

OhioEPA

Division of Surface Water

Response to Comments

**Project: Legacy Place application for section 401 water quality certification
Ohio EPA ID #: 073143**

Agency Contacts for this Project

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Ohio EPA held a public hearing on November 15, 2007 regarding an application for section 401 water quality certification by Silverman and Associates regarding the proposed Legacy Place development. This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on November 23, 2007. This document also summarizes and responds to comments made during the public comment period held for the receipt of the application, which ended on July 25, 2007.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Statements of Support and Opposition

Comment 1: Many citizens wanted Ohio EPA to be aware that a ballot issue was put forth to change the zoning of the proposed development site, and that it passed. This is seen by many to be an expression of community support for the Legacy Place development.

- Response 1: Ohio EPA is aware of the ballot issue put forth by the local community which changed zoning to allow for retail development.
- Comment 2: Citizens want Ohio EPA to be aware that the Legacy Place development fulfills the criteria required by the Green Township Land Use Committee.**
- Response 2: Ohio EPA recognizes the Green Township Land Use Committee criteria has been fulfilled; however, the Agency must review applications based on Federal and State environmental laws and rules.
- Comment 3: Many citizens expressed support for an alternative development plan for the site as put forth by the group Safe Clean Green, which limits development to the area between the CSX rail bed and Harrison Avenue.**
- Response 3: The preferred, minimal degradation and no degradation alternatives, as presented in the application, were reviewed by Ohio EPA. Development plans by other parties were not included in the application materials submitted for review by the applicant, and Ohio EPA cannot mandate that an applicant consider them.
- Comment 4: A comment was made that this development has undergone review by many groups including the Green Township Land Use Planning Committee, the Green Township Trustees, the Hamilton County Regional Planning Commission, the Hamilton County Commissioners and the voters (in a referendum on rezoning) and all supported the project.**
- Response 4: Ohio EPA must review applications based on Federal and State environmental laws and rules. The Agency has separate requirements that must be met in order to fulfill the terms of the Clean Water Act.

Current Stream Conditions and Uses

Comment 5: **A resident noted that the streams on the proposed development site often have trash in them.**

Response 5: Unfortunately, this is a common problem, especially in urban areas. Trash that is not disposed of correctly often ends up in streams. Water quality, however, is determined based on chemical and biological parameters and not on how a stream looks.

Comment 6: **Many citizens are concerned that the developer's minimal degradation alternative would destroy Class II and III (high-quality) headwater streams and their associated riparian zone.**

Response 6: Ohio EPA is reviewing the developer's proposed alternatives to determine if avoidance and minimization efforts have been made to reduce environmental impacts.

Comment 7: **A citizen requests that Ohio EPA clarify whether information presented that the streams in question are high quality headwater streams is correct, and if so, why. Citizens feel that these streams look similar to many other streams in the area.**

Response 7: The biology (bugs, salamanders and fish) found in some of these streams is indicative of Class III primary headwater habitat. These streams are high quality streams. More information on the methods used to make this determination can be found at: http://www.epa.state.oh.us/dsw/wqs/headwaters/PHW_HManual_2002_102402.pdf

Comment 8: Several citizens expressed frustration over efforts to preserve streams which are small and do not have water in them all year. Citizens commented that the streams in question are often dry in summer, are not spring fed and contain no fish.

Response 8: Small headwater streams are important because they provide several functions to help improve water quality in the larger streams they feed. Streams can have water flowing part of the year, seasonally or year round.

Comment 9: Several citizens commented that the site of the proposed Legacy Place development is one of the last undeveloped, forested watersheds in Hamilton County.

Response 9: Comment noted.

Comment 10: A neighbor commented that one of the property owners who wishes to sell his property for the Legacy Place development has allowed buildings to be in disrepair and has allowed dumping of solid waste, including unknown substances in drums, on the property. The commenter believes that these materials are detrimental to the watershed.

Response 10: Hamilton County General Health District Waste Management Division issued the owners of the property a Notice of Violation in May 2007. The owners are working with the Health District to clean up the property.

Comment 11: Several citizens believe that the streams on site should be more properly classified as perennial streams rather than ephemeral or intermittent because they have water in them most months of the year even in years of drought.

Response 11: Ohio EPA classified Streams 1, 2, 3, 6 and 12 as Class III perennial headwater streams using Ohio EPA's Primary Headwater Habitat guidance and methodology. The biology present in these streams indicates the hydrology is perennial.

Comment 12: A comment was made that there are approximately 300 private septic systems in the streams' drainage area and that outflow from these septic systems, originating in the public water system, provides the majority of the water for stream flow. It was further asserted that the source for the stream labeled Stream #1 in the application is a private septic system outlet and storm drain outfall from Chatwood Drive. A citizen does not believe that any of the streams in question are naturally occurring; instead he asserts that they are the result of runoff moving to the lowest part of Hutchinson Road.

Response 12: There are many types of streams. Both Ohio EPA and USACE have determined that the waters on-site are streams with a defined bed and bank and flowing water, all or part of the year.

Comment 13: Citizens commented that the stream beds currently may change course after a large rain event and that permanent relocation of the streams via the developers plan will result in an increase in water quality.

Response 13: Streams are dynamic systems. Streams can shift course during and after large storm events. Ohio EPA evaluates proposed activities and associated impacts to water quality as part of the application review process.

Comment 14: A comment was made that the stream proposed for relocation is currently channelized.

Response 14: During a site visits made by Ohio EPA, a channelized stream was not observed on-site. It is possible that the stream had been channelized in the past, but has since recovered.

- Comment 15:** A citizen asked whether Ohio EPA had all necessary data to make a decision in this matter, and asks Ohio EPA to consider the 1992 Ohio EPA study entitled *Biological Habitat Investigation of the Greater Cincinnati Area Streams*, which designated the streams as warm water habitat and the “last relatively undisturbed headwaters in Hamilton County” when making a decision on this water quality certification.
- Response 15: Yes, Ohio EPA has a copy of the 1992 study and read this report as part of the application review.
- Comment 16:** Several citizens request that Ohio EPA do a follow-up study to the 1992 Ohio EPA study entitled *Biological Habitat Investigation of the Greater Cincinnati Area Streams*.
- Response 16: Ohio EPA evaluated the streams on-site in 2005 and 2008. However, a comprehensive study and report similar to the 1992 report, was not conducted at these times due to resource limitations and time constraints.
- Comment 17:** A citizen cites Ohio EPA studies of the affected streams that were done in 1992, 1995 and 2005 which determined that the streams were high-quality warm water habitat. She further states that in 2005 two headwater streams on the site, Wesselman Creek and Taylor Creek, were evaluated with high QHEI/HHEI scores of 63 and 60, respectively; this places these waters in an state resource water/state high quality water category, raises their priority for sampling, and lists them as potentially high quality when anti-degradation or regulatory actions concerning these creeks are considered. According to a list published in 2002, both Taylor Creek and Wesselman Creek are in this category. The citizen would like to know if Ohio EPA has plans to sample Wesselman Creek and if the stream will be considered high quality for this regulatory situation.
- Response 17: Based on the data, these streams are high quality waters and are proposed for formal listing as State Resource Waters/Superior High Quality Waters,

however that action has not been completed. Based on sampling conducted in 2005 and 2008, these streams are indicative of Class III Primary Headwater Habitat.

Comment 18: **A citizen involved in stream studies testified that he sampled the macroinvertebrate life of the stream in 2007 and found it to have some of the highest biomass and biodiversity of any stream that his group surveyed.**

Response 18: Ohio EPA appreciates citizen involvement in stream studies and encourages citizens to become credible data collectors in order for the Agency's to use the data collected to the fullest extent. For more information on Ohio EPA's Credible Data Program, please see:
<http://www.epa.state.oh.us/dsw/volunteermonitoring/index.html>

Comment 19: **Citizens reported that, based on readings from a temperature and depth recorder placed below Hutchinson Road during the months of February to June 2007, the stream should be classified as cold water habitat. They further report that the stream did not dry up even through the past summer's drought.**

Response 19: Ohio EPA appreciates citizen involvement in stream studies. Please see Response 18 for more information.

Comment 20: **A citizen asserts that a stream on the property is the habitat of the two-line salamander, which is further evidence that it should be classified as cold water habitat.**

Response 20: Two-lined salamanders are used as indicators of Class III PHWH streams. If larvae and adults of either the northern or southern two-lined salamander (*Eurycea bislineata* or *E. cirrigera*), or of any other species of stream-breeding salamander with a larval stage lasting longer than 12 months, are present then the stream meets the criteria for Class III PHWH. While these headwater habitats often contribute to Coldwater Habitat streams downstream, the presence

of these salamanders alone is not the only criterion for CWH use designation.

Comment 21: **A comment was made that the streams on this property are currently designated as state resource waters and are entitled to more protection than lesser streams.**

Response 21: Based on the data, these streams are high quality waters and are proposed for formal listing as State Resource Waters/Superior High Quality Waters, however that action has not been completed. Based on sampling conducted in 2005 and 2008, these streams are indicative of Class III Primary Headwater Habitat.

Construction of and Upgrades to Public Sewer Systems

Comment 22: **A citizen points out that the applicant asserts that the development will improve water quality due to replacement of Glenview Pump Station, redirecting flow from a combined sewer overflow, and removing septic systems within the watershed. The citizen encloses materials from the Metropolitan Sewer District (MSD) showing that the first two actions will take place before 2010 whether or not the Legacy Place development occurs due to the MSD's obligations under the Clean Water Act.**

Response 22: MSD is required under a consent agreement (enforcement of the Clean Water Act) to eliminate a sanitary sewer overflow at the Glenview Pump Station which is tributary to the Muddy Creek sewer system. Due to the proximity of the proposed Legacy Place development, MSD is now considering elimination of the Glenview Pump Station by installing a gravity sewer to the development. This would result in sewage being taken out of the Muddy Creek area which is suffering from a combined sewer system with overflows to the Muddy Creek. This would be considered an improvement to the water quality of Muddy Creek if the Glenview pump station were eliminated. The Legacy Place sewage system would transport the sewage from the Glenview area into the

Taylor Creek sewers. The MSD has stated that if the development does not proceed, they will not eliminate the Glenview pump station. They will continue to upgrade that facility to eliminate the sanitary sewer overflow into the Muddy Creek.

Comment 23: A citizen would like to know if development of the site is necessary to receive sewer improvements in the area.

Response 23: The proposed sewer improvements at the Glenview Pump station will proceed regardless of the proposed Legacy Place development.

Comment 24: A citizen is concerned that the proposed repair of the pump station to allow it to send combined sewer overflow into the Taylor Creek basin instead of the Muddy Creek basin will simply move pollution from one basin to another. The citizen would like to know why Hamilton County doesn't fix the underlying problem instead of diverting the overflows.

Response 24: The Glenview pump station is mandated under a consent agreement to eliminate the overflow of sewage at that location. The Taylor Creek treatment plant does not have overflows in its sewer system and has adequate capacity to treat the sewage. The Muddy Creek system would be relieved, in that there will be less sewage to treat and thus less pollution going out of the combined sewer overflows in this sewer system.

Comment 25: Several citizens commented that the developer's assertions that the stream would be cleaner after development due to replacing failing septic systems with a sanitary sewer system are unfounded. Citizens wish to know what evidence the developer has provided to show that septic systems in the area are failing.

Response 25: Ohio EPA has evaluated data from the Hamilton County combined health district regarding the septic systems in the proposed development area. Approximately 5 out of 40 systems were deemed failing,

meaning that an unacceptable amount of pollution was occurring. It is unclear at this point how many private septic systems would be connected to the sanitary sewer system in the proposed Legacy Place development. By looking at the proposed area of development, it is estimated by Ohio EPA the 18 systems in the Harrison Avenue/Filview Circle could be eliminated by connection to the new sewers. Homes are required to connect to public sewer if they are within 200 feet of it.

Comment 26: **Several citizens commented that the Legacy Place plan will result in increased water quality due to removal of existing home septic systems in favor of a public sanitary sewer system.**

Response 26: There would be some improvement of water quality if private septic systems are connected to the public sewer. The magnitude of improvement would be proportional to the number of systems that would connect.

Comment 27: **A citizen commented that the Legacy Place development will increase water quality due to the removal of 160 homes from the Muddy Creek combined sewer overflow and will replace an existing multi-pump station without a generator backup that periodically discharges sewage into the watershed. The commenter further asserts that these projects will not be undertaken without the construction of Legacy Place.**

Response 27: According to Ohio EPA research with the Metropolitan Sewer District, the elimination of the Glenview pump station depends upon the approval of the proposed Legacy Place development. However, the MSD is required to upgrade the Glenview pump station regardless of the proposed development, so that still results in improvement of water quality.

Comment 28: **A citizen informs Ohio EPA that Green Township plans to install storm water quality units to provide pollution separation at all storm water outfalls in order to remove salt and other pollutants generated by runoff from the road to enhance downstream water quality.**

Response 28: In the comment response letter dated August 16, 2007 from JF New to the Corps, the last paragraph of Response to Comment #3 indicates that the Township has also taken effort to address water quality treatment of the watershed by including a plan to install approximately 7 stormwater separators within the watershed.

Comment 29: A citizen stated that odors coming from the subdivision at Westborn and Werk Roads are evidence that the current water treatment systems in the area are inadequate.

Response 29: The area that is referenced is in a combined sewer overflow area of the Muddy Creek. The MSD has a consent agreement to do improvements of the sewer system in this area. This work is not dependent upon the Legacy Place development.

Impacts to Water Quality

Comment 30: A citizen commented that removal of soil and vegetation and increasing the slope of the stream bank will cause the runoff to drain faster and the stream to go dry once it is moved. The citizen is concerned that the stream will change from a groundwater-fed perennial stream to an ephemeral stream or intermittent stream fed by surface runoff.

Response 30: One of Ohio EPA's concerns with the proposed development and on-site mitigation was maintaining the existing hydrology of the streams to ensure the groundwater flow to streams on-site remained intact.

Comment 31: An entity is concerned that the mitigation plan does not preserve the filtering capacity of the current first and second order streams and their associated riparian corridor and floodplain. They feel that this will result in increased impairment to the Lower Great Miami Watershed, which is already listed by Ohio EPA as impaired due to urban runoff and riparian corridor removal.

- Response 31: This is one of many aspects that Ohio EPA considered during the review of this application.
- Comment 32: A citizen asks how will the current site plan protect the streams from seasonal decreases in water quality due to snow and ice removal including chlorides and dissolved solids?**
- Response 32: Streams would be protected from these non-point source pollutants through the use of Best Management Practices and stormwater controls.
- Comment 33: Citizens are concerned about increased erosion resulting from this development.**
- Response 33: The developer must use Best Management Practices to meet Ohio EPA's requirements for sediment and erosion control and comply with Ohio EPA's Stormwater program requirements for construction sites.
- Comment 34: There is concern about stream pollution from deicing salts, heavy metals and automotive fluids running off of parking areas.**
- Response 34: Ohio EPA's Stormwater Program has post construction requirements to best manage pollutants associated with parking lot runoff.
- Comment 35: A citizen is concerned that the design of any retention basins would not allow for adequate treatment of soluble pollutants such as chlorides, which would then negatively impact water quality.**
- Response 35: Retention basins are designed to control the flow of runoff. Retention basins are not necessarily designed as treatment systems, however, they can be designed to accomplish multiple goals, if desired.
- Comment 36: A citizen is concerned that removal of the riparian canopy over these streams will raise the temperature of the water.**
- Response 36: The tree canopy that is provided by forested riparian area of stream does help to keep water temperatures

cooler and it is possible that the removal of a tree canopy will lead to increased water temperatures.

Comment 37: **A comment was made that piping the streams could decrease downstream flows in Wesselman Creek, which will reduce the amount and quality of downstream flows.**

Response 37: Piping this stream is not considered to be a viable design option by Ohio EPA.

Proposed Park

Comment 38: **One citizen felt that increasing the area of the park would contribute to the health of area residents. In addition, citizens feel that this proposed development would preserve green space better than other possible future development. A group also commented that the relocated stream will be protected by the new park and will be used as a living classroom for area schoolchildren. Finally, a citizen pointed out that the property in question is currently private property and inaccessible to the public, whereas if the project goes forward it will become accessible to everyone.**

Response 38: Comment noted.

Comment 39: **The approval of this 401 water quality certification will allow for the protection of 30 acres of natural habitat and the protection of more than 2000 feet of ephemeral stream, which otherwise would be destroyed due to building of homes on the site.**

Response 39: Ohio EPA 401 program requires an application be submitted for review if anyone proposes a project involving streams to be filled. Mitigation would be required for these projects.

Comment 40: **A citizen commented that the protection of this land in the form of a park will serve as a catalyst to cause other water quality projects to happen, which in turn will enhance the greater watershed.**

Response 40: Ohio EPA is optimistic that water quality improvement projects will continue to take place within the watershed, independent of the proposed Legacy Place Development. Ohio EPA's "Storm Water Improvement Fund" was developed to help fund projects to improve water quality.

Comment 41: A citizen is concerned that only 20 acres of the 80 acre park would be left in a natural state. The citizen believes that the area which was used for fill material would not be of public benefit even after grading and seeding.

Response 41: Comment noted.

Mitigation Plan

Comment 42: Citizens commented that a comprehensive biological, hydrological and chemical assessment of the streams in question has not yet been accomplished, and that one must be done in order to have documented benchmarks against which to measure mitigation success.

Response 42: Ohio EPA conducted additional stream evaluations in 2008. These evaluations were semi-quantitative, however, the results indicated some streams were Class III headwater streams. Ohio EPA agrees that a comprehensive assessment of the streams is needed to establish baseline conditions.

Comment 43: Citizens commented that a constructed channel is inadequate to replace the functions of a high-quality headwaters stream.

Response 43: Comment noted.

Comment 44: Citizens are concerned that the 13 acres where the developer will remove soil to be used for fill will be left with exposed soil.

Response 44: The proposed mitigation plan indicated all exposed areas will be replanted with native vegetation.

Comment 45: **Citizens are concerned that mitigation will occur outside the parcel and the immediate watershed.**

Response 45: Some mitigation was proposed to be located off-site and in the neighboring watershed. All mitigation was proposed to be located within Green Township.

Comment 46: **A group feels that the magnitude of the proposed impacts violates guidance from U.S. EPA on anti-degradation written in August of 1985. Specifically, the current proposal does not maintain existing uses in all parts of the water body segment in question.**

Response 46: Ohio EPA is concerned that existing use would not be maintained.

Comment 47: **Citizens feel that re-creation of Class III stream channel will be very difficult on this site. How will the recreated channel support Class III biology and hydrology parameters?**

Response 47: Ohio EPA is concerned re-creation of Class III stream is likely not probable.

Comment 48: **A group feels that the proposed evaluation of the mitigation plan should include a headwaters habitat evaluation and that the mitigated stream channel should be constructed to meet a headwaters habitat evaluation index score equivalent to the Class III channels that are being replaced—a value of 82 for 1,900 feet and a score of at least 64 for the remainder of the channel. It is further recommended that biological and chemical monitoring of the mitigated stream should indicate equivalent or better parameters than the historical data for the stream being replaced before mitigation can be termed a success.**

Response 48: These are all considerations that Ohio EPA used in the review of the application and the proposed mitigation.

- Comment 49:** Citizens feel that the length of mitigation is inadequate, as minimum mitigation requires a 1:1 ratio and a greater ratio is generally required to mitigate impacts from development of the site.
- Response 49: Streams mitigation is negotiated but ratios less than a 1:1 ratio are not acceptable.
- Comment 50:** A group would like to know if Ohio EPA is aware of any case studies of successful replacement/reconstruction of a Class III headwaters stream.
- Response 50: No. Ohio EPA requested this information from the applicant and no known successful reconstruction efforts for Class III streams were identified.
- Comment 51:** There is concern that the proposed rain gardens would be insufficient to replace the natural drainage and groundwater recharge functions of the current streams and associated floodplain and riparian areas.
- Response 51: Ohio EPA shares this concern, which was an issue of discussion during review of the application.
- Comment 52:** A group would like to know what data and case studies Silverman and Company has provided to Ohio EPA to support their assertion that the functions of these streams will not be removed from the Great Miami watershed.
- Response 52: Some information was submitted to Ohio EPA for review, however, Ohio EPA concluded this information did not support the applicants position.
- Comment 55:** A group requests protection of a minimum width of 100 feet along both sides of all defined streams where natural vegetation would be left intact.
- Response 55: Comment noted. Buffer and Riparian setbacks would be a requirement if the project is authorized.

Comment 56: A comment has been made that on-site relocation of intermittent streams does not constitute mitigation, but instead causes additional stream degradation both onsite and downstream. If partial mitigation credit is given to the developer for on-site stream relocation, the commenter feels that the applicant should be required to protect/conservate an additional similar amount of off-site habitat where mitigation for fish and wildlife values can be more easily realized.

Response 56: Comment noted

Comment 57: A commenter would like to ensure that the relocated streams are provided with enough riparian buffer and floodplain to allow for natural meandering.

Response 57: This would be a requirement of Ohio EPA.

Comment 58: A commenter recommends that project designers ensure that flow rates from the site remain the same after project completion and that the receiving streams have a similar flow rate as before the project.

Response 58: This is a requirement of post construction.

Comment 59: A commenter recommends that the stream mitigation habitat be protected through conservation easements.

Response 59: A legal mechanism would be required to protect all mitigation in perpetuity

Comment 60: Citizens are concerned that the mitigation plan is ambiguous about what entity is responsible for planting parts of the riparian buffer.

Response 60: The mitigation plan was revised to provide additional information and details. The applicant is the responsible party for all mitigation and performance

requirement that would be placed into a permit, if authorized.

Comment 61: **A citizen believes that the developer has miscalculated the acreage affected by the development plan. By the citizen's calculations, the number of acres needed for minimum mitigation should be 0.48 and 1.04 acres instead of 0.03 and .54 acres.**

Response 61: Comment noted

Comment 62: **A commenter wants Ohio EPA to require construction of pools in the relocated stream that match the current stream assessment in size, depth and fall.**

Response 62: The design of the relocated stream will match, at a minimum, the current stream's size, depth and fall.

Comment 63: **A citizen is concerned that the developer's plan for the relocated stream includes trash removal devices. They believe that this inclusion makes it evident that the stream will be degraded.**

Response 63: This inclusion addresses the reality that litter and trash does end up in streams due to improper disposal within the watershed.

Comment 64: **A citizen wishes Ohio EPA to follow the findings of E. Lucy Braun, an early- and mid-twentieth century Ohio biologist, in determining which plants should be required for mitigation.**

Response 64: Ohio EPA requires native Ohio vegetation to be planted in mitigation areas.

Comment 65: **A citizen comments that the proposed mitigation site adjacent to Werk Road near Ebenezer Street is not a valid mitigation site because it is a man-made pond and offers little mitigation value.**

Response 65: Comment noted.

Comment 66: A commenter would like Ohio EPA to require the developers to post a 10-year bond to ensure future protection of water quality both on-site and downstream of the development.

Response 66: Ohio EPA agrees this is an excellent idea. However, the Agency does not have the authority to require developers to post a 10-year bond to ensure future protection of water quality. We do require protection in perpetuity of all mitigation areas through an environmental covenant.

Comment 67: A commenter suggests that Ohio EPA add, as a requirement of water quality certification, monitoring by a local college or university for macroinvertebrates, dissolved solids, suspended solids, phosphorous, ammonia, free oil and greases, siltation and litter for a period of five years after the project is completed.

Response 67: Ohio EPA requires, at a minimum, 5 years of post-construction monitoring and can extend the monitoring period beyond this time if necessary. Ohio EPA requires that a qualified and certified credible data collector gather monitoring data.

Comment 68: A citizen informs Ohio EPA that the bedrock of the site consists of soils which are known for failure on disturbed hillsides. The citizen is concerned that the Legacy Place application indicates that some areas of the site will be filled to nearly 50 foot depths, but that due to soil type, retaining walls may not adequately hold back soil on the slopes from sliding into the relocated stream.

Response 68: Retaining walls and other design features were incorporated into the proposed plan to help provide soil stability.

Comment 69: A comment was made that plans for stream relocation will provide a superior channel than the currently existing channel.

- Response 69: Over time, it's possible that the relocated stream channel is even better than the existing stream channel. It's equally possible that the relocated channel will be degraded. No cases have been identified to demonstrate successful relocation of this type of stream
- Comment 70:** **A comment was made that Green Township plans to create a 75 foot stream corridor to allow for a meandering stream and floodplain for the relocated stream.**
- Response 70: This will be a requirement.
- Comment 71:** **A citizen made the comment that the relocated stream will still enter and exit the property, so moving it should have no impact on neighboring properties.**
- Response 71: No permanent impacts are expected to occur on the neighboring property.
- Comment 72:** **A citizen requests that the developer be required to re-submit the mitigation plan for this site and for the new plan to include infiltration ditches, green rooms, pervious pavers, rain gardens and mitigation squalls.**
- Response 72: A revised mitigation plan was submitted to the Agency on March 24, 2008.
- Comment 73:** **A citizen explains that some of the planned off-site mitigation includes bank improvement and culvert repair for a stream on the property of Glory Day Lutheran Church.**
- Response 73: There are 3 projects located off-site that are proposed for mitigation.
- Question 74:** **There is concern that the large increase of impervious surfaces and soil compaction from construction will cause water which would normally infiltrate into the soil and recharge the groundwater to exit the site through storm sewers. This will limit the amount of groundwater, which is needed to recharge the streams.**

- Response 74: Good point. However, infiltration at upstream locations may recharge the water.
- Comment 75: Comments were made indicating that any plantings made in order to reforest the streams' riparian zone will be small and planted far apart. There is concern that it will take many years for these plantings to begin to fulfill the functional equivalent of the existing site vegetation.**
- Response 75: One aspect of mitigation is allowing time for vegetation to establish itself. This is why Ohio EPA requires a minimum 5 year monitoring period and can extend that time if needed.
- Comment 76: A citizen requested that a specific sequence of construction be written into any approved water quality certification so that the applicant would be required to first dig the new channel, then install the plantings and allow those plants time to establish before stream flow is diverted.**
- Response 76: Ohio EPA asked for the sequence of construction events and this was provided in the revised mitigation plan.

Flooding and Storm Water Management Concerns

- Comment 77: Several citizens commented that the sedimentation pond appears to be too small to handle the average amount of rain that Hamilton County routinely receives, leading to erosion and flooding. One citizen further believes that the sedimentation pond should be equipped with an oil and paper skimmer and be mandated to have a cleaning and inspection routine.**
- Response 77: Based on the information the applicant submitted, the sedimentation pond was sized appropriately to handle rainfall amounts.
- Comment 78: A citizen wishes to ensure that sedimentation ponds and retention basins required under storm water permits are not used to satisfy mitigation requirements.**

- Response 78: Any sedimentation ponds or basins that are proposed for mitigation must be above and beyond the minimal requirements of the storm water program
- Comment 79: A comment was made that this project will provide water quality enhancement and storm water management to 300 acres.**
- Response 79: Comment noted.
- Comment 80: A comment was made that the shared parking agreement between the park and the Legacy Place retail development will allow the proposed park to have a significantly smaller parking footprint than is usual with a park of this size, reducing runoff and impervious surfaces.**
- Response 80: Comment noted.
- Comment 81: A citizen would like to ensure that rain gardens are incorporated into the storm water management plan for this site.**
- Response 81: Ohio EPA encourages developers to exceed the minimum storm water requirements on sites. The proposed use of rain gardens is above the norm
- Question 82: Citizens expressed concern that flooding would increase with the removal of floodplain and increase of impervious surfaces in the watershed.**
- Response 82: This could occur, however stormwater rules require pre-construction and post-construction runoff rates be the same.
- Comment 83: A group feels that storm water will be adequately controlled by the measures in the current application, and that there will be little to no downstream water quality impact from this development.**
- Response 83: Comment noted.

- Comment 84:** Several citizens commented that the retention basins and storm sewers in the application will alleviate flooding in their neighborhoods.
- Response 84: Comment noted.
- Comment 85:** A citizen would like to know if the developer has taken into consideration the runoff from both sides of Hutchinson Road and Hutchinson Glen that enters the site and will need to be addressed in storm water planning. The citizen would like to know how the application addresses flooding and storm water management for people on the east side of Hutchinson Road.
- Response 85: As required by County and State Regulations, the post development discharge rates must be the same as the pre-development runoff discharge rates. The project is designed to ensure these rates remain the same
- Comment 86:** A citizen commented that Green Township intends to use impervious surface concrete in the park's parking lot so that there will be no runoff from the parking lot directly to the creek.
- Response 86: Ohio EPA believes that the commenter intended to say that Green Township intends to use *pervious* surface concrete in the park's parking lot...However, the plans in the application do not call for the use of pervious surface such as pervious concrete or pervious pavers.
- Comment 87:** A comment was made that Green Township has instructed the engineers to ensure that storm water from the project is retained for a greater period of time than is required by the regulations of the Hamilton County Storm Water Conservation Public Works Department.
- Response 87: Comment noted.
- Comment 88:** A citizen requested that Ohio EPA take into consideration that this is a difficult area to develop and to consider historical patterns of

development when requiring engineered structures to control flooding and runoff.

Response 88: Many factors, including but not limited to the geology, soil types, steep terrain, and stream quality, contribute to the difficulty of trying to develop this site.

Impacts to Habitat

Comment 89: A citizen comments that the streams proposed for fill and/or relocation are groundwater fed, which serves to regulate temperature for downstream organisms. Citizens are concerned that the ability of the recreated stream to regulate downstream temperature and dissolved oxygen parameters is jeopardized by the amount of impervious surface and compacted soil run off associated with this plan.

Response 89: Data collected by Ohio EPA indicates some of these streams are Class III headwater streams that are groundwater fed.

Comment 90: Several citizens are concerned that the proposed development site falls within the ranges of the Indiana brown bat and running buffalo clover, federal endangered species. A citizen cites letters from the United States Fish and Wildlife Service (USFWS) to JF New stating that the proposed Legacy Place site may contain summer habitat for the endangered Indiana brown bat and that JF New was told that their original method of habitat assessment was unacceptable, causing them to re-survey the area. These citizens request that Ohio EPA and the U.S. Army Corps of Engineers make no decisions on any 401/404 water quality certifications until the results of planned mist netting are known.

Response 90: A bat survey and report was submitted in August 2007. The bat survey was conducted using mist nets.

Comment 91: A resident believes that clay sediments from disturbed soil substrata will destroy aquatic habitat downstream.

Response 91: Comment noted.

Comment 92: Citizens are concerned that the stream and riparian area are habitat for many species that will be displaced by the proposed development.

Response 92: Comment noted.

Comment 93: A citizen pointed out that the undeveloped land intended for the Legacy Place site is one of the few areas left in Green Township that is large enough to support a strong ecosystem with high levels of biodiversity.

Response 93: Comment noted.

Comment 94: A commenter is concerned that the created channel will not provide for adequate shading of the relocated stream and the subsequent warmer water will exclude species such as salamanders, mayflies and crayfish.

Response 94: Comment noted. Ohio EPA shared this concern.

Comment 95: A citizen is concerned that Cincinnati has already lost many trees to drought and to the Emerald Ash Borer, and that the developer's proposal cuts down many additional trees which are needed for habitat.

Response 95: Comment noted.

Comment 96: A group of citizens presented information about a possible sighting of a cougar in the area under review. They are concerned that limiting the territory of this animal would cause human/animal conflict and compromised safety for both humans and animals.

Response 96: Comment noted.

Legal Arguments

Comment 97: A citizen commented that Ohio EPA does not allow filling of valleys for coal mining, and believes that if coal mines are not given water quality certifications for this type of activity, then neither should shopping malls.

Response 97: Coal mining applications undergo the same review process as any other proposed project. All projects are subject to the same environmental rules, regulations and requirements.

Comment 98: Citizens expressed belief that the proposed project conflicts with Ohio's anti-degradation rule in that, if the proposed activity does not require access to water, there is a presumption that practicable alternatives to filling in streams exists.

Response 98: Comment noted. All alternatives will be evaluated as part of the review.

Comment 99: A citizen commented that Hamilton County currently has new codified regulations for mitigation out for final comment. The citizen asserts that Hamilton County guidelines will likely require a 50-75 foot riparian zone around each stream at bank-full condition, and that the developer is attempting to obtain a 401 water quality certification before these rules go into effect.

Response 99: Ohio's certifications indicate that Local regulations must be followed.

Comment 100: A citizen commented that the State of Ohio is currently seeking comments on new mitigation guidelines which would require developers to use a 3:1 ratio of restoration to destruction. The citizen asserts that the developer is attempting to obtain a 401 water quality certification before these rules go into effect.

Response 100: Comment noted

Comment 101: A commenter would like to know if the proposed development requires permitting from Ohio Department of Natural Resources (ODNR), particularly for creating a dike or levee by placement of project spoil, dewatering, in-stream blasting, and compensation to the State of Ohio for loss of aquatic life.

Response 101: Potentially, other permits may be needed and the 401 WQC does not alleviate the applicant from obtaining all necessary permits associated with the proposed project.

Comment 102: A group puts forth the argument that the alternative development scheme proposed by opposition group Safe Clean Green meets criteria as a practicable alternative to filling in the streams. For this reason, they assert that the application presented by the developer must be denied as indicated by the Clean Water Act.

Response 102: Comment noted

Comment 103: A citizen asks whether Green Township should have been listed on the 401/404 application as co-applicant for this site as they are responsible for both on- and off-site mitigation.

Response 103: Whoever is listed as the applicant on the 401 application is the responsible party for all terms and conditions of the permit, including mitigation.

Economic Considerations

Comment 104: Citizens commented that mitigation should be paid for and carried out by the developer instead of being conducted by Green Township.

Response 104: Comment noted

Comment 105: A citizen notes that, according to the minimum degradation plan, a sediment basin will be built on township property near her property. Are taxpayers responsible for maintaining this sedimentation basin?

- Response 105: The applicant is responsible for maintaining the sedimentation basin.
- Comment 106:** Citizens are concerned that the developer has presented no hard evidence in the social and economic analysis about asserted economic gains due to development of the site and has failed to ascribe economic value to the site as it currently exists. There is also concern that the analysis presented by the developer fails to show the net economic impact after losses by surrounding retailers are taken into account. Several citizens have requested an impartial economic impact study prepared by a qualified third party before water quality certification is granted.
- Response 106: Comment noted
- Comment 107:** Many citizens commented that western Cincinnati is in need of better access to shopping and restaurants and this development would bring needed jobs into the area. In addition, many citizens commented that there is significant vacant retail space in the immediate area which could be renovated for this project. Citizens commented that allowing this development would cause failure of other nearby retail establishments. Also, several citizens expressed concern that the proposed development site is too far from the expressway to draw a significant customer base.
- Response 107: Comment noted
- Comment 108:** A group commented that the Legacy Place site falls within a Township Tax Increment Financing District (TIF). Monies generated by this TIF will be used to establish a park that will surround the commercial site. If the 401 certification is not granted, the township will not have enough money to buy the land for the park.

Response 108: Comment noted. Green Township could pursue funding opportunities through other sources. One potential funding source is the Surface Water Improvement Fund that was recently created by Ohio EPA.

Comment 109: Neighbors are concerned that development of the Legacy Place site will destroy the residential character of their neighborhood and decrease property values.

Response 109: Comment noted

Comment 110: A citizen commented that the Legacy Place development would allow them to keep their money in the local economy.

Response 110: Comment noted

Comment 111: A citizen is concerned that if Legacy Place is not built, that homes will be built on the land instead. They believe that Legacy Place will create jobs and a tax base while homes will be a detriment to the economy and overcrowd the local school system.

Response 111: Comment noted

Comment 112: Several citizens wanted Ohio EPA to know that the developer is not donating the land for the park to the township, but is instead selling the land after using part of the acreage for fill material.

Response 112: Comment noted

Comment 113: A citizen rebutted the developer's assertions in the application that Legacy Place will be a "town center" development, different from other retail space in the local area. The citizen points out that the developer is not planning new residential areas, green space or government offices as part

of the development, but is instead locating near houses, a park and township offices. The citizen further wishes Ohio EPA to know that similar retail concepts can be found at Glenway Crossing and Western Hills Plaza, among others.

Response 113: Comment noted

Comment 114: A citizen comments that TIF revenue coming from the site will be used to pay for road improvements immediately adjacent to the Legacy Place site and that these costs should more properly be borne by the developer.

Response 114: Comment noted

Comment 115: A citizen wishes Ohio EPA to know that Green Township will be creating a Joint Economic Development District (JEDD) which would in effect create a regressive tax on retail employees while exempting office workers, public employees and business owners at Legacy Place.

Response 115: Comment noted

Comment 116: A citizen is concerned that, per agreement between the developer and Green Township, the costs of stream restoration are capped at \$180.00 per square foot and only to a 1:1 ratio of disturbed to mitigated area. The commenter is concerned about a lack of a fiscally responsible agent should the costs of mitigation exceed \$180.00 per square foot or distances greater than a ratio of 1:1.

Response 116: The minimum ratio acceptable is 1:1 for stream mitigation projects. Ohio EPA holds the applicant responsible for completion and success of the proposed mitigation.

Comment 117: A citizen is concerned that there are no guarantees that Legacy Place will not be bankrupted in the future, negating all economic advantages.

Response 117: Comment noted

Comment 118: Citizens are concerned that the increased traffic near the site will negatively impact property values.

Response 118: Comment noted

Comment 119: A comment was made that the area lacks the infrastructure to support a large retail establishment.

Response 119: Comment noted

Comment 120: A citizen wishes Ohio EPA to know that the proposed 80 acre park includes 12.9 acres that the developer plans to use for fill material. The citizen is unhappy that the developer is charging the Township \$500,000 to grade this land back to useable condition, an amount which will be added to the purchase price for the land.

Response 120: Comment noted

Comment 121: A citizen believes that the Legacy Place development will overburden safety and emergency services.

Response 121: Comment noted

Comment 122: A comment was made that the Legacy Place development will create 1400 new jobs.

Response 122: This was included in the social and economic justification portion of the application

Comment 123: A commenter stated that the alternative development proposal submitted by Safe Clean Green has undergone no market studies to determine viability, whereas the developer's proposal has undergone extensive market analysis.

Response 123: Comment noted

- Comment 124:** A comment was made that Green Township will receive \$7.5 million in tax revenue from this project and will pay out \$3.6 million for land purchase and infrastructure improvements.
- Response 124: Comment noted
- Comment 125:** A citizen is concerned that the Township's contract with the developer does not contain an abandonment clause.
- Response 125: Comment noted
- Comment 126:** A citizen is concerned about the statement that Green Township will be responsible for the stream "in perpetuity" and therefore will be responsible for monetary damages resulting from flooding, etc.
- Response 126: Ohio EPA holds the applicant as the responsible party for the completion and success of the proposed stream mitigation.
- Comment 127:** A citizen computed the drive times from Green Township and surrounding communities to Legacy Place and competing retail outlets and concludes that Northgate mall and others will be just as attractive destinations as Legacy Place. The commenter believes that this is evidence that the development is poorly planned and sited.
- Response 127: Comment noted
- Comment 128:** A citizen is concerned about the size of the proposed Legacy Place development and would like the scale of the project reduced in order to mitigate the economic risks to the developer and the community, and to allow the infrastructure to grow at the same rate.
- Response 128: Comment noted
- Comment 129:** A citizen explained the TIF program as a diversion of tax funds from standard uses and as a way to indirectly subsidize the development.

- Response 129: Comment noted
- Comment 130:** **A commenter stated that the anti-degradation rule allows lowering of water quality only when it is necessary to support social and economic development. The commenter believes that the applicant has failed to show evidence to meet these criteria.**
- Response 130: A social and economic evaluation is included in the application and as part of the review process
- Comment 131:** **A citizen noted that improvements to the local sewer system such as repairs to the pump station are already planned at Hamilton County's expense, and that the Legacy Place project will only change the group responsible for payment.**
- Response 131: MSD is required under a consent agreement (enforcement of the Clean Water Act) to eliminate a sanitary sewer overflow at the Glenview Pump Station which is tributary to the Muddy Creek sewer system. Due to the proximity of the proposed Legacy Place development, MSD is now considering elimination of the Glenview Pump Station by installing a gravity sewer to the development. The MSD has stated that if the development does not proceed, they will not eliminate the Glenview pump station. They will continue to upgrade that facility to eliminate the sanitary sewer overflow into the Muddy Creek.
- Comment 132:** **A commenter wished to correct a misconception that the property in question is public green space. The commenter asserts that this is private property and will be sold for development whether or not the 401/404 water quality certifications are granted for this specific project.**
- Response 132: The property being considered as the location for the proposed Legacy Place Retail Development is privately owned property that is not public green space. It is the right of the property owner to sell the land for development or other purposes.

Historical Significance

Comment 133: Several citizens stated that houses scheduled to be razed during construction of Legacy Place date to before 1868 and that at least one house was a stop on the Underground Railroad. They assert that 5779 Filview Circle, also known as Catalpa Place, is a historically significant dwelling and should not be razed for development.

Response 133: The historical property evaluation did not reveal any historical significance to the Underground Railroad.

Air Pollution

Comment 134: A citizen commented Cincinnati is often included in lists of cities with dirty air, and that temperature inversions are common in the area. The citizen believes that these temperature inversions will trap carbon dioxide, soot and sulfur oxides near the ground resulting in poor visibility, acid rain and air that causes lung irritation.

Response 134: Comment noted

Comment 135: A citizen is concerned that Legacy Place will not be served by public transportation, thusly increasing emissions from greater vehicular traffic in the area.

Response 135: Comment noted

Comment 136: A commenter pointed out that the increase in traffic due to the proposed development will affect the health and safety of residents in the area, specifically in the area of increased automobile emissions.

Response 136: Comment noted

General

Comment 137: A citizen complained that a previous Silverman and Company project dewatered their stream and that the developer was found to be in violation of

rules related to soil conservation and erosion control.

Response 137: Comment noted

Comment 138: A commenter would like Ohio EPA to explain how the majority vote of the people in the township in favor of the project is considered when making the decision whether or not to grant a 401 water quality certification.

Response 138: The 401 application is reviewed based on Federal and State Environmental Laws. The majority vote is noted but is not an integral part of the 401 application review.

Comment 139: Citizens expressed concern that alternative plans for the site, such as those to create housing, might be presented in such a way as to avoid filling or relocating the streams and so would not be required to go through review by Ohio EPA even though they would still have great environmental impact.

Response 139: Projects involving the placement of fill into wetlands and streams are required to submit an application for a 404 permit and 401 Water Quality Certification. Those projects that avoid filling these resources may not need to submit an application for a 404/401. However, other permits may be necessary, such as a General Storm Water Construction Permit.

Comment 140: A commenter would like to point out that there is no proof that this is the best development plan for the property, and that subsequent plans would be subject to the same environmental and community review as the current plan.

Response 140: Any project that would involve filling the streams would undergo the same environmental and community review as the current proposed plan.

Comment 141: A citizen stated that a study done by JMA consultants recommended a minimum 100 foot

buffer around the perimeter of the site with an additional 100 foot buffer for grading. The citizen states that the current plan clears and grades to within 10 feet of some private properties. The citizen requests that Ohio EPA consider the consultant's recommendations for this project in their decision-making process.

Response 141: Comment noted

Comment 142: A citizen would like to know if Ohio EPA has the authority to require the applicant to downsize the project and/or use the alternative provided by the group Safe Clean Green.

Response 142: Ohio EPA asked the applicant to consider an alternative footprint that would meet the needs of the development as well as the regulatory needs of Ohio EPA.

Comment 143: Proposed improvements to existing traffic safety controls will increase safety for residents.

Response 143: Comment noted

Comments from Tim Burgyne, Director of Site Acquisition for Silverman Development

Comment 144: Green Township is planning to add separators to improve water quality at the headwaters of the streams. These separators will be paid for with TIF money generated by the development.

Response 144: Comment noted

Comment 145: Silverman and Company is working with MSD to install lift stations to pump water in to another watershed to stop combined sewer overflows from impacting Muddy Creek.

Response 145: Comment noted

Comment 146: This development will bring public sewer systems to the area to replace failing septic systems and improve water quality.

Response 146: Comment noted

Comment 147: The stream planned for relocation currently has vertical sides and is less than 10 feet wide in many places. After relocation the stream will have a 70 foot wide floodplain. This will increase habitat for aquatic species and slow the water down and reduce downstream erosion and flooding.

Response 147: The stream planned for relocation is a Class III headwater stream with an existing mature, forested floodplain.

Comment 148: Many acres of this land will be preserved through the park, and both of the slopes that citizens are concerned with will be reforested.

Response 148: Comment noted

Comment 149: The park will serve to teach children about water quality and best management practices, such as the rain gardens that Silverman and Company plan to install on-site.

Response 149: Comment noted

Comment 150: Silverman and Company plan to use innovative practices unseen in the Cincinnati area to cut down on thermal pollution of the water.

Response 150: Comment noted

Comment 151: The creeks will be protected by conservation easements and the long-term stewardship and fiscal responsibility of the Township to provide stewardship for the area in both short and long term.

Response 151: Comment noted

Comment 152: The land is zoned for development, and the property owners have plans to sell the land. The current Legacy Place plan protects water quality and green space while allowing growth and development. There are no guarantees that the residents will see these positive impacts from other development.

Response 152: Comment noted.

End of Response to Comments