

STATE OF INDIANA)	BEFORE THE INDIANA NATURAL
)	RESOURCES COMMISSION
COUNTY OF MARION)	
)	
IN THE MATTER OF:)	
)	
OBJECTION TO ISSUANCE OF PERMIT FOR)	
CONSTRUCTION NO. LM-255-0 TO THE)	
TOWN OF OGDEN DUNES, SCOTT KINGAN)	
PORTER COUNTY, INDIANA)	
)	CAUSE NO. _____
SAVE THE DUNES CONSERVATION FUND)	
INC,)	
)	
Petitioner,)	
)	
TOWN OF OGDEN DUNES, SCOTT KINGAN)	
Permittee/Respondent,)	
)	
INDIANA DEPARTMENT OF NATURAL)	
RESOURCES)	
Respondent.)	

PETITION FOR ADMINISTRATIVE REVIEW

Petitioner, Save the Dunes Conservation Fund, Inc. (“Save the Dunes”), by counsel, hereby submits this Petition for Administrative Review of the Indiana Department of Natural Resources’ (“DNR’s”) issuance of Permit for Construction No. LM-255-0 to the Town of Ogden Dunes and its agent Scott Kingan, on June 1, 2023 (“Permit”). The Permit, attached hereto as Exhibit A, allows the Town of Ogden Dunes (“Town”) to construct a 2970-foot long, 10 foot wide, armor stone revetment along the shore of Lake Michigan from 64 to 156 Shore Drive (“Revetment”) to protect the private property interests of beachfront homeowners who live at those addresses.

As detailed further below, the DNR issued the Permit without assessing the Revetment’s impact on the public’s vested rights to access and enjoy the Lake Michigan shoreline below the natural ordinary high water mark (“OHWM”) in violation of Indiana’s Public Trust Statute (Ind.

Code § 14-26-2.1 *et seq.*), the Navigable Waterways Act (Ind. Code § 14-29-1 *et seq.*), and the Indiana Supreme Court’s decision in *Gunderson v. State*, 90 N.E.3d 1171 (Ind. 2018).

Accordingly, Save the Dunes brings this Petition for Administrative Review pursuant to Indiana Code § 4-21.5-3 and 312 IAC 3-1-3, on behalf of Save the Dunes’ members who are aggrieved and adversely affected by the DNR’s failure to consider, preserve and protect their vested rights as citizens of the State of Indiana to recreate in, use, and enjoy the natural resources of Lake Michigan and the Lake’s natural scenic beauty unencumbered by manmade additions and alterations such as the Revetment that DNR approved here.

Factual Background

1. On March 29, 2023, the Town submitted its third joint permit application to DNR, the Indiana Department of Environmental Management (“IDEM”), and the U.S. Army Corps of Engineers (“USACE”) seeking to construct a “2,970 ft long armor stone revetment for the 64 to 156 Shore Drive properties . . . six beach access staircases, and upper slope restoration (above the stone revetment) with sand fill and dune grasses” (“March Application”).¹

2. The Revetment is a continuation of the objectionable shoreline hardening along the approximately one-mile stretch of beach in Ogden Dunes. DNR has approved this Revetment even though there is an ongoing federal lawsuit brought by the Town and several private residents against the National Park Service (“NPS”) and USACE for declining approval of such structures due to the potential for serious adverse impacts on the Indiana Dunes National Lakeshore and its fragile ecosystem² — none of which appears to have been considered by DNR here.

¹ March Application at pdf p. 9.

² The Town and private residents filed a lawsuit against the Department of the Interior, the NPS, and USACE in 2020 contending that the NPS has no authority to regulate the Ogden Dunes’ shoreline and that USACE “has interfered with the Town’s efforts to protect its shoreline by conditioning approval of the project on concomitant approval by the NPS.” *Town of Ogden Dunes et al v. United States of America Department of Interior et al*, Case No. 2:20-CV-34 (N.D. Ind.).

3. The Town claims the Revetment is needed to provide shoreline protection for the beachfront homes in Ogden Dunes that are at risk of property damage when Lake Michigan water levels are high, due to the “sediment-starved condition along the Ogden Dunes shoreline.”³ As an alternative, the Town considered creating a small beach through annual sand nourishment,⁴ which is notably the solution recommended by the NPS after conducting a comprehensive environmental impact assessment of various alternatives for addressing the severe shoreline and beach erosion caused by manmade structures along the lakeshore, like the DNR-approved Revetment.⁵

4. Indeed, NPS determined that annual beach nourishment was the best, most cost-effective option for “restoring natural shoreline processes, preserving the shoreline ecosystem, and providing opportunities for quality visitor experiences at the national lakeshore.”⁶ Nonetheless, the Town summarily rejected beach nourishment as an option due to the “high cost of sand” without providing any meaningful analysis of the true costs and impacts of its planned Revetment to the Lake Michigan shoreline, its ecosystem, or the public trust rights and interests in protecting and preserving the lakeshore.⁷ DNR has approved the Town’s decision and apparently the rationale for it, wholesale.

5. DNR did so despite its understanding that the Indiana Supreme Court’s ruling in *Gunderson* changed DNR’s permitting authority along the Lake Michigan Shoreline. In particular, DNR advised the Town on three, separate occasions in late 2022 and early 2023 that:

The Indiana Supreme Court held that the boundary separating public trust land from privately owned riparian land along the shores of Lake Michigan is the common-law ordinary high-water mark and that, absent an authorized legislative conveyance, the State retains exclusive title up to that boundary. [Accordingly,]

³ March Application at pdf pp. 2-3.

⁴ March Application at pdf p. 4.

⁵ NPS, Indiana Dunes National Lakeshore, Shoreline Restoration and Management Plan / Final EIS and ROD (Oct. 2014).

⁶ *Id.* at pdf p. 5.

⁷ March Application at pdf p. 4.

DNR will apply the common-law ordinary high-water mark (OHWM) when considering applications along the Lake Michigan shoreline.

[Accordingly, if you still want to proceed,] . . . please provide a survey showing elevations referenced in IGLD 85 as well as plans showing where the work will take place. The survey should reference the OHWM of 584.0' IGLD 85 and show that work will only be completed landward of the OHWM. If all work will be done landward of the OHWM, it would be out of DNR's permitting authority.⁸

6. In response, the Town submitted a new application stating the Town would “wait for [DNR's] help/decision regarding the OHWM (currently 584.0 feet IGLD85), with a field delineation hopefully [in the] spring.”⁹ The Town noted that since the common law OHWM value is “significantly more than the previous regional permit applications using a 581.5 feet value,”¹⁰ it was agreed in discussion with DNR and USACE “that a field visit *will* refine [the OHWM] value sometime in 2023, followed by revisions to the project plans as needed, including the calculated quantity of stone fill below the OHWM.”¹¹ That is precisely what happened.

7. In its January 2023 Application, the Town calculated there would be 3,733 tons of stone, covering 0.74 acres below the OHWM value of 584.0' IGLD85.¹² Then, as planned, the Town's consultant “performed a field delineation for the OHWM on March 24, 2023, with members from USACE-Chicago and [DNR] in attendance” and adopted the OHWM value of 581.5' IGLD85 for the project,¹³ which is coincidentally the same as the administrative OHWM preferred by the Town. A few days later on March 29, 2023, the Town revised its permit

⁸ DNR Deficiency Notices (Aug. 24, 2022, Oct. 13, 2022, and Feb. 23, 2023).

⁹ See January 25, 2023 email from the Town's consultant, Dan Veriotti, P.E. to DNR's Markita Shepherdson and other agency staff at IDEM and USACE.

¹⁰ This OHWM value, known as the “administrative OHWM,” marks the jurisdictional boundary used by USACE for its permit review under Section 404 of the Clean Water Act. See USACE's Public Notice for the Town's Application No. LRC-2009-00554 (May 19, 2023).

¹¹ See the Town's January 25, 2023 Application (“January Application”) at pdf p. 6 (emphasis added).

¹² January Application at pdf p. 6.

¹³ See the Town's March 29, 2023 Permit Application (“March Application”) at pdf p. 4.

application, recalculating just a tiny fraction of fill—just 345 tons of stone, covering 0.0706 acres—to be below the administrative OHWM value of 581.5’ IGLD85.¹⁴

8. Because the amount of fill below the administrative OHWM was dramatically reduced to less than 0.1 acres, the Town did not propose any compensatory mitigation whereas it had previously intended to prepare a “Mitigation Plan.” Moreover, the Town claims its Revetment project will provide “improved public beach access locations” and a half-acre of restored dune grass plantings.¹⁵ But the design drawings for the project show that the additional beach access and dune grass restoration above the Revetment will primarily benefit the private beachfront homeowners, not the public.¹⁶

9. On June 1, 2023, the DNR approved the Town’s March Application and issued a construction permit based on the administrative OHWM value of 581.5’ IGLD 85. The DNR also accepted the Town’s rationale regarding alternatives and compensatory mitigation without question and without any mention of the public trust or other factors that DNR must consider under the Navigable Waterways Act (“NWA”) and its implementing regulations.

10. Accordingly, the Natural Resources Commission (“Commission”) as the ultimate authority over DNR decisions, should revoke the Permit issued to the Town and order DNR not to issue a new permit unless and until DNR conducts its own, official jurisdictional determination of the natural OHWM for purposes of delineating public trust land, conducts a full evaluation of the Revetment’s impacts on public trust resources, and considers other factors as required by the NWA.

¹⁴ Although there is some confusion on this point. *See* March Application at pdf pp. 5-6, 9, 12 (on pdf p. 12, the Town states the “length of shoreline impacts” are 1,660 feet below the OHWM, the area of fill is 0.93 acres below the OHWM and 3,115 feet total along the shoreline, and that 4,460 cubic yards of quarry stone will be below the OHWM.)

¹⁵ March Application at pdf p. 10; USACE Public Notice at 4.

¹⁶ March Application at pdf pp. 24-25, 41. Notably, the design drawings included with the Town’s March Application at pdf pp. 26-41 substitute a “50-year water level” of 584.1’ for the common law OHWM of 584.0’ that had been previously used in the same design drawing submitted with the January Application at pdf pp. 28-46.

Interests of Petitioner

11. Save the Dunes is an Indiana 501(c)(3) non-profit, public interest environmental organization. Since its formation in 1952, Save the Dunes has been and continues to be committed to protecting and advocating for the Indiana Dunes, Lake Michigan, and the surrounding natural areas for the health and vitality of the environment, and the people who live, work, and recreate in Northwest Indiana.

12. Save the Dunes played an active role in the creation of the Indiana Dunes State Park and the National Lakeshore, which are threatened by the Revetment approved by DNR. Save the Dunes also intervened in the *Gunderson* case to ensure protection of public trust rights to access and enjoy the Lake Michigan shoreline—public trust rights that DNR has failed to protect.

13. To further its mission, Save the Dunes actively seeks federal and state agency oversight and implementation of environmental laws and, when necessary, initiates citizen enforcement actions and administrative appeals on behalf of Save the Dunes' members.

14. Save the Dunes brings this administrative appeal on behalf of its members who regularly exercise their public trust rights to recreate in, use, and enjoy the natural resources of Lake Michigan including the Indiana Dunes National Lakeshore and its natural scenic beauty unencumbered by manmade structures such as the Revetment that DNR has approved.

15. When shorelines are hardened with structures like the Revetment, public access along the Lakeshore is artificially constricted as these manmade structures impede the natural accretion of sand, leading to erosion farther and farther down the beach. Such structures also cause scouring of the lakebed itself, as the wave energy is deflected off the hard surfaces back into the lake. Structures like the Revetment also contribute to increased runoff, sedimentation, and nutrient suspension, leading to degradation of water quality. Finally, hardened shorelines are known to

have significant adverse effects on fauna and flora by disrupting their habitat, inhibiting movement between upland and aquatic environments, and providing opportunities for invasive plants to take root.

16. In approving the Revetment, DNR failed to consider any of these impacts and their potential to infringe on the public trust rights of Indiana citizens, including Save the Dunes' members who are thus aggrieved and adversely affected by DNR's approval of the Revetment.

17. Because Save the Dunes' members are aggrieved and adversely affected, Save the Dunes has associational standing to pursue this administrative appeal on their behalf. *Save the Valley, Inc. v. Indiana-Kentucky Elec. Corp.*, 820 N.E.2d 677, 682 (Ind. Ct. App. 2005).

Respondents

18. Respondent DNR is a state administrative agency charged with protecting and stewarding Indiana's public trust lands including the public trust rights in the shores of Lake Michigan. DNR is also responsible for reviewing and issuing permits under the NWA and its implementing regulations, which likewise charge DNR with protecting the public trust in considering whether to allow construction of permanent structures on or within the OHWM of Lake Michigan. Ind. Code § 14-29-1; 312 IAC 6-8-1. DNR's decisions, including the Permit at issue here, are subject to administrative appeal to the Commission.

19. Respondent, the Town of Ogden Dunes, is a municipal corporation located on the northern edge of Porter County, adjacent to Lake Michigan, and is surrounded by the Indiana Dunes National Lakeshore. DNR issued the Permit at issue to the Town.

Commission's Jurisdiction

20. The Commission has jurisdiction to decide this appeal pursuant to Indiana Code § 4-21.5-3-7 and is the ultimate authority with respect to the subject matter of this proceeding under

Ind. Code § 14-10-2-3. The Commission’s review is *de novo*, and its adjudicative proceedings are governed by the procedural requirements set forth in the Administrative Orders and Procedures Act, Ind. Code § 4-25.1-3 *et seq.*, and the Commission’s regulations at 312 IAC 3.

Legal and Technical Deficiencies of the Permit

FIRST DEFICIENCY

DNR Failed to Assess Whether the Revetment Will Violate the Public Trust

21. In 2018, the Indiana Supreme Court in *Gunderson v. State* affirmed that the beaches of Lake Michigan below the common law, natural OHWM are held in trust by the State of Indiana for the benefit of all Hoosiers. The Court also recognized that the DNR is the steward of these public trust resources and that the common law, natural OHWM is the governing jurisdictional boundary between public trust and private land. 90 N.E.3d at 1186-1188.

22. In the wake of *Gunderson*, the Indiana General Assembly codified these principles at Indiana Code § 14-26-2.1 *et. seq.* (“Public Trust Statute”), to eliminate any question that the citizens of Indiana have a “*vested* right to enjoy the natural scenic beauty of Lake Michigan; enjoy and use the resources of Lake Michigan; and use Lake Michigan for recreational purposes.” Ind. Code § 14-26-2.1-4(c) (emphasis added).

23. Notably, Indiana’s Public Trust Statute makes clear that the public’s vested right to enjoy the “natural scenic beauty” of Lake Michigan includes the right to enjoy “*conditions produced by nature without manmade additions or alterations*,” such as the Revetment approved by DNR. Ind. Code § 14-26-2.1-4(a) (emphasis added).

24. To ensure that the public’s vested right to enjoy the natural scenic beauty of Lake Michigan is protected, the Indiana General Assembly also included a provision in the Statute that prohibits the State from relinquishing ownership of public trust land below the common law, natural OHWM outside of an authorized *legislative* conveyance. Ind. Code § 14-26-3(a). Absent

such a conveyance, a bordering landowner “does not have the exclusive right to use the water or land below the ordinary high water mark of Lake Michigan.” Ind. Code § 14-26-3(b).

25. Critically, Hoosiers’ public trust rights to use and enjoy Lake Michigan cannot be subordinated even by the issuance of a state permit. As the Indiana Supreme Court made clear, “the control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.” *Gunderson*, 90 N.E.3d at 1183 (quoting *Illinois Central Railroad Co v. Illinois*, 146 U.S. 387, 453 (1892)).

26. For this reason, in issuing the construction Permit at issue here, the DNR was required to consider whether the Revetment would impact the public trust. 312 IAC 6-1-1(f)(1). And if it would violate the public trust, the DNR is required to either deny the project or condition approval on permit terms that would allow placement of the structure without violation of the public trust. 312 IAC 6-8-3(c). None of that occurred here.

27. Indeed, pursuant to 312 IAC 6-8-2(b), the Town was required to submit “plans, drawings, other specifications reasonably required for the [DNR] to determine whether placement of the [Revetment] would satisfy 312 IAC 6-1-1, which in turn required DNR consider whether the Revetment would impact the public trust. Yet, nowhere in the final Permit issued, nor in the Town’s application materials to DNR is there *any mention* of the public trust, much less any information to indicate that DNR evaluated whether the Revetment would violate the public trust. Thus, the Commission should revoke the Permit for that reason alone.

SECOND DEFICIENCY

DNR Failed to Delineate the Natural OHWM and Boundary of Public Trust Resources

28. The field delineation conducted by the Town’s consultant with USACE and DNR “in attendance” adopted an OHWM value of 581.5’ IGLD85 for the Revetment project using *the*

Rapid Ordinary High Water Mark Field Identification Data Sheet — the form used to delineate the OHWM for purposes federal permitting by USACE and IDEM under the CWA.

29. The *Gunderson* Court made clear that use of the administrative OHWM is not appropriate or relevant for determining DNR’s public trust jurisdictional boundaries. *Gunderson*, 90 N.E. 3d at 1186-1187.

30. Instead, the natural OHWM for Lake Michigan is the appropriate boundary and that is defined by the Public Trust Statute to be “the line on the bank or shore of Lake Michigan that is: (1) established by the fluctuations of water; and (2) indicated by physical characteristics, including: (A) a clear and natural line impressed on the shore; (B) shelving; (C) changes in character of soils; (D) the destruction of terrestrial vegetation; and (E) the presence of litter or debris.” Ind. Code § 14-26-2.1-2.

31. This legislative definition, and particularly its inclusion of “the destruction of terrestrial vegetation” as a factor, follows the *Gunderson* Court’s explanation that the natural OHWM moves through “gradual” accretion and erosion over time, not where the water reaches on any given day. *Gunderson*, 90 N.E.3d 1171 at 1186.

32. The DNR plainly understands this critical distinction as seen on the agency’s website where DNR provides photos that point to the natural OHWM as being located where the dunes or upland vegetation would naturally meet the beach:



Figure 1:

The dashed line on Figure 1 depicts the location of the OHWM based on the appearance of recognizable shelving at the toe of the dune bluff and the presence/destruction of terrestrial vegetation.¹⁷

33. Despite this understanding, DNR relied on the Town's delineation, which clearly identified the OHWM as the level of high tidewater that had been reached on that particular day. For instance, Figures 6 and 7 below from the Town's delineation report identify the OHWM as the line of wet sand and the debris carried in by the most recent high waves (even though there are undisturbed sand dunes in the background).

¹⁷ See *Lake Michigan Ordinary High Water Marks*, Indiana DNR <https://www.in.gov/dnr/water/lake-michigan/lake-michigan-ordinary-high-watermarks/> (last visited June 19, 2023); see also *Lake Michigan Shoreline Recreation Guidelines*, Indiana DNR, <https://www.in.gov/dnr/lake-michigan-coastal-program/lake-michigan-shoreline-recreation-guidelines/> (last visited June 19, 2023).



Figure 6. Break in Beach Slope, Different Beach Materials (1)

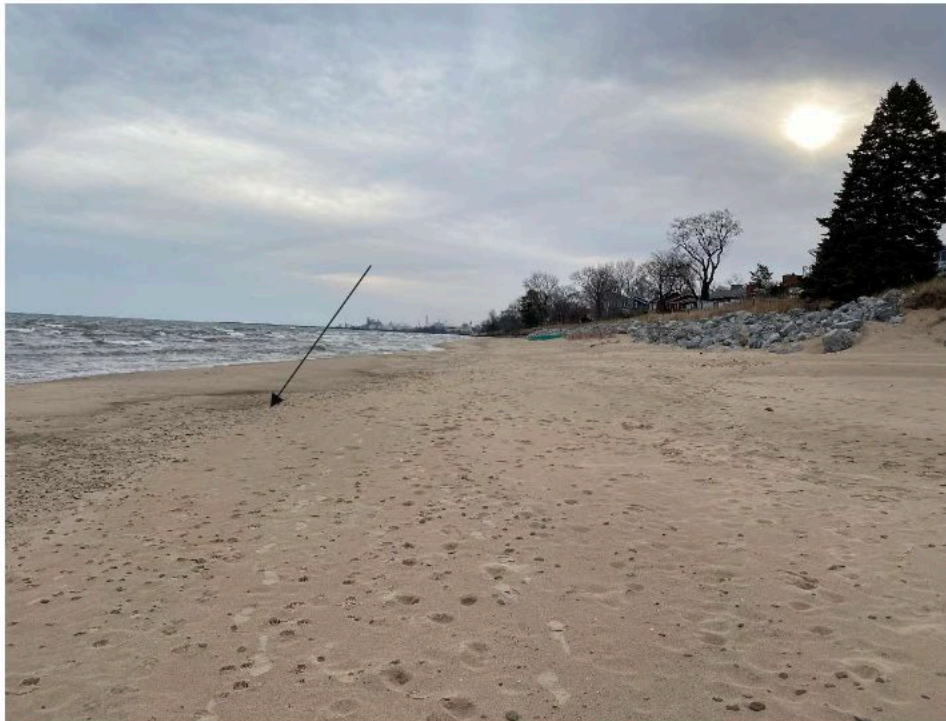


Figure 7. Break in Beach Slope, Different Beach Materials (2)

34. While the Town's delineation may be consistent with federal agency guidance provided by USACE's *OHWM Field Identification Datasheet Instructions and Field Procedure*,¹⁸ it is not based the factors and markers that must be considered in delineating the natural OHWM as described in *Gunderson* and defined in Ind. Code § 14-26-2.1-2, which is the relevant test for purposes of the public trust.

35. For that matter, DNR advised the Town on multiple occasions that the agency was required by *Gunderson* to apply the common-law, natural OHWM value of 584.0' IGLD 85 when considering applications along the Lake Michigan shoreline. While it is evident that the Town was not happy with that outcome and convinced DNR to go along with a plan to "refine" that value to one more acceptable to the Town, such a *fait accompli* approved by the state agency charged with protecting the public trust cannot be countenanced, nor is it legal.

36. DNR must conduct a proper jurisdictional determination to delineate the natural OHWM for purposes of the public trust. Without it, the agency cannot accurately assess impacts to public trust resources as required by *Gunderson*, Public Trust Statute, and the NWA.

THIRD DEFICIENCY

The Permit Violates the Requirements of 312 IAC 6-8-2

37. Pursuant to 312 IAC 6-8-2(c), "a person who wishes to place a permanent structure on or within the ordinary high water mark of Lake Michigan" must file a permit application with DNR demonstrating that the permanent structure will not: "(1) Unreasonably impair the navigability of the lake or an adjacent navigable waterway; (2) Cause significant harm to the environment; [or] (3) Pose an unreasonable hazard to life or property." In addition, 312 IAC 6-8-2(d) requires the applicant to "evaluate the likely impact of the permanent structure on coastal dynamics, including: (1) Shoreline erosion and accretion; (2) Sand movement within the lake;

¹⁸ March Application at pdf p. 51.

[and] (3) The interaction with existing structures. The application submitted by the Town does none of these things.

38. The meager, one-paragraph “Impact Assessment” provided in the Town’s application summarily concludes that because “clean quarry stone” will be used in the “small area below the OHWM (0.071 acres)” there will be “no increases in suspended particle load or turbidity” and will “not alter the quality of the Lake Michigan water.”¹⁹

39. Aside from the fact that the Town used an OHWM value that is coincidentally the same as the administrative value to calculate this “small area” of impact, there is absolutely no discussion in the Town’s application of the Revetment’s long-term impacts on the environment, shoreline erosion and accretion, or sand movement within the lake. This is especially concerning given the serious implications the Revetment has for the adjacent and surrounding Indiana Dunes National Lakeshore, one of the most biodiverse and treasured national parks that is visited by millions of people year-round.²⁰

40. For that matter, 312 IAC 6-8-2(e) requires the Town to demonstrate in its Application that it is either “the fee owner of land immediately adjacent to the site where the construction would take place or that the [Town] has written authorization from the fee owner of that land.” Yet, there is no such written authorization in the Town’s Application from the National Park Service—a critical failure given that the NPS has denied its authorization of the Revetment project based on concerns that the Revetment will cause further erosion and degradation of the Lake Michigan shoreline and its ecosystem, the public’s use of the shoreline, and will have adverse effects on threatened and endangered plant and animal species, among other concerns.

¹⁹ March Application at pdf p. 6.

²⁰ *Frequently Asked Questions*, Indiana Dunes National Park, <https://www.nps.gov/indu/faqs.htm> (last visited June 19, 2023).

41. Without question, DNR violated 312 IAC 6-8-2 by approving the Town's deficient application thereby requiring the Commission to revoke the Permit for this reason as well.

Relief Requested

WHEREFORE, to remedy the foregoing legal and technical deficiencies, Petitioner respectfully requests that the Commission revoke the Permit and order DNR not to issue a new permit unless and until:

- a. The Town, in accordance with 312 IAC 6-1-1 and 312 IAC 6-8-2(b), submits the requisite information, plans, drawings, and other specifications reasonably required for the DNR to determine whether placement of the Revetment will violate the public trust doctrine.
- b. DNR conducts an independent delineation of the natural OHWM in accordance with Ind. Code § 14-26-2.1-2 and makes an official jurisdictional determination for purposes of assessing impacts on the public trust as required by *Gunderson* and the Public Trust Statute.
- c. DNR fully evaluates whether the Revetment project will impair public trust resources and, if so, deny the project or condition its approval on permit terms that will allow placement of the Revetment without violating the public trust as required by 312 IAC 6-8-3(c).
- d. Require the Town to submit an application that complies with the requirements of 312 IAC 6-8-2.

Respectfully submitted,

/s/ Kim E. Ferraro

Kim E. Ferraro, Attorney No. 27102-64

Kacey Cook, Attorney No. 37931-53

Conservation Law Center

116 S. Indiana Avenue, Suite 4

Bloomington, IN 47408

812/856-5737

kimferra@iu.edu

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition and all attachments referenced therein were served upon the following individuals by Federal Express on this 19th day of June, 2023:

Natural Resources Commission, Division of Hearings
Indiana Government Center-North
100 North Senate Avenue, Room N103
Indianapolis, Indiana 46204-2273
nrcaopa@nrc.in.gov

Director, Daniel W. Bortner
Department of Natural Resources
Indiana Government Center-South
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Town of Ogden Dunes, Attn: Scott Kingan
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Ogden Dunes, Indiana 46368

Courtesy Service to:

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Oak Brook, IL 60523

U.S. Army Corps of Engineers, Attn: Mr. Soren Hall
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Brian Rockensuess, Commissioner
Indiana Department of Environmental Management
brockens@idem.in.gov

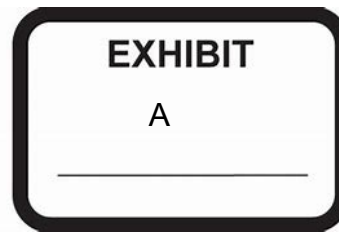
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/s/ Kim E. Ferraro



State of Indiana
Department of Natural Resources



CERTIFICATE OF APPROVAL

Application #: LM-255-0

This Certificate of Approval is a Permit for Construction under the authority of the Indiana Navigable Waterways Act, IC 14-29-1 with 312 IAC 6 as administered by the Department of Natural Resources.

Approval Issued To: Town of Ogden Dunes, Scott Kingan, 115 Hillcrest Road, Ogden Dunes, IN 46368

Approval Issued By:

Mail Date: 6/1/2023

Jennifer Ware, Division of Water

Permit Effective Date: 06/19/2023

Permit Expiration Date: 06/01/2028

Pursuant to IC 4-21.5-3-5(f), this Permit becomes Effective eighteen (18) days from the Mail Date to provide a stay period for a Petition for Administrative Review with the Indiana Natural Resources Commission, Division of Hearings. Initiating construction authorized in this Permit prior to the Permit Effective Date constitutes a violation. This Permit is only valid until the Permit Expiration Date.

PROJECT INFORMATION:

Waterbody: Lake Michigan

County: Porter

Project Description Narrative: Approximately 2970' of armor stone revetment will be placed along the shoreline tying into previously placed stone revetment. Approximately 3 to 5.5 tons of stone revetment will be placed, with the calculated quantity of stone fill below the OHWM (581.5' IGLD 85) of 345 tons, with an aerial coverage of 0.0706 acres. The revetment will consist of a 10-foot-wide crest (three stone widths) at an elevation of 592.0 feet, a side slope of 1.5:1 (horizontal to vertical), upper slope restoration with a mild side slope, and native dune grass plantings. The stone materials will be individually placed to form a knitted, well interlocked layer. The existing beach access #18 will be regraded. This area is intended for emergency vehicle access on the beach. Temporary construction mats will be provided to prevent sand movement and erosion. The construction means and methods involve trucking/transportation of the clean quarry stone, offloading at the access area, and hauling to the project areas. Public beach access staircases will be provided at access points #7, #9, #12, #16, #17, and #19. All beach access will be constructed using robust stone steps, except for #19, which will be constructed of wood. The current steel beach access staircases located at #11 and #14 will be removed during construction and replaced upon completion of the armor stone revetment. The existing toe stone will be reused in the proposed armor stone revetment.

Project Location: Along the shoreline from 64 to 156 Shore Drive at Ogden Dunes

PERMIT CONDITIONS:

This Certificate of Approval is valid only if the construction project is in compliance with all Conditions in this Permit.

DNR PROJECT SPECIFIC PERMIT CONDITIONS

- 1) Any equipment and/or cables placed on a public waterway must be clearly marked with navigation buoys as described in 312 IAC 5-4 in a manner that would be visible to any watercraft operator in the area.
- 2) In addition to the requirements in 312 IAC 5-4, any equipment and/or cables left in a public waterway in times of limited visibility must be marked with flashing amber warning lights and reflective signage warning watercraft operators of the hazards.
- 3) Minimize the movement of resuspended bottom sediment from the immediate project area.
- 4) Appropriately designed measures for controlling erosion and sediment must be implemented to prevent sediment from entering the waterbody or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.
- 5) Revegetate all bare and disturbed areas landward of the shoreline with a mixture of grasses (excluding all varieties of tall fescue) and legumes as soon as possible upon completion.
- 6) To prevent the spread of aquatic invasive species, any equipment used for the project shall be cleaned of any plants, mud, and debris prior to project initiation and after completion of the work.
- 7) Work shall not occur below the Ordinary High-Water Mark of Lake Michigan from May 1 through June 30 without the prior written approval of the Division of Fish and Wildlife.
- 8) Should any fish mortality be observed, which includes all life stages, all work must be halted and Indiana's Division of Law Enforcement must be contacted at 219-879-5710 to investigate and file the necessary report.
- 9) During recovery of existing stone for reuse in this project, do not place any demolition debris in the waters of Lake Michigan, unless the debris becomes part of the new armor stone design and/or sub-stone.
- 10) If any excavation of the bottom of Lake Michigan is necessary for the construction of the rock revetment, no bottom material may be removed from the construction site.

DNR PROJECT GENERAL PERMIT CONDITIONS

- 1) Any modifications or additional construction beyond what was shown on plans received at the Division of Water shall require an additional review and approval from the Department of Natural Resources.
- 2) This Permit must be posted and maintained at the project site until the project is completed.
- 3) This Permit shall not be assigned or transferred without the prior written approval of the Department of Natural Resources.
- 4) If any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (IC 14-21-1-27 and 29) requires that the discovery must be reported to the Department of Natural Resources within two (2) business days.
- 5) This Permit may be revoked by the Department of Natural Resources for violation of any condition or applicable statute or rule.
- 6) The Department of Natural Resources shall have the right to enter upon the site of the permitted activity for the purpose of inspecting the work authorized under this Permit.

RIGHT TO ADMINISTRATIVE REVIEW:

A party may appeal this Department of Natural Resources Action through the administrative review procedures found in the Administrative Orders and Procedures Act, IC 4-21.5, and the rules promulgated thereunder 312 IAC 3-1. If an appeal is filed, the final agency determination will be made by the Natural Resources Commission following a legal proceeding conducted before an Administrative Law Judge. The Department of Natural Resources will be represented by legal counsel at all stages of administrative review.

In order to obtain an administrative review, a written petition must be filed with the Division of Hearings within 18 days of the Mail Date of the Action. The petition must contain specific reasons for the appeal and indicate the portion or portions of the project to which the appeal pertains. The petition must be addressed to the Division of Hearings, Indiana Government Center North, Room N103, 100 North Senate Avenue, Indianapolis, Indiana 46204

SERVICE LIST:

Applicant(s):

Town of Ogden Dunes, Scott Kingan, 115 Hillcrest Road, Ogden Dunes, IN 46368

Agent(s):

GZA GeoEnvironmental, Inc., Dan Veriotti, 915 Harger Road, Suite 330, Oak Brook, IL 60523

Adjacent Landowners and Interested Parties:

Indiana Department of Natural Resources, Steve Davis, 100 West Water Street, Michigan City, IN 46360
Porter County Drainage Board, County Surveyor, 155 Indiana Avenue, Suite 303, Valparaiso, IN 46383
Indiana Department of Natural Resources, Division of Law Enforcement District 10 Headquarters 100 West Water Street, Michigan City, IN 46360
US Army Corps of Engineers, Chicago District, 231 South LaSalle Street, Suite 1500, Chicago, IL 60604
Porter County, Robert Thompson, 115 Indiana Avenue, Suite 311, Valparaiso, IN 46383
Little Calumet River Basin Development Commission, Daniel Repay, 900 Ridge Road, Suite H, Munster, IN 46321
Porter County SWCD, 2602 Chicago Street, Suite 300, Valparaiso, IN 46383
Michelle J Hassinger Living Trust, 54 Shore Drive, Portage, IN 46368
David and Cheryl Tarpo, 58 Shore Drive, Portage, IN 46368
Raymond V Komenich Family Trust, 64 Shore Drive, Portage, IN 46368
Timothy D Cleland, 68 Shore Drive, Portage, IN 46368
Fredric and Shirley Collins, 70 Shore Drive, Portage, IN 46368
Corey and Helen Smith, 72 Shore Drive, Portage, IN 46368
Crystal Strickland, 76 Shore Drive, Portage, IN 46368
Ruth Vann, 80 Shore Drive, Portage, IN 46368
Dittrich Trust, 84 Shore Drive 724 OD, Portage, IN 46368
Edwin and Lou Ann Rooks, 86 Shore Drive, Portage, IN 46368
Judith and Steven Frank, 102 Shore Drive, Portage, IN 46368
Linda Bergal Trust A FBO, 104 Shore Drive, Portage, IN 46368
Nancy Arvay Revocable Trust, 108 Shore Drive, Portage, IN 46368
George and Marge Teeling, 110 Shore Drive, Portage, IN 46368
Marjorie Largura Living Trust, 114 Shore Drive, Portage, IN 46368
Cynthia Manos, 88 Shore Drive, Portage, IN 46368
Donna Finch, 90 Shore Drive, Portage, IN 46368
ICPEP LLC, 94 Shore Drive, Portage, IN 46368
Scott and Amy Miller, 96 Shore Drive 711, Portage, IN 46368
Elizabeth Marvrelis Revocable Trust, 100 Shore Drive, Portage, IN 46368
Peter and Laurie Gilreath, 118 Shore Drive, Portage, IN 46368
Bruce and Sandy Boyer, 120 Shore Drive, Portage, IN 46368
Gwen M Tonion Declaration of Trust, 124 Shore Drive, Portage, IN 46368
Rodger Grant Howell Trust, 126 Shore Drive, Portage, IN 46368
Woodburn Living Trust, 128 Shore Drive, Portage, IN 46368
132 Shore Drive Trust, 132 Shore Drive, Portage, IN 46368
Alfred and Pat Paschen, 136 Shore Drive, Portage, IN 46368
James and Victoria Combs, 138 Shore Drive, Portage, IN 46368
Patricia Perry, 142 Shore Drive, Portage, IN 46368
Allan Halline, 142 Shore Drive, Portage, IN 46368
Paul and JoAnn Arnold, 144 Shore Drive, Portage, IN 46368
Nicholas and Melanie Server, 146 Shore Drive, Portage, IN 46368
Doug and Meredith Adams, 148 Shore Drive, Portage, IN 46368
Michele Bonneau Trust, 150 Shore Drive, Portage, IN 46368
Laurie Glenn Mykleby Revocable Trust, 152 Shore Drive, Portage, IN 46368
John Robert Bailey, 154 Shore Drive, Portage, IN 46368
Eric and Bethany Jensen Trust, 156 Shore Drive, Portage, IN 46368
Department of Environmental Management Wetlands Program, 100 North Senate Avenue, Indianapolis, IN 46204

ADDITIONAL PERMITTING AGENCIES:

This is not a waiver of any local ordinance or other state or federal law and does not relieve the permittee of any liability for the effects which the project may have upon the safety of the life or property of others.

This does not relieve the permittee of the responsibility of obtaining permits, approvals, easements, etc. under other regulatory programs administered by, but not limited to, the U.S. Army Corps of Engineers, County Drainage Board, Indiana Department of Environmental Management and local, city, or county floodplain management, planning or zoning commissions.