

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 ITEMS

MICHIGAN SUPREME COURT TO HEAR TECHNISAND/DEQ APPEAL

March 25, the State Supreme Court agreed to hear the appeal of the Court of Appeals ruling issued in last October. [See "RULING REPORTED" page 3]

It is unclear why the Court decided to review the ruling which was thorough and primarily based on prior rulings of the Supreme Court and a direct reading of the law. It may have been because a state agency is involved.

Phil Neal of Neal, Gerber & Eisenberg will be our lead attorney for PTD in defending the ruling of the Court of Appeals. Tom Fette and Jeff Haynes will provide support to Mr. Neal.

The defendants have eight weeks to file their briefs. PTD will then have five weeks to respond. We expect that oral arguments will be heard by the court in the autumn.

TECHNISAND FILES MOTION

As soon as the state Supreme Court ruled that it would hear the appeal of the Court of Appeals ruling made by TechniSand and the DEQ, the mining company asked to be allowed to mine and remove additional dunes from the critical dune area at the Nadeau Site.

Prior to issuing its opinion the Court of Appeals at the request of PTD had issued an injunction stopping mining at the Nadeau Site. The miners want the Supreme Court to lift that injunction.

In a sworn statement made in support of the motion, Jeffrey Fallon, Chief Operating Officer of Tech-

niSand, stated that while the company could substitute sand mined in Ferrysburg at the CACM site, more sand was required to produce the same volume of marketable sand. He claimed that sixteen to eighteen percent of the sand is lost in processing versus one percent from the Nadeau Site critical dune area.

Fallon stated that as a result of the additional sand required and the higher transportation cost, the injunction had reduced the company's profits from 25% to 7%. [*This may have been one of the most profitable businesses in America. Ed.*]

PTD countered by pointing out the loss of the dunes would be irreparable and permanent compared to a temporary loss of profits for TechniSand if its income were delayed.

The full text of the our brief opposing the motion filed by TechniSand can be read on the web site, www.daac.com/sosdunes.

SAND DUNE DAY ANNOUNCED

Through an Executive Proclamation, Governor Granholm has declared each May 19 as Sand Dune Day.

On that day, schools, organizations and individuals will honor one of Michigan's greatest natural assets through educational programs, events and activities.

During the week of May 19 we recognize Michigan sand dunes as an important and valuable part of our cultural and natural history. We also recognize the economic value the dunes have on Michigan's tourist economy and the quality of life for millions of visitors and Michigan citizens.

LMF POSTER/FLYER

The insert in this issue of *SOS Dune News* has been furnished by Lake Michigan Federation.

The flyer is a part of an advertising campaign to draw attention to the continuing destruction of the dunes by sand dune mining and to encourage citizens to take action in protecting the dunes.

LMF is encouraging citizens to become involved in protecting the dunes.

- Write the Governor and legislators in support of increased protection of the dunes from sand mining and over-development.
- Write letters to your local newspapers to let your elected officials and community leaders know how important sand dunes are to Michigan and urge them to increase protection.
- Post the sand dune poster inserted in today's newsletter at your favorite coffee shop, your local supermarket, a library, or other public location.
- Join PTD and other local groups to work for increased protection.
- Visit the web sites of LMF (www.lakemichigan.org) and PTD (www.daac.com/sosdunes) to learn more about the dunes and activities that may protect them.

GRAND MERE WALK SCHEDULED

PTD will sponsor a sunset dune hike jointly with Lake Michigan Federation and Sarett Nature Center. It will be held on Thursday, August 21 from 7:00 to 9:00 PM. Guides will be naturalists from Sarett.

Watch for more news as the date gets closer.

Continued on page 3

Preserve the Dunes Mission Statement

Purpose	To protect the sand dunes and adjacent duneland ecosystems in southwest Michigan from impairment and destruction by sand dune mining, over-development, and inappropriate or over use.
Central Values	<i>The dune areas of Michigan are "a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural and ecological benefits to the people of Michigan and to people from other states and countries who visit this resource."</i> [Taken from findings Michigan State Legislature in the Sand Dune Protection Act]
Areas of Concern	State of Michigan designated sand dune areas within Berrien, Van Buren, and Allegan counties.
Vision of Future	All designated dune areas of Michigan are free of sand mining, expanded and improved legal protections of these areas have been enacted by the State and local governments, and all citizens of Michigan are fully supportive of limiting use and development of these areas to only those that will preserve the dunes, the dune ecosystem, and other special qualities of this beautiful and unique land-water formation and resource.
Selected Strategies	<p>Four strategies have been identified and are described below in bold face. Each is followed by a list in italics of means that will be used to achieve each strategy.</p> <p>To fulfill its purpose and achieve its vision PTD will strive to:</p> <ul style="list-style-type: none"> • Ensure that dune protection already afforded by law is fully enforced and that the public is informed of any lack of compliance <ul style="list-style-type: none"> - <i>Monitor existing and proposed sand mines, and development and use of sand dunes within its areas of concern</i> - <i>Inform the public about dune protection laws and encourage governmental bodies and agencies to enforce them</i> - <i>Alert members and the general public to violations of these laws and other threats to the dunes</i> - <i>As a last resort, take legal action</i> • Improve and expand legal protection of the sand dunes <ul style="list-style-type: none"> - <i>Help develop and encourage enactment of legislation (within the limits of the law as a not-for-profit corporation) including a ban on any new sand mining in the designated dune areas, expansion of the boundaries of critical dune areas and prohibition of recreational ORVs in designated dunes areas</i> - <i>Encourage and assist townships within the areas of concern to enact ordinances governing the use of sand dune areas and sand mining in their jurisdictions.</i> • Create awareness and encourage appreciation of the sand dunes in present and future generations <ul style="list-style-type: none"> - <i>Provide programs and conduct activities that inform and educate members and the general public about dune ecology, and conservation and use of the dunes</i> - <i>Sponsor creation of educational programs on the Michigan sand dunes for use in local schools</i> - <i>Support teacher education in dune ecology</i> - <i>Install signage to identify sand dune areas</i> - <i>Cooperate with other environmental groups such as LMF, WMEAC, MEC, MLUI, etc. in mutual support of programs</i> • Enable and encourage preservation the topography and ecosystems within the sand dunes <ul style="list-style-type: none"> - <i>Develop planning, design and engineering principles and methods for construction in the dunes through joint efforts with universities and professional groups</i> - <i>Share results of these efforts with state and local agencies</i> - <i>Disseminate information to assist land owners in their stewardship of the dunes</i> - <i>Encourage land uses that protect the dunes while taking advantage of the benefits that they afford</i>

FALL DUNE WALK

PTD has planned a beach walk for September 21, Sunday. We will leave from the Hagar Township park on M-63 at 2:00 PM. Chuck Nelson of Sarett Nature Center will be our guide.

PTD BOARD DEFINES MISSION

Over the fall and winter the Board has been drafting a mission statement to guide PTD's future activities and programs.

The need to be clear about our mission arose as we grew from 30 members to nearly 1,200 and as our activities expanded beyond enforcement of the laws governing sand dune mining into general dune preservation issues. The statement is on page 2.

PUBLICATION ON WEB

Borne of the Wind: An Introduction to the Ecology of Michigan Sand Dunes, published by the Michigan Department of Natural Resources, Made Library Journals recently published 2001 Notable Government Documents list.

Library Journal stated, "Visually compelling and informative, this introduction to Michigan's sand dunes covers geologic formation and structure, native flora and fauna, and ecological factors that impact and endanger this environment. Maps and colorful photographs help convey the natural beauty of the area. There are references to sand dune regulations and information on sand dunes located on

publicly owned lands or private nature preserves. Indexes of native and exotic plants and animals and a bibliography of resources accompany the text."

Visit <http://www.msue.msu.edu/mnfi/dunes/index.html> to download the pamphlet.

RULING REPORTED

The following has been excerpted from *Planning & Zoning News*. It is a very clear summary of the Court of Appeals ruling in our suit against the DEQ and TechniSand.

"The Michigan Department of Environmental Quality improperly granted a permit allowing the surface and subsurface extraction of sand from a designated critical dune area. Preserve the Dunes, Inc. v Department of Environmental Quality, et al., No. 231728. Decided October 4, 2002 (published).

"Plaintiff is an ad hoc group of local citizens who filed this lawsuit under the Michigan Environmental Protection Act (MEPA) challenging a permit issued by the DEQ allowing a company to expand an existing sand mining operation into an adjacent area that had been designated a 'critical dune area.' In reversing the trial court's decision, the Court of Appeals ruled that plaintiff's claims are not time-barred under the MEPA, and the mining operation does qualify for an exemption to the MEPA's prohibition on mining in critical dune areas, because the company did not own land in the critical

dune area prior to the date specified in a statutory grandfather clause. Accordingly, the Court concluded that the DEQ was not authorized to issue the permit for expansion into the critical dune area and order summary disposition in favor of the plaintiff. (SJ)"

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MINING REPORTED

PTD received a number of reports of mining at the Nadeau Site. Based on aerial observations by a member of PTD we were able to determine that sand was being removed from areas *outside* the critical dune area.

The injunction issued by the Court of Appeals prohibits mining in the critical dune area. Sand removal has been from the "plant area." The law permits mining in three cells simultaneously. After that one cell must be reclaimed. It must be regraded and revegetated as specified in the law and in the mining and reclamation plan before another cell can be mined.

TechniSand has three cells in "active status." Therefore, mining in other areas is prohibited by law until TechniSand reclaims one of the active cells.

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 protecting sand dunes 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 2003	Please contact me to work on the following committees:	Membership dues underwrite the expense of keeping members informed about efforts to preserve the dunes and to monitor sand mining activities in Berrien, Van Buren and Allegan counties. <u>Checks should be made payable to West Michigan Environmental Action Council/Preserve the Dunes Fund. Contributions are tax deductible.</u>
<input type="checkbox"/> Individual (\$6) <input type="checkbox"/> Family (\$10) I have also included a contribution in the amount of \$		
	<input type="checkbox"/> Legal Affairs <input type="checkbox"/> Finance/Fund Raising <input type="checkbox"/> Newsletter <input type="checkbox"/> Public Hearings <input type="checkbox"/> Memberships	

FUTURE ISSUES

An upcoming issue will summarize requirements for construction governed by the sand dune protection act. Currently there are no written regulations that interpret the act's requirements. The department maintains that the variety of settings within the dunes makes it impossible to write regulations that cover all conditions.

We are working on assembling guidelines based on prior actions by the DEQ.

LOCAL TEACHER HONORED

Congratulations to Lynda M. Smith of Lakeshore High School in Stevens-

ville who was recently honored as the Michigan Science Teacher of the year. She has developed an excellent course in ecology for grades 9-12 focusing on the dunes and those at Grand Mere State Park in particular.

The course outline and lesson plans are available on the web. They can be adapted to a variety of locations and environments. The web address for the lesson plans is "<http://unite.ukans.edu/explorer/explorer-db/html/891282829-81EDF7A2.html>" or link to it from the PTD web site.

Hopefully, Ms. Smith's work will be adapted and used in other local schools.

FUNDING STILL NEEDED

TechniSand has appealed the decision of the Court of Appeals to the Michigan Supreme Court. We need your continued financial support to continue this fight and to secure the victory.

There will continue to be the need for monitoring of permit applications and continuing sand dune mine operations. These require time. They require vigilance. But they also cost money.

The Mission Statement adopted by the board expands our mission and the activities that PTD will undertake to preserve the dunes. These too will need funding.

Please renew your membership.



Mining in the Critical Dune Area at Nadeau Pit before the injunction was issued in September 2002.

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ADDRESS SERVICE REQUESTED

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