

# PIER PIT00005 - PIER IN CRITICAL HABITAT AREA

UPDATE JULY 27, 2019

The DNR pier hearing planned for 7/29 has been CANCELLED since a new pier proposal will be introduced later.

## UPDATE JULY 22, 2019

**SUMMARY:** Dr. Dresden has agreed to remove the existing pier and said that he is in full support of a far less invasive approach to gaining reasonable access to the lake using the existing channel mere feet from his property. Sadly, he was never allowed to believe that this was an option and has been incredibly supportive of the new approach suggested by an LBPIA member. This is great news and certainly progress. Dr. Dresden, the LBMD and the DNR are now taking the lead to see if this option can be realized. The Town of East Troy is monitoring the progress and is waiting for the DNR to make their determination. The LBPIA has been involved in several discussions and helped to present the better option to Dr. Dresden.

- Dr. Dresden is actively removing his pier, by hand, by himself. Anyone willing to help him with this process should contact LakeBeulah.org@gmail.com.
- Dr. Dresden is working with the DNR to cancel the prior pier plan and the public hearing as it no longer reflects his plans.
- The LBMD is determining if there is supporting science to show that the new approach is far less destructive to the environment to help support Dr. Dresden's new plan.
- It appears that the state of Wisconsin / DNR has full title to the lake bed (with a qualified exception for the area between the OHWM and actual water level) and it apparently is within the state/DNR's discretion whether to approve extending the channel to support the new minimal approach.
  - McFarren, 62 Wis. 2d at 498-99 "the **state's title to the lake bed runs to the ordinary high-water mark**. However, a riparian owner has a qualified right to the land between the actual water level and the ordinary high water mark..." (editor's note: the law seems clear that riparian rights extend to the OHWM with a qualified right to the current water level and the ability to put in structures, but not control over the lake bed or to blocking navigation.)

# HISTORY

In the Spring 2019, the LBPIA was made aware of a pier being installed in a [Critical Habitat Area](#) (as designated by the WI DNR). After investigation, the LBPIA reached out to the Town of East Troy, Lake Beulah Management District, Walworth County and WI DNR for more information. This issue was discussed at the last LBPIA meeting on May 18, 2019 and **will be further updated on this page** as more is discovered.

According to the updates provided at the LBPIA meeting...

- No Town of East Troy permit was issued or requested before building the current section. No permit has yet been issued by the Town of East Troy.
- Nesting pairs of Sandhills Cranes and Geese are in this area designated as a "[Critical Habitat Area - Sensitive Area](#)" by the WI DNR.
- The WI DNR initially allowed the pier if it followed the Pier Planner, but after viewing the site, rescinded that permission and is currently investigating.
- The pier sits in roughly 8-16" of water in a vegetated swamp area.
- The owner still can't reach navigable water with the existing pier.
- Existing pier may violate the riparian rights of neighbors. To be determined.
- WI DNR investigation must be completed before the Town can move forward.

# CRITICAL HABITAT AREAS

- The WI DNR has designated certain areas of Lake Beulah as "**Areas of Special Natural Resources Interest (ASNRI)**" - [Critical Habitat Area - Sensitive Area Designation](#). While these **are not** the only areas of sensitive habitat, these are marked the most critical wetland areas of Lake Beulah.
- According to the WI DNR:
- Every waterbody has critical habitat - those areas that are most important to the overall health of the aquatic plants and animals. Remarkably, eighty percent of the plants and animals on the state's endangered and threatened species list spend all or part of their life cycle within the near shore zone. As many as ninety percent of the living things in lakes and rivers are found along the shallow margins and shores. **Wisconsin law mandates special protections for these critical habitats.** Critical Habitat Designation is a program that recognizes those areas and maps them so that everyone knows which areas are most vulnerable to impacts from human activity. A critical habitat designation assists waterfront owners by identifying these areas up front, so they can design their waterfront projects to protect habitat and ensure the long-term health of the lake they where they live.