

SOS

SAVE OUR SHORELINE

SOS July 1, 2003 Newsletter

WE'RE GETTING THERE!

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Unless you've been living in a cocoon, you probably already know that on June 4, 2003 Governor Jennifer Granholm signed into law House Bill 4257, which until 2007 clarifies the rights of beach owners to level sand, mow, and in two "pilot areas," remove vegetation (with a letter of permission) without going through the state permit process. The law was passed unanimously in the state Senate, and one vote short of unanimous in the House. You may also know that the Detroit District of the Corps of Engineers has developed a simplified one-page permit form for certain beach maintenance activities. Finally, thanks to your generous support, the last remaining federal lawsuit against SOS member Marion Kincaid of Caseville was voluntarily dismissed by the Corps of Engineers, and she is now seeking the return of her extensive attorney fees. With SOS nearing its second birthday, we are seeing the results of what 1,800 generous, hard-working families and a tireless board of directors can do when their way of life is threatened. This newsletter will describe the victories we have recently achieved, as well as the jobs left to be done.

While we celebrate our success, we cannot lose sight of the work ahead. The Beach Maintenance Bill expires in 2007, and as a result of political compromise, some families will not realize the full benefit of the law. And the Detroit District of the Corps of Engineers has not agreed to adopt a general permit which mirrors the state law. Finally, the MDEQ and some in the environmental community still assert that the state owns our beaches below the so-called "ordinary high water mark." Your dedicated Board of Directors



Sen. James Barcia, Ernie Krygier and Rep. Brian Palmer celebrate Senate passage of H.B.4257

has strategies in place to address these issues, and we will continue to implement those strategies as long as we receive your support.

Speaking of support, you will see in the articles that follow that we continue to seek funding for our legal fund, and we have also created a Political Action Committee (PAC). We have found that we simply cannot compete in the political environment without these important tools.

In our last newsletter, I warned that I would call on you, and you responded! We estimate that 100,000 pieces of SOS-generated mail was delivered to capital offices, and SOS board members observed box-fulls of delivered post-cards as they visited legislators. As I reflect on the Bill's passage, I realize how fortunate I am to be the spokesperson for such a dedicated group of people.

Have a great summer!

Ernie Krygier, SOS President



GOVERNMENTAL AFFAIRS ANNOUNCEMENT

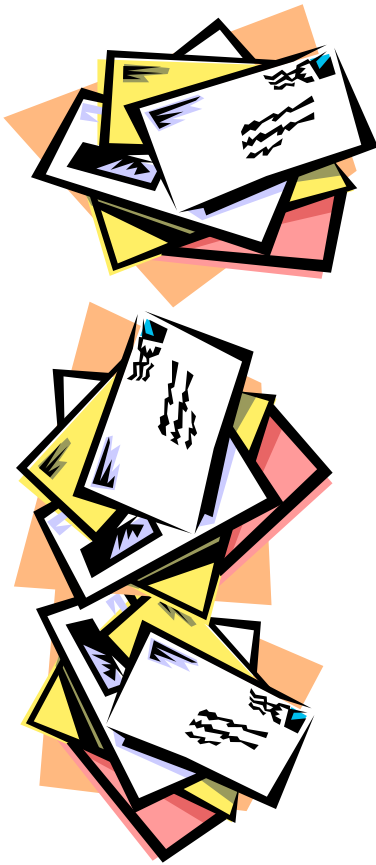
During the last six months, the Save Our Shoreline board of directors was extremely involved in the political arena. We found early on the importance of having a lobbyist representing our interests in Lansing. Even though several of the board members made many trips to Lansing, it does not leave us with a watchdog on duty there. Furthermore, we found that we have friends and foes serving in the legislature. For the pur-

poses just mentioned, we have created the SOS Political Action Committee (SOSPAC). This will be a separate fund with the purpose of electing politicians favorable to the membership of our organization.

Watch for a special announcement letter giving the complete details soon.

ON OUR MEMBERSHIP

BY FRANK WHALEN



In less than two years, our membership has grown to almost 1,800 households. You may wonder: where does our membership live? We have members from all over the state, and some that live out of state. The majority of our membership is concentrated in four areas and is represented on our board of directors by co-membership chairmen from their respective areas. The general breakdown is:

Bay County---336 members---
membership chairman---Frank Whalen

Caseville/ Port Austin---762---
members---membership chairman
David Kraft

Tawas/ Au Gres---349---
members---membership chairman---
Jay Graebner

Traverse City---202---members--
--membership chairmen---Dave Alt-

meter and Mike MacColeman

Also, we have another group of “non-shore” members that number about 146 members. This group is very concerned about our shoreline and our property rights and we are very grateful for their support.

Some of our members and the general public feel that the fight for our shoreline is over because of our recent victories. This is not true! The DEQ, the Army Corps, and the environmental groups are still after control of your property and, most likely, will intensify their efforts. We must continue to grow our membership and we need your help. Talk to your friends and neighbors and ask them to join. And remember, for close relatives, we will waive the application fee.

TREASURER JAY GRAEBNER'S REPORT



I took over as Treasurer in October 2002 and want to share some of the things I am learning. In order to be heard in the legislative and legal community it takes money, lots of money. Each week I write checks for thousands of dollars. Here are some examples. A newsletter like this one will cost over \$3,500. to get to your mailboxes. When we send the membership a one-page letter it cost \$1,000. and a post card cost costs \$650. I think each of you will recall how many of these you have received.

Your annual membership dues will support these types of costs, but they will not go toward the other things that really cost money, Attorneys! SOS had a successful legal fund drive in 2002, and we raised over \$235,000. With that money we hired lawyers in Washington D.C. to file an Amicus Brief in a case before the US Supreme Court. We also hired lawyers in Grand Rapids to review State laws, and we hired a lobbyist firm in Lansing that assisted us in the passage of legis-

lation in the House and Senate. All of these things cost tens of thousands of dollars that no one of us could afford alone.

Since I took on the duties of Treasurer last October I have written checks from the SOS General Fund totaling \$37,380.45 and the SOS Legal Fund totaling \$219,637.90. This is a total of \$257,018.35. As of July 11, 2003, the general fund balance stands at \$23,038.65 and the Legal Fund is \$69,907.76

Membership dues will support our general operations without a problem because they are perpetual each year. The Legal Fund is not a perpetual obligation and will run out without your continued support. By reading our newsletters I hope you can come to appreciate the results we have brought about by your contributions to date and that you will continue to support the Legal Fund generously.

ANNOUNCING THE NEW STATE BEACH GROOMING LAW

After much organizing, lobbying, debating, presentations, and several trips to Lansing, we were successful in obtaining passage of a law which clarifies beach grooming rights on Michigan's Great Lakes beaches under state law. Here's what the state law specifically allows:

- It allows manual or mechanical leveling of sand on beaches "predominantly free of vegetation";
- It allows the manual "de minimis removal of vegetation" on beaches;
- It allows mowing of vegetation, as long as the width of mowing does not exceed 100 feet or the width of the lot, whichever is less;
- It allows grooming of the top four inches of soil, if it does not disturb or destroy roots, for the purpose of removing debris;
- Until June 4, 2006, for those in two "pilot areas" which include the Saginaw Bay and the Grand Traverse Bay, it allows the removal of vegetation, if a letter is requested and received from the DEQ that establishes at least three of the following four criteria:

A. The area is unconsolidated material predominantly composed of rock, sand or pebbles, or is predominantly vegetated by non-

native or invasive species;

B. The area met the above requirements as of January 1, 1997;

C. The area is not within a designated "environmental area." (If you don't know if your beach is an "environmental area," check with the DEQ, or take a look at the map posted on our website);

D. The removal of vegetation does not violate specified state or federal "endangered species" laws.

The vegetation removal is limited to 100 feet or 50% of the width of your property (or wider if approved by the director), and any collected vegetation must be removed from any wetland. The request need not be on any form, but must contain specific information. The DEQ has developed a form for your use. The DEQ must respond to your request within ten working days after receipt.

For most Saginaw Bay or Grand Traverse Bay beaches, we believe this law means that if your beach is a beach, or was a beach as of January 1, 1997, then under state law you will be able to remove vegetation. But you must request and obtain permission from the DEQ, and for now, you must still request and obtain a permit from the Corps of Engineers (but we are working on this).

Other features of the law in-

clude the following:

- It authorizes the DEQ to issue a general permit for mowing or removal of vegetation, and such a permit may be requested by "a local unit of government" or by riparian property owners;
- It sets permit fees for the mowing or removal of vegetation or mowing (when letter of permission is not available and a permit is required).
- By January 1, 2006, it directs the DEQ to conduct a study that evaluates beach maintenance activities and their impact to the affected areas.

The law permits beach maintenance until November 1, 2007, which gives us five beach-grooming seasons until we have to go back and seek its renewal.

Please remember that the Corps of Engineers still asserts jurisdiction over Michigan's beaches, and it would be prudent to seek a permit from the Corps before conducting any beach-maintenance activities, other than mowing, which the Corps says it does not regulate.

We hope we can persuade the Corps of Engineers to conform its regulatory activity to Michigan law, but in the meantime, proceed with caution.



LEGAL CORNER



By Joe McBride

Your legal committee continues to work hard to bring recommendations to the board of directors to secure a permanent solution to the issues of ownership and beach maintenance.

STATE PASSAGE OF SHORELINE MAINTENANCE BILL

On the State level, the legal committee has spent hundreds of hours with SOS President Ernie Krygier and SOS Vice president David Powers to negotiate with the Lt. Governor, DEQ Director, Senators Barcia, Brader, Burkholz, Sikkema and many others to get the "Shoreline Maintenance Bill" to the Governor and have her sign the Bill. This has happened and the Governor did sign the Bill on June 4, 2003. We were most disappointed that she did not have a ceremony or thank those that worked so hard to get a unanimous agreement from the Senate and only one vote short of a unanimous vote in the House. We have so many people responsible for this success. We thank Representative Brian Palmer, who initiated HB 4257, all of his cosponsors and in particular Representative Tom Meyer, who encouraged all representatives to vote for passage. A special thanks to Senator Jim Barcia, for without his courage, support and leadership in the Senate, it would have been most difficult to achieve the success. We are so fortunate to have, for the most part, great leaders in our lakefront districts.

Our legislative victory is due in no small measure to the exquisite efforts of our lobbyists, the law firm of Kelley Cawthorne, and especially Pat McCollough, David Ladd and David Gregory of that firm. Their employment was made possible through your generous support of the legal fund. Working with SOS Board liaisons Jay Graebner and Mike MacColeman, our lobbyists worked tirelessly, they had the respect

and attention of lawmakers, and they well understood the legislative process.

DISMISSAL OF KINCAID LITIGATION

As we indicated in our last newsletter, SOS has been providing financial support to Caseville resident Marion Kincaid, who was sued by the Justice Department in May, 2002 at the request of the Detroit District, Army Corps of Engineers for moving sand on her Caseville beach. We are pleased to report that U.S. District Judge David M. Lawson dismissed the case with prejudice and the Kincaids have now sued the Army Corps of Engineers under the Equal Access to Justice Act to recover their attorney fees exceeding \$150,000. One can see why most individuals settle in cases brought by the Federal Government like this, not because the individuals did anything wrong, but because of the emotional stress and the potential financial havoc it can do to a retiree's savings. As the Kincaids' attorney Roger Marzulla said, "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." As our president said, "The Kincaids were used as pawns in the Corps' game to intimidate shoreline owners." It almost worked—that is until SOS got involved. Will the Corps stop trying to intimidate? We believe they will just elevate the enforcement process to a different level. The Detroit District has indicated through their actions that they are not going to follow the new Michigan law.

EFFORTS TO OBTAIN RELIEF FROM CORPS OF ENGINEERS

What is it going to take to get the Detroit District to move in a different direction and spend time on navigational issues rather than our beach issues? The same hard work from all of you and the SOS board that it took to move the MDEQ in a different direction. We will need additional fundraising, in particular the need for a Political Action Committee, which is new for SOS. We need to double or

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(From left to right) Joe McBride, Mike MacColeman, Senate Majority Leader Kenneth Sikkema, House Majority Whip Brian Palmer, Senator and Committee Chair Patricia Birkholz, David Powers, Senate Minority Whip James Barcia, and Ernie Krygier

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triple our membership, more organized letter writing campaigns and your continuing efforts which have brought us to where we are today. We have the battle only half-won. Let's take it all the way and return the shoreline to its proper owners, the true stewards, who know how to care for the beaches.

The legal committee has recommended to the full board and the full board has authorized the expenditure of over \$200,000 in legal fees to bring us to this point. What will it take to go all the way? Probably another \$200,000. In April we sent letters to all of our members requesting a donation of \$125 to the legal fund, in an attempt to raise another \$200,000. To date we have received donations from only one-half of our membership. If you have not donated, please do so, be-



SOS Team with Rep. Brian Palmer and House Speaker Rick Johnson

cause we cannot pursue appropriate legal challenges without your help.

OWNERSHIP OF BEACHES

One challenge is to determine who owns the beaches. The MDEQ still asserts on their web site and in other documents that the area between the ordinary high water mark of the Great Lakes and the current water's edge are exposed bottomlands which are public trust lands belonging to the State of Michigan. They claim this despite sev-

eral Michigan Supreme court decisions that say the riparian owner owns to the water's edge. How do we change the MDEQ's position? Through a judicial determination. This will cost money, and your board cannot move forward on this action unless you tell us to do that by providing the financial support.



Palmer Staff Assistants Jennifer Hayes and Justin Gray worked hard for SOS in Lansing.

WHAT YOU CAN DO TO KEEP THE WATER CLEAN

By Pete Frauson

In our last newsletter we identified all the nutrient sources that are helping the weeds grow faster on our beaches. As beachfront residents, we can be part of the problem, and we should strive to make sure we aren't polluting the water that we live on. Here are a few things each of us can do to make sure we aren't part of the problem:

- 1) If you have a septic system, make sure it is working properly. If your system isn't working, your own wastewater may be going through the ground into the water in front of your home. Any number of companies listed in the phone directory can come and test your system and the surrounding ground.
- 2) If you have a lawn, garden, or other planting area
- 3) Watch your use of herbicides near the water. Here again, less is better so it doesn't get into the water. If using a herbicide, don't use a broadcast spreader or spray the entire lawn; just go after individual plants. Better yet, get some exercise and remove the unwanted lawn weeds the same way the Army Corps will let you re-

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- move them in the water: by hand.
- 4) With all the concern for West Nile, we still need to be concerned about getting pesticides in the water where they might harm fish and other wildlife. Read the entire label to determine what you shouldn't do, or better yet, look at the local garden center for a pesticide that is environmentally friendly.
 - 5) Most important of all, when using any chemi-

cals, make sure you wear eye protection, gloves, and have clothing that covers the rest of your body. You are, as an SOS member, the most important species on the beach, and we don't want anything to happen to you! Even a small exposure to a chemical that is repeated over and over could lead to potentially major health problems in the future.

NEW ONE-PAGE ARMY CORPS PERMIT

FOR SOME BEACH WORK

The Detroit District of the Army Corps of Engineers has developed a new one page permit that allows four things that may be of interest to a shorefront property owner, and they promise a 5 to 15 day response. You can find the permit at http://www.lre.usace.army.mil/index.cfm?chn_id=1936. If all you want to do is mow vegetation, remove vegetation by hand, or level sand by hand, no permit is generally required, but if you want to level sand mechanically, or do other work, you might consider the one page permit form.

The one page permit can be used for four types of activity, each described below:

1) Leveling of Sand (using mechanical equipment)

This is for the wind-blown sand on your beach, yard or next to your sea wall. Here you are allowed to move 2 cubic yards of sand for each foot your lot is wide. You can pull the sand anywhere up to a maximum of the water's edge with the idea that you are leveling (covering swales as you move the sand) your beach. You cannot move the sand onto vegetated areas. To get the maximum of 2 cubic yards per foot wide you would need a sand dune 6 feet high and 8 feet long per foot of the width of your beach. You can do this once per year.

2) Path (using mechanical equipment)

This allows you to make a 6 foot wide path (measured at the bottom of the path) from your normal beach out across the soft spots, swales, weeds, rotting algae mats or any other thing between you and the water's edge.

You can apply for all these activities on one permit . . .

There is no charge for the permit . . .

When granted, it will last 'til May 14, 2007.

The material to make the path can come from below the ordinary high water mark (25 cubic yards max), be trucked in (clean sand and pebbles only) or a combination of both.

For the 25 cubic yards of material to build this path that can come from below the ordinary high water mark you can collect this material by scraping it off part of your newly extended beach area. As an example, if you have a 50 foot wide lot, you can scrape up the top 3 inches (0.25 feet) deep for 54 feet of your 50 foot wide lot (0.25 feet x 54 feet x 50 feet = 675 cubic feet = 25 cubic yards). For the remaining material you can bring it in. You can use as little scraped up material from your newly extended beach area as you wish but the maximum is the 25 cubic yards.

If your neighbor also files a permit, you could have paths next to one another on the lot line. This would make a shared path that would be 12 foot wide (measured at the bottom) which might make it easier to get a bigger piece of mechanical equipment to haul, move and scrape the path material.

3) Boardwalk (temporary)

You can build a boardwalk that is on piers or lays on the ground all

the way to the water's edge. It can be any width but it has to be a temporary structure.

4) Grooming (non-vegetated areas)

You can mechanically groom non-vegetated beach below the ordinary high water mark up to a maximum of 4 inches (0.33 feet) deep for a maximum of 25 cubic yards. For a 50 foot lot, this means that you can mechanically groom the 41 feet of the beach in from the waters edge (50 feet x 41 feet x 0.33 feet = 675 cubic feet = 25 cubic yards).

You can apply for all of these activities on one permit so you can do the maximum to get your expanded beach area into a clean condition that will have less stagnant pools and allow you to access the water. If you pulled sand back over the first 25 feet of your beach area, scraped up material on the next 54 feet for your path and groomed the outer 41 feet that means you have complete control of 120 feet of beach. There is no charge for the permit. Your property will have to be inspected by an Army Corps agent before the permit is granted. But when granted it will last till May 14th, 2007.

Beware, however. The Corps has used the permit process as an opportunity to make a binding determination of your "ordinary high water mark," which may limit use of your property in the future. Proceed cautiously with this governmental agency!



Membership Application

Thank you for your interest in joining Save Our Shoreline, Inc. Please complete the following information and send it to:

Save Our Shoreline, Inc.
 P.O. Box 2307
 Bay City, Michigan 48707-2307
 989-667-2910
www.saveourshoreline.org

Last Name: _____

First Name: _____

Mailing Address: _____

City: _____

State: _____

Zip Code: _____

Email Address: _____

Phone: _____

Fax: _____

Name of your beach area (i.e. Au Gres, Bay City, Caseville, Grand Traverse area, Tawas): _____

- I wish to join.
- I have enclosed \$50.00 (\$25.00 application fee and \$25.00 annual fee). Please make check payable to Save Our Shoreline, Inc.

Upon receipt of your application, you will receive one membership certificate.

Please enter the name you would like to have on the membership certificate. _____

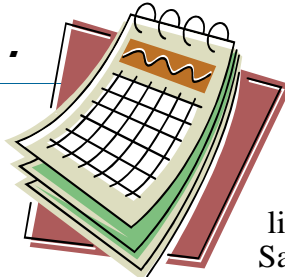
Please be very specific. Example: Bob Jones, Mr. & Mrs. Bob Jones, or Bob and Mary Jones?

On behalf of Save Our Shoreline, Inc., we thank you for your support in protecting Michigan's recreational beaches.

FOR YOUR CALENDER . . .

Annual Meeting:

The Annual Meeting of Save Our Shoreline will be held on Thursday, August 21, 2003 at 6:30 p.m. at the John Glenn High School, 3201 Kiesel Road, Bay City. The Board will report on our progress to date and on the challenges ahead, and we will elect three directors to serve four-year terms. We intend to have many dignitaries present and to honor those who have helped in our fight. Don't miss it!



TWO IMPORTANT MEETINGS!

Caseville Meeting:

Also, don't miss the Save Our Shoreline informational meeting scheduled for Saturday, August 23, 2003 at 9:30 a.m. at the Caseville School Auditorium, 6609 Vine Street, Caseville. This meeting is aimed at serving those in the Caseville area, but all SOS members are welcome to attend. So get this on your calendars now and plan to come!



a Michigan nonprofit corporation
P.O. Box 2307
Bay City, Michigan 48707-2307

Telephone: (989) 667-2910

Website: saveourshoreline.org

SOS OFFICERS AND DIRECTORS:

Ernie Krygier	President	785 Bay Rd	Bay City	(989) 684-2830
Dave Powers	Vice President	861 S Linwood Bch	Linwood	892-4861
Neal Tiernan	Secretary	789 Bay Rd	Bay City	684-4049
Jay Graebner	Treasurer	P.O. Box 376	AuGres	876-2499
Bob Harvey	Director	423 S Linwood Bch	Linwood	697-3046
John Dwan	Director	146 Little Killarney	Bay City	684-9887
Pete Frauson	Director	309 S Linwood Bch	Linwood	697-1991
David Kraft	Director	7960 Bay Drive	Sand Point	856-7653
Joe McBride	Director	7838 Port Austin Road	Sand Point	856-2572
Frank Whalen	Director	293 Donahue Bch	Bay City	686-2176
Gene Jakubczak	Director	467 S. Linwood Bch	Linwood	697-5386
Michael MacColeman	Director	2345 N. US Hwy 31 N	Traverse City	(231) 938-8888

OUR MISSION:

“To organize waterfront property owners and those with similar interests consistent with the goals of the organization; to preserve and maintain riparian rights, including the right to maintain safe recreational beaches and waterfront areas, both public and private; and to preserve and maintain a proper balance for the coexistence of man and nature upon and near waterfront property.”