

# S.O.S. DUNES NEWS

Save Our Sand Dunes

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

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## NEWS BRIEFS

### AMENDMENTS PROPOSED

Senator Gary Peters and Representative Julie Dennis introduced bills in the Michigan Legislature to improve protection of the state's sand dunes. The house bill is HB4795 and the senate bill is SB467. They are available on the web. A link directly to each is on PTD's home page.

The amendments proposed by Peters and Dennis would revise the sand dune mining law. In summary, enactment of the legislation would:

- Modify the boundaries of the critical dunes to include land that meets the criteria established in 1996 by the DEQ and a group from Michigan State University retained by the DEQ. The net effect would be to add approximately 12,000 acres to the critical dunes — 4,500 acres of public lands and 7,500 acres of private lands. About 20% of this private land is in Covert Township and the bulk of that is between the Blue Star Highway and the first major dune from the lake.
- Immediately stop all mining in the critical dune areas.
- Phase out mining in designated dune areas by 2006.
- Set a time limit for completing reclamation after mining activity has ceased.
- Create a sand dune protection

fund by assessing a \$5 fee for each ton of sand mined from the dunes to increase oversight by the DEQ and to purchase land in the critical dunes for public use.

- Strengthen consideration of environmental factors before issuing a permit
  - Require permits to expire if mining is halted for one year
- Please let your legislators know how you feel (see address list on page 4.)

### PUBLIC HEARING IN COVERT

Covert Planning Commission will hear comments on the application to install a cell phone tower in the "environmentally sensitive area" (ESA) east of the Blue Star Highway and south of the Palisades Power Plant. The ESA ordinance restricts grading changes and clear cutting, and provides other environmental protections. This ordinance is very important to the preservation of the sand dunes and the significant wetlands within Covert Township.

About four years ago the permit application was made and approved. Work just began several weeks ago but was halted when a citizen raised concerns about its legality at the last commission meeting. At that time, it was determined that the permit may have been based on a "spot zoning" change and that no ESA permit had been applied for or issued. The permit application

will be reconsidered after the hearing which will be held at **7:00 PM on October 18** in the Covert Township Hall. Concerned citizens are encouraged to attend.



### SIGNS INSTALLED

PTD worked with the Van Buren and Berrien County road commissions to have signs installed marking entry into the Michigan critical dune area which is part of the South Haven-Covert-Hagar sand dune area. Marilyn Rendell and Debbie Kelley headed up the effort. We hope that the signs will create an awareness of the beauty and significance of these dunes for visitors and residents alike.

### PERMIT RENEWED AT THE PIT

The DEQ continues its cover-up of its own lax enforcement of the sand dune mining law and the violations of TechniSand, the operator of the Nadeau Pit sand dune mine. Despite the protests and the documented violations at this mine site presented at a

public hearing in January the DEQ renewed this sand dune mining permit for another five years.

They did place several conditions on the permit that PTD had requested. By August, TechniSand was expected to correct its expansion of the plant site, the area where they store sand, from nearly 28 acres to the 19 acres that was authorized by amendments to the original permit. The DEQ also confirmed that since the original permit did not specify any setbacks for cell 12 (the land west of the Blue Star Highway) that it could only be mined by amendment with a public hearing and that unless an exception was granted, the 200 foot setbacks "could be considered the standard" (as currently mandated by the law) "although not necessarily required." The legal setback would make mining of the cell virtually impossible.

The DEQ denied, explained away or trivialized other violations —

- Dredging without a permit for 5 1/2 years and then after receiving a permit violating specified setbacks from Rogers Creek. They further state that dredging would increase flow in Rogers Creek which is in direct contradiction to the Land and Water Management Divisions hydrologist. *ANY-ONE can see that the flow in the creek is dramatically reduced.*
- Mining the buffer at the Thunder Mountain Heights property
- Storing mining equipment in the middle of a reclaimed cell
- Covering two cells with sandy "topsoil" prior to the cells being placed in active status
- Too steep underwater slopes
- Using inactive cells for moving mining equipment
- Inadequate fencing.
- Only a fraction of the required number of trees have been planted in reclaimed areas



Mining at the Busse Property on the Blue Star Highway was completed in 1998. After three years, the site is still a barren hole with wide expanses of bare sand.

since TechniSand became the owner and operator.

- Failure to mark the boundaries of the mine cell units on the site.
- Blowing sand dust (silica) falling in nearby residential areas.

#### THEN ....AMENDMENTS

TechniSand then requested an amendment to the progressive cell unit mining and reclamation plan (PCUMRP). They proposed to revise boundaries of the plant site to increase it to 21.56 acres from 19, and to create a new 7.58 acre cell unit out of previously reclaimed portions of cells 1 and 2. The new cell will be used for purposes normally conducted in the plant site. TechniSand simply requested that the PCUMRP be revised so that their illegal expansion of the plant site, which has existed despite PTD's protest for over four years, would be legitimized.

PTD requested that the amendment not be approved in its present form and requested a number of changes.

As expected, and in keeping with past performance, the DEQ approved the amendment application. They have agreed to

place a few restrictions on the operation to control blowing sand and to avoid disturbance of previously reclaimed areas.

#### STATUS OF LAWSUIT

In March, PTD filed its brief for the appeal of rulings in our suit against the DEQ and TechniSand. The suit was prompted by the threat to the critical dunes caused by the DEQ issued permit to mine in the critical dune area within Hagar Township. The suit seeks to have the court declare the permit invalid and to forbid the proposed mining. The law clearly forbids mining of new critical dunes except for two exceptions — neither of which applies to TechniSand. We remain very confident that we will prevail on appeal.

The defendants filed their briefs in May and we have now filed a reply brief, the last step before the case will be heard by Court of Appeals. We hope the case will be considered before the end of the year.

Our brief and reply brief are available at the web site: [www.daac.com/sosdunes](http://www.daac.com/sosdunes). They clearly lay out our position and explain the law.

**TECHNISAND SUES HAGAR**

As reported in the previous issue, the Hagar Township planning commission turned down TechniSand's request to rezone the Nadeau Site so the site would qualify for a mining permit under the township's mineral extraction ordinance. The township board then confirmed the action of the planning commission.

TechniSand has now filed suit in Berrien County Trial Court against the township. They are also in court in Allegan County with a similar suit against Casco Township. In both cases, they are maintaining that the townships have been capricious in their decisions. We trust that the courts will confirm that a township has the right to establish and enforce a zoning ordinance despite the desires of one land owner - no matter how big and powerful that owner might be.

**TECHNISAND MINE**

In January 1999, Covert Township issued a sand mining permit to mine a site on 38th Street across from the cemetery. Mining was to be completed by July 2001.

In March PTD notified the Land and Water Management Division (LWMD) that two lakes had been created. Together, the

lakes were two-thirds of an acre. LWMD called TechniSand. A spokesman for the mine operator reported that the lakes were not lakes — they were just due to rain runoff. The lakes would not be a part of the planned reclamation which was to begin in June. Subsequently, TechniSand filled in the lakes. We await their promised reclamation efforts.

**DAVIS SPEAKS AT WMEAC**

Charles Davis, President of PTD spoke at the First Friday program of WMEAC (West Michigan Environmental Action Council). He described the programs of PTD and recounted our experiences trying to get the DEQ to enforce the sand dune mining law.

WMEAC has supported PTD from our beginnings and we are an affiliate of WMEAC. First Friday is a series of presentations on environmental issues held on the first Friday of each month in Grand Rapids.

**MEMBERSHIP GROWS**

The list of members and supporters has now grown to over 935. Our target for the Mott Grant is to reach 1,000. *If you have not yet registered your support please do so by mailing in the Response Form or visiting the web site and registering there at the guest book page.*

**KNAUF PROPERTY STATUS**

The Land and Water Management Division of the DEQ is still waiting for TechniSand to submit requested data and analyses of effects that proposed mining, dredging, and road construction will have on the wetlands and water table.

**EARTH DAY**

Earth day was observed on April 22. Preserve the Dunes joined other area conservation and environmental groups in Kalamazoo to present our efforts to save the environment.

Sharon Turnbow designed our display, which highlighted PTD activities and featured newsreel video. Hugh Anderson, Georgia Boerma and P.J. and Ric Bubin manned the exhibit and answered questions. A number of new supporters signed up.

**ROSS PRESERVE TOUR**

Saturday, May 12, Chuck Nelson, director of Sarett Nature Center, conducted a tour of the Ross Preserve for citizens of Covert and members of Preserve the Dunes. About 40 persons attended and as usual Chuck gave a great tour.

**SCHOLARSHIPS**

PTD offered scholarships to teachers in Covert, Hagar and Coloma school districts for a

***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 581, Riverside, MI 49084-0581

*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 2001. <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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graduate course in ecology at Western Michigan University. Three scholarships were awarded. Recipients were Annaestheasia S. Hubbell - 4th grade - Coloma Elementary School; Sara Glisson - High School Biology - Coloma High School; and Jennifer Gray - 7th & 8th grade science - Covert School. Chuck Nelson, Director of Sarett Nature Center, is the instructor for the course. Field work is done at the Ross Preserve and Sarett Nature Center.

#### OPPORTUNITIES TO PARTICIPATE-COMMENTS ENCOURAGED

If you wish to comment on the lax enforcement of the sand dune mining law or on pending legislation, you can contact your elected representatives at the following addresses:

##### Senators

William Van Regenmorter eMail:  
SenWVanReg@senate.state.mi.us  
Senator Harry Gast (eMail:  
SenHGast@senate.state.mi.us)  
Senator Ken Sikkema, Chairman  
Natural Resources and Envi-

ronmental Affairs Committee (eMail:  
SenKSikkema@senate.state.mi.us)

Address for all Senators:  
P.O. Box 30036  
Lansing, MI 48909-7536

##### Representatives

Mary Ann Middaugh eMail:  
mmiddaugh@house.state.mi.us  
Charles LaSata eMail:  
clasata@house.state.mi.us  
Ron Jelinek eMail:  
rjelinek@house.state.mi.us

Address for all Representatives  
P.O. Box 30014  
Lansing, MI 48909-0839

Governor John Engler  
P.O. Box 30013  
Lansing, MI 48909  
eMail: migov@mail.state.mi.us

#### FUNDING NEEDED

PTD has been opposing the opening up of additional critical dune areas to sand mining since 1997. Our lawsuit against TechniSand and the DEQ has been expensive. We have filed our appeal. We believe we are close to winning. We must not reduce

the quality and extent of legal counsel due to lack of funds. Please consider contributing to winning this last battle in this very important effort.

#### QUESTIONS, COMMENTS?

If you want to share your observations, have a question regarding sand dune mining or the law, or need information about Preserve the Dunes visit the web site <http://www.daac.com/sos-dunes>, eMail us from there or send an eMail to [sosdunes@daac.com](mailto:sosdunes@daac.com) or telephone at (616)208-1711 or write us at the return address.

#### LATE BREAKING NEWS

TechniSand has now been cited by the US EPA for violating air quality standards by emitting excessive silica dust from its plant in Bridgman. The EPA is seeking nearly \$215,000 in fines.

#### ADDRESS CHANGE

Please note the new mailing address for PTD which was made necessary by the closing of the Hagar Shores Post Office.

**“Those dunes are to the Midwest what the Grand Canyon is to Arizona and the Yosemite is to California. They constitute a signature of time and eternity. Once lost, the loss would be irrevocable.” — Carl Sandburg**

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ADDRESS SERVICE REQUESTED

Preserve the Dunes, Inc.  
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