

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



The Summit Center at Summit Village, Shanty Creek Resort, Bellaire Michigan

In this issue:

**ML&SA Annual Conference at Shanty Creek, April 25 - 27**

**Perceptions of Lakeshore Living – Part II of a Recent Survey and Report**

**Ice Boating in Michigan – 117 Years of “Hardwater” Sailing**

**Our Attorney Writes on Adverse Possession and Prescriptive Easements**

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**In This Issue**

- Cover** *The Summit Center at Summit Village Shanty Creek Resort*
- 6** *Letters to the Editor:*  
*Seaplane Pilots are Not "Selfish"*  
By Ralph Vogel
- 7** *Editorials:*  
By William Hokanson  
ML&SA Conference is Like Going Back to College  
Watch State Website for Hearings on Lake Rules
- 8** *Perceptions of Lakeshore Living and Implications for Planning, Part II*  
By David Lemberg, Rolland Fraser, and Jonathon Marsch  
Western Michigan University
- 12** *ML&SA Conference at Shanty Creek Resort*
- 13** *Michigan Lake & Stream Associations News*
- 14** *ML&SA Conference Program*
- 16** *ML&SA Conference Registration Forms*
- 18** *DEQ Issues General Discharge Permit For Large-scale Animal Feeding Operations; Riparians Need to be Vigilant in Monitoring*  
By Anne Woiwode, Sierra Club
- 19** *Ice Boating In Michigan – 117 Years of Hardwater Sailing*
- 20** *Michigan Waterfront Alliance News & Legislative Update*  
By Christian Kindsvatter  
New Legislators Need Education on Lake Concerns  
Legislation on Road End Use to be Re-Introduced  
Proposed Lake Rules Still Being Worked On  
Boat Noise Legislation to be Done Again  
Former DEQ Director joins MWA Lobbying Firm
- 21** *Our Attorney Writes On Adverse Possession and Prescriptive Easements*  
By Clifford H. Bloom

The Michigan Riparian welcomes letters to the editor on topics of concern to riparians. Letters must avoid partisan politics and may be edited. Articles for publication, article ideas, and suggestions are invited. Please contact William Hokanson at 269-244-5477 or Whok242@aol.com

## Letters to the Editor

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

### Seaplane Pilots are Not "Selfish"

To the Editor:

I own and operate an amphibious ultra-light airplane which I land and take off on Corey Lake. I will not accept Clifford H. Bloom's wide-brush painting of me (in his "our Attorney Writes" column in the November Riparian) as a "selfish" person, especially in regard to lake matters. I really care about our lake (Corey) and lakes in general. Since its inception in 1974, I have taken hundreds of Secchi disc readings, gathered spring and summer phosphorus samples, and filtered, frozen, and delivered chlorophyll "a" samples when those Cooperative Lake Monitoring programs became available. When the DEQ office was at Plainwell across from the airport, I delivered frozen test samples by air in my plane. In recent years I've taken the dissolved oxygen temperature profiles for our lake. I have fabricated over a hundred Sechhi discs for the Michigan Lake and Stream Associations at no charge for the labor involved.

I am not aware of anyone on our lake who objects to my landings and take-offs on the lake. Quite the opposite, if I have not appeared for awhile, they say they miss seeing me. When done safely and in moderation at times when the lake is not too busy, I fail to see that my flying from the lake surface is any more or less a selfish use of the lake than that of the operators of boats and jet skis. It is probably true that some inconsiderate pilots have acted irresponsibly, been a danger to themselves and others, and been a nuisance in general in their area. However, their actions should not discredit seaplane operators as a class. Some means to change the bad behavior of a few and get them off the lakes is fine, but let's not discredit and punish all pilots.

Over the years I have attended a number of ML&SA conferences and heard some fine presentations by Mr. Bloom. I hope that he does not have an "itchy pen" that is drafting legislation that would ban all seaplanes from inland lakes in order to control a few clowns. Nor should every pilot be labeled selfish.

Ralph Vogel, USUA Pilot # A9540  
Corey Lake, St. Joseph County

**Cliff Bloom Responds:** Ralph and I are probably not as far apart on this issue as he might think. The statement in my column was, "Why anyone would be so selfish as to impose seaplane 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." (emphasis added) Obviously, there are many large and sparsely developed lakes in the state (particularly in the north) where seaplane activity is safe and appropriate. The problem I (and many riparians) have is with seaplane takeoffs/landings on small or crowded lakes. The same objection would occur if someone attempts to utilize a 30' long cigarette boat at high speeds on a 100 acre lake, or to drive a long tractor trailer on a very narrow, winding, crowded lake residential street. Also, having the state bureaucracy take away local municipal regulatory authority for seaplane activity on lakes should be objectionable to everyone as an improper loss of local control. Finally, I presume that Ralph would agree that there is a big difference between someone occasionally using a small ultralight plane on a lake versus takeoffs/landings of a conventional seaplane which will often "crowd out" all other watercraft over a large area.

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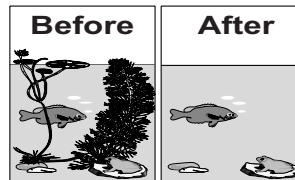
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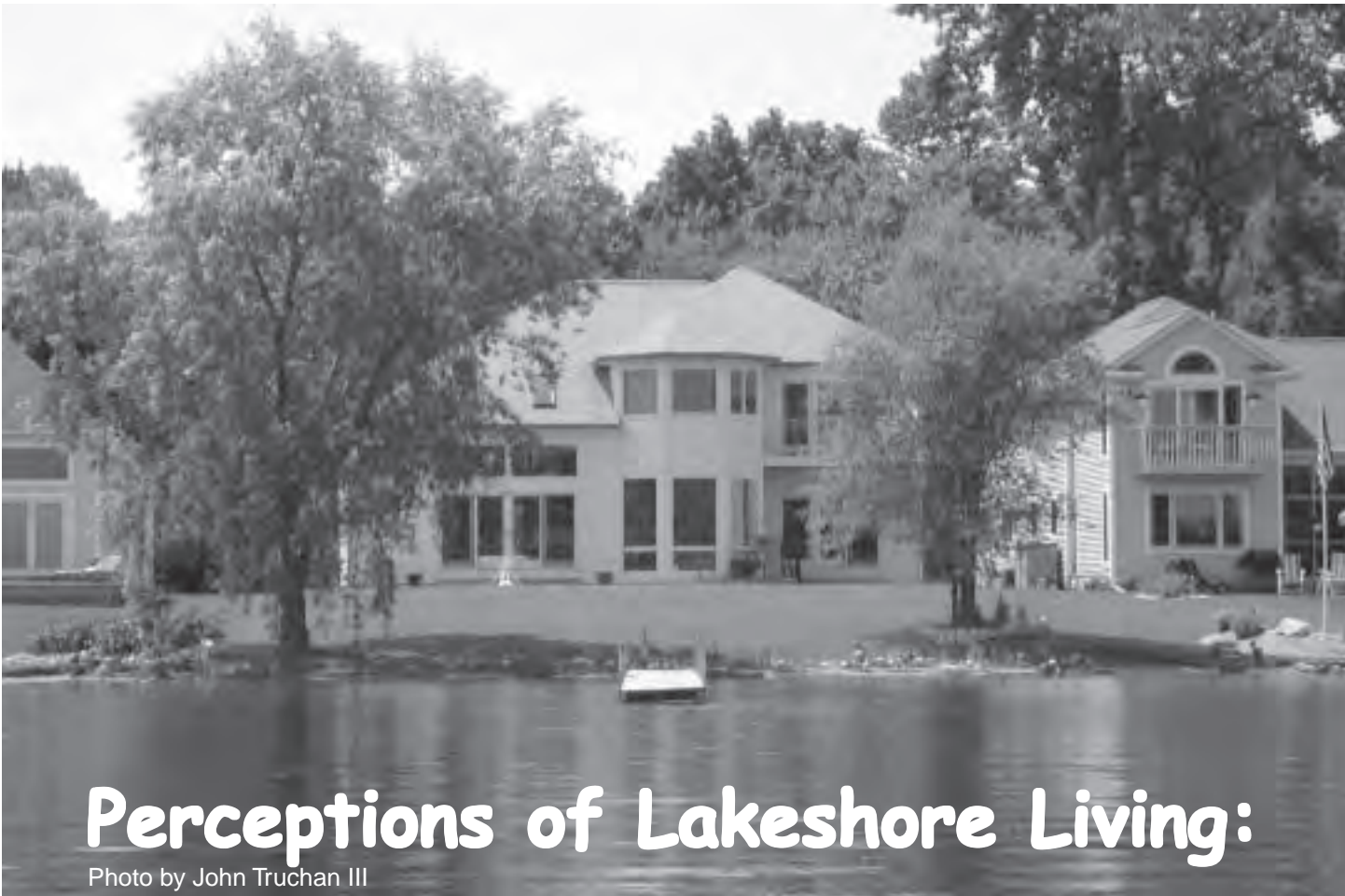
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# Perceptions of Lakeshore Living:

Photo by John Truchan III

A grass lawn lakeshore representative of landscapes reported by 80% of those responding to the survey.

## EDITOR'S NOTE:

This is the second and concluding part of a report on a recent research project on the impacts of lakeshore development on shoreline habitats in southwestern Michigan. The data discussed were obtained from a survey of nearly 500 riparians on five lakes in Kalamazoo county. The survey was designed to determine:

- 1) why individuals had chosen to live on lakes?
- 2) what problems they saw as lake living issues?
- 3) what regulation is needed to preserve lake quality?
- 4) what educational programs would be desirable?
- 5) what lakeshore landscaping was being practiced?

In Part I, published in the November 2002 issue of *The Riparian*, the authors discussed the first three topics listed above. In Part II they discuss what educational programs for lakeshore protection the riparians surveyed thought desirable and what lakeshore residents views and practices were regarding lakeshore landscaping.

At the end of Part II is a summary of the findings of the entire article.

## Implications for Planning Sustainable Lakeshores, Part II

By David Lemberg, Rolland Fraser, and Jonathan Marsch

Department of Geography, Western Michigan University

(Continued from the November 2002 *Riparian*)

### Lakeshore Protection Education

Table 4 on the next page shows the wide interest by the residents of the lakes in learning more about lakeshore protection. Over half of the residents were interested in attending programs on lakescaping and on water quality. Just under 50% were interested in attending a program on exotic species control in lakes and on lakeshores. More than 75% of the residents were interested in receiving a workbook on residential lakeshore protection techniques.

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

### Interest in lakeshore educational programs

	S D	D	U	A	S A
Interested in lakescaping program	3.04%	15.18%	30.15%	41.21%	10.41%
Interested in water quality program	1.32%	17.98%	26.10%	46.27%	8.33%
Interested in exotics control program	2.19%	20.18%	30.26%	38.82%	8.55%
Interested in receiving a lakeshore protection workbook	1.08%	9.05%	12.28%	53.45%	24.14%

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

**Table 4**

#### Implications for planning include:

1) Lakeshore residents are interested in learning more about protecting their resources and amenities, and lake associations and local agencies may be appropriate venues for programs to take advantage of this interest.

2) Providing education on lake protection might result in more acceptance of lake protection ordinances and regulations if they are deemed necessary.

3) Lake associations and local agencies should consider distributing or subsidizing lake protection workbooks.

A number of such books are available at reasonable cost including:

*Living with Michigan Wetlands: A Landowner's Guide*, is available from Michigan Sea Grant, 149 pp. This illustrated guide explains the importance of wetlands, how to identify and assess wetlands, and develop a conservation management strategy. \$5.00 from Michigan Sea Grant at [www.miseagrant.org/pubs/miwetlands](http://www.miseagrant.org/pubs/miwetlands).  
*Lakescaping for Wildlife and Water Quality*, Carrol L. Henderson, Carolyn Dindorf, Fred Rozumalski, Minnesota Department of Natural Resources, 176 pp. A highly regarded, well illustrated guide on how to landscape your shoreline property to prevent shoreline erosion, restore wildlife habitat, wildflowers and clean water. This book will show you the way to design your area for increased enjoyment of your lakeside or riverside residence. \$19.95 from Minnesota's Bookstore. [www.comm.media.state.mn.us/bookstore](http://www.comm.media.state.mn.us/bookstore).

(Ed. Note: A very brief and basic reference guide on Lakeside Landscaping and Lawncare prepared by Progressive Architecture Engineering Planning is available free from Michigan Lake and Stream Association, P.O. Box 249, Three Rivers, MI 49093.)

### Physical Appearance of the Lakeshore Property

Table 5 below shows some of the landscape and physical characteristics as described by the residents. These are particularly interesting in relation to the stated priorities of the residents on viewsheds and natural contacts. The responses showed a lakeshore landscape that is mostly artificial, rather than naturalistic. (*Continued on Page 10*)

### Physical Appearance of the Lakeshore Property

Open unshaded grass lawn	10.83%
Grass lawn with ornamental shade trees	6.39%
Grass lawn with "natural" shade trees	63.51%
Ornamental ground cover	4.12%
Ornamental flower gardens and shrubs	6.80%
Ornamental trees	0.82%
Naturalistic grassland	1.65%
Naturalistic wetland	0.62%
Naturalistic woodland	2.06%
Terraced or zoned combinations of above	5.98%
Muddy lake bottom	37.11%
Sandy lake bottom	61.24%
Gravel lake bottom	19.59%
Rocky bottom or riprap boulders	3.51%
Emergent plants offshore (such as cattail, bulrush, arrowhead)	17.32%
Floating leafed plants offshore such as water lilies)	15.88%
Submergent plants offshore ( such as milfoil, charra, pondweed)	33.20%
Seawall	52.99%
Boat dock	71.55%
Recreation deck	31.75%
Beach	51.75%
Natural wetland buffer	11.96%
Footpaths to water	14.02%
Boatramp	3.30%
Boathouse / utility shed	9.28%
Average setback	73.69 feet

**Table 5**



A lakeshore with beach and sea wall.

-- Photo by John Truchan III

More than 80% of the properties in the sample were described as grass lawns with varying amounts of shade trees. Fewer than 5% categorized their landscapes as natural. This means that the overwhelming majority of the viewsheds are likely to be of lawns rather than of nature. An examination of the nearshore plants show that more than 17% of the properties had emergent plants offshore, more than 15% of the properties had floating-leaved plants offshore, and more than 33% of the properties had submergent plants offshore. Since many of the properties had mixes of these plants, the total percentage of properties that had any plants offshore was only 44%. This means that more than half of the properties are likely to be clearing out the nearshore flora for swimming areas and boating.

This is not surprising, since more than 50% of the properties are listed with seawall and 50% with beaches. The viewsheds are further occupied with boat docks on more than 71% of the properties, recreation decks on more than 31% of the properties, and boathouses or sheds on more than 9% of the properties. On the other hand, more than 14% tried to minimize the disturbance of the shoreline with access footpaths, and almost 12% retained a natural wetland buffer on their shore. Average setback from the shore was 73.69 feet, ranging from a minimum of 4 feet to a maximum of 500 feet.

**Implications for planning include:**

1) While residents place a high priority on what they see from their properties, their landscaping practices may combine to degrade the views they are seeking. The entire property need not be covered in natural cover to appear natural, but a shoreline buffer with some access and viewshed gaps will preserve views for the lake as a whole. Natural landscaping creates habitat for wildlife, adding the “natural contacts” to the lakeshore lifestyle. Planners, decision makers, and residents might consider educational programs, plantings, and recommended guidelines for viewshed and habitat preservation and improvement.

2) While one dock or one boat house on a property on a lake is not an eyesore, a dock and boat-house on every property creates a cluttered and artificial looking shoreline. Homeowners might consider common dock areas to cluster the “clutter.”

3) The same principal can be applied to beaches and seawalls. While it is convenient to have a beach on your shoreline, it is also costly. Clearing the plants creates erosion-risk and the need for seawalls. Clearing the plants also destroys the best fish habitat. Lakes with limited common beaches and “weedy” shorelines have better fishing and little wave erosion.

4) Setback regulation should fit the physical attributes of the shoreline. Distance back from the shoreline is important for runoff control and viewsheds, but height above water and slope of the lakeshore are also important to bear in mind.

**Utilities and Property Maintenance**

Table 6 on the next page shows that more than 80% of the residents of the lakes in the survey are on a sewer system. Fewer than 5% reported that they were still on a septic field system. While this is typical of the more developed lakes in Southwest Michigan, there are still many lakes where all are still on septic systems, which may be creating excess nutrient levels in the lakes. Fewer than half were on city water systems, while presumably the rest were on local well water. More than 44% of the residents watered their lawns on a regular basis. More than 33% applied herbicides and/or pesticides on their property. Close to 85% maintained their lawns by mowing. Fewer than 2% used controlled burning to maintain their property. Close to 12% reported aquatic weed or nuisance species removal. Given the previous responses in Table 5 on aquatic vegetation and beaches, it is likely that this may have been under-reported.



A lakeshore left in a very natural state

-- Photo by David Lemberg

### Utilities and Property Maintenance

Septic system	4.54%
Sewer hookup	81.86%
City water	46.19%
Lawn irrigation	44.12%
Aquatic weed control	11.96%
Herbicide/pesticide treatment	33.61%
Mowing	84.95%
Controlled Burning	1.65%

**Table 6**

#### Implications for planning include:

1) It is well known that replacing septic fields with sewer systems around lakes can increase water quality by reducing the nutrients leaking into the lakes. Septic systems designed for summer weekend cottages many years ago are likely to fail when used year-round. Water tables are often too high near lakeshores for percolation rates required for adequate operation. While expensive, sewer upgrades are often well worth their impacts on the lake water quality (and on the lake's property values). Care should be taken, however, that a sewer system doesn't lead to increased development density in the future.

2) Water wells around a lakeshore have their own risks. The wells around the lake are tapping the same groundwater that fills the lake. Those that recognize a low lake level problem need to determine if the collective pumping around the lake is contributing to the problem. Lakeshore residents on lakes with no sewer systems should be cognizant of the risks associated with septic fields, high water tables, and wells. The same nutrients that may be leaking into the lake may be leaking into the drinking water pumped from the wells.

3) Lawns have a number of negative impacts on the lakes if maintained in a risky manner. Sprinkler irrigation should be enough to soak the turf, but not enough to run back into the lake. A buffer strip of native vegetation will help to filter lawn runoff. Sprinkling during the middle of the day may create evaporation losses. The collective losses from lawn sprinklers pumped from the lake, may result in decreasing lake levels. Evaporative losses can be reduced by early morning or evening watering sequences. Herbicide, pesticide, and fertilizer applications should be moderate. Care should be taken in watering after applications to minimize runoff into the lake of

toxins and nutrients. After mowing, compost or dispose of clippings away from the lakeshore. Tossing the clippings into the lake increases the load of nutrients and toxins (and decreases lake water quality).

#### Summary

The results of this survey show that there is a conflict between the objectives of lakeshore residents for beautiful viewsheds and natural contacts, and the collective land use practices of these same lakeshore residents. While individually, lawns, docks, and beaches are an important part of the lakeside lifestyle, collectively they create a landscape that is artificial at best, and garish and "tacky" at worst. Alternatives in landscaping practices such as shoreline buffer strips, access paths, clustered and shared docks and beaches will help to retain the natural beauty that draws us to the lakeshores.

While the responses show some hostility to land use regulation, they also show interest in strengthening some rules for the good of the lakes. The majority of the residents want to learn more about how to better care for their lakes.

Since lake association covenants were preferred 51% to 20% over local regulations for lakeshore protection, it is important that individual lakeshore associations apply themselves to education and to developing effective measures to protect what the residents really consider to be important - the viewsheds, the natural contacts, the recreation benefits, and subsequently, the real estate values. Year-round residential landowners have a growing environmental awareness, and express a desire to learn more about naturalistic landscaping choices to balance aesthetics and value.

This research was funded by EPA STAR Grant #R-82758401-1 entitled "Sustainability and Risk of Fragmented Habitats: Development and Regulatory Variables in Shoreline Residential Development Planning in Southwestern Michigan." Copies of the questionnaire used in this survey may be obtained by writing or e-mailing David Lemberg at Department of Geography, Western Michigan University in Kalamazoo, MI 49008, (lemberg@wmich.edu). Prof. Lemberg welcomes correspondence or comments on this article as does the editor of *The Michigan Riparian* at P.O. Box 249, Three Rivers, Michigan 49093.

Ed. Note: The forthcoming May issue of the *Riparian* will include an article on "Solving Lakeshore Problems with a Buffer Zone" reprinted, with permission, from the book by Carrol L. Henderson, et. al. mentioned in this article entitled *Lakescaping for Wildlife and Water Quality*.

## DEQ Issues A General Discharge Permit For Large-scale Animal Feeding Operations; Riparians Need to be Vigilant in Monitoring

By Anne Woiwode

Director, Sierra Club, Mackinac Chapter

Michigan riparians have long been concerned about protecting water quality. Agricultural runoff, particularly from large scale concentrated animal feeding operations (CAFO's), continues to be one of the greatest threats to the quality of Michigan's surface waters.

On November 21, 2001, the DEQ finally held a public hearing on a proposed general National Pollutant Discharge Elimination System (NPDES) permit for CAFOs in order to come into compliance with federal law. This came about after considerable pressure from environmental groups and a threat from the U.S. Environmental Protection Agency to withdraw Michigan's authority to run the state's water pollution control program.

Lakes and streams throughout lower Michigan, where the vast majority of the state's estimated 250 to 300 CAFOs are located, have been repeatedly contaminated by discharges of liquefied manure, milk house wastes and other animal waste products. Illegal discharges have come from manure storage lagoons, manure spreading operations, trucks hauling manure, or directly from the buildings housing the animals. These wastes contain nutrients and pathogens, including antibiotic resistant bacteria that threaten both natural resources and human health.

Despite extensive negative comments about the content of the proposed permit and a highly controversial public hearing process, former DEQ Director Russell Harding approved the permit with minor changes on December 13. The effective date of the permit was January 1, the day Governor Jennifer Granholm was sworn into office.

Among the greatest flaws in the newly issued general permit is the failure to require all CAFOs to obtain permit coverage, even though the US EPA has concluded that all CAFOs will eventually cause illegal discharges. There are also no requirements for new or expanding CAFOs to go through a permit application process prior to building and operating.

In addition, CAFOs will receive approval under the permit without being required to submit all the documentation about the designs and management plans for their facilities' features. Smaller livestock operations that have had illegal discharges will not be required to come under the permit, and enforcement of the law will be subject to adequate funding for DEQ staff to investigate and monitor facilities.

Despite its flaws, the permit does have some positive features. Facilities covered by the permit will be required to construct manure storage lagoons that meet standards consistent with other industries, and must have a certified operator on hand to run the facility. The permit also clearly defines polluted runoff from agricultural fields, including through drainage tiles, as violating the law. Most importantly, DEQ officials are now conducting pro-active inspections of potential CAFOs in the state in order to identify those that must obtain a permit.

By 2006 all livestock feeding operations with over 1,000 animal units (700 dairy cows, 1,000 beef cattle, 2,500 hogs, 30,000 chickens or the equivalent) must either come under the general permit or become certified under the voluntary Michigan Agricultural Assurance Program (MAEAP). MAEAP is voluntary, which raises grave concerns for those familiar with Michigan's poor record of assuring compliance with previous voluntary programs.

MAEAP compliance will require development of a plan for the management of manure and other nutrients from the facility. (A CAFO of 1,000 animal units produces the equivalent amount of urine and feces as 16,000 people.) Also, any facility which has a documented illegal discharge in the future will be required to obtain a certificate of compliance under the CAFO general permit in order to keep operating.

A critical component for assuring that CAFOs are not causing harm to Michigan's lakes, drains, streams and other waterways will be monitoring by members of the public, particularly interested riparians. Limited resources means that effective enforcement will depend on the eyes and ears of the public to monitor and report any violations of the law.

Protecting Michigan's lakes and streams from the deadly wastes caused by large scale livestock operations is a step closer, but the proof will be in the quality of our state's waters. Meanwhile, because of deep concerns about the inadequacy of the newly issued general permit, the Sierra Club and others have asked the new state administration to immediately revisit the recently approved permit provisions and significantly improve them.



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Editor's Note: Anne Woiwode will be giving a presentation at the ML&SA Conference at Shanty Creek Resort on Sunday, April 27.



# Ice Boating in Michigan

Hardwater Sailors Combine a "Need for Speed" with Patience to Await Good Ice and Wind Conditions



Ice boats on Fisher Lake, St. Joseph County

— Photo by John Fredricksen

Devotees of the exhilarating winter sport of ice boating have to balance their "need for speed" with a great amount of patience. They have to wait until Mother Nature provides them with good smooth ice and at least a little wind somewhere, anywhere within a couple of hundred miles. They keep each other informed about conditions around Michigan and neighboring states through a phone message system that they check into daily. Once good conditions are found, they pack their agile craft on car tops or trailers and head for the fun. When a regatta is scheduled, five or more potential locations are listed in priority. The location highest on the list that has good conditions is selected for the meet no more than 48 hours in advance.

The first ice boat in Michigan was a sail-powered sled built on Gull Lake in 1886 by D.C. Olin. Soon thereafter, several more ice boats were built on Gull Lake and the Kalamazoo Ice Yacht Club was formed in 1893.

By 1902, Gull Lake was one of the leading ice yachting centers in the country and many regattas were held between eastern and midwestern sailors. Other places active in ice yachting in the midwest were Detroit's Lake St. Clair and several big lakes in Wisconsin.

The first ice boats in North America had been introduced by Dutch settlers on the frozen Hudson Rivers in New York in 1790. Ice boats had been used as cargo carriers on the frozen canals in Holland since the mid 1600s.

The first racing of ice boats for sport occurred in 1861 at the Poughkeepsie Ice Yacht Club on the Hudson. In 1869, a 69-foot ice boat with 1,070 square feet of sail named "Icicle" owned by John E. Roosevelt (an uncle of FDR) beat a fast express train on a run between Poughkeepsie and Ossining, N.Y. Early ice yacht clubs spent most of their time racing trains.

In 1902, the huge ice yacht "Wolverine," the second largest in the country, was built at Gull Lake.

Once clocked at the world record speed of 132 mph over a 20-mile course, the "Wolverine" was undefeated in ice yacht competition until 1922.

The Kalamazoo Ice Yacht Club disbanded in 1935, but was revived as the Gull Lake Ice Yacht Club in 1943. Today it has about 45 members.

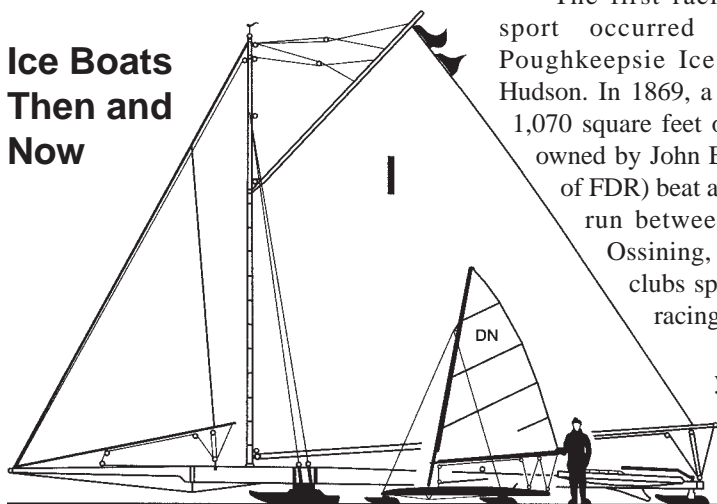
Ice boats today are far smaller than those of yesteryear as the drawing below illustrates. The most popular and largest class is the DN 60 –12 feet long with 60 sq ft of sail, designed and first built in Michigan. There are about a thousand such boats in the U.S. and another thousand in Europe. The DN stands for Detroit News, since the prototype was built in 1936-37 in the hobby shop of that newspaper. It was intended to provide economical fun for Detroiters during the depression. Its 1936 cost for materials was \$32, including a \$13 sail. It weighed 75 pounds and was intended to be built at home. Today a new, professionally built competitive DN ice boat costs from \$2,600 to \$3,500, while used DN's can be bought for from \$500 to \$2,500.

Besides its low cost, the front steered DN became popular because it could sail in very light winds, while the older, bigger, stern-steered boats needed more breeze to get going. Ice boats can zip along at speeds of from 50 to 100 miles per hour. Aerodynamics permits them to accelerate to three to five times the speed of the wind. Not all ice boaters race competitively, many prefer to avoid the risks of damage and injury that racing entails and just do it for the thrill of the speed.

Other popular ice boat classes represented in the Gull Lake club are Skeeters (Class E) limited to 75 sq ft of sail, Sprinters, and Renegades, the latter class designed and raced by the late Elmer Millenbach of Detroit – a legendary figure among ice boaters.

Last March 37 ice boats turned up for the 2002 Grand Traverse Ice Yacht Club Fun Regatta sailed at South Lake Leelanau. A great deal of information on ice boating is available on websites such as [www.sailingsource.com/ice/](http://www.sailingsource.com/ice/) and [www.iceboat.org](http://www.iceboat.org).

## Ice Boats Then and Now



Class 1-"Jack Frost" 1883  
Sail area-720 sq. ft. (50 ft. O.A.L.)

DN 60 Class -2000  
Sail area-60 sq. ft. (12 ft. O.A.L.)

Many thanks to ice boat designer, builder and enthusiast Greg Ward of Vicksburg, who supplied much of the information for this article as well as the photos. He welcomes inquiries from anyone interested in ice boating at [poplar1@att.global.net](mailto:poplar1@att.global.net) (preferred) or 269-649-1333 (evenings). – W.H.

# Michigan Waterfront Alliance News & Legislative Update

By Chris Kindsvatter, MWA Lobbyist

**New Legislators Need Education on Lake Concerns.** The new legislature began its session in early January as the new Governor began to deal with a \$1.6 billion state budget deficit for 2003. Senate and House Committees have been determined and in the House 13 of the 17 committees are chaired by freshman legislators. This will require lake associations to educate those new legislators as to the concerns and interests of the MWA. This is an important process of inviting your area legislators to your lake association meetings and discussing your lake concerns.

**MWA Road End Legislative Action Initiative** - MWA will continue its effort for passage of legislation that will define those activities that can occur at lake road ends. The legislation was introduced at the end of session in 2002 and will be introduced in 2003. SK&A will be meeting with Rep. John Stakoe who replaced term-limited Rep. Mike Kowall (2002 sponsor). Rep. Stakoe will continue the commitment to MWA to move the legislation forward this year. The main issues addressed by the proposed legislation dealing with road end use remain the same as published in the November 2002 *Riparian* and in the November 2002 *MWA Newsletter*.

**Proposed Changes to Lake Rules** - The proposed changes to rules relative to lake access and dockage has been on hold for the past 4 months. This was the result of concern by the drain commission association who are also part of the proposed revisions. Although their concerns have nothing to do with the lake issues, they are a key player in this proposed rule change. The DEQ is continuing to work out the differences and place the proposed rules back on schedule. The proposed rule changes and additions have been worked on for more than a year. They have changed dramatically since the first meeting of the stakeholders working group on which MWA and ML&SA were represented. We are confident that the proposed rules will complement the lake associations' efforts to provide uniform provisions for the management of the shorelines of Michigan lakes and streams. (See related editorial, page 7)

**Boat Noise Legislation to Be Done Again** - Although Governor Engler signed SB 1106 as PA 525 on July 25, 2002, the transfer of the monies from the DNR to MSU before October 1, 2002 did not occur. Although the reintroduction of the needed legislation did not make it through 2002 session, SK&A has made efforts with Appropriations leadership to introduce it for passage this session. As the budget deficit continues upward, the possibility for passage becomes more difficult. Background-- Since the passage of PA 274 of 1996, the enforcement of boat noise limits on lakes has not been achieved. The problem is the measuring device used by law enforcement to enforce the 90 dB level or less requirement from a stationary position in the water. Sheriff officials indicate that this is almost impossible to measure, given present measuring devices. Through the efforts of Bill Case, Ken Dennings and Ned Wickes, the Higgins Lake Property Owners Association has been the driving support to have this legislation passed.

**New Lobbyist Addition at SK&A** - Scofes-Kindsvatter & Associates, Inc, MWA's lobbyist, is pleased to announce the appointment of Russ Harding as Senior Vice President of Environmental and Energy Affairs. Mr. Harding was the former Director of the Michigan Department of Environmental Quality and has managed the department since its inception in 1995. Mr. Harding will represent SK&A and its clients on environmental and regulatory policy issues before the administration and the legislature.

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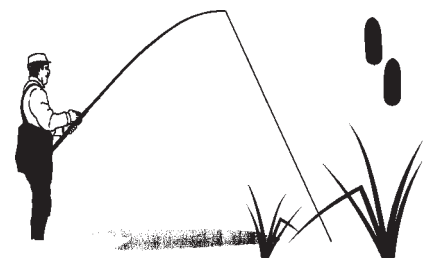
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**OUR 25th YEAR**

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

By  
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## **Adverse Possession and Prescriptive Easements: A Prescription for Adversity?**

Nearly every riparian property owner has heard the phrases squatter's rights, adverse possession and prescriptive easement. But what do they mean? There seems to be a great deal of confusion out there regarding these concepts.

In general, if you use the land of an adjoining or nearby property owner in a certain fashion for in excess of 15 years, under certain circumstances, you can claim title to that land or an easement over it. The phrase "squatter's rights" is a common vernacular for the legal doctrine of "adverse possession." Adverse possession is a process whereby one property owner can potentially claim actual title to certain adjoining property.

In order for someone to successfully claim title to property which was not previously theirs, two things must occur. First, the person must have used the adjoining property of another for 15 years or more in a fashion which was open and notorious (i.e., in a way which was regular and highly visible), exclusive (it cannot have also been used concurrently during that 15 years by the true owner of the property), hostile (not meaning nasty or mean, but without the permission of the true landowner) and under claim of right (you were treating the property as your own and you are an adjoining property owner). Second, someone claiming property through adverse possession cannot actually obtain true title to the property until a successful court action awards such title.

A prescriptive easement is similar to adverse possession, but instead of obtaining exclusive title to a strip of land, one merely obtains an easement for a particular use. For example, suppose a neighbor utilizes a driveway across your property for in excess of 15 years without your permission. Or alternately, the

owner of a non-lakefront lot across the road uses a path down to the lake across your property and maintains a dock on your lakefront at the end of that path for over 15 years. Under certain circumstances, your neighbor could obtain a permanent prescriptive easement for such uses in court if the neighbor proves the same general elements which are required for adverse possession (i.e., lack of permission, open use for over 15 years, etc.).

Prescriptive rights can also sometimes be utilized by someone to expand existing easement usage rights. For example, assume that a backlot owner has an express easement to utilize a riparian property for access purposes only to a lake—the original easement rights did not include the right to dockage, permanent boat moorage, sunbathing, etc. If the beneficiary of that easement utilizes the easement for sunbathing, one dock and one boat for over 15 years without the permission of the underlying property owner, the backlot owner might gain the right to continue those activities permanently pursuant to court action under the theory of expanded rights by prescriptive easement.

Adverse possession and prescriptive easement controversies tend to arise more frequently with regard to lake property than other property. Why? Probably because many lake lots are small, were created many years ago, and have seemingly overlapping boundary lines. Given that many riparian lots are small and increasingly valuable, every inch of waterfront property is important. Battles involving alleged prescriptive easement rights to lakes are also increasing around the state. The owners of backlots are using this legal doctrine to access lakes where no express easement

exists or to expand the usage rights for lake access easements which were for access purposes only. Finally, for whatever reason, many people tend to be more emotional and territorial regarding waterfront property boundaries than most other lands.

Contrary to popular myth, it is not easy to obtain title to a piece of land by adverse possession or an easement via prescriptive easement. Nevertheless, property owners should be on guard if it appears that other landowners in the area are attempting to use property in such a way as to commence the 15-year adverse possession or prescriptive easement time clock. That claim can be broken prior to the running of the 15-year time limit by either stopping the adverse use of the property or granting express permission for such use (which will remove the "hostility" requirement). Nevertheless, since this is a relatively complex area of real estate law, you should consult with your own attorney immediately if you believe someone is attempting to accrue an adverse possession or prescriptive easement right to your property. This is certainly one area where it is not wise to "let sleeping dogs lie," since delay could permit someone to pass the 15-year time hurdle.

Many of the topics that have been addressed in the Attorney Writes column over the years will be discussed at one or more of the seminars to be held at the Michigan Lake & Stream Associations' conference on April 25-27, 2003 at the Shanty Creek Resort in Bellaire, Michigan. I will be conducting a seminar on Saturday, April 26, 2003 regarding riparian rights. Seminars led by other speakers will also touch on many of the issues that have been covered in past columns. See the complete program on pages 14-15. Please try to attend this very worthwhile annual event if you can!