



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 30 2014

REPLY TO THE ATTENTION OF:

WW-16J

Ginger Mullins, Chief
Regulatory Branch
Huntington District
U.S. Army Corps of Engineers
ATTN: CELRH-RD-N
502 Eighth Street
Huntington, WV 25701-2070

Dear Ms. Mullins:

The U. S. Environmental Protection Agency has reviewed Public Notice LRH-2013-744 for Legendary Ridge Developers, LLC (applicant). The applicant proposes to discharge dredged or fill material into 3,390 linear feet of eight ephemeral streams and 250 linear feet of two intermittent streams. The proposed project consists of 97 single family homes with associated roadways, utilities and stormwater management systems.

The Clean Water Act Section 404(b)(1) Guidelines (Guidelines) require that the applicant demonstrate there are no practicable alternatives available that would have a less adverse impact on the aquatic environment for non-water dependent activities.¹ The Guidelines presume that less damaging upland alternatives are available for these activities. Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States.²

Headwater streams, and their associated wetland and riparian systems, improve water quality by diluting and filtering pollutants from surface water runoff and provide processed leaf litter and organic matter, which are important to sustaining biological communities in downstream waters. Combined, organic interactions and improvements in water quality and stream channel conditions provide habitat for aquatic fauna that depend upon seasonally flooded habitat for advancement in their life cycle. In turn, aquatic fauna contribute to the overall biodiversity of the watershed by fitting into the complex food webs of Jordan Creek and downstream to the Great Miami River, a traditionally navigable water of the U.S. Additionally, terrestrial fauna including mammals and passerines benefit from the interconnected stream corridors that create edge habitat and travel corridors, and supply cover and food sources.

¹ 40 C.F.R. § 230.10(a)

² 40 C.F.R. § 230.10 (c)

EPA is concerned with the potential direct, indirect and cumulative impacts of the proposed project. The proposed project, the construction of a residential development, is not a water dependent activity and therefore upland alternatives are presumed to exist until demonstrated to be impracticable. The applicant needs to conduct an alternatives analysis which includes alternative configurations and site designs to identify the Least Environmentally Damaging Practicable Alternative.

The 56-acre property is undeveloped and 44 acres are wooded. Approximately 29 acres of wooded area would be removed in preparation for the development. The public notice states that there was a determination made that the proposed project may affect, but would not likely adversely affect either the Indiana bat or the northern long-eared back. The U.S. Fish and Wildlife Service recommended that tree clearing occur prior to April 1 and after September 1. However, no tree clearing should occur in waters of the U.S. before a Section 404 permit is issued.

The mitigation proposed for stream impacts is the construction of 2,600 linear feet of grassy swales and rip rap lined ditches on site and the preservation of 2,170 linear feet and 1,975 linear feet of the avoided streams on site. The proposed mitigation is unacceptable. The applicant needs to demonstrate how the avoided streams will remain un-impacted from the development and how they will be protected in perpetuity through a conservation easement or similar instrument. In addition, the ratio for preservation should be at least 5:1 and possibly higher.

Mitigation projects are meant to replace the loss of natural wetland or stream functions due to the permitted activity. Grassy swales and rip rap lined ditches for stormwater conveyance do not substitute for natural stream functions and are not acceptable mitigation.

EPA recommends denial of a permit for this project because it does not comply with the 404(b)(1) Guidelines. Please forward the additional information on avoidance and mitigation to Wendy Melgin. She can also be reached at 312-886-7745 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Swenson". The signature is written in a cursive style with a large initial "P".

Peter Swenson, Chief
Watersheds and Wetlands Branch