

CAI - LI Chapter News

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MANAGING RISKS ASSOCIATED WITH DATA SECURITY, CYBER SPACE, TECHNOLOGY, AND THE INTERNET OF THINGS: *Can't Live with Evolving Technology and can't live without it.*

By JOEL W. MESKIN, ESQ., CIRMS, MLIS, CCAL FELLOW, MANAGING DIRECTOR, -
MC GOWAN PROGRAM ADMINISTRATORS

Introduction

A few things that everyone can agree upon is that the Internet of Things (“IoT”), Cyber Liability, Data Breach, Cyber Crime and Technology are touching everyone's life, both positively and negatively. Most people agree that all their devices, systems including the required software and hardware are expanding, changing and growing faster than any of us can keep up with or understand. Most everyone communicates using smart phones and/or other smart devices. More and more, new homes are built as smart homes or existing homes are transitioned into smart homes. Many of us yearn for times gone by.

Community Associations are not immune to the intended and unintended consequences of this brave new world that has been changing more and more, and faster and faster.

Community Association Boards, Community Association Managers and Business Partners acknowledge the changing world and many know this while many others come from the position that why fix something that they do not perceive as broken. However, at the same time, a vast majority of the community association industry is ready to pursue the necessary elements of the requisite Risk Management of these new technologies. (see [Wired, 2018 Survey of Cybersecurity in Community Associations](#))

Community Associations, whether condo, coop, Single Family HOA or other common interest development (hereafter referred collectively as “Association(s)”) are managed by boards elected by the unit owners. The key obligation of the Board is to Protect, Preserve and Enhance their community

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PRESIDENT’S MESSAGE

By ANDREW NIGRI - SANCUS INSURANCE AGENCY, LTD. AND CAI - LI CHAPTER PRESIDENT 2023

Greetings CAI Membership! It is an absolute pleasure to be addressing you as your brand new CAI President for 2023. I’m so very excited to get started and I have a few specific goals for my term which I’d like to share with you.

First and foremost is to make the seminars as worthwhile as possible. After all, at our core we are an educational organization and I will do my best to make sure the content is current and relevant. We intend to do that by using the brain power of our membership and our board as we are all attending the same meetings during the course of the year and are always looking for solutions to the problems we all face.

Another initiative I feel is important is to grow the business membership. Our membership committee has been doing a great job of attracting and retaining community association board members but I feel there is an opportunity to attract new business members that our communities can utilize and share amongst the association. I am asking YOU! (YES YOU WHO ARE READING THIS).... Do YOU have a plumbing contractor that services your community that you just love and can recommend? Take a second.... Stop reading..... Think about it....

Now write down a few of your favorite trades. How about an electrician that primarily services Condo Communities? How about Painters? Landscapers? We are looking for great members and your recommendation can go a long way. It’s an opportunity for the members to use the services of these recommended businesses as well as the businesses themselves to grow by attracting new communities across Long Island. We need your help, and we trust your recommendation, so please, help us bring on some new talent!

Finally, it’s my goal to make the Trade Show the best it’s ever been. We will be utilizing fresh new technology in addition to increasing the number of business members that are taking booths in order to expand the choices for our community members. The end goal is to have an exceptional trade show experience that sets the bar for the future.

Thank you and I look forward to meeting you all and making great new connections in the upcoming year! ■

Thank you, Andrew
 You may reach Andrew at Andrew@thesancusgroup.com.

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CAI - LONG ISLAND NEWSLETTER

The CAI - Long Island Newsletter is published quarterly by the Long Island Chapter of Community Associations Institute (CAI-LI) and is distributed to its members and is available on the Chapter website (www.cai-li.org). This publication provides members of CAI with letters from the Chapter President, informative articles written by industry professionals and service providers, updates on current legislation, and business advertising. The Chapter strives to provide our members with timely information and tools needed to keep them informed on community association issues.

The Newsletter Committee is always looking for new articles to publish. Articles should be educational, non-promotional in nature, and have a suggested word count between 500 and 1,500 words. CAI-LI retains the right to edit articles to conform to content and space requirements.

If you are interested in submitting an article for possible inclusion, please contact Christine M. Majid, Chapter Executive Director, at info@cai-li.org.

Quarterly Deadlines

Winter Issue - January 31 Summer Issue - July 31
Spring Issue - April 30 Autumn Issue - October 31

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association. To comply with their obligation, boards must put the interest of the association ahead of their own and those of the unit owner members. Their duty is to the “entity.”

The issues addressed here involve risk management, both insurance and non-insurance resources: (1) Proactive Non-Insurance Risk Management tools to eliminate or minimize consequential damage from a cyber event, a data breach event, on-line theft, phishing, social engineering, hacking, ransomware and extortion, amongst others; and, (2) what insurance products are available and what should the policy include to proactively minimize insurance claims and covered losses and perils.

The goal of this article is to convince community association Boards, CAMs and Business Partners to put the Risk Management and insurance for these exposures toward the top of the board’s agenda. In this Brave New World, these issues are different from prior board issues. In the past, boards had more breathing room for them to see how claims play out to determine their cost benefit level of risk. Boards, CAMs and Business Partners hear about, read about and experience potential cyber, data, technology and the IoT. As most of us know, it is far cheaper to address and fix issues sooner than later. Although the issue is not identical, the timing issue is. The board and unit owners of Champlain Towers South in Surfside Florida received an engineering report in 2018 clearly identifying the significant infra structure issues that were critical and needed to be addressed. The unit owners voted not to pursue any of the necessary work (approximately \$9 million) per unit. Many of the board members at the time resigned due to the vote. Sometime approximately two years later, unit owners voted to pursue the changes which were now estimated at \$16 million. Unfortunately, had they been proactive, and had they chosen not to “defer maintenance” in 2018, there may be 98 individuals still alive and a beautiful building overlooking the ocean standing. (I speculate that had the fixes and improvements been completed, the unit values would have dwarfed the cost). Admonition: it is imperative that you have your insurance professional meet with your board to evaluate this issue for your association to help identify the issues and to explain the potential insurance solutions. In addition, you should have a similar meeting with your CAM(s) to discuss a strategy for non-insurance protected matters.

Associations hear about all the cyber, data, IoT and Technology issues every day but do not see them occurring in community associations. First, earlier this year there was a Ransomware attack in a high-rise Boston association. I do not have permission to disclose that insured, but I bet you good money that they were happy to obtain the Cyber Liability/Data Breach coverage. Associations are living with a false sense of security. Hackers and cyber criminals no longer only look to large targets. Rather, they are looking at small and soft targets who

may not result in a large hit, but are simple and quick hits. At the end of the day, the issue is not “if” a hack or event will occur, but “when” it will occur.

When I speak to boards and association professionals on this topic, I am often asked what can we do? Although it is a bit tongue in cheek, I advise them to remove all technology in the management of the association.

The first thing you need to do is an audit of your Association’s use of any of the following, including what exposures board members and CAMs may have on their personal or business devices. For example, do your Association Board Members, Employees, CAMs or other business partners use any of the following in the management of the Association? Any positive answers to the following warrant cyber liability/data breach coverage.

- FOBs, key cards, remote controls
- Building automation system
- Computers
- Virtual board meetings (Zoom, WebEx, Facebook)
- Email, texting, Facebook or other social media
- Management Software
- Laptops, smart phones, or other smart devices
- Website
- On line banking
- Wire transfer capability
- Access to the internet
- Maintain applicant or unit owner applications, ESA/ADA request
- Elevators
- Security Cameras
- On line card payment capability
- Any documents/records that are save and stored after the requirement for maintaining them has expired.

Admonition: it is important for board members to understand that there is no board member privilege. Therefore, their personal e-mails are not protected from discovery in litigation. Do you want to have your personal devices and/or your business/work data requested in litigation? The only possible protection for this is to either eliminate all email between and amongst board members or to create an intranet type email where the BOD must log into the website BOD section and the email is shared and goes to all BOD members.

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IS YOUR ASSOCIATION’S RISK MANAGEMENT PLAN PREPARED TO RESPOND TO THE FOLLOWING CLAIM SCENARIOS?

- Unit owner information being stolen by a hacker or disgruntled employee?
- An order from a governmental agency to notify current and past unit owners and tenants for whom information has been kept, but is subject to a data breach, and pay any fines or penalties? [see Mass.Gen.aws 93H, Sec. 1]. All 50 states and the DC have Data Breach Laws]
- To pay costs for credit monitoring for unit owners, tenants, employees, and anyone else where the Association still stores personally identifiable information?
- A laptop or Thumb Drive being lost or misplaced with Unit owner information (personally identifiable information” on it?)
- A hacker encrypting your computer, locking it down and demanding a ransom payable in Bitcoin to unlock the computer.
- Deal with your computer being invaded by a virus and compromising your entry key cards for your building, front gate, clubhouse, elevator and/or pool?

DO YOU KNOW WHO TO CALL IF THE ASSOCIATION INCURS ANY OF THE SCENARIOS ABOVE?

- Do you know who to call if any of the scenarios listed above occur? Time is critical!
- Do you have someone to call if the computer has been compromised? Time is critical !
- Do you have access to education, webinars and proactive risk management services available for the BOD?
- Do you have someone to defend the Association against claims by governmental agencies, or civil lawsuits (at someone else’s expense)?

Tip: There is one coverage under the cyber liability/data breach policy that in and of itself is worth its weight in gold and a sufficient reason to purchase the coverage. The data breach response services materials include a number to call if any of the scenarios above occur. What is provided is a coach or claim coordinator to assist you with the claim. Most policies provide a booklet outlining the services approved and listing approved Computer Forensic Experts, Forensic Accountants, Attorneys and other principals to assist with various Claim issues within their expertise.

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Long Island Chapter Calendar of Events

Thursday, March 23 - 6:00 to 8:00 p.m.

*Chapter Membership Meeting
with Educational Presentation
“Risk Management”*

*Blue Ridge Condominiums HOA - Clubhouse
899 Golf Lane, Medford*

Thursday, April 20th - 6:00 to 8:00 p.m.

*Chapter Membership Meeting
with Educational Presentation
“Collections and Foreclosures”*

*Summerfield HOA - Clubhouse
74 Summerfield Drive, Holtsville*

Saturday, May 6th - 8:00 a.m. to 2:00 p.m.

*Board Leadership Development Workshop
for Community Association Board Members
REGISTRATION REQUIRED*

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Thursday, May 18th - 6:00 to 9:00 p.m.

*Chapter Membership Meeting
with Educational Presentation
“Reserve Studies”*

*Fairfield at St. James HOA - Community Clubhouse
1 Fairfield Drive, St. James*

*June Chapter Membership Meeting
with Educational Presentation
“All Things STP”*

*September Chapter Membership Meeting
with Educational Presentation*

*“Remote Security Guarding—Increase Efficiency
While Reducing Your Operating Budget”*

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THE COST BENEFIT ANALYSIS OF THE STRATEGY TO MANAGE RISK OF CYBER EVENTS, DATA SECURITY AND CYBER CRI

Community association insurance professionals (“brokers”) have been proposing cyber liability and data breach coverage for many years. Under a Cost Benefit Analysis, this is no longer an optional coverage for the BOD fiduciaries. This should be part of every association’s insurance portfolio. Board members must understand, their primary obligation is to protect the association’s assets, tangible and intangible, and should heed the professional’s advice regarding the proposed insurance. Failure to obtain this coverage can result in draconian costs. Just Google Cyber Liability and Data Breach claim costs.

The “cost” to obtain a cyber liability/data breach response policy is relatively inexpensive and provides a great deal of both protection and access to extensive risk management information, data breach coaches, forensic computer experts, and training videos.

The first excuse from Boards and CAMs is “cost.” Cost is actually the main concern of the majority of Boards everywhere for all insurance. The typical policy is roughly between \$500 and \$2,500. The following two policies in Massachusetts are \$809 for a \$1 MM limit, \$902 for a \$250K limit, \$2,139 for a \$500K limit, and \$2,669 for a \$1MM limit. The key underwriting rating factors are: (a) location, (b) limit of liability requested (c) and the Association’s annual revenue (for the purpose of underwriting, annual revenue would be the total of all assessment and special assessments in the upcoming budget year, not capital or improvement or reserve funds). The second excuse is why do we need these coverages in the first place. Boards say: “we have not seen any claims for cyber liability or data breach in associations.” Boards say “associations are small fish, why would the hacker or cybercriminal spend his or her time on associations?” “Associations are not like Target, hospitals, law firms, insurance agencies, oil companies, large financial institutions.” What is happening is that the large targets are getting smart, significantly upgrading security measures and are doing significant training for

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all their employees. Hackers and cybercriminals are lazy and go for the easy score.

The underwriting of these policies is not very rigorous. Sometimes the key is learning the basic sections of the policy and determining what is covered. Most BODs understand that they are insured for any type of risk, injury or damage. However, the question is, are they self-insured or insured by an insurance policy. If it is the former, the insured will have to pay any attorney fees, settlements or judgments out of its own assets. In most states, fines and penalties are not covered.

WHAT INSURANCE AND RESPONSE COVERAGE DOES THE ASSOCIATION NEED?

In the normal course, the insurance coverage purchased by Associations includes two categories of benefits, “defense” of claims, governmental proceedings and civil lawsuits, and “indemnity” for settlements and judgments that the insured becomes liable. In addition, there is generally no coverage for fees, penalties ordered by regulatory entities or remedial measures. However, fines, penalties and remedial measures are covered to one degree or another in the cyber liability/Data Breach Response Services policies.

CONCLUSION

The insurers that provide this coverage have videos, articles and trainings, generally at no additional cost. This does not need to be an

“all or nothing” strategy. Simple things such as putting limitations on websites, requiring dual authorization to most IoT devices, and being a minimalist with respect to what you maintain.

In addition, insurance should be obtained. On the following page is a chart of Insurance Solutions for various risks that Associations may in fact experience and the various insurance policies that may respond. The challenge is that contrary to many other types of policies, the insurers have not developed standard terminology, or standard coverages. In addition, not all policies providing cyber liability/data breach response services are bundled in the same way with the same coverage. ■

You may reach Joel at his office via phone at #800.545.1538 x2240 or by email at Jmeskin@mcgowanins.com.

* Originally published in the February 2023 NE CAI/Condo Media Magazine.



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Information Security failure Liability	X		X*		
Regulatory Defense & Penalties		X			
Defamation	X		X*		X*
Media Liability - Copyright and Trademark Infringement, Invasion of Right of Privacy	X		X*		
Data Breach (Electronic and or hard copy data breach)	X				
Data Breach Unit Owner Notification Expense		X			
Credit Monitoring Expense		X			
Restoration Expenses		X			
Cyber Extortion/Ransomware Demands		X			
Crisis Management/Public Relation Costs		X			
Security Incident Investigations.		X			
Anti-fraud protection for unit owners		X			
Social Engineering/False Pretense/Phishing		X*		X***	
Forensic Expenses – computer forensic		X			
Compliance Assessment Fees		X			
Hacking Association Bank Account - and illicit wire transfer	X			X****	
Drones (crash/invasion of privacy)	X		X*		X
Unauthorized board meetings (i.e. Web Ex)			X*		
Misplaced Laptop with Personally Identifiable Information	X	X	X*		
Manipulation of computer programs by employees and outside third parties	X	X		X**	
Challenged decision of board due to unauthorized use of technology			X		
Cyber Bullying	X		X*		
CAM created exposure due to breach of CAM system		X			

*If the Association D&O or GL policy is silent regarding alleged cyber liability wrongful acts or occurrences, there may be coverage, primarily a defense obligation.

* Some Cyber Liability/Data Breach response are including Cyber Crime

**Some court cases have found coverage available under the computer fraud portion of the Fidelity/Crime Policy.

*** The Fidelity (Employee Theft)/Crime policy must specifically include Social Engineering/False Pretense Coverage

**** The Fidelity/Crime policy must include Wire Transfer Fraud aka Funds Transfer Fraud



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IS YOUR SHORELINE PUTTING YOUR PROPERTY VALUE AND RESIDENTS AT RISK?

By TREND NELSON, AQUATIC SPECIALIST - SOLITUDE LAKE MANAGEMENT

Imagine driving down a new street and noticing the most beautiful house you've ever seen. Its bright paint, glistening windows, and clean, welcoming porch show that it's well cared for. But you find yourself distracted by something – a neglected lawn. It's overrun with weeds, debris, and uprooted trees. It has dusty bare spots and deep channels where water flows anytime it rains. How can the owners take pride in their home when the yard looks like this?

This is a similar problem aquatic experts see with lakes and ponds. No matter how much a community association prioritizes water quality, it will never reach its full potential without a healthy shoreline. And just as a neglected lawn can lead to complaints from neighbors, cause home values to plummet, and even citations by the city, so can a deteriorated shoreline.

Most shoreline damage doesn't occur overnight, it slowly develops over the course of several years. If you assumed responsibility of a waterbody when it was in good condition, it can be easy to overlook the signs of deterioration – and forget that it's much more than an aesthetic problem. Shorelines with deep grooves, cracks, exposed pipes, and steep, jagged



peninsulas can lead to constant gripes from homeowners and cause serious safety issues for residents, guests, employees, landscapers, and other vendors working around the property. If someone falls or is injured as a result of a neglected shoreline, the association could be held liable.

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Waterbodies with degraded shorelines also tend to experience flooding problems. Most of the ponds we see in HOAs, POAs, CDDs, and urban areas are man-made to collect stormwater when it rains. Eroded sediment can fill them with muck, reducing depth and volume. Dangerous flooding is more likely to occur if the stormwater facility cannot function properly. In addition to the liabilities this can cause, flooding expedites the rate of erosion and may cause waterfront properties – and their estimated value – to “shrink” over time.



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In addition to the obvious signs of erosion, property managers may notice that maintaining healthy water quality is becoming more challenging. Lakes and ponds filled with muck are more likely to have dissolved oxygen (DO) deficiencies and elevated nutrient levels. These imbalances often manifest as nuisance aquatic weeds and toxic algae blooms, fish kills, bad odors, and cloudiness—resulting in an unsightly lake and an influx of complaints from residents.

These problems aren't just surface level, they can have disastrous, lasting consequences for residential communities. According to a 35-year study of 2,000 lake homes, Bemidji State University in Minnesota found that a 3 ft decrease in lake clarity caused a \$700 decrease in the sale price per foot of shoreline. For example, this calculates to a \$28,000 decline in the value of a 40 ft waterfront lot. We know the effects of erosion can be stressful, but when you fully understand how it occurs, you can implement strategies that will help preserve property values and make your job easier over time.

Poor shoreline management can also accelerate the timeline for more substantial maintenance services like dredging, which is one of the largest expenses a community may ever face. Though all waterbodies will need to be reset at some point by digging out all accumulated sediment, communities usually have 20-30 years to plan and budget for a major dredging project. In cases of severe erosion, this could drop to less than 10 years, leaving community leaders in a very difficult position – divert funds from other important maintenance projects or increase dues and suffer the blowback?

Once erosion occurs, it can be difficult to halt future damage. When partnering with a professional, they will work with you to evaluate the level of deterioration and muck development, and design a restoration plan that's customized to the unique qualities of your waterbody. Often, these

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involve the use of tools that allow aquatic experts to bioengineer a new shoreline that is incredibly stable and aesthetically pleasing. They may recommend pairing these efforts with mechanical hydro-raking to scoop out bottom muck in target areas, which will then be shaped and sodded over to reestablish several feet of land back to the property.

Shoreline erosion is a slow burn; it's easy to ignore, but it's also easy to intervene. Professionals recommend integrating several proactive solutions into the ongoing maintenance practices on your property:

- **Cultivate a beneficial** buffer of tall native plants around the perimeter of your waterbody to slow stormwater runoff and help hold the soil in place.
- **Monitor wildlife populations** – species like muskrats and invasive armored catfish (found primarily in Florida) are known to burrow and destabilize banks.
- **Introduce docks or special paths** for visitors to safely fish, kayak, or enjoy the view without trampling vulnerable areas.
- Partner with a professional to regularly **survey the area for invasive weeds** that can quickly take over sensitive shorelines.
- **Properly dispose** of yard waste, pet droppings, trash, and other debris so it doesn't decay and contribute to muck build up in your waterbody.

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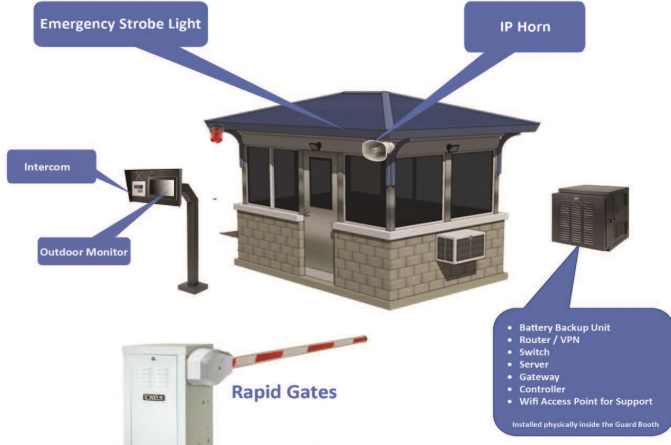
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Leadership is about making others better as a result of your presence and making sure that impact lasts in your absence.



...because not all property managers are created equal

Continued from Page 13

- **Reduce the use of lawn and garden fertilizers**, which fuel the growth of aquatic weeds and algae.
- Break down muck by **introducing nutrient remediation products**, biological bacteria, and aerators that increase DO, which is essential to the digestion process.

While erosion is a natural part of pond ownership, property managers have a lot of control over how quickly it occurs. Responsible management practices not only help enhance aesthetics and recreational opportunities, but also safeguard the value and reputation of a community.

Become the most desirable community in your region with beautiful, healthy lakes and ponds. With proactive shoreline solutions in place, you can be at ease knowing your water, residents, and assets are protected from future erosion damage. ■

SOLitude Lake Management is a leading environmental firm specializing in the sustainable management of lakes, stormwater ponds, wetlands, and fisheries.

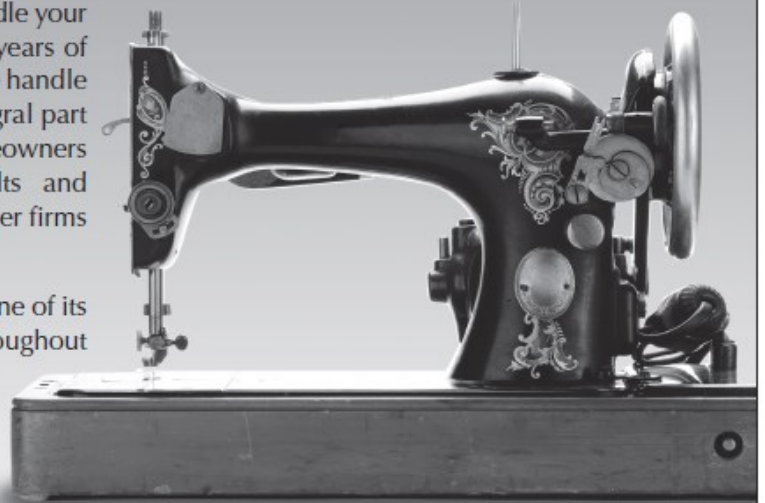
In this article you learned why erosion occurs around community lakes and ponds, how landscaping practices can negatively impact water quality, potential dangers and liabilities caused by neglected shorelines, and cost-effective strategies to make your shoreline a long-term asset.

To learn more about this topic, please visit their website at www.solitudelakemanagement.com/knowledge.day.

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