

September 13, 2001

Honorable Joseph Rivet  
State Representative  
P.O. Box 30014  
Lansing, Michigan 48909-7514

**Re: Beach/Bottomlands Issue**

Dear Representative Rivet:

Thank you for your correspondence dated August 28, 2001. I understand a copy of that correspondence has been addressed to at least one other beach owner.

I am writing today both as an individual recipient of your letter and as a director of Save Our Shoreline, Inc.

As you may know, Save Our Shoreline, Inc. is a newly formed formal organization of beachfront residents and owners, and others interested in the association's goals, to address the issues of governmental interference with beach maintenance activities. I am enclosing a pamphlet and other materials which have been distributed to prospective members for your information. I am also enclosing a copy of our first newsletter, which is being distributed at the same time as this letter. As you can see, Save Our Shoreline, Inc. currently has 274 fully paid members, and is growing every day. We anticipate reaching 500 members by the end of the year.

The Save Our Shoreline, Inc. board would first like to express its appreciation for your interest in the issue that confronts us, and for your efforts up to this date.

After reviewing your letter, I would like to take this opportunity to dispel what I would respectfully submit is a misunderstanding on your part. Specifically, in your letter, you indicate that your research indicates that exposed bottomlands belong to the State. I have thoroughly researched this issue, and I would like to respectfully submit that this conclusion is in error. In the case of Hilt v Weber, 252 Mich 198 (1930), the Michigan Supreme Court specifically held that property owners along the Great Lakes, which includes Saginaw Bay, own to

the water's edge. Subsequently, in 1955, the legislature passed the Great Lakes Submerged Lands Act. Many have interpreted that Act to state that the State of Michigan, and not shoreline property owners, own to a point above sea level set by the Act. Such a conclusion is obviously contrary to the pronouncement of the Michigan Supreme Court in Hilt v Weber, 252 Mich 198 (1930). To my knowledge, no court in any reported decision has ever held that under the terms of that Act, the State, and not a shoreline property owner, owns any portion of property between a shoreline property owner and the actual waterline at any given point in time. In a March 14, 2001 opinion letter to State Senator Ken Sikkema (copy enclosed), the Michigan Attorney General held that shoreline property owners along the Great Lakes own to the water's edge.

It is our opinion that once the Michigan Supreme Court determined that property owners own to the water's edge, the legislature could not take that property away by legislative enactment without compensation through a proper condemnation procedure. Such, of course, has not occurred. If that were not the case, then the legislature could, at its whim, set the highwater mark at any level, including a level which would encompass many persons' homes, and simply declare ownership. That is not permissible under our state or federal constitutions.

Accordingly, in our opinion the issue is not ownership. Instead, it is the reasonableness of regulations upon our shoreline property, and the scope, reasonableness, and enforceability of law and regulations currently in place.

We agree with you that, at least for now, the question that remains is what can be done to the land without permits that will be acceptable to the governing agencies. We are currently looking into proposed language for a general permit which would be agreeable to shoreline owners which we can present to the Department of Environmental Quality and the Detroit office of the Army Corps of Engineers. Once we have developed a specific proposal, we hope to work with you in an effort to have it implemented.

The Board of Directors of Save Our Shoreline, Inc. looks forward to working with you on this most important issue.

Sincerely,

SMITH, MARTIN, POWERS  
& KNIER, P.C.

DAVID L. POWERS

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cc: Save Our Shoreline, Inc.  
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