

Thumb Land Conservancy NEWS

March 23, 2019

TLC Q1 March Board Meeting

The TLC held our first quarter board meeting on March 9 at the home of board member Dorothy Craig in Fort Gratiot, next to our Dead End Woods Sanctuary. We always have a nice time at Dottie's place. Two guests attended our meeting: Connie Bates, President of the Clyde Historical Society, with whom we are working to protect the historic North Street station; and Vicki Priest, President of the Port Huron Area History and Preservation Association, a potential partner on future projects. The board approved purchase of a new preserve pending final grant funding and authorized the Executive Director to finalize a stewardship agreement for a wetland mitigation bank. Executive Director, Bill Collins, gave a presentation on the 1831 journey of Alexis de Tocqueville and Gustave de Beaumont along the western edge of the Thumb.

A Fortnight in the Wilderness



Drawing by Gustave de Beaumont of the travel party north of the Cass River near present Frankenmuth, Michigan.

Shown left to right are a horse, Sagan-Cuisco's dog, Alexis de Tocqueville, Sagan-Cuisco, a horse, and Gustave de Beaumont. Missing is the younger Native American guide, possibly at a nearby Indian camp.

Back in the early 1990's, TLC board member, Fred Fuller, introduced Executive Director, Bill Collins, to *A Fortnight in the Wilderness*, an account written by Alexis de Tocqueville of his 1831 journey by horse with Gustave de Beaumont on the Saginaw Trail from Detroit to Pontiac and north to the early settlements of Flint and Saginaw. Tocqueville was the author of the well known book *Democracy in America*, frequently cited in political commentary. *A Fortnight in the Wilderness* was later added as an appendix to *Democracy in America*. The very insightful observations of Tocqueville provide perhaps the best glimpse of the people, cultures, and feeling of the primeval forest wilderness of our region before it was largely overrun by settlers. If you have never read *A Fortnight in the Wilderness* and are curious about how it felt to stand in the untouched forest of Michigan almost two centuries ago, you need to read it. If you want a first-hand account of settlers and the few remaining Native Americans of that time, read it. See the following link on our web site with a summary of the presentation and nearly the complete text of *A Fortnight in the Wilderness*: <http://thumbland.org/AFortnightInTheWildernessPresentation.pdf>

A far more comprehensive presentation, entitled, *Aristocracy on the Saginaw Trail: Tocqueville in Michigan*, is available from the Clarke Historical Library of Central Michigan University at the following link: <https://www.cmich.edu/library/clarke/Pages/Aristocracy-on-the-Saginaw-Trail-.aspx>

Spring Stewardship

About 10 weeks ago I wrote that spring was only about 8 or 9 weeks away, and it looks like I was right. We finally lost our winter-long ice layer and temperatures have crept up into the 40's. But it was rough going with the "polar vortex" that seemed to keep hanging over us, and not one, but two "bomb cyclones", so far. The TLC stewardship crew has emerged from hibernation with renewed vigor. Below is a list of our plans. If you would like to help, please contact us:

March

- Deerfield Wind Energy Preserve Japanese Barberry control

April

- Deerfield Wind Energy Preserve Japanese Barberry control
- Friends of Beard's Hills litter clean-up
- Saint Clair County Earth Fair
- North Street Station clean-up and restoration

May

- North Street Station clean-up and restoration
- Port Huron State Game Area Garlic Mustard removal
- Dead End Woods Sanctuary Garlic Mustard removal

Gerrits Sanctuary Signs

The TLC will have new preserve signs posted along the boundaries of the Gerrits Sanctuary in Ira Township, Saint Clair County. Will Fuller, son of TLC board member, Fred Fuller, will install the signs as part of his Eagle project for Scouts. The signs have been printed on coroplast by Thorpe Printing in Marysville, Michigan: <https://www.thorpeprinting.com/>. Owner, Stacie Thorpe, has always been very generous with the TLC. They gave us such a good price that we also had

new signs made for our other sanctuaries. Will Fuller and his work crew will be out at the Gerrits Sanctuary this spring installing the signs and also doing some invasive weed control. Land conservancy work and Scout projects are often a perfect match, so if you know of any other scouts looking for work, send them our way.



Eagle Scout candidate, Will Fuller, at the International Camporee in 2016.

GERRITS NATURE SANCTUARY

property of the
Thumb Land Conservancy

This 38.5-acre nature sanctuary is protected in memory of the former owners, Dr. James F. Gerrits, his wife Lois Gerrits, and the Gerrits family. The public is welcome to access and enjoy this sanctuary, but please respect the rules so we can protect this area for future generations.

ANY DISTURBANCE OR ALTERATION OF THIS NATURAL AREA IS FORBIDDEN, INCLUDING BUT NOT LIMITED TO: • DESTRUCTION, REMOVAL, OR INTRODUCTION OF PLANTS, ANIMALS, OR ANY NATURAL MATERIALS • CUTTING, FELLING, OR REMOVAL OF LIVE OR DEAD TREES • MOWING OR TRIMMING OF VEGETATION • FILLING, DIGGING, GRADING, TILLING, OR ANY GROUND DISTURBANCE • SURFACE OR GROUND WATER DRAINAGE • MAKING OR EXPANDING TRAILS • CONSTRUCTION OR PLACEMENT OF STRUCTURES, MATERIALS, OR EQUIPMENT • DISPOSAL OR PLACEMENT OF ANY TRASH, SCRAP, OBJECTS, OR ANY DEBRIS INCLUDING GRASS CLIPPINGS, LEAVES, OR BRANCHES • APPLICATION OF ANY CHEMICALS, HERBICIDES, PESTICIDES, BIOLOGICAL AGENTS, OR ANY SUBSTANCE • USE OF ANY ORV, 4-WHEELER, MOTORCYCLE, SNOWMOBILE, OR ANY MOTORIZED VEHICLE; • HORSE RIDING; • BICYCLING; • PAINTBALL SHOOTING • HUNTING • TRAPPING • CAMPING • FIRES • LIVESTOCK GRAZING • DEFACING OR VANDALISM OF ANYTHING • AND ANY OTHER ACTIVITY THAT COULD ALTER THIS AREA.



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Lake Huron Coastal Park Project Burtchville Township, Saint Clair County

The TLC continues to work on possible land acquisitions in Burtchville Township, Saint Clair County, that would be part of the proposed Southern Lake Huron Coastal Park. We have been completing grant applications, contacting potential project partners, and coordinating purchase offers with real estate agent, David Ladensack of Summit Realty in Fort Gratiot. The proposed acquisitions would protect key properties needed to connect Port Huron to Lakeport State Park through an approximately 4.5-mile coastal park located on the beach ridge and swale complex. If you are interested in helping with this project, please contact us.



Rob Zbiciak

Michigan lost a great advocate for wetland protection and a good man this winter. Robert Zbiciak was, in recent years, the statewide Wetland Restoration Coordinator for the Michigan Department of Environmental Quality. Rob was diagnosed with pancreatic cancer in early September, not his first experience with cancer, and passed away on January 17.

Rob's wetland protection work with the Michigan Department of Natural Resources, and later with the Department of Environmental Quality, was very much appreciated by many of us here in the Thumb. He was a hero in the effort to protect the remaining portions of the Minden Bog in northern Sanilac County in the early to mid 1990's. After denying a permit to Michigan Peat Company to mine several hundred more acres of the Minden Bog, Rob was, shortly thereafter, reassigned by the Engler administration, to monitor tribal fishing up on Grand Traverse Bay. Such politically-motivated reassignment of State employees for doing their jobs too well came to be known as getting "Zbiciaked". Rob later participated in restoration planning for the Black River in 2009 with the Thumb Land Conservancy. Most recently, in 2018, Rob and I worked together on a wetland restoration site in Huron County along the Pinnebog River, and another wetland site in northern Macomb County. He was very helpful and made the review process much more pleasant than it otherwise would have been. Rob and I shared a very similar trajectory in our education, work, personal land ownership, and land conservancy work. I spoke with him last in early November. He was still working on wrapping up wetland files at home. I let him know how much his work was appreciated by all of us.



Rob Zbiciak



The last photo I took of Rob on June 12, 2018. He is looking at a small stream in Bruce Township, Macomb County.

Here is Rob's obituary:

http://www.swartzfuneralhomeinc.com/memsol.cgi?user_id=2158792

“Robert Paul “Rob” – St. Johns, MI, age 61, lost his courageous battle with cancer, Thursday, January 17, 2019 with his family at his side.

Funeral Mass will be held at 11 am, Wednesday, January 23, 2019 at Holy Redeemer Catholic Church, 1227 E. Bristol Road, Burton, Father Steve Anderson officiating. Rob will be at the church from 10 am until the time of Mass. Burial in New Calvary Cemetery.

Those desiring may make contributions to Mid-Michigan Land Conservancy.

Visitation will be Tuesday from 12 – 8 pm. at Swartz Funeral Home, 1225 W. Hill Road, Flint. A celebration of his life will take place Tuesday at 7 pm.

Rob was born in Flint on November 27, 1957, the son of the late Raymond and Katherine (Boze) Zbiciak. He graduated from MSU with a Bachelor of Science degree in Agriculture and Natural Resources. He started his 34 year career with the DNR Land Resource Programs Division in 1985. This later became the DEQ Water Resources Division in which he was the Wetlands Restoration Coordinator. Rob was a strong advocate for the preservation of our natural resources and he served on the board for the Mid-Michigan Land Conservancy.

On April 19, 1986, he married his love, Ellen Seymour. In 1996, his one and only son, Adam Robert, was born.

For Rob, the journey of battling cancer started in 1991 with colon cancer. This was followed by melanoma in 1994, colon cancer again in 2003, sarcoma in 2007, prostate in 2015, and his final battle of metastatic pancreatic cancer on August 7, 2018. Rob fought his hardest to the end.

Owning 100 acres of land for our home and hunting was like a dream come true. Of all his accomplishments, he was most proud of his son Adam. He loved being his dad and was thankful he was given the time to see him grow into a young man.

Surviving are his wife, Ellen; son, Adam; brother, Mark; many family members and special friends. He was preceded in death by his parents and sister, Debbie Murphy.”

Ecology News

The Endangered Species Act Needs Improvement

<https://thehill.com/opinion/energy-environment/433122-to-protect-endangered-wildlife-government-should-make-partners-of>

The Endangered Species Act and all regulation certainly needs improvement. Having worked as a wetland consultant and ecologist for nearly 30 years, I am very grateful for the regulatory protections we have. But I also see big problems with regulation, or maybe I should say, a lot of room for improvement. Beyond improvement, and I hope I'm wrong, in my opinion, regulation as we know it is ultimately doomed to failure. The reasons are fairly simple as I see them.

First, natural resources regulation, by definition, is not complete prohibition of impacts, but a pragmatic approach that provides for exemptions and permitted impacts. This is just the reality of our dependence on land and other resources. But these exempted and approved impacts, how ever small or insignificant, add up over the years and we continue to lose wetland, rare species, their habitats, and other important natural features. Using wetlands as an example, there are many exemptions for mining, forestry, agriculture, transportation, utilities, and other impacts. Beyond these exemptions, minor impacts are routinely approved. Then accounting for larger projects, there is still a lot of ongoing wetland destruction or degradation that gets approved.

Secondly, regulations are written to protect natural features that fit a relatively narrow definition. This is done out of practical necessity as regulated parties need to know exactly what features are regulated and where. Nature rarely provides us with distinct boundaries. I have described wetland delineation or boundary flagging as trying to put a line where nature never intended one. But contrary to popular myth, for purposes of regulation, identification of wetland requires observation and documentation of very specific vegetation, hydrology, and soil indicators, currently according to the 1987 US Army Corps of Engineers *Wetlands Delineation Manual* and also regional supplemental manuals. Of course, wetland jurisdiction has been subject to debate on a federal level as you may read in the news occasionally. Some people are surprised to learn that not every wetland is regulated. In Michigan, generally, wetland is regulated only if it is “adjacent” to a “navigable waterway” (a major river or lake), connected to or within 1,000 feet of the Great Lakes, connected to or within 500 feet of an inland lake (over 5 acres), pond (over 1 acre), or stream (almost any watercourse), or the wetland is larger than 5 acres. There are rare exceptions when wetlands not meeting these criteria are regulated. Unless regulated by a township or city ordinance, the vast majority of other wetlands are not legally protected. Regarding rare species, you may be surprised to learn that our laws generally do not protect their habitats, but simply prohibit the “direct take” of the species. This means, for example, that it is illegal to directly destroy a Michigan Endangered Painted Trillium plant without a permit, but it is no problem to completely destroy the forest habitat in which they grow. Not good.

Thirdly, natural resource regulations are largely one-dimensional, while nature is actually a complex of many components that make a functioning and sustainable ecosystem. Wetland regulation is a very good example of this. Especially for large-scale site developments, consideration of only those areas that meet the definition of regulated wetland often results in ecological disaster. If you've ever seen wetland go through the regulatory process for a typical residential or commercial development, as I have many times, you would know that, more often than not, the wetland comes out the other end as a chopped-up, highly fragmented, ecologically dysfunctional, and unsustainable version of its former self. Usually, only the largest wetlands remain ecologically intact. Most local tree ordinances are also great examples of a one-dimensional approach that results in little real sustainable protection. I have often said that most tree ordinances can't see the forest for the trees. Trees are great, but a forest is so much more. Relegating individual trees to mowed lawn is a death sentence for their progeny. A forest is a self-sustaining and complex natural community that provides so many more benefits. Unfortunately, most tree regulation leaves such tiny and fragmented patches of trees, that benefits to woodland species are minimal.

Fourthly, large-scale natural resource regulation simply cannot keep up with every violation. Unapproved impacts are probably occurring every day. Many of these impacts are never detected, and even when identified, other agency priorities, lack of funding, and legal hurdles often prevent meaningful response.

Finally, natural resources regulation has just about everything going against it. Effective regulation requires a coordinated alignment of science, law, rules, administration, political will, funding, enforcement, ethical integrity, education, foresight, popular support, institutional support, and I'm sure a few other things I'm not thinking of right now. Weakening of any of these supports undermines the whole regulatory system. Unlike many things our society regulates, like the financial system, natural areas and native species are highly vulnerable to permanent destruction. The forces of destruction need only win once. In most cases, it's not like we can simply restore what was lost. How do you bring back the original landscape, or a plant community with native populations that occupied a site for maybe 6,000 years or more?

Beyond the generally one-dimensional aspect of natural resource regulation, the statutes and rules can be decades behind the science, often due to an anti-science sentiment. What people don't understand, they tend to reject. But while I advocate for science, if for no other reason than we have brains to use, I will just as strongly say that science will never account for everything. It's a tool. Beyond that, we need to decide what kind of world we want to live in and leave behind. Science doesn't necessarily answer that for us. To go beyond the limitations of science, we need foresight or vision. Ironically, I would say that our vision of the future should be guided by the past. A great example is mapping of plant communities that existed prior to modern settlement, starting about 200 years ago in Michigan. We should try to restore as much of the original landscape, vegetation, and native communities as possible.

So, the basic nature of resource regulation is self-limiting, narrow in scope, generally one-dimensional, unable to account and remediate for every violation, unless we deploy an army of robots I suppose, and dependent on a large, complex, changing, and costly support system. All of this contributes to an ongoing background level of regulatory failure and brings into serious question what we will be left with decades down the road. It likely won't be 10 years from now, and maybe not even 40 years from now, but slowly and surely, natural features regulation is on a trend of failure. Having said all of this, I must, in all fairness, say that the Michigan wetland regulatory program has resulted in some good protection over its nearly 40-year history. It's just not enough for the long haul, in my opinion, and I see so many missed opportunities.

On the other side of the wetland regulation equation, we have gains through wetland restoration and mitigation, or the attempt to replace wetland lost to permitting, violations, and historic losses. One day, we may be able to more completely mitigate for losses, but with the ongoing level of impacts, with over half of the wetlands in Michigan having been eliminated in the past 200 years, with over 70% lost in some regions, and with competition for potential mitigation land with agriculture and development, it's going to be tough to make the needed progress. According to the Michigan Department of Environmental Quality, wetland restoration web page, "Although wetland protection regulations have slowed the rate of wetland losses, it is estimated by the U. S. Environmental Protection Agency that the United States still loses approximately 100,000 acres of wetlands annually. While the amount of wetlands lost each year in Michigan is unknown, it is widely accepted that the amount of wetlands continues to decline."

Beyond the systemic limitations and challenges of natural resource regulation, there are specific and long-term issues. In my opinion, wetland mitigation efforts are currently misguided. During the first roughly 20 years of Michigan wetland regulation, most everyone was trying to build new wetland in upland areas on the same sites where wetland was impacted. This was mostly a big failure. Then, mitigation banks started to slowly catch on, but there were few available. Banks consolidate wetland mitigation for multiple impact sites on single mitigation sites that serve a particular eco-region. The wetland is either constructed or restored well ahead of development, so that it can be monitored and corrected, if necessary, providing better assurance that lost wetland will be better mitigated for. The new mitigation focus is almost entirely on these banks. But another mitigation option has been available since Michigan wetland law was enacted in 1980, that being preservation of existing natural wetland at a 10:1 replacement ratio. I have encouraged this option for almost 20 years. Most of the mitigation I have been involved with has been preservation of large high-quality natural wetlands. Not only does this protect exactly what our wetland statutes were enacted to protect, but the wetlands are saved from ever having to go through the regulatory sausage process, and the owners of these wetlands are paid to preserve lands they might otherwise try to destroy. I fully realize this does not contribute to the creation or restoration of new wetland, or address the issue of "no net loss" of wetland, but preservation of existing wetland does remove these areas from threat and gradually, decreases the regulatory burden of all agencies involved.

Regulation is usually a very costly undertaking, considering not only direct program costs, but indirect costs. Direct costs are easily understood as agency staff and administrative costs. Indirect or secondary costs are passed on to individuals and the public as a whole. Using wetlands as an example, indirect costs would be for consultants like me, to flag wetland boundaries, produce reports, meet and communicate with agency staff, prepare permit applications and the many supporting documents, produce drawings, prepare mitigation documents, wetland monitoring and reporting, and so on. Other costs include supervision of development activities, mitigation construction, financial assurances, stewardship endowments, and other costs. Local governments may also require review through city or township approvals and permits. There are also costs of public noticing many permit applications, and time spent by individuals and groups making public comment. There may be administrative hearings, court cases, penalties, fines, even jail time, all some level of burden on our judicial system. Perhaps most costly of all to everyone are what economists call "opportunity costs". I have come to believe, the older I get, that the biggest costs in life are not usually what we pay or lose, but the opportunities that we miss or never pursue. Using wetlands as an example again, opportunity costs would include the cost to society of ineffective watershed protection, leading to degradation of water quality in rivers, inland lakes, and the Great Lakes, which then makes it necessary for us to come up with yet more funding to chase down pollution, nutrients, excessive flooding, and the many things that wetland

protection should be helping to alleviate. Opportunity costs also include ecosystem and rare species protection. Again, if rare species protection goals are not being met, it just means more funding necessary in another program, or gradual loss of species we may never be able to retrieve. If regulation is missing the mark for any number of reasons, we all pay more, or at least incur future generational costs, both financial and real physical losses. The bigger point is that if society is going to invest in resource regulation, it would behoove us to ensure it is well supported and hits the mark. Otherwise, we are wasting money, time, and effort that could be better used elsewhere.

I often wonder whether we would be further ahead to simply buy lands to establish more public preserves as opposed to trying to regulate features on private lands. There are a lot of issues to consider, such as “tragedy of the commons”, property tax base, and so on. Do I have all of the answers? No. But I can clearly say that there is not enough funding dedicated to land acquisition. This is key to protection. I’m not one who says that if the government wants to protect something that it should buy it in every case. After all, the government is supposed to be us, so one way or another, we all pay. There is definitely a place for regulation. But, some of us have seen so much money thrown at over-hyped restoration, awareness campaigns, conferences, and other things that seem to dance around the real solutions and attract big invoices. I’m convinced that if only a fraction of all this funding was diverted to land acquisition, we would see huge improvements. It seems to be a no-brainer.

All of what I wrote here started as an introduction to the following article. If you’ve read this far, I hope you understand some of the very basic problems with resource regulation that I have attempted to explain. You should understand that there is a lot of opportunity for improvement. I have alluded to my belief that a large part of natural resource regulation will eventually need to become something different. What that will be, I’m not really sure. But I can say clearly that far more funding is needed for real land “preservation”, a word most agencies and organizations are afraid to use in recent years. However, I do not support tossing out the baby with the regulatory bath water. At this point, we definitely still need regulation, as flawed as it is.

The author of this article suggests improvements to the Endangered Species Act. He comes from a quite conservative group, the Pacific Legal Foundation, which is well known for litigating against environmental protections. So watch your step. He suggests four improvements to the Endangered Species Act: 1) Incentivize private landowners to protect rare species habitat; 2) Stop regulating Threatened species (less rare and imperiled) as intensively as Endangered species (more rare and imperiled); 3) Encourage private conservation efforts; and 4) Establish a process for federal funding of private conservation efforts. What he seems to be suggesting here is providing funding for landowners to protect rare species while also allowing the US Fish and Wildlife Service to be more flexible. In principle, I probably agree with both approaches, but the devil is always in the details. I’m all for more financial incentives dedicated directly to land preservation. But on weakening protections for Threatened species, I say no. If you have potential habitat for the federally Endangered Indian Bat on your property, the US Fish and Wildlife Service will already come out and show you which roost trees to cut down in the winter to avoid federal regulation. So, I don’t like to think how they handle merely Threatened species, especially if protections are weakened. To suggest landowners and the US Fish and Wildlife Service will all hold hands and sing “Kumbaya” because species are less protected would be fantasy in many cases. I imagine, more often than not, landowners would just take advantage of less protection. But, I do agree everyone needs to work together better and there should be provision for more flexibility on a case-by-case basis.

So, I can generally agree with the Pacific Legal Foundation on this issue, especially in providing more incentives to landowners and working with them as partners. I am working on a few sites now where more partnership would likely result in tremendous benefits for all parties and the general public. I'm thinking of about 100 acres of lakeplain prairie along Saginaw Bay that should be a top priority for the agency personnel involved and local organizations. But with the lack of response, you might never guess that we are dealing with an imperiled community on both a statewide and global basis.

2019 TLC Membership

Since our formation in 2008, the TLC has been informal about its membership requirements. We had hoped to offer more membership benefits, but have not been in a financial and administrative position to do so. With your help, we can change that, and as we build our membership, the TLC will be better enabled to protect important natural areas in our region.

We offer three membership levels as shown below: Individual \$25, Family \$30, and Business \$100. Members will receive our e-mail news. Some of you are members based on your previous donations, volunteer efforts, or other help, and so will continue to receive our e-mail news. Otherwise, if we have not heard from you in a long while, you will likely be removed from our membership list. If you wish to continue receiving the e-mail news but can not financially justify paying for a membership, please contact us.

You can also make donations in honor or memory of someone or something. For donations of \$100 or more, your name will be listed on our web site. For larger donations, please contact us for details. You may print and complete the form below. Make checks payable to "Thumb Land Conservancy". Mail checks and forms to: Thumb Land Conservancy, 4975 Maple Valley Road, Marlette, Michigan 48453

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