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Lake access threat

by Kevin Elliott

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Any day, in any season, as the sun comes up on the horizon of one of the 350 lakes speckled throughout Oakland County, nature stops for just a minute to catch its breath. Exhaling, the sun rises, and residents begin their day.

For many of those who live in Bloomfield Township and western Oakland County, the view along the lakes are an exclusive experience, as most of the lakefront shoreline is privately owned. That sunrise can be seen from a distance, but not from the shore of many of the lakes themselves.

Many of those beautiful lakes are but a short drive off any main traffic route which cuts across the area in an endless loop of twists and turns winding through neighborhoods, wooded areas, and plains. Each unique in their size and surroundings, the lakes in the Bloomfield Township, Commerce Township, Walled Lake, White Lake, and other neighboring communities are best known for their recreational opportunities, water quality and tranquility, as well as the number of privately owned docks, houses and estates that line the shores. Yet efforts are afoot to change that privacy provision, and to provide public access to some of the waterways that riparian owners believe are theirs alone.

Once considered a nearby vacation destination for metro Detroit residents spending their weekends around Walled Lake and many other inland lakes, western Oakland County's lakes area has become the permanent home to many people who once lived close to the city of Detroit. Property values for lakefront property echo the laws of supply and demand, and with a limited supply of lakes and lakefront land, values remain strong and expensive. Open shores have given way to massive structures, at times eclipsing the view of the lakes. And while access to the water is readily available to riparian property owners, the general public is regulated to less than a few dozen state-managed sites in the area.

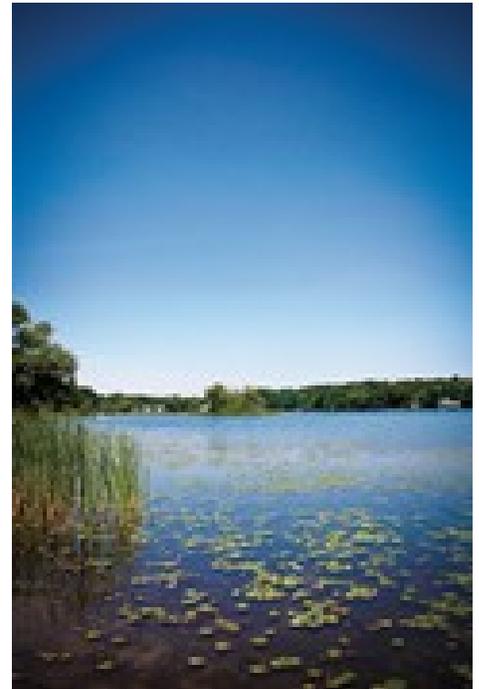
The public does have access to access sites owned and managed by the Michigan Department of Natural Resources (DNR) at Orchard Lake; Union Lake; Oakland Lake in Waterford Township; Pontiac Lake; Middle Straights Lake; Wolverine Lake; White Lake; Lake Orion; Big Lake; Long Lake; Crescent Lake, Maceday Lake and Loon Lake in Waterford Township; and Dodge Brothers State Park No. 4 at Cass Lake in Union Lake, among other sites in Oakland County.

Of the 55 lakes in Oakland County that are greater than 100 acres in size, only 18 have public access sites that are owned or managed by the Michigan DNR. Seventeen lakes with less than 100 acres of area have public access sites managed by the DNR Parks and Recreation division. All 35 of the DNR public access sites in Oakland County include access for boats, with seven of the sites limited to carry-down access for canoes, kayaks and carry-on vessels that don't require a ramp, including Pontiac Lake at Tackles Drive, which is about three miles north of Union Lake; Shoe Lake at the Bald Mountain Recreation Area in Lake Orion; Holdredge Lake at Holly Recreation Area; Alderman Lake and Moore Lake at Highland Recreation Area; and Chamberlain Lake and Hart Lake at Bald Mountain Recreation Area in Oakland Township.

Partnerships with local units of government, individual landowners, small businesses and other lakefront property owners are a key component of the DNR's plan to increase public access to the state's inland lakes. However, the idea of inviting more boats to some already crowded lakes doesn't typically sit well with riparians with a monopoly on lake access.

"It tends to be more controversial in Oakland County, and it has stopped access from happening," said DNR Policy Coordinator Donna Stine. "People are mostly concerned about the amount of usage a lake gets. That's the biggest problem."

"There are 11,000 inland lakes in Michigan, so there is plenty of lakefront available to be developed, but in our area where there's such high density and so many homes around the lakes, public access is very limited," said state Rep. Mike McCready (R-Birmingham, Bloomfield Township, Bloomfield Hills). "If there is going to be any further access to the lakes, I think they will have to work with the homeowners and local municipalities."



The DNR's intentions to increase public access to inland lakes is outlined in a proposed land management plan called the Managed Public Land Strategy, released by the department earlier this year. The Managed Public Land Strategy plan is the key component of a state law, Public Act 240, passed in July 2012, that placed a limit on the amount of property that can be owned and managed by the DNR. In order for the cap on property acquisitions to be lifted, the department must have a land strategy plan written and approved by the state legislature by Oct. 1, 2014. The plan sets goals for the DNR to reach with its publicly-owned land over the next six years, including the purchase and sale of state-owned land, and how current holdings and future transactions will help the department meet those goals.

Currently, the DNR holds title to more than 4.6 million acres of land throughout Michigan. The department also owns another 31,700 acres which is used specifically for boating access. The DNR released a draft of its Managed Public Land Strategy plan, which has been approved by state lawmakers in recent days as Senate Bill 248, leaving the cap for state owned and managed land capped until May 2015.

In regards to the public's access to lakes in the state, DNR staff included a justification statement in the plan to lay out the reasoning for the document's push for increased access: "All Michigan residents and visitors should have easy, convenient access to all the state's lakes, rivers and streams through public facilities. Boating access sites provide the legal and safe means for the public to access the waters of Michigan for recreational boating, fishing and hunting. Michigan is a national and international resource for boaters and others seeking water-related recreational opportunities, and continued development is necessary to meet demand."

Meeting the public's demand for lake access is also about money. Licensing fees tied to more than 800,000 boat registrations contribute to the state's waterway funding each year. Consider also the state's \$4 billion boating industry, which is partially supported by 1,300 public access sites and 80 harbors throughout Michigan.

Under the plan, the DNR would work with local governments to provide public access on all "priority lakes over 100 acres" in the area; provide access to 25 percent of lakes smaller than 100 acres that have "important recreational opportunity" for the public; and provide 100 new public access sites on inland lakes, rivers, the Great Lakes and connecting waters.

Looking to future goals, the land management plan calls for 1,025 boating access sites on inland lakes and streams, placing priority on lakes over 100 acres, as well as a 25 percent increase on smaller lakes that don't currently have any means for the general public to access the water. Increased access, under the plan, isn't limited to traditional boat launches. Carry-down access for small vessels, such as kayaks, canoes and other lightweight boats, is a desired goal on lakes smaller than 100 acres where the state determines a need and opportunity.

That means purchasing land on currently privately-owned lakes and creating public access sites.

The DNR completed the public review process of the Land Strategy plan in April. However, lawmakers from the Birmingham/Bloomfield and west Oakland County areas haven't reviewed the plan in its entirety, which includes the management of more than 4 million acres of land beyond water access sites. Local lawmakers, like McCready, have concerns and are reserving judgement until more is known on how it will affect their constituents.

State Rep. Eileen Kowall (R-White Lake), said she has some concerns about increasing public access to lakes in Oakland County.

"If you have people living on a lake that is a private lake, who are paying taxes and you open it up to the public, that can create a whole new situation with lake use and noise," Kowall said. "That was a hot issue for a time, particularly on Cedar Lake. We don't want to create any more of those situations."

In addition to noise, Kowall said public access at Cedar Lake in Highland in the Highland Recreation Area led to a wake of complaints about safety, as many boaters entering from the public access site weren't aware of the lake's slow-speed restriction. Members of the Cedar Lake Lake Association requested the Oakland County Sheriff's Office conduct additional patrols on the lake to ensure safety rules and property rights were being followed. Kowall said she had spoken with the DNR director and plans to discuss the issue again to ensure that the plan allows for an adequate level of local controls, particularly in relation to law enforcement.

"We have had issues on our lakes and it could create huge issues for us," Kowall said about the push for increased public access.

Whether a lake is considered private or public usually depends on an individual's perspective; most often from the water for lakefront property owners, or from the roadway for much of the general public. Which gets to the heart of the issue confronting both riparian owners and those seeking public access.

"A lot of people that live on those lakes think they are private, but they are only private in that they don't have public lake access. The water and fish belong to the people of Michigan," said Scott Brown, executive director of the Michigan Lakes and Streams Association. "If you had a sea plane or helicopter with pontoons on it, you could land in there and fish. For

practical purposes, if there isn't a boat launch, it's a private lake. But that is a misunderstanding on the part of some property owners."

The issue of lake ownership, who has rights to access the water, what activities can be conducted and by whom, is further complicated by the state's riparian rights, or the rights of lakefront property owners whose land reaches a waterbody. In general, riparians can't unreasonably restrict the use of the surface of a lake by members of the public. Michigan courts have determined that riparian property rights on the state's inland lakes, rivers and streams extend beyond the shoreline to include bottomlands. So, while the public owns the water in a lake, use of inland lake bottomlands without permission of the property owner is considered trespassing. Ownership of bottomlands in the Great Lakes is yet another story. Additionally, riparian rights may be limited by boat docking and launching regulations enacted by local units of government, as the State Supreme Court determined in a 1991 case involving the Square Lake Hills Condominium Association and Bloomfield Township.

The case involved land adjacent to a home on Square Lake in Bloomfield Township which in the 1960s was zoned single-family. The homeowners, Milton and Barbara Sloban, requested and were denied a variance to build apartments on their property, challenging the township's zoning classification. The trial judge invalidated the township's zoning, and permitted the multiple-family residential use. The Slobans then split their property in two, retaining the front lot on Square Lake, and conveying the back lot portion and a 160-foot easement to the Square Lake Apartments, a 78 apartment complex. A second phase was later built, with a total of 152 units with access to Square Lake. Later the Slobans were bought out, and the apartments were converted to condominiums.

In 1974, Bloomfield Township passed an ordinance restricting inland lake access to riparian lake owners or occupants, and the township sued the current and former owners of Square Lake Hills Condominium Associations.

The State Supreme Court held that "the legislature has placed with townships the power to adopt regulations, purely local in nature, to enhance the health and safety within its community by the regulation of boat docking and launching," thus answering the questions as to whether local governments may limit riparian rights, specifically the launching and docking of boats on private shoreline property.

"As you look at this over the next 10 years, I see many, many court battles over this issue. It's going to be a contentious issue," Brown said, regarding public versus private lake access. "I have nothing but respect for the men and women of the DNR. I have worked with them on different projects, but this is one issue where we happen to disagree."

State Sen. Mike Kowall (R-White Lake, Commerce Township, Walled Lake, Wolverine Lake Village, West Bloomfield) said the state needs to consider whether it can afford to manage additional property before the land strategy is considered and the cap on the amount of land the DNR can own is lifted.

"In 1997, there was a big push to close some of these launch sites because they didn't have enough manpower to staff them and provide lake patrols. They still don't have enough to take care of all of them – there are 28 lakes in White Lake alone that are all-sports lakes.

"If the DNR wants a piece of property, they are going to buy it," Kowall said. "They get their money from the oil and natural gas reserve. They have a substantial amount of money in that reserve, to the tune of well over \$100 million. They own over four million acres of land. Does it make sense to buy more when we can't take care of what we have? These are questions that have to be asked."

While no specific entities have been identified, the draft plan stresses the importance of partnering with other agencies and local units of government to purchase and/or manage potential public access sites.

"This is a process we are doing with partners, so it's not something we would try to do alone. We have always looked for partners," Stine said, adding that the department looks to the Natural Resources Trust Fund (NRTF) waterways funding to attain land and works with local entities to manage potential sites. "We haven't started looking for those partners, but this isn't a new priority."

Local municipal leaders in Walled Lake, Bloomfield Township, and Commerce Township said they aren't aware of any plans by the DNR to increase public lake access in their communities. However, establishing local partnerships in western Oakland County may be difficult, as public lake access hasn't traditionally been well received on lakes considered to be private by local property owners.

Bloomfield Township Supervisor Leo Savoie said the issue of public lake access hasn't been raised currently among any of the lake boards in the township, nor is he aware of the DNR seeking to establish any local sites.

"Every lake in Bloomfield Township is (considered) a private lake," he said of the 29 lakes located in the township. "They either have lake frontage or riparian interests, like a deeded boat dock."

Brown, at the Lakes and Stream Association, said while the association supports the DNR's view on lake access and the thrust behind the land management strategy, there are still some questions about operational issues.

"They have got a plan. It's a pretty well researched plan. It has flaws from a legal and operational standpoint, but we absolutely support generous public lake access to inland lakes," Brown said.

A source of contention for those who live on the lakes is more than just privacy; it's also maintaining the condition of the lakes and preventing the influx of predators into the lakes which can come into the lakes via outside vessels. Brown recognizes that potential problem. The main problem with the plan, he said, is that it places an increased burden on riparians and lakes associations in the state, which pay for the majority of the upkeep of lakes. Invasive aquatic species such as zebra mussels and Eurasian water milfoil, which have wreaked havoc on some lake's ecosystems, including the Great Lakes, are brought into a lake by clinging to the bottoms of boats. Individual riparians and lake associations in the area often spend their own money to take actions to control against invasive species.

"The \$24 million statewide burden for invasive aquatic species is falling on lake associations, when the majority of those species are brought in at public boat launches," Brown asserted. "The DNR is planning on bringing in more boaters, but the state isn't asking them to share in the burden of aquatic invasive species management, so the the lake communities and associations are left holding the bag."

Brown said the MLSA recommends adding a fee on boat registrations in the state that could be used to assist lake associations and riparians with the burden of invasive species management.

"People living on lakes understand they have a heavy personal investment in maintaining the quality of a lake, and they don't mind paying," he said, "but the recreational boating community also needs to pay their fair share."

Funding for lake access at the state level will be a determining factor as to how much public lake access is increased on the local level. Additionally, when it comes to inland lakes, size does matter.

Mary Nardo, manager of the DNR Parks and Recreation Development Unit, said "priority lakes" mentioned in the land strategy could apply to any lake over 100 acres which doesn't currently have public lake access. Criteria on which smaller lakes are ripe for increased access hasn't been developed, she said, but availability of land and the willingness of local governments and other riparian property owners to work with the DNR typically guides development of sites on smaller lakes.

"It goes back 60 years or more. The priority started with larger lakes, and within that there isn't an established priority of those," Nardo said. "There are some (lakes) where people would like more access, but a lot of the priority has to do with size, and where we have access that is insufficient and can be expanded. That gets harder and harder as the price of lakefront property increases."

The lack of available funds, combined with high property values, essentially limits any expansion of public lake access sites in Oakland County, according to the DNR. Statewide, the department's proposed plan would be to increase the number of sites by five per year. Nardo said she isn't aware of any potential sites in west Oakland County or the Bloomfield area that they are considering.

"We aren't looking in Oakland County that I'm aware of," Nardo said, of plans to expand public lake access in the state. "With the amount of dwindling state dollars, it's a very small handful of locations where we are looking."

Efforts by the DNR to improve existing lake access to Union Lake which began several years ago have since stalled, as the availability of riparian property changed.

Commerce Township Supervisor Tom Zoner said there are only a few lakes in the township where the DNR maintains public access sites. The most recent attempt by the DNR to improve public access to waterways in the township involved the purchase of the former Aggressive Marine property, 2265 Union Lake Road, near Wise Road.

"They do own the old Aggressive Marine. That's about three acres, two of which are underwater," Zoner said. "There is a parcel and building across the street that the DNR was going to buy, but I believe that property was sold."

Currently, public access to Union Lake consists of a boat ramp on the east side of Union Lake Road, south of Cooley Lake Road, and a parking lot for vehicles on the west side of the roadway. The DNR had planned to relocate public access facilities to the former marina location, which provided docking for about 100 boats while under private operation, which is the same number of vessels the department estimates enter the water at the current site.

Nardo said acquiring new property for public access usually takes several years. Often, she said, the department isn't able to acquire property because funding for purchasing sites has been reduced. The majority of funding approved for public access sites approved by the state's Waterways Commission is geared toward sites that will be able to provide access to

motor boats up to 26 feet long.

"Even when the housing market was down, waterfront property wasn't that far down. It's still a very high-dollar purchase," she said. "Typically, funding is geared toward motor (boats). There are carry-down access sites where you could bring a small boat or kayak, but the focus of the waterways funding comes from boat registration, and carry-down vessels aren't registered, nor required to be registered in the state."

Walled Lake, the third largest in the county, does provide beach access to all of the public, but boat access to the lake is limited to private sites available only to those who own property on its shores. And while the notion of creating a public access site has come up in the past, Walled Lake Mayor William Roberts said there's hasn't been any support.

"If Walled Lake had a DNR boat launch, I think it would change the atmosphere of the lake." Roberts said, adding that past studies of boat traffic indicated the lake is already busy from the current users. "I would hate to see Walled Lake become Union Lake."

In terms of the overall boating use a lake receives, Nardo said the DNR doesn't make any effort to limit the number of boats that have access, as the number of vessels coming from public access sites is very small compared to the number of crafts already accessing the water. In general, Nardo said lake capacity is a matter of personal opinion, based on an individual's experience and environment.

"The challenge you have in southeast Michigan is that half the population of the state lives in southeast Michigan. So, that's a challenge for any of the counties there because there is such a demand for lake access," Nardo said. "Many people will transport themselves further north, but the challenging part is that many people live in southeast Michigan and want to access water that is close to them."

"From the riparian standpoint, and what they may consider is a lot of public lake access, from the public standpoint, probably isn't enough."