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March 5, 2007

John Konik, Chief
Regulatory Office
US Army Corps of Engineers
Detroit District
PO Box 1027
Detroit, MI 48231

RE: Corps File No. 90-200-005-0

Dear Mr. Konik:

We are writing to comment on the Public Notice referred to above. Our organization consists of approximately 3,000 riparian households on the Great Lakes. We are generally pleased with the proposed Regional Permit, and hereby recognize the efforts of your organization to address concerns of riparian residents. Our specific comments are as follows:

1. We support changing, from two to four, the number of watercraft authorized for piers and hoists per waterfront lot. We recognize a potential for problems from the change, but think it is appropriate to see if problems do, in fact, arise.

2. Many provisions require construction with "non-polluted materials." This term should be defined, and should specifically indicate whether treated wood is included in the term.

3. We do not support changing the term "beach sanding" to "shallows sanding." At a minimum, the change in terms suggests improper hostility to the concept of beaches. Further, the term adds even more confusion to the concept, suggesting that the area at issue must be under water.

4. We support the addition of paragraph 4(f), "Grooming of Sand." The requirements of that paragraph minimize

any negative environmental impact. We believe that the previous site inspection requirement was an unnecessary expense in most cases based on existing aerial/satellite photographic technology, and a waste of taxpayer funds. We applaud this change.

5. We believe that a separate and distinct permit for public beaches is improper. The nature of ownership of a given beach should not be the basis for granting or denial of a permit. The nature of the use may, however, be an appropriate criterian.

6. We support the addition of paragraph 4(h), "Leveling of Sand." See our comments in paragraph 4 above.

7. We support the addition of paragraph 4(i), "Sand Paths," and acknowledge that the concept of 10 feet per 200 feet of frontage for commercial properties is consistent with a current state proposal, and that such consistency between regulatory agencies is desirable. Still, we believe that the proposal for commercial property is woefully inadequate.

8. We are disappointed that the proposed Regional Permit does not authorize beach grooming consistent with state law. As you are aware, 2003 PA 14 authorized beach grooming, including removal of vegetation, where such vegetation was non-existent under normal circumstances as more specifically set forth in that statute. Moreover, the MDEQ has proposed a general permit authorizing the continuation of beach grooming which was conducted, or could have been conducted, under the 2003 law. We believe that the benefits of consistency between regulatory agencies outweigh any environmental harm that might result from such consistency.

9. We believe that many matters authorized should simply be authorized without further application from an owner, including beach sanding, beach grooming, leveling of sand, docks, and boat hoists.

10. References to the ordinary high watermark, especially a reference to "site specific elevations," should be reworked (and the elevation approach abandoned) in light of Judge Lawson's recent opinion in *U.S. v. Kincaid*, holding that the Corps lacks statutory authority for its elevation approach to the ordinary high water mark.

11. We are compelled to express our continuing objection to your assertion that beach grooming--which simply involves the movement of sand--constitutes a violation of the Clean Water Act. We are unaware of any caselaw that so holds, and we do not believe that the movement of sand for beach grooming constitutes the addition of a pollutant under the Clean Water Act. Because beach sanding, beach grooming, and leveling of sand on a dry beach does not constitute the addition of a pollutant under the act, your granting of permits authorizing such activity is unnecessary and confusing to the public.

12. Similarly, we are compelled to express our continuing objection to your attempts to regulate using ordinary high watermark criteria based on elevation, rather than regulatory criteria, contrary to Judge Lawson's recent decision in *U.S. v. Kincaid*. Your granting of permits authorizing activity above the ordinary high watermark as defined by regulation is unnecessary and confusing to the public. We urge the Detroit District to promptly reconsider its elevation approach to the concept of ordinary high watermark in light of Judge Lawson's comments in *U.S. v. Kincaid*.

Thank you for considering our comments. We look forward to working with you, Colonel Leady, and your regulatory staff to continue efforts to preserve and improve our environment in harmony with our Constitution, including the constitutional protection of private property.

Respectfully submitted,

David Rice / For

Ernie Krygier, President
Save Our Shoreline