



Ottawa County

Corporation Counsel

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June 11, 2019

Daniel Eichinger, Director
Department of Natural Resources
Executive Division
P.O. Box 30028
Lansing, MI 48909

Re: Approval of Riparian Owners of any Grand River Dredging

Dear Director Eichinger:

As you probably know by now, the Ottawa County Board of Commissioners recently held a public hearing on the proposed 20-mile Grand River Dredging project ("Project") and as a result of nearly unanimous public opposition, passed a resolution opposing the project and urging the State of Michigan to abandon it for environmental, river use and ongoing public cost reasons. See attached. The purpose of this letter is to follow up by asserting Ottawa County's legal right to approve or disapprove of any dredging of its property. That property includes Grand River bottomlands to the middle of the River on all lands along the route owned by Ottawa County and its Parks and Recreation Commission.

As you probably also know, under the federal Submerged Lands Act, 43 USC §1311(A), the State of Michigan owns the bottomlands of rivers in Michigan that are regulated by the federal government as "navigable." Thus, in the City of Grand Haven, the State of Michigan owns the bottom lands of the Grand River. However, where the river is not being regulated as federal navigable waters under that Act, the river bank owners own the bottomlands to the center of the watercourse under Michigan common law, even if the river is navigable and subject to a public trust for commercial and/or recreational use. See *Bott v. DNR*, 415 Mich 45 (1982) or *Lorman v. Benson*, 8 Mich 18 (1860). Since the United States has abandoned its regulation of the portion of the Grand River in the proposed Project and Ottawa County is a major owner of the bottomlands along the route, the County's consent, along with all other riverbank owners on the Project route is necessary for the Project to move forward.

Even if the State were to convince the federal government to re-regulate the Grand River as "along the Project route in an effort to avoid the necessity of the property owners' consent to the dredging, Ottawa County would retain riparian rights to the River, including its ability to legally challenge any activity that fails to meet the "reasonable use" standard:

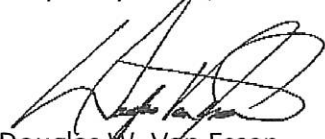
"Michigan has a straightforward rule governing riparian rights: riparian rights attach to land that abuts or includes a natural watercourse—i.e., a 'natural stream of water fed from permanent or periodical natural sources and usually flowing in a particular direction in a defined channel, having a bed and banks or sides, and usually discharging itself into some other stream or body of water' *Kernen v. Homestead Dev. Co.*, 232 Mich App 503, 511 n. 5, 591 N.W.2d 369 (1998) (citations and quotation marks omitted)...As Justice Kavanagh noted in *Thompson*, this rule is followed by many of our sister states, and ultimately has its origins in the most ancient property right: the right to exclude. See *Ruggles v. Dandison*, 284 Mich. 338, 340–341, 279 N.W. 851 (1938) ...Both natural and artificial use of water is limited by the doctrine of 'reasonable use,' which mandates that riparian owners on the same watercourse have an equal right to use of the water."

Holton v Ward, 303 Mich App 718 (2014).

Given the many environmental damages that channelizing the Grand River would engender, Ottawa County will oppose any dredging as unreasonable and detrimental to the reasonable riparian uses that the County presently enjoys on in its parklands, including river boat launches and river walkways to name just a couple. Indeed, even the owners of large commercial vessels such as the *Grand Lady*, which regularly plies the Project route, oppose the dredging because if the river is channelized to a 50-foot width, they won't be able to turnaround or, therefore, use the Grand River anymore, whereas now, because of their shallow drafts, they have no difficulty using the River in its natural state. In short, expending millions of dollars to temporarily channelize the river so that a few additional boats between 30 and 40 feet in length can use a channelized river to the detriment of the use by larger boats with shallow drafts, kayakers, commercial fishing boats that rely on the river in its natural state, pedestrians and riparian property owners is unlikely to pass the reasonable use test even if the federal government stepped in to assist the few proponents of this project.

I would be happy to discuss the County's concerns in more detail with you or your staff, but trust that given the overwhelming local opposition to this project, the Department does not wish a conflict with local property owners including Ottawa County to say nothing of the dozens of public opponents who appeared at our hearing.

Very Truly Yours,



Douglas W. Van Essen
Ottawa County Corporation Counsel

Cc: ☒ Ottawa County Parks Commission
Al Vanderberg, County Administrator
John Scholtz, Parks Director

COUNTY OF OTTAWA

STATE OF MICHIGAN

RESOLUTION REGARDING GRAND RIVER DREDGING

At a regular meeting of the Board of Commissioners of the County of Ottawa, Michigan, held at the Fillmore Street Complex in the Township of Olive, Michigan on the 23rd day of April, 2019 at 1:30 o'clock p.m. local time.

PRESENT: Commissioners: Frank Garcia, Joseph Baumann, Douglas Zylstra, Allen Dannenberg, Randall Meppelink, James Holtvluwer, Gregory DeJong, Philip Kuyers, Roger Bergman, Matthew Fenske. (10)

ABSENT: Commissioners: Kyle Terpstra. (1)

It was moved by Commissioner Philip Kuyers and supported by Commissioner Roger Bergman that the following Resolution be adopted:

WHEREAS, the Ottawa County Board of County Commissioners ("Board"), pursuant to MCL 46.11 to pass resolutions and take actions relating to County affairs; and,

WHEREAS, the Board is aware that the State of Michigan is considering a project to dredge a 50-foot-wide, 7-foot-deep channel in the bottom of the Grand River from Fulton Street in Grand Rapids, (Kent County), 22.5 miles downriver to the Bass River Inlet near Eastmanville in Ottawa County (hereinafter "Dredging Project");

WHEREAS, for parks and recreation purposes, Ottawa County through the management of its Parks and Recreation Commission ("Parks Commission") owns more river frontage subject to the Dredging Project than any other property owner and has received a resolution from the Parks Commission opposing the Dredging Project;

WHEREAS, the Board held a well-attended work session on the Dredging Project on April 9, 2019;

WHEREAS, the Board received statements in support of the Dredging Project from a representative of Grand River Waterway, Inc., a nonprofit dedicated to the Dredging Project and a couple of its supporters. However, the vast majority of the public who spoke at the work session were strongly opposed to the Project;

WHEREAS, while many kayakers, fishermen and other small boat users expressed their opposition and concern about the possibility that the Dredging Project would adversely affect their boating use, not a single power boat owner appeared to report that he or she was in support of dredging and channelizing the river as proposed;

WHEREAS, the Board also received information from County officials who would likely be affected by the Dredging Project to the effect that the Project would threaten the County's multi-million-dollar Greenway park project through potential river level and channel changes that dredging can risk, as well as significant public operational costs over a ten-year period due to increased pressure on marine law enforcement, buoy acquisition/maintenance and river debris monitoring and removal;

WHEREAS the Board has received a legal opinion from its Corporation Counsel that there are unsettled questions as to whether the State of Michigan possesses the statutory or common law authority to undertake the Dredging Project without the express permission of riverfront property owners, including the County, who possess riparian rights to the center of the Grand River and would have their property rights adversely affected by the Project;

NOW THEREFORE BE IT RESOLVED, that Ottawa County is opposed to the Dredging Project for reasons that include but are not limited to the following:

- A. The State of Michigan currently appears to lack the express statutory authority to undertake the Dredging Project without obtaining the consent of Ottawa County and the other riverfront property owners, who also have riparian rights that would be unreasonably affected by the Project;
- B. There is no demonstrated need or request by large power boat owners to use the dredged channel and certainly no expressed interest that would come close to justifying the public monetary costs of the Dredging Project itself, much less the ongoing law enforcement and channel maintenance costs that would have to be incurred annually;
- C. In addition to economic concerns, there are substantial, unresolved geological, hydrogeological and water quality risks associated with disturbing over 22.5 miles of Grand River bottomlands that put the nature, path and health of the river in jeopardy, including its fishery and other aquatic life;
- D. There are also substantial, unresolved concerns expressed by officials of the City of Grand Haven regarding the possible threat to its drinking water source beds at the mouth of the Grand River, disturbance of a century of potentially contaminated waste that may be loosened and made soluble as a result of the dredging;
- E. There are also substantial, unresolved concerns expressed by the River's current commercial fishing guides and riverboat owners regarding the threat that the Dredging Project would have on their commercial operations, including the elimination of necessary fishing holes and spawning beds and rifts that the guides use and elimination of the ability of the 100-foot Grand Lady to turn around in a river reduced to a 50-foot channel;

- F. There are also substantial, unresolved concerns expressed by current hikers, fishing boat owners and kayakers regarding the threat presented by noisy, large power boats have to the quality of the quiet recreational experience that they currently enjoy;
- G. There are also substantial, unresolved concerns expressed by Park officials and other property owners regarding the negative impact on existing docks, boat and kayak launches that channelizing the River will have on current fixtures;
- H. There are also substantial, unresolved concerns expressed by Park officials and other property owners regarding the threat of erosion that boat wakes or an increase in river speeds will have on the current river banks and the miles of bike/walking paths that the County has created as part of its unique and universally lauded Greenway Project that will connect Grand Rapids and Grand Haven along the Grand River and that the State of Michigan itself has funded with millions of dollars in grants and matching private donations; and
- I. There are no apparent funding sources for the hundreds of thousands of increased and recurring public safety dollars, many of them recurring, that local government will have to incur to accommodate law enforcement patrolling and public safety rescues along the extensive river area affected;

BE IT FURTHER RESOLVED, that with so many potential legal, economic, recreational, commercial and environmental negatives and so much uncertainty in each of these areas, the Board urges the State of Michigan to study the matter in depth and make policy decisions in cooperation with local units of government and the communities affected before expending precious public dollars on the Dredging Project;


BE IT FURTHER RESOLVED, that the Ottawa County Clerk shall mail a copy of this Resolution to the Michigan Governor, Michigan State Legislature, Michigan Attorney General, Michigan Department of Natural Resources, Michigan Department of Environmental Quality, all local units of government with jurisdiction along the Dredging Project's pathway as well as Kent County, the Ottawa County Parks Commission, the Grand River Waterway nonprofit, local environmental groups and media outlets.

YEAS: Commissioners: James Holtvluwer, Douglas Zylstra, Philip Kuyers, Roger Bergman, Joseph Baumann, Matthew Fenske, Allen Dannenberg, Frank Garcia, Gregory DeJong. (9)

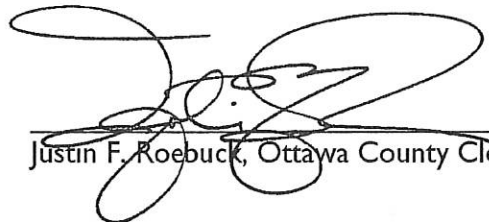
NAYS: Commissioners: Randall Meppelink. (1)

ABSTENTIONS: Commissioners: None

RESOLUTION ADOPTED.



Gregory J. DeJong, Chairperson,
Ottawa County Board of Commissioners



Justin F. Roebuck, Ottawa County Clerk