



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Ecological Services
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September 28, 2001

Lt. Colonel Glen R. DeWillie
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207

Attention: Regulatory Branch, Mr. Michael Montone

Dear Colonel DeWillie:

This letter serves as follow-up consultation on the bald eagle and piping plover, Federal threatened and endangered species, respectively, for the project proposed by Barnes Nursery, Inc. in East Sandusky Bay, Erie County, Ohio, Public Notice No. 2000-02170(1).

As proposed, the Barnes Nursery project will impact bald eagle foraging habitat and areas that could potentially provide foraging habitat for the piping plover, should the species recolonize this area. The project area is part of a heavily used staging area for fledgling eaglets throughout the region. The Service recommends the following modifications to the project design in order to minimize negative impacts on these two species.

Sedimentation and Water Quality

All efforts should be made to limit erosion and sedimentation in the project area. Sedimentation decreases the value of the habitat for fish and macro- and micro-invertebrates, and hence, birds that prey on these organisms, such as the bald eagle and piping plover. Establishment of vegetation on the created island was completed as part of the interim remedial actions proposed by Barnes Nursery in July 2001. Establishment of plants and their roots has and will continue to slow erosion and limit sedimentation. Furthermore, follow-up plantings of native prairie grass may be completed in the future which will continue to diminish erosion. This project proposal does not involve any dredging activity. Dredging this area would likely result in high amounts of suspended sediments entering the water, further disturbing the aquatic communities and disrupting feeding opportunities for eagles. The Service requests that water quality monitoring be performed regularly throughout the five-year monitoring period in both the created channel and the bay area to ensure that the project is not causing a decrease in water quality.

Invasive Species

Invasive species such as cattail (*Typha* spp.), common reed (*Phragmites australis*), and purple loosestrife (*Lythrum salicaria*) commonly thrive in disturbed wetlands including the proposed project site. These species, which provide little benefit to wildlife, often form a monoculture by outcompeting native vegetation. Indeed, in a plant survey conducted by Dr. Charles Herdendorf on September 7, 2001, each of these species was identified on the site. Interim corrective measures undertaken by the applicant included manually controlling these species to prevent their spread across the project area. The Service requests that the applicant control these species throughout the five-year monitoring period imposed by the Corps of Engineers. Furthermore, we request that herbicides be used sparingly, if at all, to protect native, beneficial plants in the project area. A diverse array of native plant species provides better habitat for

wildlife, which in turn provides better foraging habitat for eagles and plovers.

Human Disturbance

Bald eagles are notoriously shy and tend to avoid areas that are regularly disturbed by humans. A study on fledgling eagles in Ohio's western Lake Erie basin, completed by the Ohio Division of Wildlife from 1989-1992, shows that, "Once independent, young eagles search out low human activity areas with good food supplies and adequate perch sites prior to migrating. The young responded to human disturbance by fleeing the area of intrusion, often by extended soaring periods." This same study demonstrated that fledglings dispersed mainly to Sandusky Bay, Ottawa National Wildlife Refuge near the mouth of the Toussaint River, Winous Point, and Cedar Point National Wildlife Refuge in the western basin of Lake Erie. Young eagles were identified from Ohio, Michigan, Indiana, Wisconsin, and Canada, and gathered in communities at these locations. Fledglings were found to utilize the mouth of the Toussaint River only from Tuesday to Thursday, which corresponded with the days when human use was at a minimum. According to the study, "Habitat analysis indicates potential concern for meeting long-term fledgling habitat needs as Ohio's eagle population continues to grow (Mark Shieldcastle, Pers.com., 9/26/01)." We recommend that human disturbance of the project site be kept to a minimum. This includes discouraging use of the area by trespassing individuals on foot or in boats. The Service recommends posting "no trespassing" and "no fishing" signs in the project vicinity in order to minimize human disturbances. In addition, the Service requests that heavy machinery be prohibited within the project area. Introducing large, loud machines, even temporarily, is often enough to discourage eagles and other sensitive species from regularly using the area. (419) 878-0

Nuisance Species

The design of this project may influence the use of existing habitat by certain nuisance species, such as carp, Canada geese, and gulls, which may, in turn, affect the value of the habitat for eagles and plovers. Carp, a notoriously aggressive fish species that lives in silty water, usually contributes to sedimentation by thrashing about in the water and uprooting aquatic vegetation. This sedimentation prevents future colonization by other fish species and aquatic invertebrates, and disrupts the growth of aquatic vegetation that may provide forage for birds and wildlife. During a site visit on May 22, 2001, Service biologists observed a large number of carp spawning in the waters adjacent to the project. The Service proposes that the applicant undertake a fish monitoring study to determine what species are present now and their relative abundance. This study should continue throughout the five-year monitoring period to determine what, if any, effect the project is having on the fish community.

Gulls and Canada geese are two other nuisance species whose presence tends to decrease the value of the habitat for other species, specifically the piping plover. These species could potentially be attracted to the created island for nesting and foraging. The increased presence of these species will likely decrease the value of the marsh for endemic bird species. Gulls are known to prey on the eggs of piping plovers. Grazing and nesting activities of Canada geese and gulls can easily reduce the available native marsh vegetation, which would result in altering and/or reducing foraging and breeding habitat for endemic species. Planting the area with native prairie grass, and allowing the vegetation to become tall and dense will help to discourage gulls and geese. Assuring that the island is not mowed or vegetation otherwise disturbed should keep most of these nuisance birds away.

Further Actions

The Corps has stated that the island could be put into a conservation easement and held by a third party that would manage the area for fish and wildlife habitat. The Service agrees that this would be an acceptable means of maintaining the property, provided that the third party adheres to the guidelines provided above.



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COMM: 614/469-6923 FAX: 614/469-6919
October 13, 2000

Attn: Michael G. Montone, LRB
U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, New York 14207-3199

Dear Mr. Montone:

We appreciate the opportunity to comment further on the Barnes Nursery, Inc. dredge and fill project in Ohio along with associated restoration, management and the initial authorization by the Corps of its associated Nationwide Permit #27 (PCN 2000-01800). We received and reviewed your September 29, 2000 fax and related email notices pertaining to the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands in east Sandusky Bay, Erie County, Ohio. We also received your August 30, 2000 email message addressing chronology of events pertaining to NWP #27 permit issuance and proposed critical habitat of the Federally endangered piping plover (*Charadrius melodus*). We provide comments pertaining to both wetlands and endangered species.

Wetlands

We are very disturbed that your September 20, 2000, letter to Mr. Robert W. Barnes seems to indicate that NWP #27 is still in effect. While it is true Mr. Barnes is not in compliance with the previously issued NWP #27, the important remedy is full restoration and NOT a return to NWP #27 compliance. At the multi-agency meeting on July 26, 2000, and in our August 21, 2000, letter to the Corps we asked that the NWP #27 permit be rescinded. We also asked that Mr. Barnes be required to undergo the full 404/401 permit process to allow maximum time for multi-agency planning, review and workable solutions. Based on the fact that Mr. Barnes' true need is a source of water and not "restoration", NWP #27 should never have been issued by the Corps to Mr. Barnes. The NWP # 27 should never have been issued also because the Sheldon Marsh area is a Class 3 wetland and is used by the Federally endangered piping plover.

We ask the Corps to reject the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands in east Sandusky Bay, Erie County, Ohio. The Sheldon Marsh area is vitally important to numerous species of shorebirds that include the Federally endangered piping plover, the state endangered common tern (*Sterna hirundo*), egrets, herons and others. The nest island design proposed in the Plan will encourage gulls, geese, and swans that will be destructive predators, consumers and competitors to the piping plover, common tern, other shorebirds and also sensitive plant species within the Sheldon Marsh preserve. The nest island design and deep water design will not in any way enhance the Sheldon Marsh area or immediate project area for shorebirds. The Plan will also result in hydrological alterations detrimental to Sheldon Marsh in terms of nutrient depletion, interference with water runoff feeding the marsh and negative effects upon plant community composition. If left open much longer, the excavated channel will encourage invasion of unwanted exotic species into Sheldon Marsh such as Phragmites plants and perhaps unwanted fish.

Endangered Species and Critical Habitat

We are very concerned that the Corps and Mr. Robert W. Barnes have not acknowledged or offered assurances that the Federally endangered piping plover and its proposed critical habitat will be addressed. There is no mention of the piping plover or its proposed critical habitat in your September 20, 2000, letter to Mr. Barnes. There is no mention of the piping plover or its proposed critical habitat in the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands. The above paragraph in which we ask for rejection of the Compliance and Management Plan contains many of the reasons the plan is detrimental to the piping plover and its proposed critical habitat. The dredge and fill activity conducted during June and July 2000 already adversely impacted mud flats valuable to the piping plover and other shorebirds for foraging. Both the Corps and Mr. Barnes will not be in compliance with the Endangered Species Act unless the five steps we recommend below are implemented.

The Great Lakes piping plover was listed as Federally endangered in 1986. Sheldon Marsh and one other site in northern Ohio were officially proposed for piping plover critical habitat designation on July 6, 2000. The piping plover has remained on our county-based list of species with Federal status for many years in the eight Ohio counties containing Lake Erie shoreline. Sheldon Marsh is an annual migratory rest and foraging location for piping plovers. In recent years, piping plovers were observed displaying courtship behavior which means Sheldon Marsh may some day be used by breeding piping plovers to nest and raise young.

As you know, Section 7(a)(2) of the Endangered Species Act of 1973, as amended (hereafter, ESA) requires a Federal agency (e.g., the Corps) to insure that any action authorized, carried out or funded by the agency is not likely to jeopardize the continued existence of a Federally listed species or result in the destruction or adverse modification of habitat for the species. To paraphrase Section 7(a)(4) of the ESA, each Federal agency (e.g., the Corps) shall conference with the U.S. Fish and Wildlife

Service on any action which is likely to result in the destruction or adverse modification of proposed critical habitat for a Federally proposed or listed species.

It is true the Corp's Gary Buck and our office's Habitat Conservation biologist Ken Multerer met in good faith on June 14 to discuss the Barnes Nursery project. However, the discussion on June 14 focused only on wetland issues. Ken Multerer did not concur with issuance of NWP #27 at that time, and we did not see the NWP #27 permit in our office for review at any time prior to its issuance.

No endangered species issues were discussed by the Corps and our office prior to July 26, 2000. This means the Corps issued NWP #27 to Barnes Nursery, Inc. without consulting with us about endangered species. This is why I verbally notified the Corps and other agencies at the interagency meeting on July 26 about the fact that Sheldon Marsh is proposed as piping plover critical habitat. As a follow-up to the July 26 meeting, we sent our August 21, 2000, letter giving written notification of the proposed critical habitat. The Barnes Nursery, Inc. dredge and fill project has thus become an example of why the Corps Nationwide Permit process sometimes does not adequately address endangered species issues.

ESA and Wetland Recommendations

The Barnes Nursery, Inc. dredge and fill project has already seriously impacted the integrity and hydrology of Sheldon Marsh and proposed piping plover critical habitat. The project and its Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands also represent serious long-term threats which will further degrade the quality of Sheldon Marsh and piping plover critical habitat. For these reasons, we ask the Corps to implement the following steps.

- 1) Cease all dredge and fill activity; rescind the NWP #27 permit for Barnes Nursery.
- 2) Reject and do NOT implement the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands. The Plan is harmful to Sheldon Marsh, to piping plover proposed critical habitat and to the piping plover itself. Causing harm to a Federally endangered species constitutes take under the ESA; the Corps and Barnes Nursery are not currently authorized under sections 7 and 9 of the ESA, respectively, to conduct take of Federally endangered species.
- 3) Immediately require and implement full restoration of the Barnes Nursery dredge and fill project area. Vegetation, soils and hydrology should be restored to their initial condition prior to June 14, 2000. We are glad the Corps is requiring Barnes Nursery to stabilize the spoil piles with grass seed as an interim and, hopefully, temporary measure.
- 4) Require Barnes Nursery to undergo full individual 404/401 permit review at both State and Federal levels. We ask the Corps to allow our office and all other Federal or State offices involved to fully review any permit for wetland and endangered species concerns before the permit is issued. It is our hope that

through this process a winning solution will be developed which successfully addresses the need of the Barnes Nursery for water and the vital priority of maintaining the ecological and hydrological integrity of Sheldon Marsh and proposed piping plover critical habitat.

- 5) Concurrently with Item 4 above, initiate informal conferencing with us under Section 7(a) (4) of the ESA in preparation for formal conferencing and development of a formal conference opinion to address concerns about proposed piping plover critical habitat. At the Corps request, it may be possible to combine the conference with mandatory consultation already required under Section 7(a)(2) of the ESA for the Federally endangered piping plover itself.

We ask you to confirm in writing that the above five steps will be implemented by the Corps. Please feel free to contact me (x 13) or Habitat Conservation Biologist Ken Multerer (x 16) with any questions you may have.

Sincerely,

Buddy B. Fazio

Buddy B. Fazio
Endangered Species

Acting For:
Kent E. Kroonemeyer
Supervisor

cc: Honorable George Voinovich, U.S. Senate, Columbus, OH
Stu Lewis, Chief, ODNR Div. Natural Areas and Preserves, Columbus, OH
Wayne Warren, Chief, ODNR Div. Real Estate and Land Mgt., Columbus, OH
Kim Baker, Div. Real Estate and Land Mgt., Columbus, OH
Lisa Morris, Chief, OEPA Div. Surface Water, Columbus, OH
Ric Queen, OEPA Div. Surface Water, Columbus, OH
Laura Ragan, USFWS-R3-TE, Twin Cities, MN
Ron Refsnider, USFWS-R3-TE, Twin Cities, MN

Please note that the Service continues to oppose the project, as proposed. We assert that the project will negatively affect the surrounding environment, as well as Sheldon Marsh State Nature Preserve. We believe that other alternatives exist that could provide Barnes Nursery with water and avoid all impacts to this area. We believe that these alternatives have not been fully examined, and that this project could be designed such that the bay could remain the pristine ecosystem that it has been for decades. We would like to see the area restored to its original condition and request that Barnes Nursery, Inc. develop less environmentally damaging means to obtain water.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

We appreciate this opportunity to provide the above comments. If you have questions, or if we may be of further assistance in this matter, please contact Megan Sullivan at extension 16 in this office.

Sincerely,



Kenneth C. Lammers
Acting Supervisor

cc: ODNR, Division of Wildlife, Columbus, OH
ODNR, Division of Natural Areas and Preserves, Columbus, OH
ODNR, Division of Real Estate & Land Management, Columbus, OH
Ohio EPA, Water Quality Monitoring, Attn: Rick Queen, Columbus, OH
US EPA, Office of Environmental Review, Chicago, IL