

**COMMENTS ON PUBLIC NOTICE (PN) NO. 07-40
APPLICATION NO. CELRP-OP-F 200100145
OHIO COUNTY DEVELOPMENT AUTHORITY (OCDA)
THE HIGHLANDS DEVELOPMENT (PHASE V)
PROPOSED WILD ESCAPE AMUSEMENT PARK
STORCHS RUN, OHIO COUNTY, WEST VIRGINIA**

Based on information provided in the September 7, 2007 Public Notice (No. 07-40) regarding Application No. 200100145, the following comments are offered. The drawings/figures provided in Public Notice 07-40 were not to scale. Therefore, they were inserted into AutoCAD and scaled correctly so that the project site and the proposed impacts and resource losses on streams and wetlands could be verified.

- 1) The applicant states that the total acreage of disturbance for Phase V is 217 acres. The project site outlined on Sheets 1 of 10 and 6 of 10 of the Public Notice totals approximately 100 acres. This significant difference in acreage between the stated, proposed disturbance and that shown on Sheets 1 of 10 and 6 of 10 must be reconciled.
- 2) The applicant states that the total acreage of disturbance for Phase V is 217 acres. The "Permit Limit" outlined on Sheet 2 of 10 of the Public Notice totals approximately 185 acres. This significant difference in acreage between the stated, proposed disturbance and that shown on Sheet 2 of 10 must be reconciled.
- 3) Both stream and wetland impacts are proposed during Phase V construction of the Wild Escape Amusement Theme Park. The applicant states that the total wetland impact for Phase V development is 0.23 acres. Sheet 3 of 10 and 4 of 10 of the Public Notice shows five (5) distinct possible wetland areas within the Storchs Run watershed identified as AMD Ponds 4, 5, 6 and 7 and Wetland W8. Four (4) of these five (5) areas are AMD ponds which are apparently acid mine drainage treatment facilities. It is confusing that Wetlands 10A and 10B are included in AMD Pond 7 but the remainder of AMD Pond 7 is not considered a wetland. The AMD ponds should be considered jurisdictional wetlands. Therefore, the jurisdictional wetland areas within the Phase V project limit total approximately 1.7 acres (based on scaling Sheets 3 and 4 correctly).

This significant difference in acreage between the stated, proposed wetland impact and that shown on Sheets 3 of 10 and 4 of 10 must be corrected to be made accurate and consistent.

It is stated in the Public Notice that a Nationwide Permit (#39) was issued by the Corps of Engineers on February 10, 2003 to the OCDA for impacts to existing resources on previous phases of the Highlands Development which required the construction of a 1.0 acre wetland. It is also stated that the 1.0 acre wetland was not constructed and is now being proposed to be constructed along Middle Wheeling Creek and will be increased for impacts resulting from Phase V and other subsequent phases.

Was there a plan submitted by OCDA for the original 1.0 acre replacement wetland and, if so, where was the 1.0 acre wetland to be constructed? The application submitted by the OCDA for Phase V development is incomplete because it does not contain a detailed wetland replacement (mitigation) plan. How can the Corps of Engineers make a decision on Application No. 200100145 for Phase V development without review of a detailed wetland replacement plan? A detailed wetland replacement plan must be submitted by the OCDA for review and approval by the Corps of Engineers before a permit can be issued.

Related to the issue of the replacement wetland, why does the Corps of Engineers think the OCDA will construct the 1.23 acre replacement wetland when it has not constructed the required 1.0 acre wetland that was required to be constructed for previous phases of the development?

- 5) Related to the issue of wetland encroachment, has the Corps of Engineers made a jurisdictional determination (and issued a JD letter) for all wetlands within the limits of the Phase V development and has the applicant performed a functional values assessment for the wetlands to be impacted?
- 6) Has the Corps of Engineers issued a JD for jurisdictional wetlands within previous and future phases of the overall development?
- 7) The Public Notice states that no detailed stream mitigation has been proposed for the 8,141 linear feet of stream to be impacted during Phase V development. How can the Corps of Engineers make a decision on Application No. 200100145 for Phase V development without review and approval of a detailed stream mitigation plan? It appears that the Corps of Engineers should have rejected the application when it was determined that a detailed stream mitigation plan (and where this plan would be implemented) was not included as part of the application package.

- 8) The Public Notice states that previous unpermitted impacts of 1,200 linear feet of stream occurred during construction of Phases IV and VIII of the Highlands Development. Why does the Corps of Engineers think the OCDA will mitigate impacts on an additional 8,141 linear feet of stream when the OCDA has not complied with their commitment to mitigate the 1,200 linear feet of stream already impacted? Apparently, the OCDA did not even apply for impacts on the 1,200 linear feet of stream in its application for Phases IV and VIII.
- 9) In light of the Corps of Engineers recent definition of relatively permanent waters (RPW), is the Corps of Engineers certain that the OCDA has delineated all RPWs within the boundary of the 217 acre Phase V development? Based on USGS mapping provided in the Public Notice, it appears that RPWs may exist along the eastern portion of the Phase V development. Has the Corps of Engineers issued a JD letter relative to streams?
- 10) Why is the Corps of Engineers considering a permit for Phase V development without evaluating the totality of impacts for future development by the OCDA? I understand it is Corps policy to request that applicants present information on the entirety of their projects rather than in piecemeal fashion.
- 11) The Public Notice states that the Corps of Engineers will make its decision whether to issue a permit based on an evaluation of the probable impact on important resources. The applicant has provided information on only stream and wetland resource impacts. Other natural resources (not addressed by the OCDA) should be included in the analysis including woodlands, wetland functions and values, soils (prime farmland, hydric), etc.
- 12) The OCDA environmental consultant (Wallace and Pancher) does not fully apply accepted stream assessment techniques in their partially included "Fish Abundance and Diversity Survey" (Pages 8 through 10 in Public Notice). Their assessment of biological condition for sampling stations on Storchs Run is vague (low quality vs. intermediate quality) based on incomplete metrics (they call measures). Trophic composition; species composition and richness; favorable number of fish species; and high CPUE measures (metrics) must be explained and ratings for these metrics compared to an ecoregional reference stream. The OCDA environmental consultant should input their fish sampling data results into the Index of Biotic Integrity (IBI) procedure approved for West Virginia, and evaluate the rating and score for each specified metric for their data. The accepted IBI for use in West Virginia is detailed in the following reference: McCormick, F.H.,

et.al. 2001, "Development of an Index of Biotic Integrity for the Mid-Atlantic Highlands Region" trans. AM Fish. Soc., 130: 857-877.

- 13) The applicant's assessment of the biological condition of Storchs Run does not include the necessary evaluation of the benthic macroinvertebrate community which is highly indicative of the quality of the stream resource. The West Virginia Stream Condition Index (WVSCI) provides an EPA and State approved methodology using peer reviewed testing and approval of six metrics (or measures) that provide a rating and score to compare the study stream quantitatively to reference streams in West Virginia ecoregions. Use of the WVSCI is paramount for effectively assessing the quality of the resource loss in Storchs Run and must be completed and approved before a permit for the project can be issued.

Respectfully submitted:

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