



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Lloyd L. Eagan, Regional Director

South Central Region Headquarters
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REC'D DEC 22 2006

December 18, 2006

Larry Nelson
City of Madison
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Subject: Olbrich Park shoreline restoration application

Dear Mr. Nelson:

I received your letter regarding the Olbrich Park shoreline restoration application. As you are aware, I have held this application incomplete until I receive additional information and plan revisions that were requested on July 26, 2006 and August 21, 2006. Incomplete information includes a revised shoreline plan for vegetated armoring at a moderate energy site, and a plan to bring the un-permitted beach into compliance. You had specific questions regarding statutory authority for the information I requested.

First, you asked for the regulatory citation for having the beach come into compliance with state law. Sand or other similar materials placed on the bed of a public waterway are regulated under 31.12, Wisconsin State Statutes. I have no record of any permit issued for the sand blanket at Olbrich Park. The Department restricts the placement of sand on public waterways because of its tendency to move from the site where it is placed, which can negatively affect aquatic habitat.

Second, you asked for the regulatory citations for requirement of vegetated armoring at a moderate energy site. Section 30.12, Wisconsin State Statutes and chapter NR 328, Wisconsin Administrative Code provide the Department legal authority over structures and deposits in navigable waters. The shoreline restoration project proposed at Olbrich Park is required to be reviewed under our individual permit process due to the total length of the project (3165 feet). Analysis of individual permits is not constrained to the general permit standards identified in s. NR 328.05. However, the intent of NR 328 is to require vegetation above the ordinary high water mark (OHWM) as evidenced by s. 328.05(4)(m) under riprap repair or replacement, and s. NR 328.05(5)(j) under riprap or vegetated armoring. It is well within statutory authority to require vegetated armoring at this site. *subjective & persuasive*

Third, you asked for the regulatory citation for the requirement that you reduce the amount of stone steps proposed at the park. As I stated above, the Department requires vegetated armoring at moderate energy sites. Analysis of individual permits is not constrained to the general permit standards identified in s. NR 328.05. However, there is a note section found under NR 328.05(5) that states "Erosion control treatments may include a 10-foot shoreline segment where plant establishment is not required for the purpose of ingress/egress associated with the placement of a pier or access to the waterway, or associated with public park activities". I used a generous interpretation of this note to assume this is 10 feet in a 300-foot shoreline, with the 300 feet coming from our standard for riprap repair. Once again, it is well within statutory authority to require a reduced amount of non-vegetated stone steps.

Your permit application is still considered incomplete, and you must submit the additional information requested in my August 21, 2006 letter. If I do not hear from you or receive the additional information within 30 days of receipt of this letter, I will assume you are not longer interested in the project and will dismiss your application. By law, your fee will not be refunded unless you request it. If you have any questions, you can contact me at 608-275-3208.

Sincerely,



Cami Peterson
Water Management Specialist



Department of Public Works
City Engineering Division

608 266 4751

Larry D. Nelson, P.E.
City Engineer

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January 10, 2007

Deputy City Engineer
Robert F. Phillips, P.E.

Principal Engineers
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Christina M. Bachmann, P.E.
John S. Fahrney, P.E.
David L. Benzschawel, P.E.
Gregory T. Fries, P.E.

Operations Supervisor
Kathleen M. Cryan

Hydrogeologist
Joseph L. DeMorett, P.G.

GIS Manager
David A. Davis, R.L.S.

Ms. Cami Peterson
Water Management Specialist
Wisconsin Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg, WI 53711-5397

Re: Olbrich Park Shoreline Restoration Application

Dear Ms. Peterson:

Since receiving your letter of December 18, 2006, we have re-evaluated our Olbrich Park Shoreline Project in detail.

It is our belief that shoreline erosion that we have experienced at Olbrich Park is the result of the high lake levels that we experienced in 1993, 1996, and 2006. During those periods of high water, which approach the 100-year regional flood elevation, existing shoreline protection structures are overtopped and the soil behind the structures erode, thus resulting in failure of the structure.


NR 328, Shore Erosion Control Structures in Navigable Waterways, does not recognize the shore protection for high lake levels. Rather, it is based on wave action at the "ordinary high water mark". Thus, it does not appear that the Department has the latitude to address the problem that the high lake levels pose for a successful design of a shoreline protection structure.

You did pass along plans for the beach at Kegonsa State Park so as to provide the city with an example of an approved beach. Engineering and Parks staff visited the site yesterday. It would appear that the sea wall has failed, probably from ice movement. The beach is eroded and will probably need additional sand before it is again placed in operation.

Given these two issues, we shall need to give our project some additional thought and so we are withdrawing our application. We also think it might be helpful to have additional discussions with the Department regarding the current lake levels, which are having a serious impact on the Cherokee Marsh in the Upper Yahara River, and other methods for the permitting of beaches.

We request that our application fee be refunded. Thank you for your assistance on our project.

Sincerely,


Larry D. Nelson, P.E.
City Engineer

Cc. James Morgan, Park Superintendent

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