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25 October 2005

Alexander Ciesluk, Jr.  
Deputy Regional Permit Administrator  
Division of Environmental Permits  
21 South Putt Corners Road Region 3  
New Paltz, NY 12561-1696

RE: Subdivision – Shadowfax Run Development, LP, Jackson Avenue  
Section 54, Block 1, Lot 44.2, Town of New Windsor

Dear Mr. Ciesluk:

We are in receipt of your letter of October 20, 2005. In response, we offer the following:

We are aware of the NYSDEC's general approach to the review of projects involving wetlands crossing and the policy of avoidance, minimization, and mitigation. As correctly stated in your letter, Option A, as shown on our plan, is consistent with the NYSDEC's policy and would disturb the least amount of wetlands, and is the reason the road was sited in that location. The wetland's loss is estimated at 3,900 SF.

The wetlands crossing at Option B, preferred by the Town of New Windsor Highway Superintendent, would result in a wetlands loss of an estimated 13,000 SF. The Highway Superintendent's preference for that location is based solely on the fact that the available sight distance at the proposed road intersection with Jackson Avenue is sufficient without improvements or changes to the alignment of Jackson Avenue.

The Option A location would require improvements to Jackson Avenue to achieve the required sight distance. The applicant is willing to make the improvements or provide the required monetary amount to the Town of New Windsor for the highway department to make the changes.

The third possible location at the existing farm road, north of Option B, was reviewed early on in the project as a possible access point to the site. This location was dismissed out of hand by the highway superintendent in that the available sight distance looking north from the new intersection does not provide the required distance. In order to achieve the required sight distance, additional wetlands disturbance, including the removal of trees and underbrush along Jackson Avenue would be required. The wetlands disturbance at this location for the new road itself, together with the sight distance improvements, would exceed the 13,000 SF necessary for Option B and greatly exceed the disturbance required for Option A.

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When the Army Corps of Engineers' representative, Brian Orzel, visited the site to review the wetlands delineation, he was specifically queried about the wetlands at the Option B location and the old farm road. He answered that because the area was functioning as a wetlands, regardless of its past use, it was deserving of the same protection as the balance of the delineated areas.

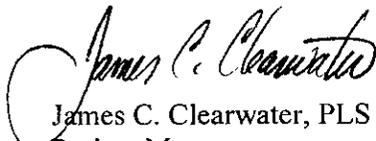
You may recall that in our meeting on August 29<sup>th</sup> at your office when the Option B and the old farm road locations were discussed, Mr. Gaugler stated that the area was, "in fact, quite wet."

The most glaring safety consideration reviewed in the selection of the entrance location was the flooding of Jackson Avenue which occurs on a regular basis. The local Flood Insurance Rate Map issued by FEMA (copy enclosed) shows that the stream and the area immediately adjacent to the farm road is identified as a Zone A, 100-year floodplain.

MJS Engineering & Land Surveying, PC prepared a lengthy flood study, more detailed than the study prepared by FEMA which demonstrates that an even greater portion of Jackson Avenue floods on a regular basis for the 10, 50, and 100-year storms. Photographs documenting the flooding were provided by John Waugh whose house is across Jackson Avenue from the Option B location. Locating a new road intersection in an area historically known to flood and demonstrated by FEMA and the Flood Study prepared by our office flies in the face of our joint duty to provide for the health, safety, and welfare of the future residents of this subdivision. It is recognized that the NYSDEC does not have jurisdictional authority regarding floodplains but, based on the flooding alone regardless of wetlands disturbance, the road should not be located in this area.

Please review the enclosed and, if you have any questions, please do not hesitate to contact me.

Very truly yours,  
**MJS Engineering & Land Surveying, PC**

  
James C. Clearwater, PLS  
Project Manager

JCC/gl  
Enc.

cc: D. Kartiganer  
D. Gaugler  
Town of New Windsor Planning Board ✓