



October 13, 2022

Scott A. Marshall, Principal Planner
Town of Amherst Planning Department
5583 Main Street
Williamsville, New York 14221

Re: Major Site Plan [SP-2022-06] - Proposed Multifamily Project
Location: 3325 and Portion of 3275 Millersport Highway
Applicant/Project Sponsor: The Green Organization
File No. 10173.11

Dear Scott:

Attached as Exhibit "1" is a copy of the Permit as issued by the New York State Department of Environmental Conservation ("NYSDEC") today for the purpose of approving the impact to approximately 3.5 acres of 100-foot Adjacent Area of the NYSDEC Freshwater Wetland located on the Project Site and issuing Water Quality Certification.

As you know, the Project Sponsor is also seeking an Amended Wetland Permit from the United States Army Corps of Engineers ("USACE") as a result of the change of use of the project Site as compared to the previously proposed commercial development. Once the pending requested Amended Wetland Permit has been issued by the USACE, a copy will be provided to the Planning Department.

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsmlegal.com if you have any questions regarding the enclosed Permit issued by the NYSDEC or the status of the pending request for Site Plan Approval for the proposed multifamily project.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

A handwritten signature in blue ink that reads "Sean W. Hopkins".

Sean W. Hopkins, Esq.

Enc.

cc: Daniel Ulatowski, Assistant Planning Director/Zoning Enforcement Officer
Matt Green, The Green Organization Inc.
Scott J. Livingstone, Earth Dimensions, Inc.
Anthony Pandolfe, P.E., Carmina Wood Design
David Sutton, R.A., Sutton Architecture PLLC

HOPKINS SORGI & MCCARTHY PLLC

Attorneys at Law

5500 Main Street, Suite 343 • Williamsville, New York 14221

Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

**Exhibit 1 – Permit as issued by the New
York State Department of Environmental
Conservation (“NYSDEC”) dated
October 14, 2022**



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
THE GREEN ORGANIZATION INC

6465 TRANSIT RD
EAST AMHERST, NY 14051
(716) 471-2806

Facility:
MULTI-FAMILY DEVELOPMENT-
MILLERSPORT
3325 MILLERSPORT HWY
AMHERST, NY 14228

Facility Location: in AMHERST in ERIE COUNTY

Facility Principal Reference Point: NYTM-E: 194.795 NYTM-N: 4771.355
Latitude: 43°02'00.8" Longitude: 78°44'46.7"

Authorized Activity: The development of a 162 unit apartment complex including 5 residential structures, plus garages, parking, stormwater management areas and 12 acres of permanent open space. The project will disturb approximately 3.5 acres of 100-foot wetland buffer zone. Mitigation will include monuments and existing deed restrictions to protect the wetland and tree plantings in the location shown on the authorized site plans to offset the loss of some of the vegetative 100-foot wetland buffer zone. The project is located at 3275 (portion) and 3325 Millersport Highway in the Town of Amherst.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 9-1422-00451/00004

New Permit

Effective Date: 10/13/2022

Expiration Date: 10/12/2027

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: DAVID S DENK, Regional Permit Administrator
Address: NYSDEC Region 9 Headquarters
700 Delaware Ave
Buffalo, NY 14209

Authorized Signature: David S. Denk

Date 10 / 13 / 2022



Distribution List

Law Enforcement
CHARLES P ROSENBURG
US ARMY CORPS OF ENGINEERS - BUFFALO DISTRICT

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS
WATER QUALITY CERTIFICATION SPECIFIC CONDITION
GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS
NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Permit Attachments

WQC - Basis for Conditions

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: WATER QUALITY CERTIFICATION

- 1. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by Carmina Wood Design dated 5/2/22 and 8/11/22, received on August 22, 2022.
- 2. Notice of Intent to Commence Work** The Permittee shall notify the Department 48 hours prior to the commencement of work on the project by emailing dep.r9@dec.ny.gov. The email needs to include the permit number, permittee name and the project start date.
- 3. Siltation Prevention Measures** Siltation prevention measures, such as silt fencing, sediment traps or settling basins, shall be installed and maintained during the project, to prevent movement of silt and turbid waters from the project site into any watercourse, stream, water body or wetland.
- 4. Invasive Species (Non-native Vegetation)** To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within the state regulated freshwater wetland or its 100 foot adjacent area.
- 5. Storage/Refueling of Equipment** All equipment and machinery shall be stored, refueled, and safely contained greater than 100 feet landward of the regulated wetland LA-19 at the end of each work day. This will serve to avoid the inadvertent leakage of deleterious substances into the regulated area.



6. Disposal of Material Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an approved upland site more than 100 feet from any regulated waterbody or wetland. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area; and must be disposed of in accordance with all local, state, and federal statutes, regulations, or ordinances.

7. Install Monuments The permittee shall install a minimum of 13 monuments around the perimeter of the authorized development area, as shown in the final DEC-accepted site plan. Each monument shall be constructed as follows: 42" inches of 5/8" rebar sunk 36" into the ground; a 4.5' section of 4" Schedule 40 PVC drain pipe shall be sunk 36" into the ground over the rebar, the PVC pipe shall be filled with cement to flush with the exposed end; each marker shall extend 18 inches above grade and have an embedded flush cap that says - Survey Marker, Wetland Conservation Area, Do Not Disturb.

8. Seed, Mulch Disturbed Areas All areas of soil disturbance within the adjacent area shall be seeded with an appropriate erosion control seed mix and mulched with straw or hydro-mulched immediately upon completion of the project, within two days of final grading, or by the expiration of the permit, whichever is first. Mulch shall be maintained until suitable vegetative cover is established to the Department's satisfaction.

9. Establish Vegetative Cover A minimum 90% vegetative cover shall be established across all disturbed areas within the regulated 100-foot adjacent area of the wetland by the end of the full first growing season following construction.

10. Native Conifer Plantings The permittee shall plant a row of at least 94 native conifer trees in the location shown on the authorized site plan (Drawing No. C-100). The tree plantings must be a minimum of 6 feet tall and must be planted no later than October 15,th following the completion of construction of the adjacent apartment units.

11. Survival Rate for Mitigation Plantings The permittee must ensure a minimum of 85% survival of mitigation plantings for the adjacent area for 5 growing seasons following construction. If this goal is not met, the permittee must evaluate the reasons for these results and develop and implement a remediation plan approved by the Department to ensure mitigation planting survival meets or exceeds the 85% survival standard.

12. Annual Monitoring and Reporting The success of tree plantings shall be documented by annual monitoring surveys and submittal of an annual monitoring report to DEC describing vegetation monitoring results, for five growing seasons. Reports should be submitted to Mr. Chuck Rosenberg by December 31st of each monitoring year.

13. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.



14. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

15. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

16. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).



The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 9 Headquarters
700 Delaware Ave
Buffalo, NY14209

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.



NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

ATTACHMENT
DEC PERMIT NO.: 9-1422-00451/00004

401 Water Quality Certification Conditions Water Quality Requirements and Explanations

The conditions included in this certification are necessary to ensure that the project will meet applicable New York State water quality requirements. In accordance with 40 CFR §121.7, the applicable water quality requirements and explanations for each condition, wherever included in this Section 401 Water Quality certification, are provided in the table below. Where used in the table, ECL refers to New York State Environmental Conservation Law and 6 NYCRR refers to Title 6 of the Codes, Rules and Regulations of the State of New York.

Condition Title or Number	Water Quality Requirements	Explanation
Conformance with Plans and Disposal of Material	6 NYCRR 608.9, Discharges Prohibited without certification.	These conditions are necessary to identify what discharges are authorized by the certification. Any discharge not identified on the referenced plans is prohibited.
Precautions Against Contamination of Waters, Siltation Prevention Measures, Notice of Intent to Commence Work and Storage and Refueling of Equipment	6 NYCRR 703.2, Narrative Water Quality Standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.	These conditions are necessary to ensure that the permittee undertakes whatever additional measures are necessary, and not otherwise specified in the conditions of this permit, to prevent the contravention of water quality standards during the implementation of the project.
Condition Nos. 4, 7, 8, 9, 10, 11 and 12	6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival.	These conditions are necessary to ensure that activities undertaken in the Niagara River utilize methods which do not adversely affect water quality and wildlife. The condition is necessary to ensure that discharges do not contravene state water quality standards, that best usages are maintained, waters remain suitable for fish, shellfish, and wildlife survival and any activities authorized do not harm any aquatic or aquatic-dependent species or its habitat.