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News from Save Our Shoreline, Inc.

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U.S. Supreme Court Justices Weigh in on Shoreline Issues

BAY CITY, Michigan. Save Our Shoreline today releases partial transcripts from a December 10, 2002 hearing of the U.S. Supreme Court in which the justices discussed the application of the Clean Water Act to Michigan's beaches. The comments were made as a result of an *amicus curae* brief filed by SOS with the court in August of 2002 in the case of Corps of Engineers v Borden Ranch. That case involved the issue of whether use of a "deep ripping" plow in a wetland violates the Clean Water Act. SOS filed the brief to advise the court that the Corps has already extended its interpretation of the Clean Water Act to include beach raking. SOS representatives attending the hearing were surprised and stunned when the justices raised the issue of beach maintenance and asked the Corps lawyer beach raking violates the law. The lawyer responded that under the government's regulations, "*de minimus* disturbances simply do not rise to the level of a violation."

"I don't think Congress wanted the homeowner to have to worry about raking," commented Justice Scalia at the hearing. " I don't think they wanted . . . the homeowner at the mercy of this benign agency who will say, 'well there, there, don't worry. We won't get you for raking.'"

The oral arguments held at the U.S. Supreme Court in Washington, D.C. was attended by SOS President Ernie Krygier, Vice President David L. Powers and Board Members Joe McBride and Mike MaColeman.

After the oral arguments, Justice Kennedy removed himself from the case as a result of his relationship with the farmer involved. The Court then voted 4-4, and as a result of the deadlock, the lower decision against the farmer becomes final. Nevertheless, SOS believes the decision sends an important signal to the Detroit District of the Corps of Engineers. "Most commentators believe, as a result of past decisions, that Justice Kennedy would have voted that the farmer did not violate the law," said SOS Vice President and Attorney David Powers. "We believe this signals that a majority of the court does not believe that ordinary beach maintenance violates the law," he said.

"Earlier, a key congressional committee questioned the Corps' actions in a committee report. Now, it appears, a majority of the U.S. Supreme Court may also believe the Corps is exceeding its authority, just like we have said all along," said SOS President Ernie Krygier.

While in Washington, D.C., the SOS representatives also met with several staff members of a House Subcommittee, and with two staffers for Senator Carl Levin. The SOS members received statements of support from all they met with. "It is clear that the Corps has little congressional support for its actions, said Krygier.

Founded in 2001, Save Our Shoreline is a nonprofit membership basis corporation of over 1,600 households committed to the preservation of beaches and waterfront areas, and to the protection of rights to maintain beaches and waterfront areas. Those interested in Save Our Shoreline can find more information at <http://www.saveourshoreline.org/> or by calling (989) 667-2910. For more information about this press release, contact Ernie Krygier at (989) 793-3711.

Electronic photo of SOS members at Supreme Court available on request from dpowers@smpklaw.com.

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