

# SIVE, PAGET & RIESEL, P.C.

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October 2, 2008

## **By Overnight Mail**

Richard Tomer  
Chief, Regulatory Branch  
New York District  
U.S. Army Corps of Engineers  
Javits Federal Building  
New York, NY 10278-0090

Re: **Scenic Development, LLC**

Dear Mr. Tomer:

We represent Scenic Development, LLC, the owner and prospective developer of a residential project known as Patrick Farm in the Town of Ramapo, Rockland County, New York. The approximately 207 acres property (the "Site") is located between State Routes 202 and 306. We write to request confirmation that the proposed development is authorized under Nationwide General Permit ("NWP") No. 29.

As explained below, the Site has been the subject of inspections by Dr. Mallery in the context of a prior resolved enforcement matter, who found that the proposed development would have only minor impacts and would qualify for NWP No. 39 (since renumbered to NWP No. 29). Several nominal changes to the project layout, and the slight expansion of a wetland (due to a prior surveying error), do not alter this conclusion.

In May 2004, the Corps conducted a Site inspection and found that fill had been placed in certain waters of the United States without prior authorization. Carpenter Environmental Associates ("CEA"), on behalf of Scenic Development, developed and implemented a remedial plan for the impacted areas. As part of this work, CEA submitted to the Corps a Preliminary Layout Study for the proposed Patrick Farm development (dated January 10, 2006), which showed the location of waters of the United States (both streams and wetlands) and the proposed layout for the roads, road crossings and lots of the proposed project. This Study showed that the only activity near waters of the United States, including wetlands, were bridge crossings that would span the entirety of the narrow waterways and not result in any filling of such waterways.

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The Corps found that the remedial measures undertaken by Scenic Development fully addressed the enforcement issues and closed the administrative proceeding. This decision is reflected in the February 1, 2007 letter from Dr. Mallery. A copy of this letter, together with the January 10, 2006 Preliminary Layout Study (which incorporates January 15, 2007 graphics), is attached hereto as Exhibit A.

Dr. Mallery, based on his and his staff's inspections of the Site, and based on the Preliminary Layout Study, stated that

impacts of the project...are sufficiently minor in scope as to be considered and authorized under nationwide general permit permits (specifically nationwide general permit No. 39) [now No. 29], provided that the remainder of the project is carried out in accordance with the general conditions of the nationwide general permit program.”<sup>1</sup>

Dr. Mallery's letter also stated that if the project were modified so that it would have additional impacts to the waters of the United States (including wetlands) identified on the Preliminary Layout Study, additional authorization from the Corps would be needed.

Since that letter, the design layout of the project has slightly changed. The new layout is reflected in the accompanying figure entitled Proposed Layout Plan (August 21, 2008). The changes do not affect the eligibility of the project for a nationwide permit. The changes are as follows: (a) six of the single-family lots south of the New York State Department of Environmental Conservation wetland of 12.20 acres on the southeast portion of the Site, have been eliminated; (b) a lot to the north of Old Route 202 has been added; and (c) in the central portion of the Site, where the wetland remediation took place, multi-family units have replaced single family units, with an improved layout in the vicinity of Lots 85 and 86. This last modification places the remediated area in the the open space managed by the Homeowner's Association, rather than in the backyards of individual single family lots, thereby assuring greater protection to the area. In addition, the August 2008 Proposed Layout Plan reflects the detailed stormwater management plan, which shows that stormwater management basins, outside of the Corps jurisdictional area, will be used to manage stormwater. (These locations are denoted by yellow highlighting on both the enclosed Preliminary Layout Study of January 10, 2006 and the Proposed Layout Plan of August 21, 2008.)

In addition, it was discovered that the wetland in the southwestern corner of the Site had been the subject of a surveying error. That wetland, which was 5.15 acres on the Preliminary Layout Study, is actually 5.75 acres in size. The increased area is in the “finger” that juts out from the wetland toward the northwest. The Proposed Layout Plan reflects that this finger will not be impacted by the project.

<sup>1</sup> Dr. Mallery's letter also noted the need for adequate sedimentation and erosion controls during construction; Scenic Development will be implementing such a plan.



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Although the changes do not cause any additional impacts to waters of the United States, including wetlands, we write out of an abundance of caution in light of Dr. Mallery's letter and caution about project modifications. Accordingly, we request confirmation that the proposed development, as set forth in the Proposed Layout Plan, is authorized pursuant to NWP No. 29. In this respect, and consistent with Dr. Mallery's letter, the development also complies with applicable general conditions of the nationwide general permit program: there will be no impact to water flows (General Condition 9); the project complies with all applicable floodplain requirements for the 100-year floodplain that parallels the stream that crosses the northeast part of the Site (General Condition 10); no heavy equipment is expected to be used in wetlands but, in such event, mats or similar measures will be taken to protect the wetlands (General Condition 11); appropriate soil erosion and sediment controls will be used and maintained (General Condition 12); in this regard, the project will comply with applicable SPDES Stormwater General Permit provisions and will have a Stormwater Pollution Prevention Plan in place; no temporary fills of waters of the United States, including wetlands, are expected, but if that occurs, the fill will be removed in its entirety and the affected area returned to pre-filling elevations and re-vegetated as appropriate (General Condition 13); no threatened or endangered species, or habitat thereof, will be affected by the project (General Condition 17); and no critical resource waters are on or near the Site (General Condition 19).

Finally, no structure or portion of the Site is listed on the National (or State) Register of Historic Places. Scenic Development has submitted information to the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP") regarding the potential eligibility for listing on the National or State Register of a small cemetery on the southwestern edge of the Site (which will not be disturbed by the proposed development) and the foundation of a former dwelling called the Mather Farmhouse that is in the vicinity of Lot 51 (on the eastern edge of the Site, east of the DEC Wetland of 12.20 acres). If the cemetery and/or Mather Farmhouse foundation (or other site) is found to be eligible for listing on the National Register by ORPHP, the applicant will comply with Section 106 of the National Historic Preservation Act (General Condition 18).

We appreciate your consideration of this request. Please feel free to contact the undersigned with any questions.

Sincerely,



Mark A. Chertok

cc: Christopher S. Mallery, Ph. D  
Scenic Development  
Ann Cutignola (TMA)  
Greg M. Fleischer (CEA)



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**NEW YORK DISTRICT, CORPS OF ENGINEERS**  
**JACOB K. JAVITS FEDERAL BUILDING**  
**NEW YORK, N.Y. 10278-0090**

**FEB 1 - 2007**

Regulatory Branch

Subject: Enforcement Case No. 2004-047 (NAN-2004-505)  
Scenic Development, LLC  
Town of Ramapo, Rockland County, New York

Mr. Greg M. Fleischer  
Carpenter Environmental Associates, Inc.  
307 Museum Village Road  
P.O. Box 656  
Monroe, New York 10950

Dear Mr. Fleischer:

On May 17, 2004, the New York District of the U.S. Army Corps of Engineers issued a Cease and Desist Order to Scenic Development, LLC, restricting further construction on the project site of a residential development known as Patrick Farm, located between Route 202 and Route 306, in the Town of Ramapo, Rockland County, New York. This order was based on observations by a representative of this office during a site inspection on May 12, 2004, when it was noted that fill had been placed in waters of the United States, particularly streams and wetlands, on the project site, without prior authorization from this office.

In a letter dated November 27, 2006, Carpenter Environmental Associates, as environmental consultants for the project, detailed measures that had been taken to remediate the previously impacted areas, and provided a preliminary layout for the future development of the site, including its proposed impacts to areas within the jurisdiction of this office. On December 19, 2006, a representative of this office conducted an inspection of the project site with representatives of Carpenter Environmental Associates. In a letter dated January 12, 2007, Carpenter Environmental Associates described the further measures that had been taken to complete the remediation of the previously impacted areas, and submitted a drawing entitled "Patrick Farm, Town of Ramapo, Rockland County, New York - Preliminary Layout Study (SF)", dated January 10, 2006, with revised graphics dated January 15, 2007, which set out a proposal for the current project, which involves the construction of 139 single-family homes.

Based on observations during the recent site inspection and the submittals of the project consultant, it appears that the completed remedial measures have fully addressed the enforcement concerns of this office with regard to the previously impacted areas. Accordingly, the Cease and Desist Order issued by this office on May 17, 2004, is considered rescinded, effective on the date of this letter, and the relevant enforcement case is considered administratively closed.

Subject: Enforcement Case No. 2004-047 (NAN-2004-505)  
Scenic Development, LLC  
Town of Ramapo, Rockland County, New York

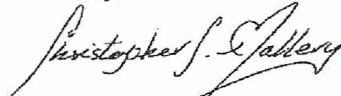
This office has reviewed the proposal for the further development of the site, and specifically the above-referenced drawing, and has determined that the prior and proposed impacts of the project as set out in this drawing are sufficiently minor in scope as to be considered authorized under nationwide general permits (specifically nationwide general permit No. 39), provided that the remainder of the project is carried out in accordance with the general conditions of the nationwide general permit program. In this last regard, and in light of the sensitive nature of the watercourses on the site, it would be in the best interests of the project sponsor to be especially diligent in the design and implementation of adequate erosion and sediment controls during construction on the project site.

If, at any time during the course of construction, the project is modified in such a manner that it would have additional impacts to areas identified on the above-referenced drawing as wetlands and waters of the United States, additional written authorization from this office will be necessary prior to the implementation of such modifications.

It is anticipated that the project will be carried out in accordance with all appropriate state and local approvals that may be required.

Your cooperation with the regulatory requirements of this office is appreciated. If any questions should arise concerning this matter, please contact me at 917-790-8418.

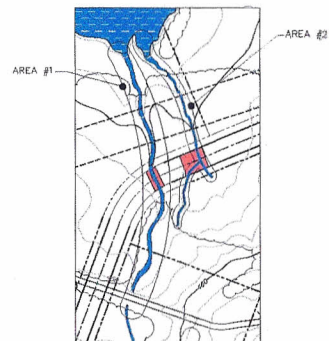
Sincerely,



Christopher S. Mallery, Ph.D.  
Chief, Harbor Supervision  
and Compliance Section

c: NYSDEC  
Scenic Development  
Leonard Jackson Associates  
Town of Ramapo





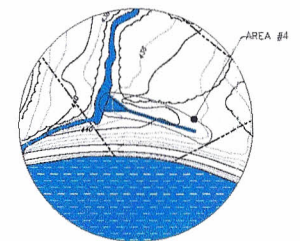
PART PLAN: AREAS #1 & #2

SCALE: 1"=60'



PART PLAN: AREA #3

SCALE: 1"=60'

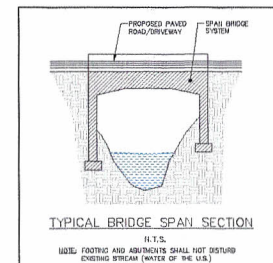


PART PLAN: AREA #4

SCALE: 1"=60'

**LEGEND**

- FRESHWATER WETLAND
- WATERS OF THE U.S.
- BRIDGE SPAN CROSSING
- PROJECT CHANGES
- AREAS OF PROPOSED ZONING CHANGE



TOWN OF RAMAPO  
TABLE OF BULK REQUIREMENTS  
§ 376-41

ZONE	USE GROUP	MINIMUM LOT AREA	LOT WIDTH (FT)	FRONT SETBACK (FT)	FRONT YARD (FT)	SIDE SETBACK (FT)	TOTAL SIDE SETBACK (FT)	SIDE YARD (FT)	REAR SETBACK (FT)	REAR YARD (FT)	REAR SETBACK (FT)	STREET FRONTAGE (FT)	MAXIMUM HEIGHT (FT)	DEVELOPMENT COVERAGE (%)	FLOOR AREA RATIO (FAR)
R-40	"	42,000 SF	160	50	50	25	70	10	50	10	100	35	40	0.40	
RR-80	#1	80,000 SF	200	50	50	30	100	10	60	10	150	35	20	0.40	

SUMMARY - BREAKDOWN OF PROPOSED USES

USE	NUMBER OF UNITS
1 SINGLE FAMILY HOMES	120

SINGLE FAMILY HOMES  
TYPICAL DIMENSIONS: 50' X 70'

NO.	REVISIONS	DATE

**LJA** LEONARD JACKSON ASSOCIATES

REGISTERED ENGINEERS  
29 FRENCH MOUNTAIN DRIVE, PARSIPPANY, NEW YORK 10942  
PHONE: (914) 351-4382 FAX: (914) 351-4343

**PATRICK FARM**  
TOWN OF RAMAPO  
ROCKLAND COUNTY, NEW YORK

PRELIMINARY LAYOUT STUDY (SF)

Date: 01/10/06 Drawn by: YCT Scale: 1" = 200' Job Number: 02633 Drawing Number: SF

LEONARD JACKSON, P.E.  
REG. NO. 14867