



PROTECT HANOVER

July 16, 2020

Virginia Water Protection Permit No. 19-2036 must be denied. This draft-permit is defective for administrative and substantive technical reasons.

Along with many noted issues of transparency and community involvement during a pandemic, **this draft-permit must be denied because the Department of Environmental Quality (DEQ) failed to issue the required public notices.** The draft-permit notice does not comply with Virginia Administrative Code (VAC) § 25-210-140(C)(8) because it does not describe how the Board arrives at a final decision on Wegmans' permit. In addition, the public-hearing notice fails to comply with VAC § 25-210-170(C)(9) because it omits reference to the procedures DEQ will implement during the July 20th hearing.

The permit must be denied because the wetlands delineation incorrectly states the amount of wetlands impacted:

- **The Airpark property delineation was improperly conducted during a drought:**
 - At the request of Airpark Associates, RK&K conducted a wetlands delineation (count) of the project area on October 11, 2019. Their report identifies 33.8 acres of wetlands.ⁱ
 - Based on the October 2019 Virginia Drought Monitoring Task Force: Drought Status Report, this wetlands delineation was conducted during abnormal (drought) conditions. A review of local climate data and rainfall averages in the project vicinity revealed precipitation levels were 28% lower than average during the three months preceding the wetlands delineation.
 - Wetlands require three indicators: hydrophytic vegetation (wetlands plants), hydric soil, and indicators of hydrology indicators. "The evaluation of wetland hydrology requires special care on any site where indicators of hydrophytic vegetation and hydric soil are present but hydrology indicators appear to be absent."ⁱⁱⁱ
 - In drought circumstances, the US Army Corps of Engineers (USACE) recommends "revisit[ing] the site during a normal rainfall year and check again for wetland hydrology indicators, or use one or more of the other methods described in this section."ⁱⁱⁱ
 - There is no evidence in the public record that demonstrates that wetland hydrology indicators absent due to drought were properly reviewed in this delineation.

- **Wetlands boundaries were reduced without justification:**
 - USACE issued a determination for the project area on December 13, 2019. This determination reduced wetlands from the 33.8 acres found by RK&K, by approximately 12.5 acres.
 - A reduction of about 4.5 of 12.5 these acres comes from the deletion of some wetland areas, and the reduction of others. Some wetlands were reduced so much that one wetlands data point, (DP2) from the RK&K report, had to be deleted because it was not within the borders of the wetlands after December 13, 2019.^{iv}
 - The location of this data point (DP2) is to become a paved road, but does not count as a wetland area that will be filled.

- **Mosaic wetlands were found despite a failure to follow the appropriate USACE process:**
 - Determining an area to be a mosaic wetland requires a data collection process involving the establishment of one or more transects.^v
 - USACE did not establish any transects to properly qualify or measure the mosaics.^{vi}
 - A reduction of about 8 of 12.5 acres results from the improper use of the mosaics.

These issues are not open to DEQ discretion. The Virginia Administrative Code (VAC § 25-210-45) requires that, “[e]ach wetland delineation, including those for isolated wetlands, shall be conducted in accordance with the U.S. Army Corps of Engineers (USACE) "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual) and any regional wetland supplements approved for use by USACE.”

The differences between the RK&K delineation and what was accepted by DEQ/USACE can be most easily seen in a comparison of the before and after maps. The before, titled “Airpark Delineated Overall WOUS Map,” shows what RK&K found in their work. The after, titled “Airpark Project Area, Confirmed WOUS Map,” shows the reductions clearly.

We believe that, instead of 6.12 acres, this development proposes to fill at least 18.5 acres. DEQ accepted a delineation that fails to meet the minimum statutory requirements. As a result, this draft-permit must be denied, and the applicant must do it correctly

ⁱ The 33.8 acres is represented by the “Airpark Delineated Overall WOUS Map.”

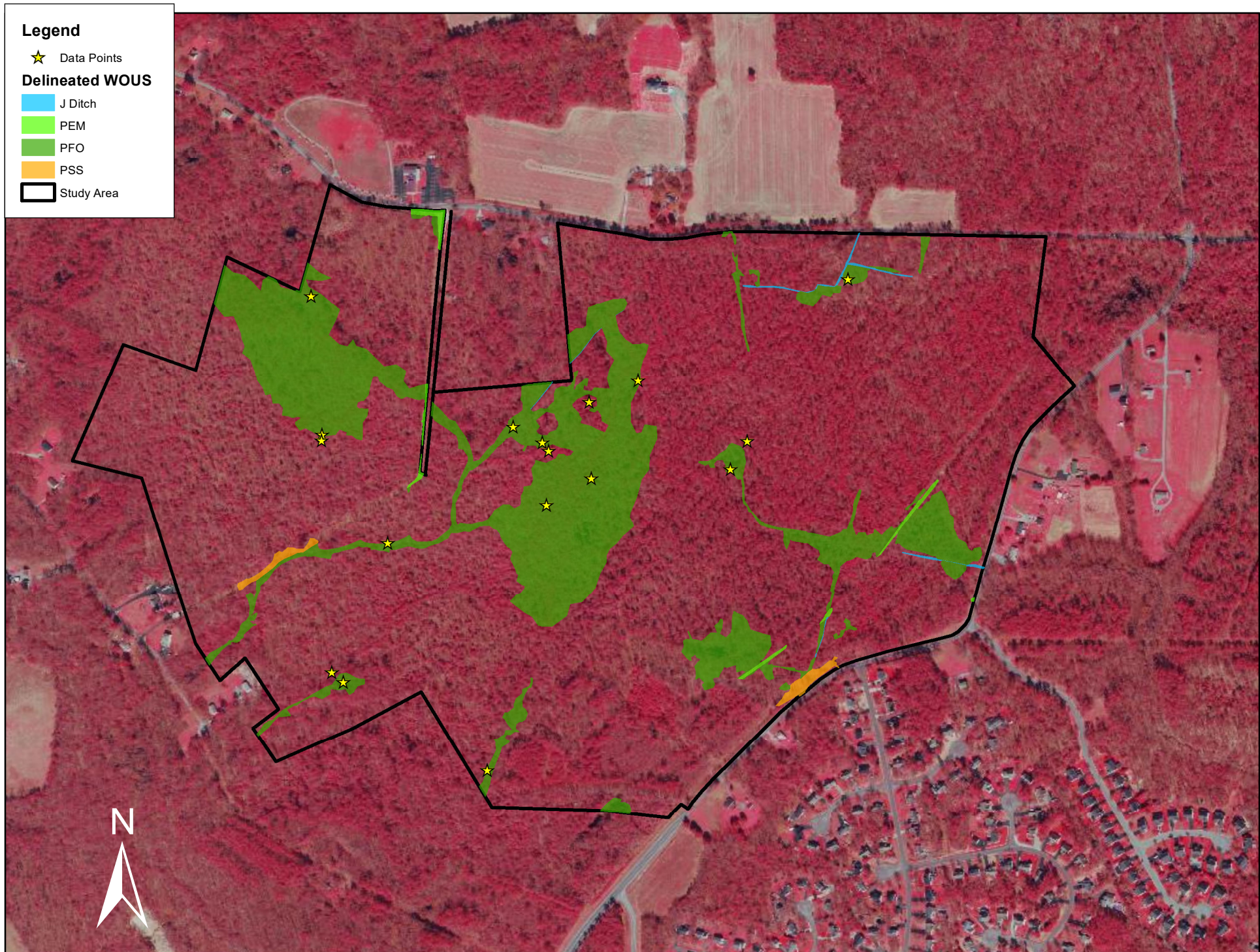
ⁱⁱ U.S. Army Corps of Engineers, *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)*, p. 135. Retrieved from <https://usace.contentdm.oclc.org/utis/getfile/collection/p266001coll1/id/7607>

ⁱⁱⁱ Ibid. p 138

^{iv} Holley, Elaine K. “Re: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)” Message to Bryan Jones. October 18, 2019. Via electronic mail. See embedded message from Malachi Mills to Travis R. Comer. October 17, 2019.

^v U.S. Army Corps of Engineers, *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)*, p. 140.

^{vi} Holley, Elaine K. “May I call you?RE: Mosaic? (UNCLASSIFIED)” Message to David A. Knepper. October 17, 2019. Via electronic mail.



Airpark Delineated Overall WOUS Map

0 300 600
Feet



From: [Holley, Elaine K CIV USARMY CENAO \(US\)](#)
To: [Jones, Bryan](#)
Subject: FW: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)
Date: Friday, October 18, 2019 10:57:00 AM
Attachments: [image001.png](#)
[image005.png](#)
[image007.png](#)
[image008.png](#)
[Airpark WOUS FieldModified noAerial.pdf](#)

CLASSIFICATION: UNCLASSIFIED

-----Original Message-----

From: Malachi Mills [<mailto:mmills@rkk.com>]
Sent: Thursday, October 17, 2019 12:38 PM
To: Holley, Elaine K CIV USARMY CENAO (US) <Elaine.K.Holley@usace.army.mil>
Cc: Sara Sanderlin <ssanderlin@rkk.com>; Travis R. Comer <tcomer@rkk.com>; Ricky Woody <rwoody@rkk.com>
Subject: [Non-DoD Source] FW: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

Elaine,

Here is map w/ just white back ground for clarity if needed.

Malachi

From: Travis R. Comer
Sent: Thursday, October 17, 2019 12:35 PM
To: Malachi Mills <mmills@rkk.com>; Ricky Woody <rwoody@rkk.com>
Cc: Sara Sanderlin <ssanderlin@rkk.com>
Subject: RE: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

Here you go. Thanks.

TRAVIS COMER, PWS, CSE

Senior Project Planner

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<Blockedhttps://www.youtube.com/channel/UCoU5UP6UpQBo2nv7wiYBmrQ>

From: Malachi Mills <mmills@rkk.com <<mailto:mmills@rkk.com>> >
Sent: Thursday, October 17, 2019 12:16 PM
To: Travis R. Comer <tcomer@rkk.com <<mailto:tcomer@rkk.com>> >; Ricky Woody <rwoody@rkk.com <<mailto:rwoody@rkk.com>> >
Cc: Sara Sanderlin <ssanderlin@rkk.com <<mailto:ssanderlin@rkk.com>> >
Subject: RE: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

WW,

One more ask- can you turn off the 'red' aerial layer so boundary, wetlands, contours are shown for a second map??

Please and thank you,

Malachi

From: Travis R. Comer
Sent: Thursday, October 17, 2019 12:05 PM
To: Malachi Mills <mmills@rkk.com <<mailto:mmills@rkk.com>> >; Ricky Woody <rwoody@rkk.com <<mailto:rwoody@rkk.com>> >
Cc: Sara Sanderlin <ssanderlin@rkk.com <<mailto:ssanderlin@rkk.com>> >
Subject: RE: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

Good point. If she wants it cut, then it needs to be removed. New map attached.

TRAVIS COMER, PWS, CSE

Senior Project Planner

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<Blockedhttps://www.youtube.com/channel/UCoU5UP6UpQBo2nv7wiYBmrQ>

From: Malachi Mills <mmills@rkk.com <<mailto:mmills@rkk.com>> >
Sent: Thursday, October 17, 2019 11:55 AM
To: Travis R. Comer <tcomer@rkk.com <<mailto:tcomer@rkk.com>> >; Ricky Woody <rwoody@rkk.com <<mailto:rwoody@rkk.com>> >
Cc: Sara Sanderlin <ssanderlin@rkk.com <<mailto:ssanderlin@rkk.com>> >
Subject: RE: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

Travis,

I do have 1 question?

“DP2- WET” is out of all ‘green’ designations, should this change or be eliminated per the field visit??

Malachi

From: Travis R. Comer
Sent: Thursday, October 17, 2019 11:33 AM
To: Ricky Woody <rwoody@rkk.com <<mailto:rwoody@rkk.com>> >; Malachi Mills <mmills@rkk.com

<<mailto:mmills@rkk.com>> >

Cc: Sara Sanderlin <ssanderlin@rkk.com> <<mailto:ssanderlin@rkk.com>> >

Subject: RE: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

Here you go all. What do you think? The 10% mosaic was cut back on the west side using contours and the IR signature. I talked with Sara, and I thought, and she concurred, how it was left in the field at the end of the day, that the limits of this wetland were remaining the same, but just called 10% wet. However, it was cut as mentioned.

TRAVIS COMER, PWS, CSE

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<Blockedhttps://www.instagram.com/rkk_social/>

<Blocked<https://www.youtube.com/channel/UCoU5UP6UpQBo2nv7wiYBmrQ>>

From: Ricky Woody <rwoody@rkk.com> <<mailto:rwoody@rkk.com>> >

Sent: Thursday, October 17, 2019 9:35 AM

To: Travis R. Comer <tcomer@rkk.com> <<mailto:tcomer@rkk.com>> >; Malachi Mills <mmills@rkk.com>

<<mailto:mmills@rkk.com>> >

Cc: Sara Sanderlin <ssanderlin@rkk.com> <<mailto:ssanderlin@rkk.com>> >

Subject: Re: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

Travis go ahead and produce the map and then it can be adjusted then can be sent to Elaine for her conversation.

RICKY WOODY, PWS
Manager

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Richmond, VA 23223

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From: Travis R. Comer <tcomer@rkk.com <<mailto:tcomer@rkk.com>> >
Sent: Thursday, October 17, 2019 9:13 AM
To: Malachi Mills <mmills@rkk.com <<mailto:mmills@rkk.com>> >
Cc: Sara Sanderlin <ssanderlin@rkk.com <<mailto:ssanderlin@rkk.com>> >; Ricky Woody <rwoody@rkk.com <<mailto:rwoody@rkk.com>> >
Subject: Re: Airpark Overall Wetland Delineation Map (UNCLASSIFIED)

I was holding off on updating any mapping until we hear back from her talk with Bryan and her internal discussion at the Corps. It sounds like things may change from that. Update map or wait?

TRAVIS COMER, PWS, CSE

Project Planner

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On Oct 17, 2019, at 8:42 AM, Malachi Mills <mmills@rkk.com <<mailto:mmills@rkk.com>>> wrote:

Elaine-
Sounds good.
Thanks for yesterday and yes, Travis is working on the final mapping.
We can talk tomorrow.

Malachi

Malachi Mills
RK&K
Richmond, VA

On Oct 17, 2019, at 8:08 AM, Holley, Elaine K CIV USARMY CENAO (US)
<Elaine.K.Holley@usace.army.mil <<mailto:Elaine.K.Holley@usace.army.mil>>> wrote:

"RK&K" and "RK&K Engineers" are registered trade names of Rummel, Klepper & Kahl, LLP, a Maryland limited liability partnership. This message contains confidential information intended only for the person or persons named above. If you have received this message in error, please immediately notify the sender by return email and delete the message. Thank you.

CLASSIFICATION: UNCLASSIFIED

From: [Holley, Elaine K CIV USARMY CENAO \(US\)](#)
To: [Knepper, David A CIV USARMY CENAO \(USA\)](#)
Subject: May I call you?RE: Mosaic? (UNCLASSIFIED)
Date: Thursday, October 17, 2019 9:52:00 AM
Attachments: [scan561.pdf](#)

CLASSIFICATION: UNCLASSIFIED

May I call you?

-----Original Message-----

From: Holley, Elaine K CIV USARMY CENAO (US)
Sent: Thursday, October 17, 2019 9:49 AM
To: Knepper, David A CIV USARMY CENAO (USA) <David.A.Knepper@usace.army.mil>
Subject: RE: Mosaic? (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

My site is difficult. Almost the whole site is hydric soils. Without transects, we (RKK, Timmons, DEQ and I) agreed yesterday, in the pouring rain to accept one area as 10% and another as 30%. If I call it all uplands, I don't think the DEQ will agree. The project is complicated. We've been looking at the site since 1995. Todd had the project in 2012, and I reconfirmed delin with minor additions in 2018, PJD. Timmons and DEQ questioned the wetland delin. RKK went back out and went overboard. Hanover County is keen to attract a user. User is ready.

The site is disturbed from past timbering, most recently 20 years ago. Most of the wetlands in the mosaic occur in skidder trails and more rutted areas. In a few wetland areas in the mosaic, sphagnum occurs, soil samples were moist with redox features. The soils were powder in most areas with no concentrations, or reductions. Off and on, there are indications of water on the surface--potholes, really.

-----Original Message-----

From: Knepper, David A CIV USARMY CENAO (USA)
Sent: Thursday, October 17, 2019 8:57 AM
To: Holley, Elaine K CIV USARMY CENAO (US) <Elaine.K.Holley@usace.army.mil>
Subject: RE: Mosaic? (UNCLASSIFIED)

Hi Ms. Holley,

Yes, I have applied percentages to mosaics. Attached are some suggested procedures from the AGCP Regional Supplement.

Your specific example:

"where the wetland areas are small and scattered throughout a large wetland area" - you probably meant one of these wetlands to be upland, but in either case I rarely do micro-delineations and just lump it together and ID as whatever the larger area is - so if mosaic of small uplands in larger wetland, I usually just lump as wetland. If the consultant thinks it might make a difference and is worth their time & effort I tell them they're welcome to delineate out the small uplands for confirmation. It's a give and take because I'd approach the same way if there were small scattered wetlands within a larger upland area - just call it an upland.

Yes.

-----Original Message-----

From: Holley, Elaine K CIV USARMY CENAO (US)
Sent: Thursday, October 17, 2019 8:36 AM
To: Knepper, David A CIV USARMY CENAO (USA) <David.A.Knepper@usace.army.mil>
Subject: Mosaic? (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Have you ever applied a percentage to an area to say it is a mix of uplands and wetlands where the wetland areas are small and scattered throughout a large wetland area?

Did you apply the percentage to an impact area for permitting?

Thanks.

CLASSIFICATION: UNCLASSIFIED

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