



U.S. Army Corps  
of Engineers  
Buffalo District  
CELRB-TDR

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# Public Notice

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Applicant: Ciminelli  
Real Estate  
Corporation

Published: December 21, 2020  
Expires: January 11, 2021

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Application No: 2001-00067 (2020 Site A Modification)  
Section: New York

All written comments should reference the above Application No. and be addressed to:

**Attn: Martin Crosson**

**U.S. Army Corps of Engineers, Buffalo District  
1776 Niagara Street  
Buffalo, NY 14207**

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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 Modification 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: Ciminelli Real Estate Corporation/Ciminelli Muir Woods, LLC (“Ciminelli”). Ciminelli has requested a modification to an existing permit described below.

WATERWAY & LOCATION: approximately 98 acres of Federal wetlands, a 32 acre lake and approximately 4.4 acres of tributaries have been previously identified as jurisdictional on the 326 acre parcel permitted for development known as “Muir Woods”. The permitted project is located in the Town of Amherst, County of Erie and State of New York.

LATITUDE & LONGITUDE: Latitude North: 43°01’46”  
Longitude West: -78°46’33”

EXISTING CONDITIONS: On May 14, 2012 a permit was issued to Ciminelli for placement of fill into 17.83 acres of Federal wetland and 1.29 acres of federally regulated tributaries for the multi-use development known as “Muir Woods”. The current jurisdictional determination remains valid until the existing permit expiration date of November 30, 2024.

**PROPOSED MODIFICATION:** Ciminelli proposes to modify the existing permit to change the proposed use of the area identified as Site A of the “Muir Woods” site. Under the existing permit, Site A was to consist of research and development and flex office space. The applicant is currently proposing to change the previously proposed use of Site A to a mixed-use commercial and residential development. The concept plan for the proposed project includes two 4-story mixed-use buildings, in addition to two-family townhouses and 6-unit apartment buildings. Also in association with the proposed changes, a new recreational bike/walking trail that will enter Site A from the southeast connection with Site B ultimately connecting to the rest of the on-site trail system and the Town’s recreational trail that connects to the North Campus of the University of Buffalo and the Ellicott Creek Trailway system. The applicant has indicated these modifications are necessary due to changes in economic conditions in the real estate market, and also due to their consideration of input from the Town of Amherst municipal boards and the local public.

#### **PROJECT PURPOSE**

**Basic:** Construction of a multi-use development.

**Overall:** Modification of an existing permitted Ciminelli construction project by changing the proposed use of Site A of the Muir Woods site to the planned development from Research and Development and flex office space to mixed-use commercial and residential development with associated amenities on Site A due to market changes and consideration of the Town of Amherst municipal boards and local public input.

**Water Dependency Determination:** As with the existing permit, this newly proposed modification resulting in changes in project purpose and use within Site A, impacts to waters of the US have been determined to not be water dependent. Therefore, alternatives that do not require impacts to US waters are presumed to exist. The applicant adequately demonstrated that US waters have been avoided and minimized to the greatest extent practicable. As a result, wetland impacts have been reduced from the currently permitted 13.010 acres to 6.089 in Site A.

**Mitigation:** The currently permitted wetland impact in Site A is 13.010 acres. The new proposed impact to Site A wetlands are 6.089 acres resulting in a reduction in wetland impacts by 6.921 acres. As a result of the decrease in wetland impacts in Site A, the previously approved off-site mitigation consisting of creation of 27.37 acres of wetland habitat in the Town of Newstead has been proposed to be removed as a permit requirement. The previously approved and currently permitted on-site mitigation for Site A consisting of creation of approximately 10.47 acres of wetland remains unchanged. In addition, the increase in avoided wetland area and the reduction in developed area proposed in Site A results in an increase to the amount of wetland area to be preserved on-site as permanent open space from 3.91 acres to 11.83 acres.

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 reference the Application Number and be directed to the attention of Martin Crosson, who can be contacted at the above address, by calling (716) 879-4346, or by e-mail at: martin.h.crosson@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

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.

Pursuant to Section 106 of the National Historic Preservation Act, this proposed modification to Site A does not constitute an action that requires additional consultation with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP). In a letter dated September 10, 2009 NYSOPRHP indicated the proposed project will have No Effect upon cultural resources in or eligible for inclusion in the National Registers of Historic Places. The proposed modification does not change the previously considered permit area or determination.

Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the Corps of Engineers has concluded consultation with the USFWS to evaluate potential impacts to the northern long-eared bat (NLEB). The Corps has previously determined that the project may affect the NLEB, but that the scope of the work falls within the parameters of the 4(d) Rule. Therefore, consultation has concluded. The existing permit for the project included the entire Site A area. This proposed modification does not constitute an action that requires further coordination or consideration under the Endangered Species Act (16 U.S.C. 1531).

Pursuant to Section 401(d) of the Clean Water Act, A Water Quality Certification will be issued or waived for this proposed project modification by the State of New.

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 modification 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

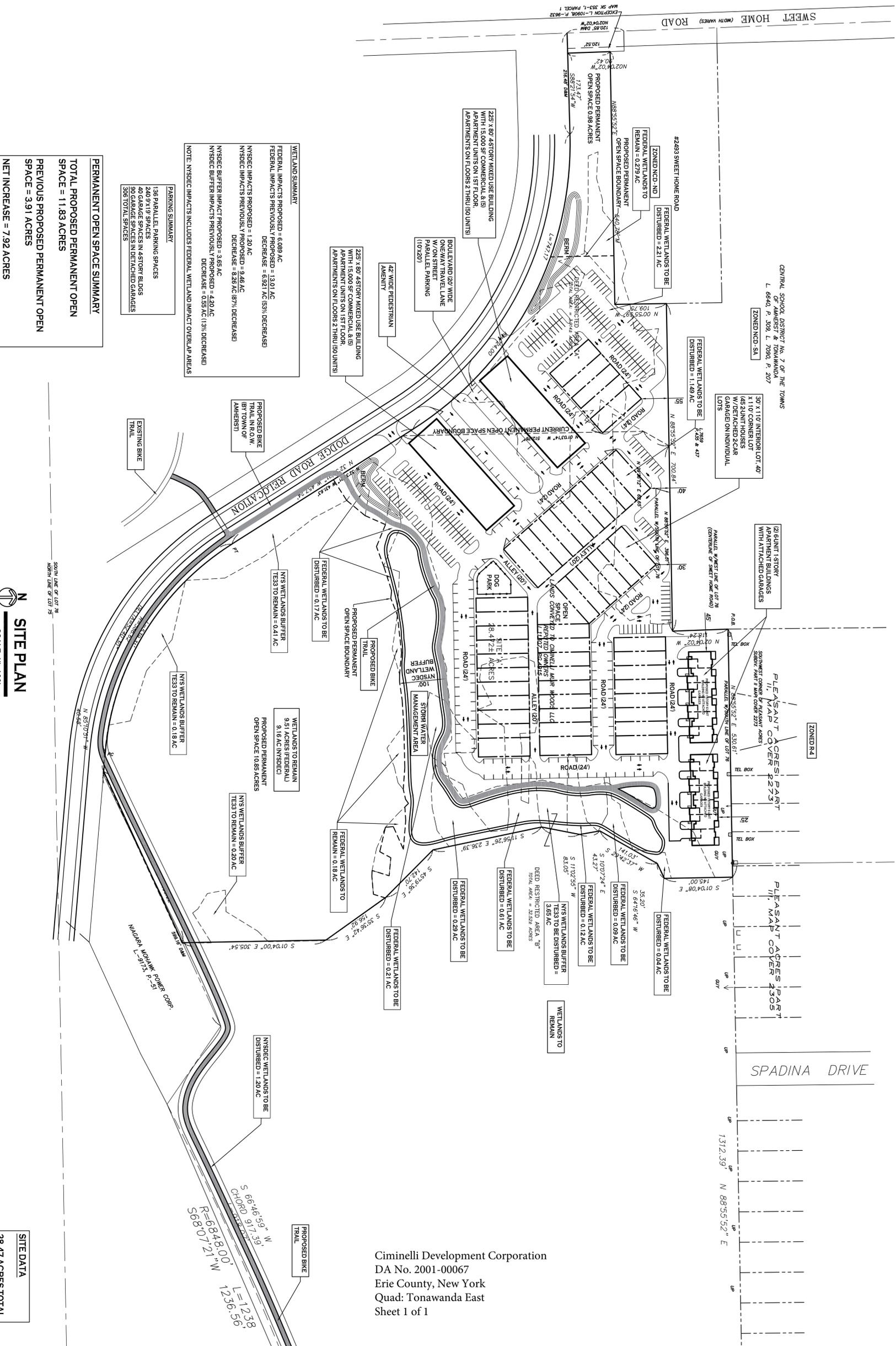
be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion 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.

**SIGNED**

Diane C. Kozlowski  
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 20 days from the date of issuance.



**PERMANENT OPEN SPACE SUMMARY**  
 TOTAL PROPOSED PERMANENT OPEN SPACE = 1.83 ACRES  
 PREVIOUS PROPOSED PERMANENT OPEN SPACE = 3.91 ACRES  
 NET INCREASE = 7.92 ACRES

**PARKING SUMMARY**  
 136 PARALLEL PARKING SPACES  
 230 X 19 SPACES IN 4 STORY BLDGS  
 90 GARAGE SPACES IN DETACHED GARAGES  
 306 TOTAL SPACES

**WETLAND SUMMARY**  
 FEDERAL IMPACTS PROPOSED = 6,689 AC  
 FEDERAL IMPACTS PREVIOUSLY PROPOSED = 13,011 AC  
 DECREASE = 6,321 AC (53% DECREASE)  
 NYSDEC IMPACTS PROPOSED = 1.20 AC  
 NYSDEC IMPACTS PREVIOUSLY PROPOSED = 9.48 AC  
 DECREASE = 8.28 AC (87% DECREASE)  
 NYSDEC BUFFER IMPACTS PROPOSED = 3.65 AC  
 NYSDEC BUFFER IMPACTS PREVIOUSLY PROPOSED = 4.20 AC  
 DECREASE = 0.55 AC (13% DECREASE)  
 NOTE: NYSDEC IMPACTS INCLUDES FEDERAL WETLAND IMPACT OVERLAP AREAS

**N SITE PLAN**  
 SCALE: 1"=100'

**SITE DATA**  
 28.47 ACRES TOTAL  
 ZONED: NCD - ND

Ciminelli Development Corporation  
 DA No. 2001-00067  
 Erie County, New York  
 Quad: Tonawanda East  
 Sheet 1 of 1

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARMINA WOOD MORRIS DPC ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.  
 200FT.  
 100' 0 100'

**DRAWING NO.**  
**C-100**  
 Project no.: 19.192

**DRAWING NAME:**  
 Concept Site Plan

Date: 7/1/20  
 Drawn by: C. Wood  
 Scale: As Noted

**PROJECT NAME:**  
 Site Development plans for:  
**Muir Woods Site "A"**  
 Sweet Home & Dodge Road  
 Amherst, New York

**REVISIONS:**

No.	Description	Date

