November 22, 2024

Dear Chad Schooley,

Our names are John Ellis, President of the Board of Save Rural Loudoun, Tia Earman, Senior Land Use Field Representative for Piedmont Environmental Council, Jim Christian, Chairman of the Loudoun Soil and Water Conservation District, Dean Naujoks, Potomac Riverkeeper with the Potomac Riverkeeper Network, and Trinity Mills, Conservation Advocacy Specialist for Loudoun Wildlife Conservancy. Each of our organizations is dedicated to protecting the natural environment in Loudoun County.

We are writing with regards to GRADE-2023-000007, a grading permit associated with a proposed subdivision near Lovettsville. We believe the wetland permit coverage submitted in support of this permit application fails to account for the full environmental impact of the project. Specifically, this coverage ignores impacts south of Lovettsville Rd, where a large swath of wetlands and stream channel will be cleared in order to construct a "line of sight" for a new intersection of Lovettsville Rd, and the access road for this subdivision ("Schoene Farm Place"). **We request that prior to approval of GRADE-2023-000007, Building and Development discuss with VDEQ Virginia Water Protection (VWP) the following relevant aspects of these additional impacts.**

First, the developer has proposed that all vegetation within the SI1 easement south of Lovettsville Road will be cleared. Though the limits of clearing and grading were restricted to areas north of Lovettsville Rd in the final versions of this development's CPAP application, this in no way means that the region south of Lovettsville Rd will not be cleared. Our understanding from the attachments associated with CPAP-2022-0010, is that this modification was made solely to reflect the fact that VDOT will be responsible for performing the clearing. It is unclear to us whether County Zoning Ordinances consider this is a legitimate definition of "the limits of clearing and grading" – i.e., whether these limits ought to only reflect the limits of activities that will be carried out by the developer directly – but that is irrelevant to the actual clearing that will occur in SI1.

The developer and VDOT have both assessed what type of actions will be required to achieve an unobstructed line of sight triangle in the SI1 easement, and determined, in writing, that the complete removal of vegetation will be necessary. The reason for this is that the SI1 easement includes ~1/3 of an acre of dense trees and shrubs currently obstructing any line of sight. We have attached screenshots from Loudoun County GIS, and photos taken during the summer and fall that show just how thick the vegetation is. All of this will need to be cleared, because, per VDOT's intersection design standards, "the line of sight establishes the boundary of a sight triangle within which there is no sight obstruction."

For this reason, the consistent description of the clearing that the developer has provided in their CPAP has been: **"Any trees/brush located in the existing sight distance easement are to be**

removed." Similarly, for their part, VDOT has confirmed that approval of Schoene Farm Place is only possible because **"all vegetation will be removed"** from the SI1 sight distance easement. This removal must be permanent, since any regrowth would immediately obstruct the line of sight. And it will necessarily occur simultaneously with the rest of this project, since Schoene Farm Place cannot be accepted until the line of sight triangle is cleared.

Second, the U.S. Fish and Wildlife Service wetland inventory and satellite imagery indicates the presence of wetlands in most of the SI1 easement. This is unsurprising, because this area is directly adjacent to the jurisdictional wetlands and stream channel that have been surveyed on the north side of Lovettsville Rd. And as the Natural Resources Team (NRT) of Building and Development has noted, VDEQ's VWP program regulates the permanent removal of trees and vegetation from large swaths of wetlands and streams. As NRT wrote with regards to the CPAP: "**The removal of vegetation within wetland areas is considered an impact.** As this area is in an easement, staff recommends that VDOT conduct a wetland delineation within the area." NRT added that without a permit, "no land-disturbance, including removal of vegetation, could be done in that area if it is a wetland area as determined by DEQ or USACE."

We understand that because the developer has narrowed the limits of clearing in their CPAP, Building and Development cannot require that the developer perform a wetland survey at this time, which would be necessary to precisely quantify the extent of the impacts. However, in our view, the important point is simply that there will clearly be impacts to wetlands and streams as a result of this clearing.

Third, and most critically, the VDEQ permit coverage the developer has submitted to Building and Development does not authorize any impacts in the SI1 easement. Brandon Bull, Director of Policy for VDEQ, has explained the implications of this, writing:

> The coverage for this project does not authorize any surface waters impacts south of Lovettsville Road. If additional impacts to surface water are necessary coverage under a Virginia Water Protection general permit may be modified through a Notice of Planned Change request. If additional impacts to Waters of the United States (WOTUS) would cause the total loss of WOTUS to be greater than 1 acre the activity would no longer be eligible for a 22-SPGP-RCIR and would need verification under another type of U.S. Army Corps of Engineer permit. Any impacts to state waters in excess of the appropriate regulatory thresholds that are not covered by a permit would be addressed through DEQ's compliance and enforcement process.

It seems that Building and Development is assessing the various component parts of this subdivision project independently, in a piecemeal fashion: reviewing first the work that the developer will perform north of Lovettsville Rd, and then subsequently reviewing the clearing of vegetation that will occur on the south side of the road. However, as Mr. Bull explains, this is not how wetland permit coverage applications are assessed. **State and Federal environmental law requires all connected actions associated with a project to be assessed as a whole, in order to accurately calculate and evaluate its cumulative environmental impact.** As Mr. Bull wrote, when VDOT or the developer notifies VDEQ of the impacts that will occur south of Lovettsville Rd, these will be assessed in the context of the existing VWP and SPGP permit coverage that authorized impacts on the north side of the road, since clearing thousands of square feet of vegetation from stream channel and wetlands in SI1 are impacts

associated with the project **as a whole.** This permit coverage will then either need to be modified, or if necessary, a different general permit could be applied for. If VDEQ is not notified of work in the SI1 easement, the project would be in violation of environmental regulations.

In light of these facts, it seems clear to our organizations that the permit coverage submitted to support the issuance of GRADE-2023-000007 is currently incomplete. We have cc'ed Margaret Dannemann, VWP Permit Manager for the Northern Regional Office of VDEQ. As Mr. Bull wrote, a simple solution to addressing this issue would simply be to notify VDEQ of the additional impacts south of Lovettsville Rd, and ensure that appropriate permit coverage is obtained and verified prior to the issuance of grading permits.

Our organization see no downside to VDEQ ensuring this project is in compliance with all existing State and Federal regulations prior to approval GRADE-2023-000007. Prematurely approving this permit, on the other hand, could very likely lead to violations of environmental laws, and unnecessary harm to wetlands.

We therefore respectfully request your team provide VDEQ an opportunity to review the full scope of this project before approving this grading permit. While the comments that VDOT and Building and Developed provided during the review of this CPAP accurately identify this issue with the existing permit coverage, neither VDOT nor B&D has formally notified VDEQ of this issue as yet, and thus any additional information your office can provide to VDEQ would no doubt be useful.

If it would be helpful, we would be more than happy to discuss this issue further at your convenience.

Thank you very much for your attention to this permit.

Sincerely,

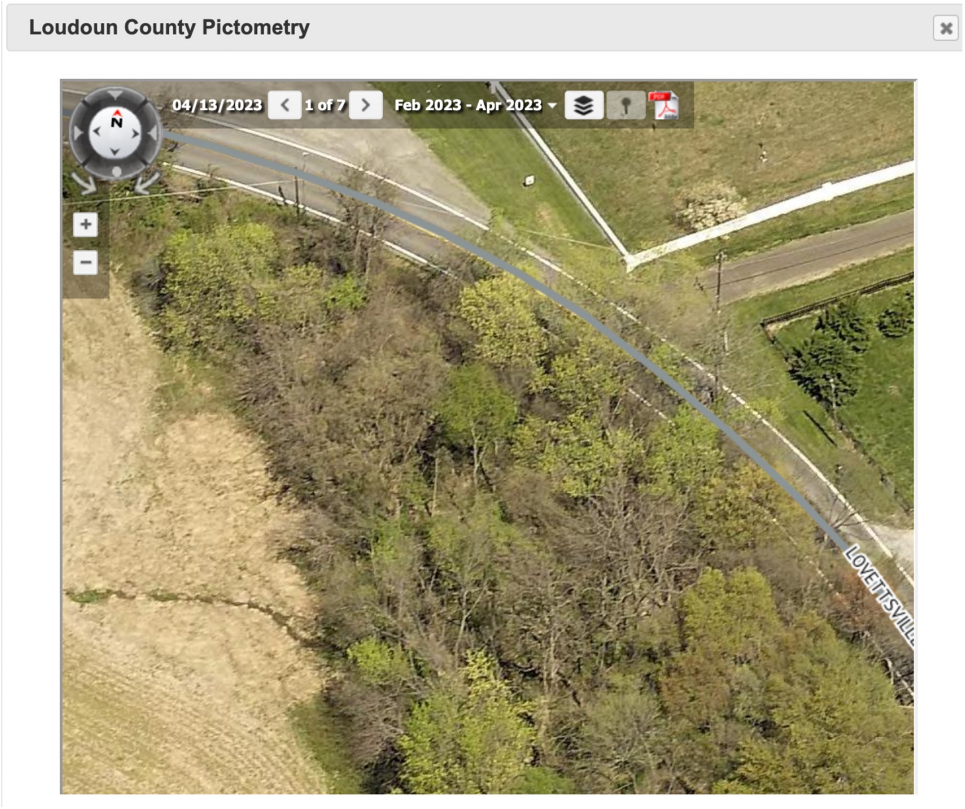
John Ellis
Save Rural Loudoun

Tia Earman
Piedmont Environmental Council

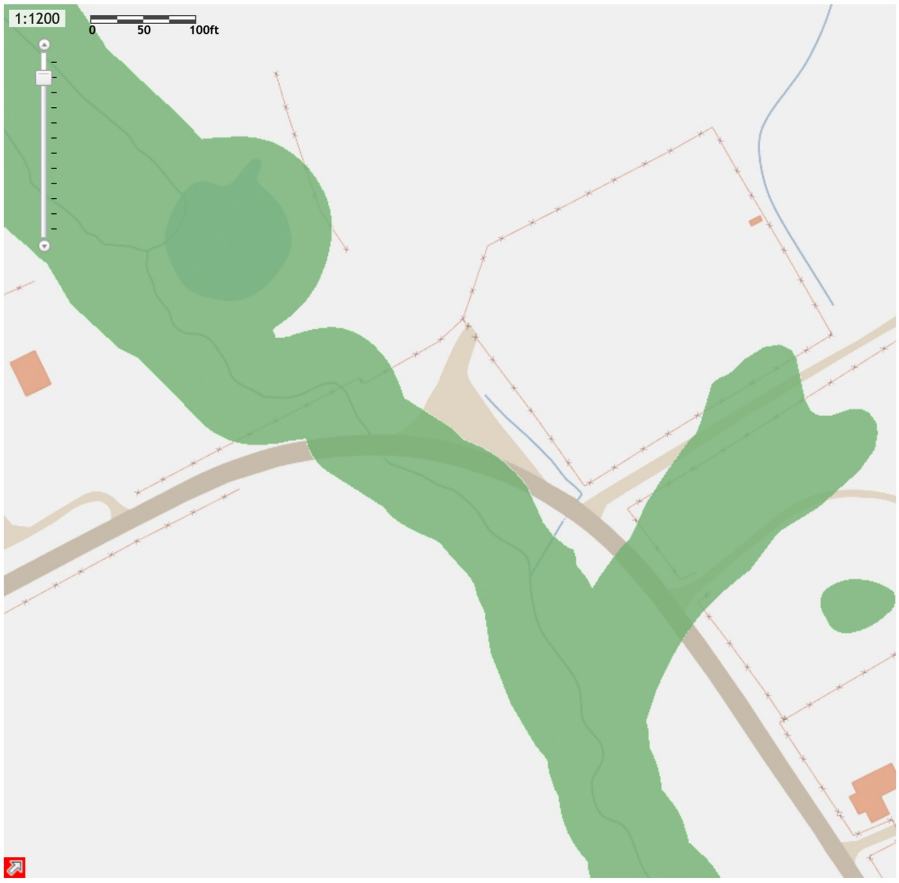
Jim Christian
Loudoun Soil and Water Conservation District

Trinity Mills
Loudoun Wildlife Conservancy

Dean Naujoks
Potomac Riverkeeper Network



Aerial imagery from Loudoun County GIS



U.S. Fish and Wildlife Service wetlands inventory





Photos of SI1 taken from Lovettsville Rd





Photos of SI1 taken from within the easement