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THE MICHIGAN RIPARIAN

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The only quarterly magazine devoted entirely to the sustainable management and wise use of Michigan's inland lakes and streams



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WATER & RIPARIAN LAW

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MLSA EXECUTIVE DIRECTOR

This is the last issue of *The Michigan Riparian* magazine for 2020, a year which has been very difficult for everyone. You need only pick up a newspaper or check your social media feed to see any number of issues worrying people around the country and the world. Michigan has been particularly hit with high water, which we addressed in our Summer 2020 issue, and a very notable dam failure event in mid-Michigan. Both of these situations have highlighted the delicate balance between the beautiful freshwater ecosystem of our state and the human infrastructure we have developed around it.



The dam failures in Midland and Gladwin counties have brought the tenuous nature of this balance into clear focus. In this issue you will read about some experiences of that tragedy and advice for how to help avoid similar situations in your watershed. You will also get a chance to learn about Gull Lake's privately owned dam and the incredible improvement project now underway.

What types of water control structures could be in your watershed? I reached out to Jeffery Wenzel, the drain commissioner for St. Joseph County and asked him about different types of dams or water control structures. This is what he had to say, "If a lake has a legal level, then there is most likely a water control structure to be able to control the level of the lake and maintain the legal level it is set at. There are bigger dams that produce power that are controlled by the Federal Energy Regulatory Commission (FERC). Usually court-ordered legal levels are the responsibility of the county drain commissioner. Someone may call their local drain commissioner's office to find out if there is a dam or water control structure in their area." I encourage you to reach out to your county drain commissioner if you are not already aware of the control structures in your watershed so you can be prepared and stay safe.

On behalf of the Board of Directors of Michigan Lakes and Streams Association, I hope you have a pleasant ending to this difficult year and enjoy some festivities. If you are planning to make any year-end donations, please remember that MLSA is a 501(c)3 nonprofit organization and we would greatly appreciate the support of your tax-deductible donation.

Enjoy the water,

A handwritten signature in dark ink, reading "Melissa DeSimone". The signature is written in a cursive, flowing style.

Melissa DeSimone
MLSA Executive Director

CONTENTS

- 5** Attorney Writes:
Land Gaps at the Lake
- 8** Addressing Invasive Species on a
Watershed Scale
A Cooperative Approach
- 10** MLSA Presents 3 Awards in 2020
- 12** Land Trusts Protect Land and
Water for All, Forever
- 16** Rebuilding the Dam at Gull Lake
- 20** Star Wars on Pentwater Lake
- 22** Lessons from the Michigan Dam Failures
for Lake Homeowners and Concerned
Citizens
- 29** Road End Blues

A BIG
*thank
you*

Michigan Lakes and Streams Association
would like to thank **Sharon Wagner** and
Carol McVicker for their long and dedicated
service to *The Michigan Riparian* magazine.
We wish them all the best with their future
endeavors.



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Land Gaps at the Lake

Not infrequently, there is a small “land gap” located between the waters of a Michigan lake and the first tier of lots or parcels near the shore. This article applies to those strips of “no person’s land.” These areas do not involve a platted road, walkway, park strip, or other easement or dedicated area along the shore, but rather constitute true land gaps which are seemingly not owned by anyone. In those situations, who generally owns the land strip - the owners of the adjoining first tier lots, the original creators of the plat (if a plat or subdivision is involved), or someone else?

Throughout Michigan, situations arise where a “waterfront” lot or property does not actually extend to the water’s edge. There is a land gap between the lot and the water. If the land gap is relatively large, the nearby lot or parcel that does not touch the water is normally not truly riparian or technically “waterfront.” That is true regardless of whether the land gap is owned by someone else (due to a reservation in an earlier deed) or even if it is unclear who owns the land gap. In general, to be considered a riparian property, the parcel must touch a body of water. However, there is a limited exception to that general rule. In some cases, where the land gap is relatively small, there is no other recorded owner, no other party has claimed the property comprising the land gap for many years, and the first tier lot or parcel owners have treated the land gap as their own for years, the Michigan appellate courts have indicated that they will disregard an insignificant land strip and will treat the first tier lots or parcels as being riparian. See *Sands v Gambs*, 106 Mich 62 (1895) and *Kranz v Terrill* (unpublished decision by the Michigan Court of Appeals dated September 20, 2012; Case No. 305198; 2012 WL 4214894).

I did address the land gap issue generally in two earlier articles entitled “Land Gaps at Lakes” and “What is Riparian?” in the Winter 2013 and Fall 2014 issues of the *Michigan Riparian Magazine*, respectively. In those articles, I pointed out that courts generally hold that first tier lot owners usually own the narrow land strips along a lake, absent unusual circumstances.

In *Kranz v Terrill*, 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 neither a street nor 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 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,

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(Continued on page 6)

Land Gaps at the Lake

(Continued from page 5)



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.) *Kranz* at p. 3-4 (Slip opinion).

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, natural monuments, such as a lake or 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.

Recently, the Michigan Court of Appeals again addressed land strips at lakes in *Saunders v Rhodes* (unpublished decision dated June 18, 2020; Case No. 347524; 2020 WL 3399572). In that case, platted Lot 1 of the Pickerel

Land Gaps at the Lake

Point plat was separated from the waters of Chippewa Lake by a narrow land strip. It was unclear who, if anyone, owned actual title to the land strip. The legal description for Lot 1 did not go all the way to the lake or even mention the lake. The owners of an adjoining off-lake adjacent property claimed that the land strip actually constituted a small “tail” that tied into their property and asserted that they own the narrow lakefront land strip and hence, are riparian property owners. Both the trial court and the Court of Appeals held in favor of the owners of the first tier platted lot (Lot 1) in decreeing that the narrow land strip passed with Lot 1 and therefore, Lot 1 is a waterfront or riparian property. The following factors were important to the Court of Appeals in its decision:

1. The original platter did not expressly reserve title to the land strip, and as such, it presumably passed with title to Lot 1.
2. In most cases, a legal description that goes close to a lake, river, or other body of water will be deemed to run all the way to the water (i.e., the body of water is deemed to be a boundary or property monument).

3. Meander lines are not boundary lines.
4. There is a common law presumption that such first tier platted lots run to the water's edge, unless a marking or designations on the plat clearly overcome and exclude that presumption.

Even if the owners of the backlot property in *Saunders* were found to actually have title to the land strip, it is possible that the ownership of that land strip eventually passed to the owners of Lot 1 by adverse possession or “squatter’s rights,” depending on whether the current and past owners of Lot 1 exclusively utilized the land strip since the time that the plat was created in 1927.

Before a purchaser buys a seemingly lake front parcel with a land gap between the property and the lake, the ownership or title issue involving the land strip should be fully resolved. *R.*



Addressing Invasive Species on a Watershed Scale

A COOPERATIVE APPROACH

By: Vicki Sawicki, North Country Cisma

In 2019 the North Country Cooperative Invasive Species Management Area (CISMA), also known as NCCISMA, began work on a project grant held by the Mecosta Conservation District. This grant project, funded by the Michigan Invasive Species Grant Program (MISGP), is intended to raise awareness of aquatic invasive species within the upper Muskegon River watershed. This project will ultimately serve as a template for other CISMAs across the State to address invasive species on a watershed scale. NCCISMA covers the counties of Lake, Mason, Mecosta, Missaukee, Osceola, and Wexford. Because the Muskegon River crosses through Clare County on its way to Osceola from Missaukee, NCCISMA is partnering with the Clare Conservation District and the Central Michigan Cisma to include Clare County in the project area for this grant. Several of the six counties that comprise NCCISMA's geographical area are entirely within the Muskegon River watershed, and parts of two of their counties also include portions of the watershed. To keep most of the project within the boundary of NCCISMA, and to keep it to a manageable scale, the project is limited to the upper Muskegon River watershed.

CISMAs, by design, are cooperative entities, bringing all invasive species-concerned organizations, businesses,



In 2019 NCCISMA staff surveyed over 100 miles of the Muskegon River and 200 miles of shoreline for invasive species

Photo Credit: NCCISMA



NCCISMA participants in the EAPW program in 2020 will receive a free toolkit

Photo Credit: NCCISMA

and residents together to implement effective controls. Controlling invasive species involves a combination of outreach to educate people on invasive identification and ways to stop the spread (e.g., Clean, Drain, Dry), and on-the-ground, or in-the-water, mechanical and chemical treatments. Partners on this watershed-scale MISGP project are varied and include municipal parks departments, canoe liveries, lake associations, private landowners, conservation districts, non-profit organizations, and more.

There are two main components to the project. One of these involves invasive species inventory surveys of the river and river corridor itself. The second goal is to empower riparian lakeshore owners to guard their lakes from unwanted invaders.

The inventory surveys were completed via kayak during the field season of 2019. With the field data collected, a mapped inventory was created of all aquatic, emergent, and terrestrial invasive plant species that were found in and along the river. No State watchlist emergent or aquatic species were found during these surveys. NCCISMA high priority terrestrial plant species discovered during the surveys included Phragmites, Japanese knotweed, and garlic mustard. Where these were discovered, NCCISMA is contacting property owners to obtain permission to perform terrestrial surveys on the remainder of the impacted property, and will be providing survey maps and best management practice guidelines to the participating property owners.

There are over 150 named lakes within NCCISMA that are also within the boundaries of the Muskegon River watershed. Many of these lakes have public boat launches and, as we all know, extensive movement of watercraft

(Continued on page 14)



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MLSA Presents 3 Awards in 2020

By Melissa DeSimone, MLSA Executive Director

Traditionally, Michigan Lakes and Streams Association (MSLA) presents two awards each year. The Masters Jacket goes to an MLSA official with long-standing service and dedication to our organization and the Riparian of the Year award that goes to a field lake association member who has

demonstrated consistent and innovative efforts on their lake. This year we also included a special additional award, the Meritorious Service Award for outstanding devotion and hard work that has made a tremendous impact on Michigan Lakes and Streams Association.



2020 MASTERS JACKET RECIPIENT - DR. JENNIFER L. JERMALOWICZ-JONES

Jennifer became involved with MLSA in 2005 when she developed a water resources department at an environmental company. In 2008, she was asked by Ed Highfield and Art Robell to join them on the MLSA Board of Directors. Jennifer said, "I wanted to become part of a non-profit group dedicated to helping individual lake associations as I knew that would contribute to better lakes!"

She says, "My favorite part of serving with MLSA is getting to experience all of the differing perspectives that exist on the board. Each volunteer brings a unique background, knowledge, and set of experiences to the board of directors that provide our associations with varying views that may be applied differently to each unique lake association. I believe The Michigan

Riparian is the most critical aspect and deliverable of MLSA because it reaches several thousand riparians all across our state and is an important educational tool that allows riparians and those interested in lakes to learn on their own time. I am most satisfied with my role as a science advisor to MLSA. This is very important to me as science can be a complicated topic and it is a challenge to convey sometimes abstract lake issues to a broad audience of people. This position continuously allows me to engage in additional critical thinking that will assist as many lake communities as possible."

You can also find Jennifer working with other boards and organizations: American Association for the Advancement of Science, North American Lake Management Society, Michigan Chapter NALMS, International Association for Great Lakes Research, Midwest Aquatic Plant Management Society, and Phi Sigma Biological Honor Society.

Jennifer grew up on Cass Lake in Oakland County and then eventually moved on to Commerce Lake, also in Oakland County. She says, "I knew that I wanted to study lakes at age 4 when I received my first microscope and had a pet turtle in the bathtub. Currently, she resides on a beautiful wooded lot that has a stream which leads to Spring Lake. Jennifer works on hundreds of lakes in Michigan, Indiana, Illinois, Vermont, and Colorado.

REPRINTING Articles from the Magazine

Frequently, lake associations, the press, educational institutions and others request permission to reprint an article from *The Michigan Riparian* magazine in a newsletter, newspaper, or other publication. In general, *The Michigan Riparian* magazine is relatively liberal in granting permission for such reprints. However, no such reprint can be done without the express prior written permission of the magazine.

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2020 RIPARIAN OF THE YEAR AWARD - CRAIG DESIMONE, GRAVEL LAKE

Craig DeSimone has been on Gravel Lake in Van Buren County for 38 years. His first experience with Gravel Lake Association (GLA) meetings was when he was about 10 years old. He would attend meetings with his father, who was a trustee at the time. Craig joined the board after he graduated college in 2000. Then he was elected as vice president and also served as the newsletter editor. After two years, he succeeded the past president and has held the position ever since. He says, "My dad instilled a sense of civic duty in me and I felt the GLA was a great place to start my service".

One of the first things the new board accomplished under Craig's presidency was a Special Assessment District for Aquatic Invasive Species control. It took a couple of years (and an infested lake) to complete, but he was able to organize a small group of dedicated petitioners. The next project was even bigger: sewers. In the late 2000s, the Gravel Lake Association successfully picked up this long, unsuccessful project that required tireless petitioning and lots of communication and education. In the end, the GLA led the charge to the ultimate formation of the Lakes Area Sewer Authority (consisting of several area lakes). Finally, Craig put the association on a trajectory to financial solvency with dues collection and the creation of a very active and effective fundraising committee. Craig says, "Gravel Lake has a very special community that makes all this more possible."

Craig became involved with MLSA's Region 3 when his mother and close friend, Gloria Caskey, told him about the meetings. He said, "I was hooked and decided I must do as much as I can for this important organization, too!" Craig attended meetings facilitated by past MLSA Presidents, Sue Vomish and Dick Morey. He now leads those meetings himself, keeping Region 3 connected.



MERITORIOUS SERVICE AWARD - MIKE GALLAGHER

Mike was on the board of his lake association and he was trying to develop a way to measure the quality of the lake. Another board member said they had heard of CLMP (Cooperative Lakes Monitoring Program), so Mike volunteered to go to MLSA's Annual Conference and get the training. Gull Lake Quality Organization has been a member and monitoring ever since.

Cooperative Lakes Monitoring Program is Mike's true passion with MLSA. He says, "That program is long term and keeps volunteers engaged for a long time. It also gives them a great opportunity to communicate with others at their lake and community about the quality of their lake. This helps to educate others on how to maintain and preserve the quality of their lake. CLMP has been very educational for me."

Mike's top priority when he took on the role of president of MLSA in 2018 was to get members to communicate with each other more. "I think we started to accomplish that by having a more casual annual conference that allowed for members to meet each other and share what is happening on their lakes. They also had time to talk with expert educators, service providers, and suppliers. I really enjoyed our last annual conference, and the response from the members was very positive."

You can also find Mike serving with the Rotary Club of Gull Lake, the Gull Lake Quality Organization, the Four Township Water Resources Council, and Kellogg Biological Station.

Mike has lived on Gull Lake for 36 years and he has served on the board for a total of 24 years. Additionally, he has done all the CLMP monitoring and programs. He said, "We learned a ton from doing the CLMP aquatic vegetation survey and it caused us to identify starry stonewort early and respond to it quickly. We also see a lot more natural shorelines on our lake since we ran the CLMP Score the Shore program. Some people now cruise the lake looking at shorelines rather than at pretty homes!"

Thank you to all three of our award winners this year for their amazing service and dedication to MLSA's mission: the preservation, protection, and wise management of Michigan's vast treasure of inland lakes and streams.

If you know an MLSA member who has demonstrated consistent and innovative efforts for the waters of Michigan, please contact us (info@mymlsa.org) to nominate them for next year's Riparian of the Year Award! 

Land Trusts Protect Land and Water for All, Forever

By Hilary Hunt, Land Protection Specialist at the Southwest Michigan Land Conservancy

Fog sits over Lime Lake at the Portman Nature Preserve, owned and protected by the Southwest Michigan Land Conservancy.
Photo Credit: Nate Fuller.



The Southwest Michigan Land Conservancy, one of 1,000 nonprofit land trusts nationwide, works throughout the nine-county region of Southwest Michigan

Most Americans are familiar with this country's legendary National Park Service, which stewards and protects wonders such as the Sleeping Bear Dunes National Lakeshore and Indiana Dunes National Park. Today, that system includes 85 million acres, while state natural resource agencies care for many other beloved parks and natural areas.

However, a lesser known—but just as determined—conservation movement has also been quietly growing since the 1980s. This movement is led by **nonprofit organizations known as land trusts** or land conservancies, which are also working to protect this nation's spectacular natural places—just a little closer to home. According to the Land Trust Alliance, there are over 1,000 land trusts currently operating within the United States.

To date, **land trusts have protected 56 million acres.** If you could add up all that land and place it next to each other, the total area of land protected by land trusts is double the size of Michigan's lower peninsula!

Even more importantly, **land trusts operate in 93% of U.S. counties**, creating close-to-home outdoor opportunities for all. Over 30 land trusts are currently operating in the state of Michigan, with different regional service areas and specialties.

HOW DO LAND TRUSTS HELP THEIR COMMUNITIES?

Land trust properties are all around you! These protected properties are usually much smaller than government-held conservation lands, on the scale of hundreds of acres,

rather than tens of thousands of acres. This is partially due to the difference in the types of land protected by these two types of conservation entities. Land trusts protect a wide variety of open space and natural land uses: family farms, orchards, forests, wetlands, vineyards, lakeshore, prairies, and more. The role played by land trusts in the national movement for conservation is important because government natural resource agencies often do not have the flexibility or resources to work on these smaller pieces of land, due to the wide variety of uses and local stakeholders. The significance of these protected areas to local communities can be enormous, despite the fact that a single land trust project might only be a few hundred acres. Many diverse community benefits can result from these projects: local food for families and restaurants, habitat for beloved wildlife species, tourism opportunities, recreation opportunities, beautiful vistas and green space, mental health benefits, increased property values, and more.

Land trusts use two primary tools to keep natural or rural land protected from future development: nature preserves and conservation easements. Nature preserves are lands that the land trust owns outright. Many of these lands are open to the public for passive recreation such as trails and boardwalk-use, bird watching, foraging, paddle sports, cross-country skiing, and mountain biking—to name a few uses. Land trusts often acquire these owned lands via generous landowners who donate, bequeath, or sell their land to their local land trust. Many landowners feel worried that their wild, natural land will become a housing development or change into another form of land use, so the thought of it staying natural forever under the land trust's care is a great assurance for them.

On the other hand, land trusts can also protect land that they do not own outright. This conservation method is called a conservation easement, which is a voluntary legal restriction placed on privately held property. In this scenario, a family still owns their land and continues the existing uses on the property, such as living on the property, farming, hunting, or trail use. However, future uses such as subdivision and development are prohibited or limited, to keep the conservation values of the property intact. In the meantime, the land trust visits the property once a year to make sure that these values are not impacted by the allowed uses.

HOW DO LAND TRUSTS HELP PROTECT WATER QUALITY AND WATER RESOURCES?


It is common sense, but it bears repeating: **what we do on the land affects the water.** To keep water clean, healthy, and plentiful, the land alongside water bodies must be managed and protected with an eye toward downstream aquatic impacts. The best-case scenario for healthy waterways? Natural land cover with native plants, minimal soil disturbance from buildings and other activities, well-managed runoff from nearby farming, roadways, and construction, and intact habitat and wildlife populations. Of course, the entirety of this vision isn't possible everywhere, but everyone can do something to improve their waterbody. Taking on-land action to improve water quality can start small—planting a native plant buffer or a rain garden to prevent dirty driveway runoff from reaching the lake.

However, on-land conservation actions for water benefit from bigger solutions, and that's where land trusts can help. **People who own acreage on water bodies can consider placing**

conservation easements on their properties, or leaving the real estate to a land trust in their will. These are great options for landowners who want to see their land retain its natural, open space, or agricultural character. Using a conservation option like those detailed above benefits everyone. Our water bodies need conserved land along their shores or banks, and people need these places to stay wild, too.

If you live in the southwest corner of the state, we hope you'll consider contacting us at the Southwest Michigan Land Conservancy to discuss protection and conservation options for your property. While we are located in Galesburg (just outside Kalamazoo), we work throughout the nine counties in the Southwest corner of this great state. See the map for more detail on the boundaries of our service area. Over the last 30 years, we have protected over 17,000 total acres, which includes hundreds of miles of frontage on all sorts of water: Lake Michigan, inland lakes, rivers, streams, creeks, and thousands of acres of wetlands, which support our wonderful healthy waters. If your property is within the nine-county region we serve, we'd be happy to discuss conservation options. **Feel free to visit us at swmlc.org to learn more about protecting your land or to find a map of our public nature preserves.**

Explore land owned by your local land trust.

These days, we're all looking for ways to get outside. Wherever you live, a local land trust near you has worked hard to provide places for you to enjoy, and to protect our invaluable natural resources. **To find a land trust near you, learn more about protected land, and hit the trail, visit FindALandTrust.org** 

Addressing Invasive Species on a Watershed Scale

A COOPERATIVE APPROACH

(Continued from page 8)

between water bodies occurs every year in Michigan. Existing measures to stop the spread of invasive species as hitchhikers on boats and equipment does much to protect our lakes. These measures can stop most spread, but since even the tiniest specimen of many invasive species can start a huge invasion, and this spread may occur via wildlife or other mechanisms outside of human control, another line of defense should be employed. If riparian property owners and other lake recreationists are trained in the identification of certain high-risk watchlist species, then they can act as early sentries, to halt the spread of a new invader, before its population gets out of control and is, as such, ineradicable.

This goal of empowering lakeshore owners to keep their lake safe from invasion is being achieved by promoting the Exotic Aquatic Plant Watch (EAPW) program. The EAPW is a part of the Michigan Clean Water Corp's (MiCorps) Cooperative Lakes Monitoring Program (CLMP). While the CLMP has been officially on hiatus for 2020, the EAPW is one aspect of the program that was able to continue. The EAPW program includes free training on how to identify and watch for five species of aquatic invasives: Eurasian watermilfoil, curly-leaf pondweed, hydrilla, starry-stonewort, and European frogbit. As added incentive, if your lake is within NCCISMA or its Muskegon River watershed project boundaries, NCCISMA is able to provide the sampling equipment that you need to participate in the EAPW program for free. This includes a secchi disc for transparency testing, a prerequisite to take part in the



Free training is provided by MSU extension aquatic plant experts for enrollees in the EAPW program

Photo Credit: Jo Latimore

EAPW, and a plant sampling rake and collection tray. Each tool kit is valued at approximately \$125.00, and the tools can be reused for years to come. We will keep you updated about the programs for 2021 as this year comes to a close.

Vicki Sawicki is the Program Coordinator for NCCISMA. She can be reached by email at vicki.sawicki@macd.org, or by phone at 231-429-5072. To learn more about NCCISMA visit NorthCountryInvasives.org. To find the CISMA that serves your community, visit michiganinvasives.org R.

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Before *After*



REBUILDING THE DAM AT GULL LAKE

By Jeff Price
Gull Lake Dam Association, VP

Gull Lake

Much has been written about Gull Lake, located in southwest Michigan, approximately 11 miles northeast of Kalamazoo and 13 miles northwest of Battle Creek. Gull Lake boasts sixteen miles of shoreline and a surface area of about 2,050 acres. The average depth is about 40 feet, with a maximum depth of 110 feet. The water quality of Gull Lake has been judged to be excellent, which is due in part to the Gull Lake Sewer & Water Authority sewage system, completed in 1983.

Aside from its natural beauty, Gull Lake is a rich fishery resource. Biologists have collected 55 species of fish from the lake with at least ten introduced species. The Michigan Department of Natural Resources (MDNR) has reported that, “Gull Lake probably has one of the most

diverse fish communities found in any inland lake in Michigan”. Typically, there are 60 or more registered fishing tournaments every year! The lake is home to Michigan State University’s Kellogg Biological Station. The lake provides the perfect outdoor, freshwater research laboratory, which has generated a considerable body of data on the biology of the lake.





History of the Dam

One of the lesser known features of Gull Lake is Gull Lake Dam No. 565, which is located at the southern end of the lake about 2 ½ miles from Richland, MI. The first dam, used to power a grist mill, was built during the winter of 1832-33 by Tillotson Barnes, one of the first settlers of Yorkville, MI. The current dam (concrete over cobbles) was erected in 1883 and was constructed slightly downstream of the original dam. From the late 1880s to 1906 the dam provided power to the Price Cereal Food Company, which operated a large mill at the current dam location. After the mill failed (they made celery-flavored cereal!), the dam deteriorated and the lake was at risk of losing the dam. The Gull Lake Association (now the Gull Lake Dam Association) was formed in 1921 to acquire the dam. It's mission was to maintain the dam and regulate lake water level. It has done so ever since.



(Continued on page 18)

REBUILDING THE DAM AT GULL LAKE

(Continued from page 17)

The Dam Today

As required by MDNR, a dam safety inspection is conducted every 5 years. A life cycle study was included in the last inspection which was conducted in April 2018. The conclusion of that study stated, "We believe the (earthen) embankment has reached its useful life. Given that the Gull Lake Dam was originally constructed prior to 1900 and repairs (were) made in 1921, it appears that the dam (concrete structure) is nearing the end of its useful life...The dam may continue to stand and operate as intended even if no repair or replacement occurs; however, the risk of critical failure will continue to increase over time." This should not have been too surprising given the normal life expectancy of the type of dam that controls Gull Lake is 50 to 100 years. At the time of inspection the dam was 135 years old. This report became the genesis of the association's fundraising campaign to replace the dam. The cost of the new dam was estimated at \$993,000. Because the dam is privately owned and operated, there was little opportunity for public funding. It was decided that the fundraising campaign would have the best chance for success if it was conducted on a voluntary basis.



One of the curious things about dams is that they are easily forgotten. A casual survey showed that 40% of the shoreline residents did not know that there was a dam. Of the remaining 60%, nearly half did not know where the dam was located or that its function was to seasonally control the lake water level within one foot. We clearly had a PR problem! We retained a local marketing firm to help us design a fundraising awareness campaign. The elements of the campaign included:

- ◆ Developing an updated website
- ◆ Creating an identifiable logo and campaign slogan ("Love Your Lake - Save the Dam!")
- ◆ Generating an up-to-date e-mail list
- ◆ Writing and mailing multiple donation letters to all residents and local businesses
- ◆ Giving TV interviews
- ◆ Giving local newspaper interviews
- ◆ Writing magazine articles
- ◆ Employing electronic billboard advertising
- ◆ Utilizing fundraising events



As incentives to donate, we provided all donors with a yard sign to signify their generosity (probably our best idea!). Additionally we included a “Legacy Wall” in our new dam design. All contributions of \$1,000 or more would have an personalized, engraved brick added to the legacy wall.

We officially began our campaign in May 2019. On May 19, 2020, the Edenville and Sanford Dams, which are part of a four-dam system near Midland, Michigan, failed. The failures forced the evacuation of thousands of residents and created catastrophic flooding and property losses. The two other dams on the same river system, the Smallwood and Secord dams, were damaged. The dams were unable to manage water flows that resulted when storms dropped as much as eight inches of rain over 48 hours in parts of Northeast Michigan. At the time, we were \$55,000 short of reaching our goal. We received the remaining funds within one week of the Midland dam failures. With a lot of hard work and dedication by what can only be described as a small army of volunteers, we met our fundraising goal in early June of 2020!

(Continued on page 27)



The Gull Lake Quality Organization

Helping to preserve the sparkling waters of Gull Lake and its surrounding watershed for over 50 years.



Major ongoing projects include:

- ✓ Install and maintain a boat wash at the Gull Lake Prairieville Township Park.
- ✓ Continuous water quality monitoring in Gull Lake and Little Long Lake since 2008.
- ✓ Fund aquatic plant survey of Gull Lake and conduct spot treatment of invasive plant species.
- ✓ Conduct Score the Shore surveys for Gull and Little Long lakes.

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Star Wars on Pentwater Lake

By Emily Neuman, Graduate Researcher at GVSU-AWRI

Originally featured in the Spring 2020 issue of the Pentwater Lake Association Newsletter

Since I was young, I was lured in by the sounds of the birds, the rippling of the stream in my backyard, and the safety net of the trees above me as I walked my dogs in the woods. My favorite memories were of being outdoors with my family, begging my dad to take us fishing so I could take in the fish lake smell, or exploring alone on our 54 acres in Minnesota. It dawned on me that my favorite pastimes could become my job one day.

Therefore, I did whatever I could to figure out my niche. I worked for the Minnesota DNR for three summers during my undergraduate degree, Bachelors in Ecology and Field Biology, educating boaters on invasive species, performing fisheries surveys, and learning more about aquatic invasive plants in my last summer by doing surveys and creating treatment maps. I worked over a year in a phytoplankton lab learning a wide variety of algal culturing techniques and the trials and tribulations of making my algae friends happy from the food medium I made. I loved all of it and wanted to learn more, which is how I ended up in Michigan at the Annis Water Resources Institute at Grand Valley State University working with the invasive macroalga, Starry Stonewort (*Nitellopsis obtusa*) with my advisor, Dr. Sarah Hamsher. I couldn't be more thrilled to work with the community to conserve Pentwater Lake. The Village reminds me of back home, a small town in the woods near a drowned river mouth estuary and the big Lake Michigan. I have learned that Pentwater strives for education, workshops, and invasive species control, which is what I can bring to the community.

My project has three objectives. The main objective is to study the life history of Starry Stonewort in Pentwater Lake. I will be conducting snorkel surveys to destructively harvest small quadrats of this macroalga throughout its growing period and determine when it reaches its maximum growth.

Secondly, I will be using ArcGIS, a mapping tool, and the New York Botanical Garden's virtual herbarium distribution records of Starry Stonewort sites in the Midwest and Northeastern United States to reveal lakes that have the greatest potential for an invasion.



Lastly, if time permits, I will be using a metabarcoding technique (plant and animal identification using DNA or RNA markers) to distinguish if there are similarities or differences of epiphyte communities associated with native *Chara contraria* versus invasive starry stonewort.

The overall goal of my thesis is to study the life history of Starry Stonewort, including its seasonal growth, asexual reproduction, and distribution across the Midwest. In doing so, I hope to unlock more clues for successfully managing this invasion. Due to the importance of this work, I have applied for and received funding from the Michigan Space Grant Consortium (MSGC) Graduate Fellowship and the Lake Research Student Grant from the Michigan Chapter, North American Lake Management Society (McNAMLS) and Michigan Lakes and Streams Association (MLSA) to support this project. Starry Stonewort has been invading North America since the 1970s, but we are still in the early stages of studying this invasion and I'm excited to begin this journey with PLA and the Village. *R.*



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Lessons from the Michigan Dam Failures for Lake Homeowners and Concerned Citizens

By Lon Nordeen & Mark Teicher, MLSA Board Directors



Readers of *The Michigan Riparian* magazine have probably seen the news reports about the May 19, 2020 dam failures in Midland county. The Midland/Gladwin county group of dams—Edenville (located about 120 miles north of Detroit), Sanford, Smallwood, and Secord—were created in the 1920s to produce electricity and recreational lakes. Residents have long had seasonal cottages and year-round homes around the lakes formed by this project. In 2018 Federal Energy Regulatory Commission (FERC) began revoking the license of Edenville dam due to failure of Boyce Hydro, LLC to perform upgrades. Local residents and government entities were working to create funding sources to have the Four Lakes Task Force buy the dams from Boyce Hydro, LLC when the events of May 19th took place. Boyce Hydro, LLC went into bankruptcy following the dam failure.

We spoke with a few officials and residents directly involved in the dam failures to give a clear picture of events as well as what we should all learn from these unfortunate circumstances. The first of our interviews was with Mike Wood, the supervisor of Jerome Township. This is what Mike had to say, “Our township is on Sanford Lake, the last lake on the Chain of Lakes, and includes the village of Sanford. On May 19, 2020, after days of heavy rains, all of the Chain of Lakes dams were overwhelmed. Smallwood dam saw 3 feet of water over its dike. Wixom Lake saw 5 feet or more above the normal level, causing Wixom Lake’s dike to fail. The

failure caused a 12 foot rise above the normal lake level on Sanford Lake.

“Sit at your lake’s water edge and think of it being 12 feet higher in two hours. Understand this is not a tsunami wall of water. It was a gradual rise of water over a period of time but the water included debris; parts of trees, houses, campers, sheds, decks, and propane tanks spewing gas, just to name a few of the items. This caused massive destruction all along Sanford Lake, the village of Sanford, and into the city of Midland. The water washed away homes, bridges, roads, and everything in its path. Sanford Lake was 11 miles long and a half mile wide at its widest point. Now it’s a river about 30 yards wide surrounded by mudflats. Most of it is inaccessible because of the muck. We had a person become stuck in it having to be rescued by our fire department.”

Township Supervisor Wood continued, “I see the depression and desperation on peoples’ faces. Many of them are wondering if we will ever have a lake again. The older, retired folks living in their forever lake home. The younger people who worked hard



and spent every penny to get that lakefront home. At this time there is no promise that there will ever be a lake again. Home owners are mad, wanting their taxes reduced because they don't have a lakefront home anymore. Disaster recovery is massive for flooded homes, all of their contents destroyed and contaminated with water and muck. Drywall removed up to the water line in the homes and all wiring that was under water needed to be replaced. Most just carried it to the curb and left it for the township to clean up. Our normal household trash pickup

is contracted and it does not cover this kind trash. It costs extra to have this cleaned up. Our trash contractor gave us a price of \$11 dollars a cubic yard to remove it. My estimate to have it remove it was \$80,000 or more out of the township budget.

"Dealing with a flood and Covid-19 at the same time has many challenges. FEMA is doing claims virtually if you have a computer and a home with power. We have a computer café set up in our township hall to help our residents file FEMA claims. As a township we suspended all elect, plumbing/mechanical, and building permits fees for flood related repairs. We have community foundations for support and financial help, untold volunteers helping with clean up, and numerous businesses are supporting other devastated businesses. We are Sanford Strong."

(Continued on page 24)

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Lessons from the Michigan Dam Failures for Lake Homeowners and Concerned Citizens

Mike highlighted some positives: “Good news is there was no loss of life or serious injury during this event. Our Midland County Emergency Operation Center was instrumental in helping set up an evacuation plan in the event of a dam failure. We held a full day exercise with the two counties that have these four dams including the road commission, local police, fire, state police, National Guard, and every township or county official. We ran a scenario of one upstream dam failing and reviewed what we would need to evacuate, what roads to close, and where to send them. When our fire department received the notice of an eminent dam failure, they had maps of where to evacuate.”

But not everything could be planned for, Supervisor Wood noted, “One of the surprises we have encountered are lawsuits. We are a small township with no sewer systems. We have a city water system with individual septic systems at each home. We are named in over 20 lawsuits for sewer water discharge. This is the claim: ‘Brief Description of Claim: On or about May 19, 2020, Claimants suffered a Sewage Disposal System Event, as defined by MCL 691.1416(k), at the Claimants' property’. MCL 691.1416(k) gives them the right to sue a government and what they are trying to claim is all the rainwater runoff of any drain or road ditches is storm sewer runoff and they call it a storm sewer system. So rainwater ran into the lake, the lake flooded the homes, and it was the township's fault. Our insurance will represent us in these lawsuits. I'm sure our future insurance premium will reflect these legal costs.”

Douglas Enos is the Water Commissioner in Midland County, Soil Erosion Enforcement Officer, Chairman of the Sanford Lake Improvement Board, and the Wixom Lake Improvement Board. Doug remarked: “If you live on a lake or water, every county has an emergency services coordinator. Here in Midland, one of the potential emergencies includes a potential release of toxic materials by Dow Chemical. Other communities have other scenarios but all have a plan that includes weather crises and natural disasters, such as tornadoes, blizzards, wildfires, and other dangers. Residents should go find out what the emergency action plans are for their area and what the assessed risks are for a flood and any other possible emergency. All of these plans should be available on the county website.



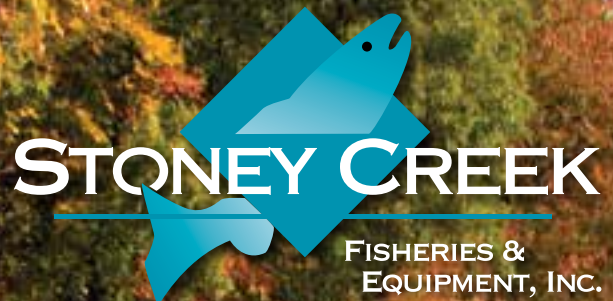
“Right now, most lakes are suffering from high water levels issues, so residents need to know, does your lake have a legal lake level? What level is that? How is it controlled? And who makes the decision? The level is set to balance the various interests around the lake. Some people might have saturated septic fields during high water events, while others could suffer wave damage and shore erosion. Each person who buys property on the water needs to know what the legal lake level is, what is considered high or low level and what these conditions could do in their particular situation.”

Pay Attention warns Doug: “The dam failure here came as a huge shock to many residents. Residents had a debate about what to do when the emergency responders came to their door. Some left, others did not. Later we had stories like, ‘I evacuated but I really did not need to do so.’ The night before at about 12:30AM or 1AM there was an alert that came over cellphones telling us a dam failure was imminent and we needed to evacuate. I went out and checked the water level and it did not come up. I checked an hour later and it was still ok, so I said to myself, maybe there was not a dam failure. The next day at about 6PM we got another alert but this time it had failed. I got a call from a couple friends, consulting engineers, who were monitoring the dams and they told me of the failure and that in two hours we were going to get a lot of water. So, I started acting accordingly for several feet of water. My walls and drywall were damaged but I moved stuff and protected the area as best I could. Most people did not get a call and didn’t understand the details on the expected water level at their location. Some people suffered six to eight feet of water in the basement and others had that level on the first floor. Some other homes were pushed off their foundations by the force of water.

“I hope the dams get rebuilt, if they do not get rebuilt there will be a serious drop in property values in the area around the lake and all areas near it. Much of the Sanford Lake area is a bedroom community for the city of Midland and the surrounding area which has a lot of industry. If the lakes are not fixed, Gladwin County will lose a lot of summer cottages and smaller homes and the county will really take a financial hit without the lakes. I am not sure if the dams will continue to be used for electrical generation, but from a recreational standpoint, it is important that they are rebuilt. We were already in the process of buying the dams from the owner. We had developed a Special Assessment District and had a designated agent called the Four Lakes Task Force in operation in Gladwin and Midland counties to prepare for the transfer. They are still in place and committed to

(Continued on page 26)

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Lessons from the Michigan Dam Failures for Lake Homeowners and Concerned Citizens

(Continued from page 25)

controlling erosion in the short term and working toward getting the dams rebuilt. The lawsuits will have to sort themselves out.”

We also spoke to Patricia Benner, a Sanford Lake homeowner, “It’s difficult to explain the level of devastation to homes and businesses caused by the Edenville dam breach on May 19. Pictures don’t do it justice. In my own neighborhood two homes have been demolished due to structural damage. Others sit vacant, with owners who don’t have the resources to rebuild. It’s nearly three months since the flood and many in the Sanford area are still homeless. We had about nine feet of water in our house; four in our crawl space and five on our main floor. We were completely unprepared for the level of damage, including inches of mud inside and outside our home. By the incredibly generous support of dozens and dozens of people, during what has been one of the most difficult times in our lives, we’re slowly rebuilding. We were displaced for 24 days. Once we had hot water and stable power, we were able to move home to live on our second floor. Not having a kitchen is challenging, but we’re making it work. Neighbors in one-story homes literally lost everything they owned. There was a thriving and vibrant ecosystem around Sanford Lake. What we have now is mud and quicksand, invasive species growing on the lake beds, and ongoing erosion of banks further threatening homes. There will be no long-term recovery for Sanford or Gladwin County without the lakes. We’re cautiously optimistic and stand behind The Four Lakes Task Force plan to rebuild the dams and restore our communities.

“My parents bought the property where our house is, and where my brother’s house next door is, before we were born. My dad built, with his own hands, a small, redwood cabin that was our summer place. Dad worked maintenance at a local dairy. Mom, when she did work, worked in a hospital kitchen. While other families bought new cars or took vacations, we had the lake. In 2006, my husband and I built a year-round home where the cabin was. We’re one of many multi-generation homeowners here. Lake life was the one constant throughout my life. The center of every summer memory, a player in every single relationship. The emotional devastation is hard to express. The fear and uncertainty

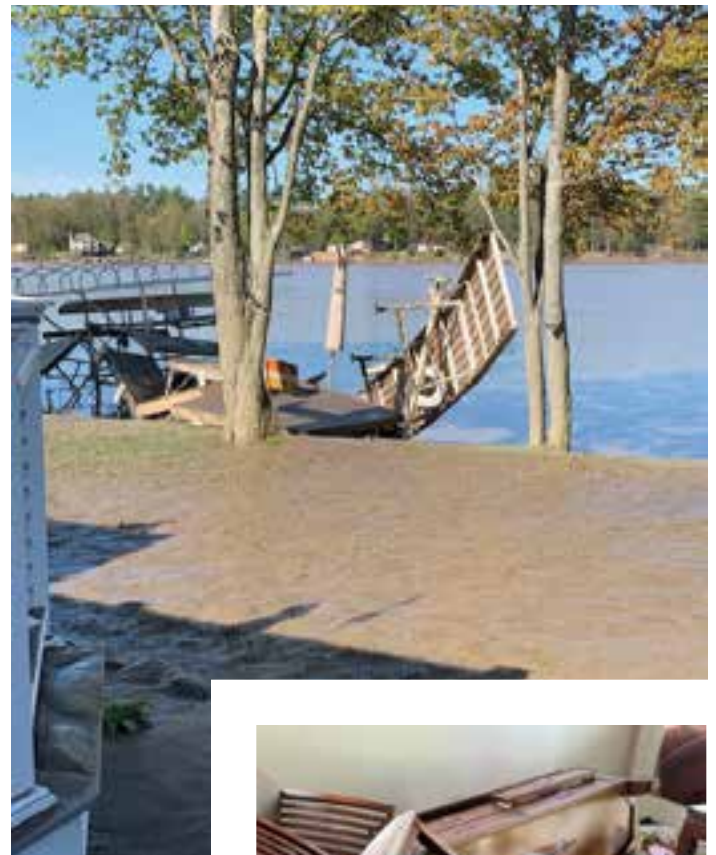
during the evacuation. The lost sense of security. A return to a place that no longer feels like home. We hope for an uncertain future.”

What can you do if you find yourself in a situation similar to the dam failures of mid-Michigan?

Your first avenue of recovery is your own insurance coverages; this may include homeowners, flood, business interruption, and auto policies. All of these coverages are very specific with lots of exceptions. Call your agent and get everything in writing.

There are at least 42 lawsuits relative to the dam failures. Possible liable defendants include the dam owners and others

(Continued on page 28)





REBUILDING THE DAM AT GULL LAKE

(Continued from page 19)

The Association signed a construction contract on July 11, 2020. Construction began in mid-September. Substantial completion is scheduled for the end of April 2021 with final completion by the end of May 2021.

Looking Forward

There are approximately 2,600 dams in Michigan, of which about two-thirds are older than their typical 50-year design life. In the next five years, about 80 percent of Michigan's dams will be over 50 years old. *R*

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Lessons from the Michigan Dam Failures for Lake Homeowners and Concerned Citizens

(Continued from page 26)

working with or for the dam owners but perhaps different legal entities, which means with their own insurance: the dam contractors, the dam maintenance company, and the dam engineers. Then there are the governmental entities: The state of Michigan through its regulators, the DNR, EGLE, your county and township officials, and the federal government. The owners of the dam filing bankruptcy does not necessarily get them off the hook; you can hire a bankruptcy attorney expert and file claims with the bankruptcy court. If your insurance coverage is insufficient, you may have a claim against your insurance sales agent and agency for failures to properly inform you of applicable coverages and amounts (insurance agent malpractice; they have insurance for this).

What can you do to prepare for this situation?

Get dam educated and informed. First, get a first-hand tour of your dam. Your local association can contact the owner/operator of your dam and receive a walk-through guided tour. It is eye-opening and immensely informative. Second, demand a copy of the most recent inspection report. Although it should be readily available, file a FOIA request if the owner/operator will not voluntarily supply the whole report—not just a summary, demand the complete report.

There are multiple sources of informational and educational materials on the web, some are listed below. Check out our next MLSA newsletter for live links to these materials and tips for using them. If you don't subscribe to our newsletter, visit mymlsa.org.

Association of State Dam Safety Officials: damsafety.org

Michigan EGLE Dam Safety: mi.gov/damsafety

Federal Dam Safety: fema.gov/emergency-managers/risk-management/dam-safety

Army Corps of Engineers: usace.army.mil/Missions/Civil-Works/Dam-Safety-Program/

The U.S. Society On Dams: ussdams.org

The Practical Guide to Lakefront Living: Enjoying and Conserving Your Lake



Lake ecology, natural shorelines, swimmers itch, fishing with conservation in mind, e-coli bacteria, dock placement, riparian rights, algae blooms, Michigan boating law, watershed management, aquatic invasive species, and Special Assessment Districts are just a few examples of the important topics that are covered in this unique guidebook that was written and published by MLSA with Michigan lakefront homeowners in mind!

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Road End Blues!

By Clifford H. Bloom, Esq.

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Civilly, it has been unlawful for decades to maintain private dockage and overnight, seasonal, or permanent boat mooring, anchoring, or dockage on a public road at a lake in Michigan. See *Jacobs v Lyon Twp* (after remand), 199 Mich App 667; 502 NW2d 382 (1993); *Higgins Lake Property Owners Assn v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003); *Delaney v Pond*, 350 Mich 685 (1957) and *Dyball v Lennox*, 260 Mich App 698 (2003). Unfortunately, however, until 2012, it typically took a lawsuit by riparian property owners to force members of the public or back-lotters from unlawfully keeping their docks, boats, boat hoists etc., at public road ends.

In 2012, the following Michigan statute (MCL 324.30111b) became effective for public road ends:

Sec. 30111b. (1) A public road end shall not be used for any of the following unless a recorded deed, recorded easement, or other recorded dedication expressly provides otherwise:

- (a) Construction, installation, maintenance, or use of boat hoists or boat anchorage devices.
- (b) Mooring or docking of a vessel between 12 midnight and sunrise.
- (c) Any activity that obstructs ingress to or egress from the inland lake or stream.

(2) A public road end shall not be used for the construction, installation, maintenance, or use of a dock or wharf other than a single seasonal public dock or wharf that is authorized by the local unit of government, subject to any permit required under this part. This subsection does not prohibit any use that is expressly authorized by a recorded deed, recorded easement, or other recorded dedication. This subsection does not permit any use that exceeds the uses authorized by a recorded deed, recorded easement, other recorded dedication, or a court order.

(3) A local unit of government may prohibit a use of a public road end if that use violates this section.

(4) A person who violates subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$500.00. Each 24-hour period in which a violation exists represents a separate violation of this section. A peace officer may issue an appearance ticket as authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates subsection (1) or (2).

(5) This section does not prohibit a person or agency from commencing a civil action for conduct that violates this section.

(6) As used in this section:

- (a) “Local unit of government” means a township, city, or village in which the public road end is located.
- (b) “Public road end” means the terminus at an inland lake or stream of a road that is lawfully open for use by the public.

This article will update my earlier one regarding the statute from the Spring 2018 issue of *The Michigan Riparian* magazine.

The 2012 statute can be enforced by any police agency in Michigan and can typically easily be done with appearance tickets. Unfortunately, however, some police agencies and prosecutors are refusing to enforce the statute. Why? There are multiple reasons as follows:

1. They do not view the statute as a high priority.
2. They claim that they do not have sufficient funds to be able to enforce statutes such as MCL 324.30111b.

(Continued on page 30)

Road End Blues!

(Continued from page 29)

3. It is not politically expedient.
4. One of the violators is a friend of a local police officer, prosecutor, etc.
5. They claim that the situation involved is not covered by the statute.
6. They assert that they are exercising “prosecutorial discretion”.

It is always frustrating when police agencies or prosecutors will not enforce a clear statute for improper reasons. It is particularly aggravating when the reasons given (or the actual reasons that are unspoken) are illegitimate, as is often the case with the above excuses.

Some police officers or prosecutors have refused to prosecute unlawful public road end cases by claiming that the road end involved is not “lawfully open for use by the public”. Interestingly enough, however, the statute does not require that a public road end be paved, gravel, or even improved for the statute to apply. Even public road ends that are left wild and overgrown can be used by pedestrians to walk to the lake. Furthermore, any public road end is likely “lawfully open for use by the public” unless it is lawfully barricaded (with prohibition signage) and physically closed to the public by the governmental unit with jurisdiction over the road.

Even apart from MCL 324.30111b, cities, villages, townships (via ordinances), and counties have full jurisdiction over their public roads and can require that private docks, boats, boat hoists, and other items be removed from the public road end under their jurisdiction. Amazingly, some of those municipalities that have expressed constant liability fears in the past regarding misuse of public properties such as parks, sidewalks, normal roads, and other public ways are now perplexingly unconcerned about public road ends at lakes being misused under MCL 324.30111b and the liability potential associated with such misuse.

Cities, villages, and townships also have full legal authority to adopt their own public road end ordinances and to enforce those ordinances via civil infraction tickets.

Too often, people have little faith in government due to the perceived laziness of certain government officials, the “it is not *what* you know, but *who* you know” principle (favoritism) and the refusal of certain government officials to simply do their jobs. The refusal to prosecute a clear violation of MCL 324.30111b only further adds to public cynicism about state and local governments.

Based on all of the above, it is within the right of any riparian property owner to insist that local law enforcement officers and prosecutors “do their job” regarding MCL 324.30111b.

A Michigan municipality that permits someone to improperly use a public road end by allowing private dockage, boat moorage, etc. could be facing potential liability issues. If someone is injured on a private dock at a public road end, drives a watercraft into a private dock (or a boat unlawfully on a public road end), or falls off a dock and drowns, not only will the owner of the private dock or moored boat be sued, but likely the municipality will be sued as well. Although municipalities generally have governmental immunity, it is not clear whether allowing private docks, boats, etc. at public road ends in violation of MCL 324.30111b would undercut such governmental immunity.

The requirement for MCL 324.0111b to apply that the road end be “lawfully open for use by the public” is but a truism. In general, if people are using the road end, even merely on foot (i.e. to walk to the lake), it must be open to the general public. Accordingly, a person who is suspected of violating the statute must be acting in one of two different situations. First, the person is using the road end for a dock, boats, etc., which violates MCL 324.30111b. Second and alternately, the public road end is not open to the public because it is barricaded or posted by the local governmental unit and it is not to be used. In that case, the person is a trespasser and should be prosecuted as such. There really are no scenarios other than those two.

Can a local municipality install its own dock at a public road end for “day use” only?

Clearly, the local unit of government may install and maintain a public dock under the statute at the public road end for day use only (i.e. boats and watercraft of the public may be docked or moored at such a government dock between sunrise and 12 o'clock midnight). Can a municipality authorize a private individual to install a private dock at a public road end? No. What about a private individual installing a public dock? The statute does allow “a single seasonal public dock or wharf that is authorized by the local unit of government”. Some local governments have interpreted that phrase to mean that the local government can authorize a public dock installed by a private individual. However, the statute clearly states that any day use seasonal

dock must be “public”. Furthermore, the Michigan common law indicates that private docks cannot be installed at public road ends – any dock must be a governmental dock. Finally, local governments should never authorize a private individual to install a private dock or even a dock for the public, due to the potential liability associated with that practice. Any day use dock should be government owned and installed. Otherwise, the local unit of government risks losing its governmental immunity in that situation.

In the last eight years since MCL 324.30111b was enacted, the Michigan appellate courts have addressed the statute in two different cases. In *Colthurst v Bryan* (an unpublished decision dated June 14, 2016; Case No. 323539; 2016 WL 3297644), the Michigan Court of Appeals rejected the backlot property owners’ assertion that MCL 324.0111b did not apply to a particular public road end. Elm Court was created via plat public dedication, was 20-feet wide, and ended at Wamplers Lake. The backlot property owners denied that Elm Court was a road end and also claimed that the adjoining riparian landowner lacked standing to assert the statute in court. The Court of Appeals found that Elm Court was a public road open for use by the public and that it ended at the lake. The Court of Appeals held that MCL 324.0111b applied even though “Elm Court is merely a grassy area of land, it is the use by the public which characterizes it as a public road end rather than the character of its terrain.” The Court also rejected the backlot residents’ claim that Elm Court was never accepted as a public road given MCL 560.255b(1), which provides that ten years after a plat is first recorded, land dedicated to the use of the public shall be presumed to have been accepted on behalf of the public by the municipality involved. In addition, the backlot residents argued that the statute retroactively deprived them of the vested right. The Court did not find any vested usage rights by the backlot property owners that were impaired by the 2012 statute. Finally, the Court found that the adjoining riparian property owner had standing to assert the statute in court.

The Court of Appeals’ decision in *Township of Grayling v Berry*, 329 Mich App 133 (2019) involved platted public road ends at Portage Lake. First, the backlot residents alleged that the public roads had never been accepted. After extensive analysis, the Court of Appeals agreed that the public roads were accepted as public roads in a timely fashion. Second, the backlot residents alleged that MCL 324.0111b did not apply because the public road ends at issue had never been improved or formally opened and were not available for vehicular travel. As such, the backlot residents claimed that the roads were not “lawfully open for public use”. Both the trial court and the Court of Appeals noted that “backlot

owners have used the area” where both roads exist to access the lake. Both courts also observed that “there is nothing that would prohibit the public from walking in that area or accessing the water there”. Therefore, the Court of Appeals held that the statute applies because the public roads were “open for the use of the public”. Finally, the Court of Appeals held that Grayling Township had standing to enforce MCL 324.0111b in court.

So, based on the above, when someone is violating MCL 324.0111b by installing a private dock on a public road end or keeping a boat, vessel, or other item on the public road end overnight, riparians should insist that the local police agency and prosecutor enforce the statute. That can be done by means of emails, letters, requested meetings, or appointments and even by giving the law enforcement officials a copy of this magazine article! Law enforcement officials are there to serve the public, not to grant special privileges to a select few by ignoring a clear statute and looking the other way. Would they do that with unlawful parking along a busy public highway? *R.*



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