

Date: November 5, 2007

To: Chatham County Planning Board

From: Allison Weakley, Chair, Chatham County Environmental Review Board

**RE: Westfall (Booth Mountain) final plat approval request for Phases 1A, 1B and 1C**

I respectfully request that the comments below be considered before final plat approval is granted for Westfall (Booth Mountain) Phases 1A, 1B, and 1C, and that resolution of these issues will be required. Those issues include:

**INTERMITTENT STREAM NOT SHOWN ON PLAT (see Tract "I" in Phase 1C)**

1. An intermittent stream is not acknowledged on the final plat for Village (see Tract "I" in Phase 1C), despite DWQ's request that it be identified on any future plans for this property in a letter from DWQ to the developer dated August 31, 2007 (see attached). This stream was the subject of an on-site determination in July 2007 by the DWQ and Army Corps at my request. DWQ's letter further states that "the owner (or future owners) should notify the DWQ (and other relevant agencies) of this decision in any future correspondences concerning this property."

As far as I can tell, this stream is NOT shown on the final plat, and needs to be. A minimum 50 foot buffer should be established and recorded on the final plat.

2. Does the acknowledgment of this intermittent stream change what is being proposed for that section of the site? The stream should at least be buffered, and some lots may not be feasible. Does the stormwater management pond in Tract "I" consider the hydrology of an intermittent stream? (See also STORMWATER MANAGEMENT below.)

**HERNDON CREEK BUFFER NOT CORRECTLY SHOWN ON PLAT (see Phase 1C)**

3. What is the width of the buffer along Herndon Creek shown on the proposed plat for Phase 1C?

A 100' buffer along Herndon Creek was originally (incorrectly) measured from the centerline of an old channel (this segment of Herndon Creek has been impounded for more than a decade, long before the property was proposed for development), not from the normal pool elevation of the impoundment, as required by the Chatham Co. Watershed Protection Ordinance.

The developer cleared and graded, and installed sediment basins (that will become stormwater ponds) and silt fencing, at the normal pool elevation of the established impoundment. This development is bordered by both Army Corps (floodable area of Jordan Lake) and County property along this segment of Herndon Creek, and includes 100-yr floodplain.

When issues were raised regarding the required buffer for impoundments, the developer drained the impoundment (Spring 2007) by cutting through dams in at least two locations. The breaches in the impoundment occurred on the property line with the Army Corps and the County, and has now re-established the stream channels at those locations, which happens to be closer than perhaps anticipated. As a result, the buffer along Herndon Creek is now less than 100 feet.

The buffer along what is currently Herndon Creek should be required to be 100 feet.

#### **OTHER STREAMS OR BUFFERS NOT SHOWN ON PLAT**

4. A buffer shown along a stream on the plat for Phase 1C (see Tract "F") does not follow the course of the stream. Only a voluntary buffer of 75' is shown. Has the buffer been measured from centerline or top of bank?
5. A stream shown in Tract "E" on plat for Phase 1A is not buffered on the plat.
6. Other streams on site may not have been acknowledged, or the full extent of streams may not be accurate. On-site determinations are also needed elsewhere within Phase 1A and 1B before final plat approval is given to ensure all streams on site have been acknowledged.

#### **STORMWATER MANAGEMENT at the VILLAGE SITE (see Phase 1C)**

7. Have stormwater ponds been sized appropriately, given that they drain considerable impervious surface on impervious soils (Creedmoor-Green Level), and some receive groundwater flow?

This is especially important in Tract "I" of Phase 1C as an intermittent stream drains directly to the stormwater pond constructed in the channel downstream and adjacent to the 100-yr. floodplain. Two other ponds in the Village site also receive additional groundwater flow from seeps that have documented groundwater flow.

8. Stormwater management ponds should be shown on the final plat for all Phases as permanent features for the entire project.

#### **TRAIL to BOARD of EDUCATION PROPERTY (see Phases 1B and 1C)**

9. The proposed trail from the Village (Phase 1C) and Crossing (Phase 1B) sections to the Board of Education property ends at Jack Bennett Road, not at the school site. So pedestrians will need to walk the length of the road, which is limited to 60' total (see COUNTY INTEREST below) to get to the school site.

Condition #8 of the Conditional Use Permit signed January 18, 2005, by Bunkey Morgan, then Chair of the Board of Commissioners, states that "the developer shall create an easement for a

trail from the village area to the school site with the location of such easement to be determined at preliminary plat phase. The installation of such trail will be contingent upon agreement by the Chatham County Board of Education."

It's my understanding that the trail shown on the preliminary and final plats has NOT been reviewed by or discussed with Board of Education.

The Subdivision Ordinance also allows the County to require sidewalks within 1 mile of school sites. A trail should be extended to neighboring communities so they too may access the school site.

### **OTHER ITEMS OF COUNTY INTEREST**

10. There is a strip of land 60 feet wide owned by the County to access the proposed Jack Bennett school site, and this land is adjacent to and between Phase 1B and 1C. This strip of land is the only access to the site. It's my understanding that the Board of Education is interested in possibly negotiating a wider easement to the proposed high school site. Has the Board of Education been consulted by the Planning staff? This should take place before final plat approval is considered.

11. Condition # 16 of the Conditional Use Permit requires the developer to "negotiate with the Chatham County School Administration the feasibility of shared-use of the Booth Mountain Community wastewater treatment system and Chatham County Schools' property for effluent spray irrigation."

No information has been presented as to the status of those discussions, or what is being discussed.

### **HISTORICAL/CULTURAL SITES NOT INCLUDED IN REQUIRED SURVEY**

12. The field reconnaissance archaeologist survey was submitted to the Planning Department in June 2006 to satisfy Condition #9 of the Conditional Use Permit. The survey was not reviewed for content, and should be subject to peer review before final plat approval is considered.

The reconnaissance survey did not mention anything about an old chimney/home site (still standing) and an old rock dam or bridge across Herndon Creek, both of which occur within Phase 1B (and are obvious and noticeable in the field). Nor did the survey address the many archaeological sites documented with the NC Department of Cultural Resources (and included in a map submitted as part of the 1 ½ page reconnaissance survey).

### **SIGNIFICANT NATURAL HERITAGE AREAS (SNHAs)**

13. The NC Wildlife Resources Commission submitted comments on October 23, 2007 with a number of recommendations, including that the presence of the Boothe Hill Upland Wildlife Area

and Herndon Creek Ravine SNHAs boundaries be shown on all plats, and that no built structures be placed within those boundaries.

Permanent conservation of the open space on this site that remains in its natural forested condition, including stream buffers, should be strongly encouraged.

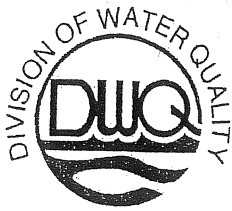
The NC Ecosystem Enhancement Program (EEP) is currently accepting conservation easement donations throughout the Herndon Creek watershed as part of a high quality preservation project. The developer should be encouraged to work with EEP to permanently preserve open space on this site.

**SUMMARY**

Given the issues that remain, I urge you to postpone consideration of the request for final plat approval for Phases 1A, 1B, and 1C until these issues have been addressed.

I also urge you to request the assistance of Fred Royal, our new Environmental Resources Director, in dealing with some of these issues, in particular those regarding streams, buffers, and stormwater management.

*Attachment:* Letter from DWQ (NC Division of Water Quality) to Mr. Jerry Radman, Over Jordan, LLC, dated August 31, 2007



Michael F. Easley, Governor

William G. Ross Jr., Secretary  
North Carolina Department of Environment and Natural Resources

Colleen H. Sullins, Director  
Division of Water Quality

August 31, 2007

DWQ Project # 2006-1416  
Chatham County  
Page 1 of 2

Mr. Jerry Radman  
201 Shannon Oaks Circle  
Suite 201  
Cary, NC 27511

Subject Property: **Booth Mountain (Westfall) development, "Village" portion off of Jack Bennett Road**

**On-Site Determination for the presence of intermittent or perennial streams**

Dear Mr. Radman:

On June 20, 2007, at the request of Ms. Allison Weakley, Chair of the Chatham County Environmental Review Board, I and Eric Kulz of DWQ as well as Monte Matthews of the US Army Corps of Engineers were accompanied by Kevin Martin and Jason Payne of Soil and Environmental Consultants to this site. As you know, DWQ and Corps staff have visited this development project several times over the past year. We conducted an on-site determination to review channels located on the subject property to determine if the channels were intermittent or perennial streams. The channel is labeled as "A and B" on the attached map initialed by me on July 13, 2007.

At Ms. Weakley's request, I conducted an on-site determination as stated above. During my review I evaluated the stream using the DWQ Stream Classification Form. I evaluated the stream reach "A" and calculated the score to be 20 points. The form states that if the score is "greater than or equal to 19 points the stream is at least intermittent". A section of feature "B" still remains in the woods above a disturbed section. Mr. Matthews recalls visiting that feature before it was impacted and decided that it was an ephemeral channel not subject to 404 Permitting. With respect to Feature "B", the Division has concluded that this feature is an ephemeral channel based on an earlier site visit from Monte Matthews.

**The Division of Water Quality (DWQ) has determined that the surface water labeled as "A" on the attached map is an intermittent stream from the locations flagged in the field.** No stream was present below the lowest flag since the remaining, remnant channel naturally loses its physical characteristics below this point. Therefore, land disturbance below this point has not impacted an intermittent or perennial stream including construction of Road "N". It is important to note that Mr. Monte Matthews of the US Army Corps of Engineers had the same conclusion both as to the origin of feature "A" and its extent within the disturbed area. This stream should be identified on any future plans for this property. The owner (or future owners) should notify the DWQ (and other relevant agencies) of this decision in any future correspondences concerning this property. This on-site determination shall expire five (5) years from the date of this letter.

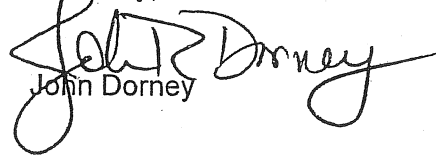
Therefore, DWQ staff have determined that the stream likely lost its direct surface connection to Herndon Creek below the intermittent segment. Therefore, DWQ staff have determined that this stream segment is isolated in the context of the Division's Isolated Wetland rules (15A NCAC 2H .1300). Since the stream length is less than 150 linear feet, impacts to this isolated stream are "deemed permitted" and as long as the provisions in 15A NCAC 2H .1305(b) are followed, then this stream can be impacted without further permitting.

In addition, our understanding is that the US Army Corps of Engineers has now signed the delineation map for the Booth Mountain site at your request and that this map does not depict a stream at the location discussed above. Since the Corps has determined that impact to this stream does not require additional permitting, then DWQ will not require permitting for this impact either.

Landowners or affected parties that dispute a determination made by the DWQ or Delegated Local Authority that a surface water exists may request a determination by the Director. A request for a determination by the Director shall be referred to the Director in writing c/o Cyndi Karoly, DWQ 401 Oversight/Express Permitting Unit, 2321 Crabtree Blvd., Suite 250, Raleigh, NC 27604-2260. Individuals that dispute a determination by the DWQ that "exempts" a surface water may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. Applicants are hereby notified that the 60-day statutory appeal time does not start until the affected party (including downstream and adjacent landowners) is notified of this decision. DWQ recommends that the applicant conduct this notification in order to be certain that third party appeals are made in a timely manner. To ask for a hearing, send a written petition, which conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. This determination is final and binding unless you ask for a hearing within 60 days.

If you have any additional questions or require additional information please call me at (919) 733-5083, ext. 528.

Sincerely,



John Dorney

JRD/lrd

Enclosures: Map of the Village portion of Booth Mountain (Westfall) project

cc: Tom Reeder, DWQ  
Chad Coburn, DWQ Raleigh Regional Office  
File Copy  
Central Files  
Eric Kulz  
Monte Matthews, US Army Corps of Engineers, Raleigh Field Office  
Kevin Martin, Soil and Environmental Consultants  
Allison Weakley, Chair, Chatham County Environmental Review Board

Filename: 20061416BoothMountain(Chatham)streamcall