



November 18, 2020

**VIA E-Mail and Mail**

Mr. Jim Datko, P.E.  
Regional Enforcement Specialist Senior  
VA Department of Environmental Quality  
Northern Regional Office  
13901 Crown Court, Woodbridge VA 22193  
Email: [james.datko@deq.virginia.gov](mailto:james.datko@deq.virginia.gov)

Mr. Mark Miller  
Regional Enforcement Manager for the Northern Regional Office  
(same mailing address)  
Email: [mark.miller@deq.virginia.gov](mailto:mark.miller@deq.virginia.gov)

**RE: Middleburg Preserve / MOJAX / Second Draft Consent Order**

Gentlemen:

On behalf of the Goose Creek Association (GCA), whose mission is to protect and preserve the environment and quality of life in the Goose Creek Watershed, we are writing to express our unequivocal objection to the Second Draft Consent Order recently issued by DEQ for the MOJAX wetlands violations. We respectfully request that you rescind the Order and instead require the full restoration of the wetlands by the developer.

We are astounded by the developer's ability, in this instance, to determine the amount of wetlands credits to be purchased under the Order (exactly half of that required under the first Draft Consent Order), thereby saving itself thousands of dollars and eliminating any modicum of deterrence on the part of the DEQ. By halving the wetlands credit requirement, it appears that the DEQ is actually rewarding the developer in the second Order for re-invading the wetlands that were the very subject of the first Order.

This is especially disturbing in light of MOJAX's repeatedly irresponsible behavior in terms of environmental impact since the inception of the project, beginning with its entry into the wetlands, with full knowledge thereof, on New Year's Day 2018, for the express purpose of avoiding any governmental intervention and the lengthy and expensive permitting process. Among other egregious actions, the developer later attempted to drain the wetlands by carving

channels on the property. In light of the tremendous public outcry in response to the first draft Consent Order, we presume that DEQ is well aware of this history.

However, regardless of whether the wetlands credit ratio is pegged at 2:1 or 4:1, it is clear that the cost to MOJAX is utterly negligible in light of the sheer size of the proposed multimillion-dollar development and will be seen by the developer as just the cost of doing business. We can therefore only surmise from this second Order that DEQ will allow MOJAX to destroy the wetlands in the permitting process going forward, action that GCA unreservedly opposes for the following reasons:

- The wetlands are a reliable and important buffer from flooding for the greater area. MOJAX's actions, in flagrant violation of wetlands regulations and state Erosion and Sediment Control Rules (ESC), have already caused a tremendous imbalance in water runoff, resulting in increased soil erosion, flooding and sedimentation, which has unreasonably damaged the surrounding properties and profoundly affected the use of the land. These are significant issues that adversely impact not only the properties comprising the St. Louis community, much of which now remains continually wet for months on end, but are consequential to properties farther downstream within the Goose Creek watershed. Further, the land cover change on these parcels will increase storm water runoff due to the conversion from forested to impervious cover. This will result in even more damaging runoff than exists today as rainfall will run off (further lowering the water table) rather than soak into the ground.
- The wetlands on the MOJAX property are a crucial source of ground water for the St. Louis community and critical to an already problematic potable water supply. The developer was well aware of the serious water supply issue in St. Louis, as it requested from Loudoun County in October of 2019 a waiver of the requisite hydrogeologic study, which the County promptly denied. The destruction of the wetlands, plus the addition of 30 wells from the high-density housing development may well devastate the water table in St. Louis, with the resulting burden of failed or erratic water supply falling on those least likely to afford it. Further, should residents be forced to dig new or deeper wells, or bring in water from elsewhere as a result of this development, they will have no recourse against MOJAX.
- The environmental degradation from the pollution of a high-density housing development, with its 30 wells, curb and gutter design and other related infrastructure, to the fragile ecosystem of St. Louis is extremely concerning. For example, the large number of residential lots on this relatively small site threatens water quality from typical lawn care practices. Pesticides, Fertilizer and herbicides used by homeowners predictably seep into groundwater and can contaminate existing and new homeowners' wells.

May we remind you that, as stated in our letter to you of April 1, 2020, GCA has monitored the quality of water in our watershed for nearly two decades and sent the data to DEQ in order that DEQ should understand the importance of all wetlands and headwaters to the Goose Creek and Potomac watersheds, as well as the greater Chesapeake Bay watershed. As did the first one, this draft Consent Order demonstrates a lack of respect for the sensitivity of our ecosystem to the health and well-being of the residents of St. Louis and the community at large. Further, its ratification, by giving a green light to the proposed development, would only serve to reward MOJAX for its long record of egregious behavior in St. Louis, an historically African-American

community. None of this is reconcilable with the DEQ's new focus on Environmental Justice or its stated mission to protect and improve the environment for the well-being of all Virginians.

Given the significance of the proposed development to the St. Louis community and the developer's long history of violations on this and other projects throughout Loudoun County, it is clear that only full restoration of the wetlands will protect St. Louis and the greater Goose Creek Watershed. We therefore respectfully request that you rescind the second Draft Consent Order and require MOJAX to fully restore the wetlands.

It is our understanding that DEQ is aware of Loudoun County's announcement that it has agreed to purchase the Middleburg Preserve II site from MOJAX and that the property will be placed in conservation easement. While we do not wish to interfere in any way with the ratification of this agreement, the County's announcement has inserted a considerable degree of uncertainty with respect to the future of the property, especially in light of the fact that the DEQ's enforcement and permitting process still moves forward. At the very least, we strongly urge the DEQ to pause its enforcement action until the property is placed in easement, as the two issues are interconnected as far as the community is concerned. Moreover, the developer has no incentive to withdraw his application to fill the wetlands until the property is in easement.

Sincerely,



Paul Lawrence  
GCA Co-Chair Loudoun County



Lori McGuinness  
GCA Co-Chair Fauquier County