



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
PITTSBURGH DISTRICT, CORPS OF ENGINEERS
WILLIAM S. MOORHEAD FEDERAL BUILDING
1000 LIBERTY AVENUE
PITTSBURGH, PA 15222-4186

February 19, 2008

Operations Division
Regulatory Branch
200100145

Attn: Mr. Gregory L. Stewart
Ohio County Development Authority
1500 Chapline Street, Room 215
Wheeling, WV 26003

Dear Mr. Stewart:

I refer to our Public Notice PN 07-40 regarding the Ohio County Development Authority's (OCDA) proposal for The Highlands, Phase V Wild Escape Amusement Park, located near the City of Wheeling, Ohio County, West Virginia.

Please also refer to your official response package (dated: November 26, 2007) to comments we received during the Public Comment period that were submitted to us through Wallace & Pancher, Inc concerning the proposed Phase V of The Highlands project.

Enclosed are the Corps of Engineers' comments to the Ohio County Development Authority's response package of November 26, 2007. Please review our comments and concerns stated on the attachment.

Clearly there are concerns that need to be addressed in order to allow us to proceed with permit issuance for the Phase V . We have received additional mitigation information and will be reviewing it which may address some of the point outlined in the attachment. We will continue to work with you to address these concerns on this as well as other phases of your development. Please be assured that the documentation we are requesting is necessary to ensure compliance with the Clean Water Act.

If you have any questions regarding this matter, you may contact me at 412-395-7154, or Ms. Diane Czelusta at 412-395-7232.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Hans".

Scott A. Hans
Chief, Regulatory Branch

Encl.

CF:

USEPA (Messrs. Lapp and Lutte)

USF&WS (Ms. Johnson-Hughes)

WVSHIPO (Ms. Pierce)

WVDNR (Mr. Bledsoe)

WVDEP (Mr. Bennett)

Wallace & Pancher (Mr. Noble) Delivered 2/19

Pedersen & Pedersen(DiBenedetto & Greene) Delivered 2/19

Corps Concerns, Phase V

19 February 2008

The following responses by the Corps of Engineers comprise like-numbered responses to the Wallace & Pancher package of November 26, 2007 in behalf of the Ohio County Development Authority (OCDA).

Comment Section A

1. We recognize your NPDES requirements. Please provide this office with a valid and current NPDES Stormwater Permit issued by the WVDEP. There have been several stormwater discrepancies and citations in the past by the WVDEP. Please verify that their issues have been reconciled.

Comment Section B

1. To address Mr. ██████ concerns about blasting impacts, has the OCDA performed any studies on the effects of blasting and earthmoving activities on any of the adjoining residential property or the effects on wildlife? Has there been a blasting survey performed by a blasting or demolition expert? His concerns require more than your simple statement.

Comment Section C

1. Was Mr. ██████ property surveyed prior to blasting and afterward? Have the stormwater corrections performed by OCDA's crews corrected Mr. ██████ water damage, and is there a formal plan to continue to address or rectify this issue?

Comment Section D

1. Concur with your response that referenced streams be mitigated for.
2. Concur with your response, but please note that until receipt of viable wetland mitigation plan and further approval by the WVDNR and the Corps of Engineers, no permit will be issued for this phase.
3. Concur with response that mitigation plans are not a requirement of a complete application, but are required prior to any issuance of a permit.
4. Concur with response on an additional Interchange.
5. The Corps of Engineers has authority to permit projects and review their aquatic impacts according to any or all twenty, or so, public interest factors. Moreover our preferred method of permitting (and according to NEPA) is always to first determine the project limits. Since the applicant (OCDA) was unable to fully determine the entire project limits, the decision was made to permit each new phase of The Highlands separately, each with Individual Department of the Army Permits. It was the intent that this method could expedite some of the Phase V (Wild Escape Theme Park) permitting of The Highlands project. However, even though each new phase of The Highlands will be permitted separately, the impacts of these subsequent phases will be addressed cumulatively. It is acknowledged that Individual State Water Quality 401

Certifications will be needed for each subsequent phase, therefore, this "compounding" of Individual Department of the Army Permits will ultimately be a more lengthy process.

6. The maintenance of stormwater ponds and basins is allowable and not a regulated activity, however, the removal of sludge and stabilization thereof with Portland Cement and returned to the jurisdiction ponds and wetlands is not allowed and will be considered a secondary impact. Will this "sludging" of jurisdictional waters be occurring?

7. Does the OCDA/Pedersen & Pedersen have design specifications for previously constructed stormwater ponds and are there verification letters from the WVDEP that these previously constructed ponds are properly constructed?

8. Please indicate proposed borrow areas from previous Phase(s) that will be utilized for the total 13.7 million cubic yards needed for the construction of the Phase V Wild Escape.

9. Without the OCDA's ability to access Mr. O'Brien's property we concur with the response, although we understand that Mr. O'Brien has granted access to his property previously.

10. The drawings included in the OCDA response (response to Ken Politan) on the SWPPP indicate the access road is to be located diagonally through Mr. O'Brien's property.

How is the Corps of Engineers to evaluate the exposure of acid producing rocks by the construction of an access road, when the roadway location is specifically on property that OCDA does not own, or may never own? Is this the final roadway alignment? It was previously explained to the Corps of Engineers that there are alternate methods of access to the Phase V area, yet the design as submitted still indicates the roadway traversing through Mr. O'Brien's property.

11. The current process that the Corps of Engineers is following meets NEPA. The NEPA process is essentially the study of sufficient alternatives that will allow the Corps of Engineers to prepare an in-house Environmental Assessment (EA) that will lead to a Finding of No Significant Impact (FONSI). Our office will determine if an Environmental Impact Statement (EIS) is warranted, however we have not yet made that determination.

12. Please verify actual earthwork costs for the Phase V project. It is unclear how much earthwork will be required for the Phase V portion of the project. If this statement pertaining to the cost of earthwork is incorrect; $13.7 \text{ million cubic yards} \times \$4/\text{cubic yard} = \$54.8 \text{ M}$, then please clarify.

13. The Corps of Engineers needs a biological and functional assessment in sufficient detail in order to determine the appropriate mitigation to be required, as will the WVDEP prior to issuance of their 401 Water Quality Certification.

Comment Section E

1. The Corps will assume that 217 acres is the total acreage to be impacted by Phase V.
2. Concur with the amount of 217 acres to be impacted by Phase V.
3. It was determined that 0.23 additional acres of jurisdictional wetlands are to be impacted, in addition to, the proposed mitigation acreage for the previously issued permits of 0.99 acre. AMD treatment ponds are not normally considered jurisdictional wetlands.
4. When the wetland mitigation plan is submitted it will be reviewed accordingly. The wetland mitigation for the former NWP 39 (2003) was to be 0.99 acre. The additional impacted acreage of 0.23 acres will result in a total mitigation area required of 1.50 ac. Further, we will be requesting that the commencement of construction of all mitigations be concurrently underway with the impacts as they occur, with any new phase of construction of The Highlands. The Corps of Engineers has previously given final approval to OCDA before in 2001 and 2003, however, mitigation was not constructed in a timely manner, if ever. Prior to a permit being issued, we require that all mitigation construction be under contract for both the streams and wetlands, or until appropriate financial assurance (bonding) is posted in the amount of no less than \$2,000,000.
5. Concur. It was agreed that this JD report and drawing by Wallace & Pancher would be accepted as the JD, however, the Corps reserves the right to perform timely jurisdictional determinations in the field if we feel that the proximity of the project is close to a resource that may require additional scrutiny.
6. Concur with previous JD's as stated.
7. In order to allow OCDA's project to continue to move forward in the permitting process and to avoid piecemeal mitigation, the Corps elected to consider this permitting methodology, rather than issue a Cease and Desist Order for the entire Highlands Project. The complete and final mitigation is not required prior to issuance of a Public Notice, however, compensation for impacts, as well as, final mitigation design is required prior to the issuance of a Department of the Army Individual Permit.
8. Concur with the statement that unpermitted impacts for previous Phases IV & VIII in the amount of 1,200 L.F. will be accounted for in the Phase V mitigation.
9. Concur that the property in question by Mr. Clark, is not owned by OCDA, and will not be impacted by Phase V.
10. In order to meet NEPA the Corps has no other viable permitting options but to permit each subsequent phase individually and consider cumulative impacts.

11. During the Corps public interest review, the Corps can investigate activities such as soils erosion and accretion, safety, land use, or “general environmental concerns” we feel may be effected by the issuance of our permit and any of those concerns can be subject to our scrutiny.

12. Concur with the fish sampling methodology.

13. Concur with the benthic macroinvertebrate evaluation method as conducted by Wallace & Pancher.

Comment Section F

1. Concur, subject to the response made by the U.S. Fish & Wildlife Service (USF&WS)

2. Response to 404(b)(1) Alternative Analysis will be covered in Alternative Analysis comments.

3. Who is the current permit holder for the NPDES permit for the treatment ponds adjoining Storches Run? Have there been any violations issued by the WVDEP within the last five (5) years? Is the treatment area shown on the most recent plans.

4. Concur. As of the date of this letter we have not received final detailed wetland and stream mitigation plans.

5. Concur with the statement that no 404 permit will be issued until such time that a mitigation plan is has been submitted and approved by the Corps of Engineers and the West Virginia Department of Natural Resources.

6. Please respond to the USF&WS comments directly or send referenced reports to the Service for their independent review.

7. The Corps cannot determine if the losses of stream habitat have been adequately compensated for until a full review of the proposed mitigation package is received from OCDA or Wallace & Pancher in sufficient detail. The WVDNR and the WVDEP will also need a wetland and stream mitigation plan in sufficient detail for their 401 Water Quality Certification process as well.

8. The Corps will need to be furnished with a post-construction stormwater plan that satisfies the appropriate Best Management Practices (BMP’s) and the jurisdictional elements(s) of the WVDEP.

Comment Section G

1. Concur. The latest Alternative Analysis has been submitted to USEPA and we are awaiting their additional input.

Comment Section H

1. The Corps concurs with the West Virginia Division of Culture and History's (WVSHPO) concerns for archeological resources along the Middle Wheeling Creek in the area of the proposed "Mitigation Corridor". The impact to cultural and/or archeological resources along this corridor is yet undetermined. The Corps is unaware of any archeological or historical investigative work having been performed along this "mitigation corridor". The Christine Davis report documented the proposed second I-70 interchange area and is not applicable to the "mitigation corridor" area now being proposed. The proposed "mitigation corridor" is at least three (3) miles away from the Storch's Run development area, where the Christine Davis Report investigated.

Comment Section I

1. Concur. Mitigation for Stream 8 (684 L.F. perennial) and Stream 10 (1,219 L.F. Ephemeral) will need to be included in the Phase V mitigation plan.

2. This response has been used previously regarding mitigations. The Waters of the State will need to be addressed in the same manner to adequately answer and reconcile the States concerns, which may be above and beyond Federal requirements and jurisdictions.

3. Report by Pennsylvania's Soil and Rock has been reviewed by the Corps and will await further comment by WVDNR.

4. Why was prior Water Quality Data not available prior to OCDA taking over the Highlands site, since this discharge had previously been monitored by several mining companies? When OCDA took over the NPDES Permit (WV1011642) in 2003 from the Rayle Coal Company, was this done (or not done) with regard for AMD discharges that had previously taken place on the site?

Again, we bring attention to the package submitted to WVDEP (Mr. Politan) dated October 31, 2007 from Pedersen & Pedersen, revising the Storm Water Pollution Prevention Plan (SWPPP) and attached drawings. These drawings indicate two Stormwater options; one with the second I-70 Interchange; the other without the I-70 interchange. We understood that the second I-70 interchange at the Millennium Center had not even received preliminary approval from either WV Department of Highways, or the Federal Highway Administration, so please explain which plan is valid, or to receive Storm Water approval? Moreover, both plans indicate the access roadway to Phase V traversing Mr. O'Brien's property which also may not occur. Please reconcile these discrepancies with plans being submitted, to what is actually going to be constructed.

Attachment 3: As we have stated previously above (**H.1**) the Christine Davis Phase I Cultural Resources Report produced in 2005, can be utilized to satisfy the second I-70 Interchange and possibly the Phase V portion of the work, however, the WVSHPO's cultural and archeological concerns still remain unaddressed for the "mitigation corridor" that is located approximately three (3) miles away from the Davis study area. Please reconcile.

The "mitigation corridor" as proposed on the general site plan is rather lengthy ($\pm 12,000$ L.F.) and will require quite a few access points in order to be constructed on Middle Wheeling Creek. Has the OCDA acquired all of the necessary easements, rights-of-way, and permissions from private landowners along this corridor that will allow for such construction? It should not be proposed to the Corps of Engineers as a continuous "mitigation corridor", if in-fact the OCDA does not have the legal real estate instruments in place to present such an endeavor, and provide for long term preservation in the format of a conservation instrument.

Alternative Analysis Comments;

A. All of the Alternative Analysis (Alt. A thru Alt. E) have not been supported by sufficient site plans, or references to previous phases of The Highlands overall plans in order to determine their respective locations as they relate to the Phase V (Preferred Alternative). Since all of the Streams have been numbered (Stream 1 to Stream 43) they should also have been referenced in the other Alternatives A thru E in order to more closely examine the impacts of these other alternatives. In Attachment 1; Site Layouts, no effort has been made with any of the alternative sites to utilize any of the natural terrain to better position the Wild Escape Amusement Park on the landscape. By merely selecting some arbitrary elevation to make a square level 100 Acre pad and then compute earthwork quantities misrepresents the inability to viably use one of these other Alternatives. No effort has been made to terrace or re-contour any of the alternative sites which would greatly reduce earthwork quantities. Since the project purpose is for the construction of an amusement park with multiple small internal facilities, rather than a large flat manufacturing building, we cannot support this presumption that 100 "flat" acres is required to construct an amusement park on any of the alternatives. Due to the rolling terrain we cannot concur that this methodology of site development could be used in most locations in West Virginia.

It is noted that in order to make the site comply with the Americans with Disabilities Act (ADA) and still be compatible with theme park rides and attractions that significant earthwork (5 – 7,000,000 C.Y.) is required to flatten the sites. Again these statements are made without the support of cross-sections or more detailed amusement park designs. Other developments have been able to meet ADA requirements without completely leveling the site, as mentioned.

We have no supporting documentation from American Electric Power (AEP) that they would not allow for the relocation of overhead power lines. Overhead power lines have been relocated on other sites within the Pittsburgh District. While we are cognizant of significant costs for doing this work, we have no documentation from the power company or a utility contractor supporting this expense and these statements appear to only be hearsay as presented.

2.2 Preferred Alternative Description - There has never been documentation furnished on this preferred alternative (Phase V) indicating that the design of the Wild Escape Amusement Park requires a 125 Acre flat area and cannot be designed to better fit the terrain and reduce impacts to Storch's Run. This preferred alternative will require 217 Acres of impacts to yield only 125 Acres of level area. Can the design of the amusement park be re-configured to reduce

these aquatic and terrestrial impacts? Again we state that no effort has been made to contour or terrace the site in a manner to be suitable to an amusement park, while at the same time reducing earthwork and impacts.

2.3 Alternative A Description - It is unclear exactly where this alternative is to be situated, and what streams would be impacted. Would the access road needed for this alternative be any longer from the Cabela's Interchange, than the access road proposed to the Phase V preferred alternative?

Further, since there appears to be plans for Phase XII and Phase XIII well underway the need for utilities (water, sewer, and electric) are already needed for the eastern side of the Cabela's Interchange, therefore we cannot fully support the statement that other sites would require more extensive infrastructure. Again, there has been no documentation to support the cost of \$12,500,000 for utilities vs. \$1,700,000 for the preferred alternative. Also, please explain why the utility costs for Alternatives B, C, & D are all shown to be \$12,500,000 even though these locations are different? Please reconcile and support.

The statement is made that the OCDA does not own any of the property for pad construction, yet it is well known that not all of the property needed for the Phase V preferred alternative is not completely owned by OCDA either (Mr. O'Brien). No cross-sections or sufficiently detailed grading plans have been provided for us to support or verify the quantity of 26.1 million cubic yards of earthwork required as stated for Alternative A. No mention of what streams (1 thru 43) will be impacted in this alternative. Please reconcile.

2.4 Alternative B Description - Again, without some form of site plan, we are unable to determine the true difference between Alternative A and Alternative B. The same comments apply to this alternative as those mentioned above in 2.3.

2.5 thru 2.7 Alternates C thru E - As stated above, we have similar concerns for lack of cost back up, unimaginative earthwork and site design layout as these alternatives have also been presented in your Alternatives Analysis.