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BUDGET SECTION

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Charles E. Mosley, et al.,	:	Case No. ⁸⁶⁻ 2279
	:	
Plaintiffs,	:	Judge White
	:	
v.	:	<u>CONSENT DECREE</u>
	:	
State of Ohio, Department of Natural Resources, et al.,	:	
	:	
Defendants.	:	

WHEREAS, on May 23, 1986, Plaintiffs filed a complaint in the above-captioned case against: State of Ohio, Department of Natural Resources, ("DNR"); John C. Cooper, Chief, (retired) Division of Parks and Recreation, DNR; William Denihan, former Assistant Director, DNR; James Dingleline, District Supervisor, Division of Parks and Recreation, DNR; Larry Peck, Deputy Chief, Division of Parks and Recreation, DNR; Joseph J. Sommer, Director, DNR; Stanley Spaulding, Chief, Division of Parks and Recreation, DNR; David Stites, Manager, Cleveland Lakefront State Park, Division of Parks and Recreation, DNR; all of whom collectively know as "State Defendants"; John and Jane Doe, identities and addresses unknown; and

WHEREAS, Plaintiff amended its complaint on September 22, 1986, naming a new Defendant and raising further allegations against the State Defendants; and

WHEREAS, the State Defendants, by and through counsel, have entered a timely appearance in this case and, inter alia, deny the substantive allegations asserted therein; and

WHEREAS, the Plaintiffs and State Defendants desire to resolve this case without trial or adjudication of, or finding on, any issues of fact or law and without this Consent Decree constituting any evidences against or admission by either the Plaintiffs or State Defendants with respect to any such issues;

NOW, THEREFORE it is hereby adjudged, ordered, and decreed as follows:

1. The Court has jurisdiction over the subject matter and the parties to this Consent Decree. This finding of jurisdiction shall not be admissible in any judicial proceeding with the exception of this proceeding.

2. All State Defendants, with the exception of the Defendant State of Ohio, Department of Natural Resources, are hereby dismissed from this action with prejudice.

3. The Defendant State of Ohio shall provide Plaintiffs with access to areas under the administration and control of the Division of Parks and Recreation at Cleveland Lakefront State Park, Gordon Park, as identified in Exhibit A attached hereto and fully incorporated herein by reference, for the purposes and uses enumerated herein. In the event other suitable land becomes

available for the purposes and uses authorized herein, the parties may agree to relocation of the operations. The parties assume that Plaintiffs can lawfully enjoy the site occupancy rights created herein. However, in the event Plaintiffs cannot secure necessary permits from any other state, federal or local agency, the parties agree to reconvene settlement negotiations. Plaintiffs shall secure such authorizations within a reasonable time following the entry of the Consent Decree.

4. The State of Ohio shall, on or before June 15, 1987, issue to "Charles Mosley and Cleveland Sailing School" a Special Permit in substantially the form of Exhibit B attached hereto and fully incorporated herein by reference.

5. Plaintiffs shall comply fully with each and every term of the Special Permit. Plaintiffs further agree that no usage of any other marina facility of Cleveland Lakefront State Park will be made by them for any non-personal purpose.

6. This Consent Decree does not relieve Plaintiffs or Defendants from compliance with any applicable federal, state, or local laws. This Consent Decree does not impose upon the State of Ohio any obligation to expend funds.

7. Compliance with this Consent Decree constitutes full satisfaction of all claims brought in this action against all State Defendants. The Complaint and all claims contained therein are dismissed with prejudice. Plaintiffs have fully read and understand all terms of this Consent Decree and intend to be fully bound thereby.

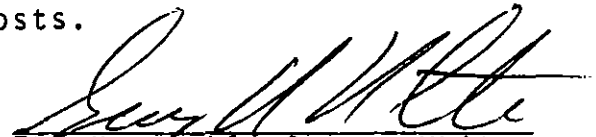
8. In addition to any remedies otherwise available at law, violation of this Consent Decree may result in revocation of Plaintiffs' permit in accordance with Ohio Revised Code Chapter 119.

9. Attorneys of record for the respective parties shall accept service of this Decree and by acceptance thereof, this Decree shall be immediately binding upon the respective parties as if personally received by them.

10. All motions not heretofore granted are denied.

11. Plaintiffs shall pay Court costs.

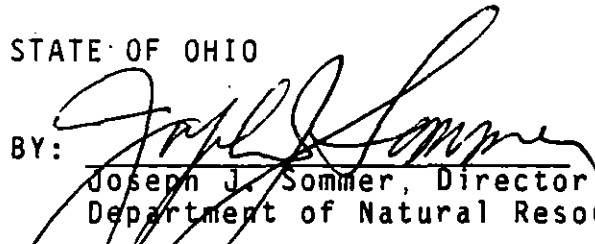
Dated: 9/10/87


The Honorable George White
United States District Judge

Defendant State of Ohio,
Department of Natural Resources
hereby consents to the entry of
this Order this 4th day of
June, 1987.

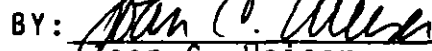
Plaintiffs Charles E. Mosley
and Cleveland Sailing School,
Inc., hereby consent to the
entry of this Order this
_____ day of June, 1987.

STATE OF OHIO

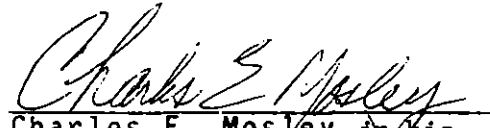
BY: 
Joseph J. Sommer, Director
Department of Natural Resources

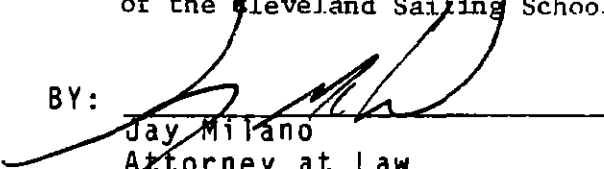
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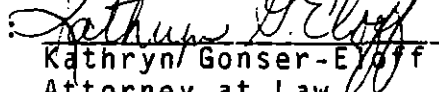
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individual capacity and on behalf
of the Cleveland Sailing School, Inc.

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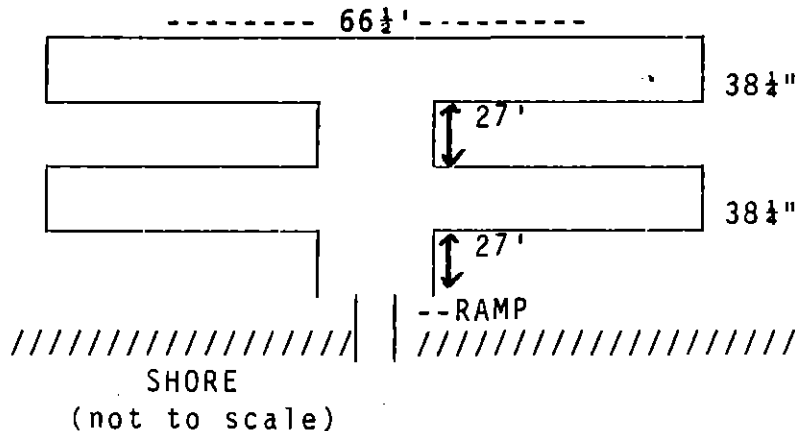
Exhibit A

Plaintiffs may, at their own expense, construct and install docks meeting the standards set by the Chief Engineer of the Ohio Department of Natural Resources in the eastern basin of Gordon Park, Cleveland Lakefront State Park, in the general vicinity of the American Red Cross classes, in a "Tee" configuration in the approximate dimensions shown below. Representatives of Plaintiffs and Defendants shall meet on site prior to construction to stake the permitted area. This dockage is to be securely anchored and may be placed in the water between April 1 and November 15 of each year, 1987-1998. The dockage shall not be directly affixed to the wall. Docks shall be removed from the water prior to November 16 and may be stored on-site during winter months. The docks may not be enlarged or expanded without the express written approval of the Director of the Department of Natural Resources.

Plaintiffs may install suitable fencing for the purpose of securing access to the docks and establishing a compound for teaching and/or storage of equipment. This compound shall not exceed 100' X 100' in area. At such time as Plaintiff secures this area, they must immediately provide the manager of Cleveland Lakefront State Park with means of access (eg., key, card, etc.) Plaintiffs may install electrical hook-up to the compound and dock area, and in advance of breaking ground shall provide the Chief Engineer, Department of Natural Resources, with a site plan showing the location and capacity of the line(s). The Chief Engineer will notify Plaintiffs to proceed in advance of installation assuming that the plan meets safety standards.

It is expressly agreed and understood that weather conditions may cause damage to docks, fencing, watercraft or other equipment or structures at this site. The State Defendants expressly recommend that watercraft be moored elsewhere during storm conditions.

Plaintiffs assume full responsibility and liability for any and all loss or damage to docks, fencing, watercraft, equipment or structures at this site, in addition to responsibilities established by law or elsewhere in this Consent Decree. Plaintiffs further agree that they will not make any claim or demand upon any of the State Defendants for any loss or damage at anytime.



June 15, 1987

EXHIBIT B

Mr. Charles E. Mosley
Cleveland Sailing School
13855 Superior Road, Suite 2403
Cleveland, Ohio 44118

Dear Mr. Mosley:

This letter shall serve as your permit to use the docks which you constructed pursuant to the Consent Decree in federal case no. 2297 at Gordon Shores for the non-profit instruction of basic, intermediate, and racing sailing classes. This letter of permit authorizes the Cleveland Sailing School to conduct educational sailing programs at Gordon Shores only, and it does not give the school any rights at any other Cleveland Lakefront State Park facilities. All State laws and regulations shall be in full force and effect at all times. This permit is valid until November 1, 1998 and need not be renewed on an annual basis.

It is understood that your docks may be used to house no more than 9 instructional watercraft. In light of the requirements of R.C. Section 3733.21 et seq, if you wish to house more than 6 watercraft at the site, you must first acquire a marina license. Only one watercraft will be moored per dock, and unauthorized watercraft will not be tolerated. Prior to classes starting each year, you will notify the Manager, Cleveland Lakefront State Park, in writing of the registration of each and every watercraft which you intend to moor at the site for the season. No other watercraft may be moored overnight at the site. Classes may be taught between April 15 and November 15, and between 9:00 a.m. and 10:30 p.m., assuming weather conditions are suitable.

It is also understood that the Cleveland Sailing School will maintain adequate property damage and liability insurance for participants, equipment and premises. A copy of current insurance policies must be submitted immediately to the undersigned and copies of future insurance policies must be submitted as soon as possible after receipt by Plaintiffs.

Participants will be controlled by the School from wandering on the public docks, and public picnic tables in the area shall not be monopolized. Understand that the State of Ohio, Department of Natural Resources, Division of Parks and Recreation, Cleveland Lakefront State Park, and all its employees and agents are exempt from any liability for any purpose to any person through permit issuance and your use of facilities. Classes must not interfere with the recreational usage of the general area by the public.

You are entirely responsible for site security. You will furnish the Manager of Cleveland Lakefront State Park with any necessary means of access prior to instituting security measures. Division of Parks and Recreation employees may enter upon the premises at anytime for any lawful purpose.

There will be no leasing, renting, or chartering of boats from the site.

This permit is personal in nature. It may not be conveyed or assigned to any other person without the express written consent of the State of Ohio.

Any requests for modification of this permit must be made and approved in writing prior to implementation.

Sincerely,

Stan Spaulding
Chief, Division of
Parks & Recreation

SS/11h

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