

Charles Fram
Bach and Co., Inc.
11176 County Road Route 9
Clayton, NY 13624

January 30, 2006

Re: F-2005-0648
U.S. Army Corps of Engineers/Buffalo District Permit Application
#2005-00598(0)
Richard Wasserlauf - Dredge a 178'x12'x2' area (160 cu. yds.) and
six 6'x6'x2' areas (18 cu. yds.), and place cobblestones along the
upland side of the dredged channel, with dredged material to be
disposed of in an upland area
St. Lawrence River region - Lake of the Isles
Town of Orleans, Jefferson County
Objection To Consistency Certification

Dear Mr. Fram:

The Department of State has completed its review of the above-referenced proposal and the consistency certification provided for it.

Pursuant to 15 CFR Part 930.63, the Department of State objects to the consistency certification for this proposed activity because it would not be consistent with Policy 7 of the New York Coastal Management Program (CMP). As a result of this objection, the consistency provisions of the federal Coastal Zone Management Act (CZMA) prohibit the U.S. Army Corps of Engineers from authorizing this activity unless this objection is overridden on appeal to the U.S. Secretary of Commerce.

Subject of the review

Your client, Richard Wasserlauf, has requested authorization from the U.S. Army Corps of Engineers/Buffalo District to dredge a channel through vegetated marsh constituting a wetland in and adjacent to Lake of the Isles, in the Town of Orleans, Jefferson County. The project involves the excavation of a 178' long x 12' wide x 2' deep channel with six 6' long x 6' wide x 2' deep dredged indentations every 15' along the length of the channel. Approximately 180 cu. yds. of material would be dredged, and disposed of at an upland location. Cobblestones would be placed along the upland bank of the excavated area.

Project Purpose:

The applicant's stated purpose for the proposed activity is to "Improve the visual appearance - Create a spawning area out of a dry marsh." The information submitted by the applicant also indicates the applicant believes placement

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of cobblestones along the upland bank of the created channel would prevent erosion.

Factors Relevant to This Review:

The proposed activity, which requires authorization from the U.S. Army Corps of Engineers, is subject to the consistency provisions of the CZMA and is required to be consistent with the enforceable policies of the CMP.

The file record indicates the area that would be excavated consists of a marsh. The marsh is part of a freshwater wetland which is located in and is an element of the State designated Lake of the Isles Significant Coastal Fish and Wildlife Habitat.

Applicable Policy and Policy Analysis:

Policy #7: SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS, AS IDENTIFIED ON THE COASTAL AREA MAP, SHALL BE PROTECTED, PRESERVED, AND WHERE PRACTICABLE, RESTORED SO AS TO MAINTAIN THEIR VIABILITY AS HABITATS.

In accordance with Article 42 of the State Executive Law and implementing regulations in 19 NYCRR Part 602, the marsh that would be dredged is part of the State designated Lake of the Isles Significant Coastal Fish and Wildlife Habitat. The area was designated a Significant Coastal Fish and Wildlife Habitat to implement Policy #7 of the CMP. Prior to its designation as a Significant Coastal Fish and Wildlife Habitat, the area was assessed and rated for its habitat functions and values. A narrative describing the habitat, and its functions and values, was developed to assist in assessing the effects of certain activities on the habitat and the consistency of those activities with Policy #7 of the CMP.

The proposed activity would be undertaken in a marsh bordering the bay, in the westernmost embayment of the Lake of the Isles. The marsh is part of a 160 acre bay and flood pond wetland complex that includes Otter Point Marsh. The habitat documentation for the area indicates the designated Lake of the Isles habitat is one of the largest shallow bay and wetland ecosystems in the St. Lawrence River ecological subzone. The habitat supports threatened species, other important species of recreational and commercial significance, and important recreational use of those resources. The habitat documentation also indicates the habitat is somewhat unique in the region because of its limited connection to the St. Lawrence River which creates a highly sheltered and productive aquatic environment. The documentation mentions that the wetland area around the bay is an integral part of the habitat. Although the marsh area that would be excavated is not large enough to be a State designated freshwater wetland and the New York State Department of Environmental Conservation has issued an Article 15 permit, this marsh as a part of and an important element of the Lake of the Isles Significant Coastal Fish and Wildlife Habitat, is to be protected in accordance with Policy #7 of the CMP.

The undisturbed shoreline adjoining the bay provides breeding areas for Blanding's Turtle, a threatened species in New York, and productive nesting and feeding habitats for waterfowl and other marsh birds. The marshes and shallows around the Lake are also used as feeding areas by great blue herons and common terns (a threatened species in New York) which nest in the area and feed on small fish which spawn and feed in the habitat. The freshwater wetlands and marshes along the undeveloped shoreline areas of the habitat contribute to the outstanding habitat values for resident and river-based fisheries resources by creating favorable conditions for spawning and nursery use by many warm water fish species. The habitat documentation indicates that the habitat is irreplaceable.

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This marsh and its associated wetlands around the bay area are an important element of and contribute to the overall functions and values associated with the designated habitat. The important benefits derived from these areas include, but are not limited to: habitat for wildlife and fish; contribution to associated aquatic food chains; erosion, flood and storm control; recreational opportunities; natural pollution treatment; educational and scientific opportunities; and aesthetic open space. The documentation for the designated Lake of the Isles habitat indicates that these freshwater wetlands, which include the marsh that would be removed by dredging or excavation, constitute one of the most important elements of the designated habitat.

The impact assessment included in the habitat documentation for the area states:

“Disturbances of littoral areas or wetland vegetation, through dredging, . . . could adversely affect fish and wildlife through direct loss of habitat. . . Activities that would subdivide or cause significant human encroachment into sizeable wetland areas should be restricted.”

The impact assessment also states:

“Existing areas of natural vegetation bordering the bay should be maintained for their value as cover, perch sites, and buffer zones from human disturbance.”

The proposed activity involves the physical removal of a cattail marsh by dredging or other form of excavation. This marsh constitutes vegetated wetland in a relatively undisturbed shoreline area that is an important element of the designated habitat. The important vegetated marsh would be replaced by an excavated open water area. The removal of the marsh would constitute a direct loss of important marsh habitat instead of protecting, preserving and where practical restoring the habitat as required by this policy. It would reduce and thereby adversely affect the important functions and values of the designated habitat and its fish and wildlife values.

The proposed activity also involves the placement of cobblestones along the upland side of the dredged area. The applicant indicates the purpose is to both create spawning habitat and prevent erosion of the upland. However, the proposed activity would physically remove marsh area, by dredging or excavation, and would result in the destruction of an important habitat rather than the creation of a spawning habitat. The natural marsh vegetation bordering the bay would be replaced by an artificial channel lined with cobblestones. This would result in the direct loss of important marsh and wetland vegetation constituting an important element of the designated habitat and its fish and wildlife habitat values.

The applicant did not submit any information to support the applicant's intended purpose of creating a successful or valuable spawning area that would compare in importance or value with the identified importance of the existing vegetated marsh.

Conclusion

Given the foregoing, the proposed excavation, dredging, or other form of physical removal of the vegetated marsh in the Lake of the Isles Significant Coastal Fish and Wildlife Habitat and its adverse effects on the habitat resulting from the loss of the marsh, and its replacement by an excavated open water area, would not be consistent with CMP Policy #7. That Policy requires the protection, preservation, and where practical restoration of the viability of the

State designated Lake of the Isles Significant Coastal Fish and Wildlife Habitat so as to maintain its viability.

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Appeal

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the U.S. Secretary of Commerce (Secretary) override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the New York Department of State, which administers the New York State Coastal Management Program, and to the U.S. Army Corps of Engineers. The Secretary may collect fees from you for administering and processing your request.

The appeal process can be a lengthy one, therefore, if you would like to continue discussions with this office while pursuing an appeal, please contact Mr. Steven C. Resler at (518) 473-2470. If you or your client are represented by counsel, kindly have your attorney contact Mr. Resler for referral to our Legal Division.

Sincerely,

Sally F. Ball
Deputy Director
Division of Coastal Resources

SCR/rm

c: OCRM - John King
COE/Buffalo - Diane Kozlowski; Bridget Brown
NYSDEC/Region 6 - Brian Fenlon