

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from COA No. 279301
(Otsego County Circuit Court – LC No. 06-011697-CE)

ANGLERS OF THE AuSABLE INC.;
MAYER FAMILY INVESTMENTS, LLC;
and NANCY A. FORCIER TRUST,

Plaintiffs-Appellants,

Docket No. 138863

v.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY; STEVEN E. CHESTER, Director of the
Michigan Department of Environmental Quality; and
MERIT ENERGY COMPANY,

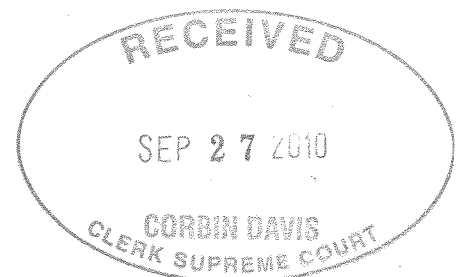
Defendants-Appellees.

AMICUS BRIEF
OF PRESERVE THE DUNES, INC.

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Dated: September 24, 2010



This amicus brief is submitted pursuant to this Court's order of January 29, 2010 in *Anglers of the AuSable, Inc. v. Department of Environmental Quality*, inviting the filing of amicus briefs.

Amicus Preserve the Dunes, Inc. is a Michigan not-for-profit corporation that was the losing party in *Preserve the Dunes, Inc. v. Michigan DEQ*, 471 Mich. 511 (2004). Preserve the Dunes submits that the Court's decision in that case was incorrect, for the following reasons:

1. The majority overlooked the fact that the plaintiff made a "prima facie showing" under Section 1703(1) of MEPA by presenting evidence that the defendant was mining sand from a critical dune, contrary to the prohibition found in Section 702 of the Sand Dune Mining Act.

2. The majority ignored the facts that plaintiff's "prima facie showing" was not rebuttable without a valid permit from the Michigan DEQ and that the defendant was ineligible for such a permit.

3. In refusing to consider the invalidity of the permit issued by the DEQ, the majority mistakenly professed to foresee an adverse effect on business investment from finding error in the permit process. But finding such error under the flagrant circumstances of the case at hand would have created no precedent applicable to mere procedural errors in granting permits (as the Court could easily have made clear).

4. In refusing to consider the validity of the permit issued by the DEQ, the majority departed from this Court's own precedents in the *Nemeth* and *WMEAC* cases, in both of which this Court found MEPA violations as a result of improperly issued permits. *See Nemeth v. Abonmarche Development, Inc.*, 457 Mich. 16 (1998); *West Michigan Environmental Action Council v. Natural Resources Comm. (WMEAC)*, 405 Mich. 741 (1979).

CONCLUSION

For each of the above reasons, this Court should hold that *Preserve the Dunes, Inc. v. Michigan Department of Environmental Quality* was erroneously decided by this Court.

Respectfully submitted,

PRESERVE THE DUNES, INC.

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