



Public Notice

**U.S. Army Corps
of Engineers**

Pittsburgh District

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Application No. LRP 2016-61

Date: August 18, 2017

Notice No. 17-43

Closing Date: September 18, 2017

1. TO ALL WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act.

2. APPLICANT: CMC Company, LLC
6200 Mid Atlantic Drive
Morgantown, WV 26508

3. LOCATION: The Middletown Mall Fill Commercial Development Site is located approximately 1,250 linear feet southeast of the Southland Drive and Viking Road intersection in south Fairmont, Grant District, Marion County, West Virginia.

4. PURPOSE AND DESCRIPTION OF WORK:

CMC Company, LLC has placed unauthorized fill in approximately 1,382 linear feet of unnamed tributaries of the Tygart Valley River in association with the Middletown Mall Fill Commercial Development Site. This fill has been placed without applying for a Clean Water Act (CWA) Section 404 Permit from the US Army Corps of Engineers. The US Army Corps of Engineers, Pittsburgh District is allowing the applicant to pursue a CWA Section 404 Permit through the "After-the-Fact" permitting process to achieve compliance with the CWA.

The applicant has proposed to create two new channels in the "groin" of the valley fill (e.g. the outside edges of this fill), that would create 1,820 linear feet of stream channel as on-site mitigation for the unauthorized stream impacts. These stream channels are being designed using "natural stream restoration" methods and structures such as cross-vanes, J-hooks and step pools will be utilized. A vegetative buffer will be established along these streams and a "Restrictive Covenant" will be put in place to prevent disturbance of these buffer areas and the created streams.

5. WEST VIRGINIA CERTIFICATION: This permit decision will not be made until the State of West Virginia, Division of Environmental Protection (WVDEP), issues, denies, or waives State Certification. This public notice does not serve as application to the WVDEP for certification required by Section 401 of the Clean Water Act. An individual 401 water quality certification (WQC) may be required for this proposed activity in conjunction with the Section 10 of the Rivers and Harbors Act permit and/or Section 404 of the Clean Water Act permit. The

applicant must apply directly to the WVDEP for an individual 401 WQC. The WVDEP will also consider whether or not the proposed activity will comply with sections 301, 302, 303, 306, 307 of the Clean Water Act or any other appropriate State laws. Please contact the below to determine if an individual 401 WQC is required for this proposed activity:

Ms. Wilma Reip, 401 Program Manager
Phone: 304-962-0499 ext. 1599
E-mail: Wilma.reip@wv.gov

6. IMPACT ON NATURAL RESOURCES: The District Engineer has consulted the most recently available information and has determined that the project will have no effect on endangered species or threatened species, or result in destruction or adverse modification of habitat of such species which has been determined to be critical. While concurrence with this determination is not required, this Public Notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

7. IMPACT ON CULTURAL RESOURCES: The National Register of Historic Places has been consulted, and it has been determined that there are no properties currently listed on the register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archeological, scientific, prehistorical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

8. PUBLIC INVOLVEMENT: Any person may request, in writing, within the comment period specified in the paragraph below entitled "RESPONSES," that a public hearing be held to consider this application. The requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

9. EVALUATION: Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposals must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. The Corps of Engineers is soliciting

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comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the overall public interest of the proposed activity. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act (40 CFR Part 230).

10. RESPONSES: A permit will be granted unless its issuance is found to be contrary to the public interest. Written statements concerning the proposed activity should be received in this office on or before the closing date of this Public Notice in order to become a part of the record and to be considered in the final determination, comments can be mailed to:

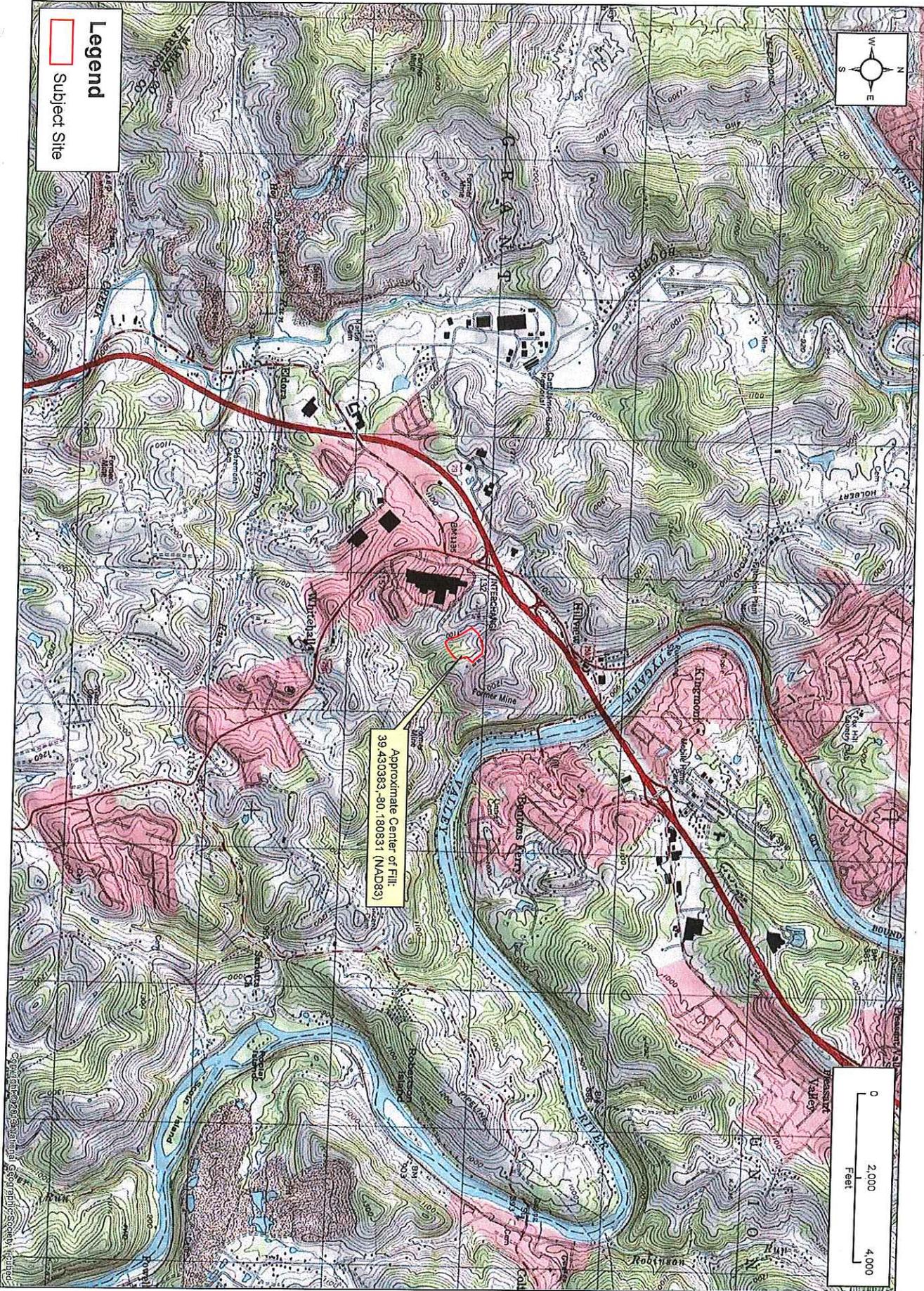
U.S. Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
Re: Public Notice CELRP-OP-F No. 17-43

Any objections which are received during this period may be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. All responses to this notice should be directed to the Regulatory Branch, attn.: Greg Currey at the above address, by telephoning (412) 395-7181, or by e-mail at Gregory.e.currey@usace.army.mil. Please refer to CELRP-OP-F 2016-61 in all responses.

FOR THE DISTRICT ENGINEER:



Jon T. Coleman
Chief, Southern Section
Regulatory Branch



Legend
 Subject Site

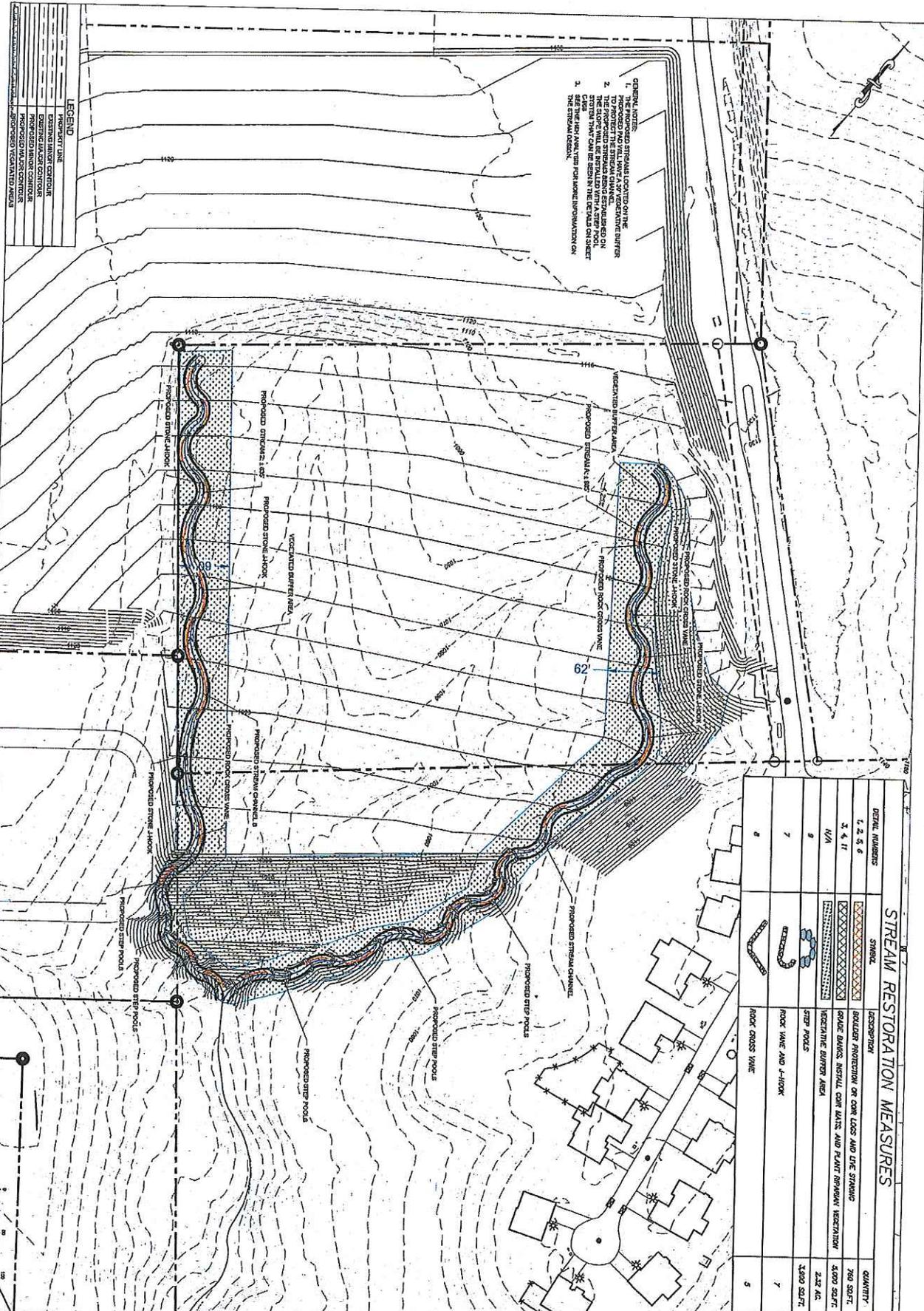
Approximate Center of Fill:
 39 430383, -80 180831 (NAD83)

0
 2,000
 4,000
 Feet



Date: 08/29/16
 A. Longenecker

Middletown Mall Fill Site
 Location Map (Fairmont West, WV Topoquad)
 Grant District, Marion County, West Virginia



	DRAWN BY: G.S.EPP CHECKED BY: G.COPEL DRAWING SCALE: 1"=50' DRAWING DATE: April 31, 2018	FIVE MILE COMMERCIAL DEVELOPMENT FAIRMONT, WV PROJECT NO: 15-149 DRAWING FILE: 15-149_DESIGN_REV26.DWG	CHEAT ROAD ENGINEERING, INC. 300 BUSINESS PARK DR, SUITE 202 MORGANTOWN, WV 26508 P: 304.212.5480	SHEET NUMBER C-15	MITIGATION PLAN											
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