

Subject: Sheldon Marsh - Supporting the state's denial

Resent-From: BarnesNursery.Comments@noaa.gov

Date: Tue, 26 Nov 2002 21:44:41 +0100

From: Renée Duille <ReneeDuille@web.de>

Organization: <http://freemail.web.de/>

To: barnesnursery.comments@noaa.gov

CC: Pskherarts1@aol.com

Dear Ladies and Gentlemen,

My friend and I have been able to visit Ohio and its few State Nature Preserves in the past years. Since the Lake Eire Coastal Line is a very unique piece of nature, we have always come back to visit Sheldon Marsh.

Our first visit took place approx. 10 years ago. Back then you could really call it marshland with free flowing waters (the right hydrology), filled with turtles, fish and interesting plants. Now after the dike and channel have been built, the ecosystem of the marsh has vastly changed and nothing is as it was before.

We do not understand how a business such as Barnes Nursery takes the right to build a dike and channel, which automatically changes the environment for Sheldon's Marsh. Why is profit worth more than a piece of nature? Did nature loose its rights because it cannot speak for itself? Where is this leading to?

As we visited Sheldon Marsh this past October, we were shocked to see the changes compared to October 2001. It used to have a unique ecosystem but due to the artificial and illegal dike and channel the natural function has been severely altered.

We have been able to inspire friends and relatives from the U.S. and Europe to visit Sheldon Marsh. All of them are enthusiastic over this special natural refuge. For us Germans it is common to walk through the woods, fields and vineyards - there are no private property signs that restrict our walking activities. That is another reason why we cherish Sheldon Marsh - we can walk along the paths that are open to the public and enjoy nature. Unfortunately that is very rare within the U.S.

As we have been following the illegal steps of Barnes Nursery from abroad, we truly question how someone has the right to build a dike without any valid permit. If the citizens of Ohio (who are the owners of Sheldon Marsh) had built something similar without a permit to protect the marshland, they would not have gotten through with it. Why is it that nature is always on the losers' side?

All of us need nature - no artificial nature to watch on TV or play as a video game - but pure nature to experience where life once originated from and developed. Children need to understand the rhythm of life by observing it outdoors in nature. That is why Sheldon's Marsh is so important. Each season reveals its own beauty - from the first bright luscious greens of sprouting plants in spring and birds building their nests up to autumn with its colorful leaves and migrating birds. It is important to appreciate and respect nature.

Why does nature have to be wilfully destroyed if other solutions are available? In this day and age and due to advanced technology - especially in the United States - it is possible to find solutions that prevent from endangering Sheldon Marsh, e.g. digging wells. It is just a question of awareness and willingness from Barnes Nursery side!

The State's denial must be supported! It is time to wake up and become active before it is too late! Nature does not need us human beings but we need nature!

Yours sincerely,

Renée Duille & Wolfgang Ranft
Lindenstrasse 17
79379 Muellheim-Niederweiler
Germany

Subject: COMMENT: STATE OF OHIO PERMIT DENIAL
Resent-From: BarnesNursery.Comments@noaa.gov
Date: Fri, 29 Nov 2002 08:07:11 -0500
From: "Dean Sheldon Jr." <seedbed@accnorwalk.com>
To: barnesnursery.comments@noaa.gov

TO WHOM IT MAY CONCERN:

With regard to this permit denial, it is my opinion that the Barnes Nursery Project largely fails to meet the rather specific requirements of the Coastal Zone Management Act. Further, I would urge that NOAA support the action taken here in Ohio denying Barnes' contention that his project meets the objectives/purposes of the Act.

offer the following comments in support of this position:

> *The invasion of this Category III wetland by Barnes is a legal and moral affront to all 11 million Ohioans who are the owners of this pristine wetlands along the Lake Erie shore. Further, I suggest that this is NOT a local or state issue only. The granting of a permit to Barnes would have far-reaching implications for the safety/protection of wetlands all across the county. It involves the physical and legal integrity of publicly-owned marshlands and other public properties not only in Ohio but in the rest of the country, as well..In my opinion, this is a major Federal issue and should be viewed as such by your agency as you review the Barnes' appeal. The ultimate resolution of this matter will be precedent-setting for the entire nation;*

> *From a personal standpoint, the Barnes' action is offensive to our family which freely made the initial Sheldon Marsh property available for acquisition by the Division of Natural Areas and Preserves/ODNR in the late 1970's. This blatant violation by Barnes surely works against our efforts to preserve this marshland;*

> *It is inconceivable that the national interest could be served in any way by the Barnes' appeal. The appeal by Barnes to NOAA should be dismissed out of hand and with no mitigation. Restoration of the ENTIRE site to its pre-construction condition is the single option for bringing the matter into compliance with the requirements of Ohio's coastal zone management plan and the CZMA.*

We appreciate the opportunity to comment on this matter. Furthermore, we would be pleased to attempt to answer all questions which you might have with regard to this matter and our position concerning it.

Dean E. Sheldon, Jr.
4569 Grn-Mln TL Road
Greenwich, OH 44837-9429
419/752.1451

Subject: Sheldon Marsh

Resent-From: BarnesNursery.Comments@noaa.gov

Date: Sat, 30 Nov 2002 20:58:42 -0500

From: "Sandra CEPAITIS" <slcep@msn.com>

To: <barnesnursery.comments@noaa.gov>

<?xml:namespace prefix="v" /><?xml:namespace prefix="o" />

Dear Secretary of Commerce,

I am writing in hopes that my email will encourage you to prevent any more damage to Sheldon Marsh. The Barnes Nursery project has created many adverse costal effects in the Sheldon Marsh area. Please be a good steward of our fragile environment and insist that the artificial dike of dirt and deep water channel that Barnes Nursery created be remove to allow the marsh to once again be free flowing. If left in place, this dike and channel would set a precedent undermining all wetland and coastal laws in the country.

The beauty of Sheldon Marsh is impressive and must be preserved for future generations to enjoy. Areas such as this are too quickly disappearing and I feel strongly that I needed to voice my opinion in hopes of saving it.

Sincerely,

Sandra L. Cepaitis

Subject: denial of Barnes Nursery project

Resent-From: BarnesNursery.Comments@noaa.gov

Date: Sun, 1 Dec 2002 15:59:59 -0800

From: "Tracy Phillips" <btphillips@sutton-ebank.com>

To: <barnesnursery.comments@noaa.gov>

November 31, 2002

Molly Holt

U.S. Department of Commerce

1305 East-West Hwy, Room 6111

Silver Spring, MD 20910

Dear Ms. Holt

I am writing in support of the State of Ohio's denial of Coastal Consistency of the Barnes Nursery project. Mr. Barnes dug a dike and channel in the Sheldon Marsh wetland complex in July of 2000.

The Barnes Nursery Project failed to adhere to the regulation of the Coastal Zone Management Act when this work was done. The rights and due process of the law were denied to the people of Ohio, which does not further the national interest. The citizens of Ohio own Sheldon Marsh State Natural Preserve which is adjacent to this illegal project. Barnes Nursery failed to notify any adjoining property owners.

Barnes circumvented the required authorizing State agencies, comments and permits specifically required on the original ACE permit. The original erroneous ACE permit was applied for one day and granted the next, allowing no time for scrutiny. The construction of the north-south channel on Barnes property was planned and built well in advance of the improper Army permit for the east-west channel. It has no permits on record from the ACE or any state agency, thus making it also insistent with Ohio's Coastal Zone Management Act.

There was no public information sessions held that would have brought to light the lack of coastal consistency before the oversized dike and channel were built in a rare category III wetlands containing a state nature preserve.

The artificial dike of dirt and deep water channel created a double wall, which alters the natural function of the previously free flowing marsh ecosystem. Sheldon Marsh is a category III, the highest quality rare wetland type, and is one of Ohio's last remaining, largest naturally functioning barrier-beach lagoon coastal ecosystems. Environmental degradation is apparent in the sedimentation, pollution from the runoff of the nursery's activities, destruction of mudflats, which are foraging areas for shore birds and endangered species, the alteration of the natural flow of water in the marsh and the invasion of undesirable plants, fish and animals.

Sheldon Marsh State Nature Preserve has been designated an important Bird Area by the National Audubon Society. It is a migratory flyway for hundreds of neo-tropical birds and shore birds. Over 80,000 visitors use the preserve on an annual basis.

There are several alternatives that exist to allow Barnes Nursery the water they insist is the purpose of their project. Ponds existed on the property in the 1960's that could be rebuilt without being inconsistent with the coastal management plan. New technology and deeper wells may be an available source of water. The source of water which Barnes has chosen needs to be re-evaluated considering the fluctuating lake levels and the expanding size of their business. Use of free flowing water without the dike and channel is an alternative which has been used by Barnes, and does not impact the wetlands in average lake level years. Relocation of the few acres of potted plants, requiring the 350,000 – 600,000 gallons of water daily, to the Barnes location on Catawba is a possibility especially during low lake level times.

Finally, the burden of proof of consistency with the Coastal Zone Management Act lies with Barnes and they have failed to produce this information. The immense amount of paperwork from their hired consultants has proven nothing, but has held up restoration for three growing seasons thus far. They have insisted upon their consistency but never even signed the Coastal Consistency Agreement form necessary to obtain an ACE 404 permit. The Ohio Attorney General, who represents the ODNR in this denial appeal, states the Army Corps cannot issue a provisional permit when a State objection is pending. Therefore, the use of this provisional permit by Barnes to justify their project is unfounded and the appeal to NOAA should be dismissed thus nullifying the after-the-fact Army Corps 404 permit to keep the already constructed illegal project. The project is illegal in this area; it is not authorized and it is non-compliant. If left in place this dike and channel would set a precedent undermining all wetland and coastal laws in the country. This is inconsistent without our management plans, both State and Federal.

Senator George Voinovich, in a letter to Assistant Secretary of the Army Civil Works, which has oversight authority over the US Army Corps of Engineers, wrote that "the applicant intentionally misrepresented his project to the Corps...In addition; it is evident that the project was more a matter of water supply than environmental restoration for fish and wildlife. The US Fish and Wildlife Service, the ODNR, and OEPA, concur with the Corps that the scope of this project exceeds the terms and conditions of the nationwide permit...In light of the misrepresentation on the original nationwide permit...(I) believe full restoration should be accomplished while the individual permit is being considered."

I would like to see the total restoration of the Sheldon Marsh area to its pre-construction condition. This is the only option to bring this area into consistency with Ohio's coastal management plan.

Sincerely,

Tracy Phillips

3806 S. County Rd 23

Attica, OH 44807

btphillips@sutton-ebank.com

419-426-9115

Subject:

Resent-From: BarnesNursery.Comments@noaa.gov

Date: Tue, 19 Nov 2002 16:46:35 -0500

From: "jennifer vincenty" <jennifer_vincenty@hotmail.com>

To: barnesnursery.comments@noaa.gov

Please don't allow Barnes Nursery to alter the coastal area any more than they have. This case will set an awful precedence and cannot be allowed. Sheldon marsh is a wonderful area here in our area and an important byway for the migration routes. Our area is too built up as is and we need to preserve the few areas left. Sheldon Marsh does that. Dikes and the such make different habitats that are not preferred to migrating birds. This will reduce their already slim chances of success from season to season.....NO!

jennifer Vincenty
Vermilion, Ohio

Protect your PC - get McAfee.com VirusScan Online
<http://clinic.mcafee.com/clinic/ibuy/campaign.asp?cid=3963>

Subject: Support for State of Ohio Position
Resent-From: BarnesNursery.Comments@noaa.gov
Date: Tue, 19 Nov 2002 09:40:40 -0500
From: Paul McSweeney <mcsweeney@genesis.eng.ohio-state.edu>
To: "'barnesnursery.comments@noaa.gov'" <barnesnursery.comments@noaa.gov>

NOAA Reviewer,

I am an avid bird watcher living in Ohio who has followed the defense of the environment, the best interests of the citizens of Ohio and most importantly the rule of law in the actions following the illegal actions taken by Barnes Nursery in the Sheldon's Marsh Preserve. I urge you to uphold the State of Ohio's denial of Coastal Consistency of the Barnes Nursery project (dike and channel) dug in Sheldon Marsh wetland complex in July of 2000.

As I understand the issue before you, you must determine whether the Barnes Nursery Project is consistent with the objectives or purposes of the Coastal Zone Management Act (CZMA). It is apparent that it isn't for the following reasons. In all that has gone on to-date, the rights and due process of law were denied to the people of Ohio and this, in itself, does not further the national interest. The burden of proof of consistency with the CZMA lies with Barnes and they have failed to produce this information. There are numerous adverse coastal effects that already have happened and will continue to happen unless there is immediate restoration of Sheldon Marsh to its original, pre-construction condition.

The preservation of this unique area is, for my selfish reasons as a birder, very important but I also feel that the blatant manner in which this business has usurped it's legal and ethical boundaries must be recognized and redressed.

Once again, I strongly recommend that you uphold the State of Ohio's denial of Coastal Consistency in this matter.

Sincerely,

Paul E. McSweeney
Worthington, Ohio