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PRESERVE THE DUNES, INC.

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October 23, 2017

Mr. John Bayha
Water Resources Division
Michigan Department Of Environmental Quality
7953 Adobe Rd.
Kalamazoo, MI 49009

re: Permit Application Submission No.: 2R8-N9W4-J542

Dear Mr. Bayha:

This letter is written to state our opposition to approval of the application for permit 2R8-N9W4-J542 which is made under Part 301 of NREPA (Inland Lakes and Streams) and as a Special Use project under Part 353 (Sand Dunes). While we have concerns about the proposal as presented, we are most concerned that Part 637 (Sand Mining) has been disregarded. All Parts of NREPA must be considered before any project effecting the natural resources of the state is issued a permit. We maintain that issuing this permit would be unlawful.

Part 637 (§637.01) The site is in a “sand dune area.”

“(k) 'Sand dune area' means that area designated by the department that includes those geomorphic features composed primarily of sand, whether windblown or of other origin and that lies within 2 miles of the ordinary high-water mark on a Great Lake as defined in section 32502, and includes critical dune areas as defined in part 353.”

See the sand dune atlas. There is no question that the site for the boat basin is in the designated sand dunes and in the critical dune areas.

Part 637 (§637.02) defines sand mining.

“(l) 'Sand dune mining' means the removal of sand from sand dune areas for commercial or industrial purposes, or both. The removal of sand from sand dune areas in volumes of less than 3,000 tons is not sand dune mining if the removal is a 1-time occurrence and the reason the sand is removed is not for the direct use for an industrial or commercial purpose. However, the removal of any volume of sand that is not sand dune mining within a critical dune area as defined in part 353 is subject to the critical dune protection provisions of part 353 .”

Is the proposed activity “sand mining” based on the definition in §637.02? Let us review the definition and its application in this case. First, excavating the boat basin is clearly the removal of sand. Second, it is from a designated sand dune area. Third, it will be removed in volumes far exceeding 3,000 tons. Finally, we must determine if the sand is to be removed for either commercial or industrial purposes.

The proposer claims the sand will not be sold and maintains the transaction is therefore not commerce. We say this is commerce. Commercial purpose is much more than buying and selling. Black's Law Dictionary defines commerce is as:

“Intercourse by way of trade and traffic between different peoples or state and the citizens or inhabitants thereof, including not only purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as goods, both by land and by sea.”

About a third of the excavated sand will be moved to the beach at Lake Michigan and spread to replenish the beach sand. This may be an exchange of commodities depending on the ownership of the adjacent land and other details of the transaction. It is also likely an enhancement of marketability of the adjacent lakeside lots/houses, which is a commercial purpose as defined.

Two thirds of the excavated sand will be stockpiled for home construction i.e., mixing concrete¹, mortar, fill for road construction, etc. This is an exchange by barter. The developer would be simply discounting the price of the land or house by the value of the sand used by or for the purchaser; or it is being used as an inducement to buy a house, lot or boat slip. When sand is conveyed to the customer it will be for a commercial purpose whether or not currency is exchanged. The developer is taking the excavated sand and exchanging it for something that he values.

If the sand were sold to a sand company or a foundry it would unquestionably be for commercial purposes. Likewise exchanging the sand for something of value to the developer is also commerce.

The amount of sand is significant. As is its value. 161,750 tons of stockpiled sand would create a pile (or mound or sand dune) about 100-feet high (± 10 -stories) and 400-feet in diameter with a side slope of 1' vertical per 2' horizontal. The US average price for construction sand in 2016 was just under \$9 per ton. That would translate into a value of \$1,500,000 for the stockpile².

In the letter of transmittal for the project documents the developer states *"The goal of Northshore was, and is, to design, and build a world-class residential development that strikes the proper balance between **economic return and preservation.**" Obviously, the boat basin/marina is being developed primarily to make a profit on the exchange or rental of the land, sand, houses and/or facilities.*

The sand removal for the boat basin has a commercial purpose. Therefore, the proposed removal of the sand is sand mining and is subject to Part 637.

Issuing a permit is unlawful. The permit cannot be issued. The application must be denied.

Sec. 63702. (1) **Notwithstanding any other provision of this part, the department shall not issue a sand dune mining permit within a critical dune area as defined in part 353** after July 5, 1989, except under either of the following circumstances.....

1 Large amounts of concrete are usually not mixed on site but purchased from concrete plants and delivered to the site in concrete mixing trucks.

2 The value of the sand to be used for beach replenishment is about \$720,000.

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The proposed activity is illegal.

Sec. 63704. (1) **A person shall not engage in sand dune mining within Great Lakes sand dune areas except as authorized by a permit issued by the department pursuant to part 13.**

We ask you to deny this permit, 2R8-N9W4-J542.

Sincerely,

Charles F. Davis, III
Vice President

cc: State Senator John Proos
State Senator Tonya Schuitmaker
State Representative Beth Griffin
State Representative Kim LaSata
State Representative Dave Pagel
State Representative Mary Whiteford