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# THE MICHIGAN RIPARIAN

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RIPARIAN (ri-'pair-ee-en) 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.

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## MICHIGAN'S *Winter Beauty*

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See page 4.



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## FROM THE PUBLISHER



We hope the year 2012 brought you health, happiness, and prosperity and that the year 2013 continues to bring you and your family the same. We are excited about this issue of The Michigan Riparian and the plans we have in store for future issues.

One of The Michigan Riparian's goals is to provide you with current news events, court decisions and information about the challenges facing lake and stream property owners. This issue is no exception. Our cover story is about restored beauty, ecological balance and extraordinary cooperation between key players with a shared commitment to preserving, protecting and restoring Michigan's threatened natural resources, specifically its streams and waterways. Good people got involved and good things happened.

If you are looking to get more actively involved in lake and stream stewardship, mark your calendar for several events planned for the coming year. The Cottage and Lakefront Living Show is set for February 21-24 in Novi and March 15-17 in Grand Rapids (see pages 31-32). The Lake and Stream Leaders Institute is looking for more than a few good people—its first training session is scheduled for May 17-18, with follow up sessions in July and October (see "2013 Lake and Stream Leaders Institute" on pages 10 & 12 for more details). And you won't want to miss Michigan Lake and Stream Associations' 52nd Annual Conference on April 26th and 27th in Bay City (see page 18). The conference is a treasure trove of opportunities for learning more about preserving and protecting Michigan's inland waters.

That's what The Michigan Riparian is all about—providing articles that are relevant and of interest to you. In addition to our cover story, you'll find extensive information about plats and how they are developed; urban lake management; a comprehensive lake improvement program; and important information about the Michigan public road ends laws.

Adding just the right flavor to the mix of scientific, legislative and environmental articles are the Lake Happenings and Love My Lake features. Keep sending us your questions, pictures, stories and information to share with our readers. Your personal contributions are an important part of our magazine. Happy New Year!

*-publisher, Sharon Wagner*

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Manton Millpond Dam



Manton Millpond Dam After

## Trout Spotted Swimming Freely in Manton Creek

Submitted by the Conservation Resource Alliance

One day after the Manton Millpond Dam was removed, a brook trout was observed swimming upstream in the newly formed channel of Manton Creek. After darting from boulder to boulder, taking a break here and there, it made it through the rushing rapids and under an old stump for some cold water refuge. Aquatic organisms are now able to migrate through a part of Manton Creek that has been completely disconnected for nearly 100 years. A project with many challenging elements has taken over 20 years to come to terms. Manton residents voiced concern to retain the pond for present and future recreational use, state and federal agency partners wanted to see ecological processes restored to the stream, and Conservation Resource Alliance's (CRA), the project coordinator, goal was to help facilitate a quality project and find common ground for the residents of Manton, agency partners, and for the good of the natural resource, Manton Creek.

Manton Creek, also known as Cedar Creek, is an important cold water tributary to the Manistee River. A historical 1886 article from the Manton Tribune noted ample fishing opportunity for brook trout and grayling (extirpated in Michigan) in the streams near Manton. In 2000, research conducted by J.L. Lessard evaluated the effects of Lake Billings Dam and Manton Millpond Dam on water temperature. The study found that the dams of Manton Creek had more impact on water temperatures than any other dams she studied. The study also found that brook trout were very abundant above the dams and virtually nonexistent below the dams.

Since 1986, the dam had failed multiple MDEQ Dam Safety Unit inspections resulting in listing the dam in extremely poor condition. Multiple reports from MDEQ recommended the city to remove, repair, or replace the dam. The City of Manton had to make a decision. After considerable public process,

it was decided that the dam would be removed while still having the opportunity to retain a smaller pond disconnected from Manton Creek. Starting in the summer of 2010, a small crew from Kanouse Outdoor Restoration (KOR) began the impoundment drawdown. With assistance from MDNR heavy equipment crew, KOR was back in action in 2011, removing the remaining portion of the dam and spillways and restoring the channel through the old impoundment. An attractive timber foot bridge replaced an old steel structure in 2012 to provide a safe crossing of the stream at the old dam site.

What's next for Manton Millpond Park? CRA will continue to monitor the project and make adjustments if needed. The city is seeking funds to dredge the existing pond. Having a pond aside the cold water trout stream will give the community the opportunity to fish cool water and cold water species of fish within feet of each other. Although not always easy, this truly is a project that the community can be proud of with positive benefits for both the resource and people.

*The Conservation Resource Alliance (CRA) coordinates sensible conservation initiatives designed to maintain the aesthetic and economic vitality of northern Michigan's natural resources and communities. This 501(c)(3) non-profit organization implements and manages systematic, proactive programs by partnering with interest groups, individuals, landowners, businesses, developers, foundations, and governmental agencies that share a commitment to make Michigan a better place to live, work, and play. CRA's goal is to make the most significant impact possible on the highest priority problems throughout the thirteen counties of northwest Michigan. Success in reaching these goals is best defined through the protection, preservation and restoration of threatened natural resources so that they may be enjoyed by future generations.*

*Find out more about CRA at [www.rivercare.org](http://www.rivercare.org).*





*Brown Bridge Dam*



*Brown Bridge Dam Removed Dec 2012*

## Restoration is a Key Component of Brown Bridge Dam Removal Process

Submitted by the Boardman Dams Implementation Team

With deconstruction of the first of three dams slated for removal on the Boardman River wrapping up, a historic accomplishment for the Boardman River and for Michigan is unfolding. The Boardman River Dams Project (BRDP) is the largest dam removal initiative in the state's history and one of the largest in the nation. Brown Bridge Dam is at the vanguard of this effort.

When the work at Brown Bridge is completed, 1.5 miles of river will be restored and 145 miles of high-quality river habitat will be reconnected. The project will also restore 150 acres of upland and wetland as well as riparian forest habitat contiguous to the Boardman River. Restoration of the river and its adjacent environs is at the heart of the BRDP. The project is as much an ecosystem restoration project as it is a dam removal project. The community and the project partners place the highest value on the fisheries, wildlife habitat and recreational qualities inherent in the Boardman River, and the project design is based on this principle.

As the project moved into the construction phase, management of sediment was a top priority. This included relocating the many thousands of tons of sediment that have accumulated in the impoundment and within the original channel area since the dam was built in 1921. The project team has done extensive survey work to understand the pre-dam river channel location. As much as ten feet of sediment covered this historic streambed. The project has guided the river

into its original channel by removing the sediment and placing it in spoil areas on site above the 100-year flood plain, as directed by the Michigan Department of Environmental Quality. Throughout this process, measures such as sediment traps are being employed to prevent as much sediment as possible from moving downstream, but project engineers acknowledge that some sediment released downstream results during this level of interaction with the stream.

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**Brown Bridge is completed, 1.5 miles of river will be restored and 145 miles of high-quality river habitat will be reconnected**

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In concert with the dredging, contractors established a 40 foot-wide floodplain that roughly parallels the re-established river channel. Strategic installation of large woody debris for bank stabilization and also for creation of habitat features associated with a healthy, productive trout stream is also taking place during this phase. The BRDP is a collaborative effort of historic proportion with numerous public and private partners providing generous financial support to make this aspect of the restoration package possible.

*(Continued on page 7)*



# A NEW BOOK FROM THE MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.

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AUTHORED BY GRAND RAPIDS ATTORNEY  
CLIFFORD H. BLOOM

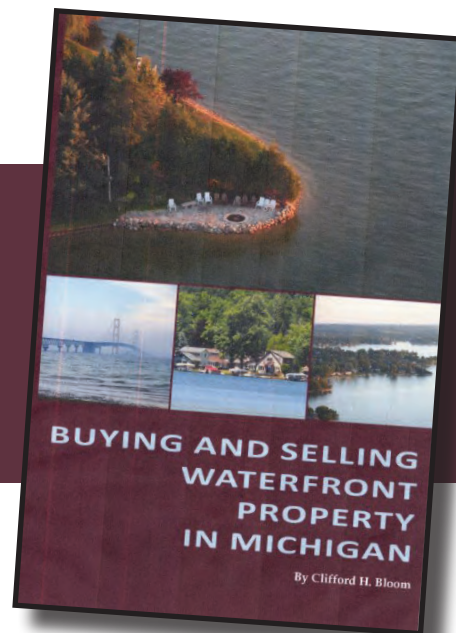
The Michigan Lake & Stream Associations, Inc. ("ML&SA") is pleased to announce its new book entitled *Buying and Selling Waterfront Property in Michigan* by Grand Rapids Attorney Clifford H. Bloom. This is the second book from ML&SA, the first being the 2009 book called *Michigan Lake Associations—The Nuts and Bolts* (also authored by Cliff Bloom).

This new book is a "must" for anyone who is interested in waterfront property in Michigan. The list of people who should purchase the book includes not only riparians (and would be riparians) but also realtors and real estate agents, attorneys, government officials, surveyors and teachers. This book is a "how to" publication that deals with numerous real estate and waterfront issues, including:

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The purchase/sales agreement  
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The purchase price is \$20.00 plus postage. Bulk rates are available. The following is an order form that you can use to purchase one or more copies of the new book. If you are interested in obtaining pricing for group or bulk purchase



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Everyone at ML&SA is excited about *Buying and Selling Waterfront Property in Michigan*. The book will also make a good birthday, graduation, holiday or other event gift to anyone who is interested in waterfront issues in Michigan.

To order *Buying and Selling Waterfront Property in Michigan*, please complete and mail the order form with payment to:

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# Restoration is a Key Component of Brown Bridge Dam Removal Process

(Continued from page 5)

Another priority established by the Implementation Team (IT) is re-vegetation of exposed bottomlands and healing of construction areas. Grand Traverse Conservation District staff and volunteers collected native plant seeds to help re-vegetate exposed bottomlands and worked to help prevent the spread of invasive species by directing the public to designated trails and viewing areas. These efforts are part of an extensive bottomlands management plan that involves both active and natural regeneration of plant species. Working with state universities, The Grand Traverse Band of Ottawa and Chippewa Indian's Traditional Ecological Knowledge (TEK) resources and other plant experts, the project team is taking a research-based approach to re-vegetation. This research will inform a planting plan based on downstream reference areas related to riparian plant density and diversity. Additionally, a plant rescue program was implemented in construction areas and bottomlands.

Like any major remodeling project, it will take time to see the end results of dam removal and restoration of the river and bottomlands. The public will need to exercise patience. The reward for that patience will be the resilience that will be reinstated to a fully restored river system. The restoration efforts now underway on the Boardman will in time unveil a natural, free-flowing coldwater stream at a level of quality and beauty not seen since pre-European settlement. It's exciting to think about, and historic indeed.

The Conservation Resource Alliance (CRA) coordinates sensible conservation initiatives designed to maintain the aesthetic and economic vitality of northern

Michigan's natural resources and communities. This 501(c)(3) non-profit organization implements and manages systematic, proactive programs by partnering with interest groups, individuals, landowners, businesses, developers, foundations, and governmental agencies that share a commitment to make Michigan a better place to live, work, and play. CRA's goal is to make the most significant impact possible on the highest priority problems throughout the thirteen counties of northwest Michigan. Success in reaching these goals is best defined through the protection, preservation and restoration of threatened natural resources so that they may be enjoyed by future generations.

*In 2009, CRA was hired by the Boardman River Dams Implementation Team, a body of 8 agencies authorized in a Settlement Agreement to oversee removal of the dams. The IT makes decisions, and CRA provides a point of contact for the engineering/contractor teams, fundraising assistance, fiscal management of certain funds, and support for communications and meetings. According to Amy Beyer, CRA's Director, "Our main job is to help the team stay informed and focused on common goals, make sure the funding goes through to the resource in the way it is intended, and to keep the records and books in order. This is a group of dedicated and top-notch professionals essentially on volunteer duty to the project, and we are very appreciative of their collective IQ – the Boardman River deserves nothing less."*

Find out more about CRA at [www.rivercare.org](http://www.rivercare.org) and follow the Boardman Dams Project at: [www.theboardman.org](http://www.theboardman.org).



Water flows around the Brown Bridge Dam de-watering structure on the Boardman River



The Brown Bridge Dam is the largest dam removal in Michigan's history



Brown Bridge Pond Powerhouse Demolition 8-24-2012



Boardman River location



# NEW LIMITATIONS ON PRESCRIPTIVE EASEMENT CLAIMS AT PRIVATE ROAD ENDS AND SIMILAR LAKE ACCESS SITES

By Clifford H. Bloom, Esq.

*Bloom Sluggett Morgan, PC*

Grand Rapids, Michigan

In Michigan, a prescriptive easement claim can be made where one has used the property of another for more than 15 years continuously and without permission. At the lakefront, there are typically two different types of prescriptive easement claims. First, backlot or off-lake property owners sometimes claim permanent prescriptive easement rights for dockage, boat moorage, lounging, sunbathing, and other lakefront uses across the lakefront property of another where no easement exists whatsoever for the benefit of the backlot property owners. The second type of prescriptive easement claim involves a lake access site created by plat dedication for the benefit of all lot owners within the plat. Many plats dedicate private road ends, parks, walkways, alleys and similar ways adjoining lakes to the use of all lot owners within the plat. In most such instances, the courts have held that dockage and permanent or overnight boat mooring are not allowed on those dedicated properties, and, with the exception of platted parks, non-travel activities, such as lounging, sunbathing, and picnicking are also generally not allowed. Where a backlot property owner has used one of those dedicated common properties beyond the uses allowed (for example, for dockage or boat moorage), they sometimes claim prescriptive easement rights to continue the prohibited uses and activities just as they have in the past for more than 15 years or longer.

This article discusses the second type of prescriptive easement – attempts by backlot owners to expand usage rights for existing lakefront platted common areas or easements.

Recently, the Michigan Court of Appeals has issued opinions in two different cases that indicate off-lake or backlot property owners cannot obtain prescriptive easement rights to engage in uses otherwise not allowed on plat-dedicated and created common areas at the waterfront. On November 20, 2012, the Court of Appeals issued its opinion in *O'Brien v Hicks* (unpublished decision by the Michigan Court of Appeals; Case No. 307332). The plat at issue created various parkways (scenic roads that run to Otsego Lake) that were dedicated to the public. The roads were ultimately determined to be private (only for use by lot owners within the plat) since they were never properly accepted by any governmental unit. Backlot owners used two of the roads for dockage and boat moorage continuously for over 15 years. The Court of Appeals agreed with the trial court that the roads as originally dedicated could not be utilized for dockage, boat moorage, lounging, sunbathing, and similar non-travel activities. However, the Court of Appeals reversed the trial court's decision that the backlot owners could continue to utilize the road ends at the lake for uses such as dockage and boat moorage based on a prescriptive easement. The Court of Appeals stated:

Here, the trial court accepted defendants' claim of a prescriptive easement on the basis that a prescriptive easement had arisen through defendants' historical use of parkway 6-7. A prescriptive easement arises in a manner similar to adverse possession, when there is "use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Higgins Lake Prop Owners Ass'n*, 255 Mich App at 118. We conclude that there is no basis for the establishment of a prescriptive easement because of the absence of the element of adversity. The backlot owners clearly had some right to use parkway 6-7, just not as extensive a use as they believed. Hostile or adverse use cannot be established if the use is permissive, regardless of the length of the use. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Here, a prescriptive easement could not have arisen because defendants and other lot owners used parkway 6-7 for an extended time period openly and without any dispute arising. The use of parkway 6-7 was a permissive and accepted use and cannot be deemed to be hostile. One may not acquire a prescriptive easement to property already subject to an easement for the benefit of an entire subdivision



and created through a private dedication simply because an owner “overuses” the easement. See *Banacki v Howe* (unpublished per curiam opinion, docket No. 302778, rel’d March 20, 2012). Slip opinion at p. 5.

The second relevant Michigan Court of Appeals decision is *Banacki v Howe* (unpublished opinion dated March 20, 2012; Case No. 302778; 2012 WL 943019). In this case, two “courts” ran to the water’s edge and were dedicated to the use of certain lot owners within the plat. The Court of Appeals indicated that a “court” is a short street. The Court of Appeals agreed with the trial court that the backlot owners did not have a right to utilize either of the two short road ends for dockage, boat moorage, sunbathing, lounging or similar uses or activities. Defendants asserted that they had a prescriptive easement to use one of the courts for dockage and boat moorage as they and their predecessors in title had done for 65 years. Both the trial court and the Court of Appeals held that no prescriptive easement could arise based on any “overuse” or misuse of the road end easement:

Defendants contend that even if the dedication itself did not give them the right to use East Court as if they were riparian owners, they have acquired such rights through a prescriptive easement. A prescriptive easement is typically established where an express easement has failed because of a defect and was treated as though it had been properly established. *Plymouth Canton Comm Crier, Inc v. Prose*, 242 Mich App 676, 684-685; 619 NW2d 725 (2000). In addition, a prescriptive easement is also found to arise in a manner similar to adverse possession, when there is “use of another’s property that is open, notorious, adverse, and continuous for a period of fifteen years.” *Higgins Lake Prop Owners Ass’n*, 255 Mich App at 118. In this case, the trial court properly rejected defendants’ claim of a prescriptive easement on the basis that a prescriptive easement cannot arise with respect to property already subject to an easement for the benefit of an entire subdivision that was created through a

private dedication simply because a lot owner “overuses” the easement. There is no basis for the establishment of a prescriptive easement because of the absence of the element of adversity. Hostile or adverse use cannot be established if the use is permissive, regardless of the length of the use. *West Michigan Dock & Market Corp v. Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Because defendants and other lot owners used East Court for an extended time period openly and without any dispute arising, this permissive and accepted use of the subject property was not adverse or hostile and, therefore, a prescriptive easement could not arise. Slip opinion at p. 4.

Based upon these two recent appellate court decisions, off-lake lot owners may not be able to expand their usage right (particularly for dockage and boat moorage) as to non-public road ends, easements, and parks at lakes via a claim of a prescriptive easement.

## WE MOVED! SAME TOWN, DIFFERENT OFFICE BUILDING

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*Working up the field data from Augusta Creek (Credit: J. Latimore)*

## APPLY NOW FOR THE 2013 LAKE AND STREAM LEADERS INSTITUTE!

What is the key to protecting Michigan's lakes and streams? People! People who are ready to step up in their communities and within their organizations as volunteers, community leaders, professionals, or who are just interested in protecting their lake or stream can make a difference. If this sounds like you, consider applying for the Michigan Lake and Stream Leaders Institute of 2013!

To be effective, aspiring lake and stream leaders need to be familiar with current aquatic science and management options and have the leadership skills necessary to work through sometimes challenging issues with a variety of interested stakeholder groups.

That is the idea behind Michigan's Lake and Stream Leaders Institute. Since 2002, the Institute has developed local water resource leaders who promote lake, stream, and watershed management through partnerships between local communities and natural resource agencies, and encourage their neighbors and colleagues to take part in good resource management. Participants learn about the ecology of lakes and streams, develop strong leadership skills, and gain an understanding of the institutions and legal frameworks that guide

lake and stream protection and management in Michigan.

The Institute itself is a partnership program developed and run by Michigan State University Extension, Michigan Lake and Stream Associations, Inc., and the MSU Department of Fisheries and Wildlife with financial support from the Paul H. Young Chapter of Trout Unlimited.

Past participants have included natural resource agency staff, lake association and non-profit organization leaders, drain commissioners, educators, and interested citizens. Today, nearly 100 Institute Alumni are found across Michigan and are leaders of lake associations; work within state and local natural resource agencies; serve on planning commissions; monitor stream and lake quality, and more.

The Institute employs a combination of classroom activities, field experiences, and independent work. Instructors are leaders and experts in their fields including university faculty, extension educators, state and local agency professionals, leaders from non-profit organizations, and Institute Alumni. Participants attend Institute sessions, complete homework assignments, and conduct an applied

project which is shared with their peers and Institute Alumni during a Poster Symposium on Graduation day. After graduation, participants can become engaged in an Institute Alumni Program that promotes communication, continued learning possibilities and opportunities for service.



*Participants present their independent projects to their peers. (Credit: C. Kosloski)*



*Classroom sessions are very interactive. (Credit: J. Latimore)*

*(Continued on page 12)*



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FRIEND AND COLLEAGUE

*Gary Crawford*

PASSES AWAY



by Scott Brown, ML&SA Executive Director

The Michigan inland lakes management and conservation communities have lost a generous and personable friend. Michigan Lake and Stream Associations mourns the loss of Gary Crawford who passed away on October 30, 2012 after a brief battle with cancer. Gary held a Master of Science degree in aquatic biology and worked throughout Michigan as an inland lakes management consultant with Environmental Consulting and Technologies, Inc. of Ann Arbor. Gary's love for his family, profession and Michigan's inland lakes were an inspiration to all who knew him.

Gary was married to Janine Barker Crawford and they have three children, Joshua, Benjamin and Charis. Gary was a Worship Pastor at Christian Love Fellowship Ministries International in Ypsilanti, Michigan. He was a gifted worship leader, teacher, mentor, singer and songwriter for many popular gospel groups.

Gary authored and co-authored several widely-circulated articles focused on inland lake management issues and was directly involved in dozens of inland lake management projects in Michigan. Always happy to devote his personal time to educating lakefront property owners about the importance of individual stewardship, Gary was a speaker at the 51st Annual Conference at Boyne Mountain in April, 2012 and at the Michigan Chapter, North American Lake Management Society's annual conference in September, 2011.

The entire Michigan Lake and Stream Associations extended family offers heartfelt condolences to Gary's family, friends and colleagues.



# 2013 LAKE AND STREAM LEADERS INSTITUTE!

(Continued from page 10)

Make plans now to take part in the Class of 2013! The first session will take place May 17-18 at the Michigan DNR's Ralph A. MacMullan (RAM) Conference Center on Higgins Lake. The second session will be held July 26-27 at Kellogg Biological Center (KBS) near Kalamazoo, and will include ample time for hands-on lake and stream field activities. The final one-day session, including the Poster Symposium and Graduation, will take place in October in the Lansing area. The application deadline is March 30, 2013. Tuition for the 2013 Institute is \$375, and includes all instruction, materials, meals, and overnight lodging at the RAM Center and KBS. Limited scholarships may be available.

After graduation, Institute Alumni can keep in touch with

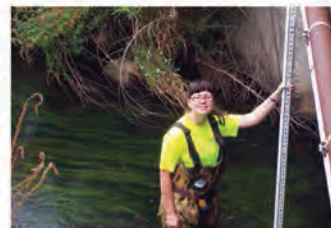
fellow Institute graduates through participation in annual Alumni Events. These diverse events offer Alumni a chance to keep up on developments in water resource science and management, partake in new field experiences, and stay connected to their fellow Alumni.

For application forms and more information about the 2013 Institute, visit the website: [http://msue.anr.msu.edu/programs/michigan\\_lake\\_and\\_stream\\_leaders\\_institute](http://msue.anr.msu.edu/programs/michigan_lake_and_stream_leaders_institute), or contact the Institute Coordinator, Dr. Jo Latimore at MSU (latimor1@msu.edu or call 517-432-1491).



Collecting aquatic macroinvertebrates from Augusta Creek (Credit: J. Herbert)

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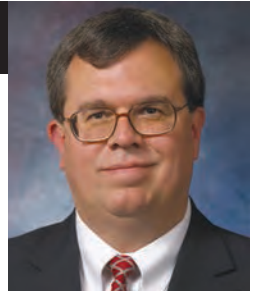
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# Everything You Always Wanted to Know About . . . **Plats!**

By Clifford H. Bloom, Esq.  
*Bloom Sluggett Morgan, PC*  
Grand Rapids, Michigan 49503



What is a plat? A plat is a type of real estate development or subdivision. Why should riparian property owners care about plats? Because most lakefront and lake area properties in Michigan are located within plats.

There are three ways to develop or divide up land in Michigan: simple land divisions (sometimes referred to as unplatted or “metes and bounds” land divisions), plats, and site condominiums. The easiest way to split a property to create two or more separate parcels is by means of a simple land division. Land divisions are governed by Sections 1, 8 and 9 of the Michigan Land Division Act (“LDA”), MCL 560.101 et seq. Generally, a simple land division involves a two-step process. First, a landowner must have a survey done to create the legal descriptions and have the field work done for the proposed new parcels. Second, the proposed land division and all resulting parcels and access easements, if any, must be approved by the local governmental unit where the property is located (i.e., a city, township or village). Prior to approving a land division, the municipality will check to make sure that all resulting parcels comply with the municipality’s zoning ordinance, as well as any other applicable ordinances (for example, the municipality’s land division ordinance, if any, and any ordinance provisions regarding private roads or access easements, utility easements or build ability). Given the limits

on the number of parcels that can lawfully be created by simple land divisions, this process is usually not well-suited for larger developments.

Until the 1980s, most larger developments or subdivisions in Michigan were developed via the platting process. Even as it exists yet today, the platting process is a fairly time-consuming, confusing, and expensive governmental review and approval process for development. Once a plat is approved, it essentially has the “seal of approval” for the development due to the extensive reviews and approvals by state, county, and local government officials and bodies.

The plat itself is typically a fairly large document (often, the size of a blueprint), which has an extensive surveyed map, together with legal descriptions, a dedication, and approval signatures by governmental authorities. The plat map is almost always quite detailed and shows various items such as the lots created, streets or roads, drainage areas, natural features such as lakes, rivers, streams, and wetlands, parks, walks, and other amenities. The plat itself can be anywhere from one to half a dozen pages or more in size, and must be recorded with the Register of Deeds office in the county where the property is located. Once a plat has been approved and recorded, it is the set blueprint for the development involved. In most cases, the plat cannot be fully approved and recorded unless it has been approved

by the local municipality where the property is located, the county drain commissioner, the county road commission (if any public roads are created), one or more state agencies, and the local health department.

Beginning in the 1980s, developers started using a new technique to develop or subdivide land called a “site condominium.” The Michigan Condominium Act (“Condominium Act”), MCL 559.101 et seq., had been used prior to the mid-1980s for conventional condominiums; that is, for high rises, duplexes, and multi-family condominium buildings. Given the increased costs and delays involved in the platting system, innovative developers discovered that the Condominium Act could be used to create conventional single-family residential subdivisions, so long as they have some common areas (such as a private road or private parks). Eventually, the Michigan Attorney General confirmed that the Condominium Act can be used to develop what appear to be conventional housing subdivisions. Hence, the “site condominium” was created.

A site condominium usually closely resembles a plat and a plat map. However, instead of having individual lots, purchasers obtain a “unit.” While some plats have deed restrictions that create property owners’ associations for the plat involved, all site condominiums

*(Continued on page 15)*

# Michigan Waterfront Alliance

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☐ I am not ready to join yet. Please send me more information.



### MICHIGAN WATERFRONT ALLIANCE

P.O. Box 369

Fenton, Michigan 48430-0369

Dear MWA Members,

This past year for the Michigan Waterfront Alliance has been rewarding, yet frustrating.

The MWA was successful in helping pass legislation prohibiting overnight and seasonal mooring of watercraft at public roads that end at Michigan's inland lakes and streams.

Because of this success, the MWA Board of Directors was confident that our membership would substantially increase-not only from individual riparians, but also from lake and stream associations. The membership, either by riparians or lake associations, has not increased.

The same result happened when the MWA was successful in helping to get the Lake Charlevoix Appeals Court decision

overturned by the Michigan Supreme Court. Had that decision not been overturned, all of Michigan's riparians, who had a public road running parallel to the water in front of their property, would have lost their riparian rights. Still...MWA has had no appreciable increase in membership.

There must be a general misunderstanding that if you belong to the Michigan Lake and Stream Associations, you belong to the MWA. This is not the case! Please let your non-MWA member friends know that the Michigan Lake and Stream Associations is a 501(C)3 tax deductible non-profit organization and is limited in the amount of lobbying it can do. The Michigan Waterfront Alliance is a 501 (C)4 non-profit corporation, and

contributions to the MWA are not tax deductible. This is because the MWA is not limited on how much money and effort it can spend on lobbying.

We are very grateful to the current MWA individual and association members. Our association membership should be in the thousands. It is just a little over 200. If you are not a member, please join.

In other news, the MWA Board of Directors has decided to change lobbying firms. We want to thank Scofes and Associates for their past representation. We look forward to working with our new lobbying firm, Karoub Associates.

Sincerely,  
Bob Frye, MWA President



# Everything You Always Wanted to Know About . . . Plats

(Continued from page 13)

must have extensive deed restrictions and a condominium association. All purchasers of units in a site condominium must belong to the condominium association, which effectively acts like another layer of government. If a prospective property purchaser does not like rules and regulations or being governed by a property owners' association, that person should not buy a site condominium!

In general, site condominiums are cheaper to develop and can have the government review and approval process completed much more quickly than plats. Hence, almost all residential developments or subdivisions of any size that have been developed during the past few decades in Michigan have been site condominium projects.

How can someone tell if the property they own or are purchasing is a platted lot, site condominium, or metes and bounds parcel? Platted lots are typically legally described by numbers. For instance, if a property is described as "Lot 1 of Acme Hills," almost certainly a platted lot is involved. Properties in a site condominium are described as units. For example, if one purchases "Unit 5 in the Pine Hill Condominium," the property being purchased is a site condominium unit. Finally, parcels created by simple land divisions

typically involve convoluted legal descriptions (called "metes and bounds") which are often confusing to lay people; for example, "Commencing at the Northeast corner of Section 1; thence South 05 degrees, 28 minutes, 38 seconds East 125.23 feet to the point of beginning; thence ...".

There are many common myths involving plats. Given that platted lots (as well as any parks, roads, and other items created via the plat) have gone through extensive governmental approvals, platted lots and other portions of a plat cannot be altered, extinguished or varied willy-nilly. For example, platted lots cannot be split, divided or have a boundary line altered unless an expensive replat (which requires extensive surveying and the approval of multiple layers of government) is done or the lot alteration is expressly approved by the local governmental unit (but only if that governmental unit has an ordinance in place for dealing with such matters). See MCL 560.263. Although landowners throughout Michigan commonly split or change the boundaries of platted lots without any local governmental approvals, it is, in fact, illegal.

In order to vacate/abandon or alter a platted road, park, alley or walkway, the property owner seeking such a plat alteration must file and pursue an expensive plat vacation lawsuit in circuit court pursuant to MCL 560.221 et seq. Pursuant to such a lawsuit, many property owners in

the plat must be joined as defendants (together with several governmental units). Such lawsuits can be complex, expensive, and time-consuming. Furthermore, in the end, whether to grant the requested vacation/abandonment or alteration is within the discretion of the circuit court judge. One myth is that the local unit of government can simply issue a quit-claim deed to the adjoining property owner to vacate or abandon a dedicated platted road, park, walk or alley. That is simply not true and any such purported "vacation by quit-claim deed" would be void without formal circuit court action.

What is a plat dedication? Plat dedications are language typically printed on the map of a plat (together with dedicated areas shown on the map), and it is a process whereby the creators of a plat, often referred to as the platters, proprietors or developers, formally create permanent road rights-of-way (including streets, alleys, drives, and boulevards), parks, beaches or walkways. The dedication can be either public (for example, to a local road commission or members of the public) or private—that is, for use only by the lot owners within the plat. Once a plat with a dedication has been recorded and even one lot has been sold to a third party, the dedication and all items created by the dedication as shown on the plat becomes permanent. Accordingly, no dedicated road, park, walk or other dedicated item in a plat can be vacated, altered or changed absent a successful circuit court vacation lawsuit.

Can a dedicated road, park, alley or walk be abandoned due to nonuse,



(Continued on page 17)



# ASK THE EXPERTS

*If you have a question about water related issues, riparian rights, and/or lakes and streams, etc., let us know by email or snail mail.*

Email: [info@mi-riparian.org](mailto:info@mi-riparian.org)  
Mail: The Michigan Riparian  
300 N. State St., Suite A,  
Stanton, MI 48888

**Question:** If an off-lake property owner is improperly keeping a dock and moored boat at a road end or easement at a lake, what must be done legally to stop them? Can we call the police or must a lawsuit occur? Ron

**Answer:** Ron, it depends upon the type of road end or easement involved. If a public road end is involved, new legislation (MCL 324.30111b) makes it a criminal misdemeanor for a private individual to maintain a dock or any overnight boat mooring at a public road end that is open for use by the public. In that situation, a complaint can be made with the local police department, county sheriff or state police. However, if a private road end, easement, walkway, alley or park is involved, the police normally will not become involved as it would be a private civil matter. In those cases, adjoining or nearby riparians normally must file a civil lawsuit to remedy the situation. In some cases, the local municipality's zoning regulations or other ordinances might apply. If that is the case, the municipality can typically utilize tickets to enforce its ordinances.


Clifford H. Bloom, Esq.  
Bloom Sluggett Morgan, PC  
Grand Rapids, Michigan

\* \* \* \* \*


Our experts include our riparian attorney, a biologist, a limnologist, an engineer, a college professor and a state agency official. They look forward to responding to your question.

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# Everything You Always Wanted to Know About . . . Plats

(Continued from page 15)

blockage by adjoining plated lot owners or the simple passage of time? Generally speaking, no. There are many so called “ghost roads” or “paper plat roads” in old plats throughout Michigan that have not been used or developed for 50 or 100 years, or ever. The same is true with regard to plated parks and walkways in plats. However, absent unusual circumstances, those dedicated ways or items still exist and could be opened up or used at any time, to the consternation of adjoining or nearby plated lot owners.

Until the mid-1990s, it was fairly easy to convince circuit court judges to vacate dedicated plated road ends at lakes. However, legislation that became effective in 1996 makes it virtually impossible to have a

circuit court vacate a dedicated plated public road end (or the equivalent) at a lake, river or stream. State officials and the courts now generally frown upon limiting or curtailing any public access to bodies of water (no matter how remote or ill-suited a water access site may be).

Most plats at lakes in Michigan were developed 50, 75 or even over 100 years ago. Accordingly, many issues and problems can arise in those old plats. First, the surveying work was often substandard, such that plated lots can overlap and lot lines are often in dispute. Second, given that cottage sites in the old plats were typically fairly small (for example, early plated lots might only be 40 feet wide), overcrowding is a significant problem. In the old

days, cottages were generally small and for summer use only. Not much lakefront was needed for each lot, as the favored activities from a century ago were swimming, canoeing, and fishing, rather than using large docks, powerboats and personal watercraft as is the case today. Third, not all of the plats ran to the water as originally plated. That creates uncertainty as to whether or not the first tier lots are actually riparian. Fourth, plated road ends, parks, and walkways can cause significant issues such as overcrowding, the misuse of such access sites by backlot property owners and conflicts among users. Finally, many older plated lots are unbuildable due to their small size, topography, wetlands, or absence of in-place access roads or utilities.

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# Save the Dates !

## Michigan Lake and Stream Associations



### 52nd Annual Conference

Doubletree Bay City-Riverfront  
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**Friday and Saturday  
April 26th & 27th, 2013**



**John & Nancy Wilks  
Indian Lake  
Kalamazoo County**

*"We always attend the MLSA Annual Conference to meet and share information with riparians from many areas of Michigan. Their dedication, leadership by example, and passion for Michigan's lakes and streams energize us to protect our beautiful lake at home."*

### 2013 Annual Conference Highlights

#### 52nd Annual Banquet

Annual Recognition Awards Ceremony  
Door Prizes / Silent Auction / 50-50 Raffle  
"Identify It" Lake Plant and Animal Booth  
MiCorps CLMP Volunteer Monitor Training  
Riparian Services Exhibitors  
Non-Profit Exhibitors  
Free Stewardship Literature

Our conference will include a close look at Michigan's Great Lakes and inland lake fisheries, the hydraulic fracturing (fracking) controversy, aquatic invasive management and control, an update on your riparian rights, control of muck through laminar aeration technology, working with your local township and basic inland lake ecology and stewardship.

### Save the dates !

Join us in Bay City as we celebrate 52 years of working to protect and preserve Michigan's inland waters. Your participation in our 52nd Annual Conference will help make this a very special occasion !

**For more info visit our web site:**

**[www.mymlsa.org](http://www.mymlsa.org)**



# MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.

## ML&SA NEWSLETTER



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300 N. State St., Suite A  
Stanton, MI 48888  
Phone 989-831-5100

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William Scott Brown, Executive Director

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## Great Lakes Collaborative Phragmites Web Site

by Scott Brown, ML&SA Executive Director

The Great Lakes Phragmites Collaborative has created a valuable on-line resource dedicated to Phragmites biology, management and research. The web site was established to facilitate communication among various stakeholders across the region and to serve as a focal point for information on Phragmites.



*Phragmites Australis*

*Phragmites australis* (common reed) is a highly invasive plant species that is now common in North American wetlands. Phragmites can now be observed in and around many wetlands and inland lake shorelines throughout the southern part of Michigan. The aggressive invasive plant usually forms monocultures as beneficial native wetlands plant species are forced out. The steady propagation of Phragmites throughout the Great Lakes Basin will increasingly challenge resources managers both ecologically and financially.

This is a must-view site for those interested in managing and controlling Phragmites australis. Point your web browser toward

<http://greatlakesphragmites.net>

## Michigan Lake and Stream Associations Creates Inland Lake and Stream Management On-Line Resources for Local Government Officials

by Scott Brown, ML&SA Executive Director

In line with our commitment to the idea that townships and other local units of government should be at the epicenter of our collective efforts to preserve and protect the wealth of inland lakes, streams and wetlands that are so important to Michigan's economic, social and cultural future, Michigan Lake and Stream Associations has created an on-line resource. When completed later this year, it will offer comprehensive scientific, legal and regulatory references as well as model lake and stream friendly ordinances to local officials seeking to protect the freshwater resources within their respective jurisdictions.

To view our "under construction" on-line resource for local government officials, go to <http://www.mymlsa.org/resources-for-local-government-officials-2>.



# MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.

## ML&SA NEWSLETTER



### The Michigan Public Road Ends Law: Enforcement not Optional

by Scott Brown, ML&SA Executive Director

Signed into law on March 22, 2012, Michigan Public Act 56 provided statewide codification of twenty-year-old court rulings that limit public road ends to one seasonal public dock (if approved by the local unit of government and the issuance of an MI DEQ permit). The act forbids overnight mooring as well as the installation of boat hoists.

While it is reasonable to believe that that the new law of the land regarding the use of public road ends in Michigan may have initially met with some confusion on the part of local governments and their respective law enforcement agencies, we are very concerned about several reports we have received regarding official refusal to enforce the law. In writing the law, the legislature did not include language that provides those who disagree with the law an "enforcement optional" clause. Public Act 56 is now **MCL 324.30111b**, and must

be enforced by state, county, municipal, and township law enforcement agencies.

If your local unit of government and/or your local law enforcement agencies have refused to enforce the law, we would like to hear about your particular set of circumstances and the various reasons you were provided by local officials for their lack of enforcement. We would like to believe that those disregarding the law remain confused about the definition of a "public road end that terminates at an inland lake" or other specific aspects of the law.

If you have encountered this unfortunate situation on your lakefront, please contact Scott Brown, Michigan Lake and Stream Associations Executive Director at e-mail: [sbrown@mlswa.org](mailto:sbrown@mlswa.org).

Your cooperation may help eliminate confusion and assist in restoring law and order to public road ends at inland lakes throughout Michigan



Michigan Clean Water Corps



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### Michigan's Inland Lakes, Ours to Protect



Cooperative Lakes Monitoring Program

- Providing baseline information and document trends in water quality for individual lakes.
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- Building a constituency of citizens to practice sound lake management at the local level and foster public support for lake quality protection.
- Providing a cost effective process for the MDEQ to increase baseline data for lakes state-wide.



**Enrollment for the Cooperative Lakes Monitoring Program 2013 season begins on October 1.**

**Contact Program Administrator, Jean Roth at 989-257-3715 or e-mail [jroth@mlswa.org](mailto:jroth@mlswa.org). To enroll on-line visit**

**[www.micorps.net](http://www.micorps.net)**



# LAKE SAFETY

## A Different Kind of **Invasive**

Kurt Kelsey and Mariquita Sheehan

### Human and Environmental Threats from Coir Products

**C**oir is fiber that is obtained from the husk of a coconut. Coconuts do not naturally grow well in North America, thus, coir products are imported. Coir is commonly produced in South Asian countries such as Sri Lanka, India, Pakistan, Bangladesh, Bhutan, Nepal, Maldives, Afghanistan and Iran. The majority of coir imports into the U.S. come from southern India and Sri Lanka.

Coir logs, also known as coconut logs, are tubular products that are filled with coir fibers (Figure 1). In the erosion control industry, a common application of coir logs is streambank stabilization. Streambank projects tend to be extremely environmentally sensitive sites that incorporate native vegetation as part of the long-term erosion control solution. With that being said, many erosion control professionals are puzzled why coir products that are imported from half-way

across the world are used on projects in North America.

Recently, a lakeshore project in picturesque northern Wisconsin had an alarming experience with coir logs. Several large purple spiders exited the coir log from India as it was placed into the stream. Mariquita Sheehan, Lake Conservation Specialist for Vilas County, states, “My concern is not so much invasive species – since it is unlikely that an equatorial species would survive our winters. But I am concerned that installers could potentially be bitten by non-native species that could cause some damage to their human victim – and local medical personnel would not be able to treat the bite properly.”

Many conservationists around North America are feverishly working to prevent the spread of invasive species. Why would we allow invasive species into our

environmentally friendly projects? What could happen to the ecosystem if these unknown exotic purple spiders or other invasive “hitchhikers” flourished here? These questions are unknown and better answered by eliminating the use of the products that contain the problem. Additionally, what would happen to the human victim if one of the large purple spiders bit them?

Medical professionals may or may not be able to treat the human victim properly because the culprit is unknown to North America. Are we willing to risk human health and the potential of introducing an exotic species for foreign products or is it time the erosion control industry diversifies into native alternatives?

Help protect our erosion control professionals and prevent the potential spread of invasive species by utilizing products from North America on your next project. If a foreign source of coir products is used, insure that the shipping container is fumigated and that the contents are certified as invasive-free.

**Kurt Kelsey** is employed by American Excelsior Company – Earth Science Division – Arlington, TX, as the director of technical services. He is CPESC- and CPSWQ-certified. Kurt

is an active member of ASTM, where he serves as the chair of the D18.25.02 Rolled Erosion Control Products (RECPs). He is also active with the International Erosion Control Association (IECA) and is the chair of the Slope Technology Technical Committee.



**Mariquita Sheehan** is the lakes conservation specialist for the Vilas County Land and Water Conservation Department. She has worked as a plant ecologist in northern Wisconsin for over 15 years and has a background in natural resources management. 🌿



Figure 1. Coir logs are frequently used in shoreline and streambank stabilization.



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### Winter in Lewiston

by Dominic Manzi

(Excerpts from the February, 2012 Lewiston Lake Living newsletter)

I enjoy a warm summer's day and all the opportunities it provides, as much as the next guy. But there is something special about winter in northern Michigan that provides a certain warmth, as well. Sure, there are the beautiful fires in the fireplace, especially with a good bottle of wine, preferably a good Italian bottle of wine, that is. But there's warmth as well from the snow as it so graciously and quietly covers our lakes and forests.

Life is... truly what you make of it. That is certainly true in Lewiston during this time of year. The ice on the lake groans at night when temps drop sharply (Who knew that!). However, at about four inches thick, the ice is providing support

for fishing if, and only if, you're some kind of risk taker.

Having two older hunting dogs that don't hunt, I take them on short walks in the woods. The colder air seems to heighten their keen sense of smell, and the snow makes it all the more interesting for them. It's both funny and enjoyable to watch how serious they are about it. The elk have begun to herd together. During winter, when there is less foliage and snow is on the ground, they are generally easier to find. I learned last year the bulls don't drop their antlers until March. Although there's never a guarantee of seeing them, it's best to look for elk in the late afternoon to dusk. Bring good binoculars, but leave your camera home. Cameras are a serious jinx when looking for elk.

The Lewiston Sportmens League has an excellent sporting clays course, which during the winter is a terrific way to get exercise and make a lot of noise at the same time... If you are the least bit interested but haven't tried it, you should. The club is open to the public every Sunday.

Lastly, isn't it remarkable that a stranger can drive through our town and not see a McDonald's or Tim Horton's, yet if they are observant enough (or are with someone who can point it out).... that's right... a Curling Club. The way I figured it, God put that Curling Club here in Lewiston for a reason, and so I joined-two leagues. I suck at it, but that's o.k. By the way, my 23 year old son is extremely envious that I'm Curling. Life up here is not without a lot of stuff to do and is after all, what we make of it.

## LAKE HAPPENINGS

Send us your lake association newsletter or special announcements electronically. We love hearing from your lake. We will continue to use and spread the interesting and informative things happening on your lake in the Michigan Riparian. Please send your lake association newsletter to: [swagner@mlswa.org](mailto:swagner@mlswa.org).

### Derby Lake

Stanton, MI

[www.derbylake.org](http://www.derbylake.org)

Derby Lake is hosting its 3rd Annual Derby on Ice event, Saturday, February 2. The fun and frolic includes Bowling on Ice, Bocci Ball, Ice Skating, Ice Fishing, Snowman Making, a Four-Hole Golf Course and so much more.



Bowling Derby Lake style!

Chili is served throughout the day.

It is provided by volunteers who bring their favorite recipes for all to enjoy (last year there were 10 varieties). Tables are set up indoors, and the lake association will offer coffee and hot chocolate.

Who could resist a day on Derby Lake where you can have a lot of fun with friends and family, feel the warmth around the bonfire and participate in a number of events on the ice? For more information, please call Linda Benner at 989-831-4184.

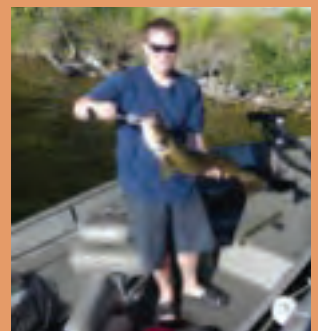
### Tri Lakes Association

(Round Lake, Blue Lake and Mecosta Lake)

Mecosta, Michigan

Tri-Lakes Happening newsletter  
Fall/Winter 2012.

Check out this whopper! This would have presented well at the Annual Tri-Lakes fishing tournament that is held in July. Our friend was trolling when the Walleye hit. What excitement! An hour later it was filleted by the Klines and Fischers of Blue Lake and made for a tasty Labor Day fish fry.



This 27 inch, 7 pound Walleye was caught on Lake Mecosta.

The last time the DNR stocked the Tri Lakes with Walleye was June of 1997.

Correction: We apologize for error made in fall 2012 issue Lake Happenings Article. The Bankson Lake Article was by Janice Park.





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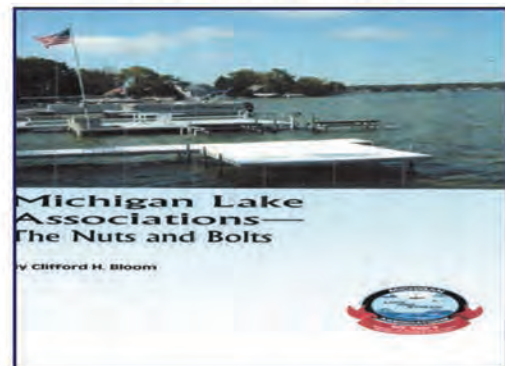
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# The Challenges of Urban Lake Management

Effective lake management requires a vision that looks beyond the lakeshore. Characterization of the entire watershed contributing to a lake allows an understanding of how and why lakes respond to land uses and human activities far from the shoreline. For lakes in urbanized watersheds, stormwater runoff is a pervasive and often poorly examined source of ecological, water quality, and recreational problems (Birch & McCaskie, 1999). Urban lake management frequently lacks detailed assessments regarding the sources and impacts of stormwater-related pollutants. Symptoms, rather than sources, often draw the most management attention and resources in these settings.

Stormwater runoff typically contains substantial amounts of nutrients, sediment, heavy metals, and bacteria. The quantity of these pollutants carried in runoff increases as the extent of impervious surfaces (paved roads, rooftops) grows. Additional nutrient loading to lakes leads to accelerated eutrophication and low

dissolved oxygen levels (especially in deeper stratified lakes) diminishing the ecological balance. Excessive sediment loads reduce water clarity and degrade habitat quality and recreational enjoyment.

Reducing urban stormwater pollutant contributions to lakes typically is expensive and highly variable. For example, reducing one pound of phosphorus per year from urban runoff can cost \$5,000 to \$10,000 per pound. Other sources of nutrients, such as rural and agricultural areas, can reduce loading at a much lower cost (\$1 to \$3 per pound). The difference in reduction costs is associated with the space constraints in urban areas, as well as the construction and maintenance costs of the treatment practices (Boyer & Kieser 2012 and Allerhand et al., 2012).

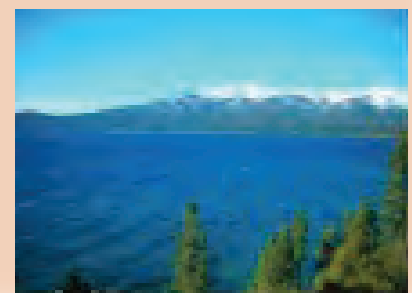
If urban development surrounding lakes continues without stormwater control policies to reduce or eliminate new runoff, lakes will only continue to degrade. Typically, in-lake methods for addressing excess phosphorus, such as alum treatment, dredging, and aeration

are limited in their effectiveness and only provide a temporary solution (Schueler & Simpson, 2001). Additional treatments will be necessary as pollutants continue to enter the lake, carried by stormwater runoff. Alternative urban lake management options include installation of stormwater controls that intercept runoff draining to the lake. These systems can remove a substantial portion of nutrients and sediment that otherwise would enter the lake and contribute to impairments.

An urban stormwater treatment system was implemented to address these types of water quality concerns in a southwestern Michigan lake. Woods Lake is a 24-acre natural lake within the city of Kalamazoo. A century ago, when the land around the lake was still rural, Kalamazoo residents could ride a trolley to the lake and spend a day in the country. Development in the 200-acre watershed began in the 1960's, and the area is now entirely dominated by residential land uses and commercial businesses (K&A, 1997).

Lake Tahoe, in the Sierra Nevada mountains of northern California, is famous for its water clarity (up to 120 feet). Relatively small urban areas started developing around this 191 square-mile lake after the 1960 winter Olympics. Since then, water clarity in the lake has been diminishing by almost one foot per year. Scientific studies, costing millions of dollars, have shown that almost 80% of the clarity loss in Lake Tahoe – the second deepest lake in the U.S. – is attributed to fine sediments from urban stormwater. The price tag to restore water clarity reducing fine sediment loading from about 40 square miles of urban land (in a 505 square-mile watershed) is expected to be in the billions of dollars for urban stormwater controls.

(see: <http://terc.ucdavis.edu/stateofthelake/StateOfTheLake2012.pdf> and [http://www.swrcb.ca.gov/lahtontan/water\\_issues/programs/tmdl/lake\\_tahoe/docs/laketahoe\\_tmdl\\_techrpt.pdf](http://www.swrcb.ca.gov/lahtontan/water_issues/programs/tmdl/lake_tahoe/docs/laketahoe_tmdl_techrpt.pdf))



Lake Tahoe



# The Challenges of Urban Lake Management

Stormwater runoff from the urbanized watershed directly enters Woods Lake through storm drains. No natural streams go into or out of the lake. Urban runoff, therefore, contributes substantial phosphorus and sediment loading to the lake, resulting in degraded water quality. The lake has experienced accelerated growth of nuisance weeds and algal blooms due to excessive nutrient inputs associated with urbanization. Diminished water clarity and bacterial contamination also have plagued Woods Lake, which provides the only public access beach in the city of Kalamazoo (K&A, 1997).

In the early 1990s, members of the local Woods Lake Association became concerned about the impaired quality of their lake. At that time, approximately 60 percent of the lake shoreline was privately owned. The remaining 40 percent was owned by the city of Kalamazoo and managed as part of the city's park system for public and recreational uses. Private landowners and the city formed a partnership to address lake concerns and authorized a lake study in March of 1996. The city hired a local environmental consulting firm to conduct an assessment of the lake and its contributing watershed. One goal of the study was to identify cost-effective options that would improve and sustain Woods Lake. The final report recommended, in part, placing a stormwater treatment facility near the lakeshore to remove sediment and phosphorus in runoff draining to the lake. This facility would treat runoff from the largest stormwater outfall that contributed more than 50 percent of the overall pollutant loading (K&A, 1997).

Initial designs for the stormwater treatment system for Woods Lake began in October of 1999. Implementation of stormwater treatment recommendations

began in 2000 and initially involved dredging at each of the five stormwater outfalls to remove polluted sediment accumulations. Construction of the treatment system for the largest stormwater outfall then began in July of 2002 with completion in the spring of 2003. In addition to treating runoff, the system also had to provide for continued use of the area as a park and incorporate public access and recreational uses. Given these requirements and the development surrounding the lake, the land area available for constructing a treatment system was limited.

The site constraints necessitated the use of technical analyses to optimize the treatment efficiency of the system. Detailed local meteorological and hydraulic information were applied to design a system that maximized reductions under the constrained conditions. The final design was a treatment system that was one-third the size generally recommended for treating runoff from a five-year storm but is still capable of treating 98 percent of local precipitation events. The target removal efficiency was projected to be 60-80 percent for total phosphorus and 70-90 percent for suspended solids (K&A, 1997). The treatment system design targeted an overall 30 percent reduction in phosphorus loading to the lake (K&A, 1997).

The final constructed treatment system included a sediment forebay, infiltration trench, dry detention pond with prairie and wetland grasses, and wetlands/wet detention (Figure 1). The wetlands provided additional polishing of the runoff while still maintaining the park setting. The system treats drainage from approximately two-thirds of the 200-acre watershed, representing approximately 50 percent of the total pollutant load

(Continued on page 26)

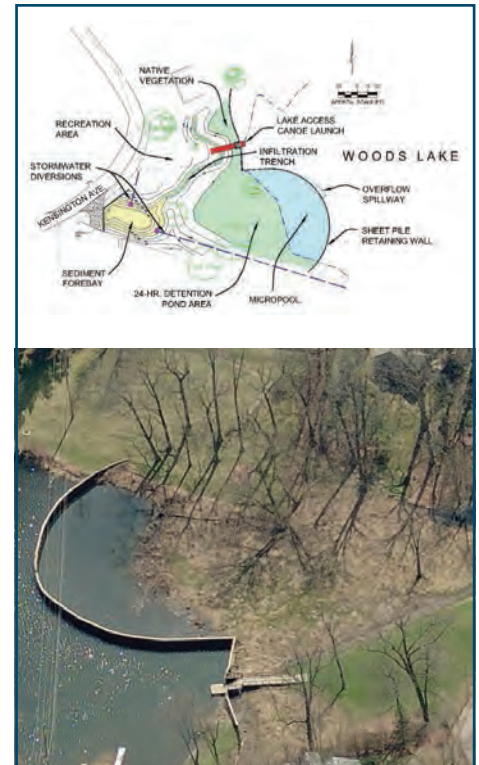


Figure 1. Schematic diagram of Woods Lake stormwater treatment system (top) and aerial photo of completed treatment system looking south (bottom) (City of Kalamazoo, 2009).



Figure 2. Woods Lake treatment system sediment forebay (top) and native vegetation within the dry detention area (bottom) (K&A, 2008)

# The Challenges of Urban Lake Management

(Continued from page 25)

(K&A, 1997 and K&A, 2008). This portion of the watershed contributes 42 percent of the total phosphorus load and 53 percent of the suspended solids load to the lake (K&A, 1997). Figure 2 depicts two components of the completed system.

Four years after completing construction of the treatment system, a monitoring program assessed the ability of the system to remove pollutants. Local volunteers, with the technical assistance of the project consultant, monitored stormwater flow through the three-stage treatment system. This monitoring took place in 2007 with funding from a local grant. A total of six storm events were monitored and sampled. Results indicated approximately 81% removal of total phosphorus – efficiency at or above the target – and 81% removal of sediment loads, which was within the original removal efficiency estimate (K&A, 2008).

The costs associated with implementing the Woods Lake system were not inconsequential when considering the resources necessary for managing stormwater to protect urban lakes. The original lake management studies were completed at a cost of \$25,000. Design and implementation of the treatment system was approximately \$370,000. This translates to unit costs of \$3,680/acre of watershed treated, \$0.01/gallon

of stormwater infiltrated, \$5,948/pound of phosphorus removed annually, and \$66,600/ton of sediment removed per year. Performance monitoring of the treatment system cost approximately \$10,000.

The Woods Lake treatment system demonstrated the effectiveness of addressing lake water quality through a whole-watershed assessment. This case study also illustrated the extensive timeframe required to implement such a system, including initial assessments, design, construction, and monitoring (Figure 3). The stormwater treatment system continues to be effective with moderate maintenance of native vegetation and monitoring of solids accumulation in the sediment forebay. Treatment of additional stormwater from other outfalls is still needed to meet water quality improvement goals outlined in the original lake management recommendations.

It should be emphasized that no two lakes are the same, and each watershed should be individually assessed and treated based on unique characteristics. However, cost-effective treatment of excess nutrient and sediment loading to urban lakes requires watershed-scale management that incorporates proper identification and quantification of pollutant sources. With this approach, appropriate treatment strategies can be

implemented to prevent and intercept source loading, as opposed to expensive and recurring in-lake treatments. The Woods Lake case study illustrates how this can be achieved with the added benefit of enhancing shoreline areas with native vegetation, retaining green space, and incorporating recreational opportunities.

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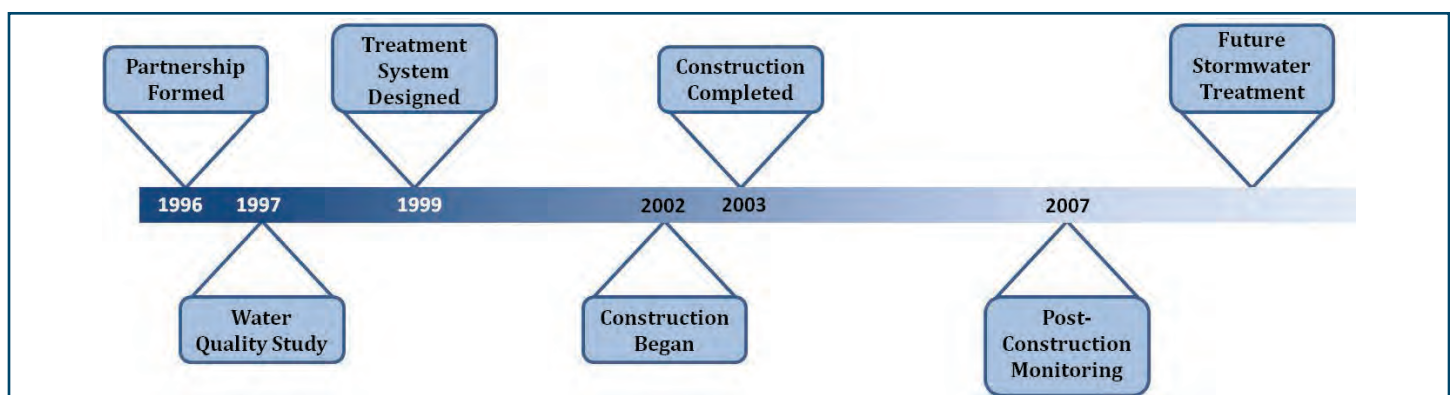


Figure 3. Timeline of Woods Lake stormwater treatment system project illustrating the long timeframe for stormwater management projects.



# The Manistee Lake Improvement Program – A Successful Collaboration

By: Tony Groves

Water Resources Practice Leader  
Progressive AE

One of the major challenges in lake management is finding a way to get everyone on the same page and moving in the right direction. Another consideration is determining what entity will take the lead in advancing a project. At the urging of the Manistee Lake Association, a statutory lake improvement board was established for Manistee Lake in 2005 to develop and implement a lake improvement plan. The lake improvement board provided a single point of responsibility and helped to foster the collaboration that was essential to the success of this project.

The Manistee Lake Improvement Board includes a Kalkaska County Commissioner, the Kalkaska County Drain Commissioner, the supervisors of both Coldsprings Township and Excelsior Township, and a riparian property owner. The riparian representative on the lake board also sits on the board of directors of the Manistee Lake Association and acts as a liaison between the lake improvement board and the lake association board. This article describes the current state of the lake, ongoing management initiatives, and how various entities are collaborating to manage the lake.

## Manistee Lake and its Watershed

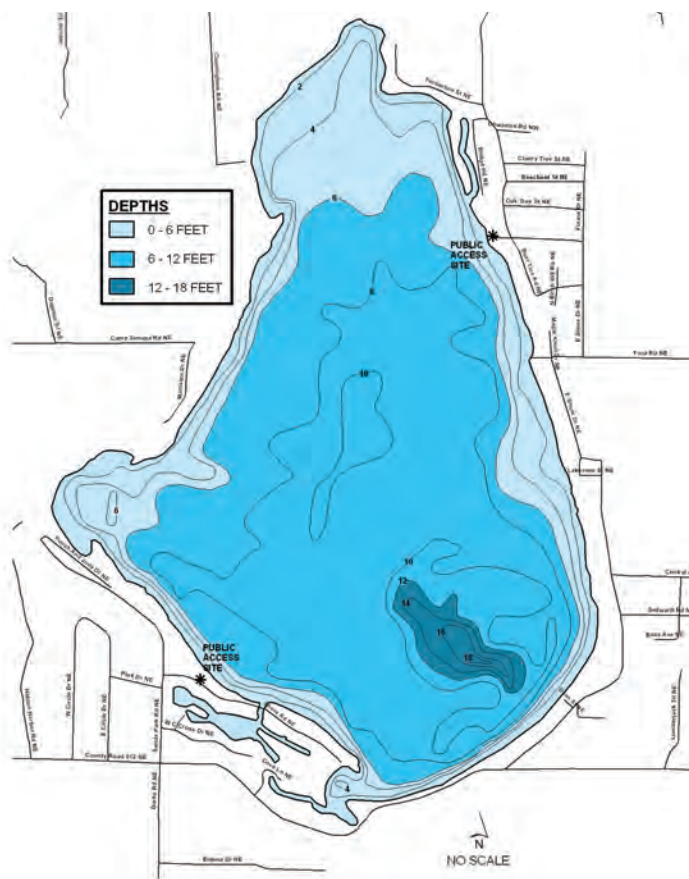
Manistee Lake is a relatively large shallow lake located in northern Kalkaska County. A summary of the physical characteristics of Manistee Lake and its watershed are included in Table 1.

**Table 1 – Manistee Lake and Watershed Characteristics**

Lake Surface Area	876 Acres
Maximum Depth	18 Feet
Mean Depth	7 Feet
Lake Volume	6,132 Acre-Feet
Shoreline Length	7.6 Miles
Shoreline Development Factor	1.8
Lake Elevation	812.5 Feet
Watershed Area	6,600 Acres
Ratio of Lake Area to Watershed Area	1:7.5

With a surface area of 876 acres, Manistee Lake is a relatively large lake. However, despite its size, the lake is shallow with a maximum depth of 18 feet, and a mean or average depth of about 7 feet (Figure 1). Much of the lake is shallow enough to support aquatic plant growth. The shoreline of Manistee Lake is over 7 miles long.

The Manistee Lake watershed is approximately 6,600 acres in area, a land area about 7.5 times larger than the lake itself. Much of the watershed is forest or wetland. However, most of the land



**Figure 1 - Manistee Lake Depth Contour Map**

immediately adjacent to the lake has been developed (Figure 2). Currently, over 300 homes and cottages border the lake.

Manistee Lake forms the headwaters of the North Branch of the Manistee River. Water flows from the outlet at the south end of the lake in a southwest direction into the main branch of the Manistee River and on to Lake Michigan at the city of Manistee. The elevation of Manistee Lake is over 600 feet higher than Lake Michigan.

(Continued on page 28)

# The Manistee Lake Improvement

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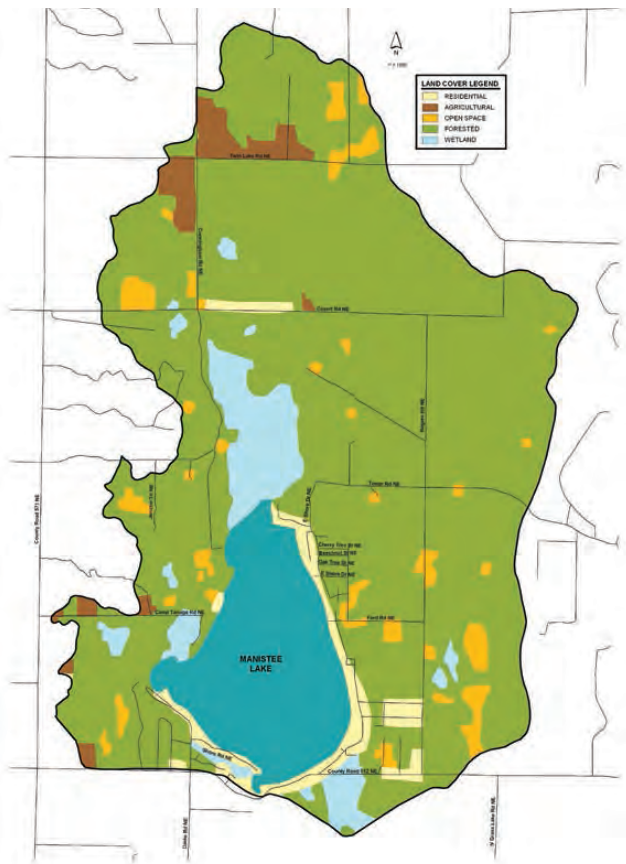


Figure 2 – Manistee Lake Watershed Land Cover Map

## The Plan

In order to address both short- and long-term management issues in Manistee Lake, a multi-faceted improvement plan was developed. Key components of the plan include aquatic vegetation monitoring, aquatic plant control, water quality monitoring, watershed management, and fisheries management.

In 2007, public hearings were held and a three-year improvement project was approved for the years 2008 through 2010. In 2011, another public hearing was held and it was agreed that surplus funds accrued in the initial three-year project could be used to extend the project for two years, without having to collect additional assessments. In 2012, additional public hearings were conducted and there was broad support to extend the term of the project five years (2013 – 2017).

## Aquatic Plant Monitoring

Each year, aquatic plants are surveyed in Manistee to evaluate the relative abundance of all plant species in the lake and to detect infestations of invasive species. With each survey, plants are collected at 149 locations identified with a global positioning system (Figure 3). At each sampling location, a double-sided thatch rake attached to a line is used to collect plant samples. A total of sixteen plant species have been identified in

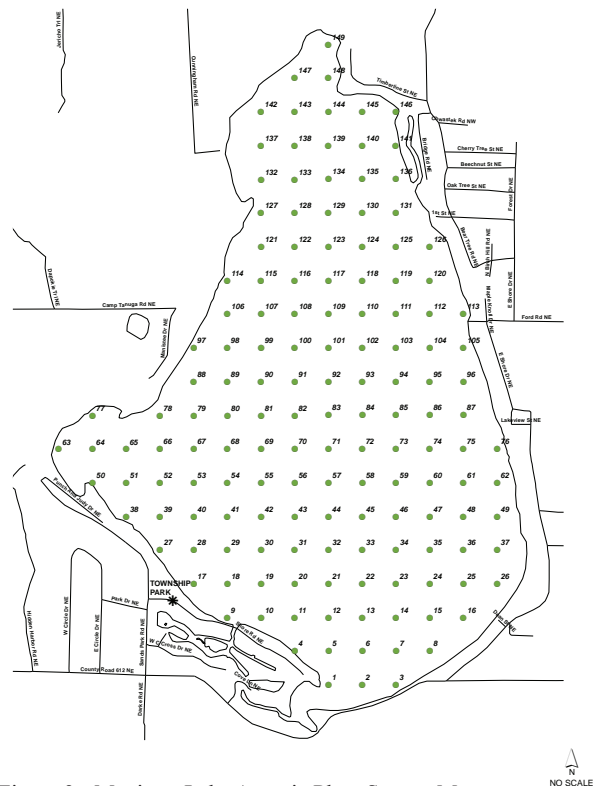


Figure 3 - Manistee Lake Aquatic Plant Survey Map

Manistee Lake. The most common species are broadleaf plants including large-leaf, whitestem, and Richardson's pondweed. These types of plants provide excellent fish cover and habitat. Eurasian milfoil (*Myriophyllum spicatum*) has been the only exotic species observed in Manistee Lake. In addition to vegetation monitoring, lake level is recorded each year to evaluate seasonal and year-to-year variation in lake level, and the impact fluctuating water levels may have on plant growth in the lake.

## Aquatic Plant Control

In order to control the spread of Eurasian milfoil, milfoil weevils (*Eurhychiopsis lecontei*) have been stocked in Manistee Lake on a periodic basis since 1999 (Table 2, Figure 4). In total, 138,000 weevils have been stocked and additional stocking is planned. The weevils feed exclusively on milfoil species, especially Eurasian milfoil. Researchers have documented declines in Eurasian milfoil in some lakes as the result of weevil feeding. These declines have been attributed largely to the burrowing and tunneling action of weevil larvae that cause the milfoil plant to lose buoyancy and fall from the water column. It is hoped that continued stocking in Manistee Lake will result in a sustained weevil population sufficient to provide long- term milfoil control. The annual vegetation monitoring surveys are being used to evaluate the efficacy of the weevils in controlling milfoil.



# The Manistee Lake Improvement

Table 2 - Manistee Lake Weevil Stocking History

1999	10,000
2000	30,000
2001	10,500
2007	20,000
2010	20,000
2011	18,000
2012	30,000
Total	138,500

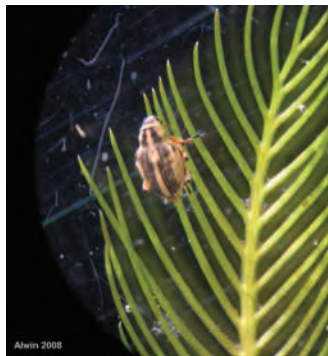


Figure 4 - The Milfoil Weevil (*Euhrychiopsis lecontei*)

Milfoil weevil photography courtesy of Tom Alwin and Michigan State University Department of Fisheries and Wildlife.

## Water Quality Monitoring

Each year, samples are collected from multiple locations in Manistee Lake to gauge the overall health of the lake. A summary of the data collected to date is provided in Table 3.

Historical and recent water quality data indicate that Manistee Lake maintains good water quality. Total phosphorus and chlorophyll-a levels are relatively low and algae growth in the open waters of the lake is minimal. The Secchi transparency in Manistee Lake appears to be influenced more by natural tannins (which impart a tea-colored appearance to the water) than algae growth in the water column. Continued water quality monitoring will provide a benchmark from which to gauge future changes in water quality.

Table 3 – Manistee Lake Water Quality Summary Statistics (2008 – 2012)

	Total Phosphorus (µg/L)	Secchi Transparency (feet)	Chlorophyll-a (µg/L)
Average	13	7.7	2
Standard deviation	10	2.4	2
Median	9	7.0	2
Minimum	2	4.0	0
Maximum	42	11.0	6
Number of samples	74	13	32

## Watershed Management

Watershed management will be essential to preserving the water quality of Manistee Lake over the long term. Fortunately, much of the Manistee Lake watershed is forest or wetland, and pollution from these areas is minimal. However, as with most lakes, much of the shoreline bordering the lake is developed. If not properly managed, these developed shoreland areas have the potential to contribute fertilizer, oil and gas residues, septic effluent and other pollutants to the lake. To help address this potential, a guidebook for homeowners was created that contained information on lake water quality, ongoing monitoring programs, the lake fishery and recommendations and guidance for septic system maintenance,



Figure 5 - Manistee Lake Guidebook for Homeowners

lakeside lawn care, fertilizer use, greenbelts, rain gardens and other practices to protect the lake (Figure 5). Copies of the guidebook were mailed twice to all property owners around the lake.

## Fisheries Management

Manistee Lake supports a healthy warm- and cool-water fishery. However, the lake is too shallow to support cold-water fish species like trout. In a 2004 survey of the lake by the Department of Natural Resources (DNR), 21 different fish species were found in the lake. Game fish in the lake include walleye, largemouth bass, smallmouth bass, bluegill, black crappie, pumpkinseed sunfish, northern pike, and yellow perch.

Fishing is a popular pastime in Manistee Lake and walleye are one of the most sought-after game fish. Manistee Lake has been stocked with walleye on a periodic basis since the early 1900's, with the most extensive stocking occurring since the early 1980's. In addition to stocking, some natural reproduction of walleye occurs in Manistee Lake. However, stocking is required to sustain the walleye fishery.

Recent DNR survey results indicate that about 50% of the total fish biomass in Manistee Lake is white suckers. White suckers often compete with perch and other fish for food. In an attempt to reduce the number of white suckers, the Manistee Lake Improvement Board and the Manistee Lake Association worked with the DNR to obtain permits to conduct a white sucker netting program. Beginning in the spring of 2007 and continuing each spring from 2010 to 2012, several thousand white suckers were netted and removed from the lake as they moved into the shallows to spawn (Figure 6). Captured suckers were distributed to the public free of charge. The DNR is planning additional surveys of Manistee Lake to evaluate the overall health of the fishery and the effects of the white sucker removal program. As this project moves forward, the Manistee Lake Improvement Board and the Manistee Lake Association are planning to continue periodic spring sucker netting and are exploring methods to enhance natural walleye reproduction in the lake, perhaps through the construction of artificial spawning reefs.

(Continued on page 30)

# The Manistee Lake Improvement

(Continued from page 29)



Figure 6 – Manistee Lake Sucker Removal

## Conclusion

All lake improvement projects have their own challenges. On Manistee Lake, a statutory lake improvement board proved the ideal vehicle to move the project forward. This was especially true because Manistee Lake is located in two separate townships; trying to coordinate activities between two townships, while not impossible, would have been an administrative challenge.

A major challenge in any lake improvement project is finding a way to equitably finance the project. The annual budget for the Manistee Lake project is \$39,000. The project is being financed through a special assessment district that includes all waterfront properties and back lots with deeded or dedicated lake access. When this cost is spread to properties within the special assessment district, the annual assessment for a typical waterfront property is \$130 and back lot properties are assessed \$65. All things considered, these costs were considered reasonable.

Another consideration in the implementation of a lake improvement plan is the need for a study to determine the scope and cost of management options. The study is an important first step in that it provides a basis for future discussion and decision-making.

This project demonstrates effective collaboration in which several partners came together and worked to improve conditions in Manistee Lake. To find out more about the project, visit [www.manisteelake.org](http://www.manisteelake.org).



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**MARCH 15-17, 2013**







## Michigan Cottage and Lakefront Living Shows

The Michigan Lake & Stream Associations, Inc. (MLSA) will have booths in two upcoming Cottage and Lakefront Living Shows this winter. The Cottage and Lakefront Living Show in Novi will be held on February 21-24, 2013, at the Novi Suburban Collection Showcase. The Grand Rapids installment of the Cottage and Lakefront Living Show will be held on March 15-17, 2013, at the DeVos Place.

MLSA's attorney, Cliff Bloom, will be holding discussions/seminars on his book *Buying and Selling Waterfront Property in Michigan* at the Novi show

on Saturday, February 23, at noon and 3:00 p.m. and at the Grand Rapids show on Saturday, March 16, at noon and 3:00 p.m. For more information, please visit [www.cottageandlakefrontliving.com](http://www.cottageandlakefrontliving.com). These shows are always interesting for current and "would be" riparians!

**Michigan Lake and Stream Associations  
52nd Annual Conference is being held in  
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more info visit [www.mymlsa.org](http://www.mymlsa.org)**

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## LAND GAPS AT LAKES

By: Clifford H. Bloom, Esq.  
Bloom Sluggett Morgan, PC

Some lakefront properties in Michigan appear to be waterfront or lakefront, but actually have a small land gap located between the property and the body of water. Typically, this occurs when the plat and the first tier of lots do not quite extend to an adjacent body of water, thus leaving a “land gap.”

Generally, in Michigan, in order for a property to be waterfront or riparian, it must actually touch or extend to the body of water involved. See *Thies v Howland*, 424 Mich 282 (1985); *Hess v West Bloomfield Township*, 439 Mich 550 (1992); *Thompson v Enz*, 379 Mich 667 (1967). However, the Michigan appellate courts have carved out an exception to that rule and have held in some cases that a narrow gap of land between a body of water and a platted lot does not necessarily prevent the lot from being deemed waterfront or riparian. See *Sands v Gambs*, 106 Mich 362 (1895). Another exception is where a platted road, walk or relatively narrow park is shown running along the water on the original plat, in which case the first tier of lots are also usually deemed to be riparian or waterfront. However, in those situations, it is not a true land gap; rather, the courts have typically held that the parallel road, walk or park is simply an easement and the side lot lines of the first tier platted lots run under or “through”

the easement and to the waters of the lake or river involved. See *Thies v Howland*; *Dobie v Morrison*, 227 Mich App 536, 540 (1998); 2000 *Baum Family Trust v Babel*, 488 Mich 136 (2010); and *Bedford v Rogers* (unpublished decision by the Michigan Court of Appeals; Case No. 299783; 2012 WL 1314165).

In *Kranz v Terrill* (unpublished decision by the Michigan Court of Appeals dated September 20, 2012; Case No. 305198; 2012 WL 4214894), there was a narrow land gap between the plaintiff's platted lot and the waters of Round Lake as shown on the original plat. The trial court held that the platted lot was not riparian, as it was not shown on the original plat as extending to or touching the waters of Round Lake. On appeal, the Michigan Court of Appeals reversed that part of the trial court's decision and held that the platted lot is riparian or waterfront notwithstanding the narrow land gap. The Court of Appeals noted:

While it is generally true that riparian rights are property rights that arise when land actually touches or includes a body of water, it appears here that plaintiff's property is riparian. See *Thies v Howland*, 424 Mich 282, 287-288, 380 NW2d 463 (1985). The plat map includes

a relatively small strip of land that varies in width, existing between a straight-edge line and a wavy line. Defendants purport the straight-edge line to be the actual boundary line of the front lot owners' properties, including plaintiff's property. The back lots are not included on the plat map, only the front lots. There is no reference or designation on the plat map with regard to this strip of land. The same strip of land exists throughout the length of the platted front lot properties, but the strip of land is not uniform in width. Although the plat map indicates that “the streets and alleys as shown on said plat are thereby dedicated to the use of the public,” this variably-sized strip of land does not appear to be either a street or an alley. And there is no indication of an intention to reserve ownership of the strip of land.

There is likewise no indication that this strip of land was intended to be a walkway. But even if it could be construed as a walkway of some sort, plaintiff's riparian rights would not necessarily be destroyed. In *Croucher v Wooster*, 271 Mich 337, 345; 260 NW 739 (1935), our Supreme Court held that a

(Continued to page 34)

# LAND GAPS AT LAKES (Continued from page 33)

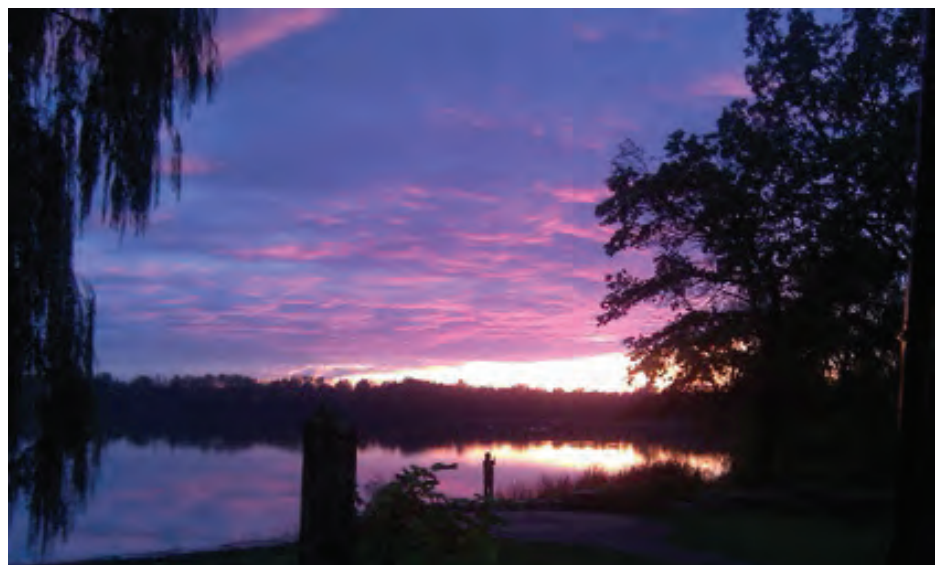
lot separated from the water by a highway that is contiguous to the water remains riparian land. And in *Thies*, 424 Mich at 290-293, the Court held that the owner of a lot separated from the water by a walkway along the edge of a body of water remained the owner of the land and, thus, had riparian rights. The Court held: “Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to the easement. Since the owner’s property is deemed to run to the water, it is riparian property.” *Id.* at 293. Accordingly, actual contact with the water is not necessarily required for riparian rights to exist.

Further, there is no evidence that the strip of land or any portion of it was ever or could ever be conveyed to anyone else. See, e.g., *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). Defendants argued in the trial court that plaintiff’s predecessors in title, the Kummerles, did not convey this strip of land to plaintiff and could not because the Kummerles’ predecessors in title, the Roneys, did not convey to them this strip of land. The argument is misleading. The metes and bounds descriptions on all of these warranty deeds were the same. Defendants presented no evidence that this strip of land was ever or could ever be conveyed.

Quoting *Hilt*, 252 Mich at 218: defendants argued in the trial court that the “interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner;” however, defendants provided no evidence “of a fee title” or an “interposing owner.”

In light of the evidence presented, we conclude that the strip of land in front of plaintiff’s property was intended for the exclusive use of her property subject to the easement. It appears to us that the wavy lines likely represent the high water mark, essentially serving the purpose of meander lines and representing the border or edge of Round Lake at the time of the plat map. See *Id.* at 201. Such lines do not establish boundaries. See *Id.* at 204. Therefore, the trial court’s conclusion that defendants proved plaintiff’s property is not riparian was erroneous. (Footnotes omitted.)

The controlling precedent regarding land gaps at lakes was set by the Michigan Supreme Court in *Sands v Gambs* in 1895. The Supreme Court indicated that a trial court should consider several factors when determining whether a property is waterfront or riparian notwithstanding a narrow land gap. First, the Court noted “[t]he tendency of [earlier] decisions is to turn every doubt upon expressions which fix the boundary next [to] the river in favor of a contact with the water.” *Sands* at 366. Second, “grants must be construed most strongly against the grantor.” *Ibid.* Third, monuments, such as the water’s edge, usually control courses and distances. *Id.* Fourth, the failure to reserve access to the strip of land indicates that there was no intention to reserve the strip of land for any other purpose. *Id.* at 366-367. Finally, a court should consider whether the adjacent landowners have treated the strip of land as part of the platted lot and whether there has been any protest regarding such treatment over the years. *Id.* at 366.





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