



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

June 23, 2022

Stephan A. Ryba
Chief, Regulatory Branch
NY District U.S. Army Corps of Engineers
26 Federal Plaza, Room 16-406
New York, NY 10278

Public Notice Number: NAN-2021-00948-UDA, Port of Albany Development Project, Albany County, New York

Dear Mr. Ryba,

The United States Environmental Protection Agency (EPA) has reviewed the subject public notice issued on May 24, 2022, for the proposed construction of a new wharf, bridge, and a warehouse and manufacturing facility with attendant features in the City of Albany and Town of Bethlehem, Albany County, New York. The applicant, the Albany Port District Commission, proposes to permanently impact 0.81 acre of wetland, comprised of approximately 0.30-acre of palustrine emergent wetland and 0.51-acre of palustrine forested wetland, and 0.21 acre of Submerged Aquatic Vegetation (SAV) and permanently convert another 0.32 acre of forested wetland to emergent wetland for the purpose of constructing a warehouse and manufacturing facility with an export terminal. EPA is concerned the applicant has not sufficiently avoided wetland impacts. We offer the following comments:

Project Purpose

EPA considers elements of the applicant's overall project purpose, manufacturing and warehousing, to be non-water dependent activities. EPA does not believe the manufacturing and warehouse portions of the project requires access to, proximity to, or siting within wetlands. Practicable alternatives that do not require access or proximity to or siting within the special aquatic site are presumed to be available, primarily a redesign of the site to better utilize open space to avoid impacts to wetlands.

Avoidance and Minimization

The preferred alternative has not been supported as the Least Environmentally Damaging Practicable Alternative (LEDPA).

The majority of the wetlands that the applicant intends to impact are located in the northwest corner of the 81.6-acre main site. The primary structure on this portion of the site is Building C, labeled as "Blast-Metallization-Paint" on project drawings, occupying an area of 119,841 square feet. The application does not give a specific reason given for the layout or sizing of the buildings on the site. Additionally, no other minimum requirements for sizing of other project elements, such as the staging area and other attendant features, have been discussed. Furthermore, no specific occupant for this site was identified in the application, meaning that there is no inherent need for the specific site layout proposed in the current application package.

Given the amount of open space and space assigned for temporary storage of materials, there is no obvious reason why Building C or other proposed site elements cannot be relocated elsewhere on the site or be reduced in size to minimize fill impacts to 0.81 acre of wetland and permanent conversion the 0.32 acre of forested wetland. EPA recommends the applicant provide justification for the current sizing and location of proposed project elements. Without such justification, the preferred alternative cannot be supported as the LEDPA and it is assumed that impacts can be further minimized.

In addition to the wetland impacts, the construction of the wharf and associated dredging would also impact a 0.21-acre SAV bed. This SAV bed, labeled as SAV Area #3, is the largest of the three SAV beds located along the shoreline of the project site. No justification was given for the sizing of the proposed wharf or its placement at the proposed location. EPA recommends the applicant provide justification as to why the proposed wharf cannot be relocated to reduce the effects of habitat fragmentation on SAV Area #3 and/or overall SAV impacts. Without such justification, the preferred alternative cannot be supported as the LEDPA and it is assumed that impacts can be further minimized.

Compensatory Mitigation

Although it has not been demonstrated that the proposed project represents the LEDPA, EPA offers the following comments on the proposed compensatory mitigation for the wetlands and SAV impacts on-site:

To compensate for the proposed permanent impacts, including the 0.33-acre wetland conversion impacts, the applicant is proposing to purchase 1.46 credits from an approved In-Lieu Fee (ILF) Mitigation Program. In addition, the applicant proposes the preservation of a 2.87-acre riparian buffer along approximately 1,700 linear feet of Hudson River shoreline by securing a restrictive covenant on the land.

At the time of writing, there is no approved ILF instrument for any ILF mitigation provider for the Middle Hudson service area, and as such no ILF credits are available in that area. If no new ILF credits are approved and released, other mitigation work will have to be performed to account for the proposed wetland impacts from this project. EPA recommends the applicant develop a mitigation plan consistent with the 2008 Federal Mitigation Rule (40 CFR § 230.94(c)). To compensate for lost wetland functions, EPA recommends that forested wetlands be compensated for at a ratio of 3:1 and emergent wetlands at a ratio of 2:1.

Additionally, the media has reported that widescale tree clearing has already occurred on site as part of project preparations.¹ EPA recommends full restoration of cleared forested wetland areas that are not authorized for impact under the proposed permit. EPA recommends these areas be identified and their proposed restoration detailed in the compensatory mitigation plan recommended above.

Secondary Site Impacts

A review of FEMA floodplain maps shows that the entirety of the project site lies within the 100-year floodplain of the Hudson River. Climate Change poses the risk for these 100-year flood events to become more prevalent, resulting in more frequent periods when the site could become inundated with water.

¹<https://www.timesunion.com/business/article/Feds-upset-about-tree-clearing-at-Port-of-Albany-17255907.php?IPID=Times-Union-HP-editors-picks#photo-22464045>

In addition, a review of NOAA maps shows that as little as five feet of sea level rise could directly impact parts of the site without an associated storm event. With the combination of more prevalent flooding events and sea level rise, EPA has concerns that the loss of such a large wetland area as proposed by the applicant could significantly impact downstream property owners and communities due to the lost water storage capacity of the impacted wetlands. If the applicant is unable to completely minimize wetland impacts, EPA recommends the applicant perform an analysis of downstream flooding impacts that may result from proposed wetland filling on-site.

EPA recommends denial of a permit as currently proposed for this project because it does not comply with the Section 404(b)(1) Guidelines due to non-water dependent project elements, inadequate impact minimization, and an inadequate compensatory mitigation plan. Please notify us of the Port of Albany's response to these comments and any changes to the permit application.

Thank you for the opportunity to provide comments on the public notice and permit documents. If you have any questions, please contact Austin Jepsky at (212) 637-3795 or Jepsky.Austin@epa.gov.

Sincerely,

MARCO
FINOCCHIARO

Digitally signed by
MARCO FINOCCHIARO
Date: 2022.06.23
13:22:26 -04'00'

For Richard Balla, Chief
Watershed Management Branch