

Water Lines

A publication of the Higgins Lake Property Owners' Association

Spring, 2003

President's Message



by Ken Dennings
HLPOA President

House Bill HB 4141

I begin this column by personally expressing my "thanks" to all the HLPOA members who took the time and made the effort in recent weeks to contact individual members of the House Conservation and

Outdoor Recreation Committee in support of HB 4141 (road end legislation). While obviously disappointed that Committee Chair, State Representative Susan Tabor, decided in late April to postpone the May 7th public hearing, I'm encouraged by the very strong support the HLPOA membership expressed in response to my April request.

Representative Tabor contacted me by letter the latter part of April indicating she had suggested to Representative John Stakoe (sponsor of HB 4141) that he form a work group to bring stakeholders together . . . and because of that she was not prepared to hold hearings on May 7th. Representative Stakoe held the initial meeting of stakeholders on May 1st with our lobbyist Chris Kindsvatter (Skofes, Kindsvatter & Associates, Inc. of Lansing) and Bob Frye, president of the statewide Michigan Waterfront Alliance and a member of the HLPOA Board of Directors, representing riparian interests. Also in attendance were Lansing DNR staff, a representative from the Michigan United Conservation Clubs (MUCC), and two persons representing non-riparians.

I'm advised HB 4141 has the support of the DNR and MUCC, but with suggested revisions dealing with public access sites controlled by the Michigan Department of Natural Resources. Essentially, as originally drafted, the proposed legislation would apply to all public access sites

throughout the state, including those under direct control of the DNR, such as state parks and other DNR operated launch sites on inland lakes and streams. I remain hopeful these differences can be resolved in the near term and the public hearing before the House Committee rescheduled without further delay.

In the meantime, if you haven't written or contacted your state representative and members of the House Committee, please do so. Every letter, every e-mail and every personal contact in support of HB 4141 will help move this legislation along. WE NEED HOUSE PASSAGE OF HB 4141!

Political Action Committee (PAC)

In the last issue of *Water Lines* I talked about the HLPOA playing a more active political role in protecting and preserving our watershed through the formal establishment of a Higgins Lake Political Action Committee.

The concept of a HLPAC is taking shape with the initial draft of our proposed bylaws in this edition of your newsletter. The formation of our own PAC as a voluntary, non-profit organization without political party affiliation, in accordance with federal and state laws, will provide the HLPOA with the means to provide financial support to candidates who share our values and concerns with respect to issues involving Higgins Lake.

Formal adoption of the HLPAC bylaws at our annual meeting on July 12th will allow us to move forward with establishment of a Political Action Committee for Higgins Lake. It's another bold endeavor by your HLPOA Board of Directors to ensure everything is being done to protect Higgins Lake for future generations.

Eurasian Water Milfoil (EWM)

If the first week in June you view a "gaggle" of watercraft at several locations on Higgins Lake with SCUBA divers in full gear, your curiosity should be

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President's Message

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aroused. Don't be alarmed because these are friendly folks under the direction of the HLPOA who are simply placing "benthic" (bottom) barrier material, on a pilot basis, in four select locations to impede the spread of Eurasian Water Milfoil (EWM). Under this "search and destroy" program approved by the DEQ, the placement of bottom barrier (which disrupts plant photosynthesis) is one of the methods being employed this summer to control EWM in Higgins Lake without the use of chemicals. We're hoping this approach (actually a case study) proves successful and can then be utilized extensively on many of the seventy-seven "spot" locations where this invasive exotic plant species was recorded last summer in a study conducted by Huron Pines RC & D staff through funds provided by the Higgins Lake Foundation.

Enclosed with this issue of *Water Lines* you'll find an EWM "identity" card made available through the joint efforts of the Higgins Lake Foundation and Huron Pines to assist with proper identification of this invasive plant. These EWM cards will be especially helpful since the HLPOA will be asking lakefront owners to carefully "harvest" EWM from their riparian bottomland in accessible shallow water areas. Huron Pines staff will provide instruction for this 2003 summer harvest at our annual meeting in July.

Additionally, the HLPOA has prompted the submission of two grant proposals that, if approved, would provide sufficient funding to bring experts from the US. Corps of Engineer Research and Development Center (Vicksburg, Mississippi) to Higgins Lake this summer for the purpose of studying our existing insect herbivore (plant eating) population.

This study would include securing samples from 10 to 15 of the more dense milfoil areas in our lake and then shipping them back to the research lab in Vicksburg to extract insect herbivores and provide a complete base line evaluation of the different herbivores (including the EWM weevil) and the impact they may have on controlling/eradicating EWM in Higgins Lake.

Higgins Lake Level

It is now possible to access lake level information for Higgins Lake by going to our website
www.hlpoa.org

Simply click "Current Higgins Lake Level Chart" to view a daily averages chart. The official levels set by the 1982 circuit court order are:

Summer	5.37
Winter	4.87

PROPOSED BYLAWS

Higgins Lake Property Owners' Association Political Action Committee

ARTICLE I

Name and Definition

The name of this Committee is the Higgins Lake Property Owners' Association Political Action Committee (hereafter HLPAC). HLPAC is a voluntary, non-profit, unincorporated committee affiliated with the Higgins Lake Property Owners' Association (HLPOA), a non-profit association whose mission is to protect, preserve and enhance the quality of Higgins Lake and its surrounding watershed.

ARTICLE II

Purposes of HLPAC

- (1) To promote the improvement of local and state government by encouraging HLPOA members to take an active interest in and an effective part in governmental affairs.
- (2) To help HLPOA members understand the nature and actions of government, especially those actions affecting Higgins Lake and its surrounding watershed.
- (3) To assist HLPOA members in organizing themselves for more effective political action and for carrying out their civic responsibilities.
- (4) To make political expenditures as allowed by law.
- (5) To do any all things appropriate to the attainment of the purposes stated above.

ARTICLE III

Membership

Membership in HLPAC shall be extended to all HLPOA members as defined in Article III, Paragraphs 1 and 2 of HLPOA's Bylaws, as amended.

ARTICLE IV

Board of Directors

1. Selection: The Board of Directors of HLPAC (hereafter "Board") shall be composed of seven (7) members selected by the Board of Directors of the Higgins Lake Property Owners' Association from HLPOA members in good standing. Vacancies on the HLPAC Board shall be selected in the same manner.

2. Duties: The HLPAC Board shall have general supervision and control over the affairs and funds of HLPAC and shall establish and carry out all the policies and purposes and activities of HLPAC.

3. Composition: The Board shall elect from its members a Chairperson, Vice-Chairperson, Secretary, and Treasurer. Board members shall serve without compensation for a term of two years. No trustee shall serve for more than two consecutive terms.

4. Chairperson and Vice Chairperson: The Chairperson shall be the chief executive officer of HLPAC. He/she shall preside at meetings of the board and in his/her absence the Vice-Chairperson shall preside.

5. Secretary: The Secretary shall keep a record of all meetings of the Board and shall perform such other secretarial duties as may be required by the Board.

6. Treasurer: The treasurer shall be the custodian of the funds of HLPAC, shall collect all contributions and disburse HLPAC funds in accordance with instructions of the Board. The Treasurer shall keep accurate accounts, shall present financial statements to the Board, and shall prepare, sign, and file all reports to governmental authorities as required by law or as directed by the Board.

(7) Meetings — The Board shall meet on the call of the Chairman or any three of its members, at a time and location to be determined in the call. Notice of meetings shall be sent by regular mail or by email to all members of the Board at least ten (10) days in advance thereof. In the event of an emergency, the Board may meet by telephone conference.

(8) Quorum — A majority of the Board shall constitute a quorum for the purpose of doing business.

(9) Committees — HLPAC shall have such committees as the Board may determine are necessary for carrying out its purposes and objectives. The Chairman and members of such committees shall be appointed by the Chairman of the Board, subject to the approval of the Board.

ARTICLE V Financial Records

(1) The committee shall maintain an account at whatever financial depository or depositories the Board shall designate.

(2) The Board shall have the authority to designate someone other than the committee treasurer as the person

responsible for the committee's records and filings. The designated record keeper shall not have the authority to sign the committee's Statement of Organization or amendments thereto.

(3) Unless otherwise provided by law, the committee shall operate on a calendar year basis.

ARTICLE VI Amendments

These bylaws may be amended by a majority of the members of the Board provided a written 30-day notice of a meeting called and convened for such purpose is given all members of the Board.

HLPOA ANNUAL MEETING SATURDAY JULY 12, 2003 Gerrish-Higgins High School Auditorium

Coffee and donuts will be served in the cafeteria from 8:30 to 9:00 a.m.
Meeting begins in the auditorium at 9:00 a.m.

ITEMS OF INTEREST

Legal update on Higgins Lake litigation, Attorney Wm. Carey, speaker

* State-of-The-Lake address
HLPOA President Ken Dennings, speaker

Higgins Lake Foundation update

* Huron Pines ... Milfoil Project

* Committee Reports

Higgins Lake Political Action Committee

Friend of Higgins Lake Award

HB 4141 (road end legislation)

* HLPOA Election

* Membership Input Session.
An opportunity for all HLPOA members to put forth concerns and ask questions

Meeting adjournment between 11:30 & 11:45 a.m.



HLPOA LEGAL UPDATE

by William L. Carey
Counsel to HLPOA

Legal matters concerning lake access to Higgins Lake continue to progress through the courts. Following is a summary of the pending litigation.

GERRISH TOWNSHIP LITIGATION

Shadyview

This lawsuit involves a challenge to the activities of 20 families who purchased a single lakefront lot in Woodlawn Subdivision (Gerrish Township). The 20 families (who purchased the lot via a non-profit corporation known as Shadyview, Inc.) set up a multiple slip marina. Lot owners on either side of the Shadyview parcel filed suit in Roscommon County Circuit Court seeking to enjoin the multiple family use. The lawsuit challenged the multi-family use because the lot was zoned as single family residential. The lawsuit further challenged the activities as a private nuisance. When this matter went to trial, Judge Baumgartner ruled that the marina dock could moor no more than 5 boats. Judge Baumgartner further ruled that no more than 2 families could use the lot at any one time. The case was then appealed to the Michigan Court of Appeals. On January 14, 2003, the Court of Appeals heard oral argument in the case. On March 3, 2003, the Court of Appeals issued its opinion reversing Judge Baumgartner.

In essence the Court of Appeals found that the activities undertaken by the 20 family corporations did not constitute a violation of the Gerrish Township Zoning Ordinance and did not create a nuisance for the families living next door. A motion for the Court of Appeals to reconsider its decision was filed on March 6, 2003. The motion for reconsideration was denied.

A timely application to the Michigan Supreme Court challenging the Court of Appeals decision has been filed.

Consolidated Cases

A series of cases involving various lakefront subdivisions in Gerrish Township have been decided at the appellate court level. The cases include subdivisions in Triangle Park, Old Point Comfort, Lyon Manor Subdivision, Shoppenagons Lodge Subdivision, Whittington Park, Sovereign Park, Honolulu Beach, Evergreen Park, Alameda Beach, and Highland Park Subdivision. In all of the cases the trial court has determined that the original developers of the plats did not intend for the road ends to be used as parks and mini-marinas. The trial court had entered court orders, which determine that road-end use does not include the right to moor boats, maintain hoists or wet anchors, sunbathe, picnic, or lounge.

Oral argument before the Michigan Court of Appeals was completed on August 6, 2002. A decision of the Court of Appeals was issued on January 17, 2003. The Court of Appeals has upheld the legal principles first declared in the matter of *Jacobs v Lyon Township*. The Michigan Court of Appeals has held that the public roads in the subdivisions mentioned in the preceding paragraph may not be used as mini marinas and lakeside parks. The decision of the Court of Appeals is a published decision.

Yet to be heard by the Court of Appeals are similar arguments involving the subdivisions of Chicago Beach, Woodlawn, Michigan Central Park 1st Addition, and Sylvan Beach. HLPOA filed a request with the Court of Appeals that the second set of cases be decided without waiting for oral argument. This process is known as preemptory affirmation. A review without oral argument would have saved all of the parties considerable time and expense. Incredibly, Gerrish Township filed opposition to the request. Based on the Township's opposition, the Court of Appeals denied the request for early review. No date has been set for oral argument in the second round of cases.

With respect to the road end cases already decided by the Court of Appeals, various defendants have filed application for leave to the Supreme Court. Both HLPOA and the Michigan Attorney General have filed briefs in opposition to the application for leave.

The application for leave was considered by the Michigan Supreme Court on March 4, 2003. A decision on the application has not yet been issued by the high court.

LYON TOWNSHIP LITIGATION

Dixon/HLPOA v Lyon

A private landowner and HLPOA filed a lawsuit in the Roscommon County Circuit Court seeking to have a declaration of rights relative to roadends in the Lyon Township subdivision of Michigan Central Park 3rd Addition. This case is noteworthy because it is the first such case filed in Roscommon County Circuit Court since the January 17, 2003 opinion of the Court of Appeals. In this particular case non-lakefront property owners organized to erect a 300' dock with 30 boat mooring slips. Dock memberships were sold upon a promise that the participants could secure a private spot at a public dock. The case was heard by the Roscommon County Circuit Court (Judge Bergeron presiding) on February 13, 2003. Judge Bergeron sided with HLPOA and the private landowner and ruled that the roads within the subdivision could not be used as marinas and parks. A judgment in the case was only recently entered. An appeal is expected.

Sunseekers

HLPOA and private land owners within Shoppenagons Lodge Subdivision have filed a suit in Circuit Court

seeking to prevent the owners of a small lakefront lot from using it as a multi-family marina operation. The lot in question has 25 feet of lake frontage and is owned by eight families in a cooperative setting. The lot is zoned for single family use. This case is expected to be heard in the last quarter of 2003.

CONCLUSION:

Many of the cases that HLPOA has actively been involved in, or has otherwise monitored, appear to be coming to a conclusion in the 2003 court year. The finalization of these cases will bring HLPOA closer to satisfying its objective of protecting both its riparian membership and the environmental quality of Higgins Lake.

Buoys in Higgins Lake

by Ken Dennings

Recently, I spoke with Lt. Walter Mikula, District Law Supervisor with the Department of Natural Resources, and he advises that the DNR will be more aggressive with enforcement of the Marine Safety Act as it applies to the placement of buoys in Higgins Lake this boating season. Riparian property owners would be well advised to familiarize themselves with the following provisions of the Marine Safety Act:

324.80159 Buoys or beacons; permit for placement; application; revocation; removal.

Sec.80159. The department (DNR) may authorize, through the issuance of revocable permits, the placing of buoys or beacons in the waters of this state to mark obstruction to navigation, to designate bathing areas, to designate vessel anchorages, or for any other purpose if it will promote safety or navigation. Any person who desires to place buoys or beacons in the waters of this state, without expense to the state, shall make application to the department in a form and containing information required by the department. Buoys or beacons, except for mooring buoys, shall not be placed in the waters of this state unless authorized by the department in writing. If authorization has been granted, the buoys or beacons shall be placed only in accordance with the terms of the permit and shall be considered lawfully placed. If buoys or beacons are placed in the waters of this state without a permit having been issued, the department may order their removal. If, in the judgment of the department, buoys or beacons authorized by the department are found to be improperly placed, the reason for their placement no longer exists, or the buoys or beacons do not conform to the uniform system of marking

established by state regulation, the department may revoke the permit authorizing their placement and may order their removal. Revocation of permits and orders of removal shall be by written notice to the person placing the buoys or beacons or to the person to whom the permit was issued at his or her last known address, directing the removal within a specified time. The person to whom the notice is directed shall remove the buoys or beacons in accordance with the instructions. If the person fails to remove the buoys or beacons within the specified time, the department may cause their removal, and the cost and expense of the removal shall be charged against the person authorized to place the buoys or beacons or, where authorization has not been granted, the person placing such buoys or beacons and shall be recoverable through any court of competent jurisdiction.

324.80160 Buoys or beacons; uniform marking system.

Sec. 80160. The department shall establish a uniform waterway marking system for the marking of all buoys and beacons authorized by this part to be placed in the waters of this state.

324.80161 Buoys or beacons; compliance with federal law or regulations; permits.

Sec. 80161. Sections 80159 and 80160 do not exempt any person from compliance with applicable federal law or regulation, and sections 80159 and 80160 do not require the securing of a state revocable permit if permit therefore has been obtained from an authorized agency of the United States.

324.80162 Buoys or beacons; use as moorings; moving, removal or damaging.

Sec. 80162. A person shall not moor or fasten a vessel to lawfully placed buoys or beacons, except mooring buoys, or willfully move, remove, or damage such a buoy or beacon.

324.80163 Anchored rafts; order for removal as navigation hazard.

Sec. 80163. Whenever, in the opinion of the department, an anchored raft presents a hazard to navigation, the department may order its relocation or removal.

324.80171 Violation of part; penalties.

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Buoys in Higgins Lake

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Sec. 80171. Unless otherwise specified under this part, a violation of this part or rules promulgated under this part is a misdemeanor. A political subdivision having adopted a local ordinance in conformity with this part may provide that any violation of this ordinance is a misdemeanor. Any person convicted of reckless operation of a vessel as defined in section 80147, or of operating a vessel while under the influence of intoxicating liquor or narcotic drugs, in addition to any other penalty, may be refused by the court having jurisdiction of the violation the right of operating any vessel on any of the waters of this state for a period of not more than 2 years.

Should you have any questions regarding provisions of the Marine Safety Act or the placement of buoys in Higgins Lake, please see Lt. Walter Mikula at the Roscommon Operations Service Center, 8717 North Roscommon Road (M-18), Roscommon, MI 48653, or contact him by phone at 989-275-5151 EXT 7100.

American Legion/Camp Curnalia Wastewater Management Project Higgins Lake, Michigan

by Ned Wickes

Site Description:

American Legion/Camp Curnalia is a 95 acre tract in the northwest corner of Higgins Lake in Roscommon and Crawford Counties. It originated as a recreational camp for U. S. Military veterans in 1922 on land owned by the State of Michigan under a lease currently in effect. Over the years, numerous seasonal cabins have been built with increasing numbers being converted to year-round homes. Population density is very high with 418 dwelling units all utilizing onsite septic systems. These, congregated within only about 60 acres of the total and approximate to the lake, have an average density of 4.4 units per acre or a density of five dwellings in an area the size of a single subdivision lot.

Environmental Impact On Higgins Lake:

Population density coupled with a high water table makes the Camp Curnalia area a potential "hot spot for increased contaminant levels in the lake." Roscommon County Health Department has cited "numerous wells lacking isolation from septic systems, many of which are of poor construction, undersized and close to a high water table," potential threats to public health. The Health Department concludes, "We are at a point in time when

many of these old wells and septics need to be replaced. Because of the density and site conditions, finding ways to do this has become increasingly difficult without compromising sound environmental practices."

In 2001 the United States Geological Survey completed a 1995 - 1999 study entitled "The Effects of Residential Development on Water Quality of Higgins Lake." It was reported that the area riparian to Camp Curnalia had elevated concentrations of nitrates and evidence of E coli bacteria with the source being septic system effluent.

Project Goals:

1. Provide the Camp Curnalia community with a wastewater collection and treatment system that will protect the health of its residents.
2. Protect the fragile, high quality waters of Higgins Lake, and concurrently, Houghton Lake, the Muskegon River Watershed and Lake Michigan, through a reduction in nonpoint source pollution.

Organization:

Administration:

The Roscommon County Board of Commissioners will assume overall project administration with support by Roscommon County Michigan State University Extension Service and citizen volunteers.

An Advisory Committee of eighteen members including Fred Bancroft, American Legion/Camp Curnalia manager and three associates.

Professional Assistance:

Roscommon County has contracted with Michigan State University for the services of Jim Wallace, Department of Agricultural Engineering, a mature doctoral candidate, registered engineer, with related work experience. Mr. Wallace and his advisor, Dr. Ted Loudon will provide essential technical oversight. He will be employed half-time at \$37,375.00 per year. Dr. Loudon, a national authority in wastewater management systems, has been made available through the Roscommon County, MSU Extension Service. He states, "MSU anticipates working with you to help identify additional sources of funding that will make the project happen."

Partners:

- Central Michigan District Health Department/
Roscommon County Health Department: Paul Menghini,
Mark Jamezco
- Houghton Lake Sewer Authority, Brett Yardley
- Michigan Department of Environmental Quality, John

Ozoga, Senior Environment Engineer; Technical assistance regarding permitting requirements

- Northeast Michigan Rural Community Assistance will provide at least 30 hours of technical assistance, use of its newsletters and websites for information dissemination.
- Higgins Lake Watershed Partnership will provide assistance in conjunction with its own sponsored projects.
- Lyon Township for possible future involvement as a possible wastewater system management authority: Sam Boodoian, Supervisor.

A Wastewater Treatment Facility Projection:

Through efforts of Dr. Loudon, the United States Environmental Protection Agency has encouraged Higgins Lake to participate in the National Decentralized Wastewater Treatment Demonstration Project which has encouraged the application of innovative technical designs to decentralized systems in small rural communities. A successful facility of this design concept at Higgins Lake's Camp Curnalia would serve as a model for similar lakeside communities across the entire Great Lakes region.

Funding:

The \$1 million federal appropriation requires a 45% local match. For this purpose \$445,000 in-kind expenditures for environmental preservation and improvement of the Higgins Lake Watershed, 1994 - 2002, will be submitted.



**Higgins Lake
Foundation**

P.O. Box 40
Higgins Lake, MI 48627

HIGGINS LAKE FOUNDATION

**14th Annual Awareness Day
Saturday, August 2, 2003**

**Ralph MacMullan Conference Center
North Higgins Lake State Park**

**Noon - Hot Dog Roast & Kids' Activities
4:00-6:00 p.m. - Reception & Raffle Drawing**

*Raffle tickets available at the HLPOA Annual Meeting
or from any Foundation Board member*

HLPOA directory out this summer

The HLPOA Board of Directors wishes to express its gratitude to the following HLPOA members for their assistance in editing the new directory. On Tuesday, April 22, 2003, Rick Meeks, Will Kerns, Dave Schwartz, Kathryn Bangs, Ed Trautz, Ken Dennings, and Bill and Jane Case spent between four and five hours confirming and correcting names, addresses and telephone numbers of all HLPOA members as well as editing articles and advertisements.

This is a task that occurs only every three years but one which could not be accomplished without volunteer help. During this period of time, many membership names and address changes occur that make it difficult and costly to have mailings forwarded or returned. Please keep us informed of your current address by reporting any moves or changes immediately.

The 2003 membership directory is currently at the printers with distribution scheduled in late May.

We offer sincere apologies to any members who may have been inadvertently omitted and/or erred in the information presented.



Established
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Water Lines is published by the
Higgins Lake Property Owners Association
P.O. Box 173, Higgins Lake, MI 48627.

*Dedicated to preserving the quality
and beauty of Higgins Lake.*

Visit HLPOA online at
www.hlpoa.org

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Michigan Attorney General supports *Jacobs V Lyon Township Decision*

by Ed Trautz

In response to the Court of Appeals decision of January 17, 2003, applying *Jacobs v Lyon Twp.* to nine subdivisions bordering Higgins Lake, the Higgins Lake Civic Association (HLCA), which represents off-lake property owners at Higgins Lake, filed a “late” motion for “leave to appeal”* the decision with the Michigan Supreme Court.

In support of its motion for leave to appeal, the HLCA claims the scope of dedication of land can be changed or altered after the dedication has occurred by subsequent private use of the land and asks the court to revisit and revise the Michigan Court of Appeals decision in *Jacobs v Lyon Township*. Michigan’s Attorney General disagrees with the HLCA’s claims and filed a brief with the Supreme Court asking the Court to deny HLCA’s motion for leave to appeal. Here are excerpts from the AG’s brief:

“The Court of Appeals decision in *Jacobs v Lyon Township* (After remand), 199 Mich App 667 (1993) rests upon a solid foundation of cases dating from 1882 which have governed the conduct of the public on dedicated roads that lead to Michigan lakes and streams. Following the rationale in *McCardel v Smoelen*, *Thom v. Rasmussen*, *Thies v Howland* and *Bang v Foreman*, the *Jacobs* Court held that the intent of the dedicator is to be determined from the language used in the dedication and the surrounding circumstances. The *Jacobs* Court rejected as evidence of the dedicators’ intent activities subsequent to the dedication.”**

“Appellants (HLCA) argue that *Jacobs* should be revisited by this Court and revised to allow the scope of the dedication to be based not only on the intent of the dedicator and the surrounding circumstances at the time of the dedication, but also based on consideration of riparian rights and based on ‘historical and traditional’ use of the land subsequent to the dedication, most of which activities in this case occurred many years after the land was dedicated and accepted for public use by local units of government. Under appellants’ view, the dedication of land for public use may be altered by subsequent private conduct, regardless of any change in the dedication language as found on the recorded plat.

“Appellants fail to explain how their private conduct on public land can rise to a level of being a right. Private property interests in public land cannot arise through prescriptive*** means. Michigan Compiled Laws 600.5821. Nor can they arise by acquiescence. *Miller v Dept of State Highway* 30 Mich App 64, 71; *Twp of Bangor v Bay City Traction*, 147 Mich 165. The only rights that appellants have are rights that are held in common with the

public in general. As stated in *Kraushaar v Bunny Run Realty*, 298 Mich 233, where the plaintiffs claimed an exclusive right to a platted park that was dedicated to the public, ‘Solely as individuals, these plaintiffs cannot assert any rights based upon the dedication and acceptance of the plat, but, instead, rights of that character *must be asserted, if at all, as a right or use to which the public in general is entitled.*’”

As further proof the use of road ends cannot be changed or altered by use subsequent to dedication, the AG cited the following in his brief:

“Except as appears below, if a dedication is made for specific or defined purpose, neither the legislature, a municipality, or its successor, nor the general public has any power **to use the property** for any other purpose than the one designated, whether such use be public or private, and whether the dedication is a common law or statutory dedication; and this rule is not affected by the fact that the changed use may be advantageous to the public. This can only be done under the right of eminent domain. On the other hand, the municipality cannot impose a more limited and restrictive use than the dedication warrants.” [26 CJS, Dedication, Section 65, pp. 154, 155]

The AG concluded his brief with this statement:

“There is nothing wrong with the decision in *Jacobs*. It recognizes that a road leading to the water is intended to provide the public with meaningful access. In essence, the Court in *Jacobs* held that areas designated on the plat as roads are not the equivalent of parks or marinas. In fact, the type of behavior appellants advocate, i.e. picnicking, lounging, sunbathing, mooring of vessels on a seasonal bases, and the placement of boat hoists off the road ends interfere with the intended purpose of the road, that being to provide access to the general public.”

(**A person does not have a “right” to appeal to the Michigan Supreme Court. One must file a motion in a timely manner with the Court for “leave to the appeal”. The Court then decides whether it will grant or deny the motion. If leave is denied, the Court of Appeals decision stands. Motions for leave to appeal filed after the deadline established by the Court are rarely granted.*)

(***The Jacobs Court ruled that publicly dedicated roads terminating at inland navigable waters are generally deemed to provide public access to the surface of the waterbody and that a public dock may be installed to aid in access. The Court rejected claims that activities long after the land was dedicated such as lounging, picnicking, sunbathing and permanent mooring were intended by the dedicator.*)

(****Prescriptive means: A Claim to title in land by long and continuous use.*)

Boat noise project tested on Higgins Lake

by Bill Case, HLPOA Executive Director

On Monday, April 21, 2003, at 1:00 p.m., an historic event took place in front of the South State Park. Despite an overcast, cold, windy and rainy day, the Roscommon County Sheriff's Department, under the approval of Sheriff Fran Staley and the supervision of Undersheriff Randy Stevenson, aided in the initial testing of a prototype noise and distance device developed by Professor Clark J. Radcliffe of Michigan State University and his graduate student assistant, Sean Vidanage.

The Sheriff Department's air boat was used to create excess noise and was piloted by Deputy Rob Holliday and assisted by Marine Division Deputy David Andre. A department marine patrol boat, piloted by Bob Boyle and accompanied by Ned Wickes and the undersheriff, was used to operate the prototype in an effort to simulate normal conditions under which usage would occur.

The initial test lasted the better part of an hour and readings were taken from as close as fifty feet away to as far as 3,000 feet away. The measuring instrument performed flawlessly reporting readings from 105 dB(A) to off-the-chart with most readings occurring between 105 dB(A) and 115 dB(A). At the present time, the law allows a maximum of 92 dB(A). The results were remarkable, particularly in lieu of the fact there was heavy rain and gusty winds. Another test is scheduled in June on Higgins Lake. Meanwhile, Professor Radcliffe will be working to fine tune his instrument for ambient noise factors, such as other boats operating in the background.

The need to develop an instrument of this nature became evident because of the awkward and unwieldy effort currently required of law enforcement personnel to meet Michigan's Marine Safety Act standards. Ned Wickes, former HLPOA executive director, spearheaded a drive to raise private funds to finance the project. Ned



MSU professor Clark Radcliffe and graduate assistant Sean Vidanage calibrate the prototype noise and distance device in preparation for a trial test on Higgins Lake.

single-handedly raised \$35,000 and made contact with MSU Mechanical Engineering Department where he convinced Dr. Radcliffe to take on the project. The funds collected were channeled through the Michigan Lake and Stream Associations' office. Ned has spent countless hours during the last two years putting this project together. It is only due to his Herculean efforts that positive results are now being realized.

The use of this laser-microphone device which measures both distance and sound level of a moving target will not be realized immediately. Now comes the task of codifying noise standards and enacting new legislation that will be recognized in our State courts. Regardless, the future looks "quieter" due to the efforts of Ned Wickes and the determination and cooperation of MSU and our local sheriff. Hopefully, we can all share in the realization of quieter summer seasons at Higgins Lake in the foreseeable future.



Roscommon County Sheriff Marine Division supervisor Bob Boyle, HLPOA President Ken Dennings, MSU Professor Clark Radcliffe, MSU graduate assistant Sean Vidanage, and Roscommon County Undersheriff Randy Stevenson await the start of noise and distance prototype testing at the launch site in the South State Park of Higgins Lake.



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 Higgins Lake, MI 48627
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If Not Now, When?

If you have not yet taken steps to become a member for 2003, it's not too late! You can renew your membership (or obtain a gift membership for a family member or friend) by filling in the form below and sending your \$50 check to:

HLPOA, P.O. BOX 173, Higgins Lake, MI 48627

Your membership and involvement helps keep the HLPOA on the cutting edge lake associations within the state of Michigan. Show pride in the organization that we are privileged to be able to belong to.

Name _____
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Summer Address _____
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City _____ State _____ Zip _____ Telephone _____

Please indicate where you would like your Association mail sent:

To winter address year-round.

To summer address May 15 to Oct. 15

Membership dues	\$ 50.00
Legal fund	_____
Total	\$ _____