

THE DISTRICT DISPATCH

The Cuba Lake District Board of Commissioners Information Letter

June 2009

This year seems to be off to a slow start all around. It's almost June and, as of this writing, the water has not yet gone over the spillway. I hope to get this first-of-2009 Dispatch done before there is too much "water over the dam". Since my first term as Commissioner is almost over, this could be my last *Dispatch* published depending on how the election goes. More about the elections later, but first:

Tax Assessment:

Craig Leslie, Partner, Phillips Lytle LLP is shown here as he talks to a group of about 40 Cuba Lake leaseholders about the Town of Cuba's tax reassessment and its impact on the Cuba Lake District properties. The meeting was held May 23rd at the Cuba Public Library.



The firm of Phillips Lytle (PL) has been retained by vote of the Cuba Lake District Board of Commissioners for an estimated total of \$15,000 which PL believes will cover the initial filings of the articles 7 and 78 explained below. The ultimate cost, which cannot be estimated at this time, will be a function of the extent of work required beyond these initial filings.

PL's retainer with the District contemplates that PL will file both an Article 7 and Article 78 proceeding on behalf of Cuba Lake leaseholders, challenging the Town of Cuba's apparent decision to include a component attributable to the value of the transfer of the leasehold interest when setting an assessed value for leased parcels along the Lake. The proceedings that PL will be filing are not intended to raise arguments concerning the value of the particular improvements on each parcel (i.e., your cottage, retaining wall, or dock is worth less than the Town says it is, etc.).

For this reason, it is important that property owners consider whether they wish simply to rely upon the legal challenge that PL will file, or whether they should bring their own challenge to preserve their ability to dispute the value assigned to their individual property, based upon its unique characteristics, improvements, and other factors (assuming the roll is found to be valid).

During the May 23rd meeting it was suggested that as many individuals as possible file complaints (RP 524) with the Board of Assessment Review ("BAR") on or before May 26, 2009. By doing so, they preserve their right to challenge all aspects of the assessment with respect to their property. Copies of a marked up RP 524, page 3, indicating some "Grounds for Complaint" were handed out at the meeting; also copies had been made available on the Cuba Lake District web site www.cubalake.org a few days prior to the meeting.

After the Board of Assessment Review issues its decisions on each complaint, the Town will finalize its assessment roll on or about July 1, 2009. Property owners who are not satisfied with the relief they obtain from the Board of Assessment Review (if any) will then have thirty (30) days in which to commence either an Article 7 proceeding or a SCAR proceeding to challenge their property assessment (Small Claims Assessment Review – see - <http://www.orps.state.ny.us/pamphlet/complain/howtofile/smclaimsreview.htm>). The two proceedings are mutually exclusive – if you commence a SCAR proceeding you cannot commence an Article 7 and vice versa. Property owners who wish to rely solely upon the challenge to be filed by PL will be asked to sign a retainer letter authorizing PL to include them as petitioners in the Article 7 proceeding that PL intends to commence. If any property owners wish to preserve their right to not only challenge the validity of the roll, but also the particular assessed value assigned to their property (assuming the roll is found to be valid), they will need to file their own Article 7 or SCAR proceeding. PL will cooperate in providing them with a copy of the proposed petition that PL intends to file so that the individual property

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owners can incorporate the arguments raised by PL into their own individual proceeding as the individual property owners see fit.

Regardless of whether a property owner decides to participate in the Article 7 proceeding to be filed by PL, or file their own Article 7 / SCAR proceeding, all Cuba Lake leaseholders are eligible to participate as petitioners in the Article 78 proceeding that PL intends to commence. Again, property owners who wish to participate in that Article 78 proceeding will be asked to sign a retainer letter authorizing PL to include them as petitioners in the proceeding. Property owners who wish to participate in both the Article 7 and Article 78 proceedings to be filed by PL are encouraged to do so (provided they do not commence their own Article 7 / SCAR proceeding).

In both instances, the retainer letters would also confirm that PL will be representing the interests of those signing the letters and that the scope of work will be limited as described above. The resulting fees for the Article 7 and Article 78 that PL intends to commence would be billed to the District under the existing retainer agreement.

Finally the following key dates are noted:

1. Filing RP 524 – May 26, 2009
2. Signing letters of participation - June
3. Final roll – July 1, 2009
4. Date by which individual SCAR or Article 7 proceedings must be filed – July 31, 2009
5. Date by which PL must file the Article 7 proceeding they intend to commence – July 31, 2009
6. Date by which PL must file the Article 78 proceeding they intend to commence – November 1, 2009 (but PL intends to file at the same time the Article 7 proceeding is filed, to ensure both proceedings are assigned to the same Judge and handled together going forward)

And What about Ischua??

Those of us who reside in Ischua, Cattaraugus County, will see reassessment impact in 2010 (starting with School Tax). The same consultant employed in Cuba, J D Brearley Consultants, LLC, has been employed by Ischua at a fee of \$41,500 to consider approximately 753 parcels. Originally the towns of Humphrey and Ischua were going to be worked together at a competitively bid price of \$83,000. After Humphrey dropped out, Brearley agreed to proceed with Ischua at the originally agreed 50% of the total. The Ischua appointed Assessor is Suzanne Putt who can be reached at 716-557-8898 if you have questions.

At a meeting held May 9, 2009 at the Ischua Bingo Hall, John Brearley gave a presentation providing an overview of the reassessment process. A copy of his presentation slides can be found on my web site www.ourcubalake.com. The goal is to achieve uniform and equitable assessments representing 100% of Full Market Value for all parcels meaning that the "equalization" rate would be 100%. It was noted by Town Supervisor, Al Chambers that already about \$1.5MM in unassessed properties have been identified. He also noted that the last reassessment was done in 1957 causing the "equalization" rate to be at 9% in 2008. Assessment will be done on the basis of selling prices of recently sold parcels. For those of us who reside on the Lake, sales prices of properties used in the Town of Cuba for the Lake leases will be used in the reassessment.

Assessment activity has begun including resident-completed forms describing the properties being sent to the Assessor; also, the Assessor and consultant will begin viewing, dimensioning and photographing each parcel in the Town. It was noted that residents do not have to allow the assessors access to their property. If you object to a visit, call Suzanne Putt at 716-557-8898.

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Town of Cuba, Sewer District #5 Project:

As long as we're on town issues, we should mention that on April 28, 2009, bids were opened for the District #5, Cuba Lake - Route 305 Corridor Public Sewage Treatment Project. The bid totals read would include both contractor work and necessary equipment which includes the E/one, Extreme Series Grinder Pumps. At 2:00 PM, Tom Swift of Clark Patterson Lee, Design Professionals opened the first bid package.

Nine bids were received from contractors, ranging from a high bid of \$5,989,000.00 to a low of **\$3,147,240.20**. The average of the remaining seven bids was \$4,515,622 and the next-lowest bid was \$4,250,000. All but one of the bids were within the voter approved value of \$5,687,000. The final approved bidder is Blue Heron Construction of 9289 Bonita Ridge Road, Jordon, NY 13080. The Town Board met with representatives of Blue Heron on May 4th for review and confirmation that they wished to proceed with the contract; this prior to final acceptance of the bid at the next Town Board meeting. Ron Cartwright, Field Supervisor and Jim Albanese, Senior VP Operations were there to represent Blue Heron. Some comments made during these informal discussions:



- Blue Heron did the contracting work at the Milo project which is along the northeast shore of Keuka Lake. This highly successful project used the same pumps (E/one) as will be used in Cuba's project and was in terrain significantly more challenging than will be experienced here. The Milo project was one of the sites visited by Town and Cuba Lake District representatives in evaluation of Cuba's project.
- Blue Heron intends to do all installation with absolute minimum open pits or trenching. They intend to use direct drilling for all pipe runs. This will mean faster installation and minimal disruption to property and roadways. They will have available three direct drilling machines that can be used on the project.
- After getting through the front-end paperwork and financial source review, they expect to start laying the mains (8 inch HDPE tube at the start down to 2 inch tube at the end) beginning at a point near the Village waste water treatment plant in early July. They would expect to start individual site visits/discussions at about the same time.
- They expect to be to the school before September.
- I reflected on my personal situation stating that my existing first tank from the house was set very close to the house and wondered how they would handle that. They indicated they would probably punch through the top and the bottom of the tank and set the new pump inside the old tank. I asked how long I would be without waste handling service; I was told about three hours. (I was expecting about three days!)

In general, Blue Heron looks to be well experienced and capable in using current technology for installing the Town of Cuba's new system. We look forward to the ground-breaking.

2009 District Election:

Two positions are to be decided on Election Day, August 29, 2009. Commissioner Dave Shemeld's 5 year term comes to an end; and, Treasurer, Andy Lindquist's 3 year term comes to an end.

Also, in the May meeting of the Board, it was noted that one of the guests might want to originate a proposition to put on the ballot regarding when to lower the water in the fall.

The following is the schedule of events associated with the election:

- Propositions to be filed with the District Secretary by **July 10, 2009**.
- Requests for **Absentee Ballot Application and Ballot Forms** are to be received by the Secretary **after August 1, 2009 but no later than August 22, 2009**.
- Public hearing for District Budget – **August 13, 2009** at the District Office, prior to the regular Board meeting.
- Nominations for office must be filed with the District Secretary no later than **August 19, 2009**.
- Absentee Ballots are mailed out between **August 20** and **August 22, 2009**.
- Meet the candidates night, if more than one candidate running for either of the open positions, (**Sponsored by the CLCOA**), **7:00 PM, Cuba Library, August 27, 2009**.

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- o Absentee Ballots must be post-marked no later than August 28, 2009 and Received by **September 5, 2009**.
- o Election Day, location **Cottage #97, South Shore Road, Noon to 8:00 PM, August 29, 2009**.

Note that nominations and propositions are by petition requiring 25 signatures of qualified voters (electors) in the district. Contact the District Secretary to obtain petition forms and for absentee ballots and detailed instructions should you anticipate the need.

Qualified electors:

(a) The qualified electors of said district being: those entitled to vote for the election of commissioners, the treasurer and on any and all Propositions and questions shall be only those persons who are citizens of the United States and who are eighteen years of age or over and who either:

- (1) Permanently reside in the district for a minimum of thirty days next preceding the election and are duly registered to vote from that residence in accordance with the provisions of article five of the election law, or,
- (2) Are lessees of real property from the State of New York or a Political subdivision of the state within said District. Or,
- (3) Own real property in the District.

(b) Only natural persons shall be entitled to vote, there shall be no vote by corporate or governmental owners or by owners holding in a fiduciary (e.g. trustee) capacity. At each annual election those persons entitled to vote are entitled to vote on all questions and for the election of all elected officers.

District Administrative Notes:

Information provided by NYS OGS indicates the following as of 5/19/09:

- A. Leases not Signed:
 - a. Of 281 listings, 81 leases are not yet reported as signed.
 - b. 61 of those 81 have paid lease fees.
 - c. 20 Lots have no lease nor paid fees.
- B. Fees not yet paid:
 - a. Of 281 listings, 35 have not yet been recorded as having paid fees.
 - b. 246 are reported as having paid.
 - c. Total recorded as outstanding excluding interest due = \$21,474.
 - d. Total recorded as paid out of \$162,160.20 total due = \$140,686.20.

To maintain your rights to leasehold, you are strongly encouraged to sign your lease and return it as required to the OGS and to pay your fees to the District as invoiced.

You may have noticed a change this year in that the District's Treasurer, Andy Lindquist is now handling all financial aspects of the District including both the District Budget and the Budget associated with the Lake Management Agreement.

Another recent change voted to the modus-operandi is that meetings will be tape recorded thereby reducing the amount of detail that is expected to be recorded by the Secretary. It is not intended that the recordings will be fully transcribed but they will be available if anyone wants to listen to the detail discussions from the meetings.

The lake management budget for 4/1/09 to 3/31/2010 was approved by the OGS and the check has been received by the District in the amount of \$ 174,825.00.

Help from the Allegany County Soil and Water Conservation Department:

At our December, 2008 District meeting we had a guest bearing gifts. Gretchen Gary, Council Chair for the Allegany County Soil and Water Conservation District Water Resources Council. The Council had received a grant of \$14,000 which was used in part to purchase a dissolved oxygen meter to be available for loan to both Rushford and Cuba Lake Districts. The balance of the money was split between Rushford and Cuba. Here Gretchen presents a check to District BOC Chair Lynn



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Sweet as Lake Manager Scott Barrey looks on. The \$5835.00 is to be used toward the cost of the inundation study required for the dam to enable the development of an emergency response procedure. In exchange, a copy of the inundation report will be given to the Council. The Dissolved oxygen meter will be of great help in monitoring the condition of the lake's waters providing significant added information to CSLAP data.

Permit Issues:

A respected member and a respected past member of the Board of commissioners were reported by a resident as having proceeded with break wall "repairs" without having applied for a District permit or for a DEC permit. It should be noted that while "maintenance and normal repairs" are encouraged and permitted by the District's Land Use Restrictions (Section 12) the extent of repairs must be considered and the impact or potential impact of the work on the lands or on the lake as indicated in Section 3; and, for break walls specifically, Section 8, item 8.3 of the LUR must be considered.

Sometimes we forget that the leased land is owned by the State and as provided for the lease we sign, the State wants to have the opportunity, or for their representative (The District) to have the opportunity, to review and approve the plans for major work that could impact the lands or the lake. And, further that it is not up to the sole discretion of the leaseholder as to what impact his planned work will have. Obviously with respect to the water the DEC feels the same way. After reviewing these two cases the combined statement of the NYS OGS and the District is as follows:

"The District has received a complaint that extensive work has been done in violation of the LURs at Lots 225 and 277. After a thorough investigation it has been determined that the work done, while extensive, does not violate the articles listed in the Land Use Restrictions and Controls except that application for permits should have been submitted for review in accordance with requirements of the lease signed by the leaseholders. While these projects overall, resulted in an enhancement to the lake from all outward appearances; this "after the fact" permit review with the District in this matter cannot be condoned and future work which has the potential for altering the lands or the lake should require prior review and written approval. Proceeding without such approval could cause considerable difficulty for cottage owners due to the possibility of disapproval of completed work by the NYDEC, the NYOGS of the District and the payment of costs of removal and any associated fines. All leaseholders must contact the lake manager or a commissioner for such written approval. When in doubt leaseholders should definitely contact the lake manager or a commissioner to determine whether an application for a permit is required. This is not a difficult procedure; the Land Use Restrictions and associated forms are available on the Cuba Lake District web site or can be obtained from the Lake Manager."

A further statement made by the Attorney at OGS is ***"I think the bottom line for review on repairs and maintenance is the standard that any work done near or along the shore of a water body involving the removal or displacement of soil to a significant degree should be reviewed. For example, I would never advise a homeowner to do work along the Hudson River, even 30 feet from shore or on a lake without running it by DEC, etc. It is just not worth it! If DEC advises that no permit is required, the homeowner can rest easy."***

The Commissioners, in a split vote, voted to wait for the completion of actions by the DEC before deciding what posture to take on the failure to apply for a permit from the District. In the case of Lot 277, which was really minor in scope compared to the one at 225, the DEC and the leaseholder reached a "consent agreement" which reportedly, cost the lessee a fine of \$550. It should be noted that the fine was strictly for failure to apply for a permit, there was no contention that the work done constituted a hazard to the land or to the lake. To our knowledge the DEC case at Lot 225 is still open. The District's evaluation on lot 225 to this point is that the work that was done did not violate any of the parameters considered by the LUR and that, had a plan and application for a permit been issued to the District, there would have been no problem to issue a permit. So thus far the consideration is a violation for failure to apply for a permit which can result in a fine at the discretion of the Board of Commissioners.

During review of these cases some information derived from discussions with the DEC might be of interest to leaseholders. Remember though that the District is still interested in some things, such a docks and moorings, that the DEC may have no interest in. Some points from the DEC's perspective are:

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- The DEC exempts the requirement for ... (items)... lands owned by the State of New York for which a lease has been obtained from the NYS OGS. In our case the OGS has contracted with the District to manage these items via the LURs.
- They also exempt Constructing, reconstructing or repairing a docking facility for five or fewer boats and encompassing within its perimeter an area less than 4,000 sq. ft. (the District has requirements)
- They also exempt establishing a mooring area for fewer than 10 boats (the District has requirements)

They do however require a Protection of Waters Permit for:

- Excavating or placing fill in navigable waters of the state, below the mean high water level, including adjacent and contiguous marshes and wetlands.

Examples of activities requiring a permit are:

- Installation of bulkheads, revetments, or other bank or shoreline protection measures;
- Installation of support piers (larger than 12" in diameter) and cribs for docks or boathouses.
- Placement of fill.....
- Excavation associated with construction activities and dredging.

They do not want the lake to be disturbed in any, not even a minor, way.

If there is any question at all, call the DEC **and** the District Lake Manager **before** you proceed!

Lake Management Activities:

Weed harvesting:

It is expected that weed harvesting will start sometime in June. The harvester has been launched with new collection belts in an attempt to minimize the "carryover" and dropping of weeds back into the lake creating excessive cleanup issues at various parts of the lake. Dana is pictured here assembling the new belt sections which have inserts which allegedly help the efficiency of the collection process. The inserts are circled but difficult to see in the picture. It's also difficult to see how they will be effective. They are raised sections of belting which, perhaps, keep the weeds from forming a continuous flat "bond" with the belt so that they will more easily separate from the belt as it rolls over the top of the conveyor dropping the weeds on to the storage belt. Anyway, we'll see what happens in this cutting season.

The District has authorized some funds for the Lake Manager to purchase a used pontoon boat which can hopefully be rigged to be used as a weed picker-upper rather than using the weed cutter to go from lot to lot to pick up weeds that have been gathered by the cottage owners.



A suggestion to consider in the future is the purchase and deployment of "grass carp"; a specially developed, non-reproducing breed of carp which have an appetite for various varieties of weeds. Brief research into the subject indicates that they have been successful in several locations. They have been shown to be effective in controlling several of the weed varieties found in Cuba Lake (see chart for examples).

Common name	Scientific name	Preference	Effectiveness
Coontail	Ceratophyllum sp.	High	High
Bushy pondweed, Naiad	Najas sp. (flexis)	High	High
Eurasian water milfoil	Myriophyllum spicatum	Moderate	Moderate
bur reed, American bur reed	Sparganium sp.	Low	Low

CSLAP Testing:

The CSLAP report of results for 2008 has been received. The report is 142 pages long and looks at many aspects of lake water quality and weed content. Although the information for the National Lake Survey

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which was initiated in 2007 has not been fully developed, some results are reflected in the CSLAP report (Pgs 7 & 8). Also discussed on page 8 are some interesting data found in DEC–RIBS (Rotating Intensive Basins) reports of 2001. In his transmittal of the report Scott Kishbaugh of the DEC Bureau of Water Assessment & Management advised – “*This report includes a brief summary of the National Lake Survey findings. The sediment coring data and the benthic (bottom organisms) data have not yet been analyzed, and they have not issued any reports. So what you see is my interpretation of the raw data that I have been provided. I will forward any formal reports that they generate.*”

Scott’s review of the National Lake Survey data is as follows:

1. Depth profiles showed that the lake is weakly stratified, with a slight temperature decrease below a depth of 5 meters. Hypoxia (reduced, but not depleted dissolved oxygen levels) occurs from a depth of 5 meters to the lake bottom. Slightly lower pH and higher conductivity readings were found in the hypolimnion (bottom waters).
2. Enterococci [*an indicator organism used to assess the presence of human pollution (as distinct from animal pollution) in waterways or the sea*] were not found in the water samples collected near the southwest shoreline.
3. The water samples collected from the center of the lake showed slightly less productive (lower phosphorus and higher water clarity) conditions than measured through CSLAP, although the CSLAP data showed lower lake productivity at this time of year than earlier and later in the summer. It is likely that the CSLAP and NLS water chemistry results are comparable. Turbidity and organic carbon levels are low, as expected given the high water clarity and low water color readings, respectively. Chloride levels are low, indicating minimal runoff from road salting operations.
4. The zooplankton community was dominated by large herbivorous rotifers (*Keratella*) and arthropods (*Daphnia*). This suggests that these zooplankton may help to keep algae in balance.”

The CSLAP summary report, in part reads:

“These data are typical of *mesotrophic*, or moderately productive lakes, and lake productivity was probably close to normal in 2008. Although water clarity was lower, algae levels were also lower than normal, and phosphorus readings were close to the long-term average for the lake. The nitrogen to phosphorus ratios indicate that algae levels in Cuba Lake are controlled by phosphorus. Lake productivity increases during the summer, and bottom waters are nutrient-enriched and possess strong H₂S odors. This suggests that deepwater anoxia occurs and ultimately impacts surface waters. However, this appears to be limited to the deep hole (near the dam), based on profile data collected through the National Lake Survey. Phosphorus levels in the lake occasionally exceed the state phosphorus guidance value, although water transparency readings rarely fall below the minimum recommended water clarity for swimming beaches. Although historical data suggest that bacteria levels vary from site to site, trophic conditions among the three sites sampled in 2008 (deep hole, center, and outlet end) showed comparable conditions.”

The full CSLAP 2008 report can be found on the District’s web site www.cubalake.org. At the bottom of page 10 is shown “*CSLAP 2008 - General Comments and Questions*” as extracted from the full report. 2009 testing will begin the second week in June and will be enhanced by the Dissolved O₂ meter mentioned in an earlier article.

Other Notes:

Spillway Notes:

The question of when to drop the water level has, again, been raised. The current practice is to drop the level by 4 logs (essentially 4 feet) on or about November 1st as determined by survey several years ago. Those who suggest an earlier date do so to extend the available work time on replacement of break walls or docks or other in-water structures. Those who appreciate the fall scenery from the lake argue against lowering the water before November to allow more time to enjoy the lake before winter. Two suggestions were made to the latest suggestion:

1. If all those who intend to work on their break wall in the late fall would apply for the required permits well before they want to start work and indicate when they would plan to do the work, then the Lake Manager in concert with the Commissioners could make a special determination for start of draw down. It was noted that the DEC will also require a permit and current backlog puts the lead time at 4 to 6 months for processing. Therefore, anyone planning work for this late-October early November time frame should be making their application for permits (including a District permit) in June. This would give the District plenty of time to consider an early drawdown based on the number of permits issued.

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2. A proposition can be put on the ballot by petition (see earlier article). Propositions with supporting petitions are due to the District Secretary by July 10, 2009.

So, whether needing a permit or a proposition, June is your month to act! Note that it is already June.

Navigation Law:

In the July 2008 issue of the *DISPATCH*, an article on this subject explained the background and issues being considered by the BOC relative to Navigation Law. A portion of that article is reprinted here:

In the Board's review of the law and options, it has been clarified that as regards the major issues of reckless operation and speed, section 46aaaa and section 73a of Article 4 already provide statutes with penalty limited to fines. Note that Article 73 on Towing has a penalty of NYS "Violation".

*After review of the Rushford law, in addition to cleaning up our existing section 46aaaa, it seems reasonable to assure the quality of recreational activity on Cuba Lake by adopting some changes and additions to the law. Local law may be the best medium. **In the current law a considered revision is the nighttime speed limit of 25 mph to be lowered to a much more reasonable 10 mph. Other areas considered are - the size of boats (Rushford limits to 21 feet except for pontoon boats); the banning of boats with on-board toilet facilities and sleeping accommodations; anchorage or mooring restrictions; trespassing on dams and spillways; littering, prevention of carrying in invasive species; the impact of the newer style boats such as the boats designed for creating large wakes for wakeboarding.***

In his visit to the BOC's May meeting, Deputy Chris Finnemore reconfirmed his agreement that Nav Law article 46aaaa does in fact satisfy their desire to have a law which can be applied that does not require "misdemeanor" type penalties over and above a fine. However, the items in bold print above were still considered, by a majority of the Board, to be reasonable considerations for the "good of the lake".

The July article welcomed any comments or suggestions on the potential changes to Cuba Lake law to be directed to the District Secretary. We have basically had one (negative) response in writing. We still welcome your comments.

The current status of this item is that it is on the "back shelf" as there are many other issues to be addressed. The last vote in March of 2009 (split vote 4/1) of the BOC was to contact the State legislature to determine how to approach modifications to the NYS Nav Law par 46.aaaa. When there is time this will be addressed. It is understood that prior to any enactment a public hearing needs to be held to cover the final changes if and when proposed. The specific list addressed at the time of the vote was:

- Nighttime speed - reduce to 10 or 15 mph from 25 mph.
- Add limit to size of power boats allowed on the lake, limit to 21 feet. Limit pontoon boats to 24 feet.
- Ban cuddy cabins and toilets.
- Ban overnight mooring or anchorage on the open lake.
- Limit the closeness of operation to shore of wake-board or high-wake boats.
- More specific definition on what constitutes reckless operation of PWC's.

It should be noted that large boats are usually run on big lakes. When they are brought in to Cuba Lake for whatever purpose, there is a possibility that they are carrying "invasive species" aquatic species both flora and fauna. An interesting article on that subject was in the Olean Times Herald recently titled "*Stewards try to stop spread of invasive aquatic species*". As costs increase to have lake property, it seems we should be ready to protect our investment.

Navigation Aids:



While the Lake Manager has been in contact with the NYS Parks, Recreation & Historic Preservation (PRHP), Marine Services Unit, the philosophy behind the setting of the most recently installed navigation aids, still, has not yet been determined. While the PRHP had promised to meet with the Lake Manager this spring, they managed to slip in and slip out without making contact. But the buoys they put in last year have been reinstalled this year. The plan was to also have new markers installed for the channel to Carpies and the mouth of Rawson Creek. The

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markers were set but, again, without direction or apparent plan. The Lake Manager and Dana have corrected the situation by removing remnants of old markers and re-setting the new markers in the appropriate locations.

The new channel markers are red and green nun buoys.

Dam Regulations:

The DEC has been proposing dam safety regulations in recent years. These regulations have been highly controversial for many throughout the State. The following information extracted from the link on the FOLA web site to the DEC web site indicates the current status after a relatively volatile public reaction to the 2008 recommendations.

Per the DEC:

"In February 2008, the New York State Department of Environmental Conservation (NYSDEC) issued proposed dam safety regulations. The Department now announces a substantial revision to the proposed regulations. Like the regulations originally proposed in 2008, this revision contains amendments to Part 673 and to portions of Parts 608 and 621 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR).

Like the 2008 proposed regulations, the 2009 proposed revisions emphasize and detail the responsibilities of dam owners to keep structures in a safe condition and, to be consistent with the statute, enhance NYSDEC's authority to help ensure the responsibilities are fulfilled.

In response to public comments, the revised regulations include several changes designed to address the cost of compliance. For example, the revised regulations:

- Extend the date by which the first Engineering Assessments and Emergency Action Plans are due for some dams, giving dam owners more time to make arrangements for the associated costs.
- Remove an explicit schedule for required Safety Inspections, but require Safety Inspections at a frequency reflected in an Inspection and Maintenance Plan so that owners can design a safety program tailored to their specific dam, subject to NYSDEC approval.
- Clarify that financial assurance is to cover only the costs of breach or removal, and only if required by NYSDEC as part of an Enhanced Safety Program for dams whose condition is not satisfactory.

Public comments also called for NYSDEC to take further steps to ensure the safety of dams. In response, the revised regulations better address public safety, help NYSDEC focus on deficient dams, and reward owners of well-maintained dams by lowering the cost of compliance. The revised regulations further clarify and strengthen NYSDEC's ability to require dam owners to address deficient dams using a system of increasing measures that can be required as part of an Enhanced Safety Program, so that the State has an improved ability to address dams before potential deficiencies become more serious.

The purpose of the public comment period is to give the public an opportunity to provide written comments on the 2009 revised text of the proposed regulations."

WRP-Rawson Creek area:

A public meeting was held in May of 2007 to review the WRP (Wetland Restoration Project) for a portion of the area between the Mallard Farm and Cuba Lake, along Rawson Creek. The Federally funded project seeks to recreate wildlife habitat on lands long "abused" by agricultural activity.

An update on status of the project has been provided by Rob Halbohm, District Conservationist, USDA-NRCS* in Mary Kerstetter's absence. He reports – *that the project is still slated to go forward in 2009. The large amount of water currently in the wetland area is the result of beaver activity and will have to be drained before the project can be laid out and started. He expects that work will be started sometime in mid-summer.*

*USDA-NRCS = US Department of Agriculture-Natural Resources Conservation Services.

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We would like to reduce the cost of the distribution of the Dispatch. Please send your E-mail address(es) to dshemeld@roadrunner.com so that you can receive the Dispatch by E-mail. The advantage to you is that you will get it when it is first sent to the printer, you will get it in color and you can get it no matter where you are. The issue will be in .pdf format.

Commissioners: E-mail - commissioners@cubalake.org

Lynn Sweet, Chairman (585) 968-1735
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Location: Cuba Lake District Office, 31 Water Street, Suite 8, Cuba, NY

Meetings – District office; 2nd Thursday of each month; beginning at 7:00 PM (Exceptions are published in local newspapers.)

CSLAP 2008 - General Comments and Questions:

• **What is the condition of Cuba Lake?**

Water quality conditions in Cuba Lake can vary significantly from year to year, but the lake is usually characterized as moderately productive, with intermediate nutrient and algae levels and water clarity. Cuba Lake usually supports at least some recreational uses during the summer. Surface water quality conditions are comparable from the deep hole near the dam to the outlet end, although historical data indicate that bacteria levels are highly variable within the lake.

• **What about the dark and murky bottom waters of the lake?**

The bottom waters of Cuba Lake have elevated nutrient (phosphorus and ammonia) levels, consistent with oxygen depletion near the lake bottom (and reports of hydrogen sulfide odors in bottom samples, also associated with oxygen depletion). This appears to be limited to the deep hole near the dam.

• **How does this condition change from spring showers thru changing of the leaves?**

Cuba Lake becomes more productive during the summer, with higher nutrient readings triggering a rise in algae levels and drop in water clarity. This results in recreational assessments that degrade substantially during the sampling season. The seasonal increase in nutrient levels is probably caused, at least in part, by increasing deepwater nutrient levels triggered by deepwater anoxia (lack of oxygen), and the mixing of the lake during and after the summer.

• **How has the condition changed since CSLAP sampling began on the lake and/or relative to historical values?**

There continues to be significant variability in water quality conditions and lake assessments in Cuba Lake from one year to the next, without any clear trends.

• **How does Cuba Lake compare to other similar lakes (nearby lakes,...)?**

In most years, Cuba Lake appears to have similar productivity (re: clarity, nutrient and algae levels) to other nearby (Allegheny River basin) lakes, other lakes classified for swimming and bathing (Class B), and other NYS lakes. Recreational assessments have been about as favorable as in these other lakes, due in part to the lack of excessive weed growth. These assessments are mostly comparable throughout the lake (based on the data from the three distinct sampling sites).

• **Based on these data, what should be done to improve or maintain Cuba Lake?**

Water quality variability in Cuba Lake continues to be significant, but lake management activities should focus on minimizing nutrient loading to the lake via failing septic tanks, lawn fertilization, storm water runoff from roads and eroding lands (via construction or agriculture), and other watershed phosphorus sources. The lake association is also advised to prevent the introduction of exotic plants and animals to the lakes via education, surveillance of boat launch sites (public and private), and boat inspections.

Footnote – By the time (5/29/09) I completed this issue of the Dispatch, water was spilling over the spillway; 'tis the season!