

**SOUND AGRICULTURAL PRACTICE  
Opinion Number 97-2**

**SUBJECT:** Request for an opinion pursuant to Section 308 of the Agriculture and Markets Law as to the soundness of a certain agricultural practice conducted by Alfredo LDC on Armonk Road, Town of New Castle, Westchester County.

**REQUESTER:** Mr. Frank A. Alfredo, President  
Alfredo Landscape Development Corporation  
Box 250  
Armonk, New York 10504

**Preliminary Statement**

On July 8, 1996 Commissioner Davidsen received a formal request from Mr. Frank A. Alfredo, President of Alfredo Landscape Development Corporation (LDC), to conduct a review of his nursery operation which is located in the Town of New Castle, Westchester County. Mr. Alfredo has operated the nursery for the past 15 years and obtained a special use permit from the Town which defines the working hours and other specifications for his agricultural business. Mr. Alfredo has received complaints, concerning noise, from a neighbor who recently moved into a home adjacent to the business.

Pursuant to this request, the Department conducted a sound agricultural practice review of the Alfredo Nursery Operation. On July 24, 1996, Department employees Robert Somers, Chief of the Agricultural Protection Unit and John Rusnica, Senior Attorney, visited the nursery to gather information on the business. Frank Alfredo and Daniel Doran, an attorney representing Alfredo LDC, provided them with an overview of the business and a tour of the facilities. During the Department's field visit, Mr. Alfredo stated that there were two issues that he would like to be reviewed in the opinion. The two issues involve the morning start-up noise and the size of the equipment needed to conduct business at the nursery.

**Information Considered in Support of the Opinion**

1. Alfredo Landscape and Development Corporation (LDC) is a registered nursery grower with the NYS Department of Agriculture and Markets. Plant material grown at the nursery occupies approximately 10 acres of land. According to Mr. Alfredo, the business provides large, mature plants to homeowners, businesses, industrial sites, and governmental entities. Both upland and wetland plant species are grown on site, including deciduous trees, needle leaf evergreens, deciduous shrubs, broadleaf evergreen vines and perennials. Mr. Alfredo indicated that the nursery

operation is specialized and, therefore, large pieces of equipment and mature nursery stock are needed to meet the requirements of his clientele.

2. The nursery is located on the west side of State Route 128 (Armonk Road), approximately 3 1/2 miles south of the Village of Mt. Kisco, Town of New Castle, Westchester County. Westchester County does not contain any county adopted, State certified, agricultural districts, but according to Mr. John McGrory, Assessor for the Town of New Castle, the nursery receives an agricultural assessment pursuant to Section 306 of the Agriculture and Markets Law.
3. Mr. Alfredo stated that the past use of the property was agricultural (animal husbandry) and when the property was sold at auction, every nursery operation from the surrounding area bid on the parcel. Mr. Alfredo indicated that he purchased the property at an auction approximately 15 years ago from Farm Credit and that they continue to hold a mortgage on the property. The past use of said property was reaffirmed by several neighbors and references of past farm practices were made in letters received by Mr. Alfredo supporting the current use of the property.
4. The Corporate office building is located adjacent to Route 128 and is separated from the road by a gravel parking lot. Upon visual inspection, it did not appear that a retail type business was conducted on the premises because no plants were on display or readily available for sale to the public. Two garages and/or storage buildings and the equipment yard are located behind the main building and downslope from the Corporate office building. The gradient between the Corporate Office and the equipment yard is approximately 30'  $\pm$  10 feet.

The complainant's house sits on a knoll approximately 400 feet north and thirty plus feet above, and overlooking, the soil mixing yard. Mr. Alfredo stated that the complainants have lived in the house for over a year. Mr. Alfredo indicated that prior to the ownership of the home by the complainants, Jim Bishop lived in the house for approximately 30 years. Mr. Alfredo stated that Mr. Bishop was in poor health for many of his remaining years on the property and never once complained about noise from the nursery.

5. Mr. Alfredo indicated that the equipment used at the nursery is necessary to lift the plants and place them onto trucks for transport, prepare job sites for the receipt of the planting stock, transplant said stock at job sites, and bring in large nursery stock purchased from off-site growers. In a letter to the Department dated August 5, 1996, Mr. Alfredo stated that the only noise is from 7:45 a.m. to 8:45 a.m. when a rubber tired loader is used to place trees and shrubs onto a truck(s), to place planting soil (i.e., soil mix) onto another truck(s) and hardwood bark mulch on another vehicle(s). Mr. Alfredo stated that they have performed the same operation everyday during the work week since the nursery began operation in 1981. He stated that since 1981, they have never once received a complaint about the operation until now.

6. Mr. Alfredo stated that the company grows their own plants and purchases large trees and shrubs from homes and estates within the area. When large plants are uprooted and brought into the nursery, the plant is heeled-in and monitored for one to two years prior to its sale. The one to two year residency at the nursery gives the plant time to recover from the shock and reestablish its root system. This is required to help assure the survival of the plant when it is sold and transplanted off-site. Mr. Alfredo stated that he guarantees the survival of all of his nursery stock, but only when his company prepares the site, conveys the plant material to the buyer, and transplants the nursery stock according to company specifications. During our visit, Mr. Alfredo indicated the cost of some of the plants within our view. Mature trees can sell for as little as \$10,000 and more than \$25,000, depending upon the species, age, shape, and availability.
7. Mr. Alfredo stated that in a typical day, the heavy equipment is used to lift the plant material and load the nursery stock onto 18-wheeler tractor trailer trucks, if required, or on smaller trucks for transport to a job site. Employees also load soil mix (i.e., planting media) into the dump trucks. Any additional equipment and supplies needed at the job site are also prepared and loaded for transport at this time. Mr. Alfredo stated that preparation in the morning may take approximately one hour, depending upon the size of the job and the amount of equipment and plant material to be moved. Once the trucks and equipment leave the nursery, they return at the end of the work day. Mr. Alfredo indicated that very little equipment traffic, both in and out of the nursery, occurs during the day. The screening machine and a payloader or trac-hoe may be in use during the day to prepare additional soil mix, as required, and prep the materials needed for the next work day.
8. When Mr. Somers and Mr. Rusnica arrived at the nursery, most of the large equipment had left the yard for a job site. Several dump trucks, pick-up trucks and low-boy trailers, a stake truck, a payloader and other earth moving equipment, and various smaller pieces of equipment remained in the yard or behind the equipment yard in an area where soil mix is prepared. The soil mixing portion of the operation is located due west of the equipment yard, behind a creek that flows through the property. According to Mr. Alfredo, sand, gravel, topsoil, compost, and other materials are combined to develop a soil media that is used in connection with the transplanted nursery. A screening machine used to integrate the various components of the soil mix and to screen out large rocks, sticks, and other debris, was also present.
9. Mr. Alfredo stated that he and his sons conducted a rock crushing operation earlier in the year to reduce the size of stone brought back to the nursery from jobs conducted over a two year period. The objective was to reduce the size of the rock so that it could be used by the business. Mr. Alfredo stated that the Town requested them to remove the excess pile of boulders on the property, so they decided to crush the rock on site. An invoice of a bill submitted by Mr. Alfredo shows that

Liberty Contracting Company crushed rock on the property for 14 days during 1994 and 1995. The 14 days that the rock crusher was in operation includes December 12-15, 18, 21, 22, 27, 1994 and January 2, 4, 22-25, 1995. Mr. Alfredo stated that the noise was no louder than the noise emitted from the soil screening machine.

10. A Special Use Permit was required by the Town to operate a landscape nursery in a R-2A residential zone. According to Town records, the permit was granted to Alfredo LDC on May 26, 1993 to bring the business into compliance with the Town's zoning ordinance. The minutes of the ZBA hearing, where the permit was issued, indicates that from 1989 to 1993, 27 public hearings were held on the application, at which time, public input was solicited. The minutes indicate that the ZBA presented its findings pursuant to the application. The pertinent findings by the ZBA to this review are as follows: the subject "landscape nursery" has been in operation for the past 11 years; the business is in "...harmony with the Zoning District in which it is located;" the "...location, nature and height of the structures, walls and fences and the nature and extent of existing or proposed plantings on the site are such that they will not hinder or discourage the appropriate development of adjacent land;" and the "...subject use, by virtue of its extensive history has proven to be no more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted use not requiring a special permit." The special use permit is subject to the following conditions:

- A. "No more than six (6) employees shall be stationed on site; however, up to thirty (30) employees may gather on site for purposes of dispatching.
- B. The hours of operation shall be from 7:30 A.M. to 5:30 P.M. on Mondays through Fridays; Saturdays 7:30 A.M. to 5:00 P.M.; Sundays closed.
- C. This Special Permit is subject to the issuance of a wetlands permit from the Planning Board if applicable."

According to Mr. Alfredo and Town records provided to the Department, the business has not been cited for a violation of its Special Use Permit.

11. On September 16, 1996 Bob Somers spoke to Ralph Tarchine, Code Enforcement Officer for the Town of New Castle, concerning the Sound Agricultural Practice Review being conducted on the Alfredo LDC nursery operation. Mr. Tarchine stated that the nursery does not have any open citations for violations of the Town's Zoning Ordinance, but last year they were cited for a wetlands violation and a violation of their site plan. Mr. Tarchine stated that the citations were withdrawn by Town Counsel because the attorney representing Mr. Alfredo stated that they had a special exemption. Mr. Tarchine stated that Mr. Alfredo and his two attorneys attended a Zoning Board of Appeals hearing on July 31, 1996. The purpose of the hearing was to obtain preliminary information on the operation to see if the operation

is in compliance with their special use permit. The ZBA members were to perform a site visit on September 21, 1996.

12. On September 19, 1996 the Department received the requested information from Mr. Maskiell concerning the Alfredo LDC property. One of the documents received was a memorandum to Gabby Rosenfeld, Chair of the ZBA, from the Building and Zoning Department of the Town concerning the complaint record on Alfredo LDC. The record shows that the complainants contacted the Town on December 21, 22, and 27, 1995 and on January 17, 18, and March 18, 1996 to register a noise complaint. From December of 1995 to August 23, 1996 the Town investigated the complaints and conducted a noise test on August 23, 1996. The record indicates that no citations for exceeding the Town's noise level were issued to Alfredo LDC. However, the record indicates that on January 23, 1996 the Town ordered Alfredo LDC to stop the crushing of rocks on the property. On January 29, 1996 the rock crushing machine was removed from the property.
13. The complainant alleges that Alfredo LDC is in violation of Chapter 90 of the Town's Zoning Ordinance which contains standards, variance procedures, enforcement, and penalties for the Town's Noise Control Law. The Law states that "it is hereby declared to be the policy of the Town of New Castle to safeguard the right of its residents within the privacy of their homes to be free from intrusive unwanted sounds." The policy continues to state that problems concerning noise are best resolved through discussions and cooperative agreements between the affected parties, but enforcement of the Law is provided where agreements cannot be reached. The Law states that the determination or measurement of the offensive sound level will be "...conducted not nearer to the sound source than the closest property line for the parcel on which such noise is generated, except where otherwise specified, and in no case on public or private streets." Section 90-4(A) states that customary residential activities on properties within any residential zoning district...as well as permitted agricultural activities, shall not be regulated by this chapter..." however, some exceptions are provided in the ordinance. Section 90-4(B) of the Law states that for all "other activities", noise produced shall not exceed sixty dB(A) during the hours of 8:00 a.m. to 6:00 p.m. or forty-five dB(A) during the hours of 6:00 p.m. to 8:00 a.m. except as otherwise permitted in Section 90-7 of the Law.

On October 18, 1996 Mr. William Maskiell, Code Enforcement Officer for the Town of New Castle, stated that to his knowledge, there was not a definition of "permitted agricultural activities" in the zoning ordinance. He did not know if the exclusion mentioned in Section 90-4(A) would apply to the Alfredo nursery operation.

14. Mr. Alfredo provided the Department with a copy of a letter, dated July 19, 1996, from the complainants concerning the public meeting which was held by the Zoning Board of Appeals on July 31, 1996. According to the letter, the complainants state

that one of the issues under discussion at the meeting is the "...misuse of the Special Use Permit..." that was obtained by the Alfredo LDC. They state that the "...misuse specifically involves the noise pollution caused by rock crushing, gravel manufacturing, pneumatic hammers, front end loaders, excavators and 18 wheel dump trucks." They conclude that Alfredo LDC has exceeded the intended use of the special use permit. The letter urges neighboring property owners to attend the public hearing and/or write the members of the Zoning Board of Appeals.

15. On August 7, 1996, Mr. Alfredo sent the Department copies of the letters which he received from five of the seven neighbors identified as living within 1/2 mile of his operation. All five of the respondents stated that they did not perceive the nursery operation to be extremely noisy. They further stated that they found the business to be an excellent neighbor and preferred the nursery operation to prior farm uses of the property. On August 9, 1996 the Department sent letters to the five respondents previously mentioned to inform them that Mr. Alfredo requested the Department to perform a sound agricultural practice review on the nursery operation. The Department informed them that we were in receipt of their letter to Mr. Alfredo concerning the nursery and that if they had any additional information, they should contact the Department by August 26, 1996. The Department notified three additional landowners of the Sound Agricultural Practice review and requested that they submit comments to the Department by August 26, 1996. The only comments received were from the complainants. The complainant stated that Alfredo LDC owns the houses located at 510 and 456 Armonk Road and rents them to two of their employees. [The Department received copies of letters from the residents of these two houses in support of Alfredo LDC.]
16. On September 20, 1996 the Department received a letter, a video tape, and pictures from the complainants concerning the Alfredo nursery operation. The complainants stated in their letter that they do not object to the nursery operation, but they do object to "...the loud noise level created by the industrial/construction equipment that is..." used on the property. The complainants indicated that they have contracted with a consulting firm to conduct a noise level study and that they would provide the Department with the results.
17. On September 20, 1996 the Department received the results and a report on the ambient noise monitoring program conducted by TRC Environmental Corporation. According to the report, and confirmed by Anthony Agresti, meteorologist with TRC Environmental Corporation, a representative of the company was present during the entire monitoring period to manually log all contributing noise sources. The report states that a review of the data show the nursery exceeding the allowable noise standard, as specified in the Town's Noise Ordinance, "on many occasions." It was noted by Mr. Agresti that between the hours of 6 a.m. and 8 a.m., noise levels from the nursery exceeded the allowable level of 45 dBA and were as high as 59 dBA. From 8 a.m. to 12 p.m. the study indicates that occasionally, noise levels generated by nursery activities exceeded the maximum allowable noise level of 60 dBA. The

report states that the nursery activity exceeded the background noise level, "...which was generally, 45 dBA." The author concludes that the study indicates that the ambient noise level was in the range of 10 to 15 dBA above background noise levels and occasionally, exceeded 15 dBA above such level. Mr. Agresti states that the results would indicate that "...widespread complaints from the average person..." would ensue.

The graph displaying the monitoring results, which was provided by the consultant, indicates that from 6 a.m. to 8 a.m. the noise level exceeded the Town's maximum allowable level of 45 dBA. According to the graph provided by TRC Environmental Corporation, it appears that trucks were started somewhere around 6:30 a.m. and the loading and moving of planting stock and associated materials began around 7:20 a.m. The graph further indicates that the larger pieces of equipment were placed into operation around 8:10 a.m. Noise from the facility fell consistently below 60 dBA at approximately 8:50 a.m. It is difficult to determine from the graph and from other data provided by the consultant in the report how many machines were in operation at one time, the exact time the equipment was being used, and what proportion of the noise recorded was background noise. However, a cursory review of the graph indicates that from 6:00 a.m. to 12:00 p.m., only two or three plotted measurements were recorded below 45 dBA. Further review of the graph indicates that from 6:00 a.m. to 6:30 a.m. no activity at the nursery occurred, however, only two spikes on the graph were reported to be below the background noise level of 45 dBA. In addition, from approximately 8:50 a.m. to 10:40 a.m. and from 10:50 a.m. to 12:00 p.m., no equipment activity at the nursery was identified on the graph, but the noise level appeared to be, on average, approximately 53 dBA. This estimated average exceeds the background noise level of 45 dBA reported by TRC Environmental Corporation.

18. During a phone conversation with Mr. Alfredo on September 25, 1996, he stated that the time and attendance logs for the business were checked and that no activity from his employees occurred prior to 7:45 a.m. on August 29, 1996. He suggested that the noise monitor may have picked up truck noise from the main road (i.e., Armonk Road). Mr. Alfredo stated that the road serves as a truck route for the whole area. The report from TRC Environmental Corporation, however, conflicts with Mr. Alfredo's statement.
19. On October 30, 1996 John Pollock, Safety Specialist with Cornell Cooperative Extension, faxed the Department a copy of a technical report entitled *Noise-the Invisible Hazard*. The article is a Science and Technology Guide published by the University of Missouri Cooperative Extension. The guide describes the hearing process and discusses the intensity, frequency, and duration of sound. The effects of prolonged exposure to noise is also examined. In general, the intensity of sound is measured in decibels (dB). A chart provided in the guide states that a human begins hearing the weakest sounds at 0 dB, with the threshold of pain exceeding 140 dB. A range of sound intensity levels and examples of objects making noise at

various intensity levels was provided in the guide. According to the examples provided, normal conversation has a sound intensity level of 60 dBA [i.e., the Town's noise maximum from 8:00 a.m. to 6:00 p.m.] and rustling leaves and soft music have a sound intensity level of 45 dBA [i.e., the Town's noise maximum from 6:00 p.m. to 8:00 a.m.]. The guide also provided a chart on the amount of allowable exposure to sound levels based upon OSHA's noise standards. The article states that exposure limits are based upon "...years of research on noise-induced hearing loss and are accepted as the standard for allowable noise level exposures." For example, during an eight hour work day, acceptable sound levels should not exceed 90 dBA and at 95 dBA, a worker should not be subjected to this amount of noise for more than 4 cumulative hours during the work day.

The information contained in the guide addresses health implications related to agricultural noise and does not specifically discuss nuisance noise as addressed in a typical zoning ordinance. The guide does, however, provide a measure where the intensity of a sound and one's exposure (i.e., duration) to that sound may adversely affect hearing.

### Findings

Based on the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture; and the Sound Agricultural Practice Guidelines<sup>1</sup> by which agricultural practices are evaluated, I find the following:

1. The equipment used at the nursery is consistent with this type of operation because such equipment is needed to uproot, ball, load onto trucks for transport, and transplant the mature planting stock off-site. The equipment used to plant the nursery stock is also needed to bring in mature plant material that is purchased from off-site growers. Noise generated from such activities appears to be the greatest for an hour or so early in the morning when the employees first arrive at the nursery and begin preparations for that day's work. The mixing of sand, gravel, mulch, topsoil, and other products to produce a blended soil mix is necessary to provide the plant material with a suitable growing medium that helps assure survival. The soil mix is used as a growing medium at both the nursery and the job site. These practices are necessary for the on farm preparation and marketing of the nursery stock.

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<sup>1</sup> On November 1, 1993 the NYS Advisory Council on Agriculture published its report entitled *Protecting the Right of New York Farmers to Engage in Sound Agricultural Practices*. The Council developed guidelines to assist the Commissioner of the Department of Agriculture and Markets in determining what is sound pursuant to Section 308 of the Agriculture and Markets Law. The Guidelines state that the practice 1) should be legal; 2) should not cause bodily harm or property damage off the farm; 3) should achieve the results intended in a reasonable and supportable way; and 4) should be necessary. The sound agricultural practices guidelines recommended by the Advisory Council on Agriculture are given significant weight in assessing agricultural practices.

2. On occasion, the noise emanating from the equipment used at the facility may have exceeded the maximum allowable limit specified in the Town's Noise Control Law. The Town has not cited Alfredo LDC for violation of that Law. In 1993, the Zoning Board of Appeals stated that the business is in harmony with its Zoning District and by virtue of its extensive history, the business "...has proven to be no more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted use not requiring a special permit." Furthermore, the wording of the Town's Noise Control Law leaves some question as to whether the agricultural activities conducted at the nursery are governed by it. The Law states that "permitted agricultural activities" shall not be regulated by this Law, but the Town does not have a definition as to what constitutes such activities. It is noted that the rock crushing activity that took place as discussed above is not an agricultural activity for purposes of Section 308 of the Agriculture and Markets Law.
3. After a review of material provided by the complainants, Cornell University, Town officials, and Alfredo LDC, the noise generated from the nursery operation does not appear to be excessive or unreasonable. The noise in the video tape from the machinery on the Alfredo property, as provided by the complainants, does not seem to be unusually loud when compared to the complainant's voice as recorded on the video. Even though the noise study described above suggests that the amount of noise emanating from the nursery is enough to cause widespread complaints from the average person, the Town's records indicate that all complaints on the nursery operation have come from one neighbor, the complainants. Neighbors who provided comments, other than the complainants, generally agree that the nursery operation does not cause adverse off-site effects. Other expert literature suggests that the noise levels recorded in the study are no higher than common background noises such as leaves rustling or normal conversation. In addition, the alleged vibrations to the complainant's house are not supported by the video tape taken during operation of machinery.

**Conclusion**

Based on all of the foregoing, I conclude that the subject practices of using large pieces of equipment to plant, lift, and load nursery stock; the mixing of material to create suitable soil mixing media; with the attendant noise coming from the facility during business hours, as described above, is sound.

1-8 97

Date



Donald R. Davidsen, D.V.M.  
Commissioner