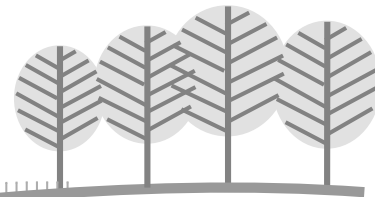


S.O.S. DUNES NEWS



Save Our Sand Dunes

S.O.S. DUNES NEWS IS PUBLISHED INTERMITTENTLY BY PRESERVE THE DUNES, INC.

VOL. 2 NO. 3 AUGUST 1999

NEWS BRIEFS

LAWSUIT UPDATE

On May 24, a hearing was held in Judge Scott Schofield's court in Berrien County on the motion for a summary disposition filed by Preserve the Dunes in its lawsuit against TechniSand and the Michigan Department of Environmental Quality (DEQ) regarding the Nadeau Site in Hagar Township. We had asked the court to rule on several points of law and to rescind the amended permit issued by the DEQ in 1996. The amendment expanded this sand dune mine into an adjacent critical dune area known as the Taube Road Expansion. Our position was and still is:

1. The sand dune mining law does not allow expansion from a non-critical dune area into a critical dune.
2. Even if the law did allow it, the law requires that the operator have a permit to mine the adjacent land and that "prior to July 5, 1989 the operator owned the land or owned rights to mine dune sane in the land for which the operator seeks an amended permit." Since TechniSand was formed in 1991 and purchased the land that year, clearly it did not qualify for the exemption.
3. We further argued that exemptions to any law cease when a business or property is sold or merged with another company. This has been the law of the land since an 1895 ruling by the U.S. Supreme Court.

Forty PTD supporters attended the hearing. The courtroom was filled to capacity and the judge not-

ed the attendance in his ruling. Judge Peterson had ruled in October 1998 that there was no time limit on our challenge under the Michigan Environmental Protection Act (MEPA). Contrary to normal legal procedures, Judge Schofield reversed the previous ruling made by Judge Peterson. He ruled that our challenge of the permit was not timely. Despite this ruling he went on to make three other findings.

First, he ruled that as he read the law it did permit expansion from a noncritical dune area into a critical dune.

Second, he noted that the law states that in order to expand a mine in critical dunes the "operator" must have had a permit to mine adjacent land and owned the land prior to July 5, 1989. He then decided that the legislature intended that an "operation" had to exist and that some operator had to own the land prior to that date. Since Manley Brothers, who sold the land to TechniSand, owned the land prior to 1989 and had a permit to mine the adjacent property, there was an "operation" in existence and he ruled this "operation" could be expanded.

Third, he did rule that Preserve the Dunes had standing to sue under the Michigan Environmental Protection Act and that we had shown a *prima facie* case that the environment was being endangered or about to be impaired or destroyed. It is up to us to prove at trial that the removal of critical dunes does in fact represent a destruction of the environment.

The trial has been rescheduled for March 2000.

APPEAL FILED

We have now filed an interlocutory

appeal of Judge Schofield's ruling. This type of appeal is made before the case has been fully adjudicated and it is left to the discretion of the Court of Appeals whether or not the appeal will be considered. The two issues being appealed are:

1. Must a declaratory judgment action filed under the MEPA, which challenges the legal authority of the DEQ to issue a permit allowing conduct which threatens to impair or destroy a natural resource, be filed within the limitations period for judicial review of administrative decisions?
2. Is a corporation which, prior to July 5, 1989 did not own land or rights to mine sand, exempt from a statutory prohibition against critical sand dune mining?

For more details and the complete text of our "application for leave to appeal" visit the web site: <http://www.daac.com/sosdunes/>.

LEGISLATIVE FRONT

Preserve the Dunes has met with Senator Harry Gast, State Representative Charles LaSata (Berrien County), and Bob Brackenridge, the former State Representative from Berrien County. This has given us the opportunity to make them aware of our concerns regarding enforcement of the Sand Dune Mining Law and our support of the addition of 12,000 acres of land to the Critical Dunes as originally recommended by the DEQ and the Michigan State University consulting/research team.

Despite our repeated attempts since March to meet with State Representative Mary Ann Middaugh (Van Buren County), she has been

unwilling or unable to meet with Preserve the Dunes' representatives. Correspondence sent to Senator William Van Regenmorter (Van Buren, Allegan, and parts of Ottawa County) has not been acknowledged. We are surprised and disappointed by this failure of elected representatives to respond to concerned citizens in their constituency.

required. A number of local citizens are organizing to oppose opening the mine. They are concerned about noise, truck traffic, blowing sand and dust, effects on the water table, safety on the roads, the destruction of roadway pavement, and planned land use after the mining is complete.

The planning commission will

that TechniSand was preparing to open another cell for mining in the Spring, we contacted the DEQ to insist that the hydroseeding done in Cell 6 could not possibly comply with the requirements for "interim status," which would allow another cell to be opened for mining. In response, TechniSand planted marram (beach) grass and hundreds of very small trees. They followed up with irrigation to ensure they would meet the 80% survival rate required for interim status. Now Cell 10 has been opened for mining. Another six to eight acres of trees have been clear cut and sand is being removed. See the photo below.

Unfortunately, the buffer adjacent to the Thunder Mountain Heights Association property has not benefited from the care given to Cell 6. While the grass has survived, the few trees that were planted have almost all died. No irrigation was ever used to ensure plant survival. Also, the number of trees planted were far too few to ever replace the trees that were cut down in the buffer. The DEQ should have required successful reclamation prior to opening the next cell for mining. Then the replanting would have been as successful as that in Cell 6.



PROPOSED NEW SAND MINE

TechniSand has begun conversations with Casco Township (North and East of South Haven — see map above) to open a 200 acre mine on land owned by Hawkshead Country Club, the township, TechniSand and several other land owners. The site is on 68th Street and north of 104th Avenue. TechniSand estimates that the mine would operate for 20 years. The land is gently rolling farm land planted with cucumbers or with pine trees. The land is outside the designated sand dune areas. No DEQ mining permit is required. However, a permit to dredge a lake will be required by the Land & Water Management Division of the DEQ.

The parcels are zoned "agricultural." Reportedly, mining is not permitted within an agricultural zone, and a special use permit or variance by the township will be

receive comments at its next meeting on September 8 at the Casco Township Hall at 7104 107th Ave.

STATUS AT NADEAU PIT

When PTD found out in February

PTD JOINS LOCAL CELEBRATIONS

This year PTD entered a float in the Covert Township Memorial Day Parade. For the second year, a float was entered in the 4th of July Pa-



rade in South Haven. Hub and Joan Erickson and family took the lead again this year. They passed out over a thousand fliers about PTD and three thousand pieces of candy. Unfortunately, they ran out of both before the end of the parade.

Thanks to the Erickson's more citizens know about PTD and about the continuing destruction of the dunes by sand dune mining. We received a number of statements of support and (even though not requested) several contributions.

EMAIL ADDRESSES

If you have an email address and were not notified of the hearing in May, then we do not have your correct eMail address. EMail is an inexpensive and quick way to notify members and supporters of hearings, local events, issues that should be brought to the immediate attention of legislators, and other activities that will benefit from quick action. To ensure that you are aware of such events, please complete the form on page 3, furnish your email address, and mail it in or just eMail us at sosdunes@daac.com.

WEB SITE

Since we first put up our web site, it has had over 45,000 "hits." Visitors have come from all over the U.S and from countries as far away as Australia and South Africa. This is proving a very effective way to inform

people and the media about the destruction of the sand dunes of southwest Michigan by sand mining and our efforts to protect this unique and irreplaceable natural resource. It has also been the source of numerous letters of support.

The web site features color photographs of some of the sand dune mines, the text of all the newsletters, links to other sites, press releases, legal documents such as briefs and most recently our "application for leave to appeal." If you have not yet done so, visit the web site: www.daac.com/sosdunes/.

SAND DUNE MINING REPORT

In April, Lake Michigan Federation (LMF) released a comprehensive report on the destruction of Michigan sand dunes by sand mining. PTD provided assistance in assembling information for it. The printed version of the report is available from LMF, 161 Muskegon Mall, Suite 502, Muskegon, MI 49440 for \$10 to cover printing, shipping and handling or can be ordered at their web site: <http://www.lakemichigan.org>.

PTD converted the report to Adobe Acrobat® format so it could be distributed over the internet. It is available free at the LMF web site. Note that photographs are not included in the internet version.

NEW FORMAT

With this issue we have revised the

format of *SOS Dunes News*. This has been done to facilitate conversion to Adobe Acrobat® format so that the newsletter can be distributed over the worldwide web.

ADDRESSES

For readers who wish to contact the governor, a state senator or representative here are the names, telephone numbers, email addresses and postal addresses.

Governor John Engler
P. O. Box 30013
Lansing, MI 48909
Phone: (517)335-7858
Fax: (517)335-6863
migov@mail.state.mi.us

Berrien, Cass & partial St. Joseph Counties

Senator Harry Gast
P. O. Box 30036
Lansing, MI 48909-7536
Phone: (517)373-6960
Fax: (517)373-0897
SenHGast@senate.state.mi.us

Van Buren, Allegan and partial Ot-tawa Counties

Senator William Van Regenmorter
P. O. Box 30036
Lansing, MI 48909-7536
Phone: (517)373-6920
Fax: (517)373-2751
SenWVanReg@senate.state.mi.us

Please return this response form to support the goals of Preserve the Dunes.

We need to tell elected officials and government employees how many residents and property owners support these efforts. This measure of support is critical to successfully protecting the dunes and restricting sand dune mining. Only your name and address are necessary.

If you can also contribute financially, the funds are needed to continue our struggle to preserve the dunes through distribution of information, keeping our state representatives and local officials informed, and ensuring that the laws governing sand dune mining are enforced.

Preserve the Dunes, Inc. — Response Form

Mail the completed form to Preserve the Dunes, Inc., Post Office Box 38, Hagar Shores, MI 49039

I want to preserve the dunes of southwest Michigan and am concerned about the expansion of sand dune mining.

| | | |
|------------------|-------------|---------------------------------|
| Name(s) | | |
| Home Address | | Michigan Address (if different) |
| City, State, Zip | | City, State, Zip |
| Telephone 1 | Telephone 2 | Telephone |
| Fax | eMail | Fax |

Annual Membership Form

| | | |
|--|--|--|
| In addition, enroll me(us) as a member for 1999. <input type="checkbox"/> Individual (\$6) <input type="checkbox"/> Family (\$10) I have also included a contribution in the amount of \$ | Please contact me to work on the following committees: <input type="checkbox"/> Legal Affairs <input type="checkbox"/> Finance/Fund Raising <input type="checkbox"/> Newsletter <input type="checkbox"/> Public Hearings <input type="checkbox"/> Memberships | Membership dues underwrite the expense of keeping members informed about efforts to preserve the dunes and monitor sand mining activities in Berrien and Van Buren counties. <u>Checks should be made payable to West Michigan Environmental Action Council/Preserve the Dunes Fund. Contributions are tax deductible.</u> |
|--|--|--|

Cass & Van Buren Counties

Representative Mary Ann Middaugh
Michigan House of Representatives
P. O. Box 30014
Lansing, MI 48909-7514
(517)373-0839
mmiddaugh@house.state.mi.us

Berrien County:

Representative Charles LaSata
Michigan House of Representatives
P. O. Box 30014
Lansing, MI 48909-7514
(517)373-1403
clasata@house.state.mi.us

Please keep these addresses for future reference.

PUBLICITY

Since March, PTD has received more national publicity. Our president was interviewed for a radio news story distributed nationally over National Public Radio in its coverage of the LMF report on sand dune mining. The Philadelphia *News* recently published an article on sand dune mining in Michigan. Our efforts and those of LMF were featured.

Locally the *Herald-Palladium* and the South Bend *Tribune* covered the hearing in May.

PLEASE . . .

Join with us in fighting to preserve

the sand dunes of southwest Michigan. Complete the response form on page 3 and return it, or record your support at the web site. If you can, please make a contribution as well.

And please inform us of upcoming changes in address. The USPS charges 50¢ each time they forward a newsletter.

FINALLY . . .

Thanks to all of you who have contributed time and hard work in realizing the success that PTD has achieved to date.



A new cell has been opened at Nadeau Pit. Six to eight more acres have been clear cut. This is the northern most cell and just south of Rogers Creek. Cell 6 is in the upper right hand corner of the photograph. PTD successfully pushed to have it properly replanted before another cell was opened to mining.

Preserve the Dunes, Inc.
P. O. Box 38
Hagar Shores, MI 49039

ADDRESS SERVICE REQUESTED

PRESORTED STANDARD
US POSTAGE PAID
BENTON HARBOR MI
PERMIT NO. 75