



Public Notice

Applicant:
Niagara County Produce

Published: July 11, 2012
Expires: August 13, 2012

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

Application No: 2011-00925
Section: NY

All written comments should reference the above Application No. and be addressed to:
U.S. Army Corps of Engineers
Molly Connerton
1776 Niagara Street
Buffalo, New York 14207

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 10 of the Rivers and Harbors Act of 1899 and
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

APPLICANT: Niagara County Produce

WATERWAY & LOCATION: Federal and State Wetlands. The site is located at 8555 Transit Road, in the Town of Clarence, Erie County, New York (Figure 1 of 5).

LATITUDE & LONGITUDE: Latitude North: 43.08
Longitude West: 78.69

EXISTING CONDITIONS: The Niagara County Produce site is 12.985 acres in size and is comprised of an irregular shaped parcel with Transit Road forming the western boundary and Tonawanda Creek Road forming a portion of the northern boundary. The existing facility is fully developed with the retail operation including greenhouses, storage facilities and a paved parking lot. A wetland that is approximately 5.28 acres in size is located on the northern portion of the site adjacent to the existing facilities (Figure 2 of 5).

PROPOSED WORK: The proposed project consists of the expansion of the existing facilities on the property. The proposed activities involve the construction of a 37,641 square foot market, a 36,450 square foot greenhouse, a 12,600 square foot warehouse, 343 parking spaces, stormwater detention

facilities, a septic field and an access drive to Tonawanda Creek Road (Figure 3 of 5).

PROJECT PURPOSE:

Basic: Commercial Development

Overall: To expand the existing facilities at Niagara County Produce.

Water Dependency Determination (*describe only if project affecting Special Aquatic Site*): The discharge of fill material into 1.91 acres of wetland for the purpose of expanding the facilities at Niagara County Produce is not a water dependent activity because it does not require access or siting within the special aquatic site 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: Per Regulatory Guidance Letter 95-01” Guidance on Individual Permit Flexibility for Small Landowners”, off-site alternatives are not required for projects affecting less than two acres. The applicant has modified the project proposal several times to develop what is now identified as the applicant’s preferred alternative. Initially, Niagara County proposed to impact 2.6 acres of the 5.28 acres of wetland on site. Measures were taken to reduce these wetland impacts, including requesting a zoning variance to move the proposed project further south on the property and reduce the size of the proposed septic system. These impacts were reduced to the currently proposed 1.91 acres of wetland impacts while preserving 3.37 acres of wetlands on site.

Proposed Mitigation: The applicant proposes to provide compensatory wetland mitigation through the direct purchase of wetland bank credits at the Raymond Road Wetland Mitigation Bank which is located approximately 3.5 miles north of the project site. The applicant will purchase 3.82 acres of wetland bank credit to mitigate for the loss of 1.91 acres of wetlands and streams. The purchase of the wetland bank credits will provide in-kind replacement compared to the wetlands that will be impacted on site. In addition the applicant proposes to provide wetland preservation of the remaining wetlands on site (Figure 4 of 5) and additional wetland protection with wetland plantings along the proposed access drive (Figure 5 of 5).

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 notice should be reference the Application Number and be directed to the attention of **Molly Connerton**, who can be contacted at the above address, by calling **(716) 879-4304**, or by e-mail at: molly.a.connerton@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The applicant has certified that the proposed activity complies with New York's approved Coastal Zone Management Program and will be conducted in a manner consistent with that program. General Concurrence was issued by the New York State Department of State for this work on March 27, 2006 (DOS reference number F-2005-1059). Any comments on the consistency of the proposed activity with New York State's Coastal Zone Management Program should be forwarded to:

New York Department of State
Division of Coastal Resources
Coastal Management Program
One Commerce Plaza
99 Washington Avenue

Albany, NY 12231
Attn: Consistency Review
Telephone (518) 486-3200

The following authorization is required for this project:

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

There are no registered historic properties or properties listed as being eligible for inclusion in the National Register of Historic Places that will be affected by this project.

Available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species. There are no species listed as protected pursuant to the Endangered Species Act located within **Erie** County, New York, and therefore the Corps is not consulting beyond this Public Notice with the U.S. Fish and Wildlife Service.

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 of Engineers 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, nor 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 of Engineers 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 of Engineers 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.

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.