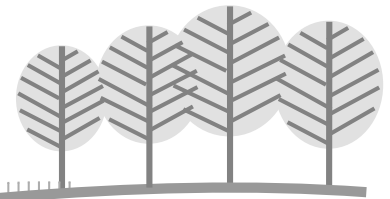


# S.O.S. DUNES NEWS



Save Our Sand Dunes

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VOL. 3 NO. 2 MAY 2000

## NEWS BRIEFS

### SCHOLARSHIPS AWARDED

PTD awarded scholarships to two teachers: Marlene Brown, first and second grade teacher at Riverside Hagar School, and Thomas Cullitan, second grade teacher at Coloma Washington School. The scholarships covered tuition for a graduate level course in spring ecology offered by West Michigan University. The course is held at Sarett Nature Center and taught by its director, Chuck Nelson. Field work is conducted at the Center and in the Ross Preserve.



Chuck Nelson, Marlene Brown and Thomas Cullitan before the first "Spring Ecology" class at Sarett Nature Center.

heavy truck traffic, noise, dust, impacts on the water table and the north branch of the Black River, reduction of the value of land and homes adjacent to the mine. The trucks raise safety concerns resulting from conflicts between new heavy fast moving truck traffic and existing traffic that includes school buses and slow moving farm equipment

### ROSS PRESERVE TOUR

On Saturday, April 23, a guided tour of Ross Preserve was held for Preserve the Dunes. The tour lasted three hours and was attended by 45 members and supporters. Chuck

similar events have been received and will be scheduled.

## THE TRIAL

The trial was held in Berrien County Trial Court. Judge Paul Maloney presided. The trial began on March 14 and lasted six days. Below is a summary of the salient parts of the trial. To fully appreciate it, you had to be there.

Each day provided surprises as the defense tried to convince the court 1)that these dunes are unimportant, 2)that TechniSand has gone out of its way to accommodate envi-



During the tour of Ross Preserve, the group arrived at Lake Helen, an interdunal pond, and habitat for numerous coastal disjuncts (plants that are native to the Atlantic coastal plain) some of which are threatened species.

### CASCO TOWNSHIP

On May 3 the Planning Commission for Casco Township again considered TechniSand's application for a mining permit. Again they postponed action on it until the June meeting. The application is for a 300 acre site on the west side of 68th Street north of 104th Avenue.

A local group of citizens has organized to oppose permitting sand mining at the proposed location. The groups major concerns are new

Nelson, director of Sarett Nature Center, conducted an interesting and fascinating tour.

The group visited the largest Serviceberry (a.k.a. Juneberry, Sarvis-tree or Shadbush) on record, dunelands, Lake Helen (an interdunal pond pictured above), and a blowout with Indian flint stones and fire rocks. Chuck pointed out a number of endangered and threatened species. Requests for more

ronmental concerns, 3)that removing 7 1/2 million tons of sand that will destroy over 26 acres of Critical Dune Area will not destroy a natural resource, and 4)that the foundry industry and TechniSand will be destroyed if TechniSand is not permitted to strip mine and destroy these critical dunes. It was an ongoing test of character for the 20 to 30 observers from Preserve the Dunes, who were present each day, as they

tried to contain their shock and disgust with these misrepresentations.

#### THE LAW

Under the Michigan Environmental Protection Act (MEPA) we, as plaintiff, had to show that the defendant "has polluted, impaired, or destroyed or *is likely to pollute, impair or destroy the air, water, or other natural resources or the public trust in these resources.*"

Under MEPA two defenses are available. The first is to rebut the assertions of the plaintiff and submit evidence to the contrary. The second is to show that there is no feasible and prudent alternative to the proposed action.

#### GEOLOGY OF THE DUNES

Our first expert witness was William Farrand, Ph.D., a noted scientist from the University of Michigan who specializes in glacial geology. He explained that the dunes were created over the past 14,000 years — the final dunes having been created during the 4,000 years since the last recession of the glaciers. He testified that these dunes would not be replaced in the history of human kind.

#### THREATENED SPECIES

Next Barbara Madsen, Ph.D., a botanist from the University of Michigan, discussed the flora located on the Nadeau Site in the proposed mining area. She testified that the threatened species located there depended on a very specific environment: wet periods where plants are submerged followed by dry periods, full sun to partial shade, sandy soil and protection from winds. Changes to the water table or removal of the tall dunes to the west could kill these plants.

The "threatened species" and "species of special concern" that were found on the site are: *Juncus scirpoides* (a rush), *Ludwigia alternifolia* (False Loosestrife or Seedbox), and *Rhexia virginica* (Meadow-beauty). The *Juncus* and the *Rhexia* are "coastal plain disjuncts." That is, they are native to the US Atlantic coastal plain. How

they arrived at scattered locations near the eastern shore of Lake Michigan is not known.

#### TRANSPLANTING OUT OF BOUNDS

Dr. Madsen was not allowed to testify regarding the chances of successfully transplanting these species, because TechniSand must still get a special permit to relocate them. Therefore, transplanting issues could not be a part of this proceeding. Had she been able to testify on these issues she would have told the court that the environmental requirements are so specific that if a suitable location were identified, these plants would probably already be there. The gene pool would not be enlarged and the plants already in the new location could be destroyed by the process of transplanting.

#### GLOBAL WARMING WARNING

Dr. Madsen also testified that this area along Lake Michigan is the northern extent of numerous southern species as well as the southern extent of many northern species. Two species are at their south west limit: *Carex argyrantha* (a grasslike member of the sedge family) and *Rhynchospora fusca*. They had not been known to be in Berrien or Van Buren Counties. The EIS states "They are frequent northward and thus not legally protected. However, surviving at the extreme edge of their geographic limits and environmental tolerances makes them significant." Dr. Madsen likened them to "the canary in the mines" as indicators of global warming.

#### GROUND WATER

Our next witness was Tim Harrington, an engineer with expertise in hydrology, mining, and soil engineering. Mr. Harrington testified that the dunes were similar to a sponge. When it rains, the dunes store water and then release it slowly over a long period of time. Removing the dunes will exaggerate fluctuations in the level of the water table causing it to rise and fall much more quickly, more often and with greater variation in height.

#### LAKES & I-196 OFF LIMITS

The mining plan calls for creating lakes by excavating and dredging below the water table. Mr. Harrington was not allowed to testify regarding the impacts of the lakes because the necessary Land & Water Management Division permit to create the lakes has not yet been issued. He was also barred from testifying about possible effects on I-196 because the interstate is not a natural resource.

#### FORD ONLY USES INLAND SAND

Our final witness was Mr. Robert Graham, who is a retired vice president of the Ford Motor Company. For a number of years all of Ford's foundries had been under his management. In the mid-70's Ford had switched from using dune sand in their foundries to inland sand. They continued doing so under his tenure.

Ford made the change without sacrificing the quality of castings and with little effect on costs. His testimony was needed to rebut that of the defendants who would maintain dune sand was necessary for the foundry industry.

#### DEFENSE RESPONSES

The trial revealed that the DEQ desperately wants to be thought of as having always acted correctly and lawfully. They misrepresented facts and used sophistry to justify their actions. This was consistent with their responses to our reports of violations at mines in Covert.

#### DEQ REJECTED APPLICATION

In September 1995 the DEQ rejected TechniSand's application for a permit to expand the Nadeau Site because they did not qualify for an exception to the law that would have allowed mining of the critical dune area since TechniSand did not own the land on July 5, 1989. That should have ended the matter but in a letter dated April 1996, the DEQ wrote to TechniSand and suggested that they reapply and stated that there had been changes in Michigan state government, especially in the DNR and DEQ, since their applica-

tion for a permit.

Rodger Whitener was a key witness for the DEQ. During cross examination he testified that the law had not changed between the time the letter denying the permit was written and the April 1996 letter. He explained that while the DEQ had been created to assume some of the responsibilities of the DNR, the Geological Survey Division continued as before except that it reported to the Director of the DEQ instead of the DNR. The only operational change that Mr. Whitener could identify was that the NRC (Natural Resources Commission) had been disbanded. *The NRC was a citizens' oversight commission. Any mining of a critical dune area had had to be submitted for review to the NRC. Without citizens' oversight, the DEQ felt free to allow the mining even though there had been no legislative changes to allow it.*

**DEQ REQUIRED REVISIONS**

The DEQ and TechniSand argued that the DEQ had required changes to the mining plan to make it environmentally safe and protective of the natural resources. They were required to preserve a wetland and small portions of two large dunes. They had to follow the 1994 amendments and provide a 200 foot buffer zone. In exchange the permit allowed them to mine within 50 feet of I-196. This area is in the Critical

Dune Area where the bulk of the sand is located. The little that they "gave up" is very small when compared to the value of the additional 150 feet of 75 foot high dunes that they were given permission to mine.

**THE INFERIOR DUNE ARGUMENT**

The Assistant Attorney General argued on behalf of the DEQ, that the threatened dunes in the critical dune area of the mine were not special enough to deserve protection. However, under cross-examination DEQ witnesses confirmed that the DEQ had designated the area first as a "barrier dune" and later as a part of a Critical Dune Area.

TechniSand also dismissed the value of these critical dunes. They pointed out that this area was east of two major highways (the Blue Star Highway and I-196). Furthermore they argued, the area west of I-196 and north of the proposed mine had already been destroyed by a sand dune mine (their own Nadeau Pit).

Peter Collins, author of the Environmental Impact Statement (EIS) for TechniSand and one of their expert witnesses, testified that the critical dunes adjacent to or within three other sand dune mines were "better" than these dunes. He apparently made his evaluation before those "better" dunes were removed.

**NO CRITICAL DUNES?**

Next the DEQ and TechniSand went even further. They maintained that the law did not protect any particular dune, but rather critical dune areas. Removing one or more dunes would not destroy an entire critical dune area (such as the critical dune area within the designated South Haven-Covert-Hagar sand dune area). Therefore, destruction of these 26 acres of dunes within a Critical Dune Area was not destroying a natural resource.

**IS ANYTHING SIGNIFICANT?**

The DEQ presented an expert witness who stated that these critical dunes were not ecologically significant. Under cross examination he stated that none of the critical dunes were ecologically significant — except perhaps several small interdunal wetlands that have unique species within them.

**GM SAYS "TOO MUCH TROUBLE"**

The DEQ tried to show that the foundry industry will collapse from lack of dune sand if TechniSand is not allowed to mine the Nadeau Site critical dune area. Testifying for the DEQ, a representative of General Motors said it would be too much trouble for GM to use inland sand. While he was aware that Ford used inland sand in its Cleveland foundry where it makes engine blocks, he told the court that GM would not be

***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)		Michigan Address (if different)
Home Address		City, State, Zip
City, State, Zip	Telephone 1	Telephone 2
Telephone 1	Telephone 2	Telephone
Fax	eMail	Fax

**Annual Membership Form**

In addition, enroll me(us) as a member for 2000. <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>
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able to make the switch to inland sand for their operations — it would be too complicated and involve too many people within GM.

**TECHNISAND SAYS “NO SAND”**

TechniSand testified that they sell about 900,000 tons of sand a year. They told the court that in one year they would be completely out of sand. According to the EIS, TechniSand was planning to strip mine 600,000 tons per year from the Nadeau Site Taube Road Expansion after the first year. Joe Fodo, Vice President of Mining Operations for Fairmount Minerals, testified that TechniSand would mine only 400,000 tons each year. Either way, this mine will not enable them to meet their commitments. This is very poor planning, or else *the facts were not fully disclosed.*

TechniSand’s witnesses testified that customers when placing an order specified sand from a particular mine — but Joe Fodo testified under cross-examination that TechniSand blends sand from different sites to meet particular customer specifications.

**NEXT STEPS**

On May 3rd each side submitted proposed findings of fact and conclusions of the law. PTD’s attorneys’ submission is posted at our website (<http://www.daac.com/sosdunes>).

At 1:30 PM on Friday, May 12, oral arguments will be heard. The judge may make a ruling at that time or he may wait until a later date.

Let’s have a huge turnout for this final hearing on the case.

**OTHER NEWS**

**NADEAU PIT INSPECTION**

After over two years of correspondence with the DEQ regarding violations at the Nadeau Pit, a date was set for an inspection of the mine. Representatives Middaugh (Van Buren), and LaSata (Berrien) were to have attended along with DEQ staff including Harold Fitch, Chief of the Geological Survey Division of the DEQ. Four members of PTD were invited to be present.

For the last few weeks TechniSand has been frantically trying to get the mine “prettied up.” Acres of beach grass have been planted. Snow fences have been installed to reduce blowing sand near Rogers Creek.

We have just learned that TechniSand has refused to allow PTD members to be on its land and so we will not be able to participate in the on-site inspection. Another meeting is being scheduled for PTD to meet with the DEQ and the legislators.

**FUNDING NEEDED**

Please make another financial contribution to PTD. So far, the trial has cost well over \$100,000. Win or lose in this round an appeal is likely. Other battles are before us in Covert Township.

We have just received two matching fund grants — one from the Pritzker Foundation and one from another private foundation. When we receive \$25,000 from member donations, we will receive matching gifts of \$75,000 from these two foundations.

**MOTT GRANT**

Together with Lake Michigan Federation, we have received a grant from the Charles Stewart Mott Foundation. This will fund educational programs to inform a larger audience about the dunes, their significance and threats to their survival. It will also cover some general operating expenses. These funds will not be used for legal expenses. The grant is spread over two years. PTD will receive about \$25,000 per year.

**THANK-YOU, VOLUNTEERS**

All the work of PTD is done by volunteers. We do not have paid staff. Many thanks to the several hundred people who have volunteered their time and efforts to preserving the dunes. Nothing would have been accomplished without you.

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

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