



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Gloria L. McCutcheon, Regional Director

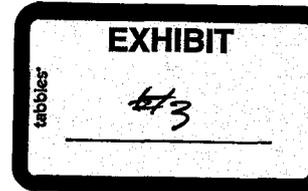
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March 1, 2010

IP-SE-2009-68-05054-05060
FILE REF: 3500

Samuel Bradt- Executive Member
North Lake Development Group
6925 Wildwood Point Rd
North Lake, WI 53029

Jerry Heine- Chairman
North Lake Management District
W326 N7050 North Lake Drive
Hartland, WI 53209



Dear Mr. Bradt and Mr. Heine:

The Department has completed its review of your Chapter 30 permit application to construct a boat launch at the STH 83 Site on the northeast corner of North Lake. The application included activities to construct a public boat launch and dredge two navigational channels. The project is located in the Town of Merton, Waukesha County.

Your application for the construction of the boat launch site is hereby denied. Your application for the dredging of two navigational channels is hereby granted with conditions.

It is our determination that your proposed project to construct a boat launch at this location would be detrimental to the public interest in North Lake and would not meet state water quality certification standards. A denial order is attached which includes our findings of fact listing the specific reasons for denial. Your rights to appeal this action are also defined. Attached is a list of the permit conditions to dredge two navigational channels according to the locations in your application.

If you have any questions about this determination, please contact me.

Sincerely,

Andrew Hudak
Water Management Specialist
(262) 574-2172

cc: Dale Pfeiffle, U.S. Army Corps of Engineers
Richard Mace, Waukesha County Zoning Administrator
Don Gallo, Reinhart Boerner Van Deuren s.c.
Richard Morris, Chairman Town of Merton

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

IP-SE-2009-68-05054-05060

Application of Samuel Bradt, North Lake Development Group and Jerry Heine, North Lake Management District to grade more than 10,000 square feet including wetlands on the bank of North Lake, construct a clear span bridge over a tributary to the Oconomowoc River, install riprap, build a boat ramp, and dredge portions of North Lake, Town of Merton, Waukesha County.

FINDINGS OF FACT AND ORDER

Samuel Bradt, North Lake Development Group, 6925 Wildwood Point Rd, North Lake, WI 53029 and Jerry Heine, North Lake Management District, W326 N7050 North Lake Drive, Hartland, WI 53029 [collectively "Applicants"] have filed an application with the Department on October 1, 2009, under Section 30 Wisconsin Statutes, to grade more than 10,000 square feet on the bank of North Lake including wetlands, construct a clear span bridge over a tributary to the Oconomowoc River, install rip-rap, install a boat ramp, and dredge portions of North Lake, Town of Merton, Waukesha County. Grading, Clear Span Bridge, Riprap, and Boat Ramp permits are Denied. Dredging Permit is Approved per Conditions.

FINDINGS OF FACT

1. Samuel Bradt, 6925 Wildwood Point Rd, North Lake, WI 53029, Executive Member of the North Lake Development Group and Jerry Heine, W326 N7050 North Lake Drive, Hartland, WI 53029, Chairman of the North Lake Management District [collectively "Applicants"] have filed an application with this Department on October 1, 2009, under Chapter 30 and Chapter 281, Wisconsin Statutes, to grade more than 10,000 square feet including wetlands on the bank of North Lake, construct a clear span bridge over a tributary to the Oconomowoc River, install riprap, build a boat ramp, [hereinafter collectively "construction of the Public Boating Access Site"] and dredge portions of North Lake, Town of Merton, Waukesha County.
2. North Lake is a 437 acre natural drainage lake with the Oconomowoc River as both the inlet and outlet. North Lake, the Oconomowoc River, and the spring tributary to the Oconomowoc River are navigable-in-fact at the project site and are all impacted by the project proposed. The Oconomowoc River and North Lake are identified as "Areas of Special Natural Resource Interest" under Chapter 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 has no public boat access. Current access to North Lake is by a small, unimproved private launch on the Oconomowoc River.
4. The Applicants proposes to construct a Public Boating Access Site with 16 car trailer parking stalls on the former Kuchler Site [hereinafter "Hwy 83 Site"] in the northeast corner of North Lake. The applicants have submitted conceptual plans for consideration by the Department to develop the former Kraus Site [hereinafter "Department Site] as a carry-in only and winter access site on the western shore of North Lake. The Applicants proposes to dredge up to 2,300 cubic yards of sediment for two navigational channels in the northeast corner of North Lake. The project as proposed will result in a direct loss of at minimum **0.137** acres of wetland adjacent to North Lake and the Oconomowoc River.

5. The Department completed field reviews of the project site on October 16, 2009, and October 26, 2009, and has evaluated the project as described in the application and plans submitted on October 1, 2009, and the modifications submitted to the Department on December 11, 2009, and January 25, 2010.
6. As part of the original submittal, the Applicants requested the Department hold a public informational hearing. The Applicants published a notice of complete application and notice of public informational hearing in the *Lake Country Reporter* on January 14, 2010. The Department held a public informational hearing at the Merton Town Hall on January 28, 2010, at 7:00 p.m. Approximately 140 interested citizens attended the hearing.
7. At the public informational hearing and prior to the close of the public comment period, which ended on February 8, 2010, at 4:30 p.m., the Department received 192 comments for the record. Public comments indicated: 141 people are in support of the STH 83 dual site proposal, 46 people are in opposition to the STH 83 dual site proposal, two people are neutral, two people did not indicate a position, and one person requested more information on both the STH 83 dual site proposal and the Department's proposal. The Department received a petition in support of the STH 83 Public Boating Access Site which contained 179 signatures. The Department categorized the concerns received during the public comment period. The comments can be categorized as follows:
 - a) Dredging is needed to remove Funk's Dam sediment that the Department allowed to enter North Lake during the dam removal.
 - b) Dredging is not needed since there are no navigational issues and there would be negative impacts from dredging.
 - c) The STH 83 dual site has less wetland impact than the Department's site.
 - d) The STH 83 dual site has more wetland impact than the Department's site.
 - e) The STH 83 Site has floodplain issues.
 - f) Neighbors of both sites have concerns of increased flooding.
 - g) The STH 83 dual site will help support North Lake businesses along STH 83.
 - h) Safety response is faster at the STH 83 Site.
 - i) Fish and Wildlife will be impacted by the STH 83 dual site.
8. Construction of the Public Boating Access Site is proposed within delineated wetlands.

FINDINGS OF FACT
REGARDING GRADING, CLEAR SPAN BRIDGE, RIPRAP, BOAT RAMP, WATER QUALITY
CERTIFICATION

9. The construction of the STH 83 Public Boating Access Site will be detrimental to the public interest in the navigable waters for the following reasons:
 - a) The proposed project contains approximately 1,250 feet of undeveloped shoreline frontage along North Lake, the Oconomowoc River, and the spring fed tributary to the Oconomowoc River. Following construction, the buffer width between the waterways and the launch is proposed to be between zero and 60 feet with an estimated average of 18 feet. The loss of average buffer width between the development and the navigable waterways will adversely impact the natural scenic beauty which is detrimental to the public interest.
 - b) The proposed project will negatively affect water quality. This is detrimental to the public interest in the navigable waterways. The proposed boat launch layout design will disturb in excess of 28,000 square feet of land. Approximately the same amount of land will be converted from pervious to impervious surfaces. No post construction stormwater management practices are proposed to treat runoff prior to discharging to wetlands and the waterways adjacent to the site. Remaining wetlands will degrade to invasive non-native species which tolerate larger water fluctuations, greater amounts of total

suspended solids, and increases in other pollutants. The location of the proposed wetland fill for the roadways, launch ramp, clear span bridge, parking stalls, and handicap parking stall will reduce the size and function of the wetland complex at the site which protects the water quality of North Lake. The location of the project adjacent to the inlet to North Lake, results in cumulative and secondary impacts to water quality. Surface water flow in this wetland has been well documented. The linear orientation of this wetland along the river corridor promotes absorption and settling of nutrient rich sediments. The project lies within mapped floodway and floodplain of the Oconomowoc River. Continual sedimentation from natural stream processes and the loss of settling and absorption in this wetland complex will increase turbidity and inflow of nutrients into the lake. Consequences include increased frequency and severity of algal blooms, greater dissolved oxygen level fluctuations, and decreased water clarity. Secondary impacts to water quality will occur from the proposed wetland fill, loss of upland buffers, and increased stormwater runoff to the remaining wetland complex. The wetland complex will receive at minimum a direct loss of 0.137 acres of wetland for the proposed STH 83 Public Boating Access Site within a critical area for the protection of water quality of North Lake and downstream waterways.

- c) The proposed project will impact wildlife utilizing the site, which is detrimental to the public interest in the navigable waterways. The proposed project would develop 0.7 acres of the 3.5 acre site and fill at minimum 0.137 acres of wetlands. This proposed disturbance will eliminate all wildlife habitat that existed within the foot print of the development. The location of the boat launch development at the STH 83 site will disrupt wildlife use on the remaining areas of the site due to human presence and disturbances. The orientation of the shoreline habitat present within the corridor of the Oconomowoc River inlet provides unique wildlife habitat. The STH 83 site currently provides year round stop-over habitat for waterfowl because of the location at the river delta which rarely freezes during the winter. Local and migrating wildlife feed on aquatic plants, fish, and insects in the inlet during fall, winter, and spring months. Waterfowl would cease using this area for resting and feeding due to the anticipated high level of boat traffic.
- d) The proposed project will have impacts to the fishery that are detrimental to the public interest in the navigable waterways. The proposed shoreline and navigational channel dredge area bottom substrate consists of sand and gravel overlain by finer materials typical of a lake delta. Aquatic plants including submerged, floating, and emergent vegetation provide habitat that are commonly used by northern pike for spawning, rearing, and feeding; largemouth and smallmouth bass and centrarchid panfish for spawning, rearing, and feeding; walleye for feeding; and forage fish species for feeding and resting. The springs located adjacent to the Oconomowoc River provide a coldwater discharge, which is important during periods of low precipitation. Sloughs and channels throughout the property are utilized by fish for spawning and rearing habitat during wet periods in the spring. The proposed project will eliminate some of this critical habitat for the life cycle of fish species. Additionally, the project is reasonably anticipated to require future maintenance dredging that would have secondary impacts to the quality of the fisheries and their habitat. The proposed wetland fill would impact hydrologic function and flow in the lake delta area. This alteration would impact water quality, sediment depositional patterns, and near shore habitat that provide a quality fishery in North Lake.
- e) The proposed project will be detrimental to the public interest in public recreational activities including but not limited to hunting, fishing, and river paddling. Currently the Corey Oil undeveloped launch site on the Oconomowoc River serves as a private access for small boats such as canoes, kayaks, and small rowboats. Conflicts are anticipated near the mouth of the Oconomowoc River between the users of the proposed STH 83 Public Boating Access Site and small watercraft paddling down river. The river inlet receives high fishing pressure from early spring to summer as anglers target spawning fish throughout this area. A high traffic launch in a confined area will cause use conflicts between motorboat access users and anglers. Hunters utilize the river inlet during the fall months for waterfowl hunting. During the fall, use of the STH 83 Public Boating Access Site will prevent hunters from safely hunting in the inlet and deter waterfowl from using the area.

10. The basic project purpose is to construct a Public Boating Access Site on North Lake. Construction of a Public Boating Access Site is not a wetland dependent activity.
11. North Lake is a developed inland lake and no lakefront sites are available to meet the project purpose that would completely avoid adverse impacts to wetlands.
12. One or more practicable alternatives exist which would not result in significant adverse impacts to wetlands nor result in other significant adverse environmental consequences. The review of the alternatives analysis for the project activity concluded the following:
 - a) The Applicant proposed the construction of a dual site access for a Public Boating Access Site at the STH 83 Site and proposes the Department construct a carry-in only public access boat launch at the Department Site.
 - b) The Applicants' initial project plans proposed direct impacts to **0.237** acres of wetland for the construction of the Public Boating Access Site at the STH 83 site.
 - c) On January 25, 2010, the Applicant submitted an alternative design for the STH 83 site utilizing spancrete structures that propose to reduce the direct wetland impacts to a minimum of **0.137** acres at the STH 83 Site.
 - d) The Applicants' proposes the Department would construct a carry-in only public boat access on the Department Site to provide ice fishing in their dual-site proposal. At minimum **0.071** acres of wetland would be required to provide road access to a carry-in access at the Department Site.
 - e) Including impacts to both the Department site and the STH 83 Site, the dual site proposal, proposed by the applicant, would require a minimum of **0.208** acres of wetland fill. The dual-site proposal would have significant adverse impacts to wetlands and a practicable alternative exists to avoid and minimize some of those adverse impacts.
 - f) Contrary to the Applicant's proposal for the Department, the Department is proposing to develop its' site beyond a carry in access site resulting in approximately **0.16** acres of wetland fill
 - g) Taking into account the cost, available technology and logistics, the Department proposed public boating access site constitutes a practicable alternative to the Applicants' proposed dual-site project that will not have significant adverse impacts to functional values of wetlands, significant adverse impacts to water quality or result in other significant environmental consequences.
13. The Applicants' proposed Public Boating Access Site will cause significant adverse impacts to wetland functional values, water quality and significant adverse environmental consequences. Significant adverse impacts to the wetland functional values, secondary impacts on wetland functional values, other significant environmental consequences, and potential adverse impacts to wetlands in areas of special natural resource interest and environmental corridors would occur with the construction of a Public Boating Access Site at STH 83 and proposed carry-in only public access at the Department Site. The impacts identified to occur at the STH 83 Site include:

a) Floristic Diversity

The proposed Public Boat Access Site at STH 83 will have an impact to floristic diversity in the wetland complex. Plant species impacted by the wetland fill for the vehicle turnaround and launch consists of mainly non-native ephemeral fresh wet meadow plant species associated with a maintained lawn such as Kentucky bluegrass. Other directly impacted species from the proposed design include portions of the scrub/shrub and floodplain forest wetland plant community that includes species such as wood sedge, pink weed, red osier dogwood, silky dogwood, autumn willow, yellow birch, black ash, green ash, American basswood, jewelweed, skunk cabbage, reed canary grass, fringed loosestrife, common buckthorn, glossy buckthorn, tussock sedge, fowl manna grass, nanny berry, elderberry, and bottlebrush sedge. A clear span bridge is proposed to cross a portion of a navigable spring connected to the Oconomowoc River. Direct impacts due to shading will affect to high quality sensitive species within the cold water spring complex

such as skunk cabbage, watercress, jewelweed, and marsh marigold. The orientation of the launch site provides no buffer between impervious surfaces and higher quality, undisturbed portions of the wooded floodplain wetlands immediately adjacent to the navigable spring, the Oconomowoc River, and North Lake. Lack of stormwater treatment will cause secondary impacts to floristic diversity. The launch will isolate a wetland within the interior of the site which will likely alter the hydrologic functions of this portion of the wetland. The plant community will experience a decrease in diversity by a loss of sensitive wetland species and proliferation of runoff tolerant, non-native, invasive species such as reed canary grass, common and glossy buckthorn. Secondary impacts are expected from the proposed concrete span structures. The existing wetland footprint below these structures will need to be excavated up to three feet to provide at least one foot of clearance. Support footings are proposed to be installed down to five feet below existing grade to reach suitable load bearing soils. Peat wetland soils are present within these areas and will need to be excavated causing an expected large impact zone. Vegetation will be removed from beneath the structures and slumping is expected to occur, impacting the adjacent wetland plant communities. Other significant environmental consequences will result from the proposed dredging to gain access for the boat launch. Currently a moderate diversity of native aquatic plant species exists within the proposed navigational channel dredging and includes white water lily, elodea, valsineria, coontail, flat stem pondweed, northern water milfoil, and grass-leaved arrowhead. Following the initial dredging and routine maintenance dredging, it is expected that non-native invasive species such as Eurasian water milfoil and curly-leaf pondweed will invade the area and out compete native aquatic plants.

b) Water Quality

The proposed Public Boat Access Site will have a significant adverse impact to water quality function of the wetlands adjacent to North Lake, the Oconomowoc River, and the spring tributary to the Oconomowoc River. The proposed boat launch layout design will disturb in excess of 28,000 square feet of land of which at minimum 5,962 square feet of wetland. Nearly all land disturbed will be converted from pervious to impervious surfaces for the launch and parking. There are no post construction stormwater management practices proposed to treat runoff prior to discharging to the wetlands and waterways adjacent to the site. Surface water flow within this wetland is well documented. The linear orientation of this wetland along the river and lake corridor promotes absorption and settling of nutrient rich sediments. The project lies within mapped floodway and floodplain of the Oconomowoc River. Continual sedimentation from natural stream processes and the loss of settling and absorption in this wetland complex will increase turbidity and inflow of nutrients into the lake. A consequence would be increased frequency and severity of algal blooms, greater dissolved oxygen level fluctuations, and decreased water clarity. Wetlands, such as those contained within the site, that are located within the upper reaches of the watershed are critical to protecting downstream water quality of the Oconomowoc River system. Significant secondary adverse impacts to water quality functions of the wetland complex on site will occur from the proposed fill, loss of upland buffers, and increased stormwater runoff to the remaining wetland complex. The wetland complex will lose at minimum 0.137 acres of wetland for the proposed public launch facility within a critical area to protect water quality of North Lake and downstream waterways. Significant adverse secondary impacts will impair the ability of the remaining wetlands on the site to function to protect water quality.

c) Fish and Fish Habitat

The proposed STH 83 Public Boat Access Site will have significant adverse impacts on fish and fish habitat in North Lake. The proposed shoreline and navigational dredge area consists of sand and gravel overlain by finer materials typical of a lake delta. Aquatic plants in the dredge area consist of submerged, floating, and emergent vegetation. The habitat types present are commonly used by northern pike, largemouth and smallmouth bass and centrarchid panfish for spawning, rearing, and feeding. Walleye use this area for feeding; and forage fish species for feeding and resting. The springs located adjacent to the Oconomowoc River provide a coldwater discharge, which is important during periods of low precipitation. Sloughs and channels throughout the property are utilized as spawning and rearing habitat during wet periods in the spring. The proposed wetland fill would impact hydrologic function and flow in the lake delta area. This

alteration would impact water quality, sediment depositional patterns, and near shore habitat that impacts the quality of the fishery in North Lake. Dredging of the navigational channel impacts pockets of gravel and cobble habitat present in this area of the lake and river inlet that are utilized by walleye. Dredging the navigational channel will impact the sand and fine material that offers nesting habitat for largemouth bass, smallmouth bass, and centrarchid panfish. The finer organic sediment that supports the native aquatic plants that provide feeding and resting habitat for forage fish and juvenile gamefish species will be impacted. Deepening and widening of this area will result in a significant loss of habitat utilized for the majority of fish species in North Lake. Other significant adverse environmental consequences and cumulative impacts to fish habitat in the proposed dredging areas are expected. Maintenance dredging will occur on a routine basis preventing the restoration of the area to a native aquatic plant dominated habitat.

d) Wildlife and Wildlife Habitat

The proposed Public Boat Access Site will have significant adverse impacts to wildlife utilizing the site. The existing project would develop 0.7 acres of the 3.5 acre site and fill at minimum 0.137 acres of wetlands. The entire site lies within primary environmental corridor that encompasses shorelines of North Lake and the Oconomowoc River. A variety of wildlife were observed utilizing the property, including gray squirrels, eastern chipmunks, American robins, cedar waxwings, American cardinals, American goldfinches, black-capped chickadees, white-breasted nuthatches, yellow-rumped warblers, mallard ducks, hairy woodpeckers, and eastern phoebes. In addition the property provides good habitat for a variety of song birds, waterfowl, wading birds, small to medium size mammals, turtles, frogs, toads, and likely other amphibians and reptiles. The site contains a mix of wildlife habitats, including standing dead (snag) trees with multiple woodpecker/wildlife cavities, mature trees, lowland shrubs, river and lake shoreline, and several springs. There was a fair amount of woody debris and rocks that provide wildlife habitat. The site has a relatively high dominance of common and glossy buckthorn. In spite of the buckthorn on the site, the property does provide quality wildlife habitat due to its vegetative structure and proximity to North Lake, the Oconomowoc River, and the associated wetlands. This proposed project will eliminate all wildlife habitats that existed within the foot print of the development. Secondary adverse impacts will occur in proximity of the boat launch. The location of the STH 83 site will disrupt the wildlife use on the remaining areas of the site due to human presence and disturbances. The orientation and shoreline habitat present within the corridor of the Oconomowoc River inlet provide unique wildlife habitat. Local and migrating wildlife feed on aquatic plants, fish, and insects in the inlet during fall, winter, and spring months. Waterfowl would cease using this area for resting and feeding due to anticipated high boat traffic. Native aquatic plants that grow within the navigational channel help support waterfowl, reptiles, amphibians, and furbearers. Removal of native aquatic plants will displace these wildlife species resulting in less desirable habitat.

e) Groundwater Recharge/Discharge

The proposed STH 83 Public Boating Access Site will have a significant adverse impact on the function and interaction of groundwater with the wetland complex. There are multiple springs located along the southern property boundary between the proposed boat launch and the adjacent riparian property owner Evergreen Condominiums. The springs can be observed and are evident through surface drainage and groundwater discharge signature species such as watercress, jewelweed, and marsh marigold. The proposed STH 83 launch design includes excavation, fill, and concrete span structures within the spring complex, significantly impacting groundwater discharges. Functions of these springs in the wetland complex provide cool water refuges that increase species diversity, provide improved water quality, and contribute base flow to the Oconomowoc River.

f) Shoreline Protection

The proposed STH 83 Public Boating Access Site will have significant adverse impacts to the shoreline protection along the banks of the Oconomowoc River and North Lake. Wetlands are orientated along the shoreline frontage within the proposed limits of the development of the launch. These wetlands serve to

protect and stabilize the shoreline from forces of wind and wave action along the shores of North Lake and erosion forces from current flows along the banks of the Oconomowoc River. Extensive effort will be needed to stabilize portions of the shoreline from erosion to protect the boat launch infrastructure. Secondary impacts from shoreline erosion and the shoreline protection features of the wetland complex are expected. Shoreline erosion contributes sediment to waterways that impact aquatic plants, increases turbidity, increases nutrients, and promotes algal blooms. The structural techniques used to stop shoreline erosion would require the replacement of the natural shoreline features and degrade the quality fish and wildlife habitat that previously existed.

g) Flood Protection

The proposed STH 83 Public Boating Access Site will have significant adverse impacts on flood protection. Surface water flow within this wetland is well documented. The linear orientation of this wetland along the river and lake corridor promotes storage and provides attenuation of the Oconomowoc River flood waters. The project lies within the mapped floodway and floodplain of the Oconomowoc River. The proposed project may have limited backwater effect during flood events based on the limited proposed grade changes; however loss of wetlands within the floodplain and floodway will increase the likelihood and severity of downstream flooding during storm events.

h) Education, Recreation and Aesthetics

The proposed STH 83 Public Boating Access Site will have primary and secondary impacts to the multiple uses that occur in the wetland complex. The wetland complex serves as a corridor along the Oconomowoc River and North Lake that experiences high pressure from recreational users. The main recreational uses are fishing, hunting, boating, canoeing, kayaking and viewing wildlife. These uses will be impacted by a decline in the quality of the fish and wildlife habitat, resulting in decreased usage by many species currently utilizing this area. The quality of the recreational experience by users will decline due to the loss of natural scenic beauty. Local school groups often participate in field trips and class exercises at the Corey Oil boat launch located on the Oconomowoc River. Environmental education experiences are dependant on the wetland and waterway quality. Significant environmental consequences resulting from the proposed project may impact these educational opportunities.

14. There is not reasonable assurance that the Public Boating Access Site will comply with the standards found in Chapter NR 299.04, Wisconsin Administrative Code. Water quality certification is hereby denied
15. The STH Public Boating Access Site project will not conform to the standards in Chapters 30 and 281 of the Wisconsin Statutes, Chapters NR 103, 299, 320, 328, 329, and 341 of the Wisconsin Administrative Code, Section 401 of the Federal Clean Water Act.
16. The proposed STH 83 Public Boating Access Site will adversely affect water quality and will increase water pollution in the Oconomowoc River and North Lake and will cause environmental pollution as defined in subsection 283.01, Wisconsin Statutes.

**CONCLUSIONS OF LAW
REGARDING GRADING, CLEAR SPAN BRIDGE, RIPRAP, BOAT RAMP, WATER QUALITY
CERTIFICATION**

1. The Department has authority under Sections 30.12, 30.123, and 30.19, 281.15, Wisconsin Statutes, and NR 299 and NR 103, Wisconsin Administrative Code, Section 401 (Clean Water Act) and the foregoing Findings of Fact, to issue an order denying the permits requested for grading, clear span bridge, riprap, boat ramp, and water quality certification for the STH 83 Public Boating Access Site.

2. The STH 83 Public Boating Access Site is detrimental to the public interest.
3. The STH 83 Public Boating Access Site is not wetland dependent.
4. No practicable alternative exists to the proposed project at the STH 83 Public Boating Access Site that would completely avoid adverse impacts to wetlands.
5. A practicable alternative exists that would minimize adverse impacts to wetlands and would not result in other significant adverse environmental consequences.
6. The project proposal would result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality and other significant adverse environmental consequences.
7. The Department has complied with Section 1.11, Wisconsin Statutes

ORDER
REGARDING GRADING, CLEAR SPAN BRIDGE, RIPRAP, BOAT RAMP, WATER QUALITY
CERTIFICATION

IT IS THEREFORE ORDERED THAT the application of Samuel Bradt, North Lake Development Group, and Jerry Heine, North Lake Management District, under Section 30.12, 30.123, and 30.19, Wisconsin Statutes, for a permit to grade more than 10,000 square feet including wetlands on the bank of North Lake, construct a clear span bridge over a tributary to the Oconomowoc River, install riprap, and build a boat ramp on North Lake, Town of Merton, Waukesha County located in the Town of Merton, Waukesha County, be, and the same hereby is, denied.

FINDINGS OF FACT
REGARDING DREDGING

17. The initial proposed dredging scope, submitted on October 1, 2009, included up to 32,000 cubic yards of soft sediment to be dredged out to the ten foot depth contour. A revised scope was submitted on December 11, 2009, that proposed dredging 2,300 cubic yards for two navigational channels that would provide navigational access for the public boat launch and for riparian access in front of the Evergreen Condominiums along the northeast shoreline. The proposed dredge channels would be approximately 30 feet by 450 feet. The riparian access channel would be dredged to the three foot depth contour and the navigational channel would be dredged out to the five foot depth contour.
18. The dredging plan for navigational channels contained within the application for the STH 83 Public Boating Access Site meets all state standards. No significant adverse environmental impacts are attributed from the dredging activity alone. However, the impacts of dredging were taken into consideration within the alternative analysis and contribute to the significant adverse environmental consequences anticipated for the development of a public boat launch at the STH 83 Public Boating Access Site. Anticipated impacts from dredging include:
 - a) Dredging will to cause direct mortality in the reptile and amphibian populations. Native aquatic plants that grow within the proposed navigational channels support waterfowl, reptiles, amphibians and furbearers. Removal of native aquatic plants will displace wildlife and will result in less desirable habitat.
 - b) Dredging of the navigational channels will impact pockets of cobble and gravel habitat. This habitat is used extensively by walleye for feeding. Dredging the navigational channel will impact the sand and fine material that offers nesting habitat for largemouth bass, smallmouth bass, and centrarchid panfish. The finer organic sediment that supports the native aquatic plants that provide feeding and resting

habitat for forage fish and juvenile game fish will be impacted. Deepening and widening of this area will result in a significant loss of habitat utilized for many of the fish species in North Lake.

c) Non-native aquatic plant species will grow in the disturbed areas where recent dredging occurred.

19. Prior to 2007 and 2008, the Department had acknowledged limited dredging may improve navigation conditions in the areas approved for dredging within this decision document.
20. Observed changes following recent high water events of both the 2007 and 2008 floods showed that sediment depths and location have shifted, water depth has increased, and the quality of native aquatic plants has improved.
21. The proposed navigational channel dredging, if performed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wisconsin Statutes
22. The Department has evaluated the proposed project in light of the Wisconsin Environmental Policy Act (Section 1.11, Wisconsin Statutes) and has determined that the granting or denial of the permit would not be a major state action significantly affecting the quality of the human environment.
23. The Department of Natural Resources and the applicant have completed all procedural requirements for the proposed dredging of the navigational channels and the dredging project as permitted will comply with all applicable requirements of Sections 1.11, 30.20(2), Wisconsin Statutes and Chapters NR 102, 103, 115, 116, 117, 150, 299, and 345, Wisconsin Administrative Code.

Samuel Bradt, North Lake Development Group, 6925 Wildwood Point Rd, North Lake, WI 53029, and Jerry Heine, North Lake Management District, W326 N7050 North Lake Drive, Hartland, WI 53029, are hereby granted under Section 30.20, Wisconsin Statutes, a Chapter 30 permit to remove up to 2,300 cubic yards of materials from the bed of North Lake, located in the Town of Merton, Waukesha County, also described as the NW1/4 of Section 16, Township 8 North, Range 18 East, subject to the following conditions:

PERMIT CONDITIONS REGARDING DREDGING

1. You shall hold a pre-dredging meeting. All contractors and sub-contractors shall attend the meeting. A Department staff member must attend the meeting. You shall notify the Department in writing a minimum of 14 days prior to the date of the meeting.
2. You must notify Water Management Specialist Andrew Hudak by phone (262) 574-2172 at least five days before starting construction and again not more than five days after the project is complete.
3. You must complete the project as described on or before March 1, 2013. If you will not complete the project by this date, you must submit a written request for a time extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
4. This permit does not authorize any work in areas other than those specifically described in your navigational dredging application and plans submitted December 11, 2009, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval by the Department.

5. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.
6. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is inspecting the project's construction, operation, maintenance or permit compliance.
7. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
8. You must post multiple copies of this permit. One at the project staging site facing the waterway, one at the project staging site facing the road, one on the dredging barge, and one at the dewatering/disposal site for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy all approved elements of the plan available at the project site at all times until the project is complete.
9. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions within this permit.
10. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
11. You shall supply a copy of this permit to every contractor associated with this project.
12. You, your agent, and any involved contractors or consultants may be considered a party to a violation pursuant to Section 30.292, Wisconsin Statutes, for any violations of Chapter 30, Wisconsin Statutes or this permit.
13. Erosion control measures must meet or exceed the standards in the State of Wisconsin's Construction Site Erosion and Sediment Control Technical Standards Handbook.
14. The removal of soft sediment material is limited to the use of a hydraulic dredge.
15. You shall provide, to the Department for review and approval, a detailed dredging plan including the following information
 - A detailed plan sheet with sediment depth analysis and characterization within the proposed navigational channel dredge alignment. This analysis will be reviewed by Department staff to determine target depth allowances within the navigational channel dredging. No removal of native bed material will be permitted for the navigational channel.
 - A detailed plan sheet with a top view of the navigational channel to show exact alignment, length, width, and distance from shore. The navigational channel shall be no wider than 30 feet in width and with maximum 4:1 side slopes and to a water depth of no greater than five feet.
 - A detailed plan sheet with cross sections of the navigation channel every 50 feet to show water depth, soft sediment depth, target depth, depth to native bottom, side slopes, and top and bottom width of channel.
 - A detailed plan sheet with a top view of the northeast dredge area to show exact length, width, and distance out from shore to provide a post dredging water depth of three feet.
 - A detailed plan sheet with at cross sections of the northeast channel every 50 feet to show water depth, soft sediment depth, target depth, depth to native bottom, side slopes, and top and bottom width of channel.
 - A detailed erosion control plan including a turbidity barrier around the proposed dredge areas for both the navigational channel and northeast shoreline and any other erosion control practices. Please include a detail details for all erosion control best management practices.

16. You shall mark the location and width of both proposed channels prior to dredging. The marked channel alignments and target depths shall be approved by the Department prior to dredging. Once approved, the dredge locations shall be located by GPS equipment and dredging may commence.
17. You shall perform a post dredge survey within both channels within seven days following completion of dredging activities. Target elevations shall be measured to one-tenth of one foot. The removal shall be made to provide a relatively level bottom condition within the channels and shall have maximum side slopes of four foot horizontal to one foot vertical and a maximum post depth of five feet in the navigational channel and three feet in the riparian access channel. Native hard bed material shall not be dredged or disturbed at any location.
18. You shall provide a signed letter of permission or agreement by the owner of the North Lake Sand and Gravel Quarry to allow the proposed sediment dewatering and disposal.
19. You shall develop a site specific disposal plan for review and approval by the Department including erosion control, dewatering, and materials management at the North Lake Sand and Gravel Quarry proposed site. This plan shall include all aspects of the project starting from initial land disturbance through final site stabilization, including management of the sediment generated from the project, management of the carriage water from the geotextile bags, and monitoring of other dredging associated discharges from the site to the Oconomowoc River. You shall not deposit or store any of the removed material in any floodplain, wetland, or waterway.
20. Solids generated from this site may be incorporated into the quarry reclamation plan provided the solids are not sold. Sale to third parties is prohibited unless additional approvals are received by the Department.
21. Upon final removal of dredged material, geotextile bags shall be properly disposed of in a landfill.
22. You shall obtain permit coverage and follow all permit conditions for the dewatering operation associated with the discharge of carriage water from the Department's Wastewater program. The request form can be found at http://www.dnr.state.wi.us/org/water/wm/ww/gpindex/46558_rfc.pdf and is WPDES Permit No. WI-0046558-4.
23. Any requirements for coverage under the wastewater permit for the discharge of carriage water shall be addressed within the sediment site disposal plan.
24. You shall pressure test all equipment daily and shall immediately shut down dredge operations if a leak is detected. The leak shall be properly repaired and pressure tested prior to resuming dredge activities. Any leak or spill shall be reported to the Department within 24 hours of the occurrence.
25. You are limited to one shoreline staging area located at the North Lake Development Group property as identified on the application materials. You shall install and maintain proper erosion control measures per the State of Wisconsin Technical Standards, install equipment storage containment measures to ensure fluids leaking from equipment do not enter wetlands or waterways, and provide the Department an updated erosion control plan, equipment containment plan, and spill prevention/response plan for review and approval prior to mobilizing to the site. You shall include details of the slurry pipe locations, road crossings, and booster pump locations. Any pier or watercraft used for dredging may not impede public navigation.
26. Dredging may not occur between March 15 and May 15 of any calendar year to protect fish spawning.
27. You shall develop a plan for habitat mitigation within the proposed dredge areas as submitted in your application materials. This plan shall be submitted to the Department for review and approval prior to commencing dredging.

28. You shall properly mark all in water equipment to U.S. Coast Guard standards and the State of Wisconsin standards for navigation.
29. All equipment used for the project including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps should be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters should not be used on other non-infested waters.

- a) **Inspect and remove** aquatic plants, animals, and mud from your equipment.
- b) **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c) **Dispose** of aquatic plants and animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d) **Wash your equipment** with hot (>104° F) and/or high pressure water OR allow your equipment to **Dry thoroughly for five days.**

CONCLUSIONS OF LAW REGARDING DREDGING

1. The Department has authority under Chapter 30.20, Wisconsin Statutes, to issue a permit for the dredging of the navigational channels.
2. The Department has complied with Section 1.11, Wisconsin Statutes

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

A request for contested case hearing must meet the requirements of section 30.209, Wisconsin Statutes, and section NR 310.18, Wisconsin Administrative Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wisconsin Statutes, may be violated; and
3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wisconsin Statutes; and,
4. Your commitment to appear at the contested case hearing, if one is granted, and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at Waukesha, Wisconsin on March 1, 2010

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By



Andrew Hudak

Water Management Specialist