



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Scott Hans
Regulatory Branch Chief
Department of the Army
Pittsburgh District Corps of Engineers
William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222

FEB 13 2008

Re: Public Notice 08-7, The Highlands, Lot 9.

Dear Mr. Hans,

The U.S. Environmental Protection Agency (EPA) has completed its review of the above referenced proposed project. The applicant proposes to place fill material into Waters of the United States to construct a flat pad for a commercial development by filling and grading the 12.5 acre site. The discharge impacts are approximately 803 linear feet, comprising the entirety of Stream 29 (703 LF) and a portion of White's Run (100 LF), will be impacted. Proposed mitigation for the impacts is through enhancement of a portion of the stream channel of Middle Wheeling Creek by bank stabilization, channel realignment and riparian planting. Stream 29 is a tributary to Whites Run. The project site is located on a parcel near the intersection of Interstate 70 and Cabela Drive in Triadelphia, Ohio County, West Virginia.

The proposed development appears to be non-water dependent, meaning that it does not require or need to be sited in or near water to meet its basic project purpose. The Clean Water Act Section 404(b)(1) Guidelines clearly state that alternatives are presumed to be available for non-water dependent activities that do not involve the use of the aquatic ecosystem, including jurisdictional wetlands [40 CFR 230.10(a)(3)]. Alternatives include not only geographical siting, but also functional alternatives such as design modifications. Such modifications which will avoid and minimize impacts should be identified and explored.

An alternatives analysis should be conducted to determine whether there are alternatives to the submitted preferred alternative to minimize the impacts to aquatic resources. The EPA suggests that Phase V and the impacts to Stream 29 be reviewed in light of previous development of The Highlands and the cumulative impacts be considered in a watershed context.

It is becoming apparent that the applicant does in fact have a general plan that could be used for a single permit instead of the phased approach as is currently being employed. The exact dimensions of the pads and lots may or may not be known as the sites are still being marketed and sold. However, it would have been reasonable to identify building envelop areas



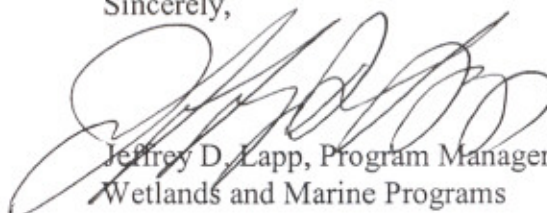
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within OCDA ownership that could be expected to be developed regardless of the type of land use intended for the site. Once the site ownership agreements and exact lot requirements are set, the applicant could then slightly modify the design issued under a single complete permit. This approach is preferred to that of the piecemeal method that is currently being used. The aggregate amount of impacts to waters of the United States can be holistically assessed using a single project methodology. In our review, this phased development appears to be connected through shared infrastructure and therefore does not have independent utility, again arguing for a single permit evaluation process.

The EPA strongly suggests that the applicant be required to secure and implement mitigation for each permitted phase prior to the submission of an application for additional phases. This will ensure that the mitigation requirement is being met in a timely manner and reduce the temporal loss of functions of the aquatic resources. The multi-phased approach could result in significant time lags before mitigation is completed for the entire development and may exacerbate the impacts to the aquatic resource.

EPA believes the intent of the 404(b)(1) Guidelines has not yet been met. The applicant's preferred alternative may not be the least environmentally damaging practicable alternative and additional measures to avoid and minimize impacts to waters of the United States should be identified and evaluated. Thank you for the opportunity to provide comments. If you have any questions please feel free to contact Mr. Mark Douglas at 215-814-2767 or by email at douglas.mark@epamail.epa.gov.

Sincerely,



Jeffrey D. Lapp, Program Manager
Wetlands and Marine Programs

