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PRESERVE THE DUNES, INC.

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March 26, 2004

Geological and Land Management Division
Michigan Department of Environmental Quality
7953 Adobe Road
Kalamazoo, MI 49009-5026

Dear Sirs:

I am writing on behalf of the board and members of Preserve the Dune, a grass roots, not-for-profit organization with over 1,250 members. We are requesting a public hearing regarding permit application, File No. 04-08-0013-P.

This permit application also raises questions regarding the sand dune mining permit. It will probably have to be amended. Certainly, cells will have to be re-opened and some "reclaimed" areas will be mined again. Newly disturbed upland areas will have to be reclaimed again. Can these issues be addressed simultaneously with the Part 301 hearing and thus avoid another hearing on the sand dune mining permit amendment?

We have a number of concerns about this permit application, the proposed action and safeguards that are needed to protect adjacent resources. We hope these can be addressed in a public hearing.

1. Approximately 25 adjacent property owners did not receive notification because they were not in the list attached to the application in response to question 8. Those omitted are closer to the site than most of the 18 who were listed. The following text is from Appendix L of the *Joint Permit Application Training Manual*:

"An increasing number of permit applications fail to identify all required property owners. We would like to remind you that *Item Number 8 requires that all adjacent and impacted property owners and the contact for any related lake association or Lake Board be identified. Adjacent property owners include those whose property touches or is across a street (including diagonally) from the property where the project is proposed.* An impacted property owner is one whose property value, structures, or natural resources could be affected by the proposed project. Staff of the Land and Water Management Division (LWMD) have no way of determining whether all appropriate people are identified. Therefore, LWMD staff will take action on a permit application based on the information provided by the applicant in Item Number 8.

"The action resulting from a discovery that information is missing is dependent on when the discovery occurs. If the discovery is made prior to the permit decision, the application is considered to be incomplete and a new or extended public notice period may be required. If there is a discovery of missing information after the permit decision is made, the application is considered to be untrue and inaccurate because the permit decision would have been made on deficient project-related information. An untrue application is grounds for revocation of a permit, as stated and agreed upon by the applicant's signature in Item Number 9 of the permit application.

"Provision of accurate and true information on permit applications is critical for appropriate permitting decisions. Please be advised that the LWMD intends to take all appropriate action, including revoking permits, when it is determined that any information on the permit application is untrue."

2. The transmittal letter indicates that the lake "has been created entirely on uplands with no impact, connection, or outlet to any other water resource." When the expiring permit was issued, the GLMD's hydrologist indicated in his analysis that decreasing the distance between the lake and the stream reduced flow to the creek. There are both known impacts and potential impacts.

The Part 301 Administrative Rules state (*italics added*):

"Rule 4. *In each application for a permit, all existing and potential adverse environmental effects shall be determined* and the department shall not issue a permit unless the department determines both of the following:

- "(a) That the adverse impacts to the public trust, riparian rights, and the environment will be minimal.
- "(b) That a feasible and prudent alternative is not available."

The application is incomplete. It does not document any existing or potential environmental effects. A number of potential adverse environmental effects are noted in the items below.

3. The answer to question 4 indicates that this permit will create aquatic resources." To insure that this actually occurs, and that the lake is a resource and not a smelly, algae covered, dead lake, the permit should specify that the average depth must be at least 12-13 feet and the lake is maintained free of pollutants.
4. Since dredging began, citizens have noted that the flow in the creek is significantly impacted during dry seasons and periods of active dredging. We believe that removal of the sand and creation of the lake amplified fluctuations in flow. We are further concerned that the water temperature in the stream is raised due to warming of the water in the dredge lake before it re-enters the ground for a relatively short trip to the creek.

The monitoring of creek, lake and ground water levels that was supposed to be conducted by the operator under the expiring permit were of questionable value.

- The water level was measured in the creek at the Blue Star Highway culvert, which acts as a dam. Consequently, changes in the height of the creek are obscured.
- Mining destroyed a number of monitoring wells on the site.
- The operator provided readings only after being asked to do so by LWMD when PTD requested the information from LWMD under FOIA. Several times it took weeks to deliver the reports. This created the impression that TechniSand had to generate the data and reduced confidence in the results.

An independent engineer should be retained to monitor the lake level, the water table depth on the site and the level of the creek in a location selected by a DEQ hydrologist to indicate meaningful data regarding ground water flow into the creek.

5. Rogers Creek is a natural trout stream and is designated a "2nd quality, cold water" stream by the DNR (See figure 7, page 46 in Generic Environmental Impact Statement Sand Dune Mining.)

We request that DNR Fisheries conduct tests of the creek flow, water quality, and temperature to verify that it still can and does support the fish and aquatic life that had previously existed, and that they conduct such tests annually while dredging continues.

6. TechniSand has often stated, including testimony in court, that mining would cease at this site before now. Contrary to the letter of transmittal, this new application does represent an extension and change in activity.
7. The current sand dune mining permit expires December 31, 2005. Since this Part 301 permit is needed only for mining activities, we request that, if the permit is issued, it be issued coterminous with the sand dune mining permit.
8. The prior joint permit also included a Part 303 permit that required preservation of wetland areas at the south end of the dredge lake. This provision is not included in the current permit application. In fact, the enlarged lake encompasses these marsh-like areas.

Loss of the wetland areas is a loss of aquatic resources, not creation of resources. On the other hand, their removal can produce little to no sand because they have developed on the "fines" washed from marketable sand.

The wetland areas should be preserved.

9. Instructions in the *Training Manual* (page 2-19) state that the amount of earth in wetlands should be listed separately. If it is the intention to remove the wetlands as is apparent from the site plan, then these numbers should be entered separately. This has not been done.

"If the project requires dredging and/or excavation for multiple areas or categories, such as floodplain and wetlands, do not combine the dimensions and volumes together."

10. Instructions in the *Training Manual* (page 2-19) state that the amount of earth above the water level as well as that below the water level should be tallied and reported. This has not been done.

"When providing dredge volumes, provide the volume of material to be removed below the OHWM of the water body. If the project also requires excavation above the OHWM, indicate this on the drawings and provide the dimensions and volumes separately. This information allows the PCU staff to accurately determine the regulations that apply and the appropriate application fee."

11. The current Part 301 permit included a requirement that TechniSand must replace any nearby wells that were adversely affected by dredging. This provision should be included again.
12. The answer to question 4 is untrue when it states that the "lake creation ... [has] been conducted under permit for two decades." The current permit has been in effect for five years. TechniSand, the current operator of the mine and applicant for this permit, failed to obtain a permit before then and dredged the lake for five years without a permit.
13. In question 10 part B, it is stated that 260,000 cubic yards of sand will be dredged. The answer to question 2 indicates a maximum lake depth of 35 feet. With an increase in area of $(36-22.7)=13.3$ acres, a 35-foot depth yields 750,000 cubic yards. Which is correct (260,000 or 750,000 or ...)? This will affect the dura-

tion of mining activities, the number of one-way truck trips (13,000 versus 37,550), the water table and flow in the creek.

Will any of the existing lake bottom be dredged deeper? The permit application would allow TechniSand to remove all of the sand above the clay, which would far exceed 750,000 cubic yards. Is anyone even monitoring the volume? TechniSand should propose a lake design with approximate depths across the lake with a contour plan of the lake bottom.

14. Once the volume to be dredged is established, we would like to know at what rate the sand will be removed. Will this operation continue for the duration of the permit or will it be complete in a year?
15. Grades below water at the current lake edges exceed the 1:6 maximum slope. PTD has brought this to the attention of GLMD previously and GLMD concurs. We have been told by the DEQ that TechniSand will eventually re-grade the lake bottom at its perimeter before the site is abandoned. Is all compliance monitoring on the site left to the Sand Dune Mining section or will Inland Lakes also be involved in oversight and have enforcement authority?
16. Overlaying the site plan on an aerial photograph reveals that the alignment of the proposed lake's west edge will require removal of reclaimed steep ($\approx 1:3$) slopes. This is not practicable. It should not be allowed.
17. Tests on water from a nearby well indicated that manganese had increased to high levels. The well has been abandoned now that the residence is served by city water. However, it remains a concern for others. Manganese in high levels is toxic.

The same conditions occurred at another mine. In that case, DEQ staff theorized that it was caused by the use of Pamak, the trade name of an organic acid, in washing the sand. We have been told by the DEQ that no organic acids are being used at this site. Are other agents being used that would result in releasing manganese into the lake and the ground water? Or that would lower water quality in some other way?

The mine operator has known for five years that the current permit at the end of this month. Yet, they have waited until the very last minute to apply for a new permit. This tardiness, together with omitting names from the list of adjacent property owners, appears to be an attempt to rush the permit application through to approval without thorough review and discussion by staff and public. We trust that the GLMD will not be pressured into issuing a permit without thorough review and environmental safeguards.

Thank you for consideration of our concerns and requests.

Sincerely,

Charles F. Davis, III
President

Geological and Land Management Division
Michigan Department of Environmental Quality

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cc: Senator Ron Jelinek
Representative Charles LaSata
Representative Mary Ann Middaugh
Wayne Rendell, Covert Township Supervisor