

Lost Nation State Game Area
Draft Review of the restrictions on access by pack and saddle animals as required by
Public Act 45 of 2010
January, 2011

Purpose of Review and Legislative Requirements

On April 2, 2010, Michigan's governor signed two bills into law; Senate Bill 578 and House Bill 4610 of 2009, now known as Public Acts 45 and 46 of 2010 respectively. Although these acts do not change any horse use restrictions on state lands, they do change the process for the Department of Natural Resources and Environment (Department) to impose any new horse use restrictions on Department owned lands. Among other things, Public Act 45 of 2010 requires the Department to review the existing horse use restrictions at the Lost Nation State Game Area by January 1, 2012.

The Department has conducted an internal review with our findings reported in this draft. These findings will be provided to the public at an informational meeting held on January 18, 2011 in Hillsdale, Michigan. The purpose of this meeting is to explain these findings to interested persons in an informal setting. A question and answer period will be provided at this meeting and the interaction from this session is being used to develop Frequently Asked Questions (FAQs) about equestrian use on state lands that will be available on our website. Public comment will also be accepted at this meeting; comments received from the meeting along with all other comments received via mail or email since the meeting will be included in this report as Appendix A. In accordance with Public Act 45, this report will be presented to the Natural Resources Commission at the _____ meeting.

Origin of the Lost Nation State Game Area and Historic Events

In 1951, the Michigan Conservation Commission approved the purchase of land (14 parcels totaling approximately 1,092 acres) in the part of Hillsdale County tentatively designated as the Pittsford State Game Area. Additional parcels continued to be purchased within the project boundary, and in 1966, the Conservation Commission changed the name of the then 2,374-acre game area to the Lost Nation State Game Area, based on the local folk lore.

Fees from the sale of state hunting and fishing licenses were used to purchase the majority of the parcels that make up the area. Additionally, 802 acres were purchased with Federal funds from the Pittman-Robertson Wildlife Restoration Act, and 70 acres were purchased using Michigan Natural Resources Trust Fund monies. The purpose and intended uses of this area were established in the official dedication of the area by the Department and in the Pittman-Robertson Wildlife Restoration Act grant used to acquire and maintain lands in the area. This area is designed to provide, protect, and enhance wildlife habitat, provide for the management of wildlife populations, and provide for the associated recreation of hunting and trapping.

Today, the Lost Nation State Game Area contains approximately 2,500 acres across two townships in southwestern Hillsdale County (figure 1). The area still serves its acquisition purpose and intended uses. The area is known to support several game species of interest to hunters as well as nongame and sensitive wildlife species (including federally endangered species) with specific habitat requirements. Truly contentious issues regarding the allowable use

of the area are not prevalent, as most users partake in hunting, fishing, shooting at the small, un-manned shooting range, and observing wildlife. Conservation officers and area managers, however, have noticed illegal off road vehicle and horse use over the years.

Legal and Regulatory Requirements

As with all state game areas, the Wildlife Division manages and maintains the Lost Nation State Game Area according to the Division’s mission:

“To enhance, restore, and conserve the State’s wildlife resources, natural communities, and ecosystems for the benefit of Michigan’s citizens, visitors, and future generations.”

As part of the Department of Natural Resources and Environment, the Division strives to allow recreational opportunities that meet the mission of the Department while not compromising the wildlife resources that are of primary concern to the Division. In keeping with both the Division and Department’s missions, activities that conflict with wildlife related resources of state game areas are regulated and restricted. In addition to mission constraints, there are numerous legal and regulatory requirements that protect lands and funds for wildlife related purposes from being diverted to other uses.

As previously discussed, most of the lands in the Lost Nation State Game Area were acquired with state license fees and federal funds that have specific requirements for the purposes for which the funds can be used. Under the federal Pittman-Robertson Wildlife Restoration Act, an excise tax is collected from the manufacture of guns, ammunition, bows, and arrows. These funds are then apportioned to the states in the form of grants for the purposes of managing the states’ wild birds and mammals. These federal funds require the state to provide matching funds on a 3:1 federal to state ratio. Michigan matches these federal funds with fees collected from the sale of hunting licenses. The acquisition fund sources for lands in the Lost Nation State Game Area are as follows:

Fund Source	Acres Acquired	% of Total
License Fees	1,693	66.0
Pittman-Robertson Wildlife Restoration Act (75% federal funds and 25% license fees)	802	31.3
Michigan Natural Resources Trust Fund	70	2.7
Totals	2,565	100.0

There are specific federal and state laws and regulations on how these funds and lands acquired with these funds can be used. When federal funds under the Pittman-Robertson Wildlife Restoration Act are used to acquire lands, those lands must be used for their intended purpose and the state cannot allow incompatible use described in the Code of Federal Regulations (CFR), namely 43 CFR 12.71(b), as follows:

43 CFR 12.71(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for those purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

Misuse of lands acquired with federal funds constitutes a misuse of federal funds. The penalty for misuse is particularly severe as the state can become ineligible for funds under the Pittman-Robertson Wildlife Restoration Act. In addition, adverse effects must be remedied, the cost of which cannot come from federal funds or license funds. This remedy may include reimbursing the federal funds and license funds used to acquire the lands at current fair market value. Funds used for this reimbursement also cannot come from federal funds or license funds. The regulations are contained in 50 CFR 80.14 as follows:

50 CFR 80.14 Application of Federal aid funds.

(a) Federal Aid funds shall be applied only to activities or purposes approved by the regional director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal Aid funds. Replacement property must be of equal value at current market prices and with equal benefits as the original property. The State may have a reasonable time, up to three years from the date of notification by the regional director, to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

In order to be eligible for federal funds through PR and DJ, Michigan had to pass legislation protecting funds derived from the sale of fishing and hunting licenses. Commonly referred to as “Assent Legislation,” this state law requirement is established in 50 CFR 80.3 as follows:

50 CFR 80.3 Assent legislation. A State may participate in the benefits of the Act(s) only after it has passed legislation which assents to the provisions of the Acts and has passed laws for the conservation of fish and wildlife including a prohibition against the diversion of license fees paid by hunters and sport fishermen to purposes other than administration of the fish and wildlife agency. Subsequent legislation which amends these state laws shall be subject to review by the Secretary. If the legislation is found contrary to the assent provisions, the State shall become ineligible.

Michigan’s Assent Legislation is codified in that section of Public Act 451 known as MCL 324.40501 as follows:

The department shall perform such acts as may be necessary to conduct and establish wildlife restoration, management, and research projects and areas in cooperation with the federal government under the Pittman-Robertson wildlife restoration act, 16 USC 669 to 669i, and regulations promulgated by the United States secretary of the interior under that

act. In compliance with that act, funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under the administration of the department.

For the purposes of eligibility under the Pittman-Robertson Wildlife Restoration Act, license fees are defined the Code of Federal Regulations (CFR) as follows:

50 CFR 80.4(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of licenses issued by the State conveying to a person the privilege to pursue or take wildlife or fish. For the purpose of this rule, revenue with respect to license sales by vendors is considered to be the net income to the State after deducting reasonable vendor fees or similar amounts retained by sales agents. License revenues include income from:

- (1) General or special licenses, permits, stamps, tags, access and recreation fees or other charges imposed by the State to hunt or fish for sport or recreation.
- (2) Sale, lease, rental, or other granting of rights of real or personal property acquired or produced with license revenues. Real property includes, but is not limited to, lands, building, minerals, energy resources, timber, grazing, and animal products. Personal property includes, but is not limited to, equipment, vehicles, machine, tools, and annual crops.
- (3) Interest, dividends, or other income earned on license revenues.
- (4) Federal Aid project reimbursements to the States to the extent that license revenues originally funded the project for which the reimbursement is being made.

50 CFR 80.4 contains a specific prohibition against diverting any of these revenues to any purpose other than the administration of the State Fish and Wildlife Agency. The definition of a diversion and the penalty for such diversion is contained in 50 CFR 80.4(b-d) as follows:

50 CFR 80.4(b) For purposes of this rule, administration of the State fish and wildlife agency include only those functions required to manage the fish and wildlife oriented resources of the State for which the agency has authority under State law.

50 CFR 80.4(c) A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the State fish and wildlife agency.

In addition to acquisition, the Lost Nation State Game Area is almost entirely managed and maintained with Pittman-Robertson Wildlife Restoration Act funds and license fees. Over the years, many habitat projects were developed and lands acquired using license fees in the Lost Nation State Game Area. Federal regulations require that lands acquired with and developments made with license fees must continue to serve their intended and allowable purposes. When uses unrelated to the intended and allowable purposes of lands and developments purchased with license fees conflict with those intended and allowable uses, a diversion occurs. The remedy in such cases is specified in 50 CFR 80.4(d) as follows:

50 CFR 80.4(d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

- (1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and
- (2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.

The penalty for diversion is severe; the Department's annual apportionment for wildlife restoration through PR for the last six years has been steadily increasing to an all time high of \$13.5 million in FY 2010. Allowing conflicting uses at the Lost Nation State Game Area would result in the loss of these funds. Additionally, the \$1.2 million provided through PR for hunter education could also be lost. Because DJ funds are also covered by the State's "Assent Legislation" these funds would be jeopardized if this legislation is violated; the Department's appropriation of DJ funds in FY 2010 is approximately \$12.6 million.

In addition to the provisions of the PR and DJ acts along with the State's "Assent Legislation," an amendment to Michigan's constitution was passed by voter referendum and took effect in December of 2006. This amendment extended constitutional protection to license fees in Section 40 of Title IX as follows:

§ 40 Michigan conservation and recreation legacy fund.

The game and fish protection account is established as an account within the legacy fund. The game and fish protection account shall consist of revenue derived from hunting and fishing licenses, passbooks, permits, fees, concessions, leases, contracts, and activities; damages paid for the illegal taking of game and fish; revenue derived from fees, licenses, and permits related to game, game areas, and game fish; and other revenues as authorized by law. Money in the game and fish protection account shall be expended only for the following:

- (a) The development, improvement, operation, promotion, and maintenance of wildlife and fisheries programs and facilities.
- (b) The acquisition of land and rights in land that support wildlife and fisheries programs.
- (c) Research to support wildlife and fisheries programs.
- (d) The enforcement and administration of the wildlife and fisheries laws of the state, including the necessary equipment and apparatus incident to the operation and enforcement of wildlife and fisheries laws.
- (e) The protection, propagation, distribution, and control of wildlife and fish.

- (f) Grants to state colleges and universities to implement programs funded by the game and fish protection account.
- (g) The administration of the game and fish protection account, which may include payments in lieu of taxes on state owned land that has been or will be purchased through the game and fish protection fund or account.

Recreational Uses and Conflict Management

To ensure the Lost Nation State Game Area continues to serve its intended purposes, a number of recreational uses have been restricted since its inception in 1951. As with virtually all of Michigan's state game areas, there have never been any portions of the Lost Nation State Game Area that have been designated open to horse use. Under the administrative rules governing allowable uses of state lands, horses are only allowed in areas designated open to horse use as follows:

R 299.922 Unlawful acts generally.

Rule 22. On lands owned or under the control of the department, it is unlawful for a person or persons to do any of the following:

- (v) To ride or lead a horse, pack animal, or other riding animal, or any animal-driven vehicle on any area, except on roads that are open to the use of motor vehicles, trails, bridle paths, and campgrounds designated for such use by the department and on state forest lands not posted closed to such use or entry.

The prohibition on horse use for game areas goes back to at least 1954 when a similar portion of the administrative rules was in effect for state game areas as follows:

R 299.333. State game areas in zone 3 [southern lower Michigan], unlawful acts.

Rule 3. In addition, on state-owned lands in a state game area in zone 3, as described in section 10 of chapter 1 of Act No 286 of the Public Acts of 1929, as amended, being section 311.10 of the Compiled Laws of 1948: ...

- ... (3) It is unlawful to ride or lead a horse, other riding animal or pack animal on, or to allow such animal or any animal-drawn vehicle to use or travel on any areas other than established public roads or trails designated for such use, without proper written permission.

In addition to horse use, to protect the integrity of the state game area system to provide, protect, and enhance wildlife habitat, provide for the management of wildlife species, and to provide for the associated recreation of hunting and trapping, the following administrative rules, which have existed in various forms since at least 1954, apply to all state game areas:

R 299.926 Game areas; unlawful acts.

Rule 26. In addition to the unlawful acts specified in R 299.922, on state-owned lands in a state game area, it is unlawful for a person or persons to do any of the following:

- (a) To camp between May 15 and September 10, except in areas specifically designated for camping.
- (b) To park any wheeled, motorized vehicle more than 20 feet from the traveled portion of a road, forest road, parking lot, or trail open to wheeled, motorized vehicle use.
- (c) To operate any self-propelled motor or mechanically driven vehicle, including snowmobiles and bicycles, on other than a designated established road open to the public, a trail or area properly signed by the department as being open to such use, or a parking lot.

In 1956, while the area was still called the Pittsford State Game Area, a proposal to convert the area to a park or recreation area was considered. A delegation with representatives from the Hillsdale Chamber of Commerce, City of Hillsdale, and the treasurer of Michigan United Conservation Clubs felt more visitors might be attracted to the area by a park. The delegation felt that exploiting the history of the area, glamorizing historic local outlaws, locating caves used by outlaws, erecting monuments, and having old mills restored and maintained would be good for the local economy. The proposal also called for the construction and maintenance of picnic grounds, camp grounds, hiking trails, and other recreational facilities. The delegation determined that such a conversion would require that the license fees and Pittman-Robertson Wildlife Restoration Act funds invested in the area would have to be replaced to avoid a diversion of license fees and a misuse of federal funds.

Ultimately, the Department's Wildlife Division determined the lands were important for wildlife management and providing hunting opportunities in a part of Michigan with relatively little public hunting access. Additionally, the Department's Parks and Recreation Division did not consider the area to have sufficient interests to warrant the investment necessary to bring it under their administration. Consequently, the Lost Nation State Game Area has been managed since its inception in accordance with state game area rules and for the purposes of eligibility under the Pittman-Robertson Wildlife Restoration Act. Horse use has never been permitted on the area and no horseback riding trails have ever been designated on the area.

Although horse use has never been allowed on the Lost Nation State Game Area, interest in using horses on the game area has been expressed sporadically by individuals and horse groups since the 1970s. Most of the requests for horse use at Lost Nation State Game Area were part of larger issues regarding horse use at other game areas (e.g., Barry State Game Area) in the early 1970s and early 1990s. Some recent requests to allow horse use on Lost Nation State Game Area were received in early 2000s. The Department has been consistent in its response to all requests to allow horse use on the area and has maintained that such use would be inconsistent with the purpose and intended uses of the area. Consequently, no horse use has been allowed. Requests to allow horse use at Lost Nation State Game Area have been practically nonexistent since 2004; however, illegal horse use on the game area still occurs.

Conclusion

Providing equestrian recreation is part of the Department's mission for the conservation, protection, management, and accessible use and enjoyment of the state's environment, natural resources, and related economic interests for current and future generations. As such, 16 State

Parks and Recreation Areas have developed equestrian trails and related amenities including 7 equestrian campgrounds. These parks provide a total of 208 miles of equestrian trails, ranging in length from 4 miles at the Bass River Recreation Area, to 25 miles of trail at both Fort Custer Recreation Area and Waterloo Recreation Area. The majority have at least 10 miles of equestrian trails.

In addition, the Department manages approximately 3.78 million acres of State forest land that has no horse use restrictions. There are also 322 miles of trails and 457 campsites within the State Forest developed specifically for equestrian use. Half of the Shore to Shore Riding and Hiking Trail, a 400 mile integrated trail and camping network that provides multi-day riding prospects for equestrians, is in the State Forest. Many of the campgrounds that service this trail corridor are State Forest equestrian campgrounds.

As many recreational uses are not compatible with each other or other resource conservation needs, the Department cannot allow all activities on all Department owned and managed lands. Additionally, certain lands were acquired and are managed for specific intended uses, uses that are often restricted by the mission of the administering division and funding sources used to acquire and manage these lands. Although the intended uses can change as wildlife management needs change, intended uses of lands acquired and managed with Pittman-Robertson Wildlife Restoration Act funds and license fees must always be part of managing the fish and wildlife resources of the State. Although the Department actively encourages the use of these lands, the Department cannot allow uses that conflict with fish and wildlife management. Failure to act would result in the Department violating its mission in addition to violating state and federal laws and regulations.

Consequently, the Department finds that the current restrictions on allowable uses at the Lost Nation State Game Area are adequate and appropriate.

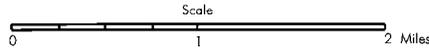


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DEPARTMENT OF NATURAL RESOURCES

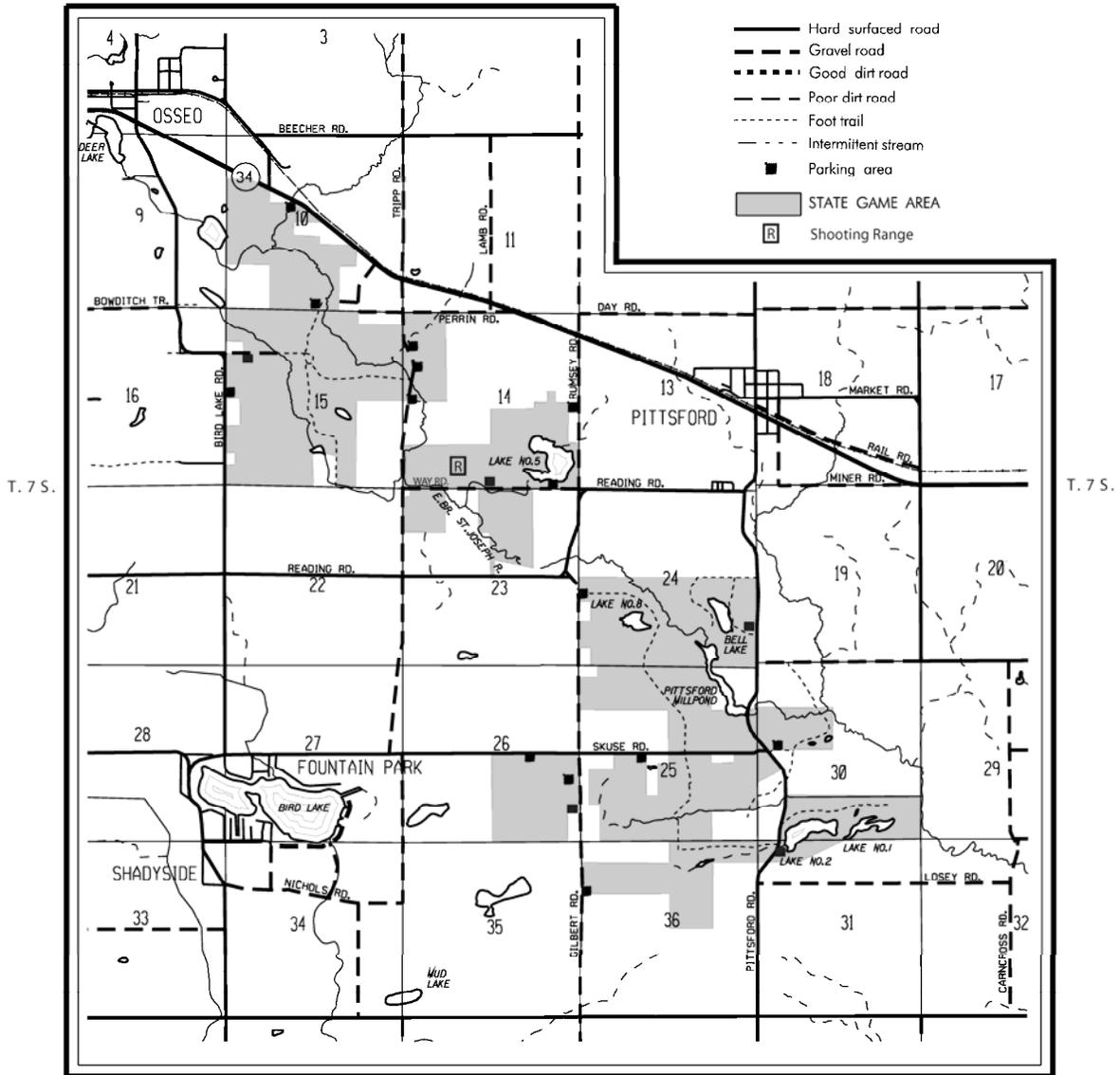


LOST NATION STATE GAME AREA

HILLSDALE COUNTY, MICHIGAN



R. 2 W.



R. 2 W.



Hunter Monies Made This Area Possible

MAP 1302 (Rev. 8/2003 -MLS)



Figure 1: Lost Nation State Game Area map.

Appendix A: Comments Received from Public Information Meeting
Michindoh Conference Center – January 18, 2011

DNRE Staff: Penney Melchoir, Steve Beyer, Earl Flegler, Kristin Bissell, Jennifer Olson

MSU Facilitator: Julie Brockman

Public Participants:

Comments received at the meeting:

Written comments received by DNRE to date:

Email comments received by DNRE to date: