

DATE: November 4, 2010

FILE REF: IP-SE-2009-68-05745-05750

TO: Lynette Check – Southeast Region Natural Resources Engineer - Milwaukee

FROM: Andrew Hudak – Water Management Specialist - Waukesha **AH**

SUBJECT: North Lake Boat Launch Manual Code 3565.1 Approval

Approval of Department project located in or adjacent to navigable waters.

Project Name and Location: The Wisconsin Department of Natural Resources proposes to construct a public boat launch on North Lake. The overall purpose of the project is to provide year-round reasonable public access to North Lake for fishing, boating, and other recreational activities. The project is located in the SE ¼, S17, T8N, R18E, Town of Merton, Waukesha County.

Sponsor: Wisconsin Department of Natural Resources

The project has been reviewed and found to be consistent with the standards of:

Chapters 30 and 281 Wisconsin Statutes and Chapters NR 102, 103, 150, 151, 216, 299, 320, 329, and 341 of the Wisconsin Administrative Code.

Conditions of Approval:

1. Conditions of this approval pertain to the application and plans received on October 15, 2009, and revised on September 16, 2010. Written approval of the final construction plans is required from Water Management Specialist Andrew Hudak prior to scheduling the pre-construction meeting.
2. A copy of this approval shall be posted on the project site and visible from the waterway, beginning at least five days prior to construction and remaining at least five days after construction.
3. The project shall be completed before November 15, 2013.
4. Items listed below shall be provided to Water Management Specialist Andrew Hudak by Kapur & Associates or the selected contractor:
 - A. Subsequent modifications and revisions to the construction sequence and erosion control plan.
 - B. Subsequent modifications and revisions to the dewatering plan to manage all water pumped from excavations for the installation of the access road stormwater pipe storage units, the bio-filter, the boat launch ramp, and any other excavations requiring dewatering, including potential groundwater withdrawal.
 - C. A plan for removal and off-site disposal of any surplus excavated and dredged materials.
 - D. A construction note detailing the permanent site stabilization within 14 days of final grading. All disturbed areas shall be seeded and stabilized with mulch or erosion control blankets specified on the approved Product Acceptability List.
 - E. A cross section shoreline plan detail for the outlet of the French drain and bio-filter system. A deposit of natural river stone or fieldstone less than two cubic yards shall be used for bedding and protecting the outfall structure, provided the material is limited to the area beneath or within four feet of the structure. Dredging for the placement of the outfall structure may not exceed two cubic yards.
 - F. A construction detail for the screening fence along the southern property boundary indicating the location of support post installation in the wetland.

- G. Any revisions to the pavement detail and cross sections for the proposed road and parking lot areas.
 - H. The final landscape and buffer plan for the areas between the boat launch parking lot and the lake. The plan shall include the proposed species and density of native trees, shrubs, herbaceous plantings, and lakeshore emergent plantings.
5. A pre-construction meeting shall be scheduled four days prior to beginning construction. The meeting must include the project sponsor, the contractor, a Department of Administration representative, Water Management Specialist Andrew Hudak and Stormwater Engineer Bryan Hartsook.
 6. Silt fence, turbidity barrier, tracking pad and other best management practices identified on the approved erosion control plan shall be installed prior to the start of construction activities.
 7. The public boat launch ramp shall be constructed according to the draft final plan sheet C105 dated February 15, 2008, or by approved modifications. Launch ramp protection may consist of 24 inch diameter quarried limestone riprap submerged at the toe of the ramp. The side slopes of the ramp shall be protected with eight inch to 30 inch diameter natural fieldstone boulders.
 8. The construction of the public boat launch access road and parking lot may impact up to 7,011 square feet (0.16 acres) of wetland.
 9. This approval may be modified or revoked if the project is not completed according to the terms of this authorization and applicable Wisconsin Statutes and Administrative Codes.
 10. This manual code approval is conditioned upon compliance with the federal authorization under section 404 of the Clean Water Act issued by the U.S. Army Corps of Engineers on July 30, 2010.

Findings of Fact:

1. The Wisconsin Department of Natural Resources has submitted materials under its internal approval process (Manual Code 3565.1) to obtain approval to grade more than 10,000 square feet on the bank of North Lake, to install a boat ramp structure and two outfall structures on the bed of North Lake, to install four culverts crossings over the wetlands and to fill up to 0.16 acres of wetland for the construction of a public boat launch on North Lake.
2. North Lake is a 437 acre natural drainage lake with the Oconomowoc River as both its inlet and outlet. North Lake and portions of its wetland complex are navigable-in-fact at the project site and are impacted by the proposed project. North Lake is identified as an Area of Special Natural Resource Interest under Section NR 1.05(3), Wisconsin Administrative Code, as waters that contain endangered or threatened species or aquatic elements identified in the Wisconsin Natural Heritage Inventory.
3. North Lake in Waukesha County does not meet Sections NR 1.90 to 1.91, Wisconsin Administrative Code standards for reasonable public boating access.
4. The Department proposes to construct a year-round public boat launch with 16 car-trailer stalls, which includes one designated disabled accessible car-trailer stall and two car only stalls, which includes one designated as a disabled car-only stall, and a launch ramp.
5. The Department proposes to fill up to 0.16 acres of wetland. The wetlands were delineated by the Southeastern Wisconsin Regional Planning Commission (Commission) on July 24, 2003, and the Commission and the Department on July 8, 2008, and August 14, 2008. This delineation was field verified and concurred with by the U.S. Army Corps of Engineers on June 30, 2010. The U.S. Army Corps of Engineers issued a Letter of Permission (2008-04314-DJP) authorizing the wetland fill on July 30, 2010.

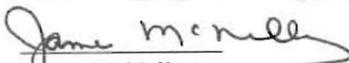
6. The Department completed field reviews on October 16 and October 24, 2009, and on September 1, 2010, and evaluated the project described in the application and plans submitted on October 15, 2009, and modifications provided on September 16, 2010.
7. The Department held a public informational hearing on September 30, 2010, pursuant to Chapter NR 310 of the Wisconsin Administrative Code.
8. The Department comment period ended on October 12, 2010, at 4:30 p.m. The Department received 197 comments for the record, including 103 opposed to the Department site, 93 favoring the Department site, and one neutral. The input received by the Department during the comment period was categorized as follows:
 - A. Public safety in the area will be impacted and emergency response time to the Department's public boat launch would be greater than at the Highway 83 site.
 - B. The Highway 83 site proposed by the North Lake Management District is a better alternative to construct a public boat launch.
 - C. The amount of wetland impact at the Department site was underestimated and an accurate estimate of wetland impact would result in significant adverse impacts to the functional values of the wetlands.
 - D. The Department site development will cause flooding and block natural drainage.
 - E. The Department development costs are underestimated. The development of a launch at the Highway 83 site would cost less.
 - F. Fish and wildlife resources will be impacted by the loss of wetland habitat and destruction of a unique sandbar.
 - G. Development of the Department site will reduce water quality of North Lake due to inundation of area septic systems, increase direct agricultural runoff due to the wetland fill and increase storm water runoff from the boat launch and parking area.
 - H. The Dual Site proposal for public access to North Lake should be the selected alternative.
 - I. The small community of North Lake will not benefit from the economic impact of development of an access on the Department site.
 - J. The Department should not consider any additional site alternatives but should build a public boat launch at its site to provide adequate public access.
 - K. Development of the Department site will impact the natural scenic beauty of the shoreline of North Lake.
 - L. Construction of a parking lot at the Department site will result in filling navigable waterways.
 - M. Development of the Department site will increase the potential for aquatic invasive species to enter North Lake.
9. Department resource managers concluded that:
 - A. No significant adverse wetland and environmental impacts would occur from construction of a public boat launch at the Department site.
 - B. Lakebed substrate at the launch ramp location is comprised of sand, gravel and cobble with no native aquatic plant beds. This area of the lake provides limited habitat to fish for feeding and spawning and no significant value to wildlife or water quality.
 - C. The wetland complex on and adjacent to the Department site is approximately 12 acres. The impacts to this wetland complex include 0.14 acres of fill to expand the existing access road and 0.02 acres of fill in a grassy area at the location of the proposed parking lot. The proposed wetland fill is not expected to cause significant impacts to the wetland's high functional values of providing flood storage capacity, water quality protection, groundwater recharge and discharge, aesthetics, and wildlife habitat due to the size of the remaining wetland.
 1. The wetland complex contains:
 - High to exceptional functional values for wildlife habitat, flood protection, water quality protection, groundwater recharge and discharge, and aesthetics.
 - Moderate functional values for fisheries and floristic diversity.
 - Low functional value for shoreline protection.

10. The basic project purpose is to construct a public boat launch on North Lake. Construction of a public boat launch is a water dependant activity. Construction of a public boat launch is not a wetland dependant activity.
11. The Alternatives Analysis for the proposed project concluded:
 - A. The *do nothing* alternative does not provide year-round reasonable public access to North Lake for fishing, boating, and other recreational activities and does not meet the basic project purpose.
 - B. No existing platted access sites are suitable for developing reasonable public boating access to North Lake.
 - C. Access at the North Lake Yacht Club is impracticable. That site is a privately owned club and its current use and configuration preclude development of a public boat launch.
 - D. Access development at the Cory Oil site is impracticable due to limited depth of the Oconomowoc River, the requirement for extensive dredging and the unavailability of winter access.
 - E. Access development at the Highway 83 site would result in significant adverse environmental impacts as identified in the findings of fact within the Department's decision dated March 1, 2010.
 - F. Alternatives to minimize wetland impacts were evaluated including the use of the existing access roadway, bridging the wetlands, developing a one-lane road with pullouts, and extending Reddelien or Silver Spring Roads to the Department site. These alternatives do not significantly reduce or eliminate adverse wetland or environmental impacts.
 - G. The Dual Site proposal was rejected because it would result in the greatest amount of wetland impact and significant adverse environmental consequences.
12. The Department public boat launch complies with the standards of Chapters 30 and 281 Wisconsin Statutes and Chapters NR 102, 103, 150, 151, 216, 299, 320, 329, and 341 of the Wisconsin Administrative Code.
13. The Department public boat launch will not adversely affect water quality or increase water pollution in the wetlands or in North Lake and will not cause environmental pollution as defined in subsection 283.01, Wisconsin Statutes.
14. The Department public boat launch meets Sections 1.90 and 1.91 of the Wisconsin Administrative Code public access standards and will provide reasonable year-round access to North Lake, a navigable water of the State. Meeting this standard will allow the Department to provide natural resources enhancement services including fish surveys, fish stocking, and eligibility for lake management grants.

Conclusions of Law:

1. The Department has authority under Manual Code 3565.1 to construct the project consistent with the above indicated Wisconsin Statutes and Administrative Codes

RECOMMENDED:


 James McNelly
 Southeast Region Water Leader

4 Nov 10
 Date

APPROVED:


 Gloria L. McCutcheon
 Southeast Region Director

November 4, 2010
 Date

Notice of Appeal Rights:

If you believe that you have a right to challenge this decision, the Wisconsin Statutes and Administrative Rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision, a petition must be filed with the appropriate circuit court and be served on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing, if applicable, the Wisconsin Statutes and Administrative Rules establish time periods and procedural requirements for such requests. A petition for hearing must be served on the Secretary of the Department of Natural Resources. The filing of a request for a contested case hearing does not extend the time period for filing a petition for judicial review.

cc: Department of Natural Resources – Jim Morrissey
U.S. Army Corps of Engineers – Dale Pfeiffle
Waukesha County Parks and Land Use – Dale Shaver, Director
Town of Merton – Richard Morris, Chairman
North Lake Management District – Jerry Heine
Waukesha Environmental Action League – Russ Evans
North Lake Development Group
Reddelien Road Neighborhood Association
Fritz and Margo Hanson
Thomas and Edda Peters