Testimony Regarding SB 1052 of 2012 before the
House Natural Resources, Tourism, and Outdoor Recreation Committee
Honorable Frank Foster, Chair

June 5, 2012

We are writing on behalf of the Tip of the Mitt Watershed Council and its 2,200-plus members to provide testimony for the record during the June 5, 2012 House Natural Resources, Tourism, and Outdoor Recreation Committee meeting with regard to SB 1052. This bill would amend the Michigan Wetland Protection Act and Michigan Great Lakes Submerged Lands Act to exempt certain shoreline management ("beach grooming") activities and prohibit local governments from enacting ordinances to protect water quality.

Tip of the Mitt Watershed Council opposes the bill as written and recommends you do as well. We oppose the bill for the following reasons:

This bill would lead to significant confusion and additional burdens for shoreline property owners. Currently, Michigan Department of Environmental Quality (MDEQ) offers one-stop shopping when it issues a permit for shoreline management and this permitting convenience and efficiency will be lost with enactment of SB 1052.

MDEQ staff currently incorporate the following reviews and authorizations into the shoreline management ("beach grooming") permits:

- Authorization under Section 404 of the Clean Water Act
- Water Quality Certification under Section 401 of the Clean Water Act
- Coastal Zone Consistency certification
- Screening and coordination with the federal and state Endangered Species programs
- Screening and coordination with the state historic preservation program

An application for a federal permit from the U.S. Army Corps of Engineers may be asked to:

- Obtain a Section 401 Water Quality Certification from the MDEQ. It has not yet been determined what staff would complete this process or how it would be accomplished.
- Obtain a Coastal Zone consistency certification from MDEQ.
- Coordinate with federal agencies including the U.S. Fish and Wildlife Service regarding impacts to species listed under the federal Endangered Species Act.
- Coordinate with state agencies including the Michigan Department of Natural Resources regarding impacts to species listed under the state Endangered Species Act.
- Address concerns of the State Historic Preservation Office.

The bill will jeopardize successful *Phragmites* control programs throughout the state. First, the bill would allow the cutting and attempted removal of live, untreated *Phragmites*. The very act of cutting *Phragmites* increases spreading as seeds can float for miles and sprout a new plant. Also, almost 80% of *Phragmites* plant biomass is contained underground in a network of thick roots and rhizomes. Rhizomes use the majority of the energy produced by the plant, and can persist through many types of disturbance, including cutting and mowing. Herbicide is the only known method of effectively killing the plant's roots and rhizomes.

Many communities throughout Michigan have worked with several partners to control invasive *Phragmites* with great success using the proper treatment of limited and targeted approved herbicide under a DEQ permit. Tip of the Mitt Watershed Council has worked throughout Northern Michigan to develop a *Phragmites* Control Ordinance and Implementation Program which successfully treated approximately 230 private properties infested with invasive *Phragmites*. The Watershed Center Grand Traverse Bay has been able to reduce the amount of *Phragmites* by 78 percent on Grand Traverse Bay in Grand Traverse County — down to 16 acres. Allowing activities that promote the spread of *Phragmites* would jeopardize all of the hard work and investment that has gone into these successful programs.

As well, the bill would allow removal of all plants, including native. The removal of native vegetation along the shoreline enhances the growth of invasives because it creates a place for them to take hold and spread.

The bill could prohibit Counties, Townships, and local governments from implementing greenbelt or shoreline buffer ordinances. Depending on how an existing local ordinance is written, this bill prohibits local units of government from regulating the shoreline management activities including removal of vegetation. Therefore, local municipalities could not protect clean, healthy waters by preventing removal of shoreline vegetation with a greenbelt or buffer ordinance. The narrow, protective strip of vegetation along the water's edge helps to protect local water quality by cleaning runoff before it gets to the lakes. A shoreline buffer provides the final defense in blocking unwanted nutrients and pollutants from entering the lake.

Proactive efforts by local governments to preserve the quality of life in their community are part of the rich history of home rule in Michigan. In Michigan, local government has traditionally assumed the responsibility for land use control through ordinances. The ability for local governments to protect their community's character while at the same time protecting the overall public and environmental health for the long term would be severely hindered though the enactment of this bill.

SB 1052 prohibits the DEQ from regulating shoreline management activities such as mowing, leveling, and removing vegetation, which will have significant impacts upon the health of coastal wetlands and the Great Lakes. Specifically, scientific research shows shoreline management activities result in the following:

- Clearing vegetation changes the chemical and physical conditions of nearshore waters.
- These changes reduce or eliminate habitat for larval (young, immature) forms of important game fish including yellow perch, smallmouth bass, and largemouth bass. As well, significantly lower numbers of adult fish, and fewer species of fish, were found adjacent to "groomed" beaches.
- Numbers of invertebrate animals (insects, snails, and other small organisms) upon which fish depend for food were greatly reduced by vegetation removal and beach grooming.
- The negative effects of plant removal extend up to150 feet on each side of a beach that has been "groomed." Thus, impacts of vegetation removal are more extensive than is immediately apparent, and can extend in front of neighboring properties.

- After the removal of beds of bulrushes, the roots that normally hold sand in place rapidly break down, thus reducing the capacity for the vegetation to regenerate.
- Rapidly growing invasive plants, such as *Phragmites*, that do not have the same ecological values are the first to colonize areas where native shoreline vegetation has been removed.

The bill is not necessary as the current permit system is working to provide shoreline property owners the ability to groom the shoreline and access the lakes while protecting Michigan's natural resources. Over the years, Michigan's wetland law has been amended to allow certain types of shoreline management (or "beach grooming") activities on exposed Great Lakes bottomlands. Currently, shoreline management activities are primarily addressed through a General Permit. This General Permit was developed in coordination with the state and federal agencies and citizen groups such as Save Our Shoreline (SOS) and Tip of the Mitt Watershed Council. The General Permit is working. MDEQ's own numbers indicate that 95% of shoreline management general permits were issued and **only 1** application was denied because the project exceeded the limits of the general permit and feasible and prudent alternatives existed. Even of the shoreline management activities that were public noticed, **only 3 were denied** due to adverse impacts to the resource and feasible and prudent alternatives available. Over the course of almost 5 years, the MDEQ denied a total of 4 shoreline management permits for adverse impacts to the resource and the existence of alternatives.

Additionally, the current General Permit has received praise from landowners and representative organizations for private property owners including SOS. SOS has publically stated that they support the shoreline management general permit and have had no issue with it numerous times. In the January 2012 SOS Newsletter, SOS acknowledged "For the most part the membership did not have any issues with the D.E.Q. or the Army Corp of Engineers (ACOE). This is great news....SOS had strongly supported the general permitting process ... as a much more reasonable approach as compared to state regulations implemented in the late 1990s. It simplified the permit application process for any beach grooming activities that had only a minimal adverse effect on the environment or aquatic resources. It also avoided the much more time consuming and expensive process of obtaining an individual permit."

Great Lakes coastal wetlands are considered to be some of the most valuable ecological areas in the Great Lakes and are critical to the Great Lakes ecosystem as a whole. The dynamic nature of the Great Lakes contributes to the ecological functions of the vegetated bottomlands. During low water, shorebirds and mammals benefit from access to the exposed bottomlands. As the vegetated areas are flooded when the lake levels rise, fish and waterfowl benefit. Throughout the cycle, if left unhampered, coastal wetlands provide a range of important functions including fish and wildlife habitat, barrier to shoreline erosion, water quality protection, and commercial activity such as hunting, fishing, and wildlife watching.

We urge you to recognize the inherent danger that would result with the enactment of SB 1052. We have the science proving beach maintenance and removal of vegetation has long lasting adverse impacts to the health of our coastal wetlands and the Great Lakes. The bill would ultimately remove the authority for local governments to provide for the public interest in clean water. We have a program that is currently working that provides shoreline access and recreational opportunities to the property owners while providing some protection to the health of our coastal wetlands and Great Lakes. We hope you will see that SB 1052 is not necessary and can have significant negative consequences for Michigan's economy and the public's interest and oppose SB 1052.

We thank you for your consideration of these comments. If you should have any questions, or would like to discuss anything mentioned above further, please don't hesitate to contact us at 231-347-1181 or jenniferm@watershedcouncil.org or grenetta@watershedcouncil.org.

Sincerely,

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About Tip of the Mitt Watershed Council: *A coalition of citizens, lake associations, businesses, and resorters, Tip of the Mitt Watershed Council works to maintain the environmental integrity and economic and aesthetic values of lakes, streams, wetlands, and ground water in our service area, as well as statewide and throughout the Great Lakes Basin. As the lead organization for water resources protection in Antrim, Charlevoix, Cheboygan, and Emmet Counties, the Watershed Council is working to preserve the heritage of northern Michigan – a tradition built around our magnificent waters.*

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