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News from Save Our Shoreline, Inc.

For more information:

Ernie Krygier

President

989-793-3711

Corps Dismisses Complaint Against Beach Groomers

BAY CITY, Michigan – May 21, 2003 –

Save Our Shoreline has learned today that United States District Judge David M. Lawson dismissed yesterday the only pending suit against a Lake Huron homeowner, Marion Kincaid of Caseville. The government requested the dismissal after thorough investigation by the Kincaids' attorneys proved that the government had no factual basis for suing Mrs. Kincaid. The dismissal means that the June 25 hearing to test the authority of the Corps over Saginaw Bay beach grooming is canceled.

Save Our Shoreline contributed to the defense of the Kincaids by providing substantial funding and by authorizing the group's Washington D.C. counsel, Marzulla & Marzulla, to join as co-counsel with Smith, Martin, Powers & Knier, P.C. of Bay City to represent Mrs. Kincaid. SOS anticipates that the Kincaids will now ask the federal court to order the Corps to reimburse them for their costs and attorney fees under a law that provides for such reimbursement when a suit is "not substantially justified."

"This is a great day for the Kincaids, and for our entire shoreline community," said Ernie Krygier, SOS President. "It shows how a resolute shoreline community can be successful in protecting the interests of the community, even against the resources of the federal government," he said. Although SOS had hoped to use the Kincaid case as a test of the jurisdictional limits of Corps authority, the organization still believes the case is instructive. "This case shows how sloppy the Corps is with the truth, how poorly it treats our citizens, and how wasteful it is with our money," said Krygier. Threatened with fines of \$25,000 per day, the Kincaids, who are retirees that built their dream home on a family parcel near Caseville along the Saginaw Bay, told the SOS Board they spent many sleepless nights worrying if they would lose all they worked for their entire lives.

According to Kincaid attorney Roger Marzulla, who previously served as the Assistant Attorney General in charge of the Environment and Natural Resources Division of the U.S. Department of Justice in Washington, D.C., the action against the Kincaids was a poorly executed enforcement initiative, which singled out Mrs. Kincaid in an effort to make an example of her. It backfired because the Corps had no case against her. "The Kincaids were used as pawns in the Corps' game to intimidate shoreline owners," said Krygier. "As some of the finest people you would ever meet, it is unfortunate that the Corps would drag the Kincaids through this debacle. We applaud the Corps for bringing this case to an end, but there is no excuse for the grief and expense the Corps has put these fine people through. Hopefully, when the court considers their attorney fee request, some justice will occur," Krygier said.

This case is typical of the Corps' attempts to use the courts and individual parties to test the limits of its jurisdiction. The Corps was rebuffed by the U.S. Supreme Court in a 2001 case where the Court held that Corps' jurisdiction did not extend to certain intrastate wetlands. Under federal law applicable in Michigan, there is serious question whether the redistribution of sand and removal of vegetation is the type of "addition" of pollutant that violates the Clean Water Act. The dismissal cancels a hearing scheduled for June 25, 2003 to determine that issue. SOS also questions the Corps' assertions as to the location of the ordinary high water mark and the existence of "wetlands" on some Michigan beaches.

The dismissal against the Kincaids coincides with the issuance of a Michigan Regional Permit by the Corps' Detroit District to allow the grading of sand by way of a simple two-page permit form. The issuance of such a permit would authorize that which the Kincaids were alleged to have done unlawfully. The dismissal also coincides with Governor Granholm's goal of resolving beach maintenance issues by June 1 of this year. A beach-grooming bill, H.B. 4257, was passed by the state House and is under consideration by a Senate committee.

Founded in 2001, Save Our Shoreline is a nonprofit membership basis corporation of nearly 1,800 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.

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