

AGENDA
STATE WATER CONTROL BOARD MEETING

FRIDAY, FEBRUARY 26, 2021

ELECTRONIC COMMUNICATION MEETING

To attend and/or speak at the Board meeting you must register at:
<https://attendee.gotowebinar.com/register/6660221729320481296>

See Page 3 for Additional Information

Persons Wishing To Speak During The Meeting Must Register By February 23, 2021

Any Updates To The Details/Final Arrangements Or The Addition Of An In-Person Location
To Be Announced On The Virginia Regulatory Town Hall

Convene – 10:00 a.m.

Agenda Item	Presenter	Tab
Permit(s)		
<ul style="list-style-type: none">• Virginia Water Protection (VWP) Individual Permit (IP) No. 19-2036 – Wegmans Distribution Center, Wegmans Food Markets, Inc.	Robb	
Memorandum		A
Acronym List		B
Draft Permit		C
Proposed Impact Maps		D
Fact Sheet		E
USACE PJD Memo for the Record		F
November 19, 2020 Public Hearing Transcript		G
List of Commenters		H
Sampling of Comment Letters		I
Email Between Applicant and Town of Ashland		J
June 17, 2020 Memo on Brown Grove Conference Call		K
No Public Forum at this Meeting		

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378, e-mail: cindy.berndt@deq.virginia.gov.

Additional Information on Virtual Meeting

Mode of Participation	Ability to make public comment if authorized by public comment policy?	Instructions
Watch and Speak Mode - GoToWebinar	YES	<ul style="list-style-type: none"> • Prior to hearing, register at https://attendee.gotowebinar.com/register/6660221729320481296 • Participants can join the meeting starting at 9:30 a.m. on February 26, 2021. • To join the meeting access the website by using the link, telephone number, access code and audio pin provided with the meeting confirmation. • For audio, it is recommended that you call-in to the webinar. Join the webinar first, select phone audio then dial the phone number and enter the access number and PIN. • If joining from a mobile device, it is recommended you download the app prior to the meeting. • All participants will be automatically muted upon joining the meeting. • If authorized to speak under the public comment policy, when you are called on, you will be un-muted and will be able to provide comments.
Watch Only Mode - GoToWebinar	NO	<ul style="list-style-type: none"> • Register at: https://www.gotomeeting.com/webinar Participants can join the meeting starting at 9:30 a.m. on February 26, 2021. • To join the meeting access the website by using the link, telephone number, access code and audio pin provided with the meeting confirmation Or Access the website https://www.gotomeeting.com/webinar, click "Join" and then enter Webinar ID 657-518-955. • If joining from a mobile device, it is recommended you download the app prior to the meeting.
Listen Only Mode	NO	If you prefer to attend the meeting by telephone and do not plan to speak, contact Debra Harris at 804-698-4209 or debra.harris@deq.virginia.gov to obtain a telephone number.

Additional Meeting Information:

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially to ensure the efficient and effective conduct of business.
- All violators are subject to removal.

**Briefing Memorandum for Issuance of a Virginia Water Protection (VWP) Individual Permit (IP)–
Wegmans Distribution Center, draft VWP IP Permit No. 19-2036 – Wegmans Food Markets, Inc.**

Attachment 1 includes a list of acronyms used throughout this document for reference. The draft permit, proposed impact maps, and fact sheet are included as Attachments 2, 3, and 4, respectively.

I. PROJECT BACKGROUND

Project Description

Joint Permit Application (JPA) Number 19-2036 was submitted on November 27, 2019, by Timmons Group, on behalf of the applicant, Hanover County Economic Development, under the name *Project Tiger*. The JPA number was received by DEQ on December 2, 2019. The application was transferred to **Wegmans Food Markets, Inc.** for the Wegmans Distribution Center on December 20, 2019. The applicant proposes to construct a retail grocery distribution facility in three phases. Phase I includes construction of an approximately of a 1.1 million contiguous square feet facility consisting of a dry warehouse, refrigerated warehouse, return center, food manufacturing facility, and offices, with the ability to expand with future growth, as well as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. fleet maintenance, dispatch and site security). Phase II expands the operation to 1.3 million square feet, adding additional dry and temperature controlled warehouses. Phase III of the project will expand the operation to a cumulative buildout of 1.7 million square feet. The project is located in Hanover County on an approximately 219.6-acre site that is situated south of Ashcake Road, northwest of Sliding Hill Road, and east of Egypt Road.

Based on the JPA and additional application materials received through March 20, 2020, DEQ drafted a permit for impacts to 6.12 acres of wetlands. The draft permit was public noticed on March 31, 2020. DEQ received 119 individual comments of which 110 requested a public hearing. Due to substantial public interest in the draft permit, on May 21, 2020 the DEQ Director authorized a public hearing on the draft permit. A public notice announcing the hearing was published on June 20, 2020. The hearing took place on July 20, 2020, and the associated comment period closed August 5, 2020. Mr. Tim Hayes served as the Hearing Officer. During the July 20, 2020 hearing there were 35 speakers.

Significant comments were raised by the public during the comment period and hearing challenging the accuracy of the preliminary jurisdictional determination (PJD) for the site confirmed by the U.S. Army Corps of Engineers (USACE). DEQ sent a letter to the USACE dated August 5, 2020, requesting review of the PJD. On August 19 and 21, 2020, the USACE conducted additional field work at the site and determined that the extent of Waters of the United States and associated surface waters on site was greater than previously delineated, and subsequently the USACE issued a revised PJD on September 15, 2020.

Revisions to the PJD were explained in a Memo for the Record (MFR) from the USACE dated September 24, 2020. The MFR is included as Attachment 5 to this memorandum. As explained in the MFR, there have been numerous wetland delineations and USACE surface water confirmations for the proposed site going back as far as 1992. An active PJD dated March 20, 2018 existed at the time that the applicant began the site selection process. During an August 28, 2019 pre-application site visit, DEQ staff determined more wetlands were potentially on site than identified on the March 20, 2018 PJD. As a result, an additional delineation was performed, and the USACE issued an updated PJD on October 30, 2019 and revision dated February 11, 2020. As described above, during the initial draft permit public comment period, significant public comments were received that caused the USACE to review the PJD, conduct additional field work, and issue a revised PJD dated September 15, 2020 that was used for purposes of this revised draft permit.

The USACE also issued a PJD on September 24, 2020 for surface waters in a small portion of the project area along Ashcake Road and Sliding Hill Road associated with road improvements and utilities.

As a result of the increased surface waters confirmed on the site, the applicant submitted revised application materials to DEQ on September 15, 2020, to update the proposed impacts at the site. The applicant also submitted additional information for the project through October 16, 2020 in response to additional information requested by DEQ. After reviewing the updated information, DEQ revised the draft permit to authorize 14.85 acres of wetland impacts as a result of the updated PJD.

Proposed Impacts

The draft permit authorizes the total impact of 14.85 acres of surface waters, consisting of 13.36 acres of permanent impacts, 1.46 acres of secondary impacts and 0.03 acre of temporary impacts.

- Permanent impacts, including secondary impacts from loss of hydrology, consist of 14.43 acres of palustrine forested (PFO) wetland and 0.23 acre of palustrine emergent (PEM) wetland, and 0.16 acre of jurisdictional ditch for the facility construction and other associated permanent infrastructure.
- Temporary impacts consist of 0.03 acre of PEM wetland for water utility lines.

Proposed Compensation

The proposed permit requires that the applicant purchase wetland mitigation credits in the amounts shown below as compensatory mitigation for proposed impacts. In accordance with § 62.1-44.15:23(A) of the Code of Virginia, all credits will be purchased from a DEQ-approved mitigation bank within the same United States Geological Survey Hydrologic Unit Code (HUC) as the project site, or in an adjacent HUC and in the same river watershed.

Compensation ratios will be at a 2:1 replacement to loss ratio for PFO and jurisdictional ditch impacts and a 1:1 replacement to loss ratio for PEM impacts.

Impact	Mitigation Ratio	Required Mitigation Bank Credits
14.43 acre forested wetlands (permanent)	2:1	28.86 wetland credits
0.23 acre emergent wetlands (permanent)	1:1	0.23 wetland credit
0.16 acre jurisdictional ditch (permanent)	2:1	0.32 wetland credit

Authorization to Convene a Public Hearing

Due to the significant public interest during the previous public comment periods, DEQ held a public hearing regarding the proposed issuance of the revised draft VWP IP No. 19-2036. The DEQ Director authorized the public hearing for the revised draft permit on October 14, 2020.

Draft Permit and Hearing Public Notice

The public notice of the revised draft permit and public hearing was published in the *Richmond Times Dispatch* on October 20, 2020. Notification of the draft permit comment period and public hearing, and copies of the public notice were sent to the locality in which activities are proposed. The public hearing was held on November 19, 2020, and comments were received through December 4, 2020.

Public Hearing

The hearing was held as an electronic meeting in compliance with Item 4-0.01G of Chapter 1289 of the 2020 Acts of Assembly. As a result of the March 12th, 2020, Declaration of a State of Emergency due to COVID-19, Executive Order 51 and subsequent orders 53 and 55 and in keeping with Governor Northam's temporary restrictions and directions to stay at home, the public hearing was held via electronic communication through GoToWebinar platform. The public hearing for the revised draft permit was held on November 19, 2020, from 7:00 p.m. to 9:30 p.m. Ms. Heather Wood served as the Hearing Officer. An informal briefing session was held prior to the hearing. A copy of the hearing transcript is available in Attachment 6.

Public Comment

During the public comment period, beginning October 20, 2020 and ending on December 4, 2020, staff received written and oral comments from a total of 262 individuals and organizations. During the hearing, there were 22 speakers, all of whom also submitted written comments.

Attachment 7 includes a comprehensive list of individuals and organizations who provided comments during one or more of the draft permit public comment periods or public hearings.

Of the comments submitted, 423 individuals and 42 organizations/groups provided comments during the comment periods, 3 commenters were in support of the draft permit and 462 commenters were opposed to the draft permit.

II. SUMMARY OF COMMENTS DURING PUBLIC COMMENT PERIODS

Below is a summary of the comments received during all of the comment periods and hearings for the draft VWP permit. Attachment 8 also includes a sampling of comment letters received during the most recent comment period. Several commenters used form letters to submit written comments. Sample form letters are also included in Attachment 8. All comments received during the comment periods are part of the record and are available upon request.

1. Support

Staff received three comments in support of the project and permit.

Staff Response:

Staff has no response to these comments.

2. Incomplete Application

Staff received comments that the applicant had not submitted a complete application. These comments focused on:

- *DEQ should not allow the applicant to continue to submit new or updated project information during the application review process.*
- *Applicant has been taken at its word with no investigation/questioning by DEQ.*
- *The application did not include a complete description of the impacts to the surface waters of Totopotomoy Creek, Kersey Creek, and Campbell Creek.*

- *The application does not meet the VWP application requirements in 9VAC25-210-80.B.1 h(4) because the delineation was not conducted in accordance with the USACE Wetland Delineation Manual as required in 9VAC25-210-45.*
- *The JPA did not include a previous delineation referenced in Section 3.2 and that delineation has not been provided for public review.*
- *The application did not include a functional assessment of wetlands to be impacted in accordance with 9VAC25-210-80.C.*

Staff Response:

The requirements for VWP permit applications are identified in 9VAC25-210-80.B of the VWP regulations. In addition to the application requirements, by regulation, DEQ has the authority to request additional information it deems necessary to ensure the project meets statutory and regulatory requirements or in order to make a decision to approve or deny the permit. There are no statutory or regulatory limitations in State Water Control Law (SWCL) or the VWP Permit Program regulations on the number of times DEQ may request additional information or an applicant can submit revised or updated information. The technical information on operations and logistics of specific type of projects and construction activities are provided by the applicant. If the information provided by the applicant appears to be reasonable, it is presumed to be accurate and representative of the project. If DEQ finds the information unclear or receives public comments, DEQ makes the determination to require additional information. It is routine for DEQ to request that the applicant provide clarifications or update information.

The applicant submitted an initial application on November 27, 2019 (received December 2, 2019), and on several occasions, DEQ requested additional information from the applicant both during the application review and as a result of comments received from the public. Additionally, the applicant provided updated and revised application materials as a result of the revised delineation and PJD issued by the USACE on September 15, 2020.

With regard to application requirements to identify impacted surface water, 9VAC25-210-80.B.1.e (2) requires applicants to name “the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.” Impact maps provided with the JPA identified those surface waters that the applicant proposes to impact with the project. Specifically, the applicant identified impacts to unnamed tributaries of Totopotomoy Creek, Kersey Creek, and Campbell Creek, all located within the York River basin. The information contained in the application satisfied the application requirements of 9VAC25-210-80.B.1.e (2)

The delineation information submitted in the initial application included a copy of the USACE PJD confirmation issued on October 30, 2019, and supporting delineation documentation. While the narrative in Section 3.2 of the JPA states that a previous delineation was conducted at the proposed site, for purposes of DEQ’s application review, it is not necessary for the applicant to provide previous jurisdictional determinations. DEQ did receive a copy of the previous PJD prior to receiving the application during pre-application discussions and site visits. While the historical PJD information is not part of the application materials for the project, they are and have been made available to the public through the Freedom of Information Act requests.

Comments were received stating that the application was incomplete because a functional assessment of wetlands proposed for impact was not provided in the application as required by 9VAC25-210-80.C. The regulations, specifically 9VAC25-210-80.C.1 states that a functional assessment analysis is not required if the proposed wetland impacts are 1.00 acres or less, or when the proposed compensatory mitigation plan includes “purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.” Because the applicant is proposing to purchase credits from a mitigation bank at the standard mitigation bank ratios, a functional assessment analysis is not required.

Based on review of the application materials, all application requirements in 9VAC25-210-80.B of the VWP Permit Program regulations are satisfied.

3. Surface Water Determination

Staff received comments that the jurisdictional determination (i.e., surface water determination) issued by the USACE does not comply with the USACE Wetland Delineations Manual, Technical Report Y-87-1, January 1987, Final Report, and the approved regional supplement. These comments focused on:

- *According to the National Wetlands Inventory map, there are approximately 62 acres of wetlands on that site.*
- *The PJD dated October 30, 2019, and revised February 11, 2020, incorrectly assesses wetland areas as “mosaics” without following the proper technical procedures outlined in the delineation manual, and underestimates the surface waters on the site.*
- *The PJD dated October 30, 2019, and revised February 11, 2020, and September 15, 2020, is based on data collected during a drought, and underestimates the surface waters on the site.*
- *The PJD dated October 30, 2019, and revised February 11, 2020, and September 15, 2020, omits that Data Point 2 shows all three wetland parameters and demonstrates a connection of Wetlands 9 and 13.*
- *Wetlands 8, 9, 10, 12, 13 and 35 were eliminated and Wetland 11 was reduced in size because the areas did not exhibit one or more wetland parameters without any evidence and should be re-instated on the PJD.*
- *The USACE and DEQ were denied full site access by the property owner in August 2020.*
- *Request for a new wetland delineation performed by an independent third party.*
- *Both DEQ and the USACE staff knowingly accepted a wetland delineation that does not meet the requirements of both state and federal law.*
- *The wetland delineation fails to meet state law and regulatory requirements.*
- *DEQ should not rely on the USACE PJD and should conduct its own review of the delineation in accordance with 9VAC25-210-45.*
- *Little to no information regarding the quality of wetland on the site is provided.*

Staff Response:

The U.S. Fish and Wildlife Service’s National Wetland Inventory (NWI) is a good tool for purposes of a desktop review and reasonable estimate of surface waters on the site. However, when a site requires USACE or VWP permitting, a field delineation is necessary to determine jurisdictional waters on a site for purposes of Section 404 of Clean Water Act and VWP permitting.

In accordance with § 62.1-44.15:21 of the Code of Virginia and 9VAC25-210-45, wetland delineations must be conducted using the procedures in the USACE’s “Wetland Delineation Manual, Technical Report Y87-1, January 1987, Final Report” and subsequent regional supplements. The manual provides the methods that are to be followed in delineating wetlands. Under normal site and climate conditions, in order for an area to be considered a wetland, the area must exhibit all three wetland parameters that include: hydrology, hydrophytic vegetation, and hydric soils. Additionally, the manual includes procedures for conducting a wetland delineation under abnormal site and climate conditions.

Confirmation of the wetland boundary by the USACE via a PJD or approved Jurisdictional Determination (AJD) fulfills DEQ’s requirement for permitting purposes. While the PJD confirms the limits of all surface waters on a site and assumes all of those waters fall under federal jurisdiction, an AJD is the USACE’s official determination of those surface waters that are jurisdictional for the purposes of federal

regulation and permitting. The USACE relies on information submitted by the property owner and typically conducts a field visit to verify the data submitted for the site.

The initial JPA received by DEQ on December 2, 2019 for the proposed project, and supplemental application materials received through March 20, 2020, proposed impacts to a total of 6.12 acres of wetlands based on the PJD from the USACE dated October 30, 2019, and revised February 11, 2020.

During both comment periods and the public hearing, DEQ received comments expressing concerns that the PJD of surface waters issued by the USACE for the proposed project site was inaccurate. Specifically, comments were received regarding technical procedures in the mosaic wetland delineation not being followed, disappearance of Data Point 2 in Wetland 14 confirming observations of wetland parameters, and procedures for conducting a delineation during a drought not being followed. Several commenters requested that DEQ perform its own confirmation or hire an independent 3rd party to conduct a delineation at the site.

Due to the significant comments on the surface water delineation confirmed by the USACE, DEQ sent a letter dated August 5, 2020, to the USACE requesting review of the October 30, 2019 PJD and February 11, 2020 revision. On August 19 and 21, 2020, the USACE conducted additional field work at the site and specifically reviewed Wetlands 11 and 14 that were previously deemed mosaic wetlands.

Following the August 2020 site visits, the USACE issued a revised PJD on September 15, 2020, and a Memorandum for the Record (MFR) supporting the PJD on September 24, 2020.

Citizens expressed concerns that the USACE was given limited access to the site on August 19 and 21 by the property owner in order to conduct the additional field work. However, the USACE has indicated that they had full access to the site and visited those areas they determined were necessary for re-evaluation.

Most significantly, the September 15, 2020 PJD identified that the two wetlands systems previously designated as mosaic (previously Wetlands 11 and 14, but now identified as Wetlands 7 and 9, respectively, in September 2020) were 100% wetland. The MFR addressed several of the surface waters and delineation comments received by DEQ and the USACE on the proposed project. These include:

- *Mosaic Wetlands:* The USACE concluded that the previously labeled Mosaic Wetlands 11 and 14, were incorrectly designated as 30% wetlands/70% uplands and 10% wetlands/90% uplands, and the procedures for Mosaic Wetland delineations were not followed. Both wetland systems were re-assessed as 100% wetlands/0% uplands. The boundaries for Wetland 11 and 14, now Wetlands 7 and 9, were reduced to more closely match the NRCS mapped hydric soil, Coxville Loam, boundaries within the project area and the gradual elevation changes.
- *Data Point 2:* Data collected by RK&K at DP-2 on October 11, 2019, indicated the presence of all three wetland parameters, and the area was shown on the delineation as a wetland. However, further review by the USACE indicated that DP-2 was located in an area mapped as having Dunbar fine sandy loam (non-hydric soil), which can contain inclusions of Coxville (hydric soils). It is believed that DP-2 may have been collected in a hydric soil inclusion and does not provide an appropriate representation of the surrounding area. Additionally, non-hydric inclusions were also observed within Wetland 14 suggesting that this is a transitional area between two soil types.
- *Drought:* During the delineation conducted on October 11, 2019, the region was experiencing drier than normal conditions. The USACE reviewed data from the USACE's Antecedent

Precipitation Tool (APT), used to analyze rainfall for wetland delineations, and results indicated that the delineation data was collected during the wet season, but that precipitation conditions at the time of the delineation were 'drier than normal'. The APT uses the 3 nearest NOAA weather stations to the site. The USACE also reviewed the Palmer Drought Severity Index (PDSI), used to estimate relative dryness, and results indicated a rating of 'Mild Drought' for the area.

Additionally, DEQ staff reviewed data used for drought designations by the Virginia Drought Management Task Force (DMTF). The DMTF issued a statewide Drought Watch in October 2019, however, a *Drought* designation was not declared for the region where the site is located at the time that the delineation was conducted.

- *Eliminated or reduced wetland boundaries:* Wetlands 8, 9, 10, 12, 13 and 35 were eliminated and Wetland 11 was reduced in size because the areas did not exhibit one or more wetland parameters.

As a result of the September 15, 2020 revised PJD, the applicant submitted updated application materials on September 15, 2020. The proposed wetland impacts were revised from 6.12 acres to 14.85 acres due to the increase in surface waters identified on the site. The supplemental application materials provided by the applicant from September 15, 2020 through October 16, 2020 included updated impact maps, a revised Least Environmental Damaging Practical Alternatives (LEDPA) analysis in accordance with the federal Clean Water Act 404(b)(1) Guidelines, and additional information regarding the offsite alternatives considered by the applicant.

DEQ reviewed the updated application materials, and ultimately determined that the applicant's preferred location remains the LEDPA for the proposed project. On October 20, 2020, a second public hearing was announced since the proposed impacts in the draft permit had substantially increased. A second hearing was held on November 19, 2020, and comments were accepted from the public from October 20, 2020 through December 4, 2020.

As previously stated, SWCL and the VWP Permit Program regulations require wetland delineations to be conducted using the USACE technical manuals and supplements. Confirmation of the wetland boundary by the USACE via a PJD or AJD fulfills DEQ's statutory requirement for permitting purposes. Because the USACE and DEQ staff are required to use the same reference materials and trained in the same methodology, DEQ relies on the jurisdictional determinations issued by the USACE. When questions arise regarding a delineation or confirmation, DEQ discusses those questions with the USACE. When questions were raised by citizens regarding the surface waters delineation for this project, DEQ followed up with the USACE for further review and analysis.

In response, the USACE performed additional field work at the site, reviewed the historical delineation and confirmation associated with property, and drafted an extensive MFR explaining the September 15, 2020 PJD, which was used in preparing the current draft permit. DEQ has reviewed the information in the MFR, and believes that the surface water delineation and September 15, 2020 PJD, and the September 24, 2020 PJD for an area of utility work, accurately represent conditions DEQ observed during site visits.

Please note that the USACE issued an AJD for the site on January 11, 2021, and revised the AJD on January 22, 2021. The AJD is USACE's official determination of those surface waters that are under federal jurisdiction. The AJD for the proposed site slightly reduces the amount of surface waters under federal jurisdiction from what was identified on the PJD. For purposes of the VWP draft permit, and in accordance with the SWCL, the extent of *state* surface waters on the site as identified on the PJD does not

change. Therefore, the proposed impacts and associated mitigation in the VWP draft permit does not change as a result of the AJD issued by the USACE.

4. Compensatory Mitigation

Staff received comments that the compensation is not adequate to offset the wetland impacts. Specifically comments states that:

- *The proposed compensatory mitigation plan is not sufficient to “to achieve no net loss” of wetland acreage and functions because of substantial errors in the PJD.*
- *The applicant will need to replace the destroyed wetlands at a rate of 2:1. Companies have a bad track record of following through with this practice, and creating the same quality habitats that were destroyed.*
- *The draft permit does not propose mitigation for 0.14 acres of jurisdictional ditches and the ditches are documented by the USACE as riverine, not palustrine.*

Staff Response:

DEQ reviewed the jurisdictional ditches on-site, and asked for additional information. The ditches appear to have been man made through the wetlands, likely associated with silvicultural activities, and do not appear to exhibit stream characteristics such as substrate sorting, ordinary high water mark, or geomorphology. DEQ originally approved the applicant’s request for an exclusion for open water impacts in accordance with the exclusions in the VWP Permit Program regulations which would not have required mitigation for the jurisdictional ditch impacts. However, in light of comments received during the initial comment period, DEQ re-evaluated the Open Water exclusion request and determined that the Open Waters exclusion was not appropriate for the jurisdictional ditch impacts because the conveyance provided connectivity between wetland systems. As such, the revised draft permit was updated to include impacts and compensation associated with the jurisdictional ditches on site.

A comment was received that the ditches are classified on the USACE PJD as riverine. The PJD does not confirm Cowardin classifications. Due to the lack of typical stream characteristics such as substrate sorting, ordinary high water mark, or geomorphology and because the jurisdictional ditches appear to have been man made through wetlands, compensatory mitigation for impacts are required at the palustrine forested wetland mitigation ratios.

Impacts to surface waters require compensatory mitigation sufficient to achieve no net loss of wetland acreage and no net loss of function of wetlands and surface waters. The permit requires the credits be purchased from a DEQ approved mitigation bank, an approved in-lieu fee fund, or a combination thereof that is authorized and approved by DEQ to sell credits in the area in which the impacts will occur and has credits available (as released by DEQ). Mitigation credits are required to be purchased prior to taking any impacts on-site.

The permit proposes compensation at a 2:1 replacement to loss ratio for permanent PFO and jurisdictional ditch impacts and a 1:1 replacement to loss ratio for permanent PEM impacts. The USACE confirmed the wetland delineation originally on September 28, 2012, and reconfirmed the delineation in September 2017. The impacts used to calculate the compensation are based on the revised wetland delineation information confirmed by the USACE on October 30, 2019, revised February 11, 2020, and September 15, 2020, and a PJD issued on September 24, 2020. Additionally, the USACE issued an AJD on January 11, 2021 and revised on January 22, 2021 refining the scope of the federal jurisdiction of surface waters.

The compensatory mitigation plan proposed by the applicant meets the requirements of the SWCL and the VWP Permit Program regulations.

5. Secondary Impacts

Staff received comments that the permit does not account for all the wetland impacts associated with the project. The comments focused on:

- *The draft permit does not account for all of the secondary impacts that will occur on and offsite.*
- *Timmons proposed and DEQ allowed a new approach to calculating secondary impacts basing secondary impact calculations on the proportion of hydrology that will be reduced.*

Staff Response:

When reviewing the initial application, DEQ review noted that no secondary impacts to downstream surface waters resulting from a reduction in hydrology had been identified by the applicant. During a meeting with the applicant on December 10, 2019, DEQ requested additional information about the potential for secondary impacts due to reduction in hydrology west of impact areas 8A and 8B, formerly 6a and 6b (west of the employee parking area), and 20A (formerly Impact 9) and 25A (formerly Impact 14) (along Ashcake Road). The applicant provided additional information on December 13, 2019, explaining that secondary impacts near 8A and 8B are not expected due to the flat topography and precipitation driven wetland hydrology. Additionally soils in that location are identified as Coxville series loams which are “typically poorly drained and possess moderately slow permeability” likely due to the clay in the soil profile beginning at approximately 12 inches. Regarding wetlands near impact areas 20A and 25A, after further review the applicant concurred that the wetland system will be “unavoidably” secondarily impacted and adjusted the impact totals and maps accordingly.

DEQ staff also requested additional information from the applicant to explain how hydrology at Impacts 3 and 9B (formerly Impact 22) would be maintained. In response, the applicant updated the design to include a culvert at Impacts 3 and 22 in order to ensure hydrology was maintained. However, further consideration by the applicant determined that a culvert at Impact 3 was not appropriate due to concerns with potential backwater flooding of the adjacent property along that portion of the project limits. The applicant removed the culvert from the design and revised the application materials to identify the wetland system to be secondarily impacted (Impacts 4A and 4B) including revisions to the proposed compensatory mitigation.

When calculating the secondary impacts at Impact 6, the applicant originally asked DEQ to consider a calculation using the percent reduction in hydrology to determine the secondary impact to the remaining wetland. DEQ informed the applicant that this “proportional” calculation methodology was not appropriate, and the applicant provided updated secondary impact calculations for the whole system being secondarily impacted (Impact 6). The applicant’s compensatory mitigation plan was also updated to incorporate these additional secondary impacts.

During the first two comment periods, DEQ received comments from citizens concerned that all secondary impacts were not appropriately accounted for in the draft permit. In a letter dated August 11, 2020, DEQ requested that the applicant further review remaining wetland systems onsite to determine the potential for any further secondary impacts. The applicant’s September 15, 2020 updated application materials included additional waters that have the potential to be secondarily impacted, specifically including Impacts 4A, 4B, 18B, and 20B to the list of secondarily impacted waters. The applicant’s compensatory mitigation plan was also updated to incorporate these additional secondary impacts.

Although secondary impact areas are considered impacted for purposes of calculating proposed impacts and mitigation requirements, there are no construction activities proposed within the secondary impact areas. To further ensure there are no additional secondary impacts associated with the project, DEQ has required onsite wetland monitoring in the draft permit at several locations within the permitted area. These include the remaining wetland areas adjacent to Impact Areas 8A, 8B, and Impact Areas 12-17. While citizens have expressed concern that off-site wetlands will also be secondarily impacted, staff believe the onsite wetland systems in close proximity of the construction and fill activities associated with the project will be the first systems impacted if secondary impacts occur. Therefore, the onsite monitoring will be indicative of potential secondary impacts to offsite wetland systems.

During the last comment period and hearing, DEQ again received comments from citizens concerned that all secondary impacts due hydrology loss had not been identified. Upon review of the application materials and proposed impacts, DEQ's best professional judgement is that all secondary impacts have been identified. As explained above, due to the relatively flat topography of the site, relatively poor draining soils, and precipitation driven wetland hydrology no additional secondary impacts are expected. Additionally, DEQ will be reviewing the periodic wetland monitoring reports the applicant will be required to submit to ensure additional waters are not being secondarily impacted. If DEQ finds that additional secondary impacts have occurred, then under its compliance and enforcement authority, DEQ will require the appropriate corrective action.

To prevent secondary impacts to downstream surface waters due sedimentation, Part I.C.9 of the draft permit requires that the applicant develop, implement, and maintain erosion and sediment controls in accordance with the Virginia Erosion and Sediment Control Handbook to protect downstream surface waters from being secondarily impacted from sedimentation resulting from onsite construction activities. DEQ's Virginia Erosion and Sediment Control Program (VESCP) (9VAC25-840), Virginia Stormwater Management Program (VSMP) (9VAC25-870), and General Permit for Stormwater Discharges from Construction Activities in conjunction with the local government programs, have the primary responsibility to ensure that stormwater runoff during and post-construction are controlled. Hanover County is required by SWCL to implement the regulations as a VESCP and VSMP Authority; therefore, the County will be responsible for the receipt, review, and approval of the erosion and sediment control (ESC) and stormwater management plans. DEQ has purview over the VESCP and VSMP and may independently conduct compliance inspections under these programs and the VWP Permit Program. The proposed project will also require a General Virginia Pollutant Elimination Discharge System (VPDES) permit for Discharges of Stormwater Associated with Construction Activities (CGP). The CGP requires the permittee to conduct site inspections no less than once per seven days while construction activities are ongoing. Part I.G.2 of the draft VWP permit also requires that the applicant conduct site inspections no less than once per month at all permanent and temporary impact areas and all avoided surface waters and report any unauthorized impacts to DEQ. Additionally, DEQ conducts periodic inspections of VWP permitted sites.

6. Least Environmentally Damaging Practicable Alternative (LEDPA) Determination

Staff received several comments stating that the applicant's preferred site (Air Park site) is not the LEDPA. The comments focused on:

- *The applicant has not demonstrated that the project must be located on wetlands rather than uplands and 404(b)(1) Guidelines presume that practicable alternatives exists to special aquatic sites for a project that are not water dependent.*
- *The applicant's focus of alternative sites within Hanover County is inappropriate.*

- *The applicant's screening criteria inappropriately excludes projects greater than 3 miles from I-95.*
- *DEQ should encourage the applicant to use existing cleared sites that will not negatively impact the environment, residents, or historical areas.*
- *The applicant's main concern is building the cheapest building at the expense of human habitation, wildlife habitation, and wetlands preservation. In order to impact as few wetlands as possible on the site and purchase the minimal compensatory mitigation, the applicant moved the building away from wetlands and towards human habitation.*
- *The applicant claims that an L-shaped campus is necessary to maximize operation efficiency of cross docking and flow through, but the L-shaped layout has been proven to be less efficient and should not be applied at the alternative sites for purposes of the LEDPA analysis.*
- *The applicant approaches the alternatives analysis backwards and stated that it did not do full site design for the alternatives because of other factors relating to offsite improvements, logistics, costs, and zoning.*
- *Field generated delineations should be used for all alternative sites and the NWI should not be used.*
- *The draft permit authorizes impacts for construction of a 1.1 million square feet distribution center, but information available to the community indicates the area to be 1.7 million square feet.*
- *EPA has submitted concerns with the Alternatives Analysis to the USACE.*
- *Alternative 3 cannot be found as impracticable because the applicant abandoned Alternative 3 after another use was proposed for the site.*
- *The Letter of Intent between the applicant and property owner of Graymont (Alternative 4) means the site cannot be considered impractical.*
- *Cost analysis does not factor in the \$1.5 million for infrastructure improvements provided by the County.*
- *Specific comments stated that the applicant claimed additional parking levels that would reduce proposed impacts at the proposed site are not feasible because the building heights are near maximum local zoning height allowances, but does not provide evidence of seeking a variance to those requirements.*
- *Given the most recent, incomplete wetlands impact delineation, the USACE and the applicant should amend the application to update the wetlands impacts, revise the alternatives analysis and demonstrate that the proposed project configuration on the property is the Least Environmentally Damaging Practicable Alternative ("LEDPA"), and that there are no alternative sites within reasonable proximity to the proposed project that would adversely impact fewer wetlands and related resources than the current proposal.*
- *Fair market value of the property because land is a tangible asset and historically appreciates over time and should not be considered in the costs analysis for LEDPA.*
- *Lost cost savings associated with rezoning and easement acquisitions are not appropriate for LEDPA.*
- *Several comments received stated that Alternative 3 is LEDPA. The following specific comments were provided:*
 - *DEQ's own analysis stated that Alternative 3 (Archie Cannon site) was the "Best choice for project based on wetland impacts and access."*
 - *Proposed site layout at Alternative 3 that did not optimize avoidance of impacts to surface waters making it appear to be a less reasonable alternative.*

- *Inaccurate statements by the applicant that more traffic would be encountered at Alternative 3 than the preferred site.*
- *Inaccurate statements by the applicant that Alternative 3 creates public safety risks due to location of an elementary school on the truck route yet the truck routes to and from the preferred site will pass share roads with school buses due to proximity of neighborhoods and daycare centers.*
- *False claims by the applicant that Alternative 3 does not allow for future expansion.*
- *False claims by the applicant that zoning for Alternative 3 no longer allows 'distribution center' as a permitted use and efforts to re-zone the site are not practicable. Alternative sites must be evaluated at the time of market entry.*
- *Cost associated with Hill Carter Parkway extension associated with Alternative 3.*
- *Mitigation costs for Alternative 3 is the result of a layout that does not properly minimize surface water impacts as evidenced by the layout in the JPA for the Scannell project that is larger than the proposed project. Mitigation cost for the exact Scannell layout would be \$96,000 (1.48 wetland credits, 143 stream credits). The mitigation cost for a reduced footprint 1.7 million square ft. version of the Scannell layout would be \$27,300 (0.78 wetland credits, 0 stream credits).*
- *Land costs for Alternative 3 are overstated as the applicant intended to carve out 52 acres from the property. It is unclear whether Wegmans intended to purchase this parcel and develop it or have it separated from the Archie Cannon site.*

Staff Response:

As part of the permit application evaluation process, 9VAC25-210-80.B.1.g of the VWP Permit Program regulations incorporate the concept of avoidance and minimization from the *Guidelines for Specification of Disposal Sites for Dredged or Fill Material*, 40 CFR Part 230, also known as the Section 404(b)(1) Guidelines, in terms of impacts to state waters and fish and wildlife resources. These federal implementing guidelines for the Clean Water Act state that the burden of proof for demonstrating compliance with the guidelines is the responsibility of the applicant, not the permitting entity. Applicants must (1) establish that avoidance of impacts to state waters, including wetlands is not practicable; (2) demonstrate that all practicable efforts to minimize unavoidable impacts to state waters, including wetlands, have been taken in project design and construction plan; and (3) provide a plan for compensation for all unavoidable impacts.

Per the VWP Permit Program regulations, the applicant must clearly state the purpose and need of the project and then demonstrate that the proposed activity, in terms of impacts to state waters and fish and wildlife resources, is the LEDPA, and must document site plan alternatives to this effect. The VWP Permit Program regulations define the following terms:

- *Avoidance* means “not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment”
- *Minimization* means “lessening impacts by reducing the degree or magnitude of the proposed action and its implementation”
- *Practicable* means “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”

Note that in order to be *practicable*, an alternative must be both available to the permit applicant and capable of fulfilling the overall project purpose.

Water dependency and a project's purpose are entwined, as the project's purpose is the foundation for evaluating water dependency and, subsequently, avoidance and minimization. Water dependent projects are defined by the Section 404(b)(1) Guidelines as those activities that require "access or proximity to or siting within [the wetland] to fulfill [the project's] basic purpose." If a project is determined to be water dependent, then it is presumed that alternatives that completely avoid impacts to the aquatic ecosystem are not practicable, and the review can move to other factors to further minimize impacts prior to considering compensation. If a project is determined to be non-water dependent, then the applicant must clearly demonstrate that there are no other practicable alternatives to the proposed impacts, which is accomplished through the LEDPA analysis.

While DEQ may ask questions regarding further avoidance and minimization of surface water impacts for a project such as consideration of alternative sites, design changes, and project reconfiguration, full consideration is given to the applicant's stated purpose and need during the LEDPA analysis review. The applicant's expertise and knowledge of their industry and project type ultimately determines the feasibility of suggested changes.

DEQ received the initial JPA on December 2, 2019, to construct a distribution center. Since that time, the applicant has responded to multiple requests for additional information from DEQ, and refined the information provided with the application to more clearly demonstrate compliance with the application requirements of the VWP Permit Program regulations.

Throughout the multiple application revisions, the purpose and need as stated by the applicant has remained constant. The application describes the project's purpose is to develop a "regional grocery store distribution center (1) to serve existing retail locations, (2) relieve transportation burdens from existing supply centers, and (3) provide a base of support to serve future retail locations in the mid-Atlantic region." The initial application as well as supplemental application materials explains that the existing distribution centers in Pennsylvania and New York are nearing capacity for serving existing retail stores. Additionally, the applicant is planning to open several additional retail locations in the mid-Atlantic region and will need a distribution center that can efficiently serve these locations. The applicant provided information demonstrating that the proposed new distribution center would serve areas of Northern Virginia and the Washington D.C. metro area as well as stores in eastern and central Virginia, and North Carolina.

According to the application materials, the applicant narrowed down the location of their search to Hanover County, because "a distribution center located in Hanover County increases logistical efficiency due to the ease of access to I-95, allowing the center to not only serve stores in NC and southern Virginia, but also providing a better source of distribution for stores located in northern Virginia (Fredericksburg, Potomac, Alexandria, Lake Manassas, Chantilly, Fairfax, etc.). Servicing northern Virginia stores from the Hanover distribution center also reduces the number of trips, trucks originating from the Pottsville Center need to make through one of the most heavily congested areas of traffic in the nation, the DC Metro Area. This helps reduce the risks associated with perishable food items, while enhancing safety by decreasing road hours for operators."

The applicant's screening criteria for site selection includes:

- Proximity to Interstate 95
- Logistical efficiency to serve current and future store locations
- Ecological factors (wetland, stream, Resource Protection Areas, threatened and endangered species)

- Mitigation Cost and Credit Availability
- Zoning
- Access (Required offsite road improvements, Avoidance of congested areas)
- Ease of Utility Access (Sewer, Power, Water)
- Cost

While the screening criteria above assists the applicant in evaluating the advantages and disadvantages of particular sites, only those items related to the applicant's purpose and need, surface water impacts and practicability based on cost, technology, and logistics are permissible in the LEDPA analysis. Accordingly, the applicant revised the LEDPA analysis on multiple occasions upon receipt of comments from DEQ to ensure those factors allowed by the 404(b)(1) Guidelines were considered and documented for purposes of site selection based on LEDPA.

Throughout the application review, DEQ inquired about opportunities for further avoidance and minimization including:

- Reducing the overall proposed footprint of the warehouse
- Creating additional vertical levels to the warehouse
- Consideration that parking and road design incorporates the minimum requirements of local ordinances
- Reconfiguration of linear portions of the project (utilities and roads) to transect surface waters at the narrowest sections

In response, the applicant indicated that road alignments could not be realigned without creating additional impacts and that the utility crossings were designed to reduce the number and area of surface water impacts. The applicant also explained that the proposed building heights were nearing the allowable heights under local ordinances and additional vertical levels was not feasible.

In response to requests for reduction or changes to the footprint, the applicant indicated the facility configured in an "L" shape is needed for the most efficient operation of the distribution center. DEQ inquired about the layout to determine if the layout could be modified in order to minimize impacts on the proposed site. The applicant indicated that the "L" shaped facility designed, with one leg being for dry storage and the other for refrigerated storage, was developed by the applicant based on their experience in warehouse operations and logistics. The applicant indicated that the "L" shape building allows for the most efficient implementation of "cross docking" and "flow through" in the handling of supplies. As explained in the application materials, retail cross docking receives items from different suppliers and classifies them into trucks departing to various locations. "Cross docking" allows for "decreased storage cost, reduced fix price of the storage area, reduced shipment lead times, and increased customer satisfaction via fast delivery."

Additionally, the application explains that the "L" shape facility allows for:

- Separation of employee traffic from truck traffic
- Employee parking and administrative areas to be centrally located with a common point of entry
- Shared employee areas, and common area for equipment parking, maintenance, and offices
- Common outbound trucking operation that is shared for both buildings
- Greater ability to expand each building.

DEQ received citizen comments stating that the “L” shaped building was the applicant’s desire, and is proven to not be as efficient as other designs, and should not be applied at other alternative sites for the purposes of the LEDPA analysis.

Details regarding the design, operation, and logistics of a distribution center falls under the purview of the applicant’s expertise. When DEQ inquired about the facility and campus layout during the application review, the applicant provided reasonable explanations as to support the “L” shaped building design.

The initial application provided information for three sites (preferred site, Alternative 1, and Alternative 2). DEQ requested that the applicant expand the LEDPA analysis to include additional sites for consideration. At that time, DEQ learned that other sites had been evaluated by the applicant prior to submitting a VWP permit applications, and DEQ requested that those sites be incorporated into the LEDPA analysis.

The LEDPA analysis was revised to ultimately include the evaluation of five sites in Hanover County. These sites were selected based on the screening criteria mentioned above. They are identified as:

- Preferred site (Airpark)
- Alternative 1 (Flippo)
- Alternative 2 (Blenheim)
- Alternative 3 (Archie Cannon)
- Alternative 4 (Graymont)

Potential surface water impacts were evaluated for each site. A delineation for the preferred site had been confirmed by the USACE through a PJD issued on October 30, 2019, and revised February 11, 2020. Field verification of surface waters on alternative sites is not required by the VWP Permit Program regulations. For the alternative sites, the applicant used a delineation, if available. If an alternative site did not have a delineation, the applicant relied on information from the U.S. Fish and Wildlife Service’s NWI and the National Hydrography Dataset to make a reasonable approximation of the surface waters.

DEQ received comments that in comparing surface water impacts, wetland delineations should be conducted at all alternative sites in order to accurately compare sites. While DEQ concurs that field verification by way of a delineation is the most accurate methodology to estimate surface waters on a site, it is not feasible to expect that the applicant would have the necessary property access to conduct a delineation at all alternative sites. Additionally, a delineation of the alternative sites is not required by the SWCL or the VWP Permit Program regulations.

DEQ also received comments that the applicant’s approach to the alternatives analysis in the application was “backwards” in that the applicant had already selected the preferred site and was presenting information that “forced” the site in to being the LEDPA.

Based on Freedom of Information Act records that citizens obtained from Hanover County and the Virginia Department of Economic Development and provided to DEQ during the comment period, records indicate that the applicant considered several locations in Hanover County, conducted due diligence at sites, and engaged local officials about sites prior to submitting a VWP permit application for the preferred site. Specifically, records indicate that the applicant entered into a Letter of Intent with the Alternative 4 property owner in order to gain access to the site in order to conduct a more complete analysis of site conditions. The records also demonstrate that the applicant discussed the possibility of constructing the project at Alternative 3 with the Town of Ashland officials prior to submitting a VWP permit application for the preferred site. It is the applicant’s responsibility to demonstrate that the

preferred alternative is the LEDPA. Entering into a Letter of Intent with a property owner or consideration of a potential site does not automatically mean that the site is practicable when evaluating under the LEDPA standard. The applicant's LEDPA analysis included consideration of surface water impacts followed by an evaluation of practicability taking into consideration cost, technology, and logistics in light of the overall project purpose for each alternative site that was contemplated.

During review of the initial application materials through March 20, 2020, the preferred site (Air Park) was believed to have the least amount of surface water impacts. Based on DEQ's review of the onsite and offsite alternatives, DEQ concurred that the applicant's preferred site and corresponding design layout was the LEDPA. DEQ drafted a permit for the preferred site authorizing 6.12 acres of wetland impacts. The public comment period began on March 31, 2020 and ended on April 30, 2020. Due to significant public interest, DEQ announced another public comment period and hearing. As described in the background information and item 2 above, during the initial public comment periods DEQ received substantial comments from citizens concerned that the PJD for the project did not accurately reflect the extent of surface waters on the preferred site and that the preferred site did not satisfy the LEDPA standard. Following the initial draft comment period and hearing, DEQ requested that the USACE review the PJD.

On September 15, 2020, the USACE issued a revised PJD and the applicant provided updated application materials based on the revised PJD. As a result of the increase of surface waters identified on site, the proposed surface water impacts at the preferred site increased from 6.12 acres to 14.85 acres. This increase indicated that the previous LEDPA analysis was insufficient because the preferred site no longer had the least amount of surface water impacts. In response to the increase in proposed impacts, the applicant provided additional details in the alternatives analysis taking into account cost, logistics and technology associated with construction at each site to determine if the alternative sites were considered practicable for the project. Additionally, the applicant clarified that the overall distribution center project included future build out, estimated to be 1.7 million square feet.

The applicant indicated that for Alternative 3 logistical challenges included traffic congestion with primary truck routes, and safety concerns associated with truck traffic sharing the same roads as traffic from an adjacent elementary school. DEQ received comments based on a 2019 VDOT Annual Average Traffic Report indicating that the average annual daily traffic associated with Alternative 3 is comparable to that of the applicant's preferred site. DEQ also received comments that truck routes for the preferred alternative will share roads with school traffic traveling to and from four day care centers and passing by several subdivisions. DEQ acknowledges that the logistical challenges of traffic congestion and safety may exist at both Alternative 3 and the preferred alternative. These items were not significant in the applicant's determination that Alternative 3 was not LEDPA. Several other factors as summarized in the fact sheet were used in determining LEDPA.

After several requests for additional information with questions specific to the economic analysis, the applicant provided a revised LEDPA analysis. The applicant provided information indicating that all sites evaluated met the purpose and need of the project and were considered practicable taking into consideration logistics and existing technology. However, the applicant's revised LEDPA analysis concluded that the alternative sites were not practicable based on costs.

As stated in the Section 404(b)(1) Guidelines, practicable alternatives are those alternatives that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." (40 CFR 230.10(a)(2), 9VAC25-210-80.B.1.g) Therefore, DEQ staff closely evaluated the cost analysis (Table 1) provided by the applicant which included infrastructure improvement projects associated with each site as well as site acquisition estimates and mitigation costs. The applicant also included in the analysis "lost cost savings" associated with rezoning

efforts for Alternatives 1, 2, and 3 and offsite easement acquisition for Alternative 1. The applicant explained that “lost cost savings” represents the calculated transportation and lost product costs that would be associated with continued use of the existing distribution centers if rezoning and easement acquisitions at the alternative sites were pursued.

During the application review process, DEQ also reviewed each alternative site and the preferred site using the agency’s Wetland Condition Assessment Tool (WetCAT). The program is an interactive GIS tool that provides a water quality and habitat condition assessment for non-tidal wetlands in Virginia. Based on staff’s review of *strictly* the wetland conditions based on WetCAT, Alternative 3 was determined to be the best location for the project when considering impacts and access. However, WetCAT is not used to determine the LEDPA because it does not take into consideration whether a site is practicable in regards to cost, logistics, and existing technology when taking into account the overall project purpose as required under the 404(b)(1) Guidelines.

Based on the information provided by the applicant associated with the construction costs, DEQ concurred that even though construction of the project on some of the alternative sites would result in fewer estimated surface water impacts, the sites were not practicable based on costs. DEQ determined that the preferred site remained the LEDPA despite the increase in proposed surface water impacts.

Table 1: Site Construction Cost Estimates Provided by the Applicant, October 2020

Updated Estimated Cost Analysis (9/28/2020)						
Site	Figgo	Blenheim	Archie Cannon	Graymont	Air Park	
Wetland and Waters Impacts	app. 15 acres	app. 16.4 acres & app. 2,366 lf stream	app. .5 acres & 1,953 lf stream	app. 1.1 acres and 689 lf stream	14.8 acres	
Estimated Development Cost						
Mitigation Cost	\$ 1,050,000.00	\$ 1,857,800.00	\$ 620,900.00	\$ 283,700.00	\$ 1,029,350.00	
Assessed Value	\$ 2,005,100.00	\$ 1,865,700.00	\$ 9,326,600.00	\$ 1,993,000.00	\$ 4,406,000.00	
Extension Hill Carter Parkway	\$ -	\$ -	\$ 10,900,000.00	\$ -	\$ -	
Signalization of Archie Cannon Dr/RT	\$ -	\$ -	\$ 500,000.00	\$ -	\$ -	
Sanitary sewer relocation	\$ -	\$ -	\$ 750,000.00	\$ -	\$ -	
Sanitary Pump Station and FM	\$ -	\$ 1,800,000.00	\$ -	\$ 1,500,000.00	\$ -	
Site Retaining Wall	\$ -	\$ -	\$ -	\$ 2,800,000.00	\$ -	
Sliding Hill Road improvements (curve softening)	\$ -	\$ -	\$ -	\$ -	\$ 500,000.00	
New Turn and Acceleration Lane Sliding Hill Road	\$ -	\$ -	\$ -	\$ -	\$ 290,000.00	
Sanitary Trunk Sewer Extension Along Little River (14,000LF @ \$200/LF)	\$ 2,800,000.00	\$ -	\$ -	\$ -	\$ -	
1-95 Bore for Force Main Extension (700LF @ \$500/LF)	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -	
1-95 Bore for Sanitary Main Extension (700LF @ \$750/LF)	\$ 525,000.00	\$ -	\$ -	\$ -	\$ -	
Ellet's Crossing and Hickory Hill Road Improvements (Blenheim ~9,500 LF @ \$2,500/LF)(Graymont ~3,500LF @ \$2,500)	\$ -	\$ 23,750,000.00	\$ -	\$ 8,750,000.00	\$ -	
12" Water Main Extension Along Hickory Hill Road (6,700 LF @ \$150/LF)	\$ -	\$ 1,005,000.00	\$ -	\$ -	\$ -	
1-95 Bore for Water Main Extension (700LF @ \$500/LF)	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -	
Offsite Easement Acquisition (8,300LF @ \$60/LF)	\$ 498,000.00	\$ -	\$ -	\$ -	\$ -	
Lost Cost Savings Due Required Rezoning (est. 39 weeks X \$150k/week)*	\$ 5,850,000.00	\$ 5,850,000.00	\$ 5,850,000.00	\$ -	\$ -	
Lost Cost Savings Due to Offsite Easement Acquisition (est. 78 weeks X \$150k/week)*	\$ 11,700,000.00	\$ -	\$ -	\$ -	\$ -	
Est. Cost Total:	\$ 18,578,100.00	\$ 36,828,500.00	\$ 27,947,500.00	\$ 15,326,700.00	\$ 6,225,350.00	
Difference:	\$ 12,352,750.00	\$ 30,603,150.00	\$ 21,722,150.00	\$ 9,101,350.00	\$ -	
Order of magnitude expense to preferred site	3.0	5.9	4.5	2.5		

Alternative 3 offers the least amount of surface water impacts and as such information provided for this site warranted further examination. In consideration of Alternative 3, the applicant stated that the long narrow shape of the parcel resulted in challenges for the project including the limited placement of the site using the “L” shaped design discussed above. The applicant also stated that the site does not provide sufficient area for future expansion to the 1.7 million square foot facility for which they are seeking a VWP permit.

Additionally, in the updated application materials, the applicant indicated that the Alternative 3 was no longer a feasible location due to zoning changes that occurred while DEQ was reviewing the application for the proposed project. DEQ reviewed meeting minutes from the June 10, 2020 Joint Meeting of the Ashland Town Council and Planning Commission (available at: https://ashland-va.granicus.com/MinutesViewer.php?view_id=1&clip_id=906&doc_id=1c14b001-b57f-11ea-888f-

0050569183fa). During the meeting the town council passed a motion approving changes to the zoning ordinance (ORD2020-06) that created a new industrial zoning district to “extract the more intensive uses from the M-1, Limited Industrial District, and place them into a new and more suitable zoned district, M-2, Industrial District.” The Alternative 3 site was rezoned with this change to M-1. Under the M-1 designation “distribution center” is not a permitted use. The elimination of Alternative 3 as the LEDPA was not based on the rezoned designation alone. As included in the application materials, other factors that eliminated Alternative 3 include the site not meeting the project purpose and determination that the alternative was not practicable based on costs. In response to comments by DEQ, the applicant removed costs associated with rezoning as described below.

After review of the applicant’s revised LEDPA analysis updated with information from September 2020 through October 2020 and including revisions to the economic analysis provided in response to public comments, DEQ concurs that the preferred site is the LEDPA. A draft permit was revised to incorporate the increase in impacts at the preferred site and another public comment period beginning October 20, 2020 and public hearing on November 19, 2020 was announced.

During the comment period, comments were received indicating that the applicant’s costs analysis included costs that were not appropriate. DEQ revisited the applicant’s costs analysis in light of public comments as follows:

- **Property cost:** The cost analysis is conducted to determine whether an alternative is unreasonably expensive, and therefore not practicable. Property purchase cost is an expense that will be incurred by the applicant in order to construct the project as the applicant does not own any of the properties. In the cost analysis submitted with the LEDPA evaluation, the applicant included the cost associated with property acquisition based on the assessed value of the site. The applicant included the property costs, i.e. assessed value, for each alternative including the preferred alternative. Using the assessed value for each property presents an equivalent examination of the property cost for each alternative that is not influenced by market variability.
- **Alternative 3 for the “Extension Hill Carter Parkway”:** The applicant indicated that in order to construct the project on the Alternative 3 site, discussions with the Town of Ashland indicated that Hill Carter Parkway would need to be extended. Commenters provided email correspondence from Town officials indicating that there was no expectation that the applicant would pay for the road extension. In response to the comment, the applicant provided DEQ with email communications with the Town (Attachment 9). Upon DEQ’s review of the public comment and documentation from the applicant, DEQ concluded that the Town did not make the road extension a condition of project approval. Instead, the Town had asked the applicant about the feasibility to assist with the cost associated with preliminary design work needed for a Virginia Transportation Partnership Opportunity Fund (TPOF) grant. As such, DEQ requested that the applicant resubmit the cost analysis with the cost for “Extension Hill Carter Parkway” removed.
- **County Incentives for Infrastructure:** Comments were received indicating that Hanover County agreed to reimburse the applicant for \$1.5 million through a grant for infrastructure improvements related to the project. In response to this comment, DEQ requested that the applicant resubmit the cost analysis to incorporate the \$1.5 million grant for infrastructure for each site.
- **Lost Cost Savings (Zoning and Easements):** Comments were received stating that the inclusion of costs deemed “lost cost savings” in the analysis was improper as costs associated with delays due to rezoning and easement acquisitions are not appropriate in the construction costs analysis. Upon further consideration, DEQ concurred with the comments and requested that the applicant resubmit the cost analysis removing the lost cost savings line items.
- **Mitigation costs for Alternative 3:** Comments were received that the applicant’s estimated mitigation costs for development of the project at Alternative 3 are overestimated due to a layout

that “does not properly minimize surface water impacts.” The comments refer to an application for a project on Alternative 3 known as the Scannell project that proposed construction of a 2.75 million square foot distribution center. *Note that while a JPA for the Scannell project was submitted for Alternative 3, shortly after submittal, at the request of the applicant, the agency suspended processing of the application.* Commenters estimated the surface water impacts and associated mitigation costs for the Wegmans Distribution Center based on ratios using the impact amounts and mitigation costs submitted in the Scannell JPA. The proportion methodology assumed in this comment is not appropriate. The commenter’s estimates did not take into consideration the applicant’s “L” shaped layout. Additionally, mitigation costs associated with stream impacts are not based on a specific ratio of impacts to compensation, but instead are based on stream scoring methodologies that take into account pre-development characteristics of the streams proposed for impacts.

- Overstated land costs for Alternative 3: Commenters provided email documentation between the applicant and the Town of Ashland during preliminary communications about Alternative 3 indicating that the applicant intended to purchase a smaller parcel, “preserving approximately 52 acres for mixed-use development.” DEQ reviewed the email communications that occurred relative to “preserving approximately 52 acres for mixed-use development” of the Alternative 3 parcel. The cost information presented by the applicant indicates the need to purchase the various alternatives in their entirety. Subdivision and future land use decisions of any of the alternatives is speculative and subject to change, and were not provided or requested for purposes of the cost analysis.

In response to citizen comments received by DEQ described above and at DEQ’s request, the applicant provided a revised cost analysis (Table 2). According to the applicant, after revising the costs analysis, the preferred site remains the LEDPA because Alternatives 2, 3, and 4 have cost estimates significantly greater than the preferred site and are therefore not practicable based on cost. Alternative 1 is estimated to have approximately the same impacts as the preferred site and construction costs are approximately 90 percent of the costs to construct at the preferred site. The applicant explained that Alternative 1 requires rezoning and acquisition of offsite easements and states that “the time required to acquire the property, conduct thorough due diligence, rezone (if possible), and acquire the necessary offsite easements (if possible), represents a greater risk and expense to the Applicant than the estimated \$847,250 difference” and therefore Alternative 1 was not chosen as the preferred alternative.

In accordance with the federal 404(b)(1) Guidelines, costs may be considered by an applicant in determining the LEDPA for purposes of eliminating a site when the cost to construct the project at that site is not considered practicable. There is no requirement in the 404(b)(1) Guidelines, SWCL, or VWP Permit Program regulations that requires the LEDPA to be the least expensive alternative.

Table 2: Site Construction Cost Estimates Provided by the Applicant, December 2020

Updated Estimated Cost Analysis (12/21/2020)					
Site	Flippo	Blenheim	Archie Cannon	Graymont	Air Park
Wetland and Waters Impacts	app. 15 acres	app. 16.4 acres & app. 2,366 lf stream	app. .5 acres & 1,953 lf stream	app. 1.1 acres and 689 lf stream	14.8 acres
Estimated Development Cost					
Mitigation Cost (based on \$35,000/wetland cr. and \$300/stream cr.)	\$ 1,050,000.00	\$ 1,857,800.00	\$ 620,900.00	\$ 283,700.00	\$ 1,029,350.00
Assessed Value	\$ 2,005,100.00	\$ 1,865,700.00	\$ 9,326,600.00	\$ 1,993,000.00	\$ 4,406,000.00
Signalization of Archie Cannon Dr/RT	\$ -	\$ -	\$ 500,000.00	\$ -	\$ -
Sanitary sewer relocation	\$ -	\$ -	\$ 750,000.00	\$ -	\$ -
Sanitary Pump Station and FM	\$ -	\$ 1,800,000.00	\$ -	\$ 1,500,000.00	\$ -
Site Retaining Wall	\$ -	\$ -	\$ -	\$ 2,800,000.00	\$ -
Sliding Hill Road Improvements (curve softening)	\$ -	\$ -	\$ -	\$ -	\$ 500,000.00
New Turn and Acceleration Lane Sliding Hill Road	\$ -	\$ -	\$ -	\$ -	\$ 290,000.00
Sanitary Trunk Sewer Extension Along Little River (14,000LF @ \$200/LF)	\$ 2,800,000.00	\$ -	\$ -	\$ -	\$ -
1-95 Bore for Force Main Extension (700LF @ \$500/LF)	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -
1-95 Bore for Sanitary Main Extension (700LF @ \$750/LF)	\$ 525,000.00	\$ -	\$ -	\$ -	\$ -
Eller's Crossing and Hickory Hill Road Improvements (Blenheim ~9,500 LF @ \$2,500/LF)(Graymont ~3,500LF @ \$2,500)	\$ -	\$ 23,750,000.00	\$ -	\$ 8,750,000.00	\$ -
12" Water Main Extension Along Hickory Hill Road (6,700 LF @ \$150/LF)	\$ -	\$ 1,005,000.00	\$ -	\$ -	\$ -
1-95 Bore for Water Main Extension (700LF @ \$500/LF)	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -
Offsite Easement Acquisition (8,300LF @ \$60/LF)	\$ 498,000.00	\$ -	\$ -	\$ -	\$ -
County Infrastructure Incentive \$1.5M	\$ (1,500,000.00)	\$ (1,500,000.00)	\$ (1,500,000.00)	\$ (1,500,000.00)	\$ (1,500,000.00)
Brown Grove Regional Trunk Sewer	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Est. Cost Total:	\$ 5,378,100.00	\$ 29,478,500.00	\$ 9,697,500.00	\$ 13,826,700.00	\$ 6,225,350.00
Difference:	\$ (847,250.00)	\$ 23,253,150.00	\$ 3,472,150.00	\$ 7,601,350.00	\$ -
Order of magnitude expense to preferred site	0.9	4.7	1.6	2.2	

7. Chesapeake Bay Preservation Act

Staff received comments regarding inaccurate assessment of resources onsite regulated by the Chesapeake Bay Preservation Act (CBPA). The comments focused on:

- The State Water Control Board is responsible for overseeing the implementation and compliance of the CBPA and cannot approve the VWP permit since the CBPA analysis does not correctly identify RPA on the proposed site.
- The Resource Protection Areas (RPA) on the site have not been appropriately identified.
- Because the property is located within a Resource Management Area (RMA), the applicant must disturb as little land as possible within CBPA protected areas, minimize impervious cover, and preserve indigenous vegetation to the maximum extent possible.
- DEQ and the applicant have not appropriately analyzed whether on-site wetlands constitute an RPA.
- The applicant has not complied with the VWP program because it has prevented the Commonwealth of Virginia from assessing the proposed development's impacts under the Chesapeake Bay Preservation Act.
- DEQ should consider immediately implementing an audit of Hanover County's CBPA program to ensure the locality is properly meeting the requirements of the CBPA.
- Eastern portion of the proposed site drains to Kersey Creek, where there are prominent wetlands within the designated RPA.
- Drought conditions may have potentially altered the connectivity of Wetland 13 to Totopotomoy Creek leading to an incorrect conclusion that the wetland is not an RPA.
- During the Federal Consistency Certification review, Hanover County provided DEQ with maps that omit portions of the Air Park site and do not identify all relevant Chesapeake Bay Preservation Areas.

Staff Response:

While 9VAC25-210-80.B.1.i.(5) of the VWP Permit Program regulations requires applicants to submit the limits of resources designated as CBPA, designation of features protected under the CBPA statute and attendant regulations does not fall within the statutory and regulatory authority of the VWP Permit

Program. Consideration of the VWP permit for the proposed project by DEQ or the State Water Control Board is independent of their oversight of local government CBPA programs.

Localities in Tidewater Virginia, including Hanover County, are required to comply with the Chesapeake Bay Preservation Area Designation and Management regulations through development and implementation of a local program in accordance with 9VAC25-830. Oversight of these local programs to ensure that they are being properly implemented is the responsibility of the DEQ Office of Local Government Assistance Programs (OLGAP). Local governments are responsible for reviewing specific projects for compliance with the CBPA requirements. OLGAP does not conduct project specific review, but ensures the proper administration of the program by conducting periodic local program reviews. If administration of the local government's program is determined to be inconsistent with the statutory and regulatory requirements, OLGAP requires corrective action by the local government and establishment of schedules of compliance, as necessary.

In December 2019, the OLGAP staff were provided the opportunity to review and comment on the proposed project under the Federal Consistency Certification (FCC) review. OLGAP's review of projects as part of the FCC review is not meant to provide site specific determination of RPA and RMA. In addition to identifying the general requirements of the CBPA program, OLGAP comments stated, "It is important to note that in accordance with the Act, *this is a private development project that must be reviewed and approved by Hanover County*. As part of this process, the applicant must coordinate with the County to identify all parts of the site that may require designation as RPA and any area(s) of potential encroachment into the RPAs..." (*emphasis added*). Designation of the RPA for this site specific project is the responsibility of the local government.

8. Flooding and Stormwater Management

Staff received comments on potential flooding from and stormwater management associated with the proposed project. The comments focused on:

- *Existing flooding being exacerbated by the increase in imperviousness.*
- *Importance of wetlands in filtering of pollutants and to reducing flooding and runoff from upland areas.*
- *Permanently altering water flow to all surrounding neighborhoods that already have problems with standing water issues after rainfall events.*
- *Concerns with how water quantity and quality would be impacted by the project.*
- *Concerns that the applicant will be changing runoff patterns such that all of the runoff will be directed to Totopotomoy and whether or not the creek can handle rainfall from 100-year storm events.*
- *Need for more studies to demonstrate culvert adequacy or adequate outfall requirements of the Erosion and Sediment Control Program and how the project will effect drainage patterns in nearby neighborhoods.*
- *No determination or documentation of backflow or flooding potential.*
- *Concerns that local streams will not be able to handle the run off from the proposed project.*
- *Request to require the applicant to use a permeable material for any paved surfaces.*

Staff Response:

The wetlands proposed for impact inherently function to absorb and store runoff during storm events. The VSMP accounts for changes in stormwater runoff caused by the changes in land cover associated with

development activities. The VSMP regulation requires that the volume, velocity, and peak discharge rate of stormwater runoff be controlled. Project developers are required to demonstrate that post-development stormwater management replicates or improves upon its contributing share of the existing pre-development runoff hydrology, and the project cannot cause additional flooding if flooding exists in the development condition. The VSMP does not require the proposed development to alleviate existing flooding if it is already present in the system. Hanover County operates a VESCP and VSMP per § 62.1-44.15:54 and § 62.1-44.15:27 of the Virginia Erosion and Sediment Control Law and Virginia Stormwater Management Act, respectively. Therefore receipt, review, and approval of the ESC and stormwater management plan(s) are completed by the local government program authority. Additionally, no land disturbance is authorized until the plans are approved by local government program authority and coverage under the General VPDES Permit for Discharges of Stormwater Associated with Construction Activities is authorized. Under these programs, the local government is responsible for conducting periodic inspections of the site.

In order to meet the requirements of the VSMP, post-development stormwater quantity must comply with channel and flood protection technical requirements. Compliance can be met by a combination of land use cover types and best management practices. DEQ does not have the authority to require that project proponents implement a particular type of stormwater best management practice, act as the plan reviewing authority, or act in a design on consultative capacity on behalf of the proposed project proponent. DEQ may independently conduct compliance inspections under these respective programs.

9. Threatened and Endangered Species and Wildlife Habitat Loss

Staff received comments about the importance of wetlands for wildlife habitat and potential for threatened and endangered species to exist on the site. The comments focused on:

- *The endangered spotted turtles that live in the wetlands that once incorporated much of central VA have been reduced to two small colonies including proposed site.*
- *Development of the site will displace wildlife including owls, hawks, deer, rabbits, frogs, eagles, foxes, opossums, seasonal birds, snakes, dragonflies, wild flowers, grasses, and mosses.*
- *Development of the site will push wildlife on to roadways and subdivisions and create problems for nearby neighborhoods.*

Staff Response:

A fundamental component of the VWP Permit Program's evaluation of any proposed project impacting surface waters is coordination with other State agencies regarding potential impacts to threatened or endangered species that may exist on the site or nearby. As required during the application process, DEQ coordinated with the Virginia Department of Wildlife Resources (DWR), Virginia Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC) and Virginia Department of Health –Office of Drinking Water (VDH-ODW) to determine if the project would potentially impact threatened and endangered plants, insects, animal species and/or public health. DEQ staff coordinated with these agencies both after receiving the initial application and after receiving application materials revised as a result of revisions to the delineation confirmed by the USACE. No determinations of impacts to State protected species were received from these agencies as a result of this coordination. Additionally, DCR reviewed information on *Helonias bullata* (swamp pink), currently listed as a federally threatened and state endangered species, provided by the applicant and concurred with the applicant's conclusion that the species was absent from the site and that the habitat was not sufficient to maintain it.

10. Effects on downstream surface water quality

Staff received comments about the effects of the proposed project on downstream surface waters. The comments focused on:

- *Concerns that the proposed project will contribute to significant impairments of state waters and fish and wildlife resources.*
- *Totopotomoy Creek is impaired for recreational use and there has been no consideration of the impairment or need to develop a total maximum daily limit (TMDL) wasteload allocation for the project.*
- *No consideration given to how the project will affect the Chesapeake Bay TMDL.*
- *Need to establish sediment and nutrient wasteload allocations for discharges from the project.*
- *Eliminating vegetation smaller than 5 inches in diameter in the buffers will cause soil to be eroded and carried downstream worsening the water quality downstream.*
- *Water quality of the remaining wetlands will be affected by constant light and pollution after removal of buffer vegetation.*

Staff Response:

The proposed project is located in the Pamunkey/York River Basin watershed and the larger Chesapeake Bay watershed. It will discharge to unnamed tributaries of Totopotomoy Creek (south), Campbell Creek (north), and Kersey Creek (southeast). All three water bodies are part of the Pamunkey River *E. coli* TMDL study area, however, only Kersey Creek is impaired for *E. coli*. There are no impairments identified for Campbell Creek or the upper Totopotomoy Creek main stems or the associated tributaries. Kersey Creek is also impaired for pH, although the impairment is suspected to be from naturally occurring conditions, and it is classified as Category 5C until further analysis can be performed.

Discharge characteristics from the proposed distribution center both during construction and operation are not expected to introduce bacteria loads into the downstream waters. Sanitary waste from the facility will be discharged to a municipal wastewater treatment plant. Therefore, no *E. coli* wasteload allocation for the facility is required.

All stormwater from impervious surfaces at the site are proposed to be routed through stormwater management facilities. Effective July 1, 2014, the Virginia Stormwater Management Program establishes a maximum loading rate for post-development stormwater runoff from new construction activities of 0.41 pounds total phosphorus per acre per year. This loading rate is considered protective of local waters as well as the Chesapeake Bay watershed by the VSMP. Project proponents are required to demonstrate compliance with this criteria through a combination of land use cover types and/or best management practices (BMPs) in accordance with 9VAC25-870-65.

The applicant is proposing to construct two BMPs (retention ponds) to control water quality and quantity from the increase in impervious surfaces from the site. Runoff from all other land covers in the project area are proposed for sheet flow from the property. As previously mentioned, the local government is responsible for review and approval of stormwater management plans.

Conditions in the draft permit are based on requirements in the VWP Permit Program regulations which were developed to protect downstream water quality during construction. The draft permit contains the following requirements to protect surface water quality:

- Part I.C.1 requires that the project activities be conducted in a manner that minimizes impacts to instream beneficial uses.
- Part I.C.9 requires that erosion and sediment controls be designed, installed, and maintained during the life of the construction activities.
- Part I.C.10 and 11 prohibit construction or waste materials from entering surface waters.
- Part I.C.12 requires that the permittee take measures to prevent and contain spills of pollutants.
- Part I.F.1 and 3 requires the construction of stormwater BMPs be constructed, maintained, and operated in manner that prevents erosion and downstream deposition.

In addition, land disturbing activities associated with the project must be covered under the VPDES Construction Stormwater General Permit (CGP), which requires installation of stormwater controls and implementation of a stormwater pollution prevention plan to prevent sediment and other pollutants associated with construction sites from being discharged in stormwater runoff. Both the draft VWP permit and the CGP require period inspections of the site. After construction, if the proposed industrial activities at the site fall into certain standard industrial classification codes the discharge of stormwater associated with industrial activities through a point source or storm sewer system will also be required to obtain a VPDES Industrial Stormwater General Permit (VAR05). The need for an industrial stormwater permit is evaluated through the VPDES program.

11. Historic Resources

Staff received comments regarding historic resources on the proposed site. The comments focused on the following:

- *Concerns about the destruction of potential archeological sites.*
- *Historical resources, including unmarked graves, the Merry Oaks Tavern associated with Patrick Henry, and the Brown Grove School, are located at the proposed project site.*
- *Historical resources on site are eligible for listing on the National Register of Historic Places.*
- *DEQ and the Board cannot appropriately determine whether to issue a permit until the Section 106 review is completed.*
- *DEQ should ensure that review of the proposed project by the USACE under Section 106 of the National Historic Preservation Act is complete before issuing the permit.*
- *DEQ was made aware of human remains on site by a citizen and neglected to establish a record of the conversation until 7 weeks after the communication.*
- *Granting the permit would supersede the current local "Do-Not-Disturb" proffer condition in place to protect unmarked graves.*

Staff Response:

Neither the SWCL nor VWP Permit Program regulations require an applicant to address historic resources prior to obtaining a VWP permit. The USACE must coordinate review of historic resources during their permitting process in accordance with Section 106 of the National Historic Preservation Act which includes coordinating with the Virginia Department of Historic Resources (DHR). DEQ has no purview in the USACE Section 106 coordination process. When information regarding historic resources is reported to DEQ, DEQ provides that information to the USACE. In response to DEQ's riparian land owner notification letter, a citizen reported to DEQ that historic human remains were on the proposed site. DEQ advised the citizen that the information should be reported to the USACE. Additionally, immediately following the conversation with the citizen, DEQ called the USACE project manager working on the parallel 404 permit for the project and relayed the information.

12. Environmental Justice

Staff received comments stating that DEQ failed to conduct a proper environmental justice assessment for the proposed draft permit. The comments focused on:

- Request for DEQ to consult with the Virginia Council on Environmental Justice and to ensure an environmental justice study be conducted prior to any permit issuance.
- The permit process did not adequately consider the disparate environmental justice impacts caused by this project on the Brown Grove community and its neighbors.
- The continual encouragement of development on the Brown Grove community will be compounded by the proposed project.
- The project will disturb and displace remains of Brown Grove ancestors.
- Hanover County's Comprehensive Plan that includes future expansion of New Ashcake Road through Brown Grove needs to be considered along with the distribution center and the cumulative impacts of industrial encroachment issues Brown Grove has suffered.
- Providing state and local grants for the project, but not incentives to members of the Brown Grove Community will destroy the Brown Grove Community.

Staff Response:

On January 22, 2019, Governor Northam issued Executive Order 29 (EO29) establishing the Virginia Council on Environmental Justice. The EO29 order charged the Council with making recommendations for consistent integration of environmental justice considerations throughout all state programs, regulations, policies and procedures. The Council is tasked with consideration of Environmental Justice across state programs, but is not tasked with reviewing individual case decision before various state agencies.

During the 2020 legislative session, the General Assembly passed, and the Governor signed into law, legislation that makes environmental justice a policy of the Commonwealth, as well as DEQ specifically, effective July 1, 2020. *Environmental Justice* is defined in §§ 2.2-234 and 10.1-1182 of the Code of Virginia as “the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, faith, disability, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.” *Fair treatment* is defined in § 2.2-234 as “the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.” *Meaningful involvement* is defined in § 2.2-234 as “the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.”

The application for this project was received seven months before the effective date of the legislation. While the legislation establishes a clear policy for the Commonwealth and DEQ, it lacks specificity with regard to regulatory and procedural implementation. The current regulatory process does not include requirements that speak directly to aspects of the Environmental Justice legislation, however, DEQ took additional steps beyond regulatory requirements in an effort to further address Environmental Justice concerns.

During the initial public comment period for the draft permit, DEQ became aware of Environmental Justice concerns raised with siting of project at the preferred site located next to the Brown Grove

community. Brown Grove is a historically African-American community founded by freedmen after the Civil War. The founding matriarch of the community was Caroline Morris from whom many of the community residents are descendants.

DEQ reached out to community leaders including Pastor Beechaum, of the Brown Grove Church located across the street from the applicant's preferred site, and Mr. Charles Morris, descendent of Carolyn Morris. DEQ indicated to Pastor Beechaum and Mr. Morris the agency's desire to hold a conference call with members of the community to discuss the proposed project and application being reviewed by DEQ. A conference call was held with several interested parties on June 17, 2020, prior to the announcement of the first public hearing. DEQ staff explained the statutory and regulatory authorities under the VWP Permit Program, the VWP permit application review process, and opportunities to participate in the upcoming draft permit public comment period and hearing. DEQ also listened and responded to concerns of the community, many of which were outside of the purview of the VWP Permit Program such as concerns regarding ground water well contamination, traffic, and air emissions. See Attachment 10 for a memorandum documenting the communications. During the call, participants also suggested that DEQ place the announcement for the public comment period and hearing in publications other than the *Richmond Times-Dispatch* in order to reach more community members. DEQ followed up with additional publications in the *Richmond Free Press* and the *Mechanicsville Local* newspapers. DEQ also offered to provide handouts of flyers to the church, however, the church leaders indicated that was not necessary.

During the initial public hearing comment period, many of the Brown Grove community members submitted written or provided oral comments that were taken into consideration. Comments from the Brown Grove community, and those from other interested parties, specifically regarding the surface waters determination were given full consideration which resulted in DEQ requesting the USACE to review the PJD issued for the proposed site. Following revisions to the PJD and submittal of new application materials, DEQ considered the significant public interest of the Brown Grove community and other residents in deciding to hold a concurrent second public hearing and comment period. DEQ communicated with all interested parties including those individuals from the Brown Grove community to disseminate information about the draft permit and upcoming public participation.

In keeping with the Commonwealth's Environmental Justice policy of the "fair treatment and meaningful involvement of every person" comments and concerns from all commenters on the draft permit received by the agency were considered equally.

The processing of the application and drafting of the permit conformed to the statutory and regulatory requirements and applies to all requests for a VWP permit application regardless of location or extent of surface water impacts proposed.

DEQ has also learned the applicant held a meeting with members of the Brown Grove community on February 7, 2020, to listen to and address concerns of the community. Seven members of the community participated and raised several concerns including traffic and safety at the proposed employee entrance, buffers around the site, noise from truck traffic, groundwater contamination, truck interference with the Brown Grove Church PA system, and hiring practices. The applicant followed up with the meeting participants in an email dated February 14, 2020, to memorialize the discussions and provided the documentation to DEQ with the application materials.

This permit authorizes only impacts to wetlands on the property owned by the applicant. Issues such as traffic, noise, and air pollution are outside the purview of this permit and the VWP Permit Program. In addition, this permit contains provisions for compensatory mitigation to ensure that the authorized impacts results in no net loss of wetlands acreage or function. The permittee must comply with all other

federal, state, and local laws and ordinances. More specifically, as described in sections 5, 8, and 10 above, compliance the Virginia Erosion and Sediment Control Program, post-development Stormwater Management Program, and Construction Stormwater General Permit require that the applicant manage stormwater, flooding, and construction related sediment onsite. As a result, the surface water impacts authorized by this permit will not impose a disproportionate share of any negative consequences on any group of people.

DEQ commissioned a comprehensive Environmental Justice Study by SKEO Solutions, Inc. and Metropolitan Group with support from Ebony Walden Consulting which was completed in October 2020. This report addresses the challenging nature of implementing Environmental Justice into the myriad of DEQ's environmental statutory and regulatory landscape and includes specific recommendations for consideration, evaluation, and implementation over the next three years and beyond. Responding to the consultant's recommendations will take time, and it should be noted that many of the recommendations will require increased resources, staffing, or even new legislative authority for the agency. Still others will require community involvement and collaboration to ensure success. That is why the agency will move quickly to act on the recommendation to create an Office of Environmental Justice and hire an Environmental Justice Director. DEQ has developed an Environmental Justice Initiative document dated October 16, 2020 which outlines the immediate steps the agency will be taking.

Concerns regarding the disbursement of grant funding or incentives and future comprehensive plans of the locality are outside of the purview of the VWP Permit Program.

13. Industrial Stormwater Permitting

Staff received comments regarding VPDES industrial stormwater permitting requirements. The comments focused on:

- *Failure of the applicant to apply for an industrial stormwater permit.*
- *Because the property is zoned M-2c (light industrial with condition), an industrial stormwater permit is required with appropriate TMDL wasteload allocation and monitoring requirements and has not been issued.*
- *The proposed uses of the facility meet the Standard Industrial Classification codes definitions for industrial activities and requires an industrial discharge permit.*

Staff Response:

The VWP Permit Program focuses on impacts to surface waters from construction activities and not ongoing operations once a facility is built. Permitting of stormwater discharges associated with industrial activities falls under the authority of the VPDES Program. Typically permitting for industrial stormwater occurs at a later stage in site development but prior to the site becoming operational. The VPDES industrial stormwater permit requirements are applicable based on the standard industrial classification codes of the proposed operational activities at the facility, and not the local zoning designations. Upon receipt and a review of a permit application for an industrial stormwater permit, the DEQ VPDES Program will review the need for monitoring, TMDL wasteload allocations, and other requirements. Note that if the applicant demonstrates that the industrial activities are not exposed to stormwater, DEQ may issue a *No Exposure Certification* approval in accordance with the VPDES regulations.

14. Impacts to ground water wells from filling of wetlands and contamination of ground water

Staff received comments regarding concern that groundwater wells used as a drinking water supply for nearby residents may run dry from the proposed project or become compromised due to contaminated stormwater runoff from diesel fuel from the trucks entering and leaving the proposed facility.

Staff Response:

The VWP Permit Program focuses on impacts to surface waters from construction activities and not ongoing operations once a facility is built. The applicant is not proposing to produce any product with the potential to infiltrate into groundwater or locating any fueling stations or fuel storage tanks on the site. Information from the applicant also indicates that the impervious surface runoff will be routed through stormwater conveyances to the onsite stormwater facilities.

Additionally, review of the soil data on the property indicates the presence of a substantial clay layer in the soil profile that suggests a perched water table on the property. As such, the hydrology of onsite wetlands appears to be precipitation driven, and not from groundwater.

Based on this information, groundwater is not expected to be affected from the proposed project.

15. Noise, Light Pollution, Air Pollution, and Traffic

Staff received comments regarding noise, light, and air pollution from operation of the proposed project and diminished air quality. The comments focused on:

- *Impact of the noise, traffic, light pollution and other pollutions that will be caused by the facility.*
- *Concerns about transport refrigeration unit (TRU) diesel fuel emissions from trucks entering, leaving, and sitting at the facility.*
- *Concerns regarding air pollution from tractor trailers idling in traffic congestion.*
- *Concerns about ammonia leaks from the proposed project's refrigeration units.*
- *Concerns that existing roads are not appropriate for heavy traffic associated with proposed facility.*
- *Concerns regarding the lack of alternative truck routes available for use by tractor trailers.*
- *Concerns for increased traffic congestion and accidents due to semi-truck traffic associated with the facility.*

Staff Response:

The VWP Permit Program focuses on impacts to surface waters from construction activities and not ongoing operations once a facility is built. Concerns regarding noise, light, and air pollution as well as traffic associated with the operation of the facility are outside of the VWP Permit Program's regulatory authority. Additionally, emissions associated with TRU emissions are not regulated by DEQ.

16. Coordination

Staff received comments regarding inadequate coordination with federal agencies and tribes. The comments focused on:

- *DEQ should consult the National Park Service (NPS) who oversees Totopotomoy National Battlefield Park downstream from the proposed facility.*
- *DEQ was advised in February 2020 to consult with Virginia Indigenous nations and tribes and the agency has taken no action.*

Staff Response:

As required by statute and regulations, DEQ coordinates review of the proposed project with the DWR, DCR, VMRC, and VDH-OWD. While DEQ does occasionally consult with Virginia Indigenous tribes during the review of projects, there is no VWP Permit Program statutory or regulatory requirement to do so. There is also no requirements to coordinate with the National Park Service. The proposed project is approximately 30 miles upstream from the Pamunkey and Mattaponi Indian Reservation and 6 miles upstream from the Totopotomoy National Battlefield Park. Given the distance from the project to the reservations and the park and that the project is not expected to impact downstream water quality, no tribal or NPS consultation was initiated. It should be noted, however, that tribal consultation is required under the Section 106 of the National Historical Preservation Act coordination conducted by the USACE.

17. Federal Consistency Certification Review

Staff received comments regarding the inadequacy of the Federal Consistency Certification review. The comments focused on:

- *Inaccurate statement by the applicant that the proposed project was not an industrial operation and an industrial permit is not required.*
- *The Federal Consistency Certification review was based on inaccurate surface water impacts totals.*
- *Hanover County's review failed to identify existing proffers for the proposed site.*
- *Incomplete parcel information provided by Hanover County to DEQ staff for purpose of CBPA review.*

Staff Response:

Federal agency actions, including licensing or permitting, that affect the state's coastal resources or uses must be consistent with the enforceable policies of the Virginia Coastal Zone Management (CZM) Program. DEQ acts as the lead agency to disseminate and receive comments from other agencies. Because the proposed project must obtain a federal permit for impacts to surface waters in accordance with Section 404 of the Clean Water Act, the applicant submitted a FCC to DEQ's Office of Environmental Impact Review dated November 18, 2019. After public notice and review by DEQ and appropriate agencies, DEQ issued a letter dated February 5, 2020, concurring that the project is consistent with the enforceable policies of the CZM Program. Specifically, conclusions of the FCC review stated:

- *Wetlands Management: "Provided adherence to any applicable permits or authorizations, the project would be consistent with the wetlands management enforceable policy of the Virginia CZM Program."*
- *CBPA: "As long as the county's review of the proposal is complete, a determination that it conforms with the county's CBPA Program is made, and the county's approval obtained, the project would be deemed to be consistent with the Chesapeake Bay Preservation Act."*

Based on the concurrences, DEQ has concluded that the project does not require additional FCC review.

Additionally, while the FCC states that the project is not industrial in nature and does not require an industrial VPDES permit from DEQ, if activities at the facility meet one or more of the standard industrial classification codes regulated under the VPDES General Permit regulation for Discharges of Stormwater Associated with Industrial Activities, a discharge permit will be required. Note that if the applicant demonstrates that the industrial activities are not exposed to stormwater, DEQ may issue a *No Exposure Certification* approval in accordance with the VPDES regulations.

18. USACE's Application Review and Permitting Process

Staff received comments regarding the need for an Environmental Impact Statement (EIS) for the proposed project. The comments focused on:

- Requests for USACE to hold a public hearing on the permitting process.
- The USACE prematurely determined that no EIS was necessary under the National Environmental Policy Act.
- DEQ should encourage the USACE to require an EIS.

Staff Response:

The VWP Permit Program has no legal authority under either § 62.1-44.15:20 of the Code of Virginia or the VWP Permit Program regulation 9VAC25-210-10 *et seq.* to require preparation of an EIS for any project. The requirement for an applicant to prepare an EIS is a decision by the federal action agency.

19. Application Processing

Staff received comments expressing concern on how DEQ has processed the application for the project. The comments focused on:

- Original application was submitted and signed by Hanover County Economic Development.
- Continued revision of application materials by the applicant and acceptance by DEQ rather than DEQ denying the permit application.
- No independent review of the information presented in the application has been conducted.
- The applicant and their representatives have intentionally presented incorrect information in the application material and signed the certification statement in the application.

Staff Response:

DEQ has no authority to dictate what legal entity applies for a VWP permit. In this case, DEQ received an initial application from *Hanover County Economic Development* for *Project Tiger* on December 2, 2019. After Virginia Governor Northam's announcement of the project, updated application materials were provided to DEQ updating the name of the applicant to *Wegmans Food Markets, Inc.* and name of the project as *Wegmans Distribution Center*. Changes in applicant, owners, and authorized agents are not uncommon during the application review process or after a VWP permit has been issued.

In response to concerns regarding the number of application revisions submitted by the application, there are no statutory or regulatory limitations in SWCL or the VWP Permit Program regulations on the number of times DEQ may request additional information or an applicant can submit revised or updated information. It is not uncommon for DEQ to request additional information multiple times during the application review process or accept updated information from the applicant. With each request for additional information, DEQ is identifying that not enough information has been provided to reach a permitting decision or that the project as proposed does not meet the requirements of SWCL or the VWP Permit Program regulations. The submittal and review process continue until such time that the application requirements are met and DEQ has enough information to reach a permitting decision.

DEQ received comments from citizens concerned that the applicant purposely provided false information in the application materials, however, DEQ has no evidence that this is the case.

20. Public Participation Process and Document Availability

Staff received comments expressing concerns about the public participation process and the availability of application materials for the public. The comments focused on:

- *Problems with finding project information on DEQ's website.*
- *Inadequate public access to relevant documents pertaining to the draft permit throughout the process resulting in a "compromised" public participation process.*
- *Public notices in newspapers and DEQ's website is insufficient and draft permit comment period notices should be posted on the Virginia Regulatory Town Hall website.*
- *Objections to DEQ holding the public hearings on July 20, 2020 and November 19, 2020 as electronic meetings and the inability for stakeholders to be physically present.*
- *Requests for extension of the public comment period and public hearing until after the governor lifts the Stay at Home Order.*
- *DEQ's decision to hold the public hearing electronically failed to comply with the Virginia Freedom of Information Act authorization for electronic meetings because the purpose of the meeting was not to address the emergency.*
- *Electronic public hearing did not adequately allow for full participation in the community due to lack of high speed internet and damaged cell tower.*
- *Poor audio quality during public hearing and technical difficulties.*
- *Public notices announcing the public hearings did not provide a "reference to the rules and procedures to be followed at the public hearing" as required by 9VAC25-210-170.C.9.*
- *Several instances where information should have been made available via FOIA request and were not.*

Staff Response:

Once DEQ determined that there was significant public interest in the proposed project, documents relevant to the application review and permitting process were posted on DEQ's website including the application materials, draft permits, proposed impact maps, and fact sheets. As new or revised application materials were received, they were also added to the website. The web address to view the documents was included in the public notices and also shared with citizens through email correspondence. DEQ also posted the transcripts from the public hearings, and provided the transcripts to those interested parties that registered to attend through the GoToWebinar platform. During the last comment period documents were not available for a brief time (less than 12 hours) when DEQ's website was transitioned to a new platform. However, when staff identified the issue, action was taken to immediately resolve the problem and have access to the documents restored.

The public notices for the draft permit public comment periods and public hearing were posted on the DEQ website in addition to publication in the *Richmond Time-Dispatch*. Notices for public meetings and hearings related to permit actions are posted on Virginia Regulatory Town Hall. Public notices announcing comment periods on draft permits that do not include a public meeting or public hearing are not announced through the Virginia Regulatory Town Hall.

DEQ received comments that the public notice for the hearing did not include "a reference to the rules and procedures to be followed at the hearing" as required by 9VAC25-210-170.C.9. The public hearing notice explained in order to make oral comments the GoToWebinar platform needed to be used, provided instructions on how interested parties could register for the electronic hearing, and directed anyone interested in making a statement during the hearing to follow the instructions provided during the hearing. The rules and procedures for public hearings are set forth by the Hearing Officer, a member of the State Water Control Board. Pursuant to § 62.1-44.15:02.K of the Code of Virginia, the Hearing Officer has the

authority and discretion to establish the methods and procedures for presentation of oral comments and written materials, including imposing reasonable time limits for oral comments.

SWCL and the Virginia Administrative Code require that the Board and/or DEQ perform certain tasks pertaining to permit processing within mandated timeframes. In order to fulfill these duties, the public hearings were held as electronic communications meeting in compliance with the Item 4-0.01G of Chapters 1283 and 1289 of the 2020 Acts of Assembly, as applicable. As a result of the March 12, 2020 declaration of a State of Emergency due to Novel Coronavirus (COVID-19), Executive Order -51 (EO-51), subsequent executive orders EO-53 and EO-55, and in keeping with Governor Northam's temporary restrictions and stay at home and safer at home directives, the public hearings were held via electronic communications. Item 4-0.01G of Chapters 1283 and 1289 of the 2020 Acts of Assembly established procedures by which public bodies can conduct public business by electronic meetings when it is deemed unsafe or not practicable to do so in person. In deciding to hold the hearings electronically, DEQ took into consideration factors such as health and safety of the public and staff, the inability to implement social distancing in light of the number of interested parties, and the Governor's orders limiting the number of people gathering.

Anyone wanting to provide the Board with oral comments were able to do so via the GoToWebinar platform. Additionally, for anyone who wanted to participate in a listen-only mode, access was made available through a dedicated phone line. To assist the public with technical difficulties, a designated DEQ staff's contact name, email, and phone number were displayed on the Webinar screen through the entirety of the proceeding. For anyone that was not able to participate in the hearing or choose not to make oral comments, the agency accepted comments for 15 days following the hearing.

The public participation process for the draft permit has been conducted in accordance with the SWCL and the VWP Permit Program regulations.

21. Transparency and Political Pressure

Staff received comments expressing concerns about the lack of transparency and political pressures to approve the permit. The comments focused on:

- *The project is being pushed through due to political pressure.*
- *Failures by DEQ to provide complete, accurate information in response to FOIA requests.*
- *Lack of transparency by DEQ breached the public trust and rendered the opportunity for public participation meaningless.*

Staff Response:

The application review and permit processing for the proposed project has been conducted in accordance with the SWCL and the VWP Permit Program regulations. The law provides that anyone can apply for a permit, and the regulations establish the requirements an applicant must meet to obtain permit authorization and the process that DEQ must follow. Timeframes for specific actions that DEQ and/or the Board must take in processing an application are dictated in the law and regulations.

Since the announcement of the proposed project, DEQ has received 37 FOIA requests regarding the proposed project, with 28 of those occurring in the last 6 months. In the majority of cases, the agency produced records to all requesters within the 5 working days without incident. However, there were some isolated situations regarding the release of records for proposed project, in which the agency did not provide all the responsive documents within the 5 working days (i.e. record in junk mail, unaware custodian possessed responsive records, etc.). In every instance when the situation was brought to the agency's attention, the agency rectified the matter within a day of being notified of the issue.

22. Staff received comments outside of the authority of the VWP Permit Program authority.

- *DEQ and the USACE should review whether destruction of the wetlands creates Hanover County a transition zone making it more susceptible to tornadoes.*
- *DEQ should consider the number of residents who live within one square mile of each site.*
- *Concerns about the metal building and empty trailers during high wind weather events.*

Staff Response:

The concerns listed above are outside the authority of the VWP Permit Program.

23. Compliance

Staff received comments expressing that there is no audit of the wetlands once permitted, and the applicant will have carte blanche to destroy all wetlands found on the 217 acre site.

Staff Response:

DEQ conducts periodic inspections of sites with active VWP permits to evaluate compliance with conditions of the permit. Inspections focus on such things as ensuring compensatory mitigation credits have been purchased prior to the permittee taking impacts, evaluating whether impacts taken are within the permitted areas, evaluating if remaining surface waters have been secondarily impacted from sedimentation or reduction in hydrology, ensuring appropriate wetland boundary flagging is in place, and other review of site activities relative to other conditions of the permit. Additionally, once construction activities are complete, DEQ conducts a final permit termination inspection to ensure that all permanent impacts are within the permitted limits and are not greater than the approved impacts, avoided surface waters have not been impacted, temporary impacts have been restored, and areas surrounding surface waters have been stabilized to prevent future sedimentation. If during any inspection DEQ finds that the permittee may be in violation of the SWCL, VWP Permit Program regulations, or permit conditions, the agency has the authority to require corrective action. Depending on the severity of the infraction, the permittee may be referred to DEQ's Enforcement Division where the permittee may be subject to a Consent Order that may include injunctive actions and/or civil charges.

24. Request to deny permit

The majority of comments requested denial of the permit. The requests for denial were largely the result of all the concerns summarized in this document. In addition, the following comments specific to the scope of the project were received:

- *DEQ has taken biased position in favor of the applicant which is in conflict with DEQ's mission to protect and enhance Virginia's environment, and to promote the health and well-being of the citizens of the Commonwealth.*
- *This will result in the largest destruction of wetlands in the state of Virginia outside of the Greater Hampton Roads/Virginia Beach area.*
- *Approving the project sets a precedent and shows businesses that they can use loopholes to skirt the intentions of regulations that were put in place to protect the environment.*
- *The project is not in the public interest.*
- *Virginia should measure and conserve wetlands.*

- *This is not the right place for this monstrous facility because the site is surrounded by homes and wetlands.*
- *The proposed location is environmentally, culturally, and historically significant to the area.*
- *The uncertain economic climate poses the significant risk that this site be environmentally destroyed, but not ultimately developed.*

Staff Response:

Section 10.1-1183 of the Code of Virginia states that “It is the policy of the Department of Environmental Quality to protect and enhance the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens, residents, and visitors in accordance with applicable laws and regulations.” DEQ staff recognizes that the proposed draft permit authorizes large wetland impacts relative to the average VWP permit and that citizens have expressed significant opposition to the proposed siting of this project; however, the VWP Permit Program regulations do not provide authority for staff to propose denial of a permit because the proposed impacts are larger than other permits or for any reason not provided in the SWCL and VWP Permit Program regulations. Staff reviewed and considered all the comments received during the application review process. In response to comments, staff requested additional information from the applicant, which in some cases, such as the surface waters determination, resulted in significant changes to the permit. Staff’s authority is limited to reviewing the application in accordance with the SWCL and VWP Permit Program regulations.

ATTACHMENTS

Tab B - Attachment 1 – Acronym List

Tab C - Attachment 2 – Draft Permit

Tab D - Attachment 3 – Proposed Impact Maps

Tab E - Attachment 4 – Fact Sheet

Tab F - Attachment 5 – USACE PJD Memo for the Record

Tab G - Attachment 6 – November 19, 2020 Public Hearing Transcript

Tab H - Attachment 7 - List of Commenters

Tab I - Attachment 8 – Sampling of Comment Letters*

Tab J - Attachment 9 – Email Between Applicant and Town of Ashland

Tab K - Attachment 10 – June 17, 2020 Memo on Brown Grove Conference Call

** Attachment 8 provides a sampling of comments received by the agency during the most recent comment period. Several of these comments reference attachments. The attachments have not been provided due to the size of the files, but are available upon request.*

ACRONYMS

AJD -	Approved Jurisdictional Determination
BMP -	Best Management Practice
CBPA -	Chesapeake Bay Preservation Act
DCR -	Virginia Department of Conservation and Recreation
DHR -	Department of Historic Resources
DMTF -	Drought Monitoring Task Force
DWR -	Virginia Department of Wildlife Resources
EIS -	Environmental Impact Statement
ESC -	Erosion and Sediment Control
FCC -	Federal Consistency Certification
HUC -	Hydrologic Unit Code
JPA -	Joint Permit Application
LEDPA -	Least Environmentally Damaging Practical Alternative
NWI -	National Wetlands Inventory
OLGAP -	Office of Local Government Assistance Programs
PEM -	Palustrine Emergent Wetlands
PFO -	Palustrine Forested Wetlands
PJD -	Preliminary Jurisdictional Determination
RMA -	Resource Management Area
RPA -	Resource Protection Area
SWCL -	State Water Control Law
TMDL -	Total Maximum Daily Limit
TRU -	Transport Refrigeration Unit
USACE -	US Army Corps of Engineers
VDH-ODW -	Virginia Department of Health
VESCP -	Virginia Erosion and Sediment Control Program
VMRC -	Virginia Marine Resource Commission
VPDES -	Virginia Pollutant Discharge Elimination System
VSMP -	Virginia Stormwater Management Program
VWP -	Virginia Water Protection



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 FAX (804) 698-4178
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James Golden
Regional Director

VWP Individual Permit Number: 19-2036

Effective Date: Month DD, YYYY

Expiration Date: Month DD, YYYY

**VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE
WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT**

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP permit, the board has not taken into consideration the structural stability of any proposed activities.

Project Name: Wegmans Distribution Center

Permittee: Wegmans Food Markets, Inc.

Address: Attn: Douglas Viets
1500 Brooks Avenue, P.O. Box 30844
Rochester, NY 14603-0844

Activity Location: The project is located south of Ashcake Road (Route 657), northwest of Sliding Hill Road (Route 656), and east of Egypt Road (Route 741) in Hanover County, Virginia.

Activity Description: The permittee proposes to construct a regional grocery distribution center that will (a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region on an approximately 219.6 acre parcel known as "Wegmans Distribution Center." Permitted activities shall be conducted as described in the Joint Permit Application dated

November 2019, received on December 2, 2019, and supplemental materials, revisions and clarifications received through October 8, 2020.

Authorized Surface Water Impacts:

This permit authorizes surface water impacts as identified in Table 1 below. Authorized surface water impacts shall be as depicted on the impacts map entitled “Wegmans Distribution Center, Hanover County, Virginia, Wetlands and Waters Impacts Map” dated September 8, 2020, last revised on September 24, 2020, and received October 7, 2020, and drawn by Timmons Group.

Table 1.

Impact Type	Surface Water Type	DEQ-Authorized Impact	
		Acres	Linear Feet
Permanent	Palustrine Forested Wetland (PFO)	12.99	N/A
	Palustrine Emergent Wetland (PEM)	0.23	N/A
	Jurisdictional Ditch	0.14	N/A
	<i>Subtotal</i>	13.36	N/A
Secondary	PFO	1.44	N/A
	Jurisdictional Ditch	0.02	N/A
	<i>Subtotal</i>	1.46	N/A
Temporary	PEM	0.03	N/A
	<i>Subtotal</i>	0.03	N/A
	Total	14.85	N/A

Approved Compensation:

The permittee shall compensate for the authorized surface water impacts through the following:

1. Compensation for permanent wetland fill and secondary impacts shall be provided through the purchase of 29.41 wetland credits from a DEQ approved mitigation bank, in-lieu fee fund, or a combination thereof that is authorized and approved by DEQ to sell credits in the area in which the impacts will occur and has credits available (as released by DEQ).
2. The credit sale shall be in accordance with the approved Mitigation Banking Instrument for the mitigation bank. Purchase of required mitigation credits shall occur first through the purchase of available released credits followed by the purchase of advance credits.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.

Kyle Ivar Winter, P.E. Deputy Regional Director

Date

Part I – Special Conditions

A. Authorized Activities

1. This permit authorizes the total impact to 14.85 acres of surface waters, consisting of 13.36 acres of permanent fill impacts, 1.46 acres of secondary impacts, and 0.03 acre of temporary impacts.
 - a. Permanent fill impacts consist of 12.99 acres of palustrine forested wetland, 0.23 acre of palustrine emergent wetland, and 0.14 acre of jurisdictional ditch.
 - b. Secondary impacts, due to diversion of surface water, are to 1.44 acre of palustrine forested wetland and 0.02 acre of jurisdictional ditch.
 - c. Temporary impacts consist of 0.03 acre of palustrine emergent wetland.
 - d. Authorized surface water impacts described under this condition shall be as depicted on the impacts map entitled “Wegmans Distribution Center, Hanover County, Virginia, Wetlands and Waters Impacts Map” dated September 8, 2020, last revised on September 24, 2020, and received October 7, 2020, and drawn by Timmons Group.
2. The permittee shall conduct authorized activities as described in the Joint Permit Application dated November 2019, received on December 2, 2019, and supplemental materials, revisions and clarifications received through October 8, 2020. Any changes to the authorized activities or impacts map that affect permitted areas shall be submitted to DEQ immediately upon determination that changes are necessary, and DEQ approval shall be required prior to implementing the changes.
3. The permittee shall notify the DEQ of any changes in authorized impacts to surface waters or any changes to the design or type of construction activities in surface waters authorized by this permit. DEQ approval shall be required prior to implementing the changes. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit.

B. Permit Term

1. This permit is valid for fifteen (15) years from the date of issuance. The permit term, including any granted extensions, shall not exceed 15 years. A new permit may be necessary for the continuance of the authorized activities, or any permit requirement that has not been completed, including compensation provisions.
2. The permittee shall notify DEQ in writing at least 120 calendar days prior to the expiration of this permit if reissuance will be requested.

C. Standard Project Conditions

1. The activities authorized by this permit shall be executed in such a manner that any impacts to beneficial uses are minimized. As defined in § 62.1-44.3 of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of

navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. Flows downstream of the project area shall be maintained to protect all uses.
4. No activity shall cause more than minimal adverse effect on navigation, and no activity shall block more than half of the width of the stream at any given time.
5. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
6. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, French drains, or other similar structures.
7. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity.
8. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
9. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.
10. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
11. All fill material placed in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
12. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
13. Machinery or heavy equipment in temporarily impacted wetlands shall be placed on mats or geotextile fabric, or other suitable means shall be implemented, to minimize soil disturbance to the maximum extent practical. Mats, fabrics, or other measures shall be removed as soon as the work is complete in the temporarily impacted wetland.

14. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel. The equipment shall be stationed on cobble bars.
15. Temporary disturbances to wetlands, stream channels, and/or stream banks during project construction activities shall be avoided and minimized to the maximum extent practicable.
16. All temporarily disturbed wetland areas shall be restored to preconstruction conditions within 30 calendar days of completing work in the areas, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested), except for invasive species identified on DCR's Virginia Invasive Plant Species List. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance.
17. All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within 30 calendar days following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Virginia Invasive Plant Species List. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance.
18. All materials (including fill, construction debris, excavated materials, and woody materials, that are temporarily placed in wetlands, in stream channels, or on stream banks) shall be placed on mats or geotextile fabric, shall be immediately stabilized to prevent the material or leachate from entering surface waters, and shall be entirely removed within 30 calendar days following completion of that construction activity. After removal, disturbed areas shall be returned to original contours, shall be stabilized, and shall be restored to the original vegetated state within 30 calendar days. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance.
19. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
20. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
21. All non-impacted surface waters that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas*.
22. All required notifications and submittals shall include project name and permit number and be submitted electronically to pro.vwpcompliance@deq.virginia.gov or mailed to the DEQ office

stated below, to the attention of the VWP project manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

Department of Environmental Quality- Piedmont Regional Office,
4949-A Cox Road
Glen Allen, Virginia 23060
Via email: PRO.VWPCompliance@deq.virginia.gov

23. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
- a. The authorization is made in writing by the permittee.
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
24. All submittals shall contain the following signed certification statement:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*
25. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 804-527-5020. If DEQ cannot be reached, the spill or fish kill shall be reported to the Virginia Department of Emergency Management (VDEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802. Any spill of oil as defined in § 62.1-44.34:14 of the Code of Virginia that is less than 25 gallons and that reaches, or that is expected to reach, land only is not reportable, if recorded per § 62.1-44.34:19.2 of the Code of Virginia and if properly cleaned up.
26. DEQ shall be notified in writing within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

D. Installation of Utilities

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area. Temporarily disturbed surface waters shall be restored in accordance with Part I.C.15, C.16, and C.17, unless otherwise authorized by this permit.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 calendar days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a French drain effect).

E. Road Crossings

1. Access roads authorized by this permit shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible pre-construction contours and elevations.
2. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions or other similar structures.
3. All surface waters temporarily affected by a road crossing shall be restored to their original elevations immediately following the removal of that particular temporary crossing. Temporary access roads shall be removed entirely following activity completion.

F. Stormwater Management Facilities

1. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.
2. Maintenance excavation shall follow the stormwater management plan approved by the Virginia Stormwater Management Program Authority, and shall not exceed the original contours or designated maintenance areas of the facility.
3. Draining of a stormwater management facility shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.

G. Project Construction Monitoring and Submittals (Impact Sites)

1. The permittee shall submit written notification at least **ten (10) calendar days** prior to the initiation of land disturbance or construction activities in permitted areas. The notification shall include preconstruction photographs, projected schedule for initiating and completing work at each permitted impact area.

- a. Preconstruction photographs shall be taken at each impact area prior to initiation of activities within impact areas.
 - b. Photographs shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area.
 - c. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.
2. Site inspections shall be conducted **once every calendar month** and recorded on the *Monthly VWP Permit Inspection Checklist (Attachment 2)* by the permittee or the permittee's qualified designee during active construction within authorized surface water impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity; and all on-site areas designated for permanent preservation. The *Monthly VWP Permit Inspection Checklist (Attachment 2)* shall be completed in its entirety for each monthly inspection and shall be kept on-site and made available for review by DEQ staff upon request during normal business hours.
 3. The *VWP Permit Construction Status Update Form (Attachment 1)* enclosed with this permit shall be completed in June and December of every year for the duration of this permit. The *VWP Permit Construction Status Update Form (Attachment 1)* shall include reference to the VWP permit authorization number and one of the following statements for each authorized surface water impact location:
 - a. Construction activities not yet started;
 - b. Construction activities started;
 - c. Construction activities started but are currently inactive, or;
 - d. Construction activities complete.
 4. The *VWP Permit Construction Status Update Form (Attachment 1)* shall be submitted and must be received by DEQ no later than January 10 and July 10 of every year.
 5. The permittee shall notify DEQ within 24 hours of discovering impacts to surface waters including wetlands, stream channels, and open water that are not authorized by this permit. The notification shall include photographs, estimated acreage and/or linear footage of impacts, and a description of the impacts.
 6. The permittee shall submit written notification of completion within 30 calendar days after the completion of all activities in all permitted impact areas authorized under this permit.

H. Compensatory Mitigation

1. As compensation for permanent wetland and jurisdictional ditch impacts, the permittee shall purchase 29.41 wetland mitigation credits. All compensatory mitigation credits shall be purchased from a DEQ approved mitigation bank, an approved in-lieu fee (ILF) program, or a combination thereof as specified below in Part H.2. The bank or program must be authorized and approved by DEQ to sell credits in the area in which the impacts will occur and have credits available (as released by DEQ). Any credit sale shall be in accordance with the approved Mitigation Banking Instrument or ILF Program Instrument. Purchase of required mitigation credits shall occur first through the purchase of available released credits followed by the purchase of advance credits. Multiple banks may be used to fulfill compensation requirements.
2. To fulfill mitigation requirements of this permit, the permittee shall first purchase available mitigation bank released credits. The permittee shall then fulfill its remaining credit obligation through the purchase of released mitigation credits from an ILF program. The permittee shall then fulfill its remaining credit obligation through the purchase of advance mitigation credits from an ILF program.
3. Documentation of the purchase of 29.41 wetland mitigation credits shall be submitted to and received by DEQ prior to initiating work in the impact areas authorized by this permit.

I. Project Wetland Monitoring and Submittals (Remaining Wetlands)

1. Pre-Construction Tasks
 - a. The permittee shall conduct photographic documentation of pre-construction conditions in the remaining wetland areas adjacent to permitted Impact Areas 8A/8B, and Impact Areas 12 through 17. Photographic documentation shall be conducted by the following method:

Photographs shall be taken at a height of approximately five to six feet and from fixed-point stations, preferably at the same location as that of each planned monitoring well. Photographs shall be taken in each of the four cardinal directions (north, east, south, and west). Permanent markers shall be established to ensure that the same locations on the site are used for future monitoring events. Each photograph taken shall be labeled with the permit number, the name of the project site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary.
2. Pre-Construction Submittals
 - a. No later than 60 days prior to the start of construction activities on-site, the permittee shall submit a final wetland monitoring plan for the remaining wetland areas adjacent to permitted Impact Areas 8A/8B, and Impact Areas 12 through 17, which shall include, at a minimum, the following information:

- (1) The goals and objectives of the wetland monitoring plan, including but not limited to classification of the existing wetlands and how the monitoring will adequately demonstrate that the remaining wetland areas will be unimpacted during and after construction of the project;
- (2) A success criteria monitoring plan including:
 - i. The monitoring design and methodologies being used to evaluate the success of the remaining wetlands on-site;
 - ii. the monitoring and reporting schedule;
 - iii. the proposed success criteria for the remaining wetland areas;
 - iv. drawing(s) depicting the location of photo-monitoring stations, monitoring wells, soil sampling points (as appropriate), vegetation sampling points, and reference wetlands (if available);
 - v. wetland delineation confirmation, data sheets, and maps for existing wetland areas on the compensation site, and any collectible information on reference wetlands adjacent to or near the compensation site;
 - vi. corrective action and/or contingency plan to address secondary impacts, deficiencies, or unexpected events;
- b. DEQ shall have 30 calendar days to review the plan and provide comments to the permittee.

3. Monitoring for Success Criteria During and After Project Construction

- a. Success monitoring of the remaining wetland areas shall begin at the first complete growing season (monitoring year one) following the start of project construction activities; shall be conducted on the frequency stipulated in the approved final wetland monitoring plan; and shall continue for the time specified in the approved final wetland monitoring plan.
- b. If all success criteria have not been met by November 30th of the last monitoring year specified in the approved final wetland monitoring plan, or if visual observations conclude that the remaining wetland areas have not met the overall goals, corrective actions shall be implemented in accordance with the DEQ-approved corrective action plan. The permittee shall be solely responsible for ensuring that all necessary corrective actions are implemented so that the wetland monitoring plan meets the success criteria, as detailed in the approved final wetland monitoring plan.
- c. Photographic documentation during success monitoring shall be conducted in accordance with the final wetland monitoring plan approved by DEQ.

- d. Hydrology monitoring shall be conducted in accordance with the final wetland monitoring plan approved by DEQ.
 - e. Wetland vegetation monitoring shall be conducted in accordance with the final wetland monitoring plan approved by DEQ.
 - f. Monitoring for the presence of hydric soils or soils under hydric conditions shall be conducted in accordance with the final wetland monitoring plan approved by DEQ.
 - g. At the completion of each monitoring year, a calculation of the acreage of each wetland type shall be made and shall be based upon that monitoring year's soils data, vegetation data, and hydrology data (if required). The acreage calculation shall be shown on the most recent version of the wetland monitoring site plan sheet(s) and shall be submitted with that year's monitoring report.
 - h. Within 60 calendar days of the completion of the entire monitoring cycle, including any time extensions for corrective action, a wetland boundary survey shall be conducted by a licensed land surveyor or a licensed professional engineer, and shall be based upon the results of monitoring data for soils, vegetation, and hydrology. A calculation shall be made of the total acreage of each wetland type. The boundary and acreage per wetland type shall be shown on the most recent version of the wetland monitoring site plan sheet(s).
4. Submittals for Success Criteria Monitoring
- a. Wetland monitoring reports shall be submitted by December 31st of the years in which a monitoring report is required, including the final monitoring year, as identified in the approved final wetland monitoring plan. The reports shall include the following, at a minimum:
 - (1) A general description of the wetland monitoring site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells (if applicable), and wetland zones;
 - (2) Summary of activities completed during the monitoring year;
 - (3) Description of monitoring methods;
 - (4) An analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams, or other open water areas, as detailed in the approved final wetland monitoring plan;
 - (5) Evaluation of hydric soils or soils under hydric conditions;
 - (6) An analysis of all vegetative community information, including woody and herbaceous species, set forth in the approved final wetland monitoring plan;
 - (7) Properly labeled photographs as detailed in Part I.I.1.a;

- (8) Comparison of site conditions from the previous monitoring year and/or reference site;
- (9) The acreage calculation, shown on the most recent version of the monitoring site design plan sheet(s);
- (10) If the success criteria outlined in the approved final monitoring plan are not met, the permittee shall submit a detailed plan to quantify and compensate for the net loss of wetland acreage and function with the final monitoring year report. Compensation shall meet the requirements of 9 VAC 25-210-116 and Va. Code §62.1-44.15:23. The plan shall be implemented as approved by DEQ.
- b. *For final monitoring year only*, the report shall include all items in Part I.I.4.a and the most recent version of the wetland monitoring site plan sheet(s) depicting the final wetland boundary and area calculations, as detailed in Part I.I.3.h.

Part II – General Conditions

A. Duty to Comply

The permittee shall comply with all conditions and limitations of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit modification, or denial of an application for a VWP permit extension or reissuance.

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Actions

A VWP permit may be modified in whole or in part, revoked and reissued, extended, transferred, or terminated in accordance with 9 VAC 25-210-180.

1. During the drafting and authorization of a permit modification, only those conditions to be modified shall be addressed with preparing a draft modified permit. VWP permit terms and conditions of the existing permit shall remain in full force and effect during the modification of the permit.
2. This VWP permit may be modified upon the request of the permittee or upon board initiative when any of the following developments occur:
 - a. When new information becomes available about the project or activity covered by the VWP permit, including project additions or alterations, that was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;

- b. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
 - c. When changes occur that are subject to "reopener clauses" in the VWP permit; or
 - d. When developments applicable to surface water withdrawals as specified in 9VAC25-210-380 occur.
3. When this VWP permit authorizes surface water withdrawals, it may be modified when any of the following developments occur:
- a. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.
 - b. Significant changes to the location of the surface water withdrawal system are proposed such that the Department of Environmental Quality determines a new review is warranted due to the potential effect of the surface water withdrawal to existing beneficial uses of the new location.
 - c. Changes to the permitted project or the surface water withdrawal, including increasing the storage capacity for the surface water withdrawal, that propose an increase in the maximum permitted withdrawal volumes or rate of withdrawal or that cause more than a minimal change to the instream flow requirements with potential to result in a detrimental effect to existing beneficial uses.
 - d. A revision to the purpose of the surface water withdrawal that proposes to include a new use or uses that were not identified in the permit application or a modification of the existing authorized use or uses such that the use description in the permit application and permit is no longer applicable. Examples of uses include, but are not limited to agricultural irrigation, golf course irrigation, public water supply, manufacturing, and electricity generation.
4. When the permittee has submitted a timely and complete application for reissuance of an existing VWP individual permit, but through no fault of the permittee, the board does not reissue or reissue with conditions a VWP individual permit or the board does not provide notice of its tentative decision to deny the application before an existing VWP individual permit expires, the conditions of the expiring VWP individual permit shall be administratively continued in full force and effect until the effective date of a reissued permit or the date on which the board denies the application. Timely application shall be a minimum of 180 days for an individual permit or a minimum of 270 days for an individual permit for a surface water withdrawal, unless otherwise specified in the existing permit.

5. Any permittee desiring to continue a previously permitted activity after the expiration date of this VWP permit shall apply for and obtain a new permit or, if applicable, shall request an extension in accordance with 9VAC25-210-180. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit other than as may be allowed under 9VAC25-210-180, shall submit written notification requesting an extension. The permittee must file the request 90 days prior to the expiration date of the VWP permit. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance. When a permit term, other than that of an Emergency Virginia Water Protection Permit, is less than 15 years, an extension of the permit terms and conditions may be granted in accordance with 9VAC25-210-180. Emergency Virginia Water Protection Permits shall not exceed a duration of one year or shall expire upon the issuance of a regular Virginia Water Protection Permit, whichever comes first.
6. This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if the current permittee: a) Notifies the board of the proposed transfer of the permit and provides a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee; and b) the board does not within 15 days notify the existing permittee of its intent to modify the VWP permit.
7. After notice and opportunity for a formal hearing pursuant to § 62.1-44.15:02 of the Code of Virginia, a VWP permit can be terminated for cause. Reasons for termination for cause are as follows:
 - a. Noncompliance by the permittee with any condition of the VWP permit;
 - b. The permittee's failure in the application or during the VWP permit process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
 - c. The permittee's violation of a special or judicial order;
 - d. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
 - e. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
 - f. A determination that the permitted activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.
8. The board may terminate this permit without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the

Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under § 62.1-44.15:25 of the Code of Virginia and 9VAC25-230.

9. This VWP permit may be terminated by consent, as initiated by the permittee. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all permitted activities and all required compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion. The director may accept this termination on behalf of the board. The permittee shall submit the following information:
- a. Name, mailing address, and telephone number;
 - b. Name and location of the activity;
 - c. The VWP permit number; and
 - d. One of the following certifications:
 - i. For project completion: "I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP permit have been completed. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit."
 - ii. For project cancellation: "I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP permit will not occur. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit."
 - iii. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement: "I certify under penalty of law that the activities or the required compensatory mitigation authorized by this VWP permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit,

unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit.

E. Inspection and Entry

Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and
3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the board.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2017), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of permit expiration. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

H. Property rights

The issuance of a VWP permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local laws or regulations.

I. Reopener

This VWP permit may be reopened for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

J. Compliance with State and Federal Law

As to the permitted activity(ies), compliance with a VWP permit constitutes compliance with the VWP permit requirements of the Law and regulations.

K. Severability

The provisions of this VWP permit are severable.

L. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

M. Unauthorized Discharge of Pollutants

Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.



Attachment 1: VWP PERMIT CONSTRUCTION STATUS UPDATE FORM

Attached to VWP INDIVIDUAL PERMIT NUMBER 19-2036

[DATE], Individual Permit Coverage

Date (check one):

June ____, _____

December ____, _____

VWP Individual Permit Number: 19-2036

Project Name and Location: Wegmans Distribution Center, located south of Ashcake Road (Route 657), northwest of Sliding Hill Road (Route 656), and east of Egypt Road (Route 741) in Hanover County, Virginia.

Status within each authorized surface water impact location, as identified on “Wegmans Distribution Center, Hanover County, Virginia, Wetlands and Waters Impacts Map” dated September 8, 2020, last revised on September 24, 2020, and received October 7, 2020, and drawn by Timmons Group: (check one of the following status options for each impact number/location. Attach additional sheet(s) if needed.)

Authorized impact number	Construction activities not started	Construction activities started	Construction activities started but currently not active	Does this impact involve culvert(s) ¹ ?	Construction activities complete ²

¹ Provide spot elevations of the stream bottom within the thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of the impact, with completion of all culvert installations.

² If all construction activities and compensatory mitigation requirements are complete, the permittee completes and signs the Termination Agreement section below within 30 days of last authorized activity and/or compensation completion. A completed and signed Agreement serves as Notice of Project Completion (9VAC25-210-130 F).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

Authorized Signature: _____

Print Name: _____

Title: _____ Phone: _____

Date: _____ Email: _____

TERMINATION AGREEMENT BY CONSENT – PROJECT COMPLETION

Permittee Name: _____

Permittee Mailing Address: _____

Permittee Phone: _____

I hereby consent to the termination of coverage for VWP Individual Permit Number 19-2036.

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP permit have been completed. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit."

Permittee Signature: _____

Attachment 2: MONTHLY VWP PERMIT INSPECTION CHECKLIST

An inspection of all permitted impact areas, avoided waters and wetlands, and permanently preserved waters, wetlands and upland areas must be conducted at least once every month during active construction activities. Maintain this record on-site and available for inspection by DEQ staff.

Project Name Wegmans Distribution Center	VWP Permit # 19-2036	Inspection Date
Inspector Name & Affiliation	Phone # & Email Address	

I certify that the information contained in this report is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature of Inspector

Date

PERMIT REQUIREMENT	In Compliance?			Location, Description, Notes & Corrective Action Taken (use additional note space below if needed)	Date Completed
	Yes	No	Not Applicable		
Surface water impacts are limited to the size and locations specified by the permit. No sedimentation impacts and no impacts to upland preservation areas have occurred ¹ .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Within 50 feet of authorized activities, all remaining surface waters and mitigation (preservation) areas that are inside the project area are clearly flagged or marked to prevent unpermitted impacts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Authorized temporary impact areas have been restored to original contours, stabilized, and planted or seeded with original wetland vegetation type within 30 days of completing work in each area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
E&S controls consistent with the Virginia ESC Handbook are present and maintained in good working order.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Exposed slopes/stream banks have been stabilized immediately upon completion of work in each impact area, in accordance with the Virginia ESC Handbook.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Heavy equipment is placed on mats/ geotextile fabric when working in temporary wetland impact areas. Equipment and materials removed immediately upon completion of work.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Construction activities are not substantially disrupting the movement of aquatic life.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
New instream pipes and culverts on <5% slope have been installed to maintain low flow conditions and are countersunk at both ends as follows: ≤ 24" diameter: countersunk 3" > 24" diameter: countersunk 6" or more. Any variations were approved in advance by DEQ.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Time-of-year restrictions are being adhered to.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

¹ If unauthorized impacts have occurred, you **must** email or fax a copy of this report to DEQ within 24 hours of discovery. Email: pro.vwpcpliance@deq.virginia.gov Fax: 804-527-5106.

Monthly VWP Permit Inspection Checklist – Permit No.: 19-2036


Date: _____

Page 2 of 2

PERMIT REQUIREMENT	In Compliance?			Location, Description, Notes & Corrective Action Taken (use additional note space below if needed)	Date Completed
	Yes	No	Not Applicable		
For stream channelization or relocation, work in surface waters is being performed in the dry, with all flows diverted until the new channel is stabilized.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Water quality monitoring is being conducted during permanent stream relocations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Streams and wetlands are free from any sheen or discoloration that may indicate a spill of oil, lubricants, concrete or other pollutants. ²	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Inspection Notes

² Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 804-527-5020. If DEQ cannot be reached, the spill or fish kill shall be reported to the Virginia Department of Emergency Management (VDEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802. Any spill of oil as defined in § 62.1-44.34:14 of the Code of Virginia that is less than 25 gallons and that reaches, or that is expected to reach, land only is not reportable, if recorded per § 62.1-44.34:19.2 of the Code of Virginia and if properly cleaned up.

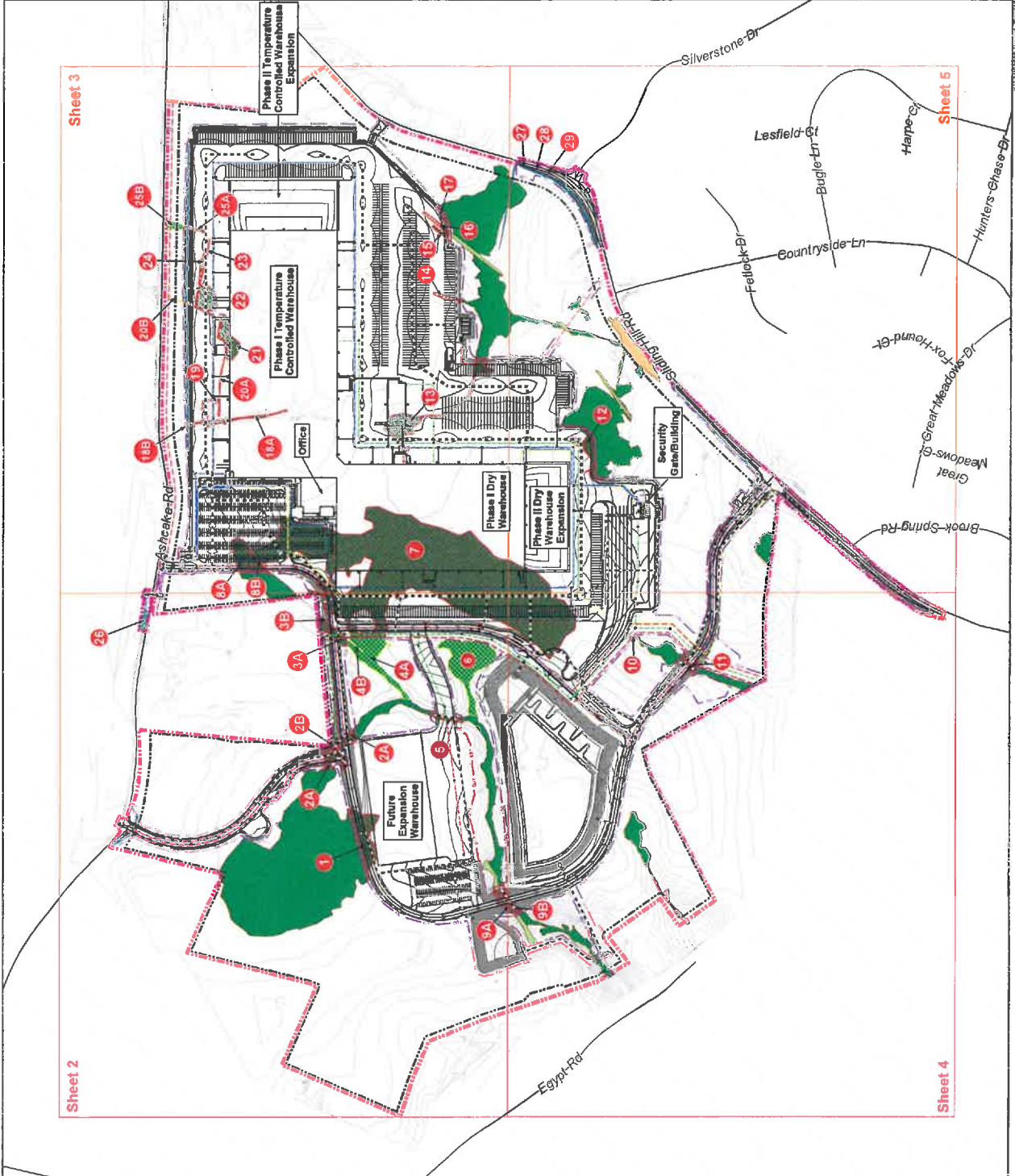



TIMMONS GROUP
YOUR VISION ACHIEVED THROUGH OURS.
10011 Backlicker Parkway, Suite 200
Richmond, VA 23232
TEL: 804.282.8000
WWW.TIMMONS.COM

WEGMANS DISTRIBUTION
CENTER
HANOVER COUNTY,
VIRGINIA

PROJECT NO: 181000020
PROJECT NAME: WEGMANS DISTRIBUTION CENTER
PROJECT LOCATION: A. HEMPOLD
SCALE: 1" = 200'
DATE: 11/15/2011

SCALE (FEET)
0 25 50
1" = 200'
DATE: 11/15/2011

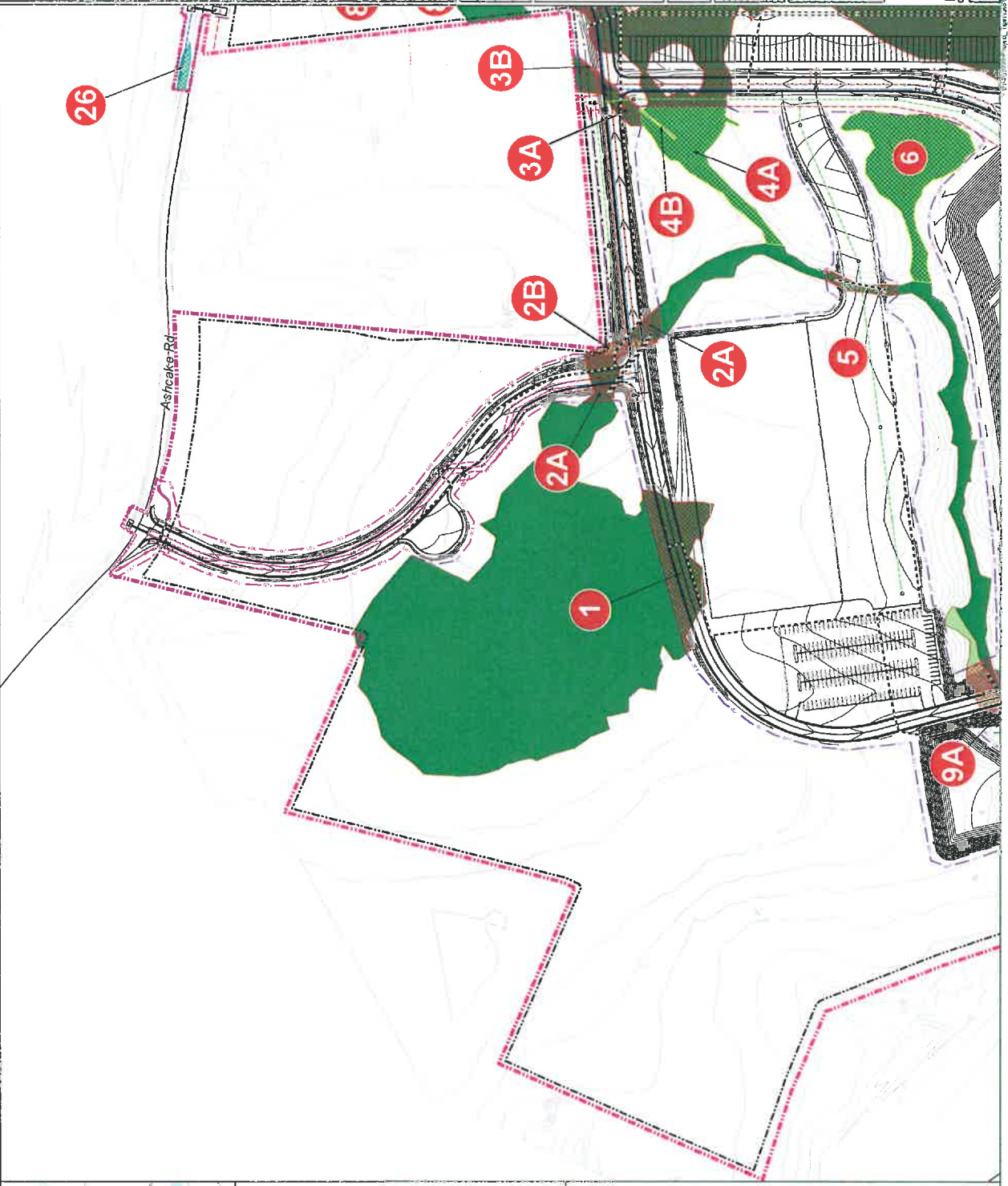




Impact ID	Area (Acres)	Notes
1	0.74	
2	21.25	
3	37.97	
4	43.48	
5	15.08	
6	5.297	
7	3.17	
8	3.09	
9	3.09	
10	3.09	
11	3.09	
12	3.09	
13	3.09	
14	3.09	
15	3.09	
16	3.09	
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80	3.09	
81	3.09	
82	3.09	
83	3.09	
84	3.09	
85	3.09	
86	3.09	
87	3.09	
88	3.09	
89	3.09	
90	3.09	
91	3.09	
92	3.09	
93	3.09	
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98	3.09	
99	3.09	
100	3.09	

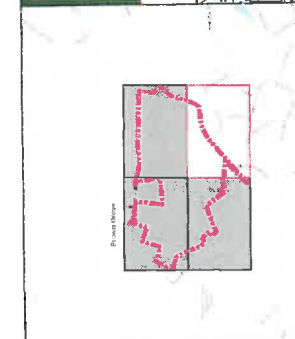
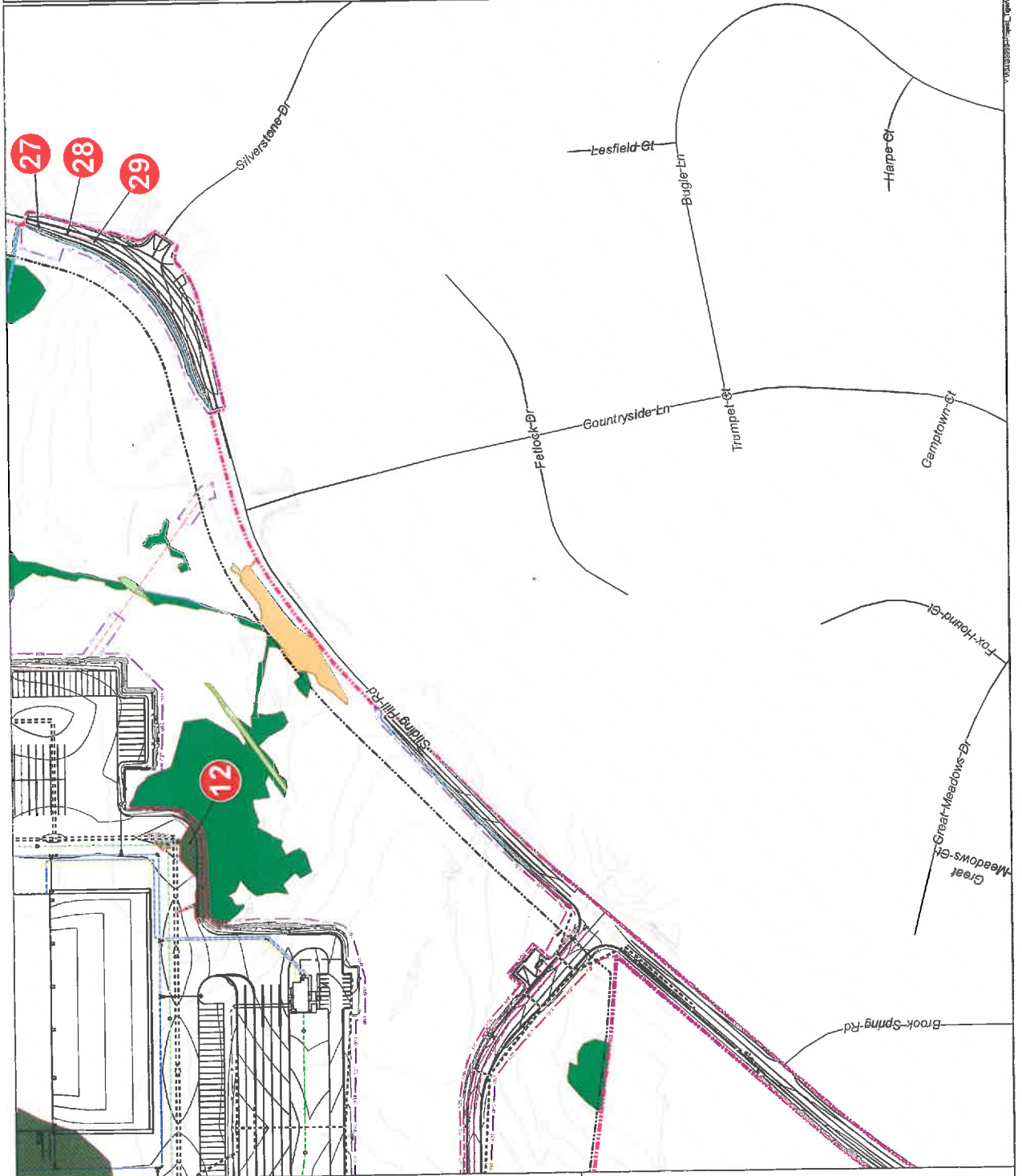
Legend

- Project Study Limits - 219.6 Acres
- Limits of Disturbance - 128.5 Acres
- Wetland/Ditch Impact
- Permanent Wetland/Ditch Impact
- Temporary Wetland/Ditch Impact
- Secondary Wetland/Ditch Impact
- Palustrine Forested (PFO) Wetlands
- Palustrine Emergent (PEM) Wetlands
- Palustrine Scrub-Shrub (PSS) Wetlands
- Ditch
- Proposed RIPRAP
- Property Setback
- Proposed Fence
- Proposed Ditch
- Proposed Utility Easement
- Proposed Culverts
- Proposed UGP
- Proposed Sanitary Sewer
- Proposed Gas Pipe
- Proposed Water Pipe
- Proposed Grading
- Existing Grading



Segment ID	Area (Acres)	Wetland Type	Waters Impact
1	128.5	Palustrine Emergent (PEM) Wetlands	Wetland/Ditch Impact
2A	15.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
2B	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
3A	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
3B	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
4A	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
4B	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
5	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
6	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
9A	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
26	10.0	Palustrine Forested (PFO) Wetlands	Wetland/Ditch Impact
Total	219.6		

- Legend**
- Project Study Limits - 219.6 Acres
 - Limits of Disturbance - 128.5 Acres
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 - Ditch
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 - Property Setback
 - Proposed Fence
 - Proposed Ditch
 - Proposed Utility Easement
 - Proposed Culverts
 - Proposed UGP
 - Proposed Sanitary Sewer
 - Proposed Gas Pipe
 - Proposed Water Pipe
 - Proposed Grading
 - Existing Grading



Report ID	Wetland Type	Area (Acres)	Area (Sq. Feet)
1	Palustrine Emergent (PEM) Wetlands	1.00	136,000
2	Palustrine Scrub-Shrub (PSS) Wetlands	1.00	136,000
3	Palustrine Forested (PFO) Wetlands	1.00	136,000
4	Secondary Wetland/Ditch Impact	1.00	136,000
5	Temporary Wetland/Ditch Impact	1.00	136,000
6	Permanent Wetland/Ditch Impact	1.00	136,000
7	Wetland/Ditch Impact	1.00	136,000
8	Proposed RIPRAP	1.00	136,000
9	Proposed Sanitary Sewer	1.00	136,000
10	Proposed Gas Pipe	1.00	136,000
11	Proposed Water Pipe	1.00	136,000
12	Proposed Grading	1.00	136,000
13	Existing Grading	1.00	136,000
14	Proposed Utility Easement	1.00	136,000
15	Proposed Ditch	1.00	136,000
16	Proposed Fence	1.00	136,000
17	Proposed Culverts	1.00	136,000
18	Proposed UGP	1.00	136,000
19	Proposed Ditch	1.00	136,000
20	Proposed Utility Easement	1.00	136,000
21	Proposed Culverts	1.00	136,000
22	Proposed UGP	1.00	136,000
23	Proposed Sanitary Sewer	1.00	136,000
24	Proposed Gas Pipe	1.00	136,000
25	Proposed Water Pipe	1.00	136,000
26	Proposed Grading	1.00	136,000
27	Existing Grading	1.00	136,000
28	Proposed RIPRAP	1.00	136,000
29	Proposed Sanitary Sewer	1.00	136,000
30	Proposed Gas Pipe	1.00	136,000
31	Proposed Water Pipe	1.00	136,000
32	Proposed Grading	1.00	136,000
33	Existing Grading	1.00	136,000
34	Proposed Utility Easement	1.00	136,000
35	Proposed Ditch	1.00	136,000
36	Proposed Fence	1.00	136,000
37	Proposed Culverts	1.00	136,000
38	Proposed UGP	1.00	136,000
39	Proposed Ditch	1.00	136,000
40	Proposed Utility Easement	1.00	136,000
41	Proposed Culverts	1.00	136,000
42	Proposed UGP	1.00	136,000
43	Proposed Sanitary Sewer	1.00	136,000
44	Proposed Gas Pipe	1.00	136,000
45	Proposed Water Pipe	1.00	136,000
46	Proposed Grading	1.00	136,000
47	Existing Grading	1.00	136,000
48	Proposed RIPRAP	1.00	136,000
49	Proposed Sanitary Sewer	1.00	136,000
50	Proposed Gas Pipe	1.00	136,000
51	Proposed Water Pipe	1.00	136,000
52	Proposed Grading	1.00	136,000
53	Existing Grading	1.00	136,000
54	Proposed Utility Easement	1.00	136,000
55	Proposed Ditch	1.00	136,000
56	Proposed Fence	1.00	136,000
57	Proposed Culverts	1.00	136,000
58	Proposed UGP	1.00	136,000
59	Proposed Ditch	1.00	136,000
60	Proposed Utility Easement	1.00	136,000
61	Proposed Culverts	1.00	136,000
62	Proposed UGP	1.00	136,000
63	Proposed Sanitary Sewer	1.00	136,000
64	Proposed Gas Pipe	1.00	136,000
65	Proposed Water Pipe	1.00	136,000
66	Proposed Grading	1.00	136,000
67	Existing Grading	1.00	136,000
68	Proposed RIPRAP	1.00	136,000
69	Proposed Sanitary Sewer	1.00	136,000
70	Proposed Gas Pipe	1.00	136,000
71	Proposed Water Pipe	1.00	136,000
72	Proposed Grading	1.00	136,000
73	Existing Grading	1.00	136,000
74	Proposed Utility Easement	1.00	136,000
75	Proposed Ditch	1.00	136,000
76	Proposed Fence	1.00	136,000
77	Proposed Culverts	1.00	136,000
78	Proposed UGP	1.00	136,000
79	Proposed Ditch	1.00	136,000
80	Proposed Utility Easement	1.00	136,000
81	Proposed Culverts	1.00	136,000
82	Proposed UGP	1.00	136,000
83	Proposed Sanitary Sewer	1.00	136,000
84	Proposed Gas Pipe	1.00	136,000
85	Proposed Water Pipe	1.00	136,000
86	Proposed Grading	1.00	136,000
87	Existing Grading	1.00	136,000
88	Proposed RIPRAP	1.00	136,000
89	Proposed Sanitary Sewer	1.00	136,000
90	Proposed Gas Pipe	1.00	136,000
91	Proposed Water Pipe	1.00	136,000
92	Proposed Grading	1.00	136,000
93	Existing Grading	1.00	136,000
94	Proposed Utility Easement	1.00	136,000
95	Proposed Ditch	1.00	136,000
96	Proposed Fence	1.00	136,000
97	Proposed Culverts	1.00	136,000
98	Proposed UGP	1.00	136,000
99	Proposed Ditch	1.00	136,000
100	Proposed Utility Easement	1.00	136,000

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 - Proposed Gas Pipe
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 - Existing Grading

Date

FACT SHEET

Virginia Water Protection (VWP) Individual Permit No. 19-2036
Wegmans Distribution Center, Hanover County, Virginia

DEQ has reviewed the application for the VWP Individual Permit No. 19-2036 and has determined that the project qualifies for an individual permit.

The following details the application review process and summarizes relevant information for developing the Part I - Special Conditions for permit issuance.

1. Contact Information:

Permittee Legal Name and Address:

Wegmans Food Markets, Inc.
Attn: Douglas Viets
1500 Brooks Avenue, P.O. Box 30844
Rochester, NY 14603-0844
doug.viets@wegmans.com
585-720-5777

Owner Legal Name and Address: See Section 1 of the Joint Permit Application (JPA)

Air Park Associates, L.P.
c/o Phil Dean or Bob Cox
2301 Wadebridge Road
Midlothian, VA 23113

Agent Legal Name and Address:

Timmons Group
Attn: Matt Neely
1001 Boulders Parkway, Suite 300
Richmond, VA 23225
matt.neely@timmons.com
804-200-6369

2. Processing Dates:

Received Application:
Received JPA No.:
Application Complete:
Permit Application Fee Deposited by Accounting:
Processing Deadline (120 days from Complete Application):

December 2, 2019
December 2, 2019
March 20, 2020
February 21, 2020
July 14, 2020

1 st Request for Additional Information Sent:	December 16, 2019
Final Response for Additional Information Received:	March 20, 2020
Notification of JPA sent to Local Government(s):	December 9, 2019
Request for comments sent to VDH, VDGIF, VDCR, VMRC:	December 9, 2019
Letters sent to Riparian Land Owners:	December 11, 2019
Draft Permit Package Issued:	March 26, 2020
Copy of Public Notice sent to DEQ Central Office:	March 30, 2020
Copy of Public Notice sent to Local Gov't and Planning District:	March 27, 2020
Public Notice Published:	March 31, 2020
End of 30-Day Public Comment Period:	April 30, 2020
Public Hearing Public Notice Published:	June 20, 2020
End of 45-Day 1 st Public Hearing Comment Period:	August 5, 2020
Received Verification of Publication:	April 13, 2020
Public Meeting or Hearing:	July 20, 2020

Due to significant comments received during the public hearing and comment periods regarding the preliminary jurisdictional determination (PJD) of Waters of the United States, which includes the state surface waters, at the proposed site issued by the U.S. Army Corps of Engineers (Corps) on February 11, 2020, DEQ sent a letter dated August 5, 2020 to the Corps requesting review of the PJD. As a result, the Corps conducted additional field work at the proposed site and issued a revised PJD on September 15, 2020. Revisions to the PJD resulted in increases in impacts to Waters of the United States, including state surface waters, from the proposed project. The applicant provided updated information to supplement the previously submitted application materials including updated impact maps and off-site alternatives analyses. As a result of the significant changes, DEQ revised the proposed permit and required a new public comment period for the revised proposed permit. Dates below document receipt and DEQ's review of the additional information.

Processing dates continued:

Request for Additional Information Sent:	August 11, 2020
Final Response for Additional Information Received:	December 22, 2020
Application Complete:	October 8, 2020
Request for comments sent to VDWR and VDCR:	September 17, 2020
2 nd Permit Application Fee Deposited by Accounting:	October 16, 2020
2 nd Draft Permit Package Issued:	October 15, 2020 and revisions October 16, 2020
2 nd Copy of Public Hearing Notice sent to DEQ Central Office:	October 16, 2020
2 nd Copy of Public Hearing Notice sent to Local Gov't and Planning District:	October 19, 2020
2 nd Public Hearing Notice Published:	October 20, 2020
End of 2 nd Public Hearing Comment Period:	December 4, 2020
Received Verification of Publication:	October 21, 2020
Public Meeting or Hearing:	November 19, 2020

Permit Issued/Decision by SWCB:

Date

3. Project Location and Site Description:

The project location is proposed on a 219.6-acre site that is situated south of Ashcake Road (Route 657), northwest of Sliding Hill Road (Route 656), and east of Egypt Road (Route 741) in Hanover County, Virginia. The site is surrounded by agricultural and forest land, as well as Ashcake Road to the north, residential development and forest, as well as Sliding Hill Road to the east and south, and the Hanover County Municipal Airport and industrial/commercial development to the west. The project lies within the Pamunkey River Watershed. The proposed project location is provided in Section 3.1 of the application.

City/County: Hanover

Waterbody: Unnamed tributaries to Totopotomoy Creek, Kersey Creek, and Campbell Creek

Basin: York River

Subbasin: Pamunkey

Section: 3

Class: III

Special Standards: None

HUC: 02080106

Latitude & Longitude: 37.711605, -77.42552

U.S.G.S. Quadrangle: Yellow Tavern

State Watershed No.: YO30

The site is comprised of all or a portion of 22 separate tax parcels owned by Airpark Associates and generally consists of mid to late successional mixed pine-hardwood forest, as described in Section 3.2 of the application. The site consists of generally flat topography ranging from topographic highs of approximately 200 feet above mean sea level (AMSL) in the central portion of the site sloping downward in all directions to topographic lows of approximately 189 feet AMSL along the western site boundary.

There have been numerous wetland delineations and USACE surface water confirmations for the proposed site going back as far as 1992. An active PJD dated March 20, 2018 existed at the time that the applicant began the site selection process. During an August 28, 2019 pre-application site visit, DEQ staff determined more wetlands were potentially on site than identified on the March 20, 2018 PJD. As a result, an additional delineation was performed, and the USACE issued an updated PJD on October 30, 2019.

The PJD from the Corps dated October 30, 2019 and initially revised on February 11, 2020 indicated that the site consisted of 16.15 acres of palustrine forested (PFO) wetlands, 0.55 acre of palustrine emergent (PEM) wetlands, and 0.336 acre of palustrine scrub-shrub (PSS). A small amount of jurisdictional ditches (0.242 acre) are also onsite.

Due to significant comments received during the public hearing and comment periods regarding the PJD of surface waters at the proposed site issued by the US Army Corps of Engineers (Corps) on February 11, 2020, DEQ sent a letter dated August 5, 2020 to the Corps requesting review of the PJD. As a result, the Corps conducted additional field work at the proposed site and issued a revised PJD on September 15, 2020. Furthermore, an additional PJD for areas associated with offsite road

improvements and utility tie-ins was requested by the applicant on September 21, 2020 and confirmed by the Corps on September 24, 2020. Based on the revised PJD information for the site from the Corps dated September 15, 2020 and September 24, 2020, the site consists of 28.708 acres of palustrine forested (PFO) wetlands, 0.585 acre of palustrine emergent (PEM) wetlands, and 0.336 acre of palustrine scrub-shrub (PSS). A small amount of jurisdictional ditches (0.248 acre) are also onsite. Wetlands within the project area persist in the natural depressions within the forested areas and alongside the large drainage system that bisects the southern portion of the site. No stream channels were delineated on site. Additional information about the surface water impacts located within the project area is located below in Section 7.

4. Application and Proposed Impacts

The applicant is requesting a permit for the total impact to 14.85 acres of surface waters, consisting of the following.

- Permanent fill impacts are to 12.99 acres of palustrine forested (PFO) wetland, 0.23 acre of palustrine emergent (PEM) wetland, and 0.14 acre of jurisdictional ditch.
- Secondary impacts, due to diversion of surface water, are to 1.44 acres of palustrine forested wetland and 0.02 acre of jurisdictional ditch.
- Temporary impacts are to 0.03 acre of palustrine emergent wetland.

The application for this project consists of the Joint Permit Application (JPA) received on December 2, 2019, additional information submitted by the applicant on December 13, 2019, December 20, 2019, December 23, 2019, February 21, 2019, March 12, 2020, March 16, 2020 and March 20, 2020 including all associated appendices, and all other information submitted by the applicant to DEQ. Additionally, revised project information was submitted by the applicant on September 15, 2020, September 22, 2020, September 28, 2020, October 7, 2020, October 8, 2020, and December 22, 2020 including all associated appendices. All submitted information will be hereto referred to as the "application". The original application received on December 2, 2019 was submitted on behalf of Hanover Economic Development for Project Tiger. Since that time, the applicant information has been updated to Wegmans Food Markets, Inc.

5. Project Purpose and Need:

As described in Section 4.0 of the application, the purpose of the project is to "provide a site that will serve as a secure regional grocery distribution center that will (a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region." The applicant states that the project is needed to develop a new regional distribution center that can serve current and planned stores in the mid-Atlantic region in a "logistically responsible and cost-efficient manner."

As described in Section 5.1 of the application, the proposed facility components include three phases of development on site. Phase I construction of an approximately 1.1 million contiguous square feet (sq. ft) facility that will house a dry warehouse, refrigerated warehouse, return center, food manufacturing facility, and offices, with the ability to expand with future growth, as well as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. fleet maintenance, dispatch and

site security). Appurtenant facilities such as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. returning trailer cleanout and site security) are necessary for operations. A near future Phase II expansion to approximately 1.3 million square feet includes expansion of the dry warehouse and the temperature controlled warehouse. Phase III - future development/expansion of the distribution center will be constructed in accordance with county zoning which allows for a maximum buildout of 1.7 million square feet.

The applicant currently operates two Northeast distribution centers located in Pottsville, Pennsylvania and Rochester, New York. A typical regional distribution center can efficiently serve 45-50 retail locations. The desired goal as stated by the applicant is for each distribution center to serve 45 stores. Currently, the Pottsville Distribution Center is serving 54 stores in the following locations: Pennsylvania (28), New Jersey (9), Massachusetts (6), Maryland (8), Virginia (12), and North Carolina (1), and is operating at 20% overcapacity. The Rochester Distribution Center serves 47 stores within New York and is operating at 4% overcapacity. Section 2.0 of the application includes an explanation that when a regional distribution facility nears 90% capacity, the facility may not be able to meet store growth or unexpected fluctuations in demand. Exceeding 95% facility capacity is not ideal because free space is needed to accommodate item changes and maintain efficient day-to-day operations. At 100% capacity, a facility would result in gridlock with no room to receive supplier deliveries.

Following current trends, Wegmans predicts that they will outgrow the existing Pottsville Distribution Center within the next five years. As depicted on the Wegmans "Here we grow" figure provided on March 16, 2020, five new stores are planned to open in North Carolina as well as six stores in the D.C. metro area within the next five years. The applicant predicts that with the current distribution centers, they will not be able to serve the increased retail locations; therefore, a new regional distribution center is needed that can efficiently supply the anticipated number of retail locations in the rapidly growing mid-Atlantic market.

In addition to relieving demand on the existing distribution centers, the proposed Hanover County Distribution Center would also serve to decrease distance, time, and costs associated with transportation to retail stores in the Mid-Atlantic region. The Pottsville distribution center currently serving these areas is approximately 370 road miles from the Virginia Beach location and approximately 480 road miles from the planned West Cary, North Carolina location. The distance from Hanover County, VA to Raleigh, NC is approximately 187 miles. A Hanover County Distribution Center would reduce trip miles to the North Carolina store locations by more than 290 miles one way. Reduced distance from a distribution center to a retail store results in a significant reduction in fuel and operational costs associated with each trip. Deliveries for perishable items are often scheduled daily to ensure the highest quality and longest shelf life. Long-distance deliveries can require longer lead times, which can result in unpredictable impacts from weather, shorter shelf life of perishable products, and the potential for increase of damage to sensitive products and loss of product. Servicing northern Virginia stores from the Hanover Distribution Center also reduces the number of trips, trucks originating from the Pottsville Distribution Center need to make through one of the most heavily congested areas of traffic in the nation, the Washington D.C. metro area.

Based on information provided by the applicant regarding lack of adequate capacity at the existing distribution center to accommodate several existing and planned retail locations in the D.C. metro area, Virginia, and North Carolina, and proximity of the current distribution center from these locations, staff

has concluded that the applicant has sufficiently demonstrated the need to construct an additional distribution center.

6. Avoidance and Minimization Efforts:

9VAC25-210-60 B.1.g of the Virginia Water Protection Permit Program Regulation requires that applications include “an alternatives analysis for a proposed project detailing the specific on-site and off-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the “Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230.” Section (a) of 40 CFR Part 230 Subpart B, known as the Clean Water Act Section 404(b)(1) Guidelines, states that “no discharge of dredged or fill material shall be permitted if there is a *practicable* alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” An alternative is considered *practicable* if it is “available and capable of being done taking into consideration cost, existing technology, and logistics in light of overall project purposes.”

The application provided documentation demonstrating the evaluation of several alternatives to the proposed project including a no-build alternative, four off-site alternatives, as well as layouts of the distribution center at the preferred location.

6.1 Off-Site Alternatives

The application explains that the applicant considered approximately a dozen locations in Virginia and North Carolina. The Richmond metro area was determined by the applicant to be the center of the retail distribution needs. The applicant specifically identified Hanover County as the location for a new regional distribution facility that best serves the needs of the existing and planned retail stores and determined that Hanover County, Virginia increases logistical efficiency due to the ease of access to I-95, allowing the center to not only serve stores in NC and southern Virginia, but also providing a better source of distribution for stores located in northern Virginia (Fredericksburg, Potomac, Alexandria, Lake Manassas, Chantilly, Fairfax, etc.) and the D.C. metro area. Servicing Northern Virginia stores from the Hanover distribution center also reduces the number of trips, trucks originating from the Pottsville Center need to make through one of the most heavily congested areas of traffic in the nation, the DC Metro Area. This helps reduce the risks associated with perishable food items, while enhancing safety by decreasing road hours for operators. Upon commencement of operations, the Hanover Distribution Center would immediately begin serving 24 stores in the D.C. metro area, Virginia, and North Carolina.

According to the applicant, the Metro Richmond area does not provide the same ease of access to the portions of I-95 that facilitate the logistics train to the Northern Virginia stores. The application proposes five build alternatives in Hanover and the Town of Ashland for development as a regional distribution facility, referred to as Alternatives 1, 2, 3, 4, and preferred (also known as the Air Park site) as most supporting of the project purpose and documents an off-site alternative analysis of these sites. The applicant also analyzed a No Action alternative. A detailed Alternative Analysis, describing how the applicant evaluated and eliminated alternatives, can be found in Section 5.0 of the JPA package dated November 2019 and additional information provided through October 8, 2020. The initial application included consideration of a No Action alternative and an evaluation of two (2) alternative sites, referred to as Alternatives 1 and 2. The applicant provided alternatives analysis for sites referred to as Alternatives 3

and 4 in response to a request by DEQ to provide additional off-site alternative analyses in order for staff to determine if the proposed site meets the Least Environmentally Damaging Practicable Alternative (LEDPA).

Screening factors that were analyzed by the applicant in the offsite analysis include:

1. Primary site access within 3 road miles of Interstate 95;
2. Must efficiently serve current and future grocery stores in the Region;
3. Minimized wetland/stream impact^a and mitigation costs;
4. Can accommodate at least 130 acres of correctly configured construction pad^b,
5. No potential stream impacts;
6. No potential of RPA impacts;
7. Availability of viable alternate routes (in the event of disruption of the primary route);
8. Properly zoned;
9. Access to connector/dissipater roads without need for improvement;
10. Sufficient labor force;
11. Avoids routing through congested areas to reach primary roads;
12. Ease of utility access (sewer, power, water);
13. No potential threatened and endangered species conflict; and
14. Sufficient amount of mitigation credits in the service area.

^a The application states that a wetland delineation and perennial stream assessment/resource protection area determination was not available or feasible to be performed for all sites evaluated during the alternatives analysis; therefore, the aquatic resources for Alternative Sites 1, 2, and 4 were approximated based on National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) mapping. A surface water delineation was used for evaluation of surface water impacts on Alternative 3 and the preferred site.

^b The application states that in designing the Hanover Distribution Center campus, the best design and operational practices from previous and existing facilities were incorporated including cross docking and flow through product handling as described below.

The proposed distribution center layout facilitates the "Flow Through" of product, which allows the movement of product through the warehouse without ever having to go into storage resulting in (a) a smaller warehouse footprint due to limiting the amount of product being stored in the warehouse. (In many cases this could be more than 40% of meat and produce); (b) decreased handling of product; and (c) increased freshness to the customer.

The proposed layout also includes retail cross docking. Retail cross docking receives items from different suppliers and classify them into departing trucks for various destinations. A figure provided on March 12, 2020 indicates a schematic portrait of cross docking for various items that depart from a facility for separate destinations. By properly implementing operational practices such as cross docking, many benefits can be brought about for organizations including, decreased storage cost, reduced fix price of the storage area, reduced shipment lead time, and increased customer satisfaction via fast delivery.

To implement cross docking and flow through, the application explains that a L-shaped campus is needed to allow for maximized efficiency in day to day operations, which in the long-term, will provide an increased profit margin, while also reducing required building footprints by eliminating the need for

redundant spaces. The applicant states that a different layout would result in a less efficient operation as well as require a larger building footprint.

The applicant also states that an L-shaped campus allows:

- (a) The employee parking and administrative areas to be positioned centrally to the dry and perishable buildings which enables a common entry point, shared employee areas, a common area for equipment parking, maintenance and offices. Other layouts result in having to duplicate several of these areas to cut down on the distance employees would need to travel;
- (b) Employee parking and truck traffic are kept apart;
- (c) The ability for a common outbound trucking operation that is shared for both buildings in terms of tractor and trailer parking, trailer stripping, and other common requirements. Moving trailers throughout the site requires less miles and less fuel because of the L-Shaped common shared trucking concourse as compared to an "in-line" design; and
- (d) Greater ability to expand each building in the future if this should ever be a requirement.

The applicant determined the Air Park site the preferred site due to a combination of factors including: proximity to I-95, logistical efficient to serve current and future stores, ecological factors, mitigation cost and credit availability, zoning, access (required offsite road improvements, avoidance of congested areas), ease of utility access, and cost.

6.2 Alternatives of 1, 2, 3, 4, and No Action

Staff closely reviewed the application to evaluate whether the application demonstrated that the applicant's proposed site meets LEDPA, satisfying the requirements of 9VAC25-210-80, taking into account cost, existing technology, and logistics in light of overall project purposes. Each of the five build alternatives and the no-build alternative presented in the application were evaluated under the following criteria:

1. Meeting the *Project Purpose and Need*
2. *Surface Water Impacts*
3. Practicable after taking into consideration *Costs*
4. Practicable after taking into consideration *Logistics*
5. Practicable after taking into consideration *Technology*

An alternative is considered *practicable* if it is "available and capable of being done taking into consideration cost, existing technology, and logistics in light of overall project purposes."

Purpose and Need

The project purpose as stated in the application is "to provide a site that will serve as a secure regional grocery distribution center that will "(a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region." The applicant has explained that a new regional distribution center is needed in Hanover County to "serve current and planned stores in the mid-Atlantic region in a logistically responsible and cost-efficient manner." More details about the purpose and need are summarized in Section 5 above.

Surface Water Impacts

Surface water impacts are evaluated based on the surface water features and activities that require a VWP Permit in accordance with 9 VAC 25-210-10 et seq. This evaluation does not include activities or features outside the authority of the VWP Program. Because not every site has a Jurisdictional Determination from the Corps, nor is it not practical for an applicant to conduct a surface water delineation for all alternatives, DEQ staff confirmed the accuracy of the information provided by the applicant from National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) mapping to determine if the applicant's assumptions in approximating the aquatic resources for Alternative Sites 1, 2, and 4 were reasonable. A confirmed Jurisdictional Determination from the US Army Corps of Engineers was used for evaluation of surface water impacts on Alternative 3 and the preferred site.

Cost

Cost is evaluated on the premise of what is a reasonable expense for this type of construction project, whether the project cost is substantially greater than the costs normally associated with the particular type of project under consideration, and if an alternative is unreasonably expensive to the applicant, the alternative is not practicable.

Logistics

Logistics of each alternative is evaluated based on the ability to successfully complete the project when taking into consideration timing, constructability, land acquisition, project constraints, and safety hazardous.

Technology

Technology is evaluated by considering whether the technology is currently available to implement each of the alternatives.

Based upon staff's review of the application, the preferred site, although having more wetland impacts than other alternatives evaluated in the application, represents the LEDPA as it is the only practicable alternative when considering cost, logistics, and technology in light of the project purpose. A summary of the details considered in this evaluation is provided in the section below, and additional details can be reviewed in the VWP Permit file 19-2036.

6.3 Alternative 1 (Flippo Site)

Alternative 1 is located southwest of the intersection of Interstate 95 and Kings Dominion Highway (Route 30) and is approximately 250 acres in area. The property is bisected by Route 1, and the evaluated alternative is on the eastern portion of the property and consists of a managed pine plantation. Alternative 1 is zoned as A-1 (agricultural), and site rezoning or a conditional use permit would be needed to construct the project at the site. The construction of sewer, waterline, and electricity infrastructure to the interior of the site would be necessary as well as off-site road improvements. As included in the application, a sanitary trunk sewer extension along Little River and boring under I-95 for a sanitary main extension would be necessary in order to develop this site.

6.3.1 Purpose

The applicant has explained that a new regional distribution center is needed in Hanover County to "serve current and planned stores in the mid-Atlantic region in a logistically responsible and cost-efficient manner" and that Alternative 1 meets the purpose as provided in the application.

6.3.2 Surface Water Impacts

The application states that approximately 15 acres of jurisdictional wetlands would be permanently impacted as a result of project implementation at Alternative 1 making the surface water impacts at Alternative 1 comparable to the preferred site. Therefore, surface water impacts were not a significant factor in evaluating the applicant's proposed LEDPA. Additionally, the applicant conducted a preliminary review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources databases for threatened and endangered species at the site. Results indicated that the dwarf wedgemussel and the Atlantic sturgeon have been confirmed within 2 miles of Alternative 1.

6.3.3 Cost

The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost. The application also stated that Alternative 1 would require the use of unclassified rural collector roads SR-602 (Mt. Hope Church Road), SR-689 (Taylorsville Road), and Short Cut Road in order to access Route 1 and Route 30 before the Route 30/I-95 interchange. These roads would require significant and costly improvements in order to withstand prolonged tractor trailer use. Due to its current use as pine plantation this alternative would likely require a minimum of 130+ acres of tree clearing and the construction of sewer, waterline, and electricity infrastructure to the interior of the site, further adding to overall project costs and increased project timeline. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated at Alternative 1 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, a sanitary trunk sewer extension along Little River, and the boring of a sanitary main extension beneath I-95. The applicant also incorporated a \$1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost to prepare Alternative 1 for development is estimated to be \$5.4 million. This cost does not include the construction costs of the distribution center itself. The cost to construct the proposed project at Alternative 1 is approximately 90 percent of the costs to construct at the preferred site.

6.3.4 Logistics

The applicant states that while site access and road infrastructure improvements are sub-par, size and the proximity to Interstate 95 make Alternative 1 a viable option. However, the potential exists for increased congestion and reduced traffic safety when accessing the interstate, as the site is near the Kings Dominion theme park and would likely utilize the same access junction to I-95 as patrons and employees entering/exiting the park via Route 30. The applicant did not identify any logistical challenges associated with construction of the distribution center associated with Alternative 1. Alternative 1 is practicable in terms of logistics.

6.3.5 Technology

The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 1. Alternative 1 is practicable in terms of technology.

6.4 Alternative 2 (Blenheim Site)

Alternative 2 is located off of Hickory Hill Road east of Interstate 95 and Ashland, Virginia. Most of the site consists of mixed pine hardwood forest, as well as clear cut land. The site consists of one parcel totaling approximately 506 acres and is zoned as A-1 (agricultural), and as such a conditional use permit or rezoning proffer would be needed. The construction of sewer, waterline, and electricity infrastructure to the interior of the site would be necessary as well as off-site road improvements. A sanitary sewer pump station and force main would be necessary in order to develop this site. Additionally, boring under I-95 would be necessary for the extension of a force main and water main. The applicant has also determined that an extension of a water main along Hickory Hill Road and significant road improvements at Ellet's Crossing is necessary to develop this site.

6.4.1 Purpose

The applicant has explained that a new regional distribution center is needed in Hanover County to "serve current and planned stores in the mid-Atlantic region in a logistically responsible and cost-efficient manner" and that Alternative 2 meets the purpose as stated in the application.

6.4.2 Surface Water Impacts

The application states that construction of the project at Alternative 2 would impact approximately 16.4 acres of wetlands and 2,366 linear feet of stream. The applicant conducted a preliminary review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources databases for threatened and endangered species at the site. Results indicated that the dwarf wedgemussel and the Atlantic sturgeon have been confirmed within 2 miles of Alternative 2.

6.4.3 Cost

The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated with Alternative 2 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, sanitary pump station and force main, the boring of a force main extension beneath I-95, road improvements to Ellet's Crossing and Hickory Hill Road, 12" water main extension along Hickory Hill Rd, and water main extension boring beneath I-95. The applicant also incorporated a \$1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost analysis concludes that Alternative 2 would cost \$29.5 million. This cost does not include the construction costs of the distribution center itself. As the preferred site is projected to cost \$6.23 million, construction of the project at Alternative 2 is estimated to be 4.7 times the cost of constructing at the preferred site. The applicant concludes that this alternative is not practicable considering cost.

6.4.4 Logistics

The application explains that construction at Alternative 2 presents some logistical challenges. Perennial streams throughout site results in approximately 9.6 acres within the Resource Protection Area regulated and protected by the Chesapeake Bay Preservation Act which cannot be developed without local government approval which may not be granted. Additionally,

Alternative 2 is bisected by an overhead electrical easement. The distribution facility has been designed in an “L-shaped” layout as described above. In order to utilize “L-shaped” design on Alternative 2, the layout would have to be placed on either side of a set of power lines and their associated easement that bisects the property. According to the applicant it is not feasible to redirect, develop permanent structures within, or otherwise alter the utility easement. Additionally, the facility cannot be separated or disconnected in order to be located on opposite sides of the power lines. Separating the facility would decrease productivity and operational efficiency while requiring an increased area of disturbance due to additional and duplicated infrastructure (i.e. roadways, parking, stormwater, etc.) facilities. The required components of the distribution center cannot be located east of the power lines without intruding into the utility easement (roads, security fencing, parking, stormwater infrastructure, etc.), extending offsite, or both. The applicant concludes that because of these challenges, Alternative 2 is not practicable in terms of logistics to construct the proposed project on this site.

6.4.5 Technology

The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 2 in comparison to the preferred site. Alternative 2 is practicable in terms of technology.

6.5 Alternative 3 (Archie Cannon Site)

Alternative 3 is in the Town of Ashland west of I-95. Most of the site consists of mixed hardwood-pine forest and agricultural land. The site consists of 3 parcels totaling approximately 297 acres zoned M-1. The construction of sewer, waterline, and electricity infrastructure to the interior of the site would be necessary as well as off-site road improvements. The applicant has determined that a new traffic signal at the intersection of Archie Cannon Drive and Route 1 and, and relocation of sanitary sewer would be necessary.

6.5.1 Purpose

The application states that because Alternative 3 is a long and relatively narrow site, the required distribution center configuration would span the entire width of the property and making onsite alternatives limited to the inability to rotate or shift planned site design. Limitation in orientation and size prohibits the applicant from meeting their future expansion goals, failing to meet their Purpose and Need.

6.5.2 Surface Water Impacts

The application states that construction of the project at Alternative 3 not including stormwater management facilities would impact approximately 0.5 acre of wetland and 1,953 linear feet of stream. Potential surface water impacts were determined based on an existing surface water delineation available to the applicant. The applicant conducted a preliminary review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources databases for threatened and endangered species at the site. Results indicated that the dwarf wedgemussel and yellow lance have been confirmed within 2 miles of Alternative 3.

6.5.3 Cost

The applicant provided information associated with cost purchasing the land and estimated mitigation credit cost. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated with Alternative 3 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, signalization of Archie Cannon Drive, and sanitary sewer relocation. The applicant also incorporated a \$1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost analysis concludes that Alternative 3 would cost \$9.7 million. This cost does not include the construction costs of the distribution center itself. As the preferred site is projected to cost \$6.23 million, construction of the project at Alternative 3 is estimated to be 1.6 times the cost of constructing the project at the preferred site. The applicant concludes that this alternative is not practicable considering cost.

6.5.4 Logistics

The applicant explains that because of the following reasons Alternative 3 presents logistical challenges and was determined to not be practicable:

- The site is situated within 3 road miles of an interchange to I-95, however accessing the site from the closest interchange (I-95/Route 54) would require tractor trailers being routed through the Town of Ashland, which creates significant congestion and public safety concerns. The next closest interchange is approximately 6 miles to the north (I-95/Route 30). However, the potential exists for increased congestion and reduced traffic safety when accessing the interstate from that location, as it is the primary interchange for the Kings Dominion theme park. *DEQ notes that this logistical challenge may not be unique to Alternative 3.*
- John M. Gandy Elementary School is adjacent to the site, just to the south of Archie Cannon Drive. This location would effectively require distribution center trucks to share the same roads with school traffic (buses and personal vehicles daily), creating further public safety risks. *DEQ notes that this logistical challenge may not be unique to Alternative 3.*
- Alternative 3 does not allow for the future expansion of the distribution center as depicted on the preferred alternative. Because of this the Applicant will not be able to achieve their future goals for the project.
- The town of Ashland will no longer allow this location to be used as a distribution center and trying to re-zone this location is not practicable due to the applicant's timeline. Rezoning efforts would be both timely and costly to the Applicant with no guarantees that the rezoning could be accomplished, making the Air Park site a much more appealing location as it is already properly zoned. Additionally, the recent zoning ordinance changes by the town of Ashland make the proposed distribution center use incompatible with the current zoning designation with no likelihood of changing.

6.5.5 Technology

The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 3. Alternative 3 is practicable in terms of technology.

6.6 Alternative 4 (Graymont Site)

Alternative 4 is located off a rural minor collector road west of I-95 in Hanover County. Most of the site consists of mixed hardwood-pine forest, agriculture, and a single residence. The site is comprised of 2 tax parcels totaling approximately 197 acres and is zoned M-1. The applicant has determined that because of the site topography a retaining wall must be constructed for the site to be developable. Additionally, the applicant has determined that a sanitary sewer pump station and force main as well as significant improvements at Ellet's Crossing is necessary to construct at this site.

6.6.1 Purpose

The application states that because Alternative 4 offers an extremely tight fit at best with regards to the distribution center layout and would not allow for further expansion of the distribution center as depicted on the preferred alternative. Because of this the applicant will not be able to achieve their future goals for the project and fails to meet their Purpose and Need.

6.6.2 Surface Water Impacts

The application states that construction of the project at Alternative 4 (minus stormwater facilities) would impact approximately 1.1 acres of wetland and 689 linear feet of stream. Potential surface water impacts were determined based on an existing surface water delineation available to the applicant. Review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources database indicated the potential for the federally endangered Dwarf Wedgemussel (*Alasmidonta heterodon*) and federally threatened Yellow Lance (*Elliptio lanceolata*). The applicant hired Three Oaks Engineering to conduct a mussel survey within the South Anna River at Alternative 4. The study concluded that "While high quality habitat is present in the South Anna River, and there is potential for additional species not found during these efforts to occur there, the target federally listed species were not found during these efforts."

6.6.3 Cost

The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated with Alternative 4 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, sanitary sewer and pump station, a site retaining wall, and road improvements to Ellet's Crossing. The applicant also incorporated a \$1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost analysis concludes that Alternative 4 would cost \$13.8 million. This cost does not include the construction costs of the distribution center itself. As the preferred site is projected to cost \$6.23 million, construction of the project at Alternative 4 is estimated to be 2.2 times the cost of constructing at the preferred site. The applicant concludes that this alternative is not practicable.

6.6.4 Logistics

The applicant explains that because of the following reasons Alternative 4 presents logistical challenges:

- The primary site access would likely be routed to the Route 30/I-95 interchange, approximately 4 miles to the north. Secondary access would be routed approximately 4 miles south through the Town of Ashland. Both routes are further from I-95 interchanges than desired and require trucks to spend more time in frequently congested areas. Additionally, a rural minor collector road and an unclassified rural local road would require costly road improvements as explained in the cost analysis section.
- Alternative 4 offers an extremely tight fit with regards to the distribution center layout and would not allow for further expansion of the distribution center as depicted on the preferred alternative. Because of this the Applicant will not be able to achieve their future goals for the project.

6.6.5 Technology

The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 4. Alternative 4 is practicable in terms of technology.

Alternative Site Construction Cost Estimates Provided by the Applicant

Updated Estimated Cost Analysis (12/21/2020)					
Site	Flippo	Blenheim	Archie Cannon	Graymont	Air Park
Wetland and Waters Impacts	app. 15 acres	app. 16.4 acres & app. 2,366 lf stream	app. .5 acres & 1,953 lf stream	app. 1.1 acres and 689 lf stream	14.8 acres
Estimated Development Cost					
Mitigation Cost (based on \$35,000/wetland cr. and \$300/stream cr.)	\$ 1,050,000.00	\$ 1,857,800.00	\$ 620,900.00	\$ 283,700.00	\$ 1,029,350.00
Assessed Value	\$ 2,005,100.00	\$ 1,865,700.00	\$ 9,326,600.00	\$ 1,993,000.00	\$ 4,406,000.00
Signalization of Archie Cannon Dr/RT	\$ -	\$ -	\$ 500,000.00	\$ -	\$ -
Sanitary sewer relocation	\$ -	\$ -	\$ 750,000.00	\$ -	\$ -
Sanitary Pump Station and FM	\$ -	\$ 1,800,000.00	\$ -	\$ 1,500,000.00	\$ -
Site Retaining Wall	\$ -	\$ -	\$ -	\$ 2,800,000.00	\$ -
Sliding Hill Road Improvements (curve softening)	\$ -	\$ -	\$ -	\$ -	\$ 500,000.00
New Turn and Acceleration Lane Sliding Hill Road	\$ -	\$ -	\$ -	\$ -	\$ 290,000.00
Sanitary Trunk Sewer Extension Along Little River (14,000LF @ \$200/LF)	\$ 2,800,000.00	\$ -	\$ -	\$ -	\$ -
I-95 Bore for Force Main Extension (700LF @ \$500/LF)	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -
I-95 Bore for Sanitary Main Extension (700LF @ \$750/LF)	\$ 525,000.00	\$ -	\$ -	\$ -	\$ -
Ellet's Crossing and Hickory Hill Road Improvements (Blenheim ~9,500 LF @ \$2,500/LF)(Graymont ~3,500LF @ \$2,500)	\$ -	\$ 23,750,000.00	\$ -	\$ 8,750,000.00	\$ -
12" Water Main Extension Along Hickory Hill Road (6,700 LF @ \$150/LF)	\$ -	\$ 1,005,000.00	\$ -	\$ -	\$ -
I-95 Bore for Water Main Extension (700LF @ \$500/LF)	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -
Offsite Easement Acquisition (8,300LF @ \$60/LF)	\$ 498,000.00	\$ -	\$ -	\$ -	\$ -
County Infrastructure Incentive \$1.5M	\$ (1,500,000.00)	\$ (1,500,000.00)	\$ (1,500,000.00)	\$ (1,500,000.00)	\$ (1,500,000.00)
Brown Grove Regional Trunk Sewer	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Est. Cost Total:	\$ 5,378,100.00	\$ 29,478,500.00	\$ 9,697,500.00	\$ 13,826,700.00	\$ 6,225,350.00
Difference:	\$ (847,250.00)	\$ 23,258,150.00	\$ 3,472,150.00	\$ 7,601,850.00	\$ -
Order of magnitude expense to preferred site	0.9	4.7	1.6	2.2	

6.7 No Action

The No Action alternative would not impact any surface waters, would not encounter any logistical or technological issues associated with construction, and would not impose any construction costs. The No Action alternative is not consistent with the applicant's purpose and need of the project to serve existing retail locations, relieve transportation burdens from existing supply centers, and provide a base of support to serve future retail locations in the mid-Atlantic region. The application included an evaluation of delaying investment in a new facility through revisions to Standard Operating Procedures (SOP) changes

and expanding utilization of the existing facilities. However, the applicant determined that the Pottsville Distribution Center constraints would require expansion of the existing facility to meet new retail store demands. Since mid-Atlantic growth is expected to continue, expanding this facility would result in increased transportation costs of supplying stores in the mid-Atlantic Region. In addition, store service and product quality would be at risk due to the long distances and transportation costs associated with expanding stores to the south that would exceed all other alternatives evaluated. The No Action alternative is not considered practicable because it does not meet the purpose and need of the project.

6.8 Preferred Site (Air Park Site)

The approximately 219.6-acre site is in Hanover County southwest of the intersection of Ashcake Road and Sliding Hill Road. The site is surrounded by agricultural and forest land, as well as Ashcake Road to the north, residential development and forest, as well as Sliding Hill Road to the east and south, and the Hanover County Municipal Airport and industrial/commercial development to the West. In order for the distribution center to most efficiently serve both current and future retail stores in the Mid-Atlantic Region, the applicant determined the project must be located in Hanover County within close proximity to I-95 to facilitate the logistics train to Northern Virginia stores.

6.8.1 Project Purpose

The application explains that the preferred site and Least Environmentally Damaging Practicable Alternative is consistent with the project purpose and also allows for future expansion of the site.

6.8.2 Surface Water Impacts

The application states that the preferred site and Least Environmentally Damaging Practicable Alternative will permanently impact 14.82 acres of surface waters and temporarily impact 0.03 acre of surface waters.

6.8.3 Cost

The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost at the preferred site and Least Environmentally Damaging Practicable Alternative. DEQ requested additional information associated with these costs in order to assess the construction cost of the preferred site compared to Alternatives 1, 2, 3, and 4. The applicant provided cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, the required Sliding Hill Road improvements (curve softening) and a new turn lane and an acceleration lane on Sliding Hill Road. The applicant also incorporated a \$1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost to construct the project at the preferred site is approximately 78% less than Alternative 2, 35% less than Alternative 3 and 55% less than Alternative 4.

The cost to construct the project at Alternative 1 is estimated to be approximately 90 percent of the costs to construct at the preferred site. The applicant explained that Alternative 1 requires rezoning and acquisition of offsite easements and states that “the time required to acquire the property, conduct thorough due diligence, rezone (if possible), and acquire the necessary offsite easements (if possible), represents a greater risk and expense to the Applicant than the estimated \$847,250 difference” and therefore Alternative 1 was not chosen as the preferred alternative.

In accordance with the federal 404(b)(1) Guidelines, costs may be considered by an applicant in determining the LEDPA for purposes of eliminating a site when the cost to construct the project at that site is not considered practicable. There is no requirement in the 404(b)(1) Guidelines, SWCL, or VWP Permit Program regulations that requires the LEDPA to be the least expensive alternative.

The preferred site is stated to be practicable by the applicant from a cost standpoint.

6.8.4 Logistics

The application explains that the proposed entrance to the distribution center at the Airpark site is approximately 2 miles from the I-95/Route 656 (Sliding Hill Rd) interchange. This allows trucks to access I-95 in an efficient manner (straight route), while minimizing the amount of time they would have to spend on local roads. Additionally, as part of the thoroughfare plan, Sliding Hill Road has already gone through recent widening improvements, which helps eliminate the logistical challenges and costs of any further offsite road improvements such as those presented in the alternatives. The preferred site is practicable in terms of logistics.

6.8.5 Technology

The applicant did not identify any technological challenges associated with construction of the distribution center associated with the preferred site. The preferred site is practicable in terms of technology.

6.9 On-Site Alternatives

Numerous on-site layouts were examined to develop the regional grocery distribution center in a manner that avoids and minimizes impacts to environmentally sensitive areas to the maximum extent practicable, while meeting configuration requirements necessary to provide efficient long-term operation of the facility. The application states that the proposed facility components include Phase I construction of an approximately 1.1 million contiguous square feet (sq. ft) facility developed in a "L" shape that will house a dry warehouse, refrigerated warehouse, return center, food manufacturing facility, and offices, with the ability to expand with future growth, as well as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. fleet maintenance, dispatch and site security). Appurtenant facilities such as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. returning trailer cleanout & and site security) are necessary for operations. A near future Phase II expansion to approximately 1.3 million square feet that includes expansion of the dry warehouse and the temperature controlled warehouse. Phase III - future development/expansion of the distribution center will be constructed in accordance with county zoning which allows for a maximum buildout of 1.7 million square feet.

In designing the Wegmans Distribution Center campus in Hanover County, the application states that the best design and operational practices were considered from all previous and existing Wegmans facilities, and were incorporated resulting in the "L" shaped campus and implementation of cross docking. The Hanover County site was designed to maximize the efficiency of the site, to allow for the least amount of impact to identified surface waters and to limit the areas of disturbance where practicable.

Sections 5.0 and 6.0 of the application materials submitted on September 15, 2020 indicated that the preferred on-site alternative layout was determined to be the LEDPA, while meeting the needs of the proposed development. The preferred on-site alternative layout provides sufficient area to construct the

proposed distribution center in such a way that serves to minimize surface water impacts, avoids encroaching on existing easements, and requires the least amount of cut and fill based on the existing percent slope.

Section 5.4 of the application materials submitted on December 2, 2019 describes an on-site alternative that was considered by the applicant, which would also realize the purpose and need of the project in the required configuration, but would have resulted in impacts greater than the proposed layout, thus also increasing mitigation costs. To reduce impacts, the applicant reconfigured the secondary access road from Ashcake Road.

In order to ensure that impacts to on-site surface waters (including wetlands) are avoided and minimized to the maximum extent practicable, the permittee must describe what specific measures were taken in designing the project to accomplish that. The costs of the measures relative to the project scope are also considered in determining the LEDPA.

Information included in Section 6.0 of the application materials includes on-site techniques that were examined to further minimize impacts, including slope grading, and strict adherence to all state and local erosion and sediment control measures. The fill slopes will be graded to a 3:1 slope. A review of incorporating steeper slopes was analyzed, but given the high level of traffic anticipated for the proposed roadways, 3:1 slopes were utilized for the project in order to safeguard from potential slope failures. They also provide an increased level of safety for vehicles and pedestrians in the event that either leave the travel way. In response to a request for additional information, the applicant also provided information stating that because of flat nature of the site, there is little difference between the footprint of 2:1 slopes vs. 3:1 slopes. In areas where the proposed site grading diverges from the existing grades, tie-in slopes of 3:1 horizontal to vertical have been utilized to tie proposed grades to existing in a stabilized manner. A 3:1 tie-in slope has little erosion potential and alleviates maintenance concerns.

Staff requested an evaluation of a number of different on-site alternatives in the December 10, 2019 meeting. A response memo was received on December 13, 2019, documenting the analysis of access, parking, stormwater management, building footprint, and minimization of secondary impacts. The following summarizes the on-site avoidance and minimization documented in the December 13, 2019 memo.

- The building footprint could not be reduced by adding a vertical level because the proposed building heights are near the maximum allowable height based on municipal and zoning regulations. Additionally, the proposed configuration is the most efficient based on a review of other large scale distribution facilities in the industry and other similar facilities. Using a different layout would mean a less efficient operation and would also require a larger building to be built.
- The parking space allotment is dictated by the required employee parking spaces, as the facility will employ upwards of 700 people upon project completion, as well as the required truck and trailer access and facilities. While not all 700 employees will be working at the same time, during shift changes the parking facility will experience a high volume of traffic. The size of the parking facility is dictated by the number of employees onsite during peak shift change volume. There will be one primary access from Sliding Hill Road.
- Utility crossings have been designed within roadway crossings, where feasible, in order to reduce the number and area of impacts to surface waters. Additionally, the roadway crossings have been

designed to cross perpendicularly to the surface waters and at the narrowest most points feasible. Care has been taken to design roadways, buildings and stormwater facilities so that they do not laterally impact the remaining wetland area located between Impacts 5 and 9A/9B.

- Due to the flat and expansive nature of the proposed site development, storm sewer pipes cannot daylight in the eastern areas of the site without globally raising the site grading in a way that makes earthwork unfeasible. Curb cuts are not desired as they would become quickly overtaxed by the 100% impervious contributing drainage area. Releasing drainage in this manner would likely create a quality compliance problem as curb cuts achieve zero pollutant removal. Additionally, curb cuts would also defeat the primary intent of the curb at this facility, which is to prevent trailers from being backed up into a light pole or the perimeter fence.
- The proposed stormwater facilities have been sized to provide compliance with the minimum requirements of the Virginia Stormwater Management Program and has been sited outside of the on-site jurisdictional wetlands. These requirements include energy balance, channel and flood protection. Additionally, the main stormwater management facility outflow has been designed to maintain and mimic existing drainage conditions to nearby Totopotomoy Creek. There are no other nearby surface waters anticipated to be impacted by proposed construction activities.
- The impervious areas proposed are all necessary for the adequate flow of truck traffic and personnel on-site during working hours. Parking spaces, drive aisles, and curbing is sited at the minimum offsets/spacing needed as directed by the distribution center end user.

Staff also reviewed the potential for secondary impacts to remaining unimpacted surface waters across the site. Due to stormwater requirements, post development flows on site have been reduced, resulting in the potential for secondary impacts due to diversion of storm water at Impacts 4A, 4B, 6, 18B, 20B, and 25B. This has resulted in 1.44 acres of forested wetland and 0.02 acre of jurisdictional ditch to be considered secondarily impacted due to a reduction of hydrology. These impacts are accounted for in the compensation package proposed by the applicant. Stormwater alternatives that were considered in the vicinity of Impacts 6, 18B, 20B, and 25B were to construct curb cuts, however, due to the size of the project and the amount of impervious area associated with a warehouse facility curb cuts were deemed infeasible. Impacts 4A and 4B are a result of a culvert being removed at Impact 3B. Due to the hydraulic nature of the culvert design, it was determined that a negative backwater effect would occur on the adjacent parcel. An alternative proposing a partial flow through a proposed culvert was considered, however the negative impacts to the adjacent parcel would still remain. The current proposed configuration at Impact 3B is the most efficient design to minimize offsite impacts to adjacent parcels.

Additionally, the remaining unimpacted wetlands adjacent to Impact Areas 8A/8B and 12-17 will be monitored to determine if there will be secondary impacts to the remaining wetlands at these locations. Monitoring of the remaining wetland areas will include data collection of hydrophytic vegetation, hydrology, soil samples, and photo documentation. A final wetland monitoring plan will be submitted to DEQ for review and approval no later than 60 days prior to the start of construction.

Staff requested the actual amount of surface waters to remain on-site and the applicant provided a response, which indicates that 15.1 acres of unimpacted surface waters will remain on-site. According to the applicant, the final proposed development plan represents the smallest practicable and best-oriented development that still meets the project's intended purpose and need.

Relevant information regarding the applicant's avoidance and minimization efforts can be found in the application as well as the additional information responses provided on December 13, 2019, December 20, 2019, February 14, 2020, March 12, 2020, September 15, 2020, September 22, 2020, and September 28, 2020.

Based upon staff review, the proposed plan represents the LEDPA and all unavoidable permanent impacts will be adequately mitigated through the proposed compensation plan that is in accordance with statutory and regulatory requirements.

7. Project Impacts:

This proposed permit authorizes the total impact to 14.85 acres of surface waters.

- Permanent fill impacts are to 12.99 acres of palustrine forested (PFO) wetland, 0.23 acre of palustrine emergent (PEM) wetland, and 0.14 acre of jurisdictional ditch.
- Secondary impacts, due to diversion of surface water, are to 1.44 acres of palustrine forested wetland and 0.02 acre of jurisdictional ditch.
- Temporary impacts are to 0.03 acre of palustrine emergent wetland.
- Authorized surface water impacts described under this condition shall be as depicted on the impacts map entitled "Wegmans Distribution Center, Hanover County, Virginia, Wetlands and Waters Impacts Map" dated September 8, 2020, last revised on September 24, 2020, and received October 7, 2020, and drawn by Timmons Group.

Impact Type	Surface Water Type	DEQ-Authorized Impact	Mitigation Ratio	Mitigation Required
		Acres		Wetland Credits
Permanent	Palustrine Forested Wetland (PFO)	12.99	2:1	25.98
	Palustrine Emergent Wetland (PEM)	0.23	1:1	0.23
	Jurisdictional Ditch	0.14	2:1	0.28
	<i>Subtotal</i>	13.36		26.49
Secondary	PFO	1.44	2:1	2.88
	Jurisdictional Ditch	0.02	2:1	0.04
	<i>Subtotal</i>	1.46		2.92
Temporary	PEM	0.03	N/A	N/A
	<i>Subtotal</i>	0.03		
	Total	14.85		29.41

8. Compensation for Unavoidable Impacts:

Permanent forested wetland impacts, emergent wetland impacts, and jurisdictional ditch impacts resulting from fill activities will be compensated at a 2:1, 1:1, and 2:1 ratio, respectively. Secondary

forested wetland impacts and secondary jurisdictional ditch impacts will be compensated at a 2:1 ratio. As compensation for permanent impacts, the permittee shall purchase 29.41 wetland mitigation credit(s). All compensatory mitigation credits shall be purchased from a DEQ approved mitigation bank, an approved in-lieu fee (ILF) program, or a combination thereof as specified below. The bank or program must be authorized and approved by DEQ to sell credits in the area in which the impacts will occur and have credits available (as released by DEQ). Any credit sale shall be in accordance with the approved Mitigation Banking Instrument or ILF Program Instrument. Purchase of required mitigation credits shall occur first through the purchase of available released credits followed by the purchase of advance credits. Multiple banks may be used to fulfill compensation requirements.

Based on the information provided, the jurisdictional ditches on-site are no longer providing functionality with respect to drainage. With this, and due to the adjacency of the jurisdictional ditches to the palustrine forested wetlands on-site, the jurisdictional ditches will be mitigated for at a 2:1 ratio.

The compensation package complies with § 62.1-44.15:21 and § 62.1-44.15:23 of the Code of Virginia.

9. Site Inspection:

DEQ staff, Bryan Jones, attended a site meeting with Timmons Group and RK&K on August 26, 2019. DEQ staff, Bryan Jones, attended a jurisdictional wetland confirmation site visit with Ms. Elaine Holley, of the USACE, Timmons Group, and RK&K on October 16, 2019.

On August 19, 2020, DEQ staff, Bryan Jones, attended a site visit conducted by Corps representatives Ms. Holley, Dr. Herman W. Hudson III, and Mr. Steven VanderPloeg. Matt Neely, with Timmons Group also attended. On August 21, 2020, DEQ staff, Bryan Jones, attended a site visit conducted by Corps representatives Dr. Hudson, and Mr. VanderPloeg. Matt Neely, with Timmons Group also attended. During the August 19th and 21st, 2020 site visits, DEQ observed the field review activities as referenced in the additional information request letter from the U.S. Army Corps of Engineers (Corps), received via email on August 12, 2020. As a result of these site visits, a revised PJD was issued on September 15, 2020 and a Memorandum for The Record (MFR) was received by DEQ on September 24, 2020.

10. Relevant Regulatory Agency Comments:

As part of the application review process, DEQ contacted the appropriate state regulatory agencies. No comments received required a change to the VWP individual permit Part I - Special Conditions. Therefore, the staff anticipates no adverse effect on water quality and fish and wildlife resources provided the applicant adheres to the permit conditions.

Summary of State Agency Comments and Actions

By email/letter dated December 9, 2019, comments were requested from the following state agencies: Virginia Department of Wildlife Resources (DWR) (formerly DGIF), Virginia Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC), and Virginia Department of Health (VDH). Failure to provide comments within 45 calendar days of the DEQ request for comments infers that the agency has no comments on the project activities.

DCR

DCR provided the following comments in a memorandum dated December 18, 2019, and transmitted by email on December 18, 2019:

- According to the information currently in Biotics, natural heritage resources have not been documented within the submitted project boundary including a 100-foot buffer. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.
- DCR concurs with the negative survey results for this project from “Survey for Swamp Pink (*Helonias bullata*), Hanover County, Virginia” prepared on June 17, 2019 by Chris Ludwig, Seedbox Consulting.
- DCR recommends efforts to minimize edge in remaining fragments, retain natural corridors that allow movement between fragments and designing the intervening landscape to minimize its hostility to native wildlife (natural cover versus lawns).
- There are no State Natural Area preserves under DCR’s jurisdiction in the project vicinity. The current activity will not affect any documented state-listed plants or insects.

No response necessary.

Additional comments were requested from DCR on September 17, 2020. DCR provided the following comments in a memorandum dated September 23, 2020:

- According to the information currently in Biotics, natural heritage resources have not been documented within the submitted project boundary including a 100-foot buffer. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.
- DCR concurs with the negative survey results for this project from “Survey for Swamp Pink (*Helonias bullata*), Hanover County, Virginia” prepared on June 17, 2019 by Chris Ludwig, Seedbox Consulting.
- DCR recommends efforts to minimize edge in remaining fragments, retain natural corridors that allow movement between fragments and designing the intervening landscape to minimize its hostility to native wildlife (natural cover versus lawns).
- There are no State Natural Area preserves under DCR’s jurisdiction in the project vicinity. The current activity will not affect any documented state-listed plants or insects.
- Recommends coordination with DWR as this agency has regulatory authority for the management and protection of threatened and endangered species not documented by DCR.

Prior to comments received from DCR on September 23, 2020, staff most recently requested comments from DWR on the proposed project on September 17, 2020. No response necessary for remaining comments received from DCR on September 23, 2020.

DWR (previously DGIF)

DWR provided the following comments to DEQ by email dated January 27, 2020:

- DWR does not currently document any listed wildlife or designated resources under their jurisdiction from the project area. Therefore, DWR does not anticipate adverse impacts upon such species or resources to result from the proposed work.
- DWR recommended conducting any in-stream activities during low or no-flow conditions, using non-erodible cofferdams or turbidity curtains to isolate the construction area, blocking no more than 50% of the streamflow at any given time, stockpiling excavated material in a manner that prevents reentry into the stream, restoring original streambed and streambank contours, revegetating barren areas with native vegetation, and implementing strict erosion and sediment control measures.

The special conditions of the proposed permit address these activities.

- DWR recommended that the permittee avoid and minimize impacts to undisturbed forest, wetlands, and streams to the fullest extent practicable to minimize overall impacts to wildlife and our natural resources. DWR also recommended maintaining undisturbed naturally vegetated buffers of at least 100 feet in width around all on-site wetlands and on both sides of all perennial and intermittent streams.

Staff reviewed the proposed impacts to surface waters and determined those proposed have been minimized to the maximum extent practicable.

- DWR recommended that the stormwater controls for this project be designed to replicate and maintain the hydrographic condition of the site prior to the change in landscape.

Oversight of stormwater management and erosion and sediment control measures is the responsibility of DEQ-Stormwater Management or the locality, if such responsibility has been delegated. Any such requirements will be implemented under the oversight of that program.

- DWR recommended that all tree removal and ground clearing adhere to a time of year restriction protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

This time of year restriction was not included in the proposed permit as it is not associated with a threatened or endangered species. The recommendation was forwarded to the permittee for their consideration.

- DWR recommended coordination with the USFWS regarding potential impacts upon federally Threatened northern long-eared bats associated with tree removal.

The project is being reviewed by the USACE for an individual permit and coordination with the USFWS will occur under federal coordination procedures.

- DWR recommended adherence to erosion and sediment controls during ground disturbance. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and

sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap.

Oversight of stormwater management and erosion and sediment control measures is the responsibility of DEQ-Stormwater Management or the locality, if such responsibility has been delegated. Any such requirements will be implemented under the oversight of that program.

Additional comments were requested from DWR on September 17, 2020. DWR responded via email on September 21, 2020 stating that there are no concerns regarding the proposed changes to the subject project and that the previous project comments remain valid.

VDH

VDH provided the following comments in a memorandum dated December 10, 2019, and transmitted by USPS received on December 13, 2019:

VDH stated no public raw water intakes were found, in the Commonwealth, downstream from the Project Tiger (Wegmans Distribution Center) area.

VDH provided the following comments in an email dated November 10, 2020, in response to the public comment period notification:

- There are no public groundwater wells within a 1-mile radius of the project site.
- There are no surface water intakes located within a 5-mile radius of the project site.
- The project is not within the watershed of any public surface water intakes.
- There are no apparent impacts to public drinking water sources due to this project.

No response necessary.

VMRC

VMRC provided the following comments in a letter dated and transmitted by email on December 16, 2019:

After completion of the JPA review process, a No Permit Necessary determination was issued by the VMRC on December 11, 2019, given that no impacts under their jurisdiction were proposed. As such, the VMRC has no objection to DEQ's issuance of a VWP individual permit.

No response necessary.

11. Riparian Landowner Notification:

Staff notified 41 riparian landowners located adjacent to the impact area and within one-half mile downstream of each distinct impact area by letter dated December 10, 2019. Two responses were received:

1. On December 20, 2019, Ms. Betty Lozano called regarding a potential cemetery on-site; this information was forwarded to the USACE.

2. On February 14, 2020, Ms. Polly Vaughan called asking for the USACE project manager contact name and asked to be notified when the Public Notice is published. She expressed potential concerns regarding stormwater runoff towards her property at GPIN 7798-67-7448.

Notifications of riparian and adjacent landowners were conducted in accordance with DEQ's Guidance Memorandum No. 11-2005 (Revised Local Government, Riparian Property Owner, Adjacent Property Owner or Resident, and General Public Notification Procedures for VPDES, VPSA and VWP Permit Applications and Draft Permits).

12. Public Comment and Public Hearing:

The public notice was published in the Richmond Times Dispatch on March 31, 2020. The public comment period ran from March 31, 2020 to April 30, 2020.

DEQ received 119 comments, 117 from private citizens, 1 from a non-profit organization, and 1 from an attorney representing interested citizens. Of the comments, 3 supported the proposed permit, 115 opposed it, and 1 did not provide an opinion. One-hundred ten commenters requested a public hearing and 53 requested the denial of the VWP individual permit.

As a result of public interest, on May 21, 2020 the DEQ Director authorized a public hearing. A public hearing comment period of 45-days was published in the *Richmond Times-Dispatch* on June 20, 2020 and ended on August 5, 2020. A public hearing was held on July 20, 2020. DEQ received 251 comments, 243 from private citizens, 4 from non-profit organizations, and 3 from attorneys representing the interest of various associated parties. A joint letter opposing the project was submitted by the following signing parties: Protect Hanover, Brown Grove Preservation Group, Chesapeake Legal Alliance, Brown Grove Baptist Church, Virginia Environmental Justice Collaborative, Virginia League of Conservation Voters, Green New Deal Virginia, Sunrise Richmond, Falls of the James Group, Virginia Poor Peoples Campaign, AMMD Pine Grove Project, Clean Water Action, United Parents Against Lead & Other Environmental Hazards; Partnership for Smarter Growth, Virginia Network for Democracy and Environmental Rights, Center for Sustainable Communities, Coalition for Hanover's Future, and Center for Progressive Reform. Of the comments, 4 supported the proposed permit and 247 opposed it.

Comments received during the comment periods opposing the proposed permit contained similar concerns regarding the following:

- Insufficient wetland delineation
- Insufficient analysis for off-site alternatives and LEDPA determination
- Insufficient analysis of secondary impacts to adjacent wetland systems
- Concerns about increased flooding and proper stormwater management from the site
- Concerns regarding historic resources on the proposed site, including graves
- Lack of proposed compensation for impacts to Open Water Jurisdictional Ditches on site
- Inadequate consideration of Environmental Justice issues
- Water quality impacts to downstream waters
- Potential for Threatened & Endangered Species on the proposed site
- Lack of impact analysis on RPA/RMA in accordance with the Chesapeake Bay Preservation Act
- Other concerns including county proffers, traffic congestion, noise pollution, 24/7 operations, etc.

As a result of public comments, the Corps reviewed and ultimately revised the PJD for surface waters at the proposed site. The revised PJD resulted in increases to proposed surface waters impacts on site and compensatory mitigation requirements. Staff also re-evaluated the potential for secondary (hydrology) impacts on site and the determination of an open water exclusion for jurisdictional ditches. Due to these changes, a joint public comment period and hearing was advertised on October 20, 2020 to allow for public comments on the revised proposed permit. DEQ received comments from a total of 262 individuals and organizations. During the hearing, there were 22 speakers, all of whom also submitted written comments.

A summary of comments received during all comment periods and hearings as well as staff responses are provide in **Attachment A**.

13. Special Conditions:

The following conditions were developed to protect instream beneficial uses, to ensure compliance with applicable water quality standards, to prevent significant impairment of state waters or fish and wildlife resources, to provide for no net loss of wetland acreage, and to provide no net loss of functions in all surface waters through compensatory mitigation and monitoring and reporting.

Section A Authorized Activities

Nos. 1-3 addresses the activities authorized by the permit, including impact types and totals.

Section B Permit Term

Nos. 1-2 addresses the permit term and re-issuance process to ensure that all permit conditions are completed.

Section C Standard Project Conditions

- No. 1 addresses the requirement for the minimization of adverse impacts to instream beneficial uses.
- No. 2 ensures that the project will be executed in a manner that limits the disruption of the movement of aquatic life.
- No. 3 ensures that downstream flows will be maintained to protect both instream and off-stream beneficial uses.
- No. 4 ensures the minimization of adverse effects on navigation.
- No. 5 ensures the passage of high flows.
- No. 6 requires maintenance of continuous flow of perennial springs for the protection of instream beneficial use.
- No. 7 ensures that dredging and filling operations will minimize stream bottom disturbances and turbidity.
- No. 8 requires instream activities to be conducted during low-flow conditions to protect instream beneficial uses.
- No. 9 requires that erosion and sediment controls are designed and maintained in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

- Nos. 10 through 12 provide requirements and limitations on the entry of various materials (including concrete, fill, construction and waste material, fuels, lubricants, and untreated stormwater runoff) into state waters.
- No. 13 limits the use of machinery and equipment in surface waters to protect beneficial uses.
- Nos. 14 through 19 require temporary disturbances to surface waters during construction to be avoided and minimized to the maximum extent practicable and the restoration of such temporary disturbances.
- No. 20 prohibits the violation of Water Quality Standards in surface waters as a result of project activities.
- No. 21 requires the identification of all non-impacted surface waters in the vicinity of the proposed activity to prevent unpermitted impacts.
- Nos. 22 through 26 set forth all reporting requirements concerning construction, monitoring, compensation, and restoration as required by current law and regulations.

Section D Installation of Utilities

- No. 1 requires the minimization of disturbance to surface waters and restoration to preconstruction conditions following utility line installation.
- No. 2 sets a 90-day time limit for temporary sidecasting during trench excavation to minimize impacts to surface waters.
- No. 3 provides the requirements for trench construction to avoid the drainage of surface waters.

Section E Road Crossings

- No. 1 provides specifications for access road construction to minimize adverse effects to surface waters.
- No. 2 ensures pipes and culvert construction is conducted in the dry to protect water quality and wildlife habitat.
- No. 3 requires that temporary impacts be restored immediately following construction to minimize impacts to water quality and fish and wildlife resources.
- Numbers 4-7 in this section of the template Special Conditions were not included in the permit because no streams were classified within the project limits.

Section F Stormwater Management Facilities

- No. 1 defines the general requirements for stormwater management facility construction to minimize adverse effects to aquatic resources and provide for long-term aquatic resources protection and enhancement.
- No. 2 provides limits and guidance for maintenance excavation to avoid unpermitted impacts to surface waters.
- No. 3 requires correct draining methods to minimize sedimentation of surface waters.

Section G Project Construction Monitoring and Submittals (Impact Sites)

- Nos. 1 through 6 address monitoring and submittals required for pre-construction, during construction and post-construction for the impact areas on site.

Section H *Compensatory Mitigation*

No. 1 describes the compensatory mitigation required to mitigate for the permitted impacts.

Nos. 2 and 3 describes the hierarchy of credit sources.

No. 4 describes the documentation requirement for the purchase of the required amount of credits.

Section I *Project Wetland Monitoring and Submittals (Remaining Wetlands)*

This section was added to monitor wetland conditions within the remaining wetland areas directly adjacent to Impact Areas 8A/8B, 12, 13, 14, 15, 16, and 17. Nos. 1 through 4 lists the requirements for monitoring of these wetland areas being monitored for secondary impacts and the requirements for the associated report submittals and notifications.

Sections of the template Special Conditions that were not included in the permit are: Projects Involving Stream Modifications, Including Intake/Outfall Structures; Projects Involving a Golf Course; Projects Involving a Marina; Dredging Activities; On/Off Site Creation, Restoration, and/or Preservation Standard Conditions; Wetland Compensation Site Construction Tasks, Monitoring, and Submittals; Stream Compensation Site Construction Tasks, Monitoring, and Submittals.

14. General Conditions:

The general conditions specified in the effective VWP Permit Program Regulation 9VAC25-210 apply to all VWP individual permits.

15. General Criteria (9VAC25-260-20.A):

State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.

Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and substances which nourish undesirable or nuisance aquatic plant life. Effluents which tend to raise the temperature of the receiving water will also be controlled. Conditions within mixing zones established according to 9VAC25-260-20.B do not violate the provisions of this subsection.

16. Staff Findings and Recommendations:

- The proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law, and will protect instream beneficial uses.
- The proposed permit addresses avoidance and minimization of wetland impacts to the maximum extent practicable.
- The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.

- The proposed permit conditions address no net loss of wetland acreage and no net loss of functions in all surface waters, through compensatory mitigation via the purchase of wetland credits and reporting.
- The proposed permit reflects the required consultation with and full consideration of the written recommendations of VMRC, VDH, DCR, and DWR.

17. Action by the State Water Control Board

[ADD SWCB ACTION]

DRAFT

**United States Army Corps of Engineers
Norfolk District Regulatory Office
Southern Virginia Regulatory Section**

Memorandum for The Record

Corps Application Numbers:

The earliest remaining reference to this project area (described below) is 92-7374-81. This record indicates that the United States Army Corps of Engineers Regulatory Branch (Corps) Project Manager (PM) was Dave Ramsey and that an action may have been completed in 1992. The second remaining reference to this project area is 95-E0597 (ORM #NAO-1995-00591) which indicates the Corps PM was Elaine Holley (Figure 1). During this time the Norfolk District Corps used what was internally known as the Tracker Database to store and track Corps actions. The current request is stored in the OMBIL Regulatory Module (ORM) database. The current request is stored as NAO-2012-02369, which has been used with this project area since Nov 30, 2012. The Corps representative Todd Miller was the PM for this project from November 30, 2012 till November 2, 2017. Corps representative Elaine Holley has been the Corps PM since November 2, 2017.

VMRC Application Number:

19-V2036 - The VMRC issued a no-permit required letter on December 10, 2019 in reference to the proposed development activities within the project area described below.

Current Property Owners:

Air Park Associates, L.P.
c/o Phillip W Dean
2301 Wadebridge Road
Midlothian, VA 23113
pwdean2@comcast.net

Current Agent:

Timmons Group
c/o Matt Neely
1001 Boulders Parkway
Suite 300
Richmond, VA 23225
804-200-6369
matt.neely@timmons.com

RK&K LLP
c/o Richard Wiley
c/o Malachi Mills
2100 East Cary Street
Suite 309
Richmond, VA 23223

Permit ID: 92-02297 Status: Closed Find Mode: [v]
 Project Name: Air Park Associates Location: Section 404 only
 Permit Type: Jurisdictional Determination Permit Owner: Holly, Elmer ASH EVRS

Permit Applicant:
 Air Park Associates, L.P.
 c/o Robert Cox
 701 E. Boyd Street
 Richmond, Virginia 23219

Agent:
 Hirschler, Fleischer, Wenberg, Cox
 Post Office Box 500
 Richmond, Virginia 23218-0500

Home: [] Work: [] Fax: []
 E-mail: [] Text: (804) 771-9547 Web: []

Delimitation expires: on 12-17-95 - Extend
 Delimitation Confirmation: []

T.E. Species Check Permitted
 Previously confirmed by Dave Ramsey-92-337a
 If revised delimitation confirmed: []

Location: Ashbake Road and 57den Hill Road intersection, Ashbake Va.
 Latitude: [] Longitude: []

Locality: Hanover County State: [] Latitude: 374230
 Waterway: Topoonly Longitude: 772500
 Quad Sheet: Yellow Towers Arrival Phase: []
 Critical Habitat: []

Actions	Num	Qty	Date	Days	Delay	TES?	Add Impact?
Received Pre-Application	1		12 Jul 95				
Assigned to PM	1		17 Jul 95				
Site Visit, Pre-Application	1		9 Aug 95				
JD-Field	1		9 Aug 95				
Application Complete	1		28 Aug 95				
JD-Office	1		29 Aug 95				
Issued, Confirmation of JD	1		29 Aug 95				
Received Pre-Application	1		23 Jun 00				
Application Complete	1		7 Sep 00				
Issued, Confirmation of JD	1		7 Sep 00				
Project Closed Unknown	1		7 Sep 00				
JD-Field	1		7 Sep 00				

Actions	Num	Qty	Date	Days	Delay	TES?	Add Impact?
Application Complete	1		7 Sep 00				
Issued, Confirmation of JD	1		7 Sep 00				
Project Closed Unknown	1		7 Sep 00				
JD-Field	1		7 Sep 00				
JD-Office	1		7 Sep 00				
Received Pre-Application	1		26 Apr 05				
Assigned to PM	1		26 Apr 05				
Application Complete	1		26 Apr 05				
JD-Office	1		8 Jun 05				
Issued, Confirmation of JD	1		8 Jun 05				
Project Closed Pre-Application	1		8 Jun 05				
Project Closed Unknown	1		9 Jun 05				

Figure 1. Corps Tracker Database screenshot.

Current Property Owner Legal Representation:

Hirschler Fleischer
 c/o Paul Davenport
 c/o James Theobald (Member of Air Park Associates)
 2100 East Cary Street
 Richmond, VA 23223-7078
 804-771-9500

Other Interested Parties:

Applicant listed in JPA:
 Hanover Economic Development Authority (EDA)
 Mr. E. Linwood Thomas IV
 8200 Center Path Lane
 Mechanicsville, VA 23116

Applicant Listed on the Public Notice:

Mr. Doug Viets
 Wegmans Food Markets, Inc.
 P.O. Box 30844
 Rochester, NY 14603-0844

Virginia Department of Environmental Quality (VADEQ)
Bryan Jones
Virginia Water Protection Program
4949-A Cox Road
Glen Allen, VA 23060
804-527-5074
Bryan.Jones@deq.virginia.gov

Location:

The approximately 217.3-acre project area is known as Hanover Air Park. The project area is located at the southwest corner of the intersection of Sliding Hill Road and Ashcake Road in Hanover County, Virginia.

Coordinates: 37.711435, -77.423739

The total project area consists of all or portions of 21 separate tax parcels that are owned by Airpark Associates (Figure 2).

Parcel ID (GPIN) (Obtained from Hanover County Parcel Search and Mapping Application – Accessed 9-4-20):

7798-54-5903
7798-45-3554
7798-44-0937
7798-44-0663
7798-44-2350
7798-43-4904
7798-53-1614
7798-43-8505
7798-43-4481
7798-35-4750
7798-35-1840
7798-35-3160
7798-35-0225
7798-25-6471
7798-25-1001
7798-24-4811
7798-24-6569
7798-24-8382
7798-34-2121
7798-33-3765
7798-33-9427



Figure 2. Parcel Map submitted to Corps in 2019. The Corps believes the project area shown in red has been revised to exclude portions of 7798-32-4765 (Owned by Lowe, Riley B Revocable Trust and Lowe, Helen F Revocable Trust). Additionally, the project area was revised on December 10, 2019 to include the easement between 7798-35-3160, 7798-35-4750 and properties to the east.

Waterway:

The southern and western portions of the project area drain to the south to Totopotomay Creek (A2 – Tributary). Totopotomay Creek drains into the Pamunkey River (TNW), which flows to the York River (TNW), which drains into the Chesapeake Bay (TNW) and the Atlantic Ocean (TNW). Eastern portions of the project area drain to Kersey Creek (A2 – Tributary). Kersey Creek drains to Crump Creek (A2- Tributary) which drains into the Pamunkey River (TNW).

HUC: 02080106 (Pamunkey Watershed)

USGS Quad: Yellow Tavern

Comments:

This Memorandum for the Record (MFR) will focus on site history and in particular the numerous wetland delineations performed and confirmed within the project area referenced above. This MFR will not address development plans proposed for this project area. These development plans have been referenced as ‘Project Tiger – Airpark Site’ and ‘Wegmans Distribution Center Project’ previously. This comment section begins with a general description of the project area and will proceed chronologically through Corps actions associated with the project area.

General Description of the Project Area

Currently, the project area is surrounded by agricultural land, forest land, light/medium residential developments, the Hanover County Municipal Airport, and industrial/commercial development. Ashcake Road runs east/west along the northern portion of the project area while Sliding Hill Road runs southwest/northeast along the east and south portions of the project area (Figure 3). The project area is currently undeveloped and wooded. There is a cleared portion of woods in the middle of the project area that follows an existing linear easement.

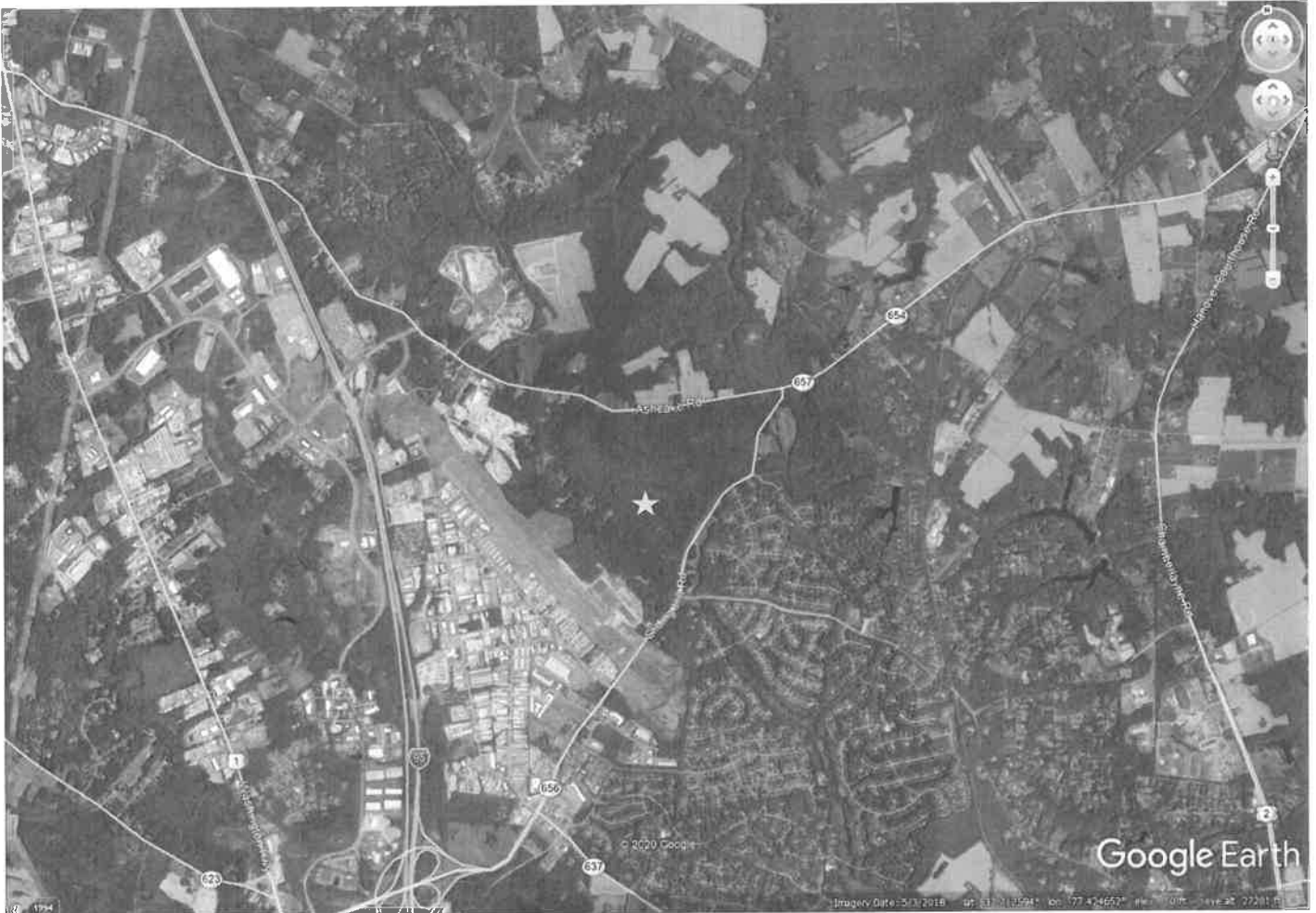


Figure 3. General project location east of Hanover County Municipal Airport

The project area consists of generally flat topography ranging from topographic highs of approximately 204 feet above mean sea level (AMSL) in the west central portion of the site sloping downward in all directions to topographic lows of approximately 185 feet AMSL along the western site boundary (Figure 4, Figure 5, Figure 6).



Figure 4. Digital elevation map. The red boundary approximates the project area. The cool colors (blue/greens) represent topographic lows, while the warm colors (yellow/red) represent areas of higher elevation.

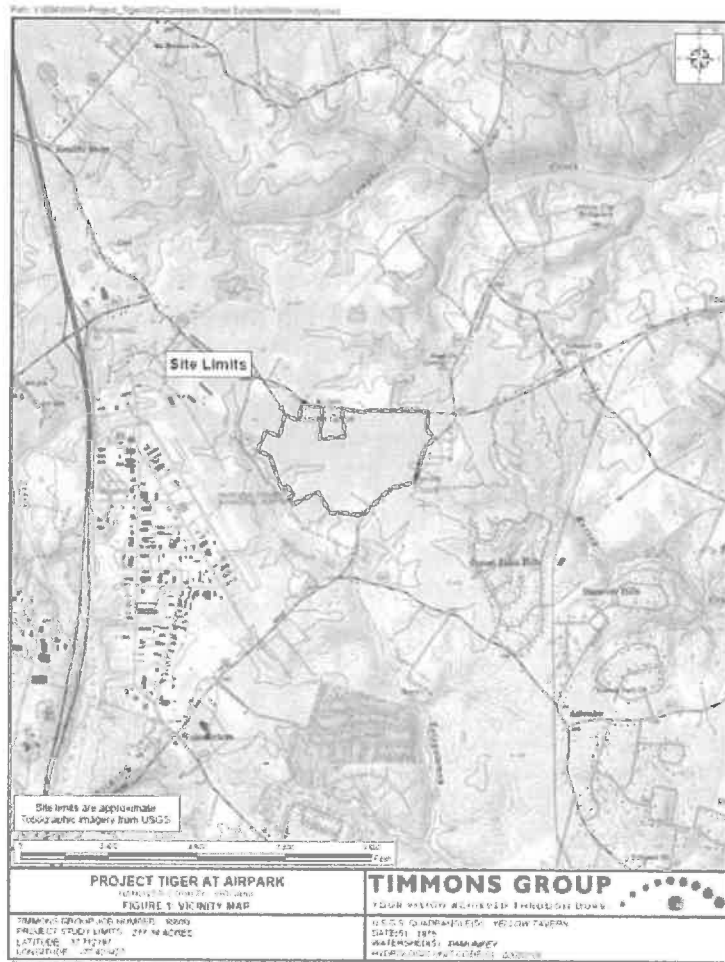


Figure 5. United States Geologic Service (USGS) Yellow Tavern Topographic Map (1975).

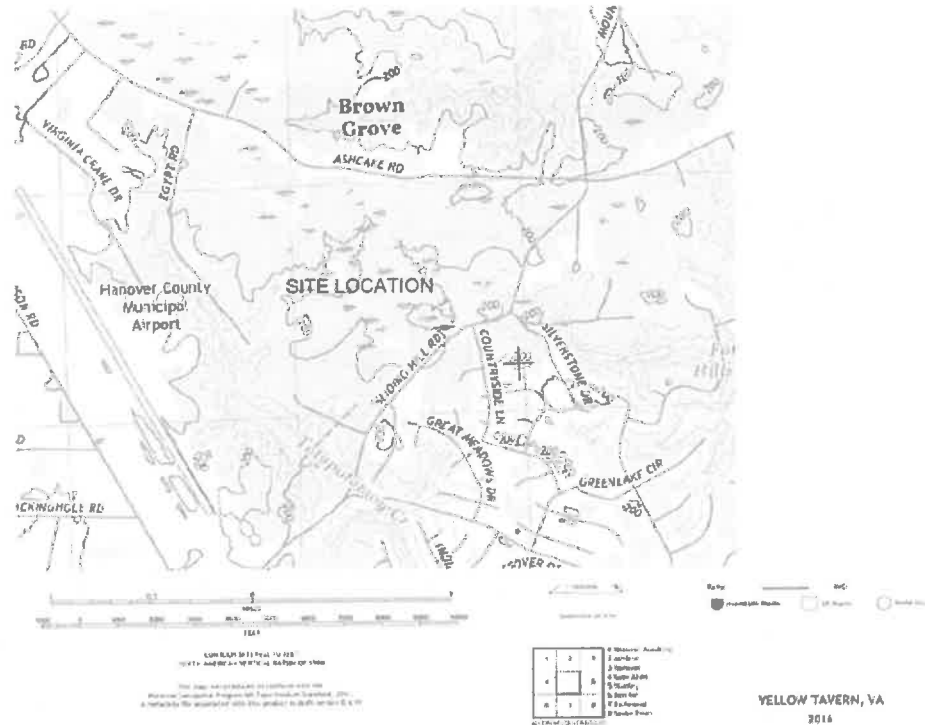


Figure 6. USGS Yellow Tavern Topographic Map (2016).

The soils underlying the project area consisted of hydric and non-hydric soils as determined by the United States Department of Agriculture (USDA) National Resource Conservation Service (NRCS) (Figure 7). The surrounding area consisted of similar soil types (Figure 8). The hydric rating of these soil types is shown in Figure 9.

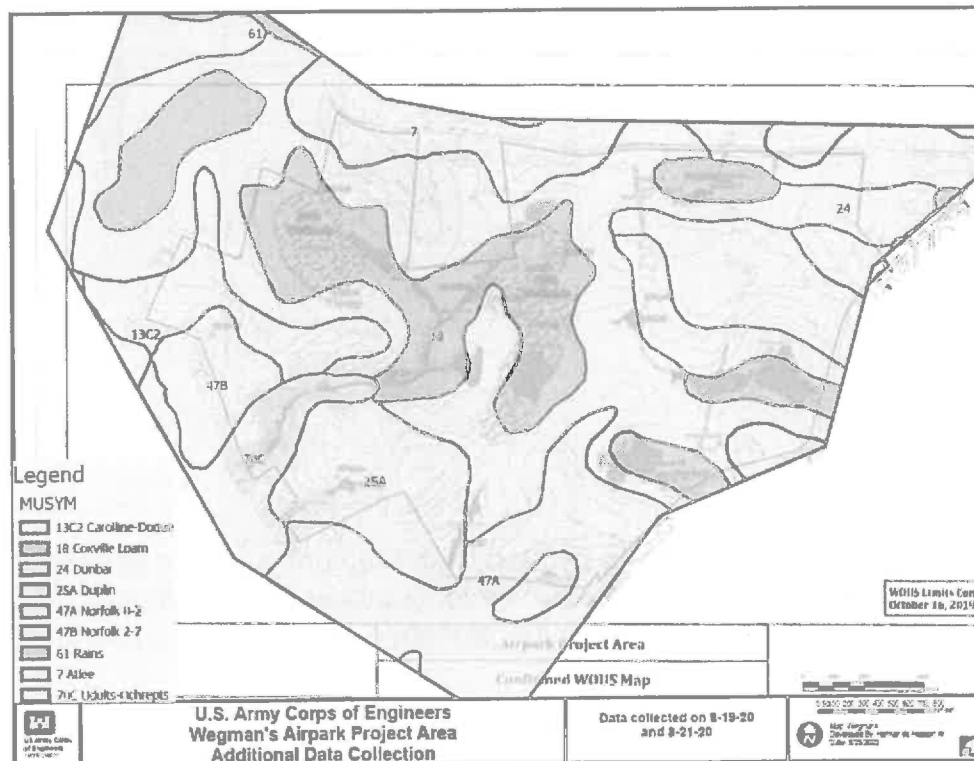


Figure 7. NRCS USDA mapped soil series displayed over the 'Airpark Project Area Confirmed WOUS Map' (October 16, 2019).

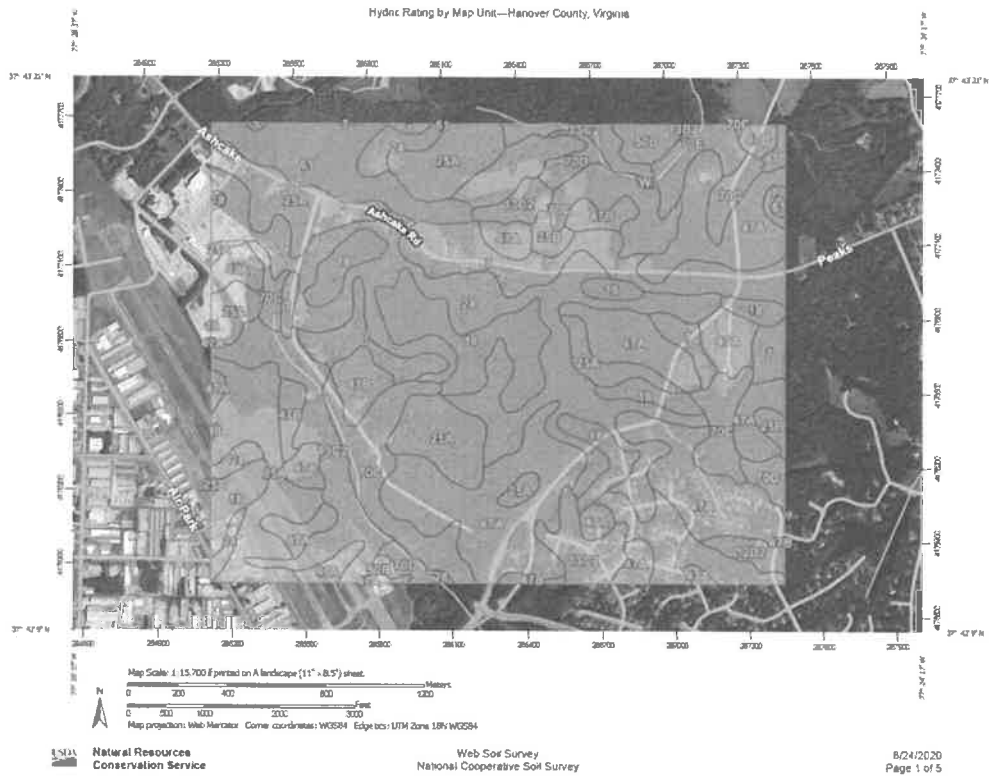


Figure 8. USDA NRCS mapped soil types surrounding the project area.

Map unit symbol	Map unit name	Rating
7	Albee loam, 0 to 4 percent slopes	2
12D	Caroline fine sandy loam, 15 to 25 percent slopes, eroded	6
13B2	Caroline-Dogue complex, 2 to 7 percent slopes, eroded	6
13C2	Caroline-Dogue complex, 7 to 15 percent slopes, eroded	6
18	Coxville loam	5B
24	Dunbar fine sandy loam	1
25A	Duplin fine sandy loam, 0 to 2 percent slopes	2
25B	Duplin fine sandy loam, 2 to 7 percent slopes	2
28	Fluvaquents, nearly level	00
35B	Helena-Cotfax complex, 2 to 7 percent slopes	7
47A	Norfolk fine sandy loam, 0 to 2 percent slopes	1
47B	Norfolk fine sandy loam, 2 to 7 percent slopes	2
50B	Orangeburg-Faceville fine sandy loams, 2 to 7 percent slopes	1
61	Rains fine sandy loam	6E
70C	Udults-Ocovepts complex, steep	2
70D	Udults-Ocovepts complex, moderately steep	2
70E	Udults-Ocovepts complex, steep	2
W	Water	0

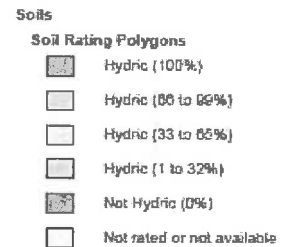


Figure 9. USDA NRCS Hydric Rating by Map Unit. Map unit symbols correspond with Figure 8. The historic USDA NRCS Soil County Survey for Hanover County Virginia (1980) closely resembles the current soil survey but does indicate the presence of a drainage system bisecting the project area (Figure 10).



Figure 10. USDA NRCS County Soil Survey Hanover County VA (1980). Red star indicates potential historic drainage system within the project area.

The United States Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) Map indicates the presence of numerous Class and Subclasses of Palustrine Forested Wetlands (PFO), Palustrine Emergent Wetland (PEM), and Palustrine Unconsolidated Bottom (PUB) wetlands within the project area and within the immediate vicinity (Figure 11).



Figure 11. USFWS NWI map.

1992

The earliest remaining Corps records for this site are a potential jurisdictional determination (JD) completed by Corps PM Dave Ramsey in 1992 (Figure 1). No paper or electronic records remain from this confirmation.

During this time until following the RAPANOS court decision (Decided June 19, 2006), there was no distinction between a Preliminary Jurisdictional Determination (PJD) and an Approved Jurisdictional Determination (AJD). See Regulatory Guidance Letter No.16-01 for distinction between PJDs and AJDs. Therefore, all JD's issued before 2006-2007 time frame were confirming the Corps geographic jurisdiction over waters of the United States (WOUS) as defined in the Clean Water Act (CWA). Following this time period, PJDs issued were only confirming the presence and boundaries of aquatic resources that the Corps may have geographic jurisdiction over.

1995

Based on records from the Corps Tracker Database (predecessor to current ORM database – See Figure 1), a Preapplication request for a JD was received July 12, 1995 and the request was assigned to Corps PM Elaine Holley. This request was to extend the expiration date of the 1992 JD (re-confirmation). Ms. Holley conducted a site visit on August 9, 1995. This site visit resulted in alteration to the wetland delineation map. The revised wetland delineation map was confirmed by Ms. Holley on August 29, 1995 through issuance of a JD. Around this time period, Ms. Holley performed additional site visits with students from Randolph Macon as part of the Environmental Science program. The only remaining physical record from 1995 is a copy of a hand drawn site map depicting wetland boundaries, wetland flags, contour lines, property boundaries, roads, and soil boundaries (Figure 12). It is unclear if this is the figure that was confirmed by the Corps or a teaching tool for Ms. Holley's students.

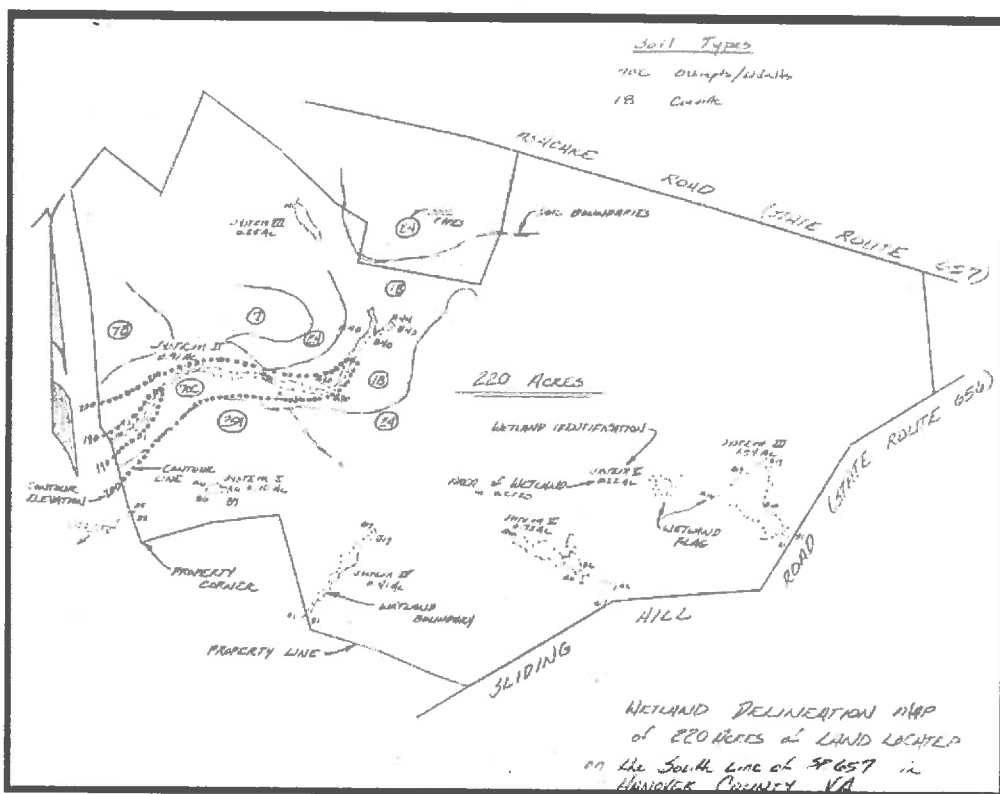


Figure 12. Hand drawn site map from 1995.

2000

Based on the information from the Tracker Database (Figure 1), a wetland delineation was confirmed on September 7, 2000 through issuance of a JD. The records indicate that a site visit did not take place to confirm the wetland boundaries. There are no physical or electronic records from this time period.

2005

Based on the information from the Tracker Database (Figure 1), a wetland delineation was confirmed on June 8, 2005 through issuance of a JD. The records indicate that a site visit did not take place to confirm the wetland boundaries. There are no physical or electronic records from this time period.

2006-2007

While no Corps actions took place during this time period, it is important to note that based on the historic aerial images, it appears that trees from portions of the project area were selectively harvested (thinned) (Figures 13 and 14). This thinning occurred between May 2006 and January 2007. These aerial images show the location of trails (often called skidder trails) that were likely constructed as a result of the forestry operation (Figure 15). Several of these skidder trails were encountered during subsequent field visits. Preliminary investigation of the skidder trails suggests that they may have been constructed in existing drainage features. Subsequent investigation would be necessary to determine if these skidder trails altered the hydrology of these wetland systems.



Figure 13. May 2006 aerial image of project area. Note the intact forest across much of the site.



Figure 14. January 2007 aerial image of the project area. Note the decreased forest cover and presence of skidder trails.



Figure 15. May 2008 aerial image depicting numerous skidder trails throughout the project area. Note the decreased forest cover during the early growing season.

2010

The letter from James W. Theobald (Hirschler Fleisher) dated August 24, 2020 references a Corps confirmed JD during this time period. The remaining Corps records do not indicate a JD was confirmed during this time.

2012-2013

On or about November 30, 2012 - Corps Received a request to confirm wetland boundaries within the project area. Richard Wiley (RK&K) completed Wetland Determination Data Forms on October 19, 2012 in support of the delineation. Mr. Wiley used the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Interim Version) (EMP Supplement). The Corps has retained these Data Forms.

The project area is located ~4 miles to the east of the EMP Supplement's geographic boundary and is within the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (AGCP Supplement). Based on the site location and site conditions the AGCP Supplement is appropriate to use for this project area.

The data points collected for this delineation effort focused on the wetland areas that had been previously identified. This approach resulted in a lack of data points collected from large portions of the project area. Specifically, there is a lack of data collected around shallow depressional features that are visible on historic aerial imagery and on NWI maps.

On or about December 13, 2012 – Todd Miller (Corps PM) performed a site visit. According to the Antecedent Precipitation Tool (APT), this site visit occurred during the wet season however, precipitation conditions during this time were drier than normal (Figure 16).

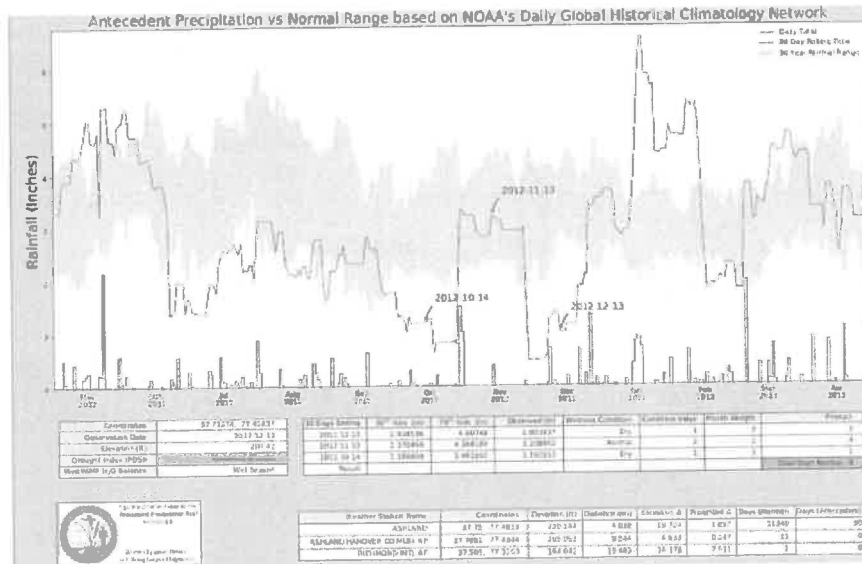


Figure 16. Results from the APT for the project area on December 13, 2012. One additional data point (WT-8) was collected by RK&K on December 14, 2012 that revised wetland 8's boundary.

On or about January 11, 2013 – PJD Issued

The Corps does have a record of the PJD Cover letter or PJD Form and the confirmed exhibit (Figure 17).

The PJD cover letter states "The map entitled "Wetland Assessment Map", by RK&K without a date and Corps date stamped as received December 21, 2013 (copy enclosed) provides the location of waters and/or wetlands on the property listed above". This statement correctly references Figure 17 below.

The PJD cover letter states "The basis for this delineation includes application of the Corps' 1987 Wetland Delineation Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region". This statement in the PJD letter is incorrect. The basis for this delineation was the EMP supplement.

All delineations performed prior to June 1, 2012 would have used 1987 manual procedures and would have used the 1988 National Wetland Plant List (NWPL) wetland indicator statuses. Using current methodology and indicator statuses may have affected the delineations prior to this point. Specifically, *Pinus taeda* and *Ilex opaca* indicator statuses changed from FAC- to FAC and from FACU to FAC respectively during the 2012 revisions. These changes along with addition of new indicators in the regional supplements (e.g. 18 new wetland hydrology indicators) may account for additional wetland area identified in subsequent delineations.

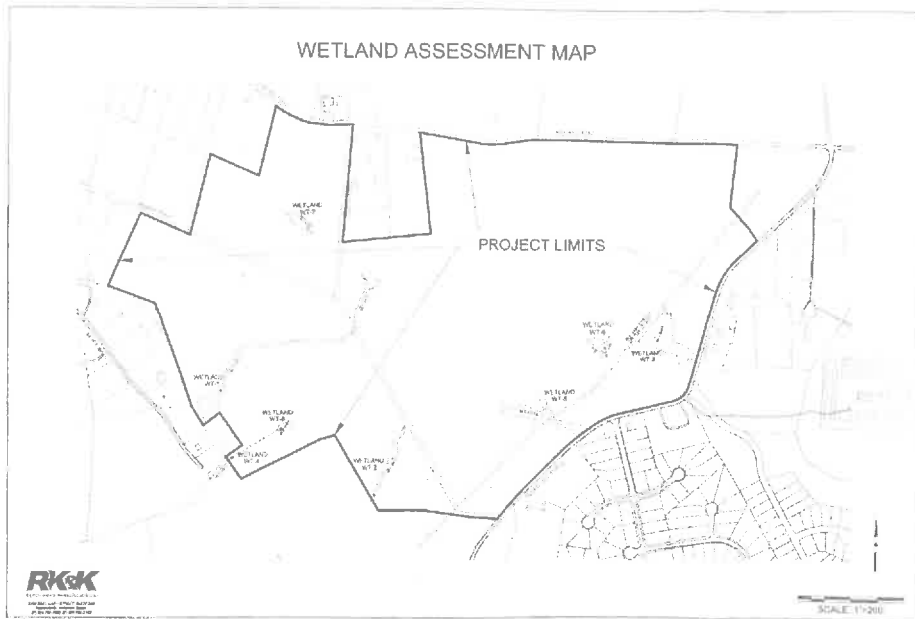


Figure 17. Wetland delineation exhibit confirmed on or about January 11, 2013.

2017-2018

November 22, 2017 – RK&K scientists performed a field visit. Below are notes provided to the Corps regarding this site visit in the December 4, 2017 preapplication. It appears no new Data Forms were submitted with this preapplication.

WOUS Re-evaluation Airpark/Sliding Hill Road:

On November 22, 2017 RK&K scientists revisited the areas demarked as wetlands and streams on the property known as the Airpark/Sliding Hill Road.

During the inspection, it was found that Wetland 6 and 3 have formed a hydrological connection. The connection is a PFO wetland. The total area added to these features is 5171 sq ft (0.119 ac). Wetland 7 has extended to the unpaved road and is an additional 3574 sq ft (0.082 ac). An additional part of Wetland 7 was found to the southeast and is 2580 sq ft (0.059 ac).

The additional acreage on site totals 11,352 sq ft (0.26 ac)

Based on the lack of new data submitted with this request and lack of retained records, it was assumed that the applicant was relying on the data collected in 2012 using the EMP supplement.

March 20, 2018 – PJD Issued.

This PJD letter states “The enclosed undated revised map prepared by RK&K entitled “Wetland Assessment Map,” received on 3-20-18, without a revision date and on file in this office provides the accurate location of waters and wetlands on the property listed above.” This statement correctly references Figure 18 below.

The PJD letter also states, “The basis for this delineation includes application of the Corps’ 1987 Wetland Delineation Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region”. This statement in the PJD letter is incorrect. The basis for this delineation was the EMP supplement.

The PJD Form (attached to the PJD cover letter) mistakenly reports the completion date for the PJD as March 19, 2018.

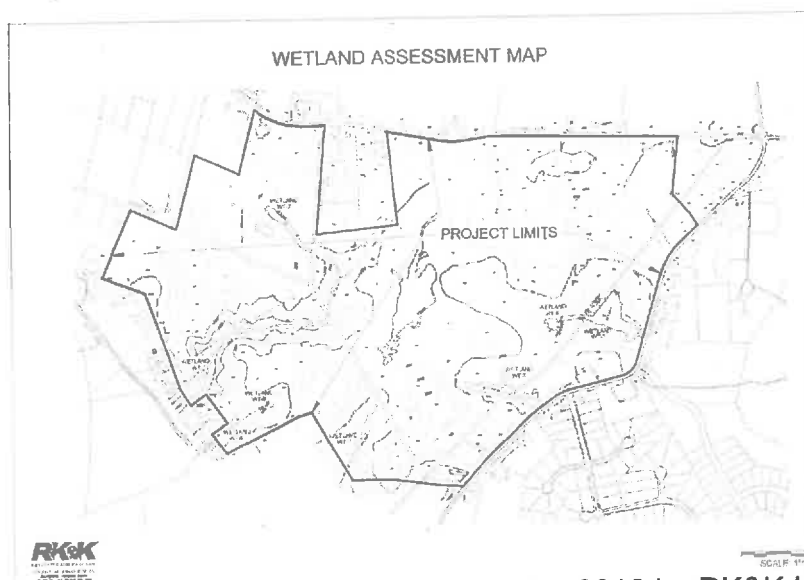


Figure 18. "Wetland Assessment Map" received on March 20, 2018 by RK&K LLP and confirmed on March 20, 2018.

2019-2020

On or about July 23, 2019 Mr. Cox requested a copy of the latest PJD for the project area from Ms. Holley.

July 31, 2019 - Preapplication meeting attended by Ms. Holley and representative from Timmons and the EDA to discuss a potential plan for the site and the existing PJD.

August 28, 2019 – Bryan Jones (VADEQ) performed a site visit. Ms. Holley was unable to attend. Mr. Jones determined that there may be more wetlands present within the project area calling into question the March 20, 2018 existing PJD (which was reliant upon data collected in 2012).

October 11, 2019 – Date of Data Form collection. Due to the concern from VADEQ about the accuracy of the March 20, 2018 PJD, RK&K performed a wetland delineation on or around October 11, 2019 and collected new data. This delineation effort used the methods in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). The location of these data points is shown on Figure 20 (Unlabeled) and Figures 21-24 (labeled). These data provide information about portions of the site that was not sampled in the October 2012.

The APT results suggest that this data was collected during the Wet Season, however, precipitation conditions were 'Drier than Normal' and the Palmer Drought Severity Index (PDSI) rating was Mild Drought (Figure 19).

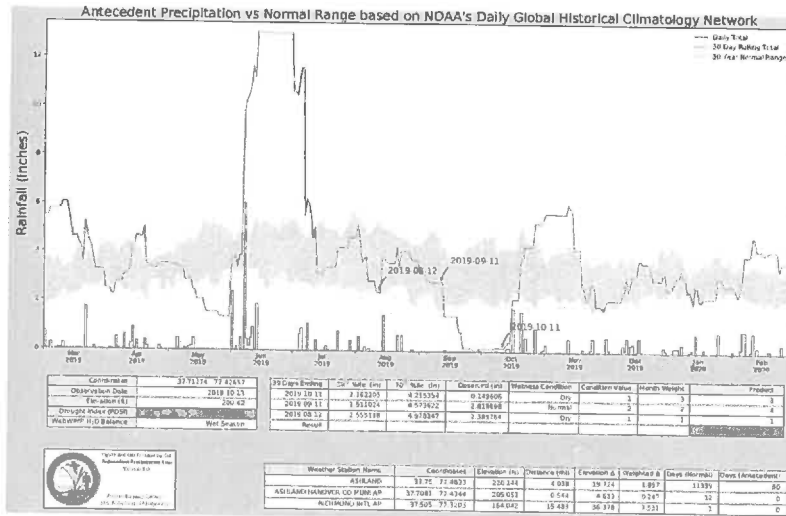


Figure 19. APT results from October 11, 2019 when data forms were collected.

October 16, 2019 – Site visit performed and attended by Ms. Holley (Corps), Bryan Jones (DEQ), Malachi Mills (RK&K), Travis Comer, Sarah Sanderlin, and Eli Wright. This site visit occurred in drier than normal precipitation conditions despite rainy conditions during the site visit. The purpose of this site visit was to review the delineation performed by RK&K including the data collected in October 2019 and review a draft wetland delineation exhibit (Figure 20, and Figures 21-24).

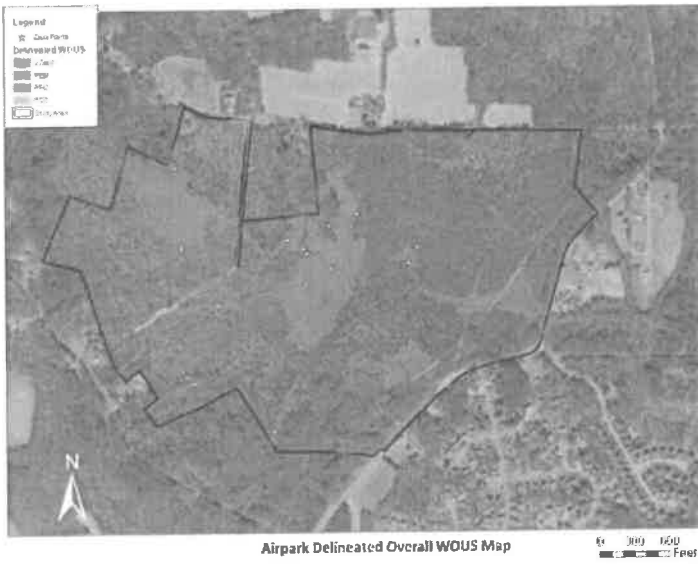


Figure 20. Overview of project area. Draft version for field confirmation by RK&K.

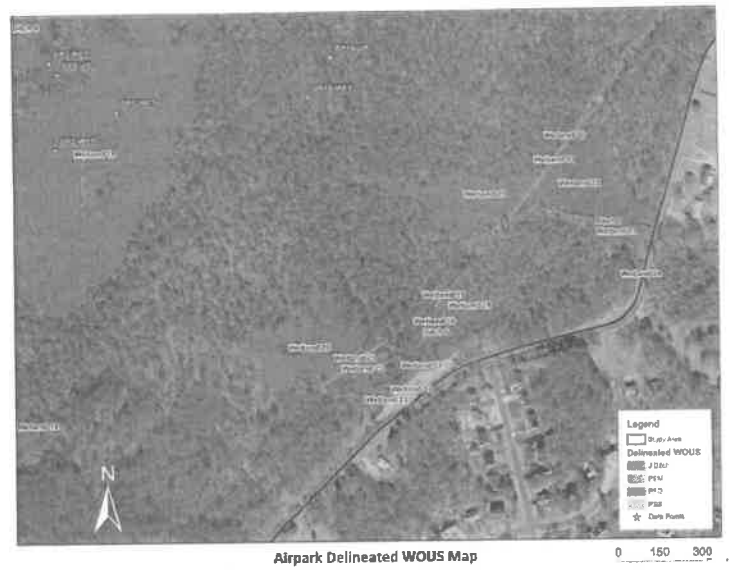


Figure 23. Overview of project area. Draft version for field confirmation by RK&K.

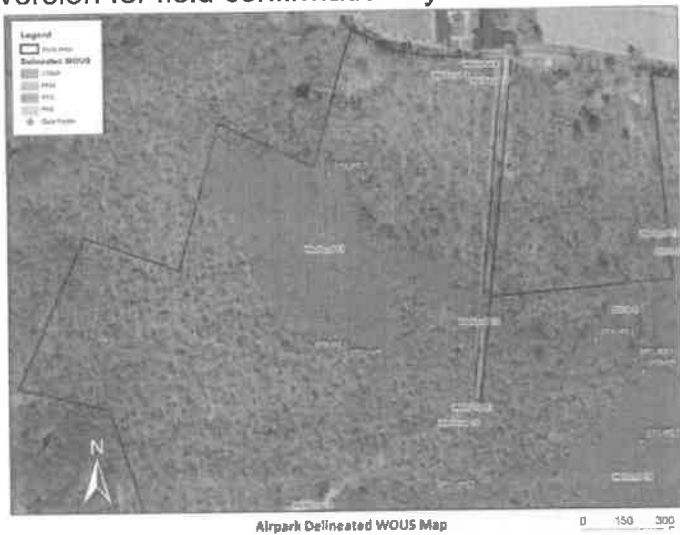


Figure 21. Overview of project area. Draft version for field confirmation by RK&K.



Figure 24. Overview of project area. Draft version for field confirmation by RK&K.

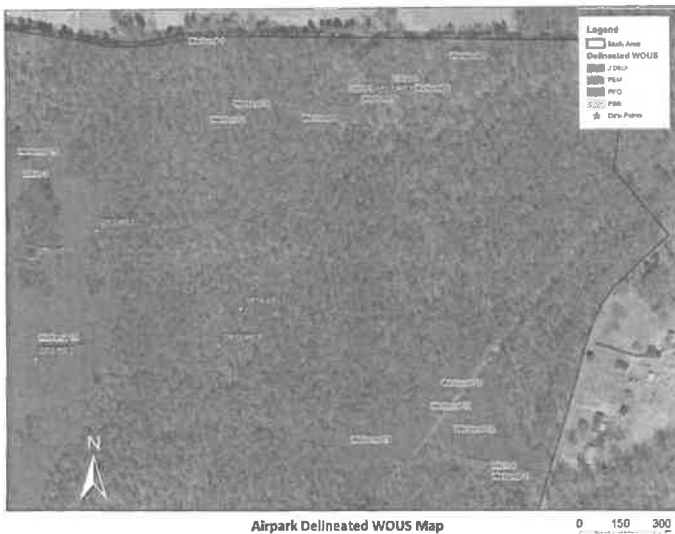


Figure 22. Overview of project area. Draft version for field confirmation by RK&K.

The wetland naming convention will follow the above Figures 21-24. The naming convention changes with the final revision.

This field investigation resulted in changes to the boundaries of several wetlands, elimination of several wetlands, and the decision that Wetland 11 and Wetland 14 were wetland/non-wetland mosaics. These modifications are represented in several revisions to the wetland delineation exhibit (Figure 25-27).

Wetlands 8, 9, 10, 12, 13, 35 were eliminated from the wetland delineation exhibit. These wetlands were eliminated because these areas did not meet one or more wetland parameters.

Wetland 11 was estimated to contain 30% wetlands/70% uplands. Wetland 14 was estimated to contain 10% wetlands/90% uplands and to contain a "100% Wet" wetland within the boundaries. The protocol in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Regions (Version 2.0) for determining the percentage of wetlands vs. uplands was not followed. The percentage of wetlands/uplands within the mosaic was agreed upon the field by the representatives attending based on visual observations.

Wetland 11 boundary was reduced in size because this area did not meet one or more wetland parameters.

These initial revisions were drawn on Figure 25. A more formalized revisions is shown on Figure 26.

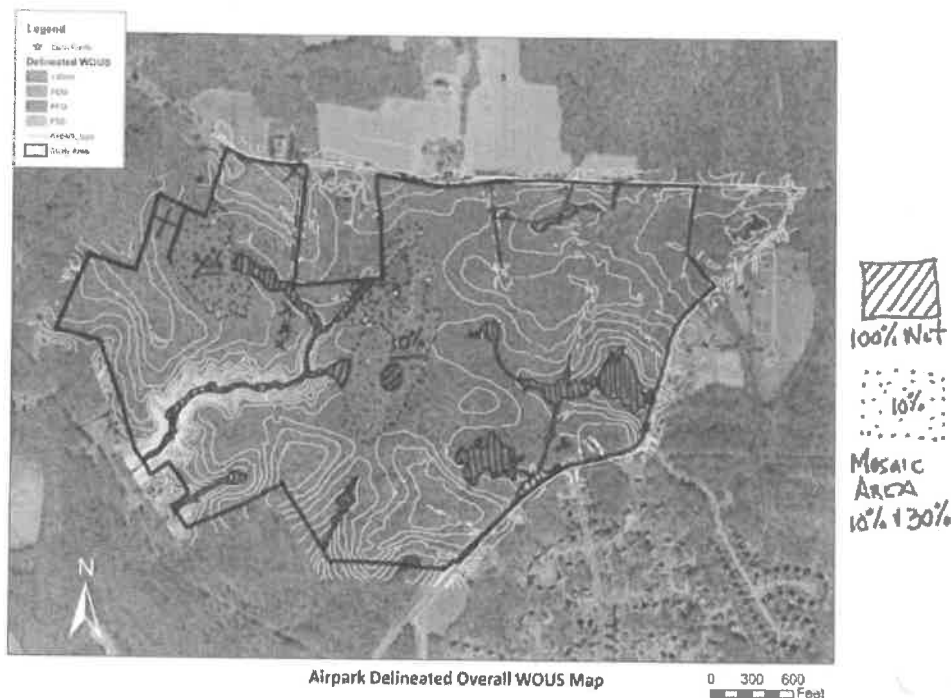


Figure 25. Initial revision to wetland delineation based on October 16, 2019 field visit and discussion. 'X' indicated wetlands that were removed or whose boundary was relocated.

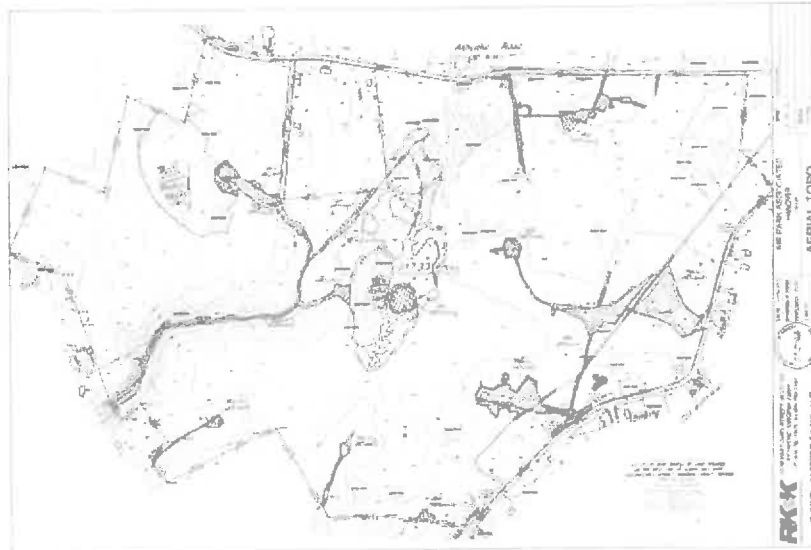


Figure 26. Date: October 16, 2019.

The boundaries of Wetland 11 and Wetland 14 were reduced further, while the size of the “100% Wet” wetland within Wetland 14 was expanded (Figure 27). Wetland 15 was reverted from 10% wetland/90% upland to “100% Wet” (Figure 27).

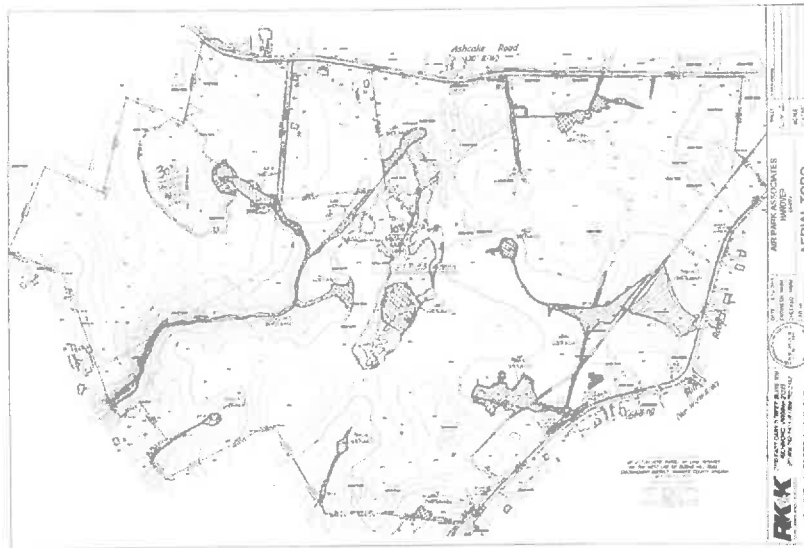


Figure 27. Date: October 16, 2019

The location of the boundaries for Wetland 11 and 14 were reduced from the initial draft (Figure 20) to the confirmed wetland delineation exhibit (Figure 33) because these boundaries closely match the mapped boundaries of Coxville Loam (Hydric Rating 88) within the project area. Figure 7 illustrates this close matching by overlaying NRCS mapped soil layers with the Figure 33. The mapped soil surrounding these wetlands is Dunbar fine sandy loam (Hydric rating of 1). Coxville Loam is described as a poorly drained soil with a BEg horizon starting at 11 inches with a texture of sandy clay loam, which transitions to a sandy clay below. This increase in clay content is shown in Figure 28, was observed in the field, and persisted for 4 feet below the soil surface. This increase in clay content appears to reduce precipitation infiltration causing a perched water table during certain parts of the year. The surrounding soils lack this thick clay layer. These soil conditions would lead to development of all three wetland parameters in these areas.

In addition to the soil conditions, these boundaries closely match the very gradual elevation changes within the site.

Data collected at DP-2 by RK&K in October 11, 2019 indicate that all three parameters were satisfied, and the area was a wetland (Figure 30-32). DP-2 was in an area mapped as Dunbar fine sandy loam (non-hydric), which can contain inclusions of Coxville (hydric) (Figure 29). Based on subsequent observations of this area it appears that DP-2 may have been collected in a hydric soil inclusion and does not provide an appropriate representation of the surrounding area. Additionally, non-hydric inclusions were also observed within Wetland 14 suggesting that this is transitional area between two soil types (Figure 33).

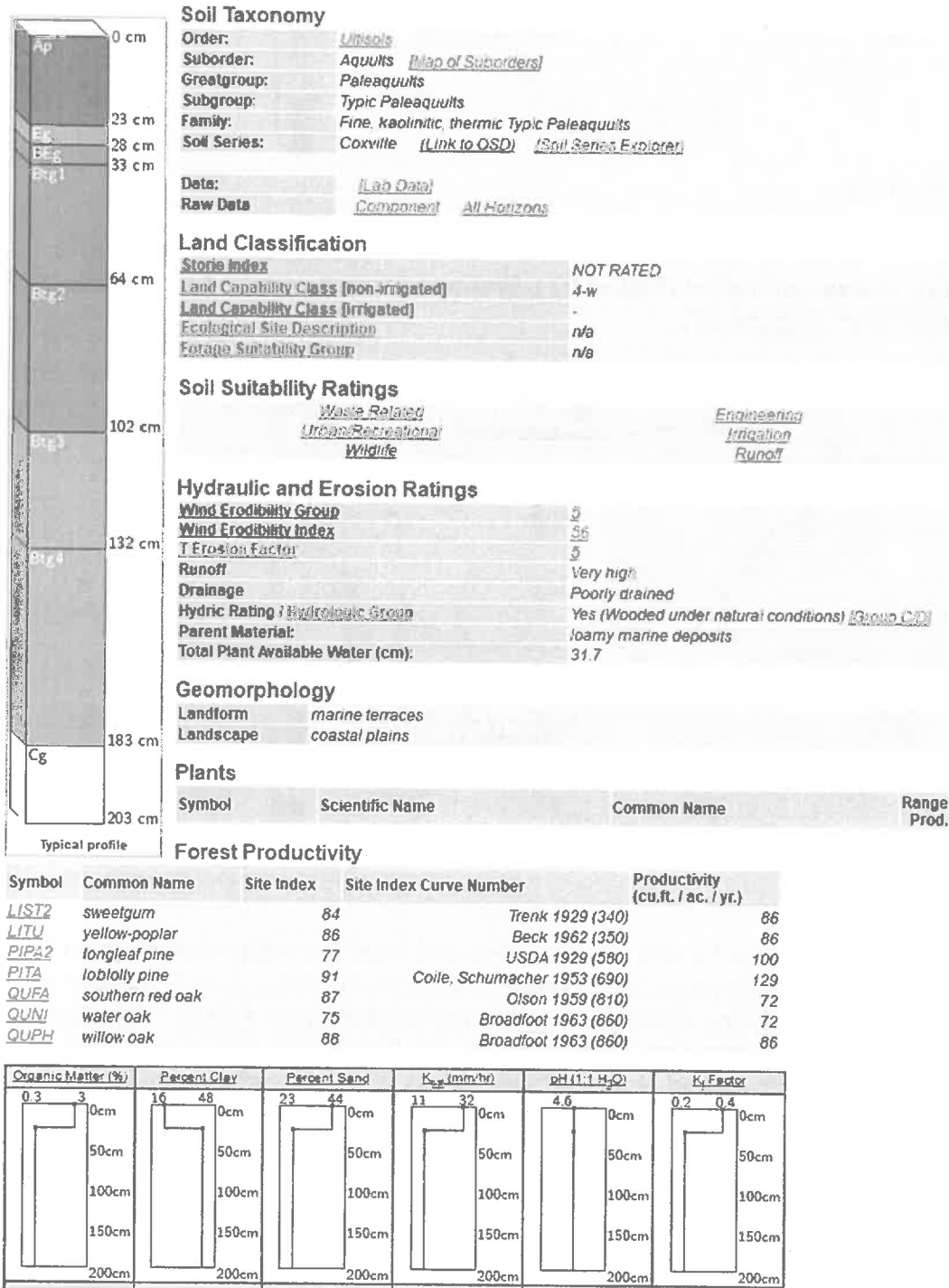


Figure 28. USDA NRCS SoilWeb Coxville description. Note the increase in clay content between 0 cm and 50 cm.

Map Unit Composition

Map units consist of 1 or more soil types commonly referred to as *components*.

Soil Type 1 Descriptor	Component Name	Geographic Position	Area Fraction	Component Type	Horizon Data
Soil Type 2 Descriptor		marine terraces	90%	Major Soil Type	MSS
		marine terraces	*%	(inclusion)	MFR

Note: Asterisks (*) on data marked with an * are approximate

Map Unit Data [What is a Map Unit?](#)

Geographic information about this map unit:

Map Unit Name: **Dunbar fine sandy loam**
Map Unit Type: **Clayey/loam**
Map Unit Symbol: **24**
Map Unit Area: **acres (2000ac total in survey area)**
[View Map Unit Data](#)
[View Component Data for this map unit](#)

Map Unit Aggregated Data

Generalized soil information about this map unit:

FarmLand Class: **FarmLand of statewide importance**
Available Water Storage (0-100cm): **15.25 cm**
Max Flood Frog: **None**
Drainage Class (Dominant Condition): **Somewhat poorly drained**
Drainage Class (Wettest Component): **Somewhat poorly drained**
Hydric Conditions: **1**
[Annual] Min. Water Table Depth: **53 cm**
[April-June] Min. Water Table Depth: **53 cm**
Min. Bedrock Depth: **ndg**
[View Associated Map Unit Data](#)

Associated Point Data

[Links to any NCS point data within this map unit.](#)

Figure 29. USDA NRCS SoilWeb Results

WETLAND DETERMINATION DATA FORM - Atlantic and Gulf Coastal Plain Region

Project Site: Arpenk City/County: Hanover County Sampling Date: 10/11/2019
 Aquatic Design: Helophyte State: VA Sampling Point: DP-2
 Investigator: TC Section, Township: Range
 Landform (slope, terrace, etc.): None Localized (contour, convex, concave): None Slope (%): 0-1
 Subtype (LRR or MLRA): LRR Lat: 37 7151975 Long: -77 424150 Datum: NAD83
 Soil Map Unit Name: 24-Dunbar fine sandy loam MVA classification:
 Are climatic/hydrologic conditions at the site typical for this time of year? Yes No (If no, explain in Remarks.)
 Are Vegetation, Soil, or Hydrology significantly disturbed? Are 'Normal Circumstances' present? Yes No
 Are Vegetation, Soil, or Hydrology naturally problematic? (if needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes No Is the Sampled Area within a Wetland? Yes No
 Hydric Soil Present? Yes No
 Wetland Hydrology Present? Yes No
 Remarks:
 According to the latest Virginia Drought Monitoring Task Force - Drought Status Report (October 11, 2019) issued by DEQ, Hanover County is either abnormally dry or has moderate drought therefore the climatic/hydrologic conditions are not normal.

HYDROLOGY

Wetland Hydrology Indicators:
 Primary Indicators (presence of one is required, check all that apply):
 Surface Water (A1) Aquatic Plants (B12)
 High Water Table (A2) Mire Deposits (B15) (LRR U)
 Saturation (A3) Hydrogen Sulfide Odor (C1)
 Water Marks (B1) Oxidized Rhizospheres along Living Roots (C3)
 Sediment Deposits (B2) Presence of Reduced Iron (C4)
 Dry Deposition (B3) Raccoon Tracks on a Three Sols (C6)
 Algal Mat or Crust (B4) Thin Muck Surface (C7)
 Iron Deposits (B5) Other (Explain in Remarks)
 Ironation Visible on Aerial Imagery (B7)
 Water-Saturated Lenses (B8)
 Secondary Indicators (presence of two is required):
 Surface Soil Cracks (D8)
 Sparingly Vegetated Concave Surface (D9)
 Drainage Patterns (D10)
 Mud-Tier Lines (D16)
 Dry-Season Water Table (D2)
 Crayfish Burrows (D3)
 Saturation Visible on Aerial Imagery (D5)
 Geomorphic Position (D2)
 Shallow Aquifer (D3)
 FAC Neutral Test (D5)
 Sphagnum moss (D6) (LRR T, U)
 Field Observations:
 Surface Water Present? Yes No Depth (inches):
 Water Table Present? Yes No Depth (inches):
 Saturation Present? Yes No Depth (inches):
 Wetland Hydrology Present? Yes No
 Describe Recorded Data (stream gauge monitoring data, aerial photos, previous inspections), if available:
 Remarks:

Figure 30. DP-2 Page 1

SOIL

Sampling Point: DP-2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators)

Depth (inches)	Matrix		Redox Features		Type	Loc	Texture	Remarks
	Color (moist)	%	Color (moist)	%				
0-4	2.5Y 5/2	100					Silt Loam	
4-10	2.5Y 4/2	90	2.5Y 5/6	10	C	M	Silt Loam	
10-14	2.5Y 5/2	100					Silt Loam	

 Type: C=Concentration; D=Depletion; E=M Reduced Matrix; MS=Mashed Sand Grains Location: PL=Pure Lining; M=Matrix
 Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted) Indicators for Problematic Hydric Soils:
 Histosol (A1) Polyverse Below Surface (S6) (LRR S, T, U) 1 cm Muck (A5) (LRR D)
 Histic Epipedon (A2) Thin Dark Surface (S9) (LRR S, T, U) 2 cm Muck (A10) (LRR S)
 Black Histic (A3) Loamy Mucky Mineral (F1) (LRR O) Reduced Vertic (F18) (outside MLRA 180A, B)
 Hydrogic Sulcate (A4) Loamy Grayed Matrix (F2) Piedmont Floodplain Soils (F19) (LRR P, S, T)
 Striped Matrix (A5) Depleted Matrix (F3) Anoxic Bright Loamy Soils (F20) (MLRA 182B)
 Organic Bodies (A6) (LRR P, T, U) Redox Dark Surface (F6) Red Parent Material (TF2)
 5 cm Mucky Mineral (A7) (LRR P, T, U) Muck Presence (A8) (LRR U) Redox Depressions (F8) Very Shallow Dark Surface (TF12)
 1 cm Muck (A9) (LRR P, T) Mire (F10) (LRR U) Muck Presence (A8) (LRR U) Redox Depressions (F8) Other (Explain in Remarks)
 Depleted Below Dark Surface (A11) Depleted Ochre (F11) (MLRA 151)
 Thick Dark Surface (A12) Iron-Manganese Masses (F12) (LRR O, P, T) Indicators of hydrophytic vegetation and wetland hydrology must be present unless disturbed or problematic.
 Coastal Prairie Redox (A16) (MLRA 160A) Limbic Surface (F13) (LRR P, T, U) Delta Ochre (F17) (MLRA 183)
 Sandy Mucky Mineral (S1) (LRR O, S) Delta Ochre (F17) (MLRA 183) Reduced Vertic (F18) (MLRA 180A, 180B)
 Sandy Grayed Matrix (S4) Mire (F10) (LRR U) Piedmont Floodplain Soils (F19) (MLRA 149A)
 Sandy Redox (S5) Stopped Matrix (S6) Anomalous Bright Loamy Soils (F20) (MLRA 149A, 153C, 163D)
 Dark Surface (S7) (LRR P, S, T, U)
 Restrictive Layer (if observed):
 Type: _____
 Depth (inches): _____ Hydric Soil Present? Yes No
 Remarks:

Figure 32. DP-2 Page 3.

VEGETATION (Four Strata) - Use scientific names of plants.

Sampling Point: DP-2

Stratum	Plot size	Abundance	Dominant Species	Percent	Indicator	Notes
1	10'	70	FACU	70	FACU	
2	10'	80	FAC	80	FAC	
3	10'	36	Y	36	FAC	
4						
5						
6						
7						
8						
Total % Cover of: _____ Multiplied by: _____ OBL species: _____ x 1 = _____ FADW species: _____ x 2 = _____ FAC species: _____ x 3 = _____ FACU species: _____ x 4 = _____ UPL species: _____ x 5 = _____ Column Totals: (A) _____ (B) _____ Prevalence Index = (A) x (B) = _____ Hydrophytic Vegetation Indicators: <input type="checkbox"/> 1 - Rapid Test for Hydrophytic Vegetation <input checked="" type="checkbox"/> 2 - Dominance Test is > 50% <input type="checkbox"/> 3 - Prevalence Index is > 3.0 <input type="checkbox"/> Problematic Hydrophytic Vegetation? (Explain) _____ Indicators of hydric soil and wetland hydrology must be present unless disturbed or problematic. Definitions of Four Vegetation Strata: Tree - Woody plants, excluding vines, 5 in. (7.6 cm) or more in diameter at breast height (DBH) regardless of height. Sapling/Shrub - Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody vine - All woody vines greater than 3.28 ft in height.						
1	10'	56	FACW	56	FACW	
2	10'	47	FAC	47	FAC	
3	10'	10	N	10	FAC	
4	10'	8	N	8	FAC	
5						
6						
7						
8						
Total % Cover of: _____ = Total Cover 50% of total cover: 75 20% of total cover: 30 Prevalence Index = (A) x (B) = _____ Hydrophytic Vegetation Indicators: <input type="checkbox"/> 1 - Rapid Test for Hydrophytic Vegetation <input checked="" type="checkbox"/> 2 - Dominance Test is > 50% <input type="checkbox"/> 3 - Prevalence Index is > 3.0 <input type="checkbox"/> Problematic Hydrophytic Vegetation? (Explain) _____ Indicators of hydric soil and wetland hydrology must be present unless disturbed or problematic. Definitions of Four Vegetation Strata: Tree - Woody plants, excluding vines, 5 in. (7.6 cm) or more in diameter at breast height (DBH) regardless of height. Sapling/Shrub - Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody vine - All woody vines greater than 3.28 ft in height.						
1	10'	16	FACW	16	FACW	
2	10'					
3	10'					
4	10'					
5	10'					
6	10'					
7	10'					
8	10'					
Total % Cover of: _____ = Total Cover 50% of total cover: 5 20% of total cover: 2 Prevalence Index = (A) x (B) = _____ Hydrophytic Vegetation Indicators: <input type="checkbox"/> 1 - Rapid Test for Hydrophytic Vegetation <input checked="" type="checkbox"/> 2 - Dominance Test is > 50% <input type="checkbox"/> 3 - Prevalence Index is > 3.0 <input type="checkbox"/> Problematic Hydrophytic Vegetation? (Explain) _____ Indicators of hydric soil and wetland hydrology must be present unless disturbed or problematic. Definitions of Four Vegetation Strata: Tree - Woody plants, excluding vines, 5 in. (7.6 cm) or more in diameter at breast height (DBH) regardless of height. Sapling/Shrub - Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody vine - All woody vines greater than 3.28 ft in height.						
1	10'	3	FAC	3	FAC	
2	10'					
3	10'					
4	10'					
5	10'					
6	10'					
7	10'					
8	10'					
Total % Cover of: _____ = Total Cover 50% of total cover: 1.5 20% of total cover: 0.6 Prevalence Index = (A) x (B) = _____ Hydrophytic Vegetation Indicators: <input type="checkbox"/> 1 - Rapid Test for Hydrophytic Vegetation <input checked="" type="checkbox"/> 2 - Dominance Test is > 50% <input type="checkbox"/> 3 - Prevalence Index is > 3.0 <input type="checkbox"/> Problematic Hydrophytic Vegetation? (Explain) _____ Indicators of hydric soil and wetland hydrology must be present unless disturbed or problematic. Definitions of Four Vegetation Strata: Tree - Woody plants, excluding vines, 5 in. (7.6 cm) or more in diameter at breast height (DBH) regardless of height. Sapling/Shrub - Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody vine - All woody vines greater than 3.28 ft in height.						

Figure 31. DP-2 Page 2

5-22

October 30, 2019 – PJD Issued

This PJD cover letter states “The enclosed map prepared by RK&K LLP, entitled, “Air Park Associates, Hanover County, Aerial Topo” dated 5-29-19, without a revision date, last revised and received by this office on 10-22-19, and on file at this office provides the accurate location of waters of the United States, including wetlands.”

The cover letter incorrectly identifies the final wetland delineation exhibit which is correctly identified in Figure 33.

The cover letter incorrectly states that the map provides the accurate location of WOUS. Since this is a PJD it is only confirming the location of aquatic resources that may fall under Corps geographic jurisdiction under the CWA definitions of WOUS.

The PJD cover letter states “The basis for this delineation includes application of the Corps’ 1987 Wetland Delineation Manual, the Regional Supplement to the Corps of Engineers’ Wetland Delineation Manual: Eastern Mountains and Piedmont Region, the presence of positive indicators of wetland hydrology, hydric soils, and hydrophytic vegetation, and the presence of an ordinary high water mark.”

The PJD cover letter incorrectly states that the EMP Supplement was used. This delineation correctly used the methods in the AGCP Supplement.

The attached, ‘Appendix 2 – Preliminary Jurisdictional Determination (PJD) Form’ contains multiple errors including the date, file number, nearest water body, and the table of aquatic resources is not filled in correctly. Both the cover letter and PJD form are unsigned.

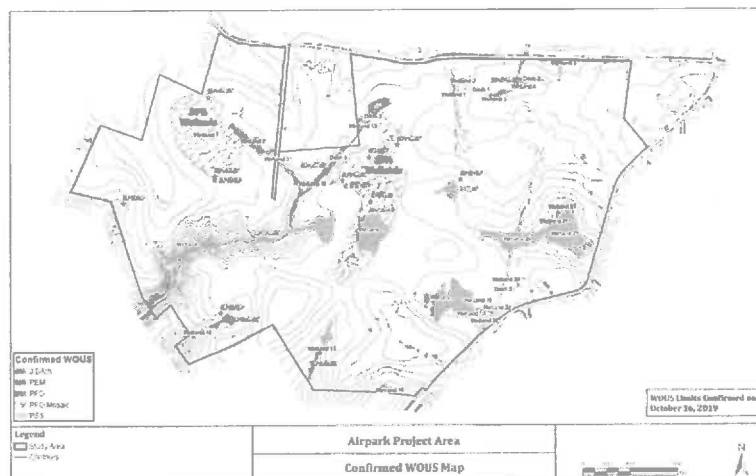


Figure 33. October 30, 2019 confirmed exhibit. Included in JPA. Note the presence of the linear easement intersecting Wetland 31.

November 27, 2019 – JPA submitted

Parker Osterloh (Timmons) submitted a JPA requesting authorization for numerous impacts within the project area in support of construction of a new warehouse and attendant features. The unsigned October 30, 2019 PJD and exhibit (Figure 33) were included in the JPA.

December 10, 2019 – RK&K revised the project area.

February 11, 2020 – PJD Issued

The PJD cover letter states “The enclosed revised and undated map prepared by RK&K LLP, entitled, “Airpark Project Area, Confirmed WOUS Map,” without a revision date, received by this office on 12-10-19, and on file at this office provides the accurate location of waters of the United States, including wetlands.” (Figure 34).

The cover letter incorrectly states that the map provides the accurate location of WOUS. Since this is a PJD it is only confirming the location of aquatic resources that may fall under Corps geographic jurisdiction under the CWA definitions of WOUS.

Additionally, this letter states “The basis for this delineation includes application of the Corps’ 1987 Wetland Delineation Manual, the Regional Supplement to the Corps of Engineers’ Wetland Delineation Manual: Eastern Mountains and Piedmont Region...”.

The PJD cover letter incorrectly states that the EMP Supplement was used. This delineation correctly used the methods in the AGCP Supplement.

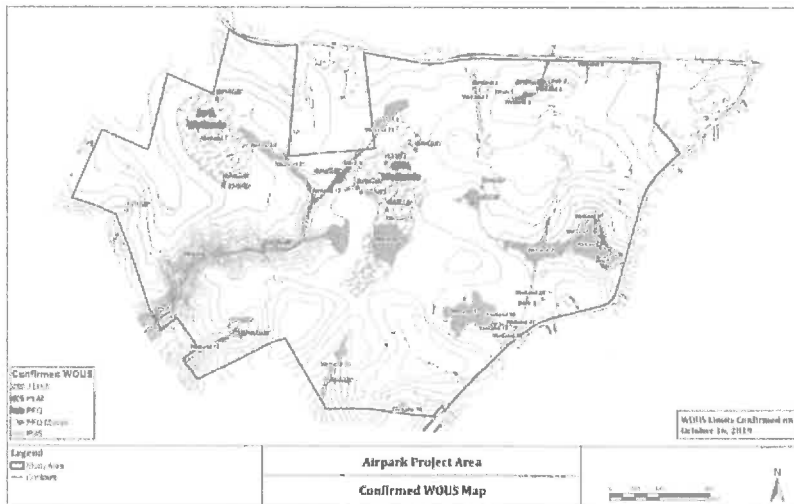


Figure 34. Exhibit included in the February 11, 2020 PJD package. Note the lack of the linear easement intersecting Wetland 31.

April 1, 2020 – Public notice (PN) for JPA published on website. The impact map included in the PN matches Figure 34. In response to the PN, concerns were expressed to the Corps about not following the procedures for determining the percentage of wetlands vs. uplands in wetland/non-wetland mosaics (Wetland 7 and 9, formally Wetland 11 and 14) outlined in the AGCP Supplement.

As a result of the above concerns expressed about the February 11, 2020 (Figure 34) confirmed PJD, the Corps requested permission from Mr. Davenport (Hirschler) to access the project area to collect additional data to assist with the permit evaluation. Specifically, the Corps was interested in establishing transects through the two wetland/non-wetland mosaics following the methodology in the AGCP Supplement (page 141). The alternative approach to sampling was used due to challenging site conditions (Figure 35).

An alternative approach involves point-intercept sampling at fixed intervals along transects across the area designated as wetland/non-wetland mosaic. This method avoids the need to identify wetland boundaries in each swale, and can be carried out by pacing rather than stretching a measuring tape across the site. The investigator uses a compass or other means to follow the selected transect line. At a fixed number of paces (e.g., every two steps) the wetland status of that point is determined by observing indicators of hydrophytic vegetation, hydric soil, and wetland hydrology. Again, a completed data form is not required at every point but at least one representative swale and hummock should be documented with completed forms. After all transects have been sampled, the result is a number of wetland sampling points and a number of non-wetland points. Estimate the percentage of wetland in the wetland/non-wetland mosaic by the following formula:

$$\% \text{ wetland} = \frac{\text{Number of wetland points along all transects}}{\text{Total number of points sampled along all transects}} \times 100$$

Figure 35. Wetland/non-wetland mosaics procedure from Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Regions (Version 2.0).

Air Park Associates, L.P. granted the Corps and VADEQ access to the property on August 19, 2020 and August 21, 2020.

August 19, 2020 – Site visit conducted with Corps representatives Ms. Holley, Dr. Herman W. Hudson III, and Steven VanderPloeg. Bryan Jones (VADEQ) and Matt Neely (Timmons) were also in attendance.

August 21, 2020 – Site visit conducted with Corps representatives Dr. Hudson and Mr. VanderPloeg. Mr. Jones (VADEQ) and Mr. Neely (Timmons) were also in attendance.

Cumulative local precipitation from the 30 days preceding these site visits exceeded 13 inches. While the APT results indicated 'Normal Conditions' (Figure 36 and 37), the Corps concluded that the site visit days did not fall within a 'typical year' and the conditions were wetter than normal. Additional evidence for the wetter than normal precipitation conditions was the presence of 20+ inches of water within a seasonally flooded depression (Figure 38). This is the first recorded site visit by the Corps during wetter than normal conditions. This presented a unique opportunity to observe the project area. Care was taken when analyzing the wetland hydrology indicators. Additionally, this recent precipitation provided a very accurate analysis of soil color and layer identification that previously had been challenging due to dry conditions.

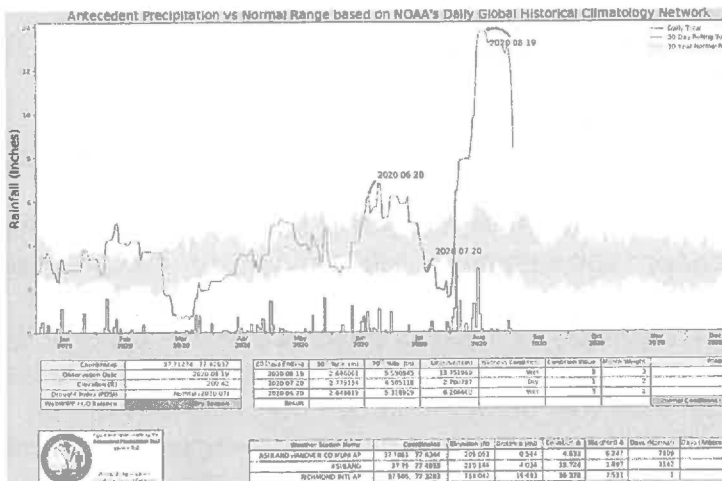


Figure 36. August 19, 2020 APT results.

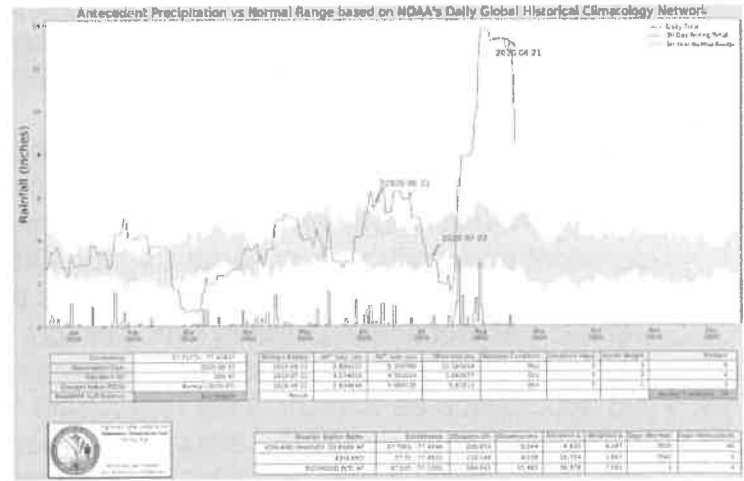


Figure 37. August 21, 2020 APT results.



Figure 38. Seasonally flooded depression Wetland 11. Taken August 19, 2020.

The results of the site visit indicate that Wetland 7 and Wetland 9 were incorrectly designated as 30% wetland/70% non-wetland and 10% wetland/90% non-wetland respectively, in the most recent confirmed PJD (February 11, 2020, Figure 34). Both Wetland 7 and Wetland 9 are 100% wetland with 0% non-wetlands.

Following the methods above, a baseline was established in Wetland 7. The purpose of this baseline was to provide a location to establish multiple transects extending perpendicular to the baseline and alternating east vs. west of baseline. However, due to time constraints, only one transect (W7-T1) was established and completed (Figure 39). Analysis at each point on transect W7-1 (except the most easterly point) met the three parameters and was considered a wetland. While not documented, the entire baseline was traversed (in addition to detailed observations near Wetland 8), and no uplands were observed within Wetland 7.

The wetland/non-wetland mosaic procedure recommends collecting a datapoint from within a 'swale and hummock'. The elevational difference between the 'swale and hummock' at this site averaged 6 inches (this difference in surface elevation would be better characterized as micro-topography as opposed to swales and hummocks). More dramatic changes in elevation were observed around relatively few older *Pinus taeda* or older mounding/pitting from trees that had been uprooted. Therefore, only a single data point was collected within Wetland 7.

CDP-1 was collected to represent the conditions within Wetland 7 (Figure 40-42). However, Oxidized Rhizospheres on Living Roots (C3) were not common throughout Wetland 7. The presence of a Shallow Aquitard (D3) was evidenced by increasing clay content with depth of soil sample and by the apparent slow infiltration of surface water. Often deeper soil samples would appear dry. The presence of Water-Stained Leaves (B9) also provides evidence of slow water infiltration since the hydrologic input to this wetland is primarily precipitation. The Water-Stained Leaves observed at this time (8-19-2020 and 8-21-2020) were leaves that were dropped during the fall of 2019. The color of these leaves did not develop as a result of the recent rain events. This was determined by observing leaves that were under water during the site visit that were not blackened or grey in color. This suggests that the flooding from the recent precipitation had not persisted for long enough for the color change to occur. The Water-Stained Leaves that were observed were likely flooded during the late winter/early spring of 2020. Additionally, the micro-topographic conditions suggest that if flooding was present within the micro-topographic lows long enough to cause changes in leaf color, then the perched water table

would be present within 12 inches of the soil surface of the micro-topographic highs (~6 inches above the micro-topographic lows). The presence of the water table within 12 inches of the soil surface of the micro-topographic highs was further evidenced by redoximorphic (redox) depletions present near the soil surface (anecdotal observations <4 inches from the mineral soil surface within Wetland 7, close to Wetland 8). Finally, the secondary indicator of Geomorphic Position (D2) was also observed in Wetland 7 because it is present in an extensive flat with poor drainage (due to shallow aquitard and lack of hydrologic manipulation). The field estimated slope in this area is <1%.

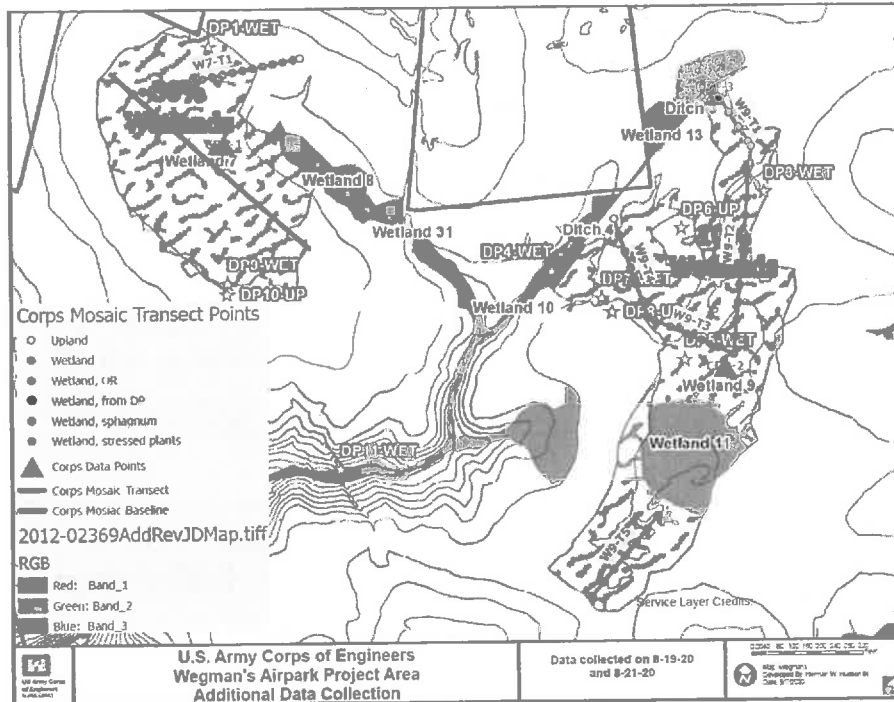


Figure 39. Additional data collected by the Corps overlaid on Figure 34.

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET - Atlantic and Gulf Coastal Plain Region
 See ERDC/EL TR-07-24, the proponent agency is CE2W-CO-R

OMB Control # 0710-0188, Exp. Pending
 Requirement Control Symbol: 0200P7
 Authority: AR 335-10, paragraph 5-2d

Project/Title: Weymans Project NAC-2012-2369 City/County: Hanover Sampling Date: 08-15-2020
 Applicant Owner: Aurback Associates State: VA Sampling Point: CDP-1

Investigator(s): H.W. Hudson, S. VanderPooag Section, Township, Range: _____
 Landform (Hillside, Terrace, etc.): flat Local relief (concave, convex, none): none Slope (%): _____
 Subregion (LRR or MLRA): LRRP, MLRA 133A, LRR 37.714D076 Long: -77.4276535 Datum: NAD83

Soil Map Unit Name: Corvise Loam NWI classification: PFQ 41B

Are climatic/hydrologic conditions on the site typical for this time of year? Yes No (If no, explain in Remarks.)
 Are Vegetation, Soil, or Hydrology significantly disturbed? Are Normal Circumstances present? Yes No
 Are Vegetation, Soil, or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes No Is the Sampled Area within a Wetland? Yes No
 Hydric Soil Present? Yes No
 Wetland Hydrology Present? Yes No

Remarks:
 *Hanover Airport weather station had recorded 6.67" of rain in previous 10 days and 12.50" since August 1, 2020 making a abnormally wet for the current time of year
 *Point taken in Wetlands 7

HYDROLOGY

Wetland Hydrology Indicators:
 Primary Indicators (minimum of one is required, check all that apply):
 Surface Water (A1) Aquatic Fauna (B1)
 High Water Table (A2) Muck Deposits (B1E) (LRR U)
 Saturation (A3) Hydrogen Sulfide Odor (C1)
 Water Marks (B1) Oxidized Rhizospheres on Living Roots (C3)
 Sediment Deposits (B2) Presence of Reduced Iron (C4)
 Drift Deposits (B3) Recent Iron Reduction in Tilled Soils (C6)
 Algal Mats or Crusts (B4) Thin Muck Surface (C7)
 Iron Deposits (B5) Other (Explain in Remarks)
 Iron Deposits Visible on Aerial Imagery (B7) Spallole Aquatard (D2)
 Water-Soaked Leaves (B8) FAC-Natural Test (O5)
 Sphagnum Moss (D5) (LRR T, U)

Secondary Indicators (minimum of two required):
 Surface Soil Cracks (B6)
 Spangle/Vegetated Concave Surface (B8)
 Orange Patterns (B10)
 Moss/Tim Lines (B11)
 Dry-Season Water Table (C2)
 Crayfish Burrows (C8)
 Saturation visible on Aerial Imagery (C5)
 Geomorphic Position (D2)
 Spallole Aquatard (D2)
 FAC-Natural Test (O5)
 Sphagnum Moss (D5) (LRR T, U)

Field Observations:
 Surface Water Present? Yes No Depth (inches): 1
 Water Table Present? Yes No Depth (inches): 0
 Saturation Present? Yes No Depth (inches): 0 Wetland Hydrology Present? Yes No
 (includes capillary fringe)

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available

Remarks:
 * 1"-2" dull layer above start of mineral soils

Figure 40. CDP-1 Page 1

SOIL Sampling Point: CDP-1

Profile Description: (Describe to the depth needed to document the Indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Color (moist)	%	Type	Loc	Texture	Remarks
0-4	10YR 5/2						Loamy Clayey	Loam
4-10	10YR 5/2						Loamy Clayey	Fine Sandy Loam
10-13	10YR 5/1	80	7.5YR 5/6	20	C	M	Loamy Clayey	Sandy Clay Loam

Location: PL-Pine Linnig, ML-Matrix

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted)
 Indicators for Problematic Hydric Soils:
 Histic A Horizon (A1) Thin Dark Surface (S5) (LRR S, T, U)
 Histic Epipedon (A2) Barren Islands 1 cm Muck (S12)
 Black Histic (A3) (MLRA 103B, 103D)
 Hydrogen Sulfide (A4) Loamy Mucky Muck (F1) (LRR O)
 Stratified Layers (A5) Loamy Gleyed Matrix (F2) Reduced Vertic (F18)
 Organic Bodies (A6) (LRR P, T, U) Depleted Matrix (F3) (outside MLRA 100A, 100B)
 2 cm Mucky Mineral (A7) (LRR P, T, U) Redox Dark Surface (F6) Piedmont Floodplain Soils (F15) (LRR P, T)
 Mucky Presence (A8) (LRR U) Depleted Dark Surface (F7) Anomalous Bright Floodplain Soils (F20) (MLRA 103B)
 1 cm Muck (A9) (LRR P, T) Redox Depressions (F8) (MLRA 103B)
 Depleted Below Dark Surface (A11) Mott (F10) (LRR U) Red Parent Material (F21)
 Thick Dark Surface (A12) Depleted Ochric (F11) (MLRA 151) Very Shallow Dark Surface (F22)
 Coast Prairie Redox (A1E) (MLRA 150A) Iron-Manganese Masses (F12) (LRR O, P, T) (outside MLRA 138, 152A in FL, 154)
 Sandy Mucky Mineral (S1) (LRR O, S) Umbric Surface (F13) (LRR P, T, U) Barrier Islands Lo. Chorno Matrix (F57) (MLRA 103B, 103D)
 Sandy Gleyed Matrix (S4) Delta Ochric (F17) (MLRA 151) Other (Explain in Remarks)
 Sandy Redox (S5) Reduced Vertic (F18) (MLRA 150A, 150B)
 Striped Matrix (S6) Piedmont Floodplain Soils (F15) (MLRA 149A)
 Dark Surface (S7) (LRR P, S, T, U) Anomalous Bright Floodplain Soils (F20)
 Polysulfide Below Surface (S8) (LRR S, T, U) (MLRA 149A, 153C, 153D) Indicators of hydrophytic vegetation and wetland hydrology must be present unless disturbed or problematic.
 (LRR S, T, U) Very Shallow Dark Surface (F23) (MLRA 138, 152A in FL, 154)

Restrictive Layer (if observed):
 Type: _____
 Depth (inches): _____ Hydric Soil Present? Yes No

Remarks:

Figure 42. CDP-1 Page 3.

VEGETATION (Four Strata) - Use scientific names of plants. Sampling Point: _____ CDP-1

Tree Stratum (Plot size 30')	Abundance % Cover	Dominant Species?	Indicator Status	Dominance Test worksheet:
1. <i>Pinus taeda</i>	15	Yes	FAC	Number of Dominant Species That Are OBL, FACW, or FAC <u>5</u> (A) Total Number of Dominant Species Across All Strata <u>6</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC <u>83.3%</u> (A/B)
2. <i>Jer coeca</i>	15	Yes	FAC	
3. <i>Quercus alba</i>	38	Yes	FACU	
4. <i>Quercus nigra</i>	3	No	FAC	
5. _____	_____	_____	_____	
6. _____	_____	_____	_____	
7. _____	_____	_____	_____	
8. _____	_____	_____	_____	
Total Cover			71	Total Cover
50% of total cover			36	20% of total cover
20% of total cover			15	

Prevalence Index worksheet:
 Total % Cover of _____ Multiply by:
 OBL species 0 x 1 = 0
 FAC(W) species 18 x 2 = 36
 FACU species 168 x 3 = 504
 FACU species 41 x 4 = 164
 UPL species 0 x 5 = 0
 Column Totals 227 (A) 704 (B)
 Prevalence Index = A/B = 3.10

Hydrophytic Vegetation Indicators:
 1 - Rapid Test for Hydrophytic Vegetation
 2 - Dominance Test is >50%
 3 - Prevalence Index is >3.0
 Problematic Hydrophytic Vegetation? (Explain) _____

Indicators of hydric soil and wetland hydrology must be present unless disturbed or problematic.

Definitions of Four Vegetation Strata:
 Tree - Woody plants, excluding vines 3 in (7.6 cm) or more in diameter at breast height (DBH), regardless of height.
 Sapling/Shrub - Woody plants excluding vines less than 3 in DBH and greater than 3.28 ft (1 m) tall.
 Herb - All herbaceous (non-woody) plants, regardless of size and woody plants less than 3.28 ft in height.
 Woody Vine - All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? Yes No

Remarks: (If observed, list morphological adaptations below)
 Cover classes were used to determine cover

Figure 41. CDP-1 Page 2

5-28

The field investigations on August 21, 2020 focused on Wetland 9. Five transects were established along which wetland/non-wetland determinations were made and data forms were collected from two locations (CDP-2 was collected on August 18, 2020). The micro-topography, Water-Stained Leaves, and Geomorphic Position descriptions above describing Wetland 7 also apply to Wetland 9. In addition, numerous locations along the transect exhibited Oxidized Rhizospheres and Sphagnum Moss (D8). Both CDP-2 and CDP-3 satisfied the FAC-Neutral indicator (D5) and the Prevalence Index was ≤ 3 (Figures 43-48). These observations suggest that portions of Wetland 9 may experience a water table within 12 inches of the soil surface for longer durations than Wetland 7. The upland located to the west of W9-T4 was investigated and was found to lack hydric soils and Water-Stained Leaves.

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET - Atlantic and Gulf Coastal Plain Region
 See ERODC/EL TR-07-24, the promulgated agency is CEW-CG-R

Project Site: Wegmans Project NAO-2012-2369 City/County: Hanover Sampling Date: 08-16-2020
 Applicant: Armark Associates State: VA Sampling Point: CCP-2
 Investigator: J. W. Nelson, S. VanderPloeg Section: Tox-MHP Range
 Landform: Inland Terrace etc. flat Local relief (concave, convex, none): none Slope (%): _____
 Subregion (LRR or MLRA): ELR F MLRA 133A Len: 37 7122585 Long: -77 4230064 Datum: (GAD83)
 Soil Map Unit Name: Dundar fine Sand, Loam NFA Classification: FFC 4-1B

Are climatic/hydrologic conditions on the site typical for this time of year? Yes No (If no, explain in Remarks.)
 Are vegetation/soil or hydrology significantly disturbed? Are natural circumstances present? Yes No
 Are vegetation/soil or hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Is the Sampled Area within a Wetland?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Hydric Soil Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Wetland Hydrology Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

Remarks: Hanover Airport weather station not recorded 6.87" of rain in previous 10 days and 12.56" since August 1, 2020 making it abnormal, wet for the current time of year.

HYDROLOGY

Wetland Hydrology Indicators Primary Indicators (minimum of one is required, check all that apply): <input checked="" type="checkbox"/> Surface Water (A1) <input checked="" type="checkbox"/> High Water Table (A2) <input checked="" type="checkbox"/> Saturation (A3) <input type="checkbox"/> Water Marks (B1) <input type="checkbox"/> Sandstone Deposits (B2) <input type="checkbox"/> DMF Deposits (B3) <input type="checkbox"/> Algal Mat or Crust (B4) <input type="checkbox"/> Iron Deposits (B5) <input type="checkbox"/> Inundation Visible on Aerial Imagery (B7) <input checked="" type="checkbox"/> Water Stained Leaves (B9)	Secondary Indicators (minimum of two required) <input type="checkbox"/> Surface Soil Cracks (B6) <input type="checkbox"/> Sparsely Vegetated Concave Surface (B7) <input type="checkbox"/> Drainage Patterns (E1) <input type="checkbox"/> Moss Thin Lines (E16) <input type="checkbox"/> Dry-Season Water Table (C2) <input type="checkbox"/> Crusts/Europans (C3) <input type="checkbox"/> Saturation Visible on Aerial Imagery (E4) <input type="checkbox"/> Geomorphic Position (D2) <input checked="" type="checkbox"/> Shallow Aquifers (D3) <input checked="" type="checkbox"/> FAC-Nutrient Test (D5) <input type="checkbox"/> Sphagnum Moss (D8) (LRR T, U)
--	--

Field Observations:
 Surface Water Present? Yes No Depth (inches): 2
 Water Table Present? Yes No Depth (inches): 0
 Saturation Present? Yes No Depth (inches): 0
 (includes capillary fringe)

Wetland Hydrology Present? Yes No

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections, if available): _____

Remarks: 1'-2' buff layer above start of mineral soil
sphagnum moss intermittently outside of plot in low areas

ENG FORM 6116-2-SG JUL 2018
 Figure 43. CDP-2 Page 1

VEGETATION (Four Strata) - Use scientific names of plants

Tree Stratum (Plot size: 30)	Absolute % Cover	Dominant Species?	Indicator Status	Sampling Point	CDP-2
1 <i>Pinus taeda</i>	15	Yes	FAC		
2 <i>Acer rubrum</i>	38	Yes	FAC		
3 <i>Quercus alba</i>	15	Yes	FACU		
4 <i>Nyssa sylvatica</i>	15	Yes	FAC		
5 _____					
6 _____					
7 _____					
8 _____					
50% of total cover: <u>83</u> = Total Cover			17		

Dominance Test worksheet:
 Number of Dominant Species That Are OBL, FACW, or FAC: 8 (A)
 Total Number of Dominant Species Across All Strata: 9 (B)
 Percent of Dominant Species That Are OBL, FACW, or FAC: 88.9% (A/B)

Prevalence Index worksheet:
 Total % Cover of: _____ Multiply by:
 OBL species: 0 x 1 = 0
 FACW species: 53 x 2 = 106
 FACU species: 151 x 3 = 453
 FACU species: 18 x 4 = 72
 UPL species: 0 x 5 = 0
 Column Totals: 222 (A) 631 (B)
 Prevalence Index = B/A = 2.84

Hydrophytic Vegetation Indicators:
 1 - Rapid Test for Hydrophytic Vegetation
 2 - Dominance Test is > 50%
 3 - Prevalence Index is > 3.0
 Problematic Hydrophytic Vegetation? (Explain) _____

Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic

Definitions of Four Vegetation Strata:
 Tree - Woody plants, excluding vines, 3 in (7.6 cm) or more in diameter at breast height (DBH), regardless of height.
 Sapling/Shrub - Woody plants, excluding vines, less than 3 in DBH and greater than 3.28 ft (1 m) tall.
 Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.
 Woody Vine - All woody vines greater than 3.28 ft in height.

Sapling/Shrub Stratum (Plot size: 30)	Absolute % Cover	Dominant Species?	Indicator Status
1 <i>Vaccinium formosum</i>	38	Yes	FAC
2 <i>Acer rubrum</i>	15	Yes	FAC
3 <i>Liquidambar styraciflua</i>	3	No	FAC
4 <i>Clethra alnifolia</i>	15	Yes	FACW
5 <i>Ilex opaca</i>	3	No	FAC
6 <i>Saxifraga albidum</i>	3	No	FACU
7 _____			
8 _____			
50% of total cover: <u>77</u> = Total Cover			16

Herb Stratum (Plot size: 30)	Absolute % Cover	Dominant Species?	Indicator Status
1 <i>Clethra alnifolia</i>	38	Yes	FACW
2 <i>Vaccinium formosum</i>	3	No	FAC
3 <i>Smilax rotundifolia</i>	3	No	FAC
4 <i>Acer rubrum</i>	3	No	FAC
5 _____			
6 _____			
7 _____			
8 _____			
9 _____			
10 _____			
11 _____			
12 _____			
50% of total cover: <u>47</u> = Total Cover			10

Woody Vine Stratum (Plot size: 30)	Absolute % Cover	Dominant Species?	Indicator Status
1 <i>Smilax rotundifolia</i>	15	Yes	FAC
2 _____			
3 _____			
4 _____			
5 _____			
50% of total cover: <u>15</u> = Total Cover			3

Remarks: (If observed, list morphological adaptations below.)
 Cover class estimates were used.

ENG FORM 6116-2-SG JUL 2018
 Figure 44. CDP-2 Page 2.

SOIL

Depth (Inches)	Matrix	Color (moist)	%	Color (moist)	%	Type	Loc	Texture	Remarks
0-2	10YR 3/2							Loamy Clayey	Sandy Loam
2-6	10YR 5/2							Loamy Clayey	Sandy Clay Loam
6-12	10YR 5/1	80		10YR 5/8	20	C	M	Loamy Clayey	Sandy Clay Loam

Type Cs **Concentration** _____ **D** Depletion **R** Reduced Matrix **MSP** Masked Sand Grains **Location** PL **Pore Lining** **M** Matrix

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted)
 Histosol (A1) _____ Thin Dark Surface (S3) (LRR B, T, U)
 Hist. Epipedon (A2) _____ Barren Islands 1 cm Muck (S12)
 Black Histic (A3) _____ (MLRA 152B, 153D) Coast Prairie Redox (A16)
 Hydrogen Sulphide (A4) _____ Loamy Mucky Mineral (F1) (LRR D) outside MLRA 150A
 Stratified Layers (A5) _____ Loamy Gleyed Matrix (F2) Reduced Vertic (F1E)
 Organic Bodies (A6) (LRR P, T, U) Depleted Matrix (F3) outside MLRA 150A, 150B
 5 cm Mucky Mineral (A7) (LRR P, T, U) _____ Redox Dark Surface (F8) Pediment Floodplain Soil (F16) (LRR P, T)
 Muck Presence (A8) (LRR U) _____ Depleted Dark Surface (F7) Anomalous Bright Floodplain Soils (F20)
 1 cm Muck (A9) (LRR P, T) _____ Redox Depressions (F9) _____ (MLRA 153B)
 Depleted Below Dark Surface (A11) _____ (Mud) (F10) (LRR U) _____ Red Parent Material (F21)
 Thick Dark Surface (A12) _____ Depleted Ochric (F11) (MLRA 151) _____ Very Shallow Dark Surface (F22)
 Coastal Prairie Redox (A16) (MLRA 150A) _____ Iron-Manganese Masses (F12) (LRR D, P, T) _____ (outside MLRA 138, 152A in FL, 154)
 Sandy Mucky Mineral (S1) (LRR O, B) _____ Umbic Surface (F13) (LRR P, T, U) _____ Barren Islands Low Chroma Matrix (T37)
 Sandy Gleyed Matrix (S4) _____ Delta Ochric (F17) (MLRA 151) _____ (MLRA 153B, 153D)
 Sandy Redox (S2) _____ Reduced Vertic (F1E) (MLRA 150A, 150B) _____ Other (Explain in Remarks)
 Striped Matrix (C6) _____ Pediment Floodplain Soils (F16) (MLRA 149A)
 Dark Surface (S7) (LRR P, S, T, U) _____ Anomalous Bright Floodplain Soils (F20)
 Polyvalent Below Surface (S8) (LRR S, T, U) _____ (MLRA 149A, 152C, 153D)
 Very Shallow Dark Surface (F22) _____ (MLRA 138, 152A in FL, 154)

Indicators of hydrophytic vegetation and wetland hydrology must be present unless disturbed or problematic.

Restrictive Layer: (if observed):
 Type _____
 Depth (inches): _____
 Hydric Soil Present? Yes No

Remarks: _____

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 Figure 45. CDP-2 Page 3

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET - Atlantic and Gulf Coastal Plain Region
See ERO/CLE TR-07-24, the proposal agency is CECW-CD-R

Project Name: Wetland Project MAP-212-2349 City/County: Hancock Sampling Date: 06-21-2023
 Applicant/Owner: Arctan Associates State: VA Sampling Point: CDP-3
 Investigator: M. W. Heston, S. VanderPloeg Section Township Range:
 Landform (include terrace alt.): Local relief (concave/convex/none) Slope (%):
 Surveyor (LRR or MLRA): LRR# 11RA-133A Lat: 37.744619 Long: -77.42061 Delay: NAD83?
 Soil Map Unit Name: Luvic Fluvisol
 Are climatic/hydrologic conditions on the site typical for this time of year? Yes ___ No ___ (If no, explain in Remarks.)
 Are vegetation soil hydrology significantly disturbed? Are "Normal Circumstances" present? Yes ___ No ___
 Are hydrology soil hydrology naturally problematic? (If needed, explain any anomalies in Remarks.)

SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic vegetation Present? Yes No ___ Is the Sampled Area within a Wetland? Yes No ___
 Hydric Soil Present? Yes No ___
 Wetland Hydrology Present? Yes No ___

Remarks: Hancock Airport weather station had recorded 6.67" of rain in previous 16 days and 12.56" since August 1, 2020 making it anomalously wet for the current time of year.

HYDROLOGY

Wetland Hydrology Indicators: Primary Indicators (Minimum 2 of these required, check all that apply):
 Surface Water (A1) Aquatic Fauna (B12)
 High Water Table (A2) Soil Deposition (B15) (LRR U)
 Saturation (A3) Hydrogen Sulfide Color (C1)
 Water Marks (B7) Oxidized Phosphorus on Living Roots (C2)
 Redox Potential (B2) Presence of Reduced Iron (C4)
 Soil Deposition (B3) Rapid Iron Reduction in Tilled Soils (C6)
 Algal Mats (B4) Thin Muck Surface (C7)
 Iron Clusters (B5) Other (Explain in Remarks):
 Water-Clashed Leaves (B6) Sphagnum Moss (B8) (LRR T, U)

Secondary Indicators (Minimum 1 of these required):
 Surface Soil Cracks (B9)
 Sporadic Vegetative Concave Surface (B1)
 Drainage Patterns (B13)
 Moss Trim Lines (E15)
 Dry-Season Water Table (C2)
 Crayfish Burrows (C8)
 Saturation Visible on Aerial Imagery (C9)
 Geomorphic Position (C2)
 Shells - Aquatic (C3)
 FAC-Hydro Test (D1)
 Sphagnum Moss (B8) (LRR T, U)

Field Observations:
 Surface Water Present? Yes ___ No Depth (inches):
 Water Table Present? Yes No ___ Depth (inches): 3
 Saturation Present? Yes No ___ Depth (inches): 0 Wetland Hydrology Present? Yes No ___
 Includes capillary fringe?
 Describe Recorded Data: stream gauge monitoring well aerial photos previous inspections, if available

Remarks: 1" (2" soil) layer above start of mineral soils
 18" deep by 24" wide ditch located approximately 46' from CDP-3. The drainage area of the ditch localized to the immediate vicinity of the data point and was likely a "fac".

VEGETATION (Four Strata) - Use scientific names of plants

Tree Stratum (Plot size 30')
 Absolute % Cover Dominant Species? Indicator Status
 1 Pinus taeda 15 No FAC
 2 Ilex opaca 35 Yes FAC
 3 Acer rubrum 18 No FACU
 4 Quercus falcata 15 No FACU
 5 Nyssa sylvatica 3 No FAC
 6
 7
 8
 50% of total cover: 55 = Total Cover 22

Saunders Shrub Stratum (Plot size 30')
 Absolute % Cover Dominant Species? Indicator Status
 1 Nyssa sylvatica 15 Yes FAC
 2 Vaccinium formicoides 15 Yes FAC
 3 Gaylussacia frondosa 15 Yes FAC
 4 Clatrina alifolia 15 Yes FACW
 5
 6
 7
 8
 50% of total cover: 60 = Total Cover 12

Herb Stratum (Plot size 30')
 Absolute % Cover Dominant Species? Indicator Status
 1 Clatrina alifolia 38 Yes FACW
 2 Eubotrys racemosa 3 No FACW
 3 Gaylussacia frondosa 15 Yes FAC
 4 Pinus taeda 3 No FAC
 5 Ilex opaca 3 No FAC
 6 Smilax rotundifolia 3 No FAC
 7
 8
 9
 10
 11
 12
 50% of total cover: 65 = Total Cover 13

Woody Vine Stratum (Plot size 30')
 Absolute % Cover Dominant Species? Indicator Status
 1 Smilax rotundifolia 3 No FAC
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 50% of total cover: 2 = Total Cover 1

Remarks: (If observed, list morphological adaptations below.)
 Cover class estimates used

Dominance Test worksheet:
 Number of Dominant Species That Are OBL, FACW, or FAC: 8 (A)
 Total Number of Dominant Species Across All Strata: 8 (B)
 Percent of Dominant Species That Are OBL, FACW, or FAC: 100.0% (A/B)

Prevalence Index worksheet:
 Total % Cover of: Multiply by
 OBL species 0 x 1 = 0
 FACW species 56 x 2 = 112
 FAC species 165 x 3 = 495
 FACU species 15 x 4 = 60
 UPL species 0 x 5 = 0
 Column Totals: 237 (A) (B)
 Prevalence Index = B/A = 2.83

Hydrophytic Vegetation Indicators:
 1 - Rapid Test for Hydrophytic Vegetation ___
 2 - Dominance Test is >50% ___
 3 - Prevalence Index is >3.0 ___
 Problematic Hydrophytic Vegetation? (E=explain)

Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.
 Definitions of Four Vegetation Strata:
 Tree - Woody plants, excluding vines 3 in (7.6 cm) or more in diameter at breast height (DBH), regardless of height.
 Sapling/Shrub - Woody plants, excluding vines, less than 3 in DBH and greater than 3.28 ft (1 m) tall.
 Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.
 Woody Vine - All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? Yes No ___

Figure 46. CDP-3 Page 1.

Figure 47. CDP-3 Page 2.

SOIL Sampling Point CDP-3

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix	%	Color (moist)	%	Type	Loc	Texture	Remarks
0-4	10YR 4/1						Loamy Clayey	Loam
4-10	10YR 6/1						Loamy Clayey	Sandy Clay Loam
10-13	10YR 6/1	75	10YR 5/8	25	C	M	Loamy Clayey	Sandy Clay Loam

Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains
 Location: PL=Pore Lining, M=Matrix

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted):
 Histic (A1) Thin Dark Surface (S6) (LRR S, T, U) 1 cm Muck (A6) (LRR O)
 Histic Epipedon (A2) Barren Islands 1 cm Muck (S12) 2 cm Muck (A10) (LRR S)
 Dark Histic (A3) (MLRA 153B, 153D) Coast Plain Redox (A16) (outside MLRA 150A)
 Hydrogen Sulfide (A4) Loamy Mucky Mineral (F1) (LRR O) (outside MLRA 150A)
 Stratified Layers (A5) Loamy Gleyed Matrix (F2) 7 Reduced Vertic (F18)
 Organic Bodies (A6) (LRR P, T, U) X Depleted Matrix (F3) (outside MLRA 150A, 150B)
 5 cm Mucky Mineral (A7) (LRR P, T, U) Redox Dark Surface (F6) Piedmont Floodplain Soils (F19) (LRR P, T)
 Muck Presence (A8) (LRR U) Depleted Dark Surface (F7) Anomalous Bright Floodplain Soils (F20)
 1 cm Muck (A9) (LRR P, T) Redox Depressions (F8) (MLRA 153B)
 Depleted Below Dark Surface (A11) (LRR U) Red Parent Material (F21) (MLRA 153B, 153D)
 Thin Dark Surface (A12) (LRR U) Depleted Organic (F11) (MLRA 151) Very Shallow Dark Surface (F22)
 Coast Plain Redox (A16) (MLRA 150A) Iron-Manganese Masses (F12) (LRR O, P, T) (outside MLRA 138, 152A in FL, 154)
 Sandy Mucky Mineral (S1) (LRR O, S) Umbric Surface (F13) (LRR P, T, U) Barren Islands Low Chroma Matrix (TS7) (MLRA 153B, 153D)
 Sandy Gleyed Matrix (S4) Delta Oxic (F17) (MLRA 151) (MLRA 153B, 153D)
 Sandy Redox (S5) Reduced Vertic (F18) (MLRA 150A, 150B) Other (Explain in Remarks)
 Singsped Matrix (S6) Piedmont Floodplain Soils (F15) (MLRA 148A)
 Dark Surface (S7) (LRR P, S, T, U) Anomalous Bright Floodplain Soils (F20)
 Polyvalue Below Surface (S8) (LRR S, T, U) (MLRA 148A, 153C, 153D) 2 Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.
 Very Shallow Dark Surface (F22) (MLRA 138, 152A in FL, 154)

Restrictive Layer (if observed):
 Type _____
 Depth (inches) _____ Hydric Soil Present? Yes No ___

Remarks:

Figure 48. CDP-3 Page 3.

5-31

September 9, 2020 – RK&K submitted a revised wetland delineation exhibit. Figure 49 shows the revisions based on additional data collected by the Corps and small revisions to the project area.



Figure 49. Revised wetland delineation exhibit by RK&K based on additional data collected by the Corps.

September 15, 2020 – The Corps issued a PJD referencing Figure 49. The PJD cover letter also included a table referencing the size of the wetland (Figure 50).

Classification	Labels	Area (acres)
Ditch	Ditch 1	0.092
Ditch	Ditch 2	0.032
Ditch	Ditch 3	0.024
Ditch	Ditch 4	0.021
Ditch	Ditch 5	0.015
Ditch	Ditch 6	0.058
PFO	Wetland 1	0.142
PFO	Wetland 2	0.035
PFO	Wetland 3	0.235
PFO	Wetland 4	0.207
PFO	Wetland 5	0.034
PFO	Wetland 6	0.081
PFO	Wetland 7	6.938
PFO	Wetland 8	0.721
PFO	Wetland 9	8.639
PFO	Wetland 10	2.733
PFO	Wetland 11	1.501
PEM	Wetland 13	0.261
PFO	Wetland 13	0.695
PFO	Wetland 14	0.386
PFO	Wetland 15	0.478
PFO	Wetland 16	0.161
PFO	Wetland 17	1.791
PEM	Wetland 18	0.066
PFO	Wetland 19	0.131
PFO	Wetland 20	0.026
PSS	Wetland 21	0.336
PFO	Wetland 22	0.019
PFO	Wetland 23	0.044
PEM	Wetland 24	0.022
PFO	Wetland 25	0.052
PFO	Wetland 26	1.820
PFO	Wetland 27	0.034
PEM	Wetland 28	0.141
PFO	Wetland 29	1.655
PFO	Wetland 30	0.148
PEM	Wetland 31	0.061

Figure 50. Table 1 included in the September 15, 2020 PJD Cover letter. Labels are shown on map "Airpark Project Area Confirmed WOUS Map" included in February 11, 2020 PJD package (Figure 34). Total acreage for Ditches: 0.242 acres, PEM: 0.551, PFO: 28.706, PSS: 0.336.

**United States Army Corps of Engineers
Norfolk District Regulatory Office
Southern Virginia Regulatory Section**

Memorandum for The Record – Addendum

This is an Addendum to the MFR for NAO-2012-02369 signed on 9-24-20. Several errors were identified through internal and external review. These errors and their corrections are outlined below.

Error 1: CDP-2 and CDP-3 Data sheets (Figure 43 and Figure 46) incorrectly list the Soil Map Unit Name as Dunbar Fine Sandy Loam.

Correction: Soil Map Unit Name: Coxville Loam

Error 2: CDP-1 and CDP-3 Data sheets (Figure 41 Figure 47) show *Smilax rotundifolia* as the only species in the Woody Vine Stratum with an absolute cover of 3 and not as a dominant.

Correction: While the data is correct, the AGCP Supplement pg 19 indicates that when a stratum has less than 5% cover during peak growing season, those species can be combined into other similar strata for sampling purposes. *S. rotundifolia* therefore could have been added to the sapling/shrub or herbaceous stratum. However, this correction would not have made *S. rotundifolia* a dominant species and would not have changed the outcome of the Dominance Test which satisfied the hydrophytic vegetation parameter.

Error 3: CDP-1 and CDP-2 (Figure 42 and Figure 45) Data sheets incorrectly checked Depleted Below Dark Surface (A11) hydric soil indicator.

Correction: This indicator was not satisfied because the layer above the depleted matrix did not have a value of 3 or less and chroma of 2 or less. Therefore, this indicator should not be checked.

Error 4: CDP-1, CDP-2, CDP-3 (Figures 42, 45, and 48) had yellow highlighted question marks (?) beside several hydric soil indicators.

Correction: The Corps approved automatic Excel data sheets were used to complete these data forms. These automatic data forms place highlighted question marks next to indicators for the user to consider. Since these hydric soil indicators were not met, the highlighted check marks should have been deleted to avoid confusion.

Error 5: CDP-1 (Figure 42) incorrectly checked Depleted Matric (F3) as a hydric soil indicator. The data that were collected at this data point and recorded do not meet the F3 indicator. The thickness of the layer from 10-13 inches does not satisfy the 6-inch thickness requirement for F3.

Correction: Data collected by RK&K on October 11, 2019 at DP-9 (South of CDP-1) indicate that this layer continues to 14 inches. Based upon the data collected by RK&K and upon observations surrounding this datapoint it is the Corps position that this layer continues for 3 additional inches to satisfy the thickness requirement of F3.

PREPARED BY:



Herman W. Hudson III, PhD, PWS
Environmental Scientist

Date 10-9-20_____

REVIEWED AND APPROVED BY:

Todd Miller, Chief
Southern Virginia Regulatory Section

Date 10/30/2020_____

PREPARED BY:

Elaine Holley

Digitally signed by Elaine
Holley
Date: 2020.09.24 13:20:13
-04'00'

Elaine Holley
Environmental Scientist

Date

Herman W. Hudson III

Herman W. Hudson III, PhD, PWS
Environmental Scientist

9-24-20
Date

REVIEWED AND APPROVED BY:

MILLER.TODD.M.1195494890

2020.09.24 13:24:25 -04'00'

Todd Miller, Chief
Southern Virginia Regulatory Section

Date

William T. Walker

Tom Walker, Chief
Norfolk Regulatory Branch

9/24/20
Date

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE WATER CONTROL BOARD

IN RE: INFORMATIONAL BRIEFING/PUBLIC HEARING
HEARD BEFORE: HEATHER WOOD
CHAIR, STATE WATER CONTROL BOARD

IN RE: VWP INDIVIDUAL PERMIT NO. 19-2036, PROPOSED
WEGMANS DISTRIBUTION CENTER, HANOVER COUNTY, VIRGINIA

NOVEMBER 19, 2020

HOSTED BY: DEQ PIEDMONT REGIONAL OFFICE

4949-A COX ROAD

GLEN ALLEN, VIRGINIA

6:00 P.M.

COMMONWEALTH REPORTERS, LLC
P. O. Box 13227
Richmond, Virginia 23225
Tel. 804-859-2051 Fax 804-291-9460

1 APPEARANCES:

2 Heather Wood, Presiding*
3 Chair, State Water Control Board

4 DEQ STAFF:

5 Jaime Robb*
6 VWP Manager

7 Marilee Tretina*
8 Office of Training Services

9 Kevin Vaughan*
10 Piedmont Office

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25 *Board member and staff remote participation.

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SPEAKER NAME	PAGE
Jeff Hetzer**.....	59
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**All public comments were offered via GoToWebinar.

PUBLIC COMMENT PERIOD (con't.)

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**All public comments were offered via GoToWebinar.

1 (The virtual public informational briefing
2 commenced at 6:00 p.m., and the presentation
3 commenced as follows:)

4
5 MS. TRETINA: Good evening.
6 Welcome to the Virginia Department of
7 Environmental Quality virtual public hearing
8 for the Wegmans Distribution Center draft
9 VWP permit.

10 Before we get started with the
11 briefing portion, which runs from 6:00 to
12 6:45 tonight, we'll just go over the
13 logistics of using the webinar.

14 You can see on your screen
15 that you've got the control devices for a PC
16 and two mobile devices, Android and iPhone.
17 During the briefing, you'll be able to ask
18 questions.

19 So if you have questions
20 during the briefing, they'll be answered at
21 the end, you can write it in the questions
22 portion of the -- of the control panel. You
23 can see that clearly on the PC view. And
24 then on the Android and iPhone, you just
25 click the question to answer your question.

1 Attendees are muted during the portion --
2 the briefing portion of the webinar tonight.
3 After the briefing portion, the questions
4 option is turned off as all public comments
5 during the public hearing will be verbal.
6 So now, I'll turn it over to Jaime Robb who
7 will give you the briefing.

8
9 MS. ROBB: Thank you, Marilee.
10 Good evening, everyone. Just want to thank
11 you for joining us tonight. My name is
12 Jaime Robb and I'm the Virginia Water
13 Protection, or VWP, permit manager at DEQ's
14 Piedmont Regional Office.

15 We're here tonight to discuss
16 the proposed VWP permit No. 19-2036, Wegmans
17 Distribution Center located in Hanover
18 County.

19 Assisting me this evening with
20 conducting this webinar and hearing is
21 Marilee Tretina with the Office of Training
22 Services. Also, Heather Wood -- Chair of
23 the State Water Control Board -- will be
24 acting as our hearing officer. So before I
25 get started, I'd like to mention just a few

1 logistics. DEQ is holding tonight's
2 proceedings as an electronic meeting in
3 compliance with Item 4-0.01G of Chapter 1289
4 of the 2020 Acts of the Assembly as a result
5 of the declaration of the State of Emergency
6 due to COVID-19 on March 12th, Executive
7 Order 51 and subsequent orders 53 and 55.

8 And in keeping with Governor
9 Northam's temporary restrictions and
10 directions to stay at home, this public
11 hearing is being held via electronic
12 communication through GoToWebinar.

13 At the bottom of each slide,
14 you will notice that there is a phone
15 number, name and email address for staff
16 that you can contact if you're having
17 difficulties.

18 So tonight's proceedings are
19 broken into two parts. The first portion
20 will be an informational briefing where I'll
21 present information regarding the VWP
22 program and the draft permit, and answer
23 questions regarding both. As Marilee
24 mentioned, questions can be typed into the
25 question box of the webinar system. And we

1 will answer those at the end of the
2 presentation. This will last until 6:45.
3 No public comments are accepted during the
4 informational briefing.

5 Comments, as part of the
6 official comment period, must be made during
7 the public hearing which will be called to
8 order at 7:00 p.m., by the hearing officer.

9 Please note that during the
10 public hearing that begins at 7:00, staff
11 will not be responding to comments. If you
12 wish to ask a question during the briefing,
13 as I mentioned, please type that in the
14 question box.

15 And that is, again, only for
16 the first portion of tonight's proceedings
17 from 6:00 to 6:45. We will now get started.
18 So what the hearing -- let's see. Again,
19 the public comments will only be received at
20 7:00 p.m.

21 This is an opportunity for us
22 to describe the project, answer questions.
23 And I just wanted to note that a decision
24 regarding this permit will be made at a
25 future meeting of the State Water Control

1 Board. And no decision will be made during
2 either portion of tonight's proceedings. So
3 first off, I wanted to talk briefly about
4 those activities that are typically
5 regulated under a VWP permit or by the VWP
6 program.

7 And those are activities that
8 cause significant alteration or degradation
9 of surface water function or wetland acreage
10 and function. And these typical activities
11 including dredging, excavating, filling,
12 draining, impoundment, installation of
13 culverts and bridges and channelization.

14 Additionally, I just thought I
15 would mention that there are several
16 activities that -- or a lot of activities
17 that are not regulated under the VWP
18 program.

19 And those activities are
20 specific to zoning, noise, Chesapeake Bay
21 Preservation Act and resource protection
22 areas, traffic, public safety and
23 aesthetics. As many of you are aware, this
24 is the second public hearing tonight held by
25 DEQ for this project. DEQ originally

1 received the application for the proposed
2 Wegmans Distribution Center, originally
3 called Project Tiger, in December 2019.

4 After initial review of the
5 application, DEQ requested and the applicant
6 provided additional information on several
7 occasions. Information was submitted by the
8 applicant through March of 2020.

9 A 30-day comment period was
10 held beginning at the end of March and
11 concluding on April 30th. Upon review of
12 those comments and due to significant public
13 interest in the project, a public hearing on
14 the project was held in July, which also
15 included a second comment period.

16 At the conclusion of the
17 second comment period, DEQ requested
18 additional information from the US Army
19 Corps of Engineers regarding their previous
20 jurisdictional surface water determination
21 for the applicant's preferred site.

22 The Corps conducted additional
23 field work at the site in August and issued
24 a revised jurisdictional surface water
25 determination in September. The

1 determination identified an increase in
2 surface water onsite and, as a result, the
3 applicant submitted updated application
4 materials to DEQ in September and October.

5 DEQ has reviewed the updated
6 information, including the proposed surface
7 water impacts and additional information on
8 off-site alternatives considered by the
9 applicant.

10 Based on the updated
11 information, DEQ has revised the draft
12 permit and placed it out for public comment.
13 The current comment period begins on October
14 20th and will end -- or began on October
15 20th and will end on December 4.

16 In accordance with regulatory
17 requirements, an applicant must identify the
18 purpose and needs for their project as part
19 of their application.

20 In this case, for the Wegmans
21 Distribution Center, the applicant
22 identified the purpose of the project to
23 construct a regional grocery distribution
24 center that will serve existing retail
25 locations, relieve transportation burdens

1 from existing supply centers and provide a
2 base of support to serve future retail
3 locations in the Mid-Atlantic region.

4 The applicant explained that
5 the need for the project is to develop a new
6 regional distribution center, centrally
7 located, to accommodate existing and
8 proposed retail locations in the
9 Mid-Atlantic region in a logistically and
10 responsible cost-efficient manner.

11 The applicant's proposal is to
12 construct a 1.7M square-foot distribution
13 center at the intersection of Sliding Hill
14 and Ashcake Roads that will include a dry
15 warehouse, refrigerated warehouse, return
16 center, food manufacturing facility, office
17 space and parking area.

18 Support facilities that will
19 be constructed include stormwater management
20 practices, parking and staging areas for
21 tractor trailers and support buildings for
22 fleet maintenance, dispatch and security.

23 VWP applications reviewed by DEQ can be
24 broken into three main parts. First, DEQ
25 reviews the -- that the applicant has

1 avoided and minimized impacts to the maximum
2 extent practicable. This is done through
3 the review of the application submittal of
4 alternative analysis, both onsite and
5 offsite, to determine the project's least
6 environmentally damaging practical
7 alternative, or LEDPA, in light of the
8 overall project purpose.

9 The second component of the
10 review includes verification that the
11 applicant is proposing compensation for
12 unavoidable impacts.

13 And that that compensation
14 meets the requirements of the State Water
15 Control law and the VWP regulations. And
16 then lastly, DEQ coordinates review of the
17 project with other State agencies to insure
18 that no significant impairments to State
19 waters or fish and wildlife resources will
20 occur.

21 The VWP program permit
22 regulation requires the application include
23 an alternative analysis that details the
24 site-specific -- both onsite and offsite --
25 measures taken during project design and

1 development to first avoid and then minimize
2 impacts to surface water to the maximum
3 extent practicable.

4 An alternative is considered
5 practicable if it is available and capable
6 of being done and taking into consideration
7 the cost, existing technology and logistics
8 in light of the overall project purposes.

9 So there's three criteria in
10 determining the least environmentally
11 damaging practical alternative. We look at
12 surface water impacts, but we also look at
13 the practicability associated with the
14 costs, technology and logistics.

15 And this is done both on
16 offsite alternatives and onsite avoidance
17 and minimization. According to the
18 application materials, the applicant focused
19 their site selection in Hanover County due
20 to the proximity of Interstate 95 in order
21 to efficiently serve existing, planned --
22 and planned retail stores from Northern
23 Virginia to North Carolina, with the
24 majority of those stores being located in
25 Northern Virginia. The applicant has stated

1 that the location of the distribution center
2 in Hanover serves to decrease distance, time
3 and costs associated with the transportation
4 to retail stores in those areas and
5 minimizes damage and loss of product due to
6 transportation problems.

7 The applicant identified five
8 sites in Hanover, including the preferred
9 site. And DEQ reviewed the application
10 materials to determine if the preferred site
11 met the least environmentally damaging
12 practical alternatives.

13 Each site was evaluated again,
14 keeping in mind the applicant's stated need
15 and purpose of the project, the extent of
16 surface waters, impacts onsite and whether
17 logistical, economical or technological
18 challenges existed associated with
19 construction of such site.

20 For purposes of onsite
21 avoidance and minimization, the applicant
22 proposed to implement best industry
23 standards to minimize the footprint
24 including cross docking, an L-shaped campus
25 and flow through selection techniques. They

1 also proposed utility crossings be paired
2 with road crossings to minimize impacts.
3 Road crossings would be placed perpendicular
4 to surface waters and cross at the narrowest
5 point feasible. Culvert pipes at proposed
6 road crossings to maintain flows.

7 Roadways, buildings and
8 stormwater management facilities are
9 proposed to avoid lateral impacts where
10 feasible.

11 During the application review
12 process, DEQ inquired as to whether impacts
13 could be further minimized by reducing
14 parking areas or by adding vertical levels
15 to the distribution center.

16 Reduction in employee parking
17 was not feasible due to the need for
18 adequate parking for shift changes. Adding
19 vertical levels to the facility was deemed
20 not feasible based on proposed building
21 heights being near maximum allowable heights
22 and local zoning regulations. Additionally,
23 according to the applicant, the proposed
24 configuration is considered the most
25 efficient based on review of other large

1 scale distribution facilities in the
2 industry. Using a different layout could
3 mean a less efficient operation and a larger
4 footprint, and potentially more impacts
5 onsite.

6 The amount of surface waters
7 onsite that potentially will be avoided is
8 at 15 acres based on the surface water
9 determination.

10 After reviewing the four
11 alternative sites and the applicant's
12 proposed preferred site, and taking into
13 account the cost, logistics and technology
14 associated with construction in light of the
15 applicant's stated purpose and need, DEQ
16 determined the preferred site did meet the
17 least environmentally damaging practical
18 alternative based on the application.

19 To insure the goal of no net
20 loss of surface water and function and
21 wetland acreage and function are met, State
22 Water Control law requires compensatory
23 mitigation for those impacts that can not be
24 avoided. This is usually accomplished by
25 the applicant through the purchase of

1 wetland mitigation credits or contributing
2 to an approved inland fee program, which is
3 DEQ's preferred option of mitigation. Here
4 on your screen, you see a table that
5 summarizes the impacts from the proposed
6 project.

7 As a total impacts proposed at
8 the preferred is 14.85 acres. This includes
9 permitted impacts to forested wetlands and
10 emergent wetlands as well as jurisdictional
11 ditches.

12 There are also proposed
13 secondary impacts associated with the
14 project to forested wetlands and a
15 jurisdictional ditch.

16 And lastly, temporary emergent
17 wetland impacts associated with utilities.
18 The next column over shows the mitigation
19 ratio and ultimately the required mitigation
20 wetland credit purchase that'll be necessary
21 for the project.

22 And as you can see, the total
23 wetland credit purchase required by the
24 permit will be 29.41 credits. The applicant
25 has proposed to purchase credits from a

1 mitigation bank to fulfill the requirements.
2 State Water Control law and the proposed
3 permit requires the mitigation banks be used
4 in the same hydrologic unit code as the
5 project, or an adjacent hydrologic unit code
6 and in the same watershed as the project
7 site.

8 The applicant has provided a
9 wetland credit availability letter from the
10 New Kent Environmental Bank. The proposed
11 mitigation plan complies with the
12 requirements of State law.

13 The last major component of
14 review includes -- insures that there's no
15 significant impairment to State waters or
16 fish and wildlife resources from a project.

17 To accomplish this, DEQ
18 coordinates with the Virginia Department of
19 Conservation and Recreation, the Department
20 of Wildlife Resources -- formerly called
21 DGIF -- and the Virginia Department of
22 Health and Virginia Marine Resource
23 Commission. Information regarding the
24 project's location, activities and impact
25 are provided to these agencies for review

1 when the application is received from DEQ --
2 by DEQ. Additionally, coordination with
3 federal agencies and the Virginia Department
4 of Historic Resources is performed through
5 the US Army Corps of Engineers permitting
6 process.

7 And just as a -- a
8 clarification, as far as the State
9 coordination is concerned -- because of the
10 increase in impacts associated with this
11 site, DEQ did initiate coordination with the
12 Department of Wildlife Resources and the
13 Department of Conservation and Recreation in
14 light of the overall increase in impacts
15 based on the information we received in
16 September.

17 So as part of the application,
18 the applicant is required to provide a final
19 impacts map. The impact map that you're
20 seeing right now on your screen is that
21 final map.

22 There have been several
23 iterations of this map since December, and
24 also since the updated information has been
25 received in -- in September and October.

1 For purposes of orientation, Egypt Road is
2 located on the left side of the map, Sliding
3 Hill Road is on the right side of the map.
4 Ashcake borders the project at the top.

5 And the impact -- impact map
6 reflects the most recent Corps
7 jurisdictional determination that was issued
8 in September. The permit will contain
9 conditions that limit the amount of impacts
10 onsite.

11 It will require and define the
12 amount of compensatory mitigation. It will
13 require implementation of erosion and
14 sediment and stormwater controls. And it
15 will require that work be conducted in the
16 dry.

17 Additionally, the permit
18 includes monitoring for remaining onsite
19 surface waters and is limited to a term of
20 15 years.

21 Next step in the application
22 review and permitting process, so right now
23 we have an active comment period that will
24 close on December 4th. We will assess all
25 comments at the end of that comment period,

1 whether they are received in writing or
2 verbally here tonight. And verbal and
3 written comments are -- are all given the
4 same consideration.

5 Staff will then prepare a
6 response to comments and they will revise
7 the draft permit in light of comments if
8 appropriate.

9 Next, staff will present the
10 project to the State Water Control Board and
11 make a recommendation to approve or deny the
12 permit.

13 Anyone participating by
14 providing written comments or speaking
15 during the hearing tonight can respond to
16 staff summary when it is presented to the
17 State Water Control Board.

18 The State Water Control Board
19 will be the one to render a final decision
20 and they can either issue the permit, issue
21 the permit with modifications or deny the
22 permit. And as of right now, the State
23 Water Control Board meeting, to which this
24 project will be on the agenda, it has not
25 been determined. I know that some folks

1 have been concerned that perhaps this would
2 be going to the Board in their December 2020
3 meeting, and this permit is not on their
4 agenda for December 2020.

5 So it is a future date that
6 will be determined. And the Board, by law,
7 is required to take up the matter within 90
8 days of the close of the comment period.

9 And the schedule for the 2020
10 Board has not been established. And once it
11 is established, it will be announced on the
12 Regulatory Townhall.

13 And just for a reminder for
14 anyone that may have joined us late and for
15 everyone else, the official hearing begins
16 at 7:00. Until 6:45, DEQ will take
17 questions.

18 And if you would like to make
19 official comments for the record, that needs
20 to be done during the hearing at 7:00 p.m.,
21 or they can be submitted in writing to DEQ.

22 And finally, the comment slide
23 here, you can address the comments to me.
24 You can email those. You can deliver them
25 by hand or submit them through the US Postal

1 Service to our Piedmont Regional Office.
2 Anything sent through the mail needs to be
3 received by 5:00 p.m., on December the 4th.
4 Emailed comments can be received up until
5 11:59 p.m., on the 4th.

6 So that is the presentation
7 for tonight for our public briefing. I am
8 going to go to take a look at some of our
9 questions. And bear with me just a minute.
10 I'm undocking so I can take a look at what
11 we've got here.

12 So first question was whether
13 or not the Board would be considering this
14 permit on the 9th. And as I just explained,
15 they will not. This is not on their agenda
16 for the 9th.

17 Next question, was the
18 discrepancy in the wetlands found during the
19 recent review which was limited only to
20 review in the mosaics, should this trigger a
21 review of the entire site to determine the
22 full wetland impact. And -- so as far as
23 the delineation and the confirmation of
24 State waters is concerned, it's our policy
25 at DEQ -- for permitting decisions -- that

1 we rely on the Corps' confirmation. State
2 Water Control law requires that we use the
3 Corps' reference materials and that we
4 insure that we're consistent with the
5 implementation practices that the Corps
6 employs.

7 So when there's questions
8 regarding a jurisdictional determination,
9 those are referred to the Corps just like
10 they were last summer when questions were
11 raised during the previous comment period.
12 So DEQ will review comments regarding the
13 jurisdictional determination.

14 And if additional information
15 is needed, we'll follow up with the Corps.
16 Let's see here. What is the estimated
17 compensation cost under the current project
18 site plan? I don't have that right off in
19 front of me.

20 I would be glad to provide
21 that if you'd send me an email after our
22 proceedings tonight and I can get you that
23 information. Additionally, I believe it is
24 in the application materials that is
25 available on our web site. And the

1 information regarding this project can be
2 found at [www.deq.virginia,](http://www.deq.virginia.gov/wegmans) spelled out,
3 [.gov/wegmans.](http://www.deq.virginia.gov/wegmans) And the application materials
4 as well as the jurisdictional determination
5 and supporting documentation for that, the
6 draft permit, the fact sheet, all of that
7 information is posted on our web site.

8 There's a question, when did
9 Hanover County board approve this project?
10 It's my understanding that the Board
11 approved the project in May. But that is
12 not part of our consideration.

13 That is -- that's a separate
14 process. So you would need to confirm that
15 with the County. But I think that that's
16 when that occurred.

17 Data Point 2, I believe Data
18 Point 2 is addressed in the Corps' technical
19 memorandum that supports the revised PJD.
20 So information regarding Data Point 2, I
21 would -- I would look to that.

22 Again, that's posted on our
23 web site. Why did the Board not take a vote
24 within 90 days after the initial public
25 comment period? So the -- because we went

1 back and asked for additional information
2 from the applicant and from the Corps, that
3 is why it was not forwarded to the Board at
4 that time.

5 What independent verification
6 of wetland delineation, alternatives
7 analysis and practicality for purposes of
8 the LEDPA analysis.

9 So -- I mean, there is a
10 certain amount of reliance on the
11 application materials provided by the
12 applicant.

13 We do verify the -- verify the
14 impacts that are proposed, the site design,
15 the impact map matches up with the
16 confirmation -- surface water confirmation
17 issued by the Corps.

18 We ask questions of the
19 applicant. So it -- it's not a blind
20 acceptance of what the applicant gives us.
21 It's a lot of questions.

22 And we ask questions about
23 site design, we ask questions about further
24 avoidance and minimization. And get to a
25 point of where we believe there is

1 reasonable information on the record that
2 documents and justifies information is
3 correct in the application. Can you give an
4 example of when DEQ has denied a permit and
5 what stipulations surrounded the denial?

6 So typically what happens is
7 if an application is incomplete or can't be
8 moved on to permit approval or
9 recommendation for approval, we do allow the
10 applicant to provide additional information
11 until such time that the application can be
12 approved.

13 Alternatively, the application
14 can -- can be withdrawn by the applicant.
15 And typically, if there is a point at which
16 the applicant is still considered
17 incomplete, rather than deny the permit an
18 applicant will -- rather than DEQ deny a
19 permit, typically the applicant will
20 withdraw.

21 So given those circumstances,
22 we don't get into situations very often in
23 which DEQ has denied a permit. And you
24 know, quite frankly, we have -- you know --
25 many programs, many different regional

1 offices. So I can't give you an exact
2 example of when that may have occurred.
3 Where did the credits in the New Kent
4 Environmental Bank come from?

5 So the question is, is it the
6 same watershed, State of Virginia? Same --
7 similar wetlands? So yeah, the -- the State
8 Water Control law does require that the
9 compensatory mitigation credits be purchased
10 from a bank that's within the same
11 hydrologic unit code, sort of a microcosm,
12 micro-watershed or an adjacent watershed.

13 So in this particular case,
14 this project is located in the Pamunkey
15 watershed. And the New Kent Environmental
16 Bank would also be located in the Pamunkey
17 watershed.

18 Are those on the Board unaware
19 of the history of the wetlands being the
20 burial ground of unmarked slaves of Hanover
21 County?

22 I am not sure to what extent
23 the Board is aware of the ongoing -- the
24 ongoing discussions regarding graves onsite.
25 Graves -- the Corps -- it is our

1 understanding the Corps is working with
2 interested parties as well as the Department
3 of Historic Resources regarding graves
4 onsite. That is part of the Section 106
5 review that is done by the Corps.

6 That is not something that is
7 part of the VWP analysis. And I just --
8 looking back at the question regarding the
9 mitigation bank. So I -- I think I
10 misspoke.

11 I said that in -- New Kent was
12 in the Pamunkey. That's actually in the
13 York. So just for clarification there.
14 Let's see.

15 Why are impacts to the same
16 site area on Archie Cannon impact map shown
17 by Wegmans as stream impact. But shown by
18 Timmons as a wetland impact for Skinnel [sp]
19 JPA.

20 And I -- just honestly, I can
21 -- I can look into that. You can submit
22 that as a comment. I'm not familiar with
23 that particular JPA. And I can, you know,
24 further look into that if you'd like to
25 contact me. It was stated previously that

1 there are no protected wildlife species on
2 this site, but there are protected wildlife
3 species on others. All sites are within a
4 few miles of each other.

5 This doesn't seem likely. Who
6 determines if there are protected species on
7 the property? So I think that what was --
8 what has been documented is that for several
9 of the sites, there are potentials for
10 threatened and endangered species within a
11 few mile radius of those sites.

12 And the way that that's
13 determined is DCR and DGIF, they have tools
14 that can be used to basically map a
15 project's location and then look for hits
16 within that area.

17 So that's how that's
18 determined. Additionally, for this specific
19 project and for the Airpark site, the
20 information was sent over to both DCR and
21 DGIF.

22 And they confirmed through a
23 further review of information that there
24 were no threatened and endangered species,
25 you know, potential impacts with this

1 particular site. So question here, were
2 environmental justice impacts considered
3 during DEQ's project review process? So,
4 you know, environmental justice is an
5 important issue.

6 And right now in the State,
7 there's a lot of work being done on that.
8 Last General Assembly session of 2020, there
9 was legislation passed regarding
10 environmental justice that became effective
11 this year.

12 And DEQ takes the matter very
13 seriously. So when we get word that there
14 is potential for an environmental justice
15 concern within a community, then DEQ will do
16 outreach to the communities to make sure
17 that that affected community is aware of the
18 project, is aware of what DEQ is processing
19 regarding that project to make sure that
20 they are aware of what DEQ's statutory and
21 regulatory authorities are.

22 And ultimately, how they can
23 participate in the process. And so for
24 Wegmans, we did -- you know -- reach out to
25 some of the communities leaders of Brown

1 Grove back in the early summer. We had a
2 conference call explaining those items,
3 explaining regulatory authorities,
4 explaining what was -- what was the purpose
5 of the project, how the community could
6 participate in the public participation.

7 We have kept those -- the
8 folks in that community, made sure that
9 they're on our mailing list. So when you
10 guys get mailings of hearing notices and
11 comment notices, you know, those folks get
12 those, too.

13 So that is how DEQ has handled
14 that. Would DEQ consider denying a permit
15 on adverse environmental justice impacts?
16 So right now, the agency has contracted with
17 a third party to evaluate our various
18 environmental regulatory programs and
19 determine how to -- you know, make
20 reservations to determine how best to
21 incorporate environmental justice impacts
22 into those programs. So that is what is
23 going on at DEQ right now regarding the
24 environmental justice. How many people did
25 you meet with in Brown Grove? Was it the

1 entire community? So I specifically reached
2 out to Pastor Beechaum and to Charles Moore.
3 And they rounded up some of the community
4 members that they felt would be interested
5 in the project.

6 There were, I think, six or
7 seven -- maybe a few more -- that were on a
8 conference call with us and we provided a
9 presentation. And we have relied on the
10 community leaders to help us get that word
11 out.

12 How does the third party
13 review of environmental justice issues
14 impact this particular project? So you
15 know, we're -- we're looking at
16 recommendations from -- from that third
17 party review to determine exactly what it
18 means for this project.

19 Why was the project not
20 reviewed by Governor Northam's Council on
21 Environmental Justice? So the Virginia EJ
22 council that was formed by the Governor's
23 Office, they were actually charged with
24 looking at EJ on a more systemic scale
25 across all State agency programs and

1 regulatory programs, regulations, laws, all
2 of that. So they are not involved
3 intimately one-on-one with projects, but are
4 looking to -- to provide recommendations to
5 the governor to better implement EJ through
6 the State system as a whole.

7 Will the third party that DEQ
8 hired regarding EJ recommendations be
9 reviewing this project approval? No, they
10 are not.

11 Again, similar to how the
12 Virginia EJ Council is giving
13 recommendations to the governor more on a
14 high level, high scale basis, the third
15 party evaluation is looking at, you know,
16 DEQ's programs as -- as a whole and making
17 recommendations.

18 And they we're seeing how
19 those recommendations can be worked into
20 individual programs. And who is the third
21 party?

22 I think the name is SEKO
23 [SKEO], I'm going to pronounce that wrong,
24 though. It's -- I think it's S-I-E-K-O. If
25 you Google DEQ's web site and environmental

1 justice, there should be some information
2 out there regarding the work Virginia has
3 done -- or DEQ has done. So you only
4 contacted two people in Brown Grove.

5 Why is it the responsibility
6 of the community leaders to get the
7 information out? Well, the -- the community
8 leaders -- we contacted them because they
9 were the first people that we knew to start
10 with was the pastor and -- and one other
11 community leader.

12 And they were the ones that
13 were able to connect us and tell us who in
14 the community we should be talking to. So
15 there is a question, considering the entire
16 record, do you believe if Airpark is the
17 least environmentally damaging practical
18 alternative?

19 I think that review of the
20 information is -- demonstrates that given
21 the various criteria of looking at surface
22 water impacts, looking at practicality in
23 terms of cost, logistics and technology that
24 the information does leave itself to -- to
25 indicate that the least -- that the Airpark

1 is the least environmentally damaging
2 practical alternative as stated in our
3 presentation. Sorry, there's -- questions
4 are coming and things are moving. So I'm
5 trying to catch these as I go.

6 So -- I'm trying to understand
7 the question here. Which category or
8 categories does the top alternative not make
9 it less viable -- not meet, making it less
10 viable than the proposed location?

11 So there were some situations
12 in which costs, the other -- other costs
13 were considered that the -- what -- the
14 costs was the limiting factor.

15 I believe that there was one,
16 maybe two, projects -- just thinking off the
17 top of my head -- that there were some
18 logistical concerns regarding how the sites
19 were laid out, and the proposed purpose and
20 needs of the applicant.

21 All of that information is
22 based -- is listed out in our fact sheet
23 that is available on our web site and
24 explains, you know, each of those categories
25 and whether or not it, you know, checked the

1 box or not for cost, existing technology and
2 logistics. Let's see. Can you repeat the
3 name of the third party? SEKO [SKEO], yes.
4 S-E-I-K-O, S-I-E-K-O. I apologize.

5 I can't remember off the top
6 of my head, but I think that that's correct.
7 Why didn't DEQ send info to the entire Brown
8 Grove community? We had tried to, you know,
9 reach out to folks by public noticing in
10 different publications.

11 We also offered to bring
12 information over to the church, but was --
13 was told that it wasn't -- wasn't necessary.
14 That the various community leaders had --
15 had, you know, been in contact with the --
16 with the community and had all of the
17 information at that point that they needed.

18 Let's see. Agency policy, is
19 it the agency's policy determination that
20 outreach, engagement and instruction in
21 disaffected community members on how to
22 participate -- I am sorry. I think I'm
23 missing something with this question here.
24 Environmental justice impacts considered
25 during project review process. I think

1 we've already answered that. Let me see
2 here. Scrolling down. So the person that
3 asked about the third party, it's S-E-K-O --
4 sorry, S-K-E-O. Let's see, where are we at?

5 Wegmans is not required to
6 build a new road in the Archie Cannon site.
7 They're using this as a reason -- are they
8 using this as a reason for increase costs.

9 It's our understanding that
10 that was going to be a need to build at that
11 site that was given consideration when
12 looking at the alternatives analysis.

13 Certainly if there's
14 information that the public would like to
15 submit to us that is different from that, we
16 will take a look at it. But you know, to
17 our -- our knowledge, that was something
18 that was part of that project at Archie
19 Cannon.

20 Is the agency's policy
21 determination that outreach, engagement and
22 instruction to disaffected community members
23 on how to participate in the required
24 permitting process considered sufficient for
25 meeting EJ? So again, you know, our biggest

1 concern is making sure that all people --
2 regardless of how they are, race, gender,
3 all of that -- that they have equal
4 opportunity to the process.

5 So -- and that's, you know,
6 within the definition of the EJ legislation.
7 So we are insuring that everyone has equal
8 opportunity to participate there. All
9 right.

10 What is DEQ's responsibility
11 for -- sorry, I guess it's verifying --
12 looks like a mistype there, of the Wegmans
13 cost estimate? A planner for the town said
14 their \$10M estimate for road improvements
15 was much higher than what the town had
16 estimated.

17 Yeah, and I -- I understand
18 that that's a concern of the community. I
19 have spoken with the applicant about that.
20 There appears to be documentation regarding
21 that and we'll be asking for that
22 information to -- to answer that question.
23 Let's see. There's a question about whether
24 the third party would recommend this project
25 at this location. And again, that third

1 party does not get involved -- DEQ did not
2 hire that third party to get involved in
3 looking at individual projects, but instead
4 looking at our programs at -- you know,
5 holistically.

6 Verifying -- okay. So were
7 any pre-existing buildings or sites
8 considered as alternative locations? And if
9 not, are they at all required to consider
10 using those instead of building a new site?

11 There's nothing that says that
12 they have to or that they don't have to look
13 at pre-existing buildings. Essentially, the
14 applicant shapes their purpose and need to
15 the application and determines the
16 alternatives that are selected for use.

17 DEQ did ask about the sites
18 that were located in Hanover. And the
19 applicant indicated that -- that, you know,
20 based on their needs there's -- that those
21 were the sites that met their -- their
22 needs. So that's why they looked at those
23 particular sites. And I think that there
24 were a few sites that -- existing buildings
25 that could accommodate the size footprint

1 that they needed. All right. And then
2 there's a question in here, at what point do
3 you question the integrity of the applicant
4 after being proven wrong multiple times?

5 So I mean, we -- as -- as an
6 agency, we do rely on the applicant
7 providing the most current information, the
8 most accurate information.

9 They're signing certification
10 statements saying that the information is
11 accurate. So the -- the, you know, there is
12 a preponderance of -- of requirements on the
13 applicant to be accurate.

14 And DEQ reviews that
15 information and, you know, we do some
16 independent verification of some of that
17 information and make sure that it is in line
18 with our understanding.

19 So it -- again, I think I said
20 it earlier, we do not blindly accept what
21 they are submitting to us. All right. So
22 it looks like we're hitting at 6:45. So I
23 will read one last question and then we are
24 going to take a pause and we will start back
25 up at 7:00. And that last question will be,

1 what impact -- this is in order they were --
2 came in. What impact is there on the homes
3 on Egypt Road? From the map, it looks like
4 the impact line as well as the structure
5 itself is very close to homes that people
6 live in.

7 And especially considering
8 that some of those homes are on well water.
9 So, you know, we have heard concerns about
10 well water. You know, we do not
11 specifically regulate well water as it
12 pertains to the VWP permit.

13 But our understanding of soils
14 on that site does seem to indicate that
15 there's a pretty thick clay level in the
16 soil profile.

17 And suggests that there's a
18 perched water table in that -- on that site
19 and in that vicinity. So based on that, I
20 would venture to guess that the site should
21 not affect the well water associated with
22 the neighbors. But ultimately, it's the
23 local -- the local Department of Health
24 officials that regulate private groundwater
25 wells. And that is going to conclude our

1 Q&A for tonight. So again, I want to thank
2 everybody who submitted questions. I
3 encourage you to submit comments.

4 Again, written and verbal
5 comments tonight will be considered equally
6 as we review all of this information at the
7 close of the comment period. So again,
8 thank you.

9 We're going to take a brief
10 pause. We will start back up at 7:00
11 o'clock. And the hearing officer, at that
12 time, will call the hearing to order. So,
13 thank you.

14
15 (The virtual public informational briefing
16 concluded at 6:48 p.m. The virtual public hearing
17 commenced at 7:00 p.m., and the taking of oral
18 comments commenced as follows:)

19
20 MS. TRETINA: Good evening.
21 Welcome to the Virginia Department of
22 Environmental Quality's virtual public
23 hearing for the Wegmans Distribution Center
24 draft VWP permit. We're just going to go
25 over some more logistics about the hearing.

1 It's a little different than the briefing.
2 You see, once again, the control panel on
3 your screen for the webinar.

4 If you are registered to make
5 comments during the hearing, we recommend
6 switching to phone audio. If you dialed the
7 number prior to joining the webinar, you
8 need to hang up.

9 Then select phone audio on
10 your webinar control panel, which you can
11 see the examples here. On the PC, open up
12 phone and -- on the open up audio. And
13 click on phone and then you will get a phone
14 number, an access code.

15 And if you've registered to
16 speak, you need to put in the PIN number.
17 That's very important. Otherwise, we can
18 not unmute you. So you do it there on the
19 PC.

20 And then click the three dots
21 on an Android and then the audio icon on the
22 iPhone. If you are commenting, please raise
23 your hand -- use the raise your hand
24 function at the appropriate time. And the
25 commenters will be unmuted in the order that

1 they registered to speak. And now, I'm
2 going to turn it over to Heather Wood, our
3 hearing officer for the evening.
4

5 MS. WOOD: Thank you, Marilee.
6 Good evening, ladies and gentlemen. I will
7 now call the hearing to order. My name is
8 Heather Wood and I'm the Chair of the State
9 Water Control Board, and will serve as the
10 hearing officer for tonight's public
11 hearing.

12 This hearing is being
13 conducted in compliance with Item 4-0.01G of
14 Chapter 1289 of the 2020 Acts of Assembly.
15 As a result of the March 12th, 2020,
16 Declaration of State of Emergency due to
17 novel coronavirus -- COVID-19 -- Executive
18 Order 51, subsequent Executive Orders 53 and
19 55, and in keeping with Governor Northam's
20 temporary restrictions and direction to stay
21 at home, this public hearing is being held
22 via electronic communications through
23 GoToWebinar. It is suggested, as you heard
24 earlier, that you select phone audio to make
25 comments. Utilizing the phone for

1 commenting results in better audio quality.
2 If during the webinar, you or your equipment
3 have experienced -- experience technical
4 difficulties, please contact Kevin Vaughan
5 at 804-698-4470 or email him at
6 kevin.vaughan@deq.virginia.gov.

7 His contact information will
8 remain posted on the screen for the duration
9 of this hearing. Before we proceed, I would
10 like to clarify that the State Water Control
11 Board is a policy making body of citizens
12 appointed by the governor and empowered by
13 law to adopt regulations and make permanent
14 decisions.

15 The Virginia Department of
16 Environmental Quality is an executive branch
17 agency with the responsibility of
18 administering relevant laws and regulations.
19 I am not a staff member of the Department.

20 In addition, I would like to
21 point out that the relevant State laws and
22 regulations are the basis for actions taken
23 by the Board and the Department. Neither
24 the Department or the Board has the
25 authority to make changes to the law. The

1 State Water Control Board is holding this
2 hearing to receive comments on the proposed
3 issuance of the Virginia Water Protection
4 Permit, or VDP -- VWP permit No. 19-2036 to
5 Wegmans Food Markets, Incorporated.

6 Wegmans requested this permit
7 in order to obtain authorization to impact
8 wetlands associated with the construction of
9 the Wegmans Distribution Center in Hanover
10 County.

11 This hearing was authorized by
12 the Director of the Department of
13 Environmental Quality. Notice of this
14 hearing was published in the Richmond Times
15 Dispatch on October 20th, 2020.

16 This fact-finding proceeding
17 is being held pursuant to Section 2.2-4019
18 and Section 62.1-44.1502 of the Code of
19 Virginia, as well as 9 VAC 25-210-160 and
20 the Board's Procedural Rule No. 1.

21 The State Water Control Board
22 will ultimately decide whether to issue a
23 permit. There will be no decision made here
24 tonight. The date and time and location of
25 the State Water Control Board meeting for

1 consideration of this proposed permit are
2 yet to be determined. Please be assured
3 that we will consider all relevant
4 information that you present regarding the
5 proposed permit.

6 The general procedure for this
7 hearing will be as follows; Jaime Robb, the
8 Virginia Water Protection Permit program
9 manager for the Piedmont Regional Office of
10 DEQ will make a brief presentation.

11 Before taking comments from
12 the general public, I will first ask if
13 there are any elected officials -- State and
14 local officials -- that would like to speak.

15 Once any elected officials
16 have spoken, I will ask if the applicant
17 would like to speak. It is my understanding
18 tonight that the applicant has deferred --
19 deferred comments from tonight's hearing.

20 Once the applicant has spoken
21 -- or then -- once we've addressed the
22 applicant or offered the applicant an
23 opportunity to speak, the individuals who
24 indicate a desire to speak -- who have
25 indicated a desire to speak when registering

1 for the webinar will be called on. Anyone
2 else participating in the webinar wishing to
3 speak will be asked at a later time to use
4 the raise your hand function on the
5 GoToWebinar control bar that appears on your
6 screen.

7 Please do not raise your hand
8 until asked to do so. Once you have raised
9 you hand, please leave your hand raised
10 until you are called on.

11 When called upon to give your
12 statement, you will be unmuted and you can
13 begin to speak. Please state your full name
14 and who you represent prior to making your
15 comments.

16 Please speak slowly and
17 clearly so that your comments can be
18 accurately and completely recorded. As the
19 hearing officer for the public hearing, I
20 reserve the right to restrict comments based
21 on the length of time or the repetitive
22 comment. And I ask that you keep your
23 comments to three minutes. We will be
24 recording all public comments for the
25 official files. As a reminder, written

1 comments may be submitted to DEQ through
2 December 4th. Written comments mailed to
3 DEQ must be received by close of business on
4 December 4th, 2020.

5 Emailed comments must be
6 received by DEQ by 11:59 p.m., on December
7 4th, 2020. At this time, I call on Jaime
8 Robb to give the staff presentation.

9
10 MS. ROBB: Thank you, Ms. Wood.
11 Good evening, everyone. My name is Jaime
12 Robb and I am the Virginia Water Protection,
13 or VWP, permit manager at DEQ's Piedmont
14 Regional Office.

15 The subject of the public
16 hearing this evening is the proposed VWP
17 permit No. 19-2036, Wegmans Distribution
18 Center located in Hanover County. The
19 applicant is Wegmans Food Markets,
20 Incorporated.

21 As many of you are aware, DEQ
22 had a public hearing in July for this
23 project. However, due to an increase in
24 surface waters on the proposed site as
25 determined by the US Army Corps of Engineers

1 in September 2020, impacts for the proposed
2 project have increased. As a result, the
3 applicant has submitted updated application
4 materials.

5 DEQ has reviewed the
6 application materials in light of the new
7 surface water information and prepared a
8 revised draft permit.

9 The purpose of the project is
10 to construct a 1.7M square-foot grocery
11 distribution center and ancillary support
12 facilities.

13 Phase one of construction
14 consists of construction of an approximately
15 1.1M square-foot contiguous facility
16 developed in an L-shape that will house a
17 dry warehouse, refrigerated warehouse,
18 return center, food manufacturing facility
19 and offices, as well as parking and staging
20 areas for tractor trailers, parking for
21 associates and support buildings, such as
22 fleet maintenance, dispatch and site
23 security. Phase two includes a near term
24 expansion of Phase one to approximately 1.3M
25 square-foot. The applicant plans to -- a

1 third phase future expansion for a total of
2 1.7M square feet. The project, as proposed,
3 on approximately 219-acre parcel of land in
4 Hanover County located southwest of the
5 Ashcake Road and Sliding Hill Road
6 intersection.

7 The site is surrounded by
8 agricultural and forest land, Ashcake Road
9 to the north, residential development and
10 forest as well as Sliding Hill Road to the
11 east and south and the Hanover County
12 Municipal Airport and industrial commercial
13 development to the west.

14 The project lies within the
15 Pamunkey River watershed. The selected site
16 was determined to be the least
17 environmentally damaging practical
18 alternative.

19 The project as proposed will
20 impact 14.8 acres -- excuse me, 14.85 acres
21 of surface waters consisting of 12.99 acres
22 of palustrine forested wetlands, 0.23 acres
23 of palustrine emergent wetland and 0.14
24 acres of jurisdictional ditch for the
25 distribution center construction and

1 associated infrastructure. Secondary
2 impacts due to the diversion of surface
3 water are proposed to 1.44 acres of
4 palustrine forested wetland and 0.02 acre of
5 jurisdictional ditch.

6 Temporary impacts to 0.03
7 acres of palustrine emergent wetland are
8 also proposed. The applicant evaluated four
9 alternatives and a no-build alternative, as
10 well as the alternative design within the
11 selected site in order to demonstrate that
12 the proposed impacts are the minimum
13 necessary to accomplish the project's
14 purpose.

15 The draft permit requires
16 compensatory mitigation for wetland impacts
17 to -- at a 2:1 replacement to loss ratio for
18 the palustrine forested and jurisdictional
19 ditch impacts, a 1:1 replacement to loss
20 ratio for the emergent impacts and a 2:1
21 replacement to loss ratio for the secondary
22 impacts to forested wetland. The proposed
23 permit required a total of 29.41 wetland
24 credits. The applicant proposes to purchase
25 credits from a mitigation bank to fulfill

1 the mitigation requirements. State Water
2 Control law and proposed permit require the
3 mitigation banks to be used be located in
4 the same hydrologic unit code as the project
5 site or an adjacent hydrologic unit code and
6 in the same watershed as the project site.

7 In accordance with the State
8 Water Control law, DEQ requested comments
9 from other State agencies on the effects of
10 the proposed projects on fish and wildlife
11 resources, threatened and endangered
12 species, drinking water supplies and tidal
13 wetlands and state-owned bottomland.

14 DEQ contacted Virginia
15 Department of Wildlife Resources, the
16 Virginia Department of Conservation and
17 Recreation and the Virginia Department of
18 Health and Virginia Marine Resource
19 Commission.

20 None of the agencies commented
21 that the project would have an adverse
22 effect on species or areas within their
23 jurisdiction. The proposed permit contains
24 limits of wetland impacts and a 15-year
25 term. The permit requires that mitigation

1 credits are purchased prior to impacts to
2 insure no net loss of wetland acreage and no
3 net loss of function of wetlands.

4 The permittee must report
5 before, during and after impacts begin to
6 insure DEQ can monitor and inspect the
7 project for compliance with the permit.

8 Additionally, the proposed
9 permit contains wetland monitoring
10 conditions for several areas directly
11 adjacent to remaining onsite wetlands. And
12 also requires associated report submittals
13 and notifications.

14 The permit also contains
15 conditions to minimize impacts to water
16 quality, fish and wildlife resources during
17 construction such as requiring work to be
18 performed in the dry, erosion and sediment
19 controls and stormwater management.

20 The purpose of the hearing
21 tonight is to receive additional public
22 comments to enable DEQ staff to further
23 evaluate the proposed permit. DEQ staff
24 will consider all the information provided
25 at the hearing and any written comments

1 received during the comment period until
2 December 4th before making its final
3 permitting recommendation to the State Water
4 Control Board at a future meeting on a date
5 that has yet to be determined.

6 This concludes staff
7 presentation. Thank you very much for your
8 attention. Now back to you, Ms. Wood.

9
10 MS. WOOD: Thank you, Jaime. If
11 there are any State or local officials
12 online who wish to speak, please raise your
13 hand -- please use the raise your hand
14 function on the GoToWebinar control bar that
15 appears on your screen now so we may call
16 upon you.

17 Please be sure to state your
18 full name and your position. Any elected
19 local or State officials.

20
21 MS. TRETINA: Ms. Wood, I don't see
22 any that have just raised their hand. The
23 only ones I see are people that have
24 previously raised their hand.

1 MS. WOOD: Okay. And as I stated
2 earlier, at this point we typically call on
3 the applicant to make a statement. It is my
4 understanding that the applicant is going to
5 remain with the statement that they prepared
6 at the prior -- and delivered at the prior
7 public hearing.

8 So we will move on to those
9 individuals who wish to speak. Please use
10 -- again, those of you that wish to speak,
11 please use the raise your hand function on
12 the GoToWebinar control panel that appears
13 on your screen.

14 Once you have raised your
15 hand, please leave your hand raised until
16 you are called on. And your hand will be
17 lowered on the webinar control panel so that
18 we can accurately follow who has spoken and
19 who still wishes to speak.

20 And Marilee's going to help me
21 -- help me navigate that. So I guess,
22 Marilee, if we can have our first -- first
23 speaker.

24
25 MS. TRETINA: Okay. The first

1 person registered is Patty Garza. Patty,
2 you are now unmuted. You need to unmute
3 your microphone, Patty. Okay. Well, we'll
4 move on to the next one.

5 Let's see, Kelsey Crane
6 registered but she doesn't seem to be on the
7 webinar. The next one is Jeff Hetzer.
8 Jeff, you are unmuted.

9
10 MR. HETZER: Okay. Can you hear
11 me?

12
13 MS. TRETINA: Yes, we can.

14
15 MR. HETZER: Okay, great. Thank
16 you for the opportunity. I'm Jeff Hetzer, a
17 resident of Mechanicsville, Virginia. I
18 request that the Virginia Water Protection
19 permit No. 19-2036, related to the proposed
20 construction of a Wegmans distribution
21 center on property owned by Airpark
22 Associates in Hanover County be denied for
23 defective performance of numerous
24 administrative and technical policies and
25 requirements to include, but not limited to

1 the following. The wetlands delineations
2 contained in the current permit continues to
3 incorrectly state the amount of impacted
4 wetlands.

5 The initial permit finding of
6 6.2 acres that was questioned by concerned
7 citizens during the first public hearing, as
8 you stated earlier, basically has been
9 discredited or found invalid by DEQ and the
10 Corps of Engineers.

11 New reviews by these agencies
12 have now determined that there are 14.8
13 acres of impacted wetlands. This new result
14 still understates the amount of impacted
15 wetlands as all data points for the property
16 are still not included in the study.

17 The Airpark Associates own
18 consultant performed an independent wetland
19 study and identified 33.8 acres of impacted
20 wetlands. This is a tremendous disparity
21 between 6.2 and 14.8 to 33.8.

22 And it -- if it's in the range
23 of 14 to 33 acres, it represents the largest
24 impact to wetlands of any Virginia project
25 in the last decade. This entire effort by

1 Wegmans, and now DEQ and the Corps, to
2 determine the real amount of impacted
3 wetlands as required by law really has
4 become bogus and contrary to your own
5 policies and procedures.

6 The Airpark Associates site
7 for this project is not the least
8 environmentally damaging practical
9 alternative.

10 There are available sites in
11 Hanover County, the Town of Ashland and
12 areas within the Richmond Metropolitan area
13 that offer significantly less environmental
14 and wetlands destruction than this airpark
15 site.

16 The agency study of
17 alternative sites to determine the least
18 environmentally damaging practical
19 alternative is flawed in much the same way
20 as the studies to determine the impacted
21 wetlands were flawed.

22 No other site has the huge
23 amount of impacted wetlands, ostensibly up
24 to 33.8 acres -- perhaps more -- as the
25 Airpark site. This study is skewed to favor

1 the Airpark site due to the abnormally low
2 sale price negotiated by Hanover County on
3 behalf of Wegmans.

4 Wegmans, Hanover County and
5 now DEQ are -- seem to be pushing this
6 development of this project over other sites
7 due to its relatively low purchase price
8 with limited concern to any environmental
9 impacts and required protections.

10 Wegmans also has not met its
11 burden to promote the environmental justice
12 from meaningful involvement of the Brown
13 Grove community as required by Virginia law.
14 Wegmans has sought to trivialize this.

15 Community and minimize its
16 concerns related to the impacts that this
17 project will have on the community. To be
18 honest, it's disgusting that Hanover and the
19 State seem to be supporting this lack of
20 concern and adherence to its own
21 requirements and laws.

22 Based upon the extensive
23 impacts of this project upon the community,
24 a lack of transparency -- especially related
25 to the Corps of Engineers' responsibilities

1 related to this permit -- ongoing critical
2 flaws in the accuracy of delineation
3 determinations. The lack of adherence to
4 your own policies and requirements,
5 unaddressed environmental justice
6 requirements, the fact that less impactful
7 alternative sites exist within the area, the
8 sheer volume of destroyed wetlands as well
9 as the negative impacts upon quality of life
10 and habitats.

11 And lastly, an apparent
12 misguided political influence to continue
13 the promotion of this project. For these
14 reasons, this permit must be denied. Thank
15 you very much.

16
17 MS. TRETINA: Our next speaker is
18 Rod Morgan. Rod, you are unmuted.

19
20 MR. MORGAN: Thank you. Can you
21 hear me?

22
23 MS. TRETINA: Yes, we can.

24
25 MR. MORGAN: Wonderful. My name is

1 Rod Morgan and I ask that this permit be
2 denied. The Airpark site is not the LEDPA.
3 One element of LEDPA relates to special
4 aquatic sites. Airpark is considered to be
5 a special aquatic site and the regulations
6 are clear. When the activity proposed for a
7 special aquatic site is not water-dependent,
8 practicable alternatives are presumed to be
9 available unless clearly demonstrated
10 otherwise.

11 To date, there has been no
12 demonstration to rebut this presumption
13 under the law. I will explain why Airpark
14 is not LEDPA for the proposed Wegmans
15 facility.

16 In the interest of time, I'm
17 going to limit my comments to the cost.
18 Wegmans submits that Archie Cannon, which
19 DEQ had determined to be the, quote-unquote,
20 best site would cost \$36M or \$30M more than
21 Airpark.

22 This analysis is not simply
23 flawed, but it contains outright
24 misstatements of fact. Wegmans states that
25 wetlands mitigation costs at Archie Cannon

1 will be about \$620,000.00 primarily based on
2 almost 2,000 linear feet of impact to
3 streams. We have a design for a 2.7M
4 square-foot facility at the Archie Cannon
5 site. This proposal, which is 1M square
6 feet larger than what Wegmans proposes would
7 impact only 104 linear feet of stream.
8 Wegmans is absolutely aware of this
9 proposal.

10 It was also prepared by the
11 Timmons Group, which is Wegmans engineer.
12 If you look at the disparity in mitigation
13 cost, that -- the mitigation cost at Archie
14 Cannon are overstated by \$550,000.00.

15 Then Wegmans submits that
16 Archie Cannon would require relocation of
17 the sanitary sewer. This cost is listed at
18 \$750,000.00.

19 Hanover County has already
20 voted to cover the sewer cost for Wegmans
21 and this cost is inappropriate and not --
22 and should not be included in the analysis.

23 Then Wegmans submits that a
24 switch from Airpark to any other site,
25 including Archie Cannon, would cost almost

1 \$6M in lost cost savings due to a delay.
2 This cost is improper. Regulatory guidance
3 is clear. Alternatives are to be judged at
4 the time of market entry. And opportunity
5 and some costs are not allowable for this
6 purpose. That brings us to the last cost,
7 and my favorite of all, which is the road.

8 Wegmans submit that the Town
9 of Ashland would require the extension of
10 Hill Carter Parkway as, quote, a
11 requirement. Wegmans believes this road
12 would cost almost \$11M.

13 This requirement is news to
14 the Town of Ashland. The Town of Ashland
15 advises that, quote, at no point was this a
16 requirement, end quote.

17 It was discussed as a town
18 need, but almost all -- if not all -- of the
19 cost estimated between -- estimated to be
20 between \$5M and \$6M would be covered by
21 VDOT.

22 When I correct all of Wegmans'
23 misstatements, Archie Cannon would cost \$10M
24 compared to the \$6M at Airpark. The
25 difference of \$4M certainly seems

1 substantial, but taken in light of the
2 overall announced project investment of
3 \$175M, it's approximately 2.1% of the
4 overall value. A 2.1% difference is not
5 substantial enough to render the Archie
6 Cannon site as impracticable. And I -- I go
7 back -- DEQ analysis already agrees that the
8 Archie Cannon site is the least
9 environmentally damaging.

10 In September of 2020, Michelle
11 Henicheck -- a wetlands ecologist with DEQ
12 -- writes that Archie Cannon is the, quote,
13 best choice for the project based on
14 wetlands impacts and access.

15 She capitalizes the word best
16 for emphasis. So how could all of these
17 errors and misrepresentations continue
18 unaddressed by DEQ?

19 When asked by a member of the
20 media, Ms. Robb responded that, quote,
21 responsibility lays with the applicant to
22 provide accurate information for review and
23 approval.

24 In reviewing the economic
25 information provided by the applicant, DEQ

1 has no reason to believe that the
2 information provided is inaccurate.

3 Ms. Robb then goes on to note that the
4 public can point out any problems with the
5 application submitted. I ask if DEQ takes
6 everything an applicant submits at face
7 value. How can they properly advise the
8 State Water Control Board -- they being DEQ.

9 How can they meet their
10 statutory duties to protect the environment
11 for all Virginians if every applicant's
12 submissions are taken at face value? It's
13 -- it's ridiculous and it should not be
14 allowed to continue. Thank you very much.

15
16 MS. WOOD: Thank you.

17
18 MS. TRETINA: The next speaker is
19 Weedon Cloe. Weedon, you are unmuted. You
20 need to unmute your microphone. Weedon,
21 you're -- there you go.

22
23 MR. W. CLOE: Can you hear me?

24
25 MS. TRETINA: Yes, we can hear you.

1 Mm-hmm. We can hear you.

2
3 MR. W. CLOE: All righty. Thank
4 you very much. Ms. Robb, Ms. Wood, friends
5 and neighbors, good evening and thank you
6 for the opportunity to speak. My name is
7 Weedon Cloe and I'm a resident of Forest
8 Lake Hills, located in the Ashland district
9 of Hanover County adjacent to the Wegmans
10 Distribution Center site.

11 I would first like to express
12 my sincere appreciation for the work your
13 office has conducted. Thus far, in this
14 project has been complicated and most likely
15 one of the most involved to date in the
16 Commonwealth.

17 Your ongoing efforts to insure
18 the natural resources of our state are fully
19 protected are appreciated. I am speaking
20 tonight to respectfully request denial of
21 the Virginia Water Protection permit 19-2036
22 that would allow for the filling of 14.85
23 acres of wetlands and jurisdictional ditches
24 on the proposed distribution center site.
25 If approved, this project will result in the

1 largest destruction of wetlands in the State
2 of Virginia outside of the Greater Hampton
3 Roads-Virginia Beach area.

4 A review and summary of
5 wetlands impacts greater than 10 acres over
6 the past five years in the State of
7 Virginia, as provided by DEQ via FOIA
8 request, demonstrates that the impacts of
9 this project will be approximately five
10 acres greater than those realized by the
11 2016 Niagara Bottle plant project in
12 Chesterfield County, which is the largest
13 wetlands impact to date in Central Virginia.

14 It's concerning that
15 increasing and precedent setting wetlands
16 impacts in Central Virginia are considered,
17 especially when avoidance can be achieved by
18 responsible site selection and/or project
19 site design.

20 We do contend that the -- the
21 wetlands existing onsite are -- are still
22 not 100% characterized. While folks went
23 right back out and -- and took a look and
24 kind of made the right choice about making a
25 change with what was considered mosaics and

1 now non-mosaics. There are still some
2 outstanding issues that need to be
3 addressed. One issue relates to the
4 empirical delineation of the nature of
5 wetland at data point two and how it relates
6 to the impacts seven and the Hammerhead
7 wetland impact six.

8 In the original RK&K
9 delineation, DEQ is identified as being
10 located within a larger contiguous wetland.
11 And then it was omitted based on a general
12 mapping exercise rather than observational
13 field work.

14 This omission has been
15 explained or justified in the technical
16 memorandum as the data point being located
17 outside areas depicted by the Natural
18 Resource Conservation Services soil surveys
19 as being outside of hybrid soils.

20 However, the site-specific
21 characterization clearly asserted that
22 hybrid soils were present at that point.
23 This would suggest that the two wetlands are
24 at a minimally hydrogologically connected.
25 And as a result, should be accounted for as

1 one contiguous body with appropriate
2 mitigation taken for the proposed grid
3 impact.

4 We contend that further field
5 observations are needed in these areas to
6 conclusively determine the natures of those
7 sites.

8 To summarize, it's my opinion
9 that the siting of this project on the
10 airpark tract land will, indeed, result in
11 one of the most significant impacts to
12 natural resources in the Commonwealth.

13 The degree to which the
14 applicant has pursued the site in question
15 is remarkable given the availability and
16 potentially relative ease of permitting of
17 alternative tracts of land in Central
18 Virginia.

19 I respectfully request denial
20 of this permit. Thank you for the
21 opportunity to comment and please let me
22 know if you have any questions.

23
24 MS. WOOD: Thank you.
25

1 MS. TRETINA: Our next speaker is
2 Chris French. Let me scroll up.

3
4 MS. ROBB: Marilee, I think you --
5 I think you skipped Brett Blose.

6
7 MS. TRETINA: Oh, I'm sorry. I'm
8 sorry. Sorry, Chris. False alarm. Thank
9 you. Brett, you are unmuted. Sorry about
10 that.

11
12 MR. BLOSE: Thank you. My name is
13 Brett Blose. I'm a resident of Foxhead
14 neighborhood, which is adjacent to the
15 airpark site. My visual aid is ready?

16
17 MS. TRETINA: Yes, it is.

18
19 MR. BLOSE: We'll be -- all right.
20 We'll be comparing the LEDPA site Archie
21 Cannon with the preferred alternative
22 Airpark, next slide. This is the impact map
23 for Airpark. 14.82 acres of wetland, 1.7M
24 square feet of building in an L-shaped
25 layout. Can't really see it. Kind of --

1 something. Anyway, I'll keep going. This
2 is the -- all right. So we're -- we're
3 looking at Airpark here. It's an L-shaped
4 layout.

5 14.82 acres of wetland impact,
6 1.7M square feet, it has an L-shaped layout.
7 So the next slide. This is the Archie
8 Cannon layout Wegmans' engineer Timmons did
9 for a developer who chose not to build.

10 2.75M square feet, 0.82 acres
11 of wetland impact and minimal stream impact.
12 This is an I-shaped layout. We'll go to the
13 next slide. Since Wegmans only needs 1.7M
14 square feet.

15 I worked the Archie Cannon
16 site layouts. Here is 0.38 acres of wetland
17 impact, 1.7M square feet with an I-shaped
18 layout. Next slide.

19 When comparing optimized
20 layouts, Airpark impacts at least 38 times
21 more wetland acres than Archie Cannon. Next
22 slide.

23 False claim, the Archie Cannon
24 site routes traffic through more congested
25 area. Archie Cannon, the first part of the

1 trip to I-95 with 16,000 vehicles per day.
2 The second part's 25,000 per day. For
3 Airpark. The first part is 16,000 vehicles
4 per day, the second part is 31,000 vehicles
5 per day as determined by VDOT traffic
6 counts.

7 And would use the Atlee
8 Station and Sliding Hill intersection rated
9 'F' by VDOT, the worse possible service
10 level. Airpark is a longer distance, more
11 average and more peak traffic than Archie
12 Cannon, next slide.

13 False claim, Archie Cannon is
14 limited in size and orientation and can not
15 fulfill future expansion or need. Wegmans'
16 engineer Timmons has shown the Archie Cannon
17 site can be configured for 2.75M square
18 feet.

19 Wegmans simultaneously makes
20 the assertion the site can not support 1.7M
21 square feet for Wegmans. These statements
22 can not co-exist. Wegmans is attempting to
23 make alternative sites be falsely
24 unpractical, next slide. False claim,
25 L-shaped layout is needed for efficient

1 cross docking. A study on cross dock shape
2 published in Transportation Science provides
3 these conclusions and states; most cross
4 docks are long, narrow I-shaped.

5 When the L-shaped is used, the
6 primary reason is to accommodate site
7 restriction. L-shaped docks are considered
8 generally inferior to I-shaped docks.

9 I-shaped docks are considered
10 the most efficient shape for cross docks
11 that Wegmans is proposing, next slide. Why
12 would Wegmans mandate a less efficient
13 layout?

14 Next slide. Wetlands. The
15 best shape to avoid impact under the old
16 invalidated PJD on the airpark was the
17 L-shape.

18 Wegmans proffered substantial
19 conformity to this layout needing re-zoning
20 to change. Now that PJD has changed due to
21 substantial conformity, Wegmans is sticking
22 to the old layout.

23 And instead of avoiding
24 wetlands, it's building on the larger
25 section, next slide. But it get's worse.

1 Wegmans attempts to manipulate the
2 alternatives analysis to their desired
3 result by insisting all sites be handicapped
4 by the same compromised 'L' design mandated
5 on Airpark.

6 This kept alternative sites
7 from being optimized in layout, minimization
8 of wetland impact due to the faulty 'L'
9 requirement.

10 Wegmans claimed other sites
11 were logistically challenged or overstated
12 wetland impacts due to the L-shaped
13 handicap, next slide. Archie Cannon is
14 clearly the LEDPA site.

15 Virginia law requires it, the
16 permit shall only be issued on a site which
17 is the least environmentally damaging,
18 practicable alternative. Airpark fails this
19 test.

20 Therefore, the permit for
21 Airpark must be denied by law. The issuance
22 of this permit would be arbitrary,
23 capricious and an error of law. I request
24 that this permit be denied.
25

1 MS. TRETINA: Okay. Our next
2 speaker is Chris French. Chris, you are
3 unmuted.

4
5 MR. FRENCH: Can you guys hear me
6 okay?

7
8 MS. TRETINA: Yes, we can.

9
10 MR. FRENCH: Excellent. Well, I
11 just want to thank everybody for this
12 opportunity to speak this evening. I'm
13 going to be using the same visual aid
14 framework that I used the last time.

15 So some of these slides will
16 look fairly familiar to people who were
17 participants in the last public hearing.
18 Next slide, please.

19 As mentioned by many of my
20 neighbors, colleagues and interested
21 parties, the wetland delineation continues
22 to be fatally flawed.

23 Contributing to this potential
24 issue is not only the fact that the wetlands
25 increased for impacts almost 250% from the

1 6.12 acres to the now 14.8 acres once the
2 mosaics went away. But there was
3 significant issues that the public raised
4 previously that was not further investigated
5 by the Army Corps of Engineers because
6 Airpark Associates did not allow the -- full
7 access to the property in order to
8 investigate the other matters that came up
9 with this last survey.

10 And that gets to the first
11 bullet point with these particular issues
12 where field data sheets continue to remain
13 to be incomplete.

14 The final WOUS map is still
15 significantly altered from the original RK&K
16 wetland delineation. Offsite wetland
17 impacts are still not addressed according to
18 what the rules and regulations require.

19 Next slide please.

20 This is what the original RK&K
21 wetland delineation wetland looked like
22 beforehand. I'm a visual person. I imagine
23 many people are as well. If you look at --
24 and I -- Ms. Wood, specifically, if you look
25 at the map, you will see that there's a

1 cut-out on the northern section where
2 wetlands that look like they connect just
3 mysteriously disappear offsite as if it's on
4 a different property.

5 The same thing is true to the
6 western wetlands over here where the
7 property boundary at the wetland and at the
8 boundary itself of the property. Now, we
9 know in nature that does not occur.

10 That wetlands are continued
11 and connected to other offsite areas. And
12 these waters of the United States do not
13 recognize property boundaries. Next slide,
14 please.

15 When you had the field study
16 that occurred afterwards and the Corps of
17 Engineers went out, this is when the concept
18 of wetland mosaics came about.

19 And a number of wetlands
20 disappeared completely that were on the
21 previous map. The mosaics came into play.
22 All these issues that Mr. Hetzer brought up
23 earlier are very well illustrated in this
24 process -- I mean, with this map. Next map,
25 please. This is what the site now looks

1 like, but there are still some very distinct
2 differences from the original map that RK&K
3 did. You'll notice now that the western
4 wetlands complex that was claimed to be
5 mosaic no longer goes to the property
6 boundary edge.

7 Instead, it follows the
8 contours that you can see in the black line
9 on this map. That's an artificial
10 determination that's a flaw from the
11 original scaling back of the wetlands on the
12 property.

13 Next slide, please. In the
14 original RK&K wetland delineation, we talked
15 about various data points that exist at that
16 time period. Next slide, please.

17 These are some of the very
18 safest and obvious issues that are still in
19 this process. Because wetland Data Point
20 No. 2 is still missing even though there's a
21 field data sheet and a delineation that
22 shows its existence. So it's only missing
23 from the map, but it's actually there still.
24 And what it does is it connects the
25 Hammerhead wetland to the west with this

1 drainage area just below it to the larger
2 wetland complex to the east. And it was --
3 why is it there? Well simply put, when you
4 look at the project layout, Wegmans has an
5 access road going right over top of this
6 area.

7 So the access road, if not
8 impacting the wetlands that is obviously
9 there -- that the data sheet shows that it's
10 obviously there -- they have less mitigation
11 to occur.

12 And it didn't connect it to
13 the original mosaics that was to the west --
14 to the east of this area originally. The
15 offsite impact that is noted towards the
16 north of this area, I have actually walked
17 this property.

18 I have photographs of the
19 hydrophilic vegetation that's present, as
20 well as photographs of the ditch line that
21 connects the northeastern quadrant area to
22 the southwestern portion just below the
23 arrow. So there's obvious connections
24 there. Sphagnum moss is growing in this
25 area. And as a wetland --

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MS. WOOD: Mr. French.

MR. FRENCH: -- plant --

MS. WOOD: Mr. French, if I could ask you to --

MR. FRENCH: Hello?

MS. WOOD: -- to -- this is Ms. Wood. If I could ask you to start to wrap up your comments, please. You're at about five minutes.

MR. FRENCH: Okay, thank you. Next slide, please. There's a lot of things here that have been errors of regulatory processes that are in place.

The site is obviously an industrial complex, but there is no industrial permit that DEQ has done for the site. Next slide, please. The gap, it was mentioned earlier, Michelle Henicheck's analysis, that this is not the best choice site based off of road access as well as

1 wetlands. This is a copy of that analysis
2 where is shows Archie Cannon is actually the
3 best site. Next slide, please.

4 Environmental justice, getting back into
5 LEDPA.

6 The Army Corps of Engineers
7 specifically, based off of information from
8 DEQ to the Corps as well as the Corps to
9 Wegmans, asked Wegmans to include
10 environmental justice concerns as part of
11 the LEDPA analysis.

12 This has not been accomplished
13 at all. So there's a number of other issues
14 that the agency's asked for that, for
15 whatever reason, they're putting forth the
16 permit now for public input that wasn't even
17 addressed.

18 Next slide, please. Wegmans'
19 responses regarded environmental justice
20 issues is not anywhere close to being
21 adequate.

22 We note that they had a small
23 meeting with five residents in February
24 2020. And then there was a flawed analysis
25 done using the EPA EJSCREEN tool. As EPA

1 explicitly states on their web site,
2 EJSCREEN is literally that, a pre-screening
3 tool that is not designed to address or to
4 contemplate a full environmental justice
5 study.

6 And this entire aspect has not
7 been adequately addressed by anyone,
8 including DEQ. I was a participant in the
9 meeting that was referenced in the
10 information session earlier tonight.

11 And it created more confusion,
12 in my opinion, with Brown Grove residents
13 than it provided answers. So I don't
14 believe that that is a check-the-box type
15 meeting that the agency did in order to say
16 that they addressed environmental justice
17 and inform the community as to what was
18 going on. Next slide, please.

19
20 MS. WOOD: Mr. French, I'm going to
21 ask you to wrap it up, please.

22
23 MR. FRENCH: I am asking that,
24 because of all significant flaws, that DEQ
25 and the State Water Control Board deny this

1 permit. Thank you.

2
3 MS. WOOD: Thank you.

4
5 MS. TRETINA: Our next speaker is
6 Mary Finley-Brook. Ms. Finley-Brook, you
7 are unmuted.

8
9 MS. FINLEY-BROOK: Can you hear me?

10
11 MS. TRETINA: Yes, we can.

12
13 DR. FINLEY-BROOK: Good evening.
14 I'm Dr. Mary Finley-Brook from the
15 University of Richmond. Do you have an
16 echo?

17
18 MS. TRETINA: Not now.

19
20 DR. FINLEY-BROOK: Okay.

21
22 MS. TRETINA: Not now, no.

23
24 DR. FINLEY-BROOK: I request DEQ
25 deny the issuance of this permit and to

1 begin to deny harmful, mistruthful and/or
2 incomplete permit applications as regular
3 practice.

4 The ecological assessments
5 have been incomplete and unclear and they
6 require correction. The original wetlands
7 delineation was improper.

8 Flawed work conducted in 2019
9 has been allowed to stand. The permit also
10 needs to better consider secondary impacts
11 to offsite wetlands with hydrological
12 connections which were not adequately
13 considered in the permit application or the
14 mitigation plan.

15 The airpark site appears
16 unlikely to be the least environmentally
17 damaging practical -- practicable
18 alternative.

19 The data provided to make this
20 assessment was biased towards specific costs
21 and unnecessary information, for accurate
22 assessment remains incomplete. The process
23 has not been fully transparent, while the
24 ecological and social stakes are high both
25 locally and regionally. Transparency and

1 proper practice are lacking with respect to
2 environmental justice. The use of EJSCREEN
3 in this case was highly problematic based on
4 EPA guidance and DEQ experience, leading to
5 the fourth court -- the Fourth Circuit Court
6 decision regarding Buckingham Compressor
7 Station.

8 Brown Grove is a freedman
9 community with long-standing occupation to
10 this day, and based on Civil Rights Code and
11 the EJ Act, this is absolutely relevant to
12 the DEQ and Water Board process and
13 decision.

14 By Virginia Code, there needs
15 to be meaningful involvement of Brown Grove
16 residents and the introduction tonight did
17 not describe meaningful participation.

18 In fact, the practices clearly
19 showed Civil Rights violations during
20 outreach procedures which were delayed,
21 spotty, inconsistent and incomplete.

22 DEQ's presentation tonight did
23 not show even basic knowledge of
24 environmental justice practice or that
25 people had read the SKEO report. This

1 process, so far, as devalued the oral
2 history and memory of local elders and has
3 not treated the existence of unmarked graves
4 on the development site in a respectful
5 fashion.

6 There needs to be renewed
7 efforts regarding engagement, along with a
8 household study to identify specific risks
9 and harms to the families, homes and wells
10 in this locality.

11 And many other forms of harm,
12 but as most relevant to this DEQ permit as
13 related to industrial zoning, dredging,
14 excavation and impounding, etcetera.

15 DEQ states transportation
16 impacts are not relevant to this assessment
17 even though Brown Grove was divided
18 historically by the construction of I-95.

19 Because highways have torn
20 apart many African-American communities, in
21 2000, VDOT established environmental justice
22 guide lands -- guidelines that, to my
23 knowledge, have never been adhered to.
24 After passage of the EJ Act, these
25 guidelines are highly applicable beyond

1 transportation because they, as DEQ knows,
2 recommend involvement of local residents
3 from the earliest stages of planning, which
4 did not happen.

5 Moving forward, regulators
6 must listen to impacted populations to
7 assess a range of factors from wetland
8 destruction and stream and well pollution to
9 health harm from diesel emissions to
10 historical resources including unmarked
11 graves.

12 I've many pending questions
13 about this permit that were not answered in
14 the permit application. Comprehensive
15 ecological and social reviews has still not
16 occurred.

17 And with a facility of this
18 size in a marginalized area, this is
19 unacceptable. For these reasons, I ask DEQ
20 to deny this draft permit. Thank you.

21
22 MS. WOOD: Thank you.

23
24 MS. TRETINA: Our next speaker is
25 Lori O'Toole. Lori, you are unmuted.

1 MS. O'TOOLE: Hi. Thank you for
2 allowing me to speak tonight. My name is
3 Lori O'Toole and I'm a resident of Ash Creek
4 subdivision. And before I get started, can
5 you hear me?
6

7 MS. WOOD: Yes.
8

9 MS. O'TOOLE: Can you -- okay. I
10 just want to make sure. Martin Luther King,
11 Jr., once said, our lives begin to end the
12 day we become silent about the things that
13 matter.

14 Evidence is clear that the
15 proposed Wegmans Distribution Center and the
16 corresponding water permit should be denied.
17 The process has been fraught with a lack of
18 transparency, the lack of proper scientific
19 measurements and the lack of integrity with
20 respect to the environmental injustices
21 taking place against the Brown Grove
22 community. It -- the time is right to right
23 the wrongs about this project and to vote
24 against this proposed permit. I've outlined
25 just a few items that clearly delineate the

1 terrible project and why it should be
2 stopped. Number one, this project will
3 destroy twice the amount of wetlands under
4 the flawed original survey of the property
5 per the most recent work done on this land.

6 In addition, the most recent
7 review only includes the wetlands previously
8 identified, but does not include a broader
9 look at the property.

10 And the citizens of this
11 county believe there are still uncounted,
12 unsurveyed wetlands. In fact, the
13 destruction of these wetlands is said to be
14 the largest in Central Virginia and the
15 largest in the State of Virginia in the last
16 five years.

17 Two, the Army Corps of
18 Engineers has refused to respond to numerous
19 requests regarding multiple FOIA asks. The
20 lack of transparency does not provide the
21 evidence to citizens to believe that proper
22 procedures [have] taken place to review the
23 wetlands on this property. We'd also like
24 to have the Corps provide us with a public
25 hearing. Three, in your study, you have not

1 appropriately considered secondary impacts
2 to offsite wetlands. All these wetlands are
3 connected to other hydrological connections
4 outside of these property lines.

5 Four, stormwater impacts will
6 be catastrophic to surrounding neighborhoods
7 where over 40 acres are being paved over for
8 the building and parking lots.

9 Water that had four different
10 ways of being dispersed will now be whittled
11 down to one. Five, this property does not
12 meet the standards of least environmentally
13 damaging practical alternative.

14 Both the DEQ and the Corps
15 have not proven -- in fact, the opposite is
16 true -- that this site is the most damaging
17 site of those looked at for this project.

18 Opportunity costs
19 [unintelligible] do not negate this property
20 because Wegmans has thoughtfully said that
21 they were required to build, as someone
22 previously said, a \$10M road at the proposed
23 Ashland site. This has proven to be a false
24 statement. Six, also this site has -- will
25 have a devastating effect on the historic

1 Black community of Brown Grove. Brown Grove
2 has been unjustly targeted by Hanover County
3 over the years by ignoring their pleas
4 regarding the destruction of their
5 community.

6 They've been on the receiving
7 end of the brunt of impacts from the
8 Airpark, airport, a dump and the building of
9 Interstate 95. During the review of this
10 property, Wegmans made feeble attempt to
11 meet with them only once.

12 Wegmans did not listen to the
13 community members about the known grave
14 sites and the foundation of the Brown Grove
15 community school on this property.

16 An appropriate archeological
17 review of this property was not done with
18 the kind of tools that is needed to complete
19 this type of study.

20 As a citizen of the nearby
21 subdivision, I find the lack of
22 transparency, as well as the lack of
23 following the agency's own scientific
24 protocols, to be -- at the very least --
25 deeply disturbing. I implore you to deny

1 this permit. It is never too late to do
2 what is right for the environment, the Brown
3 Grove community and all the communities
4 being impacted by this project that has not
5 been backed by sound, environmental
6 practices or a sound review of the
7 environmental injustices that are attached
8 to this project. Thank you very much for
9 letting me speak.

10
11 MS. WOOD: Thank you.

12
13 MS. TRETINA: Our next speaker is
14 Shanda Miller. Shanda, you are unmuted.

15
16 MS. MILLER: Okay. Can you hear
17 me?

18
19 MS. TRETINA: Yes, we can.

20
21 MS. MILLER: Thank you for the
22 opportunity to speak. My name is Shanda
23 Miller. I'm a resident of the Foxhead
24 neighborhood, adjacent to the Airpark
25 parcel. I request that this permit be

1 denied due to an inability of the applicant
2 to provide sufficient evidence that the
3 Airpark site is the least environmentally
4 damaging practicable alternative.

5 In the initial application,
6 Wegmans used a preliminary jurisdictional
7 determination. The initial PJD understated
8 wetland impact by half and overstated
9 impacts on alternative sites.

10 The application claimed that
11 Airpark was equally environmentally damaging
12 to alternative sites. It's important to
13 note that this is no longer true.

14 During Ms. Holley's recent
15 visit to the Airpark parcel, she invalidated
16 the original PJD and a new PJD shows that
17 there are extensive environmental impacts on
18 Airpark.

19 In addition, the use of
20 delineated wetlands instead of NWI mapping
21 has caused the impacts on alternative sites
22 to be reduced. Even Wegmans has dropped the
23 idea that Airpark is the least
24 environmentally damaging. If this permit is
25 issued, this will be the second largest

1 impact of non-tidal wetlands and the largest
2 impact outside of Hampton Roads in the last
3 five years. The environmental damage,
4 should Wegmans build on Airpark, would be
5 immense and unprecedented.

6 Since no defensible claim can
7 be made that Airpark is the least damaging,
8 Wegmans has instead shifted strategies to
9 attempt to manipulate the alternatives
10 analysis by inventing inflated and bogus
11 costs and logistical complications that
12 don't exist in order to attempt to make
13 other far less environmentally impacts
14 falsely appear to be un-practicable.

15 A permit may only be issued
16 for a site which is determined to be the
17 least environmentally damaging practicable
18 alternative. Airpark impacts at least 25
19 times more wetlands than alternative sites
20 and is clearly not the least damaging.

21 Stop letting Wegmans provide
22 faulty and misleading data, costs and
23 analysis in an attempt to manipulate the
24 alternatives analysis to provide
25 rationalization for their preferred site.

1 Airpark is clearly not the least
2 environmentally damaging practicable site.
3 And the proposed purpose can be accomplished
4 on alternative sites in Hanover. Therefore,
5 the permit application must be denied.

6
7 MS. WOOD: Thank you.

8
9 MS. TRETINA: Our next speaker is
10 Renada Harris. Renada, you are unmuted.
11 You need to unmute your mic.

12
13 MS. HARRIS: Hello, can you hear
14 me?

15
16 MS. TRETINA: Yes, we can.

17
18 MS. HARRIS: Okay. My name is
19 Renada Harris. And I am representing my
20 parents who have -- their property is
21 connected to the Wegmans' project.

22 Actually, the Wegmans' project
23 will be in their backyard. So I just want
24 to say that the DEQ role is to inform and
25 engage the community and insure the vitality

1 of our environment. The church does not
2 speak for the entire community. It is the
3 DEQ's responsibility to inform the
4 community, not the church.

5 However, the church does do it
6 as a courtesy, but it is not the church's
7 responsibility to inform the entire
8 community of over 100 homes in this
9 community.

10 That is not the church's
11 responsibility. The DEQ did not give equal
12 opportunity for the Brown Grove citizens to
13 even participate in this whole process.

14 So the history of
15 communication and the role of the church in
16 the Black community -- you know, the church
17 is where the Black community kind of
18 receives their information and organize.

19 And this dates all the way
20 back to slavery. However, during COVID, we
21 are not -- we were -- haven't been in
22 church. We haven't been in communication.
23 Church is done online. So the people that
24 you met with back in -- I think you said in
25 April -- it was a few people out of 100

1 homes that you met with. It's not equal
2 representation of the community getting
3 their information. This whole thing was
4 presented as a done deal when we did hear
5 about it.

6 And when you have people that
7 you're not -- when the DEQ is not directly
8 talking to the community themselves by
9 sending some sort of letter, you have
10 information that is lost in translation.

11 And when I've been canvassing
12 the community to inform people about this
13 whole thing, they said it's a done deal.
14 There's nothing we can do about it. The
15 older community is not online.

16 They're not on the internet.
17 They can't even get on this phone call to
18 receive the info. So that's a whole issue
19 right there of the -- the community not
20 being informed.

21 So there -- that right there
22 is the whole environmental justice issue
23 that I have a problem -- that's the true
24 essence of environmental injustice. So
25 environmental justice is based on the

1 principle that no segment of the population,
2 especially individuals most impacted and
3 vulnerable, should bear disproportionately
4 high or adverse effects of environmental
5 pollution.

6 However, for years the Hanover
7 County Board of Supervisors has ignored the
8 community's concerns regarding industrial
9 industries making Brown Grove a place of
10 business.

11 This historical community has
12 been over-burdened with environmental
13 degradation. And it's one of the heaviest
14 polluted neighborhoods in Hanover County.
15 That is environmental injustice and it has
16 not been addressed.

17 We have an airport. We have
18 the 95 highway running through our
19 community. We have a truck stop. We have a
20 landfill. We have a concrete plant.

21 And now you want to put
22 Wegmans Distribution Center in the middle of
23 the neighborhood. This will mark the sixth
24 industrial business planted in the middle of
25 a family residential neighborhood. Wegmans,

1 nor the DEQ, Army Corps has not met the
2 burden to promote environmental justice
3 through meaningful involvement of the
4 community members.

5 Residents have not had the
6 access and the opportunity to participate in
7 the full cycle and decision-making process
8 at all.

9 This started early on with the
10 Hanover County Board of Supervisors when
11 they voted to even -- when they even voted
12 to pass this on. So we're doing all this
13 through stay at home orders through a
14 pandemic.

15 And you want to push this
16 thing through. Neither the Department of
17 Environmental Quality nor the US Army Corps
18 of Engineers has conducted an environmental
19 justice review.

20 Governor Northam has an
21 advisory council on environmental justice.
22 But he is in full support of Wegmans and he
23 has not enacted the committee to partner
24 with the Brown Grove residents to issue a
25 plausible plan or research on potential

1 impacts of the community. So these
2 activities are insufficient to meet Wegmans'
3 environmental justice responsibility.

4 And the denial -- and the
5 denial of Brown Grove's existence as a
6 minority community is ignorant to the
7 history of Hanover County. And it's
8 offensive.

9 And to dismiss the oral
10 history is offensive. However, Dutton and
11 Associates, through their field survey, they
12 held so much history, so many artifacts that
13 are deemed eligible for the National
14 Registry of Historic Places.

15 There are -- there is no way
16 Wegmans can continue to build when you have
17 so much history. In fact, we are mentioned
18 in the Smithsonian Museum. So that's
19 history for you right there.

20 Confirmed artifacts from the
21 Merry Oak Tavern, Brown Grove School --
22 which is one of eight African-American
23 schools during Reconstruction and the Jim
24 Crow era. This land is full of things that
25 still need to be discovered and protected.

1 The Dutton and Associates cultural resource
2 survey recommends this site be avoided and
3 undergo further research. Now, you have the
4 issue of the wetlands.

5 So we already have -- you're
6 going to destroy the wetlands. Roads like
7 Ashcake Road will face excessive rainwater,
8 potential flooding on the residential houses
9 in their yards making traffic conditions
10 more precarious for our community.

11 And a lot of the residents get
12 their water from the well, from the spring,
13 especially from my family. We have well
14 water. However, I didn't catch the lady's
15 name at the beginning of the -- I didn't get
16 the lady's name at the beginning of the
17 meeting because my internet was going in and
18 out.

19 But she said that when the
20 question was asked about the -- how would
21 this development affect well water, she said
22 it should not affect the well water.

23 She did not say it will not
24 affect the well water. She said it should
25 not affect the well water. So that's -- she

1 -- her statement was with a question mark,
2 like it may affect the well water. That
3 answer -- the question to -- the answer to
4 that question should've been a straight no.
5 So you're putting the lives --

6
7 MS. WOOD: Ms. Harris.

8
9 MS. HARRIS: Yes.

10
11 MS. WOOD: Ms. Harris, you're at
12 about six minutes. So if I could ask you to
13 --

14
15 MS. HARRIS: Wrap it up?

16
17 MS. WOOD: -- wrap it up, yes,
18 ma'am. I'd appreciate it.

19
20 MS. HARRIS: Okay. So with that
21 being said, you're putting the lives of the
22 residents that have well water at risk. We
23 have almost over 5,000 signatures on
24 Change.org in support of the community that
25 do not want Wegmans. We do not want it

1 here. It adds no value to the quality of
2 life for the people that live here. That's
3 it. Thank you.

4
5 MS. WOOD: Thank you. Thank you
6 very much.

7
8 MS. TRETINA: Okay. Our next
9 speaker registered was Phillip Taylor, but
10 he is not on the webinar. So we will go to
11 the next one and that's Peter Tatro. I hope
12 I pronounced you name correctly. You are
13 unmuted.

14
15 MR. TATRO: Can you hear me?

16
17 MS. TRETINA: Yes, we can.

18
19 MR. TATRO: Well, it's Peter Tatro.
20 I'm a resident --

21
22 MS. TRETINA: I'm sorry.

23
24 MR. TATRO: -- of -- oh, no
25 problem. Long day. Everyone does it. I

1 get all kinds of versions of my last name.
2 I'm a resident of the Foxhead neighborhood.
3 I do not have a presentation, so hopefully
4 the dulcet tones of my voice will suffice.

5 As many have previously
6 stated, the wetlands study grossly
7 understated the wetlands impact. And when
8 the Army Corps was allowed to come back in,
9 they were allowed to come back in and survey
10 a very limited section of this.

11 So based on that, I think this
12 should trigger a review of the entire site
13 based on the initial flawed findings. In
14 addition, there seems to be a lot of
15 reliance on information provided by the
16 applicant.

17 Based on the inaccuracy of the
18 wetlands count as well as the cost of the
19 road -- that I believe Ashland has confirmed
20 will not be a cost to Wegmans -- everything
21 Wegmans has claimed in the application
22 process needs to be reviewed and verified.
23 The application is a deliberate deception in
24 an attempt to manipulate the alternative to
25 provide rationalization of the applicant's

1 preferred results. That's all I have.

2 Thank you.

3
4 MS. WOOD: Thank you.

5
6 MS. TRETINA: Our next speaker is
7 Diane Smith Drake. Hold on, let me --
8 Diane, you are unmuted. Diane? Okay, I'll
9 do -- you got a lot of echo.

10
11 MS. DRAKE: Can you hear me now?

12
13 MS. TRETINA: Yes, we can.

14
15 MS. DRAKE: Are you able to hear
16 me?

17
18 MS. TRETINA: Yeah, okay. So I'm
19 going to -- you've got two microphones open.
20 I'm going to mute one of them. All right.
21 Go ahead and speak --

22
23 MS. DRAKE: Are you able to hear
24 me?
25

1 MS. TRETINA: Yes, we can.

2
3 MS. WOOD: Yes, ma'am.

4
5 MS. DRAKE: Okay. I am Diane Smith
6 Drake. I am a member of the Brown Grove
7 Baptist Church. And I am the descendent of
8 Caroline Morris, which was born into
9 slavery.

10 Her descendents are the ties
11 that bind the majority of the Brown Grove
12 community and the membership of Brown Grove
13 Baptist Church.

14 My ancestors had a vision that
15 became a reality. Their struggles were real
16 trying to preserve and protect their
17 families and their land.

18 I strongly oppose the Wegmans'
19 proposal to build a distribution warehouse
20 that would disrupt our historic community
21 and church on a daily basis.

22 I believe if the -- if the
23 coin was flipped and it was Brown Grove
24 trying to commercialize Wegmans's community
25 knowing how hard their ancestors struggled

1 for their families and to preserve and
2 protect their land, would Wegmans try to
3 protect their vision and protect their land,
4 too.

5 It's a sad thing to see and
6 say that even in 2020, the struggles are
7 still real, unfair. And the lack of
8 equality shown to many of our majority Black
9 communities are being looked upon as
10 disrespectful. I deny these permits. Thank
11 you.

12
13 MS. WOOD: Thank you, ma'am.

14
15 MS. TRETINA: Our next speaker is
16 Lisa Eget. And I don't see her on there, so
17 we'll go to the next one. And that's Sara
18 Blues or maybe I am mispronouncing that.
19 Hold on. Let me scroll -- I have to scroll
20 down to get to her. Sara, you are unmuted.

21
22 MS. BLOSE: Good evening, can you
23 hear?

24
25 MS. TRETINA: Yes, we can.

1 MS. BLOSE: Great. I'm Sara Blöse.
2 I live in the Foxhead neighborhood, which is
3 a neighborhood that's very close to the
4 Airpark site. And I thank you for the
5 opportunity to comment tonight.

6 I obtained a copy of the
7 packet DEQ prepared for the hearing officer
8 and I was struck by one thing in particular.
9 The summary reads as if DEQ believes that by
10 simply having debunked the so-called
11 mosaics, that the hundreds who've commented
12 and care about this won't notice that
13 nothing else has been fixed.

14 But they are wrong. We just
15 can't cover our ears or close our eyes
16 tightly enough to make these problems go
17 away. The truth is that Airpark limited
18 site access to the mosaics and DEQ didn't
19 push the issue.

20 DEQ seems perfectly content to
21 allow Wegmans and Airpark to take the lead
22 in the permitting process and to decide
23 which rules they must follow and which ones
24 they're just going to ignore. In fact, in
25 response to the Bay Journal, DEQ advised a

1 reporter that they simply take the applicant
2 at their word. And yet, I'm here tonight to
3 make clear that this is a mistake. We
4 shouldn't reward bad behavior.

5 And approving a permit under
6 these conditions would be arbitrary,
7 capricious and contrary to law. It's
8 obvious that Wegmans was dishonest in their
9 application.

10 For example, Wegmans claimed
11 in their alternatives analysis that Archie
12 Cannon is prohibitively expensive, citing
13 just shy of \$11M to do work on a nearby road
14 that they claimed the Town of Ashland
15 mandated.

16 All it took was a quick email
17 and a phone call to Ashland's planning
18 director -- Nora Amos -- for me to confirm
19 that this simply is not true.

20 After State money, they
21 would've offset the cost, the actual expense
22 of this roadwork would be about \$1M. Making
23 this a \$10M lie. And if that weren't bad
24 enough, Ms. Amos made clear that the town
25 never made the road work a requirement at

1 all. If it was that easy for me to find out
2 about some of their lies, shouldn't we be
3 asking what else they're hiding? What other
4 lies have they told?

5 To sum it up, if you have to
6 lie to make it the right site, it's the
7 wrong site. I'm asking the Board to refuse
8 to give this applicant any special favors.
9 They should have to follow every rule and
10 every regulation and not just be taken at
11 their word.

12 Until the applicant goes back
13 and fills in all of their lies and
14 omissions and sneaky tricks with the
15 complete and honest truth, they should not
16 be allowed to fill in a single wetland. For
17 these reasons, I'm asking the Board to deny
18 the permit.

19
20 MS. WOOD: Thank you.

21
22 MS. TRETINA: Okay. So, Lisa Eget.
23 She has shown up on the list, or maybe I
24 missed it. So I'm going to unmute her.
25 Lisa, you are unmuted. You need to unmute

1 your mic, okay.

2
3 MS. EGET: Can you hear me?

4
5 MS. TRETINA: Yes, I can.

6
7 MS. EGET: Hi. I was, in fact, on
8 the line before and I don't know how it got
9 missed. But I just want to state I have
10 been listening to the whole hearing and the
11 briefing.

12 My name is Lisa Eget. I live
13 in Milestone, which is very close to the
14 proposed development. And I'm asking that
15 the DEQ recommend denial of the permit and
16 that the Water Board deny the permit.

17 I want to talk about the
18 wetlands for a moment. The wetlands have
19 been estimated to be vast for many, many
20 years.

21 And in fact, the property
22 owners knew that when they bought the
23 property. Now, one comment that I read
24 online at some point was from a professional
25 who worked in this area. And he said he has

1 never seen an estimate of wetlands go from
2 the vast amount that was originally
3 estimated down to the 33-34 acres that the
4 consultant for Wegmans said that Wegmans
5 would need to address, down to 6.8 or
6 whatever it became.

7 Back up to 14.8. This is
8 ridiculous. You guys need to get it right.
9 And you're here to protect the State of
10 Virginia's interest in having wetlands.

11 Once they are destroyed, it is
12 hard to get them back. The frogs that live
13 on Sliding Hill aren't going to be able to
14 go drink in York County or New Kent or
15 wherever your remediation wetlands are.

16 So this is a ridiculous thing
17 that the wetlands, which we know are huge,
18 have been understated. Because there is
19 such a discrepancy from the original
20 estimates that were, you know, figured out
21 by overhead satellite pictures and
22 everything else, you guys need to re-do the
23 entire process. You need to go in there and
24 re-do the entire thing. And the idea that
25 Elaine Holley can say that she can't make it

1 into the wetlands because there's too much
2 undergrowth, well, guess what? There are
3 ways to do it. And if she can't do it, find
4 somebody who can.

5 And that's what I say to you
6 and the US Army Corps. And I do think it's
7 relevant to this discussion because you're
8 relying on the US Army Corps to -- Corps of
9 Engineers to establish what your wetlands
10 are.

11 So they should do it right and
12 there should be a lack of excuses. I want
13 to talk about regulatory capture. This
14 process has been under regulatory capture
15 from the beginning.

16 When we talk about applicant,
17 are we talking about Linwood Thomas?
18 Because as I recall or understand, I believe
19 Linwood Thomas was the applicant for the
20 permits from DEQ and USACE, which is
21 completely inappropriate.

22 For those of you who don't
23 know who Linwood Thomas is, he's the
24 development guy for Hanover County. Now,
25 there was an 11-month non-disclosure

1 agreement where our own elected
2 representatives hid this project from us.
3 There is a conflict between secrecy and
4 meaningful engagement. Now, meaningful
5 engagement is not simply announcement.

6 When this project was
7 presented to community members on all sides,
8 it was simply an announcement. It was a
9 fait accompli. This is what's happening.
10 Suck it up, Buttercup.

11 Wrong. This is wrong. Now,
12 as far as LEDPA. I'd like to talk about
13 this for a moment. Because everyone in this
14 space knows that the Diesel TRU's will cause
15 significant pollution.

16 The diesel pollution does not
17 go airborne. It goes -- it's heavy and it
18 goes back into the ground, which means into
19 the water. And you guys are supposed to
20 protect the water.

21 Part of that water is the well
22 water that the residents will be drinking.
23 You're going to poison the residents if you
24 approve this project. Meanwhile, everyone
25 in this space knows that you can have

1 electrified parking spaces. And that is one
2 of the things that the community has been
3 asking for from the very beginning of this
4 project is electrified parking spaces.

5 So that our children are not
6 poisoned by diesel in the water and in the
7 air. And within a mile -- the diesel will
8 go within a mile, even though it is heavier
9 than many other items.

10 So your -- your citizens that
11 live within a mile are risking cancer. And
12 the citizens on -- in Brown Grove are
13 risking cancer from well water. Meanwhile,
14 let's talk about the graves for a minute.

15 Because you talk about part of
16 your responsibility is excavation. Well,
17 while you're bulldozing through all the
18 wetlands, you're going to be bulldozing the
19 graves of the people who actually live in
20 Brown Grove.

21 If there were meaningful
22 engagement, which would occur if the
23 governor would ask his new council on
24 environmental justice to be involved in this
25 problem. If there were meaningful

1 engagement, you guys would not have a
2 boilerplate answer to the issue of graves.
3 Either being found or how they're disposed
4 of if they are found.

5 It is so offensive to my soul
6 that you would say that the Brown Grove
7 people, who know their ancestors are buried
8 in the land behind them, should be scanning
9 the newspaper or a web site in order to find
10 out what box to pick up at what office
11 downtown once they've been bulldozed over.
12 That's if Wegmans bothers to tell anybody --

13
14 MS. WOOD: Ms. Eget. Ms. Eget,
15 you're approaching five minutes. I'd ask
16 you to wrap it up, please.

17
18 MS. EGET: I understand. I am
19 finishing up. But I heard the governor give
20 a press conference the other day. And I
21 understand that he talked about
22 environmental justice and talked about
23 having a director of environmental justice
24 or --
25

1 MS. WOOD: Ma'am. Ma'am? I would
2 like for you to speak directly to the
3 aspects of this permit application.
4

5 MS. EGET: And that -- this is an
6 aspect. His director of diversity should be
7 handling this so that the people who are
8 diverse get consulted, not 11 months after
9 the project's been planned as a fait
10 accompli by everybody from the county to the
11 State to the federal government.

12 Everybody knew about this but
13 the citizens. There was no meaningful
14 engagement. There was purposeful
15 non-meaningful engagement. Those
16 non-disclosure agreements were purposeful,
17 non-meaningful engagement.

18 They were meant to hide this
19 project and every bad aspect of it. Every
20 mismanaged aspect of it and every crooked
21 aspect of it from the public. And we are
22 outraged and you need to fix it. Thank you.
23

24 MS. WOOD: Thank you.
25

1 MS. TRETINA: Our next speaker is
2 Lisa Rossi. You are unmuted.

3
4 MS. ROSSI: Can you hear me?

5
6 MS. TRETINA: Yes, we can.

7
8 MS. ROSSI: Hi, howdy. I'm Lisa
9 Rossi. I just want to say I appreciate you
10 and your time this evening. I'll make it
11 brief. I am a lifelong resident of Hanover
12 County. I currently reside in the Ashcreek
13 subdivision.

14 My property is about three-
15 quarters of an acre and I back up directly
16 to the Totopotomoy Creek. So if anyone gets
17 to see how water changes and flows change,
18 it's me.

19 Because -- take for example
20 last week when we had the heavy rain. I
21 watched -- right behind my house is probably
22 one of the widest parts of the creeks -- how
23 it overflowed. Went over into the trees.
24 Came up on the banks. And as I stood there
25 watching it, literally water running fast

1 enough that there was someone in a kayak
2 treating it like a rapid. And that is not a
3 denial. That is so true.

4 I thought, how can I look at
5 this and say that building a 1.7M square-
6 foot beast with all of this concrete is not
7 going to have a significant impact on the
8 waters or wildlife and that it can -- it's
9 not going to be environmentally damaging.

10 There's just no way. You
11 know, as mentioned earlier, all that water
12 -- once filled in, all those wetlands --
13 where's it going? You know, I've seen it --
14 even on good days -- flood out here.

15 Water rising up. And that's a
16 concern for -- for all of us. I drive
17 Ashcreek Road each and every day to go to
18 work in Ashland.

19 And I know -- even if the
20 smallest amount of rain -- when I leave out
21 of my house, high water signs are going to
22 be posted up and down that road. I
23 literally make a decision on which vehicle
24 to drive. Because in a normal car, our road
25 is flooded and it's almost impassable at

1 some point. I watch as the residents of
2 Brown Grove, where their mailboxes are right
3 on the street, try to get to their mail
4 while cars are going up and down the road
5 with the high water going all over them.

6 And I think, how could anyone
7 believe that filling in these wetlands and
8 building this Wegmans there wouldn't have an
9 affect on that. The drainage is already a
10 problem. It's not going to get any better.

11 So I think that's what I look
12 at with this, is how anyone can visually go
13 out there and look at that property and look
14 at this creek and look at the flooding that
15 occurs even with just a small amount of
16 rain, and think that this is a good idea to
17 put this here.

18 And think that it's not going
19 to have an environmental impact. And it
20 talks -- you talk about the wildlife not
21 being impacted. It's got to be. It's has
22 to wildlife-impacted.

23 Even down where I am, it's
24 still going to trickle down. We -- we have
25 beavers out here, deer drink from the

1 stream. We have everything back here. Bald
2 eagles are back behind my house. So I think
3 that's the thing that bothers me the most,
4 the affect it's going to have on all of us
5 on the creek.

6 The affect on Brown Grove, who
7 is already just struggling on a normal rainy
8 day, how this is going to affect them. So
9 obviously, I am speaking in denial of this
10 permit. And I am done. I just wanted to be
11 very brief. Thank you so much for you time.
12 I appreciate you.

13
14 MS. WOOD: Thank you.

15
16 MS. TRETINA: Our next speaker is
17 Deshanda Artis. Deshanda, you are unmuted.

18
19 MS. ARTIS: Can you hear me?

20
21 MS. TRETINA: Yes, we can.

22
23 MS. ARTIS: Great, yes. Hello, my
24 name is Deshanda Artis and I'm speaking in
25 opposition of the Wegmans Distribution

1 Center being built, and ask that the permit
2 is denied.

3 I am a lifelong resident of
4 Hanover County. And my mother lives on
5 Egypt Road in Ashland, Virginia, in the
6 Brown Grove community. And the proposed
7 Wegmans property will join her property.

8 My mother does not currently
9 attend Brown Grove Church and she was not
10 included in the discussion of this project
11 by DEQ. On one side of the property where
12 my mother lives, it will be Wegmans.

13 On another is the Ashland
14 Airport. And the creek, that will be the
15 site of run-off water -- Wegmans -- is on a
16 third side.

17 My mother grew up on the
18 property where she currently lives and
19 slowly her community and home are being
20 suffocated by industrial development,
21 figuratively and literally.

22 The increase of activity in
23 the airport because of Wegmans' needs --
24 they use it for delivery -- and the increase
25 of air pollution from planes and trucks is a

1 concern. The creek that will be used is a
2 small creek. And there is a field that the
3 creek will flood often and prevent my mom
4 and her cousins from being able to access
5 their home or leave their home.

6 In the -- in addition, there's
7 a fear of what will be in this water and the
8 quality of the water. And how this water
9 will affect the people and animals within
10 the community. My mother has health issues
11 and my cousin, who lives with her, is a
12 disabled veteran.

13 We're not sure of how the
14 added industrial activity will affect their
15 health, as well as the health of their
16 children, grandchildren and great
17 grandchildren who will visit her often.

18 And the family members who
19 visit the family graveyard across the
20 street. With there being such a great
21 impact on my mother, she should have been
22 contacted regarding this project. There are
23 many reasons why this project is not good
24 for the community of Brown Grove. And it's
25 hard to find any reason of how it can be

1 good for the community or environment.
2 Again, for the reasons previously stated and
3 many more, I want to note opposition of
4 Wegmans Distribution Center being built and
5 ask that the permit is denied. Thank you
6 for your time.

7
8 MS. WOOD: Thank you.

9
10 MS. TRETINA: Our next speaker is
11 John Dumont. John, you are unmuted.

12
13 MR. DUMONT: Can you hear me?

14
15 MS. TRETINA: Yes, we can hear you.

16
17 MR. DUMONT: Hi. My name is John
18 Dumont and I live in Hanover County. I
19 signed up as a participant, but I'm not
20 entirely sure what I'm supposed to be
21 talking about.

22 At the last hearing, we had
23 hundreds of people speak and write letters
24 about the flaws in the draft permit
25 requested by Wegmans. These issues

1 included, but were not limited to, the fact
2 that Wegmans didn't file for an industrial
3 stormwater permit and they should have. The
4 over-burdened Totopotomoy Creek and the fact
5 that this project will exacerbate problems
6 with that.

7 The use of wetlands
8 delineation performed during a drought with
9 no follow up as prescribed in the guidance.
10 The fact that Wegmans has not considered the
11 impact the fencing on their property will
12 have on surrounding wildlife that relies on
13 the wetlands.

14 The lack of documentation
15 that's been provided to the public, the
16 failure of DEQ to address economic justice
17 issues. Inadequate searches to locate
18 unmarked burial grounds and assess the
19 handling of any found remains.

20 The removal of buffer
21 vegetation around the land that it's being
22 built on. The use of virtual hearings and
23 the fact that this disenfranchises many
24 people that want to participate in this
25 process. The precedent that DEQ is setting

1 by relying on citizens to do the legwork
2 that the oversight body should be doing.
3 And flaws with -- flaws in the use of
4 mosaics for determining the wetlands
5 delineation.

6 As best as I can tell, DEQ
7 hasn't taken any meaningful steps to address
8 any of these concerns, with the notable
9 exception of the mosaics.

10 When you went out to the site
11 to revisit the mosaics portion of the
12 property, you determined that the citizen
13 comments were 100% accurate about that
14 portion of the land.

15 And that the applicant's
16 treatment was completely wrong. I want to
17 point out that DEQ, the oversight body, was
18 ready to sign off on that treatment until
19 the people in my community forced you to
20 re-examine it and do what was clearly
21 prescribed in the procedures.

22 The applicant said that there
23 was no evidence of the Brown Grove School on
24 the property. But when a resident was
25 invited onto the property to look at the

1 height that the lights would be installed
2 at, he was able to find the structure in
3 plain sight. The applicant has not been
4 truthful about the cost of alternatives,
5 particularly with regard to road
6 construction.

7 When the applicant said they
8 only wanted to change two proffers in the
9 zoning, they removed almost every meaningful
10 protection for residents. There are more
11 examples of their deception.

12 We are going -- we are doing
13 our best to shine light on this project and
14 insure that the rules and regulations are
15 applied evenly and fairly.

16 I don't have much faith that
17 DEQ, who's supposed to be acting on behalf
18 of the citizens, is doing their jobs. I
19 feel like they're trying their hardest to
20 see everything from the perspective of the
21 developers.

22 You said that you asked
23 questions of developer to substantiate that
24 the proposal is fair and accurate. But I
25 haven't seen any answers to the questions

1 that I listed at the beginning of my
2 speaking time. I ask this the last time and
3 I'll ask again, please start to openly share
4 the information that's available.

5 Start performing reasonable
6 assessments or deny this permit until those
7 things begin to happen. The team of
8 community volunteers shouldn't have to be
9 the ones taking the lead in this process.

10 In closing, I want to thank
11 all of the citizens that have spent their
12 personal time and money doing what I believe
13 DEQ should already be doing. That's all I
14 have.

15
16 MS. WOOD: Thank you.

17
18 MS. TRETINA: Our next speaker
19 registered is Rhoda Burk, but I don't see
20 her on the list. And I'm double checking.
21 I do not see her, so our next speaker
22 registered is Kathy Woodcock. And Kathy,
23 you are unmuted.

24
25 MS. WOODCOCK: Hello, can you hear

1 me?

2

3 MS. TRETINA: Yes, we can.

4

5 MS. WOODCOCK: Thank you. Good
6 evening. My name is Kathy Woodcock. I live
7 on Ashcake Road, directly across the street
8 from the proposed Wegmans Distribution
9 Center.

10 I appreciate the opportunity
11 to comment this evening. There are many
12 things wrong with this proposed development
13 and the processes regarding its approval.

14 One of my greatest concerns,
15 though, is that DEQ is facilitating the
16 destruction of the environment, rather than
17 protecting it, by knowingly accepting flawed
18 information.

19 Recent Corps of Engineers'
20 corrections to the site delineation, made at
21 the urging of the public, still do not
22 accurately reflect the total wetlands
23 impact. They don't account for the drought
24 at the time of the initial delineation, the
25 still inexplicably missing data points or

1 impacts to remaining onsite or offsite
2 wetlands. These issues were brought to
3 DEQ's attention in the prior public comment
4 period and has not been addressed. Why?

5 The property owners limited
6 access to the site so the Corps was not able
7 to review these issues. What do they have
8 to hide? And more importantly, why was this
9 constraint allowed by the permitting agency?

10 How is it that the self-
11 interested property owner can determine what
12 are and are not reviewed? How is it that
13 the proverbial fox is allowed to guard the
14 hen house? Because the delineation of PJD
15 are inaccurate, the mitigation plan and
16 alternatives analysis are also inaccurate.

17 In accepting the highly
18 questionable delineation of PJD from the
19 Corps and accepting the property owner's
20 limitations to access to the site, and
21 accepting Wegmans at their word concerning
22 alternative site impacts, DEQ is not
23 adequately investigating issues and
24 enforcing the laws that its responsibility
25 to uphold. The Board can not issue a permit

1 with so many questions and issues remain.
2 I'm also gravely concerned about the impact
3 this facility could have on the quality of
4 life for people in the surrounding homes and
5 neighborhoods, the human environmental
6 quality.

7 This is a quiet, rural area
8 steeped in history. This immense 24-hour,
9 seven-day-a-week facility with its noise,
10 traffic and impacts on property value would
11 destroy the rural and historic nature of
12 this entire section of Hanover County.

13 And could be the last straw in
14 a long line of industrial encroachment that
15 threatens to destroy the historic Brown
16 Grove community altogether.

17 Environmental justice is an
18 explicit part of DEQ's stated mission. Yet
19 tonight's public information briefing didn't
20 make the slightest mention of Brown Grove
21 until questions were reviewed.

22 It was then mentioned how DEQ
23 told the community what was going to happen
24 to it. But neither the applicant or the DEQ
25 permit review process thoughtfully

1 considered or evaluated the disparate and
2 irreparable impacts to this community. As
3 such, the DEQ has failed in its mission.
4 For the reasons I have conveyed and those
5 that so many others have stated, the permit
6 should be denied. Thank you for the
7 opportunity to convey my --

8
9 MS. WOOD: Thank you.

10
11 MS. TRETINA: I'm sorry, Kathy. I
12 cut off her last couple of words. I
13 apologize. The next speaker -- and I
14 apologize for the name mangling -- is
15 Fionnuala Fisk.

16
17 MS. FISK: Fionnuala, yeah.

18
19 MS. TRETINA: Fionnuala, okay.
20 Sorry.

21
22 MS. FISK: Yeah, thank you. Hi.
23 My name is Fionnuala Fisk. I am co-help
24 [phonetic] coordinator of Sunrise Richmond.
25 And I am commenting today to ask that permit

1 No. 19-2036 is denied. Primarily, I'll be
2 speaking from an environmental justice and a
3 procedural standpoint. And in particular,
4 I'm a little bit concerned about how the
5 Department of Environmental Quality is
6 generally handling their EJ reviews.

7 The outreach work that has
8 already been done is unacceptable, reaching
9 out to only a few community members and then
10 blaming them for not doing enough to reach
11 the rest of the community is an abrogation
12 of the DEQ's responsibility.

13 That's in reference to Jaime
14 Robb's comments earlier tonight. In
15 addition, instead of asking a third party to
16 evaluate your programs, you could take
17 first-line communities seriously when they
18 tell you that this will be damaging to their
19 community.

20 You don't need to pay white
21 people in suits to learn how to treat
22 historically Black communities. That group
23 -- I looked them up -- their organization is
24 five percent Black. I'm sorry, but this is
25 ridiculous. DEQ needs to do a much, much

1 better job of engaging with historically
2 Black communities if they are taking
3 environmental justice seriously. This is
4 not an issue that applies to all communities
5 equally.

6 This is an issue of
7 environmental racism. Also, I'm not really
8 sure how a third party is expected to be
9 able to holistically evaluate the work of
10 DEQ if they are not able to take a look at
11 individual projects and consider how DEQ is
12 handling individual projects.

13 I think that this is a perfect
14 case study for this third party to review.
15 I don't understand why they're not being
16 given the opportunity to.

17 I just -- I think this is, you
18 know, this is an environmental justice
19 community that hasn't been treated
20 respectfully and fairly.

21 I -- I just think that's a
22 little bit ridiculous. In addition, I have
23 a few procedural concerns. I'm -- first of
24 all, I find it deeply concerning that Jaime
25 Robb said earlier tonight that she couldn't

1 think of a single example of when a permit
2 has not been denied -- I mean, when a permit
3 has been denied. I'm not really sure what
4 the point of DEQ -- DEQ's existence is if
5 there are no denials of permits.

6 I mean, like you might as well
7 just not do anything at all. And -- and the
8 same thing goes for why you all would not
9 be, you know, fully reviewing the
10 information that Wegmans is providing.

11 I mean, the community members
12 have done all of the work of reviewing this
13 information. And it's -- it's been great
14 because you guys have been revising things
15 as, you know, the community is presenting
16 this evidence.

17 But it shouldn't be on the
18 backs of people with full time jobs in other
19 capacities to be doing this. So with all
20 that being said, I do appreciate the work
21 that you guys do.

22 But I do think, you know, it
23 does feel a little bit like there's a lot of
24 political pressure kind of on y'all. And I
25 do hope that moving forward, these

1 environmental justice concerns will be taken
2 more seriously. And also, that you all will
3 consider denying this permit to kind of
4 start the process of actually denying
5 permits when they should be denied. Thank
6 you so much.

7
8 MS. WOOD: Thank you.

9
10 MS. TRETINA: Our next speaker is
11 Brian Buniva. I'm going to unmute you, but
12 I'm not sure if you're going to be able to
13 speak because you haven't put in a PIN
14 number. Brian, I'm sending you a PIN
15 number. We will come back to you.

16 The next speaker is William
17 Spencer and I don't see him on the webinar,
18 either. So then the next speaker is Bonnica
19 Cotman. Bonnica, I have unmuted you. You
20 need to unmute your mic.

21 Go ahead and speak. Bonnica?
22 You look like your mic is working. Okay,
23 we'll come back to you. All right. Next
24 one is Veronica Quinley. Let's see. Yes,
25 she is there. Veronica, you are unmuted.

1 MS. QUINLEY: Hi.

2
3 MS. TRETINA: Hello.

4
5 MS. QUINLEY: Hello?

6
7 MS. TRETINA: Yes, we can hear you.

8
9 MS. QUINLEY: Okay, good. Hi, I'm
10 Veronica Quinley and I've lived in Foxhead
11 for 17 years. For the past seven years,
12 I've driven Ashcake Road from Foxhead to
13 Ashland two to three times a week. I know I
14 probably could make that drive in my sleep.

15 In the winter, I know all the
16 places to look out for black ice, knowing
17 that many places the water just does not
18 drain well along that road.

19 I know where the water is
20 deepest when there has been even a light to
21 moderate rain so that I do not hydroplane.
22 I think of driving a little differently as
23 I'm teaching my teenage son to drive. When
24 I've take -- when I -- I have been taking
25 him to our church, just a little further

1 down the road where Ashcake turns into
2 Peaks. I can take him there and feel safe.
3 Your church should be a place you can drive
4 up to at any point and find the peace and
5 comfort of your place of worship, even if it
6 is not Sunday.

7 For years, I have driven by
8 and wondered why Brown Grove Baptist has up
9 gates, not allowing you into their parking
10 lot.

11 It has struck me as odd that
12 it wasn't until this spring, when I believe
13 it was the minister there spoke at a meeting
14 opposing further encroachment on his church
15 and community.

16 He spoke of having the parking
17 lot torn up due to concrete trucks turning
18 around in the parking lot, to the point
19 where they had to put up gates.

20 Personally, when I give money
21 to my church, I do so to support the church
22 and its missions -- not to support having to
23 replace our parking lot due to poor planning
24 by the county and the government. I'd like
25 -- I'd like for you to think of what issuing

1 this permit means. Our neighborhood already
2 has flooding every time it rains. These
3 wetlands that will be destroyed keep these
4 rainwaters in check and balance.

5 It means to us the loss of
6 natural habitat, the loss of the night sky
7 due to the light. Loss of peace, as this is
8 a 24/7 operation with non-stop back-up
9 beeping and tractor trailer noise and
10 lights.

11 I'd like you to think of the
12 injustice already impacting the community of
13 Brown Grove, a fortified church not even
14 open to its community thanks to the supposed
15 development.

16 This project is not in keeping
17 with the community and is the wrong project
18 for this piece of land. It will cause harm
19 to where so many families live, including
20 mine, and to the wetlands and habitats that
21 should be left alone.

22 Because it's clear there are
23 better alternative sites for this project.
24 For this reason, I would request that you
25 deny the permit. Thank you.

1 MS. TRETINA: Okay. We'll go back
2 to Brian Buniva. He seems to have resolved
3 his audio issues. Brian?
4

5 MR. BUNIVA: Yes, I'm --
6

7 MS. TRETINA: You are unmuted.
8

9 MR. BUNIVA: I'm here. Can you
10 hear me?
11

12 MS. TRETINA: Okay. Yes, we can.
13 Thank you.
14

15 MR. BUNIVA: All right. I'm sorry.
16 I got bumped off for some reason. My name
17 is Brian Buniva. I'm an attorney and I
18 represent several of the people that have
19 already spoken.

20 And I must tell you, just
21 listening to them -- particularly Mr. Morgan
22 and the Bloes family and Ms. Woodcock and
23 Chris French -- I am very, very proud to
24 represent them. Just as I have earlier in
25 my career been very, very proud to represent

1 the State Water Control Board and the
2 predecessor of the Department of
3 Environmental Quality when I first started
4 practicing law in the Attorney General's
5 Office almost 4 years ago.

6 I am a lifelong environmental
7 law attorney and have represented the State.
8 I've represented local governments. I've
9 represented individuals, I've represented
10 corporations, all dealing with environmental
11 stuff.

12 There -- there are powerful
13 forces that are pushing for this site. The
14 governor and the county see this project as
15 an economic development engine, and it may
16 well be.

17 Wegmans wants the cheapest
18 site it can find, so that it can -- can
19 improve its supply chain. And it was told
20 by the local government and State government
21 representatives, who are pushing this site,
22 that it was a done deal.

23 That there would be -- that
24 they would get their re-zoning and they
25 would get their permits. And there's myriad

1 examples of that in internal emails back and
2 forth among the local government and State
3 government and so on, including DEQ.

4 Airpark is really owned by
5 several law partners at the Hirschler
6 Fleisher law firm, which is one of the most
7 prominent land use development law firms in
8 the state.

9 And they've held this property
10 for 25 years. Their motivation is simply to
11 make a profit on their investment. But none
12 of these forces have the responsibility that
13 DEQ does and that the State Water Control
14 Board has.

15 And those responsibilities
16 range from insuring environmental justice is
17 properly applied and -- and communities of
18 color are properly engaged in the process.

19 The engagement of the
20 environmental justice community was one
21 meeting, to my knowledge, conducted -- I
22 believe -- in February of this year. Where
23 they were told by representatives of Airpark
24 and Wegmans that this was a done deal. That
25 this is what was going to happen, there's

1 nothing that could be done about it. And
2 frankly, as I understand the history of
3 Brown Grove, they've been told that before
4 and it has turned out that way.

5 And -- and that is just simply
6 not complying with Code Section 2.2-2699 of
7 the -- and 22 -- 2.2-235, which define
8 environmental justice as the meaningful
9 involvement of -- of all people, whereby no
10 group of people bears a disproportionate
11 share of any negative environmental
12 consequences resulting from an industrial,
13 governmental or commercial operation program
14 or policy.

15 It's the responsibility of DEQ
16 and the State Water Control Board to -- to
17 not just hire a study -- a group to study
18 and tell us how to do it.

19 It's your responsibility to
20 actually do it, to be actively involved in
21 bringing in people who are going to be
22 adversely impacted by this project. And
23 asking them, how can we make this work or
24 can we make it work? And that's really the
25 question. I'm not going to repeat what has

1 been so eloquently stated to -- simply to
2 say this. How do you go from a drought-
3 based wetlands delineation performed by the
4 developer's consultant in 2019 -- which
5 showed a total of, I think, almost 35 acres
6 of wetlands on the site down to only 6.2
7 that are impacted.

8 Then go back up when the error
9 of that delineation is pointed out. And the
10 landowner restricts the Corps -- and the
11 Corps accepts the restriction -- to come
12 back on the property and look at these --
13 these mosaics which under-counted by 90% in
14 one area and 70% in the other area,
15 wetlands.

16 Non -- I mean, non-tidal,
17 jurisdictional wetlands. So that then goes
18 up to 15 and ignores all of the rest of the
19 issues with respect to the wetland
20 delineation that was pointed out by Chris
21 French and others that have spoken before
22 you and -- and Brett Blose. How do you do
23 that? How can you simply rely on self-
24 interested parties who have demonstrably
25 provided your agency with incorrect,

1 inaccurate information and accept it? You
2 can't do that and fulfill your duty to
3 protect the environment, which I was proud
4 to be a part of doing for many years in the
5 Attorney General's Office.

6
7 MS. WOOD: Mr. Buniva. You're at
8 five minutes.

9
10 MR. BUNIVA: Yes.

11
12 MS. WOOD: I'd ask you to wrap it
13 up, please.

14
15 MR. BUNIVA: I am at five minutes.
16 My goodness.

17
18 MS. WOOD: Five and a half if you
19 want to be specific.

20
21 MR. BUNIVA: Well, I -- I certainly
22 will respect that. I just want to -- to
23 close with this. There are practical
24 alternatives. You have been misrepresented
25 with that in terms of the cost of it. This

1 Archie Cannon site -- just call the planning
2 director of Ashland and find out that it's
3 been misrepresented to you. Please do that.
4 Please search for the truth. Please do
5 that.

6 And if you do that, you will
7 not be -- in good conscience -- able to
8 grant this permit. Please help this
9 community survive from this onslaught. We
10 do not oppose Wegmans. We oppose this site
11 for the Wegmans' project. Thank you very
12 much, and I'm sorry I went over time.

13
14 MS. WOOD: Thank you.

15
16 MS. TRETINA: All right. We're
17 going to go back to Bonnica Cotman to see if
18 she can -- Bonnica, you have -- your phone
19 is muted, so unmute your phone and --

20
21 MS. COTMAN: Okay. Can you hear
22 me?

23
24 MS. TRETINA: Yes, we can.
25

1 MS. COTMAN: Praise the Lord.
2 Thank you so much. I'm going to actually
3 put this on speaker phone because I -- I
4 need to reference to my phone. I wanted to
5 -- my name, as you -- as you said, I'm a --
6 I'm 49 years old.

7 I've lived in the Brown Grove
8 community my entire life. I am a -- a
9 descendent of Caroline Morris, who is known
10 as the mother of Brown Grove. I want to
11 read you guys something.

12 This is the obituary for my
13 great, great grandmother. It says -- and
14 this was in the newspaper. It says, aged
15 negro dies at Brown Grove. She is survived
16 by 166 descendents.

17 Mrs. Caroline Morris, 98-year-
18 old widow of Jeff Morris, who has lived
19 since her birth near Brown Grove in Hanover
20 County, died last Monday. She is survived
21 by 166 descendents.

22 And it goes on to state -- it
23 lists -- talks about all of her -- her
24 children. And then it says, she is survived
25 by 55 grandchildren, 100 great grandchildren

1 and one great, great grandchild. And I say
2 that -- I read that in order to -- to let
3 you guys know that there are lives here in
4 Brown Grove -- in the Brown Grove community.
5 We are real people with real roots to this
6 community.

7 Our ancestors are woven into
8 the soil of the Brown Grove community. And
9 Brown Grove may not mean much to other
10 people, but it means the whole world to us
11 that live here.

12 Back during the period of
13 Reconstruction, the former slaves were --
14 you know, they chose to settle near the
15 plantations where they once was forced to
16 serve their masters.

17 And that was because they
18 wanted to be near what they called home, so
19 that their children who were sold off, their
20 -- their -- all of their loved ones that
21 were sold off would -- everyone would be
22 able to find one another. The children
23 would come back to the plantations where
24 their -- they last known their parents to
25 be. Or the husband or wife would come back

1 to the plantation where they once known that
2 their spouse used to be. So Brown Grove is
3 not just a -- a community of people who are
4 not connected, who don't really know each
5 other. Most of us are related.

6 And you know, when I hear
7 someone talk about we've met with Brown
8 Grove. I know Wegmans stated that they met
9 with Brown Grove. That was very deceiving.

10 And when they said that -- I
11 was at the meeting that they said was the
12 meeting where they actually met with Brown
13 Grove. I was at that meeting. I met with
14 three people.

15 I know Dan Aiken [sp] was one
16 of them and I can't think of the other two
17 gentlemen's name. But the other four people
18 attended Brown Grove Church, but they did
19 not live in the Brown Grove community at
20 all.

21 So you did not meet with --
22 Wegmans did not meet with Brown Grove. They
23 actually met with me, Bonnica Cotman. And I
24 do not represent the whole community. I had
25 no idea that I was charged with going back

1 to the community to say this is what's --
2 what's happening. This is what's going on.
3 This meeting was called last minute. I was
4 called the morning of the meeting to say,
5 hey, Wegmans is about to fly out of town.

6 Because they had came here for
7 a really big meeting that we had at the
8 middle school over on 301. This was back in
9 February.

10 I was not -- I was just called
11 last minute by Reverend Beechaum to say,
12 hey, these people want to -- to meet with
13 some people from the church. And that's all
14 they said.

15 And I was one of the people
16 that happened to be picked. And I -- I'm
17 the only one that lives in the community.
18 So I mean, how can they -- how can they say
19 they met with the community?

20 I myself have not received a
21 package from DEQ. I also have not received
22 one for US Army Corps of Engineers, so I
23 don't know what's going on with my address
24 on the list of people. And I'm adjacent --
25 an adjacent property owner. So I should've

1 received the list -- a notification. Also,
2 the folks that are not adjacent property
3 owners, they weren't even contacted.

4 Like you know, I know -- I
5 once heard it said on one of these other
6 comment calls that they're not even require
7 to contact them because they're not adjacent
8 property owners.

9 So I'm not -- you know, it's
10 -- it's like the engagement with the
11 community has been very poor. I would say
12 that there is no engagement with the
13 community.

14 You -- you know, it's not like
15 -- you know, it's like we're a check mark.
16 You know -- and you know, because it -- it
17 says that, you know, it's very rare that an
18 applicant is denied a permit is very
19 disheartening.

20 I mean, that just breaks my
21 heart because it's like we have no fighting
22 chance when it comes down to this. So I
23 don't even know the purpose of having a
24 comment period if our comments are going to
25 be disregarded in the first place. It's --

1 it's -- I'm just not -- I don't -- I don't
2 know, you know, like why we're going through
3 all of this. I am hoping, by the grace of
4 God, that somebody who is -- who is
5 listening to these comments will hear us.

6 Because we are -- are people
7 here. Please don't let our community be
8 decimated by a large distribution center.
9 Wegmans is not -- you know, we -- we belong
10 here in the community.

11 We have been overpowered by
12 all of these industrial businesses around
13 us. Now Wegmans wants to come in. It's
14 like the -- between the -- it's the Airpark
15 and Hanover County Board of Supervisors, we
16 don't have a fighting chance.

17 It's like we're a dumping
18 ground for businesses here, for industries.
19 We've got concrete plants, you know, truck
20 stops, landfill.

21 We also have an unofficial
22 junk yard or scrap yard that somebody's
23 using that we've been trying for the longest
24 time to get this guy to clean up this mess.
25 And it's been three years since it -- it's

1 been like that. So I mean, we have no --
2 you know, we just don't have a fighting
3 chance.

4 I don't know -- I don't know
5 what else to say because, I mean, everything
6 that I'm hearing is, you know, we're -- you
7 know, where is -- who is the person who --
8 or what agency with the State are the ones
9 who say, okay, we're going to stop any kind
10 of -- any more businesses in this community
11 because they have been overburdened with --
12 with stuff over the past 50-60 years.

13 Like who speaks up for us
14 other than ourselves? Like who -- what
15 agency within the State of Virginia -- we
16 know the governor's not speaking up for us.

17 We know our local government
18 is not speaking up for us. So who speaks up
19 for us other than ourselves? How are -- how
20 are we to survive?

21
22 MS. WOOD: Ms. Cotman. Ms. Cotman,
23 I'm going to ask you -- I need to ask you to
24 wrap it up, please.

1 MS. COTMAN: Okay. I am a
2 descendent of Caroline Morris. I am also a
3 descendent of -- excuse me, Issha [sp]
4 Morris and Sally Morris, who were her
5 parents. So that's all I have to say and I
6 thank you for the opportunity.
7

8 MS. WOOD: Thank you.
9

10 MS. TRETINA: Our next registered
11 speaker is Carolyn Blake. Carolyn, you are
12 unmuted. You can unmute your mic.
13

14 MS. BLAKE: Can you hear me?
15

16 MS. TRETINA: Yes, we can.
17

18 MS. BLAKE: Yes. My name is
19 Carolyn Blake. And I've been here in Brown
20 Grove area all -- all my life. I was born
21 and raised around here.

22 And Caroline Morris, I am her
23 great, great granddaughter. And my property
24 is all the way down on Egypt Road at the
25 dead end. And if Wegmans would come through

1 here, they would be on all three sides of
2 me -- in the back, the left and the right.
3 And I also have water, it's on both sides of
4 me.

5 And I -- my -- where my
6 property at is it -- you know, I'm on the
7 low -- the low part. And it -- you know, if
8 Wegmans come and all that water will come --
9 come through here, my house going to be
10 over-floated.

11 It's -- it's flooded now
12 around my house. And I can't -- my house
13 can not stand no more water around it. And
14 -- and [unintelligible] I have breathing
15 problems.

16 I've had breast cancer. You
17 know -- you know, we -- I -- I disagree with
18 Wegmans coming over here. I -- I really do.
19 And if you can devoid their license, I -- I
20 appreciate it. And that's all I have to
21 say.

22
23 MS. WOOD: Thank you, ma'am.

24
25 MS. TRETINA: Our next registered

1 speaker is Melvinia Wilson. And I probably
2 have mispronounced her name. Hold on, let
3 me get her -- okay. You are unmuted. It's
4 open. You're unmuted. You've got some
5 feedback going on.

6
7 MS. WILSON: [inaudible].

8
9 MS. TRETINA: We can't hear you.
10 No, we can't -- we can't hear you. Barely
11 -- you've got feedback. You must have two
12 audio. Okay, can you speak now?

13
14 MS. WILSON: [inaudible].

15
16 MS. TRETINA: We can barely hear
17 you, but there's a lot of feedback in your

18 --

19
20 MS. WILSON: Okay, I apologize for
21 that. My name is Melvinia Wilson and I am a
22 resident of Hanover County in the Brown
23 Grove community. I first would like to give
24 honor to my grandmother [inaudible] who was
25 born in [inaudible].

1 MS. TRETINA: Ms. Wilson, we're --
2 we -- we really can't hear you.

3
4 MS. WILSON: [inaudible].

5
6 MS. TRETINA: Ms. Wilson, we'll
7 come back to you. The best thing -- the
8 best thing for you to do is -- are you --
9 are you using headphones or are you just
10 using straight computer sound?

11
12 MS. WILSON: I actually have a
13 tablet. And the volume is completely turned
14 up, so I don't know --

15
16 MS. TRETINA: On the -- on the
17 tablet, can you go into your -- your
18 webinar's control and select phone and then
19 dial that number with your cell phone?

20
21 MS. WILSON: [inaudible] but I
22 could not access it.

23
24 MS. TRETINA: On the tablet, oh.

25

1 MS. WILSON: Uh-uh, on the -- on my
2 phone [inaudible].
3

4 MS. WOOD: Marilee, can you give
5 her a phone number to call?
6

7 MS. TRETINA: She's -- we won't be
8 able to -- I won't be able to unmute her if
9 she just calls in on the phone and she's not
10 on the webinar.
11

12 MS. WILSON: [inaudible] you can't
13 hear me at all?
14

15 MS. TRETINA: Okay, tell -- no, we
16 -- it's -- it's a lot of feedback in there.
17 So please call Kevin Vaughan, if you can
18 hear this number, it's 804-698-4470. Call
19 him and let him help you with this. Okay?
20

21 MS. WILSON: Okay, thank you very
22 much.
23

24 MS. TRETINA: Uh-huh, okay. So our
25 next registered speaker is Maxwell Cloe.

1 And Maxwell, you are unmuted.

2
3 MR. M. CLOE: Hello, can you hear
4 me?

5
6 MS. TRETINA: Yes, we can. Very
7 clearly.

8
9 MR. M. CLOE: Awesome. All right.
10 So, hello. My name's Maxwell Cloe. I'm a
11 resident of Forest Lake Hills neighborhood.
12 I've lived here for more than 20 years. And
13 I'm 22 years old, so that's my entire life.

14 There's a couple concerns I
15 have, I'm respectfully asking that the DEQ
16 suggest the denial of this permit to
17 Wegmans.

18 I'll bring up two issues
19 specifically along with all of the other
20 issues that everyone else has very
21 eloquently listed.

22 The first of these issues,
23 which I won't harp on for too long because
24 it's already been talked about, is the idea
25 of the least environmentally damaging

1 practicable alternative. Very clearly, as
2 everyone has illustrated, the Airpark site
3 is simply not the LEDPA, not in any way
4 whatsoever.

5 So I request that the DEQ and
6 the Army Corps of Engineers and the Virginia
7 Water Quality managing board, they all take
8 another look at that Archie Cannon site and
9 re-evaluate what's going on over there.

10 The second issue that I'm
11 particularly interested in speaking about
12 today is the idea of the archeological
13 evidence of graves and schools and all sorts
14 of things on the Airpark site.

15 So I'm a historian and I would
16 like to speak to the -- the historical and
17 archeological missteps that have occurred in
18 the assessment of this property.

19 As many residents of the Brown
20 Grove community and many others here have
21 noted today, the area in which the Wegmans
22 Distribution Center will appear is at the
23 grave site of numerous, formerly enslaved
24 people whose descendents -- very clearly --
25 still live in the area. Now there were

1 previously archeological -- a previous
2 archeological survey found no such grave
3 sites in the area. Ellen Holley noted in an
4 article in the Richmond Times Dispatch that
5 the previous studies have been very limited
6 in scope.

7 And they simply didn't talk
8 with the members of the Brown Grove
9 community whose oral histories are essential
10 to this -- to the study of the area.

11 In a related 1992 Department
12 of Historic Resources survey of Hanover
13 County, it was noted that slave cemeteries
14 were a part of the wetland and Hickory Hill
15 plantations, and they didn't contain grave
16 markers, either.

17 They were identified only by
18 the presence of periwinkle and an oral
19 tradition that was passed down through the
20 property owner's family. Much like in the
21 Brown Grove Airpark area.

22 Now the Brown Grove community
23 was originally made up of freedmen from
24 these nearby plantations, meaning that the
25 oral history of this region is likely the

1 only and major reliable source for the
2 presence of the graves in this area. Now,
3 to grant Wegmans the permit without
4 conducting a more thorough and proper oral
5 history and archeological investigation of
6 the area would like result in the
7 destruction of a place which historical --
8 has historical significance on local, state
9 and national levels.

10 So in my professional opinion,
11 I think it would be a misstep to grant this
12 permit. And I, again, respectfully request
13 that the permit is denied. Thank you.

14
15 MS. WOOD: Thank you.

16
17 MS. TRETINA: Okay, while
18 Ms. Wilson is working out her audio issues,
19 we have a couple of additional speakers.
20 The first one is -- I'm going to butcher
21 this name again, probably, Ankur Bhaskar.
22 You are unmuted. You need to unmute your
23 mic.

24
25 MR. BHASKAR: Here we go. Can you

1 hear me well?
2

3 MS. TRETINA: Yes, we can hear you.
4 Sorry for butchering.
5

6 MR. BHASKAR: It's okay. Hello, my
7 name is Ankur Bhaskar and I'm with Sunrise
8 RVA. Like many of my peers in the same
9 group who spoke during the last meeting
10 regarding this project on July 20th, I am
11 against the building of this distribution
12 site for Wegmans.

13 To build anything on unmarked
14 slave burial grounds, given the painful
15 history that African-Americans in this
16 country have had to face -- starting with
17 slavery in this very state when the first
18 ship arrived in Jamestown, to Jim Crow to
19 segregation and now today with the social
20 unrest that we've seen gone on, is an insult
21 to the community in Brown Grove.

22 To build this complex in this
23 area, for many, is the closest thing to
24 their ancestral history they've had unlike
25 most people in this country, who are

1 privileged to know their roots.
2 Additionally, as cited in the Richmond
3 Times-Dispatch article in July, it's not
4 just, you know, much of the Brown Grove
5 community -- or most of the Brown Grove
6 community in Hanover and Brown Grove who
7 will -- who have such grievances with this
8 project.

9 Many in, you know, white
10 suburban neighborhoods are speaking out on
11 -- against this project due to the grave
12 potential health risks as mentioned here
13 tonight, including the damage done to the
14 wetlands. Some of it maybe permanent.

15 In addition to the drinking
16 water, Elizabeth Guzman and CGO-31, has
17 written a letter urging the rejection of
18 this permit which, if allowed, I can link
19 below right here. And has invited the DEQ
20 to speak to her office further. So that's
21 all I have for comments. Thank you.

22
23 MS. WOOD: Thank you.

24
25 MS. TRETINA: We have another

1 additional speaker, Robin Payne. Robin, you
2 are unmuted. You need to unmute your mic.
3 Robin, are you -- your microphone is self-
4 muted. So you need to unmute it.

5 Okay. I don't know if she's
6 going to be able to offer comment if I can't
7 get her unmuted. Robin, if you're having
8 audio issues, you can contact Kevin Vaughan.

9 That's on the screen, his
10 contact information. Okay, I know that
11 Kevin is also working with Melvinia, trying
12 to get her audio working. If we could hold
13 on a couple minutes, Heather.

14
15 MS. WOOD: Yeah, that's fine.
16 That's fine. I was going to ask you if you
17 could tell if he's actively engaged with
18 her.

19
20 MS. TRETINA: He is.

21
22 MS. WOOD: Okay. We can -- we can
23 take a little bit of a break while they try
24 to work that out.
25

1 MS. TRETINA: Okay.

2
3 MS. WOOD: Let's -- let's regroup
4 in another 10 minutes. How about that?

5
6 MS. TRETINA: Okay.

7
8 (The virtual public hearing went off the
9 record at 9:06 p.m., and resumed at 9:12 p.m. The
10 taking of oral comments resumed as follows:)

11
12 MS. TRETINA: Okay.

13
14 MS. WILSON: Okay, good evening.
15 My name is Melvinia Wilson and I am a
16 resident of Hanover County in the Brown
17 Grove community.

18 I first would like to give
19 honor to my grandmother, Mrs. Nannie Lewis,
20 whose birthday is today. She was born in
21 1922. And to all of the ancestors who lived
22 in the community, especially Momma Caroline
23 Dobson Morris -- my great, great
24 grandmother. I submit the following
25 comments in reference to the Virginia Water

1 Protection permit and request that this
2 permit application be denied. The permit
3 would allow Wegmans Food Markets,
4 Incorporated, to permanently impact many
5 acres of wetlands located south of Ashcake
6 Road and east of Egypt Road in Hanover
7 County.

8 Based upon the issues
9 discussed this evening, I vehemently request
10 that the DEQ and the State Water Control
11 Board deny Wegmans' request because its
12 construction and operation will severely
13 impair the waters and resources of the
14 wetlands.

15 Wegmans is a \$9.7B revenue
16 company located in New York -- which is its
17 headquarters -- in Pennsylvania,
18 Massachusetts and New Jersey. It is seeking
19 to construct 1.7M-foot distribution center
20 to grow their existing revenues in the
21 southeast.

22 The food stores are marketed
23 toward the elite, with grand piano
24 renditions playing while shopping in the
25 international stations and restaurants

1 within their food facilities. The cost of
2 their food products and delicacies are
3 extremely expensive to me and probably to
4 most of the Brown Grove community.

5 It would be a tremendously
6 insulting destruct to the Brown Grove
7 community to build a facility to distribute
8 high cost foods and delicacies that Brown
9 Grove could not afford to purchase.

10 And even greater, transport
11 those products leading -- leaving gas fumes,
12 noise pollution from over 100 transport
13 trucks and cars.

14 This activity would be
15 constant, 24 hours a day, seven days a week,
16 and within 25 feet of my home and other
17 homes in the community.

18 This horror will be towering
19 six stories high, consuming most of the
20 forestry for fresh air and wetlands I
21 believe have already deemed protected by the
22 federal government. Brown Grove is already
23 bearing the cross of industrial development
24 that has been sanctioned by the State of
25 Virginia. A study was done by Virginia Tech

1 and Virginia State University in 1972.
2 According to the internet archives, that
3 Title V of the Rural Development act of
4 1972, whereby Virginia has provided -- or
5 has been providing funding for venture
6 capitalist companies to build buildings and
7 roads.

8 They have used the Small
9 Business Administration funding for small
10 businesses from the federal government,
11 private foundations, investors, banks.

12 And I see New Kent
13 Environmental Bank is one of them. And
14 insurance companies to develop state
15 development authorities.

16 And these authorities carry
17 public corporate authority which utilizes
18 State tax dollars for these type of
19 activities.

20 Brown Grove certainly has paid
21 more than their share of taxes for over 150
22 years, if they've owned land as well as
23 other state taxes, with no benefit of
24 receipt of business funding or even the
25 pavement -- paving of roads. State

1 development authorities are utilized to
2 expand industry by standard industrial
3 classification, or what we call SIC codes,
4 and preferred new business.

5 This type of funding has been
6 available for such projects like Wegmans,
7 the epitome of this process. However, our
8 community and communities like ours have too
9 often beared the cross of environmental
10 poisons and toxic waste from industrial
11 development.

12 Which is actually a global
13 problem for poor, under-served, under-
14 represented communities. The Brown Grove
15 community has never actualized any such
16 funding for any businesses or business plans
17 for the past 150 years, and has never
18 received any compensation for the continual
19 attacks upon our community including
20 Interstate 95.

21 With initially splitting the
22 community and constant noise from traffic,
23 no sound walls have been constructed within
24 the areas where our families live. The
25 Hanover County Airport and all the airplane

1 exhaust and noise with landing fields and
2 splitting our communities with flying over
3 homes and gardens. The landfill, which has
4 caused flooding, constant dust and mud and
5 gas fumes from transport trucks.

6 And from CP&P Concrete -- and
7 it used to be Americast [unintelligible]
8 with constant drilling underground, shifting
9 the ground.

10 Transport vehicles with slate
11 dust and increased flooding after rains.
12 We, as a community, do not agree to any
13 additional attacks on our environment.

14 Brown Grove is our home and
15 the land of our ancestors. And according to
16 the just principles and spiritual
17 guidelines, we are entitled to equal
18 protection from environmental harm and risk.

19 An attack, regardless of race,
20 color, national origin or income. I will be
21 forwarding more detailed letter to the DEQ
22 in regards to this. Thank you very much.

23
24 MS. WOOD: Thank you. And thank
25 you hanging in there with us while we got

1 the -- got the audio straight.

2
3 MS. WILSON: Thank you for being
4 patient.

5
6 MS. TRETINA: And I have to
7 actually give Kevin Vaughan thanks, too.
8 Because he helped her behind the scenes.

9
10 MS. WILSON: Yes, please. Thank
11 you.

12
13 MS. TRETINA: Yes. Okay, we have
14 -- let's try Robin Payne one more time.
15 Robin, I have unmuted you. Your mic is
16 still showing muted -- self-muted.

17 I don't see that you reached
18 out to Kevin Vaughan. I don't see any other
19 hands being raised. Ms. Wood?

20
21 MS. WOOD: Okay. If -- I would
22 encourage Ms. Payne, if she's got written
23 comments, that she can go ahead and email
24 those to Jaime Robb. And they'll be added
25 to the record. I want to thank everybody,

1 the members of the public, that took time
2 out of their busy schedules today to provide
3 comment to the Board.

4 I'd like to thank Virginia DEQ
5 for continuing to try to navigate this new
6 normal that we find ourselves in and all the
7 work that the staff has done.

8 Not only with the continued
9 review of this permit application, but also
10 all of the logistics that go in -- and that
11 are involved with -- with having these
12 public hearings.

13 And with that, I will close
14 the hearing for November 19th, 2020. And
15 look forward to hearing more about this at
16 our future meetings. Thank you.

17
18 (The virtual public hearing concluded at
19 9:23 p.m.)
20
21
22
23
24
25

CERTIFICATE OF THE COURT REPORTER

I, Debroah Carter, hereby certify that I was the Court Reporter at the VIRTUAL PUBLIC INFORMATIONAL BRIEFING AND PUBLIC HEARING regarding WEGMAN FOOD MARKETS, VWP No. 19-2036, heard in Richmond, Virginia, on November 19th, 2020, at the time of the virtual public informational briefing and public hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the virtual public informational briefing and public hearing herein.

Given under my hand this 27th of November, 2020.



Debroah Carter, CMRS, CCR
Virginia Certified
Court Reporter

My certification expires June 30, 2021.

LAST NAME OF COMMENTER	FIRST NAME OF COMMENTER
Abernethy	Steven
Abshire	Rachel
Albright	Jonice
Arries	Nathan
Ashkan	Teymour
Atkins	Julie
Aubin	Christine
Ayoub	Nadia
Baines	Deborah
Banks	Wayne
Barr	L
Barry	Howard
Barshis	Dan
Barto	Samantha
Bateman	Thomas (Tommy)
Baumann	Daniel
Bazemore	Chris
Beacham	Deanna
Beck	Ann Drewing
Becken	Diane
Bernadowski	Timothy
Berry	Tracy
Bhaskar	Ankur
Binshtok	Esther
Binshtok	Meir
Blake	Carolyn
Blakey	Jim
Bland	Pattie
Blaylock	Sharyn
Blose	Brett
Blose	Sara 8-1
Bondurant	Lakota
Bowen	Wendy
Bowen	Steve
Box	Doug
Box	Gwen

Brant	Kara
Brant	Seth
Brinkley	Lucian
Bristow	Tracey
Bristow	Shaun
Sandlin	Sophie
Broache	Gregory
Broache	Margaret
Brooker	James
Brown	Brenda
Buniva	Brian 8-7
Burris	Mark
Bursae	Benjamin
Byrnes	Jennifer
Byrnes	Thomas
Caines	Devin
Castillo	Adele
Cataldi	Loretta
Chamberlain	Dan
Chapin	Sophia
Chavez	Andrea
Chiapella	Lynn
Clay	Bruce
Clay	Lisa
Clinton	Louis
Cloe	Maxwell
Cloe	Weedon 8-17
Coleman	Edith
Coleman	Kimberly
Compton	Elizabeth
Compton	Bryan
Cook	Shannon
Coss	Shelley
Cotman	Bonnica
Cotman	Brenda
Cotman	Chip
Cotman	Daric
Cotman, Jr.	Larry
Cottingham	Donna
Crenshaw	Faye
Crockett	Terry
Crone	Brady
Crone	Heather
Cummings	Laurel

Dalton	Marianne
Daly	Lauren
Damian	Kevin
Daniels	Kevin
Daniels	Kimberly
Davis	Donte
Dawson IV	James Seth
Diehl	Fred
Dixon	Monique
Falkner	Carl L.
Domayer	Rose
Donohue	Kieran
Drake	Diane Smith
Drake	Fran
Duke	Karen
DuMont	John
DuMont	Veronica
Earley	John
Earley	Maureen
Edmonds	Princess
Eget	L. William
Eget	Lisa
Eisentroust	Tiffany
Elliott	Beth
Elmer	Britton
Ercelebi	Ahmet
Evans	Laura
Evans	Mike
Fauth	Lois
Fedock	John
Fennell	Melanie
Fenster	Michael
Ferguson	Kay
Finely-Brook	Mary
Fisher	Chelsea
Fisher	Sandy (Sandra)
Fisk	Fionnuala
Fjord	Lakshmi
Foster	Kathryn
Frankart	Jeffey
Frasconga	Nan
French	Robert Christopher
Frowert	Melanie
Gallagher	Deanna

Gannon	Thomas
Garza	Patty
Garza	Robert
Gemmer	Jessie
Gentry	Angela
Gibson	Carrie
Gier	Sue
Gillespie	Scott
Goodman	Mya
Grantham	Awendela
Grasberger	Matt
Grayson	Amie
Greene	Glenn
Greene	Grace
Grieshaber	Margaret
Grimes	Kendra
Grimes	Lu
Gross	Susan
Grover	Richard
Gustafson	Amy
Guthrie	Betsy
Guthrie	J. Donald
Guthrie	Jerry
Habel	Nathan
Hamant	Susan
Hamdallah	Ramzi
Harmic	Christine
Harmic	Sandy
Harris	Andrew
Harris	Liz
Harris	McKinley
Harris	Renada
Harris	Renada
Hartman	Laura
Heckle	Dixie
Heiter	Nolan
Hemphill	Della
Hettlinger	David
Hetzer	Jeff
Hetzler	Simon
Hickman	Mike
Hilert	Alexander
Holmes	Mark
Hruska	Jon

Morgan	Rod 8-35
Morgan	Sharon
Morris-Anastasi	Nicole
Morris	Charles
Moseley	Collin
Mulvehill	Thomas
Myers	Kit
Nesaw	Lynn
Neshiem	Brad
Neves	Christina
Newcomb	Eli
Newsaw	Lynn
Nicholson	Diane
Nicholson	Haley
Nicholson	John
Nicholson	William O.
Nicholson	Bonnie M.
Nix	Brienne
Nix	Sieglinde
O'Keefe	Barry
Olson	Anna
O'Neal	Brian
Orie	Terry
O'Toole	Amanda
O'Toole	Lori
O'Toole	Terrance (Terry)
Page	Mary
Parker	Raymond
Parrish	Amanda
Patacca	Andrew
Payne	Phillip
Payne	Robin
Pearson	Rashad
Peay	Linda
Peay	Garland
Peters	Esther
Pettyjohn	Kathy
Pettyjohn	Daniel
Philp	Anita DiGrazia
Pien	Natalie
Pittman	Danny
Pittman	Rose
Pitts	Robbie
Pitts	Tabitha

Poignant	Robert
Pollard	Jasmine
Polson	Pam
Poole	Denise
Powell	Jason
Pritchard	John
Quinley	Jill
Quinley	Todd
Quinley	Veronica
Quiroga	Scott
Ramachandran	Janani
Ramchandani	Jitender
Razavian	Michael
Reising	Lisa
Renick	Kathryn
Rhoades	Benjamin
Richards	Kimberly
Richards	Mary E.
Richards	Walter
Robbins	Jonathan
Roberson	Jennifer
Robertson	Bridgett
Robinson	Dabney
Robinson	Tom
Roper	Henry
Rossi	Lisa
Royster	Roxana
Rucobo	Brandon
Rucobo	Christian
Russell	Amy
Russo	Johanna
Rutledge	Louise
Sanderlin	Alison
Sandford	MeiMei
Satterwhite	Andrew
Satterwhite	Emily
Schultz	David
Schumacher	Christen
Sharma	Anshu
Shaw	Suzanne
Showalter	Judee
Sigler	Patricia
Simopoulos	Jodi
Simpson	Barbara

Huber	Margaret
Hulshof	Catherine
Hunter	Dorothy
Hunter	Rosan
Hurd	Laura
Irvin	Rose
Irwin	Daniel
Irwin	Keene
Irwin	Kimberly
Irwin	Paul
Jacob	JoEllen
Jaggard	Karen
Johnson	Addie
Johnson	Oluwarotimi
Johnson	Robert
Jones	Essence
Jones	James
Jones	Mary
Jones	Pam
Jones	Teresa
Judkins	Daniel
Judkins	Diane
Judson	Therese
Junod	Jennifer
Kaeberle	Lori
Kamara	Chaz
Kaplan	Paulette
Kasey	Christina
Keene	Athena
Keene	Donnie
Kegel	Jacob
Kegel	John
Kegel	Lynne
Keller	Roger
Kelley	Charles
Kelley	Rebecca
Keltner	Susan
Ketz-Robinson	Elizabeth
Kinser	Patricia
Kitchen	Cheryl
Kitchen	Tim
Kraus	Bernie
Lain	John
Landrum	James

Landrum	Tammy
Larkin	Delaney
Lederman	Kenneth
Lee	Catherine
Lee	Jennifer
Lee	Aaron
Levy	Rachel
Lewis	Atanya
Lewis	John
Lewis	Eleanor
Lux	Jane
Lux	Ellen
Lux	Roman (Rick)
Lynch	Kacie
Lynch	Langdon
Martin	Frank
Martin	Heather
Martin	Robert
Martin	Emalee
Martin	Clair
Martin	Susan
May	Ryan
McCombs	Carolyn
McCombs	James
McEntire	Abby
McEntire	Jeremy
McEntire	Kristen
Mehta	Nitin
Mehta	Surbhi
Messina	Karri
Messina	Michael
Meszaros	Leslie
Meszaros	Tom
Mickens	Travis
Mickiewicz	Lois
Miller	Jason
Miller	Shanda
Miller	Tim
Millman	Mia
Mitchell	Ren
Mittler	Richard
Montanile	Theresa
Morgan	Andrea
Morgan	Brent

Smith	Bradley
Smith	Elizabeth
Smith	Mark
Smith	Ryan
Smoyer	Elizabeth
Snyder	Lynn
Spencer	William
Spiggel	Shannon
Staley	Deborah
Stanley	Aubrey
Stark	Kathy
Stevens	John
Suddarth	John
Swierczewski	Amy
Szorc	Kamil
Tankersley	Matthew
Tatro	Pete
Taulbee	Kim A.
Taylor	Jessica
Taylor	Chris
Taylor	Kim
Taylor	Philip
Taylor	Susan
Terrell	Nancy
Tewalt	Carri-Anne
Theobald	James (Jim)
Theuer	Philip
Thomas	Judy
Thomas	Kelly
Thompson	Lisa
Tolson	John
Turner (Maybe)	Annie
Tyler	Katie
Vaughan	Beverly (Polly)
Vaughan	Melissa
Veatch	Sharon
Vera	Andrea
Verham	Cheryl (Cheri)
Verham	Kelly
Villegas	Ivan
Vrana	Dylan
Ward	Sharon
Ward	David
Wash	John

Washington	?
Washington	Bernetta
Washington	Jonathan, Jr.
Washington	Kim
Washington	Mia
Weigle	Jeff
Weigle	Tiffany
Wells	Brandi
Wertheimer	Janine
West	Dave
West	Kay
Whittington	Shelley
Wiggins	Charles
Wiggins	Melanie
Willett	Gina
Willett	James (Jim)
Williamson	Tim
Wilson	John
Wilson	Melvinia 8-93
Wingfield	Martha
Winston	Kymani
Winston	Pamela
Winters	Diane
Winters	Katherine
Wood	Susan
Woodcock	Kathy
Woods	Erin
Wright	Laura
Yalowitz	Erika
Yarrington	Jennifer
Yeatts	Kevin S.
Yoho	Brad
Young	Ayron
Young	Jennifer
Zweerink	Elena

Organization	Signing Rep First Name	Signing Rep Last Name
AMMD Pine Grove Project	Muriel	Miller
Brown Grove Baptist Church	Kenneth	Spurlock
Brown Grove Preservation Group	Bonnica	Cotman
Center for Progressive Reform	Laurie	Ristino
Center for Sustainable Communities	Garry	Harris
Chesapeake Climate Action Network	Kim	Jemaine
Chesapeake Legal Alliance	David	Reed
Clean Water Action	Bob	Wendelgass
Coalition for Hanover's Future	Pattie	Bland
Defensores de la Cuenca	Abel	Olivo
Falls of the James Group	Joe	Brancoli
Foundation for Family & Community Healing	Susanna	Alvert
Fox Head Homeowners Association	Damian	Kevin
Friends of Buckingham	Chad	Oba
Green New Deal Virginia	Lee Anne	Williams
Hanover Black Heritage Society	8-29 Jefferson	Alphine
Hanover NAACP	Barnette	Robert
Mothers Out Front VA	Kim	Sudderth
Natural Resources Defense Council	Rebecca	Hammer
Partnership for Smarter Growth	Martha	Wingfield
Preservation Virginia	Ingram	Sonja
Protect Hanover	Rod	Morgan
Renewal of Life Land Trust	Monica	Esparza
Richmond Interfaith Climate Justice League	Barbara	Adams
Sierra Club VA Chapter	Kate	Addleson
Southern Environmental Law Center (SELC) & Chesapeake Bay Foundation	8-67 Gendizer	Jonathan
Sunrise Richmond	Finnuala	Fisk
Sunrise Roanoke	Sonja	Taylor
Together Hanover	Rachel	Levi
Union Hill - VA Freedman Family Research Group	Lakshmi	Fjord
United Parents Against Lead & Other Environmental Hazards; Partnership for Smarter Growth	Queen	Shabazz
Virginia Conservation Network	Mary	Rafferty
Virginia Environmental Justice Collaborative	Queen	Shabazz
Virginia Interfaith Power & Light	Faith	Harris
Virginia League of Conservation Voters	Michael	Town
Virginia Network for Democracy and Environmental Rights	Victoria	Ronnai
Virginia Pipeline Resisters	Stacy	Lovelace
Virginia Poor Peoples Campaign	Christiane	Riederer
Virginia Poverty Law Center	Jay	Speer
Virginia Wilderness Committee	Mark	Miller
Waterkeepers Chesapeake	Robin	Broder
Wetland Watch	Stiles	William

* or Matt Shultz



Attachment 8

Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Public Comments - VWP Individual Permit Number: 19-2036 - Wegmans Distribution Center - Hanover VA

1 message

Brett Blose <brett_blose@hotmail.com>
To: "Robb, Jaime Bauer" <jaime.robb@deq.virginia.gov>

Fri, Dec 4, 2020 at 4:16 PM

Ms. Robb,

Attached are my public comments and supporting documents concerning the above referenced permit application. I have also attached the Protect Hanover long format letter that I wish to include into my personal comments.

I would like to point out that while Wegmans has applied for a VWP permit, what they actually need is a functioning distribution center. The issuance of a fatally flawed permit issued contrary to law and fact does nothing to further the construction of a functioning distribution center. The issuance of such a flawed permit has a nearly certain likelihood of being challenged, and subsequently spending years in litigation with an extremely high likelihood of such a permit being vacated by the courts. Such a permit would likely keep Wegmans tied to a purchase agreement on the Air Park property and unable to construct anything on any site until the litigation is over. What would help with the construction of a functioning distribution center is evaluating the evidence according to law and issuing a denial of the permit application giving closure on the Air Park site and allowing Wegmans to pursue alternative sites that would be more quickly and easily permitted and approved under a general permit.

Please confirm receipt of this.

Sincerely,

Brett A Blose

3 attachments

-  **Brett A Blose - DEQ Public Comments - Wegmans Distribution Center.pdf**
2376K
-  **Bblose - Public Comment Appendix.pdf**
16619K
-  **VWP 19-2036 PROTECT HANOVER Comment 12042020.pdf**
832K

8-1

Brett A. Blose
9229 Fetlock Drive
Mechanicsville, VA 23116
brett_blose@hotmail.com

December 4, 2020
VIA EMAIL

Ms. Jaime Robb
Virginia Dept. of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia, 23060

RE: Comment on VWPP No. 19-2036; Proposed Wegmans Facility

Dear Ms. Robb,

Thank you for the opportunity to present my comments and for your work and graciousness throughout this permitting process. I have previously commented on VWPP No. 19-2036, the proposed Wegmans Facility in Hanover County, Virginia. I wish to now supplement these comments to reflect information in the revised permits as well as other materials which have become recently available.

As one of the primary authors of and contributor to the long format Protect Hanover letter I wish to incorporate that letter in it's entirety into my public comments. I also wish to incorporate via reference the public comments of: Sara Blose, Roderick "Rod" Morgan, Kathy Woodcock, Robert "Chris" French, Weedon Cloe, Brian L. Buniva, and the Southern Environmental Law Center.

Basic Sequence of Events for the Air Park Site -

I have tried where possible to incorporate the words of proponents and supporters of this project.

- 1) Wegmans looks for property and selects Hanover County
- 2) Wegmans selects Air Park and plans for Governor to make announcement
- 3) Due diligence process finds lots of additional wetlands

Linwood Writes to VEDP: "The unfortunate news we found out after a call with Timmons Group today was... [t]hat the old delineation done on the property did not show the significant amount of new found wetlands. This "could' deem the site "undevelopable" unfortunately. We may need the State to help us with DEQ at some point..."

- 4) Announcement is placed on hold

Linwood writes to VEDP: "I know we had put together a press release for Tiger back in June but then had to put the announcement on hold due to challenges that were unforeseen at Air Park."

5) Wegmans eliminates the Air Park Site from consideration

Donald Self the buyer's realtor for Wegmans writes to the seller's realtor: "We just spoke with our client and, based on the substantial wetland issues, they may not be moving forward with the site."

Linwood writes to others at Hanover County: "I just got off the phone with Timmons and the head of Wegman's real-estate group Dan Aken and they have done an updated wetlands delineation and determined that there are "significantly more" wetlands on the Air Park Associates site than was indicated in the last delineation..." Linwood goes on to write "They (Wegmans) will finalize their analysis by Thursday but have all but said this site could be eliminated. Dan Aken noted that they the client "STILL" wants to be in Hanover..."

Chris Jenkins writes to Linwood relaying the details of a conversation he had with Tim Davey from Timmons: "However he (Tim Davey) said that in every other economic development deal of this nature that he's worked on, the client has moved on from the site every time, because it is more of a game of eliminating risk/variables than making sites work."

6) Air Park offers to fix the wetland problem

Chris Jenkins realtor for Air Park Associates writes to Linwood: "We think that not only would it be wise to get a second opinion before terminating, but there are people with a lot of respect and rapport with the Corp that have experience working on this site."

Chris Jenkins writes to multiple recipients – "John Lain and Paul Davenport, who is Seller's Counsel, have spoken and John is on board for what we need him to do, and confident that it can be done quickly. He has a very good relationship with Richard Walker with the Norfolk District office of the COE."

While it isn't spelled out exactly what a lawyer is needed to do concerning the USACE and wetland delineations, and how a good relationship with USACE would aid in this effort, what is clear is that RK&K delineated 34 acres of wetlands which would result in a project impact of 18 acres or greater, and that the USACE reduced this delineation to 22.6 acres following their site visit with the majority of the reductions happening to areas within the limits of disturbance and reduced the project impact by 300% to 6.12 acres. This reduction occurred by the misapplication of the mosaic determination and other unsubstantiated wetland deletions. It seems obvious what was asked of the Corps.

7) Wegmans allows Air Park to attempt to fix the problem and continues to look for alternative sites simultaneously

Wegmans identifies Graymont and Archie Cannon as the preferred backup sites should Air Park not be able to get the Corps to agree to reduce the wetland impact from the RK&K delineation and for DEQ to accept the reduction from the Corps. Wegmans went as far as to execute a letter of intent on the Graymont site.

Linwood writes to a colleague at Hanover County – “Confidentially, our Wild Tiger clients have a LOI on the Graymont property...”

A Timmons meeting memorandum details the following:

1.) Existing Site Issues – Wetlands

a) Strategy – Strategy remains placing the onus of previous wetland delineation confirmation on the seller of the Airpark Property

I. Best case scenario. Lee Mallonee obtains a confirmation on the previous delineation and the proposed impacts become permissible...

II. Worst case scenario: VA DEQ gets involved and pushes back against the previous delineation to such a degree that the impacts become unobtainable and the site becomes undevelopable for the clients desired use.

The same memorandum goes on to list the following backup sites.

11.) Back-up Site #1 (Axselle) (This is another name for Archie Cannon)

12.) Back-up Site #2 (Ellet’s Crossing/Graymont)

Linwood writes to colleagues at Hanover County: I spoke with Tim Davey with Timmons this morning and they are trying to find a path forward on the Air Park site but are becoming more weary regarding the possibilities. The client is now putting pressure on the owners to corroborate the delineation using John Lain of McGuire Woods services/resources and giving them a set time frame to accomplish this. With that said, Tim said they are going to probably have to start looking at some other sites again and mentioned Graymont.”

This shows that Wegmans never considered the Air Park site to be the least environmentally damaging nor were the alternative sites considered to be unpracticable by Wegmans. This clearly shows that Wegmans knew that the Air Parks site was more environmentally damaging than the other back up sites that were being considered in the event that the true extent of the wetlands to be impacted on the Air Park property were discovered.

8) The USACE agrees to reduce the wetland impact from that delineated by RK&K by the mis-application of the “mosaic” determination and outright deletion of wetland areas. This reduced the wetland acres on site from 34 acres as delineated by RK&K to 22.6 as shown on the now invalidated PJD WOUS map.

9) With the Corps wrongfully reducing the wetland impact and DEQ promising to accept the faulty delineation from the Corps, Wegmans feels they can make the more damaging but cheaper Air Park site work.

10) Wegmans announces development on the Air Park Site via Gov. Northam and Hanover County submits a PJD on behalf of the development.

11) Additional information is supplied by using the initial faulty PJD wetland determination for Air Park and using the NWI inventory assessment for Archie Cannon and Graymont instead of the readily available current valid PJD determination. This falsely overstated the impact on Archie Cannon and Graymont and falsely understated the impact on Air Park allowing the claim to be made that they were equivalent in damage making the Air Park site wrongfully appear permissible.

12) Public comments cause the Corps to re-examine the site and the "mosaic" determination is found to have been applied in error. The old PJD was retracted and a new PJD was issued reflecting a 2.5x increase to the area impacted by the project.

13) Wegmans supplies revised impact assessments to alternative sites Archie Cannon and Graymont. It is likely that this revised impact assessment was only offered because Hanover County (via FOIA) was specifically asked to provide the PJD for Archie Cannon and Graymont. Hanover County had this information and provided it. It is likely that the county let Wegmans know this information had been provided to the public.

14) With the revision to the PJD and using more accurate delineated impacts for alternative sites, it is now publically apparent what was known internally the whole time: that Air Park is far from the least environmentally damaging. DEQ internal evaluation reaches the same conclusion stating that the Archie Cannon site is the least damaging site.

15) This causes Wegmans to shift from a strategy of claiming that Air Park is no more damaging to a strategy of overstating costs on other sites in an attempt to make them seem falsely unpracticable, in a desperate attempt to obtain a permit on the more damaging Air Park property.

This leads us to where we are currently as of 12/4/2020

All quotes referenced are supplied in their original format in the Appendix.

I stand in opposition to the permit and request the Board deny the permit.

Thank you for the opportunity to comment.

Sincerely,



Brett A. Blöse



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Public Comment in Opposition to VWP Permit Application No. 19-2036

1 message

Buniva, Brian <Brian_Buniva@sequa.com>

Fri, Dec 4, 2020 at 4:43 PM

To: Robb Jaime tms29507 <jaime.robb@deq.virginia.gov>, "citizenboards@deq.virginia.gov" <citizenboards@deq.virginia.gov>

Cc: Sara Blose <sblosejd@gmail.com>, "brett_blose@hotmail.com" <brett_blose@hotmail.com>, KATHRYN WOODCOCK <kathyhwva@gmail.com>, Rod Morgan <roderickmorgan@yahoo.com>, Andrea Morgan <shortiepagano@yahoo.com>

Jamie and members of the State Water Control Board:

Attached are my written comments in opposition to the issuance of the referenced VWP permit application submitted on behalf of my clients.

Thank you for the opportunity to comment.

Brian L. Buniva, Esq.

B.L. Buniva Strategic Advisor, PLLC

919 E. Main Street; Suite 1300

Richmond, VA 23219

804-873-0610

Brian_buniva@sequa.com



12-4-2020 Comments to SWCB opposing Wegmans VWP permit application No. 19-2036.docx
39K

Brian L. Buniva, Esq.
B.L. Buniva Strategic Advisor, PLLC
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Richmond, VA 23219
804-873-0610
Brian buniva@sequa.com

December 4, 2020

VIA ELECTRONIC FILING

Via Email to citizenboards@deq.virginia.gov

Jamie Robb jaimе.robб@deq.virginia.gov
Virginia Department of Environmental Quality (DEQ)
Piedmont Regional Office
4949-A Cox Coad
Glen Allen, VA 23060

The Honorable Heather Wood, Chair
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

The Honorable Lou-Ann Jessee-Wallace, Vice Chair
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

The Honorable Timothy G. Hayes
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

The Honorable Paula Hill Jisinski, Member
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

The Honorable James Lofton
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

The Honorable Jillian Cohen
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

The Honorable Robert H. Wayland, III
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

**RE: Public Comment on Draft Virginia Water Protection Permit Number 19-2036
and Joint Permit Application 2012-02369 (Wegmans Distribution Center)**

Dear Ms. Robb and Members of the State Water Control Board:

As you may recall from my April 30 and August 4 comment letters, I represent a group of individual citizens who reside in neighborhoods surrounding the site of the proposed Wegmans Distribution Center. Many of the issues raised in the public comments submitted by me and others remain unresolved. My clients are pleased that the U.S. Army Corps of Engineers ("USACE") admits and has corrected some errors, but more work is required to correct other critical flaws and to ensure that this permit is scientifically and legally defensible. Until these flaws are corrected, this permit application must be denied.

The near tripling of the wetlands acreage adversely impacted by the proposed development (an impact which we believe is understated in the absence of a full re-delineation which we have repeatedly requested) requires a "redo" of several mandatory analyses under the regulations, which do not appear to have been done. For example, the applicant submitted an "Alternatives Analysis" using the previous wetlands delineation. Given the most recent, incomplete wetlands impact delineation, the COE (and applicant) should, at a minimum, amend the application, update the wetlands impact quantities, revise the alternatives analysis and demonstrate that the proposed project configuration on the property is the Least Environmentally Damaging Practicable Alternative ("LEDPA"), and that there are no alternative sites within reasonable proximity to the proposed project that would adversely impact fewer wetlands and related resources than the current proposal. It is not apparent that any of these mandatory revised

analyses have occurred. Simply buying mitigation credits for wetlands destruction for development activity that does not require water access, and which should be avoided with a proper alternatives analysis and site plan reconfiguration is not consistent with the spirit or intent of the Clean Water Act, or the State Water Control Law and their implementing regulations. We believe it is well past time for VDEQ to not simply rely upon submissions from the property owner and Wegmans that have been proven wrong in the past, but rather to go onto the site itself and determine the true extent of the on-site and off-site wetlands that a fulsome environmental impact study for this massive project is necessary to ensure that all appropriate environmental and natural resource analyses have been considered.

It is also unclear whether environmental justice protocols have been followed with respect to considering the adverse impacts on and engaging with the largely African-American Brown Grove community bordering this proposed project. The importance of assessing disparate impacts of permit decisions on predominantly African American communities in Virginia has recently been recognized by the United States Court of Appeals in *Friends of Buckingham et al. v. State Air Pollution Control Board, Virginia Department of Environmental Quality, et al.*, No. 19-1152, 947 F. 3d 68 (4th Cir. 2020) decided earlier this year. During the public hearing on the Union Hill air compressor station associated with the Atlantic Coast Pipeline proposed for transporting natural gas, numerous individuals noted that the predominantly African American neighborhood of Union Hill would suffer the bulk of the adverse environmental and health impacts caused by the compressor station. In its presentation to the Air Board the DEQ staff argued that regardless of the percentage of the minority population [in Union Hill], air modeling indicated that emissions from the proposed Buckingham Compressor Station would not harm human health. The Court vacated the Air Board's permit based, in part, upon the inadequacy of the Board's treatment of the Environmental Justice issue. The Court stated:

“The Board's reliance on air quality standards led it to dismiss EJ concerns. Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station -- an overwhelmingly minority population according to the Friends of Buckingham Survey -- will be affected more than those living in other parts of the same county. The Board rejected the idea of disproportionate impact on the basis that air quality standards were met. ***But environmental justice is not merely a box to be checked, and the Board's failure to consider the disproportionate impact on those closest to the Compressor Station resulted in a flawed analysis.***

Friends of Buckingham, Slip Op. at 44, 947 F. 3d at 92. (Emphasis supplied). The record before the USACE and the VDEQ on this Wegmans Joint Permit Application is equally void of any environmental justice analysis and consequently the permit must be rejected.

Not all wetlands on the Air Park Site have been identified.

RK&K conducted the fieldwork for the most recent Preliminary Jurisdictional Determination (“PJD”) in fall 2019. As RK&K noted at that time, and as the USACE noted in its subsequent review, that fieldwork was conducted during a period of drought. Indicators of hydrology are crucial to a wetlands’ delineation. USACE guidance suggests that a delineator, if possible, “revisit the site during a normal rainfall year.” If that is not possible, the guidance requires the delineator to look carefully for evidence of past hydrology.

As we all know, this guidance was not followed. Departures from USACE and by incorporation VDEQ policy allowed for the now discredited “mosaic” wetland areas, and other flaws that led to a now admitted substantial undercounting of wetlands on the project site. When USACE reviewed the mosaics at the request of the Virginia Department of Environmental Quality, USACE improperly accepted scope limitations on its work imposed by the property owner. As a result of agreeing to the access and scope of review limitations imposed on the Corps by Air Park/Wegmans, the Corps did not fully investigate all of the flaws in the 2019 delineation.¹

¹ The following email string between counsel for the property owner (Air Park Associates, LP) and representatives of the Corp demonstrate Air Park granted the Corps site access solely for the purpose of re-evaluating the now discredited “mosaic” wetlands determination on site. The property owner did not allow the Corps free reign to confirm the entire wetland delineation as it made its jurisdictional determination. Further, rather than allowing the Corps to conduct an entirely complete wetland confirmation consistent with the public comments provided on this project, Air Park made it clear that it needed a Corps final decision no later than September 15 so that the information could be presented at the December 9, 2020 State Water Control Board meeting as it considered Air Park/Wegmans VWP application. Clearly the applicant is much more interested in speed and limited analysis than it is in finding the truth about the unsuitability of this property for the Wegmans project. See the following:

“From: Paul Davenport >Sent: Thursday, September 3, 2020 5:37 PM To: Miller, Todd M CIV USARMY CENAO (USA) >Cc: 'Holley, Elaine K CIV USARMY CENAO (US)' >; Walker, William T Jr CIV USARMY CENAO (USA) >; Jim Theobald>; pwdean2@comcast.net ; Chris Jenkins >; Bill Barnett >; Joseph Burhman (jburhman@commonwealthcommercial.com) >; Ivan Wu >; Tim Davey >; 'Lain, John M.' >; 'mmills@rkk.com' >Subject: RE: 2012-02369 Wegmans (UNCLASSIFIED)
Good evening Todd. I am responding to you, at Elaine's request, as counsel for Air Park Associates. As you might imagine, my clients find it unbelievable that after three site visits by three different professionals from the Corps over a 28year period (not including Elaine's site visit in October of last year) that these mosaic areas have suddenly become 100%wetlands. This seems particularly troublesome given the amount of rainfall the weekend before your recent site visits. Nevertheless, if my clients have to live with this result, we feel that it is incumbent on the Corps to do everything possible to promptly rectify the situation so that Wegmans may continue to pursue the permits it needs to develop the site in a timely manner. To that end, we are requesting the following:

* Neither my clients nor I are environmental scientists, so we are not qualified to instruct RK&K to "fill in the mosaics as100% wetlands, rather than 10% and 30%." Since your office conducted two recent site visits to collect data and has made the determination that the mosaic areas are 100% wetlands, we are asking that you direct RK&K to make that change.

* We are advised by Timmons/Wegmans that documentation from the Corps must be delivered by September 15 in order to make it on the agenda for the next State Water Control Board hearing on December 9. [Emphasis supplied]. The documentation from the Corps should contain at least an updated Preliminary Jurisdictional Determination; however, we understand that Mr. Walker advised Wegmans that he could expedite an Approved Jurisdictional Determination, which will be needed shortly thereafter in order for Wegmans to continue with this site.

* Accordingly, please also identify the next steps moving forward that RK&K will need to take in order to update the mapping so that an Approved Jurisdictional Determination may be issued. in order to meet the very tight schedule, we ask that you provide your request to update the mapping to Malachi Mills at RK&K at your earliest opportunity, preferably tomorrow. If you have questions, we would be happy to discuss them with you. Thank you, Paul.

These flaws include issues with the boundaries of the wetlands and the destructive effect that altered drainage patterns will have on connected off-site wetlands and streams.

The latest revision of the permits indicates that this proposal would allow for the destruction of 14.82 acres of non-tidal wetlands (approximately three times the number of wetlands initially identified by the Corps in 2019). This is a substantial loss of wetlands for a single non-water dependent industrial use. The unresolved errors by USACE render the current PJD unreliable. Without confidence in the amount of the wetlands adversely impacted, my clients and the public can have no confidence that the mitigation plan properly achieves the statutory goal of no net loss, or that this site meets the Least Environmentally Damaging Practicable Alternative (“LEDPA”) standard which binds the Corps. A new and comprehensive wetlands delineation performed by an independent agency or third-party delineator should be performed before this project is allowed to proceed with the requested permit. As regulators both the Corps and the SWCB have the right to go onto the property and conduct a full delineation, which unfortunately, based upon the record, has never been done. The site owner does not have the authority to deny complete and unrestricted access to the Corps and VDEQ, as it has done. I ask that in order for

From: Holley, Elaine K CIV USARMY CENAO (US) >Sent: Thursday, September 3, 2020 8:12 AM To: Paul Davenport >Cc: Jim Theobald >Subject: [EXTERNAL] RE: 2012-02369 Wegmans (UNCLASSIFIED)9/17/2020 Commonwealth of Virginia Mail - RE: 2012-02369 Wegmans (UNCLASSIFIED) https://mail.google.com/mail/u/0?ik=084814d992&view=pt&search=all&permthid=thread-f%3A1677562974755984133%7Cmsg-f%3A1678015405312... 5/6

CLASSIFICATION: UNCLASSIFIED

Hi Paul. As you know, the accuracy of our wetlands delineation was challenged by members of the public in response to our public notice. We reviewed the site during wet conditions in the dry time of year, and the site was covered in shallow deep water and much deeper (18" to 24") in the vernal pool. [Emphasis supplied]. I have only ever walked the site during drought years, in the dry time of year and in the dry. Our officvvvvvvv David Ramsey was the first onsite for the Corps, and he confirmed a similar delineation in 1992. I came along in 1995 and reconfirmed Ramsey's delineation, and Todd Miller confirmed a similar delineation in 2012. I don't think anyone from the Corps has ever seen water ponded on the site. We repeatedly identified a restrictive clay layer extending to four plus vertical feet below ground. We were unable to ascertain the depth of the restrictive clay layer, because our hand augers are not long enough. The soil boring logs will provide additional information with regard to the thickness of the clay, but we were not provided with the logs. The restrictive clay layer could extend deep into the soil profile. To consider that the inundation is merely ephemeral, I would expect the water to disappear in 24 to 48 hours, which it did not. Let's say in one week the water should dissipate within one week. The water did not recede and never reached the highest level of water marks observed on the trees. We factored the unusual amount of rainfall into our review and hypothesized that during a normal year, early in the growing season, we would expect the water level to be 10" shallower, which it did not. The elevation of water did not appear to recede, at all as judged by the water marks on trees. We had permission to review only the two mosaic areas of the site, only. [Emphasis supplied]. I apologize for all of our mistakes. Also, this is to let you know that I am no longer your contact person for Wegmans. Todd Miller is your contact person for Wegmans 804 323 3782 cell 804 586 2938. Thank you., Elaine Holley.

August 24, 2020 4:42 PM To: Paul Davenport Subject: RE: 2012-02369 Wegmans (UNCLASSIFIED) ,CLASSIFICATION: UNCLASSIFIED Thank you.-----Original Message-----From: Paul Davenport [mailto:PDavenport@hirschlerlaw.com]Sent: Monday, August 24, 2020 4:22 PM To: Holley, Elaine K CIV USARMY CENAO (US)Cc: Jim Theobald ; pwdean2@comcast.net Subject: [Non-DoD Source] RE: 2012-02369 Wegmans (UNCLASSIFIED)

Hi Elaine, sorry for the delay. Yes, the owners have agreed that you may access the site again tomorrow, under the same conditions and requirements as applied to the site visit on Wednesday and Friday of last week. [Emphasis supplied]. Unfortunately, my client is not comfortable expressly providing you access to use the easement, as the property on which the easement lies is not owned by Air Park Associates, and some other party barricaded the easement and posted the "no trespassing" signs. Best regards, Paul."

the truth to come out with respect to this site, VDEQ and the Corps MUST go onto this site and conduct a full and complete wetlands delineation without limitations imposed by the property owner and Wegmans.

The level of connectivity of the Air Park wetlands has been underestimated and has failed to ensure that state and local regulations have been followed.

Wegmans has not complied with the Virginia Water Protection Program (“VWPP”) because it has prevented the Commonwealth of Virginia from assessing the proposed development’s impacts under the Chesapeake Bay Preservation Act (“Bay Act”).² The Bay Act protects Chesapeake Bay Preservation Areas (“CBPAs”), lands which have the capacity to impact the Bay’s water quality most directly.³ CBPAs are characterized as either Resource Protection Areas (“RPAs”) or Resource Management Areas (“RMAs”) and cannot be disturbed unless developers satisfy requirements to minimize impacts to these areas.⁴ Wegmans falls short of its VWPP Program obligations because it overlooks onsite RMA and RPA. It is acknowledged that property is located within an RMA, a type of CBPA.⁵ Wegmans must disturb as little land as possible within CBPA protected areas, minimize impervious cover and preserve indigenous vegetation to the maximum extent possible.⁶

Regulators and Wegmans have not appropriately analyzed whether on-site wetlands constitute an RPA. Under the Bay Act, RPAs include “nontidal wetlands connected by surface flow and contiguous to...water bodies with perennial flow.”⁷ Wegmans’ engineers, the Timmons Group, concluded that Wetland 13 is not an RPA because it is not contiguous to Totopotomoy Creek, a water body with perennial flow located southwest of the site.⁸ Timmons asserts that contiguity with the creek is missing because Wetland 13 first drains into an ephemeral channel that is not surrounded by wetlands.⁹ The assertion overlooks the potential for drought conditions to have altered the nature of this connectivity, and it neglects to include wetlands delineation data on lands adjacent to the channel. Thus, USACE cannot reasonably conclude that Wetland 13 is not contiguous to Totopotomoy Creek.

Tellingly, the property owner, Air Park Associates, LP limited the access to the site by the Corps delineators this past August and early September only to the areas that were previously identified as “mosaic” wetlands, a designation which has been discarded both by VDEQ and by the USACE after reviewing the public comments previously provided. If Air Park Associates, LP was interested in an accurate determination of the true extent of the wetlands on site and full

² 9 Va. Admin. Code § 25-210-80(B)(1)(i)

³ [Chesapeake Bay Preservation Act, DEQ Website](#)

⁴ *Id.*

⁵ B. Rayfield (DEQ) Letter to P. Osterloh (Timmons Group) re Federal Consistency Certification: Project Tiger in Hanover County (DEQ 19-141F), dated Feb. 5, 2020; 9 Va. Admin. Code § 25-830-70

⁶ 9 Va. Admin. Code § 25-830-130; 19-2036 DRAFT Permit

⁷ 9 Va. Admin. Code § 25-830-80(B)(2); Hanover County Code of Ordinances, Chapter 10, Art. II, Division 1, § 10-35.

⁸ P. Osterloh (Timmons Group) email to H. Mackey (DEQ) re Project Tiger at Hanover Air Park - DEQ #19-141F, dated Dec. 23, 2019.

⁹ *Id.*

compliance with the Clean Water Act and its regulations, the VDEQ VWPP regulations, and the Chesapeake Bay Act and its regulations, Air Park would not have limited access to the site to the regulatory community nor to the neighbors who have raised serious questions about the validity of the wetlands analysis performed by Air Park Associates and Wegmans. Even more astounding is that the regulators accepted the limitations imposed by the property owners and Wegmans. The public relies upon regulators to protect the public policies embodied in the federal and state laws at stake. If the regulators simply succumb to limitations on finding the truth imposed by self-interested property owners and developers such as Air Park and Wegmans, the law's regulators are sworn to protect and uphold cannot be enforced. Yet that is the situation that prevails in this case.

The On-Site and Off-Site Alternatives Analysis is Invalid and Skewed.

Earlier today I submitted my clients' (members of Project Hanover) public comments submitted to the USACE on November 16th. Rather than repeat those extensive comments wholesale, I commend them to your thoughtful consideration. I specifically ask that you pay close attention to the "Alternatives Analysis" discussion beginning on page 12-21.¹⁰

There is clear and irrefutable evidence that the alternatives analysis submitted by the applicant is fundamentally flawed and inaccurate. Indeed, as my clients point out, the Archie Cannon site in Ashland, represents the least environmentally damaging practicable alternative to the Air Park site. The Timmons Group, the consultant for Air Park in this application, submitted a JPA permit application for another client's distribution center and warehouse center (Scannell) totaling a million more square feet of building and 204 acres of land disturbance on the Archie Cannon Site in Ashland. The Archie Cannon site would impact a mere .5 acres of wetlands as compared to the undercounted nearly 15 acres of wetlands at the Air Park site. This site is available for purchase but based upon an inaccurate and flawed analysis Wegmans has rejected this clearly less environmentally damaging project for its distribution center.

In support of its choice of the Air Park site, the applicant has submitted clearly erroneous logistical, and cost information to support its contention that Air Park, not Archie Cannon, is the least environmentally damaging practicable alternative (LEDPA). My clients demonstrate on pages 14-21. The logistics show that the route to the Archie Cannon site would encounter a total "annual average daily traffic" count of 41,000 vehicles depending upon the route chosen. By contrast the Air Park site would add to the annual average daily traffic count of 47,000 vehicles per day. Clearly the Archie Cannon site presents superior logistics to Air Park regarding traffic and congestion. The remainder of the logistics analysis continues on pages 15-18 of the Project Hanover November 16 public comments.

Wegmans has claimed that the costs of developing the Archie Cannon site is \$21 Million Dollars more than the costs to develop Air Park and thus Archie Cannon is not practicable. Wegmans analysis frankly cooks the books in the following manner:

¹⁰ See Project Hanover November 16, 2020 public comment to the Corps of Engineers on Joint Permit Application 2012-0236, and its appendices submitted earlier today for the record to Jamie Robb via four emails from me, Brian L. Buniva.

1. The use of real estate assessments of the two sites is not an appropriate measure of Fair Market Value of the two sites. The record does not reveal that Wegmans ever approached the owners of the Archie Cannon site to negotiate a purchase price. The real estate assessment should be discarded as a factor in establishing a cost. This reduces the Wegmans cost comparison by \$9,326,600.00. See p. 18-19.
2. Wegmans claims that the Town of Ashland requires an extension of the Hill Carter Parkway for development of the Archie Cannon site at a cost of nearly \$11,000,000.00. This is patently untrue. The Director of Planning for the Town of Ashland is on record stating that “[a]t no point [in discussions with Wegmans] was this [the Hill Carter Extension] a ‘requirement’, but it was a need and the prospects agree to work with us [the Town] to get it done using *state funds and administration*.” Thus, another nearly \$11,000,000.00 of “cost” should be eliminated from the practicability analysis supplied by Wegmans.

My clients have identified other inappropriate considerations (such as Wegmans “lost cost savings adjustment” of \$5,850,000 for rezoning), which demonstrates a minimum of more than \$20,000,000.00 of inappropriate and inflated costs in the Wegmans analysis. If VDEQ does not blindly accept the Wegmans submission, it must conclude that the Air Park site, by any reasonable measure, is not the least environmentally damaging practical alternative for this project.¹¹

Conclusion

Time does not permit every flaw in the permit application and procedure to be fully articulated in these comments. I urge the State Water Control Board to consider all the public comments submitted by the people most directly effected by this massive and inappropriately sited project.

On behalf of my clients, I ask that the Permit Application be denied for the reasons presented above and for the reasons raised by others. Specifically:

- The permit application and the supplemental information provided does not accurately evaluate the number of regulated wetlands on the site or their contiguity and adverse impact on off-site state waters and waters of the United States;
- The wetlands delineation submitted by the applicant is flawed and a new independent and comprehensive wetlands delineation, consistent with the proper application of the 1987 Corps manual should be performed;
- The project configuration and the entire site does not demonstrate that the proposed project presents the “Least Environmentally Damaging Practicable Alternative” justifying the destruction of the significant number of wetlands that will be adversely affected by this project; and
- The process followed in preparing and considering this permit application did not adequately consider the disparate environmental justice impacts caused by this project on the Brown Grove community and its neighbors.

¹¹ I note that my clients submitted its comments to VDEQ at approximately 4:15 pm on December 4, 2020 which in essence repeats the referenced analysis made to the USACE on November 16th.

I appreciate the opportunity to present these comments for the record and look forward to appearing before the State Water Control Board when this application is placed on its agenda.

Respectfully submitted,

/s/

Brian L. Buniva, Esq.
Virginia State Bar No. 18628



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

VWPP No. 19-2026 Wegmans Distribution Center Comments

1 message

wehomain@aol.com <wehomain@aol.com>

Fri, Dec 4, 2020 at 12:09 PM

Reply-To: wehomain@aol.com

To: "jaime.robb@deq.virginia.gov" <jaime.robb@deq.virginia.gov>, "protecthanover@gmail.com" <protecthanover@gmail.com>

Dear Ms. Robb,

Good afternoon and thank you for the opportunity to comment on VWPP No. 19-2036 for the proposed Wegmans Distribution Center in Hanover County. I am writing to respectfully request denial of the permit. Substantial ongoing public interest in this project, especially by those residents living in proximity to the proposed site, have generated numerous inquiries and petitions to local and state officials to ensure that potential impacts will not be detrimental to the area. It has yet to be concretely demonstrated that this is the best and most appropriate location for this facility. Thank you for your time and please let me know if you have any questions.

Best Regards,

Weedon

W. Weedon Cloe III, PWS
9071 Greenlake Circle
Mechanicsville, VA 23116
804-334-0500
wehomain@aol.com

 **VWPP_No_19-2036_Wegmans_Distribution_Center_Comments_WWC_120420.pdf**
790K

8-17

04 December 2020

Ms. Jaime B. Robb
Virginia Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road,
Glen Allen, Virginia, 23060

Re: VWPP No. 19-2036 - Wegmans Distribution Center

Dear Ms. Robb,

I am writing in response to the proposed Wegmans Distribution Center project in Hanover County. I would first like to express my sincere appreciation for the work your office has conducted thus far on this project as it has been complicated and most likely one of the most involved to date in the Commonwealth. Thank you for your ongoing efforts to ensure that the natural and cultural resources of our state are fully protected.

I understand from the public notice and provided documents that 14.43 acres of PFO wetlands, 0.26 acres of PEM wetlands, and 1,673 (0.16 acre) linear feet of jurisdictional ditches are propose to be filled and/or impacted on the 219.6 acre tract for the purposes of constructing a 1.7 million square foot distribution center, appurtenant parking/structures and future expansion. I further understand that should the project proceed, impact compensation will be accomplished by the purchase of credits from the New Kent Environmental Bank in New Kent County.

Regarding this permit, I respectfully offer the following comments:

1. If approved, this project will result in the largest destruction of wetlands in the state of Virginia outside of the Greater Hampton Roads/Virginia Beach area. A review and summary of wetlands impacts greater than 10 acres over the past five (5) years in the State of Virginia, as provided by VADEQ via a FOIA request, demonstrates that the impacts of this project will be approximately five (5) acres greater than those realized by the 2016 Niagara Bottle Plant project in Chesterfield County (Attachment 1). That project, which led to the largest wetland impacts to date in Central Virginia, was located within a dedicated technology park well away from populated areas. It is concerning that consideration is being given to precedent setting wetland impacts in Central Virginia, especially when avoidance can be achieved by responsible site selection and/or project site design.
2. One outstanding issue related to the original delineation is the nature of DP-2 and how it relates to the separation of Wetland Impact 7 and the "hammerhead" Wetland Impact 6. In the original delineation, DP-2 was identified as being located within a wetland, yet its location remains absent on any delineation exhibit to date; coordinates provided placing it in the general area between Wetland Impacts 7 and 6. This omission was explained/justified in the revised PJD dated 15 September 2020 as the data point being in

an area depicted as Dunbar Fine Sandy Loam (non-hydric) by NRCS USDA soil survey map overlays. One rationalization for omission was that the data point “may have been collected in a hydric soil inclusion” within a larger non-hydric area, representing with general surrounding soil types, a transition area rather than a true wetland. In this case, supposition should not replace empirical evidence and if the hypothesis is truly representative of the nature of this area, further analysis is warranted. As it stands now, the site-specific categorization clearly asserts hydric soils are present at DP-2. Without conclusive empirical data, the two wetlands should be considered hydrologically connected and as a result, be accounted for as one contiguous body with appropriated mitigation taken for the proposed road impact.

3. The correct categorization of the original wetlands 7 and 9 as “non-mosaics” has influenced the overall suitability of the site as a location for a large distribution center. Analysis provided by VADEQ via FOIA requests demonstrate that the Least Environmentally Damaging Practicable Alternative (LEDPA) is not the Air Park site, but instead the Archie Cannon Site in the Ashland area. For this alternative parcel, onsite and adjacent wetlands are described as “stressed” and potential areal impacts to onsite wetlands are noted as being 0.5 acres with 1,953 feet of linear impact to onsite stream resources. Other noted issues raised by the alternatives analysis suggest that the Archie Cannon site in Ashland would be viable and result in less environmental impacts given sufficient engineering and site design. Please see Attachment 2 for spreadsheets related to the alternative analysis provided by VADEQ.
4. Without argument, the outstanding qualifier driving the siting of the distribution center on the Air Park property is monetary cost. One of the significant influencers of this cost was the stated need by the applicant to independently finance and construct a \$10 million road extension of the Hill Carter Parkway. Email correspondence between Protect Hanover representatives and the Town of Ashland Planning Department suggest otherwise. In a 09/24/20 email, the Town of Ashland states that the road extension was not a requirement for siting the distribution center but rather a need that would have been paid for by state/local funds and incentives (Attachment 3). Removing this cost from the overall total results in an alternative site that is only 2.4X rather than 4.5X the estimated cost to the applicant as developing the Air Park site.
5. Interestingly, an email correspondence provided by VADEQ via a FOIA request show that Wegmans was actively pursuing the Archie Cannon site in the summer of 2019 (Attachment 4). The email correspondence shows intent and purposeful analysis by Wegmans and the Town of Ashland to address road improvements/connectivity as the site appeared the most preferable. An agreement to purchase the Archie Cannon property by another entity ended Wegmans plan to build at this site however in the interim, the agreement fell through bringing the Archie Cannon site back on the market. The question exists; if the property was appropriate to begin with, and is the LEDPA as determined by VADEQ analysis, why not site the distribution center there?

6. Wegmans has not met its requirement to promote environmental justice through meaningful involvement of the Brown Grove community as required by Va. Code § 2.2-235. The extent of Wegmans involvement to date has been a single meeting with five people from the Brown Grove Community on February 7, 2020, followed up with an email on February 14, 2020. I understand that while the US Army Corps of Engineers directed Wegmans to consider environmental justice as part of their LEDPA analysis, Wegmans, using the Environmental Protection Agency's EJSCREEN tool, determined that there was no bona fide EJ community in the area. The denial of Brown Grove's existence as an environmental justice community is without merit and contrary to law.

To summarize, it is my opinion that the siting of this project on the Airpark Associates' tract of land will result in the one of the most significant impacts to natural and extant cultural resources in Central Virginia. The degree to which the applicant has pursued the site in question is remarkable given the availability and potentially relative ease of permitting of alternative tracts of land in Central Virginia. I respectfully request denial of this permit. Thank you for the opportunity to comment and please let me know if you have any questions.

Respectfully Submitted,



W. Weedon Cloe III, PWS
9071 Greenlake Circle
Mechanicsville, VA 23116
wehomain@aol.com
804-334-0500

Attachment 1. Table compiled by Protect Hanover summarizing permitted wetland impacts approximately 10 acres or greater in Virginia for the past five (5) years.

Date	Permit No.	Permittee	Location	Non-Tidal Wetlands (acres)	Streams & Ditches (linear feet)
October 11, 2018	17-1089	Bridgeman Properties	Norfolk	16.61	
<i>Pending</i>	<i>19-2036</i>	<i>Wegmans</i>	<i>Hanover</i>	<i>14.82</i>	
August 28, 2018	18-0425	Granite/Parsons/Corman JV	Chesapeake	14.48	23,801
January 11, 2017	15-1564	City of Virginia Beach	Virginia Beach	10.01	
July 28, 2016	16-0731	Chesterfield County EDA (Project Buzzard/Niagara Bottling)	Chesterfield	9.87	84
	Notes:	Temporary Impacts removed.			
		Data from permits received from DEQ on 10/21/2020			
		DEQ provided all wetlands impacts over 10 acres for the past 5 years.			

Attachment 2. Spreadsheet provided by VADEQ compiling results of alternative analyses related to wetlands and surface water conditions. Note bold text in the notation column for the Archie Cannon site.

PREFERRED SITE	Acres	# of wetlands	Habitat Score	WQ Score	Impaired Waters	Notes
PEM	1.32	3	0.67	0.4	N/A	Majority of wetlands onsite are only slightly stressed with surrounding wetlands somewhat stressed.
PFO	71.01	6	0.74	0.7	N/A	
FLAPPO		# of wetlands	Habitat Score	WQ Score	Impaired Waters	Notes
PFO	14.78	1	0.87	1	Unsegmented - insufficient	Additional streams are identified based on typo, soils, and elevation maps that were not identified on plan sheets provided by consultant that only used NWI. Possible additional impacts. Wetlands onsite are slightly stressed with surrounding wetlands being mostly slightly stressed and a few somewhat stressed.
PSS	0.21	1	0.8	0.4	Unsegmented - insufficient	
BLENHEIM		# of wetlands	Habitat Score	WQ Score	Impaired Waters	Notes
PEM	6.77	3	0.9	0.4	Unsegmented - insufficient	Additional wetlands and streams are identified based on typo, soils, and elevation maps that were not identified on plan sheets provided by consultant that only used NWI. Wetlands on site are slightly stressed or slightly somewhat stressed. Surrounding wetlands are slightly somewhat to somewhat stressed.
PFO	82.91	5	0.91	0.7	Unsegmented - insufficient	
PSS	15.54	1	0.61	0.7	Unsegmented - insufficient	
ARCHIE CANNON		# of wetlands	Habitat Score	WQ Score	Impaired Waters	Notes
PEM	0.9	1	0.44	0.1	Slayden, trbs, and unsegmented - insufficient	Possible additional wetland impacts. Wetlands on site are somewhat stressed. Surrounding wetlands are severely stressed and somewhat severely stressed near Ashland. Impacts to this area would not affect surrounding wetlands and landuse. BEST choice for project based on wetland impacts and access.
PFO	55.33	1	0.36	0.4	Slayden, trbs, and unsegmented - insufficient	
GRAYMONT		# of wetlands	Habitat Score	WQ Score	Impaired Waters	Notes
PEM	3.78	1	0.55	0.7	South Anna - E. Coli	Possible additional wetland impacts. Wetlands on site are somewhat stressed and slightly stressed. Surrounding wetlands are slightly stressed with a few being somewhat stressed. Developing this site would impact
PFO	27.86	3	0.66	0.4	South Anna - E. Coli	

Attachment 3. Email screenshot documenting response to FOIA request by Protect Hanover regarding proposed cost of Hill Carter Parkway extension.

Sun Nov 1, 2020 @ 10:07 AM

Sara Blöse (sblösejd@gmail.com) To you Details

Forwarded message
From: Nora Amos <namos@ashlandva.gov>
Date: Thu, Sep 24, 2020 at 3:58 PM
Subject: RE: FOIA request
To: Sara Blöse <sblösejd@gmail.com>

Sara,
As we discussed, in working with the prospect we discussed the need for the extension of Hill Carter Parkway to be completed. At the time we met with VDOT and VEDP and believed we would have been able to leverage approximately \$5 million in TPOF funds to construct the roadway as a state economic development incentive. We have since received a more solid estimate of \$5-6 million, not \$10 million.
At no point was this a "requirement", but it was a need and the prospects agreed to work with us to get it done using state funds and administration.
I hope this answers your question. Let me know if you have any follow-up inquiries.
Take care.

Nora Amos, Director
PLANNING AND COMMUNITY DEVELOPMENT
C 804-798-1073 101 THOMPSON ST. P.O. BOX 1600
ASHLAND, VA 23005

Town of Ashland Virginia
Town of Ashland Virginia

IMPROVING THE QUALITY OF LIFE IN ASHLAND THROUGH THE PROFESSIONAL AND EFFICIENT DELIVERY OF OUTSTANDING PUBLIC SERVICES

Attachment 4. Email correspondence between Wegmans and the Town of Ashland as obtained by a FOIA request by Protect Hanover regarding initial intent to develop on the Archie Cannon site.

11/20/2020

Commonwealth of Virginia Mail - Additional Information



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Additional Information

1 message

Matt Neely <Matt.Neely@timmons.com>

Fri, Nov 20, 2020 at 11:04 AM

To: "Robb, Jaime Bauer" <jaime.robb@deq.virginia.gov>

Cc: "bryan.jones@deq.virginia.gov" <bryan.jones@deq.virginia.gov>

Good Morning Jaime,

I hope you are well.

During last night's public hearing, there were many citizen comments regarding the LEDPA, Archie Cannon, and Hill Carter Parkway. In anticipation of an additional information request from your office regarding that topic, the applicant has asked that we provide you with the attached correspondences from July 2019.

Additionally, we will also be providing additional information as to the actions surrounding the Archie Cannon site to further support why it was not determined the LEDPA.

Regards,

Matt

Matt Neely, PWD

Senior Environmental Project Manager

TIMMONS GROUP | www.timmons.com
1001 Boulders Parkway, Suite 300 | Richmond, VA 23225
Office: 804.200.6369 | Fax: 804.560.1648
Mobile: 757.329.0573 | matt.neely@timmons.com
Your Vision Achieved Through Ours

To send me files greater than 20MB click [here](#).

----- Forwarded message -----

From: Nora Amos <namos@ashlandva.gov>

To: Tim Davey <Tim.Davey@timmons.com>, Scott Dunn <scott.dunn@timmons.com>, Andrew Gould <Andrew.Gould@timmons.com>

Cc:

Bcc:

Date: Wed, 10 Jul 2019 14:27:06 +0000

Subject: Hill Carter Parkway- Tiger

<https://mail.google.com/mail/u/0?ik=084614d992&view=pt&search=all&permthd=thread-f%3A16838825903477644290%7Cmsg-f%3A1683885908477> 1/5

Attachment 4. Email correspondence between Wegmans and the Town of Ashland as obtained by a FOIA request by Protect Hanover regarding initial intent to develop on the Archie Cannon site (continued).

11/20/2020

Commonwealth of Virginia Mail - Additional Information

All (didn't know who to start with).

We just spoke with Lindsey at VEDP about the possibility of a TPOF grant for the Hill Carter Parkway extension project. She says that you all are estimating \$5mil. We were closer to \$10mil. In order to apply we would obviously need a more exact number. So I have several questions:

1. How much would it cost to get a more exact estimate?
2. Is this something Tiger would pay for?
3. If we contract to have it done, is it a conflict for you to do the work?
4. If you do the estimate we would like one for a VDOT administered project and one where it is contractor (you?) administered. Not sure if there would be a difference?

Happy to chat if that is easier. We hope to meet with VDOT in the next day or two about the funds. Thank you in advance for your assistance.

Nora D. Amos

Town of Ashland

Director of Planning and Community Development

101 Thompson Street

P.O. Box 1600

Ashland, VA 23005

Phone: 804-798-1073

www.AshlandVa.gov

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----- Forwarded message -----

From: Dan Aken <dan.aken@wegmans.com>

To: Matt Neely <Matt.Neely@timmons.com>, Ivan Wu <Ivan.Wu@timmons.com>, Doug Viets <doug.viets@wegmans.com>, Marty Herrmann <marty.herrmann@wegmans.com>, "Lain, John M." <jlain@mcguirewoods.com>

Cc:

Bcc:

Date: Fri, 20 Nov 2020 15:27:02 +0000

Subject: FW: Project Tiger - Responses

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here is the correspondence I have from Nora. Spelling out what we were prepared to do and some of the associated costs. Again, shortly after this I re-engaged with Mrs. Allen (the land-owner) and she informed me that she had someone else looking at the land and ultimately signed an agreement with Skanell Development.

From: Nora Amos <namos@ashlandva.gov>

Sent: Friday, July 12, 2019 4:30 PM

To: Dan Aken <dan.aken@wegmans.com>

<https://mail.google.com/mail/u/0?ik=084814d992&view=pt&search=all&permthid=thread-f%3A1683895908477644290%7Cmsg-f%3A1683895908477...> 2/5

Attachment 4. Email correspondence between Wegmans and the Town of Ashland as obtained by a FOIA request by Protect Hanover regarding initial intent to develop on the Archie Cannon site (continued).

11/20/2020

Commonwealth of Virginia Mail - Additional Information

Cc: Hurl, Lindsay <LHurl@vedp.org>; Thomas IV, E. Linwood <Elthomas@hanovervirginia.com>; Thomas T. Dubel Jr. <tom.dubel@altusgroup.com>; Zina Diehl <zina.diehl@altusgroup.com>; Josh Farrar <jfarrar@ashlandva.gov>; Joe Topham <JTopham@ashlandva.gov>
Subject: RE: Project Tiger - Responses

Dan,

We have incorporated our responses into your message below in red. Looking forward to discussing this further with you and your team.
Have a great weekend.

Nora D. Amos

Town of Ashland

Director of Planning and Community Development

101 Thompson Street

P.O. Box 1600

Ashland, VA 23005

Phone: 804-798-1073

www.AshlandVa.gov

Improving the quality of life in Ashland through the professional and efficient delivery of outstanding public services.

Hi Nora,

I hope this email finds you well.

I am writing to follow-up on our meeting from a few weeks ago. We have now had a chance to review the Axelle property again, discuss our thoughts with the current land owner, and give additional thought to our uses of the property in light of your feedback.

As a result, we are putting forward this proposed approach, which we hope will address the Town's concerns, while allowing us to move forward with our project.

1. We intend to purchase a smaller portion of the property than what was originally proposed, preserving approximately 52-acres for mixed-use development along the Archie Cannon Drive. We would like to preserve the ability to have a potential future passenger vehicle only connection to Archie Cannon, if it made sense with the adjacent development and future uses of the property. Attached is a conceptual plan showing the portion of the property we would intend to purchase.

- We really like the idea of having up to four remnant pieces left after your project: Lots 1 and 2, your manufacturing space, and the potential mixed use area
- We have concerns (addressed below) about the lack of a connection to Archie Cannon Drive

<https://mail.google.com/mail/u/0/?ik=084814d992&view=pt&search=all&permthid=thread-f%3A1683895908477944290%7Cmsg-f%3A1683895908477...> 3/5

Attachment 4. Email correspondence between Wegmans and the Town of Ashland as obtained by a FOIA request by Protect Hanover regarding initial intent to develop on the Archie Cannon site (continued).

11/20/2025

Commonwealth of Virginia Mail - Additional Information

- We need to speak with Hanover County about the precise location of the sewer line. We want it to be as low cost as possible while ensuring that it does not impede the development of the remaining property
 - On the map provided would lots 1 and 2 be owned by Wegmans or retained by Mrs. Allen?
 - With the desired level of security for the site would a walking trail still be a possibility? The possibility of a trail was a significant selling point when we worked with Ms. Allen to rezone the property.
2. We are showing a 100-foot wide landscaped buffer along the entire length of the property that is adjacent to Route 1. The current buffer requirement is 50-feet. So we would be doubling what is currently required in an effort to provide additional screening in order to address your concerns that this is the northern entrance to the Town. Additionally, we would preserve the portions of the parcel up-front along Route 1 for additional development, that would likely be manufacturing type uses that you referenced the Town would like to see. We potentially have our own need for these spaces, but it is just too early for us to commit to that aspect at the moment.
- The loading dock locations as depicted would need amendments to the current proffers. This is based on the Route 1 frontage requirement. As we discussed, if everything else were to come together Town Council may amend the proffers, but we included this comment just make sure we are communicating all potential issues
3. We would like to understand how the Transportation Management Fund, you referenced at the meeting, works in greater detail, but based on what you identified at the meeting we believe it would make sense for us to contribute to this fund to help support this effort. We would need to understand the order of magnitude others such as Kings Dominion are contributing and could then respond with more specifics on what we thought made the most sense.
- Estimates to bring a full time commuter bus route to Ashland are about \$247,000 for our portion of a \$712,000 system annually. The other part is shared by Kings Dominion, fares, and state grants. We would also discuss this opportunity with adjacent industrial users
4. Addressing the concern with trucks. I am hopeful that after seeing the actual numbers we presented at the meeting, that you and Council will find that there are not nearly as many trucks heading to the south through Town as you may have originally had concern with. However, we understand the long-term vision for the Town and are in the process of fully evaluating the extension of the North Hill Carter Parkway. Based on preliminary estimates by Timmons (for both roadway improvements and potential wetlands mitigation) we believe the total cost to make this connection is approximately \$5M, minus the cost associated with land purchase, permitting, etc. We are working through our consultant (Altus) and the State to see if we can get access to TPOF funding to help facilitate this work. As we understand it, this would ultimately be an agreement between VDOT and the Town to make this happen. We are happy to participate in any way feasible, but do have hesitations with tying the completion of this project with our opening of our facility. There are just too many unknowns with permitting, wetlands, right-of-way acquisition, etc., associated with the new road that could potentially hold-up or interfere with our project. I would like to further discuss how we can partner in this effort without being potentially held-up.
- We are working to get a solid estimate on the Hill Carter Parkway extension project as well. From our initial estimates, we expect this to be closer to \$10 million once property is acquired and associated wetlands are mitigated
 - As we previously discussed, we are very open to being flexible on timing of the road extension completion, but do need a correspondingly very high level of assurance it will actually happen, and
 - We obviously want to ensure that if we move forward together that this extension is completed and the Town is not left footing the bill if costs are greater than estimated
 - Reminder the proffers require that a TIA must be completed by the applicant and that the applicant must complete the work which the TIA identifies as necessary
 - The most obvious point that we expect the TIA will identify is the need for a traffic signal at the main entrance. Our assumption has been that would be off of Archie Cannon Dr, or across from Jamestown Road. In order to properly use the Hill Carter Parkway extension we've discussed, trucks will likely need a protected left turn from, or crossing of, U.S. Route 1. Otherwise, it would be more likely that a driver would simply proceed south to Route 54 on Route 1 and not use the constructed route. Without fully understanding Wegman's operational traffic flow requirements our preference is to have a connection to

<https://mail.google.com/mail/u/0?ik=084614d992&view=pt&search=all&permthd=thread-f%3A1683895908477644260%7Cmsg-f%3A1683895908477...> 4/5

Attachment 4. Email correspondence between Wegmans and the Town of Ashland as obtained by a FOIA request by Protect Hanover regarding initial intent to develop on the Archie Cannon site (continued).

1/10/2017

Commonwealth of Virginia Mail - Additional Information

Archie Cannon that would necessitate a light at the corner of Archie Cannon and Route 1. Truck traffic would then flow directly across Route 1 via Archie Cannon Road to Sylvia Road to use the newly constructed Hill Carter Parkway extension if heading south, or simply make a left at this signalized intersection if heading north.

- Was the reasoning for the proposed entrance location based on building/parking layout? This would not be signalized and seems like it would be hard for truck traffic exiting to the north or arriving from the south.

I know there is a lot here and it is fairly preliminary in nature, but I would like to understand if what I have outlined (along with the proposed plan) is feasible. Please let me know if you would like to discuss further as you give this consideration.

Thanks again for the opportunity to have this discussion and try to work through the issues. We are excited about the possibilities, but I do want to be clear in stating that we are particularly concerned about the traffic impacts of the project on the site as well as the offsite impacts to the Town's overall transportation system and the remaining economic development opportunities on this key piece of property.

Best,

Dan

Dan Aken

Director of Real Estate and Site Development

Wegmans Food Markets, Inc.

100 Wegmans Market Street / P.O. Box 30844

Rochester, NY 14603

(585) 464-4728 Work

(585) 755-1842 Mobile

dan.aken@wegmans.com

2 attachments

 **Hill Carter Parkway- Tiger.eml**
14K

 **FW: Project Tiger - Responses.eml**
52K



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Hanover County NAACP Comments - Proposed DEQ VWP Permit for Wegmans

1 message

Chris French <robert_c_french@yahoo.com>

Fri, Dec 4, 2020 at 4:08 PM

To: Jaime Bauer Robb <jaime.robb@deq.virginia.gov>

Cc: Pat Jordan <pjhac2011@gmail.com>, Bryan Jones <bryan.jones@deq.virginia.gov>, David Paylor <david.paylor@deq.virginia.gov>

Ms. Robb:

The Hanover NAACP appreciates the opportunity to provide comments on the proposed VWP permit. As many of the comments we raised in August 2020 were not addressed by the applicant and DEQ, we are submitting them again using the same letter. In addition, we incorporate by reference the comments from Protect Hanover.

Furthering those comments, we must point out that Wegmans, DEQ, and the US Army Corps of Engineers have not adequately addressed the significant Environmental Justice issues that have been raised. In fact, the response from Timmons and Wegmans does not even come close to what both DEQ and the Corps requested from them in both agency's August 2020 correspondence requesting additional information. For example, the Corps explicitly requested Wegmans include EJ considerations as part of the alternative analysis. This did not occur at all.

For these reasons, the Hanover County NAACP respectfully requests DEQ and the Virginia State Water Control Board deny the currently flawed proposed permit that does not meet both state and federal requirements.

Regards,

Chris

8-29



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Re: Hanover County NAACP Comments - Proposed DEQ VWP Permit for Wegmans

1 message

Chris French <robert_c_french@yahoo.com>

Fri, Dec 4, 2020 at 4:09 PM

To: Jaime Bauer Robb <jaime.robb@deq.virginia.gov>

Cc: Pat Jordan <pjhac2011@gmail.com>, Bryan Jones <bryan.jones@deq.virginia.gov>, David Paylor <david.paylor@deq.virginia.gov>

With attachment...

On Friday, December 4, 2020, 4:08:20 PM EST, Chris French <robert_c_french@yahoo.com> wrote:

Ms. Robb:

The Hanover NAACP appreciates the opportunity to provide comments on the proposed VWP permit. As many of the comments we raised in August 2020 were not addressed by the applicant and DEQ, we are submitting them again using the same letter. In addition, we incorporate by reference the comments from Protect Hanover.

Furthering those comments, we must point out that Wegmans, DEQ, and the US Army Corps of Engineers have not adequately addressed the significant Environmental Justice issues that have been raised. In fact, the response from Timmons and Wegmans does not even come close to what both DEQ and the Corps requested from them in both agency's August 2020 correspondence requesting additional information. For example, the Corps explicitly requested Wegmans include EJ considerations as part of the alternative analysis. This did not occur at all.

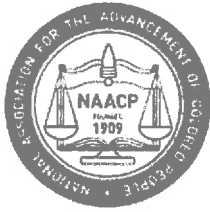
For these reasons, the Hanover County NAACP respectfully requests DEQ and the Virginia State Water Control Board deny the currently flawed proposed permit that does not meet both state and federal requirements.

Regards,

Chris

 2020_08_04_NAACP_Wegmans_DEQ_Letter.pdf
180K

8-30



Hanover County
NAACP

Robert N. Barnette Jr., President
P.O. Box 2112 Mechanicsville, VA 23116
Phone: 804-647-7087
Email: r.barnette55@gmail.com

August 4, 2020

Jaime Robb

Virginia Department of Environmental Quality (DEQ)
Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060

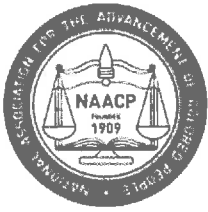
RE: Public Comment on Draft Virginia Water Protection (VWP) Permit Number 19-2036 (Wegmans Distribution Center)

Dear Ms. Robb:

The Hanover County NAACP would like to use this opportunity to express our concerns regarding the proposed Wegmans Distribution Center (VWP Permit Number 19-2036) and its uneven impact on the Brown Grove community. We have been following this matter and believe there are several issues that need resolution prior to the issuance of any permit that would allow the project to advance. Specifically, we are concerned with the following:

- The lack of engagement with Brown Grove residents and the surrounding communities to negotiate ways to reduce the negative impacts of the proposed Distribution Center.
- No environmental justice review has been conducted to study the cumulative impacts of industrial encroachment on the Brown Grove community
- A general lack of respect and disregard over long documented public statements there are unmarked grave sites on the property by Brown Grove residents
- While much can be stated about these concerns, the Hanover Branch NAACP generally supports the comments others have made regarding these topics. We hereby incorporate by reference comments made by Protect Hanover and others opposed to issuance of this permit due to the significant environmental justice shortcomings noted above, an incomplete Joint Permit Application, and the overall lack of accurate and required supporting information to allow the applicant's permit to be issued.
- We feel the process has been rushed and legitimate concerns expressed by Brown Grove and other nearby communities have been largely dismissed by Wegmans and others supportive of this development.

We encourage DEQ to consult with the Virginia Council on Environmental Justice and to ensure an environmental justice study be conducted prior to any permit issuance. As you are likely aware, as of July 1st, Virginia state law requires DEQ and the State Water Control Board (as well as all other state agencies) to consider environmental justice matters in permitting decisions and to ensure there are meaningful engagement of disproportionately affected communities. Brown Grove – established after the Civil War by freed men and



Hanover County
NAACP

Robert N. Barnette Jr., President
P.O. Box 2112 Mechanicsville, VA 23116
Phone: 804-647-7087
Email: r.barnette55@gmail.com

women – has a long-documented history of industrial encroachment such as Interstate 95, the County Airport and Airpark industrial complex, a landfill, and other industries.

We are also aware the Hanover County Comprehensive Plan has a future expansion of New Ashcake Road going through Brown Grove close to the current footprint of Egypt Road, which borders the western portion of the proposed distribution center. Such a proposed project needs to be considered along with the distribution center and the cumulative impacts of industrial encroachment issues Brown Grove has suffered. A 3rd party conducted environmental justice study that allows collaboration with local stakeholders would provide for a greater understanding of the project and its negative impacts.

The Brown Grove School is located on the proposed project site. While minor archaeological surveys have been conducted, the Hanover County NAACP is concerned with the recent conclusion the school offers little historical research value. We understand from Brown Grove residents the structure was also used as part of the original community church. This would have been understood by all had residents been approached prior to the archaeological site work having been conducted. An area like this could also have unmarked grave sites.

It is our view the Brown Grove School represents a significant historical resource that requires further investigation. Brown Grove community members should be consulted regarding the school and an effort made to both preserve the structural remains and record the school's history.

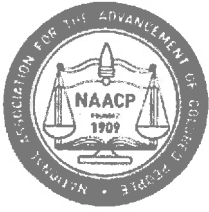
Hanover County Branch NAACP requests DEQ and the State Water Control Board either deny or defer indefinitely the proposed and significantly flawed VWP permit for the Wegman Distribution Center. This industrial development – which currently lacks an industrial permit – has been rushed. Key steps in gathering basic information regarding this project has been skipped. The affected communities have been largely excluded. As a result, the issuance of any permit for this project will result in continued environmental injustice directed towards Brown Grove. This is an unacceptable inequality that requires resolution.

No permit issuance should unfairly target this minority community who has been already suffered from unchecked industrial sites being located in their literal “backyards”. Wegmans would be another such project. Given the long disenfranchisement of Brown Grove, we request there be sufficient effort made to ensure members of this community and others are proactively engaged in such efforts.

Please reach out should you have any questions or concerns regarding these comments.

Respectfully,

Robert Barnette
Hanover NAACP President



Hanover County
NAACP

Robert N. Barnette Jr., President
P.O. Box 2112 Mechanicsville, VA 23116
Phone: 804-647-7087
Email: r.barnette55@gmail.com

Cc. David Paylor, Virginia Department of Environmental Quality

Bryan Jones, Virginia Department of Environmental Quality

Chris French, NAACP Hanover Environmental and Climate Justice Committee Chair



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

19-2036 Comment of RA Morgan 12042020.pdf

1 message

Rod Morgan <roderickmorgan@yahoo.com>
To: Jaime Bauer Robb <jaime.robb@deq.virginia.gov>

Fri, Dec 4, 2020 at 5:56 PM

Ms. Robb,

My personal comments are attached. I appreciate your attention to these matters.

Rod Morgan

 **19-2036 Comment of RA Morgan 12042020.pdf**
1460K

8-35

Roderick A. Morgan
11170 Countryside Lane
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December 4, 2020
VIA EMAIL: jaimerobb@deq.virginia.gov

Ms. Jaime Robb
Virginia Dept. of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia, 23060

RE: Comment on VWPP No. 19-2036; Proposed Wegmans Facility

Dear Ms. Robb,

Thank you for the opportunity to present my comments and for your work and graciousness throughout this permitting process. I have previously commented on VWPP No. 19-2036, the proposed Wegmans Facility in Hanover County, Virginia. I wish to now supplement these comments to reflect information in the revised permits as well as other materials which have become recently available.

I thank DEQ for pushing back on the improper and unscientific work by the Army Corps of Engineers, however, the extent of the wetlands on the Air Park site remains a concern. When the Corps reviewed their work, they accepted a scope restriction from Air Park to only review the mosaic areas. This was improper. A review of the 2019 delineation work by the Corps indicates substantial additional problems. These concerns have not been addressed. DEQ should only accept a delineation from the Corps that has been conducted from a clean slate. Using the past improper delineation as the foundation causes the edifice of this permit decision to crumble.

Air Park is a “special aquatic site.”¹ Regulations require that, “[w]hen the activity ... proposed for a special aquatic site ... [is not] water dependent, practicable alternatives are presumed to be available, unless clearly demonstrated otherwise.”² Wegmans’ permit application does not demonstrate otherwise, and it cannot. In this area, the regulations are clear. The burden of proof is upon Wegmans as the applicant, and DEQ must hold them both to the spirit and to the letter of these regulations.

Even with the problems relating to the delineation, DEQ has already determined that the Air Park site, chosen by Wegmans to be their desired alternative, is not the least environmentally destructive alternative³. The delineations done at the Archie Cannon and Graymont sites clearly show that each of these to be less destructive to wetlands. Both sites could likely be developed under a general permit.

¹ 40 CFR § 230.3(m)

² 40 CFR § 230.10(a)(3)

³ See Comparison spreadsheet prepared by Michelle Henicheck, dated September 24, 2020. Ms. Henicheck, a Senior Wetlands Ecologist with DEQ writes that the Archie Cannon site is the “BEST choice for project based on wetland impacts and access.” She capitalizes the word best for emphasis

Since we know that Air Park is more destructive, we must then focus our analysis on practicality. At one time, Wegmans had a letter of intent in place to purchase the Graymont property. It is impossible to argue now that this property has become impractical. Nevertheless, we must examine the elements of practicality: technology, logistics, and cost.

In a rare display of candor, Wegmans notes no difference in technology between sites. Wegmans notes their preference for the Air Park site based on logistics, and the "L-shaped" warehouse configuration. Wegmans then provides data claiming to show that impracticality of other sites based on cost.

According to the draft Fact Sheet, Wegmans identified fourteen (14) screening factors it used in its offsite analysis. This is improper. EPA guidelines do not allow a particular alternative to be selected because Wegmans would find it a more desirable project. The test is to "*determine the feasibility of the least environmentally damaging alternatives that serve the basic project purpose.*" (emphasis added.) It "is not whether a proposed project is 'better' than an alternative with less wetlands impact because it would cost less." The test is whether the alternative with less wetlands impact is "impracticable," and the burden [to demonstrate that other alternatives are impracticable] is on [Wegmans.]⁴ To the extent that Wegmans' screening factors limit alternatives that meet the basic project purpose, they must be discarded.

In its Joint Permit Application, Wegmans notes that:

The purpose of the proposed project is to provide a site that will serve as a secure regional grocery distribution center that will (a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region.

The basic project purpose not to provide an L-shaped warehouse configuration. Indeed, a project purpose must not be so narrow that it excessively restricts the number of alternatives to be considered.⁵ Wegmans L-shaped configuration is a desire and not a need. Wegmans desire does not render other sites impractical. Likewise, Wegmans uses the proximity of three miles from Interstate 95 as a screening factor. No evidence is offered that sites four or seven miles from Interstate 95 fail to meet the project purpose. Sites within three miles of Interstate 295 (I-95 bypass) may meet the basic project purpose, and have been improperly excluded as a result of these inappropriate screening factors.

Finally we turn to cost. Wegmans submits that Archie Cannon, which DEQ had determined to be the "best" site, would purportedly cost \$27.9 million, or almost \$22 million and 4.5 times more than Air Park. This analysis is not simply flawed, it contains outright misstatements of fact.

- Wegmans states that wetlands mitigation costs at Archie Cannon would be \$620,900, primarily based on 1,953 linear feet of impacted streams. Luckily we have a design a 2.7 million square foot distribution center on the Archie Cannon site. This proposal, which is 1 million square feet larger than the Wegmans proposal, would impact 140 linear feet of streams. Wegmans cannot be ignorant of this proposal. It was also prepared by the Timmons Group, which is Wegmans'

⁴ *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1187 (10th Cir. 2002), as modified on reh'g, 319 F.3d 1207 (10th Cir. 2003).

⁵ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196, 21 ELR 21142 (D.C. Cir. 1991).

engineer. Based on other proposals for Archie Cannon prepared by Timmons, mitigation costs are estimated to be \$70,000 or about \$550,000 less than that represented by Wegmans.

- Wegmans submits that Archie Cannon would require the relocation of a sanitary sewer. This cost is listed at \$750,000. Hanover County has already agreed to cover sewer costs for Wegmans. These costs at the Air Park site would be \$1.5 million. This cost is inappropriate and should not be included.
- Wegmans submits that a switch to Archie Cannon would cost \$5,850,000 in lost cost saving due to the delay. This cost is improper. EPA guidance is clear. Alternatives are to be judged at time of market entry. Opportunity and sunk costs are not allowable for these purposes.
- Wegmans submits that the Town of Ashland would require the extension of Hill Carter Parkway as quote, “a requirement.” Wegmans believes this road would cost \$10,900,000. The Town of Ashland advises that “at no point was this [road expansion] a requirement.” It was discussed as a Town need, but almost all, if not all of the cost, estimated to be between \$5-6 million, would be covered by VDOT.⁶

When I correct Wegmans calculations, in a manner most beneficial to Wegmans, Archie Cannon would cost \$10 million compared to the \$6 million at Air Park. This fails to consider that Wegmans intent “to purchase a smaller portion of the property than what was originally proposed, preserving approximately 52-acres for mixed-use development along the Archie Cannon Drive.”⁷ Carving these 52 acres out of the Archie Cannon Site would likely save Wegmans approximately \$2 million, based on the assessed value divided by acre.

In the Draft Fact Sheet for this proposed permit, DEQ notes that, “[t]he Applicant [Wegmans] concludes that [Archie Cannon] is not practicable considering cost.” The final difference of \$2 million, taken in light of the overall announced project investment of \$175 million, it is approximately 1.1% of the total value. A 1.1% difference is not substantial enough to render Archie Cannon impracticable.

In order to issue the proposed permit, DEQ must find that the Air Park site is the Least Environmentally Destructive Practical Alternative. It is already established that the site is not the least environmentally destructive alternative, and at least one alternative is practical. DEQ must show appropriate professional skepticism, do its own analysis, and reach its own conclusions in accordance with the law, and on behalf of the citizens of Virginia. This authority may not be delegated to the applicant, and this permit cannot be issued.

Again, I appreciate the opportunity to comment. If you have any questions, please feel free to contact me directly.

Sincerely,



Rod Morgan

⁶ Email of Nora Amos, Planning Director, Town of Ashland

⁷ Email of Dan Aken, Wegmans to Nora Amos, Planning Director, Town of Ashland, July 2019



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Fw: VWP 19-2036 PROTECT HANOVER Comment 12042020.pdf

1 message

Rod Morgan <roderickmorgan@yahoo.com>
To: Jaime Bauer Robb <jaime.robb@deq.virginia.gov>

Fri, Dec 4, 2020 at 4:14 PM

Ms. Robb,

Attached please find the comments of Protect Hanover as they relate to VWP 19-2036; Wegmans Distribution Center.

I will send 3 sperate appendices files. I will send them separately because of their size. I would appreciate a confirmation that you receive a four emails.

Thanks very much,

Rod Morgan

 **VWP 19-2036 PROTECT HANOVER Comment 12042020.pdf**
832K

8-37



PROTECT HANOVER

VIA ELECTRONIC FILING

December 4, 2020

Jamie Robb
Virginia Department of Environmental Quality (DEQ)
Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060

RE: Public Comment on Draft Virginia Water Protection Permit Number 19-2036 and Joint Permit Application 2012-02369 (Wegmans Distribution Center)

Dear Ms. Robb,

Protect Hanover submits the following comments in opposition to the draft Virginia Water Protection Permit No. 19-2036 (“VWP Permit”) and accompanying Joint Permit Application 2012-02369 (“Application”). The VWP Permit would allow Wegmans Food Markets, Inc. (“Wegmans”) to permanently impact significant areas of wetlands on approximately 219.6-acres (previously 217-acres), primarily owned by Air Park Associates, LP, situated south of Ashcake Road, northwest of Sliding Hill Road, and east of Egypt Road in Hanover County, Virginia (“Air Park site”). Thank you for this opportunity to comment.

I. THE PARTY COMMENTING

Protect Hanover is an organization of Hanover County citizens that reside near the Air Park site. Members of the organization drive past the site daily, play with our children in the creeks downstream, and admire the site’s cultural and historical significance. Some of our members live in the Brown Grove community; all members are allied with our African American neighbors whose ancestors have lived along Ashcake Road since Emancipation. We highlight their experiences and amplify their voices because they have been shut out of development-related decisions numerous times.

As an interested party to this permit process, we are deeply concerned about Wegmans’ distribution center. While Protect Hanover understands the economic benefits of having Wegmans in Hanover County, the Air Park site is an inappropriate location for the proposed development. For the reasons explained herein, we urge the VA Department of Environmental Quality (“DEQ”) and the State Water Control Board (“Board”) to deny the VWP permit requested by Wegmans. A denial is warranted because the VWP permit application and accompanying joint permit application process have critical flaws, the proposed development will unavoidably impair state waters and resources, and there has been no environmental justice study to understand decades of targeted industrial encroachment in the Brown Grove community.

II. BACKGROUND

Wegmans seeks to construct a 1.7 million square-foot distribution center,¹ but the Air Park site and the surrounding roads and communities cannot sustain this development. The site is an environmentally, historically, and culturally significant area that DEQ and the Board, charged with protecting state waters in furtherance of public interest,² and the US Army Corps of Engineers (“Corps”), responsible for protecting waters of the United States, must protect.

The Air Park site is an ecologically rich environment that the Commonwealth has identified for conservation priority.³ Wegmans’ proposed development would permanently impact in excess of fourteen and 8/10ths (14.8) acres of wetlands on the Air Park site, which help protect water quality both locally and regionally. At the local level, the wetlands drain into Totopotomoy Creek, Kersey Creek, and Campbell Creek.⁴ Recreational use in Totopotomoy and Kersey Creeks is already impaired because of elevated *E. Coli* levels; in fact, Kersey Creek was included in the Pamunkey River and Tributaries Bacterial Total Daily Maximum Load (“TMDL”) established in 2015 under the Clean Water Act (“CWA”).⁵ The original Totopotomoy Creek *E. Coli* TMDL was written in 2004 and has been subsequently incorporated into the Pamunkey River and Tributaries Bacterial TMDL. Kersey Creek’s aquatic life also suffers due to the water’s pH levels, which violate Virginia’s water quality standards and require a TMDL study.⁶ Permanent impacts to the site’s wetlands risk destabilizing these waterways and further degrading their uses. Regionally, these nontidal wetlands protect the Chesapeake Bay by filtering pollutants, reducing flooding and runoff from upland areas, and providing habitat to wildlife. Nontidal wetlands also protect the community by naturally controlling the impacts of flooding on nearby residences.

The Air Park site is also a historical marvel.⁷ It is home to a dwelling associated with Merry Oaks Tavern, where founding father Patrick Henry famously enlisted volunteers to fight in the American Revolution.⁸ Cultural resource experts Dutton + Associates (“D+A”) recently announced that the dwelling is likely eligible for inclusion in the National Register of Historic Places.⁹ Air Park also overlaps with the study areas of several Civil War battles. Ashcake Road was an avenue of approach during the Battle of Hanover Courthouse.¹⁰ Lastly, oral histories indicate the Air Park site is likely home to slave burials.¹¹ The presence of such burials is not surprising, provided the site’s long history of occupation and the area’s recognition¹¹ for slave-based tobacco farming.¹²

The Air Park site is of utmost importance to our members in Brown Grove. During Reconstruction, freedmen created Brown Grove by settling along Ashcake Road.¹³ Since then, Brown Grove has been significantly displaced by industrial

¹ 19-2036 Application Materials Combined Part 1 of 2, pg. 2

² Va. Code Ann. § 62.1-44.15(3a)

³ APPENDIX A: Conserve Virginia Maps of Air Park Site, collected Jul. 2, 2020

⁴ Public Notice Virginia Website; Richmond Times - Dispatch notice, June 20, 2020

⁵ Draft 2020 305(b)/303(d) Water Quality Assessment Integrated Report - Fact Sheet for Impaired (Category 4 or 5) Waters in 2020

⁶ *Id.*

⁷ Phase I Cultural Resource Survey of [Project Tiger], prepared by D+A, Dec. 2019, pg. 6-2 *Id.* at pg. 5-10

⁸ *Id.* at pg. 5-10

⁹ *Id.*

¹⁰ *Id.* at pgs. 5-16, 5-17, 6-2

¹¹ Virginia residents worry for Black community’s future, Washington Post, dated Jul 26, 2020; Wegmans proposal

¹² Phase I Cultural Resource Survey of [Project Tiger], prepared by D+A, Dec. 2019, pg. 5-8, T. Clouthier (Pamunkey Indian Tribe) letter to E. Holley (USACE) re NAO-2012-02369 - Wegmans Distribution Center, Mar. 31, 2020

¹³ Phase I Cultural Resource Survey of [Project Tiger], prepared by D+A, Dec. 2019, pg. 5-8, T. Clouthier (Pamunkey Indian Tribe) letter to E. Holley (USACE) re NAO-2012-02369 - Wegmans Distribution Center, Mar. 31, 2020

encroachment, including Interstate 95, Hanover County Airport, a landfill, and a concrete plant.¹⁴ Brown Grove is not only invested in preserving the site because it likely contains unmarked slave burials and the historic Brown Grove School (which has been identified by D+A as a site likely eligible for inclusion in the National Register of Historic Places),¹⁵ but also because the proposed project would further splinter the community and generate more industrial pollution. These concerns are exacerbated by Wegmans' failure to meaningfully engage with the community. For example, Wegmans claimed it met with the community in February, yet a meeting attendee found that only one Brown Grove resident was present.¹⁶ A Protect Hanover member also encouraged Wegmans to consult with Virginia's Council on Environmental Justice, but the company declined.¹⁷

The Air Park site has been assessed for wetlands several times in the past decade.¹⁸ Two of the most recent wetland delineations occurred under well-documented drought conditions.¹⁹ The engineering firm RK&K conducted a delineation in early October 2019 and found 34 acres of wetlands on the Air Park site.²⁰ On October 16, 2019, RK&K conducted a second site visit with the Corps, the Timmons Group engineering firm ("Timmons"), and DEQ, which resulted in the Corps reducing the delineated acreage from 34.8 acres to only 22.6 acres.²¹ Wegmans concluded its project would impact only 6.12 acres after this adjustment.

On August 19 and 21, 2020, the Corps, DEQ and Timmons revisited the site in response to extensive public comment questioning the mosaic methodology. In a subsequent technical memo, the Corps abandoned the mosaic methodology entirely, resulting in an increase in wetland impact from 6.12 to 14.8 acres. However, additional critical flaws in the underlying delineation identified by the public could not be revisited because the owners of the Air Park site denied the Corps access beyond the mosaic areas²², contrary to the access allowance statement in the JPA and PJD application certification.

III. SUBSTANTIVE CONCERNS

A. The wetlands delineation does not comply with USACE's wetlands delineation guidance.

The current wetlands delineation does not comply with the USACE "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report," and the approved regional supplement.²³ Instead, the delineation omits data altogether; and

¹⁴ Fighting for Survival, Richmond Times - Dispatch, Apr. 15, 2008, Wegmans proposal stirs up land use controversy in VA, Bay Journal, July 14, 2020

¹⁵ R. Barnette Jr. (Hanover County NAACP) letter to E. Holley (USACE) re Concerns Regarding Environmental Injustice Issues to Brown Grove, Jul. 6, 2020; Wegmans proposal stirs up land use controversy in VA, Bay Journal, July 14, 2020

¹⁶ Opposition voices prevalent at DEQ hearing, Richmond Times - Dispatch, Jul. 20, 2020

¹⁷ *Id.*

¹⁸ Wegmans proposal stirs up land use controversy in VA, Bay Journal, July 14, 2020

¹⁹ "Virginia's biggest drought since 2010 tightening its grip as fall goes on" Richmond Times - Dispatch Article, Oct. 10, 2019

²⁰ Wegmans proposal stirs up land use controversy in VA, Bay Journal, July 14, 2020; S. Sanderlin (RK&K Engineers) email to B. Jones (DEQ) re Air Park Overall Wetland Delineation Map, Oct. 15, 2019

²¹ APPENDIX B: E. Holley (USACE) email to M. Mills (RK&K Engineers) re FW: Air Park Overall Wetland Delineation Map (UNCLASSIFIED), dated Oct. 17, 2019, and accompanying attachment; 19-2036 Application Materials Combined Part 1 of 2

²² APPENDIX H: Email: Elaine Holley & Paul Davenport – Permission only to review "mosaic" areas

²³ Note that the permitting agencies have referenced both supplements. Due to the inconsistency, for the purposes of this comment, we will reference simply the "Regional Supplement" as all information referenced herein is identical in both versions.

overlooks how Hanover County's drought alters interpretation of site data.

1. The most recent jurisdictional determination omits data that would increase the acres of wetland impacted by the proposed development.

Wegmans' wetlands delineation does not comply with the Corps Delineation Manual and regional supplement because it excludes data necessary to identify all wetlands onsite. DEQ cannot issue a permit that does not comply with the Corps' delineation manual. RK&K completed a wetlands delineation in early October 2019, which it included as part of the JPA.²⁴ The delineation identified wetlands at sampling site DP-2, connecting what is now identified as Wetlands 9 and 13.²⁵ USACE since omitted all information on DP-2 from its jurisdictional determination.²⁶ However, the Wetland Determination Data Form for DP-2 suggests the site and surrounding area should retain its wetlands designation because RK&K found hydrophytic vegetation, hydric soil, and wetland hydrology at DP-2.²⁷ Moreover, RK&K affirmed the sampled area rested within a wetland.²⁸ In a memorandum for the record, the Corps explains that DP-2 was removed due to the data point being outside the areas listed by a NRCS USDA soil survey as being hydric soils. However, the regional supplement states that "[s]oil survey information can be valuable for planning purposes, but it is not site-specific and does not preclude the need for on-site investigation." The Corps disregarded the site-specific information obtained by RK&K and substituted generic information that the regional supplement deemed unreliable.

The Corps mentions in the same memo that "[w]etlands 8, 9, 10, 12, 13, 35 were eliminated from the wetland delineation exhibit because these areas did not meet one or more wetland parameters," and that the "[w]etland 11 boundary was reduced in size because this area did not meet one or more wetland parameters." However, the Corps failed to document any evidence to support the claim that data points identified by the professionals at RK&K to be wetlands lacked necessary wetland parameters.

The documented drought conditions during the October 2019 site visit by the Corps already lead the Corps to incorrectly assess wetland areas (the "mosaics"), which they acknowledged in their revision of the jurisdictional determination. Considering that the Corps has acknowledged the difficulty in properly determining wetland boundaries due to site conditions at that time, in addition to the lack of evidence to support modification and removal of wetlands, wetland areas 8, 9, 10, 12, 13, and 35 should be reinstated and the RK&K delineated boundaries of wetland 11 should be applied to the jurisdictional determination map boundaries. Improper reduction and removal of these wetlands without evidentiary support underestimates the acres of wetland impact. This caused the permit application to propose insufficient mitigation, which means that the goal of no net loss has not been met and the application should be denied.

2. The most recent jurisdictional determination does not consider that Hanover County's drought changes how delineators should have interpreted site data.

The current delineation inaccurately identifies certain land as non-wetlands on the Air Park Site because the Corps overlooked that Hanover's 2019 drought²⁹ changes how the agency should interpret site data. Under the regional supplement, if a site lacks wetland hydrology indicators but (a) has hydrophytic vegetation and hydric soils, (b) experiences "no

²⁴ S. Sanderlin (RK&K Engineers) email to B. Jones (DEQ) re Air Park Overall Wetland Delineation Map, Oct. 15, 2019

²⁵ S. Sanderlin (RK&K Engineers) email to B. Jones (DEQ) re Air Park Overall Wetland Delineation Map, Oct. 15, 2019; Delin_Maps_2019-10-15

²⁶ S. Sanderlin (RK&K Engineers) email to B. Jones (DEQ) re Air Park Overall Wetland Delineation Map, Oct. 15, 2019; [19-2036 Application Materials 1 of 2](#)

²⁷ APPENDIX C: Wetland Determination Data Forms - Atlantic and Gulf Coastal Plain Region for Sampling Point DP-2

²⁸ *Id.*

²⁹ "Virginia's biggest drought since 2010 tightening its grip as fall goes on" Richmond Times - Dispatch Article, dated Oct. 10, 2019

significant hydrologic manipulation,” and (c) sits in a region affected by drought, then the site should be considered a wetland.³⁰ The supplement strongly suggests that a subsequent site visit during a normal rainfall year should be performed to double check for wetland hydrology indicators.³¹ The Corps and DEQ were denied the ability to investigate the data points that have hydric soil and hydrophytic vegetation as determined by the original delineation during their August 2020 visit. The property owner denied access to the entirety of the site.³² This denial of full site access is in violation of the PJD application certification which states “I agree to allow the duly authorized representatives of the Norfolk District Corps of Engineers and other regulatory or advisory agencies to enter upon the premises of the project site at reasonable times to evaluate inspect and photograph site conditions. This consent to enter the property is superior to, takes precedence over, and waives any communication to the contrary.”³³ Due to the lack of cooperation and site access by the property owner the Corps could not follow the procedure outlined in the regional supplement calling for the re-examination during a period of normal rainfall.

At least two sites, DP-6 and DP-8, should be reclassified as wetlands based on the regional supplement. RK&K noted that Hanover County “is either abnormally dry or has moderate drought” for all sites sampled on October 11, 2019.³⁴ The engineering firm did not identify DP-6 and DP-8 as having “significant hydrologic manipulation” or wetland hydrology but did indicate the sites had hydrophytic vegetation and hydric soils.³⁵ Therefore, both sites should be designated as wetlands under the regional supplement. Alternatively, Wegmans should conduct another comprehensive delineation during a normal rainfall period to receive an accurate depiction of wetland hydrology on the site.

3. The calculated project impact and proposed mitigation do not account for wetland impacts due to dewatering of adjacent wetland areas.

The large, impervious curb and gutter areas proposed for this project will alter pre-development drainage divides and remove the natural flow of water that preserves hydrology in wetland areas adjacent to the limits of disturbance. Wegmans proposes to monitor these areas post-development and purchase mitigation only after the wetlands have been destroyed. Monitoring and mitigation after the fact is inadequate and an attempt to influence the alternatives analysis and LEDPA determination by understating the impacts used for analysis. Total project impacts must be fully assessed before the issuance of any permit.

The removal of hydrology and the subsequent destruction of adjacent wetlands due to the construction of this project are predictable and certain. Wetlands cannot exist without water and without receiving water from areas that currently drain into them. These sloped wetland areas are sure to be destroyed. For example, the pre-development drainage divide plan sheet³⁶ shows that wetlands adjacent to impacts 13-17 currently are supplied with water from the drainage of 38.5 acres. The pre-development flow path shows that water from the interior of the site fills these areas. The post-development drainage divides show that post-development, no water from the interior of the site reaches these wetlands.³⁷ These wetlands are deprived of 25 acres worth of drainage post-development. It is impossible for these wetland areas to receive 65% less water and not be impacted. Wegmans makes the false assertion that these adjacent wetland areas may not be subject to secondary loss due to the presence of a restrictive clay layer on this site. This restrictive clay layer allows large wetland areas in the flat interior of the site to maintain wetland hydrology by precipitation alone. However, this restrictive clay layer

³⁰ Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, pg. 137-139

³¹ *Id.*

³² APPENDIX H: Email: Elaine Holley & Paul Davenport – Permission only to review “mosaic” areas

³³ APPENDIX J: Norfolk District Jurisdictional Waters Determination Request Form

³⁴ APPENDIX C: Wetland Determination Data Forms - Atlantic and Gulf Coastal Plain Region for All Sampling Points

³⁵ APPENDIX C: Wetland Determination Data Forms - Atlantic and Gulf Coastal Plain Region for Sampling Points DP-6, DP-8.

³⁶ APPENDIX L: Wegmans Distribution Center Civil Plan sheets: Drainage Divides and Grading Plan Excerpt.

³⁷ *Id.*

would not provide the same effect on the sloped wetlands adjacent to the limits of disturbance. The pre-development drainage divide sheet shows a flow path from these wetland areas draining to analysis point 4. The grading plan³⁸ demonstrates that these adjacent secondarily impacted wetlands lack the same flat topography and geomorphic position conducive to holding water exhibited in the interior of the site that allows maintenance of hydrology by precipitation alone. This detailed example is only the largest area to be dewatered due to the shifting of drainage divides, but there are additional areas on site that would be similarly impacted. Until all wetland impacts are properly assessed and included in the application, the permit should be denied.

B. Wegmans failed to identify all Chesapeake Bay Preservation Areas on the Air Park Site.

DEQ and the Board must consider the Bay Act and CBPAs as part of the permitting process. DEQ is responsible for regulating lands adjacent to water bodies of perennial flow, which necessarily includes Chesapeake Bay Preservation Areas/RPAs³⁹

While CBPA enforcement is primarily a function of individual localities, the Board is responsible for oversight of local programs. In this case, it is impossible that the information provided to DEQ is in keeping with the master “comprehensive plan” created by the locality as required because it relied on incomplete information. In order to perform its oversight function, the Board is required to conduct periodic local program compliance reviews with the option of conducting more frequent reviews where necessary. Where deficiencies exist, the Board must specify what is deficient, provide recommendations for corrective action, and provide a schedule for the action to be taken.⁴⁰

However, the Board cannot assess the proposed development’s impacts under the Chesapeake Bay Preservation Act (“Bay Act”) because Wegmans failed to provide complete, accurate information in its application in at least two critical ways.⁴¹

1. Hanover County provided DEQ with maps that omit portions of the Air Park site and do not identify all relevant Chesapeake Bay Preservation Areas.

The Board cannot assess the project under the Bay Act because Wegmans produced maps that are deficient and misleading. Wegmans must provide the boundaries of RPAs on site, as approved by the locality in which the project is located.⁴² To this end, Hanover County provided DEQ with maps highlighting a single tax parcel (GPIN 7798-54-5903) on the Air Park Site.⁴³ However, the site consists of all or a portion of 22 separate parcels, some of which are omitted altogether from the county maps.⁴⁴ Wegmans cannot meet its VWPP obligation of identifying RPA boundaries if its maps exclude portions of the site itself. Moreover, the Board cannot assess the distribution center’s implications under the Bay Act if it receives incomplete information on the Air Park site.

The county maps may mislead the Board to incorrectly conclude that the proposed development will not impact CBPAs or create additional obligations for Wegmans. In the correspondence that accompanied county maps, Hanover represented to DEQ that the single tax parcel has no CBPAs.⁴⁵ But, DEQ’s Office of Environmental Impact Review identified that the

³⁸ *Id*

³⁹ Chesapeake Bay Preservation Area Designation and Management Regulations, Volume 29, Issue 4, Virginia Register of Regulations 791 (2012), <http://register.dls.virginia.gov/vol29/iss04/v29i04.pdf>.

⁴⁰ Va. Code § 62.1-44.15:71

⁴¹ 9 Va. Admin. Code § 25-210-80(B)(1)(i)

⁴² 9 Va. Admin. Code § 25-210-80(B)(1)(i)

⁴³ APPENDIX I: CBPA Maps

⁴⁴ 19-2036 Application Materials Combined Part 1 of 2.

⁴⁵ M. Dieter (Hanover County) email to H. Mackey (DEQ) re Project Tiger at Hanover Air Park - DEQ #19-141F, dated Dec. 20, 2019.

property is located within an RMA, a type of CBPA.⁴⁶ Wegmans must disturb as little land as possible within CBPA protected areas, minimize impervious cover and preserve indigenous vegetation to the maximum extent possible.⁴⁷ The county maps and correspondence impede the Board from assessing the Air Park site because they significantly understate how the distribution center affects CBPAs and Wegmans' obligations under the Bay Act. Unless and until it receives a complete depiction of all CBPAs located on the entire Air Park Site, the Board cannot adequately review the development's implications for water quality and cannot approve Wegmans' VWP permit.

2. Wegmans overlooks potential RPA near Wetland 13.

The Board cannot assess the proposed development because Wegmans has not thoroughly analyzed whether Wetland 13 might constitute an RPA. Under the Bay Act, RPAs include "nontidal wetlands connected by surface flow and contiguous to...water bodies with perennial flow."⁴⁸ The Timmons Group concluded that Wetland 13 is not an RPA because it is not contiguous to Totopotomoy Creek, a water body with perennial flow located southwest of the site.⁴⁹ Timmons asserts that contiguity with the creek is missing because Wetland 13 first drains into an ephemeral channel that is not surrounded by wetlands.⁵⁰ The assertion overlooks the likelihood that drought conditions may have altered the channel's ephemeral or perennial designation, and neglected to include wetlands delineation data on lands adjacent to the channel. Thus, Timmons cannot reasonably conclude that Wetland 13 is not contiguous to Totopotomoy Creek and therefore not RPA. Before the Board can independently assess the development under the Bay Act, Wetland 13 needs to be investigated. Furthermore, Wegmans' failure to comply with state and local requirements means that the Section 401 Certification process under the Clean Water Act likewise has not been met.

C. The proposed development will contribute to significant impairments of state waters and fish and wildlife resources.

The Board cannot issue the VWP permit application because the development center will contradict the Commonwealth's conservation priorities and degrade valuable waters and resources. VWPP permits are issued only if the proposed activity, together with other wetland impacts, will not "cause or contribute to a significant impairment of state waters or fish and wildlife resources."⁵¹ The distribution center will not meet this threshold. Instead, it will achieve the complete opposite: destroy resources the state has prioritized for conservation initiatives. In 2018, Governor Northam established a new land-conservation strategy that protects the most important environments through a data-driven tool, ConserveVirginia.⁵² Under ConserveVirginia, the project will fragment ecological cores of general and moderate integrity, which the Virginia Department of Conservation and Recreation ("DCR") believes will not only reduce biodiversity and habitat quality, but also impair water quality through diminished erosion prevention.⁵³ Furthermore, the project will eradicate lands that DCR has linked directly to preserving water quality and watershed integrity, including areas designated as the second highest class for conservation priority.⁵⁴

⁴⁶ B. Rayfield (DEQ) Letter to P. Osterloh (Timmons Group) re Federal Consistency Certification: Project Tiger in Hanover County (DEQ 19-141F), dated Feb. 5, 2020; 9 Va. Admin. Code § 25-830-70

⁴⁷ 9 Va. Admin. Code § 25-830-130; 19-2036 DRAFT Permit

⁴⁸ 9 Va. Admin. Code § 25-830-80(B)(2); Hanover County Code of Ordinances, Chapter 10, Art. II, Division 1, § 10-35.

⁴⁹ P. Osterloh (Timmons Group) email to H. Mackey (DEQ) re Project Tiger at Hanover Air Park - DEQ #19-141F, dated Dec. 23, 2019.

⁵⁰ *Id.*

⁵¹ Va. Code Ann. § 62.1-44.15:21(A).

⁵² ConserveVirginia 2020 Update, Office of the Governor

⁵³ R. Rhur (DCR) letter to J. Wellman (DEQ) re DEQ 19-141F, Project Tiger at Air Park, dated Dec. 18, 2019.

⁵⁴ APPENDIX A: ConserveVirginia Maps of Air Park Site, collected Jul. 2, 2020

Regardless of any mitigation and compensatory measures, the proposed development will irrevocably damage land the Commonwealth has designated to protect for its environmental benefits. Because the project will contribute to the significant impairment of state waters, the State should not provide Section 401 certification. Without such, the Corps cannot approve the permit application.

D. The proposed project raises environmental justice issues that DEQ has not adequately addressed.

The Air Park site is situated on land in the heart of the Brown Grove community, whose residents have suffered significant displacement by decades of industrial encroachment including Interstate-95, Hanover County Airport, a landfill, and a concrete plant.⁵⁵ The proposed development would contribute to the pollution, noise and traffic generated by these other industrial sources and accelerate Brown Grove's destruction. The U.S. Environmental Protection Agency ("EPA") warned the Corps that the Application had not adequately assessed the environmental justice impacts of the project as required under Federal Executive Order 12898.⁵⁶

The development would likely destroy unmarked graves and historic sites significant to Brown Grove. Oral histories identify slave graves on the property, as well as the segregation era Brown Grove School.⁵⁷ While D+A reported they did not find any unmarked graves, they acknowledge that their survey was limited in scope and that the shovel test pit technique not typically used to locate graves. D+A searched for graves only in the high probability sections identified through a pedestrian survey for surface evidence.⁵⁸ In contrast, a 1992 study of Hanover County historic resources discovered fifteen African-American cemeteries where the study team relied on local oral traditions and the presence of known vegetation types such as periwinkle, a groundcover long associated with burial sites even though they lacked grave markers.⁵⁹

A recent Fourth-Circuit case, *Friends of Buckingham v. State Air Pollution Control Board* ("Union Hill") highlights that DEQ and permit-related boards must assess whether proposed activities might cause disproportionate harm to underrepresented communities.⁶⁰ In *Union Hill*, the Court held that the Virginia Air Pollution Control Board failed its statutory duty to determine how a new compressor station would injure the health of Union Hill, a historic African-American community situated near the station because it did not make findings on community demographics and rejected concerns about disparate impacts because the activity met air quality standards.⁷¹ Much like the Air Pollution Control Board, the State Water Control Board has the opportunity and statutory obligation to protect communities from environmental harms and cannot rely solely on satisfying the minimum standards.⁷² In light of these mandates, DEQ and the Board must independently assess how the proposed development will impact the Brown Grove community.⁶¹

Both DEQ and the Corps have requested additional information from Wegmans about how they have addressed environmental justice issues. The Corps specifically requested that they "...provide responses to the comments and re-evaluate the offsite alternatives with a focus on Environmental Justice."⁶² Wegmans did not include any information in the alternatives analysis about environmental justice. Wegmans responded that their efforts to address environmental justice and engage Brown Grove have been limited to the following: (1) they held a meeting with five (5) Brown Grove community

⁵⁵ Wegmans proposal stirs up land use controversy in VA, Bay Journal, July 14, 2020

⁵⁶ APPENDIX F: M. Fitzgerald (EPA) email to E. Holley (USACE) re EPA comments for Wegmans' distribution center (NAO-2012-2369), May 1, 2020

⁵⁷ Wegmans proposal stirs up land use controversy in VA, Bay Journal, July 14, 2020

⁵⁸ Phase I Cultural Resource Survey of [Project Tiger], prepared by Dutton + Associates, LLC and dated Dec. 2019, pg. 2-2

⁵⁹ Survey of Historic Resources in Hanover County, Virginia, Phases I and II by Land and Community Associates and dated 1992, pg. 106

⁶⁰ Opinion, Friends of Buckingham v. State Air Pollution Control Board, written by Judge Thacker and joined by Chief Judge Gregory and Judge Wynn, decided Jan. 7, 2020

⁶¹ *Id.*

⁶² APPENDIX S: Letter from Corps to Wegmans Requesting Additional Information

members, only one of which was an actual community resident, in February 2020 and (2) they conducted a rudimentary EJ analysis using the Environmental Protection Agency's (EPA) EJ SCREEN tool. This falls short of both the Corps' and DEQ's specific requests that the applicant needed to address environmental justice as a whole and within the alternatives analysis. Furthermore, the "*Friends of Buckingham*" case clarifies that the EJ SCREEN tool does not accurately reflect communities like Brown Grove and that the tool should not be used to identify an area as an "EJ community."

While the Corps held a meeting at the Brown Grove Baptist Church on October 19, 2020 to receive feedback on possible grave locations, participants were not allowed to go on site. Site access rather than relying solely on a map would have made it much more likely that reliable information would have been collected. Participants felt that the meeting was mere tokenism designed to limit the ability to gather useful information to locate graves without providing any real meaningful opportunity to protect these resources.

The Corps prematurely determined that no Environmental Impact Statement ("EIS") was necessary under the National Environmental Policy Act, indicating without further explanation that the agency believes this project poses no significant environmental impact. However, DEQ's records show that this permit, if approved, will be both the largest destruction of wetlands outside of the Hampton Roads area and the second largest destruction of non-tidal wetlands in Virginia over the last five years. In consideration of the extensive community concern, ongoing and uncorrected critical flaws in the delineation, unaddressed environmental justice failures, and sheer volume of wetlands to be destroyed, this project will significantly affect the quality of the human environment, and therefore must be classified as a major federal action under the Act. Permitting action should not progress unless and until an appropriate and comprehensive EIS is performed.

DEQ held a meeting with a handful of Brown Grove and other community members on June 17, 2020 where they reviewed a PowerPoint presentation and allowed participants to state their concerns about the project. However, DEQ failed to explain how their concerns would be addressed and has had little to no contact with the Brown Grove community since. Note, Brown Grove Church and its leadership does not represent the entirety of the Brown Grove community.

DEQ and the Board cannot disregard the disparate impact permit issuance will cause the Brown Grove community. In addition to federal requirements, the Commonwealth recently enacted environmental justice as a focal point of the Governor Northam's administration, leading to statutory implementation of requirements that the Commonwealth work to promote environmental justice and ensure it is carried out.⁶³ DEQ Director David Paylor acknowledged the agency's shortcomings in this regard, stating that "[i]t's clear that we haven't done as good of a job as we should have done with communicating and connecting with the public, and that's not OK," and that DEQ "...need[s] to learn how to listen better and how to include and connect with folks better." Paylor further admitted that DEQ cannot wait until there is enough funding to improve their track record on environmental justice.⁶⁴ This is an ideal opportunity get started.

Both the Corps and DEQ should independently assess how the proposed development will impact the Brown Grove community. The National Environmental Policy Act ("NEPA") has a defined process for addressing environmental justice considerations that both the Corps and DEQ can utilize. By doing so, both agencies can adequately address the federal and state requirements each must consider environmental justice as part of the proposed permit actions. Furthermore, the NEPA process would allow DEQ to correct the critical flaws in the Coastal Zone Management Area ("CZMA") Federal Consistency Certification simultaneously. Until the environmental justice concerns in this permit application are properly addressed, DEQ and the Board should either deny the permit.

⁶³ APPENDIX G: Relevant Virginia Statutes on Environmental Justice, Effective as of July 2020

⁶⁴ https://www.bayjournal.com/news/policy/virginia-to-hire-its-first-environmental-justice-director-despite-budget-constraints/article_8d37be9c-33fb-11eb-af6c-9b61a94a28bc.html Accessed December 3, 2020.

IV. PROCEDURAL CONCERNS

A. DEQ oversight has been inadequate, requiring the public to investigate and identify the critical flaws in the application.

Wegmans original application was submitted (under another name) in December 2020. As the result of community concerns, it has been amended over and over. While we applaud DEQ for following up on the “mosaics” issue, DEQ has been remarkably accepting of information from Wegmans. There has been no independent review of these proffered facts, and many are clearly designed to mislead both regulators and the community.

In totality, these mistakes and/or fabrications have required the community to review and challenge almost every aspect of this permit application. Had DEQ consistently demonstrated the appropriate level of professional skepticism, the application would likely have been more appropriate. The community anticipates additional revisions to the application after the second comment period has expired. While we acknowledge our ability to speak before the State Water Control Board, many of these issues should have been corrected much earlier in the process.

B. Wegmans fails to overcome the required presumption that there are practicable alternatives to the Air Park site

DEQ must reach its conclusions under the direction of the Clean Water Act, as interpreted by the Environmental Protection Agency. EPA guidelines presume a practicable alternative is available for special aquatic sites⁶⁵ if the proposed project is not a water-dependent activity, such as for a dock or a marina. The regulation is abundantly clear:

Where the activity associated with a discharge which is proposed for a special aquatic site ... does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not “water dependent”), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.⁶⁶

Wegmans makes no attempt to refute this presumption. Since the Air Park site has practicable alternatives, a permit cannot be issued.

Wegmans failed to correctly identify the Least Environmentally Damaging Practicable Alternative (“LEDPA”)

In addition to their failure to refute the presumption of practicable alternatives, Wegmans has not fulfilled their 404(b)(1) alternatives analysis obligations by incorrectly concluding less environmentally damaging sites were not practicable due to inclusion of misleading, inaccurate information in their analysis. DEQ has an obligation to ensure that the alternatives analysis is fair, balanced and objective. The analysis may not be used to provide a rationalization for the applicant’s preferred result. However, the alternatives analysis provided by Wegmans attempts to do exactly that by claiming that no practicable alternatives exist despite clear evidence to the contrary. Wegmans’ analysis is not scientifically or legally

⁶⁵ 40 CFR § 230.3(m) Special Aquatic Sites “are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.”

⁶⁶ 40 CFR § 230.10(a)(3)

supportable. They work backwards from a conclusion to justify a preferred result. This is contrary to the scientific method and procedures to identify the LEDPA.

EPA guidelines do not allow a particular alternative to be selected because Wegmans would find it a more desirable project. The test is to “determine the feasibility of the least environmentally damaging alternatives that serve the basic project purpose.” It “is not whether a proposed project is ‘better’ than an alternative with less wetlands impact because it would cost less.” The test is whether the alternative with less wetlands impact is “impracticable,” and the burden [to demonstrate that other alternatives are impracticable] is on [Wegmans.]”⁶⁷

DEQ in its internal analysis, notes that Archie Cannon is “BEST choice for project based on wetland impacts and access.” The word “best” is capitalized for emphasis.⁶⁸

Wegmans’ analysis does not find that either of the two less damaging alternatives, Archie Cannon or Graymont are impractical. Archie Cannon was only abandoned as an alternative when another use was proposed. Wegmans executed a letter of intent on the Graymont site. These activities show that these two sites are indeed practicable, and thus a permit for the Air Park site cannot be allowed.

LEDPA analysis requires that the applicant follow a four-step process, where an alternative is eliminated for any step that it fails. The applicant must (a) define the project purpose, (b) identify available alternative sites that meet the project purpose, (c) evaluate the alternatives that meet the project purpose to determine which are least environmentally damaging, and (d) evaluate the alternatives considering existing technology, logistics, and cost.

The project purpose is defined as “[p]rovide a site that will serve as a secure regional grocery distribution center that will (a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region.”

Wegmans identified the following five available sites which they concluded can serve this purpose and listed the project impacts to surface waters of those sites as follows:

Flippo	15 acres of wetlands
Blenheim	16.4 acres of wetlands and 2,366 linear feet of stream
Archie Cannon	0.5 acres of wetlands and 1,953 linear feet of stream
Graymont	1.1 acres of Wetlands and 689 linear feet of stream
Air Park	14.82 acres of wetlands

From this list, the Air Park site ranks third out of five (5) in largest wetland impact. However, there is reason to question their claim. For example, Wegmans asserts that there will be no stream impact on Air Park, but the Hanover County CBPA mapping shows RPA extending onto the site that would be impacted by the proposed layout,⁶⁹ and there is further

⁶⁷ *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1187 (10th Cir. 2002), as modified on reh’g, 319 F.3d 1207 (10th Cir. 2003).

⁶⁸ Work of Henicheck, Michelle, Senior Wetlands Ecologist, DEQ September 24, 2020

⁶⁹ APPENDIX I: CBPA Maps

evidence of a defined stream channel running through the property.⁷⁰ RPAs are so prevalent that the Hanover County Sheriff's Office was recently called to deal with an injured river otter on the Southeast side of the Air Park site.

Moreover, the amount of wetland impact on Air Park is in dispute. Protect Hanover believes that the impact exceeds the 14.82 acres Wegmans acknowledges. There are almost certainly additional impacts in excess of 14.82 acres due to the inexplicable deletion and reduction of wetland areas from the RK&K delineation and the false claim that wetland areas adjacent to the project areas would not be destroyed due to the redirection of the water flow that maintains wetland hydrology. This redirection of the flow of water is shown on the pre and post development drainage divide civil plan sheets.⁷¹

Wegmans proposes to monitor some of these areas post-development and purchase mitigation after the fact if these wetlands become impaired. The evidence shows that these wetland areas will be destroyed by the proposed development and the proposal to monitor and purchase mitigation after the fact is a deliberate and deceptive attempt to exclude these secondary impacts from the LEDPA analysis. With the imminent secondary impacts and wrongfully excluded wetland acreage included, at least 19-20 acres of wetlands will be destroyed on Air Park, making the preferred site the most environmentally damaging alternative.

Wegmans' alternatives analysis contains more fiction than facts. For the sake of brevity, we will point out only some of the problems with a single alternative site.

Archie Cannon Alternative Site Analysis

1. Wegmans provided misleading information regarding surface water impact on Archie Cannon.

Timmons, who prepared Wegmans' permit application, also previously filed a JPA on Archie Cannon for Scannell for a distribution and warehousing center totaling 2.75 million square feet of building and 204.23 total disturbed acres.⁷² The delineated impacts from this 2.75 million square foot project were 0.82 acres of wetlands and 140 linear feet of stream.⁷³

Considering that Wegmans can develop Air Park for at most 1.7 million square feet by proffered agreement, the site could easily be adjusted to remove the impacts to wetland 2 and 3 and stream impacts 1 and 7, thus providing equivalent or greater usable space than Air Park while impacting 0.39 acres of wetlands and 0 linear feet of stream. Wegmans calculated impacts using a layout not properly optimized to avoid impacts to surface waters, making it appear to be a less reasonable alternative. However, if the layout was configured to minimize environmental damage, this site is the least environmentally damaging alternative that can meet the project purpose.

2. Archie Cannon is still LEDPA after an evaluation of the existing technology, logistics, and cost

⁷⁰ APPENDIX K: 1980 Soil Survey

⁷¹ APPENDIX L: Wegmans Distribution Center Civil Plan sheets: Drainage Divides and Grading Plan Excerpt

⁷² APPENDIX M: JPA Application for Scannell Development on Archie Cannon Excerpt – Prepared by Timmons

⁷³ *Id.*

Existing Technology – Wegmans identified no technological challenges associated with the construction of a distribution center on the Archie Cannon site. It therefore can be concluded that Archie Cannon can accomplish the project purpose with existing technology.

Logistics – Wegmans identifies the following logistical challenges:

a. The site would require tractor trailers to be routed through the Town of Ashland which creates significant congestion and public safety concerns. The next closest interchange is 6 miles to the north (I-95/Route 30). However, the potential exists for increased congestion and reduced traffic safety when accessing the interstate from that location, as it is the primary interchange for Kings Dominion theme park.

While we agree that the standard route to access I-95 would be through the Town of Ashland to access I-95 at the England Street, it is simply not true that this route would encounter more traffic than the route from Air Park to access I-95 at the Sliding Hill interchange. The latest available VDOT Annual Average Traffic Report from 2019⁷⁴ show the traffic encountered for the sites are as follows:

<p>Archie Cannon</p>	<ul style="list-style-type: none"> - South from the site on US 1 to England Street (US 54) would encounter annual average daily traffic (“AADT”) of 16,000. - On England Street from US 1 to I-95 interchange encounters AADT of 25,000.
<p>Air Park</p>	<ul style="list-style-type: none"> - The route from the Air Park site would encounter on Sliding Hill road from New Ashcake road to Atlee Station road AADT of 16,000. - From Atlee Station Rd. to the I-95 interchange encounters AADT of 31,000.

Wegmans neglected to note that this analysis shows that the most practical route to access I-95 from the Archie Cannon Site will encounter less average traffic, less peak traffic, and is a longer total distance to I-95 than the most practical route from the Air Park site. The route from the Air Park site to I-95 must also use the intersection of Sliding Hill and Atlee Station Roads, VDOT has given this intersection an F rating denoting the lowest service level possible. The Archie Cannon site presents superior logistics than the Air Park site regarding traffic and congestion.

John M. Gandy Elementary School is adjacent to the site, just to the south of Archie Cannon Drive. Wegmans contends that this location would effectively require distribution center trucks to share the same roads with school traffic (buses and personal vehicles daily), creating further public safety risks. However, Wegmans chose to design a project layout for the Archie Cannon site that does not make use of Archie Cannon Drive which has direct access to Washington Highway/U.S. Route 1 and would allow Wegmans to avoid routing trucks through any neighborhood.⁷⁵

Additionally, Wegmans omits that the route from Air Park will pass four large daycare facilities that generate school bus traffic and pick up and drop off of young children, as well as numerous large subdivisions with children who often travel between neighborhoods on foot, and the US Bicycle Route 76 on Sliding Hill and Ashcake Roads, which is heavily used by cyclists daily.

A Protect Hanover member and mother of a young child asked Wegmans’ representative Dan Aken directly if their operations would pose a danger to school buses and children along Sliding Hill. He claimed that Wegmans hires professional and skilled drivers and that distribution center traffic would pose no greater threat than any other vehicle on the road.

⁷⁴ APPENDIX N: VDOT Annual Average Daily Traffic Excerpt

⁷⁵ Wegmans Plan, Titled Concept 12, July 9, 2019

Protect Hanover believes that all members of our community deserve to have protection and consideration regarding our safety. It's patently offensive to claim that the children in Ashland deserve to be protected from their business operations, but ours do not.

The route from Sliding Hill to I-95 has more traffic, which means there is a statistically greater number of children, motorists and cyclists placed in harm's way at the Air Park site than Archie Cannon.

b. Wegmans falsely asserts that Archie Cannon does not allow for future expansion compared to the preferred alternative. The Scannell and Wegmans' own concept plans demonstrate that this site can accommodate an expansion larger than the Air Park site.

c. Wegmans claims that the Town of Ashland will no longer allow the site to be used as a distribution center, and that it would not be practicable to attempt to re-zone the property due to the applicant's timeline. Rezoning efforts would be both timely and costly to the applicant with no guarantees that the rezoning could be accomplished, making the Air Park site a much more appealing location as it is already properly zoned. Additionally, the recent zoning ordinance changes by the town of Ashland make the proposed distribution center use incompatible with the current zoning designation with no likelihood of changing.

Alternatives analysis requires that sites be evaluated as they existed at time of market entry. Neither the current zoning nor the applicant's preferred timeline are acceptable criteria for determination of LEDPA. However, the following analysis is included for the sake of argument:

At the time of market entry, both the Archie Cannon and Air Park site had equivalent zoning. Wegmans has shown through their efforts to rezone the Air Park site that they are willing to accept the time necessary to rezone a property for this project. Wegmans applied to rezone the Air Park site on 11/25/19 and received zoning approval from Hanover County on 5/6/20. The rezoning process took 163 days to complete (5.4 months), which included delays due to COVID restrictions on public hearings. Without the public health emergency, the Air Park rezoning would have likely taken only 4 months.

Wegmans introduced the idea that rezoning Archie Cannon would cause an unreasonable delay in a response to DEQ questions on 9/22/20.⁷⁶ Had the rezoning application of the least environmentally damaging site been filed on that date, the rezoning process likely would have been completed by 3/5/21, accounting for the same 6-week delay in process due to COVID. The earliest the Virginia State Water Control Board would be scheduled to vote on the issuance of a VWP permit to be able to start construction on the Air Park site would be at their 2021 March meeting.⁷⁷ The timeline to rezone the Archie Cannon site represents an equivalent delay to the pursuit of a Virginia VWP permit at Air Park.

Any additional permits or site plan review for Archie Cannon could run concurrently with the rezoning. Archie Cannon would qualify for a general permit instead of an individual permit, and already has a valid PJD. Archie Cannon could receive environmental permitting quickly. It is likely that any of the additional processes or permitting for Archie Cannon if initiated on 9/28/20 could be accomplished in an equivalent amount of time as the earliest possible issuance of the necessary permits for Air Park.

Equal or greater concerns about the success of the rezoning of Archie Cannon were expressed regarding the successful issuance of the permits to impact and fill wetlands on the Air Park site. In an e-mail to the Corps, which was circulated to the Governor's Chief of Staff, as well as the Secretaries of Natural Resources and Commerce and Trade, and the Director

⁷⁶ APPENDIX T: Wegmans Response to Additional Information Request 9/22/20

⁷⁷ "Revised wetlands request open for comment - again" - Mechanicsville Local - Dated Nov 3, 2020

of DEQ, Air Park owner James W. Theobald, writes, “I fear that a State Water Control Board ruling required for the development will not be issued, or at the very least be significantly delayed, as a result of recent actions of the Corps.” He goes on to say that “Wegmans and the owners have been through an extraordinary regulatory burden, with diminishing confidence of a successful outcome.”

Wegmans cannot use their flawed decision to select a site that is not LEDPA to then assert that a site is LEDPA. Wegmans decision was based in part on flawed wetlands science and an improper delineation by the Corps.

d. The LEDPA determination requires the least environmentally damaging layout on a site that can fulfill the project purpose. LEDPA does not allow a specific preferred layout when that layout is more environmentally damaging than an alternative less environmentally damaging layout that can fulfill the project purpose. Nevertheless, Wegmans insists that an L-shaped campus is needed to allow for maximized efficiency in day to day operations, which in the long term will provide an increased profit margin, while also reducing required building footprints by eliminating the need for redundant spaces.

Despite Wegmans’ claims, an “L” shape is not required for the efficient implementation of cross docking and flow through operation, but rather, is provided as a deliberate attempt to manipulate the alternatives analysis as a rationalization for the applicant’s preferred result (i.e., that no practicable alternatives exist) by claiming that the former best layout for Air Park is the only possible layout on any alternative site. This creates a false narrative that alternatives are not logistically practicable or are more environmentally damaging based on what works best on Air Park.

Not only is the “L” shape not required, the shape has been proven to be less efficient of a cross docking and flow through operation than alternative layouts. In a study published entitled “The Best Shape for a Crossdock” in *Transportation Science*, the foremost scientific journal in transportation analysis, John J. Bartholdi, III and Kevin R. Gue prove this point.⁷⁸

The study concluded that:

- Most crossdocks are long, narrow rectangles (I-shape).
- When the I-shape is not used, the primary reason is to accommodate lot restrictions. L shaped docks are considered particularly wasteful because the inside corners are near the center of the dock rendering centrally located door positions unusable.
- The I-shape is ideal because short across-the-dock travel is important. Crossdocking operations are labor intensive, and most of the variable cost of labor is devoted to travel between doors. Accordingly, smaller crossdocks are I-shaped because this design offers the chance to move freight directly across the dock from receiving door to shipping door.

The Air Park layout chosen by Wegmans is referred to as an “L” shape by Wegmans but from a crossdocking design point of view it operates as 2 distinct I-shaped crossdocks oriented at a right angle to each other and narrowly connected at the end. An “L” shape in respect to crossdock design nomenclature denotes a crossdock that is full width for the entire shape of the L and has products traveling from one leg of the L to the others as one continuous crossdocking operation. The Wegmans site would not have product transferred back and forth between the legs of the L since one leg would be refrigerated cold storage designed for the shipment of perishable items and the other would be dry goods which do not require refrigeration. The products stored in each building are differentiated in their storage requirements refrigerated and non-refrigerated but also differentiated by the trucks that haul these items. Van type trailers would haul items from the dry grocery section and refrigerated trailers would haul the perishable items from the refrigerated section. Due to the

⁷⁸ APPENDIX Q: The Best Shape for a Crossdock – Published in Transportation Science

distinctly different storage and hauling requirements of each section there would be practically no overlap causing the need to transfer product between each section. Based on lack of product transfer between refrigerated and non-refrigerated sections, the Air Park layout is not in fact an “L” shape cross dock but instead is two distinct I-shaped cross docks oriented 90 degrees to each other. The number of doors Wegmans plans in each of these distinct crossdocks (less than 150) fits well with the peak efficiency range of the I-shape.⁷⁹

Why would Wegmans configure two distinct I-shaped crossdocks in an L configuration? After all, the L shape was found to be particularly wasteful because the inside corners are near the center of the dock and thus the most centrally located door positions are rendered unusable. The obvious answer is that they did this based on lot restrictions to avoid wetlands as depicted on the previous PJD. This carryover design compromise has been complicated by Wegmans’ decision to proffer substantial conformity with a concept plan mandating the L shaped layout for the Air Park site. The conceptual plan is likely the primary reason that Wegmans refused to rework the site layout despite the Corps’ request to do so or to look for another site in the alternative.⁸⁰ Changes to the conceptual plan would require additional modification through Hanover County. Considering the significant increase and location of wetlands onsite, this configuration is not the onsite LEDPA. Wegmans’ refusal to modify its plan results in impermissible and unnecessary increase in impacted wetlands, forcing the environment and the public to pay the price if the application is approved.

In contrast, the least environmentally damaging site, the Archie Cannon site is best optimized from an environmental damage perspective by a layout utilizing the I-shape configuration. This is shown in the Scannell layout impact map.⁸¹ This would allow the Archie Cannon site to utilize the most common and most efficient crossdock design.

Wegmans insists that the generally inferior L-shaped layout be applied to all sites because they are attempting to manipulate the alternatives analysis process to rationalize their desired outcome. By insisting that the L shape on the Air Park site be applied to all alternative sites improperly prevents alternative sites from being configured to minimize the environmental impact and optimize the operational efficiency of each site.

While crossdocking and flow through can be accomplished through a variety of building configurations, the I shape is the most common and most efficient. Wegmans’ L-shape is less efficient from an operational standpoint and only serves to manipulate the alternatives analysis findings. The least environmentally damaging site Archie Cannon is optimized for minimization of environmental damage with the most efficient crossdock shape while the more environmentally damaging Air Park site chose to utilize the less efficient L-shape due to site constraints and proffered substantial conformity to a concept plan developed to avoid wetlands under the former invalidated PJD.

Cost

The alternatives analysis is required to evaluate and eliminate alternatives based on cost. Where an alternative is “unreasonably expensive to the applicant,” the alternative is not practicable. Wegmans wrongfully asserts that this language allows them to eliminate unreasonable alternatives due to cost that they as the applicant determine to be unreasonable. The correct interpretation is that a site may not constitute an unreasonable expense to the applicant as determined by the regulatory agency when taking into consideration costs normally associated with similar developments.

Wegmans lists the following costs associated with the development of the least environmentally damaging, Archie Cannon site.

⁷⁹ *Id.*

⁸⁰ APPENDIX S: Letter from Corps to Wegmans Requesting Additional Information

⁸¹ APPENDIX M: JPA Application for Scannell Development on Archie Cannon Excerpt – Prepared by Timmons

Mitigation Cost	\$620,900.00
Assessed Value	\$9,326,600.00
Extension of Hill Carter Parkway	\$10,900,000.00
Signalization of Archie Cannon Dr/Rt	\$500,000.00
Sanitary Sewer Relocation	\$750,000.00
Lost cost savings for rezoning	\$5,850,000.00
Total	\$27,947,500.00

Wegmans lists the following costs associated with the development of the more environmentally damaging Air Park Site

Mitigation Cost	\$1,029,350.00
Assessed Value	\$4,406,000.00
Sliding Hill Rd. Improvements (curve softening)	\$500,000.00
New Turn and Acceleration Lane Sliding Hill Road	\$290,000.00
Total	\$6,225,350.00

It should be noted that the Air Park site requires the construction of the Brown Grove Trunk Sewer at a cost of \$1,500,000.00 which is covered by a transferrable Hanover County utility incentive.

Since an alternatives analysis is only concerned with costs that would constitute an unreasonable cost to the applicant, the government assessed fair market value of the property should not be included in this calculation. The land upon purchase becomes a tangible asset for Wegmans. Historically land has appreciated in value over time. Land obtained at fair market value is not considered to be an unreasonable cost. If land costs are included, the costs of Archie Cannon are overstated. Wegmans proposed leaving a 52 acre piece of the Archie Cannon site available for mixed use development. It is unclear whether Wegmans intended to purchase this parcel and develop it, or have it separated from the Archie Cannon site. Either way, the inclusion of the cost of these 52 acres, which, based on the average cost per acre supplied by Wegmans would be in excess of \$2 million, is intentionally misleading. Since that land would not be need to fulfill the proposed project's purpose, inclusion of the cost is inappropriate.⁸²

Based on the limited information available to Protect Hanover, it appears that Wegmans has deliberately added inaccurate cost to the Archie Cannon site to attempt to provide a rationalization for the applicant's preferred result (i.e., that no practicable alternatives exist).

⁸² Wegmans Plan, Titled Concept 12, July 9, 2019 / Emails between Dan Aken of Wegmans and Nora Amos of the Town of Ashland, July 12, 2009

Cost analysis for Archie Cannon

Mitigation Cost: Wegmans shows a mitigation cost for Archie Cannon of \$620,900.00 from the mitigation of 0.5 acres of wetlands and 1,953 lf of stream. However, as stated above, this mitigation cost is determined from a site layout that is not properly optimized for efficiency and minimization of environmental impact on the Archie Cannon property. The mitigation cost for the exact Scannell layout would be \$96,000 (1.48 wetland credits, 143 stream credits). The mitigation cost for a reduced footprint 1.7 million square ft. version of the Scannell layout would be \$27,300 (0.78 wetland credits, 0 stream credits)

Adjusted required cost associated with mitigation - \$27,300

Extension of Hill Carter Parkway - \$10,900,000.00:

Wegmans claims that the Town of Ashland requires the extension of Hill Carter Parkway for the development of the Archie Cannon Site. Obtained through a FOIA request, the Town of Ashland Director of Planning and Community Development stated that “[a]t no point was this (Hill Carter Extension) a “requirement”, but it was a need and the prospects agree to work with us to get it done using state funds and administration” She goes on to state that the actual estimated cost to construct the extension would be “\$5-6 million, not \$10 million” and that at the time of discussion of the road extension VDOT and VEDP believed that they would be able to “leverage approximately \$5 million in TPOF funds to construct the roadway as a state economic development incentive.”⁸³

Based on this information, we know that not only was the Hill Carter Extension not required, it also would not cost nearly as much as Wegmans claimed. The difference is approximately \$5-6 million less and would at most cost \$1,000,000 after the application of state funds, should Wegmans voluntarily offer this improvement.

Adjusted required cost associated with Hill Carter Parkway Extension - \$0.00

Signalization of Archie Cannon - \$500,000.00: - This is a reasonable cost to mitigate local traffic impacts associated with the construction on the Archie Cannon Site. No adjustment has been made.

Sanitary Sewer Relocation - \$750,000.00

This cost is a reasonable and necessary cost associated with the development of the Archie Cannon Site. However, this cost would not be paid by Wegmans. The executed performance agreement between Hanover County and Wegmans provides \$1,500,000.00 for “Regional Utility Improvements” defined as improvements necessary to provide sewer service to properties in the vicinity of, and including, the property on which the facility is located, in accordance with the public utility plan within the Hanover County Comprehensive Plan. This incentive is not specific to the Air Park site and is applicable to any site in Hanover that Wegmans would build on.

Wegmans adjusted cost for Sanitary Sewer Relocation after county incentive - \$0.00

Lost cost savings for rezoning - \$5,850,000.00

As detailed above, the time it would take to rezone the Archie Cannon Site is comparable to the time needed to potentially get issuance of Virginia VWP permits for Air Park. It is not reasonable to include it in a cost analysis because LEDPA is

⁸³ APPENDIX R: Correspondence from the Town of Ashland Concerning Hill Carter Parkway Extension

analyzed as of the date of market entry, at which point the site was properly zoned. This does not constitute an increased cost over the development of the Air Park site.

Adjusted rezoning delay cost. \$0.00

Total adjusted required cost for construction on Archie Cannon	\$527,300.00
Total adjusted required cost for construction on Air Park	\$1,819,350.00

delay cost compared to Air Park

Wegmans included inflated and unnecessary costs associated with the development of the Archie Cannon site in a blatant attempt to rationalize the applicant’s preferred result (i.e., that no practicable alternatives exist). The actual cost to build on Archie Cannon, which is the least environmentally destructive site as determined by DEQ internal analysis⁸⁴, is also less costly than Air Park, and will impact at least 38 times less wetland acreage than Air Park.

3. 404(b)(1) alternatives analysis and LEDPA determination conclusion.

The evidence strongly suggests that Wegmans attempted to manipulate the alternatives analysis process to rationalize their preferred result (i.e., that no practicable alternatives exist) through the omission of facts, not optimizing onsite layouts for alternative sites in regard to efficiency and environmental impact, inflating costs associated with development of less environmentally impactful alternatives, and a biased portrayal of logistical concerns meant to make less damaging alternative sites appear logistically challenged.

Wegmans voluntarily offered the costs attributed to Archie Cannon site development. In email correspondence, Dan Aken advised the Town of Ashland that they were “putting forward this proposed approach, which we hope will address the Town’s concerns while allowing us to move forward with our project.” Aken later told Timmons that this email “spell[ed]out what we were prepared to do and some of the associated costs.” Thus, Wegmans confirmed that the Archie Cannon site is practicable and does not constitute an unreasonable cost due to their expressed willingness to provide these improvements.

A fair, balanced, and objective alternatives analysis and LEDPA determination would conclude that the Archie Cannon site is able to meet the projects purpose, is the least environmentally damaging alternative, and is practicable considering existing technology, logistics, and cost. The Archie Cannon Site is the equal or better of the Air Park site in every measurable metric the LEDPA determination considers.

Regulations governing permit issuance require that only LEDPA sites receive permits. There is overwhelming evidence that Air Park is not LEDPA, and thus a decision to issue a permit to fill wetlands on Air Park would be arbitrary, capricious, and contrary to law.

84 Work of Henicheck, Michelle, Senior Wetlands Ecologist, DEQ September 24, 2020

V. CONCLUSION

Despite partial revisions, the VWP Permit and accompanying Application have not met the minimum requirements prescribed by law. The project will be environmentally devastating and is not in the public interest. For these reasons, we urge DEQ and the Board to reject them.

The wetlands analysis remains deficient under the Corps' delineation manual and regional supplement. Data that demonstrates additional wetlands onsite has been inexplicably left out, and the application fails to give due consideration to how the drought conditions should have altered interpretation of site data. It is obvious that the VWP permit application is incomplete based on critical flaws in the alternative analysis and compensatory mitigation plan. DEQ should not issue a VWP permit based on a flawed PJD that undercounts onsite and offsite wetland impacts.

It is a distinct possibility that there are more deficiencies in the VWP permit application, but the Corps' abject failure to comply with FOIA makes it impossible for the public to know. While we commend DEQ for being responsive to most FOIA requests, we note the significant barrier this lack of transparency creates in providing the public with a meaningful opportunity to participate in this process. We reserve our right to submit additional comments as new information becomes available.

Even if the wetlands analysis is corrected, the proposed development will destroy lands the Commonwealth has identified for its conservation priorities, thereby circumventing the Governor's interests and impairing state waters and fish and wildlife resources. Moreover, the development will contribute to the long list of industrial projects that have shut out and splintered Brown Grove, whose history and culture are inextricably rooted in the land. DEQ and the Board are obligated to protect these places and people, regardless of any revisions to the wetlands analysis.

For the reasons explained herein, and in furtherance of public policy and regulatory procedure, we urge DEQ and the Board to deny the Wegmans' VWP permit application. Thank you.

Respectfully submitted,



Roderick A. Morgan
(roderickmorgan@yahoo.com)
On behalf of Protect Hanover

Protect Hanover Public Comment on Draft Virginia Water Protection Permit Number 19-2036 and Joint Permit Application 2012-02369 (Wegmans Distribution Center)

LIST OF APPENDICES

APPENDIX A	ConserveVirginia Maps of Air Park Site, collected Jul. 2, 2020
APPENDIX B	E. Holley (USACE) email to M. Mills (RK&K Engineers) re FW: Air Park Overall Wetland Delineation Map (UNCLASSIFIED), dated Oct. 17, 2019, and accompanying attachment
APPENDIX C	Wetland Determination Data Forms - Atlantic and Gulf Coastal Plain Region for All Sampling Points
APPENDIX D	Summary USACE Wetland Determination Data for All Sample Sites
APPENDIX E	E. Holley (USACE) email to D. Knepper (USACE) re Mosaic? (UNCLASSIFIED), dated Oct. 17, 2019
APPENDIX F	M. Fitzgerald (EPA) email to E. Holley (USACE) re EPA comments for Wegman's distribution center (NAO-2012-2369), May 1, 2020
APPENDIX G	Relevant Virginia Statutes on Environmental Justice, Effective as of July 2020
APPENDIX H	Email: Elaine Holley & Paul Davenport – Permission only to review “mosaic” areas
APPENDIX I	CBPA Maps
APPENDIX J	Norfolk District Jurisdictional Waters Determination Request Form
APPENDIX K	1980 Soil Survey
APPENDIX L	Wegmans Distribution Center Civil Plan sheets: Drainage Divides and Grading Plan Excerpt
APPENDIX M	JPA Application for Scannelle Development on Archie Cannon Excerpt – Prepared by Timmons
APPENDIX N	VDOT Annual Average Daily Traffic Excerpt
APPENDIX O	Wegmans Response to Additional Information Request 9/28/20
APPENDIX P	Jim Theobald Letter to Corps
APPENDIX Q	The Best Shape for a Crossdock – Published in Transportation Science
APPENDIX R	Correspondence from the Town of Ashland Concerning Hill Carter Parkway Extension
APPENDIX S	Letter from Corps to Wegmans Requesting Additional Information
APPENDIX T	Wegmans Response to Additional Information Request 9/22/20

APPENDIX U	Timmons email to DEQ providing information on Proposed improvements associated with Archie Cannon site.
APPENDIX V	Work of Henicheck, Michelle, Senior Wetlands Ecologist, DEQ September 24, 2020

SAMPLE FORM LETTER 1: OCTOBER 20, 2020 – DECEMBER 4, 2020 COMMENT PERIOD

Dear Virginia Department of Environmental Quality Piedmont Regional Office,

C'mon VA DEQ. Get it together.

Brown Grove is a predominantly African American community and has been routinely targeted by Hanover County to host facilities that have negative environmental impacts. The proposed 1.1 million square foot Wegmans distribution facility will be the 5th industrial business in the middle of a family neighborhood.

The residents of Brown Grove deserve to enjoy the same degree of protection from environmental health hazards and equal access to the decision making process. Your agency has a responsibility to ensure that every single person has a healthy environment in which to live, learn, and work.

Bringing Wegmans to this community furthers environmental racism and will impact the quality of life of those that live there. The majority of Brown Grove residents have well water and contaminated water can cause an abundance of health-related issues, particularly for young children. This facility will contribute to traffic safety, air pollution, and health concerns like asthma, cardiovascular issues, lung disease, and cancer.

Residents have also raised concerns about impacts from:

1. Constant, daily air pollution from heavy-duty trucks as Wegmans will generate an estimated 2,864 additional vehicle trips per day
2. All day 24-hour disruptive noise from the distribution center and truck traffic
3. Light pollution from 24-hour lights shining in the community
4. Destruction of wetlands causing more flooding on roads and resident property and potential impacts to drinking water
5. Disturbance of historic and sacred slave burial grounds

Your agency has a responsibility to ensure equity and environmental protections. One of the major concerns is that the Army Corps is not requiring an environmental impact study, and they are refusing to hold public hearing. Without an EIS or public hearing, community members and agencies making important decisions, charged with environmental protection will not know the full extent of these potential impacts. ?The majority of Brown Grove residents have well water and contaminated water can cause a number of health-related issues.? The Director of Virginia DEQ David Paylor and the State Water Control Board can urge the Army Corp to conduct a full EIS and hold a public hearing.??Pushing this project through without the full view of the impacts only benefits the interest of corporations, to the detriment of the surrounding communities and residents.

Please ensure that the Army Corp of Engineers conducts a full Environmental Impact Statement and provides a safe format for public hearings. Permits should not be approved without assurance that this the facility won't negatively impact on the environment, the community and quality of life.

SAMPLE FORM LETTER 2: OCTOBER 20, 2020 - DECEMBER 4, 2020 COMMENT PERIOD

There has been a lack of transparency and community engagement. USACE has not fulfilled its statutory responsibilities to make information available. USACE has made no attempt to resolve these issues informally as contemplated by 33 CFR Part 327, and I request that a formal Public Hearing be scheduled so that the community's views may be appropriately presented.

The wetlands delineation remains incomplete and inaccurate. Although USACE correctly eliminated the mosaics and now regards those areas as 100% wetlands, there was no attempt to address the other issues. The improper work conducted in Fall 2019 has been allowed to stand without sufficient scientific basis. This delineation was incorrectly performed in drought conditions, and areas identified as wetlands are still outside the official wetlands boundaries. The property owner refused permission to allow USACE and the Department of Environmental Quality ("DEQ") to review any wetlands other than what had previously been labeled mosaics. The history of mistakes at this site, along with the amount of wetlands to be destroyed, make this limited review unacceptable. A proper delineation in accordance with the USACE manual and regional supplement must be performed. USACE and DEQ have not appropriately considered secondary impacts to off-site wetlands. Many of the wetlands on the property have hydrological connections to wetlands on other properties that border the Air Park site.

The destruction of wetlands at Air Park will have a dramatic impact on these off-site wetlands. This destruction has not been considered in the permit application, or the mitigation plan. This failure is contrary to the no net loss principle of wetlands mitigation.

The Air Park site is not the Least Environmentally Damaging Practicable Alternative ("LEDPA"). Both DEQ and USACE must find that this site is the LEDPA *in order to issue permits*. It is not. USACE has not shared its analysis, but since this site qualifies as a special aquatic site, and the proposed project not water dependent, USACE must presume that practicable alternatives exist. Wegmans has not overcome this presumption. DEQ admits that other sites are less environmentally destructive, but finds that Air Park is the LEDPA based on cost. In its application, Wegmans provides inaccurate and improper costs to justify this permit. For example, Wegmans reports that the Town of Ashland would require Wegmans to finance a new road costing \$10 million to build at the Archie Cannon site. The Town of Ashland advises that it would not require this road. Wegmans further identifies "opportunity costs" related to any delays in building related to zoning etc. These costs are not allowed as a matter of law, and the alternatives analysis must be performed at time of "market entry." Wegmans cannot use their choice of a site that is not LEDPA to make a site LEDPA. In fact, alternative sites that were available at time of market entry must continue to be considered as alternatives, even if they are no longer available.

The site must be LEDPA both off-site and on-site. For the sake of argument, if one accepts this flawed LEDPA analyses, Wegmans must still demonstrate that the plans

for the proposed project make all practicable efforts to avoid and minimize impacts to wetlands. The main portion of the building that Wegmans proposes sits atop a large portion of wetlands that Wegmans makes no effort to avoid. This proposed project is not the on-site LEDPA.

Wegmans has not met its burden to promote environmental justice through meaningful involvement of the Brown Grove community as required by Va. Code § 2.2-235. Meaningful involvement means that “affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment.” Va. Code § 2.2-234. To the contrary, Wegmans has continued to limit opportunities for Brown Grove’s involvement, and minimized and devalued the oral history and memory of Brown Grove elders as to the existence of graves on site. DEQ asked Wegmans about their EJ outreach, and all Wegmans could report was that they conducted a meeting with five people on February 7, 2020 and followed that up with an email on February 14, 2020. USACE directed Wegmans to consider EJ as part of their LEDPA analysis but Wegmans did not. Instead, Wegmans asserts, through the use of the Environmental Protection Agency (EPA) EJSCREEN tool that there is no bona fide EJ community in the area. The use of EJSCREEN under these conditions is contrary to both EPA guidance and the sworn testimony of DEQ. (*See Friends of Buckingham v. State Air Pollution Control Board, 4th Cir. 2020.*) These activities are insufficient to meet Wegmans’ EJ responsibilities, and the denial of Brown Grove’s existence as an EJ community is ignorant, offensive and contrary to law.

USACE prematurely determined that no Environmental Impact Statement (“EIS”) was necessary under the National Environmental Policy Act (“NEPA”), indicating without further explanation that the agency believes that this project poses no significant environmental impact. However, DEQ’s records show that this permit, if approved, will be both the largest destruction of wetlands outside of the Hampton Roads area and the second largest destruction of non-tidal wetlands in Virginia over the last five years. In consideration of the extensive community concern, ongoing and uncorrected critical flaws in the delineation, unaddressed environmental justice failures and sheer volume of wetlands to be destroyed, this project will significantly affect the quality of the human environment, and therefore must be classified as a major Federal action under the Act. Permitting action should not progress unless and until an appropriate and comprehensive EIS is performed..

For the reasons discussed above, I respectfully request that both USACE and DEQ deny the draft permit, and that USACE provide a public hearing on this matter. Thank you for consideration of these requests.



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

SELC and CBF comments - Wegmans Distribution Center - Draft VWP Permit No 19-2036

1 message

Jonathan Gendzier <jgendzier@selcva.org>

Fri, Dec 4, 2020 at 5:37 PM

To: "JAIME.ROBB@DEQ.VIRGINIA.GOV" <JAIME.ROBB@deq.virginia.gov>

Cc: "rudnick.barbara@epa.gov" <rudnick.barbara@epa.gov>, "JULIE.LANGAN@DHR.VIRGINIA.GOV"

<JULIE.LANGAN@dhr.virginia.gov>, "BRYAN.JONES@DEQ.VIRGINIA.GOV" <BRYAN.JONES@deq.virginia.gov>,

"elaine.k.holley@usace.army.mil" <elaine.k.holley@usace.army.mil>, Peggy Sanner <PSanner@cbf.org>, "Jon Mueller ext. 2162" <jmueller@cbf.org>, Josephus Allmond <jallmond@selcva.org>

Dear Ms. Robb,

Please accept the attached comments from the Southern Environmental Law Center and the Chesapeake Bay Foundation regarding draft VWP Permit No. 19-2036, for the proposed Wegmans distribution center in Hanover County, Virginia. Thank you in advance for your consideration of these comments, and your attention to this important matter.

Attachments to the comment letter are attached to this email and, due to file size limitations, one or more additional emails to follow. I will note in each subsequent email containing attachments its order in the sequence and will note the final email. Please treat all attachments as part of SELC's and CBF's comments. A list of attachments can be found on the final page of the comment letter.

Best regards,

Jonathan Gendzier

Jonathan M. Gendzier

Staff Attorney

Southern Environmental Law Center

201 West Main St., Ste.14

Charlottesville, VA 22902-5065









Phone: (434) 977-4090

Fax: (434) 977-1483

www.SouthernEnvironment.org

10 attachments **SELC and CBF Comments - Draft VWP Permit No 19-2036 - Wegmans Distribution Center - 12.4.2020.pdf**
163K **Public Notice 2012-02369 _ Norfolk District _ Norfolk District Regulatory Public Notices Apr 2020.pdf**
33K

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-  **Public Notice NAO-2012-02369 Oct 16 2020.pdf**
103K
-  **VCEJ-Report-Final_July-2020.pdf**
1466K
-  **Virginia residents worry for Black community's future - The Washington Post.pdf**
72K
-  **Williams, Reed - Fighting for survival - The Richmond Times Dispatch (Apr 15, 2008).pdf**
50K
-  **Environmental Justice Study Report to Virginia DEQ.pdf**
739K
-  **EO-29-Establishment-Of-The-Virginia-Council-On-Environmental-Justice-1.pdf**
246K
-  **EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf**
791K
-  **How Does EPA Use EJSCREEN_ _ EJSCREEN_ Environmental Justice Screening and Mapping Tool _ US EPA.pdf**
98K

8-68



Robb, Jaime Bauer <jaime.rob@deq.virginia.gov>

RE: SELC and CBF comments - Wegmans Distribution Center - Draft VWP Permit No 19-2036

1 message

Jonathan Gendzier <jgendzier@selcva.org>

Fri, Dec 4, 2020 at 5:39 PM

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Cc: "rudnick.barbara@epa.gov" <rudnick.barbara@epa.gov>, "JULIE.LANGAN@DHR.VIRGINIA.GOV"

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"elaine.k.holley@usace.army.mil" <elaine.k.holley@usace.army.mil>, Peggy Sanner <PSanner@cbf.org>, "Jon Mueller ext. 2162" <jmueller@cbf.org>, Josephus Allmond <jallmond@selcva.org>

Dear Ms. Robb,

This is the first additional email containing attachments to SELC's and CBF's comment letter.

Best regards,

Jonathan Gendzier

From: Jonathan Gendzier**Sent:** Friday, December 04, 2020 5:37 PM**To:** 'JAIME.ROBB@DEQ.VIRGINIA.GOV'**Cc:** 'rudnick.barbara@epa.gov'; 'JULIE.LANGAN@DHR.VIRGINIA.GOV'; 'BRYAN.JONES@DEQ.VIRGINIA.GOV'; 'elaine.k.holley@usace.army.mil'; 'Peggy Sanner'; Jon Mueller ext. 2162; Josephus Allmond**Subject:** SELC and CBF comments - Wegmans Distribution Center - Draft VWP Permit No 19-2036

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8-69

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2 attachments

 **D+A Phase I Cultural Resource Survey.pdf**
14031K

 **HN-042_Survey_Historic_Resources_Hanover_1990_LCA_report.pdf**
5113K

8-70



Robb, Jaime Bauer <jaime.rob主@deq.virginia.gov>

RE: SELC and CBF comments - Wegmans Distribution Center - Draft VWP Permit No 19-2036

1 message

Jonathan Gendzier <jgendzier@selcva.org>

Fri, Dec 4, 2020 at 5:40 PM

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Cc: "rudnick.barbara@epa.gov" <rudnick.barbara@epa.gov>, "JULIE.LANGAN@DHR.VIRGINIA.GOV"

<JULIE.LANGAN@dhr.virginia.gov>, "BRYAN.JONES@DEQ.VIRGINIA.GOV" <BRYAN.JONES@deq.virginia.gov>,

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Jonathan Gendzier

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8-71

Dear Ms. Robb,

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Best regards,

Jonathan Gendzier

Jonathan M. Gendzier

Staff Attorney
Southern Environmental Law Center
201 West Main St., Ste.14
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 **Neely Letter 20200915_Combined DEQ response letter September 2020.pdf**
17035K

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SOUTHERN ENVIRONMENTAL LAW CENTER

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Facsimile 434-977-1483

December 4, 2020

Jaime Robb
Virginia Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
Jaime.Robb@deq.virginia.gov
Via email

Re: Proposed Wegmans Distribution Center, revised draft Virginia Water Protection Permit No. 19-2036

Dear Ms. Robb,

Please accept these comments from the Southern Environmental Law Center and the Chesapeake Bay Foundation on the pending application of Wegmans Food Markets, Inc. (“Wegmans,” or the “Applicant”), for a Virginia Water Protection (“VWP”) permit from the Department of Environmental Quality (“DEQ”) to fill wetlands in order to construct a distribution center on approximately 219.6 acres of land in Hanover County, Virginia. Of particular importance for DEQ’s review of this application, this project would destroy 14.8 acres of wetlands (or more), would be located on land that is part of the historic African-American community of Brown Grove and adjacent to the current community, and would impact two sites that are potentially eligible for listing on the National Register of Historic Places (“NRHP”). The Southern Environmental Law Center appreciates the opportunity to submit comments to DEQ regarding this proposal.

Wegmans’s proposed regional grocery distribution center would involve the construction of 1.1 million square feet of contiguous dry and refrigerated warehouse and office space, in addition to parking and staging areas for tractor-trailers, and support buildings.¹ Wegmans also has a near-term expansion planned to increase the size of the distribution center to 1.3 million square feet, and could increase the size of the distribution center to a maximum size of 1.7

¹ Individual Permit Request, Project Tiger – Airpark Site (November 2019) at i.

8-73

million square feet as currently zoned.² This distribution center would serve current, planned, and future grocery stores in the mid-Atlantic region, including five new stores in North Carolina and six new stores in the Washington, D.C. metropolitan area in the next five years.³

The Virginia State Water Control Law provides that the State Water Control Board (the “Board”) “shall, after providing an opportunity for public comment, issue a Virginia Water Protection permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.”⁴ Based on the project’s significant impacts, and the Applicant’s inadequate analysis of key issues, DEQ and the Board cannot make such a determination.

Moreover, “[n]o VWP permit shall be issued where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations.”⁵ Landmark environmental justice legislation passed by the General Assembly and signed into law this year, including the Commonwealth’s environmental justice policy for DEQ, bears on DEQ’s treatment of this proposal and similar ones which affect or may affect environmental justice communities. The public process around Wegmans’s application to date has failed to meaningfully involve the Brown Grove community, and so has not complied with the environmental justice policy.

Furthermore, the U.S. Army Corps of Engineers (the “Corps”) cannot find that this proposal is the “least environmentally damaging practicable alternative” or that issuing a permit would be in the “public interest” – two independent findings the Corps must make in order to issue a Clean Water Act Section 404 permit.⁶ For these reasons, we respectfully request that DEQ and the Board deny the permit.

If the Application is not denied at this time, we request that DEQ, in coordination with the Corps: (1) require additional alternatives analysis to fully consider whether less damaging practicable on-site or off-site alternatives exist, (2) ensure that additional analysis is conducted to determine the total number of wetland acres impacted by the proposal, 3) conduct a thorough assessment of the potential impacts of the project on the Brown Grove community, its residents, and associated historic and cultural resources, and 4) ensure that an adequate environmental

² Individual Permit Application, Additional Information Package, Wegmans Distribution Center (September 2020) at i; VWP Individual Permit N. 19-2036, Draft Fact Sheet at 4 (hereinafter, “Draft Fact Sheet”).

³ Individual Permit Request, Project Tiger – Airpark Site (November 2019) at 3.

⁴ Va. Code § 62.1-44.15:20(B); *see* § 62.1-44.15:20(D) (“Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act[.]”).

⁵ 9 VAC 25-210-50(B)(1).

⁶ *See* 40 C.F.R. § 230.10(a); 33 C.F.R. § 320.4(a).

justice analysis is conducted to examine the impact of the proposal on the predominantly Black community of Brown Grove adjacent to the project site, including meaningful involvement by the Brown Grove community, which has been inadequately facilitated to date. Moreover, because there are two sites within the project area that are potentially eligible for listing on the NRHP, review by the Corps under Section 106 of the National Historic Preservation Act (“NHPA”) must be completed before a permit may be issued.⁷ We encourage DEQ to ensure that this important review is carried out, in coordination with the Corps and with relevant state agencies, such as the Department of Historic Resources.

Without such additional analysis, DEQ and the Board cannot make the requisite findings to determine whether to issue a permit.

If the permit is not denied, robust additional public input opportunities must be provided in order to ensure a careful, comprehensive review. We appreciate DEQ’s request that Wegmans provide information regarding the applicant’s review and consideration of environmental justice concerns, DEQ’s decision to hold a second public hearing on November 19th, and the additional time DEQ is taking to review this application. While these are helpful steps, we believe that DEQ must undertake further efforts to facilitate the meaningful involvement of the public, especially the Brown Grove community, and to avoid disproportionate impacts on the Brown Grove community, as will be discussed in these comments. It is important to underscore that it is DEQ, not the applicant, which ultimately has responsibility for analyzing this application, developing the information necessary to fully consider this permit, its impacts, and alternatives, and furthering environmental justice in making decisions about this application. In addition, affirmatively seeking and incorporating public input could increase support for DEQ’s decision-making and reduce objections. The significant impacts of this proposal, the substantial concern and opposition the public and other interested groups have expressed, and the inadequacy to date of the factual development and analysis regarding key issues elaborated upon in these comments, merit cautious and careful consideration by DEQ. Similarly, in light of the significant impacts and controversy surrounding the proposed project, we have urged the Corps to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act.

DEQ Should Deny the Application Because It Fails to Demonstrate That Wetlands Impacts Cannot be Avoided

As Wegmans’s permit application notes, the project would permanently impact, or destroy, approximately 14.8 acres of wetlands, consisting primarily of palustrine forested

⁷ 54 U.S.C. § 305108; 36 C.F.R. § 800.1(c).

wetlands.⁸ This figure is a revised estimate that increased the amount of wetlands to be impacted by the proposed project,⁹ and the total amount of impacted wetlands remains a matter of contention that should be analyzed further. Even if the 14.8 acre estimate is correct, under the Clean Water Act and U.S. Environmental Protection Agency 404(b)(1) Guidelines, avoidable wetland and stream impacts such as those proposed here cannot be permitted since “no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”¹⁰ Moreover, the Guidelines recognize that “[f]rom a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines.”¹¹ DEQ regulations provide that the alternatives analysis submitted in an application for a VWP permit must “first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with” the Guidelines.¹²

Wegmans bears a heavy burden in demonstrating that the proposed impacts cannot be avoided. For this type of development activity, which does not require water access, “practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.”¹³ Courts have recognized that “[t]his presumption of practicable alternatives is *very* strong, . . . creat[ing] an incentive for developers to avoid choosing wetlands when they could chose an alternative upland site.”¹⁴ To meet this burden, the Applicant must demonstrate “why it is necessary for the [development] to be located on the wetlands rather than the uplands, except for its preference to build on the wetlands.”¹⁵

⁸ Individual Permit Application, Additional Information Package, Wegmans Distribution Center (September 2020) at 3; Draft Fact Sheet at 3-4, 20.

⁹ Draft Fact Sheet at 3; *see* Public Notice 2012-02369, Norfolk District, U.S. Army Corps of Engineers (April 1, 2020), <https://www.nao.usace.army.mil/Media/Public-Notices/Article/2128033/public-notice-2012-02369/> (stating the project would impact approximate 6.1 acres of wetlands) (attached).

¹⁰ 40 C.F.R. § 230.10(a).

¹¹ 40 C.F.R. 230.1(d).

¹² 9 VAC 25-210-80(B)(1)(g).

¹³ 40 C.F.R. § 230.10(a)(3).

¹⁴ *National Wildlife Federation v. Whistler*, 27 F.3d 1341, 1344 (8th Cir. 1994) (citing *Bersani v. Robichaud*, 850 F.2d 36, 44 (2d Cir. 1988), *cert. denied*, 489 U.S. 1089 (1989)) (emphasis in original).

¹⁵ *Shoreline Associates v. Marsh*, 555 F.Supp. 169, 179-80 (D. Md. 1983), *aff'd*, 725 F.2d 677 (4th Cir. 1984).

Wegmans has failed to carry its burden of demonstrating that no practicable off-site alternatives exist. Of four alternatives considered, two would involve far fewer acres of impacted wetlands: the Archie Cannon site would only impact 0.5 acres of wetlands, and the Graymont site would only impact 1.1 acres of wetlands.¹⁶ These sites were dismissed for various cost, zoning, and logistical reasons. Wegmans told DEQ that it did not complete full site design for these alternatives because “other factors (offsite improvements, logistics, costs, zoning, etc.) eliminate[d] those locations from contention.”¹⁷ Wegmans has approached the alternatives analysis exactly backwards. In fact, its application states that the selected site was “identified as the preferred location for development based on location, size, accessibility, offsite improvements, and other characteristics that facilitate the end user’s goals. *Based on this* the Applicant has worked . . . to place the project on the site while minimizing environmental impacts.”¹⁸

Wegmans has failed to justify its need to destroy nearly fifteen acres of wetlands in order to construct a distribution center at its preferred site. Other sites it considered would entail far less wetland destruction, and other as-yet-unidentified sites might similarly avoid wetlands impacts while being more to Wegmans’s liking based on other characteristics.

Similarly, Wegmans has failed to demonstrate that no practicable on-site alternatives exist. Wegmans states that the proposed impacts are “the minimum necessary to meet the Applicant’s purpose and need[,]” but then states that the “proposed [single-warehouse, L-shaped] configuration is the most efficient . . . Using a different layout would mean a less efficient operation.”¹⁹ It then notes that its Pottsville, Pennsylvania facility is arranged in two non-contiguous warehouses.²⁰ Likewise, Wegmans dismisses the possibility of adding an additional level to its parking facility in order to reduce the necessary footprint, noting that proposed building heights are already near the maximum height allowed by local and zoning regulations.²¹ Wegmans does not appear to disclose whether it considered seeking, or sought, variances from those regulations, or its reason for failing to do so. It is possible that wetlands impacts could be

¹⁶ Individual Permit Application, Additional Information Package, Wegmans Distribution Center (September 2020) at 8-9.

¹⁷ Joint Permit Application Number 19-2036 - Wegmans Distribution Center - Hanover County Virginia, *Additional Information Letter Responses to Additional Information Request* (Sep. 15, 2020) at 3-4.

¹⁸ Individual Permit Request, Project Tiger – Airpark Site (November 2019) at 2 (emphasis added).

¹⁹ Individual Permit Application, Additional Information Package, Wegmans Distribution Center (September 2020) at 13.

²⁰ *Id.*

²¹ *Id.*

minimized or avoided by a site design including non-contiguous warehouses, use of parking decks, or other modifications.

If the permit application is not rejected, these are the types of options that should be considered as public input is sought and further analysis is conducted to determine whether this proposal can be permitted under the Clean Water Act and Virginia law. Further, if the application is not denied, a comprehensive review of reasonable and less-damaging alternatives for this project would also be required to comply with the VWP permit regulations,²² including a thorough evaluation of potential alternative locations and site designs, and would be essential to provide the many interested members of the public adequate opportunities to review and provide further input before a permit decision is made.

The Clean Water Act and its regulations, and DEQ's obligations under the State Water Control Law,²³ presume that avoidance of streams and wetlands is feasible, and nothing in the Application overcomes that presumption. Wegmans has not demonstrated "why it is necessary for the [development] to be located on the wetlands rather than the uplands, except for its preference to build on the wetlands."²⁴ While other sites with far fewer acres of impacted wetlands may involve increased costs, this alone is not determinative. DEQ appears to take Wegmans at its word that alternative sites are not practicable.²⁵ Before a permit can be issued, Wegmans must demonstrate, and DEQ must determine, that the wetlands *cannot* be avoided.²⁶ Based on the information available, DEQ cannot defensibly reach that conclusion and the application should be denied.

²² See 9 VAC 25-210-80(B)(1)(g) ("The [alternatives] analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.").

²³ See *Id.* (requiring that application for VWP individual permit include "[a]n alternatives analysis for the proposed project detailing the specific on-site and off-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230.").

²⁴ *Shoreline Associates*, 555 F.Supp. at 179-80.

²⁵ See, e.g., Draft Fact Sheet at 12-13 (discussing the Archie Cannon site, with projected impacts to approximately 0.5 acres of wetlands and 1,953 linear feet of stream, and stating that "The applicant concludes that this alternative is not practicable considering cost.").

²⁶ Because the Applicant has not demonstrated that the proposed impacts are unavoidable, compensatory mitigation should not be considered, and DEQ cannot use mitigation to offset the proposed impacts. Compensatory mitigation is only available for "unavoidable impacts." 40 C.F.R. § 230.91(c).

DEQ Has Not Adequately Furthered the Fair Treatment and Meaningful Involvement of the Brown Grove Community and Cannot Issue a VWP Permit

During the 2020 legislative session, the Virginia General Assembly passed four bills pertaining to environmental justice. Relevant here, SB 406, also known as the Virginia Environmental Justice Act, is a broad policy declaration, similar to several other broad declarations located throughout the code.²⁷ SB 406 declares that, “[i]t is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.”²⁸ This policy applies to all state agencies, authorities, commissions, councils and boards, including the State Water Control Board.²⁹ In another bill specific to DEQ, the General Assembly enacted HB 1162, which amends the section of the code specifically governing DEQ.³⁰ First, HB 1162 inserts the term “environmental justice” into the definitions section of the Virginia Code chapter governing DEQ.³¹ Second, HB 1162 amends DEQ’s statement of policy, Va. Code § 10.1-1183, making it an express DEQ policy “to *further* environmental justice.”³² These bills became effective on July 1, 2020.

Each of these two bills contains the same definition of “environmental justice”, namely, “the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, faith, disability, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.”³³ In addition, Va. Code § 2.2-234 contains important definitions for the terms “meaningful involvement” and “fair treatment”. Within the context of environmental justice, “fair treatment” means “the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative

²⁷ See Va. Code Ann. § 2.1-715 (stating, “[i]t is the policy of the Commonwealth . . . [t]o safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, age, marital status, or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; to preserve the public safety, health and general welfare; and to further the interests, rights, and privileges of individuals within the Commonwealth.”). See also Va. Code Ann. § 51.5-4(B) (stating, “[i]t is the policy of this Commonwealth that persons with disabilities shall be employed in the state service, the service of the political subdivisions of the Commonwealth, in the public schools, and in all other employment supported in whole or in part by public funds . . .”).

²⁸ 2020 Va. Acts Ch. 1257, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB406>.

²⁹ *Id.*

³⁰ 2020 Va. Acts Ch. 454, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1162>.

³¹ Va. Code § 10.1-1182.

³² *Id.* (emphasis added).

³³ *Id.*

environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.”³⁴ “[M]eaningful involvement” is defined as “the requirements (i) that affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.”³⁵

Given the definitions within these bills, DEQ’s express policy requires the furtherance of the fair treatment and meaningful involvement of environmental justice populations in agency decisions. Accordingly, DEQ must further the fair treatment and meaningful involvement of the Brown Grove community within the decision-making process for the VWP permit for the proposed Wegmans distribution center in Hanover County.

Founded during the Reconstruction era after the Civil War, the historic African-American community of Brown Grove has been subjected to industrial and developmental encroachment for over 50 years.³⁶ The current Brown Grove community borders the northern side of the project site, although its historical extent included the project site and nearby areas such as the area that was developed into Hanover County Municipal Airport, which borders the project site to the west. Many residents in the project area descend from founding matriarch Caroline Dobson Morris. The community is also home to the Brown Grove School, an African American schoolhouse that operated during the Jim Crow era until the 1950s.³⁷

The industrial and developmental encroachment over the past 50 years into the Brown Grove community would be compounded by the proposed Wegmans distribution center. It is no wonder, then, that over the past several months, local groups and citizens have raised concerns about the proposed project’s impact on the Brown Grove community, calling for a more thorough study to ensure that the residents of Brown Grove have the acknowledgement and

³⁴ Va. Code § 2.2-234.

³⁵ *Id.*

³⁶ See Williams, Reed, *Fighting for Survival*, The Richmond Times Dispatch (Apr. 15, 2008) (updated Sep. 2019), https://richmond.com/business/fighting-for-survival/article_d16fb93b-446d-5bf7-97ad-af2e888c3320.html (noting that “Interstate 95 clipped part of Brown Grove when it opened in the early ‘60s. The Hanover County airport opened in 1971, and industries popped up nearby, spreading development toward Brown Grove. In 1997, residents on Johnson Town Road opposed an extension of an airport runway, but to no avail.”) (**attached**).

³⁷ Report, *Phase I Cultural Resource Survey of the ±87.9-Hectare (±217.4-Acre) Wegmans Distribution Center Project Area*, Dutton + Associates, LLC (June 2020) at i (**attached**).

consideration necessary to address their concerns.³⁸ These concerns about the proposed project include, but are not limited to, change in community character, increased traffic, including large tractor-trailers and associated air pollution, exacerbation of existing runoff and flooding problems by the destruction of wetlands, and threatened cultural and historical resources, including the site of the Brown Grove School, and community burial sites on the property. Community oral history holds the project site to be the location of graves associated with the Brown Grove community. In an unfortunate and wholly inadequate response, an attorney representing Wegmans, speaking at the DEQ hearing on July 20, 2020, dismissed this as “lots of talk,” claiming that there is “no historic evidence” of the presence of gravesites.³⁹ Not only do we believe that ensuring that the residents of Brown Grove have the acknowledgement and consideration necessary to address their concerns is the right thing to do to adequately safeguard this community, which has experienced persistent developmental encroachment for over 50 years, it is also consistent with DEQ’s express new policy—furthering environmental justice.

DEQ’s initial 30 day comment period for the permit began on March 31 and ended on April 30, 2020.⁴⁰ This occurred during the early, most chaotic days of the ongoing global COVID-19 pandemic. Then, on June 20, 2020, DEQ published a public hearing notice that scheduled a public hearing for July 20, 2020.⁴¹ That spirited public hearing lasted almost three hours, and a total of 35 concerned citizens spoke.⁴² This hearing was conducted virtually, only a month after Virginia’s stay at home order expired,⁴³ but still in the midst of the pandemic. As many Brown Grove residents are without access to internet,⁴⁴ there is no telling how many Brown Grove residents were precluded from participating in this virtual meeting. After many of these speakers raised concerns held by the Brown Grove community, DEQ sent a letter on

³⁸ See Rojas, C. Suarez, *Virginia residents worry for Black community’s future*, The Washington Post (July 26, 2020), https://www.washingtonpost.com/local/virginia-residents-worry-for-black-communitys-future/2020/07/26/989d6d9e-cf48-11ea-826b-cc394d824e35_story.html (noting that the board of trustees for the Brown Grove Baptist Church and the Hanover NAACP sent letters to the Corps, “alleging a lack of engagement with the community.”) (attached).

³⁹ Hearing Transcript, Public Hearing/Informational Teleconference, *In re: VSP Individual Permit No. 19-2036, Wegmans Distribution Center, Hanover County, Virginia* (July 20, 2020) at 47-48 (hereinafter, “July Hearing Transcript”).

⁴⁰ Fact Sheet, Virginia Water Protection (VWP) Individual Permit No. 19-2036, DEQ, at 2.

⁴¹ *Id.*

⁴² July Hearing Transcript at 1; 3-6, 167.

⁴³ Commonwealth of Va. Office of the Governor, Exec. Order No. 55, (March 30, 2020) (attached).

⁴⁴ See Hearing Transcript, Public Hearing/Informational Teleconference, *In re: VWP Individual Permit No. 19-2036, Wegmans Distribution Center, Hanover County, Virginia* (Nov. 19, 2020) at 100 (hereinafter “November Hearing Transcript.”) (noting that many in the Brown Grove community, especially the elderly, are “not on the internet.”).

August 11, 2020 to Wegmans⁴⁵, requesting additional information, specifically asking Wegmans to provide “any supporting information that demonstrates actions taken by Wegmans to review and address Environmental Justice concerns related to the project and specifically the Brown Grove Community[.]”⁴⁶ In response to DEQ’s letter, Wegmans provided only two pieces of information. The first was notes summarizing a meeting between Wegmans representatives and Brown Grove community members in February 2020, listing expressed concerns about the project design and characteristics, and a follow-up email to community members describing Wegmans’ efforts to address concerns or investigate further (but not responding to the listed concern about drainage and flooding problems).

Its response to DEQ’s request for additional information reflects Wegmans’s knowledge of the existence of the predominantly Black community of Brown Grove adjacent to its project site. But remarkably, the second and final environmental justice-related item submitted by Wegmans was census block demographic data and a print-out of EPA’s EJSCREEN environmental justice screening tool, without elaboration, summary, or explanation. Wegmans seems to intend to convey, in submitting this information, that there is no environmental justice community implicated by the project.

However, Wegmans in fact admits that it considers Brown Grove to be an environmental justice community, by providing the meeting notes in response to DEQ’s request for information about its review of environmental justice concerns. A fundamental problem with the limited response Wegmans provided is that EJSCREEN “is a pre-decisional screening tool,” and nothing more.⁴⁷ EJSCREEN is not “designed to be the basis for agency decision-making or determinations regarding the existence or absence of [environmental justice] concerns.”⁴⁸ It should not form the entirety of an environmental justice analysis, nor obviate the need for one, especially in the face of additional information, in the hands of the applicant, pointing to the

⁴⁵ The Corps sent its own letter to Wegmans on August 11, 2020, asking it to respond to comments and to “re-evaluate the offsite alternatives with a focus on Environmental Justice.” It is unclear to us what specific response Wegmans provided to the Corps.

⁴⁶ Letter from Matt Neely, Senior Environmental Project Manager, Timmons Group, to Jaime Robb and Bryan Jones, Virginia Department of Environmental Quality, Re: Joint Permit Application Number 19-2036 – Wegmans Distribution Center – Hanover County, Virginia – Additional Information Letter Responses to Additional Information Request Letters Dated: 8/11/2020 and 8/19/2020 at 2 (Sept. 15, 2020) (hereinafter the “Neely Letter”) (**attached**).

⁴⁷ Environmental Protection Agency, EJSCREEN: Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen/how-does-epa-use-ejscreen> (**attached**).

⁴⁸ *Id.*

possibility of a project having environmental justice impacts. It is disingenuous for Wegmans to acknowledge the existence of Brown Grove as an environmental justice community by meeting with local residents to hear their concerns, while simultaneously attempting to undermine that characterization with demographic data from a screening tool looking at a circle of arbitrary radius, uninfluenced by known facts on the ground.

Nonetheless, it is ultimately not Wegmans's decision whether an environmental justice community exists. Since the United States Court of Appeals for the Fourth Circuit's decision in *Friends of Buckingham v. State Air Pollution Control Bd.*, it is clear that it is ultimately up to the responsible agency, in the face of conflicting evidence, to determine whether a community constitutes an environmental justice community.⁴⁹ It was DEQ's and the State Air Pollution Control Board's overreliance on EJSCREEN⁵⁰ to constitute an environmental justice analysis, in part, which led the Fourth Circuit to note that "environmental justice is not merely a box to be checked," in overturning a permit granted to the proposed Atlantic Coast Pipeline's Buckingham Compressor Station.⁵¹

Based on DEQ's August 11, 2020 letter to Wegmans, which requested information regarding "Environmental Justice concerns related to the project and specifically the Brown Grove Community," DEQ correctly identified that Brown Grove is an environmental justice community.⁵² Having recognized that an environmental justice community would be affected, the Commonwealth's new environmental justice laws oblige the agency to further the fair treatment and meaningful involvement of the Brown Grove community in its public engagement and decision-making on this VWP permit application.

On November 19, 2020, DEQ held a second public hearing for the VWP permit for the proposed Wegmans Distribution Center. During this equally spirited second public hearing which, including the immediately preceding public information session, lasted over 3 hours, 25 citizens presented comments on the proposed permit.⁵³ All of the commenters opposed the issuance of a permit. Two commenters at this second public hearing raised issues that call into

⁴⁹ See 947 F.3d 68, 87-88 (finding that the Virginia Air Pollution Control Board's failure to resolve the issue of whether Union Hill was a "minority" environmental justice population was "improper under both federal law, and Virginia administrative law.") (4th Cir. 2020).

⁵⁰ The EJSCREEN analysis in the case of the Atlantic Coast Pipeline was not reliable in the face of on-the-ground information about who lived in the Union Hill community, *i.e.*, a door-to-door survey performed by Friends of Buckingham.

⁵¹ *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 92 (4th Cir. 2020).

⁵² Neely Letter.

⁵³ November Hearing Transcript at 3-4; 5; 176.

question whether DEQ has furthered environmental justice throughout the consideration of the permit at hand.

The first commenter, Ms. Bonnica Cotman, a 49 year old lifelong resident of Brown Grove and descendent of founding matriarch Caroline Dobson Morris, stated that at the February meeting that Wegmans had with Brown Grove, she was the *only* person in attendance who actually lives in Brown Grove—the others involved were Brown Grove Church members.⁵⁴ Moreover, Ms. Cotman was notified of this meeting with Wegmans representatives just the morning of the actual meeting date. In regards to this meeting, Ms. Cotman rightly pointed out that she does “not represent the whole community.”⁵⁵ Of course the views of all concerned citizens are important, but it is equally important to understand that, when Wegmans responded to DEQ’s request for additional information, it actually only provided DEQ with the concerns of *one* Brown Grove resident. Ms. Cotman’s revelation that she was the only actual Brown Grove resident at the Wegmans meeting is just one example of how facts around this situation continue to develop and relevant information continues to come to light, highlighting the procedural deficiencies throughout this entire process.

The second commenter, Ms. Renada Harris, representing her parents who own property adjacent to the proposed project site, raised two important concerns regarding the hearings conducted by DEQ thus far. First, Ms. Harris pointed out that many within the Brown Grove community, especially among the elderly population, are “not on the Internet. They can’t even get on this phone call to receive the info.”⁵⁶ Second, Ms. Harris stated that the July DEQ hearing only garnered comments from “a few people out of 100 homes” in Brown Grove.⁵⁷

These comments indicate that, in considering this proposal, DEQ has not yet met its obligation to further environmental justice by meaningfully involving affected community residents and, in fact, actively seeking out such participation. The key question, then, is whether DEQ has furthered the meaningful involvement of the Brown Grove community in regard to this permit. The comments given at the November public hearing by Ms. Cotman and Ms. Harris indicate two ways in which DEQ has not.

First, Ms. Harris explained that many people within Brown Grove, especially among the elderly, are without internet, and as such are unable to participate at all in virtual public hearings. To this point, public hearings for this permit have been conducted virtually, and DEQ has

⁵⁴ *Id.* at 152.

⁵⁵ *Id.*

⁵⁶ *Id.* at 100.

⁵⁷ *Id.* at 99-100.

thereby necessarily excluded those Brown Grove residents without internet access from the decision-making process. For this reason, Brown Grove residents without internet access have not had “access and opportunities to participate in the full cycle of the decision-making process .

”⁵⁸

Second, while DEQ did request additional information regarding environmental justice from Wegmans, all it received from Wegmans were the concerns of *one* Brown Grove resident, Ms. Cotman.⁵⁹ While Wegmans’s attempt to meet with Brown Grove community members was commendable, it is now clear that Wegmans didn’t actually meet with a representative group of the Brown Grove community. Additionally, the first public hearing only garnered comments from a “few people out of 100 homes” in Brown Grove.

The recent second hearing was a useful step. However, the recent environmental justice legislation tasks DEQ with “seek[ing] out and consider[ing]” the participation of environmental justice communities “and allowing the views and perspectives of community residents to shape and influence the decision.”⁶⁰ Given such sparse participation of Brown Grove residents in the Wegmans community meeting and the first public hearing, and a limited number of Brown Grove resident participants in the second hearing, and given what we know about the community members’ issues accessing virtual hearings, it is difficult to see how DEQ has adequately sought out and considered the views and perspectives of Brown Grove residents. It is likewise difficult to see how DEQ can use such a limited set of views and perspectives to “shape and influence the decision.”⁶¹

Pursuant to Governor Northam’s Executive Order 6, issued more than two years ago, DEQ has undertaken public meetings and internal studies in an effort to improve its day-to-day operations and public engagement.⁶² Subsequently, Governor Northam’s Executive Order Number Twenty-Nine established a Virginia Council on Environmental Justice (“Council”) in 2019, stating that “[t]he Commonwealth requires a consistent, action-oriented approach to

⁵⁸ *Id.*

⁵⁹ November Hearing Transcript at 152.

⁶⁰ 2020 Va. Acts Ch. 1257, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB406>.

⁶¹ 2020 Va. Acts Ch. 1257, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB406>.

⁶² Among other provisions, Executive Order Six directed DEQ to “Work with stakeholders to improve communication with the public and the regulated community and provide more opportunities for proactive education, especially among underserved and lower income populations.” *See also* DEQ, About Us, www.deq.virginia.gov/get-involved/about-deq/executive-order-6 (last visited 12/3/2020).

incorporating environmental justice into decision-making.”⁶³ In the Council’s 2020 Annual Report, the Policies, Permits, Programs, and Procedures Committee Report recommended that agency outreach should “be unique and specific. Rather than prescribing a minimum standard for communications, agencies should be able to show how and why their approach was warranted.”⁶⁴ DEQ should conform its community outreach and engagement to that recommendation in order to prevent the type of deficiencies which have characterized this particular permit application.

Indeed, just this October, DEQ published an Environmental Justice study conducted for the agency by its consultants, which makes specific recommendations about how DEQ “can better incorporate environmental justice into its strategic planning *and programs* to advance environmental justice outcomes for the Commonwealth of Virginia.”⁶⁵ The study elaborates that “DEQ must create the space for a *cultural* shift that centers and aligns environmental justice within its core mission and everyday activities within each program[.]”⁶⁶

Among recommendations for community engagement, the study states that DEQ should “[p]roactively and effectively notify . . . Environmental Justice and Tribal communities early in regulatory permitting processes . . . and share relevant information and educational resources[;]” utilize timelines for permits to accommodate community engagement and extended comment periods; and proactively engage with affected communities on decisions by “[c]larify[ing] decision points, discussing potential benefits and adverse impacts; clarify[ing] to what extent the community can influence decisions and how the public input ultimately influenced final decision-making[.]” and “[h]old[ing] meetings in the impacted community at a time and location that are convenient for residents.”⁶⁷

As the study puts it, its recommendations “represent an opportunity for DEQ to move into a dramatically different approach to their work in the environmental justice space.”⁶⁸ For that to occur, however, changes must be implemented in how DEQ carries out its program work, including permitting actions like this one. “Both DEQ’s new purposes and the Commonwealth’s environmental justice policy authorize DEQ to incorporate environmental justice considerations

⁶³ E.O. 29, Establishment of the Virginia Council on Environmental Justice (Jan. 22, 2019) (attached).

⁶⁴ Virginia Council on Environmental Justice, 2020 Annual Report (July 15, 2020) at 9 (attached).

⁶⁵ Skeo Solutions, Inc. and Metropolitan Group, Environmental Justice Study for the Virginia Department of Environmental Quality 1 (Oct. 2020) (emphasis added) (attached) (hereinafter “DEQ EJ Study”).

⁶⁶ *Id.* at 3 (emphasis in original).

⁶⁷ *Id.* at 15.

⁶⁸ *Id.* at 43.

in its decisions and actions to ensure its programs do not disproportionately impact environmental justice communities.”⁶⁹ We sincerely hope that DEQ will move expeditiously to effectively implement the study’s recommendations where possible, including in its consideration of Wegmans’s application for a VWP permit.⁷⁰ It is our understanding that a community group known as the Brown Grove Preservation Group has been reconstituted and reactivated, in large part in response to this proposal. We encourage DEQ to make contact with this group, which includes Ms. Bonnica Cotman, as it undertakes efforts to more substantially engage Brown Grove community members.

In Virginia, within the administration of the VWP program, the State Water Control Board may not issue a permit where the proposed activity, or the terms and conditions of the VWP permit, do not comply with state law or regulations.⁷¹ After the 2020 legislative session, it is now state law that it is DEQ’s express policy, among several others, to “further environmental justice . . . in the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁷² It is also the Board’s policy to “promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.”⁷³ Given the issues raised at the November public hearing and discussed above, it is clear that DEQ has not yet completed its statutory obligations to further environmental justice by ensuring the meaningful involvement of the Brown Grove community throughout this permit process and the fair treatment and equitable consideration of this community to avoid disproportionate impacts of new industrial or commercial operations.⁷⁴ Therefore, the State Water Control Board cannot issue a VWP permit for the proposed distribution center until the Board and DEQ meet these obligations.⁷⁵

Likewise, in the Corps’ process, under the National Environmental Policy Act, impacts to the Brown Grove community (and any others the Corps identifies) must be analyzed, disclosed,

⁶⁹ *Id.* at 19.

⁷⁰ The study includes numerous other recommendations, including some which may be especially relevant here, *e.g.*, recommendations regarding impacts analyses in permitting. *See* DEQ EJ Study at 23.

⁷¹ 9 VAC 25-210-50(B)(1).

⁷² Va. Code § 10.1-1183.

⁷³ Va. Code § 2.2-235.

⁷⁴ *Id.*

⁷⁵ *See* 9 VAC 25-210-50(B)(1) (stating that “[n]o VWP permit shall be issued: 1) Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations.”).

and considered in the Corps' EIS or Environmental Assessment,⁷⁶ and these issues should drive the consideration of less damaging alternatives pursuant to NEPA and Clean Water Act requirements. Moreover, without an actual assessment of the project's impacts on the Brown Grove community, the Corps cannot find that issuing a permit would be in the "public interest".⁷⁷ This is a further finding that the Corps must make in order to issue a Clean Water Act Section 404 permit.⁷⁸ An important part of the Corps' public interest review is the evaluation of cumulative impacts – a potentially significant factor for Brown Grove, given the history of industrial encroachment on the community.⁷⁹ The Board must determine that the proposed activity is "consistent with the provisions of the Clean Water Act" before it may issue a permit.⁸⁰ DEQ should strongly encourage the Corps to complete a rigorous public interest review that fully characterizes the impacts of the proposal, including impacts to the Brown Grove community. DEQ should not present a VWP permit to the Board for its consideration and decision before this issue has been rectified and the Corps' process, and its Section 404 permit, are complete.

DEQ Should Ensure That the Corps Thoroughly Reviews the Proposal Under Section 106 of the National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to consider the effects of federal actions on historic properties. The NHPA requires that when the Section 106 process applies, it must be completed prior to the issuance of a license or permit.⁸¹ The Corps' procedures for implementing Section 106 note that the analysis must "take into account the effects, if any, of proposed undertakings on historic properties both within and beyond the waters of the U.S.," and must "consider the effects of undertakings on any known historic properties that may occur outside the permit area".⁸²

⁷⁶ See *White Tanks Concerned Citizens, Inc. v. Strock*, 563 F.3d 1033, 1036 (9th Cir. 2009) ("A Section 404 permit is a major federal action requiring review under the National Environmental Policy Act"); see also 33 C.F.R. § 325.2(a)(4) (providing that "[a] decision on a permit application will require either an environmental assessment or an environmental impact statement unless it is included within a categorical exclusion.").

⁷⁷ See 33 C.F.R. § 320.4(a).

⁷⁸ *Id.*

⁷⁹ *Id.* at § 320.4(a)(1) ("All factors which may be relevant to the proposal must be considered including the cumulative impacts thereof . . .").

⁸⁰ Va. Code § 62.1-44.15:20(B).

⁸¹ 54 U.S.C. § 305108; 36 C.F.R. § 800.1(c).

⁸² 33 C.F.R. Part 325, App. C §§ 2(a), 5(f).

Furthermore, the Section 106 process involves a thorough consultation process with the State Historic Preservation Officer (SHPO), local governments, the applicant, and other parties “with a demonstrated interest in the undertaking . . . due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties.”⁸³ This comprehensive review process must take into account potential direct and indirect effects of the proposed project on historic and cultural resources, and the Corps must seek to avoid or minimize any adverse effects to the greatest extent possible.⁸⁴

As discussed previously in these comments, the issue of unmarked burial sites on the proposed project site is one of high importance for the Brown Grove community and is a crucial question which needs to be fully investigated and the results publicly disclosed. In addition, in November 2019, Dutton + Associates (“D+A”) conducted a Phase I cultural resource survey of the Wegmans Distribution Center project area in Hanover County, Virginia. In the course of this survey, D+A identified two sites that it recommended for potential eligibility for the NRHP.

The first of these sites, designated VDHR# 44HN0452, is the location of Brown Grove School, “an African American schoolhouse that operated during the Jim Crow era until the 1950s.”⁸⁵ D+A explained that “the site’s primary importance is in its association with the African American community of Brown Grove during the Jim Crow era.”⁸⁶ The second site, designated VDHR# 44HN0326, is a dwelling associated with the Merry Oaks Tavern, the site where Patrick Henry organized Virginia’s first company of revolutionary volunteers in 1774.⁸⁷

Based on the scale and intensity of this project and its close proximity to the resources identified in the Phase 1 cultural resource survey, it is clear that the proposed project would have direct and indirect effects on two cultural resources that are eligible for listing in the NRHP. This warrants careful review under Section 106 of the National Historic Preservation Act,⁸⁸ as

⁸³ 36 C.F.R. § 800.2(c).

⁸⁴ See 33 C.F.R. Part 325, App. C., § 2(f) (noting that the Corps’ historic resource review procedures are “intended to provide for the maximum consideration of historic properties within the time and jurisdictional constraints of the Corps regulatory program.”).

⁸⁵ Report, *Phase I Cultural Resource Survey of the ±87.9-Hectare (±217.4-Acre) Wegmans Distribution Center Project Area*, Dutton + Associates, LLC (June 2020) at i (attached).

⁸⁶ *Id.*

⁸⁷ See Federal Public Notice, US Army Corps of Engineers, NAO-2012-02369 (Oct. 16, 2020) at 2 (noting that “the project will adversely affect Site 44NO326), <https://www.nao.usace.army.mil/Media/Public-Notices/Article/2381594/nao-2012-02369/> (attached); Survey of Historic Resources, Hanover County, Virginia, Prepared for: Hanover County Planning Department (1990) at 23 (attached).

⁸⁸ See 54 U.S.C. § 306108; 36 C.F.R. § 800.1(a).

well as the National Environmental Policy Act. DEQ should coordinate with the Norfolk District in order to ensure that this review is completed—and any avoidance, minimization, and mitigation measures agreed upon—before it considers issuing the requested permit. In ensuring that impacts to all affected historic and cultural resources are studied and avoided or minimized, DEQ should coordinate with other relevant state agencies, including the Department of Historic Resources, which was not listed as a consulted agency in the draft permit fact sheet.

Conclusion

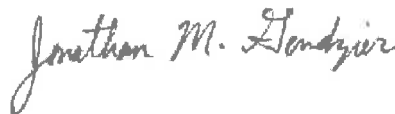
The proposed Wegmans distribution center would have significant impacts on state waters and affected communities, particularly by destroying valuable wetlands, and impacting the historic African-American community of Brown Grove and associated cultural and historic resources in ways that have not yet been fully studied. The Application fails to demonstrate that the selected site and site design are the least environmentally damaging practicable alternative, and fails to show that the project, as proposed, is in the public interest.

Moreover, the public process to date has failed to facilitate the fair treatment and meaningful involvement of the predominantly Black community of Brown Grove in DEQ's decision-making. This contravenes the policy of the Commonwealth, and DEQ should not recommend issuance of a permit until measures have been taken to rectify this.

As a result, DEQ should deny the permit application. If DEQ does not deny the application at this time, it should at the least, in coordination with the Corps, require substantial additional factual development and analysis by Wegmans, and/or conduct such analysis itself, as discussed in these comments – especially with respect to off-site and on-site alternatives, impacts to natural, historic, and cultural resources, and impacts to the environmental justice community of Brown Grove.⁸⁹ This should include robust opportunity for and facilitation of public input from the Brown Grove community.

Thank you for your consideration of these comments.

Sincerely,



Jonathan M. Gendzier
Staff Attorney

⁸⁹ See 9 VAC 25-210-55 (board may request “such other information as may be necessary to accomplish the purposes of [the VWP permit regulation].”).

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cc:

Barbara Rudnick, U.S. EPA Region 3
Elaine K. Holley, U.S. Army Corps of Engineers
Julie Langan, Director, Virginia Dept. of Historic Resources
Bryan Jones, Virginia DEQ

List of Attachments

1. Public Notice 2012-02369, Norfolk District, U.S. Army Corps of Engineers (April 1, 2020), <https://www.nao.usace.army.mil/Media/Public-Notices/Article/2128033/public-notice-2012-02369>.
2. Williams, Reed, *Fighting for Survival*, The Richmond Times Dispatch (Apr. 15, 2008) (updated Sep. 2019), https://richmond.com/business/fighting-for-survival/article_d16fb93b-446d-5bf7-97ad-af2e888c3320.html.
3. Report, *Phase I Cultural Resource Survey of the ±87.9-Hectare (±217.4-Acre) Wegmans Distribution Center Project Area*, Dutton + Associates, LLC (June 2020).
4. Rojas, C. Suarez, *Virginia residents worry for Black community's future*, The Washington Post (July 26, 2020), https://www.washingtonpost.com/local/virginia-residents-worry-for-black-communitys-future/2020/07/26/989d6d9e-cf48-11ea-826b-cc394d824e35_story.html.
5. Commonwealth of Va. Office of the Governor, Exec. Order No. 55, (March 30, 2020).
6. Letter from Matt Neely, Senior Environmental Project Manager, Timmons Group, to Jaime Robb and Bryan Jones, Virginia Department of Environmental Quality, Re: Joint Permit Application Number 19-2036 – Wegmans Distribution Center – Hanover County, Virginia – Additional Information Letter Responses to Additional Information Request Letters Dated: 8/11/2020 and 8/19/2020 (Sept. 15, 2020).
7. Environmental Protection Agency, EJSCREEN: Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen/how-does-epa-use-ejscreen>.
8. E.O. 29, Establishment of the Virginia Council on Environmental Justice (Jan. 22, 2019).
9. Virginia Council on Environmental Justice, 2020 Annual Report (July 15, 2020).
10. Skeo Solutions, Inc. and Metropolitan Group, Environmental Justice Study for the Virginia Department of Environmental Quality 1 (Oct. 2020).
11. Federal Public Notice, US Army Corps of Engineers, NAO-2012-02369 (Oct. 16, 2020) at 2, <https://www.nao.usace.army.mil/Media/Public-Notices/Article/2381594/nao-2012-02369/>.
12. Survey of Historic Resources, Hanover County, Virginia, Prepared for: Hanover County Planning Department (1990).



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Public Comment on Draft Virginia Water Protection Permit Number 19-2036 and Joint Permit Application 2012-02369 (Wegmans Proposal)

1 message

Melvinia Wilson <melviniawilson@yahoo.com>
To: Jaime Bauer Robb <jaime.robb@deq.virginia.gov>

Thu, Dec 3, 2020 at 3:12 PM

Dear Ms. Robb:

I have attached a letter regarding the above-mentioned application.

Thank you for your consideration in this very important matter that severely impacts the Brown Grove Community.

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95K

8-93

Jaime Robb
Virginia Department of Environmental Quality (DEQ)
Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060

RE: Public Comment on Draft Virginia Water Protection Permit Number 19-2036 and Joint Permit Application 2012-02369 (Wegmans Distribution Center)

Dear Ms. Robb,

I submit the following comments regarding the draft Virginia Water Protection Permit No. 19-2036 ("VWP Permit") and accompanying Joint Permit Application 2012-02369 ("Application"). The VWP Permit would allow Wegmans Food Markets, Inc. ("Wegmans") to permanently impact several acres of wetlands situated south of Ashcake Road and east of Egypt Road in Hanover County, Virginia. Thank you for this opportunity to submit written comments.

Based upon the issues discussed in this comment letter, DEQ and the Board must deny the VWP individual permit requested by Wegmans Food Markets, Inc. ("Wegmans"), a family corporation headquartered in Rochester, NY, permit denial is warranted because the regulated activity will unavoidably damage the quality of the state's waters, air and land resources. Furthermore, State Water Control Board ("Board") denial is warranted because the permitting process and Wegmans' application have an aversive and disapproving impact upon the Brown Grove Community and other communities in Hanover County.

BACKGROUND

According to an article written in Richmondbizsense, AirPark Associates LP is or was owned by a Chesterfield County lawyer named Phillip Dean who bought 217 acres in 1986 for \$202,000. It is currently assessed at \$4,400,000. The property has been rezoned since 1990's. Under the 1990's zoning, a company like Wegmans could not build on the existing property. Between January and February, just before the Covid 19 crisis, the zoning was changed to allow Wegmans to build. Also, the Virginia Economic Development Partnership under Governor Northam (called the Commonwealth's Opportunity Fund Grant) gave Wegmans a \$2,350,000 grant and Hanover County Economic Development matched the amount and is using it for road expansion, public and private utility extension, on and offsite internet, etc. These appropriated dollars by both the State of Virginia and Hanover County are tax dollars that the Brown Grove Community has paid to the State and to Hanover County, and paid for 150 years.

According to a list of companies in the Ashland area, there is a minimum of 2 or 3 Black-owned companies that may have received funding from these grant programs. I very seriously doubt this. Our community has been plagued with environmental poisons, however, there has been no relief, monetary or otherwise, to purchase and/or improve our properties.

The question is, should Wegmans, a multi-billion dollar company on Wall Street receive grants from the state and local governments to build a 1.7 million foot building with all its poisonous transports that will invariably destroy our community, Brown Grove Community that has been here for over 150 years, paying taxes for as long as we were able to purchase land after the Civil War and Reconstruction, with no new business owner incentives for us, as existing residents for over a century?

In 2019, Wegmans Food Markets, Inc. produced revenues of \$9.7 billion. It has locations in New York, Massachusetts, New Jersey, Maryland and Pennsylvania. Wegmans seeks to construct a distribution center that would help the company grow in the Southeast. The food stores are for the elites, with grand piano playing and international shops and stores within their shopping facilities to appease their customers.

The cost of food products and delicacies sold at Wegmans is extremely expensive relative to the incomes of most residents of the Brown Grove Community. It would be a tremendously insulting destruct to the Brown Grove Community, as most residents can not afford to purchase the products that would be distributed by this company, if approved. The community is already laden with groundwater flooding, water and air pollution from airplane exhausts, gas fumes, dumps and landfills. To place a distribution food center building in our community that is :

- 6 stories high with over 100 transfer trucks and cars,
- with smoldering gas fumes, oil and smoke,
- full of loud noise and horns from trucks 24 hours a day, 7 days a week,
- transferring food and food products that our community cannot afford to even purchase,
- stationed only 25 feet from homeowners and our properties

is a lethal weapon planned against our community. This plan would be total eventual annihilation of our community. The water, soil and air pollution would create all kinds of respiratory and waterborne illnesses causing continued environmental poisoning and heartbreak. This plan is unacceptable to the people of the Brown Grove Community and other residents of Hanover.

Wegmans has more than enough capital to seek and obtain other locations throughout Virginia as well as other southern states where they are not destroying the communities who have always lived here. I was informed in the hearing by the DEQ that Archie Cannon Drive was also considered as an alternative site for Wegmans. Adjacent to this drive is the John Manual Gandy Middle School, which used to be the elementary, middle and high School for the Black community living throughout the entire county of Hanover. John Manual Gandy was the third president of then, Virginia State College, which developed as the United States' first fully state supported four year institution of higher learning for Black Americans. The school here in Hanover is a historical landmark. Its historical value to the Black communities of Hanover should not be diminished. Companies like AERC and Wegmans which pollute our environment should not be located in areas where families flourish, especially in and/or near our homes, or institutions of higher learning and spiritual embrace.

Most of all, the Air Park Associates site cannot sustain the proposed development due to federally protected lands, and, if negatively disturbed or impacted with flooding, buildings, gases and fumes from transfer trucks, noise pollution, etc., will cause tremendous harm and eventual death to the residents and property owners. Additional surveys should be performed by the DEQ and EPA to determine if the wetlands being reported are accurate. Since the beginning of the summer, there has already been rerouting of waterways along Egypt Road for the building of a water tower in the AirPark per conversation with Alan White, a contractor for the Reid Group.

HISTORY and CULTURE

The Brown Grove Community

The Family

The proposed site is an environmentally, culturally, and historically significant area. The Brown Grove Community has lived on this land for more than 150 years. The Brown Grove Church was established in 1870, however, my great, great, grandmother, Caroline Dobson, daughter of Oliver Dobson, a mulatto, born in 1827 in Hanover County, Virginia, and Sophia Jones, her mother, and slaves of the Dobson family, were freed in 1865. Caroline was 10 years old when she became a free person.

The US 1870 Census shows her sisters and brothers: Mary age 19, Francis age 16, (Caroline age 15), Malvina age 11, George age 1 and Emma age 2. Grandma Caroline married Jefferson Morris on Christmas Day, 1872. She birthed 13 children. According to the 1880 census, she birthed Fanny, Victoria, Susan and Lilly. Because the Commerce Building burned in Washington DC, the 1890 census files are not available. Therefore, the continuity of the family households could be questionable during the years from 1871 to 1899.

The US 1900 Census shows Fanny, Victoria and Susan were not in the household. They were probably married then. In 1900, there were 10 children living in the household:

Lena age 19, Lillie age 18, Pattie, age 17, Cyrus age 16, Virgie age 12, Solvin age 10, Jeff Jr. age 8, Ollie age 5, Hattie age 3 and Mary age 0, a newborn. Lena and Lillie were day laborers. Cyrus, Virgie and Solvin went to school at that time as indicated in the census, thus, a school house was certainly in the community.

It is important to know that our ancestors had continued to grow together after slavery. Our family worked hard. They were farmers and laborers. They were domestics and midwives. The next generation worked on the railroad, the tobacco warehouses and laundries. The women worked in the shirt factory, laundry and as domestics and seamstresses. The brothers and sisters of my great, great grandmother are the ancestors of this community. We are truly a great and courageous family. **Egypt Road was called Morris Road and Morristown Road then.**

It is most interesting that Wegmans has a location in Hanover, New Jersey in the county of Morristown.

Our family lived on that dirt road, a private road because the land was owned by the members of the families who lived on the road. Our family members are buried along this road. There are at least 3 cemetery sites on Morristown Road, now Egypt Road. There may be other unmarked graves.

Egypt Road was called Little Egypt Road also. The road was not paved until Hanover County decided to deem it a "state maintained" road. This was years after a little girl was killed by a fast moving car that dragged her little body along Ashcake Road (then paved) because the school bus was not permitted to drive down the dirt road to pick up the children who walked to the end of Egypt Road. I was one of those children who walked that road in the sun and the rain every school day. I survived the quiet, brisk walks of dust on sunny days and mud puddles in the rain. The question now is will I and others who live in the community continue to survive those quiet, brisk walks in the sun and the rain.

THE ENVIRONMENT

The Brown Grove Community and the Wetlands

In terms of the environment, the DEQ and the Board must protect these wetlands. Hanover County has already input piping purchased from CP & P, a \$220 million revenue company headquartered in Charleston, SC which has operated in the Brown Grove Community for decades. This company and the company before it, Americast, have caused great harm to the Brown Grove community environment. It has polluted the grounds and caused much disruption in the underground tunneling, extracting minerals and other stone possibly from private homeowners who live on a high hill adjacent to the company.

The tunneling should be investigated to determine if there has been unauthorized tunneling underground and extraction of resources owned by the homeowners who live adjacent to this company. Also, the transport trucks from CP & P and others transporting to the landfills create dust and gas fumes which harm the residents of Egypt Road, Johnstown Road, and Lewistown Road. In addition, there are over 5 drilling companies located within 2 miles of Egypt Road 741 and another 8 within a 15 mile radius. These companies drill wells as well as dig and extract land from one area and add to another for roads and building houses and industrial parks.

It was explained that a water tower is to be constructed at the AirPark per the Reid Group. Invariably, there will be the draining of wetlands and cutting of trees which will cause continued flooding to our properties near the AirPark.

The Brown Grove Community and Potential Brownfields

There maybe potential risks for Brownfields, as the old Shell service station adjacent to the TA Truckstop on I-95 which has numerous fueling stations have underground storage tanks of contaminants of lead, petroleum, asbestos and arsenic from gasoline and other fuels which may have leaked onto properties in the Brown Grove Community causing severe harm to the people.

Review of the government environmental reports pertaining to the companies like Shell, Exxon, and TA Truckstops which are located in and near the Brown Grove Community should be made available to be reviewed by the Brown Grove Community to ensure that the DEQ and Environmental Protection Agency have tested and reviewed the properties of these companies and the residents who live near and within those companies have not been negatively impacted by underground storage tank leakages. If not, there must be testing of the properties in Brown Grove immediately.

THE BUSINESS ENVIRONMENT

HISTORY-- TITLE V of the Rural Development Act of 1972

According to the Internet Archives regarding the State of Virginia, a study was done in 1985 with Virginia Tech and Virginia State universities that under the Title V of the Rural Development Act of 1972, Virginia has never focused on small businesses even though Virginia receives funding from the federal government from the Small Business Administration.

The Virginia Assembly has voted for Venture Capitalist companies to build buildings in rural areas since 1972 instead of creating small business products and services. In 1972, out of 13 southern states, Virginia had the lowest self-employed at 7.9%, 23% for businesses with less than 20 employees and 46% of businesses with less than 100 employees at that time. There are private foundations, private donations and the federal government which donate millions of dollars to a foundation called (RVDF). The Small Business Administration, banks and insurance companies and smaller investors and other contributors contributed or continues to contribute to this foundation. Many companies which operate in Virginia have applied for and received millions of dollars in loans and investments and have received monies **below market rates**.

Virginia has focused and continues to focus on State Development Authorities to expand Industry by "Standard Industrial Classification" and "Preferred New Businesses. These companies, I presume may have taken advantage of available funding because the State and Hanover County, based upon these actions with Wegmans, are interested in construction and buildings for multi-billion dollar venture capitalists business prospects and not true small business entities. Some of those companies are foreign entities, i.e., Cascades Inc. Kinsey Falls, Quebec, which is currently converting a paper mill in an area in north Ashland, also, an

area stricken with mercury poisoning in 2008 and your department diligently reported the condition to the Environmental Protection Agency.

The Wegmans project seems to be the epitome of a practice that has been perpetuated for decades, and, the Brown Grove Community has never actualized any major funding, if any, for any businesses for the past 150 years due to these policies.

Our community continues to bear the cross of the poisons and waste from industrial development, and now, another cross as the Wegmans proposed site is located 25 feet from the homes of our families, our ancestors.

SUSTAINABLE DEVELOPMENT and MAINTENANCE of BROWN GROVE COMMUNITY

The DEQ and the Board must deny the wetlands permit because the proposed project raises environmental-justice issues unavoidable by DEQ and the Board. Environmental injustice is a reality for us, currently, however, we, the Brown Grove Community claim a thriving, vibrant community of family of the past, present and the future.

The distribution center will impermissibly compound upon the environmental injustices that have splintered the Brown Grove community. Brown Grove was created during Reconstruction by freed slaves. They are a predominantly African (and Native American community, possibly the Manaponni and Chickahominy tribes). Since Walter Plecker, a medical doctor and eugenicist was the Registrar for the Virginia Bureau of Vital Statistics changed the birth certificates related to Native (brown and copper colored) people in Virginia to be labeled "Colored" instead of keeping the names of the tribes). This destroyed the tribal links between the our native heritage.) There have been articles in the Washington Post regarding the atrocities of this man and others who were eugenicists whose purpose was and is systemic racism. We, as a community should never forget who we are as the original owners of this land.

The Brown Grove Community has been routinely targeted to host facilities that have negative environmental impacts including Interstate-95, the Hanover County Airport, a landfill on Ashcake Road, T & A Truck Stop and CP& P Concrete plant. In addition, there are at least 5 well drilling companies and contract digging within 2 miles of Egypt Road 741. The proposed development will contribute to the pollution generated by these other industrial sources and accelerate the degradation of Brown Grove. The proposed development will remove graves from three known cemeteries and historic markers.

This is environmental racism and Brown Grove has been battling this injustice for decades. Wegmans proposed facility will create a tremendous number of safety issues, air pollution, and health concerns like asthma, cardiovascular issues, lung disease, and cancer. The majority of Brown Grove residents have well water and contaminated water can cause an abundance of health-related issues, particularly for young children.

The DEQ and the Board cannot turn a blind eye to the disproportionate impacts that environmental decisions inflict on underrepresented communities. The guiding principle of environmental justice is that everyone, regardless of race, color, national origin or income is entitled to equal protection from environmental harms and risks.

POLICIES and PROCEDURES- Development and Compliance

The DEQ has a responsibility to ensure that environmental justice is integrated into policies in order to achieve environmental and public health improvements for communities in Virginia that may be disproportionately burdened by environmental harms and risks, as minority, low-income and racially- identified communities. These potential hazards to our community should be reported to the EPA for our protection.

It is imperative that the DEQ and Wegmans have the responsibility to:

- ensure that the Brown Grove Community is not harmed by environmental and health-related challenges, to preclude planned poisoning and eventual community annihilation due to polluted air, gases, flooding, constant loud noise and destabilization of homes and lands;
- ensure that the Brown Grove Community completely understands the inherent, negative impact regarding the injustice of environmental destruction of lands and personal properties, as well as, the eventual health-related issues which will arise if this project is implemented under the current proposal;
- provide monetary accessibility and business opportunities specific for the Brown Grove Community to meaningfully participate in the decision-making processes not to locate this project in the Brown Grove community;
- provide timely access to all information, equipment, tools, and resources to the Brown Grove Community and to be thorough and transparent in the community in order for the community to be aware of decisions which are made and potential changes that are being planned by the state, local government and business venture capitalists that may devastate the community;

- **develop comprehensive methods to swiftly identify, address, track, and measure progress toward our claim of equal protection from harm environmentally, economically, monetarily, legally and racially, as injustice has been woven within these systemic areas, and, has prevailed for over a century in Hanover County and in other minority communities in the state of Virginia.**

The Wegmans plan is unacceptable to the people of the Brown Grove Community and other residents of Hanover. We are fervent with our intention to claim protection against this attack on the Brown Grove Community, specifically. This is our home and has been our home for over 150 years. Moving is not an option because it is the land of our ancestors.

Until these matters are adequately addressed, the permit should be denied.

Melvinia Wilson
Brown Grove Community Resident



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Wegmans Permit

1 message

Sara Blose <sblosejd@gmail.com>
To: Jaime Bauer Robb <jaime.robb@deq.virginia.gov>

Fri, Nov 20, 2020 at 8:35 AM

Good morning Ms. Robb:

For your convenience, I have attached the email correspondence I referenced last night demonstrating that Wegmans was not truthful in their alternatives analysis regarding the roadwork "required" for Archie Cannon. I look forward to submitting much more extensive comments prior to the end of the comment period.

Thank you.

Sara Blose

 **email hill carter pkwy.pdf**
286K

9-1

FOIA request

Nora Amos <namos@ashlandva.gov>
To: Sara Blose <sblosejd@gmail.com>

Thu, Sep 24, 2020 at 3:58 PM

Sara,

As we discussed, in working with the prospect we discussed the need for the extension of Hill Carter Parkway to be completed. At the time we met with VDOT and VEDP and believed we would have been able to leverage approximately \$5 million in TPOF funds to construct the roadway as a state economic development incentive. We have since received a more solid estimate of \$5-6 million, not \$10 million.

At no point was this a "requirement", but it was a need and the prospects agreed to work with us to get it done using state funds and administration.

I hope this answers your question. Let me know if you have any follow-up inquiries.
Take care,

Nora Amos, Director

PLANNING AND COMMUNITY DEVELOPMENT

O: 804-798-1073 101 THOMPSON ST. P.O. BOX 1600
ASHLAND, VA 23005



ASHLANDVA.GOV | VISITASHLANDVA.COM

IMPROVING THE QUALITY OF LIFE IN ASHLAND THROUGH THE PROFESSIONAL
AND EFFICIENT DELIVERY OF OUTSTANDING PUBLIC SERVICES

----- Original message -----

From: Sara Blose <sblosejd@gmail.com>

Date: 9/24/20 10:11 AM (GMT-05:00)

To: Nora Amos <namos@ashlandva.gov>

Subject: FOIA request

Hi Nora,

I'd like to request any public records your office may have specifically about Wegmans/Wild Tiger and Archie Canon. By this, I mean contain both Wegmans and Archie Canon together, not the two topics separately.

What I'm really interested in is whether there was any requirement from the Town to extend Hill Carter Parkway to use that property.

Please let me know if you have any questions.

Thanks very much,

Sara Blose



Robb, Jaime Bauer <jaime.robb@deq.virginia.gov>

Additional Information

1 message

Matt Neely <Matt.Neely@timmons.com>

Fri, Nov 20, 2020 at 11:04 AM

To: "Robb, Jaime Bauer" <jaime.robb@deq.virginia.gov>

Cc: "bryan.jones@deq.virginia.gov" <bryan.jones@deq.virginia.gov>

Good Morning Jaime,

I hope you are well.

During last night's public hearing, there were many citizen comments regarding the LEDPA, Archie Cannon, and Hill Carter Parkway. In anticipation of an additional information request from your office regarding that topic, the applicant has asked that we provide you with the attached correspondences from July 2019.

Additionally, we will also be providing additional information as to the actions surrounding the Archie Cannon site to further support why it was not determined the LEDPA.

Regards,

Matt

Matt Neely, PWD*Senior Environmental Project Manager*

TIMMONS GROUP | www.timmons.com
1001 Boulders Parkway, Suite 300 | Richmond, VA 23225
Office: 804.200.6369 | Fax: 804.560.1648
Mobile: 757.329.0573 | matt.neely@timmons.com
Your Vision Achieved Through Ours

To send me files greater than 20MB [click here](#).

----- Forwarded message -----

From: Nora Amos <namos@ashlandva.gov>

To: Tim Davey <Tim.Davey@timmons.com>, Scott Dunn <scott.dunn@timmons.com>, Andrew Gould <Andrew.Gould@timmons.com>

Cc:

Bcc:

Date: Wed, 10 Jul 2019 14:27:06 +0000

Subject: Hill Carter Parkway- Tiger

9-4

All (didn't know who to start with),

We just spoke with Lindsey at VEDP about the possibility of a TPOF grant for the Hill Carter Parkway extension project. She says that you all are estimating \$5mil. We were closer to \$10mil. In order to apply we would obviously need a more exact number. So I have several questions:

1. How much would it cost to get a more exact estimate?
2. Is this something Tiger would pay for?
3. If we contract to have it done, is it a conflict for you to do the work?
4. If you do the estimate we would like one for a VDOT administered project and one where it is contractor (you?) administered. Not sure if there would be a difference?

Happy to chat if that is easier. We hope to meet with VDOT in the next day or two about the funds. Thank you in advance for your assistance.

Nora D. Amos

Town of Ashland

Director of Planning and Community Development

101 Thompson Street

P.O. Box 1600

Ashland, VA 23005

Phone: 804-798-1073

www.AshlandVa.gov

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----- Forwarded message -----

From: Dan Aken <dan.aken@wegmans.com>

To: Matt Neely <Matt.Neely@timmons.com>, Ivan Wu <Ivan.Wu@timmons.com>, Doug Viets <doug.viets@wegmans.com>, Marty Herrmann <marty.herrmann@wegmans.com>, "Lain, John M." <jlain@mcguirewoods.com>

Cc:

Bcc:

Date: Fri, 20 Nov 2020 15:27:02 +0000

Subject: FW: Project Tiger - Responses

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here is the correspondence I have from Nora. Spelling out what we were prepared to do and some of the associated costs. Again, shortly after this I re-engaged with Mrs. Allen (the land-owner) and she informed me that she had someone else looking at the land and ultimately signed an agreement with Skanell Development.

From: Nora Amos <namos@ashlandva.gov>

Sent: Friday, July 12, 2019 4:30 PM

To: Dan Aken <dan.aken@wegmans.com>

Cc: Hurt, Lindsay <LHurt@vedp.org>; Thomas IV, E. Linwood <Elthomas@hanovervirginia.com>; Thomas T. Dubel Jr. <tom.dubel@altusgroup.com>; Zina Diehl <zina.diehl@altusgroup.com>; Josh Farrar <jfarrar@ashlandva.gov>; Joe Topham <JTopham@ashlandva.gov>

Subject: RE: Project Tiger - Responses

Dan,

We have incorporated our responses into your message below in red. Looking forward to discussing this further with you and your team.

Have a great weekend.

Nora D. Amos

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Hi Nora,

I hope this email finds you well.

I am writing to follow-up on our meeting from a few weeks ago. We have now had a chance to review the Axelle property again, discuss our thoughts with the current land owner, and give additional thought to our uses of the property in light of your feedback.

As a result, we are putting forward this proposed approach, which we hope will address the Town's concerns, while allowing us to move forward with our project.

1. We intend to purchase a smaller portion of the property than what was originally proposed, preserving approximately 52-acres for mixed-use development along the Archie Cannon Drive. We would like to preserve the ability to have a potential future passenger vehicle only connection to Archie Cannon, if it made sense with the adjacent development and future uses of the property. Attached is a conceptual plan showing the portion of the property we would intend to purchase.

- We really like the idea of having up to four remnant pieces left after your project: Lots 1 and 2, your manufacturing space, and the potential mixed use area.
- We have concerns (addressed below) about the lack of a connection to Archie Cannon Drive.

- We need to speak with Hanover County about the precise location of the sewer line. We want it to be as low cost as possible while ensuring that it does not impede the development of the remaining property
 - On the map provided would lots 1 and 2 be owned by Wegmans or retained by Mrs. Allen?
 - With the desired level of security for the site would a walking trail still be a possibility? The possibility of a trail was a significant selling point when we worked with Ms. Allen to rezone the property.
2. We are showing a 100-foot wide landscaped buffer along the entire length of the property, that is adjacent to Route 1. The current buffer requirement is 50-feet. So we would be doubling what is currently required in an effort to provide additional screening in order to address your concerns that this is the northern entrance to the Town. Additionally, we would preserve the portions of the parcel up-front along Route 1 for additional development, that would likely be manufacturing type uses that you referenced the Town would like to see. We potentially have our own need for these spaces, but it is just too early for us to commit to that aspect at the moment.
- The loading dock locations as depicted would need amendments to the current proffers. This is based on the Route 1 frontage requirement. As we discussed, if everything else were to come together Town Council may amend the proffers, but we included this comment just make sure we are communicating all potential issues.
3. We would like to understand how the Transportation Management Fund, you referenced at the meeting, works in greater detail, but based on what you identified at the meeting we believe it would make sense for us to contribute to this fund to help support this effort. We would need to understand the order of magnitude others such as Kings Dominion are contributing and could then respond with more specifics on what we thought made the most sense.
- Estimates to bring a full time commuter bus route to Ashland are about \$247,000 for our portion of a \$712,000 system annually. The other part is shared by Kings Dominion, fares, and state grants. We would also discuss this opportunity with adjacent industrial users.
4. Addressing the concern with trucks.. I am hopeful that after seeing the actual numbers we presented at the meeting, that you and Council will find that there are not nearly as many trucks heading to the south through Town as you may have originally had concern with. However, we understand the long-term vision for the Town and are in the process of fully evaluating the extension of the North Hill Carter Parkway. Based on preliminary estimates by Timmons (for both roadway improvements and potential wetlands mitigation) we believe the total cost to make this connection is approximately \$5M, minus the cost associated with land purchase, permitting, etc.. We are working through our consultant (Altus) and the State to see if we can get access to TPOF funding to help facilitate this work. As we understand it, this would ultimately be an agreement between VDOT and the Town to make this happen. We are happy to participate in any way feasible, but do have hesitations with tying the completion of this project with our opening of our facility. There are just too many unknowns with permitting, wetlands, right-of-way acquisition, etc.. associated with the new road that could potentially hold-up or interfere with our project. I would like to further discuss how we can partner in this effort without being potentially held-up.
- We are working to get a solid estimate on the Hill Carter Parkway extension project as well. From our initial estimates, we expect this to be closer to \$10 million once property is acquired and associated wetlands are mitigated.
 - As we previously discussed, we are very open to being flexible on timing of the road extension completion, but do need a correspondingly very high level of assurance it will actually happen, and:
 - We obviously want to ensure that if we move forward together that this extension is completed and the Town is not left footing the bill if costs are greater than estimated.
 - Reminder the proffers require that a TIA must be completed by the applicant and that the applicant must complete the work which the TIA identifies as necessary.
 - The most obvious point that we expect the TIA will identify is the need for a traffic signal at the main entrance. Our assumption has been that would be off of Archie Cannon Dr, or across from Jamestown Road. In order to properly use the Hill Carter Parkway extension we've discussed, trucks will likely need a protected left turn from, or crossing of, U.S. Route 1. Otherwise, it would be more likely that a driver would simply proceed south to Route 54 on Route 1 and not use the constructed route. Without fully understanding Wegman's operational traffic flow requirements our preference is to have a connection to

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- Was the reasoning for the proposed entrance location based on building/parking layout? This would not be signalized and seems like it would be hard for truck traffic exiting to the north or arriving from the south.

I know there is a lot here and it is fairly preliminary in nature, but, I would like to understand if what I have outlined (along with the proposed plan) is feasible. Please let me know if you would like to discuss further as you give this consideration.

Thanks again for the opportunity to have this discussion and try to work through the issues. We are excited about the possibilities, but I do want to be clear in stating that we are particularly concerned about the traffic impacts of the project on the site as well as the offsite impacts to the Town's overall transportation system and the remaining economic development opportunities on this key piece of property.

Best,

Dan

Dan Aken

Director of Real Estate and Site Development

Wegmans Food Markets, Inc.

100 Wegmans Market Street / P.O. Box 30844

Rochester, NY 14603

(585) 464-4728 Work

(585) 755-1842 Mobile

dan.aken@wegmans.com

2 attachments

 **Hill Carter Parkway- Tiger.eml**
14K

 **FW: Project Tiger - Responses.eml**
52K

From: Nora Amos <namos@ashlandva.gov>
Sent: Wednesday, July 10, 2019 10:27 AM
To: Tim Davey; Scott Dunn; Andrew Gould
Subject: Hill Carter Parkway- Tiger

All (didn't know who to start with),

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From: Dan Aken <dan.aken@wegmans.com>
Sent: Friday, November 20, 2020 10:27 AM
To: Matt Neely; Ivan Wu; Doug Viets; Marty Herrmann; Lain, John M.
Subject: FW: Project Tiger - Responses

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Best,
Dan

Dan Aken
Director of Real Estate and Site Development
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 100 Wegmans Market Street / P.O. Box 30844
 Rochester, NY 14603
 (585) 464-4728 Work
 (585) 755-1842 Mobile
dan.aken@wegmans.com



MEMORANDUM

DEPARTMENT OF ENVIRONMENTAL QUALITY *Piedmont Regional Office*

4949-A Cox Road, Glen Allen, Virginia 23060-6295

804/527-5020

TO: File
FROM: Jaime Robb, VWP Regional Manager
DATE: June 17, 2020
SUBJECT: Brown Grove Outreach Meeting on VWP No. 19-2036 Wegmans Distribution Center

On Wednesday, June 17, 2020 DEQ Piedmont Regional Office staff and Central Office staff held a conference call with members of the Brown Grove Community that is located adjacent to the proposed Wegmans Distribution Center. The Brown Grove Community is located approximately on Ashcake Road from Interstate 95 to the Brown Grove Baptist Church and includes residences on Egypt Road and Johnstown Road.

Community members on the call included:

Charles Morris, property owner and administrator for Caroline Morris's property
Bonnica Cotman, property owner
Kenneth Spurlock, Brown Grove Baptist Church Deacon Chairman
Michael Morris, property owner
Queen Shabazz, Virginia Environmental Justice Collaborative Coordinator
Chris French, Observer invited by Mr. Charles Morris for assistance

DEQ staff that participated included:

James Golden, Regional Director, Piedmont Regional Office
Jaime Robb, VWP Regional Manager, Piedmont Regional Office
Bryan Jones, VWP Permit Writer, Piedmont Regional Office
Dave Davis, Manger, Office of Streams and Wetlands, Central Office
Ann Regn, Manager, Office of Public Information and Outreach

During the call, Jaime presented information provided to interested parties prior to the call (attached) explaining the Virginia Waters Protection Permit program, permit application requirements, application review of DEQ staff, preparation of a draft permit materials, the public participation process, and specific wetland impact information for the proposed Wegmans Distribution Center. Following the presentation, community members asked questions and expressed concerns on the following topics:

- Delineation confirmation process – checks and balances
- Stormwater flooding and drainage
- Deforestation and water quality
- Future well water contamination
- Water quality monitoring of site before and after development
- Ongoing monitoring of site operations following construction
- Environmental Justice

Community members also expressed concerns regarding DEQ's announcement that the upcoming public hearing on July 20, 2020 was a planned electronic meeting rather than an in-person hearing. Jaime explained that decision to hold the meeting electronically was due to the COVID-19 circumstances, and that prior to the hearing DEQ would determine if it is feasible to hold an in-person component to the hearing. It was explained that DEQ was providing various opportunities for the public to participate including a live stream, webinar, and also a call in number for community members that may not have internet access. Jaime also encouraged that comments be submitted in writing, and stated that verbal and written comments are equally evaluated during the agency's review.

There was additional discussion amongst the group about how to ensure members of the community were aware of the opportunity to participate in the public process. Jaime explained that notifications of the hearing had been sent to the citizens that commented during the previous comment period, riparian land owners, Mr. Charles Morris, and Pastor Beechaum (Brown Grove Baptist Church) and was also posted on DEQ's website. Additionally, Jaime shared that the public notice would be published in the *Richmond-Times Dispatch* on June 20, 2020. Community members expressed concerns that not all Brown Grove Community members get the *Richmond-Times Dispatch* and suggested using other publications such as the *Richmond Free Press*. DEQ committed to following up with the *Richmond Free Press* about getting information published. Additionally, it was suggested that DEQ provide the hearing notice to Hanover County to send out to county residents. DEQ committed to contacting the county and ask if they would email the hearing notice to county residents.

At the conclusion of the call, Jaime offered to send copies of the presentation materials and/or hearing notice to anyone on the call that did not have the materials. She provided her contact information and offered to answer any questions in the future.