

THE MICHIGAN
RIPARIAN



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DEVOTED TO THE MANAGEMENT AND WISE USE OF MICHIGAN'S LAKES AND STREAMS

Published Quarterly – February, May, August and November



Autumn canoeing on the Manistee River between Hodenpyle Dam and Tippy Dam Pond

Photo by Jay Hanks

In this issue:

**Perceptions of Lakeshore Living – Part I of a New Survey and Report
First Graduates of Lake and Stream Leader's Institute**

**Our Attorney Writes on Watercraft Rules, Seaplanes, Lots for Common Use
News and Activities of Lake Associations Around the State**

"THE MICHIGAN RIPARIAN (ISSN 0279-2524) is published quarterly for \$2.00 per issue by the Michigan Riparian Inc., P.O. Box 249, Three Rivers, Michigan 49093. Periodicals postage paid at Three Rivers, Michigan and additional mailing offices."

POSTMASTER:
Send address changes to:
The Michigan Riparian
P.O. Box 249
Three Rivers, MI 49093

The Michigan RIPARIAN is the only magazine devoted exclusively to protection, preservation and improvement of Michigan waters and to the rights of riparian owners to enjoy their waterfront property.

The Michigan RIPARIAN is published quarterly and is mailed to subscribers during February, May, August and November.

THE MICHIGAN RIPARIAN magazine is owned and published by the Michigan Riparian Inc., a Michigan non-profit corporation.

EDITORIAL and BUSINESS OFFICE: 124½ N. Main Street, P.O. Box 249, Three Rivers, MI 49093.

TELEPHONE: 269-273-8200

FAX: 269-273-2919

ADVERTISING DEADLINE: No later than 1st of the month preceding month of publication.

ADVERTISING RATES: Sent upon request.

SUBSCRIPTION RATES:

Individual Subscription \$8.00
Group Rates: 10 to 49 Subscriptions \$7.00
50 or more, or all members of a Lake Association \$6.00

PUBLISHER: Donald E. Winne 269-273-8200

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In This Issue

- Cover** *Autumn Canoeing on the Manistee River*
Photo by Jay Hanks
- 6** *Letter to the Editor: Limiting Boat Speed on Lakes Under 100 Acres*
By Fred M. Nightingale
- 7** *Michigan Waterfront Alliance News & Legislative Update*
By Christian Kindsvatter
MWA Board Urges Riparians to Write Legislators
Boat Noise Measuring Device Project Funded
- 8** *Perceptions of Lakeshore Living: Implications for Planning Sustainable Lakeshores, Part I*
By David Lemberg, Rolland Fraser,
and Jonathon Marsch
Western Michigan University
- 11** *MDEQ Plans Public Hearings on Pollutant Discharge General Permit for CAFOs*
- 11** *Wisconsin Imposes Sweeping New Rules To Control Farm, Construction, Urban Runoff*
- 12** *Michigan Lake & Stream Associations News*
- 13** *First Graduates of Lake & Stream Leader's Institute*
- 14** *High Schools and Lake Associations in Joint Projects*
- 15** *Cooperative Lake Monitoring Program*
- 16** *Our Attorney Writes On Three Recent Court Cases of Interest to Riparians*
Special Watercraft Rules, Aircraft Landing on Lakes, Properties Dedicated for Private Use in a Plat
By Clifford H. Bloom
- 17** *Pentwater Lake Association Members Concerned About Possible Houseboat Barges at Dockominium*
- 17** *Tips on Writing To Legislators*
- 18** *News and Activities of Lake Associations Around the State*
- 22** *DEQ Hearings on Revised New Lake Rules Delayed to March*
- 22** *Bass Virus Found in Southwest Michigan Lakes*

Letters to the Editor

"Discussion is the breath of a democracy's life."
— Raymond Clapper

Let's Limit Boat Speed and Engine Horsepower On Lakes of Less Than 100 Acres

To the Editor:

As a subscriber, I found the letter by Charles Breed of Long Lake, Grand Traverse County, only too true. The proliferation of large homes is a scourge on our already overburdened lakes. There is another scourge that is all too evident and detrimental as well.

On lakes of less than 100 acres, the use of high powered and fast watercraft is not only a safety concern but very destructive as well. Shoreline erosion is a concern as well as those boaters ignoring the 100-foot, no-wake rule and coming too close to docks where children are playing and snorkeling.

Also, small lakes are usually shallow, and ski boats with powerful engines stir up bottom silt to a depth of 6 to 8 feet that causes all sorts of problems and takes weeks to settle out. Among them is clipping off weeds that float away and re-root, contributing to more weeds. Then there is the silting over of spawning beds that reduces certain fish populations. The suspended silt causes turbidity which helps to raise water temperatures as well as giving algae material to exist on. There is more, but can we curb this?

Presently, lake associations can circulate petitions among the riparian owners and go to their Township Boards to pass ordinances for some controls. But this is the reverse of what it should be. The state should enact a law stating that "all lakes of 100 acres or less shall have no watercraft powered with more than 15 hp engines, and these may operate at full speed only between 10 a.m. and 6 p.m." However, owners of higher horsepower boats may petition the riparian owners for permission to operate their craft on such lakes. This would do two things. It puts teeth in measures to control these operators because the permission is conditional. It puts the monkey on the back of the boat users rather than the riparian owners. This should also reduce the need for marine patrols as well.

So, all riparian owners on lakes of 100 acres or less should put pressure on our legislators to give us this relief.

Fred M. Nightingale
Stone Ledge Lake
Wexford County

The Michigan Riparian welcomes letters to the editor on topics of concern to riparians. Articles for publication, article ideas, and suggestions are invited. Please contact William Hokanson at 269-244-5477.



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OUR 25th YEAR

Michigan Waterfront Alliance News & Legislative Update

By Christian Kindsvatter, MWA Lobbyist

MWA Board Urges Riparians to Support Road End Legislation – President Bob Frye and the MWA Board are urging riparians to help to advance legislation to be introduced in the Michigan House of Representatives in November, 2002. The sponsor of this MWA supported bill is Representative Mike Kowall from White Lake. The proposal will put 120 years of case law into state statute. This much-needed legislation will protect riparian interests and establish a state-wide standard for use and docking at road ends.

What the Legislation will do – The main provisions are:

1. No unattended mooring of boats at public dedicated accesses, to be included as part of the definition of public access. A time limit for temporary mooring or leaving a boat.
2. Define public access as ingress and egress only, and shall not include boat hoists, dock construction, unless to aid public access: (Backus vs Detroit), picnicking, sunbathing, or lounging, unless stated differently in property dedication (Jacobs vs Lyons Township).
3. Docks facilitating public access at road ends and other dedicated accesses must have a sign indicating use limitations of the site.
4. Penalties. Tickets issued by local law enforcement and other proper authorities. Violators guilty of misdemeanors, with fines up to \$500 for each violation. Each day is a violation. State or local government agencies may take civil action to compel removal of a non-compliant boat or structure. Aggrieved citizens may file civil actions to compel compliance. Barricading or preventing legitimate use of a public access also a misdemeanor.

What you can do – Write, call, or e-mail your state representative now. To find your representative or senator see these websites:

- State Representative: www.house.state.mi/uslocaterep.html
 - State Senator: www.senate.state.mi/us/Senator/find-your-senator.html
- Or call MWA Lobbyist Scofes, Kindsvatter & Assoc. at 517-485-5960.

Your message to legislators should be to support Rep. Kowall's legislation that sets a state-wide standard for road-end use. Including personal examples in your letter will emphasize the need for the law. Please send copies of your correspondence to SK&A at 416 W. Ionia St., Lansing, MI 48933. For tips on effectively communicating with your representative see Page 17. When the House Bill Number is available for this legislation it will be posted on the MWA website at www.mwai.org. "If you were ever going to write a political letter, now is the time," said MWA President Frye. This window of opportunity is rarely open."

Funding for Boat Noise Measuring Device Stays in Budget – Governor Engler signed Public Act (PA) 525, 2002, on July 25, 2002, which provides funding in the DNR 2002-2003 budget to support research by Michigan State on a device to determine whether boat noise exceeds the 90db limit. State funding of \$35,000 must be matched by contributions.



Perceptions of Lakeshore Living:

Photo by John Truchan III

EDITOR'S NOTE:

The Riparian is pleased to be the first to publish this research report on what a relatively large number of riparians consider important about their lakeside residences. Because of space limitations, the article will appear in two parts. This issue will cover what lake-related problems owners consider most critical, what problems they perceive, and what they favor in the way of regulations to protect their properties. Included are the implications for planning and zoning that the authors see in analyzing the views collected. In the February 2003 *Riparian*, Part II will report on what owners would like to learn more about lakeshore protection, the physical attributes of their properties, and some of their property maintenance practices.

The authors, specialists in geography and urban planning, would be the first to warn against over-generalizing these findings, since their survey was confined to only five lakes in Kalamazoo County, all of which are served by sewers. While some differences doubtless would be found in a similar survey of lakes in less urbanized areas, the information presented in this article is a valuable contribution providing important insights on what Michigan riparians are thinking and doing. W.H.

Implications for Planning Sustainable Lakeshores, Part I

By David Lemberg, Rolland Fraser,
and Jonathan Marsch

Department of Geography, Western Michigan University

As part of a research project on the impacts of lakeshore development on shoreline habitats in Southwestern Michigan, a survey was recently conducted of nearly 500 riparians on five lakes in Kalamazoo County. The survey was designed to determine:

- why individuals had chosen to live on the lakes?
- what problems they perceived as lake living issues?
- what regulation is necessary to preserve lake quality?
- what educational programs for lakeshore protection would be desirable?
- what were the resident's views and practices regarding lakeshore landscaping?

Questionnaires were sent in September of 2001 to 1,227 residents on Austin, Gull, Long, West, and Woods Lakes, of which 485 were returned - an unusually high response rate. Analysis of the results showed interesting conflicts between residents' reasons for choosing to live on a lake, such as views and interaction with nature, and their landscaping practices and attitudes toward lakeshore protection.

David Lemberg and Rolland Fraser are Assistant Professors in the Department of Geography, Western Michigan University, Kalamazoo, MI 49008. Jonathon Marsch is a graduate student.

Lakeshore protection is a complex issue and better understanding by both those living on the lakes and those responsible for protecting the lakes is to be desired.

Lakeshore Living Decision Factors

The first set of questions was on lakeshore location decision factors. Residents were asked to rate the relative importance of eight factors, at five levels, from Completely Unimportant to Extremely Important. The factors and their ratings are shown in Table 1 below.

Importance of Lakeshore Living Decision Factors					
	CU	NI	RI	I	EI
Viewshed(Vista)	0.42%	0.83%	3.74%	19.96%	75.05%
Interaction with nature	0.83%	3.13%	13.13%	39.58%	43.33%
Rurality	2.71%	12.11%	23.59%	40.29%	21.29%
Isolation from neighbors	6.26%	34.08%	38.41%	15.24%	6.05%
Security	1.67%	2.92%	10.42%	36.67%	48.33%
Open spaces	1.27%	4.02%	22.62%	41.44%	30.66%
Recreation	1.10%	3.96%	15.82%	32.09%	47.03%
Real estate value	2.74%	6.11%	15.16%	32.00%	44.00%

Key: C U - Completely Unimportant NI - Not Important
 R I - Relatively Important I - Important
 E I - Extremely Important

Table 1

As Table 1 indicates, the factor of more importance to lakeshore living was the viewshed, or vista available from the property. More than 95% of the respondents considered this to be important or extremely important. Other factors with a strong majority of extremely important or important responses included security (85%), interaction with nature (83%), recreation (79%), real estate value (76%), open spaces (72%), and rurality (62%). Only isolation from neighbors received a combined rating (21%) of either important or extremely important below 60%.

Implications for lakeshore planning include:

1) Viewshed protection is important to lakeshore residents requiring planners, decision-makers, and residents to be sensitive to controls on development and landscaping practices that affect lakeshore viewsheds.

2) Lakeshore residents express strong importance of natural contacts and natural spaces, implying land-use practices should be encouraged that protect and enhance natural lakeshore habitats.

3) Real estate values are important to lakeshore residents, so preserving the views and the habitats on the lakeshore should preserve and increase property values.

Perceptions of Lakeshore Problems

The results on the perceptions of lakeshore problems as seen in Table 2 vary across the population. Problems are perceived as both important and not important. Many of the differences can be linked to the character of the lakes. Gull Lake is deep and clear, with a known zebra mussel problem. Austin, West, and Long Lakes on the southern edge of the City of Portage are shallow and weedy. Woods Lake in the City of Kalamazoo is an urban lake with urban runoff problems. As such, the residents of all of the Lakes (except Gull Lake) saw low water levels, weediness, and exotic plants as a problem. Woods, West, and Austin Lakes saw water clarity problems. Woods Lake residents perceived a water quality problem. Gull Lake residents recognized their zebra mussels as an exotic fauna issue. While the reasons for locating on the lakes are consistent between the lakes, perceptions of problems seem to vary with the physical properties and surroundings of the lakes. *(Continued on Page 10)*

Perceptions of Lakeshore Problems					
	S D	D	U	A	SA
Lake level too high	59.19%	34.83%	2.78%	2.35%	0.85%
Lake level too low	10.64%	23.83%	4.89%	20.21%	40.43%
Water clarity is degraded	11.06%	34.89%	14.68%	23.83%	15.53%
Lake is too weedy	6.98%	28.33%	12.68%	29.18%	22.83%
Water quality is degraded	6.48%	29.37%	34.77%	17.49%	11.88%
Ground water quality is degraded	9.78%	39.33%	34.67%	11.11%	5.11%
Exotic plants spreading in lake	3.67%	22.25%	19.65%	33.26%	21.17%
Exotic fauna are problem in lake	3.43%	24.25%	28.97%	25.75%	17.60%

Key: S D - Strongly Disagree D - Disagree U - Undecided
 A - Agree SA - Strongly Agree

Table 2

Implications for lakeshore planning include:

1) Every lake has its own set of problems about which residents are aware, and a generic set of protections may not be sufficient at county, township, or even watershed scales, but rather mitigation measures may have to be applied at the lake scale.

2) Urban, suburban, and rural lakes have different problems, in part from development histories, and both physical differences in the lakes and differences in land uses around the lakes need to be considered in lakeshore planning.

3) Lakeshore residents perceive different problems depending on which lake (and sometimes what portion of the lake) they live, so decision makers and planners can not assume lakeshore residents will value a common agenda for lakeshore protection.

lakeshore development to preserve the quality of the lake and shoreline is adequate for current and future protection, though approximately 34% of the residents disagree with this statement. Given this summary, it should follow that close to 34% of the sample would support stronger regulations on setbacks, landscaping, runoff, and septic systems. Instead, 48% support stronger setback ordinances, 49% support stricter landscaping ordinances, 62% favor stricter runoff controls, and 60% favor septic system controls. In addition, lake association covenants or informal agreements are favored over township ordinances for lake protection 51% to 20% with 19% undecided. At the same time, over 75% of the residents disagree with the statement that lake protection measures should be voluntary, even at the risk of degradation of the lake resource.

Opinions on Lakeshore Protection Regulation

Table 3 below illustrates the differences of opinions on lakeshore protection regulation. Roughly 50% of the respondents agree that the level of regulation on

Implications for lakeshore planning include:

1) Lakeshore residents (at least in Kalamazoo County) are cautious about the idea of outside regulation of their lakes (some disdain regulation of any kind).

2) While many perceive the overall level of regulation as adequate, they may also perceive specific aspects of the lake needing stronger protective measures.

3) Residents see more local control through lake association covenants or informal agreements as preferable to township ordinances. While the concept of such covenants or agreements is attractive to riparians, the difficulty of designing, implementing and enforcing such measures requires complete consensus that is often difficult to achieve among neighboring property owners. Nevertheless, planners and decision makers should work with lake associations and residents to create stronger lakeshore protection measures.

4) Residents do not believe that voluntary compliance on lakeshore protection measures is adequate, so any covenants and other association-based lakeshore protection measures should have fair, but active enforcement mechanisms.

Opinions on Lakeshore Protection Regulation					
	S D	D	U	A	S A
Level of regulation is adequate	5.73%	28.14%	18.90%	44.37%	7.86%
Stronger setback ordinances needed	4.69%	24.09%	23.03%	33.26%	14.93%
Stricter landscaping ordinances needed	5.91%	20.68%	24.26%	34.60%	14.56%
Stricter runoff controls needed	2.95%	16.21%	18.95%	37.68%	24.21%
Stricter septic system controls needed	3.44%	19.57%	16.56%	32.26%	28.17%
Lake association covenants or informal agreements preferable to township ordinances	4.48%	15.57%	29.00%	34.97%	15.99%
Lake protection should be voluntary even at risk of lake degeneration	30.21%	44.89%	9.15%	11.49%	4.26%
Key: S D - Strongly Disagree D - Disagree U - Undecided A - Agree S A - Strongly Agree					

Table 3

In Summary So Far

The survey showed that the factors of leading importance to lakeshore living were viewsheds, interaction with nature, recreation, real estate value, open spaces, and rurality. The responses show some hostility to land use regulation, but interest in strengthening some rules for the good of the lakes. Since lake association covenants were preferred over local regulation for lakeshore protection, it is important that lake associations apply themselves to education and to developing effective measures to protect what the residents really consider to be important. *(Continued in the February Riparian)*

MDEQ Plans Public Hearing On Pollutant Discharge General Permit for CAFOs

In mid-October, the Water Division of the Michigan Department of Environmental Quality was nearing completion of the draft of a National Pollutant Discharge Elimination System (NPDES) general permit for concentrated animal feeding operations (CAFOs), Rhonda Wuycheck, spokesperson for the division, confirmed.

Ms. Wuycheck said that when the draft permit is completed, public notices of the hearing and a public comment period on it will be published in major regional newspapers, the DEQ website, and the DEQ Calendar 30 days in advance of the hearing, expected to be some time in November 2002. The text of the permit is expected to be available on the MDEQ website at www.michigan.gov/deq. Individuals seeking more information may contact Ms. Wuycheck at 517-241-7832.

Environmental groups such as the Sierra Club and National Wildlife Federation have charged that the state of Michigan has not enforced federal laws on regulating CAFOs. As a result, they say, many such facilities do not follow the law and the lack of enforcement has encouraged even more CAFOs to locate in Michigan, to include large dairy farmers from Europe.

According to the Sierra Club, many CAFOs wash manure from barns and store it in liquefied form in large open lagoons until it is spread on farm fields as fertilizer. Anne Woiwode, Chapter Director of Michigan's Mackinac Chapter of the Sierra Club, pointed out that water contamination can occur at any point of the manure disposal operation. "Pathogen containing liquefied manure can runoff from production areas, overflow or break out of lagoons, or wash off farm fields into county drains, rivers, lakes and streams." She noted that currently the state takes action against polluting CAFOs only on the basis of local complaints. Ms. Woiwode may be contacted at 517-484-2372.

Wisconsin Imposes Sweeping New Rules To Control Farm, Construction, Urban Runoff

As of October 1, 2002, extensive new rules to control runoff pollution went into effect in the state of Wisconsin. The new rules, which the Department of Natural Resources staff, advisory committees, and others spent four years developing, are regarded as the most comprehensive in the nation according to Russ Rassmussen, who led the DNR runoff management section in developing the rules. The DNR conducted 22 public hearings statewide during 2000 on the initial draft of the rules, and after significant revisions based on public comments, conducted 12 more hearings in 2001.

The new rules set mandatory goals or "performance standards" for farmers, municipalities, developers, golf course owners, and others to meet in order to reduce polluted runoff from their land. However, the different groups have been given some flexibility in how they meet the new standards. The new Wisconsin rules come 30 years after Congress passed the 1972 Clean Water Act. This law had the effect of reducing and controlling pollution from factories and municipal sewage treatment plants, so called "point sources", but did not address "non-point source" pollution carried into lakes and rivers by rain and melting snow from farms, city streets, construction sites, and other sources.

Wisconsin DNR Secretary Darrell Bazzell called the new rules the critical missing piece in Wisconsin's quest to clean up and protect all waters so they are safe to fish and swim in. Polluted runoff is one of the major reasons that 44% of Wisconsin river miles and 61% of lake acres do not fully support the fish and other aquatic life they should be able to support, according to a recent EPA assessment.

For the first time, farmers with small operations— the vast majority of Wisconsin's farms— would be required

to control soil erosion and manure runoff. The state, however, would not be able to enforce the requirements for a particular farmer unless the state had paid at least 70% of the farmer's cost of installing the practices to prevent runoff pollution. Currently only farms with at least 1,000 animal units — roughly 710 dairy cows, 1,000 beef cattle, 2,500 hogs, or 200,000 broiler chickens— are regulated to prevent water pollution.

Developers, contractors, and others involved in construction activity will have to control soil and sediment from their construction sites. Urban and urbanizing areas must meet standards for controlling toxics, sediment, and other pollutants, and for educating their residents on proper yard and garden care to minimize polluted runoff.

According to the Wisconsin DNR, many Wisconsin farmers and municipalities are already following some of the practices that will reduce polluted runoff. For instance, 82% of farmers already have reduced erosion from their croplands to the level set in the new performance standards, and many are following management plans for applying fertilizer to their land.

The new rules become effective at different levels over six years. For example, erosion control plans are required for construction sites of five acres or more now; by March 2003, the rules will apply to sites of one acre or more.

Agricultural operations must follow a nutrient management plan when applying fertilizer to new croplands after October 2003.

By March 2008, municipalities with 1,000 people per square mile must manage leaf/grass collection, detect and stop illicit discharges to storm-water sewers, and implement information and educational programs. W.H.

Our Attorney Writes On Riparian Rights and other legal matters of concern

By
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Three Recent Court Decisions of Interest To Riparians

In this issue's column, I report on three court cases which will likely be of interest to riparians. They involve special watercraft rules, aircraft landing on lakes, and properties dedicated for the private use of lot owners in a plat.

Special Watercraft Rules

Many riparians are aware of the ability of the Michigan Department of Natural Resources ("DNR") to approve special watercraft rules for lakes in Michigan pursuant to a portion of the Michigan Environmental Code (formally known as the "Marine Safety Act"). Special watercraft rules can include speed limits, no wake areas, no wake lakes and hours for high speed boating activity. Getting a special watercraft rule adopted is not easy. First, the local municipality (city, village or township) must adopt a resolution requesting the DNR to consider the proposed rule. Second, the DNR holds a public hearing (with appropriate newspaper notice) and makes its determination. If the DNR decides not to proceed with the special watercraft rule, that is the end of the matter. If the DNR approves the rule, it is sent back to the local municipality for final approval. Finally, if the local municipality approves the DNR sanctioned special watercraft rule, it becomes law through adoption of a local ordinance. If the municipality declines, the rule will not go into effect.

In Andrews v Holly Twp, ____ F Supp 2d ____ (Eastern District of Michigan 2002), a property owner challenged the adoption of a special watercraft rule on Marl Lake in Holly Township. The federal district court dismissed

the case without reaching a decision on the merits—the federal court held that the case should have been brought in Michigan's state courts. Nevertheless, the federal court implied that the special watercraft rule in that case might not be valid since the strict statutory adoption requirements may not have been met.

If you or other riparians on your lake desire to initiate the special watercraft rule adoption procedure, make sure that your local municipality and the DNR follow all required statutory procedures precisely. Furthermore, the DNR generally refuses to approve any special watercraft rules absent significant safety issues—the DNR usually will not consider nonsafety issues such as lake overcrowding, inconvenience or environmental considerations. Also, unless a sizable majority of the property owners on a lake desire to have the special watercraft rule adopted, it is unlikely that the DNR will approve an unpopular rule proposal.

Aircraft Landing on Lakes

Although sea planes landing and taking off on crowded or small lakes in the lower peninsula of Michigan have generally not been a problem in the past, controversies involving them are increasing. Why anyone would be so self-ish as to impose sea plane landings on their lake neighbors (to the point of sometimes even making them fear for their safety) on an urbanized or crowded lake is beyond me. Nevertheless, there appear to be an increasing number of incidents where sea planes are landing and taking off from lakes where such craft have no business being around. Under current Michigan law, local municipi-

palities can regulate and even ban sea planes on lakes. (I am using "sea plane" as a generic term to include float planes, flying boats, amphibians, and other aircraft capable of landing on and taking off from water.)

Local governmental regulation of sea planes has an interesting litigation history in Michigan. In 1996, the Sixth Circuit Federal Court of Appeals (i.e., the court just below the United States Supreme Court) held that Michigan municipalities have the authority to regulate and even ban sea planes on lakes within their jurisdictions. The Court rejected the notion that federal law and the Federal Aeronautics Administration have exclusive authority over sea planes on lakes. Despite this definitive decision in Gustafson v City of Lake Angelus, 76 F3d 778 (6th Cir 1996), advocates for sea planes simply would not take "no" for an answer. Rather, they lobbied the Michigan Aeronautics Commission ("MAC") to adopt administrative regulations which would preclude local governmental regulation of sea planes. Predictably, MAC adopted such special interest regulations. In the recent Oakland County Circuit Court case of City of Lake Angelus v Michigan Aeronautics Comm'n, (Oakland County Case No. 01-031671-CZ), MAC attempted to have the sea plane regulations of the City of Lake Angelus (the same municipality involved in the earlier federal lawsuit) thrown out. Happily, the trial court judge held that MAC exceeded its Michigan statutory authority in adopting such regulations, such that the city's sea plane ordinance remains in effect. That case is on appeal. This is just one more example

of narrow special interest groups attempting to take away local control.

Properties Dedicated For Private Use of Lot Owners in Plats

Approximately one year ago, the Michigan Court of Appeals handed down a decision which could dramatically affect properties in plats which were dedicated to the use of the property owners within the plat. Amazingly, this case has received very little publicity. Martin v Redmond, 248 Mich App 59 (2001), involved an outlot in a plat. Under the plat, the property was dedicated “for the use of the lot owners.” The Court of Appeals held that while common properties in a plat such as parks, roads, walkways and similar items can be validly created for and dedicated to the public, there was no legal authorization to create such items by dedication for the private use of property owners within a plat. In Martin, the Court held that the outlot effectively did not exist for use by property owners within the plat—the title went to owners of the adjoining property who could forbid other property owners in the plat from using the land which everyone had assumed for years was available for common use. What does this case mean in practical terms? That is unclear. The case is complex. Furthermore, the Court of Appeals handed down its decision in Little v Hirschman (unpublished Michigan Court of Appeals Case No. 227751) a few months after Martin, which did not clarify matters much. It is highly likely that private roads created by dedication in plats will continue to exist in favor of the property owners. This is true because the case of Nelson v Roscommon County Road Comm’n, 117 Mich App 125 (1982), long ago held that where a private road was improperly created or is vacated, it will still exist for the benefit of property owners within the plat. Even if that were not the case, it is difficult to believe that the courts would cut off a platted property’s only means of

Pentwater Lake Association Members Concerned About Possible Houseboat Barges at Dockominium

Last summer, some members of the Pentwater Lake Association became concerned when they learned that a houseboat was being built in Holland that the builder planned to tow to Pentwater Lake, where it would be moored for the season at a local dockominium. It would be used as a floating residence. It was later learned that this was a prototype that would serve as a sales model, the possible forerunner of a floating village.

The houseboat, which looks like a small two-story cottage with a pitched roof, was reported to measure 16 ft by 40 ft. It was being built on a barge-type hull and was not self-propelled. (See photo in next column.)

A number of lake association members, concerned about issues ranging from sewage disposal, to taxation, to lakeshore esthetics, wrote letters to their state senator and representative, requesting that legislation be enacted excluding the use of houseboats for residential purposes on the inland lakes of Michigan.

According to one member, the response from Lansing was “It’s not our problem.” Asked whether the lake association had approached the local zon-

ing author-
ity to regulate such craft, Ron Steiner, vice president, said “We’d like to, but we need help in drafting a proposed ordinance as well as strong justifications for it.”

Meanwhile, it was learned that because of the opposition generated, the builder has changed his plans for Pentwater Lake, but may be looking for other sites. W.H.

access. Additionally, the theory of easement by necessity could also probably be used to protect access rights in most cases. What the Martin case means for nonessential property access devices in plats (such as parks, walkways, beaches, and other privately platted devices to access lakes) is unclear. Unless Martin is overturned on appeal, it is possible that these other privately dedicated, commonly used properties will be extinguished (with the title going to adjoining property owners) unless some other legal theory such as prescriptive easement can be utilized in a given case to preserve such properties for common private use.

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Tips for Writing to Legislators from the Michigan Waterfront Alliance

Be timely, write when legislation is pending in committee or before the legislature. If possible, identify bills by title and number.

Write your own legislators. Keep your letter short, clear, and concise.

Use your own words on your own stationery. State reasons for your position. Tell how the issue will affect you or your community, state, or general property.

Avoid threats. Be reasonable and constructive. State only the facts, not hear-say.

Always ask for their position in a reply letter or phone call. Ask for clear yes or no answers, not maybes.

If you are pleased with your legislator’s vote, write and tell him or her so. Use the proper form of address:

The Honorable John/Jane Doe
Michigan State Senate/House
of Representatives

State Capitol, P.O. Box 30036
(S) / 30014 (H)

Lansing, Michigan 48909

Dear Senator/Representative Doe:

News & Activities of Lake Associations Around the State

Selected and edited from reports in recent lake association newsletters to provide an exchange of information and ideas

Barron Lake Association

Cass County

Larry Schadler, President

Herbicide Treatment Being Considered. Concerned about a worsening weed problem, the lake association asked Jim Donahoe of Aqua Weed Control Inc. for advice. After a tour of the lake, he found an infestation of Eurasian watermilfoil. Mr. Donahoe said the best method of control is by selective application of fluoridone, since weed cutting can create fragments that helps the plant spread. He estimated the cost of treating the entire lake at \$30,000. It was reported that the Michigan DEQ requires 100% of homeowners to give permission to treat an entire lake. If application is to take place in April, a permit should be obtained in January. The Barron Lake Association continues to explore the possibility of chemical treatment.

Kawkawlin River Watershed Property Owners Association

Bay County

Robert Manrovich, President

Annual Meeting. Meeting under the theme "The Kawkawlin River: Its Present and Its Future," the association recently addressed:

- The impact of present weeds in the river, implications for the future, and recourses available, particularly chemical treatments and their effectiveness;
- River water quality, implications for the future, what is being done now and what should be done about it;
- The quality of the river and its impact on property values.

The association is concerned about the increasing presence of weeds and plans to bring several experts in to learn more about what can be done.

Platte Lake Improvement Assn.

Benzie County

Wilfred Swiecki, President

Zebra Mussels and Clams.

Since zebra mussels have appeared in Platte Lake, improved water clarity is anticipated. One member observed about 2,000 zebra mussels on the hulls of his pontoon boat when he removed it for the winter. The newsletter reported that before 1960 Platte Lake had an abundant clam population that has all but disappeared. The clams helped maintain water clarity by filtering algae. Algae decrease water clarity as well as increase the potential for marl precipitation (whitening, clouding of the lake) by removing carbon dioxide from the water. It also noted that the previous clam population meant the presence of shells that were "torture on tender unprotected feet, just as zebra mussels are reported to be."

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Graduates of Lake Leader's Institute - 2002

M & M Lakes Environmental Association (Maston & Muskellunge Lakes) Kent County
Jim Southwick, President

Christmas Light Display Contest. The association will sponsor its second annual contest in December this year. The association received a report that the lakes currently contain too many hybrid bluegills. The association voted to spend \$1,000 to plant additional walleye and perch – equal numbers in each lake– to try to reduce the bluegill population. It has allocated \$700 for chemical treatment of weeds in two problem areas. Professional Lake Management has been hired to obtain the permits and do the treatment next spring. About 30 members of the association recently participated in a digging party to improve the channel between the two lakes. The association has completed its first clean-up project on a stretch of Trufant Road that it has adopted under the Adopt a Highway program.

Pratt Lake Association
Ogemaw County
Tom Cummins, President

Lake Monitoring Begins. Following training provided by Michigan Lake and Stream Assns, Pratt Lake has begun lake monitoring under the volunteer Cooperative Lakes Monitoring Program. In the first year the association will monitor water clarity through sechhi disc readings, and measure spring and fall phosphorus. Next season, they plan to add testing for chlorophyll a and dissolved oxygen. Volunteers are being sought to participate in the monitoring program. A post-season weed control survey was conducted, which noted that the control of Eurasian water milfoil remained excellent. Some increase was seen in the size of water lily beds and in the number and extent of other native aquatic plants, but not to the point that control measures were needed. Spot treatments under DEQ permits were applied during the season to control noxious weeds and algae.

Lake Gogebic Improvement Assn
Gogebic & Ontonagon Counties
Joe Slazyk, President

Fish Shelter Program Report.

With the approval of the DNR and the support of the Lake Gogebic Chamber of Conference, the association has been installing fish cribs, or shelters, in this huge lake in the Upper Peninsula. A fish crib consists of 20 pairs of 10-foot evergreen trees, each pair tied to a cement block, dropped in the water in a semi-circular pattern. Over the past five years, the association has put in 68 of these shelters along the west shore of Gogebic Lake.

While the Chamber of Commerce has achieved its objective and is no longer a partner, the lake association sees the need to improve the entire lake with many, many fish shelters. Its next target is the eastern shore.

Until now, the association had been using a 16 ft square raft on four 275- gallon steel tanks that could only be towed slowly to haul materials to shelter sites. It is building a vee-hulled catamaran 16 ft wide and 20 ft long that can be towed much faster and can carry the material for two fish cribs – twice the capacity of the old raft. The twin hulls will be of solid styrofoam protected by an aluminum skin. The association is building the catamaran at a cost of about \$1,000. The association also buys the cement blocks, supplies, and fuel.

It takes a crew of ten to effectively cut and haul trees, tie them to blocks, load them on the catamaran, and deliver them to the site selected for the fish shelter. With good weather and advance preparation, two delivery trips can be made in a day, resulting in four new fish shelters.

The cost of each shelter is about \$100, with unpaid volunteer labor. The fish shelters are assembled and loaded at the new East Shore launching ramp south of the Clay Banks. Work takes place on Saturdays and some weekdays. Members of the association can request that a fish shelter be emplaced in the lake in front of their cottages.

Higgins Lake Property Owners Association
Roscommon County
Ken Dennings, President

Green Belt Awards. The association recognized four property owners with Margaret Gilbert Greenbelt Awards for creating landscaped buffer zones to protect lake water quality. Charles McDaniel was honored as the 2001 “Friend of Higgins Lake” for his many contributions through long service on the HLPOA Board.

The association recently elected Ken Dennings president, replacing Robert Frye who had served in that position for 18 years. Frye was praised for his dedicated leadership through trying times during which the HLPOA was involved in more than a dozen lawsuits, primarily over road-end use. Frye was instrumental in the creation of the Michigan Waterfront Alliance to protect the interests of riparian owners throughout the state by closely monitoring legislative actions through the use of a professional lobbying firm. He serves as president of MWA and remains on the HLPOA board.

Pentwater Lake Association
Oceana County
James MacGregor, President

Milfoil Weevil Found Beneficial.

The association’s newsletter published a summary of a final report by Hamdy A. Helal, PhD, reporting that three years after the introduction of 10,000 milfoil-eating weevils in the north and south branches of the Pentwater River and in the Pentwater marsh in 1999, the presence of Eurasian water milfoil had been drastically reduced. Milfoil in Pentwater Lake, however, was not greatly impacted, probably because of the limited migration of weevils into the lake, the report said. Other factors, such as water level, flow rate, rainfall, and shifting of sand particles on the river bottom after a heavy rain, seem to have a negative impact on the growth of milfoil, the report said. Further actions concerning Pentwater Lake are being considered by the Pentwater Lake Improvement Board.

Big Brower Lake Improvement Association.

Kent County

Jacquelyn Deregnacourt, President

Events Sponsored Annually:

Community Pig Roast, 4th of July Fireworks and Boat Parade, Annual Garage Sale, Kid's Halloween Party, Christmas Eve luminaria (milk jug with votive candle) display.

The association owns a pontoon trailer used on designated pull-out and launch days at a fee of \$15 for members, \$25 for non-members. Service is available on other dates for \$10 more in each category. It conducts annual fish plant of perch, hybrid bluegill, and walleye supported by voluntary donations. Catch of a 22 inch walleye reported. Fall 2001 stocking included 360 walleye, 200 blue gill, 400 perch, and 10,000 fathead minnows. A Neighborhood Watch system was recently organized. Two residents who are retired secret service agents volunteered to serve as block captains. Publishes *The Brower News* six times a year.

Cedar Lake Recreation Association

Van Buren County

Don Dewey, President

Water Testing Results. The association conducts an annual test for e-coli in 20 locations around the lake. It also participates in the CLMP. In 2001 it recorded its worst ever average sechhi disc reading of 12.82 feet, and advised members on the need for increased vigilance and to reduce the input of phosphorus from fertilizer and burned leaves.

It has been investigating ways to control eurasian water milfoil. One firm proposed four to five chemical treatments of the entire lake for the first year at a cost of \$15,500, with follow-up treatments the second and third years at additional cost. The chemical treatment is guaranteed to kill 80% of the milfoil.

Another firm proposed to introduce 8,000 weed eating weevils into two affected areas, with a follow-up the second year, for a cost of \$13,500. The weevils do not kill the milfoil, but keep it eaten down 3 to 4 feet below the water surface of the lake.

Lakes Preservation League

Devil's and Round Lakes

Lenawee County

Arlen Miller, President

Lake History Book. The league has a history book, *Lake Reflections-Chronicles of Devil's and Round Lakes*, by Margaret Brighton for sale for \$30 (\$20 for LPL members). Call: 517-547-7267. The league has been concerned about runoff sediment reaching Devil's Lake via the Horton Drain from construction work on a manufactured home park on Devil's Lake highway.

It has adopted about 15 miles of roads around the lakes. Volunteer members have been cleaning up litter periodically for several years.

The league is encouraging members to pledge \$100 a year for three years to build an endowment fund for Michigan Lake and Stream Associations. It also encourages individual memberships in ML&SA at \$25.

The league joins with other local organizations to provide Christmas baskets for the needy.

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Long Lake Property Owners Assn.
Gogebic County (Upper Peninsula)
Jim Forbes, President

Loon Hatching and Other Reports. A loon returned on April 18. A loon nesting platform was put in, two loons were seen on April 23, and a loon on a nest on June 9. A chick was seen on June 27. The chick was seen diving on Aug 30. In late September, Army Domanus, secretary/treasurer of LLPOA reported the adult pair had headed south. The chick will remain until mature enough to follow. Three association representatives attended the ML&SA regional meeting in Iron River on September 6. Speakers' topics included protecting and restoring loon habitat, lakeshore buffer strips to prevent erosion, invasive exotic weeds, Eurasian water milfoil survey, and riparian rights. Water testing indicates the lake is "oligotrophic" and in good health, but there was some concern about sechhi disc readings being a consistent 12 feet, rather than varying between 12-18 feet as in prior years.



Gull Lake Quality Organization
Kalamazoo and Barry Counties
John Luchsinger, President

Late Freezing, Fish Survey. The newsletter reported that Gull Lake, usually an active place for ice fishing and ice boating, was not expected to freeze over until mid-February, 2002. It reported that only three times in the past 75 years of record had the lake not frozen until after January 31, two of which were in the first few days of February. It also reported that the lake never froze in the winters of 1930 and 1931. It also noted that if warm winters continue the lake will likely become warmer at all depths, significantly affecting many organisms that depend on the deep cold water to get through the summer, including brown trout and many zooplankton. The DNR was planning an extensive fish survey to see if smelt planted in Prairieville Creek are surviving. An earlier "creel survey" indicated the top three species caught in Gull Lake were bluegill (8,500), rock bass (7,900) and yellow perch (4,400).

**Morton Township
Tri-Lakes Association**
Blue and Round Lakes and Lake Mecosta, Mecosta County
Yo Bellingier, President

Fighting Funneling. The association has been urging Morton Township to pass an anti-funneling ordinance. The township's attorney encouraged the Twp Board to hold off acting on such an ordinance and none has been passed. Now, the newsletter reports, the same attorney is representing a subdivision developer who wants to funnel 41 back lots onto Blue Lake. A hearing scheduled for Oct 4 in Big Rapids was postponed at the request of the developer.

A review of water clarity data from the past eight years reveals the clarity of Blue Lake dropped significantly in the summer of 2002 to an average of about 3.2 feet. Investigation indicated that the water temperature has been about 5 degrees Fahrenheit higher. The reduced clarity is a trend reversal for the Tri-Lakes and is contrary to what was expected after zebra mussels appeared.

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DEQ Hearings on Revised New Lake Rules Delayed to March

Public hearings on proposed revisions and additions to administrative rules used to enforce Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994, (PA 451 as amended) probably will not be scheduled until mid-March 2003, according to the MDEQ. *The Riparian* plans to publish an extensive article on these rules in the February 2003 issue.

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Bass Virus Found in Southwest Michigan Lakes

According to the Michigan Department of Natural Resources, as reported in an Associated Press dispatch from Lansing, Largemouth Bass Virus appears to be spreading in southern Michigan. It has been found to date in Long and Klinger Lakes in St. Joseph County, and in Little Long Lake in Hillsdale County on the Indiana-Michigan border. More recently the *Kalamazoo Gazette* reported that it had been found in Austin Lake, Kalamazoo County, and is suspected in 30 other lakes, mostly in southwest Michigan.

The virus is not known to infect humans and infected fish are considered safe to eat. But all fish should be thoroughly cooked as a precaution, the DNR advises.

Other fish species can be infected with the virus, but it has been fatal only to largemouth bass of 12 inches or longer. Infected fish usually appear

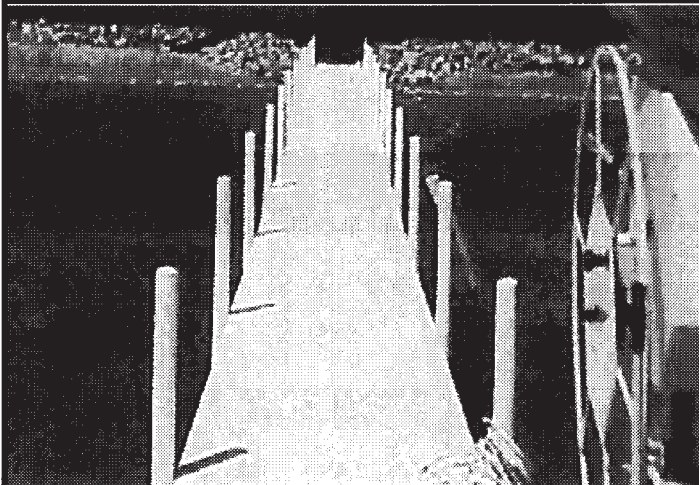
normal, although they may be lethargic and less responsive to activity around them. Dying fish are often seen near the surface and have difficulty remaining upright.

When examined internally, such fish usually will have bloated swim bladders, which accounts for the swimming problem. Red sores or other lesions are sometimes seen on the skin, but these are not part of the virus infection, the DNR advises.

The DNR asks anglers to handle bass gently if you intend to release them, and not to move fish or fish parts from one lake to another. Live bait should not be released into any body of water, the DNR says. Boats, trailers, and other equipment should be cleaned thoroughly between fishing trips to prevent the spread of the virus as well as other organisms. Dead or dying fish should be reported to the DNR.

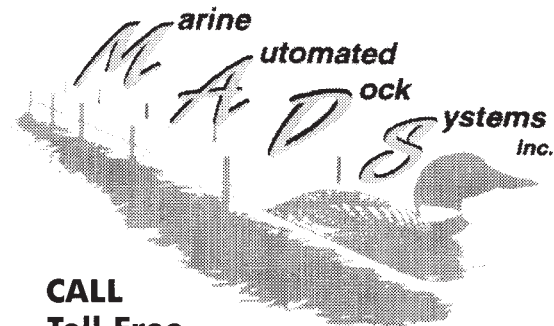
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