

Shoreline Task Force Consensus Document

April 8, 2003

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Technical Assistance: provided by the US Army Corps of Engineers

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I Definitions

At its first meeting, the Task Force agreed to develop common definitions of terms integral to the discussion so that members were all working with the same vocabulary. The first section of this document outlines these terms and definitions. Where possible, definitions were taken from statute and are referenced in parentheses () after the term as either Corps (US Army Corps of Engineers) or DEQ (Michigan Department of Environmental Quality) mandated or non-mandated definitions. The former (mandated) refers to definitions coming directly from statute or administrative rule. For people who are interested in more detailed information, relevant documents related to this process are available at: www.lre.usace.army.mil under “Hot Topics” click on Saginaw Bay.

- **Beach** – (Corps: non-mandated) *Webster*: The shore of an ocean, sea, lake, or the bank of a river primarily covered by sand, gravel, or larger rock fragments above water.
- **Bottomland** – (DEQ: mandated) Natural Resources and Environmental Protection Act (NREPA), Part 325: Lands in the Great Lakes, and bays and harbors thereof, lying below and lakeward of the ordinary high water mark.
- **De minimus Activity** – (DEQ, but not a mandatory/rule-based definition) *De minimus* refers to those activities that are of a small enough magnitude to have little or no impact and so require no regulation. Example: building a sand castle, removing debris by hand, shoveling/raking dead fish/vegetation by hand (manual grooming).
- **Discharge** – (Corps: mandated) as Discharge of Fill Materials. See also: Incidental Fallback.
- **Dredging** – (DEQ: administrative rule) Removal of any mineral, organic, or other material from or within the bottomland or waters of the Great Lakes by any means. State becomes involved to assess the resource impacts, area being disturbed, impact on natural resources, public trust rights, other riparians and sanitation. (Corps: non-mandated)
- **Emergent** – (Corps: non-mandated; no State definition in statute or rule.) A scientific term referring to herbaceous plants rooted below water with most of their vegetative growth above the waterline. The normal condition of the plant requires that it be submerged for part of its life cycle, for example, cattails.
- **Environmental Areas** – (DEQ: mandated) Environmental areas, designated under NREPA, Part 323, are sensitive fish and wildlife habitat along the shorelands of the Great Lakes, connecting waterways, and river mouths. All available digital maps of environmental areas have been added to the DEQ address: www.michigan.gov/deq Water > Great Lakes > Shoreland Management.

The page can be accessed directly at:

http://www.michigan.gov/deq/0,1607,7-135-3313_3677_3700-63548--,00.html

- **Fill** – (Corps: mandated) Clean Water Act, S. 404, § 323(e) Fill material means material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land; or changing the bottom elevation of any portion of a water of the United States. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. The term fill does not include trash or garbage.
- **General Permit** (Corps: mandated) Section 404, § 322.2(f) The term general permit means a DA authorization that is issued on a nationwide or regional basis for a category or categories of activities when:
 - (1) Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or
 - (2) The general permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR part 330.)
- **Grooming** – (Corps) The removal of material through manual or mechanical means landward from the water’s edge.
- **Habitat** – (non-mandated) A place that provides water, food, space, air, and cover for an organism.
- **Incidental Fallback** – (Corps: mandated) Section 404, § 323.2(d)(2)(ii) Incidental fallback is the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. Examples of incidental fallback include soil that is disturbed when dirt is shoveled and the back-spill that comes off a bucket when such small volume of soil or dirt falls into substantially the same place from which it was initially removed.
- **Individual Permit** – (Corps: mandated) A permit required to undertake any regulated activity falling outside nationwide or regional permits determined by a public review of the probable impact, both positive and negative, of the proposed activity. Benefits and detriments are balanced by considering effects, including cumulative effects, on public interest factors that may include but are not limited to water quality, shoreline erosion/accretion, and effect on flood hazards, navigation, conservation and overall ecology.

- **Littoral Process or Dune Creation:** (non-mandated) The creation of new beach area due to natural processes.
- **Maintenance** – (Corps, derived from nationwide permit for maintenance) Repair, rehabilitation or replacement of any previously authorized, currently serviceable, structure or fill.
- **Mechanical** – A self-propelled vehicle either pulling grooming/mowing equipment or performing grooming/mowing itself.
- **Non-native/Invasive Species** (non-mandated)
Non-native – Plant/animal species that evolved outside of the Great Lakes basin.
Invasive – Plant/animal species that threaten native ecosystems and have aggressive growth characteristics and the potential to dominate the vegetation of an area. These may be either a native or non-native species.
- **OHWM (Ordinary High Water Mark)** – (Corps: mandated; DEQ: mandated) Both Corps and DEQ reference International Great Lakes Datum (IGLD) for 1985. There is, however, a one foot difference in the elevation set as OHWM: DEQ is 580.5, Corps is 581.5. Old documents will reference IGLD 1955; a difference of 0.7 feet.
- **Permit by Rule** – (DEQ, no legislative/rule-based definition; a concept) Criteria for permits are spelled out in an administrative rule. If the land owner meets *all* of the listed criteria, he/she is free to begin working without a paper permit. In all other situations, the landowner is required to obtain a paper permit.
- **Pollutant** – (Corps: mandated) Means dredged spoil, solid waste, incinerator residue ... rock, sand, cellar dirt and agricultural, industrial and municipal waste discharged into water.
- **Previously Unidentified Emergent Wetland** – (non-mandated) Locations which have not been previously identified as wetlands or areas which, through natural processes, are becoming a wetland.
- **Public Trust** – (DEQ: mandated) NREPA, Part 325 R.322.1001 (1)
(m) “Public Trust” means the perpetual duty of the state to secure to its people the prevention of pollution, impairment or destruction of its natural resources, and rights of navigation, fishing, hunting, and use of its lands and waters for other public purposes.
- **Site Inspection** – (Corps: non-mandated; Agreed to this term as defined in the Corps document) An on-site visit made in conjunction with a reported or ongoing enforcement action, a verification of wetlands delineation, a determination of the ordinary high water mark, or an analysis of existing environmental conditions to

facilitate an evaluation of impacts due to a proposed permit activity.

- **Threatened/Endangered Species** – (USFWS/DNR: mandated) Federal authority comes from the Endangered Species Act of 1973 As Amended (ESA) and state authority comes from Part 365 of the Natural Resources and Environmental Protection Act (NREPA).

Definitions from ESA:

Endangered species: any species which is in danger of extinction throughout all or a significant portion of its range....

Threatened species: any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(These definitions apply to currently designated species; species can be added or removed by the process defined in the statutes.)

- **Regional Permit** – (Corps: mandated) A general permit issued on a regional basis (usually on statewide basis - in one state).
- **Wetland** – (Corps: mandated) Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.
(DEQ: mandated) Land characterized by the presence of water at a frequency and duration sufficient to support and, under normal circumstances, does support wetland vegetation or aquatic life, and is commonly referred to as bog, marsh, or swamp.

II Existing Corps/DEQ Permitting Requirements

The Task Force asked the US Army Corps of Engineers (Corps) and the Michigan Department of Environmental Quality (DEQ) to address the following issues as an opportunity to compare the permitting processes of each organization in order to identify areas of significant difference and offer suggestions where the two processes could be reconciled.

Comparison of Corps and DEQ Permits

- authority
- non-regulated activities
- activities falling under existing regional/national permits
- content of individual and general permits
- submittal, decision and appeal process
- revision v. new permits (content/process)
- cumulative impact assessment – content/process

1) Identified Differences Between Corps and DEQ Permitting Processes:

DEQ	Corps
Mowing: DEQ requires a permit if not <i>de minimus</i>	Mowing: Corps does <i>not</i> require a permit
Threatened and Endangered Species: Included in the application review process	Threatened and Endangered Species: Included in the permit review process; Corps must consult with USFWS
Application Fees: <ul style="list-style-type: none"> • fees vary from \$50-\$2,000 depending on the statute under which the permit falls; if more than one, the most expensive fee is used 	Application Fees: <ul style="list-style-type: none"> • \$10/citizen or \$100/commercial for individual permits • no charge for regional or national permits
Appeals Process: <ul style="list-style-type: none"> • Applicant has 60 days to appeal for any reason • Appeals are made to the Office of Administrative Hearings • New information can be introduced • Third parties can appeal if they are judged to “have standing” in the 	Appeals Process: <ul style="list-style-type: none"> • An oversight process for applicants denied a permit or sent a modified permit. • Grounds for the appeal cannot be disagreement with decision but must be based on procedural violation, such as failure to consider all pertinent information. • Appeals are made to the Division Engineer. • New information cannot be introduced at the appeal. • No option for third party appeal.

<p>permit, such as being the adjacent property owner. An issued permit remains valid through the appeal process.</p> <ul style="list-style-type: none"> • Decision is rendered by the Dept. Director or his/her designee 	<ul style="list-style-type: none"> • Product of the appeal is not a new decision from the District, but advice is remanded to the Regional Engineer to take the pertinent information into account.
<p><i>Despite differences in statutes and rules, DEQ and Corps most often come to the same decision on permits; it is very rare to have real differences in judgment.</i></p>	

Mail completed application copies to **both** DEQ and the Corps to expedite process.

2) ***De minimus Activity*** (unregulated, no permit required by DEQ or Corps)

- Building a sand castle
- Removing debris by hand
- Hand shoveling/manually raking dead fish and zebra mussel shells
- Hand shoveling/manually raking trash and dead vegetation
- Manually burying debris such as dead fish, dead vegetation, and small trash items
- Wheel barrow and mechanized vehicles can be used to transport above materials to uplands
- Hand shoveling and raking wind blown sand from home sites
- Hand shoveling/manually pulling plants (does not authorize the taking of threatened and endangered species), includes other hand tools
- Bonfire building
- Temporary tent building and camping by permission of the property owner
- Beaching boats and seasonal storage of ice shanties

3) **Path Building:** (Activities allowed under current DEQ General and Corps Nationwide Permits; suggested changes in these activities are contained in IV Recommendations)

- 6-foot wide path
- Maximum length of 200 linear feet total of what you have filled, but can be in sections
- 25 cubic yards of non-vegetated dredge material from below OHWM
- Seasonal, wooden walkways, 200 linear feet long, 6-foot wide
- Present photos with application
- Either agency might respect site-visit of other agency
- If you desire to fill areas falling outside of the pathway, contact your local Corps and DEQ office.

- 4) **Mowing Vegetation** (Activities allowed under current regulation; see Section V)
- Corps: mowing, by mechanical or hand tools, of exposed lake bed or wetland areas is not regulated provided the soil is not disturbed other than by normal use of tires or footprints. The equipment may not relocate, grade, or redeposit soil.
 - DEQ: mowing is a regulated activity; the proposed permit-by-rule is to mow up to 100 feet width from OHWM to water's edge, with no soil disturbance (e.g. plowing or disking). No mowing allowed in a designated environmental area. Common tools include: lawnmowers, brush hogs, sickle-barred mowers, riding mowers.
- 5) **Grooming** (Activities allowed under current regulation; see Section V)
- Corps: no permit required for non-mechanical grooming from OHWM to water's edge;
 - DEQ proposed permit-by-rule for mechanical grooming 30 feet landward from water's edge on non-vegetated areas

III Consensus Points

These consensus points were reached by Task Force members after presentations from various experts identified by the Task Force and invited by the facilitators. Presenters were given specific questions to address, the content of which was also reached by consensus of the Task Force, and are listed below.

Questions:

1) Evaluate the habitat and other functional values of the vegetated strip between the ordinary high water mark (OHWM) and the lakeward edge of vegetation proximate to residential/commercial properties. [Additional questions that came up during the session include: How will increasing water levels impact the value of habitat? Is there a compendium of studies for Great Lakes coastal wetlands that includes research on Saginaw Bay? How much research has been carried out on the area (vegetation between OHWM and lakeward edge of vegetation) of interest?]

Presenters:

- Dr. Thomas Burton, Michigan State University
- Dr. Dennis Albert, Michigan Natural Features Inventory
- Dr. Douglas Wilcox, US Geological Survey (unable to attend)
- Speaker to be identified by SOS (SOS declined)

2) Examine the possibility of restoring habitat types such as lakeplain prairie, wetlands or other habitat types as “mitigation” for cutting/removing taller species, especially invasives such as phragmites, in front of residential properties. Should these mitigations be onsite or offsite? Will this vary with habitat type?

Presenters:

- DEQ and Corps speakers who addressed the process/requirements for mitigation in permitting
- Gregory Soulliere, MDNR
- Dr. Gene Jaworski, Eastern Michigan University (unable to participate; Lone Tree Council)

3) Evaluation of the vegetation/trapped water in the narrow strip of vegetated land between OHWM and lakeward edge of vegetation as habitat for mosquitoes known to carry West Nile virus. (*Not* how to control mosquitoes.)

Presenters:

- Mary McCarry, Bay Co. Mosquito Control (SOS)
- Tom Cooley, MDNR (hand-out)
- Dr. Richard Merritt, Chair, Department of Entomology, MSU and Dr. Michael Kaufman, Department of Entomology, MSU (hand-out)
- Dr. Edward Walker, Department of Entomology, MSU (unable to participate)

4) Address the social and economic aspects [of the new vegetation growth along the shoreline due to low water levels], as well as the value of beaches to quality of life and the impact of new vegetation growth on property values.

- Tom Starkweather, American Real Estate Advisors (A.R.E.A.), Bay City, MI
- Michigan Chamber of Commerce (SOS declined)

- Realtors (SOS declined)
- Tourism (SOS declined)

5) Legal history of bottomlands issues, specifically ownership rights v. public trust; address Hilt v. Weber (1930 case) and its relevance today; Outcome of Michigan Land Title Standards sub-Committee inquiry (by David Powers) and whether there are remaining issues; what littoral rights does the landowner have?

Presenters:

- Mr. David Powers, Bay City Attorney (SOS)
- Mr. Skip Pruss, MDEQ (unable to attend)

Consensus Points:

Consensus Points on Wetlands Issues:

- Coastal marshes provide values to people as well as habitat for fish and wildlife. Values can be many, including recreation, water filtration (including nutrient retention), and erosion control.
- There is consensus regarding the value of designated Environmental Areas established under Part 323.
- There is consensus that there are other areas of persistent coastal wetland not designated under Part 323 that are also considered high quality.
- Non-native and/or invasive plants like phragmites diminish the quality of coastal marshes.

Consensus Points on Property Appraisal:

- Available information on sales of waterfront property within Bangor Twp indicate that there has been no decline in aggregate property values, in fact aggregate property values have increased. (See Appendix One)
- If all other variables are equal, it appears to be reasonable to accept that a sandy beach will sell for a different price than a vegetated beach, likely higher.
- There is no evidence of a negative impact on the tax base however, because there is a lag time in property evaluation, any negative impacts will not manifest themselves for some time.

Consensus Points on West Nile Virus:

The Task Force learned that the primary carrier of West Nile Virus was the *Culex* species (spp) of mosquito which are primarily associated with urban areas because of the predominance of standing water, such as abandoned tires and bird baths, for breeding habitat.

- Standing/trapped water, not wave impacted, in newly vegetated areas along the lakeshore is one of many breeding habitats in which *Culex spp* may be found.
- Water susceptible to regular disturbance by wind or wave action is not favorable *Culex* breeding habitat.
- There are a variety of favorable *Culex* breeding habitats and removing any one habitat will not solve the problem.

IV Recommendations:

Recommendations to the US Army Corps of Engineers (Corps) and Michigan Department of Environmental Quality (DEQ) as well as other agencies with a mandate in Great Lakes and/or coastal wetland issues were also developed by consensus of the Task Force.

Recommendations for Path Building Landward of the Water's Edge

- Up to 6-foot wide path at the base, using the most direct route to the water
- Allow fill for pathway to be up to a maximum of 1/3 acre in area and a maximum of 300 cubic yards (Corps will have to modify 200 foot length limit on their permit)
- Allow 25 cubic yards of the fill to be taken from non-vegetated dredge material (sand and pebbles <3/4 inch in diameter) from between the ordinary high water mark (OHWM) and the water's edge; the balance of the sand and pebble fill can come from anywhere above the OHWM and must be clean. (DEQ will have to modify its process to accept material coming from above OHWM)
- Landowners be allowed to maintain pathways
- No more than one path per property parcel
- Limitations above refer to a single parcel project
- Joint paths are allowed and encouraged, with neighbors working together to reduce expense or being allowed to expand width of path (up to 12 feet)
- Wooden, aluminum or other suitable material walkways, can be installed in lieu of pathways; these must be seasonal, no more than 6-feet wide and built on the most direct route shoreward from the waterline. (Task Force recommends no permit be required)
- Wooden, aluminum or other suitable material walkways, can be installed in lieu of pathways; these must be temporary, no more than 6-feet wide and built on the most direct route shoreward from the waterline. (Task Force recommends DEQ general or Corps regional/nationwide permit be required)

Recommendations for Further Action:

- 1) The Task Force has identified several issues falling outside its purview that it nevertheless believes should be addressed for the health of Saginaw Bay. These include aquatic nuisance species, non-point sources of pollution, sanitary sewer overflows and combined sewer overflows.
- 2) The Task Force recommends identifying federal and other sources of funding to investigate/monitor bacteria levels and other kinds of pollution, as well as identifying the agencies competent to undertake these activities.
- 3) To the extent that there are mutually identified issues between the findings of this Task Force and the Saginaw Bay/River Remedial Action Plan, the RAP should take this report into account.
- 4) Mary Ellen Cromwell (DEQ) and Wally Gauthier (Corps) will work with Howard Wetters (Bay Co. Extension) and Jen Read (Michigan Sea Grant) to develop an information/education program related to allowed and permitted activities on exposed bottomlands as identified by the Task Force.

- 5) To the extent possible, the Corps and DEQ should try to identify a simplified and expedited permit application form and process for regional/nationwide issues.

Recommended Areas for Further Research:

- 1) Determine the hydrology of Saginaw Bay.
- 2) Determine appropriate grooming equipment.
- 3) Determine the composition of combined sewer overflow and sanitary sewer overflow into the water of Saginaw Bay.
- 4) Investigate the economics of the issue, specifically a balanced approach to the value of coastal wetlands.
- 5) Undertake a quantification of shoreline characteristics across the state, e.g. what percentage of shoreline is in Environmental Areas, what percentage is developed, what percentage is wetland?
- 6) Evaluate/assess the habitat and other functional values of the vegetated strip between the ordinary high water mark (OHWM) and the lakeward edge of vegetation proximate to residential/commercial properties. How will increasing water levels impact the value of habitat?

V: Points Discussed but No Consensus Reached

The Task Force did not reach consensus on every point which was discussed. The key points where consensus was not reached are listed below.

Value of newly exposed bottomland:

There is no consensus about the value and regulation of newly exposed bottom lands adjacent to some developed areas.

Mowing:

No consensus has been reached for recommendations on this issue.

Corps status: non-regulated activity;

DEQ: proposed permit by rule for mowing 100 feet width parallel to the water's edge from water's edge to OHWM

Environmental Community (Lone Tree Council): Permits to mow be allowed on 20% of the width of riparian frontage up to a maximum of 100 feet; mowing must occur adjacent the pathway if one exists or is being requested.

SOS: full grooming between OHWM and the water.

Grooming:

- No consensus has been reached for recommendations on this issue.
- DEQ: proposed permit by rule to allow grooming on 30 feet of non-vegetated land, landward of the water's edge
- Corps: grooming requires an individual permit.
- SOS: desires full grooming between OHWM and the water.
- Environmental Community: no grooming at all

West Nile Virus:

The group did not reach consensus on the following points, but the language was extensively discussed.

- If all newly vegetated areas along lakeshore were removed from the equation, there would still be a *Culex spp* problem because of the preponderance of favorable habitat located in proximity to humans, such as abandoned tires, bird baths, etc.
- There may be other mosquito species, not yet determined, which are the bridging factor between avian and human populations. If these mosquito species are not dependent on breeding habitat in newly vegetated areas along the lakeshore, then this is not a problem.

Appendix One

Bangor Township Homes

			Consumer Price Index State of Michigan					
Year	CPI	CPI effect	Number of Sales	Sale Price	Twice SEV	Ratio	Actual Adjustment	Comments
1994	0.00%	100.00%						
1995	2.60%	102.60%						
1996	2.80%	105.47%	18	\$2,148,750	\$1,900,300	1.131	1.037	Bay only
1997	2.80%	108.43%	20	\$3,004,275	\$2,474,500	1.214	1.066	Bay only
1998	2.70%	111.35%	159	\$17,247,415	\$14,907,900	1.157	1.054	All Sales
1999	1.60%	113.14%	121	\$14,101,400	\$12,696,500	1.111	1.078	All Sales
2000	1.90%	115.28%	149	\$17,453,105	\$15,418,100	1.132	1.093	All Sales
2001	3.20%	118.97%	144	\$16,411,569	\$14,387,200	1.141	1.045	Waterfront
2002	3.20%	122.78%	year 2002 data included in 2001					
2003	1.50%	124.62%						
				Twice Taxable	Twice SEV	Ratio		
2003	Tax Base Study		Bay only	\$55,421,138	\$81,587,200	0.679		

(Source: Thomas Starkweather, Presentation to Shoreline Task Force, Tuesday, March 18, 2003)

Saginaw Bay-front Homes

Year	Total Sales	Average Sales Price	Average Days on the Market
1992	13	N/A	165
1993	18	N/A	177
1994	16	\$148,687.50	146
1995	19	\$166,610.26	177
1996	10	\$170,790.00	119
1997	16	\$181,893.75	185
1998	16	\$167,887.50	132
1999	11	\$196,372.72	154
2000	8	\$229,112.50	157
2001	6	\$223,333.00	126
	Homes on the Market	Average Asking Price	
2002	14	\$315,478.57	

Note: these are compiled statistics of all the homes listed through the members of REALTOR Association of Bay County, Michigan. Only homes from Linwood Beach around Bay to Knodt Road were included. Expired listings (homes that did not sell) were not considered in this report.

(Source: Charley Curtiss, Shoreline Task Force member at March 25, 2003 meeting.)