

GEORGE V. VOINOVICH
OHIO

317 HART SENATE OFFICE BUILDING
(202) 224-3353
TDD: (202) 224-6997
senator_voinovich@voinovich.senate.gov
http://voinovich.senate.gov

United States Senate

WASHINGTON, DC 20510-3504

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THE FEDERAL WORKFORCE AND
THE DISTRICT OF COLUMBIA

August 4, 2003

The Honorable Don Evans
Secretary
United States Department of Commerce
Fourteenth Street and Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Evans:

I am writing to urge you to require Barnes Nursery Incorporated to fully restore the dike and channel it constructed adjacent to Sheldon Marsh State Nature Preserve in Eric County, Ohio. Sheldon Marsh is one of the most pristine wetlands in the State of Ohio and is an important natural refuge for wild species and plant life.

More than three years ago, Barnes Nursery requested authorization to construct a dike and channel for the primary purpose, as initially determined by the Army Corps of Engineers (the Corps), of enhancing the wetlands. Once a permit was granted and construction started, the Corps discovered that the specifications of the dike and channel did not match those originally authorized as the project was much larger. Upon further review, the Corps also determined that the primary purpose of the project was to construct an irrigation channel to supply a constant source of water to support nursery operations. Thus, the Corps instructed Barnes Nursery to stop construction because the permit for this project was not applicable for the work that had already been done or this newly discovered purpose.

Upon learning of this situation, I sent a letter in September 2000 to the Corps urging full and immediate restoration of the affected area. I hoped that quick action to return the land back to its original condition would prevent any irreparable harm to Sheldon Marsh. The dike and channel, however, have remained in their originally constructed condition.

As you know, Barnes Nursery subsequently applied for an after-the-fact permit to complete work on the dike and channel but was denied a Water Quality Certification by the Ohio Environmental Protection Agency and a Coastal Zone Management Federal consistency determination from the Ohio Department of Natural Resources. Although they originally challenged these decisions, it is my understanding that Barnes Nursery recently dropped its appeals. Thus, the denials stand and a final permit will not be issued.

STATE OFFICES:
36 EAST SEVENTH STREET
ROOM 2615
COLUMBUS, OHIO 43202
(614) 684-3285

1240 EAST NINTH STREET
ROOM 2956
CLEVELAND, OHIO 44199
(216) 622-7095

37 WEST BROAD STREET
ROOM 320 (EAST-1034)
COLUMBUS, OHIO 43215
(614) 469-0774

37 WEST BROAD STREET
ROOM 310
COLUMBUS, OHIO 43215
(614) 469-6697

320 EAST TENTH STREET
ROOM 1210
COLUMBUS, OHIO 43260
(614) 259-3805

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Yet, this issue remains unresolved. I am dismayed that this process has taken three years and that the dike and channel remain adjacent to the Preserve. Sheldon Marsh is an important asset for every Ohioan to both learn from and enjoy, and we must do everything we can to ensure it remains so for years to come. This can be accomplished by simply requiring Barnes Nursery to return the area where the dike and channel were built to its pre-construction condition.

It is my understanding that both the Ohio Environmental Protection Agency and the Ohio Department of Natural Resources support full restoration, and I urge that this be required of Barnes Nursery without further delay.

Thank you for your consideration of this very important matter.

Sincerely,

A handwritten signature in black ink, reading "George V. Voinovich". The signature is written in a cursive style with a large, prominent initial "G".

George V. Voinovich
United States Senator



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

AUG 9 2003

The Honorable George V. Voinovich
United States Senate
Washington, D.C. 20510

Dear Senator Voinovich:

This responds to your letter regarding the administrative appeal filed by Barnes Nursery, Inc. (Barnes Nursery) under the Coastal Zone Management Act (CZMA). This matter is currently pending before the Department of Commerce (Department). The National Oceanic and Atmospheric Administration processes many aspects of CZMA appeals for the Secretary of Commerce, and therefore was asked to respond to your inquiry.

Your letter indicates that Barnes Nursery has dropped its appeal and also raises various concerns about the restoration of an area adjacent to the Sheldon Marsh State Nature Preserve. In this regard, you urge that Barnes Nursery be required to restore the area where a dike and channel were built to its pre-construction condition.

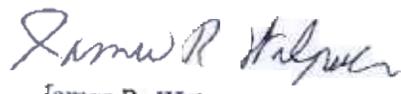
To date, Barnes Nursery has not provided the Department with any indication that it will withdraw or seek a dismissal of its administrative appeal under the CZMA. However, given your letter, we will contact Barnes Nursery to confirm its intention. If the appeal were withdrawn and if Ohio continues its objection, then no Federal permit for the project could be issued. With respect to requiring the restoration of the affected area, we note that the Secretary of Commerce does not have the authority to order such action under the CZMA. In this regard, you may want to contact the U.S. Army Corps of Engineers.

At this point, the decision record for the Barnes Nursery administrative appeal includes briefs and supplementary information submitted by the State of Ohio and Barnes Nursery, as well as comments from the public and interested Federal agencies. If Barnes Nursery continues its appeal, the next step, after determining that the decision record is complete, would be the publication of a notice in the Federal Register announcing that the record is closed. Under most circumstances, a decision would then be issued within 90 days after that notice is published. Please note, all materials in the decision record as well as Federal Register notices and other documents related to the Barnes Nursery appeal can be reviewed at the Department's consistency appeals web site, www.ogc.doc.gov/czma.htm.



Thank you for your interest in this matter

Sincerely,

A handwritten signature in cursive script that reads "James R. Walpole".

James R. Walpole
General Counsel