

# THE MICHIGAN **RIPARIAN**

SPECIAL ANNUAL CONFERENCE ISSUE!!!

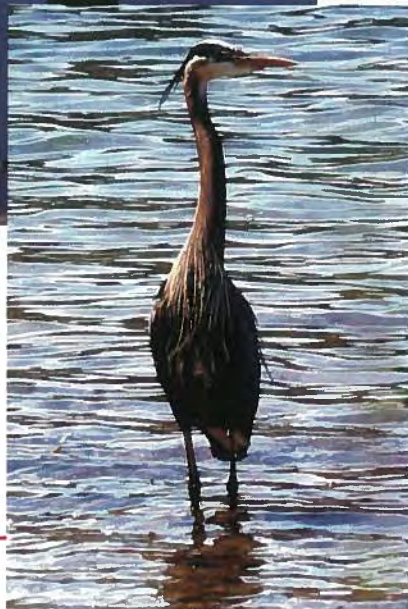
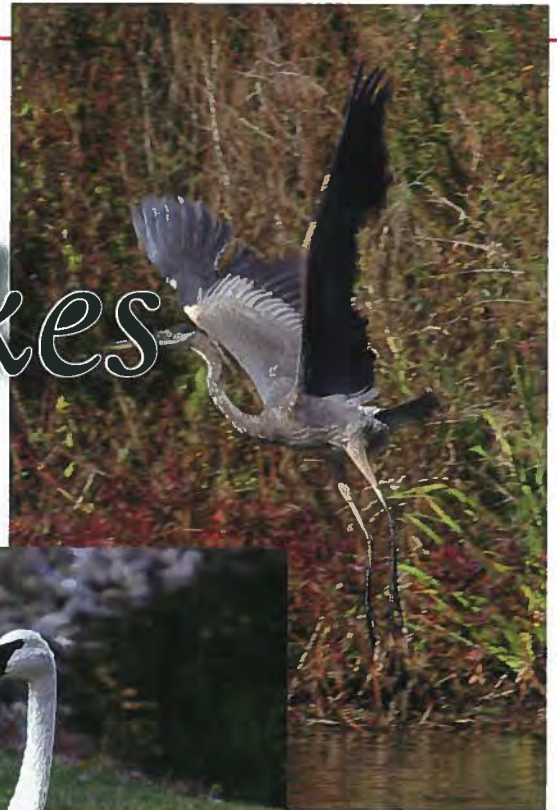
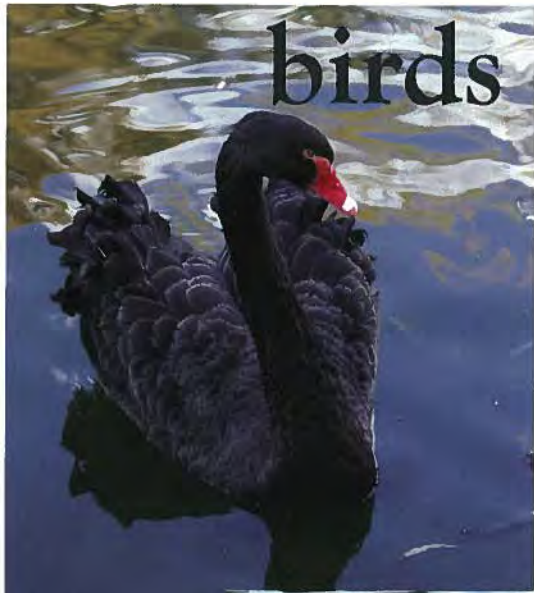
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*RIPARIAN* (r-'per-EE-n) adj. Relating to or living or located on the bank of a natural watercourse, such as a river, or of a lake or a tidewater.

## birds of the lakes



Muskegon native Jim Gillard took these beautiful photographs of, clockwise, a black swan, a blue heron, a trumpeter swan, and a blue heron. Read more about the photographer and these beautiful birds on page 6.



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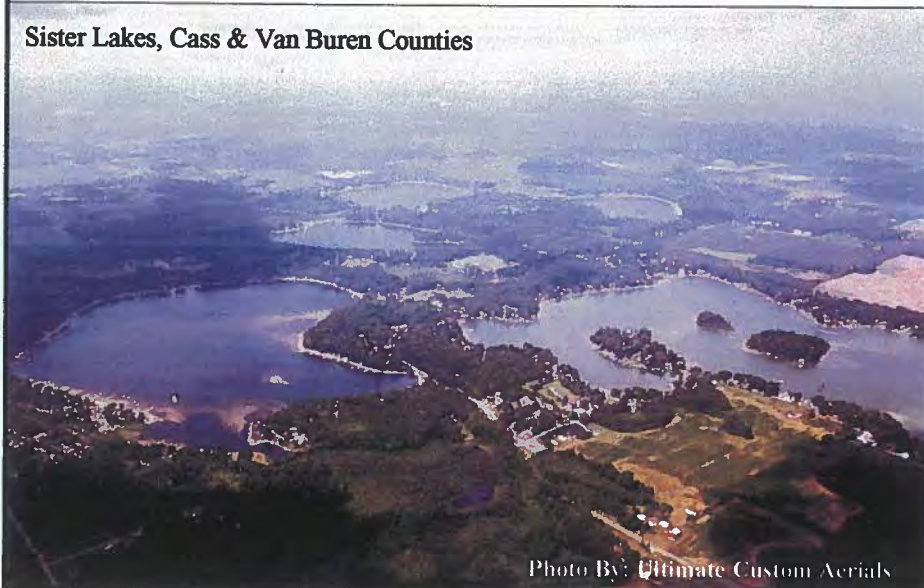


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See pages 10-13 of this magazine for all of the registration details!

**See you in April!**

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# ON THE COVER: birds of the lakes by Jim Gillard



This issue's beautiful photographs were taken by Michigan Lake & Stream Associations member Jim Gillard, a native of Muskegon. Jim - who has a business degree from Western Michigan University and had a 30-year career with the Michigan DNR - has lived with his family in Three Rivers for the past 26 years.

Since retirement, Jim's photography has become a passion and a second career. His work focuses on wildlife, sports and other outdoor activities. Most of his photographs are of Michigan subjects, and he has recently done photography in some Western states, as well. Jim's involvement with wildlife photography began with the DNR and includes work for Ducks Unlimited, Kellogg Bird Sanctuary, and the Audubon Society. His photographs have appeared in art institutes, libraries, schools, restaurants, calendars, magazines, newspapers, yearbooks and other publications. Information about the subjects of this issue's cover follows:

## BLACK SWAN

The Black Swan is a highly gregarious species, occurring in enormous flocks, up to 50,000 strong. It breeds in colonies of hundreds of pairs, the nests placed just beyond pecking distance from one another. Like


many Australian waterbirds, the Black Swan can delay breeding in times of drought and quickly take advantage of sudden rains and flood conditions. Its habitat includes large freshwater and brackish marshes and lagoons, as well as estuaries and coastal bays.

## BLUE HERON

The Great Blue Heron is found throughout most of North America, including Alaska, British Columbia, Quebec and Nova Scotia. The range extends south through Florida, Mexico and the Caribbean to South America. Great Blue Herons can be found in a range of habitats, in fresh and saltwater marshes, mangrove swamps, flooded meadows, lake edges, or shorelines, but they always live near bodies of water. Generally, they nest in trees or bushes that stand near a body of water.

## TRUMPETER SWAN

The trumpeter swan is the largest waterfowl species native to North America. Most trumpeters weigh 21 to 30 pounds, although large males may exceed 35 pounds. The male is called a cob; the female is called a pen. With a wingspan over 7 feet, these snow-white birds are truly spectacular. Standing on the ground, an adult stands about 4 feet high. Several Midwestern states have launched restoration programs to reintroduce trumpeter swans. Minnesota's Hennepin Parks pioneered the effort to reestablish trumpeter swans in 1966. By the 1980s, the state natural resources agencies of Wisconsin, Minnesota, and Michigan had initiated trumpeter swan recovery programs. These states are now establishing flocks that will help create a migratory and breeding population in the Midwest.



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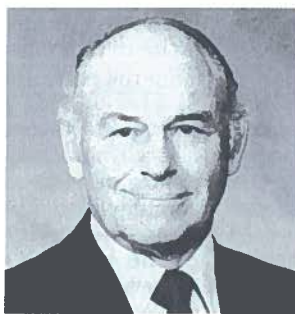
Cover photographs provided by James Gillard, a resident of Corey Lake near Three Rivers, Mich.

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## FROM THE PUBLISHER

### Cooperative Lakes Monitoring Program (CLMP)



Don Winne

The Cooperative Lakes Monitoring Program (CLMP) has existed for 33 years; it began as the "Self-Help" program in 1974. In 1992, MDEQ and Michigan Lake & Stream Associations, Inc., entered into a cooperative agreement to expand the program to include all inland lakes that wanted to participate in the water-clarity-measuring Secchi program.

In 1993, the program was expanded to include spring and summer phosphorous, and in 1998 chlorophyll A was added to the measurement program. Dissolved oxygen/temperature and plant identification and mapping have since been added to the parameters measured.

If your lake has been in the CLMP, we hope you will complete the application form for this year (2008). Lakes that have not been in the program, but would like to participate, please fill out the application below for more information and mail to:

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- PUBLISHER DON WINNE

#### CORRECTIONS

Our goal is to produce an error-free publication, but sometimes the spellcheck and human frailty let us down! We apologize for the errors in the November 2007 issue of the Riparian, which included a headline that read "Don Winne wins state DNR award." Of course, Mr. Winne was the recipient of an award from the DAR, not the DNR. Don Winne, publisher of The Michigan Riparian, had received the Conservation Award of the Year at the Michigan Society Daughters of the American Revolution state conference in Grand Rapids. There was also a typographical error in a headline on page 12, with an "s" appearing at the end of the word "stream" rather than "association" in the headline that should have read "Objectives of the Michigan Lake & Stream Associations, Inc." Our apologies for any confusion! - THE EDITORS



# Riparianism and the Great Lakes

by Clifford H. Bloom  
Law, Weathers & Richardson, P.C.

In Michigan, bottomlands ownership is different for inland lakes than it is for the four Great Lakes that border the state (Michigan, Superior, Huron and a small portion of Erie). Accordingly, many of the commonly enunciated rules of riparian ownership floating about do not apply to riparian landowners on the Great Lakes.

With most inland lakes, a riparian property owner owns the attendant bottomlands to the center of the lake. A riparian property owner can make various uses of his or her bottomlands and riparian rights, including the ability to draw water for lawns and utilize dockage, shorestations, and rafts. Such uses by riparians are limited only by the reasonableness doctrine and applicable governmental regulations. While members of the public can swim, fish, water ski, and boat over the entire surface of an inland lake (and even temporarily anchor on another's bottomlands as an incident of navigability) without the consent of any bottomlands owner, members of the public cannot permanently moor, trespass, or wade on the bottomlands of another without permission. Furthermore, riparians on inland lakes generally do not have to worry about members of the public being able to lawfully walk on their bottomlands or along their shoreline (absent an unusual situation such as a parallel public road right-of-way at the lake, access easement, dedicated park, or similar lake access device designed for use by backlot property owners or members of the public).

Unlike the bottomlands under inland lakes, the bottomlands under the waters of the Great Lakes are not owned by the adjoining riparian landowners. Rather, the bottomlands are owned by the State of Michigan and are held in trust for the public. Thus, unlike riparian ownership associated with most inland lakes (where land and bottomlands ownership is normally "fixed" and runs to the center of the lake), riparians on the Great Lakes generally own what is considered to be a "movable freehold." That is, their property line varies depending upon where the edge of the water is at any given time. Great Lakes riparians also have to contend with a public easement on or along their shoreline and beach. This easement, which is based on the public trust doctrine, allows members of the public to walk in certain

lakefront areas without the permission of the riparian owners. Prior to 2005, it was unclear whether members of the public could lawfully walk on the dry shoreland of the Great Lakes without the permission of the riparian landowners or whether the public had to stay in the water or on the wet sand. In *Glass v Goeckel*, 473 Mich 667 (2005), the Michigan Supreme Court definitively decided the issue. In *Glass*, the court held that the public has an easement based on the public trust doctrine that extends all the way to the ordinary high water mark of the Great Lakes. Thus, lakeward of the ordinary high water mark, members of the public can walk anywhere they wish, at any time, without the permission of the adjoining riparian landowner (even over the objection of the riparian landowner). It remains unclear, however, whether the rights of the public to use the dry shoreland is limited to walking, or whether members of the public can engage in other activities such as driving snowmobiles or four-wheelers on the beach, picnicking or resting.

In determining where the public easement begins under the *Glass* decision, it is necessary to locate the "ordinary high water mark" on each specific piece of Great Lakes waterfront property. Unfortunately, this is not always an easy task given the Michigan Supreme Court's confusing and ambiguous definition of "ordinary high water mark." In *Glass*, the Court defined "ordinary high water mark" as follows: *The point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction or terrestrial vegetation, or other easily recognized characteristic. And where the bank or shore at any particular place is of such a character that is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below ordinary high-water mark.* [*Glass* at p. 691]. In most cases, for any given stretch of Great Lakes shoreline, one could have three different expert limnologists or hydrologists inspect the property and there would likely be three different opinions regarding the location of the ordinary high water mark!

In light of the *Glass* decision and other concerns related to the ownership of riparian property in Michigan, if you are

considering purchasing Great Lakes lakefront property, you should have your attorney review a survey, the title history, and other appropriate matters prior to entering into a binding purchase agreement. It is possible that issues may arise concerning title and ownership. For example, describing a lakeward boundary line for a property with frontage on the Great Lakes presents some interesting challenges. Given that the lake levels fluctuate dramatically over time, the location of the water's edge for many existing properties is nowhere near where the water's edge was years ago when the legal description for the parcel or lot was created. Sometimes, a legal description includes a "meander line" near the water. In addition, it is very common for property descriptions and deeds for Great Lakes properties to describe land that ends some distance from the current water's edge, but to also indicate or imply that the property is riparian and that the title actually ends at the water's edge, wherever that might be at a given time. This can be a complicated legal area for a particular property and may result in "gaps" in ownership between what appears to be a riparian property and the actual water's edge.

Apart from title and ownership issues, owning Great Lakes riparian property can present other unique challenges, which differ from those associated with inland lake riparian property. Great Lakes riparians rarely have to worry about conflicts arising over docks, shorestations, or boat moorings. However, they often have to contend with erosion, receding lake levels (and the long walks between the ordinary high water mark and the location of the water's edge that may result), trash floating onto the shoreline, and unwelcome (sometimes belligerent) members of the public who walk along the beach. In addition, Great Lakes riparians generally cannot install stairs, platforms, erosion control structures, or other items at or near the waterfront without the appropriate permits from both the U.S. Army Corps of Engineers and the Michigan Department of Environmental Quality. Finally, Great Lakes riparians must be prepared to address issues that may arise under the Michigan Dunes Protection and Management Act (MCL 324.35301 et seq.).



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The Michigan Lakes & Streams Foundation is a 501(c)(3) nonprofit, charitable organization established in 2004 by Michigan Lake & Stream Associations, Inc. (MLSA) to provide an endowed fund for developing a stable and permanent financing source to help support MLSA's many programs and initiatives.

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**APRIL 25-27, 2008 • GRAYLING, MICHIGAN**  
**RAMADA INN HOTEL & CONFERENCE CENTER**

**"Working Together to Preserve and Protect  
our Inland Lakes and Streams"**



Join Michigan Lake and Stream Associations in the heart of northern Michigan's Au Sable River country for an interesting and educational celebration of our state's magnificent Great Lakes and inland lakes and streams.

*We cordially invite you to attend our 47th Annual Conference whose primary theme is dedicated to recognizing and discussing the idea that only by working together in the true spirit of cooperation and partnership will we succeed in preserving and protecting our inland lakes and streams for future generations of Michigan citizens.*

While challenges and concerns mount for the future viability of our state's freshwater resources, there is hope and encouragement to be found in the resourceful and innovative regional and state-wide partnerships that are being formed around the common goal of providing stewardship and management of Michigan's priceless freshwater resources.

Meet us in Grayling at the 47th Annual Conference as we explore these new and creative ideas as well as a wide ranging host of timely topics and issues focused on our freshwater heritage.

As citizen stakeholders of our state's freshwater treasure, your active participation and ideas are key to ensuring that we achieve our common goal of preserving and protecting the long-term quality and value of Michigan's most valuable resource.

*Please see the following pages for agenda details, registration information and hotel reservation information.*

## See you in April!



47TH ANNUAL MLSA CONFERENCE  
APRIL 25-27, 2008 • GRAYLING, MICHIGAN  
CONFERENCE AGENDA



**Friday, April 25, 2008**

- 8:00 A.M. - 8:00 P.M. General Conference Registration
- 8:45 A.M.- 10:00 A.M. MiCorps: CLMP Registration/Equipment Disbursal  
9:00 A.M. - 5:00 P.M. MiCorps: CLMP Training Sessions
- 2:00 P.M. - 5:00 P.M. General Conference Plenary Session  
Aquatic Invasive Species Update • Living Trusts/Wills for Riparians  
Michigan Inland Lakes Partnership • Challenges to Your Riparian Rights
- 6:00 P.M. - 7:30 P.M. Buffet Dinner

**Saturday, April 26, 2008**

- 6:30 A.M. - 8:30 A.M. Buffet Breakfast
- 7:30 A.M. - 1:00 P.M. Conference Registration
- 9:00 A.M. - Noon MiCorps: Aquatic Plant Identification Workshop
- 9:00 A.M. - 4:30 P.M. Computer Center - Web Site Training Workshop
- 9:00 A.M. - 4:30 P.M. General Breakout Sessions  
Topics include lake and stream management, aquatic nuisance species, inland lake and stream fisheries, forming partnerships, and working with state/local governments.
- Noon - 1:30 P.M. Luncheon
- 4:30 P.M. - 5:00 P.M. Michigan Lake and Stream Associations, Inc.  
Annual Corporate Meeting
- 5:00 P.M. - 5:30 P.M. Michigan Waterfront Alliance  
Annual Election/Corporate Meeting
- 7:00 P.M. 47th Annual Conference Banquet

**Sunday, April 27, 2008**

- 6:30 A.M. - 8:30 A.M. Buffet Breakfast
- 9:00 A.M. - Noon General Conference Plenary Session  
"A Look at Our Great Lakes - 2008"  
Join us as several notable speakers discuss the current state of our Great Lakes.
- Noon - 1:00 P.M. Luncheon



# 47TH ANNUAL MLSA CONFERENCE APRIL 25-27, 2008 • GRAYLING, MICHIGAN CONFERENCE REGISTRATION FORM



Conference Registration Form (may be copied for additional attendees)

**MAIL to:** Pearl Bonnell, P.O. Box 303  
Long Lake, MI 48743-0281

Please print:

Name \_\_\_\_\_ Day phone # \_\_\_\_\_  
**Only one name per registration (Spouses please use separate forms)**

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

e-mail \_\_\_\_\_ County \_\_\_\_\_

Lake Name \_\_\_\_\_  
(If you reside on a lake or stream)

Association, School, or Company Name you may be associated with \_\_\_\_\_

**Note: Meals are NOT included in these registration fees.**

	PRE-REGISTRATION By April 15, 2008	REGISTRATION AT the CONFERENCE	
♦ FULL CONFERENCE (2 or 3 days)	\$ 65.00	\$ 75.00	\$ _____
♦ ONE DAY ATTENDANCE – ONLY	\$ 35.00	\$ 40.00	\$ _____
<u>For Which Date:</u>			
Friday, April 25 <sup>th</sup> _____			
Saturday, April 26 <sup>th</sup> _____			
Sunday, April 27 <sup>th</sup> _____			
♦ REGISTERED STUDENT- Full Conference (per person)	\$ 10.00	\$ 15.00	\$ _____

♦ **CLMP LAKES MONITORING PROGRAM** - there is no charge to attend only the CLMP session

(If you plan to **ONLY ATTEND THE CLMP SESSION**, PLEASE CHECK HERE: \_\_\_\_\_)

(April 25, 2008 = training session only.....No Charge...Does **NOT** include meals)

CHECK/MONEY ORDER ↑ MASTERCARD ↑ VISA ↑ DISCOVERY ↑ AMERICAN EXPRESS

Check Number \_\_\_\_\_ Check, Money Order, or Credit Card Total \$ \_\_\_\_\_

Credit Card # \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / Exp. Date \_\_\_\_\_ Pin # \_\_\_\_\_

**PRINT** Name as it appears on Credit Card \_\_\_\_\_

Credit Card Holders Address \_\_\_\_\_

Phone Number of Credit Card Holder ( \_\_\_\_\_ ) \_\_\_\_\_

Signature of Credit Card Account Holder X \_\_\_\_\_



# 47TH ANNUAL MLSA CONFERENCE RAMADA INN RESERVATION FORM • APRIL 24-27, 2008

RESERVATIONS SHOULD BE MADE BY APRIL 15, 2008. CHECK-IN 3 P.M. CHECK-OUT 11 A.M.

To reserve your room, please call the Ramada Inn at 1-800-292-9055.

Ask to book your room under the block for Lake and Stream Associations. You can either send in a check made to Hotel of Grayling, Inc, use a credit card to hold the room or bring a check with you. Since you are with MLSA, the hotel will guarantee your reservation to the hotel if needed. The Ramada Inn's cancellation policy is very liberal; you have until 6 p.m. the night of the reservation to cancel; although the hotel would appreciate being informed of any changes as soon as possible.

Accommodations: Specific room types cannot be guaranteed, although the hotel will do its best to get you your request. There is no elevator, so if you are healthy and can take the stairs, please save the lower level rooms for those who need them.

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<b>Friday: Single Occupancy</b>	<b>\$ 115.88 per person</b>	<b>Saturday: Single Occupancy</b>	<b>\$96.80 per person</b>
<b>Double Occupancy</b>	<b>\$ 80.75 per person</b>	<b>Double Occupancy</b>	<b>\$61.70 per person</b>
<b>Triple Occupancy</b>	<b>\$ 69.08</b>	<b>Triple Occupancy</b>	<b>\$49.99 per person</b>

**Friday Prices Include:** Lodging, Dinner, Saturday Breakfast and Lunch

**Saturday Prices Include:** Lodging, Dinner, Sunday Breakfast

### **Tax-Exempt Individuals:**

Please present the state tax exempt form at check-in. Personal funds are not exempt from state tax or local assessments. You must use a company check or company credit card.

If you are mailing a check or money order please make them payable to:

Hotel of Grayling Inc  
P.O.Box 473  
Grayling, MI 49738  
Phone (800) 292-9055  
Fax(989)348-7984



## PLEASE PRINT

Arrival Date: \_\_\_\_\_ Departure Date: \_\_\_\_\_

Share With \_\_\_\_\_

Number in Party \_\_\_\_\_ Number of Adults \_\_\_\_\_

Ages of Children under 18 yrs \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone Number \_\_\_\_\_ Trip Rewards \_\_\_\_\_

## PAYMENT METHOD

Check or Credit Card Enclosed \$ \_\_\_\_\_

Credit Card Number \_\_\_\_\_ Exp \_\_\_\_\_

Signature: \_\_\_\_\_



## "Wetlands!" (not swamps)

By Clifford H. Bloom, Esq.  
Law, Weathers & Richardson, P.C.  
800 Bridgewater Pl • 333 Bridge St NW  
Grand Rapids, Michigan 49504-5320



In Michigan, the regulation of wetlands often suffers from urban legends (or should I say, rural legends!). In this column, I hope to dispel some of those myths and to foster a better understanding of wetlands regulations.

Modern wetlands regulation was born with the passage of the federal Clean Water Act (the "Federal Act"). Under the Federal Act, the U.S. Army Corp of Engineers is charged with administering and enforcing the wetlands component of that statute in the Great Lakes region. Shortly after the Federal Act was enacted, Michigan became only one of two states to "opt out of" the federal regulatory scheme by adopting its own wetlands protection statute (MCL 324.30301 *et seq.*; the "Michigan Wetlands Act"). Given that the Michigan Wetlands Act is at least as strict or stricter than the federal statute, the federal government has generally allowed Michigan to enforce its own wetlands statute so long as it does so vigorously. Initially, the Michigan Wetlands Act was enforced by the Michigan Department of Natural Resources ("DNR"). However, after the old DNR was split into two agencies [the "new" DNR and the Michigan Department of Environmental Quality ("DEQ")], the DEQ has since been charged with enforcing the Michigan statute.

Under the Michigan statute, a "wetland" is defined as: *land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is any of the following:*

(i) *Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.*

(ii) *Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size; except this subparagraph shall not be of effect, except for the purpose of inventorying, in counties of less than 100,000 population until the department certifies to the commission it has substantially completed its*

*inventory of wetlands in that county.*

(iii) *Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner; except this subparagraph may be utilized regardless of wetland size in a county in which subparagraph (ii) is of no effect; except for the purpose of inventorying, at the time.* MCL 324.30301(i).

It should be noted that the Michigan statute generally does not regulate wetlands under five (5) acres in size and which also are not contiguous to the Great Lakes, an inland lake or pond, or a river or stream (unless certain other standards are met).

Theoretically, if enforcement of the Michigan Wetlands Act is not vigorous enough, the federal government (through the U.S. Army Corp of Engineers) could step back in and administer and enforce the federal statute in Michigan. There are some areas of Michigan where both the DEQ and the U.S. Army Corps of Engineers currently enforce their respective statutes as to the same property, such that there is theoretically "concurrent jurisdiction." That sometimes includes properties along the Great Lakes coastline of Michigan and certain navigable rivers and major waterways.

Prior to 1995, local governments in Michigan could adopt their own regulatory ordinances for wetlands which were stricter than either the federal or state statutes. That alarmed various developer groups, who were able to prompt the Michigan legislature to adopt an amendment to the Michigan Wetlands Act which partially pre-empted/precluded local governments from regulating wetlands. Thereafter, local governments could still regulate wetlands by local ordinance, but in a very limited fashion, which also tends to be expensive for the municipality involved since the pre-emption statute requires extensive inventories, procedures, etc. Accordingly,

very few local governments have chosen to regulate wetlands.

Some lay people in Michigan believe that if a wetland is present, it cannot lawfully be filled or altered. On the other extreme, some people believe that Michigan's entire wetlands regulatory scheme is a joke and that the DEQ will always give permits to destroy or significantly alter any wetland. In fact, the truth probably lies somewhere in between those extremes.

It must always be kept in mind that the DEQ is an agency which appears to be virtually under siege at any given time. First and foremost, funding for the DEQ (including wetlands enforcement) has been woefully lacking over the years and that deficiency keeps getting worse with every passing year. Second, two diametrically opposed forces constantly pressure and criticize the DEQ. On the one side, developers, business groups, chambers of commerce and some landowners frequently view the DEQ as an antiquated and obstructionist governmental agency which is mired in red tape and which drives business out of Michigan. On the other hand, environmental groups often assert that the DEQ is weak, grants too many permits for the alteration or destruction of wetlands and is not living up to its statutory mandates. If one looks at the averages over the last half dozen years, out of every 100 wetland applications submitted, the DEQ approves approximately 81 to 93 requests and denies about 7 to 19. It should be noted, however, that contained within the permit approval figures are a significant number of applications which were initially denied and which the DEQ later approved when the applicant modified its proposal to scale back the amount of wetlands destroyed, increase mitigation, or otherwise limit the impact of the proposed development. What is the process for property owners to be able to lawfully fill or alter wetlands? Initially, the landowner must file a wetland fill or alteration application with the DEQ.

*continued on page 21*

# Understanding mute swans in Michigan

by Michigan Department of  
Natural Resources  
Wildlife Division

Native to northern Europe and north central Asia, mute swans are considered an exotic species in the United States. They were brought to North America in the late 1800s to be decorative waterfowl for parks and private estates. Some of these captive swans escaped or were released, and breeding populations became established across North America.

Today, Michigan has an estimated 7,000 mute swans in the spring population before nesting begins. They are considered non-migratory but may make short-distance, seasonal movements that are dictated by the weather. As mute swan numbers continue to grow, there is conflict among citizens who appreciate their beauty and those who have difficulty with the swan's aggressive tendencies or impacts on other species.

The Michigan Department of Natural Resources (DNR) has a procedure on *Mute Swan Management and Control*. One of the main goals in this management effort is a 50% reduction of the mute swan spring population. The need to decrease mute swans in Michigan was triggered by efforts to ensure success of the native trumpeter swan reintroduction program, efforts to protect the endangered loon, and other native wildlife, as well as reduce the number of potentially dangerous conflicts with humans. The techniques the DNR use to reduce populations are the removal of nests and eggs on certain public and private areas and/or the removal of swans.

Adult swans typically measure 50-60 inches tall, weigh 20-30 pounds, and have wingspans reaching 6 to 7 feet. Both adult males (cobs) and females (pens) have entirely white plumage with black legs and webbed feet. They have long necks that are normally held in a graceful S-shape with their bill pointed downward, especially while swimming. Their bills are vibrant orange with a black face patch and a bulbous black knob on the forehead. Males are slightly larger than females and have more prominent forehead knobs than females. Despite such differences, it is difficult to visually identify males from females. Young mute swans (cygnets) have gray, silvery, or white down. Their feet, legs, and bill are gray to tan. During their second year, the frontal knob begins to appear along with coloration of the bill.

Mute swans reach sexual maturity and pair up and build nest when they are two years old; however, they do not begin breeding until three to four, or even five years old. Nesting begins late March to April and normally once a year. Pairs frequently use the same nests over several years, restoring and rebuilding. Nesting sites often are in a secluded area on shore or in shallow water, but will vary based on habitat. Nests are large, from 4 to 6 feet in diameter.

On average, mute swans lay six off-white to pale green eggs, but there can be as many as 10; one

is laid per day. Incubation is approximately 35 days after the last egg is laid. Hatching is normally mid-May to mid-June. The female does most of the incubating, but the male will take over so the female can forage for food. Cygnets begin to swim within a day or two of hatching and often ride on their parents' backs. Mute swan families stay close to their nesting area and keep away from other broods and non-breeding swans for at least several months following hatching. Juveniles begin to fly at four to five months. Some may then leave their territory, or parents may chase them off while other juveniles stay with the family through the winter.

Mute swan pairs, especially males, are very protective of their territory and family and can become very aggressive to any perceived threat, especially when they are rearing their young. They are known to attack humans, animals, and other waterfowl that may enter or come near their nesting territory. The cob often jumps on top of the potential threat, striking with wings, feet, and bill. They may also attempt to stand on and hold the poten-

**Some swans become aggressive due to hazing by humans on watercraft.**

tial threat under water. This is judged to be a health, safety, and welfare threat – when an aggressive swan comes into physical contact with a human or when a human is forced to take immediate evasive maneuvers to avoid swan-initiated physical contact.

Some swans, however, become aggressive due to hazing by humans on watercraft, especially jet skis. After such hazing events, the swan may aggressively target the craft and its operator. Swans have been documented to selectively attack a jet ski while being towed (riderless) behind a larger boat because they no longer tolerate this object. This aggressive targeting is known to carry over between years once a swan is conditioned. Therefore, watercraft operators should not haze swans and avoid operation near swans. Lake associations should encourage vigilance by Marine Patrol that this message is conveyed to lake users. Keep a safe distance from nesting sites and do not try to become friends with these or any birds; it will place them in harm's way.

If you need to notify the DNR of a mute swan conflict, contact the local field office and they will record the situation on a statewide database. If the situation appears to involve a potential human safety risk, the issue will be forwarded to the Wildlife Division Management Unit Supervisor for further handling and response. In most cases, DNR staff will not be dispatched to sites in response to mute swan situations. Site investigations may occur

while staff is on-site for other reasons or where the supervisor identifies unique circumstances that prompt a site visit. Also, the DNR does not have the authority to ban the use of certain watercraft, like jet skis, from all or parts of public waters.

Mute swan behavior will be assessed to ascertain potential risk to public health, safety, or welfare. This assessment will generally include information from a complainant but must include independent written confirmation by a third party. This may include confirmation by local law enforcement agencies. This confirmation will contain sufficient information to characterize the swan behavior in detail. Upon identifying a threat to public health, safety and welfare, law enforcement agencies may immediately take offending swans or may recommend a nuisance control permit be issued as detailed in the Mute Swan Management Plan.

A swan will be considered a risk to public health, safety, or welfare when it comes into aggressive physical contact with a human or when the swan forces a human to take immediate evasive actions to avoid physical contact. Patterns of swan behavior will also be weighed in this assessment. The Management Unit Wildlife Supervisor will determine options needed to address the situation after considering all available information. If deemed necessary, a nuisance control permit may be issued to the complainant (now permittee), which authorizes removing and disposing of the swan by a DNR authorized contractor. Relocation or release of the swan will not be permitted. If an offending swan needs to be removed, it will be euthanized.

The permit will require the permittee, at their cost, to secure the services of a DNR authorized contractor. U.S. Department of Agriculture Wildlife Services is recommended. The permit will require appropriate carcass disposal according to federal, state, and local regulations, as well as activity reporting by the permittee. It requires full access to permitted sites and activities for auditing by DNR personnel.

Conflicts between humans and mute swans do arise. Aggressive swans sometimes do need to be removed. But on many occasions, the swans were provoked by human interactions that could have been avoided. The DNR urges boaters to use caution during the nesting and brood-rearing season and keep a safe distance from swans. It is critical that humans do not taunt or "play" with swans. But if a conflict does occur, contact your local DNR field office and report the situation.



# Small boat proposal for Lake Superior

The Viral Hemorrhagic Septicemia Virus (VHS) has now spread to Lakes Michigan, Huron, Erie and Ontario. It has also spread to inland lakes - Winnebago in Wisconsin and Budd in Michigan. To date, it has not reached Lake Superior. This virus is deadly to fish and once it gets into a body of water, there is no way to remove it. Numerous groups and agencies are "studying" the problem and plan to have a solution to stop all invasive species by the year 2010. We do not have the luxury to wait even four more months for Lake Superior.

We have contacted the offices of Senator Carl Levin (D-MI), Congressman Bart Stupak (D-MI) and the Great Lakes Task Force to provide federal legislation and funding for mandatory ballast water disinfection for all ships entering Lake Superior through the Soo Locks. The effort could be in operation by March 2008 if the funding and legislation are in place. Ballast water discharge is one of the vectors for the spread of VHS.

A second vector for the spread of the virus is through infected bait fish. To combat this,

the DNRs of Michigan, Wisconsin and Minnesota will be inspecting fisheries and bait sellers and issuing virus free bait permits. A third vector includes pleasure and fishing boats that leave an infected body of water and launch in Lake Superior.

Water in live bait wells and bilge waters are supposed to be drained whenever a boat is taken out of the water. Even with that precaution, the DNRs are recommending that all boats be sprayed with a weak solution of Clorox prior to launch. The DNRs of Michigan, Wisconsin and Minnesota are not staffed or funded to handle this number of boats themselves so they are asking boat owners to voluntarily comply.

We have coordinated with the MiDEQ to find the optimum type and concentration of disinfectant. It is a very weak solution of Clorox (one-half ounce of Clorox per gallon of water) and does kill the VHS virus. The residual chlorine in a launch basin per typical boat would have a concentration of .00003 ppm whereas drinking water is usually .3 ppm. This is about 10,000 times less

by Jack Hartmann  
Isle Royale Boaters Association

than ordinary drinking water. To help the boat owners, we are asking all boat associations near Lake Superior to join together in providing help. We do not expect the volunteers to disinfect any boats (except as a demonstration for the newspapers) - that will be the responsibility of the boat owner.

We would ask volunteers to keep each public boat facility stocked with the necessary materials. We are asking each association to bring this proposal to its membership and ask for volunteers. Please e-mail me (*see contact information at end of article*) with your results. Some of the associations contacted so far include Izaak Walton League, Michigan Lake and Stream Associations, Save Lake Superior Association, U.S. Coast Guard Auxiliary, and Isle Royale Boaters Association.

## SMALL BOAT PROPOSAL OUTLINE

1. Stock each public boat launch on Lake Superior with instructions, safety goggles, a sprayer and a supply of Clorox. This would be achieved through volunteer boat associa-



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tions and the U.S. Coast Guard Auxiliary.

2. Boat associations would start and maintain a publicity campaign through local media (news articles, T.V. interviews, posters and speeches) informing everyone of the VHS virus and the efforts to stop it. Private boat launch owners would be contacted and asked to disinfect any boat using their private facility.

3. The materials will be provided and maintained through grant monies raised by our organization(s).

4. The budget is simple: There are 60 public boat launches in Wisconsin, Minnesota, and Michigan that serve Lake Superior. So we'd need the following: 2 sprayers+security chain @\$30 ea x 60=\$3,600; 7 bottles Clorox/season @ \$1.50 ea=\$630; 2 Informational posters @ \$5.00 ea=\$360; 2 pair safety goggles @ \$5.00 ea=\$600; Office supplies, posters, miscellaneous=\$1,080. TOTAL = \$6,000.

5. Service could start in March 2008.

It would be best to have approximately 25 to 30 volunteers that live within driving distance of the shores of Lake Superior. Volunteers would check assigned boat launches for the disinfection materials (sprayer, safety glasses, etc.).

To get involved, or if you have comments or questions, contact Jack Hartmann at [jrhartmann@msn.com](mailto:jrhartmann@msn.com) or Pearl Bonnell at [pbonnell@mlswa.org](mailto:pbonnell@mlswa.org).

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#### SHOW HOURS

Thursday	Feb. 28	2 pm - 9:30 pm
Friday	Feb. 29	2 pm - 9:30 pm
Saturday	March 1	10 am - 9 pm
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Sunday	March 30	11 am - 5 pm

#### TICKET PRICES

Adult	\$9.00
Child	
(6-14)	\$4.00
Under 5	FREE



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# NEWS FROM LAKES AROUND THE STATE

## When to lower the water level?

### **ELK-SKEGEMOG LAKES ASSOCIATION**

#### **Elk Rapids, Michigan**

*Dean Ginther, President*

By legal mandate, water level in Elk Lake (measured at the Elk Rapids Dam) is to be lowered November 1 every year by six-tenths of a foot (about 7 inches). This requirement is based on the assumption that lakeshore erosion and damage will be reduced if the water levels are lower during the winter months. Actually, this court-mandated legal requirement does not specify when the lowering should begin or when it should end; only that the process should be ongoing by November 1 of each year. Typically, if there are no significant rain events, it takes about two weeks to lower the level of Elk Lake by six-tenths of a foot. So, it is legally permissible to start lowering the lake level as late as November 1 or to start several weeks earlier. Bill and Stock Stockhausen (the ER Dam operators) have indicated they would like input from riparians regarding the best time to begin lowering the water level. So, here is the question ESLA is posing to its membership: When do you prefer that the lowering of Elk Lake begin (assuming it will take two weeks to complete)? Riparians in the area can respond via e-mail to dean.ginther@gmail.com. If a large enough sample of riparians respond, the information will be an important determinant of when the Elk Lake water level will be lowered next year and thereafter.

## Shoreline stewardship

### **CRYSTAL LAKE & WATERSHED ASSOCIATION**

#### **Beulah, Michigan**

*Bob Appleford, President*

A new program that began in summer 2007 encourages good lake stewardship through the use of buffer zones adjacent to the shoreline. The program is a collaborative effort between the CLWA and the Benzie Conservation District. The mission of the BCD is to encourage and assist people in preserving, managing and enhancing Benzie County's natural resources. The committee seeks to identify shoreline dwellers whose endeavors protect water quality and create attractive, low-maintenance lakefronts. The committee's first selection of an example of excellent watershed stewardship is the

shoreline of Dr. and Mrs. James Hamp, who created a functional and aesthetically pleasing buffer zone that includes native species (such as dune grasses with deep roots, which require little weeding and watering, no fertilizers, and no mowing). In the future, the Plant It Wild organization will partner with the Shoreline Stewardship Committee to highlight a buffer site where a variety of native plants predominate in a natural, unstructured, but beautiful, maintenance-free way. The mission of Plant It Wild is to preserve, protect and promote the natural beauty of the area and its plant communities. Committee members are available to offer advice about establishing and maintaining buffer zones.

## Increased assessment for milfoil

### **BIG BROWER LAKE IMPROVEMENT ASSOCIATION**

#### **Rockford, Michigan**

*LaRay Bonney, President*

Earlier this fall, BBLIA's Water Quality Monitor, Joe Hesse, discovered the explosion of a very large patch of Eurasian milfoil in the middle of the lake and several new, small patches in other areas around the lake. Milfoil poses a very serious threat to water quality. Left untreated, milfoil would quickly clog Big Brower Lake and render it unusable for most recreational surface uses. Hesse immediately contacted Jason Broekstra at Professional Lake Management for a consultation. After an on-site evaluation, Broekstra concluded that treatment this fall was not a good option and advised that all weed control treatments be postponed until next spring. Treating Eurasian milfoil is very expensive. The BBLIA board anticipates the amount currently collected for weed control will be insufficient to pay for the extensive treatment program that will be required to control milfoil growth over the next few years. An increase in the weed control assessment will be necessary to generate sufficient revenue to cover the cost of an expanded treatment program. Currently, \$80 per year for weed control is added to the annual tax bills of all riparian owners around Big Brower Lake. There has been no increase in the weed control assessment collected by Courtland Township since it was first implemented in the 1980s. Currently, the board is working with township offi-

cials and Professional Lake Management to determine what needs to be done to ensure that sufficient funds are available to maintain high water quality in Big Brower Lake.

## Aquatic weed problem tabled

### **LAKES PRESERVATION LEAGUE**

#### **Manitou Beach, Michigan**

The Woodstock Township board tabled action on the aquatic weed(s) problem in Devils and Round Lakes pending the outcome of the Rollin Township meeting, although it was generally agreed that since more of the lake property is in Rollin Township, that township should take the lead and the two townships would work together to deal with the problem. The Rollin Township board tabled action on the aquatic weed(s) problem, pending more information regarding signatures of those petitioning for creation of a special assessment district. Jennifer Jermalowicz-Jones of ASI Environmental Technologies, Inc., will meet with the Rollin Township board to discuss the vegetative survey of the lakes and to answer questions. Quite a few lakes in the area already have weed management programs in place, and others are considering them.

## Spring fish die-off explained

### **EAGLE LAKE BLOOMINGDALE ASSOCIATION**

#### **Bloomington, Michigan**

*Bob Wicklander, President*

ELBA president Bob Wicklander heard from the DNR regarding the spring fish die-off. The DNR tested some of the fish from the die-off in 2007. The examining pathologist concluded that the fish did not have the VHS virus and that the die-off did not result from weed control efforts. Most likely, the die-off was caused by the unusually warm spring weather. Early in the spring, while the fish were on the beds, the temperature rose into the 90s. This removed oxygen from the shallows and put the fish in stress – a natural phenomenon that happens from time to time.

## Choosing better plants

### **PENTWATER LAKE ASSOCIATION**

#### **Pentwater, Michigan**

*Jerry Saylor, President*

Scientists from The Nature Conservancy have worked with Meijer Stores to help recommend non-invasive plants that are



# NEWS FROM LAKES AROUND THE STATE

best-suited for backyards in the Midwest. Shoppers will find 16 percent of Meijer's plants, trees and shrubs with a special icon created by a Nature Conservancy volunteer indicating them as "Recommended Non-Invasive." Meijer will also remove two species from their inventory known to be invasive in parts of the Midwest – the Norway maple and Lombardy poplar. An invasive plant is one that has negative effects on our economy, environment or human health. Experts estimate that all invasive species (aquatic, plants and insects) cost Americans approximately \$137 billion annually in loss of agriculture, fisheries, forestry and infrastructure maintenance. Some of the worst invasive plants are purple loosestrife and garlic mustard, which were first introduced as garden plants and now have taken over much of the landscape. The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. For more information, visit [www.nature.org/michigan](http://www.nature.org/michigan).

– Reprinted from a news release of The Nature Conservancy, spring 2007

## **Walleye fish stocking update**

### **PJC LAKES ASSOCIATION**

#### **Edwardsburg, Michigan**

*Clint Draeger, President*

After three consecutive years of stocking 5-inch to 9-inch walleyes, we decided to skip the stocking this past year to try to determine the program's success. Over the past three years, we stocked the lakes with a total of 5,500 walleyes. This year, we had reports of some 21-inch walleyes being caught, including a 19-inch in front of my pier. This shows the growth rate over this time has been very good. We continue to ask fishermen to release any walleyes they catch so they can continue to grow to their natural size of 25-30 inches. Although the DNR doubts that they will reproduce, we are hoping that they are wrong. We have had one report this past summer of a six-inch being caught, which could be an indication that they are breeding. We will need to know if members are interested in continuing and supporting the walleye stocking program. The price has increased substantially (around \$2 each). – by Jerry Marchetti

## **Monitoring lake water levels**

### **LAKE MARGRETHE PROPERTY OWNERS ASSOCIATION**

#### **Grayling, Michigan**

*Joe Porter, President*

Because maintenance of appropriate lake levels is related to the environmental health and quality of our lake, the Crawford County Circuit Court established summer and winter lake levels on Oct. 5, 1973. LMPOA ultimately assumed responsibility for monitoring and adjusting lake levels. Lake levels can only be adjusted and controlled at the Portage Creek Dam in the months of May through October, when boards are either raised or lowered to attain court-ordered levels. November through April, lake levels are dependent upon rainfall, snowfall, and underground springs since all dam boards have been raised and flow of water through Portage Creek to the Manistee River is not restricted at the dam. In summer months, when lake surface water is below the appropriate levels and all dam boards are in place, there is nothing the LMPOA can do to improve the situation. Even though this may be inconvenient for the operation of watercraft, there is no environmental damage being done to the lake and its shoreline area. Environmental problems, specifically significant land erosion, occur when water levels in the lake are higher than the legal levels. In the past five years, the ability of Portage Creek and the Portage Creek Dam to eliminate high lake water levels has been substantially reduced. During these high water periods, primarily in late fall and early spring, significant beachfront erosion occurs when high winds pound windward shorelines. Many current residents state that they have lost between 10 to 20 feet of shoreline due to erosion during high water. The natural response is to install costly seawalls to halt further loss of shoreline. The problem is that from an environmental standpoint, the installation of more seawalls is also detrimental. The solution is to carefully monitor and maintain court-ordered lake levels, but in order to do this, we must resolve the problems encountered on Portage Creek and at the Portage Creek Dam. For these reasons, the LMPOA has hired the Northwest Design Group to research our problem and to make recommendations for the future well-being of Lake Margrethe and its residents. – Chuck Spencer reporting

## **Cost study for a sewer system**

### **DERBY LAKE PROPERTY OWNERS ASSOCIATION**

#### **Stanton, Michigan**

*Ed Housler, President*

I would like to thank all of you you attended the Sidney Township meeting and supported our request for the township to update the cost study for a sewer system for Derby and Nevins lakes. Since the meeting, Don Cooper and I have met with Jean Inman of the Spicer Group and staff members from Montcalm Community College, who expressed their willingness to partner with the lakes to create a system that will be beneficial for all parties. We were given a tour of MCC's current waste treatment system, which allowed us to get more of a feel for the renovation and upgrades needed to satisfy the expansion requirements. We will be meeting again with the MCC staff and the Spicer Group engineer to review her evaluation. – Dan Lower, Sewer Committee Chair

## **Marina case appealed**

### **HIGGINS LAKE PROPERTY OWNERS' ASSOCIATION**

#### **Roscommon, Michigan**

*Pat Springstead, President*

In Lyon Township, eight families purchased a 25-foot lakefront lot for the purpose of maintaining a marina. At various times, the Sunseekers group maintained a dock of almost 200-feet in length with eight mooring sites. Sunseekers was advised repeatedly they were operating a marina illegally; Sunseekers refused to cease and desist their operation. HLPOA and an adjoining riparian owner brought suit, arguing that the Sunseekers activity was a nuisance because it violated state law (operating a marina without a DEQ operating permit) and because it violated the Lyon Township zoning ordinance. The case was presented at trial in the Roscommon County Circuit Court, with Judge Michael J. Baumgartner ruling in favor of the HLPOA position on all counts. Sunseekers members were ordered to stop their illegal activities. The Sunseekers decision has been reversed by the Court of Appeals, which ruled that HLPOA did not show sufficient harm to its membership to warrant nuisance abatement. The case is now on appeal to the Michigan Supreme Court.

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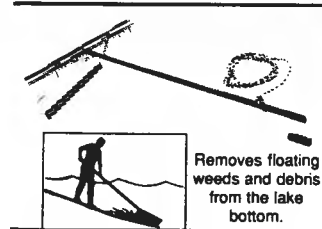


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*"Attorney Writes" continued from page 14*

Quite often, the property owner will use the services of a wetlands consultant or expert (many of whom formerly worked for the DEQ or other regulatory agencies). Normally, the DEQ will send notice of the application and request to the local governmental unit, the county, the DNR, the county drain commissioner, various other governmental entities, and all adjacent property owners. Those persons and entities typically will have 20 days to comment or file an objection regarding the wetlands application with the DEQ.

Anyone who receives such a notice also has the right to file (within 20 days) a request for a public hearing with the DEQ. One frustrating aspect of the process is when the DEQ may initially deny an application after a public hearing, but later grants a permit when the applicant modifies the application - without the DEQ providing additional notice to area property owners or the governmental unit involved.

DEQ permits can take a variety of forms. Some permits allow the filling and destruction of an entire wetlands. However, those permits will often involve "remediation" elsewhere, which requires the applicant to create new artificial wetlands in some other area. This mitigation process has been severely criticized as many experts believe artificially created wetlands are not as good and do not last as long as natural wetlands. Sometimes, the DEQ will allow a partial filling of wetlands (a smaller area) but will not approve the original application which would destroy an entire wetlands.



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Milfoil weevil,  
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