



**robert e. blue consulting engineers, p.c.**

September 13, 2023

Ms. Jessica Buck  
Montgomery County Conservation District  
143 Level Road  
Collegeville, PA 19426-3313

**Re: NPDES Permit Application No. PAC460811  
Response to Public Comments  
222 Church Road – Cheltenham Township  
REB #2154-10**

Dear Ms. Buck:

On behalf of our client, 222 Church Road LLC, the following information is being submitted in support of the NPDES Application for the project located at 222 Church Road. The below is a discussion of public comments provided to our office by MCCD that include the following files:

- “Redacted Public Comments received via email Friday May 26, 2023” (letter with Summary of Storm Water and Erosion Issues and Exhibits A thru G) – provided to our office by MCCD on August 16, 2023 with the Technical Deficiency Letter.
- “Public Comments received via email Wednesday June 7, 2023” (letter with link for the docket search for Case #2023-12084) – provided to our office by MCCD on August 16, 2023 with the Technical Deficiency Letter.
- “Public Comments received via email Friday August 18, 2023” (letter with Second Supplemental Public Comments and Exhibits A thru K) – provided to our office by MCCD on August 25, 2023.

This letter shall serve as the response letter and includes how the concerns are addressed. Due to the length of the documents, comments from above files have only been referenced in italics as opposed to copying the entire text with the response following in **bold**.

**Redacted Public Comments Received Via Email Friday May 26, 2023**

**2023-05-26 Public Comment Email Redacted**

- *Opening Paragraph*

**RESPONSE:** The application has been previously revised to omit Old Mill Race as a receiving water. Based on the more recent wetland/waters investigation performed by VW Consultants (included with the submission package), Wetland ‘A’ has been identified on the plans with the ultimate receiving water being Tookany Creek. Other comments in the opening paragraph are not relevant to the NPDES Application.

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1. *The Applicant...*

**RESPONSE: Not applicable to NPDES.**

2. *One of the unanswered comments...*

**RESPONSE: The Applicant's EIN has been added to the NOI during the NPDES Administrative review process.**

3. *We provide a short history...*

**RESPONSE: Not applicable to NPDES.**

2023-05-26 Summary of Storm Water and Erosion Issues Redacted

1. *BACKGROUND*

**RESPONSE: Not applicable to the current NPDES application package. The Applicant's EIN has been previously provided.**

2. *PERTINENT HISTORY OF THE APPLICANT'S PLANS*

**RESPONSE: A majority of this section is not applicable to the current NPDES application package. Regarding identification of receiving waters, the current plans depict two points of discharge identified in accordance with NPDES criteria – one at the discharge point of BMP ID 001/Level Spreader #1 and one at Wetland 'A' where runoff from the subject property concentrates. Both Points of Discharge identified drain to Tookany Creek. The current plans reflect the results of a revised wetland investigation that occurred following construction of the Township trail just south of the subject property and an off-site discharge analysis has been included with the application package. The application package and supporting plans and documents have been prepared in accordance with Township and NPDES criteria.**

3. *THE HAMMOND TOOL FACTORY HISTORY AT 218 CR INCLUDING THE DEED HISTORY OF 222 AND 218 CR.*

**RESPONSE: Not applicable to the current NPDES application package.**

4. *THE OLD MILL RACE IN ITS STATE OF DISREPAIR...*

**RESPONSE: Discussion of Old Mill Race is not applicable to the current NPDES application package. An off-site discharge analysis in accordance with NPDES criteria has been included with the application package.**

5. *CONCLUSION.*

**RESPONSE: An off-site discharge analysis in accordance with NPDES criteria has been included with the application package.**



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**Public Comments Received Via Email Wednesday June 7, 2023**

**Montgomery County Tax Lien Case #2023-12084**

**RESPONSE: Not applicable to the NPDES application.**

**Public Comments Received Via Email Friday August 18, 2023**

**2023-08-18 Public Comment Email**

- *Opening Paragraph*

**RESPONSE: Acknowledged.**

**Redacted Second Supplemental Comments to MCCD dated August 18, 2023**

1. *Since the original comments...*

**RESPONSE: Acknowledged.**

2. *Because the Proposed Development...*

**RESPONSE: The proposed development includes stormwater controls to support the development in accordance with Township and NPDES criteria. The proposed development does not drain to the Cheltenham Township MS4.**

3. *Stated differently...*

**RESPONSE: Not applicable to the current NPDES application package.**

4. *We do not have a complete record...*

**RESPONSE: Not applicable to the current NPDES application package.**

5. *The CT Public Works Committee...*

**RESPONSE: Not applicable to the current NPDES application package.**

6. *The Minutes of the PWC 8-2-17 Meeting...*

**RESPONSE: Not applicable to the current NPDES application package.**

7. *At its Meeting of 8-2-17, the PWC...*

**RESPONSE: Not applicable to the current NPDES application package.**

8. *At its Meeting of 8-16-17, the Board...*

**RESPONSE: Not applicable to the current NPDES application package.**

9. *After discussion of the public comments received...*

**RESPONSE: Not applicable to the current NPDES application package.**

10. *The DEP issued a five-page comment letter...*

**RESPONSE: Not applicable to the current NPDES application package.**

11. *We do not know if there were any informal comments...*

**RESPONSE: Not applicable to the current NPDES application package.**

12. *At p. 5 of the DEP 5-17-19 Comment Letter...*

**RESPONSE: Not applicable to the current NPDES application package.**

13. *CT did not respond within 45 days.*

**RESPONSE: Not applicable to the current NPDES application package.**

14. *Instead, by letter dated 2-19-21...*

**RESPONSE: Not applicable to the current NPDES application package.**

15. *The 2-19-21 CT letter to DEP...*

**RESPONSE: Not applicable to the current NPDES application package.**

16. *Also obtained in July 2022...*

**RESPONSE: Not applicable to the current NPDES application package.**

17. *Thus, CT did not provide...*

**RESPONSE: Not applicable to the current NPDES application package.**

18. *In addition, the revised map...*

**RESPONSE: Not applicable to the current NPDES application package.**

19. *Another document obtained...*

**RESPONSE: Not applicable to the current NPDES application package.**

20. *At p. 1 of the 2017 MS4 Application...*

**RESPONSE: Not applicable to the current NPDES application package.**

21. *We do not know if the 2017 MS4 Application...*

**RESPONSE: Not applicable to the current NPDES application package.**

22. *At page 2 of the 2017 MS4 Application...*

**RESPONSE: Not applicable to the current NPDES application package.**

23. *The GF Response of 9-10-21...*

**RESPONSE: Not applicable to the current NPDES application package.**

24. *We do not know when...*

**RESPONSE: Not applicable to the current NPDES application package.**

25. *Shortly before the GF Response...*

**RESPONSE: Not applicable to the current NPDES application package.**

26. *The remedial measures included...*

**RESPONSE: Not applicable to the current NPDES application package.**

27. *The GF TC Bank Stabilization...*

**RESPONSE: Not applicable to the current NPDES application package.**

28. *The PWC unanimously recommended...*

**RESPONSE: Not applicable to the current NPDES application package.**

29. *The Board at its Meeting of 9-29-21...*

**RESPONSE: Not applicable to the current NPDES application package.**

30. *We have not located any mention on the CT website...*

**RESPONSE: Not applicable to the current NPDES application package.**

31. *Nevertheless, if such an application...*

**RESPONSE: Not applicable to the current NPDES application package. The Applicant is not obligated to consider off-site stream maintenance work performed by the Township that is unrelated to the NPDES Permit application associated with the proposed development.**

32. *The PWC Agenda for 3-2-22...*

**RESPONSE: Not applicable to the current NPDES application package.**

33. *The attachment at PDF pages 78-100 of the PWC Agenda...*

**RESPONSE: Not applicable to the current NPDES application package.**

34. *The fourth paragraph of the cover memo...*

**RESPONSE: Not applicable to the current NPDES application package.**

35. *If there were preliminary comments...*

**RESPONSE: Not applicable to the current NPDES application package.**

36. *The last paragraph of the cover memo...*

**RESPONSE: Not applicable to the current NPDES application package.**

37. *Among the projects shaded in gray on PDF p. 80...*

**RESPONSE: Not applicable to the current NPDES application package.**

38. *Likewise, Project 28B at PDF p. 80...*

**RESPONSE: Not applicable to the current NPDES application package.**

39. *The Minutes of the PWC Meeting...*

**RESPONSE: Not applicable to the current NPDES application package.**

40. *The PRP was next considered...*

**RESPONSE: Not applicable to the current NPDES application package.**

41. *We turn to the Agenda...*

**RESPONSE: Not applicable to the current NPDES application package.**

42. *The first item on the PWC Agenda...*

**RESPONSE: Not applicable to the current NPDES application package.**

43. *While we have not compared them...*

**RESPONSE: Not applicable to the current NPDES application package.**

44. *We do not know for sure the reason...*

**RESPONSE: Not applicable to the current NPDES application package.**

45. *There are several reasons we suspect...*

**RESPONSE: Not applicable to the current NPDES application package.**

46. *Staying in chronological order...*

**RESPONSE: Not applicable to the current NPDES application package.**

47. *As noted earlier, the GF Cover memo...*

**RESPONSE: Not applicable to the current NPDES application package.**

48. *As we have noted earlier, the PRP Draft...*

**RESPONSE: Not applicable to the current NPDES application package.**

49. *This description sounds much like the GF TC Bank Stabilization...*

**RESPONSE: Not applicable to the current NPDES application package.**

50. *Likewise, Project 28B at p. 12 of the PRP Draft...*

**RESPONSE: Not applicable to the current NPDES application package.**

51. *The PWC Minutes of its Meeting of 9-7-22...*

**RESPONSE: Not applicable to the current NPDES application package.**

52. *The PWC Minutes of 9-7-22 also include...*

**RESPONSE: Not applicable to the current NPDES application package.**

53. *The Minutes of the Board Meeting of 9-21-22...*

**RESPONSE: Not applicable to the current NPDES application package.**

54. *We could not find anything further...*

**RESPONSE: Not applicable to the current NPDES application package.**

55. *In the different context of granting conditional final approval...*

**RESPONSE: Not applicable to the current NPDES application package.**

56. *The Hot Topics Page of the CT website...*

**RESPONSE: Not applicable to the current NPDES application package.**

57. *One of the remarkable aspects of the PRP Draft...*

**RESPONSE: Not applicable to the current NPDES application package.**



58. *The two (2) Gimbel Field Projects...*

**RESPONSE: Not applicable to the current NPDES application package.**

59. *The PRP Draft Dated 2-24-22 that was preceded...*

**RESPONSE: Not applicable to the current NPDES application package.**

60. *The PRP Draft 7-13-22 did not include...*

**RESPONSE: Not applicable to the current NPDES application package.**

61. *Recalling the GF TC Bank Stabilization...*

**RESPONSE: Not applicable to the current NPDES application package.**

62. *The Board approved the recommendation to install the drainage pipe...*

**RESPONSE: Not applicable to the current NPDES application package.**

63. *What we know from the GF MS4 Map 7-13-22...*

**RESPONSE: Not applicable to the current NPDES application package.**

64. *From the description given in the PWC Minutes of 2-1-23 it sounds like...*

**RESPONSE: Not applicable to the current NPDES application package.**

65. *What we do not know is what happened...*

**RESPONSE: Not applicable to the current NPDES application package.**

66. *The storm sewer that was approved on 2-25-23 from Gimbel Field to TC...*

**RESPONSE: Not applicable to the current NPDES application package.**

67. *Even if the GF TC Bank Stabilization...*

**RESPONSE: Not applicable to the current NPDES application package.**

68. *If the projects 28A and 28B were not completed...*

**RESPONSE: Not applicable to the current NPDES application package.**

69. *We also think there is a plethora of information...*

**RESPONSE: Not applicable to the current NPDES application package.**

70. *We turn to the most recent Existing Features Plan...*

**RESPONSE: No response necessary.**

71. *The 6-29-23 EFP contains several notes of the Base Flood Elevation...*

**RESPONSE: Not applicable to the current NPDES application package. The elevations referenced in this comment to not appear to be correct.**

72. *On 4-9-23 used a tape measure...*

**RESPONSE: Not applicable to the current NPDES application package. The existing topography depicted on the current NPDES Application is consistent with FEMA mapping and the Tookany Creek Trail design plans which have been included with the submission package for reference.**

73. *Exhibit I, the FEMA Flood Insurance Study...*

**RESPONSE: Not applicable to the current NPDES application package.**

74. *Exhibit J, the FEMA Location map...*

**RESPONSE: No response necessary.**

75. *The graph in Exhibit I also depicts...*

**RESPONSE: No response necessary.**

76. *In addition, the 6-29-23 EFP depicts the right hand turn...*

**RESPONSE: No response necessary.**

77. *Taking the sum of the above facts...*

**RESPONSE: Not applicable to the current NPDES application package.**

78. *Thus, the Base Flood Elevation...*

**RESPONSE: Not applicable to the current NPDES application package.**

79. *Obviously, the engineers who designed the bridge...*

**RESPONSE: Not applicable to the current NPDES application package.**

80. *The Member of the Environmental Advisory Council...*

**RESPONSE: Not applicable to the current NPDES application package.**

81. *The 6-13-22 EAC Minutes were unanimously accepted by the PWC...*

**RESPONSE: Not applicable to the current NPDES application package.**

82. *Without delving into the many changes...*

**RESPONSE: The PCSM Report included with the submission package documents that the proposed development will result in a reduction in runoff volume and peak rate and a reduction in Total Suspended Solids, Total Phosphorous, and Total Nitrogen to each identified Point of Discharge for the 2-year/24-hour storm in accordance with NPDES criteria and maintains the same general drainage paths from pre-development to post-development conditions. Additional discussion has been included in the off-site discharge analysis included with the submission package.**

83. *In addition, in Record Plan (1 of 3) dated 2-10-23...*

**RESPONSE: The NPDES submission package documents the stormwater controls proposed to manage runoff generated from the increase in impervious. The proposed stormwater management program was designed in accordance with Township and NPDES criteria.**

84. *For all the reasons stated above, TC is a trouble area...*

**RESPONSE: Not applicable to the current NPDES application package.**

85. *Lastly, in our Supplemental Public Comments dated June 27, 2023...*

**RESPONSE: The current NPDES application package reflects the most recent wetlands/waters investigation prepared by a Certified Professional Soil Scientist.**

86. *We questioned the accuracy of the new description...*

**RESPONSE: The current NPDES application package reflects the most recent wetlands/waters investigation prepared by a Certified Professional Soil Scientist.**

87. *In paragraph 57 of the Supplemental Comments...*

**RESPONSE: No response necessary.**

88. *The claim bolded in paragraph 74 above...*

**RESPONSE: The Applicant has not claimed that draught conditions “dried up” wetlands.**

89. *The Annual precipitation in Elkins Park is typically 45.6 inches per year...*

**RESPONSE: The Applicant has not claimed that draught conditions “dried up” wetlands.**

90. *In paragraphs 62-68 of the Supplemental Comments, we disputed...*

**RESPONSE:** The current NPDES application package reflects the most recent wetlands/waters investigation prepared by a Certified Professional Soil Scientist.

91. *In a response on 8-17-23 from CT in response to an RTKL we received...*

**RESPONSE:** Not applicable to the current NPDES application package. The current NPDES application package reflects the most recent wetlands/waters investigation prepared by a Certified Professional Soil Scientist as they relate to the proposed development and drainage paths.

92. *Attached as Exhibit K is a copy of the CT Interceptor...*

**RESPONSE:** Not applicable to the current NPDES application package.

93. *Exhibit K shows the entire area of the "Interceptor A..."*

**RESPONSE:** Not applicable to the current NPDES application package.

Should you require any additional information, please contact me by phone at (610) 277-9441 (Ext 16) or by email at [rblue@robertblue.com](mailto:rblue@robertblue.com).

Sincerely,



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**Robert E. Blue Jr., P.E., P.L.S.**  
President  
Robert E. Blue Consulting Engineers, P.C.

Cc: Client  
REB File #2154-10

Public Comments received via email Friday May 26, 2023

Attachments:

- "Summary of Storm Water and Erosion Issues in Applications of 222 Church Road LLC for Property Development 5-26-23.pdf"
- "Ex. A – Articles of Organization 222 Church Road LLC file 5-7-2021 with NY Secretary of State.pdf"
- Exhibit B – November 1877 Survey of Tacony Edge Tool and Hammer Factory, C Hammond Owner by E. Hexamer, 401 Walnut St, Philadelphia..docx"
- "Ex C – Culin 1932 Plan of Property.pdf"
- "Ex D – Blumenthal 1953 Plan of Property.pdf"
- "Exhibit E – 1897 Map of Hammond Tool Factory Depicting Dam & Reservoir Supplying Water to the Mill Race.docx"
- "Ex F – TC Train Plans PG 338, 340-42.pdf"
- "Ex G – Shoemaker 2021 Subdivision Pln Bk 55 PG 194.pdf"

The Applicant's re-application above on 3-2-23 made a change to its prior application to designate the "Old Mill Race" as the initial stormwater "receiving waters" and stating it was tributary to Tookany Creek. For the reasons stated in the attached summary, we do not agree that the "Old Mill Race" could be described as "receiving waters" and, even if it could, the "Old Mill Race" would **[redacted]** requiring an easement for offsite stormwater discharges to the property of another, as stated in the MCCD letter dated 4-14-22 denying the original application at PAC 460661. We have sought to tell the story of the Old Mill Race in the attached document that begins with a deed in 1846 to Charles Hammond who operated the Hammond Tool Factory just above Tookany Creek **[redacted]** with the then Mill Race conveying water from a Dam and Reservoir on Tookany Creek to the west of 222 CR between present day Cedar Road and an athletic park known as Gimbel Field to underneath Building 8 of the Hammond Tool Factory to turn a waterwheel. The Hammond Tool Factory shut down no later than 1932 when the land of the Hammond Tool Factory was sold **[redacted]**. We recite below some key points of the attached summary:

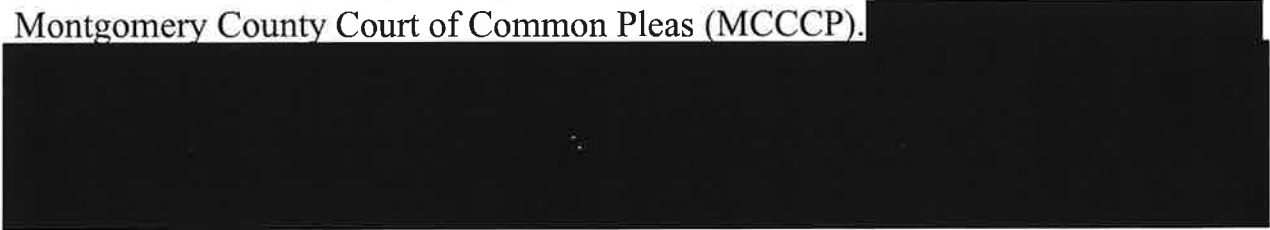
1. The Applicant is a New York Limited Liability Company that was formed on 5-7-2021 and that is not registered to do business in PA based on a check with the PA Secretary of State on 5-25-23 where the business registration records were stated as current as of 4-12-23;
2. One of the unanswered comments of the MCCD at PAC 460661 was the absence of the Applicant's EIN. Among the deficiencies noted by the MCCD In its comment letter of 3-27-23 for the re-Application at PAC 460811 was the absence of the Applicant's EIN.
3. We provide a short history of the Applicant's initial set of plans to Cheltenham Township stamped 11-2-21, 3-4-22, and 9-28-22 that listed the receiving waters as Tookany Creek and a single Point of Interest, but that changed to the Old Mill Race in the plans dated 2-28-23 in PAC 460811 where the Old Mill Race became the initial "receiving waters" and there were two (2) Points of Discharge.



<p>IN Re:</p> <p>222 CHURCH ROAD LLC SUBDIVISION AND LAND DEVELOPMENT</p> <p>FOR 222 EAST CHURCH ROAD ELKINS PARK, PA 19027 CHELTENHAM TOWNSHIP</p>	<p>MONTGOMERY COUNTY CONSERVATION DISTRICT PAC460811</p> <p><b>BACKGROUND, HISTORY AND STORY OF THE OLD MILL RACE, ITS SUDDEN CHOICE AS THE “RECEIVING WATERS” FOR STORM WATER (SW) FROM 222 CR AND THE REASONS IT IS NOT A SOLUTION TO THE APPLICANT’S EROSION CONTROL ISSUE</b></p>
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**I. BACKGROUND**

Appeals from the Cheltenham Township (CT) Board of Commissioners (Board) granting preliminary approval subject to conditions in resolution 08-22 dated April 20, 2022 for a proposed subdivision and land development project of 222 Church Road LLC (Applicant) at 222 Church Road (222 CR), Elkins Park, PA. (Proposed Development) are pending at docket number 2022-0517 of the Montgomery County Court of Common Pleas (MCCCP).



The Applicant is a New York Limited Liability Company that was formed on 5-7-2021.<sup>1</sup> A check with the PA Secretary of State’s website on 5-25-23, which was current as of 4-12-23, determined that there was no record of the Applicant registering to do business in PA.

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<sup>1</sup> A copy of the NY registration is attached as Exhibit A.

In the MCCD Incompleteness Review Letter of 12-14-2021 of the Applicant's initial application to the MCCD at PAC460661 (Initial MCCD Application), the MCCD noted at page 2 and comment A(1)(c) that the Applicant had not provided its EIN. In its response dated 3-4-2022, the Applicant stated: "The applicant is an individual forming an LLC under the general permit and does not currently list an EIN." However, the Applicant had formed its LLC almost a year earlier on 5-7-2021. In the MCCD's denial letter of 4-14-22 on page 2 and comment A(1)(b) the MCCD stated: "This item has not been addressed."

In the re-Application of the Applicant on 3-2-23 to the MCCD at PAC460811 (MCCD Reapplication), the Applicant again did not provide an EIN although this date was nearly two (2) years after forming its LLC. The absence of the EIN was the first comment in the MCCD Incompleteness Review letter of 3-27-23.

Turning to the Proposed Development, the Board granted the Applicant's request for a waiver of the requirement at § 260-15.C that certain features be depicted on the Existing Features Plan (EFP) "[w]ithin the [Proposed Development], and within 200 feet of the tract boundaries [including with emphasis supplied but not limited to]: ...

1. **Tract boundary lines, easements, deed restrictions, current owners of the subject and neighboring properties ...**
2. **Streets, including alleys ...** bordering or crossing the tract ...
3. Water resources, including: ... (d) **Wetlands, swamps, marshes, and riparian buffers.** (e) **Watercourses and their sizes** in addition to any **springs<sup>2</sup>...** (g) **Flood-prone or floodplain areas including ...** the base flood elevation using data from FEMA studies, plus a note indicating the source of hydrologic and hydraulic data for 100-year flood limits...
5. Storm sewers, including: (a) **Pipe locations...** (c) Direction of flow. (d) **Gradient of flow... and (g) All stormwater management controls...**
10. **Contour information, including: (a)** Contour lines at a vertical interval of one foot for ... natural slopes averaging 2% or less and a maximum of two feet for ... natural slopes averaging greater than 2%.
11. Other man-made features, including: ... (b) Location and description of existing buildings and other structures less than 400 feet beyond the tract

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<sup>2</sup> The Applicant's EFP dated 2-24-23 shows a "Spring House TBR" (to be removed) but there is no identification of any spring.

boundaries. **A high-definition aerial photograph may be used to satisfy this requirement, provided that the aerial photograph ...**

The Board permitted an aerial photograph of 400' beyond the tract boundaries to substitute for all the features "within 200' of the tract boundaries" even though § 260-15.C.11 only permitted an aerial photograph as a substitute for the depiction of all buildings and structures within 400' of the tract boundaries. The waiver hindered the reader of the Applicant's plans (1) to assess fully the Applicant's drainage contentions pre and post the Proposed Development, (2) to consider the drainage and flooding from the properties to the north of CR, and (3) to notice readily that the Applicant's drainage plans contemplate off site drainage [REDACTED]. There is no reason for the MCCD in achieving its mission to be hindered by the waiver by the Board of the EFP requirements.

## **II. PERTINENT HISTORY OF THE APPLICANT'S PLANS**

The initial set of 25 plans were stamped 11-2-21 for submission to CT. Per the revision notes, the first drafts were 7-23-21 for Record Plan (1 of 3) Sheet 2, Subdivision Sheet 3, and Grading Sheet 6.<sup>3</sup> These plans were premised on a basin to the south of proposed lots 6-8 and just above a steep slope leading to Tookany Creek (TC). The first draft of Storm Details (3) was 9-30-21 and depicted a Rain Garden with a berm elevation of 136.5' and a spillway of 135.5'. These plans were revised prior to 11-2-21 on 10-23-21 for an alluvial soil survey. This revision does not affect the discussion below as the alluvial soils were south of the Rain Garden towards TC.

The Applicant had permeability testing conducted on 2-2-22 or seven (7) months after the initial draft of the Subdivision Plan for eight (8) new homes that included the location of the basin in the subdivision and almost five (5) months after selecting a Rain Garden as the BMP. There were six test sites. Three (3) of the four (4) test sites outside the basin flunked the tester's criteria of a minimum infiltration

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<sup>3</sup> Unless indicated otherwise, all documents mentioned are available on the CT website at [cheltenhamtownship.org](http://cheltenhamtownship.org) by selecting "Hot Topics" at the bottom of the page, and then selecting 222 CR on the next page (CT Website).



of .10” per hour. The results of the two (2) sites within the basin were .43” and 4.11” per hour or nearly a ten-fold difference.<sup>4</sup>

The next full set of plans were stamped 3-4-22 and included the addition of “Tree Inventory Charts” and “Fire Truck Circulation” plans. The revision notes were the same on all 27 plans: “2-8-22 rev per MCCD Comments” and “3-4-22 rev per add’l tree survey.” On 4-14-22, MCCD denied the Initial MCCD Application for not satisfactorily answering its first set of comments.

The 11-2-21 plans named the basin a “retention basin” except for the “Rain Garden” on Storm Details 3. The 3-4-22 plans substituted “infiltration basin” except for Storm Detail 3 that retained the name of a “Rain Garden.” These plans were submitted just over a month after the permeability testing of 2-2-22. Storm Details 3, sheet 21, raised the berm and spillway by 1’ to elevations 137.5’ and 136.5’.

Both the Pre and Post Development Drainage Area Boundary Plans [Pre or Post DDABP] of 3-4-22, sheets 15-16, have a P.O.I 001 (Point of Interest 1) in the top center of the plans just to the east and outside the 222 CR property. One has to examine these plans carefully to detect the eastern property boundary line of 222 CR and compare that boundary line in the EFP to determine that Point of Interest 1 designates SW discharge [REDACTED]

In the PCSM Notes Plan stamped 3-4-22, sheet 17, in the third column from the left with a heading of “Maintenance Requirements,” then two (2) headings down to “General PCSM Planning and Design” and finally to the fifth bullet point below that heading, the Applicant claimed in part:

The PCSM Plan maximizes protection of existing drainage features and existing vegetation. The site currently drains uncontrolled to a **point of interest**. The runoff from the proposed improvements is collected, controlled, and discharged to the same location in order to maintain the existing drainage patterns. (emphasis supplied).

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<sup>4</sup> See the PCSM Narrative posted on the CT Website on 3-4-22 at PDF pp. 53-54 that was also provided by the Applicant to the MCCD in the Initial MCCD Application.

Bullet point 6 includes this: “Total site disturbance is limited to 7.03 acres out of 8.65 acres total lot area.” Bullet point 6 is contradicted by the claim in the Pre DDABP dated 3-4-22 that the limit of disturbance is 3.35 acres.

The claim of a single Point of Interest in the PCSM Notes Plan of 3-4-22 and the plotting on the Pre and Post DDABP of 3-4-22 is contradicted by the SW discharge path that is actually on the Pre and Post DDABP of 3-4-22. The Pre DDABP legend of “ $\_ > \_ > \_$ ” is defined as “Drainage/ TC Path”. That symbol begins in the lower left-hand corner, crosses between proposed lots 1-2 and 6-7 and the middle of the proposed “infiltration basin,” leaves the property and descends down a steep slope and in nearly a straight line enters TC next to a note that reads “Receiving Surface Waters Tookany Creek.” Thus, SW enters TC far before Point of Interest 1, which is much farther east and outside the boundary line of 222 CR.

The Post DDABP dated 3-4-22 has the same symbol that begins in the lower left-hand corner, crosses between lots 1-2, and the proposed extension of Harrison Ave. where it ends at a storm sewer inlet on the south side of proposed Harrison Ave. adjacent to lot 7 where the SW drain leads to the basin. South of the spillway and after descending steep slopes and just before TC is the same note: “Receiving Surface Water Tookany Creek.” This was another plotting of a SW drainage route to TC far before Point of Interest 1.

In sum, it is evident when looking at these plans that the location of Point of Interest 1 as the location of pre and post drainage is contradicted by the Applicant’s own drainage plans. The drainage both pre and post leaves the site near the middle of the basin and enters TC far from Point of Interest 1. Most certainly, these contradictory drainage plans and PCSM notes do not demonstrate that “the runoff from the proposed improvements is collected, controlled, and discharged to the same location in order to maintain the existing drainage patterns.”

The Applicant submitted PCSM Report dated 3-3-22 as part of the Initial MCCD Application. At p. 2, the Applicant reported that there “are waters and alluvial soils none of which will be disturbed other than the installation of an 8” sanitary sewer collection systems that will replace an existing 6” sanitary sewer

lateral.”<sup>5</sup> In the PCSM Report dated 2-28-23 at p. 2 that was submitted with the MCCD Reapplication, the Applicant used slightly different language: “These [Sensitive Areas] ... are located outside of any development and earth disturbance activities with the exception of the proposed sanitary sewer replacement.” In either case, the Applicant conceded disturbance of the Sensitive Areas for the larger sewer lateral needed for the Proposed Development.

Thus far, we have demonstrated that (a) the spillway of the Rain Garden when activated would flow down steep slopes thru the Sensitive Areas, (b) the disturbance of the Sensitive Areas would be magnified due to the required replacement of a sewer lateral, (c) the 3-4-22 pre and post DDABP contradict the supposed location of Point of Interest 1 and (d) the waiver of the offsite EFP requirements requires a much more careful study of the pre and post DDABP to demonstrate the flaws in those plans

The next set of plan include revision notes dated 7-19-22 of “rev’d per Twp review” and 9-28-22 of “Issued for Final LD Review.” This set of 30 plans was stamped 9-27-22 and added “ADA Grading Plan & Details” – Sheet 8, Utility Details 2 – Sheet 12, and Driveway Profiles – Sheet 30.

Storm Details 3 dated 9-28-22 again shows the Rain Garden but lowers the berm and the spillway 1’ each to 136.5 and 135.5 or back to the levels prior to the 1’ raise of each in the plans of 3-4-22 following the permeability testing of 2-2-22. Storm Details 3 shows a drain within the basin between the 134’ and 135’ elevation lines on the south-east side of the basin but does not show the exit point of the pipe. There are squares between the spillway and extending back into the basin and down the spillway that are not defined in any plan legend.

The Pre DDABP dated 9-28-22 has the same symbol of “   >    >   ” defined as “Drainage/TC Path,” and the same route to TC well before Point of Interest 1 as did the Pre DDABP dated 3-4-22, but the phrase “Receiving Surface Water (Tookany Creek)” was omitted even though the diagrams shows the receiving surface water as TC at the same location. In the PCSM Notes Plan of 9-28-22, Sheet 19, at the same

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<sup>5</sup> The plans show the “waters and alluvial soils”, a Riparian Zone 1 within such waters, and a Riparian Corridor Zone 2 above and below such waters (collectively, Sensitive Areas).

location as in the prior plan dated 3-4-22, the Applicant made the exact same statement as in the 3-4-22 plan:

The PCSM Plan maximizes protection of existing drainage features and existing vegetation. The site currently drains uncontrolled to a **point of interest**. The runoff from the proposed improvements is collected, controlled, and discharged to the same location in order to maintain the existing drainage patterns. (emphasis supplied).

Likewise, at the sixth bullet point the Applicant makes the same erroneous comment as in the 3-4-22 plan: “Total site disturbance is limited to 7.03 acres out of 8.65 acres total lot area.” Bullet point 6 is contradicted by the claim in the Pre DDABP dated 9-28-22 that the limit of disturbance is 3.35 acres.

The Post DDABP dated 9-28-22 had the same symbol beginning in the lower right hand corner, and the same route of travel of SW leading to the basin and had the same notation with an arrow pointing to TC of “Receiving Surface Water (Tookany Creek)” as did the Post DDABP of 3-4-22. That is, unlike the Pre DDABP dated 9-28-22 it did not delete the “Receiving Surface Water (Tookany Creek)” as did the Pre DDABP dated 9-28-22.

The Applicant submitted a PCSM Report dated 1-4-23 and five (5) plans as exhibits to the PCSM Report. None of these plans had revisions dates and all had a stamp date of 1-4-23 and a notation of “Plan Exhibits dated 1-4-2023 to Accompany PCSM Report Dated 1-4-2023” including Pre & Post DDABP. The Pre DDABP had a P.O.D. Neither the Pre or Post DDABP had the symbol for the route of travel of SW as in the 3-4-22 and 9-28-22 or the note of “Receiving Surface Water (Tookany Creek),” but both now had P.O.D. 1 and P.O.D. 2. For the explanation of this change, we refer to the PCSM Report dated 1-4-23 at PDF pages 6-7:

In general, the site drains in a southerly direction towards the Tacony Creek. The project has been determined to contain two (2) distinct study points, defined as Point of Discharge (POD) #1 and POD #2. POD #1 is located along the bank of the Tacony creek upstream of the existing trail crossing and coincides with the discharge location of the proposed above ground infiltration basin (BMP ID 001) located along the rear of Lots 6 thru 8. POD #2 is located along the bank of the Tacony Creek at

the downstream (sic) and of the development property.<sup>6</sup> In the existing conditions, both POD's receive primarily sheet flow and shallow concentrated flow from the upland residential properties. There are no distinct stormwater facilities or outfalls that drain to these POD's in the existing conditions. In the proposed conditions, the same general drainage patterns are maintained to the greatest extent possible and the locations of POD #1 and POD #2 remain the same. Some of the area that was tributary to POD #2 in the existing conditions will be directed towards the BMP ID 001 in the proposed conditions and subsequently POD #1. POD #2 will continue to receive primarily sheet flow and shallow concentrated flow from upland residential properties in the proposed conditions. The proposed stormwater management program provides an overall reduction in peak rate and volume of runoff to the receiving waters.

We do not linger on the sudden change in the Pre and Post DDABP in the prior plan sets of 11-2-21, 3-4-22, and 9-28-22 that depicted a single P.O.I. 1 to two (2) P.O.D.'s in the plans accompanying the PCSM Report of 1-4-23. We do note that the sudden discovery of two drainage points 16 months after the original drafting date of 9-30-21 for the Pre and Post DDABP identifying a single P.O.I. draws into question the accuracy of the Applicant's drainage plans and raises the question whether they are results driven or fact driven.

Then the drainage routes changed once again not in a plan posted on the CT Website before it granted Final Approval with conditions, but only in the documents submitted to the MCCD in the MCCD Reapplication.<sup>7</sup> The Applicant discovered the "Old Mill Race" even though it had been on the Applicant's plans since its first Pre and Post DDABP stamped 11-2-21 and first drafted 9-30-21. There is a reason for adding "Old" to what was once the Mill Race when it was functioning as an integral part of the "Tacony Edge Tool and Hammer Factory, C. Hammond Owner" (Hammond Tool Factory) and operated by C. Hammond & Son as described in a comprehensive survey of the Hammond Tool Factory dated November 1877 by E.

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<sup>6</sup> P.O.D. 2 is not located at the "downstream [end] of the development property. [REDACTED]

<sup>7</sup> The Applicant's MCCD Reapplication included 14 plans dated 2-28-23. There was another set of Plans of the Applicant dated 2-4-23 that were mentioned in a CT Engineer review letter of 2-24-23 that were not posted to the CTW Hot Topics Page and that are the subject of a pending RTKL appeal to the Office of Open Records [REDACTED] after a no records response of CT.

Hexamer, 401 Walnut St., Phila., Pa that is available at this link: <https://libwww.freelibrary.org/digital/item/zoom/13404> (1877 Mill Survey).<sup>8</sup> For reasons explained later, the Mill shut down not later than mid-1932 after the property was sold during the depression or nearly 91 years ago. Hence, the remnants of the Mill Race from nearly a century ago became the Old Mill Race.

The new drainage plans are summarized in the PCSM Narrative of 2-28-23 filed in the MCCD Reapplication. The Applicant claims at p.2 and pdf p. 6 that the “development site is immediately adjacent to and drains directly to surface waters identified as Old Mill Race, which drain into Tacony Creek” a/k/a TC. The Pre DDABP stamped 11-2-21 has as its original drafting date 9-30-21 and the same route as the 3-4-22, and 9-28-22 versions starting in the left bottom corner of the plan, crossing the basin, and then crossing, rather than emptying into, the “Old Mill Race” before draining into TC well before Point of Interest 1.

Just how did the registered engineers and landscape architects not notice the Old Mill Race as the “receiving surface waters,” which, as we shall explain, are actually not waters at all, until 17 months later? That is, for 17 months from the original drafting date of the first Pre-DDABP of 9-30-21, to the Pre-DDABP of 3-24-22, to the Pre-DDABP of 9-28-22, and to the Pre-DDABP of 1-4-23, there was no mention of the Old Mill Race as the “receiving waters” for SW until in the Pre-DDABP dated 2-28-23 suddenly there was a major change to two (2) POD’s (Points of Discharge) discharging into the Old Mill Race.<sup>9</sup> Was the postulating of the Old Mill Race as the “receiving waters” a method to avoid the issue of the erosion of the Sensitive Areas that would be a focal point of the prior plans of a spillway, which when activated, would cascade down a steep hill passing the Old Mill Race and eroding the Sensitive Areas below the Old Mill Race? To a reasonable observer, this fluctuating history of the description of the Proposed Development’s drainage patterns casts doubt on the accuracy of the current diagnosis of 2-28-23 of the drainage patterns.

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<sup>8</sup> Attached as Exhibit B is a word document that contains just the link to the 1877 Mill Survey to avoid any difficulty accessing the 1877 Mill Survey due to the current document in PDF format.

<sup>9</sup> We do not know what drainage pattern is in the plans dated 2-4-23 because CT did not post them on the CTW Hot Topics Page and see Note 7 above.

Here we should interject one section of the comments of the MCCD in its letter of 4-14-22 denying the Initial MCCD Application at p. 3 item (h) where the MCCD stated if:

there will be off-site discharges (e.g., discharges to a non-surface water such as a ... ditch or ground surface ..., that will flow through a property ... not owned by the applicant prior to reaching surface water) the applicant is expected to secure an easement ... for the off-site discharge ... and to provide adequate BMPs to prevent accelerated erosion on off-site property.

The MCCD continued in its “Subsequent Comment” that the “response that offsite discharges are directed to land dedicated to the Township does not relieve the applicant from providing documentation that the discharge will not cause erosion prior to entering the receiving watercourse.”

We continue with the new recitation of “Drainage Conditions” at pp. 2-3 and pdf pp. 6-7 of the PCSM Narrative of 2-28-23:

In general, the site drains in a southerly direction towards Old Mill Race and the Tacony Creek. The project has been determined to contain two (2) distinct study points, defined as Point of Discharge (POD) #1 and POD # 2. POD #1 is located along Old Mill Race upstream of the existing trail crossing and coincides with the discharge location of the proposed above ground infiltration basin (BMP ID 001) located along the rear of Lots 6 thru 8. POD #2 is located along Old Mill Race at the downstream [end] of the development property.<sup>10</sup> In the existing conditions, both PODs receive primarily sheet flow and shallow concentrated flow from the upland residential properties. There are no distinct stormwater facilities or outfalls that drain to these PODs in the existing conditions.

In the proposed conditions, the same general drainage patterns are maintained to the greatest extent possible and the locations of POD #1 and POD #2 remain the same. Some of the area that was tributary to

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<sup>10</sup> POD 2 is not located on the “downstream end of the development property.” Instead, as was the case with Point of Interest 1, POD 2 is located outside the eastern boundary line of 222 CR [REDACTED] [REDACTED] Also, the plan incorrectly suggests that POD 2 is at a point where the Old Mill Race discharges into TC. That is also not the case for reasons we will demonstrate.

POD # 2 in the existing conditions will be directed towards BMP ID 001 in the proposed conditions and subsequently to POD #1. POD #2 will continue to receive primarily sheet flow and shallow concentrated flow from upland residential properties in the proposed conditions. The proposed stormwater management program provides an overall reduction in peak rate and volume of runoff to the receiving waters.

In other words, *inter alia*, the Applicant has changed the pre-existing drainage pattern and it sounds just like the PCSM Report of 1-4-23 with the substitution of the Old Mill Race for TC.

For reasons we identify in detail below, the recent discovery of the “Old Mill Race” in what may be an attempt at a solution to the extent of the erosion that would result from the Proposed Development is inadmissible for two reasons. The Mill Race is just that “old”. It has been adversely impacted by development to the west of 222 CR in the prior 91 years, e.g., Gimbel Field and the TC Trail, which we discuss below, and is in disrepair and not a likely vessel in its current condition for the transport of SW to TC. Second, the Mill Race did not drain to TC at the recent designation point of POD 2 when the Mill Race was alive and well but continued to the Hammond Tool Factory where it made a 90° turn underneath building 8 where the Mill Race waters were used in the manufacturing process to turn a waterwheel and then the remaining Mill Race waters exited as the “tail race” into TC as depicted on the 1877 Mill Survey. [REDACTED]

[REDACTED] Thus, if nearly a century after the Hammond Tool Factory shut down, the Old Mill Race were still an adequate vessel for the reception and transport of SW from the Proposed Development, the Applicant would be required pursuant to the MCCD letter of 4-14-22 at p. 3 item h “to secure an easement ... providing legal authority for the off-site discharge ...,” but such an easement has neither been mentioned or provided by the Applicant. An easement is also required by § 260-47.I of the CT Code that provides: “Where stormwater or surface water will be gathered within the subdivision or land development and discharged or drained over lands within or beyond the boundaries of the subdivision or land development, the applicant shall reserve or obtain easements over all lands affected.”

[REDACTED] the Applicant’s EFP was not required to have depicted all the required elements within 200’ of the “tract boundaries.” Had it been required to prepare an EFP without a waiver, the reader of



its plans would instantly have seen that the Old Mill Race continued [REDACTED] and the supposed location of POD 2 was incorrect but, in any event, [REDACTED] requiring an easement [REDACTED] that has not been produced by the Applicant.

### III. THE HAMMOND TOOL FACTORY HISTORY AT 218 CR INCLUDING THE DEED HISTORY OF 222 AND 218 CR.

Charles Hammond (CH) took title from Jacob Ewing to what became the land for the Hammond Tool Factory at DB 67 PG 512 recorded 3-21-1846.<sup>11</sup> CH is called a “manufacturer” at PG 512. The deed transferred to him all that certain “messuage<sup>12</sup> or Tenement Fulling Mill<sup>13</sup> and Tract, Lot or piece of land ... Containing twelve acres and thirty four perches of land more or less.” PG 512-13.<sup>14</sup> This deed came with the right to go upon the adjoining land of George K. Keller for the purpose of maintaining a dam and the mill race and to “dam the water of said dam so far and high as heretofore become customary ...[as such right had been granted to John Kinnan in DB 32 PG 3 recorded 3-2-1815]” and which was conveyed to CH in the foregoing deed from Jacob Ewing (Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns). PG 513.

The dam referenced above no longer exists within 222 CR or any of its adjoining properties. As we shall see in a 1897 Plan, the dam was located along TC west of 222 CR at a point on TC that was approximately south of present day Cedar Road and the Mill Race was connected in the approximate middle of the reservoir created by the dam. It was that dam and resulting reservoir that supplied the “waters” for the Mill Race. Without the dam and reservoir, there are no “waters” being supplied to the Old Mill Race and therefore the Old Mill Race cannot be the “initial receiving waters” outlined in the Applicant’s new SW drainage plans. Thus, what was once the Mill Race became the Old Mill Race.

The deed history of 222 CR recited below establishes that the right that was granted to CH to maintain and repair the Mill Race and dam in DB 57 at PG 513 was excepted, i.e., excluded from the rights conveyed in the deed history of the predecessors in title to 222 CR.

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<sup>11</sup> Copies of any or all of the Deeds mentioned below can be provided.

<sup>12</sup> A “dwelling house and its adjacent buildings.” [What does messuage mean? \(definitions.net\)](http://www.definitions.net)

<sup>13</sup> Fulling “was the first part of the cloth-making process ...” [Fulling Mills \(witheridge-historical-archive.com\)](http://witheridge-historical-archive.com). Thus, a “Fulling Mill” was different from a tool factory.

<sup>14</sup> A “perche” was then a surveying tool and a unit of measurement. [What’s A Perch???? – Prairie Roots Research](http://www.prairie-roots.com)

To put the immediately preceding point above in historical context, we pause the deed history of CH to first explore the deed history of 222 CR, which is as follows:

1. Bernstein deeded 222 CR to the Applicant in DB 6248 PG 1810 recorded 9-22-2021;
2. Bernstein obtained title from the Katzenbergs in DB 1997 PG 538 recorded 7-31-1997;<sup>15</sup>
3. The Katzenbergs obtained title from the Fleishers in DB 1953 PG 259 recorded 10-20-1953;
4. The Fleishers obtained title from Wood in DB 1136 PG 514 recorded 11-25-1931;
5. Wood obtained title from Bromley in DB 699 PG 5 recorded 6-13-1913, which included courses at PG 6 “to a point near the southeasterly side of a certain Mill Race, thence along near the southeasterly side of said Mill Race ... excepting and reserving out of the said grant to and for the only proper use” [of the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns];
6. Bromley obtained title from Belber in DB 678 PG 117 recorded 7-11-1912, which included at PG 118 the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns;
7. Belber obtained title from Fritz in DB 600 PG 54 recorded 9-25-1908, which included at PG 56 the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns;
8. Fritz obtained title from Alexander in DB 523 PG 70 recorded 8-1-1904, which included at PG 71-72 the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns. This deed recited at PG 71 that the majority of the lands conveyed by Alexander to Fritz were obtained by Alexander from Camp at DB 284 PG 494 recorded 11-25-1884;<sup>16</sup>
9. PG 494 of the Deed from Camp to Alexander included courses “in the side of a Mill Race,” “to a corner of a dam breast, thence along said dam,” “to a peach tree by the south side of said dam,”

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<sup>15</sup> Katzenberg deeded a parcel to CT at DB 3558 PG 62 recorded 6-12-1969 subject to a condition that the banks of TC be protected from erosion. Thus, erosion of the banks of TC was a concern not later than 1969.

<sup>16</sup> The Deed to Fritz from Alexander at PG 72 recited that the remaining land was obtained by Alexander in DB 341 PG 251 recorded 12-19-1889. This Deed was from Wands and adds nothing to the discussion above.

and a course “running through the said dam”. The Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns is at PG 495;

10. Camp obtained title from Slaymaker at DB 272 PG 339 recorded 5-21-1883. The Race and Dam Repair Reservation for Kinnan & His Heirs & Assigns was at PG 431;<sup>17</sup>
11. Slaymaker obtained title from Frick at DB 267 PG 76 recorded 6-8-1882, which included at PG 77 the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns;
12. Frick obtained title from Moorhead at DB 226 PG 506 recorded 7-16-1875, which included at PG 507 the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns; and
13. Moorhead obtained title from George K. Keller at DB 101 PG 103 recorded 3-27-1856 and at PG 104 included the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns. Thus, the lands of the grantor to Moorhead, George K. Keller, were burdened with the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns by the Deed into CH at DB 67 PG 512 recorded 3-21-1846. Thus, the successors to CH possessed the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns and the successors of George K. Keller took title excepting and burdened by that same Race & Dam Reservation for Kinnan & His Heirs & Assigns

The dam and the race are depicted on a map from 1897, which we discuss later, but for now just mention that it has the name “Alexander” spread across the race and TC in an arc. Because Alexander obtained title in 1884 and conveyed to Fritz in 1904, the 1897 Map was dated within the ownership period of Alexander of what became 222 CR.

Returning to the deed history of CH, per DB 463 PG 415 recorded 8-1-1900 Emma Louisa Hammond conveyed to Charles H. Culin 358/1,000 of an acre, CH died on 2-14-1874, Charles Hammond Jr. (CHjr) became the owner of the property the subject of DB 67 PG 512 after the death of certain annuitants, and then CHjr died 9-6-1899. *Id.* at PG 416. CHjr left the remainder of those premises to Emma Louisa Hammond, his widow. *Id.* Charles H. Culin’s middle name was “Hammond”, and

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<sup>17</sup> In this Deed and the Deeds that follow we do not recite the page numbers where there are courses mentioning the dam and Mill Race.

he was the brother of Emma Louis Hammond. Trowel and Masonry Tool Collector Resource (trowelcollector.blogspot.com) at 3.

In DB 757 PG 516 recorded 7-9-1917, Earl C. Hammond and Charles H. Culin, the surviving executor of Emma Louisa Hammond, conveyed to James Collin Jones, what was then the remaining property the subject of DB 67 PG 512. *Id.* at PG 517. Emma Louisa Hammond died on 2-10-1905. *Id.* Earl C. Hammond was the sole taker under the will of Emma Louisa Hammond. *Id.* The conveyance to James Collin Jones included the right to enter “into, through, and upon the land and premises ... of George K. Keller in and along the said dam and mill race erected upon the said premises for the “mending, cleaning, and remedying said dam and mill race [including the right to dig earth from the adjacent bank ...] and also to dam the water of said dam so far and high as has hitherto been customary ...”. *Id.* at PG 516-517, i.e., the Race & Dam Repair Reservation for Kinnan & His Heirs & Assigns that was included in DB 67 PG 512 from Ewing to CH.

The same property with the same privileges was then deeded by James Collin Jones to C. Hammond & Son Incorporated (C Hammond & Son) at DB 757 PG 519 recorded 7-9-17. By its President, Charles H. Culin, C Hammond & Son then deeded the same property at DB 1150 PG 74 recorded 6-6-1932 to Moses L. Blumenthal (Blumenthal) and which was described in a “Plan of Property” for Charles H. Culin by Wm. T. Mulgrew, Civil Engineer & County Surveyor, dated 3-16-1932, and which depicted the remaining buildings of the Hammond Tool Factory (Culin 1932 Plan).<sup>18</sup>

According to the 1877 Mill Survey, the Hammond Tool Factory then employed “60”, but the number of employees later declined. In reports made by the Hammond Tool Factory to the Commonwealth of Pa. in 1916 the factory employed 49 plus 5 in the office, in 1920 the factory employed 43 plus 5 in the office, and by 1922 the number in the factory was down to 32 plus 4 in the office. Trowel and Masonry Tool Collector Resource at 3. CHC’s occupation on the US 1930 Census was “Manufacturer Tools” and by the 1940 US Census his occupation was “Manufacturer Retired.” *Id.* and US Census records reviewed on Ancestry.com.

In the 1940 US Census, Blumenthal lived at 218 CR, i.e., the former location of the Hammond Tool Factory. Column 17 of the 1940 Census also required the person’s residence on April 1, 1935 and the response was “same house.” Thus, we know from US Census Records that Blumenthal lived at 218 CR at least since April

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<sup>18</sup> A copy of the 1932 Culin Plan is attached as Exhibit C. A 24” by 36” copy can be provided.

1, 1935. His occupation was “manufacturer candy factory.” According to his WW II Registration card, he was employed by “Blumenthal Brothers” at Margaret and James St., Philadelphia (Frankford), Pa.<sup>19</sup> In other words, he was not in the tool manufacturing business.

“Only a few remnants of the original mills along Tookany Creek ... remain in the Township. C. Hammond’s Tacony Edge Tool Works, which produced hammers and sledges, was eventually purchased for residential use.”

<https://www.cheltenhamtownship.org/pView.aspx?id=2894#Early%20Industrial%20Development&gsc.tab=0>

In the early 1800’s a fulling mill and then a fork and shovel mill had operated there. According to a descendant, Helen C. Culin, Hammond acquired the mill together with a small stone house known as the Carpenter House where he lived for many years. The company began with one factory building, referred to as the Lower Forge Shop, but Hammond eventually expanded the business and went into the production of hammers.

A son Charles, Jr. enlarged it more by adding to the buildings and making hatches and sledges along with the hammers. The company became known as Charles Hammond and Son prospered, after employing between sixty and seventy people in the middle 1800’s.

When Earl Hammond, son of Charles, Jr. and Emma (nee Culin), became twenty-one on May 11, 1911, he obtained title to the business since both his parents were deceased but Charles Culin, Emma’s brother, was in charge of the factory at this time.

Part of the property, the 8 acres containing the factory and other buildings, was sold in 1930 to Mr. and Mrs. M.L. Blumenthal. Nine of the structures were torn down, their stone foundations being used for the stone wall still standing along Church Road, and the main factory building was converted into a striking residence for the Blumenthals. The other buildings still in use are, according to Mrs. Blumenthal, the miller’s cottage (probably the Carpenter Shop) and the coal bin, which the Blumenthal’s remodeled into a charming little house where they lived after their children were grown.

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<sup>19</sup> Records reviewed on Ancestry.com.

<https://freepages.rootsweb.com/~dynamo53/genealogy/Cheltenham/CheltonhamTwpCh2.html>

In particular, buildings 8 and 9 of the Hammond Tool Factory, as described below, were renovated to become the Blumenthal residence. Horace Fleisher (Fleisher) may have been the landscaper who performed the landscaping in 1932 of the exterior of the Blumenthal home. Fleisher's occupation was a "landscape gardener" and the owner of that business, and his wife, Elizabeth, was listed as an "architect" in the "home building" industry residing at 224 CR in the 1940 US Census.<sup>20</sup> Thus, the Fleishers were immediate neighbors of the Blumenthals. Thus, the conversion of building 8, which contained the waterwheel for the Hammond Tool Factory, Blumenthal's occupation, and the recent onset of the Great Depression, combine to make obvious that the Hammond Tool Factory ceased operation no later than early 1932.

Blumenthal later had a Plan of Property prepared for himself by Charles E. Shoemaker, Reg. Professional Engineer, dated July 18, 1953 and recorded in Plan Book A-1 PG B-3 on 10-26-1953 that divided his land into seven (7) lots. (1953 Blumenthal Plan).<sup>21</sup> The 1953 Blumenthal Plan had the same metes and bounds descriptions as the 1932 Culin Plan. Six (6) of the lots had frontage on Church Road and Lot 7 had frontage on New Second Street.

Lots 1-4 were sold by Blumenthal and his wife, Catherine, to Equitable Builders at DB 2523 PG 121 recorded 11-18-1954. Lot 5 was sold to Homer and Jeanne Jensen at DB 2429 PG 473 recorded 12-10-1953. Lot 6 was sold to Willard J. Zabriskis at DB 2429 PG 73 recorded 12-8-1953, who was the predecessor in title to Bernstein at 216 CR. Jensen and Catherine Blumenthal swapped portions of Lot 5 and Lot 7. The swap of a portion of Lot 5 was recorded on 12-21-1955 at DB 2644 PG 107 and the swap of a portion of Lot 7 was also recorded on 12-21-1955 at DB 2644 PG 103 in which the death of Moses Blumenthal was reported as May (illegible), 1955.<sup>22</sup> Jensen later sold Lot 5

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<sup>20</sup> There was no 222 CR listed on the 1940 US Census and in deed records 222 CR has been referred to as 222-224 CR.

<sup>21</sup> A copy of the 1953 Blumenthal Plan is attached as Exhibit D. A 24" by 36" copy can be provided.

<sup>22</sup> The death certificate on Ancestry.com supplies the day as the 28<sup>th</sup>.

Lot 7 was not sold during Moses Blumenthal's lifetime. Catherine Blumenthal had a Plan of Property prepared by Shoemaker for what remained of Lot 7 after the exchange with the Jensens and the Plan was recorded at Plan Book B-12 PG 45 on 10-18-1966. Lot 7 was divided into Lots 1 & 2. Lot 2 was sold to David and Judith Chomsky at DB 3488 PG 756 recorded 10-17-1967 (Chomsky). Lot 1 was conveyed to CT at DB 3526 PG 1185 recorded 9-10-1968.

This history brings us back to the 1877 Mill Survey depicting 15 buildings on the site of the Hammond Tool Factory. The following structures or elements remain [REDACTED] from the 1877 Mill Survey and were renovated and transformed into a home in 1932: (a) Building 8 was a three (3) story stone building that had had a waterwheel on the first floor and a Polishing operation on the second floor, (b) Building 9 was also a three (3) story stone structure that had been devoted to "handle turning" on the second floor and "handle storing" on the third floor, (c) connecting Buildings 8 and 4 was an above ground "gangway," and (d) Building 4 was a two (2) story stone building in which the first floor had been devoted to "storing stock" and the second floor to "Painting" except for an "office" on the north end. [REDACTED]

The following structures depicted in the 1877 Mill Survey that were no longer present in the 1932 Culin Plan are (a) the shed on the west side of Building 4, (b) Building 5, (c) the shed on the north side of Building 5, (d) Building 10 that straddled the Mill Race, (e) the Wooden Bridge crossing the Mill Race adjoining Building 10 on the east side, (f) Building 12 (Coal Bin) below Building 6, (g) the footpath crossing TC to the west of Buildings 4 and 6, and (h) the Smoke Stack above Building 2.

The following structures depicted in the 1877 Mill Survey that were no longer present in the 1953 Blumenthal Plan are: (a) Buildings 1-3 and 11, (b) Buildings 8 and 9, which became the Blumenthal home, then the Jensen home and now the Ockman home on Lot 5 including building 4 plus the "gangway" connecting Buildings 8 and 4, (c) although Buildings 7 and 6 were removed they are now part of a "Walled Garden" depicted on Lot 5 in the 1953 Blumenthal Plan, (d) Buildings 13 and 14, which were connected Sheds on the 1877 Mill Survey became a "Frame Shed" on Lot 7 of the 1953 Blumenthal Plan, and (e) the "2 ½ Story Stone Building" on Lot 7 of the 1953 Blumenthal Plan later became the Chomsky home that resulted from an addition to what was Building 15 or the Coal Bin on the 1877 Mill Survey.

**IV. THE OLD MILL RACE IN ITS STATE OF DISREPAIR COULD NOT FUNCTION AS EITHER THE “RECEIVING WATERS” OR A VESSEL TO TRANSPORT SW TO TC AND, EVEN IF IT COULD, POD 2, THE REMNANTS OF THE ORIGINAL OVERRFLOW STRUCTURE THAT WAS PART OF THE MILL RACE DESIGN AND THAT WAS SITUATED BEFORE THE MILL RACE WENT UNDERGROUND [REDACTED] BEFORE EXISTING INTO TC AS A TAIL RACE [REDACTED] AND THE OFFSITE DRAINAGE OF SW [REDACTED] WOULD REQUIRE AN EASEMENT THAT HAS NEITHER BEEN REQUESTED BY 222 CR NOR GRANTED [REDACTED]**

The Old Mill Race in its current state could not support its purported function as the initial SW “receiving waters” and subsequent drainage into TC at POD 2 as described in the Applicant’s PCSM Narrative dated 2-28-23. The dam supplying the water for the Mill Race in order to turn the Waterwheel in the Hammond Tool Factory in Building 8 is not depicted in the 1877 Mill Survey because the 1877 Mill Survey just depicts the factory components and the Mill Race in the immediate area of the factory and does not depict the source of the water for the Mill Race. The same is true of the 1932 Culin Plan, and the 1953 Blumenthal Plan.

However, an 1897 Map that includes the Hammond Tool Factory depicts the location of the Dam on TC and the resulting reservoir that fed the Mill Race.<sup>23</sup> The approximate Dam location was south of present day Cedar Road, which is west of the Proposed Development and not part of 222 CR. The reservoir created by the Dam extended further west away from the Proposed Development to a point near the west side of what is now Gimbel Field and continued in a smaller size as TC turned to the North on the west side of the current extension of Tookany Creek Parkway. *Id.* The Mill Race was fed from the north side of the Dam from about the middle of the reservoir created by the dam at a point west of what is now Cedar Road and within what is now Gimbel Field. *Id.* A Google Earth view of the former location of the Dam and the point at which Mill Race began and received its “waters” from about the middle of the reservoir created by the Dam can be found at <https://www.google.com/maps/@40.0678301,-75.1193221,212m/data=!3m1!1e3!5m1!1e4> or by accessing Google Earth and inserting “Gimbel Field, Elkins Park, Pa” in the search box.

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<sup>23</sup> A copy of the 1897 Map is attached as Exhibit E.



In other words, the Applicant has it backwards. It was TC that was tributary to the Mill Race when the Mill Race had a water supply and was an indispensable part of the Hammond Tool Factory rather than the Mill Race being tributary to TC in the Applicant's latest edition of its SW Plans. In sum, the Applicant's plan postulating the Old Mill Race as the initial "receiving waters" of the SW from the Proposed Development falls apart when its history is revealed and understood, including that the right to repair the Mill Race was excluded from the rights granted to the predecessors in title to the Applicant and hence was excluded from the real estate rights granted to the Applicant.

[REDACTED]  
[REDACTED] in 1932 [REDACTED]  
[REDACTED]

[REDACTED] the Hammond Tool Factory was no more. Thus, the remnants of the Mill Race lay in neglect for the next 91 years as a remnant of a by-gone era until the Applicant's engineers thought to resurrect it perhaps as a facially appealing plan to deal with erosion issues complicating its prior plans. Although it is not easy to notice given the waiver of the obligation to depict features on the EFP within 200' of the tract boundaries, one can determine from a combination of several of the Applicant's plans that the supposed POD 2 is not on the Applicant's property [REDACTED]

Also, [REDACTED] the location of the "Old Mill Race," [REDACTED] its current state of disrepair and he has advised that it is virtually non-existent and could not function as a tributary from 222 CR to TC at POD 2 as in the Applicant's PCSM Narrative of 2-28-23. The portion of the Old Mill Race [REDACTED] was dry and in sections overgrown with the walls of the Old Mill Race barely above or below current ground level, which, of course, is not surprising given the 91 years since the Old Mill Race was the Mill Race supplying water for the waterwheel in Building 8.

Also of note are the Plans of Cheltenham Township for the Tookany Creek Trail that were recorded in PLN BK 56 PG 337 on 11-9-21 (TC Trail Plans).<sup>24</sup> The TC Trail Plans need to be discussed in combination with the Subdivision Plan prepared for Bernstein by Charles E. Shoemaker, Inc. last revised 3-31-21 and

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<sup>24</sup> Due to the size of the file, only PG 338, 340-42 are attached as Exhibit F.

recorded at PLN BK 55 PG 194 on 5-28-21 (Shoemaker 2021 Subdivision) and the 1897 Plan depicting the dam, reservoir, and the point at which the Mill Race was fed from that reservoir.<sup>25</sup>

In examining the Shoemaker 2021 Subdivision to locate the Old Mill Race, one starts at the east end of current Harrison Avenue near the bottom center. If one then looks from that point to near the right side of the drawing one can see a measure of a distance of 59.93' in bold print. One then needs to look up a bit from the 59.63' point and then one can see the narrow tracing of the Old Mill Race. At this point, the Old Mill Race is just within the boundary line of what one can recognize as a series of bolded lines tracing what is a proposed one acre Parcel A that was deeded by Bernstein to CT later in 2021 for the TC Trail to resolve a condemnation action of CT. Also, right above the 59.53' mark one can see a depiction of the proposed TC Trail. Looking up from that point, one can see that the TC Trail shortly takes a right hand turn and crosses the Old Mill Race.

Turning to the TC Trail Plans, PG 338 depicts the location of Gimbel Field and the meandering route of the TC Trail beginning from Gimble Field that has a series of numbers beginning with "9" below Gimbel Field and ending at "25" at Tookany Creek Parkway. PG 341-342 depict the route of the TC Trail in a larger dimension [REDACTED] Also, we know from the 1897 Plan that the Mill Race was fed from the north side of the Dam from about the middle of the reservoir created by the dam at a point west of what is now Cedar Road and within what is now Gimbel Field. However, there is no depiction on the TC Trail Plans of the Old Mill Race as a structure to be considered. Indeed, starting "Google Earth" and searching for "Gimbel Field" and then dropping down in altitude and rotating the view in multiple directions, we also cannot detect an Old Mill Race structure. What one can see on Google Earth is the initial grading of the TC Trail from Gimble Field that appears to match the route of the TC Trail depicted at PG 341-342 of the TC Trail Plans. While we cannot determine from Google Earth if the TC Trail crosses what was once the Mill Race in multiple locations, we can determine from the TC Trail Plan at PG 342 and the Shoemaker 2021 Subdivision that the TC Trial would cross the location of the Old Mill Race on the Shoemaker 2021 Subdivision at the point where the TC Trail turns to cross a proposed bridge over TC that is now in place. Lastly, PG 340 depicts grading of typical sections of the TC Trail and also that the TC Trail includes a base of 10" of concrete. Thus, there is at least one point that the TC Trail crosses the Old Mill Race

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<sup>25</sup> A copy of the Shoemaker 2021 Subdivision is attached as Exhibit G. A 24" X 36"

where the Old Mill Race winds up being buried by the “typical” grading plan for the TC Trail and 10” of concrete.

One other point is certain. The Old Mill Race is no longer being fed water from a reservoir created from a dam on TC. [REDACTED] The original water source from TC is no longer and there is no other water source.

Even assuming that the Old Mill Race could continue to function as a vessel to transmit SW to TC despite its original purpose to transmit dammed up water from TC to the Hammond Tool Factory to turn the Waterwheel [REDACTED] there is no discharge point from the Old Mill Race to TC [REDACTED] The “Overflow” point depicted on the 1877 Mill Survey and the 1932 Culin Plan is [REDACTED]<sup>26</sup>

Here is what the 1877 Mill Survey depicts of significance. First, there is the word “overflow” just below the Mill Race to the west of what was Building 10 and encapsulating the word “Overflow” are two (2) parallel lines of “dashes” in the direction of TC that present the prospect of an exit point if the Mill Race were to overflow its banks before it went underground to the waterwheel in Building 8. The 1932 Culin Plan does not have the word “overflow,” but it has the functional equivalent of the “overflow” in its depiction of a solid line along the southerly side of the Mill Race prior to depicting a connection to TC. The 1953 Blumenthal Plan does not depict (a) an “overflow” of what it labelled “Mill Run,” (b) the route of travel into what was Building 8 and (c) the “tail race” emerging from what was Building 6 just before entering TC south of the Hammond Tool Factory, as depicted on both the 1877 Mill Survey and the 1932 Culin Plan. Nevertheless, the 1953 Blumenthal Plan shows a connection from the Mill Run to TC [REDACTED]

## V. CONCLUSION.

The most important part of the depiction of the “Overflow” on the 1877 Mill Survey, and on the 1932 Culin Plan, and the route of the Mill Race going

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<sup>26</sup> See the MCCD’s letter of 4-14-22 (a) at p. 3 and point (h) reciting the principle that an easement is required for off-site discharges and a DEP permit does not grant property rights, which would include an easement [REDACTED] that the Applicant has not produced.

underground [REDACTED] and to exit from the underground as the “Tail Race” in both the 1932 Culin Plan and the 1877 Mill Survey is that all these elements of the Mill Race [REDACTED] There is no point at which the “Old Mill Race” could be tributary to TC other than through the “Overflow” [REDACTED] or from underground [REDACTED] Thus, even if despite its state of disrepair, the “Old Mill Race” could be tributary to TC, the change in the drainage course from 222 CR [REDACTED] would be off-site drainage of the Proposed Development to an off-site property requiring an easement of the off-site property owner, [REDACTED] which the Applicant has not produced. Therefore, the idea of minimizing drainage caused erosion of the Sensitive Areas from the proposed Spillway on 222 CR and instead re-routing drainage from the Applicant’s BMP basin [REDACTED] ought not work as a matter of law and basic equity.

Respectfully submitted,

Dated: May 26, 2023

[REDACTED]

[REDACTED]

CERTIFICATION

I [REDACTED] hereby certify that the foregoing statements of fact are true and correct to the best of my knowledge, information and belief and that if any of the foregoing statements are willfully false, I am subject to punishment pursuant to *18 Pa. C.S. § 4904*.

Dated: May 26, 2023

[REDACTED]

Public Comments received via email Wednesday June 7, 2023

I wanted to update our public comment to bring to the attention of the MCCD that Montgomery County filed a tax lien against the Applicant in the Montgomery County Court of Common Pleas on 6-2-23 at Case #2023-12084 in the amount of \$2,384.78. The docket search can be confirmed by going to <https://courtsapp.montcopa.org/psi/v/detail/Case/201343632>

Public Comments Received via email Friday, August 18, 2023

Attached are the above and which will include Exhibits A thru K in support thereof. Due to the size of a few of the exhibits, this will be email 1 of 4 to keep the email size below 10 mg. This email has Exhibits A-B.



<p>IN Re:</p> <p>222 CHURCH ROAD LLC SUBDIVISION AND LAND DEVELOPMENT</p> <p>FOR 222 EAST CHURCH ROAD ELKINS PARK, PA 19027 CHELTENHAM TOWNSHIP (PROPOSED DEVELOPMENT)</p>	<p>MONTGOMERY COUNTY CONSERVATION DISTRICT PAC460811 (APPLICATION)</p> <p><b>SECOND SUPPLEMENTAL PUBLIC COMMENTS TO THE ORIGINAL PUBLIC COMMENTS DATED 5-26-23 AND SUPPLEMENTAL COMMENTS DATED 6-27-23</b></p>
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1. Since the original comments dated 5-26-23 (Original Comments) and the Supplemental Comments dated 6-27-23 (Supplemental Comments) were provided to the Montgomery County Conservation District (MCCD) regarding 222 Church Road LLC (Applicant) the MCCD in a letter to the Applicant dated July 17, 2023 notified the Applicant that the Application was administratively complete and would undergo technical review.

2. Because the Proposed Development anticipates storm water discharges to Tookany Creek (TC), an increase in impervious square feet, and a reduction in tree coverage, *inter alia*, we believe that the technical review of the Application ought to consider the current status of, and issues raised in, the Cheltenham Township (CT) Municipal Separate Storm Sewer System, NPDES Permit No. PAI 130080, Authorization ID # 1203926 (MS4 Application) and related issues discussed below.

3. Stated differently, we believe the Application ought not to be reviewed in isolation.



4. We do not have a complete record of the MS4 Application yet because the CT website does not contain a complete record of the status of the MSR Application. However, we believe the complete record of the MS4 Application is available to the MCCD and to the Pennsylvania Department of Environmental Protection (DEP), but we nevertheless reference or attach as Exhibits documents that we have been able to obtain from the CT website or from Right To Know Law Requests (RTKL) submitted to CT (CT RTKL).

5. The CT Public Works Committee (PWC) considered the MSR Application and the preparation of a Pollution Reduction Plan (PRP) at its Meeting of August 2, 2017 (PWC 8-2-17 Meeting).

6. The Minutes of the PWC 8-2-17 Meeting at pages 5-6 include the following:

[The Township Manager] stated that under the next [NPDES] permit period, which is between March 2018 and March 2023, municipalities are required to prepare a [PRP] and submit it to the [DEP] for review by September 16, 2017. A PRP demonstrates the Township's strategy for installing best management practices to reduce sediment and nutrient loads. The PRP will be available for [public] review and comments between August 3 and September 4, 2017.

...

It was noted that the PRP is only one part of the NPDES permit requirements. In addition, municipalities need to meet minimum control measures as required for [the MS4 Application], which include street sweeping, education, communications, outreach, etc.... [T]here is a lot of research going on as to the major source impacting our water base, but since it is undetermined, multiple strategies are being required of municipalities...<sup>1</sup>

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<sup>1</sup> The Minutes are available at:  
<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes1596091417081417.pdf>

7. At its Meeting of 8-2-17, the PWC recommended approval of the MS4 Application including the PRP to the Board of Commissioners (Board). Id. at 6.<sup>2</sup>

8. At its Meeting of 8-16-17, the Board approved the recommendation of the PWC to approve the PRP as was recorded at Item 9(d) on p. 3 of the 8-16-17 Board Minutes.<sup>3</sup>

9. After discussion of the public comments received within the 30-day notice period, the PWC Committee approved the 2017 PRP for filing with the DEP “as part of its NPDES application” at page 5 and item 15 of the Minutes of its Meeting of 9-6-17.<sup>4</sup>

10. The DEP issued a five-page comment letter dated 5-17-19 regarding the 2017 PRP a copy of which is attached as Exhibit B (DEP 5-17-19 Comment Letter).

11. We do not know if there were any informal comments between the DEP and CT relating to the 2017 PRP prior to the DEP 5-17-19 Comment Letter but there was mention of a meeting at pp. 4-5 beginning at the last bullet point on p. 4 of the DEP 5-17-19 Comment Letter.

12. At p. 5 of the DEP 5-17-19 Comment Letter, CT was requested to “submit an updated plan that addresses these comments within 45 days of the date of this letter.”

13. CT did not respond within 45 days.

14. Instead, by letter dated 2-19-21 or 21 months later, the then Assistant Township Manager wrote to the DEP advising that CT had a new Township Engineer

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<sup>2</sup> Due to the 18.5 mg bite size of the PRP dated 8-2-17 and revised 9-8-17 to include public comments (2017 PRP), the 2017 PRP attached as Exhibit A is limited to Pages 1-6, 12-13, 19, 22, 26 & 30 of the 2017 PRP. The entire 2017 PRP is available at:

<https://www.cheltenhamtownship.org/files/documents/document1680121014102317.pdf>.

<sup>3</sup> The Minutes are available at:

<https://www.cheltenhamtownship.org/files/documents/BoardofCommissionersMinutes1706113639092217.pdf>

<sup>4</sup> The Minutes are available at:

<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes1596015851092217.pdf>

and would be responding to the DEP 5-17-19 Comment Letter as soon as the new Township Engineer was “up to speed” (2-19-21 CT letter to DEP).

15. The 2-19-21 CT letter to DEP was not posted on the CT website, but was obtained in July 2022 in response to an the RTKL to CT.<sup>5</sup>

16. Also obtained in July 2022 in response to an RTKL to CT was the letter of the Township Engineer, Gannett Fleming (GF), dated 9-10-21 responding to the DEP 5-17-19 Comment Letter (GF Response of 9-10-21 to the DEP 5-17-19 Comment Letter) and referenced an attached revised map.<sup>6</sup>

17. Thus, CT did not provide a substantive written response to the DEP 5-17-19 Comment Letter for just under 28 months.

18. In addition, the revised map referenced in the responses to a number of comments in the DEP 5-17-19 Comment Letter was not included with the July 2022 response to the RTKL to CT when the GF Response of 9-10-21 to the DEP 5-17-19 Comment Letter was produced by CT.

19. Another document obtained in July 2022 in response to the RTKL to CT was the NPDES Individual Permit for Small MS4 Application of CT dated 9-13-17 (2017 MS4 Application), but the map required at p. 2 of the 2017 MS4 Application was not included in the July 2022 CT RTKL response.<sup>7</sup>

20. At p. 1 of the 2017 MS4 Application, CT identified the application as seeking a new permit.

21. We do not know if the 2017 MS4 Application was ever granted but, given the discussion in the PWC 8-2-17 Meeting that the permit period was between March 2018 and March 2023 [see ¶ 6 and n. 1 *supra.*], and given the delays in responding to the DEP 5-17-19 Comment Letter and other delays and matters mentioned below, we have reason to question whether the 2017 MS4 Application was granted before another such application was due.

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<sup>5</sup> The 2-19-21 CT letter to DEP is attached as Exhibit C.

<sup>6</sup> A copy of the GF Response of 9-10-21 to the DEP 5-17-19 Comment Letter is attached as Exhibit D.

<sup>7</sup> A copy of the 2017 MS4 Application is attached as Exhibit E.

22. At page 2 of the 2017 MS4 Application, CT answered “no” to the question whether it had an approved TMDL [Total Maximum Daily Load], which CT defined at p. 16 of the 2017 PRP as the “calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet quality standards for that particular pollutant.”

23. The GF Response of 9-10-21 to the DEP 5-17-19 Comment Letter contemplated updated responses, *inter alia*, at bullet points 3 (all BMP’s will be presented on the next version of the MS4), 4 (drainage areas to identified BMP’s will be presented on the next version of the MS4), and 6 on page 2 (the updated TMDL Plan/PRP will present the acreage of the watersheds), and bullet point 3 on p. 5 (*inter alia*, additional BMP’s will be identified).

24. We do not know when or if those updated responses in the preceding paragraph were provided to the DEP

25. Shortly before the GF Response of 9-10-21 to the DEP 5-17-19 Comment Letter, and, in particular, in a GF Proposal to CT dated 6-7-21 regarding “Tookany Creek Stream Stabilization at Gimbel Field,” GF proposed to CT a number of remedial measures regarding silt accumulation in TC near Gimbel Field, which is located just upstream from the Proposed Development (GF TC Bank Stabilization and Gravel Bar Removal Proposal).<sup>8</sup>

26. The remedial measures included stabilization of the south bank of TC “immediately opposite the stream from Gimbel Field [that] is actively eroding, gravel bar removal that “may require periodic entry into the channel by excavation equipment”, and north bank stabilization because the gravel bar removal and modification to the stream channel “may require that stabilization to protect sanitary sewer and gas line running parallel to the stream in the park and repair of the 18” storm sewer outfall.” The phases of the project included “Inspection of Existing Condition,” “Concept Design,” and “Permit Coordination” with the latter including a pre-application meeting with the DEP and “after confirmation by the regulators of

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<sup>8</sup> A copy of the GF TC Bank Stabilization and Gravel Bar Removal Proposal is attached as Exhibit F.

the permits required ... a timeline and cost estimate for final design, permitting and bid and construction services.” *Id.*

27. The GF TC Bank Stabilization and Gravel Bar Removal Proposal was discussed at the PWC Meeting of 9-1-21.<sup>9</sup> These Minutes at p. 2 include the following:

Mr. Phillips explained the project which will correct problems caused in the stream by a large gravel bar that has formed in the stream from sediment deposits from large storm events.... The initial design and field work will allow them to begin the permitting phase to determine what is acceptable to the permitting agency... Robert Hyslop, 211 Harrison Avenue, had a comment, stating that they may be treating the effects of flooding rather than the cause of the flooding.

28. The PWC unanimously recommended to the Board the approval of the GF TC Bank Stabilization and Gravel Bar Removal Proposal. *Id.*

29. The Board at its Meeting of 9-29-21 approved the recommendation of the PWC and authorized GF to begin work on the GF TC Bank Stabilization and Gravel Bar Removal Proposal as reflected in the Board Minutes at p. 4 Item 14(a), which .<sup>10</sup>

30. We have not located any mention on the CT website of an application to the DEP or MCCD or the granting of such an application regarding the permitting for the GF TC Bank Stabilization and Gravel Bar Removal Proposal.

31. Nevertheless, if such an application or update were made by CT, we believe that the DEP would be in possession of the same and, as noted earlier, we believe that the technical review of the Application ought to consider the current status of, and issues raised in, the 2017 PRP and MS4 2017 Application and the

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<sup>9</sup> The Minutes of the PWC Meeting of 9-1-21 are available at:  
<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes09-01-21030827092421PM1706.pdf>

<sup>10</sup> The Board Minutes of 9-29-21 are available at:  
<file:///C:/Users/fredh/Desktop/222%20Church%20Road%20LLC/DEP/MS4/9-29-21%20Board%20Minutes%20re%20silt.pdf>

material findings in the GF TC Bank Stabilization and Gravel Bar Removal Proposal.

32. The PWC Agenda for 3-2-22 at p.2 and Item 4(E) listed the “Presentation of a Revised Pollution Reduction Plan“ and referenced an attachment.<sup>11</sup>

33. The attachment at PDF pages 78-100 of the PWC Agenda for 3-2-22 begins with a one (1) page cover memo from GF dated 2-24-22 followed by three (3) pages of an annotated version of Table 7 of the PRP, which listed the proposed projects to be completed under a revised draft PRP dated 2-4-22 (PRP Dated 2-24-22), and a one page map depicting the location of the projects listed in Table 7. PDF pages 82-100 consist of the PRP Dated 2-24-22.

34. The fourth paragraph of the cover memo from GF includes the following statement: “Once the Public Works Committee’s comments are integrated into the PRP, [GF] will submit it to DEP for preliminary review as requested by DEP. Following integration of DEP’s comments, the Township will initiate a comment period prior to formal submittal to the DEP for their approval.”

35. If there were preliminary comments on the PRP Dated 2-24-22 by the DEP, we have not located them on the CT Website, but, of course, they would be available to the DEP if there were any such comments.

36. The last paragraph of the cover memo dated 2-24-22 provides that the highest priority projects were shaded in gray.

37. Among the projects shaded in gray on PDF p. 80 of the PRP Dated 2-24-22 was project 28A with a project name of “Gimbel Field at Ashbourne” for treatment of 40 acres with sediment reduction of 16.8 tons per year, a BMP Description of “**Bioswale.** Coordinate with property owner to cut off existing storm sewer discharge to the Tookany Creek and install an infiltration BMP prior to stream discharge. Stabilize surrounding streambank and protect sanitary sewer infrastructure,” and an action of “Acquire survey in CAD and prepare concept plan.”

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<sup>11</sup> The PWC Meeting Agenda of 3-2-22 is available at: <https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeAgenda03-02-22094517022722AM1680.pdf>

38. Likewise, Project 28B at PDF p. 80 included a Project Name of “Gimbel Field Infiltration at Harrison” for treatment of 5 acres with sediment reduction of 2.1 tons per year, and a BMP Description of “**Bioswale. Coordinate with trail relocation project to intercept flows from Harrison Avenue,**” and an action of “acquire survey in CAD and prepare concept plan to coordinate with trail development.”<sup>12</sup>

39. The Minutes of the PWC Meeting of 3-2-22 reflect at p. 5 and Item 4(E) the presentation by GF including answers by GF to questions from Commissioners.<sup>13</sup>

40. The PRP was next considered at a PWC Meeting on 8-3-22 or more than three (3) years after the DEP 5-17-19 Comment Letter.

41. We turn to the Agenda of the PWC Meeting of 8-3-22.<sup>14</sup>

42. The first item on the PWC Agenda of 8-3-22 is “Presentation of the Revised Pollution Reduction Plan and authorization to advertise a 30-day public comment period.” The draft PRP attached to the agenda is also dated 2-24-22.

43. While we have not compared them word for word, the PRP drafts attached to the PWC Agendas of 3-2-22 and 8-3-22 appear to be exactly the same except that the PRP attached to the PWC Agenda of 8-3-22 includes a GF “Municipal Separate Storm Sewer System (MS4)” map dated 7-13-22 (GF MS4 Map 7-13-22).

44. We do not know for sure the reason that the Agenda for the PWC Meeting on 8-3-22 contained the same PRP Dated 2-24-22 as the PWC Meeting of 3-2-22, but suspect that there was an error in attaching the same PRF Dated 2-24-22 to the PWC 8-3-22 Agenda.

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<sup>12</sup> The reference to “trail development” is a reference to an extension of the TC Trail from Gimbel Field to New Second Street that passes below the Proposed Development.

<sup>13</sup> The Minutes of the PWC Meeting of 3-2-22 are available at:  
<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes03-02-22094419031522AM1740.pdf>

<sup>14</sup> The PWC Agenda for 8-3-22 is available at:  
<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeAgenda08-03-22041714072822PM1680.pdf>

45. There are several reasons we suspect the attachment of the PRP Dated 2-24-22 to the PWC Agenda of 8-3-22 was an error. First, the last page of the PRP Dated 2-24-22 that was attached to the PWC 8-3-22 Agenda was the GF MS4 Map 7-13-22, which is a black and white version and which, of course, due to the date of 7-13-22 could not have been part of PRP Dated 2-24-22. Thus, the existence of the GC MS4 Map 7-13-22 suggests the existence of a revised PRP also dated 7-13-22. Second, after checking all the Board and PWC Agendas and Minutes from 3-2-22 to August 2023, we could not find a discussion of a PRP that corresponds to the GF MS4 Map 7-13-22. Third, we have a color version of GF MS4 Map 7-13-22.<sup>15</sup> Fourth, we have a corresponding PRP Draft Dated 7-13-22 that corresponds to the date of the GF MS4 Map 7-13-22.<sup>16</sup>

46. Staying in chronological order, the Minutes of the PWC Meeting of 8-3-22 at p. 1 and Item 1(A) contain the following discussion:

Nathan Walker, [GF], presented the revised plan (see attached). Mr. Walker explained that the [GF] team has been reviewing and revising the [PRP], which was originally completed in 2017, to address comments from the [DEP]. The [PRP] is a requirement for an MS4 permit (Municipal Separate [Storm] Sewer System). Mr. Walker explained the four [sic] main MS4 components which includes an annual report, minimum control measures, and PRP.

The PRP outlines the projects the Township will complete to reduce the discharge of sediment in the watershed by 10 percent or 160 tons per year. There are 22 projects total and three have already been completed. Mr. Walker explained that projects at Robinson Park, Renniger Park and Carroll Brook Park have been prioritized because they will reduce the higher levels of sediment to help the Township reach the required goal more efficiently.

The Township is required to advertise a 30-day public comment period on the PRP and he asked authorization to move on to this next phase of the process.

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<sup>15</sup> Attached as Exhibit G is a copy of the color version of the GF MS4 Map 7-13-22.

<sup>16</sup> Due to its size, the PRP Draft Dated 7-13-22 is attached in three parts as Exhibit H1, H2, and H3.



Ms. Rappaport [a PWC and Board Member] asked about SALDO and zoning requirements being used as a preventative requirement and remedial measure. Mr. Walker responded that the DEP is requiring municipalities to update their Stormwater Ordinances during this permit cycle. This will increase standards for stormwater management to more modern standards.

Mr. Holland [a PWC and Board Member] asked if there may be a potential increase in the requirements from DEP. Mr. Walker said the MSR requirements are simply about maintenance, inspection, maintaining the existing storm sewer system and understanding its discharge from it.

Mr. Areman [a PWC and Board Member] asked if the 22 projects outlined in the PRP are the same or different from the nearly 40 projects outlined in the Stormwater Fee Feasibility Study. Mr. Walker said some of the projects overlap; however, the PRP projects are focused on water quality, not flood reduction.

#### Public Comment

Howard Schultz asked how the study takes into account the likelihood of greater volumes going through the stormwater system during extreme weather events with the potential of higher sediments. Mr. Walker responded that there are some stream stabilization projects that are included in the PRP.

Mr. Areman asked that the Township staff have a chance to review the PRP before authorizing advertisement of the PRP for public comment. It was a consensus of the Committee to delay action on the PRP until staff has had a chance to review it and provide any comment.<sup>17</sup>

47. As noted earlier, the GF Cover memo of 2-24-22 that is an attachment to the 3-2-22 PWC Agenda includes a three (3) page spreadsheet of projects with the priority projects in gray scale. There are 32 projects listed on the spreadsheets for TC and the cover memo reports that three (3) of them have been completed. The objective for TC is to reduce the silt flowing into TC by 160 tons annually. The two

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<sup>17</sup> The Minutes of the PWC Meeting of 8-3-22 are available at:  
<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes09-07-22103512092622AM1706.pdf>

(2) projects listed for Gimbel Field are in gray scale and, thus, are among those listed as a priority.

48. As we have noted earlier, the PRP Draft Dated 2-24-22, which is attached to the PWC Agenda of 3-2-22 and 8-3-22, includes at p. 11 a project 28A of “Gimbel Field at Ashbourne” for treatment of 40 acres with sediment reduction of 16.8 tons per year, which the “\*\*” legend indicates would be dependent on the available treatment area, and a BMP Description of “**Bioswale**. Coordinate with property owner to cut off existing storm sewer discharge to the Tookany Creek and install an infiltration BMP prior to stream discharge. Stabilize surrounding streambank and protect sanitary sewer infrastructure.”

49. This description sounds much like the GF TC Bank Stabilization and Gravel Bar Removal Proposal, but it does not mention remedying the “large gravel bar” although it does mention stabilizing the streambanks.

50. Likewise, Project 28B at p. 12 of the PRP Draft Dated 2-24-22 includes a Project Name of “Gimbel Field Infiltration at Harrison” for treatment of 5 acres with sediment reduction of 2.1 tons per year, and a BMP Description of “**Bioswale**. Coordinate with trail relocation project to intercept flows from Harrison Avenue.”<sup>18</sup>

51. The PWC Minutes of its Meeting of 9-7-22 include at p. 2 and Item 3A the following:<sup>19</sup>

Consider recommending the [Board] authorize advertisement of a 30-day public comment period on the revised Pollution Reduction Plan.

Mr. Areman asked Mr. Walker of Gannett Fleming if he received feedback form staff regarding the Pollution Reduction Plan. Mr. Walker responded that he has received the feedback.

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<sup>18</sup> We do not understand what is meant by the “trail relocation project.” If the layout of the TC Trail extension from Gimbel Field to New Second Street was moved, we have not seen it discussed in PWC or Board Agendas or Minutes.

<sup>19</sup> The Minutes of the PWC Meeting of 9-7-22 are available at: <https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes09-07-22103512092622AM1706.pdf>

Upon Motion of Mr. Zygmund-Felt, the Committee unanimously recommended the [Board] authorize advertisement of a 30-day comment period on the revised Pollution Reduction Plan.

52. The PWC Minutes of 9-7-22 also include at p. 2 and Item 4A the following:

Update on the requirements to amend the Township's Stormwater Management Ordinance to meet new standards of the MS4 Program.

Mr. Walker explained that in the upcoming months, he will be introducing some specific changes on restrictive prohibited discharges to the stormwater system, the use of **low impact development**, and water quality. The changes will be needed to meet the requirements of the [DEP's] 2022 Model Stormwater Management Ordinance to bring the Township into compliance with MS4 permit standards. (emphasis supplied).<sup>20</sup>

53. The Minutes of the Board Meeting of 9-21-22 at p.2 and Item 10(a) recorded the approval of the recommendation of the PWC that the revised PRP be advertised for a 30-day public comment period.<sup>21</sup>

54. We could not find anything further on the CT Website regarding the PRP including any subsequent drafts, the final draft with the public comments listed and answered or the date of any submission of a final PRP to the DEP.

55. In the different context of granting conditional final approval of the Proposed Development, at the Board Meeting of March 15, 2023, the following colloquy took place between a Member of the Board at p. 3 of the Minutes. "Mr. Areman asked how residents would be informed of next steps. Ms. Elliott [the Acting Township Manager] said there is a page on the Township website with all the

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<sup>20</sup> The Proposed Development at 222 CR does not strike us as "low impact development."

<sup>21</sup> The Minutes of the Board Meeting of 9-21-22 are available at:

<https://www.cheltenhamtownship.org/files/documents/BoardofCommissionersMinutes09-21-22092800101922AM1706.pdf>

pertinent information on this project and any questions can be directed to the Building and Zoning Department.”<sup>22</sup>

56. The Hot Topics Page of the CT website for 222 CR does not contain “all pertinent information” and there are delays in posting “pertinent information” when it is posted. [REDACTED]

57. One of the remarkable aspects of the PRP Draft Dated 7-13-22 is that at pp. 13-15 the number of projects was reduced to 22 and three were marked with “\*\*” that page 15 defined as “[d]ocumentation of completed projects ...”.

58. The two (2) Gimbel Field Projects although listed in the PRP 2-24-22 as priority projects were no longer among the list of projects in the PRP Draft 7-13-22. They were also not listed as completed projects.

59. The PRP Draft Dated 2-24-22 that was preceded by the cover memo of GF included three (3) pages of project listings, and a map depicting the location of all of the projects. The two (2) Gimbel Field projects, numbers 28A and 28B, were listed on the Map.

60. The PRP Draft 7-13-22 did not include any such map depicting the location of the projects.

61. Recalling the GF TC Bank Stabilization and Gravel Bar Removal Proposal that was accepted by the PWC at its Meeting of 9-1-21 and by the Board at its Meeting of 9-29-21, and the PRP Draft Dated 2-24-22 for the two (2) projects at Gimbel field that were no longer listed in the PRP Draft Dated 7-13-22, the PWC Minutes of 2-1-23 at p. 2 and Item 4D recorded that the “Committee unanimously recommend the [Board] approve a change order in the amount of \$16,748.45 to

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<sup>22</sup> The Minutes of the Board Meeting of 3-15-23 are available at: <https://www.cheltenhamtownship.org/files/documents/BoardofCommissionersMinutes03-15-23091117050223AM1706.pdf>

install drainage pipe under the Tookany Creek Trail Phase III in Gimbel Field to improve drainage.”<sup>23</sup>

62. The Board approved the recommendation to install the drainage pipe as recorded in its Meeting of 2-25-23 at p.2 Item 10(d).<sup>24</sup>

63. What we know from the GF MS4 Map 7-13-22 (Exhibit G) is that Storm Sewer numbers 67-71 empty into TC near Gimbel Field and that the next Storm Sewer is number 72 and is just east past the Proposed Development at 222 CR at the point where TC makes a right turn adjacent.

64. From the description given in the PWC Minutes of 2-1-23 it sounds like a storm sewer will be added near Gimbel Field that will also empty into TC at the location of the “large gravel bar” and the eroding north and south banks of TC.

65. What we do not know is what happened to the GF TC Bank Stabilization and Gravel Bar Removal Proposal, i.e., whether that project was completed or abandoned between the time of the PRP Draft Dated 2-24-22 where the two (2) priority projects for the Gimbel Field area were listed and the PRF Draft Dated 7-13-22 where those two (2) priority projects were no longer listed as either proposed or completed projects.

66. The storm sewer that was approved on 2-25-23 from Gimbel Field to TC suggests to us that the two (2) projects listed in the PRP Dated 2-24-22 in the Gimbel Field area may not have taken place. This suggestion is reinforced because the work proposed in project 28A was denominated as a “bioswale” to “cut off existing storm water discharge to Tookany Creek and install an infiltration BMP” and project 28B was for another “bioswale.” Cutting off “existing storm water discharge to” TC does not appear to us to be consistent with adding another drainage pipe to TC to improve drainage from Gimbel Field.

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<sup>23</sup> The PWC Minutes of its Meeting of 2-1-23 are available at:  
<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes02-01-23041746021023PM1740.pdf>

<sup>24</sup> The Board Minutes of its Meeting of 2-15-23 are available at:  
<https://www.cheltenhamtownship.org/files/documents/BoardofCommissionersMinutes02-15-23032019031023PM1706.pdf>

67. Even if the GF TC Bank Stabilization and Gravel Bar Removal Proposal was permitted by the DEP and completed, we ought to recall the public comment of the resident at 211 Harrison Avenue at the PWC Meeting of 9-1-21 who stated that the projects may be treating the result of the flooding rather than the cause of the flooding. This commenter was an informed individual because Harrison Avenue is just north of TC and just east of Gimbel Field.

68. If the projects 28A and 28B were not completed the Harrison Avenue resident's comments may be quite prophetic. If the projects were not completed, we think the comment of the resident from Harrison Avenue would be that neither the result of the flooding nor the cause of the flooding just upstream from the Proposed Development would be addressed.

69. We also think there is a plethora of information in the DEP files regarding the long-standing flooding problems along TC. And the problem of flooding along TC in the vicinity of the Proposed Development is well known in the community.

70. We turn to the most recent Existing Features Plan that is dated 6-29-23 and that is on file with the MCCD (6-29-23 EFP) as part of the Application.

71. The 6-29-23 EFP contains several notes of the Base Flood Elevation of FEMA of 128'. The 6-29-23 EFP also depicts the last elevation line prior to TC as 120'. That elevation is consistent with the elevation of the stream bed of 120' at the approximate location of the TC Trail bridge located south and just below the Proposed Development that takes the TC Trail across TC from the North side of TC to the South Side of TC.<sup>25 26</sup>

72. On 4-9-23 [REDACTED] used a tape measure to measure the height above the surface water of TC at the beginning of the bridge once it was above the north side of TC. The measurement he took was 125" above the water surface or just under 10.5 feet and, assuming the water level to be 6" from the bed of TC, means that the bridge elevation was 131" or 10.92 feet above the bed of TC. [REDACTED]

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<sup>25</sup> See the attached streambed chart at FEMA Flood Insurance Study Volume 6 at p. 297P that is attached as Exhibit I.

<sup>26</sup> See also the FEMA Location Map of TC that is attached as Exhibit J. The FEMA Location Map is available at: <https://map1.msc.fema.gov/firm?id=42091C0403G>

██████████ also advised that the distance from the underside of the bridge in the middle of the bridge to TC was higher than the measurement he took because the bridge slopes upward towards the middle.

73. Exhibit I, the FEMA Flood Insurance Study Volume 6 at p. 297P, depicts a graph of five (5) measures of elevations. The elevations decrease from right to left, i.e., west to east. The elevation measures are Stream Bed, and 10%, 2%, 1% and .2% annual flood chances. The bottom of the graph shows cross-sections. Here, we focus on cross section N.

74. Exhibit J, the FEMA Location Map, depicts Location N as slightly east of the right angle turn of TC. That right angle turn is also east or downstream of the Proposed Development. Just west of the right angle turn of TC is the 128' elevation line. The 128' elevation line is also depicted on the 6-29-23 EFP.

75. The graph in Exhibit I also depicts cross-section N. Cross-section N is slightly east or downstream of the right hand turn of TC. The right hand turn of TC is ██████████ east and downstream of the Proposed Development.

76. In addition, the 6-29-23 EFP depicts the right hand turn of TC, ██████████. The eastern part of the Proposed Development is situated north or above TC and west or upstream of the existing structures of 222 Church Road that are depicted on the 6-29-23 EFP. The 6-29-23 EFP also plots the TC Trail Bridge.

77. Taking the sum of the above facts from Exhibit I, Exhibit J and the 6-29-23 EFP, we make the conservative estimate that the TC Trail Bridge is located two (2) vertical lines west of the vertical line of cross-section N in Exhibit I. We then see that the intersection of the vertical line two (2) lines west of the vertical line of cross-section N intersects the horizontal line representing the stream bed of TC at an elevation of 120'.

78. Thus, the Base Flood Elevation or the 1% chance each year of the 100 year flood is per the 6-29-23 EFP, the graph in the FEMA Flood Insurance Study, and the FEMA Location Map is 128' or 8' above the bed of TC adjacent to the TC Trail Bridge.

79. Obviously, the engineers who designed the bridge did not just design the bridge to be just above the 100 year flood plain of 128'. [REDACTED] the design of the lowest vertical distance of the TC Trail Bridge above TC Creek was 10.92' or just under 3' above that 100 year flood plain measured from the north side of the bridge just above where the bridge is in the same vertical plane of TC adjacent to the north bank of TC.

80. The Member of the Environmental Advisory Council (EAC) appeared to recognize this same point as recorded in the 6-13-22 EAC Minutes at Item G(1) at p. 3 where the recorded observation was that the “biggest cost driver was that the flood analysis necessitated that the bridge be bigger than originally planned, adding cost and time to the project.”<sup>27</sup>

81. The 6-13-22 EAC Minutes were unanimously accepted by the PWC as recorded in the 7-6-22 PWC Minutes at p. 2 and Item 2(H).<sup>28</sup>

82. Without delving into the many changes in the design of the BMP in the Proposed Development, the multiple shifts in the nature and location of the drainage routes from the BMP, which we have addressed in our two (2) prior sets of comments, there would be additional drainage across sensitive areas south of the property owned by the Applicant on the way to TC that would in effect add another storm water channel to the five (5) storm sewers draining into TC just west of the Proposed Development in the Gimbel Park area and the one (1) storm sewer located east of the Proposed Development at the right hand turn of TC.

83. In addition, in Record Plan (1 of 3) dated 2-10-23, the impervious coverage of the Proposed Development site would increase by 40,007.58 S.F.,<sup>29</sup> and, as set forth in the Landscape Plan dated 2-10-23, 213 trees would be removed

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<sup>27</sup> The 6-13-22 EAC Minutes are available at:

<https://www.cheltenhamtownship.org/files/documents/EnvironmentalAdvisoryCouncilMinutes06-13-22010843070122PM1740.pdf>

<sup>28</sup> The 7-6-22 PWC Minutes are available at:

<https://www.cheltenhamtownship.org/files/documents/PublicWorksCommitteeMinutes07-06-22044701071522PM1706.pdf>

<sup>29</sup> Record Plan (1 of 3) dated 2-10-23 is available at:

<https://www.cheltenhamtownship.org/files/documents/222ChurchRdLDPResubmittal1740041925071123PM.pdf>



equaling 1,891” DBH (Diameter at Breast Height) of trees, and 223 trees would be preserved equaling 2,331” DBH.<sup>30</sup>

84. For all the reasons stated above, TC is a troubled area and we believe the Proposed Development would not only ruin what is one of the few pristine areas remaining in CT, but would add materially to the existing and repetitive adverse environmental problems besetting the TC drainage. Therefore, the Application should not be viewed and decided in isolation and without consideration of the points raised in this Second Supplement Public Comments.

85. Lastly, in our Supplemental Public Comments dated June 27, 2023 (Supplemental Comments) we reviewed the prior history of the Applicant’s history of varying descriptions of the Wetlands present at the Proposed Development at paragraphs 24-33, 44, 56-57, 62-68.

86. We questioned the accuracy of the new description of the Wetlands derived from a “Wetlands/Water Investigation Report of VW Consultants LLC dated 4-21-23 (VW Report) in paragraph 56 of the Supplemental Comments.

87. In paragraph 57 of the Supplemental Comments, we quoted from the Applicant’s response to the MCCD’s Incompleteness review letter of March 27, 2023, in part, as follows:

In addition to the revisions per the NPDES review comments below, note that a revised Wetland and Waters Investigation has been performed within the subject property. The original investigation performed by Penn’s Trail Environmental LLC [Penn’s Trail] with summary letters dated October 15, 2021 was found to be **inconsistent with current site conditions**. ... [Omitting discussion of the jettisoning of the immediately preceding and the then recently discovered theory that the Old Mill Race was a surface water vehicle tributary to TC after we presented a complete history of the Mill Race and demonstrated that it could not represent surface waters tributary to TC]. The only areas where surface waters containing wetlands were delineated are in the

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<sup>30</sup> The Landscape Plan dated 2-10-23 is available at:  
<https://www.cheltenhamtownship.org/files/documents/222ChurchRdLDPResubmittal1740041925071123PM.pdf>

area behind and in the immediate vicinity of the “spring house” located behind the existing dwelling on the property. The accompanying E&S and PCSM Plans as well as the applications and any supporting documentation have been revised accordingly. (emphasis supplied).

88. The claim bolded in paragraph 74 above that the prior report dated October 15, 2021 of Penn’s Trails was found in the VW Report to be “inconsistent with current site conditions” strikes us as peculiar. There has been no prolonged drought in the 18 months between the time of the Penn’s Trail Report and the VW Report that would have dried up the “Limit of Wetlands” in the Penn’s Trail Report as distinguished from seasonal variations.

89. The Annual precipitation in Elkins Park is typically **45.6** inches per year reinforcing the doubt that the Wetlands delineated in the Penn’s Trail could have dried up prior to the VW Report. <https://dwellics.com/pennsylvania/climate-in-elkins-park>

90. In paragraphs 62-68 of the Supplemental Comments, we disputed the contention that the only area of Wetlands in the Proposed Development was the Area A delineated in the VW Report as distinguished from the repeated references in the Applicant’s prior plans of “Limits of Wetlands and Alluvial Soils” that were derived from the Penn’s Trails Reports.

91. In a response on 8-17-23 from CT in response to an RTKL we received, *inter alia*, a copy of a plan for the CT Interceptor A Sanitary Sewer Replacement [project] Sheet 1 of 29 of BCM Engineers [the engineering firm selected by CT to design the project] last revised 2-7-17 that depicts the Wetlands in the area of the Proposed Development that we believe is consistent with what we said in paragraphs 62-68 of the Supplemental Comments and that we believe contradicts the VW Report that purports to minimize the area of the Wetlands.

92. Attached as Exhibit K is a copy of the CT Interceptor A Sanitary Sewer Replacement Sheet 1 of 29 of BCM Engineers last revised 2-7-17.

93. Exhibit K shows the entire area of the “Interceptor A Sanitary Sewer Replacement” and consists of a split plan with one part of the project in the bottom half of the plan and the other in the top half of the plan. In the top half of the plan,

one can see a short distance from the right side of the plan two (2) baseball diamonds. The baseball diamonds are the location of Gimbel Field, a short distance west of the Proposed Development. In the same part of the plan, one can see the right hand turn of TC, a short distance east of the Proposed Development. In between these two locations one can see the delineation of two (2) Wetland areas that are within the area of the Proposed Development and south of the Proposed Development and, in any event, an area of Wetlands larger than what is depicted in the VW Report.

Respectfully submitted,

Dated: August 18, 2023



## CERTIFICATION

I, [REDACTED] hereby certify that the foregoing statements of fact are true and correct to the best of my knowledge, information and belief and that if any of the foregoing statements are willfully false, I am subject to punishment pursuant to *18 Pa. C.S. § 4904*.

Dated: August 18, 2023

[REDACTED]