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# Public Notice

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Applicant:  
The DeMarco Group  
dba/Rowley 96, LLC

Published: April 3, 2015  
Expires: May 4, 2015

U.S. Army Corps  
of Engineers  
Buffalo District  
CELRB-TD-R

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Application No: 2008-00768  
Section: NY

All written comments should reference the above Application No. and be addressed to:  
U.S. Army Corps of Engineers  
**(Attn:) Judy A. Robinson**  
**US Army Corps of Engineers, Buffalo District**  
**7413 County House Road**  
**Auburn, NY 13021**

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**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.**

**Application for Permit under Authority of  
Section 404 of the Clean Water Act (33 U.S.C. 1344)**

**APPLICANT:**  
The DiMarco Group  
dba Rowley 96, LLC  
1950 Brighton-Henrietta Town Line Road  
Rochester, New York 14623

**WATERWAY & LOCATION:** Various emergent wetlands and intermittent streams that outfall to culverts under Route 96 to an unnamed tributary to Irondequoit Creek. The 95-acre parcel is located between the New York State Thruway and Route 96 with access from Route 96 across from Route 251, Town of Victor, Ontario County, New York.

**LATITUDE & LONGITUDE:** Latitude North: 42.99822  
Longitude West: -77.43102

**EXISTING CONDITIONS:** (Sheet 1 of 43). Portions of the site have been mined for gravel in the past, and there are several existing gravel roads and trails on the site. The site generally slopes from north to south with elevations ranging from 750 feet to 600 feet above mean sea level with slopes ranging up to 25%. Dense scrub/shrub communities and patches of deciduous forest dominate the site. Open fields are present in the northern portion below the New York State Thruway. Soils are mapped as Ontario fine sandy loam, Ontario gravelly loam, Ontario, Lansing, and Honeoye soils, Palmyra and Howard soils, and Palmyra gravelly loam. None of these soils are listed as hydric in the National List of Hydric Soils or the Soil Survey for Ontario County. Drainage is generally to the south. Four (4) streams and associated wetlands discharge to culverts under Route 96 and enter a wetland complex associated with Irondequoit Creek which flows to Lake Ontario.

**Description of delineation of waters of the US, if applicable:** On January 26, 2009, an Approved Jurisdictional Determination (JD) was authorized by the USACE. The Approved JD expired and was reauthorized as a Preliminary JD on March 6, 2014 (Sheets 2-7 of 43).

**Wetland A** is a 1.01 acre linear emergent wetland which directly abuts Stream A (described below) and is connected from the upper to lower reach by drainages or culverts.

**Wetland B** is a 0.75 acre linear scrub-shrub wetland directly abutting Stream B (described below) located along the southeastern site boundary.

**Wetland BB** is a 0.33 acre linear wetland comprised of 0.16 acre forested wetland in the northern portion and 0.17 acre scrub-shrub wetland in the southern portion. The northern and southern portions of the wetland are connected by a non-jurisdictional linear conveyance. This wetland directly abuts Wetland B in the southeastern section of the site.

**Wetland C** is a 0.04 acre emergent (wet meadow) wetland that directly abuts Stream C (described below) and is located east of Wetland A.

**Wetland E** is a 0.33 acre linear scrub-shrub wetland that directly abuts Stream E (described below) and is located in the southwestern portion of the site.

**Stream A** is a 2,030 linear foot intermittent stream with a silt and cobble channel ranging from three – four (3-4) feet wide and flows through Wetland A. This stream enters the site from under the New York State Thruway on the northern boundary, flows through the center of the site and outfalls to a culvert under Route 96 that directs flow to an unnamed tributary to Irondequoit Creek. Approximately 100 feet of the stream has been culverted near the center of the site.

**Stream B** is a 1,038 linear foot intermittent stream with a sand and silt channel ranging from one-two (1-2) feet wide and flows through Wetland B. The stream outfalls to a “drop in” storm drain on Route 96.

**Stream C** is a 307 linear foot intermittent stream with a sand and silt channel ranging from one-two (1-2) feet wide and flows through Wetland C. Stream C connects to the lower reach of Wetland A through a 127-foot culvert.

**Stream E** is an 842 linear foot intermittent stream with a sand and silt channel ranging from two-three (2-3) feet wide. Portions of the stream were channelized during previous gravel mining operations on the site. The stream outfalls to a “drop in” storm drain on Route 96.

**PROPOSED WORK:** Preferred Alternative – (Sheets 8-16 of 43). The DeMarco Group (dba Rowley 96, LLC) proposes to conduct a phased development of the 95-acre site known as Fishers Ridge. The development would consist of commercial space, hotel, office space, residences, green areas and recreational trails, sidewalks, parking lots, and paved public roadways. The design is intended to provide a living center where people can work, shop, and recreate all within a ‘walkable’ community. It is anticipated that the proposed project would provide 1,500 construction jobs and 1,900 permanent employment opportunities. Phase 1 proposes construction of a large anchor retail store to define the geographic extent of the retail trade area on the northern boundary adjacent to I-90 with a hotel proposed east of the anchor store. Bass Pro Shops is the Fishers Ridge anchor retail store and is characterized as a super-regional anchor with a retail trade area defined from Buffalo to Syracuse, an approximate 90-mile radius from the site. Residences and office space are proposed on the west side of the parcel. Phase 2 proposes office buildings, restaurants, a variety of retail stores, and multi-residential units. This design plan provides a ‘ring road’ which was determined to be the best solution to managing vehicular circulation through the site and to eliminate traffic congestion at the Route 96/251 intersection. The project is also designed to connect to existing Town and County trail systems.

In addition, the project meets the Town of Victor’s Draft Comprehensive Plan objectives to support retail, professional/high tech offices, and tourism. Associated zoning and other municipal regulations are in place to support and promote this type of growth. The Bass Pro Shop designation as a super-regional anchor represents the tourism generator called for by the Comprehensive Plan, and the high-tech office and multi-residential housing are primed to support the goal of attracting and retaining professionals in the Victor area.

Under this Preferred Alternative, the proposed work would entail permanent impacts to 1.61 total wetland acres (0.95 acre emergent; 0.16 acre forested; 0.50 acre scrub/shrub) and 2,707 linear feet of intermittent stream channel as follows: 0.91 acre to emergent Wetland A; 0.33 acre to Wetland BB (0.16 acre forested, 0.17 acre scrub/shrub), and 0.04 acre to emergent Wetland C, 0.33 acre to scrub/shrub Wetland E.

Approximately 1,558 linear feet of Stream A will be impacted by piping, impoundment, and reshaping portions of the stream which is being designed as an aesthetic amenity for the overall site development. Streams C and E will be filled entirely (307 and 842 linear feet respectively). Flow from Streams C and E was originally directed to ‘drop in’ storm culverts along Route 96 to an unnamed tributary to Irondequoit Creek. Development of the site will redirect flow to stormwater management ponds adjacent to Route 96, which will outlet to the same unnamed tributary to Irondequoit Creek. It is anticipated that the treated discharge will have a positive effect on water quality to two trout streams - Irondequoit Creek and the tributary to Irondequoit Creek - which flow through a large wetland complex regulated by both the New York State Department of Environmental Conservation and the USACE, and ultimately to Lake Ontario.

**PROJECT PURPOSE:**

Basic: Housing and Commercial

Overall: To provide an integrated development with retail stores, commercial office space, hotel and conference center and residential housing along the Route 96 corridor within the Town of Victor in Ontario County, New York.

**Water Dependency Determination (describe only if project affecting Special Aquatic Site):**

The discharge of fill material into wetlands for the purpose of developing the site for commercial and residential use is not a water dependent activity because it does not require access or siting within the special aquatic sites in question to fulfill its basic purpose. Therefore, practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.

**AVOIDANCE AND MINIMIZATION INFORMATION:**

**Off-Site Alternatives:**

To identify a site location that would represent the least environmentally damaging practicable alternative, a matrix of siting criteria was developed to evaluate four (4) off-site alternatives, with the results compared to the proposed site's score. Ten (10) factors for site selection were considered, each with a ranking score from 0 to 5 (low to high) allowing a maximum score of 50. The highest ranking score would represent the site having the most economical and practical advantages, and the least environmental damaging, cost, and difficult or impractical disadvantages. Analysis results are summarized in Table 4 (Sheet 17 of 43). Additional information regarding the Off-Site Alternatives is provided in Sheets 18-23 of 43. The applicant determined that the proposed project site would result in the least environmental impacts while maximizing their preferred criteria.

**On-Site Alternatives:** Note: Physical constraints associated with the configuration of all On-Site Alternatives include the fixed location of the main access road as designated by the Town of Victor Design Guidelines. The main access road must be aligned with the existing Route 251 at the south entrance and must intersect with Route 96 at the north entrance. Another constraint is the steep topography of the site. There is a 100-foot change in elevation between the upper and lower tiers of the site which limits lay-out options for the access roads. In addition, configuration of the site depends on the recruitment of a large retail anchor store visible from the New York State Thruway.

**Alternative 1** (Sheet 24 of 43): This is the only alternative which provides less impact to aquatic resources than the Preferred Alternative from 1.61 acres of wetland impacts to 1.45 acres and intermittent stream impacts reduced from 2,707 linear feet to 2,235 linear feet. Specifically, impacts associated with Alternative 1 include 0.75 acre to emergent Wetland A (which is a reduction of 0.16 acre from the Preferred Alternative), 0.33 acre to Wetland BB (0.16 acre forested, 0.17 acre scrub/shrub), 0.04 acre to emergent Wetland C, and 0.33 acre to scrub/shrub Wetland E, Stream A - 1086 linear feet (which is a 472 linear foot reduction from the Preferred Alternative), Stream C – 307 linear feet, and Stream E – 842 linear feet.

However, minimization of impacts compromises the overall design intent of the development. This site plan configuration places two large anchor retail stores located on the northeastern property

boundary adjacent to the New York State Thruway (I-90) and a mix of junior anchor and in-line style retail stores throughout the remainder of the development. This Alternative lacks streetscape or pedestrian friendly design elements, residential housing, office spaces, or mixed-use buildings, nor does it lend itself to the practical placement of pedestrian trails connecting the community with Town or County recreational trails. This Alternative was not chosen because it does not fulfill the basic project purpose of creating a community where people can live, work, shop, and recreate.

**Alternative 2** (Sheet 25 of 43): This Alternative would require more impacts to aquatic resources than the Preferred Alternative increasing wetland impacts from 1.61 acres to 1.71 acres (1.05 acres emergent; 0.16 acre forested; 0.50 acre scrub/shrub) and increasing intermittent stream impacts from 2,707 linear feet to 3,179 linear feet. Specifically, impacts associated with Alternative 2 would impact 1.01 acre to emergent Wetland A (an increase of 0.10 acre), 0.33 acre to Wetland BB (0.16 acre forested, 0.17 acre scrub/shrub), 0.04 acre to emergent Wetland C, 0.33 acre to scrub/shrub Wetland E, Stream A - 2,030 linear feet (an increase of 472 linear feet), Stream C – 307 linear feet, and Stream E – 842 linear feet.

This site plan places two large anchor stores located at the northwestern property boundary adjacent to I-90. This layout begins to incorporate a town center component where mixed use buildings could be viable, instead of being exclusively retail space. The goal of achieving a pedestrian friendly environment is not possible with this layout as one of the main project roadways is directed through the project center. In comparison, the Preferred Alternative directs traffic around a perimeter ring road with intersecting secondary streets proposed to route drivers to the residential, retail stores, hotel and town center shopping areas. The town center will only be viable if it incorporates the appropriate amount of retail, office, residential, and restaurant uses in an environment that provides a “sense of place”, which is lacking in this Alternative. Alternative 2 does not provide open or public space within the project center and lacks pedestrian paths connecting to the extensive off-site Town and County trail systems

**Alternative 3** (Sheet 26 of 43): This site plan would require the same impacts to aquatic resources as Alternative 2 (1.71 acre of fill in wetlands and 3,179 linear feet of fill in intermittent streams).

This site plan places medium and junior sized anchor retail stores located at the northwestern property boundary on the uppermost tier adjacent to I-90. A ‘street of shoppes’ is introduced in the middle tier and includes on-street parking in an attempt to create a pedestrian friendly streetscape. The plan also includes outparcels along Route 96 and a hotel/ conference center. This plan was not chosen because it does not include a super-regional anchor retail store that represents dominant use of the site, as describe above in the Preferred Alternative. The upper tier shown in Alternative 3 is not large enough to accommodate this type of retail anchor and the overall plan lacks residential housing and is not conducive to user-friendly vehicular circulation. This alternative does include a main project roadway through the center ‘street of shoppes’; however, the volume of traffic anticipated at the intersection of Route 96/251 makes the configuration undesirable. In addition, the goal of creating a mixed-use project is not possible without an appropriate combination of retail, office, multi-residential living, hotel, recreation – a place where people can live, work, shop, and recreate.

**Alternative 4 - No USACE Permit Action Required** (Sheet 27 of 43) – This Alternative was not considered viable for the following reasons:

1. In order to avoid all impacts to aquatic resources the super-regional anchor retail store would have to be oriented so that the rear of the store would be towards the rest of the development. The marketing strategy for the Bass Pro Shop requires a 132,200 square foot building plus the attached restaurant, which is an operational requirement for the Outdoor World concept. With this orientation, the anchor is disconnected from the rest of the project and does not function as a contiguous center.

2. Access points for the two (2) main commercial driveways remains the same as the Preferred Alternative; however, to avoid Wetland E, the western site driveway would be moved to the west. This would impact the side slope to the Hillside Residential development and results in an approximately 20% reduction in units and loss of common area space which is dedicated to providing amenities such as outdoor pool and gathering spaces. The common area is important to the rental community and influences leasing decisions for potential residents.

3. This Alternative eliminates the town center concept. The ‘street of shoppes’, with offices above, would be replaced by junior retail anchors and an at-grade parking field, typical of a power center layout. Wetland A severs the project in half, essentially disconnecting and separating the retail area to the extent that a ‘walkable’ community is no longer possible.

4. Outparcels fronting Route 96 are still present; however, they are disconnected from one another, forcing patrons to repeatedly drive and park to access their destinations.

5. A residential apartment area would be eliminated. Integration of apartments into the town center would not be possible and would be replaced with standard retail stores. The desired balance of offices over retail stores and multi-residential apartments would not be feasible under this Alternative.

6. This alternative limits office space to the area between Wetland BB and Wetland B. The office space offered is professional office space with at grade parking with close proximity to individual entrances. This type of office space does not meet the Ontario County goal for providing high-tech work force office space to compliment the workforce housing offered on the Hillside Residential project.

7. The common area and open space offered by this plan surrounds existing wetlands and all of the common area is located in the rear of proposed retail or office buildings. This does not offer the welcoming environment to encourage gathering and enjoyment of open public spaces.

Although this Alternative represents a version of a multi-use development with two or more land uses; it does not offer the degree of project planning and integration as desired in a live, work, shop, and recreate community.

**Alternative 5 - No Build:** Under this alternative the site would not be developed, eliminating the benefits associated with providing a substantial tax base for the Town of Victor and Ontario County, temporary construction jobs, permanent retail, service, and office employment, provision of work force housing needed to meet the existing and growing demands of the expanding high-tech

job market in Ontario County. Further, it is anticipated that not building the community would result in the loss of approximately 1,500 temporary construction jobs and 1,900 permanent employment opportunities.

## **PROPOSED MITIGATION:**

**Wetland Mitigation:** To compensate for the loss of 1.61 acres of wetlands consisting of 0.95 acre emergent; 0.16 acre forested; 0.50 acre scrub/shrub, the applicant proposes the following:

**Off-Site Wetland Mitigation:** Creation of two (2) vernal pools ranging from 0.10 to 0.25 acre in size within the Irondequoit Creek floodplain on Ontario County land at Fisher's Park (Sheets 28, 29, 31, 35, 40, 41 of 43) and the purchase of 1.61 credits from the Ducks Unlimited In-Lieu Fee Program. The details for the proposed mitigation are in process.

**Stream Mitigation:** To compensate for the loss of 2,707 linear feet of intermittent stream channel (Stream A – 1,558 feet; Stream C – 307 feet; Stream E – 842 feet), the applicant proposes the following:

**On-Site Stream Mitigation:** Enhancements to Stream B including removal of invasive species, improved in-stream habitat diversity, improved riparian zone diversity, and bank stabilization. Design plans are not available at this time. Note that Stream B is part of the 95-acre parcel, but not included within the project impact area.

**Off-Site Stream Mitigation:** 1) Bank restoration to approximately 110 feet of an unnamed tributary to Irondequoit Creek. This is a trout stream and the subject reach is adjacent to a county recreational field which is severely eroding into the playing field. Restoration methods include construction of a toe-wood sod mat consisting of the installation of root wads, creation of a bank full bench, and laying back the slope above the bench to achieve stabilization. Stream banks and adjacent riparian zone areas will be planted with tree and shrub species. These activities will improve bank and channel condition, improve in-stream fish habitat diversity, aquatic invertebrate habitat, riparian area quality, and canopy cover (Sheets 28, 29, 31-34 of 43).

2) Bank stabilization and enhancements to approximately 1,335 linear feet of Irondequoit Creek, which is a trout stream. Work includes removal of steel sheetpiling that was installed nearly three-quarters of the way across the channel many years ago. The purpose of the sheetpiling is not known; however, it is causing erosion, bank undercutting and sediment accumulation in the channel. In addition, a log vane will be installed to direct flow from the banks and root wads will be installed to stabilize eroded bank areas (Sheet 28, 29, 31, 36, 36a, 37-39 of 43).

Location and details of the above described work are shown on the attached maps and drawings.

Comments or questions pertaining to the work described in this Public Notice (Notice) should reference the Application Number and be directed to the attention of Judy Robinson, who can be contacted at the above address, by e-mail at: [judy.a.robinson@usace.army.mil](mailto:judy.a.robinson@usace.army.mil), or by calling 315-704-0255. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The following authorization is required for this project:

**Water Quality Certification** (or waiver thereof) from the New York State Department of Environmental Conservation.

**Historic and Cultural Properties:**

The Fishers Ridge development, as shown on Sheet 1 of 43, is located within an archaeological sensitive area as identified by the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP). The applicant coordinated with NYSOPRHP previous to the issuance of this Notice. In their letter dated August 20, 2007, (NYSOPRHP Project No. 07PR04452), it was the NYSOPRHP's opinion that the project would have No Impact upon cultural resources listed in or eligible for inclusion in the State and National Registers of Historic Places, which is consistent with the Corps findings. All currently available historic resource information pertaining to this proposed project if any has been provided to the NYSOPRHP. Additional information concerning historic properties should be submitted to the Corps before the end of the comment period of this Notice. The Corps will forward that information to the NYSOPRHP for their review.

The two (2) off-site mitigation areas located on the Town of Victor land in Fishers Park are within an archaeological sensitive area. In their letter pertaining to the off-site mitigation sites proposed for construction of the vernal pools and stream restoration activities along Irondequoit Creek and the unnamed tributary to Irondequoit Creek, dated November 24, 2014, the NYSOPRHP determined that no historic properties would be affected by the undertaking.

**Endangered Species:**

Pursuant to Section 7 of the Endangered Species Act (16 USC 1531), the Corps is consulting, under separate cover, with the U.S. Fish and Wildlife Service to evaluate any potential impacts to the northern long-eared bat (*Myotis septentrionalis*) and to ensure that the proposed activity is not likely to jeopardize its continued existence or result in the destruction or adverse modification of critical habitat.

This Notice is promulgated in accordance with Title 33, Code of Federal Regulations, Parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this Notice.

Comments submitted in response to this Notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, or a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**SIGNED**

Diane C. Kozlowski  
Chief, Regulatory Branch

**NOTICE TO POSTMASTER:** It is requested that this Notice be posted continuously and conspicuously for **30** days from the date of issuance.