



west virginia department of environmental protection

Division of Waster and Water Management
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Harold D. Ward, Cabinet Secretary
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May 20, 2022

Re: WV/NPDES General Permit WV0115924
Waterfront Group WV, LLC
Registration Application No. WVR111041
Response to Public Comments

Dear Citizen,

The State of West Virginia, Department of Environmental Protection (DEP), Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those who submitted written comments on the application from Waterfront Group WV, LLC. This Response to Public Comments highlights the issues and concerns that were identified through the comments received during the public notice period and virtual hearing period.

Waterfront Group WV, LLC (Whitewater Preserve) will disturb 143 acres and is planned residential/recreational area in Preston County. The property consists of 842 Acres and is owned by Waterfront Group. Approximately 150 lots will be sold to individuals for residential development. Roads will be upgraded or built. The property borders Big Sandy Creek and Laurel Run flows through the property. The project will develop the property into a planned housing development.

A Class I legal advertisement was published in The Preston County News on February 12, 2021. This public notice allowed the DWWM to receive public comments on the proposed project. The public notice/public comment period closed on March 14, 2021. Several commenters requested a public hearing. A second Class I legal advertisement was published on April 30, 2021, announcing that a virtual public hearing would be held on the Zoom Meeting videoconferencing platform from 6:00 to 8:00 pm on Tuesday, June 8, 2021, and that the comment period had been extended to accept written comments until 5 pm June 18, 2021. Seven (7) oral comments were made at the virtual hearing.

DWWM received 138 sets of written comments during the two public notice periods. Every attempt has been made to ensure that all issues and concerns relevant to the application and within the scope of the WV/NPDES General Permit for Stormwater Associated with Construction Activities (CSW GP) were considered and addressed. While all comments are reviewed, it is beyond the purview of the DWWM to respond to comments that are not related to the permit application or CSW GP. DWWM has reviewed and considered all comments received and has prepared a Response to Public Comments.

Promoting a healthy environment.

This permit registration was issued on April 15, 2022, with the following Special Condition:

Special Condition: All lots associated with Waterfront Group WV, LLC Permit Registration WVR111041 must comply with the General WV/NPDES Water Pollution Control Permit during the permitting process. Stormwater discharges are required to discharge into the surface waters of the State in accordance with the General Permit. A modification to Registration WVR111041 may be required to facilitate appropriate drainage for each individual lot to comply with the 2019 General Permit.

Notice is hereby given of your right to appeal the terms and conditions of this permit registration of which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days of this notification.

Thank you for your interest and comments on the Waterfront Group WV, LLC application. If you have any further questions or concerns, please do not hesitate to contact Rick Adams of my staff at 304-926-0499 ext. 43763 or by email at rick.d.adams@wv.gov.

Sincerely,

Katheryn Emery, P.E.
Director

KDE/rda

Enclosure

**Response to Public Comments
Registration No. WVR111041**

Multiple comments were provided on specific issues. Those comments have been summarized and, in some cases, similar comments have been listed together. Comment is shown in italics with the agency response below in bold.

1. *Request for Public Hearing: Most commenters requested a public hearing be held concerning the construction of the WVR111041 Whitewater Preserve project.*

A virtual hearing was held on the Zoom Meeting videoconferencing platform at 6:00 on Tuesday, June 8, 2021. Seven (7) oral comments were made during the virtual hearing. See Section C for those comments and responses.

2. *Not Applicable: Comments were received that were not specific to Stormwater or Groundwater Associated with Construction Activities. The agency has no response to the comments that are not items subject to the jurisdictional authority of the WVDEP.*

While all comments are reviewed, it is beyond the purview of the Division of Water and Waste Management to evaluate comments that are not specifically related to the Construction Stormwater General Permit requirements.

3. *Work Beginning without a Permit: Several commenters were concerned that work was started in this environmentally sensitive area without a permit.*

Per the applicant, based on advice from a local consultant, the project was started without a permit. Once it became apparent this was in error, the process of preparing the permit was initiated. E&S controls have been installed and maintained and only remedial work has been completed on the site while the applicant waited on permit issuance. NOVs were issued and the applicant has taken corrective action.

4. *Construction Completed on County Routes 14 and 14/1: Several commenters were concerned about the current condition of County Routes 14 and 14/1 and the construction that has been completed.*

Per the applicant, stone was added to the county road and ditches were cleaned. The cleaning of the ditches and culvert inlets allowed for water to flow the way it was originally constructed by the DOH. The existing bridge that crosses Laurel Run is on a private road and is not on CR14 or CR14/1. The applicant has removed the county road upgrade in this application since it was determined that only maintenance was required at this time. The ditches now carry water which did flow in the road and the road is no longer acting as a stream as the commenter stated.

5. Conservation and Protection of Natural Resources: *Several commenters noted that Big Sandy of the Cheat River is beloved by the community and Laurel Run is one of the few unimpaired and forested tributaries to the Big Sandy Creek and hosts a native Brook Trout fishery. Big Sandy Creek is a priority area for boaters because of its good water quality, stunning beauty, and paddling opportunities. It is beloved by the river community, including whitewater boaters for its untamed and wild scenery and equally wild ride. Boaters travel from across the world to experience the thrill of navigating the Big Sandy.*

The applicant has developed a SWPPP and GPP that stormwater discharges will be of such quality not to cause a violation of applicable water quality standards. The permittee is required to protect the water quality and the existing uses and designations of receiving waters by implementing appropriate BMPs.

6. Inadequate Erosion and Sediment Control Plan: *Several comments received were concerned that the quantity and size of the proposed E&S BMPs are inadequate, that single rock check dams accepting large drainage areas and virtually no sediment will be removed in the check dams and all sediment will exit the proposed culverts and pass into the receiving stream(s). The proposed use of compost filter sock as a BMP is not adequate given the scale of construction.*

The controls proposed for this project have been enhanced including rocked ditch lines, sediment basins, rock checks with sumps and smart belted silt fence which are consistent with best management practices (BMPs) required by the WVDEP for linear construction projects.

7. Section 401 Water Quality Certification, Section 404 permit through USACE (e.g. Nationwide Permit) or WVDNR (Stream Activity Application): *Several comments received were concerned that earthwork and equipment activity below the ordinary highwater mark of Laurel Run without appropriate permits being obtained for impacts to aquatic impacts including work (i.e. stream channels) that are tributary to Laurel Run and Big Sandy Creek, resulting from the developer's earthwork for roads, ditches, and installation of culverts..*

Per the applicant, the only work that has been done in the flood plain was the abandonment of the ford crossing in Laurel run beside the bridge. The USACE (Corps) was contacted concerning the bridge being replaced by the developers. The Corps indicated that the bridge could have been installed under a non-reporting NWP 14 however the developer should conduct an aquatic resources delineation though since it appears culverts will be necessary in many locations to cross streams that are flowing across the currently existing logging/access road and because maybe an instream stormwater facility based on a review from our 401 Section. The road crossings and stormwater facilities as well as other aquatic resources impacted as part of the proposed development could be covered by an NWP-29 for Residential Development. The applicant was encouraged to comply with the USACE

recommendation and obtain all necessary permits.

8. Section II.H.1.b of the General Permit, the plans are required to show cross sections of proposed fill areas: Several comments received were concerned that appropriate cross sections were not provided.

Typical cross sections have been provided at appropriate locations to illustrate cut/fill areas for new roads and roads to be upgraded. Several of these roads are existing and are being expanded in some areas. There are no large fill areas and appropriate drainage have been proposed based on contributing drainage areas, so a slope stability issue is not anticipated.

9. Sections II.H.3.b.11 and II.H.3.b.12 of the General Permit: Comments received were concerned that if 3,600 cubic feet of storage is not attainable, appropriate justification must be provided.

The disturbed areas associated with this project are generally linear in nature and enhanced BMP's have been proposed including rock checks with sumps. In addition, two (2) sediment basins have been added to the plan and will be retained as permanent storm water rain gardens.

10. Section II.H.1.d. of the General Permit for Ditch and Culvert Design: Comments received requested that DEP require the applicant to demonstrate the proposed and improved ditches can pass the 10-year, 24-hour precipitation event and culverts pass can pass the 2-year, 24-hour precipitation event.

Road ditches have been proposed to handle a 10-year storm event and culverts pass a 2-year, 24-hour precipitation event. Discharge channels have been proposed to be constructed where ditches or culverts discharge more the 5 CFS of storm water based on a 10-year storm event. These channels will be constructed to convey runoff from culverts, an appropriate channel, or manmade structure. The applicant's plans identify which culverts that were existing and which culverts will be replaced.

11. Section II.H.1.d. of the General Permit for road grades: Some of the proposed roads are currently shown in the design plans as being crowned in the middle, should be sloped to ditch to eliminate potential for fill slope erosion and should not be more than 15% slope.

Roads were previously constructed with a crown. It was determined that it is better environmentally to leave them as built instead of re-disturbing the area. It is proposed that new roads will be graded, and the slope/crown will be corrected. The areas where the crowned roads occur were described in the plan. Sections of the roads are steeper than 15% however per the applicant, they were existing prior to this project construction, so the changing the slope would require excessive grading.

12. Appropriate curve number (CN) for Discharge Calculations: *Comments received were concerned that the weighted average curve number (CN) used for Pre-development and Post-development calculations is the same (74).*

The average curve numbers were updated. The curve numbers used are from SCS resources and methodology.

13. Grading Plan with contours: *Comments received requested that DEP require the applicant to submit of a grading plan that shows proposed contours and the true extent of earthwork required to construct the road.*

The project work consists of upgrading roads that are existing on property that has been heavily timbered in the past. It has been determined that roadway widths are primarily adequate for the applicant's intended use and minimal slope grading is anticipated. Field adjustment can be made that will account for any imbalance.

14. Proposed Roadway width and acreage: *Comments received were concerned that the proposed plans do not include an appropriate grading plan with contours and the width of the road, it is unlikely that the LOD as shown on the plans is accurate, due to the necessary length of cut and fill slopes*

The application states anticipated road widths of between 18 to 20 feet. The LOD was depicted to include additional grading which may be required, and it is not anticipated for this entire area to be disturbed across the permit area. The disturbed areas have been increased to 15.8 acres additional width for the roadways and 75.2 acres additional width for the right of way.

15. Underestimated acreage of residential lots: *Comments received were concerned that the post development area for residential lots was calculated incorrectly.*

It is anticipated that the lots will not be totally cleared by the lot owners. Most of the lot areas are expected to remain wooded, only areas required to build houses will be cleared. Due to the terrain and nature of the project, it is anticipated that most lots will only be disturbing a maximum of 2 acres.

16. Applicant's estimation of Time of Concentration: *The applicant has assumed sheet flow of 300 feet instead of 100 feet in length recommended in Section 4.4.3.5 of the WVDOH Drainage Manual.*

The SCS references and methodology were used for all the hydrologic calculations. Enhanced BMPs have been proposed for this project.

17. *Natural Vegetative Buffer: Comments given were concerned that with the steep topography and pristine nature of Laurel Run and Big Sandy Creek, we believe the approximate 60-foot vegetative buffer is insufficient to protect the water quality.*

The natural vegetated buffer will not be used as a stand-alone erosion and sediment control practice.

18. *As required by Section II.H.3.b.5 of the General Permit: comments were made that the proposed 2000 diesel tank location should be identified on the site plan. Applicant identifies 330,564 Cubic yards of excavation, with no proposed waste/borrow sites.*

The proposed Above Ground Storage Tank (AST) has been removed from the plan. Control measures for Staging areas to be used to park, provide maintenance, fuel, load and offload equipment and material deliveries have been delineated. Waste and borrow sites have been identified on the plans. All cut and fill areas occur along the road, so a 3-dimensional grading plan model is not necessary for the project.

19. *Section II.11.c An Evaluation point shall be selected: Comments concerned that the discharge points, for the hydrological calculations are not identified on the drawings, making it impossible to check the calculations. There will be a greater than 10% increase for post-development peak discharge, and therefore post construction BMPs to reduce erosion at the discharge point(s) should be implemented as outlined in Section II.H.1.c of the General Permit.*

Discharge areas were shown on a separate map (See Drainage Map). Each area was calculated to estimate the stormwater volumes and design culverts and ditches accordingly. The flow paths have been included on the drainage map. The culverts and ditch discharges have been designed with outlet channels that will direct the water to an appropriate channel.

20. *Effective functioning septic and wastewater disposal system: Several comments received were concerned that many of the lots are steep and rocky and will not be able to support a septic system.*

While all comments are reviewed, it is beyond the purview of DWWM to address comments that are not related to the Construction Stormwater General Permit requirement, application WV111041, stormwater or groundwater associated with construction activities or proposed erosion and sediment controls.