

NEWSRELEASE

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DETOUR REEF LIGHT PRESERVATION SOCIETY

For additional information contact Ann Method Green, 906-493-6303 voice/fax or PR@drlps.com

The Historic Bottomlands Use Agreement for Off Shore Lighthouses

DeTour Reef Light Transferred to DRLPS
Harbor Beach Light Transferred to the City of Harbor Beach

DeTour Village and Drummond Island, MI (January 10, 2011) – Lighthouses in Michigan provide a rich and colorful history. When they were built by the federal government their purpose was to provide safe passage for the ships that traveled the waterways along the United States coastlines. With the advent of advanced technology onboard the ships including radar, satellites and various sensors, the lighthouses became less a guide to the ships and more a nostalgic and historic part of our maritime culture.

Because of the technology the United States Coast Guard (USCG) has been trying to get out of the lighthouse business and they were not able to maintain the lights according to historic guidelines. In 2000 the United States Congress enacted the National Historic Lighthouse Preservation Act (NHLPA) to enable the USCG transfer these American castles to approved local governments, non-profit groups and private interests.

With the largest concentration of U.S. lighthouses in the State of Michigan that is a big job. According to Martha MacFalane-Faes, Cultural Resource Protection Manager, State Historic Preservation Office, Michigan State Housing Development Authority, out of the 120 lights in Michigan 77 of them have been transferred: 10 to other federal agencies (the National Park Service, the US Forest Service); 30 to state and city/county governments; 16 to non-profits; 20 to private individuals; and 1 to a Native American tribe.

THE LEASE FROM THE COAST GUARD

When the United States Coast Guard (USCG) declared the DeTour Reef Light surplus property in 1997, well-known lighthouse preservationist Dick Moehl asked Bob Jones and Jim Charles both of DeTour Village to go out with them to the Light. Bob and Jim then inspired local citizens to get involved with preserving this monument to Michigan's maritime history and formed a group of local citizens to save the Light. The DRLPS was formally organized with 501c3 status in 1998 and received a 20 year lease from the USCG in 2000.

This 20 year lease came with a number of conditions. The DRLPS was required to "restore, rehabilitate, maintain and preserve," the DeTour Reef Light raising the money and covering all expenses in the process. The lease or any part or interest in it could not be transferred or assigned or sublet to anyone else.

Other conditions of the lease gave the Coast Guard the right to keep aids to navigation on the light forever, and the right to terminate the lease at anytime without prior notice. Also, if the Coast Guard needed the light, they could terminate the lease. However, by leasing the DeTour Reef Light the Coast Guard was relieved from maintaining the light.

APPLICATION FOR OWNERSHIP

Application for Ownership of the DeTour Reef Light under the terms of the National Historic Lighthouse Preservation Act of 2000 (NHLPA) was submitted to the National Park Service (NPS) on December 31, 2004.

The application was extensively prepared by Dave Bardsley, Chuck Feltner, Jeri-Baron Feltner, and Clif Haley, and presented in a 3-inch binder. The NPS informed DRLPS that it was the best application they had received to date and planned to use it as the "example" for other applications. The National Park Service recommended approval of the application and Gayle Norton, then Secretary of the U.S. Department of Interior approved the application on August 17, 2005.

The DRLPS had completed the initial restoration, met all the federal requirements, completed the initial restoration, and had opened the Light up for public tours and a unique overnight keeper program.

The insistence by the State of Michigan that DRLPS agree to a bottomlands agreement or lease that gave control of the lighthouse to the state and in some instances could conflict with the requirements of the NHLPA created years of delay. The DRLPS finally obtained ownership of the lighthouse on June 17, 2010. That transfer was the result of many hours of legal research, frustration, and finally compromise.

This delay in the transfer affected not only DeTour Reef Light but also many of the other off-shore lights including Harbor Beach Light.

WHAT WERE THE LEGAL ISSUES?

The National Historic Lighthouse Preservation Act (NHLPA) of 2000 provides for the transfer of lighthouses. As part of the transfer the U.S. reserves an easement and the return of the light for breach of the Covenant, or if needed by the U.S.: a reversionary interest. Also specified is that all of the U.S. right, title, and interest is to be conveyed by quitclaim deed. All conditions and obligations of the NHLPA Covenant and deed are legally binding, and run with the land, (the bottomlands).

The U.S. has had a navigational servitude *easement* (a dominant power of the Federal Government derived from the Commerce Clause of the U.S. Constitution) in bottomlands which DeTour Reef Light has occupied since 1931. However because the DeTour Reef Light rests on the bottomlands at the mouth of the St. Mary's River, the state owns the *proprietary real property rights* to the bottomlands and those *proprietary* rights can't be conveyed by the U. S. Agreement.

POINTS OF AGREEMENT

Both the DRLPS and the State of Michigan agreed that the bottomlands are owned by and held in trust by the State. As specified by the NHLPA, the DRLPS was obligated to use DeTour Reef Light for public use only and not for any private use. DRLPS' use of the Light was specified in the NHLPA and quitclaim deed from the Federal Government.

THE BASIS OF THE BOTTOMLANDS DISPUTE

However there were two major stumbling points to completing the transfer.

The Department of Environmental Quality (DEQ) insisted that DRLPS was required to obtain a short term private use lease from State, similar to lease for a private use commercial dock. DRLPS, on the other hand believed, based on Navigational Servitude, that the U.S. easement in the bottomlands was conveyed, or retained, by the U.S. when Aids to Navigation (ATONS) remain, and that no private use agreement for the bottomlands was required.

The second disagreement was that the DRLPS as well as the Michigan Lighthouse Alliance (MLA) representing the lighthouse community in Michigan did not believe the State of Michigan should have any control of the Lighthouse, as the Federal Government had control of the Lighthouse through the Covenant and quitclaim deed. DEQ insisted on control of the historical lights as they do private use docks. With that control the State could require removal of the lighthouse for breach of the private use agreement, or based on the state's need. The State could dictate maintenance requirements, insurance, annual rent, make changes or maintain the lighthouse and then charge the DRLPS.

The disagreement continued, with frustration on each side. The GSA and the USCG joined the fray and tried unsuccessfully to "broker" an agreement. A simple historical bottomlands use agreement proposed by DRLPS was ignored by the DEQ.

The disagreement came to a head in July 2009 when the NPS, with the support of the DEQ, advised the DRLPS and other off-shore lights that they must obtain a private use agreement in the bottomlands from the State of Michigan by August 7, 2009. Following receipt of these memoranda, DRLPS and MLA concluded State and Federal agencies left no alternative but to seek other solutions. Foremost in consideration was seeking a declaratory judgment in Federal Court upholding that Navigational Servitude ruled out the need for a bottomlands agreement. Also under consideration was to change Michigan Law to require the DEQ to provide a bottomlands use agreement without the restrictive clauses that the DEQ demanded.

DRLPS acting in their interest and as a representative for the MLA researched, prepared and distributed to all involved State and Federal agencies, as well as State Officials, Senators and Representatives, a comprehensive draft legal brief on bottomlands and navigational servitude when offshore light stations are transferred under NHLPA.

Because there was no response to the brief, it looked like the matter would be played out in the courts. All negotiation was at a standstill when a new face appeared at the DEQ. Carol Linteau, Michigan Port Collaborative Coordinator, DEQ Maritime Culture Advisor, and DEQ Legislative Director contacted the DRLPS and the MLA and suggested a fresh approach, a negotiated compromise that addressed the concerns of the historic lighthouse community as laid out in the proposed simple historical use agreement, and met State concerns

During the next four months David Bardsley, DRLPS President, Buzz Hoerr, MLA President and The Harbor Beach Lighthouse Preservation Society President, and Clif Haley, DRLPS Director and legal advisor, worked and negotiated with Linteau. Finally on November 9, 2009, five years after the journey began, the DRLPS with the MLA and the DEQ agreed to a compromise in an effort to resolve the long standing dispute and to get on with the work of restoring and preserving the lighthouses.

THE COMPROMISE AGREEMENT

Both Hoerr and Haley praised DEQ Maritime Culture Advisor Carol Linteau and the staff of the DEQ for their work to craft this agreement. “Carol kept things moving internally and brought a fresh perspective to a very complex issue” said Haley. “She and her colleagues wanted this to work to help save Michigan’s offshore lights and she helped us with our historic mission while protecting the interests of the people of Michigan” said Hoerr.

“Together we negotiated an agreement that protects the bottomlands held in trust by Michigan citizens while making it as simple as possible for dedicated preservation groups to continue their critical work of protecting our lighthouses as precious symbols of Michigan’s maritime heritage,” said Linteau. “We wish the MLA and these two local groups every success and look forward to providing assistance in the transfer process!”

DRLPS and MLA accepted the State’s requirement for a bottomlands use agreement for the State owned bottomlands. The State accepted that DRLPS and other historic lighthouse preservation groups would hold the offshore lighthouses transferred under the NHLPA subject to the requirements of the quitclaim deed and Covenant as determined by the Federal Government, not as determined by the State of Michigan.

THE HISTORIC BOTTOMLANDS USE AGREEMENT

The Agreement provides:

- 1) State bottomlands belong to and are held in trust by the State of Michigan.
- 2) The State of Michigan authorizes the grantee to continue to use bottomlands for 99 years.
- 3) The grantee holds the same interest as the U.S. held in the DeTour Reef Light.
- 4) The grantee will use the DeTour Reef Light for public purposes only, not for any private use.
- 5) The use of the DeTour Reef Light will be in accordance with, under the authority of, and subject to the Covenant and quitclaim deed as determined by the Federal Government.

TRANSFER OF THE DETOUR REEF LIGHT AND THE HARBOR BEACH LIGHT FROM THE FEDERAL GOVERNMENT

Finally the requirements for the transfer of the title of the DeTour Reef Light and the Harbor Beach Lighthouse were completed.

Dave Bardsley, DRLPS President wrote “DRLPS Director Clif Haley has led the effort for the Society during this entire period. By involving the Michigan Lighthouse Alliance (MLA) early in this effort and establishing DeTour Reef Light as the lead lighthouse group for reaching a bottomlands agreement, two significant achievements took

place. First, the full support of the MLA provided bargaining strength to the DRLPS position. Second, once agreement was reached with DRLPS, other pier, breakwater and offshore lighthouse groups in Michigan have been relieved of the burden of negotiating a unique agreement with the State. Equally important for Michigan is that a model agreement for all lighthouse groups in the United States would be created. MLA President, Buzz Hoer, has not only been supportive of our efforts, he was personally involved with our negotiations, not only as a representative of MLA but also for the Harbor Beach Lighthouse Society.”

On June 17, 2010 at the MLA Lighthouse Conference “Back to the Future”, both lights were transferred: Harbor Beach Lighthouse to the City of Harbor Beach and DeTour Reef Light to the DeTour Reef Light Preservation Society.

TRANSFER CELEBRATIONS

The Harbor Beach Lighthouse transfer celebration event will be held on July 31, 2010. Tours of the lighthouse will leave from the Marine City dock. A buffet luncheon and reenactment of the transfer ceremony will be held at the Municipal Library Auditorium. For additional information contact Buzz Hoerr at hoerrfam@msn.com.

On Saturday, August 28th the DRLPS will be hosting a celebration marking the transfer of ownership of the DeTour Reef Light to the DRLPS. The event will be held at the Eastern Upper Peninsula Fine Arts Cultural Center at 245 Erie St., DeTour Village Michigan (located behind the Sacred Heart Church) from 5:30 to 8:30PM. Donations are welcomed and cocktails and hors d’oeuvres will be provided. Space is limited and a reservation and ticket are required. For tickets contact Ann Method Green at PR@DRLPS or Sandy Wytiaz at swytiaz@centurytel.net.

To learn more about the DRLPS, the DeTour Reef Light, and the public tours and light keeper programs, please visit www.DRLPS.com, email DRLPS@drlps.com, call 906-493-6609 or write to DRLPS, PO Box 307, Drummond Island, MI 49726.

To learn more about the HBLPS and the Harbor Beach Lighthouse please contact Buzz Hoerr at hoerrfam@msn.com or call 802-734-1621.

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Information for this article was based on a presentation prepared and presented by Clif Haley, Director, and legal advisor ,Detour Reef Light Preservation Society at the 2010 Great Lakes Lighthouse Preservation Conference, Traverse City, Michigan June 17, 2010. The event was organized by the Michigan Lighthouse Alliance.

Information also came from the Press Release on the Bottomlands Use Agreement released on November 12, 2009

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- Picture 1 DeTour Reef Light 2010
- Picture 2 Harbor Beach Light
- Picture 3 The transfer Team left to right: Arthur Ullenberg, U. S. General Services Administration, Property Specialist; Buzz Hoerr, MLA President and HBLPS President; Dave Bardsley DRLPS President; Clif Haley DRLPS Director and legal advisor; Carol Lintean, Michigan Port and Maritime Advisor, Department of Natural Resources and Environment (photo by Jeri Baron Feltner, June 17, 2010)

Federal, State, and Lighthouse groups involved in the title transfer of the DeTour Reef Light and Harbor Beach Light are:

Congress of the United States

- Enacted National Historic Lighthouse Preservation Act (NHLPA) of 2000

Federal Agencies

- **United States Coast Guard (USCG)**
 - Controls offshore light stations
 - Granted 20 year lease of DeTour Reef Light to DRLPS
- **Department of the Interior; National Park Service (NPS)**
 - Identifies, selects, and approves eligible grantees
- **General Services Administration (GSA)**
 - Conveys property from the US to grantee

State of Michigan Agencies

- **Department of Environmental Quality (DEQ) now Department of Natural Resources and Environment (DNRE)**
 - Keeper of the bottomlands held in trust for all State citizens
 - Issues leases for private use of bottomlands
- **Department of Attorney General (DAG)**
 - Issues State legal opinions
- **State Historic Preservation Office (SHPO)**
 - Identifies, evaluates, registers, interprets and protects the state's historic properties

Historic lighthouse preservation entities

- **Michigan Lighthouse Alliance (MLA)**
 - Advocate for State historic lighthouse organizations and initiatives
- **DeTour Reef Light Preservation Society (DRLPS)**
 - All volunteer 501C3 lighthouse preservation entity
 - Lessee of Detour Reef Light since October 2000
 - NHLPA approved grantee since 2005
 - Restored Detour Reef Light at cost of \$ 1 million plus
- **Harbor Beach Lighthouse Preservation Society (HBLPS)**
 - Stewards of the Harbor Beach Light since 1984
 - Ownership transfer to the City of Harbor Beach with HBLPA continuing to manage the lighthouse
 - NHLPA approved grantee since 2004