

## **“Shoreline Owners Get Environmental Relief”**

By: Joseph E. Quandt

The Michigan Legislature recently granted shoreline property owners who own property on the Great Lakes the right to “groom” their beaches without violating state law and regulations. Beach grooming has become a major issue for not only shoreline homeowners but also for hotel and resort owners who saw a significant decline in tourist income as a result of their inability to groom muck, slime and other material from exposed Great Lakes bottomlands. This new law significantly amends Michigan’s Submerged Lands Acts and Wetland Protection Acts in certain specific and isolated circumstances to address this problem.

As most people know, Great Lakes water levels have steadily decreased over the last five years. The decreasing water levels have caused land which was previously under water to be exposed near the shorelines. These exposed bottomlands began to grow wetland type vegetation. These exposed areas also caused large pools of zebra mussels and contributed breeding grounds for mosquitoes and other insects. Property Owners who tried to groom their beaches to remove the unwanted material and restore their sandy water frontage found themselves faced with civil and criminal prosecution by state and federal government authorities who asserted that the bottomlands were protected under state and federal law and could not be altered without a permit. Those who requested permits were frequently denied the right to perform beach grooming as it was felt that these “emerging wetland areas” created important environmental habitat for sensitive aquatic species and other animals. Some hotel and resort owners, faced with the prospect of only being able to offer slime covered beaches, found it impossible to compete with other hotels and resorts which were located on deeper waters which were not experiencing the exposed bottomlands problems. This situation was exacerbated by the government’s poor choices in deciding to press civil and criminal cases against shoreline homeowners who merely wanted to rake a path to the water so that they could enjoy some of their water frontage. One of the more prolific and publicized cases resulted in the United States Attorneys Office dropping a criminal case in the middle of a trial against a homeowner for performing this type of activity.

As a result of enormous political pressure, the legislature agreed almost unanimously to amend the Wetland Protection and Submerged Lands Acts to allow for certain types of activities. Specifically, the statute provides that a waterfront land owner may “groom” up to a 100 foot wide path from the ordinary high water mark on the Great Lakes lakeward to the water’s edge without obtaining an MDEQ permit. “Grooming” means using a rake or other mechanized means to rake and groom no more than four inches below the surface of the exposed bottomlands so as not to disturb important wetland grass root structures. Acceptable activities include the “de minimis” removal of some wetland grasses (de minimis meaning very small amount where necessary). Shoreline owners may also mow wetland grass areas to a height of no less than two inches without specific MDEQ permission. Property owners who wish to combine their property with other adjacent shoreline neighbors may combine their properties under one permit application and with only one permit fee in situations where a permit may be required. Also, more aggressive grooming activity or

vegetation removal likewise requires specific consent of the MDEQ as part of a permit regimen. Thus, although the new legislation provides exemptions for certain types of activities from permit requirements, other activities may take place under less stringent permit guidelines (general permits) or may require additional permit scrutiny if the activity is more aggressive or extensive than that allowed under exemption or general permit.

Further, property owners should be aware of the fact that the state legislation does not extinguish the possible enforcement of federal laws for dredging and filling in the Great Lakes basin. Dredging and filling in the Great Lakes basin is generally regulated by the Corps of Engineers through the Rivers and Harbors Act. The Great Lakes coastal wetlands are regulated by the EPA and Corps of Engineers concurrently under the Clean Water Act. The policy statements issued by the Corps of Engineers and the EPA has been to the effect that they are not relinquishing jurisdiction over these areas as a matter of federal law but that they will most likely exercise enforcement discretion by not taking enforcement action against shoreline owners who comply with the limitations under the new legislation.

Of course, specific questions related to the applicability of this new legislation to your specific circumstances should be directed to experienced environmental counsel. This legislation took effect June 5, 2003.

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