

SOS
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SHORELINE
www.saveourshoreline.org

May 4, 2007

Ms. Peg Bostwick
Michigan Department
of Environmental Quality
Land and Water Management Division
P.O. Box 30458
Lansing, MI 48909-7958

Re: Proposed General Permit for Limited Beach Grooming

Dear Ms. Bostwick:

We are writing with our comments to the above-referenced proposed General Permit.

As you know, our organization was one of many participating groups charged with finding a compromise to the beach grooming controversy which surfaced in 1999/2000, and which was the subject of legislation in 2003, 2003 PA 14. The pros and cons of beach grooming have been the subject of spirited debate during this entire period, and especially in the discussions that took place last summer between SOS, MDEQ, and Corps of Engineers leaders, and environmental organizations.

Our organization has committed to supporting the proposed General Permit in its current form, and we stand by that commitment. We must nevertheless reaffirm our long-held view that neither the Great Lakes Submerged Lands Act, MCL 324.32501 et seq, nor the Wetlands Protection Act, MCL 324.30301 et seq, authorize the MDEQ to regulate private riparian beaches above the water's edge. The Wetlands Protection Act applies only to statutorily defined "wetlands," an element of which is a requirement that land be "commonly referred to as swamp, bog, or marsh." See MCL 324.3030 (d). They may be considered as such by the wetland protection community, but longstanding beaches are not commonly referred to as swamp, bog, or marsh. The Great

Ms. Bostwick
Page 2
May 4, 2007

Lakes Submerged Lands Act applies only to lands "belonging to the state or held in trust by it." MCL 324.32502. Private riparian beaches down to the water's edge are neither owned by the state nor held in trust by it. *Hilt v Weber*, 252 Mich 198, 233 NW 159 (1930). Not even the recent but flawed opinion in *Glass v Goeckel*, 473 Mich 667; 703 NW2d 58 (2005) went so far as to hold that the state "held" riparian lands above the water's edge. As a result, the Great Lakes Submerged Lands Act grants no regulatory authority over these lands.

In previous correspondence dated October 5, 2006, we informed the MDEQ of technical problems with the proposed General Permit. We hereby incorporate those comments.

We regret that the proposed General Permit does not authorize the mechanical removal of vegetation on beach areas inundated with phragmites. In our view, this reflects an assumption by your agency that phragmites is preferable to a vegetation-free shore. We are unaware of any scientific studies which support such an assumption. On the other hand, we are aware of several studies demonstrating the harmful effects of phragmites. The policy choice reflected by the General Permit assures the continued proliferation of this unwanted invader.

We regret that your "study" conducted under 2003 PA 14 did not consider the harmful effects of phragmites, and the benefits of beach grooming, with its resultant check on phragmites proliferation. A case in point is the western shore of the inner Saginaw Bay, from the Saginaw River to Linwood Road. Much of that shoreline is well groomed, and on the groomed portions, phragmites is absent. In areas where grooming has not occurred, phragmites proliferates. This evidence suggests that without grooming, phragmites would dominate the entire shore from Saginaw River to Linwood. Those hundreds of acres of phragmites would, in turn, threaten the Tobico Marsh, only a few hundred feet away. Thanks to shoreline residents anxious to preserve their beaches, the threat to this treasured marsh has, in our view, been substantially lessened. In our view, the policy reflected by your General Permit, discouraging the removal of phragmites, poses a much greater threat to our ecosystem than the grooming of traditional beaches. With phragmites overtaking thousands of acres of shore and wetland in the Saginaw Bay, we believe this conclusion is self-evident.

Ms. Bostwick
Page 3
May 4, 2007

We also regret that the proposed General Permit does not authorize the removal of vegetation on traditional beaches. We believe that people that own property used and maintained as beach for decades, through low and high water cycles, have a substantial property interest in preserving such property in its existing use. The law has traditionally protected existing uses. For example, zoning laws typically authorize existing uses, even when an area is rezoned. Building and Fire Codes typically have "grandfather" clauses which allow the use of existing buildings without requiring the same level of construction safeguards as new construction. As a general proposition, we believe that an owner that can demonstrate an existing use--a maintained beach through vegetation removal--should be allowed to continue that existing use. 2003 PA 14 protected existing uses, and we regret that the proposed General Permit does not provide similar protection.

We understand that one or more environmental organizations have requested modifications to the proposed General Permit. In our view, the proposed General Permit represents a compromise of many divergent positions and interests. We, too, would like to see changes to the proposed General Permit, such as those mentioned above. We, too, could request changes that might better protect the environment; that might better support our state economy and the tax base; that might better serve public recreation and other interests. But the proposed permit was developed after a full and fair debate, and the requested modifications, to our knowledge, represent nothing new. We respectfully request that your agency reject these requests for substantive modifications.

Thank you for considering our comments.

Sincerely,

SAVE OUR SHORELINE


DAVID L. POWERS

Vice President

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