STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE MICHIGAN COURT OF APPEALS)

LAKESHORE GROUP AND ITS MEMBERS, LAKESHORE CHRISTIAN CAMPING, CHARLES ZOLPER, JANE UNDERWOOD, LUCIE HOYT, WILLIAM REININGA, KEN ALTMAN, DAWN SCHUMANN, GEORGE SCHUMANN & MARJORIE SCHUHAM,
Petitioners-Appellants,

v.

DUNE RIDGE SA, LP, and MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,
Respondents-Appellees.

Supreme Court No. 159524 & 159525

Court of Appeals No. 340623 & 340647

Ingham Circuit Ct. No. 17-176-AA

MAHS Docket 14-026236

PETITIONERS-APPELLANTS' SUPPLEMENTAL BRIEF PURSUANT TO THE COURT'S NOVEMBER 27, 2019 ORDER

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*****ORAL ARGUMENT REQUESTED*****

PROOF OF SERVICE

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STATEMENT IDENTIFYING JUDGMENT APPEALED

This brief is provided pursuant to the Court's November 27, 2019 Order in connection with an application for leave to appeal the unpublished Michigan Court of Appeals decision dated March 21, 2019, attached as Appendix Volume 22.

RELIEF SOUGHT

Appellants respectfully ask this Court to grant leave to appeal or, in the alternative, to take peremptory action reversing the Court of Appeals decision, Appendix Volume 22, and upholding the standing of Ms. Underwood and Mr. Zolper (and, thus, Lakeshore Group), with remand to the administrative tribunal to conduct a formal contested case hearing on the three rounds of Part 353 permits MDEQ, now EGLE, granted to Dune Ridge, which the administrative tribunal consolidated into one contested case proceeding before dismissal of same.

STATEMENT OF QUESTION PRESENTED
Pursuant to the Court's November 27, 2019 Order

"Whether appellants Jane Underwood and Charles Zolper, as "owner[s] of [] property immediately adjacent to the proposed use" at the time of their intervention in these contested cases, satisfy the statutory standard for standing under MCL 324.35305(1), notwithstanding the developer's subsequent sales of land located between each appellant's respective property and the property being developed."

Administrative Tribunal answers: "No."

Circuit Court answers: "Yes."

Court of Appeals answers: "No."

Appellants answer: "Yes."

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Michigan Constitution

Const. 1963, art. IV, § 52:

> The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

Const. 1963, art. VI, § 28:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. . . .

The Sand Dunes Protection and Management Act, Part 353 of the Natural Resources and Environmental Protection Act or "NREPA," MCL 324.35301 *et seq*.

Section 35305:

> (1) If an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the applicant or owner may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
>
> (2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

GROUNDS FOR JURISDICTION

The Supreme Court should grant this application under three of the grounds set forth in MCR 7.305(B).[1] The case involves the deprivation of standing for persons who satisfy a statutory standing test solely as the result of unilateral action by the regulated party unrelated to the subject matter of the case. This is (1) an issue of "significant public interest" against a state agency (formerly the Michigan Department of Environmental Quality or MDEQ, now renamed the Michigan Department of the Environment, Great Lakes and Energy or EGLE) which supports the deprivation; (2) it involves "a legal principle of major significance to the state's jurisprudence," because it involves not the failure of a plaintiff to meet standing criteria but rather the defendant's claiming to divest them of it; and (3) the decision of the Court of Appeals' rejection of Ms. Underwood's and Mr. Zolper's standing despite the plain language of the relevant statutory provision "is clearly erroneous and will cause material injustice." MCR 7.305(B)(2), (3) and (5)(a), respectively.

MCR 7.305(B)(2): The Court of Appeals decision this Court should reverse bars neighbors Jane Underwood and Charles Zolper who satisfy the standing criterion of MCL 324.35305(1) ("owner of property immediately adjacent to the proposed use") from being heard in a contested case proceeding solely because the developer sold land next to them that had nothing

[1] Appellants have previously offered several reasons why this case should be heard under these three provisions of MCR 7.305(B) concerning applications for leave to appeal: "(B) Grounds. The application must show that . . . (2) the issue has significant public interest and the case is one by or against the state or one of its agencies . . . ; (3) the issue involves a legal principle of major significance to the state's jurisprudence; . . . (5) in an appeal of a decision of the Court of Appeals, (a) the decision is clearly erroneous and will cause material injustice, ..." The summary here is more narrowly focused.

to do with the case.[2] The effect of the state's wrongly rejecting these two owners' established standing and denying the required contested case hearing is of "significant public interest," MCR 7.305(B)(2), because the Part 353 statutory protections at issue were promulgated under a constitutional provision making the "conservation and development of the natural resources of the state . . . [a matter] of paramount public concern in the interest of the health, safety and welfare of the people." Const. 1963, art. IV, § 52. The constitution and the administrative procedures act of 1969 ("APA"), MCL 24.201-24.328, also provide for administrative ("contested case") review and for judicial review of final agency decisions, both of which have been blocked due to the dismissal here. Further, it is always of "significant public interest" when a governmental agency bars all review of its decision making – both administratively and by our elected judiciary; and the ALJ conducts the contested case process on behalf of DEQ/EGLE pursuant to its duty under §35305(1) to conduct "the contested case hearing in the manner provided for in" the APA. MCL 324.35305(1). This case does not involve a request for standing by an unaffected, distant or politically-motivated person, or by someone who seeks to undermine Part 353's mandate that EGLE must protect certain, limited regions of sand dunes by balancing private and public interests; to the contrary, it involves the simplest and most fundamental right to administrative review by two individuals *who have –and were ruled to have – standing under a narrow statutory provision*. This Court has jurisdiction to address this "significant [and narrow] public interest" in order to enforce the will of the legislature according to the plain language of Section 35305 of the Sand Dunes Protection and Management Act, Part 353. MCL 324.35301 *et seq*.

[2] Appellants attempt to limit the focus of this brief to matters most relevant to the narrow question the Court has directed the parties to address, but do not thereby mean to waive or alter their position that their other grounds for the standing of these two individuals and for their fellow Appellants also support the application.

MCR 7.305(B)(3): The Court of Appeals decision upholding the later denial of a petitioner's proven standing solely as a result of the actions of the regulated party also presents a "legal principle of major significance to the state's jurisprudence." MCR 7.305(B)(3). While some Michigan judicial decisions deny a plaintiff's standing upon review of challenges to it, they do so based on the plaintiff's own failure to satisfy applicable grounds. This cases present the converse situation, whether the opposing party can alter a plaintiff's or petitioner's right to be heard where the petitioner satisfies the statutory provision and has made no change. The state's jurisprudence contains a fundamental gap on this issue which this Court can, and Appellants respectfully submit should, address with this case: Whether the defendant or regulated party can, by its own actions unrelated to the subject matter of the case or the relationship of the petitioners to it, divest or dispossess a plaintiff who has standing of his or her right to be heard. This case presents a simple factual scenario and legal basis for this Court to rule that the answer is, "No," a regulated party should not have such power to evade all review. The plain language of the statutory standing provision supports Appellants' case. The history of standing in Michigan supports it, as well. The Court has jurisdiction on this basis in MCR 7.305(B)(3) as well as the first noted above from 7.305(B)(2).

MCR 7.305(B)(5)(a): A third basis for this Court's jurisdiction is that the Court of Appeals decision affirming the dismissal of the contested case proceeding, which was to review over 20 permits for construction of a gated community on many acres of legislatively-protected sand dunes, without any hearing being conducted whatsoever "cause[s] a material injustice" and is "clearly erroneous." MCR 7.305(B)(5)(a). It ignores the plain language of the statute and results in the complete avoidance of any contested case hearing to review the issuance by MDEQ, now EGLE, of Part 353 permits authorizing the intervening developer Dune Ridge to make tremendous

changes to many acres of protected sand dunes notwithstanding the statutory requirement for such a hearing. The hearing is required not only by MCL 324.35305(1)(the second sentence begins: "The hearing shall be conducted . . ."), but also under the APA (the second sentence of § 35350[1] continues: "by the department [*i.e.*, DEQ, now EGLE] as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328"), and the Michigan constitution at Const. 1963, art. VI, § 28 (all final agency decisions, *such as the issuance of final permits after a contested case proceeding*, "shall be subject to direct review by the courts as provided by law"). To bar all review for citizens the legislature selected to have statutory standing creates the impression of government without oversight, and that would be a "material injustice" even if the questions of private rights and the scope of destruction of natural resources were not at issue. The decisions below in which the administrative tribunal and the Court of Appeals ignored the plain language of MCL 324.35305(1) were "clearly erroneous." MCR 7.305(B)(5)(a).

This Court has jurisdiction to correct these clear errors.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Introduction: This application arises out of an unpublished Court of Appeals decision dated March 21, 2019, that rejected the standing of all petitioners and thereby upheld the dismissal of the contested case proceeding on Part 353 sand dunes permits for a large gated community without any hearing. The March 21, 2019, Court of Appeals decision is attached as Appendix Vol 22.

The Court of Appeals decision overturned the Circuit Court's September 26, 2017 decision reinstating the standing of four petitioners who the ALJ originally ruled satisfied the statutory criterion of being "owner[s] of property immediately adjacent to the [developer's] proposed use" of the dunes, together with Lakeshore Group (to which they belong), and remanding the matter for the contested case hearing which had been denied. The Circuit Court Opinion and Order dated September 26, 2017 is attached as Appendix Vol 21.

This Court has directed by Order dated November 27, 2019 that the parties brief the narrow question set forth above.

Appellants' September 1, 2015, Motion to Intervene: On September 1, 2015, Appellants Ms. Underwood and Mr. Zolper, along with their neighbors and the Group, moved to intervene into a pending consolidated contested case. Appendix Vol 13 at 1132A-1138A. Three contested case petitions filed by three separate petitioners had been consolidated and the consolidated contested case was still pending at that time. See decisions of ALJ at Appendix Vol

14 at 1206A-1207A (proposed consolidation) and all later ALJ decisions (which note the cases are consolidated, such as at Appendix Vol 12 at 985A).[3]

Ms. Underwood and Mr. Zolper sought intervention on multiple grounds, including that they had standing under the standing section of Part 353, MCL 324.35305(1), the subject of this brief.[4] Ms. Jane Underwood and Mr. Charles Zolper own property in the same municipal area and the same protected sand dunes where the development is located and their properties share boundaries with the east side of 130-acre development use property, the former church camp. *See* maps from the administrative record, for example, at Appendix Vol 3 at 144A; Vol 2 at 68A; Vol 11 at 909A; and Vol 13 at 1037A. The affected sand dunes comprise one local region of a larger area of dunes that was legislatively protected by the passage of the Sand Dunes Protection and Management Act, Part 353.[5] The area of dunes making up the location of the Dune Ridge development is continuous from the Lake Michigan shoreline on the west to the Kalamazoo River on the east, and from Oval Beach Park along the northern boundary of the development through residential areas south of the development. *See, e.g.*, Appendix Vol 11 at 909A and Vol 13 at 1037A.

ALJ Grants Intervention: The ALJ ruled by decision dated October 28, 2015, that Ms. Underwood and Mr. Zolper (along with others) had standing based on their aggrieved status and their properties' locations immediately adjacent to the proposed "use," namely the planned

[3] Separately, the ALJ decided on July 7, 2016 to consolidate the three separate rounds of permits, noting that the permits involved "the same critical dune"; "all concern a development on a 130-acre parcel"; and that it was without objection from MDEQ). Appendix Vol 3 at 193A-199A.
[4] See arguments for standing in correspondence and briefs in the AR at Appendix Vol 13 at 1132A-1138A & 1054A-1125A.
[5] *See* web page containing atlas of sand dunes in Michigan that were designated as statutorily-protected critical dunes pursuant to legislative direction, at MDEQ's web site: https://www.michigan.gov/egle/0,9429,7-135-3311_4114-70207--,00.html.

changes subject to Part 353 permits throughout the overall 130-acre property, and noted that MDEQ did "not object to the intervention of these four Intervenors." Appendix Vol 12 at 985A-991A (at 989A: "no prejudice will result to the parties if the immediately adjacent property owners are allowed to intervene").[6] The ALJ ruled that their ownership status gave them the right under §35305(1) to be heard as to the "uses" of the development property throughout the 130 acres. *Id*. The ALJ ruled that Ms. Underwood and Mr. Zolper were "aggrieved" based on their possessing special concerns with regard to natural resource destruction in the statutorily-protected sand dunes where their property was located. *Id*., at 987A-988A:

> The proposed intervenors allege that they were aggrieved by the issuance of the special exception and permits in this case by, *inter alia,* DEQ's alleged failure "to evaluate the effects of the proposed development on the diversity, quality and functions of the critical dunes." Brief in Support at p. 2 [footnote 2 deleted].
>
> The WRD [Water Resources Division of *MDEQ] does not object to the intervention of these four intervenors in this contested case.* Dune Ridge objects to the intervention of these Intervenors on the grounds they are not the owners of property "immediately adjacent to the proposed use" (emphasis supplied). MCL 324.35305(1).

The ALJ further ruled in the same decision that the developer could not avoid administrative review by leaving the outer areas of the property undeveloped and hence creating a buffer to shield its actions from review:

> Dune Ridge contends that none of the Intervenors live immediately adjacent to the "proposed use," because Phase 1 of the project [footnote deleted] is to occur on an interior portion of the Dune Ridge property. Dune Ridge argues that, because the Intervenors do

[6] The two others were Ms. Hoyt and Mr. Reininga, whose property is also immediately adjacent to the development, in their case on the south side at the shoreline. The focus of this brief is the narrow question posed by the Court and, thus, does not address the standing of Ms. Hoyt and Mr. Reininga (or of Mr. Altman, Mrs. Schumann and Ms. Schuham, whose homes are "adjacent" in the sense that they are nearby in the same, affected dunes). Nor does it address other grounds to support their standing than those required to respond to the question presented.

> not own property immediately adjacent to the proposed use, *i.e.*, Phase 1, they do not have standing under § 35305(1).
>
> In effect, *Dune Ridge is advancing a construction of § 35305(1) that only confers standing to the adjoining property owners if the proposed use is on the border of parcels owned by the applicant. To accept this construction would impermissibly limit an adjoining property owner's right to a contested case.* By its terms, § 35305(1) provides both the applicant and the owner of the immediately adjacent property the right to a contested case. In this case . . . *Ms. Underwood and Mr. Zolper are owners of the immediately adjacent property, and thus have standing* to challenge the issuance of permits and/or special exception issued to Dune Ridge (emphasis supplied).

Appendix Vol 12 at 987A-988A.

The Development Project: DEQ issued more than 20 sand dunes development permits to Dune Ridge in three separate rounds of applications that divided the review up instead of providing for overall review of the entire project.[7] The permits cover work on various portions of the 130-acre property, from lakefront lots to internal roads and utilities and upland lots higher in the dunes:

- The first ten permits sought permission to develop building sites on eight residential lots, numbers 5-12, for large homes along the shoreline, in the foredunes and in the immediate back dunes, as well as construction of two-lane paved roads, gates, retaining walls and

[7] MCL 324.35301(j) defines a proposed use for a "commercial purpose" and a "multifamily use of more than 3 acres" as "special use project[s]." This raises the question whether the overall project, which was a commercial development project and involved multiple homes on over 20 acres, was reviewed together under this statutory provision. The three sets of permits (as well as others later) were submitted separately and not as part of an overall project whole. They are contained in the Administrative Record attached to petitions challenging each at Appendix Volumes 6, 7 and 18-20.

utilities. *See, e.g.*, permit documents in Administrative Record, Appendix Vol's 18-20 at 1510A-1646A.[8]

- The second set of permits sought permission to modify the first plans, as well as to make changes to additional portions of the property, for septic and drain field construction throughout the property, which had not been decided on or included in the first round of permits.[9] *See* Appendix Vol 7 at 523A-563A (containing mostly drawings).
- The third set of permits were to develop additional shoreline parcels, lots 1-5, add more sites in the foredune and back dune areas of the overall property, lots 13-21, and install more roads, paths and utilities. Appendix Vol 6-7 at 443A-500A.

Other areas of the camp property not involved in the permits were an area to be put under a conservation easement, an area to be sold to the Oval Beach Preservation Society and other locations to be sold to other developers. See, for example, Appendix Vol 2 at 68A, depicting development lots across large areas of the 130-acre property, with the focus on the waterfront and lake view areas.

Reconsideration Denied: Dune Ridge moved for reconsideration of the ALJ's rulings that Ms. Underwood and Mr. Zolper satisfied the statutory standing provision of §35305(1). Motion in Appendix Vol 9-10 at 733A-797A. The ALJ again concluded by decision dated January

[8] Note that the Administrative Record ("AR") supplied by MDEQ, which is provided in its entirety in the Appendix, contains the permits MDEQ issued to Dune Ridge and documents from the contested case process, but does not contain any hearing record because no hearing was held. Nor does it contain the submissions to MDEQ by the applicant for the permits, or any meeting notes, correspondence, public comments and other communications and analysis from the permit review process. Rather, the AR begins with a petition being filed and attaching the permits that were granted. It is not clear why DEQ does not include these earlier, relevant materials from its files in the AR. Were a hearing to be held, such additional relevant information could have been brought out and made part of the record.

[9] MCL 324.35313(1)(b) requires that an application contain documentation in writing "[t]hat a proposed sewage treatment or disposal system on the site has been approved . . . ."

26, 2016, Appendix Vol 7 at 572A-579A, that petitioners Underwood and Zolper satisfied the statutory criteria, including that they were aggrieved:

> As to Ms. Underwood and Mr. Zolper, the Permittee [Intervenor-Appellee Dune Ridge] contends that they are not aggrieved. However, their Motion to Intervene alleges that the "removal of woody vegetation … can affect the flora and fauna that inhabit" the critical dune, and that they are affected by changes to the dune landscape and changes to habitat for birds and animals…." Concomitantly, their Motion adopts the Petition of Lakeshore, which asserted challenges to the permits in order to protect "the flora and fauna of the critical dunes against improper and unnecessary intrusion, changes, slope alterations, plant removal, habitat destruction, development and any impairment not required to be permitted under Part 353…." In its Response to the Motion for Reconsideration, *the WRD [Water Resources Division of DEQ, which oversees Part 353 permitting] concedes that 'it is likely that objections to potential natural resource destruction are sufficient to render a party 'aggrieved' under Part 353*." This tribunal agrees. The Motion for Reconsideration [arguing that petitioners were not "aggrieved"] is denied . . . (emphasis supplied).

Appendix Vol 7 at 575A-576A.

Administrative Tribunal dismisses Ms. Underwood based on developer's sale of land next to her containing no permitted activity: Later, Dune Ridge sold an undevelopable portion of its property located next to Ms. Underwood to the Oval Beach Preservation Society. This steep and elevated land had not been the subject of any of the permits at issue and there were never plans to develop it, probably because it is so steep that construction would not be practical.[10] Dune Ridge had already argued this buffer required Ms. Underwood's dismissal and the ALJ had rejected that

[10] Interestingly, Dune Ridge never sought dismissal or alteration of the subject matter of the contested case based on its sale of various lots within the area subject to the permits, such as the lots along the shoreline and the upland, lake view lots. This inaction would appear to indicate recognition that, since the Dune Ridge permits would not be final until the completion of the contested case review process and any appeals, Dune Ridge remained responsible to answer to challenges to its original permits notwithstanding a purchaser's taking over a portion of the permitted region(s) of the overall development property.

in his original decision granting their intervention. Appendix Vol 12 at 985A-991A. This sale to Oval Beach included the portion of the overall property right next to Ms. Underwood, Appendix Vol 3 at 144A, and left her located right across Perryman Street, kitty corner from (and therefore still touching) the rest of the development property. *Id.*

Dune Ridge challenged Ms. Underwood's standing, arguing that she no longer owned property adjacent to their development (even though she had not sold the land that established her standing) and that, because of the developer's sale of their land, she had lost her standing. See Appendix Vol 4 at 261A-282A. The ALJ ignored his earlier ruling rejecting the buffer defense and the fact that she had not moved or made any other change in her status, and dismissed Ms. Underwood by decision dated July 7, 2016. Appendix Vol 3 at 193A-199A. After noting that "this Tribunal found that Ms. Underwood had standing under §35305(1) because her property is immediately adjacent to a portion of the 130-acre development," *Id.*, at 196A, the ALJ accepted Dune Ridge's argument that "the property [it sold] is no longer a part of the development, *i.e.*, no development is occurring on the immediately adjacent property," ignored the fact that the property Dune Ridge sold had nothing to do with (and had never been part of) the permitted development activities at issue in the contested case, and granted the motion to dismiss Ms. Underwood. *Id.*

ALJ dismisses Mr. Zolper following the same rationale: Several months later, Dune Ridge sold a second portion of its 130-acre development property located next to Mr. Zolper that was not part of the permitted activity or the subject of the contested case. Dune Ridge then repeated its argument that Mr. Zolper, like Ms. Underwood, lost standing. Appendix Vol 3 at 97A-156A. The ALJ granted the motion by decision dated February 7, 2017. Appendix Vol 2 at 9A-12A; see 10A ("Dune Ridge argues the Petitioners have no standing to challenge the permits and special

exception issued by the WRD, because it has sold the property immediately adjacent to Mr. Zolper"):

> Without question, Mr. Zolper no longer is the owner of property immediately adjacent to the proposed use and, therefore, no longer has standing under Part 353.

Id.

ALJ dismisses Lakeshore Group and, as a result, the contested case as a whole:

In the same brief, Dune Ridge argued that, if Mr. Zolper's standing was taken away, the standing of the Group should be lost, as well.[11] Appendix Vol 3 at 97A-156A. The ALJ agreed.

> Because Lakeshore Group's standing is representational standing through Mr. Zolper's membership in the association, its standing must fail in this contested case as well.

Appendix Vol 2 at 9A-12A. The result was the complete dismissal of the contested case. *Id.*

Circuit Court reinstates standing of Ms. Underwood and Mr. Zolper: Upon Appellants' appeal to Circuit Court of the dismissal and all grounds asserted for their standing, the Circuit Court overruled the ALJ by reinstating the standing of Ms. Underwood, Mr. Zolper, two others and Lakeshore Group:

> The ALJ erred in holding that [developer] Appellee Dune Ridge could strip Appellants of standing by conveying slivers of its parcel to other entities so that Appellants were no longer owners of property immediately adjacent to the planned development. Dune Ridge's attempts to eliminate Appellants' standing are brazen,

[11] In the same Opinion in which the tribunal turned away Ms. Underwood based on the developer's actions, the ALJ rejected the developer's attack on the standing of Lakeshore Group. Appendix Vol 3 at 193A-199A. Although not directly at issue in the narrow question posed by the Court, the Group's representative status is relevant because if either Ms. Underwood or Mr. Zolper is reinstated, the Group may be, too, following the ALJ's analysis. Specifically, the ALJ recognized the authority of *Trout Unlimited v City of White Cloud,* 195 Mich App 343 (1992) and a 2014 decision in "*In re Petition of Saugatuck Dunes Coastal Alliance,* File No. 13-03-0079-P, issued August 21, 2014" to the effect that "Lakeshore Group similarly has standing in this contested case due to Mr. Zolper's membership in such association. Allowing re-entry of such individuals [as the other Group members] through an unincorporated association is not fundamentally unfair . . . ." *Id.*

> bad-faith efforts to circumvent the administrative review process.[12] The ALJ's decision was contrary to long-standing Supreme Court precedent that standing is determined at time of filing. *See Girard*, 437 Mich 231.
> . . .
> . . . because Ms. Underwood and Mr. Zolper had standing as property owners adjacent to the proposed development at the time of filing, and Lakeshore Group had representative standing when it intervened, the ALJ's decisions dated July 7, 2016 and February 13, 2017 dismissing these Appellants are hereby REVERSED.

Circuit Court Opinion and Order dated September 26, 2017, Appendix Vol 21 at 1652A-1653A.

Appellants filed related MEPA cases seeking judicial review of the conduct of both the developer and MDEQ. The case against MDEQ was dismissed by the Court of Claims and is the subject of a related application in Supreme Court case no. 159033.[13]

Court of Appeals decision rejects standing of Ms. Underwood and Mr. Zolper: By decision dated March 21, 2019, the Court of Appeals overturned the Circuit Court decision and rejected all grounds for standing argued by Petitioners-Appellants, thus reinstating the ALJ's order dismissing the contested case proceeding without any hearing on these permits. Appendix Vol 22.

Application for Leave to Appeal: By two orders dated November 27, 2019, this Court ordered the application for leave to appeal the dismissal of the MEPA case against MDEQ in case no. 159033 to be held in abeyance and ordered the parties to brief the following question:

> Whether appellants Jane Underwood and Charles Zolper, as "owner[s] of [] property immediately adjacent to the proposed use" at the time of their intervention in these contested cases, satisfy the statutory standard for standing under MCL

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[12] The Circuit Court made these findings based upon the record as a whole, which is the Administrative Record included in the Appendix at Volumes 1-20. The petitioners had not argued that the developer's sales of land was improper but that *its attempt to use those irrelevant sales* to evade administrative and judicial review was. Nor did the Circuit Court decision criticize the sales of land themselves but rather the "attempts to eliminate" standing. Circuit Court decision, Appendix Vol 21, at 1652A.

[13] By order of this Court in case 159033 of the same date as the order directing this briefing in this case, November 27, 2019, case 159033 was held in abeyance. Appellants respectfully note that while rejection of this application would heighten the need for that action, remanding this case for a contested case hearing would not resolve the other case, which is not limited to the administrative record, or alter the need for a decision to correct the error below in that case.

324.35305(1), notwithstanding the developer's subsequent sales of land located between each appellant's respective property and the property being developed.

STANDARD OF REVIEW

Questions of law such as the issue now before this Court are reviewed *de novo. See Madison Dist Pub Sch v Myers*, 247 Mich App 583, 588, 637 NW2d 526 (2001). *See also*, *Mich Chiropractic Council v Comm'r of the Office of Fin & Ins Servs*, 475 Mich 363, 369, 716 NW2d 561 (2006) ("Whether a party has standing is a question of law that we review de novo"); *Miller v Allstate Ins Co*, 481 Mich 601, 606, 751 NW2d 463 (2008) ("Questions of statutory interpretation are reviewed de novo"); *Salem Springs, LLL v Salem Twp*, 312 Mich App 210, 215-216, 880 NW2d 793 (2015) ("a trial court's decision on a motion for summary disposition . . . [and] questions of law, including statutory interpretation and the issue of a party's standing, are reviewed de novo").

This Court can review *de novo* the correct decision of the Circuit Court that the agency dismissal of the contested case based upon the improper rejection of standing was "in violation of . . . statute" and otherwise violated the standards set forth in the APA. *See* MCL 24.306.[14]

[14] MCL 24.306 Grounds for reversals provides: (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
(a) In violation of the constitution or a statute.
(b) In excess of the statutory authority or jurisdiction of the agency.
(c) Made upon unlawful procedure resulting in material prejudice to a party.
(d) Not supported by competent, material and substantial evidence on the whole record.
(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
(f) Affected by other substantial and material error of law.
(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

ARGUMENT

Introduction

This application involves a narrow question: Can a developer whose permits are under review (*i.e.*, the regulated party) unilaterally dispossess[15] two people of their right to a contested case hearing where the two individuals have that right because their property ownership satisfies a statutory standing provision? Ms. Underwood and Mr. Zolper (and their fellow Appellants) submit that the regulated party cannot dispossess, deprive or divest them of their standing – not only because it would be illogical and unfair; not just because it is contrary to the purposes of Part 353 and the APA; but even more simply because it is contrary to the plain language of the statutory standing provision at issue here.

The standing provision at issue here is §35305(1) of the Sand Dunes Protection and Management Act[16]:

> Sec. 35305.
>
> (1) If an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance

[15] "Dispossess" is defined in the online Merriam-Webster dictionary as "to put out of possession or occupancy." https://www.merriam-webster.com/dictionary/dispossess. Dune Ridge seeks to put Ms. Underwood and Mr. Zolper "out of possession" of their rights to a hearing and does so not by buying their property so as to put them literally "out of possession" (although they tried), but by selling its own property. The administrative tribunal's dismissal (and the Court of Appeals decision, like it) is backwards in the simple sense that it allowed an action by the developer that had no bearing on the case to dispossess two people of their established standing where they had not given up possession of the land, the ownership of which gave them standing.

[16] The Sand Dunes Protection and Management Act is Part 353 of the Natural Resources and Environmental Protection Act of Michigan (commonly abbreviated "NREPA"), MCL 324.35301 *et seq.*, which governs EGLE conduct in the management of the permit application, review and decision making process for proposed alterations of legislatively-protected sand dunes.

> or denial of a permit or special exception under this part, the applicant or owner may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

The four colors highlighting phrases above identify four key parts of the wording of the statute at issue here:

1. First, §35305(1) identifies two classes of parties who have standing (highlighted above in yellow – the "applicant" and "the owner of property immediately adjacent to the proposed use").
2. Second, it says these parties must be "aggrieved" by EGLE's decision to issue or deny a permit (highlighted above in purple);
3. Third, either such party "may request" a hearing for the purpose of obtaining administrative review of staff's permit decision (highlighted above in red); and
4. Fourth, once requested by either such party, "[t]he hearing shall be conducted . . ." (highlighted above in green).

The plain language of the statute makes clear that the status of a party with standing pertains to the time one *requests* a hearing. The Court of Appeals decision erred in ignoring the words "may request a formal hearing" and "[t]he hearing shall be conducted" when it focused solely on the words "immediately adjacent" that precede these two operative phrases.

Appellants respectfully request that this Court apply the plain meaning of the language of §35305(1) and rule that standing to request a hearing for administrative review of Part 353 permits

is determined at the time the request for a formal hearing is made by one's petition or intervention, and that the legislature's immediately-following mandate that the hearing "shall be conducted" is then triggered. The challenge by Dune Ridge at a later time that ignored the statutory language should have been rejected by the ALJ and the Court of Appeals not only as unfair, illogical and generally contrary to the scheme of Part 353, but more simply on the ground that the standing provision does not countenance such a "look-back" or dismissal of the mandated administrative review hearing as that would make portions of the standing provision meaningless.

Also, the conclusion from the plain language of the statute that Ms. Underwood's and Mr. Zolper's standing remains intact is reinforced when one considers Michigan's history of standing decisions. Recent appellate court decisions have adopted and followed this Court's recognition that a person with a substantial interest different from the citizenry at large has standing, even where there is (and in addition to) an applicable statutory provision.

Point I. According to the plain language of §35305(1), once a party – such as Ms. Underwood and Mr. Zolper – who has standing requests a hearing by initiating a contested case proceeding, the hearing "shall be conducted"

The plain language at issue: The Court of Appeals decision erred by failing to give the statute its plain meaning. The crux of the error was that, when the court considered the question of standing, it ignored the legislature's statement in the standing section, §35305(1), that the applicant or owner of adjacent property is entitled to "request a formal hearing" and "the hearing shall be conducted" and, instead, limited its focus to other portions of the language.

The full text of the two-paragraph standing provision of Part 353, MCL 324.35305(1 & 2), states:

> Sec. 35305.
> (1) If an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under

> this part, the applicant or *owner may request a formal hearing* on the matter involved. *The hearing shall be conducted by the department* as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328 (emphasis supplied).
>
> (2) *Following the hearing* provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328 (emphasis supplied).[17]

The key operative language for purposes of the question now before the Court is the end of the first sentence of paragraph (1), together with the second sentence of paragraph (1):

> . . . the applicant or owner *may request a formal hearing* on the matter involved. *The hearing shall be conducted by the department* as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328 (emphasis supplied).

The ending of the first sentence makes clear the legislature's direction that, when a party satisfies either of the two criteria for standing (*i.e.*, either the applicant or the owner of property immediately adjacent to the proposed use), that status entitles each such party to "request a formal hearing." A party's petition or intervention constitutes that request. The second sentence then directs that MDEQ, now EGLE, (identified in the statute as "the department") shall proceed to conduct the contested case hearing either such party has requested.

A. The Court of Appeals decision ignores the plain language of the statute

To reconsider whether or not to proceed with the mandated "formal hearing" at a later time without a focus on the circumstances at the time of intervention is contrary to the plain language of the statute. The Court of Appeals' decision to reject established standing after the hearing had

[17] Appellants include the second paragraph of §35305 because it spells out the path of judicial review of the final agency decision once the process of completing all administrative review has been exhausted. As a result of the dismissal of this case with no formal administrative hearing, that judicial review has also been avoided entirely in this case.

been requested – with the result that the department's obligation that it "shall . . . conduct[ ]" the hearing is nullified – flies in the face of the plain language of the statute and must be rejected.

The Court of Appeals decision, Appendix Vol 22, began its analysis of the standing of these petitioners by identifying relevant rules of statutory interpretation, including the admonition that:

> "[t]he primary goal of this Court when interpreting a statute 'is to discern and give effect to the Legislature's intent.' . . . 'We begin by examining the plain language of the statute,' and '[w]here that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed – no further judicial construction is required or permitted, and the statute must be enforced as written,'" (citations omitted).

Appendix Vol 22 at 1660A-1661A & 1666A. The Court of Appeals correctly explained that "the Legislature provided a scheme for challenging Part 353 permits, and that scheme extends only to Part 353 applicants and property owners whose property is immediately adjacent . . . ." *Id*., at 1663A. However, the Court of Appeals considered only part of the pertinent language provided by the legislature. It ignored the words "may request a formal hearing" and "[t]he hearing shall be conducted" and, thus, voided a legislated process that is part of the balancing function of Part 353 as well as the private rights of the petitioners under the APA.

As the Court of Appeals decision says, at 12, Appendix Vol 22 at 1666A, "[W]here the language of a statute is clear, it is not the role of the judiciary to second-guess a legislative policy choice; a court's constitutional obligation is to interpret, not rewrite, the law" (citations omitted). The decision goes on to reiterate the point of the language quoted above from page 6 of the decision that "when language of a statute is unambiguous, no judicial construction is permitted and the statute must be enforced as written in accordance with the plain and ordinary meaning of its words." *Id*.

By failing to include or even to take into consideration the plain language "may request a formal hearing" and "the hearing shall be conducted," two key dictates of the legislature that are part of the standing provision, the Court of Appeals decision failed to give all of the statute's words their plain meaning. In addition to the rules of statutory interpretation quoted in the Court of Appeals decision, another fundamental rule is to give meaning to all words; none should be ignored or treated as meaningless. *People v. Gaston (In re Forfeiture of Bail Bond)*, 496 Mich. 320, 328, 852 NW2d 747 (2014) ("it is well established that "'[c]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute.'" *People v Couzens*, 480 Mich 240, 249; 747 NW2d 849 [2008] [citation omitted]"); *Apsey v. Mem'l Hosp.*, 477 Mich. 120, 127, 730 NW2d 695 (2007) ("Whenever possible, every word of a statute should be given meaning. And no word should be treated as surplusage or made nugatory. *People v Warren*, 462 Mich. 415, 429 n 24; 615 N.W.2d 691 [2000]"). The Court of Appeals decision failed to comply with that rule because it ignored the operative terms "may request a formal hearing" and "[t]he hearing shall be conducted," §35305(1), and thus made them meaningless. Instead, it focused solely on the words pertaining to ownership of immediately adjacent property, without regard to the temporal element and despite that fact that these Petitioners-Appellants' status as owners of the property in question never changed.[18]

[18] One can imagine a situation in which a legitimate challenge might be brought, such as on the ground that a petitioner did not satisfy the standing provision when intervening, perhaps because she did not own the property, or that he or she had moved away and sold the property and thus arguably had given up the right to a contested case hearing. But such is not such a case here. No change in the petitioners' facts that support the original, correct finding of standing has occurred.

B. Issues with the analysis in the Court of Appeals decision

A review of a series of points made in the decision's analysis illustrates some of the reasons[19] why it must be reversed:

1. The analysis in the decision begins by citing to Dune Ridge's argument that Petitioners "lost statutory standing to challenge the DEQ's decisions to grant Dune Ridge permits because Dune Ridge sold those portions of the property that were immediately adjacent to petitioners' properties." Court of Appeals decision dated March 21, 2019, Appendix Vol 22, at 1661A. It is noteworthy that this explanation ("adjacent to petitioners") reformulates the standard backwards; the test in the statute is the location of petitioners' properties vis-à-vis the proposed uses to be permitted, not what the developer does with the portion of that overall property that is adjacent to petitioners.[20] The converse of a proposition is not identical to the proposition itself.[21]

2. The decision then cites to *Salem Springs, LLC v Salem Township,* 312 Mich App 210, 216, 880 NW2d 793 (2015) and to *Miller v Allstate Ins Co,* 481 Mich 601, 751 NW2d 463

[19] The Court of Appeals statement of facts at pages 2 and 3 of its decision, Appendix Vol 22 at 1656A, illustrate a significant failure to understand the facts and the prior proceedings of this case. For example, the decision notes there were three separate petitioners but fails to recognize that these parties moved to intervene while all three original petitioners were still parties, not after two had settled; the summary confuses Lakeshore Group (made up of all intervenors) with Lakeshore Camping; and it describes Lakeshore Group as "an unincorporated association of Lakeshore Camping," at fn 3, when it in fact is an association of all of the individual intervenors along with Lakeshore Camping. *See* Appendix Vol 22 at 1657A.

[20] It also runs afoul of ALJ's ruling that the developer could not insulate itself from review by creating a buffer as that would undermine the rights of the petitioners. Appendix Vol 12 at 988A ("Dune Ridge is advancing a construction of §35305(1) that only confers standing to adjoining property owners if the proposed use is on the border of parcels owned by the applicant. To accept this construction would impermissibly limit an adjoining property owner's right to a contested case.")

[21] See, for example, https://en.wikipedia.org/wiki/Converse_(logic). "In logic and mathematics, the converse of a categorical or implicational statement is the result of reversing its two constituent statements." "In general, the truth of [statement] *S* says nothing about the truth of its converse."

(2008), App Vol 22 at 1661A, to note that the legislature can limit statutory standing, and uses the precedent to focus on statutory interpretation, but does so in a way that ignores what the legislature said despite the admonition in *Miller* cited in *Salem Township* that "Before a court may exercise jurisdiction over a plaintiff's claim, that plaintiff must possess standing." 312 Mich App at 216. These Appellants *did* possess standing; the contested case was initiated and the required hearing was to be conducted. No challenge has offered or established facts that undermine the existence of standing at the time the hearing was requested. Just as the legislature can limit standing, *Id.*, it can spell out how it works; the legislature did that here with the words "may request a formal hearing" and "the hearing shall be conducted." §35305(1). Yet, the Court of Appeals decision ignores those words and the directions of the legislature.

3. The decision rejects Appellants' argument that the common law supports their claim of standing, but erroneously mischaracterizes that argument as relying solely upon MEPA, which provides statutory standing, not common law standing, Appendix Vol 22 at 1661A, when Petitioners-Applicants have argued all along that *Lansing Schools* supports their standing.[22]

4. The decision applies the "*expressio*" adage to limit standing, Court of Appeals decision at 7-8, Appendix 22 at 1661A-1662A, and yet fails to apply it to the legislature's listing of what someone with standing may do and have, namely that she or he may request a hearing and the "hearing shall be conducted." Again, on page 8, the decision rejects the United States Supreme Court position on applying the adage so that language is interpreted to be consistent with a statute's "dominating general purpose." Appendix Vol 22 at 1662A. In apparent support, the decision cites

[22] *See* Point II below regarding *Lansing School Educ Ass'n v Lansing Bd of Educ,* 487 Mich 349, 792 NW2d 686 (2010) ("*Lansing Schools*"), and recent judicial support for these parties' argument that the decision in *Lansing Schools* and Michigan's historical law of standing supports them.

to the purpose of Part 353 to balance private rights and the public's interest in the protected dunes; yet it completely fails to address how barring someone with standing comports with that purpose. Appendix Vol 22, generally.

5. The decision notes the 2012 legislative amendment to §35305(1), *Id*., at 1662A, which inserted the identification of the applicant and the adjacent property owner as petitioners, and yet fails to note that the legislature did not alter the key operative language that the adjacent owner "may request a formal hearing" and "the hearing shall be conducted." Instead of accepting the legislature's decision that a party such as Ms. Underwood and Mr. Zolper who satisfy the standing criteria of adjacency and being aggrieved are to be given their hearing, the decision ignores that dictate and becomes mired pursuing the red herring of the question what to do about the developer's sale of land that was never relevant to the case.

6. The decision acknowledges that a MEPA provision authorizes intervention, *Id*., at 1662A-1663A, as well as the ALJ's recognition that MEPA provides the power to intervene, and yet shunts the argument aside with what appears to be the mistaken belief that these petitioners' intervention was not that but rather an effort to initiate a new contested case. That is not true; as noted above, they moved to intervene into a pending three-party consolidated contested case and were granted petitioner status as intervenors.

7. The decision erroneously rejects the application of *Lansing Schools*, at 9 of the decision (again, *see* Point II below for a discussion of *Lansing Schools*) on a mistaken application of *Olsen v Jude Reed LLC*, 325 Mich App 170, 924 NW2d 889 (2018), which actually found that *Lansing Schools* was not relevant in that case. Appendix Vol 22 at 1663A. The *Olsen* decision, 325 Mich App at 193, held the parties in that case *were not aggrieved*, whereas the ALJ here found they were, a legal conclusion the Court of Appeals does not address. *See also, Olsen, supra*, at

180-81, where the decision says a party seeking relief in that case is "*not required to demonstrate 'standing'* but instead must demonstrate . . . that they are an 'aggrieved' party" (emphasis supplied). Thus, *Olsen* does not address the applicability to this case of the explanations in *Lansing Schools* of grounds for standing.

8. The Court of Appeals decision then begins to consider at some length cases cited regarding the "issue whether statutory standing may be lost during the pendency of the proceeding as a result of the opposing party's conduct." Appendix Vol 22 at 1663A. The Court of Appeals recognizes that "it is undisputed that [Underwood and Zolper] . . . had standing" at the time they intervened and thus requested a hearing, *Id*. At 9-10, the decision acknowledges the citation to *Girard* for the rule that the question of standing is about "what the plaintiff must allege at the time of filing." *Id*. at 1663A-1664A. But then the decision ignores the fact that the §35305 language "may request" is operative at that time and simply transitions to saying a challenge to "standing may be raised at any time." *Id*. at 1664A. The decision does not address the administrative nature of the process, consider whether a later challenge must look back to one's status at the time of intervention or analyze whether the regulated party may fairly avoid all review by its own irrelevant actions having nothing to do with the permitted actions at issue in the administrative process.

9. The decision continues to ignore the §35305 operative wording ("may request a formal hearing" and "the hearing shall be conducted") as it segues into discussion of cases respondents cite that are not helpful. *Id*., at 1664A (the Court says *"none of them provide significant guidance in the resolution of this case*" [emphasis supplied]). The decision segues yet again, *Id*., at 1664A-1665A, into cases discussing mootness, but without any analysis that advances the resolution of this case, and then wrongly concludes that Ms. Underwood and Mr. Zolper "lost

their status as owners of 'the property immediately adjacent to the proposed use.'" *Id*. The decision even notes that Dune Ridge "conveyed their property that was immediately adjacent to petitioners' property," *Id*. at 1665A, rather than altering their ownership of property adjacent to the development property as a whole (again getting the standard backwards). Surprisingly, the decision even falsely says that Dune Ridge "abandoned their 'proposed use' or plan to develop their property" (when Dune Ridge never was going to develop the land it sold; and Dune Ridge did not abandon any development plan or permitted activity). *Id*. The decision compounds the error when it proceeds to use that erroneous analysis to conclude that "petitioners could not be 'aggrieved by' the decision to issue the permits," *Id*., simply because irrelevant property was sold. The ALJ had recognized twice that they were aggrieved. Appendix Vol 12 at 985A-991A and Vol 7 at 572A-579A. MDEQ concurred. *Id*. Nothing changed in the circumstances of the developer's plans or the status of Ms. Underwood or Mr. Zolper that would have any impact on their "aggrieved" status. It is difficult to understand how the Court of Appeals could have gotten the facts so wrong; this reasoning assumes changes in the development plan that never occurred and gives the land Dune Ridge sold importance it never had. The decision erroneously concludes that Underwood and Zolper's "interests are now the same as other persons who live in the community," Appendix Vol 22 at 1665A, and thus elects to ignore the established fact that they had and continue to have substantial interests different from the citizenry at large.

10. The decision then essentially rules that "a development company may . . . evade administrative review by unilaterally changing a petitioner's status," *Id*. At this point, the decision attempts to distinguish federal cases offered by petitioners wherein the courts (6th Circuit and ED MI) ruled that a defendants' actions after a case was initiated would not always deprive a plaintiff of standing as that it "would be anomalous," *Id*., citing *Senter v Gen Motors Corp,* 532 F2d 511,

519 (CA 6, 1976) and "it would be unreasonable," Appendix Vol 22 at 1666A, citing *Blankenship v Superior Controls, Inc,* 135 F. Supp. 3d 608, 616-17 (ED Mich, 2015). Instead of considering whether the dismissal here was "anomalous" or "unreasonable," the Court of Appeals decision relies on the factual and legal error of ignoring the ALJ's ruling that these parties were aggrieved, and decides that they could no longer be aggrieved simply because of the Dune Ridge land sales. *Id*. This conclusion is an absurd one not only because the phrasing "adjacent to" is flipped backwards, but even more importantly because the land sold was entirely irrelevant to the planned changes to the dunes, the permits and the subject matter of the hearing that was to be conducted.

11. The decision then acknowledges twice on page 12 that (A) its decision interpreting §35305(1) to bar someone with standing "may create potentially unfair situations" and (B) it "may be inequitable to allow Dune Ridge to divest petitioners of the power to contest the permit[s]," and yet completely fails to address how to redress that unfairness. Appendix Vol 22 at 1666A. More importantly, despite then proceeding to go back to rules of statutory construction, *Id*., and noting that "it is not the role of the judiciary to second-guess a legislative policy choice" (quoting from *Ambs v Kalamazoo County Rd Comm*, 255 Mich App 637, 662 NW2d 424 [2003]), *Id*., like the choice to authorize a neighbor such as Underwood or Zolper to "request a hearing," the decision reads out of existence the plain language that, once Ms. Underwood and/or Mr. Zolper has exercised his or her right to "request a formal hearing," the hearing "shall be conducted." §35305(1).

In sum, with error compounded on error, in the process of ignoring the facts or getting them wrong (and declining to address unfairness), the decision below fails to follow precedent on statutory interpretation about applying the legislature's policy choices and words. Then, by

ignoring the plain language of the statute, the decision "throws out of court" these two petitioners who had established their standing for a contested case hearing.

The decision's focus on the status question of being "immediately adjacent"[23] and whether that status can be lost also fails to address the gap in Michigan law on the issue whether a defendant or regulated party can divest a petitioner or plaintiff of standing. This Court should correct that error and rule that a defendant cannot divest a plaintiff (or, here, a petitioner) who satisfies a standing provision and destroy his or her right to be heard.

The apparent quandary that the Court grappled with – whether a petitioner can lose his or her standing established at the time of intervention based on later property changes by the developer – did not consider the rest of the language in the same paragraph of the statute and thus ignored the plain wording and meaning of the legislature. This failure, even more than the court's analytic shortcomings generally, is the reason the decision must be overturned, the case should be remanded for the contested case proceeding and the required hearing must be conducted. Because the analysis in the decision below ignores the rest of the operative language of the statute, the effect of the decision is to substitute the court's judgment for that of the legislature. The decision must be overturned and the words of the legislature given effect.

[23] The dictionary meaning of "adjacent" (a term not defined in the statute) is not limited to meaning "sharing a common border." It also means sharing a "common endpoint" (like the Underwood property still shares where it is now kitty corner from one boundary of the development property – see maps from the Administrative Record, for example, at Appendix Vol 3 at 68A and 144A) or even being situated "nearby" or "not distant." https://www.merriam-webster.com/dictionary/adjacent. Consideration of these dictionary meanings of "adjacent" illustrates that the decision below applied one meaning to the exclusion of other, equally valid meanings. The legislature did not say which meaning it intended in §35305(1) and the common meaning of the word does not restrict it to lands sharing a common boundary.

C. Analogy to personal jurisdiction obtained at the time "process is served" Under the Revised Judicature Act of 1961 ("RJA"), "[p]resence in the state at the time *when process is served*" is "a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the individual . . ." (emphasis supplied). RJA 600.701(1). *Bagsby v. Gehres*, 195 F. Supp. 2d 957 (ED MI 2002) ("In Michigan, jurisdiction over the person can exist on the basis of general personal jurisdiction, *see* Mich. Comp. Laws §§ 600.701 . . . General personal jurisdiction exists over an individual when that person is physically served in Michigan, is domiciled in Michigan, or consents to the exercise of personal jurisdiction. Mich. Comp. Laws § 600.701."). A party over whom the court obtains personal jurisdiction at the time process is served cannot evade jurisdiction by moving out of state. *See Haefner v Bayman*, 165 Mich App 437, 441, 419 NW2d 29 (1988) (serving a person while in Michigan is all that is required to obtain personal jurisdiction even over someone who lives out of state), citing *Fitzwater v Fitzwater*, 97 Mich App 92, 98 at fn 3, 294 NW2d 249 (1980). Similarly, the provision of §35305(1) that an aggrieved applicant or owner "may request a formal hearing on the matter involved" makes clear that the required status applies when the statutory party first files his or her petition or intervenes. Just as a party over whom the court has personal jurisdiction cannot evade that jurisdiction by moving away, so Dune Ridge should not be allowed here to evade administrative review by selling off part of its property where parties with standing have already requested a contested case hearing by their lawful intervention.

In sum, the plain language of Part 353 that addresses in §35305 the question of a person's standing to obtain a contested case hearing provides a temporal, initiating function to the standing of the two identified aggrieved parties. The owner of adjacent property has a right to "request a formal hearing" and "[t]he hearing shall be conducted." MCL 324.35305(1). It is that simple. With

this language, the legislature clearly created a process with a threshold for standing, to be followed by an administrative review of permits and a final agency decision.[24] What could have been a simple administrative review process completed long ago has stretched into years of appeals because the developer sought to escape administrative review altogether and the ALJ conducting the mandated hearing for the department failed to conduct it and, instead, dismissed the proceeding without any formal hearing. To revisit the issue of standing at a later date, as was done in error here by the administrative tribunal and then erroneously upheld by the Court of Appeals, is improper not only because the Petitioner-Appellants did not alter their status (and the changes that were made were irrelevant to the case), but more simply because the petitioners' request had initiated the contested case process and the administrative tribunal should have respected that and complied with the legislature's mandate to conduct the hearing. Instead, parties with standing to "request a formal hearing" were dismissed and *no hearing was conducted*. That result violates the plain meaning of the statute. The erroneous ruling below must be reversed and the case remanded for a full contested case hearing.

[24] The administrative review process in a contest case pursuant to §35305(1) is much simpler than occurs in litigation before a trial court. There is no discovery and other than allowing the parties to negotiate and/or file motions, as well as conduct a site visit, the administrative process moves toward a formal, quasi-judicial hearing. After the administrative tribunal holds the hearing, the ALJ drafts a recommended decision. The parties may comment and a final agency decision is then issued by the EGLE director. Then, pursuant to §35305(2), a party may seek judicial review of that final agency decision. *See also* APA Procedures in Contested Cases at MCL 24.271-288.

II. Ms. Underwood and Mr. Zolper's statutory basis for standing shows they have a "substantial interest different from the citizenry at large," satisfying an historical basis for standing in Michigan that courts have adopted and applied in recent decisions along with statutory standing.

A. Recent Adoption and Application of "Substantial Interest" test

Recent decisions adopt and follow this Court's analysis of standing in *Lansing Schools* that was based upon historical rulings for over a century. In *Le Gassick v Univ of Mich Regents*, __ Mich App __, 2019 Mich App LEXIS 7245, 2019 WL 6138539 (November 19, 2019)[25], the Court found the trustee plaintiff had standing based upon "general principles of standing," *Id*. at *13, Appendix Vol 23 at 1678A, as well as the statutory basis for standing in MCL 700.7405, stating "we conclude that the purpose of the MTC [Michigan Trust Code], the trustee's power to prosecute and enforce the trust, and the *general rules of standing* allow plaintiff to proceed with this litigation" (emphasis supplied). *Id*. at *21, Appendix Vol 23 at 1681A. Specifically, the Court in *Le Gassick* quoted from this Court's decision in *Lansing Schools* and cited to the decision in *In re Pollack Trust*, 309 Mich App 125 (2015), which had quoted the same language for the principle that a party with "a special right or substantial interest that will be detrimentally affected in a manner different from the citizenry at large" has standing. *Le Gassick, supra,* at *13, fn 5 ("we adopt this reasoning as our own"). Appendix Vol 23 at 1678A.

In *Lansing Schools*, teachers with no standing under the schools statute at issue sought to protect themselves from violence by students. *Lansing Schools, supra,* 487 Mich 349. The decision upholds their standing on grounds apart from the terms of the statute that was at issue there, which did not grant them standing. In doing so, the decision reviews the history of Michigan law on standing, including the lengthy history of decisions applying the substantial interest test.

[25] The Lexis version of the yet-to-be published decision in the *Le Gassick* case is provided in Appellants' Appendix as Volume 23.

These petitioners, like the teachers in *Lansing Schools*, should have standing independent of, as well as based upon, the §35305 criterion for standing. In the case involved in this application, the statutory standard of §35305(1) supports the conclusion that Ms. Underwood and Mr. Zolper have a "special right or substantial interest that will be detrimentally affected in a manner different from the citizenry at large." *Le Gassick.* First, the legislature determined that, among all persons, these two sets of people (applicant and neighboring owner) have unique interests and rights. Thus, in effect, the legislature has decided that Ms. Underwood and Mr. Zolper have 'substantial interests different from the citizenry at large.'

Moreover, the administrative tribunal's ruling that Ms. Underwood and Mr. Zolper were "aggrieved" within the meaning of §35305(1) further supports the conclusion based on the legislature's decision about their status that they had (and have) a substantial interest different from the citizenry at large. Their petitions' allegations identified harm to the dunes. Since (unlike the general citizenry) they live in the same dunes, their physical property would be far more likely to be affected by the development changes based upon the interrelationships among the ecological characteristics within the same sand dunes. *See* generally, excerpt of Cowles, *The Ecological Relations of the Vegetation on the Sand Dunes of Lake Michigan*. Appendix Vol 11 at 884A ff., included as Exhibit 3 to Lakeshore's Motion for Summary Disposition. Appendix Vol 10 at 799A – Vol 12 at 952A.

While any citizen might have or wish to express a concern with the protection of Michigan's majestic sand dunes, Ms. Underwood and Mr. Zolper have property in the very area of protected dunes at issue in the permits which are the subject of the contested case. The tribunal held that the interests they identified satisfied the statutory standard to support the determination

that they had standing, including that they were "aggrieved."[26] MCL 324.35305(1). Thus, the rationale adopted in recent decisions of the Court of Appeals, *Le Gassick, supra,* based upon this Court's decision in *Lansing Schools* and a century-old standard for considering standing supports the conclusion that Ms. Underwood and Mr. Zolper not only had standing but have a right to proceed. The uniqueness of their interests and the substantial nature of their concerns different from the citizenry at large remain in place and are as applicable today as the day they intervened. The sale of small parcels by the developer had no effect whatsoever on that analysis. Therefore, those sales should not create the illogical and negative effect that is contrary to §35305(1) of divesting Ms. Underwood or Mr. Zolper of their standing and their right to proceed with the contested case hearing they had requested.

B. History of Michigan decisions adopting and applying the test

It may be instructive to consider a small sampling of decisions in the long line of historical cases that established the background for the "substantial interest different from the citizenry at large" ground for standing cited in *Lansing Schools* and adopted in *Le Gassick.* The standard and the language used to articulate it comes from Michigan's history of standing, going back to *People ex rel. Drake v. Regents of University of Mich,* 4 Mich 98 (1856), where this Court considered approaches used in other jurisdictions and adopted the approach that a citizen would have standing where he or she (A) had a substantial interest which (B) was different from that of the citizenry at large. *Id*. at 103. The following is a brief summary of some of the threads in this history.

[26] It has never been challenged or appealed that Ms. Underwood and Mr. Zolper were "aggrieved" except upon Dune Ridge's request for reconsideration in the administrative tribunal. There, the ALJ clearly reiterated his ruling that they satisfied the standard for "aggrieved" for standing (and DEQ agreed). Appendix Vol 7 at 572A-579A.

Two not-too-distant decisions from the 1990s cited by this Court in *Lansing Schools* were *Detroit Fire Fighters Ass'n v City of Detroit*, 449 Mich 629, 633, 537 NW2d 436 (1995), and *House Speaker v Governor*, 443 Mich 560, 572-73, 506 NW2d 190 (1993). In *Detroit Fire Fighters*, this Court held that the purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to "ensure sincere and vigorous advocacy." Ms. Underwood and Mr. Zolper certainly satisfy that test. The decision called for a showing "that a substantial interest of the litigant will be detrimentally affected in a manner different from the public at large" to support making the required finding, and cited to *Alexander v Norton Shores*, 106 Mich App 287, 307 NW2d 476 (1981) and *Waterford School Dist v State Bd of Ed*, 98 Mich App 658, 296 NW2d 328 (1980). *Detroit Fire Fighters, supra,* at 633.

In the other case of the same era, *House Speaker v Governor, supra,* a case seeking declaratory relief, the decision found that meeting the court rule requirements for declaratory relief was sufficient to establish standing. The Court also explained, however, that in cases involving public rights, a litigant established standing by demonstrating a "substantial interest [that] will be detrimentally affected in a manner different from the citizenry at large." *House Speaker, supra,* at 572-73, quoting a prior decision in the same case, *House Speaker v Governor*, 441 Mich 547, 554, 495 NW2d 539 (1993). Like the decision in *Detroit Fire Fighters*, *House Speaker* cites to *Alexander v Norton Shores, supra.*

The case of *Alexander v Norton Shores*, 106 Mich App 287, 288 (1981), decided over a decade earlier, had followed precedent to rule that the purpose of standing is to "assure sincere and vigorous advocacy," citing *Michigan License Beverage Ass'n v Behnan Hall*, 82 Mich App 319, 266 NW2d 808 (1978), for one who may be "hurt in a manner differently than the citizenry at large," citing *Waterford, supra.*

These cases cited in *Alexander* looked back another decade: *Mich License Bev Ass'n, supra,* 82 Mich App at 324 (1978) supported its ruling consistent with Michigan precedent that the goal of standing is to assure sincere and vigorous advocacy, and also cited to five United States Supreme Court decisions to support that rule of state law.[27]

The second case relied on in *Alexander* in 1981 was *Inglis v Pub Sch,* 374 Mich 10, 13, 131 NW2d 54 (1964which cited *Michigan License Beverage Ass'n, supra,* and *Inglis v Pub Sch,* 374 Mich 10, 13, 131 NW2d 54 (1964) for the language referring to an interest different from the citizenry at large. In *Inglis,* this Court followed the same approach of looking for a special or specific injury or interest, and also cited to treatises as well as to *Wilson v Cleveland,* 157 Mich 510, 511, 122 NW 284 (1909) from far earlier in the century.

In the 1909 decision in *Wilson,* the court had addressed standing by saying: "It has become the settled policy of this court" that standing exists "where a specific right is involved not possessed by citizens generally" and cited for contrast to *People v Whipple*, 41 Mich 548, 49 NW 922 (1879) (rejects mandamus because case involves a "general violation of a public duty" and not a "specific right." Earlier than *Wilson*, in the 19th Century, the precedent came from another decision cited by this Court in *Lansing Schools* and noted above, *People ex rel Drake v Regents of University of Mich*, 4 Mich 98, 101-102 & 103 (1856). There, this Court explained that it would follow the rule of the English common law and examples from Maine, Massachusetts and Pennsylvania that

[27] They were: *Warth v Seldin*, 422 US 490 (1975) (holding standing arose for the protection of interests that are not the same for all citizens); *United States v Students Challenging Regulatory Agency Proceedings*, 412 US 669, 687 (1973); *Sierra Club v Morton*, 405 US 727 (1972) (standing and jurisdiction are related; cites precedent for the point that having a sufficient stake to support the court through the adversary system is a basis of standing); *Flast v Cohen*, 392 US 83 (1968) (citing Baker with approval that the focus of standing is on the party and his or her personal stake to assure "concrete adversity"); and *Baker v Carr*, 369 US 186, 204 (1962) (the gist of standing is that the party has a personal stake in the outcome to assure concrete adverseness in order to illuminate questions for the court).

concluded a court should hear a case if the citizen had "some individual interest in the subject matter of [the] complaint which is not common to all the citizens of the state . . ." 4 Mich at 103. In contrast, the *Drake* decision rejected the examples of New York and Illinois, whose state courts had found standing in a mandamus action for any citizen without the qualifier that his or her interest be "not common to all." 4 Mich at 102.

In short, as this limited example of precedent illustrates, Michigan has a longstanding practice going back almost to the time Michigan became a state in 1837 of applying the rule adopted recently in *Le Gassick* that standing arises where a citizen has a substantial interest different from the citizenry at large – and this ground for standing applies even where there is a statutory provision, as well. *Le Gassick, supra,* at *13-14 and fn 5 ("we note that general principles of standing are applicable to trusts" and "[i]n addition to statutory law, the trial court improperly granted summary disposition in favor of defendants in light of general standing principles"). Appendix Vol 23 at 1678A.

In this case, the interests of Ms. Underwood and Mr. Zolper are different from the citizenry at large and entitle them to be heard in a contested case proceeding. They will be detrimentally affected differently from the general citizenry because their properties are in the same area of dunes near the permitted alterations. Actions including removal of mature trees, destruction of habitat and the resulting movement of wildlife, removal of native species of plants and alteration of the contours of the dunes will all create effects that are more immediate and significant for them, even if the general public might have a more generalized concern about such actions. They satisfy the standing provision of §35305(1) and this precedential ground based on having a substantial interest different from the citizenry at large reinforces the appropriateness of their statutory standing. It also demonstrates they should and do retain standing despite actions by the developer to sell small

areas of the camp property not subject to the permits, and that those arguments to dispossess them of their standing are even more obviously insupportable as well as contrary to law.[28] This analysis supports the conclusion of Point I above that Ms. Underwood and Mr. Zolper have standing according to the plain language and they have not lost their standing through the actions of the developer.

III. Fundamental fairness requires restoring the standing of Ms. Underwood and Mr. Zolper.

The decision below adopting MDEQ's rejection of the standing of Ms. Underwood and Mr. Zolper through its ALJ constitutes a material injustice that is of significant public interest. It is clearly erroneous because it ignores the plain language of the statute. And it is contrary to over 160 years of precedent on standing. The decision below ignores the gap in Michigan jurisprudence where, like here, a defendant seeks to alter the plaintiff's standing, in contrast with Michigan cases (which the Court of Appeals acknowledges do not "provide significant guidance in the resolution of this case," Appendix Vol 22 at 1664A), where the plaintiff himself or herself is proven never to have satisfied the standing criterion or to have given it up by his or her own actions.

This application does not present a difficult case and does not depend upon an extreme or divisive argument about standing. Ms. Underwood and Mr. Zolper, together with their fellow Applicants, are not seeking extraordinary relief. To the contrary, the only extraordinary thing about this case is the deprivation of standing, once established, without any rationale based on the subject

[28] Appellants understandably feel there is an absurdity to the dismissal of their contested based on the regulated party's argument that his irrelevant land sales altered their rights or interests. To them, that Dune Ridge argument might be considered "brazen," as the Circuit Court said, or indicate an abundance of chutzpah. One definition of chutzpah is "that quality enshrined in a man who, upon killing his father and mother, throws himself on the mercy of the court because he is an orphan." *Williams v State*, 126 Ga. App. 350, at fn1 (1972). Here, the sales were not a wrongful act, but the argument that the sales shield the entire development from review seems extreme to Appellants.

matter of the case and contrary to the plain language of the statute. The relief Ms. Underwood and Mr. Zolper seek is merely the basic administrative review of a contested case hearing to which they are entitled, followed by the mandated final decision by the director of EGLE on the permits at issue and, if appropriate, judicial review by appeal to circuit court based upon the administrative record. MCL 324.35305(2).[29] This contested case review process is a natural and normal part of finalizing agency decisions and does not involve unusual proceedings or extraordinary demands.

Both MDEQ in its briefs and the Court of Appeals in its decision acknowledged that the result of rejecting parties with standing and dismissing the contested case was or appeared to be unfair and inequitable. *See*, for example, Appendix Vol 22 at 1666a ("may create potentially unfair situations in which a Part 353 permittee can eliminate a petitioner's standing" and "may be inequitable to allow Dune Ridge to divest petitioner of the power to contest the permit"). Both rationalize accepting the unfairness based upon flawed statutory interpretation. Both the agency tasked by the legislature with managing the protected dunes and the Court of Appeals decision ignore key words of the statute, effectively making those words meaningless.

The Court of Appeals decision reached the wrong result as to its analysis of the effect of the developer selling off slivers of land that were not part of the permitted activity nor the subject of the contested case proceeding. The decision justified that outcome in part by erroneously ruling that Ms. Underwood and Mr. Zolper were no longer "aggrieved" based on the mistaken interpretation that that status was altered by the developer's sales and ignoring entirely the findings by the ALJ that they were aggrieved (and that DEQ agreed they were aggrieved). Appendix Vol 22 at 1665A.

[29] This right of appeal also belongs to the permittee, who may seek it if unhappy with the department's final decision at the conclusion of the formal contested case review process.

The decision also erred in ignoring the ALJ's decision that the developer could not insulate its permits from all review by creating a buffer area between the actions covered by the permits and the location of the petitioners. Appendix Vol 12 at 988A ("Dune Ridge is advancing a construction of §35305[1] that only confers standing to adjoining property owners if the proposed use on the border of parcels owned by the applicant"). Arguing that the sale of land[30] alters standing was effectively an attempt to apply the buffer defense that the ALJ had rejected.

The concept of fundamental fairness may present itself in many contexts. Here, a statute enacted to protect dunes and to empower affected neighbors to seek administrative and judicial review is one part of the legislature's fulfilment of its duty under the constitution. Const. 1963, art. IV, §52 (requiring the legislature to provide for the protection of Michigan's natural resources, the conservation and development of which "are hereby declared to be of paramount public concern"). The state constitution also provides for judicial review of final agency decisions. Const. 1963, art. VI, §28. Ms. Underwood and Mr. Zolper satisfied statutory criteria that set them apart from the general citizenry and yet the administrative tribunal dismissed their contested case proceeding without the required formal hearing and the decision at issue here agreed with that fundamentally unfair outcome. *Compare, Shavers v. Attorney General*, 402 Mich. 554, at fn 36, 267 N.W.2d 72 (1978) (noted that "[l]eaving seriously injured persons without *any* remedy may violate concepts of fundamental fairness and justice which are part of the fabric of constitutional government" in a case considering legislative changes to existing law [emphasis in original]). Here, when the

[30] Dune Ridge says it had long planned to sell the land in question. In other words, the sales were in furtherance of the overall commercial objective of making money from the development of the former church camp, including selling property (locations where no Part 353 permits were involved) as well as developing it in the areas subject to the permits at issue here. Appellants do not criticize or object to the land sales. But Dune Ridge's arguments after its sale of these irrelevant parcels that such actions should result in the complete absence of any formal contested case hearing on the permits were illogical as well as contrary to the plain language of the statute.

legislature amended §35305(1), it did not eliminate standing but retained it specifically for people like these Appellants and also retained language requiring that the formal hearing "shall be conducted." Yet the effect of taking away the established standing of Ms. Underwood and Mr. Zolper is to leave them "without *any* remedy."

Finally, the decision to take a situation in which parties with statutory standing have a right to a statutory hearing that the legislature has dictated "shall be conducted" and to deprive said parties of any hearing whatsoever is clearly contrary to the plain language of the statute. That fundamentally unfair result is materially unjust and must be overturned.

Conclusion

The Court has asked the parties to brief the question whether certain actions by the regulated developer unilaterally divest parties of their right to be heard notwithstanding their having a statutory right to a contested case review of Part 353 permits. It would be shocking to think that the law allows such a practice, which would undermine the purposes of Part 353 (public/private balancing regarding alterations to legislatively-protected sand dunes) and the APA (right to review of final agency decisions), as well as creating the potential for dangerous precedent in other areas. The Court of Appeals decided and Appellees have argued that, despite unfairness, the law allows and requires dispossession of rights and dismissal of the contested case. In this case, however, it is not necessary to turn to broad policy arguments since the statutory provision that empowered Ms. Underwood and Mr. Zolper to petition for a contested case hearing focuses all attention on their status *at that time* by saying they "may request" such a formal hearing on the permits at issue based upon their status, followed in the very next sentence with, "*The hearing shall be conducted* by the department as a contested case hearing in the manner provided for in" the APA (emphasis supplied). MCL 324.35305(1).

Ms. Underwood and Mr. Zolper did request a contested case hearing by intervening and the administrative tribunal found they met the statutory standard. The administrative tribunal also rejected an attempt to avoid contested case review by leaving an undeveloped buffer, yet effectively allowed that buffer defense by dismissing the contested case without a hearing when the developer sold boundary portions of the overall property having nothing to do with the development permits under review. The petitioners did not sell the property they owned that gave them standing, and no change occurred in the circumstances that supported the ALJ's determination that they were "aggrieved" under the statute. Thus, they never altered any circumstance that could have affected their posture as petitioners, their right to "request a formal hearing on the matter[s] involved," MCL 324.35305(1), their relationship to the permits at issue or their concern with the potential impacts of the development on the regulated sand dunes in which both the development and they are located, a substantial interest of theirs that differentiated them from the citizenry at large. This historical ground for standing supplements and reinforces the fact that they had and retained their standing under the terms of §35305(1).

REQUEST FOR RELIEF

Ms. Underwood and Mr. Zolper (and their fellow members of Lakeshore Group) respectfully request that the Court summarily reverse the erroneous ruling below and reinstate their standing to proceed with this contested case proceeding or, in the alternative, grant leave to appeal so that this Court may hear a full appeal on this important standing question.

Respectfully submitted,

Date: January 6, 2020

/s/ Dustin P. Ordway

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STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE MICHIGAN COURT OF APPEALS)

LAKESHORE GROUP AND ITS MEMBERS, LAKESHORE CHRISTIAN CAMPING, CHARLES ZOLPER, JANE UNDERWOOD, LUCIE HOYT, WILLIAM REININGA, KEN ALTMAN, DAWN SCHUMANN & MARJORIE SCHUHAM,
Petitioners-Appellants,

v.

DUNE RIDGE SA LP, and MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,
Respondents-Appellees.

Supreme Court No. 159524 & 159525

Court of Appeals No. 340623 and 340647

Circuit Court No. 17-176-AA

MAHS Docket No. 14-026236

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PETITIONERS-APPELLANTS' SUPPLEMENTAL BRIEF

*****ORAL ARGUMENT REQUESTED*****

PROOF OF SERVICE

On this date I have caused to be served a copy of this Brief and Appellants' Appendix and Proof of Service on counsel noted above using the Truefiling system.

Respectfully Submitted,

Date: January 6, 2020

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