



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHEAST MICHIGAN DISTRICT OFFICE



C. HEIDI GREETHER
DIRECTOR

August 18, 2017

CERTIFIED MAIL 7016 0910 0002 1986 6839

Michigan Department of Natural Resources
Attn: Terry McFadden
33135 South River Road
Harrison Township, MI 48045

Dear Mr. McFadden:

SUBJECT: Application Denial
Site Name: 74-St. John's Marsh-Clay Township
Submission Number: 2F4-ZZ4S-7ADM
T03N, R15E, Section 36, Clay Township, St. Clair County

This letter is to notify you that your application for a permit submitted under the authority of Part 301, Inland Lakes and Streams, Part 303, Wetlands Protection, and Part 315, Dam Safety of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) is hereby denied. The application was received by the Department of Environmental Quality (DEQ), Water Resources Division (WRD), on April 22, 2016.

The purpose of the project, as shown in your application, is to construct a new dike system within the St. John's Marsh to "improve the management ability and efficiency on 295 acres of existing impounded wetlands, and restore and maintain 332 acres of habitat that is severely inundated with invasive Phragmites. This project will also restore and improve public access for fishing and wildlife related outdoor recreation."

The project proposes 37.99 acres of permanent wetland impact (values from August 2, 2017 submittal). Of this total, 16.73 acres of wetland will be filled to construct the 2.5 miles of dikes and the 1 acre parking area and boat ramps, and 21.26 acres of wetland will be dredged to obtain the materials to construct the dikes and create interior navigation channels. The dredged spoils will be temporarily stockpiled in 9.22 acres of wetland. A 310 acre wetland area will be impounded by the dikes. A pump will be installed within the new dike to control water levels within the impoundment. The dike will be 11 feet high, capable of holding 0.5-3.5 feet of water within the impoundment.

In addition, material will be dredged from a 7.5 acre area 8,130 feet long by 30 feet wide in the existing stream running along the proposed north dike to improve flow to the existing water control structure of an existing 295 acre impounded wetland.

After due consideration of the permit application, site conditions, and other pertinent materials, your application is denied for the following reasons: The project will have significant adverse impacts on the natural resources associated with the wetlands of the St. John's Marsh.

Section 30311(1), of Part 303, states in pertinent part, "A permit ... shall not be approved unless the department determines that the issuance of a permit is in the public interest..."

Section 30311(4) states, in pertinent part, *“A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. A permit shall not be issued unless the applicant also shows either of the following:*

- (a) The proposed activity is primarily dependent upon being located in the wetland.*
- (b) A feasible and prudent alternative does not exist.”*

The DEQ finds the following:

- 1) The proposed project is not in the public interest in that the benefits which reasonably may be expected to accrue from the proposal do not balance the reasonable foreseeable detriments of the activity.
- 2) The proposed project will cause an unacceptable disruption to the aquatic resources.
- 3) The activity is not dependent upon being located in the wetland and a feasible and prudent alternative exists.

Rule 4 (R 281.814) of the Administrative Rules for Part 301, states, in pertinent part, *“...a permit shall not be issued unless...*

- a) The adverse impacts to the public trust, riparian rights, and the environment will be minimal.*
- b) That a feasible and prudent alternative is not available.”*

The DEQ finds the following:

- 1) The adverse impacts to the public trust, riparian rights, and the environment are not minimal.
- 2) A feasible and prudent alternative is available.

The Michigan Department of Natural Resources has not shown that there is a public need for the proposed dike system and impoundment. When considering the stated project purpose of restoration and maintenance of wetland habitat that is severely inundated with invasive Phragmites, the DEQ finds that the benefits of the stated goal of the project do not outweigh the detriments of 38 acres of wetland losses and the isolation of an additional 310 acres of wetlands from direct connection with the surrounding natural wetland systems and watercourses. Further, the public need for improved recreational access also does not outweigh the reasonable foreseeable detriments of the wetland impacts. In fact, many comments received in response to the Public Notice pointed to existing alternative sites that are available in the immediate vicinity that provide access to the St. John's Marsh.

The proposed project will destroy Great Lakes coastal wetland and negatively impact habitat for breeding, nesting, feeding, and cover for a wide variety of wildlife species. The coastal wetlands adjacent to the St. Clair River are some of the most productive areas of the Great Lakes and are protected to promote sustainable fish, reptile, and amphibian populations. It is further determined that this project, if authorized, would adversely affect the ability of the wetland to trap sediment, retain storm and flood waters, and assimilate nutrients; resulting in degradation of associated water resources.

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The DEQ has also found that a feasible and prudent alternative exists to achieve the stated purpose of the project. The Michigan Department of Natural Resources has not shown that the use of traditional chemical and mechanical means of Phragmites management are not feasible and prudent alternatives to such a large wetland impact. Further, although water level control can be used to improve overall efficacy of Phragmites management actions in conjunction with chemical and mechanical treatments, it would result in significant degradation through wetland fragmentation and loss of the rare and imperiled wetland types at this site. Any subsequent improvement in the habitat and diversity of the impounded wetland area would be limited to benefits only for some species (such as waterfowl) and would not be enough to offset the substantial wetland losses on the landscape.

The DEQ believes that feasible and prudent alternatives exist that would lessen or eliminate the negative effects of the project as proposed.

If you would like to obtain a permit for only the proposed dredge of the northern channel to provide water flow to the water pumps for the existing diked areas, the DEQ could issue a permit for that activity alone under a new permit application. If you choose to pursue this alternative project, it will be necessary to reapply for a permit by submitting a new application with all of the necessary information and application fees. Application fees are not transferable or refundable.

You have the right to appeal this denial by filing a petition for a formal administrative hearing. To preserve your right to an administrative hearing, a petition or written request must be filed with the Michigan Administrative Hearing System (MAHS) within 60 days from the date of this denial letter. To request a hearing, submit the necessary document to: Michigan Administrative Hearing System, P.O. Box 30695, Lansing, Michigan 48909.

During the administrative hearing process, the MAHS provides the parties an opportunity to meet informally to attempt to resolve the matter. If a resolution is not reached during informal discussions and the case is not dismissed for other reasons, an administrative hearing will be scheduled. The MAHS will conduct the hearing and submit a Proposal for Decision to the director of the DEQ. The director then makes the final DEQ decision regarding the application.

If you have any questions regarding this matter, please contact me at 586-753-3864; fairchildk@michigan.gov; or DEQ, WRD, Southeast Michigan District Office, 27700 Donald Court, Warren, Michigan 48092-2793. Please include your submission number 2F4-ZZ4S-7ADM, in your response.

Sincerely,



Kathleen Fairchild
Southeast Michigan District Office
Water Resources Division

cc: USACE, LRE-2013-00828-10-S16
St. Clair CEA
Clay Township Clerk
Ducks Unlimited