



Nittany Valley Environmental Coalition
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State College PA 16801
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May 7, 2018

Source Water Protection Committee, State College Borough Water Authority
c/o Brian Heiser, SCBWA Executive Director
1201 West Branch Road
State College PA 16801

RE: Toll Brothers April 2018 application for easement to construct sewage pipeline across SCBWA-owned land, scheduled for full board vote May 17, 2018.

Nittany Valley Environmental Coalition (NVEC) is a 501(c)4 nonprofit organization with a mission of “protecting Pennsylvania’s Constitutionally-guaranteed rights” per the Environmental Rights Amendment. We appreciate this opportunity to provide a written statement to the committee concerning the request from Toll Brothers for an easement to install 4,200 feet of high pressure sewage pipe to cross the SCBWA's 60-acre parcel land to hook up to the UAJA sewage system at Stonebridge Road.

Since March 2015, we have been deeply engaged in efforts to protect the Harter and Thomas wells, and Slab Cabin Run, from the risks associated with land development in the Zone 2 recharge area. Our lawyer concurs that the protective covenant in the deeded land from PSU to SCBWA precludes providing an easement for this purpose (see letter from Jordan Yeager).

It is clear that Toll Brothers can use the Penn DOT right-of-way, or they may be able to hook up their sewer line to the Borough's sewage system, which doesn't cross the SCBWA land and would reduce the amount of pipe carrying high pressure sewage by about 10-fold, and has been stated as the preferred route by both the SCBWA and UAJA. Either of these options would require delays of a few months for review by Penn DOT, or a flow study if the Borough sewer system is preferred.

However, it is our position that government entities should protect public interests, and not concern themselves with the profitability of a given project for private corporations. If Toll Brothers made a bad investment in land that's less than ideal for development, causing delays as maximum mitigations are implemented, no local government entity has an obligation to save them from the costs of their poor investment decision.

It is also our understanding that there are a couple of alternatives to the easement:

1. Although the State College Borough has already told TB and UAJA that they are reluctant to allow this Ferguson Township development to hook up to the Borough's sewer system, they would let the park do so because it's a regional park. The two could be decoupled (see more about this below). Either way, SCBWA should encourage SC Borough to consider accepting flow from the TB's parcel if you and UAJA believes it's safer. The Borough should be willing to explore this option with due diligence.
2. The PennDOT ROW on Whitehall is another option. This is not preferred by UAJA because of higher costs of potentially having to dig up the pipe under pavement if repairs are needed or the road is widened. But if the alternative is violating the deed-restricted covenant, it is unfortunate but may not be avoidable. Our understanding is that regardless of the ultimate route, TB will use HDPE, which is the safest material

available. John Sepp stepped back his original statement on this when he spoke a second time at the last SCBWA meeting.

However, if SCBWA members vote to approve this easement, it should not be for free. You are in a strong position to get something you want out of this, and more than just a preferred type of pipe.

We think there is a short-term opportunity for SCBWA, UAJA, State College Borough and Ferguson Township to engage in comparative risk assessment to further mitigate the potential environmental impacts of the two developments (the Cottages and the park) to be constructed in the Zone 2 recharge area of the Harter and Thomas wells. We share the same goals: to minimize impacts on our water recharge area and to prevent the Toll Brothers development from being the tipping of the domino that eventually leads to development of all the land in this recharge area owned by PSU and farmers.

We are concerned, in keeping with issues raised by Centre Region planners dating back to at least 2001, that Penn State and associated land developers deliberately avoided considering the State College Borough hookup because they prefer to install a large pump station and long high-pressure line via Ferguson Township to enable future intense development of the rest of the Penn State-owned land in the area. **This suspicion is reinforced by the aligned extension of Blue Course Drive and a provision in the Terms and Conditions for the TB project requiring evaluation of further Blue Course extension, beyond the Cottages.** See Terms and Conditions XV – “A potential future southern extension of the street shall be evaluated as part of the design, although not constructed, to make sure the park driveway location will accommodate a future extension of the street.”

We suggest that there are two main proposals for the SCBWA Sourcewater Protection Committee to consider:

1. If you are going to go forward with the easement, SCBWA should ask for something in return from TB (landowner), UAJA (sewage operator) and PSU (adjacent landowner). All three must agree in writing that no one else can use the sewage pumping station other than the currently permitted Cottages PRD and the park. Since UAJA will take over the sewage pumping station once it is in service, UAJA may have to negotiate this. No one else can hook up and no additional land other than what has already been agreed to can be served. Then you get the pipe you want and reduce impacts from not allowing further development. This is to prevent the sewage pumping station from being used to open up development of the surrounding parcels. We strongly encourage the SCBWA to stipulate that the pumping station cannot be used for anything else except the park (and there is another option for the park, i.e., the Borough’s sewer system). This would at least be in line with the spirit of the covenant to protect the wells.

2. Your board had a great idea and should continue to make every effort to facilitate a land swap for the WRRP park, which has the potential to not only protect more fragile, more sloped land from grading, but could also save the COG money that would otherwise be spent on grading, freeing up those funds for park amenities. It would place the park closer to the road and reduce the amount of land excavation and keep impervious surfaces further away from the wells. This would permit building of environmentally safe playing fields and parking lot construction and maintenance on that parcel right along Whitehall. Then the Regional Growth Boundary can re-established and firmed up.

Forcing Toll Brothers to pursue either alternative would also protect SCBWA from being in the awkward and self-contradictory position of allowing large volumes of raw sewage to be conveyed under pressure, across land originally set aside for the specific purpose of sourcewater protection, thereby undermining the board’s credibility as a protector of public water supplies. Further, if your decision prompts TB to consider moving the pump farther uphill, closer to the hookup location, using HDPE pipe, we encourage you to facilitate that revision as it goes through the PA-DEP and UAJA review procedures.

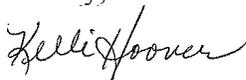
While the remaining land at this location is currently zoned RA, we know that Penn State successfully rezoned RA land to R-4 previously, which made the Toll Brothers project possible. And while we intend to remain alert and engaged to prevent any further upzoning in the area, we are aware that Penn State and the farmers in this area will have a good argument that their land is less suitable for farming once the housing and park are constructed, and that they should have the right to sell for development; deep-pocketed developers may be more than willing to roll the dice and sue for the right to extend the development down to Shingletown Gap and across by expanding the RGB.

We strongly support separating WRRP and TB strategically; this is important for assigning financial liability for potential water contamination, for the park to hook into the Borough separately from TB, and to facilitate mandating that the sewage pumping station not be allowed to be used by other developments. It makes sense to split the TB and WRRP sewage conveyance to limit bad outcomes for SCBWA and Ferguson Township, and limit liability for COG/FT if WRRP sewage line breaks occur.

As you prepare for the May 17 board meeting, please be prepared to present to the public a detailed map of the proposed easement route, a copy of the contract requiring HDPE and a copy of Penn State's signed authorization for SCBWA to violate the covenant, so that we can review those documents with our legal counsel and do our part to ensure that SCBWA is getting the strongest possible protections on the developed land and on the not-to-be developed adjacent land.

NVEC is standing by ready, willing and able to help further reduce risks of water contamination, and provide information for citizens about how to contact/engage with UAJA board, the SCBWA board, the State College Borough Council, and Ferguson Township Supervisors.

Sincerely,



Kelli Hoover, President
Nittany Valley Environmental Coalition
Nvec2018@gmail.com

cc Stakeholders:

UAJA, Toll Brothers, Ferguson Township, Borough of State College, Centre Region Council of Governments, Centre Region Parks and Recreation Authority, CRCOG Parks Capital Committee, ClearWater Conservancy, PSU

References and copies of documents related to this memo can be requested by emailing kw.investigations.llc@gmail.com.

Attachments: Letter from attorney Jordan Yeager