



To: Mary Bohling, Michigan Sea Grant

From: Terra Bowling, Research Counsel II, National Sea Grant Law Center; Madeline Doten, Research Associate, Research Associate, National Sea Grant Law Center

Re: Access to Michigan Water Trails from Bridges (NSGLC-20-04-05)

Date: June 30, 2020

Advisory Summary

The Michigan Great Lakes Water Trails are a statewide water trail system used for recreational purposes such as kayaking, canoeing, and paddle boarding. Because of limited public access points along some of the water trails in the region, residents and visitors have been utilizing the area below public bridges along the trail as an access point to launch their kayaks and canoes. Michigan Sea Grant requested information on whether the public may use these bridges as access points to the state's water trails.¹

It is likely that the rivers being used as water trails in Michigan are considered navigable under state law. If these rivers are considered navigable, the public is probably permitted to use government-owned bridges as access points to reach the rivers in question. The memo first provides a discussion of the definition of navigable waters in Michigan and whether the rivers used as water trails in Southwest Michigan meet this definition. The memo also discusses access points for roads ending at or lying adjacent to public waters, how that classification influences public access to navigable waters, and how bridges may be access points for public waters.

Navigability

In Michigan, the public has the right, through the public trust doctrine, to use navigable lakes and streams for the purposes of bathing, swimming, wading, fishing, boating, and

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temporarily anchoring a boat.² Although there is a federal test for navigability, states may enact their own, more expansive tests. Michigan’s test for navigability is the “log-float” test. In *Moore v. Sanborne*, the Michigan Supreme Court held that a river or stream is considered to be navigable if the stream “is inherently and in its nature, capable of being used for the purposes of commerce for floating of vessels, boats, rafts or logs.”³ The court in *Moore* determined that the mere “capacity for valuable floatage,” regardless of whether the river has actually been used by the public, satisfies the test for navigability.

Although there have been attempts to modernize Michigan’s test for navigability, the log-float test from *Moore* remains controlling law. In 1974, the Michigan Court of Appeals adopted the recreational use test — which defines waters as navigable if they are capable of being navigated by oar- or motor-propelled small craft.⁴ However, the Michigan Supreme Court expressly rejected this test less than 10 years later.⁵ Thus, the log-float test, not the recreational use test, must be used to determine the navigability of the Michigan rivers used as water trails.

Many Michigan rivers have been declared navigable by state courts. It’s likely that the waters used for the trail have been or would pass the navigability test. There are three methods to determine whether a stream passes the log-float test. First, tests may be conducted to show that the river can actually support the floatation of logs.⁶ Second, records may be utilized to illustrate historical usage of the river to transport logs.⁷ Third, a comparison may be done between the characteristics of the river in question and other streams that have already been determined navigable.⁸

Public Access to Navigable Waters via Bridges

Once navigability of a river is established, there are several ways the public may access the waters. The public may, of course, use public access points, such as state or municipal-owned land, as well as private property with permission from the landowner. The Recreational Trespass Act prohibits a person engaging in a recreational activity from crossing land that is posted or fenced, agricultural land, or wooded land adjacent to farmland.⁹ Due to limited public access points along some of the water trails in the

² *Collins v. Gerhardt*, 237 Mich. 38, 45, 211 N.W. 115, 117 (1926); *Rushton ex rel. Hoffmaster v. Taggart*, 306 Mich. 432, 11 N.W.2d 193 (1943); *Nedtweg v. Wallace*, 237 Mich. 14, 208 N.W. 51 (1926); *McCardel v. Smolen*, 404 Mich. 89, 273 N.W.2d 3 (1978).

³ *Moore v. Sanborne*, 2 Mich. 519, 520 (1853).

⁴ *Kelley ex rel. MacMullan v. Hallden*, 51 Mich. App. 176, 189–191 (1974).

⁵ *Bott*, 415 Mich. at 66–79.

⁶ *Bott v. Comm’n of Nat. Res. of State of Mich. Dep’t of Nat. Res.*, 415 Mich. 45, 72 n.27 (1982).

⁷ *Id.*

⁸ *Id.*

⁹ MICH. COMP. LAWS ANN. § 324.73102.



southwest region, roadways or bridges may be a viable option for residents and visitors to access navigable waters.

The public may access a waterbody via a roadway depending on the location of the road in relation to a navigable body of water. State law regulates public road ends, including a prohibition on activities that obstruct “ingress to or egress from the inland lake or stream.”¹⁰ “Public road end” is defined as “the terminus at an inland lake or stream of a road that is lawfully open for use by the public.”¹¹ The public may access publicly dedicated road ends at the edge of navigable bodies of water for the purposes of boating, fishing, and swimming.¹² Whether other uses, such as sunbathing, are allowed at the access point depends on the road’s dedication.¹³ If a road lies adjacent to a navigable body of water, the government typically has an easement for the roadway, and the property owner retains ownership of the land beneath the road to the waterfront.¹⁴ However, if a public easement has been granted in the area from the roadway to the navigable waterbody, the public may access the waterbody from the roadway.¹⁵ Therefore, the public’s right to access a navigable body of water from a roadway will depend on a fact-specific analysis of the property in question.

Finally, bridges may offer the public an access point to the navigable waters. Bridges likely fall under the classification of a road end, in which public access to navigable waters is permitted. Michigan law indicates that bridges are considered public access points, as it specifically requires notification of a municipality, the DNR, and MDOT if the abandonment of a road that ends at or **crosses** a stream will result in the “loss of public access.”

*The board shall also notify the township or municipality within which the road is situated, the state transportation department, and the department of natural resources if the action concerns any county road or portion of a county road that borders on, crosses, is adjacent to, or ends at a lake or the general course of a stream and the proposed action would result in the loss of public access.*¹⁶

The DNR and local government must determine within 30 days “whether the property should be retained as an ingress and egress point.”¹⁷ Thus, bridges, which are basically roads that cross streams, would likely be considered road ends, which would permit public access to navigable waters.

¹⁰ MICH. COMP. LAWS ANN. § 324.30111b.

¹¹ *Id.*

¹² *Thies v. Howland*, 424 Mich. 282, 295, 380 N.W.2d 463 (1985); *McCardel v. Smolen*, 404 Mich. 89, 96, 273 N.W.2d 3 (1978); *Backus v. Detroit*, 49 Mich. 110 (1882).

¹³ *Id.*

¹⁴ *Thies*, 424 Mich. at 290-91.

¹⁵ *Park Trs. for Cass County v. Wendt*, 361 Mich. 247, 251-252 (1960).

¹⁶ MICH. COMP. LAWS ANN. § 224.18(5).

¹⁷ *Id.*



Conclusion

It is likely that the Southwest Michigan rivers used as water trails are navigable waters. Many of the rivers have been adjudicated by courts as navigable. If not, navigability may be determined by using the log float test that was set forth in *Moore*. This could include comparing the rivers in question to trails that have already been deemed navigable waters, looking at historical records for commercial use or log floating, and demonstrating the rivers' capacity for log floating. If the waters are navigable, it is likely that the public may use public bridges as access points, as bridges are likely considered to be public road ends, which permit public access to navigable waters.