

The Detroit District is Proposing a Permit Process to Do Normal Beach Maintenance for All of Michigan's Shoreline

By Joseph McBride, Chairman, SOS Legal Committee, Pigeon, Michigan

I am writing this urgent message for a couple of reasons. The first is to thank the many Members of SOS and the Michigan and Federal Legislators who submitted comments to the Detroit District and others in Washington DC recommending that the Detroit District remove the proposed conditions that were placed on beach grooming and leveling of sand in the State of Michigan. Secondly, to bring shoreline property owners up to date on my previous article, "The Detroit District, U.S. Army Corps of Engineers is Getting Ready to Pull the Scab off an Old Wound".

To refresh your memory, the Detroit District essentially proposed that you could groom your beach no more than 1000 square feet (40 ft. by 25 ft.) if your beach is located below the Ordinary High Water Mark (OHWM) by first obtaining a permit. Their process will require you to take time to prepare an application, submit your drawings and wait for the Detroit District to approve it.

Save Our Shoreline responded to the Detroit District's Proposed Regional Conditions by vehemently opposing this change, in that it cannot be justified by any fair public interest analysis conducted pursuant to 33 CFR 320.4(a)(1) and (2). 2012 PA 247, which is the Michigan law authorizing beach grooming in Michigan without permit and provides a better approach to regulation of beach grooming in Michigan. Michigan Law provides the necessary environmental safeguards which, after four years, have already gained acceptance by the public.

The Detroit District issued on November 14, 2016 a Proposed Reissuance of Regional Permit for Minor Work, Structures and Discharges of Dredged and Fill Material in Michigan. This proposal permits Leveling of Sand and Grooming of Sand under certain conditions and limitations so as not to cause more than minimal adverse environmental impact.

<http://saveourshoreline.org/wp-content/uploads/2016/11/detroitdistrictproposed1116.pdf>

One of the many problems with their proposal is that you **still need a permit** to do these acts which cause minimal impact on our environment and are acts which shoreline property owners have been doing for decades . During a recent Supreme Court hearing on the matter of beach grooming, there was a discussion between Justice Scalia and Mr. Minear in which one would argue that the types of beach maintenance actions for which the Detroit District are requiring a permit to do are de minimis. (The law does not concern itself with trifles).

<http://saveourshoreline.org/wp-content/uploads/2016/10/BordenRanchTranscriptoforalargument1.pdf> on page 45.

Let the Detroit District spend taxpayers money by requiring them to prevent major harm to our shoreline by destroying what they created the massive invasion of Phragmites. The Detroit District created this mess by harassing shoreline property owners with threats and intimidation by denying and delaying permits to maintain their beaches and bringing law suits against many shoreline property owners and with their inappropriate news releases.

As you may know, the Detroit District has been requiring shoreline property owners to make application for a permit since 1980. That has resulted in a mountain of information over the past 35 years. What more information could one possibly provide that has not already been accumulated by the Detroit District on the conditions of our beaches? The Detroit District already has tons of information on your beach so why waste more taxpayers money to have the Detroit District hire personnel to maintain a retrieval system, have the application digitize or put in newly purchased steel cabinets, which requires more leased space and highly paid personnel.

In addition, the personnel hours to reviewing applications, approve, deny or ask for clarification, travel to the site, review the site, costs to hold meetings on the best way to retaliate against shoreline property owners who challenge their decisions, answer legislators letters and respond to a variety of law suits will require millions of dollars in new money for the Detroit District. I do not agree that they have this right, and I believe a Federal Court would probably agree with me that they are overreaching and their actions possibly constitutes a taking action. I believe what they are trying to achieve by requiring a permit is not to protect the environment, or for the greater good, but to further intimidate shoreline property owners, grow their budgets and to achieve greater power. If not, why not promulgate the limitations stated on the permit application and if there are individuals who violate the limitations and safeguards to our environment, cite

the shoreline property owner and let the courts do their job. To require a permit to do something so de minimis, is completely contrary to why permits are required and defies common sense and strongly indicates that the Detroit District is not being fiscally responsible for the monies they receive.

Completing the Permit Application is not an easy process. You have to take time to fill in the blanks on a one page permit and then you have to prepare both a plan view and cross-sections view for leveling of sand and one for grooming of sand. You must also provide a plan view (overhead) view not just of the beach area below the ordinary high water mark, but your entire property showing your driveway, house, seawall, property lines, with measurements and the entire beach area including the amount of cubic yards to be groomed. When did they acquire jurisdiction above the ordinary high water mark? What next are they going to require? How many people live on the property and how big is your blanket that you intend to use on the beach?

In addition they want you to provide a copy of a map, such as a plat, county, or a USGS topographic map, showing the site location and include an arrow indicating the north directions and directions to the site and many other details. Do not forget to include the names of your neighbors in your application for this also is required. Additionally, when you sign the permit application you are agreeing to allow representatives of the USACE, and/or their agents or contractors to enter upon said property in order to inspect the proposed activity. WOW! All of this, so we have the privilege of doing de minimis acts to groom and level sand caused by Mother Nature. What courses in jurisprudence and leadership promotes this kind of thinking and behavior?

Also, the U.S. Supreme Court ruled recently that property owners don't have to wait until they have a permit denied before they can sue the federal government over whether their property is subject to Clean Water Act regulation. This is a big decision for shoreline property owners and may be helpful if grooming and leveling of sand requires a permit under the proposed regulations.

If you think a permit is necessary, don't do anything. If you disagree that a permit is necessary to maintain your beach to promote healthy beaches, tourism, a healthy tax base and protect private property rights and that the Detroit District knows more than our Governor, and

Legislators, and then please send an email to Charles Simon, Chief, Regulatory Office, at kristi.m.defoe@usace.army.mil strongly recommending that permits are not necessary for grooming and leveling of sand on private property beaches and remind them this has been Michigan Law for the past four (4) years. When is the Detroit District going to get it right? Your email must include your name and mailing address. In all communications please refer to File Number LRE-1990-200050-S16. Your email must reach them prior to December 14, 2017.