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A LIMITED LIABILITY CORPORATION

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May 3, 2002

VIA REGULAR MAIL

The Honorable Donald Evans
Secretary of Commerce
United States Department of Commerce
Herbert C. Hoover Building
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230

VIA FACSIMILE TRANSMISSION

Molly Holt, Esq.
Department of Commerce
National Oceanic & Atmospheric Administration
General Counsel for Ocean Services
SSMC-4, Room 6111
1305 East-West Highway
Silver Spring, MD 20910

RE: Barnes Nursery, Inc.
State of Ohio Department of Natural Resources
STIPULATION FOR STAY AND REMAND

Dear Mr. Secretary and Ms. Holt:

Pursuant to 15 C.F.R. Section 930.129(c)(3) and (d), the parties hereto respectfully request that the within matter be stayed, and thereafter remanded to the State of Ohio, Department of Natural Resources, for reconsideration of the project's consistency with the enforceable policies of the Ohio Coastal Management Program.

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Molly Holt, Esq.

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By their signatures below, counsel for Barnes Nursery, Inc. and the State of Ohio indicate their stipulation to the requested stay and remand.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

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Counsel for Appellant,
Barnes Nursery, Inc.

The Honorable Donald Evans
Molly Holt, Esq.

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Brief in Support

Appellant Barnes Nursery, Inc. submits to the Secretary that significant new information exists, which is relevant to the State agency's objection, and which was not provided to the State of Ohio, Department of Natural Resources as part of the State agency's consistency review. This evidence includes (but is not limited to) the following types of information:

1. The impact of the provisional permit issued by the U.S. Army Corps of Engineers for the Project;
2. The opinions and conclusions reached by several experts concerning the Project provided by Barnes Nursery to the State of Ohio since June 11, 2001; and
3. A proposal made by Barnes Nursery to the State in 2002 by which a perpetual conservation easement would be placed on property now owned by Barnes Nursery which adjoins the Sheldon's Marsh State Nature Reserve.

Therefore, Appellant requests that the Secretary stay the processing of this appeal and remand this proceeding to the State of Ohio, Department of Natural Resources for reconsideration of the proposed activity's consistency with the enforceable policies of the Ohio Coastal Management Program in light of this significant new information not available to the

State agency prior to its objection of June 11, 2001

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The State of Ohio, Department of Natural Resources has no objection to Appellant's requested stay and remand.

Respectfully submitted,

BETTY D. MONTGOMERY
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