

**Minutes of the
Michigan Trails Advisory Council
October 21, 2015**

The regular meeting of the Michigan Trails Advisory Council (MTAC) was called to order by Chair Frank Wheatlake at 10:00 a.m., on Wednesday, October 21, 2015, at the Ralph A. MacMullan Conference Center in Roscommon. All members were present: *Frank Wheatlake, Jim Dickie, Jim Duke, Tom Dunn, Mike Foote, Tim Kobasic, Nancy Krupiarz, Bill Manson, Sarah Nicholls, Jason Rolling, and Drew YoungeDyke.*

The following Department of Natural Resources (DNR) staff was present: Barbara Graves, Kirk Lapham, Emily Meyerson, Todd Neiss, Tim Schreiner, Scott Slavin, Amy Swainston, Anna Sylvester, and Tom Weston.

ACTION ITEMS

MOTION: Mr. Mike Foote moved to approve the agenda. The motion was seconded by Mr. Drew YoungeDyke and it carried unanimously.

MOTION: Mr. Jim Dickie moved to approve the July 20, 2015 minutes. The motion was seconded by Ms. Nancy Krupiarz and it carried unanimously.

Chair Wheatlake confirmed the appointment of Mr. Brindley Byrd to the Nonmotorized Advisory Workgroup.

Mr. Kirk Lapham from Legislative and Legal Affairs, DNR, gave the committee an update on Land Use Liability. The relevant statute and cases that have changed the landscape are the Recreational Land Use Act and the 1995 federal court case *Kruse v. Iron Range Snowmobile Club*, with the most recent case being *Duffy v. Irons Area Tourist Association* in 2013 (presentation attached).

Mr. Lapham stated that the DNR's intent is to work with the legislature on amending language in the Recreational Land Use Act. They have drafted language that they will be presenting to the legislature.

Mr. Jason Rolling said this particular liability issue was brought up through the Noquemanon Trail Network (NTN) group through his board and requested to be placed on the MTAC agenda. This sums up what they do, with about 100 miles of single track trails that the city allows them to use. As board members, have they opened themselves up to liability from anyone that gets hurt on city property trails that were built for public use? Mr. Lapham said he would first have to understand how the entity is structured, but there is a possibility. He said his office is acting as quickly as they can to try and address the situation.

Mr. Drew YoungeDyke asked Mr. Lapham to keep the MTAC updated of the committee hearings once the bill is introduced. Someone from the group, or that has been in a similar situation, could come testify on the bill once it is up in committee to help it along.

Mr. Rolling said the way he read the Duffy case, it specifically targets volunteers that do maintenance or assist to make the trail available for the public. Mr. Lapham said before the *Duffy* case they were working under everyone, including the maintenance groups who were protected under that same standard, but now that has obviously changed.

Ms. Nancy Krupiarz said about 50% of their nonmotorized trails are not state owned. She asked if that would make the actions of anybody that signed up for an Adopt-A-Trail program liable. Chair Wheatlake responded that they are hearing a litany of problems and the Department needs to draft legislation that will be all-encompassing.

Mr. Tim Kobasic said when they as trail sponsors work with the DNR, and it is under a contract, there are criteria that they have to meet to be considered trail sponsors. Many of them are 501(c)(3), and as an incorporated entity in many cases they are insulated from personal litigation, but they are still going to get behind and support an amendment.

Ms. Nancy Krupiarz asked if the equine interests have a law that takes care of this type of problem. Mr. Mike Foote said the Equine Liability Act does not pertain to this type of situation. If you have an equine facility you have to post a sign. The language says it is an inherently risky endeavor, and you are acknowledging this; however, what happens to some of the friends groups? There are issues that could be solved with new legislation.

Mr. Bill Manson said they entered into part of their snowmobile law language that it is “inherently dangerous” and it is up to the rider to be aware of several different hazards, which has cut down their lawsuits. Mr. Tom Dunn said they have done the same thing with ORV because it has been a long standing problem, and their lawsuits have gone down as well.

When asked if the Department was still using volunteers, Mr. Lapham replied that volunteers are going to fall under a contractual situation and there may be some further extension of what is known as “governmental immunity” protections for them. Chair Wheatlake said if they are going to have this language out there, they have to be aware of what the issues are and to make sure they address it.

When asked if there was any consideration of taking this to the Attorney General’s office, Mr. Lapham responded that the state of Michigan is not a party to that case, thus does not have the ability to represent this defendant; the State does not have a role because they are not party to that lawsuit. The effort the DNR is making is to try to change the legislation so that the law encompasses the trail groups that are maintaining the trails.

Ms. Kristin Thrall of the U.S. Forest Service said none of this applies to federal lands. People that are actually doing the work on the trails are a different liability situation. As far as the public land managers, it does not pertain to this. Their partners on the Huron Manistee have Challenge Cost Share Agreements and are required to have liability insurance. If you are a volunteer working on their trail, like North Country Trail Association, they are signed up under a volunteer agreement and if they get hurt it would be similar to if an employee got hurt.

When asked if there was an overlap of a state designated trail on federal land, Ms. Thrall responded that the federal land manager is the land owner and responsible. Mr. Kobasic asked if the trail sponsors were indemnified through the federal rule. Ms. Thrall said they would carry liability insurance for the actual maintenance, but if you were just out riding, then it would fall to the federal government. She would have to research what the specifics are.

Chair Wheatlake asked Mr. Lapham to keep them updated and to have all of the groups make contact with legislators to make them cognizant of it. He said he would call Rep. Bumstead personally, who has been a good ally to the Department and conservation. Mr. Lapham said as soon as the amendment is presented to the representative, he will forward it to the members.

COMMITTEE REPORTS

Snowmobile Advisory Workgroup

Chairman Lee Murray of the Snowmobile Advisory Workgroup reported to the committee:

- Performing oil samples and tweaking it to get better data. It is a good program that will help them reduce their maintenance dollars.
- Working on having GPSs in all of their groomers for safety and for data recording.
- Still discussing the Yuma-Copemish trail that crosses the Manistee River. If and when they do get the bridge repaired over the Manistee River, it will be a multi-use trail. Mr. Todd Neiss of the department said that there has been an agreement between the MDOT and DNR that was recently signed; it is in the trail proposal process, meaning that it is not a designated trail as of yet. Mr. Bill Manson said he knows the Cadillac groups have worked hard on getting the proposal pushed; same with the Benzie-Manistee. He asked if there was any way to get this trail proposal moving. Ms. Anna Sylvester said Mr. Paul Yauk would be the one to guide through that process and that Ms. Emily Meyerson can take it back to Mr. Yauk to maybe push it through for signatures. Chair Wheatlake said to put it on their to-do list and that it is imperative that they find out how long it takes to get a trail designated once it is named; to get a timeframe from the department.
- SAW is responding to requests by snowmobilers to have DNR Law implement a plan for better enforcement of noise control. Corporal John Morey informed them that there will be more statewide enforcement this coming winter. Some lease owners are complaining and threatening to not renew their leases if we do not control it. They are pleased that they are getting the cooperation from DNR Law.
- Currently holding their annual PCs and grant sponsor meetings, and are looking at ways to improve the attendance, because good attendance equals better informed grant sponsors and improves the workability of the entire program.
- Currently have two maintenance workshops set up this week for the groomer operators. A great tool for keeping down maintenance costs.
- The equipment subcommittee has drafted a plan to turn over certain groomer trackers every two years, which will cut costs.
- There is an ORV/snowmobile conflict on Drummond Island. Rock crawling vehicles are using the combined trails year-round and this is a particular problem in the winter as the ruts that are produced by these oversized vehicles cause a severe safety hazard to the snowmobile users. Private property leases are in danger because the owners of the property are very upset about the trespassing of these rock crawling vehicles. The SAW is also concerned that the Wildlife Division comprehensive plan for Drummond Island has apparently omitted snowmobile trails in their plan. They are looking into it.
- Another serious concern is that skate park techs are designing trails on the railroad grades with boulders placed too close to the trails causing a hazard to snowmobilers and groomer equipment. The groomers are actually hitting them.
- Mackinaw Island – reports have been going around that the State Parks Commission is considering charging a fee to non-resident snowmobilers coming to the island. They are already paying a fee, so they are not excited about it. Mr. Manson wrote a letter to the executive director of the Park Commission but he has not heard back yet. Mr. Manson said the antidote he got was that it is going to make the locals adhere to state law. He just wanted it on record that they are not happy about that. Mr. Jim Duke said that he wanted to add that there have been a couple of towns in the past that wanted a snowmobile fee to come through their town and it got shut down quickly. He thinks Mackinaw Island would fall under that same category.

Chair Wheatlake asked Mr. Murray if based on the condition of his equipment he anticipates any issues grooming the trails this year. Mr. Murray responded that he does not think so but a lot

will depend on maintenance demands. They are trying to find ways to reduce maintenance costs. He is extremely pleased with the job the equipment subcommittee is doing. They have some good people that are working well together with Richard Kennedy and others in the DNR. They have a lot of back and forth input and good ideas coming out of it. He thinks if they continue to function the way they have been they will probably be successful again this season and be able to groom everything.

Chair Wheatlake asked Ms. Emily Meyerson if they are going to have the bridge done across the Maple River so they can get from Pellston to Alanson. Ms. Meyerson said it is supposed to be done by December 1.

Mr. Murray informed the Chair that they have two appointments, his and Mr. Bill Lucas', that need to be considered.

Chair Wheatlake inquired about the Mullett Lake to Pellston connector. Mr. Bill Manson said the meeting has taken place with U of M and they have reached an agreement for getting along that piece of property. There are still a couple of property owners they are awaiting permission from so it is not a done deal yet. The trail will go from Pellston into Topinabee, and he is still holding hope that the connector will be completed before this season. The major hurdle of the U of M property has been worked out.

Nonmotorized Advisory Workgroup

- Ms. Nancy Krupiarz reported that the committee met in September and they talked about their top issue of concern, funding for trail development and trail maintenance. They have plans to work on that issue. There is research that can be done on what other states are doing and also survey for what the public would tolerate.
- Electric bikes - there are manufacturers that are pushing to have automatic right to all of the trails. There has been legislation that has been drafted that is now in the hands of Representative Pettalia. He is reaching out to groups like MML and other user groups to get their sense of it. The NAW discussed that there needs to be some distinction between the different kinds of electric bikes. Chair Wheatlake asked if the Department has taken a position on any of it. Ms. Anna Sylvester said they are aware of it and have been discussing it in their section chief meetings. They are looking for some recommendations as well and are waiting for directions from the committee on what their thoughts are. Ms. Krupiarz said they want to get an amendment into the legislation that distinguishes between the different categories. She wants to take a closer look at the California laws.
- Legislative Day - she is going to get a committee together to try and see if there is anything they can do this year. They definitely want to do it for the following year, 2017.

Equine Trails Subcommittee

- Ms. Anna Sylvester reported Big Oaks officially opened on October 1st and the trails have been approved. There are about 26 miles of trails around there.
- Mr. Mike Foote said there will be more discussion on the separation of equine campers and non-equine campers. Non-equine people do not necessarily know how to behave around horses and they might inadvertently do things that could put them in harm's way.
- Assuming everything is moving forward with the Ionia WIP for electricity. It will be a good precedent for a lot of other campgrounds. Ms. Sylvester said she will follow up and make sure they have that information for the November 12 ETS meeting.
- He has been approached by several people that want to start a conversation with the DNR on how can they be proactive in getting carts out on the trails. Even within their own groups there are a lot of equine people who do not like carts; their horses are scared of them, so they have

to work with the DNR to see how they can make this work. Chair Wheatlake would be interested in a presentation from Mr. Foote on what the different types of carts look like. Mr. Foote said he would bring that to a future meeting.

Tourism

- Ms. Sarah Nicholls reported that they are working on an equestrian tourism plan and the Equine Trails Subcommittee is very involved. They are having three input meetings to generate material for the plan. One was in Ishpeming, one will be in Gaylord and one in Lansing. The plan will probably be finalized in the spring of next year. One of the participants at the Ishpeming meeting who is with MiTrail was looking for equivalent plans for all of the motorized forms of trail users because he noticed that there was one for bike, one for horses, and was thinking that there should be an one for ORV and snowmobile as well.

Off-Road Vehicle Advisory Workgroup

- Mr. Tom Dunn reported that they did a historical ride on October 3rd of ORVs across the Mackinaw Bridge, Trek the Mighty Mack. They had 1,446 machines and 2,500 people register for it. They staged out of Mackinaw City and rode across to St. Ignace. St. Ignace opened up their arms to them and it was a wonderful event. It shows the economic value of the ORVs. Out of the groups there were actually 1,340 that crossed the bridge.
- The last ORV Advisory Workgroup meeting was in September; moved back from August due to the Department filling in positions. Mr. Jason Fleming has done a wonderful job of staying with them. They are continuing with getting the maps working and live.
- Have had conversations with the Secretary of State as they came out with a new ruling on licensing of the side-by-side ATV/ORVs. They will no longer fall under a vehicle that has been remade into a licensed vehicle. They were able to get the motorcycles out of it. After speaking with multiple legislators he thinks this will continue to be an issue.
- Still moving forward with the Oakland County ORV Park. The blocking points have been worked out between the DNR and the county at this point. Hopeful of an opening next year.
- \$2.6 million of priority projects have been put in place for trail infrastructure repair and bridges they rolled over into 2016 because of the timeline of when the money was available.
- Working with the SAW group to have a conjoined meeting, hopefully in December, in the U.P. They have issues between the ORVs and the snowmobilers and he thinks they can work them out by being together again with Dennis. It has worked out well in the past.
- Working with Jason Fleming on a response to the auditors for the forest certification.
- Still looking for ideas and thoughts on how to incorporate the side-by-sides into their trail program. They are the biggest selling and the most popular right now.

UPDATES

Ms. Emily Meyerson gave an update on the Iron Belle Trail. There was \$250,000 in community grants that were distributed in the summer. They are primarily planning grants for people to do routing, engineering, etc.; the things local communities often do not have funding for. There is going to be a second round of funding this fiscal year of \$350,000. They are trying to get those grants out by the end of this calendar year. The Trails Section is working on some sign standards for Iron Belle and those sign standards could be distributed with these grants.

Marquette Portal Update - Mr. Tom Weston introduced himself as the Chief Technology Officer from the Department of Natural Resources. He gave an update on the Marquette Trail Pilot. (Presentation attached).

Chair Wheatlake asked Mr. Weston if a city wants to update their trails they can go into this data port and they can put it in their app? Mr. Weston said yes, they have technology now that they can provide to the people in a city and they can use it to validate that their lines are correct. When using the app, they will collect things for them -- bridges, culverts, picnic tables, rest stop, parking spots, etc. It will empower communities to help manage trails.

Mr. Weston continued that they are going to build a website, which is in progress right now. They are testing it and it will go live at the end of this month and they will do silent launch.

Chair Wheatlake questioned the length of time it took to do one county. Mr. Weston said the biggest task was auditing and cleansing the data. Right now they have an estimate of how many hours it takes to do 100 miles of trails. They have learned a lot and the Marquette folks helped tremendously. They are asking for additional resources and ways to partner with communities to get it done. The next step after this is to get the Iron Belle Trail converted over. Chair Wheatlake recommended counties, municipalities, or townships to provide the data. Mr. Jason Rolling said that part of that timeline includes the working groups figuring out what layers they wanted to put in. He thinks the templates can be replicated very quickly in every community and once you get the data it is a lot easier to get through.

The question was asked if people are mapping their own data, will there be some kind of filtering taking place to validate it is legal data. Mr. Weston said it has been a problem with Google and Bing for years. If they are putting illegal trails on state property, we can prove ownership to Google to pull that data, but it takes a long time. People are uploading it and some of it is correct and some of it is not. It may take a year to correct.

Ms. Nancy Krupiarz asked how do you stop people that are doing their own trails on Strava? Mr. Weston said the data uploaded on Strava shows how people are using our trails. We might see some differences where the data is really close. It might just be a bad GPS device. Some are way off. So either our data is wrong or folks have made their own trails. There are tools out there that we can use to understand trail usage.

Mr. Kobasic asked if the data differentiates between hiking and biking. Mr. Weston responded yes. Chair Wheatlake asked how the data is delineated if someone on their motorcycle goes from one end of the trail to the other. Mr. Weston said they will capture the data on their device but he or she will have to categorize it.

Chair Wheatlake asked Mr. Weston who he reports to and what is going to be the charge to the rest of the department. Are the trail coordinators going to be charged with the interface with the communities? Mr. Weston replied he reports to Ms. Kristin Phillips in Marketing and Outreach, and yes, they have asked for resources, people and dollars, to go forward with this project for the entire state. Those resources will not all be DNR resources. They will be resources that they partner with the community and work with the local DNR trail coordinators to identify those communities so they can act as the boots on the ground.

Chair Wheatlake said he would contact Director Creagh to find out where we are at with the timeline. He thanked Mr. Weston for his overview and asked him to return to the next meeting and give the committee an update. Mr. Weston is the contact for this project and his email is westont1@michigan.gov. (PowerPoint attached)

Ms. Kristen Thrall gave an update on the U.S. Forest Service:
- Jon Thompson, new Recreation lead for Cadillac/Manistee Ranger District starting in January 2016. The Huron Shores position will be re-advertised.

- Still working on implementing Connecting Communities in Oscoda. We discovered in the Jose Lake area one ¼ mile section is in private ownership so we are working through a solution.
- Attended the National Water Trails Forum in June; learned that rivers already designated as Wild and Scenic are not eligible for a second designation.
- Luzerne Boardwalk – horse trail – we are working through Stewardship Funding to repair the wooden boardwalk. Hoping repairs will be completed by spring 2016.

Corporal John Morey updated the committee on LED staffing levels with the recent probationary Conservation officers that were hired.

Chair Wheatlake provided the 2016 meetings dates which have been set for April 12, 2016, July 7, 2016, and October 11, 2016.

Mr. Jim Dickie moved to adjourn the meeting at 1:38 p.m. The motion was seconded by Mr. Tim Kobasic and it carried unanimously.

Michigan Trails Advisory Council Meeting

Land Use Liability

Kirk Lapham, Legal Policy Analyst
Legislative and Legal Affairs Office

October 21, 2015



Relevant Statutes & Case Law

- Recreational Land Use Act (RUA), MCL 324.73301
- *Kruse v Iron Range Snowmobile Club*, 890 F Supp 681 (WD Mich, 1995)
- *Duffy v Irons Area Tourist Ass'n*, 300 Mich App 542 (2013)



Purpose of the RUA

- To encourage owners of private tracts of land to make land and water areas available to the public for outdoor recreational activities by limiting the owners' liability toward persons entering on the land for such purposes. *Wymer v Holmes* 429 Mich 66 (1987), overruled on other grounds, *Neal v Wilkes*, 470 Mich 661 (2004)



RUA, MCL 324.73301(1)

- “[A] cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.”



Kruse v Iron Range Snowmobile Club (1995)

- Plaintiff injured on snowmobile trail
- Defendant contracted with the DNR to maintain and groom the trail (no ownership interest)
- Federal District Court held that the RUA applied to an entity that contractually agreed to maintain a trail even if the entity did not own or lease the land
- The DNR and trail groups have operated under the *Kruse* interpretation since 1995



Duffy v Irons Area Tourist Ass'n (2013)

- Plaintiff injured on Little Manistee Trail
- Defendant entered a grant agreement with the DNR to maintain and grade the trail (no ownership interest)
- Defendant relied on *Kruse* to argue that the RUA applied and no cause of action existed because it did not act in a grossly negligent manner or commit willful and wanton misconduct
- Michigan Court of Appeals rejected *Kruse*



Duffy v Irons Area Tourist Ass'n (2013), continued

- State courts are not required to apply federal court decisions when applying state law
- *Duffy* Court narrowly interpreted “owner, tenant, or lessee” as used in the RUA to exclude entities that contract to maintain trails on land that the entity does not own or lease



Result of *Duffy* Opinion

- Only landowners, tenants, and lessees are protected by the RUA
 - Only subject to claims for gross negligence or willful and wanton misconduct
- Claim for ordinary negligence can be brought against an entity that only maintains a trail but has no ownership interest in the property



Response to *Duffy* Opinion

- The DNR is currently working with the Legislature to amend the RUA
 - Amendment would expressly extend protection granted to landowners, tenants and lessees to entities that maintain trails on property that the entity does not own or lease



Thank You

- Questions?





Marquette Trail Pilot Status Update October 8, 2015





Project Goals

- Become the Digital Trail State
- Connect all trails whether public or private
- Partner with our communities
- Adopt the Code for America open trails data standard
- Open Data Portal, make machine readable data the default
- All State of Michigan trail data to be published and managed from one source

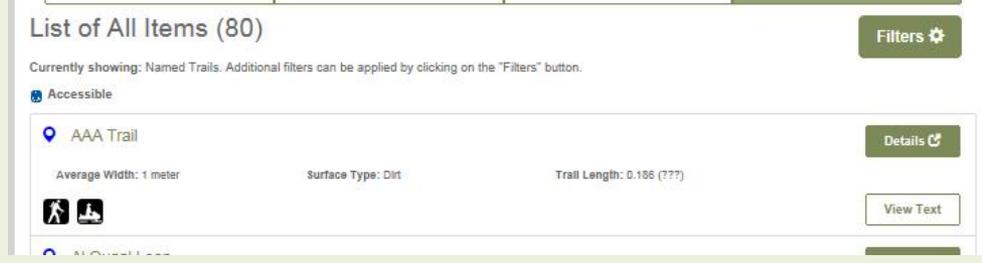
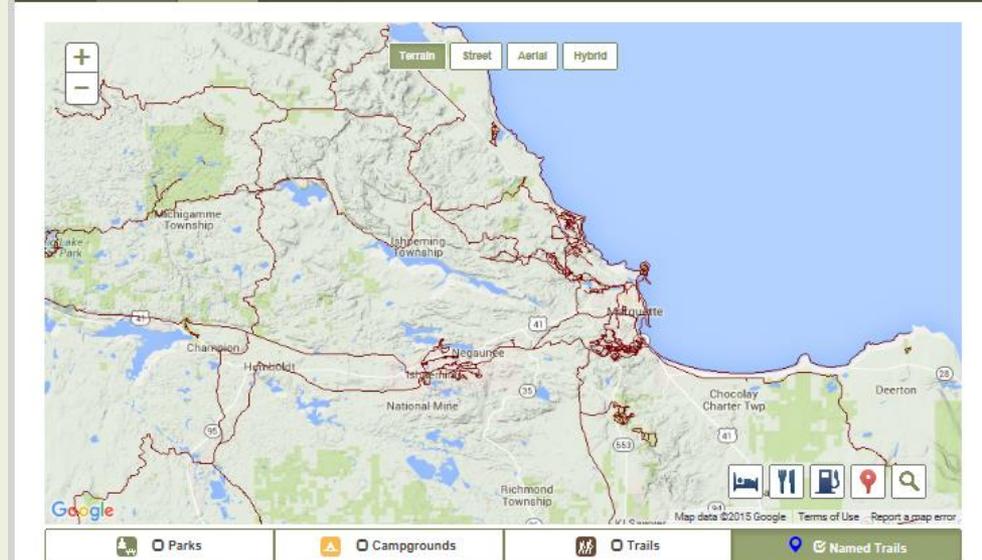
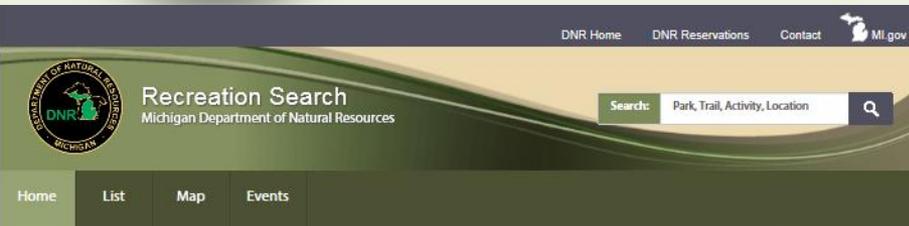


What we've accomplished in Marquette County

- Partnered with the City of Marquette, CVB, County, Federal, NCTA & Local Trail groups
- Audited, cleansed & connected 900 miles of trails in the County, including the Hiawatha Water Trail & Shipwrecks off the city
- Converting 900 miles of trail data to the Code for America Open Trails Data standard
- Publishing our trail data in an Open Data portal, API's ready to be consumed



What's Next – Launch Pilot Site



Welcome to the newly re-designed Recreation Search Application! If you find an issue or have a question, please contact us at 517-284-7275 or via email at DNR-ParksandRecreation@michigan.gov



What's Next

- Market the benefits of the pilot to the rest of the State
 - Partner with communities to manage trail data
 - Connect the trails
 - Common Data Standard
 - Publish all trail data from one source
 - Show the value of being the “Digital Trail State”, who might consume and market our data;
 - Google & Bing
 - Pure Michigan
 - AllTrails
 - Map My Ride
 - Strava ★
 - Polaris ★



Research tools we're exploring

Strava

The screenshot shows the Strava mobile app interface. At the top, the status bar displays "Verizon", signal strength, Wi-Fi, the time "3:26 PM", and battery level. Below the status bar, there are navigation options: a back arrow, "Feed", "Run" (the current activity), and "Share".

The main content area shows a run activity titled "Evening Run" by "Thomas Weston", posted "Yesterday". Below the title is a map showing the run route in red, starting near "Legal" and "496" (I-496), passing through "Frances Park", and ending near "Boston Blvd".

Below the map, there are interaction icons: a thumbs-up icon with "0" and a comment icon with "0".

The activity statistics are displayed in a grid:

5mi DISTANCE	1:20:34 TIME	Trophy x 3
15:49/mi AVG PACE	1,063 CALORIES	

At the bottom of the screen, there are four circular icons: a location pin, a heart rate line, a heart, and a bar chart.

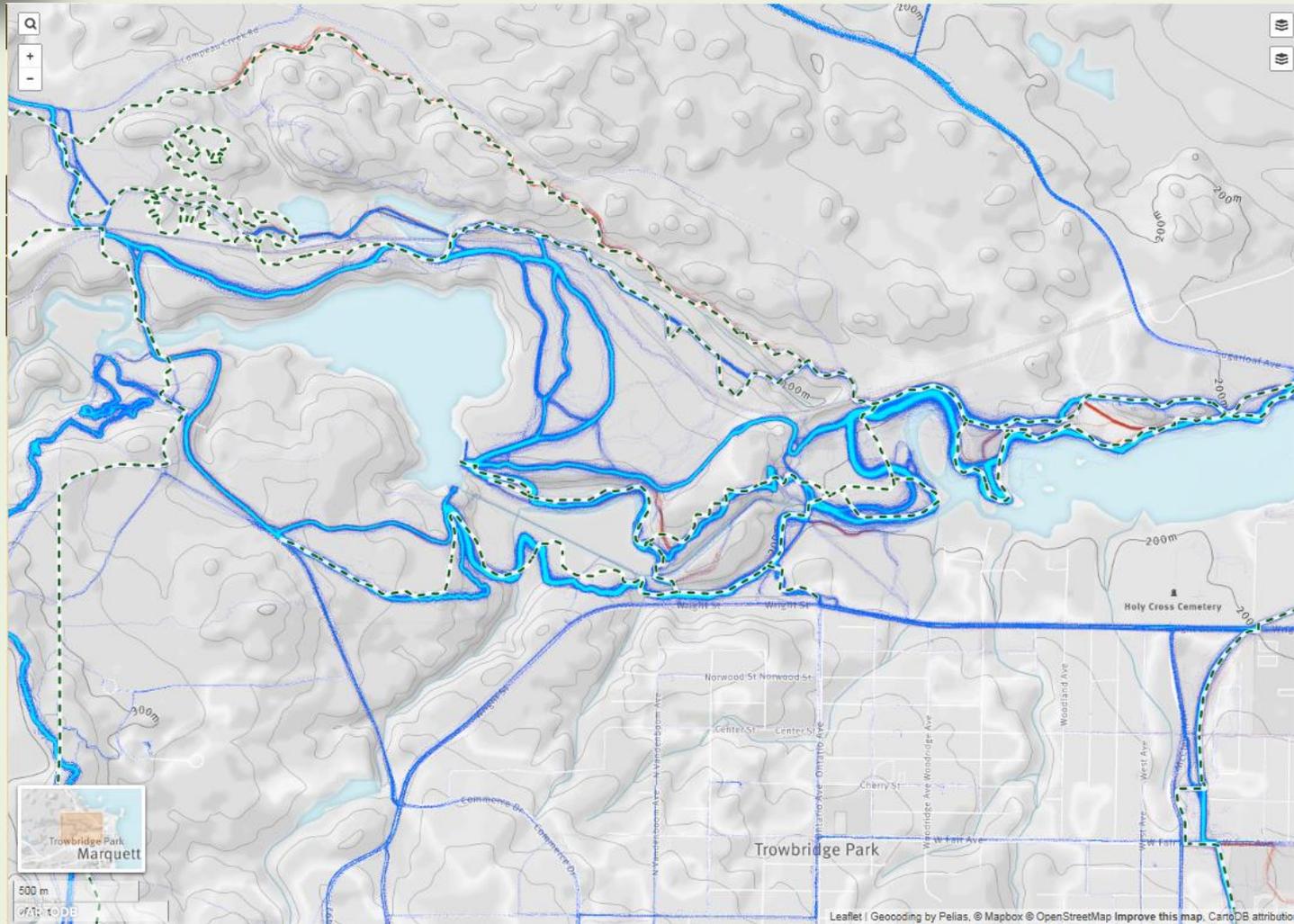


Research Tools Were Exploring Strava continued

The screenshot shows the OuterSpatial web application interface. On the left is a sidebar with a dark header "OuterSpatial" and a search bar. Below the search bar, the application is identified as "Marquette Pilot". A "Fit" button is visible. The sidebar contains a list of items: "Stewards" (3), "Trails" (114), "Trailheads" (29), and "Open Trails". The main area is a map of Michigan and the surrounding region, showing a green dashed trail near Marquette. The map includes various city labels such as Marquette, Sault Sainte Marie, Elliot Lake, Sudbury, North Bay, Escanaba, Traverse City, Green Bay, Appleton, Ishkosh, du Lac, Milwaukee, Grand Rapids, Lansing, Detroit, Chatham, Ann Arbor, Elgin, Aurora, Chicago, South Bend, Toledo, Fort Wayne, Sarnia, Hamilton, Kitchener, St Thomas, Erie, Sandusky, Cleveland, Youngstown, Canton, and Pittsburgh. The map also shows topographic contours and a scale bar for 100 km. At the bottom, there is a footer with attribution: "Leaflet | Geocoding by Pelias, © Mapbox © OpenStreetMap Improve this map, CartoDB attribution".

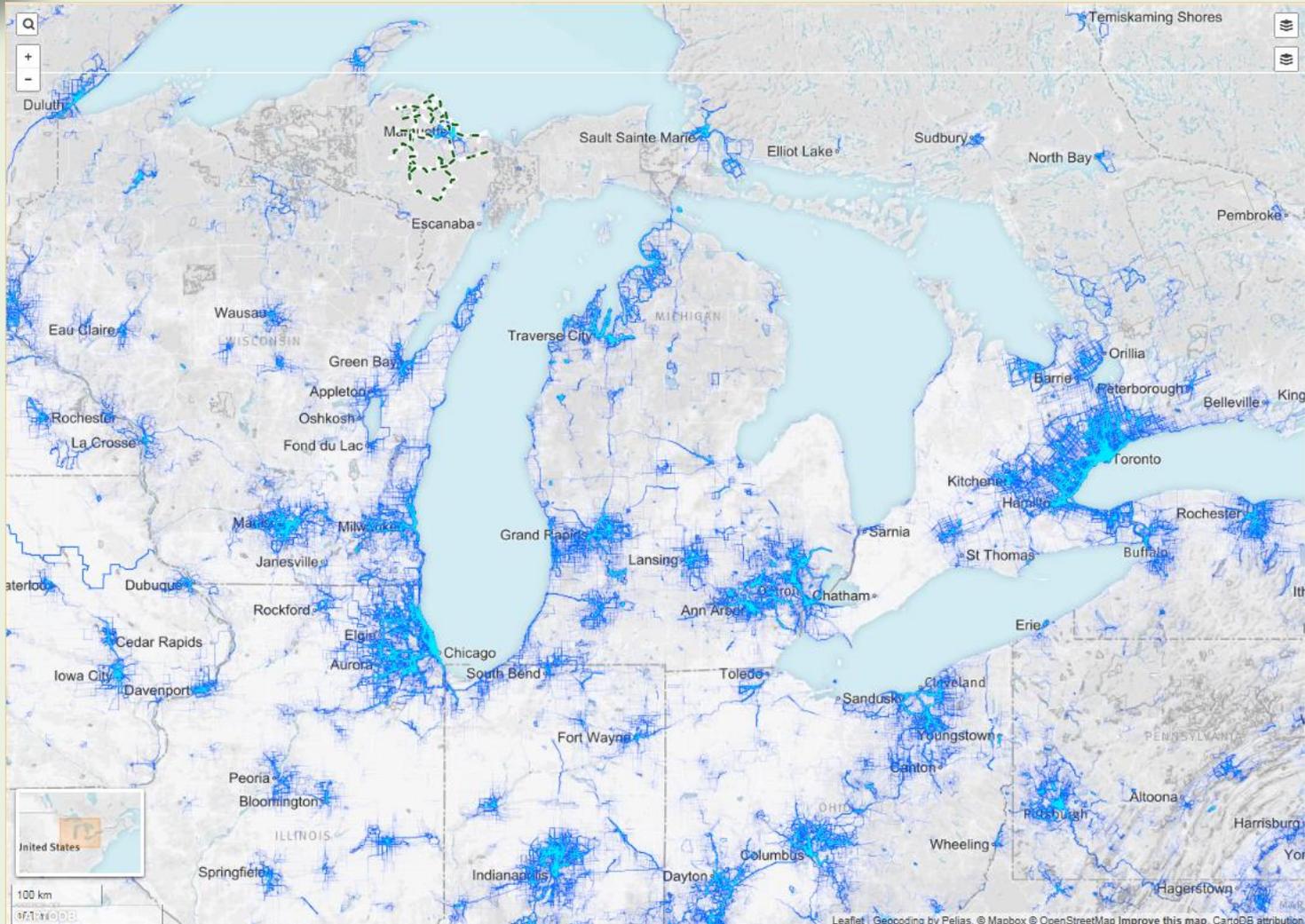


Research Tools Were Exploring Strava Marquette County



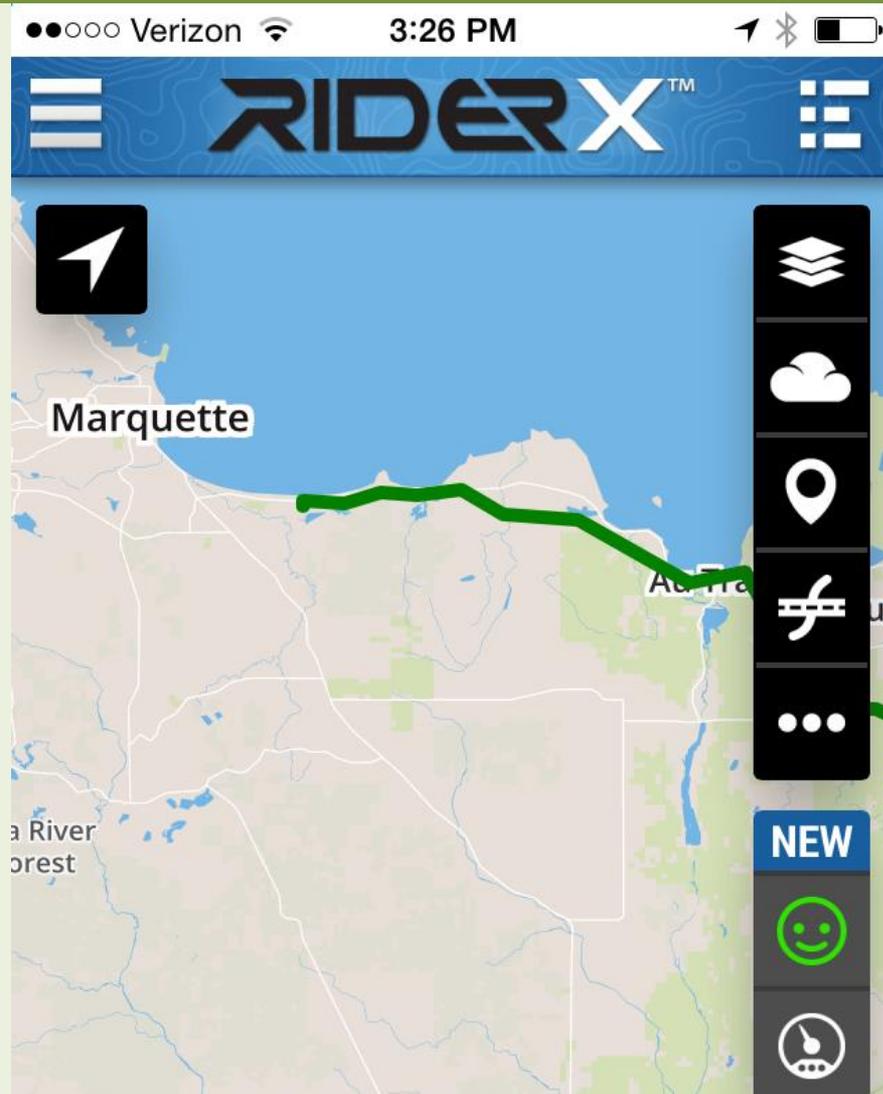


Research Tools Were Exploring Strava entire state





Research Tools Were Exploring Polaris





Questions?
Thank You

