

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Matthew J. Frank, Secretary  
Gloria L. McCutcheon, Regional  
Director

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10/5/2010

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

Dear Mr. Bradt:

The Department of Natural Resources (Department) reviewed your August 13, 2010 application to construct a public boat access on North Lake. The proposed project requires authorization under Chapter 30, Wisconsin Statutes, Section 401 of the Federal Clean Water Act and Chapter 299 of the Wisconsin Administrative Code. Activities include grading in excess of 10,000 square feet, filling adjacent wetlands, placing a boat ramp and dredging a navigational channel. The project is located in the SE ¼ NW ¼ Section 16 T8N R18E. Town of Merton, Waukesha County.

On March 1, 2010 the Department issued a decision accompanied by a notice of appeal rights for a similar project at the same location. The Department denied the construction of a boat launch and public access at this location and approved minimal dredging in the delta of the lake. The Department did not receive a timely appeal of this decision.

The changes in the August 13, 2010 application included:

- Two car-top parking spots
- A rain garden
- Increased access road widths
- Relocated the toilet facility
- A clear-span bridge over wetlands near the entranceway

While these proposed modifications may improve the design of the access facility, they do not address the basis for the Department's original denial of the access site at this location. In essence, the August 13, 2010 modifications do not provide a substantial change from the wetland and environmental impacts which were identified in your original application. The Department's March 1, 2010, decision clearly explained the impacts of that project on the adjacent wetland quality and public interests. These impacts remain valid, unchanged and uncontested.

The Department will not process the August 13, 2010 application or future applications unless a significant change has been made that would lessen the environmental impacts of the proposed project. The Department is dismissing your application based on the legal principle of "estoppel on the record." You did not properly seek administrative or judicial review of the March 1, 2010 denial of your application for your original project. The revisions to the project in the new submittal do not change the material facts on which the denial was based including detrimental impacts on the environment and wetlands.

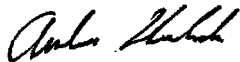
Having failed to properly and timely seek administrative or judicial review of the March 1, 2010 denial, you are estopped by the record in that decision. Attempting to raise issues that were or could have been litigated in the prior



proceeding by resubmitting essentially the same application is upheld in the decision Archarya v. AFSCME Council 24 WSEU, 146 Wis.2d 693 (Ct. App. 1988)

Your fee has been returned within this letter. If you have any questions you can contact me at (262) 574-2172.

Sincerely,



Andrew Hudak  
Water Management Specialist

Cc: Don Gallo- Attorney  
Jerry Heine- North Lake Management District Commissioner