

In the Supreme Court of Pennsylvania

NO. 9 MAP 2023

THE BOROUGH OF WEST CHESTER,

APPELLANT,

v.

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION, *ET AL.*,

APPELLEES.

REPRODUCED RECORD
Volume 1 of 4 (1a to 572a)

DIRECT APPEAL FROM ORDER OF
THE COMMONWEALTH COURT OF PENNSYLVANIA
(DOCKET NO. 260 MD 2018) DATED JANUARY 4, 2023

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The enclosed list of record documents is sent to all counsel of record and unrepresented parties in accordance with Pa. R.A.P. 1931(d).

Office of the Prothonotary
Commonwealth Court of Pennsylvania

Miscellaneous Docket Sheet

Docket Number: 260 MD 2018

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May 3, 2023



CAPTION

The Borough of West Chester,
Petitioner

v.

Pennsylvania State System of Higher
Education and West Chester University
of Pennsylvania of the State System of
Higher Education,
Respondents

Certified from the Record

MAY - 3 2023

And Order Exit

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Closed

Case Processing Status: March 14, 2023 Completed

Journal Number: 26-09-2022

Case Category: Miscellaneous Case Type(s): Declaratory Judgment

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Petitioner The Borough of West Chester

Pro Se: No

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

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Pro Se: No

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Miscellaneous Docket Sheet

Docket Number: 260 MD 2018

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COUNSEL INFORMATION

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Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 260 MD 2018****Page 4 of 15****May 3, 2023****COUNSEL INFORMATION****Respondent West Chester University of Pennsylvania of the State System of Higher Education**

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Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 260 MD 2018****Page 5 of 15****May 3, 2023****FEE INFORMATION**

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
04/13/2018	Miscellaneous Docket Filing Fee	70.25	04/16/2018	2018-CMW-H-000889	70.25
10/11/2019	Copy Work (Per Page)	36.50	10/11/2019	2019-CMW-H-002134	36.50
07/23/2021	Copy Work (Per Page)	85.00	07/23/2021	2021-CMW-H-001321	85.00
08/06/2021	Copy Work (Per Page)	85.00	08/06/2021	2021-CMW-H-001400	85.00
11/10/2021	Copy Work (Per Page)	40.00	11/10/2021	2021-CMW-H-001995	40.00
09/06/2022	Copy Work (Per Page)	146.00	09/06/2022	2022-CMW-H-001700	146.00
01/06/2023	Copy Work (Per Page)	69.00	01/06/2023	2023-CMW-H-000015	69.00

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: Notice of Appeal Filed:
 Order Type:
 Documents Received: April 13, 2018

Court Below:

County:

Judge:

Docket Number:

Division:

OTN:

Judicial District:

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
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Date of Remand of Record:**BRIEFING SCHEDULE****Amicus Curiae**

Lehigh-Northampton Airport Authority
Brief

Due: July 19, 2021 Filed: July 16, 2021

Petitioner

The Borough of West Chester
Brief

Due: August 27, 2018 Filed: August 27, 2018
 Due: July 19, 2021 Filed: July 19, 2021
 Due: August 23, 2021 Filed: August 23, 2021

Reply Brief

Due: Filed: September 7, 2021

Respondent

Pennsylvania State System of Higher Education
Brief

Due: July 23, 2018 Filed: July 23, 2018
 Due: July 19, 2021 Filed: July 16, 2021
 Due: August 23, 2021 Filed: July 16, 2021

Reply Brief

Due: September 10, 2018 Filed: September 10, 2018
 Due: Filed: September 7, 2021

West Chester University of Pennsylvania of the State
System of Higher Education
Brief

Due: July 23, 2018 Filed: July 23, 2018
 Due: July 19, 2021 Filed: July 16, 2021
 Due: August 23, 2021 Filed: July 16, 2021

Reply Brief

Due: September 10, 2018 Filed: September 10, 2018
 Due: Filed: September 7, 2021

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
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Neither the Appellate Courts nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors or omissions on the docket sheets.

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
① April 13, 2018	Petition for Review Filed The Borough of West Chester		Petitioner	
April 18, 2018	Order Filed Brobson, P. Kevin			04/19/2018
②	Document Name: upon review of the "Action for Declaratory Judgment" filed in this matter, it appearing that Comment: petitioner seeks to challenge government action, the "Action for Declaratory Judgment" shall be docketed as a petition for review invoking this Court's original jurisdiction. Pa. R.A.P. 1501-1504. This matter shall proceed in accordance with Chapter 15 of the Pennsylvania Rules of Appellate Procedure.			
May 7, 2018	Entry of Appearance Kovatis, Stephen Ronald Kovatis, Stephen Ronald	Pennsylvania State System of Hi Respondent West Chester University of Penn Respondent		
May 9, 2018	Certificate of Service Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
May 11, 2018	Return of Service Sheriff Document Name: Sheriff's Return			
May 11, 2018	Return of Service Sheriff Document Name: Sheriff's Return			
May 22, 2018	Notice Exited Commonwealth Court Filing Office			05/22/2018
May 23, 2018	Entry of Appearance Mozdziok, Jeffrey Mozdziok, Jeffrey	Pennsylvania State System of Hi Respondent West Chester University of Penn Respondent		
③ May 23, 2018	Preliminary Objections Kovatis, Stephen Ronald Kovatis, Stephen Ronald Mozdziok, Jeffrey Mozdziok, Jeffrey	Pennsylvania State System of Hi Respondent West Chester University of Penn Respondent Pennsylvania State System of Hi Respondent West Chester University of Penn Respondent		
	Document Name: Respondent's P.O. to Petitioner's Action for Declaratory Judgment			
④ June 21, 2018	Answer to Preliminary Objections Gill, Michael Steven Camp, Kristin S.	The Borough of West Chester The Borough of West Chester	Petitioner Petitioner	
	Document Name: Petitioner's the Borough of West Chester's Response to Respondents' Preliminary Objection			
⑤ June 25, 2018	Order Filed Simpson, Robert E.			06/26/2018
	Document Name: Respondents' briefs in support of POs shall be filed by 7-23-18. Subsequent briefs shall be filed Comment: in accordance with Pa.R.A.P. 2185.			

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 260 MD 2018****Page 7 of 15****May 3, 2023****DOCKET ENTRY**

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 23, 2018	Respondent's Brief Filed Kovatis, Stephen Ronald Kovatis, Stephen Ronald	Pennsylvania State System of Hi West Chester University of Penn	Respondent Respondent	
6	Document Name: In support of P.O.'s			
August 27, 2018	Petitioner's Brief Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
7	Document Name: In opposition to P.O.'s			
September 10, 2018	Respondent's Reply Brief Filed Kovatis, Stephen Ronald Kovatis, Stephen Ronald	Pennsylvania State System of Hi West Chester University of Penn	Respondent Respondent	
8	Document Name: In support of P.O.'s			
November 1, 2018	Tentative Session Date Krimmel, Michael			
	Document Name: March 2019 (Philadelphia)			
February 6, 2019	Argument Scheduled Krimmel, Michael			02/06/2019
9	Document Name: For Wednesday, March 13, 2019 at 9:30 a.m. Before a panel of Judges sitting in Court Room No. 1 Comment: Ninth Floor, Widener Building, 1339 Chestnut Street, One South Penn Square, Philadelphia, PA 19107. Case No. 32			
July 15, 2019	Memorandum Opinion Filed Fizzano Cannon, Christine			07/15/2019
10	Document Name: Memorandum Opinion (13 pages) : The PO of the PSSHE and WCU is overruled. Respondents shall file an answer to the Borough of West Chester's declaratory judgment action within 30 days of the date of this order. See Memorandum Opinion Filed.			
August 14, 2019	Answer and New Matter Kovatis, Stephen Ronald Kovatis, Stephen Ronald Mozdziock, Jeffrey Mozdziock, Jeffrey	West Chester University of Penn Pennsylvania State System of Hi Pennsylvania State System of Hi West Chester University of Penn	Respondent Respondent Respondent Respondent	
	Document Name: Respondent's Answer and New Matter			
September 12, 2019	Application for Extension of Time to File Gill, Michael Steven	The Borough of West Chester	Petitioner	
12	Document Name: Extension Letter requesting an Extension of time for filing a Reply to Respondent's New Matter			
September 16, 2019	Order Granting Application for Extension of Time to File Brobson, P. Kevin			09/16/2019
13	Document Name: Upon consideration of Petitioner's unopposed request for an extension of time to file Reply to Respondent's New Matter, the request is granted. Petitioner shall file and serve its Reply to New Matter on or before September 17, 2019.			
September 16, 2019	Answer to New Matter Gill, Michael Steven	The Borough of West Chester	Petitioner	
14	Document Name: Petitioner's Reply to Respondent's New Matter			

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
December 3, 2019	Entry of Appearance Koopman, Ellen Blood	The Borough of West Chester	Petitioner	
July 10, 2020 (15)	Application for Relief Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order			
July 16, 2020	Order Granting Application for Relief Per Curiam			07/16/2020
	Document Name: NOW, July 16, 2020, upon consideration of Petitioner's "Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order," the Motion is GRANTED. In accordance with the parties' agreed-upon case management schedule, as modified by the Court, it is ORDERED that:			
(16)	<ol style="list-style-type: none"> 1. The parties shall complete all fact discovery no later than October 31, 2020; 2. The parties shall deliver any expert reports no later than December 31, 2020; 3. Any responsive or rebuttal expert reports shall be delivered no later than January 31, 2021; 4. The parties shall file and serve any dispositive motions and briefs (4 copies) in support thereof no later than March 31, 2021; 5. The parties shall file and serve any answers and briefs (4 copies) in opposition to the dispositive motions no later than April 30, 2021; 6. Any reply briefs (4 copies) in support of the dispositive motions shall be filed and served no later than May 14, 2021; and 7. The Prothonotary shall list the dispositive motions on the next available argument list upon completion of the briefing schedule. 8. In the event no party files a dispositive motion, Petitioner shall praecipe the Court for a status conference. 			
October 22, 2020	Application for Relief Gill, Michael Steven	The Borough of West Chester	Petitioner	
(17)	Document Name: Second Uncontested Motion for Entry of Agreed Upon Proposed Scheduling Order			
October 26, 2020	Order Granting Application for Relief Per Curiam			10/26/2020
	Document Name: NOW, October 26, 2020, upon consideration of Petitioner's "Second Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order," the Motion is GRANTED. In accordance with the parties' agreed-upon case management schedule, it is ORDERED that the Court's July 16, 2020 case management order is modified as follows:			
(18)	<ol style="list-style-type: none"> 1. The parties shall complete all fact discovery no later than December 11, 2020; 2. The parties shall deliver any expert reports no later than February 15, 2021; 3. Any responsive or rebuttal expert reports shall be delivered no later than March 15, 2021; 4. The parties shall file and serve any dispositive motions and briefs (4 copies) in support thereof no later than May 14, 2021; 5. The parties shall file and serve any answers and briefs (4 copies) in opposition to the dispositive motions no later than June 14, 2021; 6. Any reply briefs (4 copies) in support of the dispositive motions shall be filed and served no later than June 30, 2021; and 7. The Prothonotary shall list the dispositive motions on the next available argument list upon completion of the briefing schedule. 8. In the event no party files dispositive motions, Petitioner shall praecipe the Court for a status conference. 			

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 18, 2021 (19)	Application for Relief Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Third Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order			
March 19, 2021	Order Granting Application for Relief Per Curiam			03/19/2021
	Document Name: Order Granting Relief Regarding Schedule			
	Comment: NOW, March 19, 2021, upon consideration of the "Third Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order," which Petitioner The Borough of West Chester filed, the Motion is GRANTED. In accordance with the parties' agreed-upon case management schedule, it is ORDERED that the Court's October 26, 2020 case management order is modified as follows:			
(20)	<ol style="list-style-type: none"> 1. The parties shall complete all fact discovery no later than April 15, 2021; 2. The parties shall deliver any expert reports no later than April 30, 2021; 3. Any responsive or rebuttal expert reports shall be delivered no later than May 31, 2021; 4. The parties shall file and serve any dispositive motions and briefs (4 copies) in support thereof no later than July 1, 2021; 5. The parties shall file and serve any answers and briefs (4 copies) in opposition to the dispositive motions no later than August 2, 2021; 6. Any reply briefs (4 copies) in support of the dispositive motions shall be filed and served no later than September 2, 2021; and 7. The Prothonotary shall list the dispositive motions on the next available argument list upon completion of the briefing schedule. 8. In the event no party files a dispositive motion, Petitioner shall praecipe the Court for a status conference. 			
March 25, 2021	Entry of Appearance Cameron, Roger Philip	The Borough of West Chester	Petitioner	
	Document Name: Atty. Roger Cameron for The Borough of Chester			
June 29, 2021 (21)	Application for Relief Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Fourth Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 2, 2021	Order Granting Application for Relief Per Curiam Document Name: Scheduling Order Comment: NOW, July 2, 2021, upon consideration of the "Fourth Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order," which Petitioner The Borough of West Chester filed, the Motion is GRANTED. In accordance with the parties' agreed-upon case management schedule, it is ORDERED that the Court's March 19, 2021 case management order is modified as follows: 1. The parties shall deliver any outstanding responses to fact discovery no later than July 5, 2021; 2. The parties shall deliver any responsive or rebuttal expert reports no later than July 5, 2021; 3. The parties shall file and serve any dispositive motions and briefs (4 copies) in support thereof no later than July 19, 2021; 4. The parties shall file and serve any answers and briefs (4 copies) in opposition to the dispositive motions no later than August 20, 2021; 5. Any reply briefs (4 copies) in support of the dispositive motions shall be filed and served no later than September 7, 2021; and 6. The Prothonotary shall list the dispositive motions on the next available argument list upon completion of the briefing schedule. 7. In the event no party files a dispositive motion, Petitioner shall praecipe the Court for a status conference.			07/02/2021
July 16, 2021	Entry of Appearance Christakis, Aristidis William Document Name: Atty. Christakis for Petitioner	The Borough of West Chester	Petitioner	
July 16, 2021	Amicus Curiae Brief Freedberg, Robert A. Lehigh-Northampton Airport Authority Document Name: 4	Lehigh-Northampton Airport Auth	Amicus Curiae Amicus Curiae	
July 16, 2021	Application for Relief Kovatis, Stephen Ronald Kovatis, Stephen Ronald Document Name: Respondent's Motion for Summary Judgment	Pennsylvania State System of Hi West Chester University of Penn	Respondent Respondent	
July 16, 2021	Respondent's Brief Filed Pennsylvania State System of Higher Education West Chester University of Pennsylvania of the State System of Higher Education Document Name: In support of motion for summary judgment		Respondent Respondent	
July 19, 2021	Application for Summary Relief Cameron, Roger Philip Christakis, Aristidis William Gill, Michael Steven Document Name: Petitioner the Borough of West Chester's Application and Motion for Summary Relief	The Borough of West Chester The Borough of West Chester The Borough of West Chester	Petitioner Petitioner Petitioner	

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 260 MD 2018****Page 11 of 15****May 3, 2023****DOCKET ENTRY**

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 19, 2021 27	Petitioner's Brief Filed The Borough of West Chester		Petitioner	
	Document Name: Brief in Support of Motion for Summary Relief			
August 19, 2021 28	Application for Relief Christakis, Aristidis William	The Borough of West Chester	Petitioner	
	Document Name: Fifth Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order			
August 20, 2021	Order Granting Application for Relief Per Curiam			08/20/2021
	Document Name: Relief Granted			
	Comment: NOW, August 20, 2021, upon consideration of Petitioner's "Fifth Uncontested Motion for Entry of Agreed-Upon Proposed Scheduling Order" (Motion), the Motion is GRANTED. In accordance with the parties' agreed-upon case management schedule, it is ORDERED that the Court's July 2, 2021 case management order is modified as follows: 1. Petitioner shall file Petitioner's Brief in Opposition to Respondents' Motion for Summary Judgment on or before August 23, 2021.			
August 20, 2021 30	Answer Filed Kovatis, Stephen Ronald	Pennsylvania State System of Hi Respondent		
	Kovatis, Stephen Ronald	West Chester University of Penn Respondent		
	Document Name: Respondent's Answer to Petitioner's Motion for Summary Relief			
August 20, 2021 31	Respondent's Brief Filed Pennsylvania State System of Higher Education		Respondent	
	West Chester University of Pennsylvania of the State System of Higher Education		Respondent	
	Document Name: Respondent's Brief in Opposition to Motion for Summary Adjudication			
August 23, 2021 32	Answer Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Cameron, Roger Philip	The Borough of West Chester	Petitioner	
	Christakis, Aristidis William	The Borough of West Chester	Petitioner	
	Document Name: Answer of Petitioner the Boro of West Chester in Oppostion to Resp. Mot. for Sum. Judg.			
August 23, 2021 33	Petitioner's Brief Filed Christakis, Aristidis William	The Borough of West Chester	Petitioner	
	The Borough of West Chester		Petitioner	
	Document Name: Brief in Opposition to Summary Judgment			
September 7, 2021 34	Respondent's Brief Filed Kovatis, Stephen Ronald	Pennsylvania State System of Hi Respondent		
	Kovatis, Stephen Ronald	West Chester University of Penn Respondent		
	Pennsylvania State System of Higher Education		Respondent	
	West Chester University of Pennsylvania of the State System of Higher Education		Respondent	
	Document Name: Reply Brief In futher support of motion for summary judgment			

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 260 MD 2018****Page 12 of 15****May 3, 2023****DOCKET ENTRY**

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 7, 2021 (35)	Petitioner's Reply Brief Filed Christakis, Aristidis William The Borough of West Chester	The Borough of West Chester	Petitioner Petitioner	
October 5, 2021	Tentative Session Date Krimmel, Michael Document Name: December 2021			
November 10, 2021 (36)	Argument Scheduled Krimmel, Michael Document Name: Wednesday, December 15, 2021, 9:30 a.m. (En Banc) CR 5001, Pennsylvania Judicial Center, Harrisbu Comment: No. 27 on the list.			
November 16, 2021 (37)	Letter Krimmel, Michael Document Name: Letter to counsel requesting additional copies of documents previously filed			
November 17, 2021	Argument Continued Per Curiam Document Name: To Next Available En Banc List Comment: Now, November 17, 2021, argument currently scheduled before the Court en banc on December 15, 2021, is CONTINUED and shall be relisted for oral argument before the Court en banc on the next available argument list.			11/17/2021
May 31, 2022	Praecipe for Withdrawal of Appearance Koopman, Ellen Blood Document Name: For Ellen B. Koopman, Esquire	The Borough of West Chester	Petitioner	
July 19, 2022	Tentative Session Date Krimmel, Michael Document Name: September 2022			
August 4, 2022 (39)	Argument Scheduled Krimmel, Michael Document Name: Wednesday, September 14, 2022, 9:30 a.m. (En Banc), CR 5001, Pennsylvania Judicial Center, Comment: Harrisburg No. 26 on the list.			
September 8, 2022 (40)	Notice Commonwealth Court of Pennsylvania Document Name: Notice - Amended COVID-19 Protocols For In-Person Proceedings and Oral Argument Sessions			

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 260 MD 2018****Page 13 of 15****May 3, 2023****DOCKET ENTRY**

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
January 4, 2023	Motion for Summary Judgment Granted Fizzano Cannon, Christine			01/12/2023
	Document Name: Memorandum Opinion: PASSHE's Motion for Sum. Judg. is GRANTED / Cross-App. for Sum. Relief is D			
	Comment: AND NOW, this 4th day of January, 2023, the motion for summary judgment filed by the Pennsylvania State System of Higher Education and West Chester University of Pennsylvania is GRANTED. The cross-application for summary relief filed by the Borough of West Chester (Borough) is DENIED.			
	Judge Dumas did not participate in the decision of this case.			
	* This Memorandum Opinion has been re-certified on 1/12/2023 due to an incorrect exit stamp. *			
February 1, 2023	Notice of Appeal to PA Supreme Court Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: 9 MAP 2023			
February 1, 2023	Filed - Other Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: 9 MAP 2023-Jurisdictional Statement.			
February 1, 2023	Application to Publish Opinion Kovatis, Stephen Ronald	Pennsylvania State System of Hi Respondent		
	Kovatis, Stephen Ronald	West Chester University of Penn Respondent		
February 2, 2023	Praecepte for Withdrawal of Appearance Cameron, Roger Philip	The Borough of West Chester	Petitioner	
	Document Name: for Roger P. Cameron			
February 3, 2023	Application to Publish Opinion Immel, Jeffrey	Allegheny County Airport Authorit Other		
	Webster, Hobart James	Allegheny County Airport Authorit Other		
	Document Name: Allegheny County Airport Authority			
February 3, 2023	Application to Publish Opinion Macfarlan, Tad John	Pennsylvania Chamber of Busine Other		
	Macfarlan, Tad John	Pennsylvania Aggregates and Cc Other		
	Vaitl, Jonathan Richard	Pennsylvania Chamber of Busine Other		
	Vaitl, Jonathan Richard	Pennsylvania Aggregates and Cc Other		
	Weston, R. Timothy	Pennsylvania Chamber of Busine Other		
	Weston, R. Timothy	Pennsylvania Aggregates and Cc Other		
	Document Name: PACA and PA Chamber of Industry			
February 3, 2023	Application to Publish Opinion Bee, John Caleb	Seda-Cog Joint Rail Authority	Possible Intervenor	
	Document Name: App. to report Opinion and App. for leave to intervene to PA. R.A.P. NO. 1531(b)			
February 15, 2023	Answer Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Petitioner's answer to respondents' application to publish memorandum opinion			
February 15, 2023	Certificate of Service Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	

Miscellaneous Docket Sheet

Docket Number: 260 MD 2018

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May 3, 2023



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 17, 2023	Answer Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Petitioner's Answer to Application to Publish			
February 17, 2023	Answer Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Petitioner's answer to App to report opinion and app for leave to intervene pursuant			
February 17, 2023	Answer Filed Gill, Michael Steven	The Borough of West Chester	Petitioner	
	Document Name: Petitioner answer to Paca's and Pa Chamber's application to report unreported opinion			
February 17, 2023	Amended Certificate of Service The Borough of West Chester		Petitioner	
March 14, 2023	Order Granting Application to Publish Opinion Fizzano Cannon, Christine			03/14/2023
	Document Name: January 4, 2023 Opinion shall be reported			
	Comment: AND NOW, this 14th day of March, 2023, it is hereby ordered that the above-captioned opinion filed January 4, 2023, shall be designated OPINION rather than MEMORANDUM OPINION and it shall be reported.			
March 14, 2023	Order Filed Per Curiam			03/14/2023
	Document Name: Application for Leave to Intervene Dismissed as Moot			
	Comment: AND NOW, this 14th day of March, 2023, the "Application for Leave to Intervene Pursuant to Pa. R.A.P. No. 1531(b)" filed on February 3, 2023, by SEDA-COG Joint Rail Authority, is DISMISSED as moot.			
May 3, 2023	Notice Commonwealth Court Filing Office			
	Document Name: 9 MAP 2023-Record forwarded to the Supreme Court of PA, Middle District.			

SESSION INFORMATION

Journal Number: 26-09-2022
Consideration Type: En Banc Argument
Listed/Submitted Date: September 14, 2022

DISPOSITION INFORMATION

Final Disposition: No

Miscellaneous Docket Sheet

Docket Number: 260 MD 2018

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May 3, 2023



DISPOSITION INFORMATION

Related Journal No:		Judgment Date:	
Category:	Decided	Disposition Author:	Fizzano Cannon, Christine
Disposition:	Motion for Summary Judgment Granted	Disposition Date:	January 4, 2023

Disposition Comment: AND NOW, this 4th day of January, 2023, the motion for summary judgment filed by the Pennsylvania State System of Higher Education and West Chester University of Pennsylvania is GRANTED. The cross-application for summary relief filed by the Borough of West Chester (Borough) is DENIED.

Judge Dumas did not participate in the decision of this case.

* This Memorandum Opinion has been re-certified on 1/12/2023 due to an incorrect exit stamp. *

Dispositional Filing:	Opinion	Filing Author:	Fizzano Cannon, Christine
Filed Date:	1/4/2023 12:00:00AM		

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER
829 Paoli Pike
West Chester, Pennsylvania 19380-4551

Plaintiff

v.

**PENNSYLVANIA STATE SYSTEM
OF HIGHER EDUCATION**
2986 North Second Street
Harrisburg, Pennsylvania 17110-1201

&

**WEST CHESTER UNIVERSITY
OF PENNSYLVANIA OF THE
STATE SYSTEM OF HIGHER EDUCATION**

Defendants

Original Jurisdiction

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearances on behalf of Plaintiff Borough of West Chester in the above-captioned matter.

Date: April 13, 2018

Respectfully submitted,

BUCKLEY, BRION, MCGUIRE & MORRIS LLP

By: 
Michael S. Gill, Esquire

By: 
Kristin S. Camp, Esquire

Attorneys for Plaintiff
Borough of West Chester

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER
829 Paoli Pike
West Chester, Pennsylvania 19380-4551

Plaintiff

v.

**PENNSYLVANIA STATE SYSTEM
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2986 North Second Street
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**WEST CHESTER UNIVERSITY
OF PENNSYLVANIA OF THE
STATE SYSTEM OF HIGHER EDUCATION**

Defendants

Original Jurisdiction

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Acton for Declaratory Judgment and notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Action for Declaratory Judgment or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL AND INFORMATION SERVICE

Chester County Bar Association
15 West Gay Street,
West Chester, Pennsylvania 19380
(610) 429-1500

Respectfully submitted,

**BUCKLEY, BRION,
MCGUIRE, & MORRIS LLP**

By: 
Kristin S. Camp, Esquire
Attorney ID No. 74593
kcamp@buckleyllp.com

By: 
Michael S. Gill, Esquire
Attorney ID No. 86140
gillm@buckleyllp.com

118 West Market Street
West Chester, Pennsylvania 19382

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER
829 Paoli Pike
West Chester, Pennsylvania 19380-4551

Plaintiff

v.

**PENNSYLVANIA STATE SYSTEM
OF HIGHER EDUCATION**
2986 North Second Street
Harrisburg, Pennsylvania 17110-1201

&

**WEST CHESTER UNIVERSITY
OF PENNSYLVANIA OF THE
STATE SYSTEM OF HIGHER EDUCATION**

Defendants

Original Jurisdiction

ACTION FOR DECLARATORY JUDGMENT

Plaintiff Borough of West Chester, by and through its undersigned counsel, Kristin S. Camp, Esquire, Michael S. Gill, Esquire, and Buckley, Brion, McGuire & Morris LLP, hereby brings this Action for Declaratory Judgment against Defendant

Pennsylvania State System of Higher Education and Defendant West Chester University of Pennsylvania of the State System of Higher Education and, in support thereof, avers as follows:

Identification of Parties; Jurisdiction; Venue.

1. Plaintiff is the Borough of West Chester (the "Borough").
2. The Borough is a Home Rule Municipality organized and existing under and pursuant to the laws of the Commonwealth of Pennsylvania including, without limitation, the Pennsylvania Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901 *et seq.*
3. The Borough has a mailing address at 829 Paoli Pike, West Chester, Pennsylvania 19380-4551.
4. Pursuant to Article II of the Home Rule Charter of the Borough, the governing body of the Borough is the Borough Council ("Borough Council").
5. Defendants are Pennsylvania State System of Higher Education ("PASSHE"), and West Chester University of Pennsylvania of the State System of Higher Education ("WCU").
6. Pursuant to 24 P.S. § 20-2002-A.(a), PASSHE is a body corporate and politic constituting a public corporation and instrumentality of the Commonwealth of Pennsylvania.

7. Upon information and belief, PASSHE has a mailing address at 2986 North Second Street, Harrisburg, Pennsylvania 17110-1201.
8. Pursuant to 24 P.S. § 20-2002-A.(a), WCU is a constituent institution within PASSHE.
9. Upon information and belief, WCU has a mailing address at 700 South High Street, West Chester, Pennsylvania 19383.
10. The jurisdictional limits of the Borough extend over an area measuring 1.8 square miles, more or less, within an area generally *situate* within the geographic center of Chester County.
11. A large part of that portion of the campus of WCU known, generally, as North Campus (“North Campus”), is *situate* within the south-central portion of the area which is within the jurisdictional limits of the Borough, as aforesaid.
12. Upon information and belief, the area of North Campus within the jurisdictional limits of the Borough measures approximately fifty-seven (57) acres.
13. Upon information and belief, PASSHE, in the name of the Commonwealth of Pennsylvania, is the owner of fee simple title to those properties which form a part of North Campus within the jurisdictional limits of the Borough and which are more fully identified on Exhibit A attached hereto and incorporated herein by reference (collectively, the “Commonwealth Titled Properties”).

14. Upon information and belief, WCU is the owner of fee simple title to those properties which form a part of North Campus within the jurisdictional limits of the Borough and which are more fully identified on **Exhibit B** attached hereto and incorporated herein by reference (collectively, the “WCU Titled Properties”).
15. In or about 2016, Borough Council enacted the Borough of West Chester’s Stream Protection Fee Ordinance (the “Stream Protection Ordinance”).
16. A true, correct, and complete copy of the presently-in-force version of the Stream Protection Ordinance is attached hereto as **Exhibit C**.
17. On September 21, 2016, Borough Council adopted Resolution No. 11-2016, and thereby imposed the Stream Protection Fee (as hereinafter defined) upon the owners of all developed properties within the jurisdictional limits of the Borough which are benefitted by (A) the Borough Stormwater Collection and Conveyance System (as hereinafter defined) and (B) the public health, safety, and welfare enhancements which are afforded by Borough Stormwater Collection and Conveyance System.
18. A true, correct, and complete copy of Resolution No. 11-2016 is attached hereto as **Exhibit D**.
19. The Commonwealth Titled Properties and the WCU Titled Properties are subject to, and benefitted by (A) the Borough Stormwater Collection and Conveyance System and (B) the public health, safety, and welfare

enhancements which are afforded by the Borough Stormwater Collection and Conveyance System.

20. Notwithstanding that the Commonwealth Titled Properties and the WCU Titled Properties are subject to, and benefitted by (A) the Borough Stormwater Collection and Conveyance System and (B) the public health, safety, and welfare enhancements which are afforded by the Borough Stormwater Collection and Conveyance System, as aforesaid, on January 18, 2018, counsel for PASSHE sent to the Borough the letter attached hereto as **Exhibit E** (the "January 18, 2018 Letter").
21. Pursuant to the January 18, 2018 Letter, PASSHE informed the Borough that WCU "will not be paying the" Stream Protection Fee.
22. On February 23, 2018, counsel for the Borough sent to counsel for PASSHE the letter attached hereto as **Exhibit F** (the "February 23, 2018 Letter").
23. On March 5, 2018, counsel for the Borough sent to counsel for PASSHE the letter attached hereto as **Exhibit G** (the "March 5, 2018 Letter").
24. Pursuant to the February 23, 2018 Letter and the March 5, 2018 Letter, the Borough rejected PASSHE's and WCU's refusal to pay the Stream Protection Fee, and reiterated the Borough's expectation that those entities would, in fact, remit such payment.

25. As of the date of this Action for Declaratory Judgment, PASSHE and WCU have failed to remit payment of the Stream Protection Fee for 2017 and 2018.¹
26. The Borough brings this Action for Declaratory Judgment pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. § 7531 *et seq.*, in order to obtain from the Commonwealth Court a “declaration of rights, status, or other legal relations” between the Borough, PASSHE, and WCU with regard to the Stream Protection Ordinance, generally, and the Stream Protection Fee, specifically.
27. Pursuant to Section 761 of the Pennsylvania Judicial Code, “[t]he Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . [a]gainst the Commonwealth government, including any officer thereof [] acting in his official capacity” 42 Pa.C.S. § 761.
28. The Commonwealth Court has subject matter jurisdiction over this Action for Declaratory Judgment.
29. The Commonwealth Court has *in personam* jurisdiction over PASSHE and WCU.
30. The Commonwealth Court is the proper venue for this matter.

¹ The first year for which payment of the Stream Protection Fee was due was 2017.

Regulatory Requirements.

31. The Borough owns and operates a Small Municipal Separate Storm Sewer System (MS4), as that term is defined at Section 122.26(b)(16) of Title 40 of the Code of Federal Regulations (the “Borough Stormwater Collection and Conveyance System”).
32. The Borough Stormwater Collection and Conveyance System is a Small MS4, as that term is defined at Section 122.26(b)(17) of Title 40 of the Code of Federal Regulations.
33. Stormwater from the Borough Stormwater Collection and Conveyance System is discharged to various watercourses including Plum Run, Blackhorse Run, Taylor Run (and from those watercourse, to Brandywine Creek), and Goose Creek.
34. Pursuant to Section 122.26(a)(9)(i)(A) of Title 40 of the Code of Federal Regulations, in order for stormwater from the Borough Stormwater Collection and Conveyance System to be lawfully discharged, as aforesaid, the Borough must be covered under a National Pollutant Discharge Elimination System Permit (NPDES Permit).
35. Pursuant to Section 92a.32.(a) of Title 25 of the Pennsylvania Code, “[t]he provisions of 40 CFR 122.26(a), (b), (c)(1), (d), (e)(1), (3)-(9) and (f)-(g) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)) and 122.30-122.37 are incorporated [therein] by reference.”

36. In 2013, the Borough obtained NPDES Permit coverage for the Borough Stormwater Collection and Conveyance System under General Permit PAG-13 pursuant to NPDES Permit No. PAG130002 (the “Pre-Existing Borough MS4 NPDES Permit”).
37. Pursuant to applicable law, the Pre-Existing Borough MS4 NPDES Permit was due to expire on March 15, 2018.²
38. Several years ago, the Commonwealth of Pennsylvania Department of Environmental Protection (the “Department”) announced that it would replace General Permit PAG-13 with a new statewide General Permit to be known as the 2018 PAG-13 (the “2018 Statewide General Permit”).
39. On August 21, 2017, and pursuant to applicable law, the Borough submitted to the Department the Borough’s application for NPDES Permit No. PAI130026 (the “2018-2023 Term Borough MS4 Individual NPDES Permit Application”).³

² Notwithstanding that the Pre-Existing Borough MS4 NPDES Permit was due to expire on March 15, 2018, before that date the Department informed the Borough as follows.

The current statewide PAG-13 General Permit expires on March 15, 2018. A new PAG-13 General Permit becomes effective on March 16, 2018. If you are currently covered by the PAG-13 General Permit, as long as you have submitted a timely Notice of Intent (NOI) or individual permit application to renew your permit coverage, you are automatically covered by the new PAG-13 General Permit on March 16, 2018, and you must comply with the terms and conditions of the new General Permit, including any new requirements contained therein. This is true regardless of the expiration date of coverage identified on page 1 of the authorization to discharge under PAG-13 that you may have received in 2013 or 2014.

³ Because at least one watercourse to which the Borough Stormwater Collection and Conveyance System discharges is impaired for chemical nutrient levels (*i.e.* Goose Creek) and requires implementation of a TMDL (Total Maximum Daily Load) with regard to that nutrient, the Borough is not eligible for coverage under the 2018 Statewide General Permit. Rather, the Borough must obtain coverage pursuant to an Individual NPDES Permit. In

40. Pursuant to applicable law including, without limitation, Section 92a.32.(c) of Title 25 of the Pennsylvania Code, the Borough included within the 2018-2023 Term Borough MS4 Individual NPDES Permit Application information with regard to the following Minimum Control Measures which form the basis of the Borough's Stormwater Management Program of Best Management Practices (collectively, the "Minimum Control Measures"):
- A. public education & outreach;
 - B. public participation/involvement;
 - C. illicit discharge detection & elimination;
 - D. construction site runoff control;
 - E. post-construction runoff control; and
 - F. pollution prevention/good housekeeping.
41. As part of its preparation of the 2018-2023 Term Borough MS4 Individual NPDES Permit Application, the Borough was also required to prepare, as applicable, a Pollutant Reduction Plan (collectively, the "Pollutant Reduction Plan") and a TMDL Plan (the "TMDL Plan") with regard to those watercourses (A) to which the Borough discharges stormwater from the Borough Stormwater Collection and Conveyance System and (B) which are impaired for sediment and/or nutrients.⁴
42. The Pollutant Reduction Plan, as attached hereto as **Exhibit H**, forms a part of the 2018-2023 Term Borough MS4 Individual NPDES Permit Application.

order to obtain coverage pursuant to an Individual NPDES Permit, though, the Borough must still comply with, *inter alia*, the requirements as set forth in the 2018 Statewide General Permit.

⁴ Plum Run, Blackhorse Run, Taylor Run and Brandywine Creek are all impaired for sediment. Goose Creek is impaired for total phosphorus.

43. The TMDL Plan, as attached hereto as **Exhibit I**, forms a part of the 2018-2023 Term Borough MS4 Individual NPDES Permit Application.
44. The Borough expects that the Department will approve the 2018-2023 Term Borough MS4 Individual NPDES Permit Application and, in doing so, will issue to the Borough NPDES Permit No. PAI130026 (the “2018-2023 Term Borough MS4 Individual NPDES Permit”).
45. The Borough expects that, pursuant to the 2018-2023 Term Borough MS4 Individual NPDES Permit, the Borough will be required to implement the Pollutant Reduction Plan and the TMDL Plan.

Stormwater-Related Impairment; Public Health, Safety, and Welfare Concerns.

46. As noted by the Department,

[i]n 2016, the Department labeled approximately 19,000 miles of rivers and streams in Pennsylvania impaired for water supply, aquatic life, recreation, or fish consumption. Stormwater runoff pollution is one of the biggest reasons for this impairment.

<http://www.dep.pa.gov/Business/Water/CleanWater/StormwaterMgmt/Pages/Be-Stormwater-Smart-.aspx>

47. The United States Environmental Protection Agency states that

[s]torm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating

pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

40 C.F.R. § 122.30(c).

48. The Department states that

[s]tormwater carries an enormous amount of pollution, including sediment, car oil, lawn fertilizers, pesticides, pet poop (and viruses and bacteria), and cigarette butts. As you might expect, this has many negative impacts on streams and rivers.

<http://www.dep.pa.gov/Business/Water/CleanWater/StormwaterMgmt/Pages/Be-Stormwater-Smart-.aspx>

49. In order to address these (and other) findings, the Borough must comply with certain regulatory requirements with regard to stormwater including, *inter alia*, those to which reference is made in this Action for Declaratory Judgment.

50. Upon information and belief, there is a direct relationship between the amount of impervious surface within a given watershed and the health and quality of the watercourse (and its tributaries) within that watershed, as well as public health, safety, and welfare concerns related to flooding and other stormwater-related issues.

51. Upon information and belief, the impervious area of that portion of North Campus which is *situate* within the jurisdictional limits of the Borough

measures approximately thirty-two (32) acres (the “North Campus Impervious Area”).

52. Upon information and belief, the North Campus Impervious Area constitutes nearly eight percent (8%) of the total impervious area within the Borough.
53. Upon information and belief, stormwater which flows from that portion of North Campus which is *situate* within the jurisdictional limits of the Borough either (A) enters and flows through the Borough Stormwater Collection and Conveyance System via infrastructure which traverses certain parts of North Campus or (B) flows directly into a nearby watercourse.
54. Upon information and belief, stormwater which flows from that portion of North Campus which is *situate* within the jurisdictional limits of the Borough and which enters the Borough Stormwater Collection and Conveyance System, as aforesaid, is, from there, discharged to a receiving watercourse.
55. Stormwater from the Borough Plum Run Watershed ultimately flows to Brandywine Creek.
56. Upon information and belief, Plum Run is characterized by an impaired status due to siltation (the “Plum Run Stormwater-Related Impairment”).
57. Upon information and belief, Brandywine Creek is characterized by an impaired status due to siltation (the “Brandywine Creek Stormwater-Related Impairment”).

58. Pursuant to applicable law, the Borough is implementing Minimum Control Measures and the Selected BMPs in order to remediate existing and ongoing stormwater-related damage to certain watercourses including, *inter alia*, the Plum Run Stormwater-Related Impairment and the Brandywine Creek Stormwater-Related Impairment.
59. Pursuant to the Pollutant Reduction Plan, by the date which is five (5) years from the date on which the Department shall issue to the Borough the 2018-2023 Term Borough MS4 Individual NPDES Permit, the Minimum Control Measures and the Selected BMPs (as hereinafter defined) (which the Borough is implementing pursuant to the Pollutant Reduction Plan) must operate to remove 59,879 pounds of sediment from Brandywine Creek per year (*i.e.* ten percent (10%) of the existing annual load of sediment within Brandywine Creek).⁵
60. As more fully set forth in the Pollutant Reduction Plan, the Borough anticipates that implementation of the Minimum Control Measures and the Selected BMPs will allow the Borough to realize a reduction of 67,271 pounds per year.
61. Stormwater from properties *situate* within the jurisdictional limits of the Borough drains to Goose Creek.
62. Upon information and belief, Goose Creek is characterized by an impaired status due to total phosphorus (the “Goose Creek Impairment”).

⁵ As more fully set forth in the Pollutant Reduction Plan and the TMDL Plan, the Borough intends to accomplish the goals there set forth through, *inter alia*, the construction of infiltration facilities, street sweeping, new tree plantings, and streambank restoration projects (collectively, the “Selected BMPs”).

63. Pursuant to the TMDL Plan, the Borough is implementing Minimum Control Measures and the Selected BMPs in order to remediate existing and ongoing stormwater-related damage to certain watercourses including, *inter alia*, the Goose Creek Impairment.
64. Pursuant to the TMDL Plan, by the date which is five (5) years from the date on which the Department shall issue to the Borough the 2018-2023 Term Borough MS4 Individual NPDES Permit, the Minimum Control Measures and the Selected BMPs must operate to remove from Goose Creek 4.56 pounds per year of total phosphorus.
65. As more fully set forth in the TMDL Plan, the Borough anticipates that implementation of the Minimum Control Measures and the Selected BMPs will allow the Borough to realize (and exceed) the aforementioned total phosphorus removal goal.
66. Implementation of the Minimum Control Measures and the Selected BMPs will allow the Borough to realize the public health, safety, and welfare goals as more fully set forth in the Stream Protection Ordinance.

The Stream Protection Ordinance and the Stream Protection Fee.

67. In December of 2013, the Borough Stormwater Management Assessment Advisory Committee recommended adoption of a stormwater fee to fund compliance with the stormwater-related regulatory requirements which are imposed upon the Borough by the United States of America and the Commonwealth of Pennsylvania.

68. The then-WCU Vice President for Administration and Finance (Mr. Mark P. Mixner) was a member of the Borough Stormwater Management Assessment Advisory Committee and participated fully in that body's deliberations and discussions.
69. Borough Council adopted the Stream Protection Ordinance after making the legislative findings set forth in that document.
70. Those legislative findings include the truism that
- [i]nadequate management of accelerated stormwater runoff resulting from land disturbance and development throughout a watershed can harm water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream beds and stream banks, thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations such as sediments, nutrients, heavy metals, and pathogens.
71. Those legislative findings also include acknowledgment of the fact that “[t]he Borough must adhere to increased regulatory requirements for managing the quantity and quality of stormwater runoff.”
72. Pursuant to applicable law, when it prepared the Pollutant Reduction Plan and the TMDL Plan, the Borough was required to identify the proposed mechanisms by which the Borough would fund the Selected BMPs.
73. At Section 94A-6.A. of the Stream Protection Ordinance, Borough Council adopted a fee (the “Stream Protection Fee”) as the mechanism by which the

Borough would raise revenue to fund the Selected BMPs and the Minimum Control Measures, and ordained as follows:

[f]or the use of, benefit by and the services rendered by the [Borough Stormwater Collection and Conveyance System], including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, a stream protection fee . . . as described, defined, and calculated herein is imposed upon each and every developed property within the Borough that is connected with, uses, is served by or is benefitted by the [Borough Stormwater Collection and Conveyance System], either directly or indirectly, and upon the owners of such developed property as set forth herein.

74. Properties for which the Stream Protection Fee is payable are characterized not by the fact that they are *situate* within the jurisdictional limits of the Borough but, rather, by their status as “developed” property which is “connected with, uses, is served by or is benefitted by” the Borough Stormwater Collection and Conveyance System.

75. Pursuant to the Stream Protection Ordinance, the term “developed” is defined as

[p]roperty where manmade changes have been made which add impervious surfaces to the property, which changes may include, but are not limited to, buildings or other structures for which a building permit must be obtained under the requirements of the Pennsylvania Building Code and [the Borough] Code, mining, dredging, filling, grading, paving, excavation or drilling operations, or the storage of equipment or materials.

76. Each of the Commonwealth Titled Properties and the WCU Titled Properties is developed, as that term is defined in the Stream Protection Ordinance.
77. Each of the Commonwealth Titled Properties and the WCU Titled Properties is connected with, uses, is served by, or is benefitted by the Borough Stormwater Collection and Conveyance System.
78. The amount of the Stream Protection Fee for which the owner of a developed property is responsible is dependent upon the amount of impervious surface at the subject property.
79. Pursuant to the Stream Protection Ordinance, the owner of a developed property can reduce the amount of the Stream Protection Fee with regard to that property by reducing the amount of impervious surface at that property or otherwise achieving site-specific credits against the Stream Protection Fee.
80. Pursuant to the Stream Protection Ordinance, Borough Council established “[i]mpervious area property tiers . . . [f]or the purposes of determining the appropriate assessment rate for the [Stream Protection Fee]”
81. Borough Council ordained that “[i]mpervious area property tiers were developed using impervious surfaces based on Chester County’s geographic information system (GIS) impervious cover data layer from 2010.”
82. As so established, a “Tier 4” property is one “where the total impervious surface area is greater than 2,000 square feet and less than or equal to 2,500 square feet.”

83. As so established, a “Tier 5” property is one “where the total impervious surface area is greater than 2,500 square feet and less than or equal to 3,000 square feet.”
84. As so established, a “Tier 6” property is one “where the total impervious surface area is greater than 3,000 square feet.”
85. Several of the Commonwealth Titled Properties and the WCU Titled Properties are either a Tier 4 property or a Tier 5 property, but most of the Commonwealth Titled Properties and the WCU Titled Properties are Tier 6 properties.
86. For purposes of calculating the Stream Protection Fee for a given property, Borough Council (acting pursuant to the Stream Protection Ordinance) adopted Resolution No. 11-2016.
87. Pursuant to Resolution No. 11-2016, Borough Council established the monthly amount of the “Base Fee,” as that term is defined in the Stream Protection Ordinance, at \$6.70 per 1,000 square feet of impervious cover on a given property.
88. All revenue generated by the Stream Protection Fee is, and will continue to be, “deposited into the West Chester Borough Stormwater Management Fund.”

89. The Borough uses the Stormwater Management Fund **only** for the purposes set forth in the Stream Protection Ordinance, which, by extension, include (but are not limited to) funding the Minimum Control Measures and Best Management Practices as set forth in the Pollutant Reduction Plan and the TMDL (as the same may be renewed, revised, updated, or otherwise amended from time-to-time) in order to comply with the regulatory requirements which are imposed upon the Borough by the United States of America and Commonwealth of Pennsylvania, respectively.
90. No revenue generated by the Stream Protection Fee will be used for any purpose other than as set forth in the Stream Protection Ordinance.

The Stream Protection Fee Invoices; Refusal to Pay.

91. The Borough sent to PASSHE the invoices attached hereto, collectively, as **Exhibit J**, and incorporated herein by reference (collectively, the “2017 Commonwealth Titled Properties Stream Protection Fee Invoices”).
92. The aggregate face value of amounts due under the 2017 Commonwealth Titled Properties Stream Protection Fee Invoices is One Hundred Five Thousand Seven Hundred Sixty and 85/100 Dollars (\$105,760.85).
93. The Borough sent to WCU the invoices attached hereto, collectively, as **Exhibit K**, and incorporated herein by reference (collectively, the “2017 WCU Titled Properties Stream Protection Fee Invoices”).

94. The aggregate face value of amounts due under the 2017 WCU Titled Properties Stream Protection Fee Invoices is Five Thousand Eight Hundred Fifty-Five and 81/100 Dollars (\$5,855.81).
95. The aggregate face value of the Stream Protection Fee for 2017 owed by PASSHE and WCU is One Hundred Eleven Thousand Six Hundred Sixteen and 66/100 Dollars (\$111,616.66) (the “2017 PASSHE/WCU Stream Protection Fee”).
96. The deadline for payment of the 2017 PASSHE/WCU Stream Protection Fee passed without PASSHE and/or WCU remitting to the Borough payment of the 2017 PASSHE/WCU Stream Protection Fee.
97. The Borough sent to PASSHE the invoices attached hereto, collectively, as **Exhibit L**, and incorporated herein by reference (collectively, the “2018 Commonwealth Titled Properties Stream Protection Fee Invoices”).⁶
98. The aggregate face value of amounts due under the 2018 Commonwealth Titled Properties Stream Protection Fee Invoices is One Hundred Thirteen Thousand Four Hundred Sixty-Seven and 33/100 Dollars (\$113,467.33).
99. The Borough sent to WCU the invoices attached hereto, collectively, as **Exhibit M**, and incorporated herein by reference (collectively, the “2018 WCU Titled Properties Stream Protection Fee Invoices”).

⁶ That certain property known as Tax Map Parcel No. 1-12-244 was not included in the 2017 Commonwealth Titled Properties Stream Protection Fee Invoices, but is included in the 2018 Commonwealth Titled Properties Stream Protection Fee Invoices.

100. The aggregate face value of amounts due under the 2018 WCU Titled Properties Stream Protection Fee Invoices is Five Thousand Eight Hundred Fifty-Five and 81/100 Dollars (\$5,855.81).
101. The aggregate face value of the Stream Protection Fee for 2018 owed by PASSHE and WCU is One Hundred Nineteen Thousand Three Hundred Twenty-Three and 14/100 Dollars (\$119,323.14) (the “2018 PASSHE/WCU Stream Protection Fee”).
102. The deadline for payment of the 2018 PASSHE/WCU Stream Protection Fee passed without PASSHE and/or WCU remitting to the Borough payment of the 2018 PASSHE/WCU Stream Protection Fee (or, as applicable, electing to pay the 2018 PASSHE/WCU Stream Protection Fee in quarterly installments and making the first quarterly payment thereof).

**COUNT I
DECLARATORY RELIEF**

103. The Borough incorporates herein Paragraph 1 through Paragraph 102 above as if here set forth in their entirety.
104. The Borough brings this Action for Declaratory Judgment pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. § 7531 *et seq.*, in order to obtain from the Commonwealth Court a “declaration of rights, status, or other legal relations” between the Borough, PASSHE, and WCU with regard to the Stream Protection Ordinance, generally, and the Stream Protection Fee, specifically.

105. The express purpose of the Declaratory Judgments Act is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” EQT Prod. Co. v. DEP, 130 A.3d 752, 755 (Pa. 2015) (quoting EQT Prod. Co. v. DEP, 114 A.3d 438 (Pa. Cmwlth. 2015) (quoting 42 Pa.C.S. § 7541(a)).
106. As a threshold matter, the Borough does not dispute the legal accuracy of PASSHE’s counsel’s statement that PASSHE and WCU are “immune to local taxation”
107. The Stream Protection Fee, however, is a fee for service, and not a tax.
108. Through various statutory mechanisms, the Borough is empowered to charge and collect the Stream Protection Fee with regard to the Commonwealth Titled Properties and the WCU Titled Properties.
109. As stated by PASSHE’s counsel in the January 18, 2018 Letter, counsel informed the Borough that WCU “will not be paying the” Stream Protection Fee.
110. Declaratory judgment, therefore, is necessary in order to establish PASSHE’s and WCU’s obligations under and pursuant to the Stream Protection Ordinance.

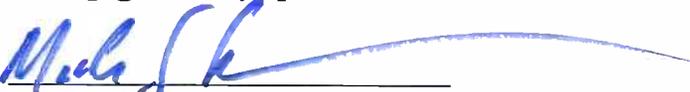
WHEREFORE, Plaintiff Borough of West Chester respectfully requests that the Commonwealth Court enter Declaratory Judgment confirming that PASSHE and WCU are responsible for payment of the Stream Protection Fee with regard to the Commonwealth Titled Properties and the WCU Titled Properties, as applicable, and that the Borough may enforce the Stream Protection Ordinance with regard to those properties.

Dated: April 13, 2018

Respectfully submitted,

**BUCKLEY, BRION,
MCGUIRE, & MORRIS LLP**

By: 
Kristin S. Camp, Esquire
Attorney ID No. 74593
kcamp@buckleyllp.com

By: 
Michael S. Gill, Esquire
Attorney ID No. 86140
gillm@buckleyllp.com

118 West Market Street
West Chester, Pennsylvania 19382

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER
829 Paoli Pike
West Chester, Pennsylvania 19380-4551

Plaintiff

v.

PENNSYLVANIA STATE SYSTEM
OF HIGHER EDUCATION
2986 North Second Street
Harrisburg, Pennsylvania 17110-1201

&

WEST CHESTER UNIVERSITY
OF PENNSYLVANIA OF THE
STATE SYSTEM OF HIGHER EDUCATION

Defendants

Original Jurisdiction

CERTIFICATION OF COMPLIANCE

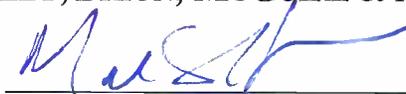
I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: April 13, 2018

Respectfully submitted,

BUCKLEY, BRION, MCGUIRE & MORRIS LLP

By:



Michael S. Gill, Esquire
Attorneys for Plaintiff
The Borough of West Chester

EXHIBIT A

[LIST OF COMMONWEALTH TITLED PROPERTIES]

WEST CHESTER BOROUGH STREAM PROTECTION FEE

Tax Parcel No.	Parcel Owner
1-12-0244-1	Commonwealth of Pennsylvania
1-12-0243	Commonwealth of Pennsylvania
1-12-0243-MH	Commonwealth of Pennsylvania
1-12-0246	Commonwealth of Pennsylvania
1-12-0250	Commonwealth of Pennsylvania
1-12-0250-1	Commonwealth of Pennsylvania
1-12-0253	Commonwealth of Pennsylvania
1-09-1066	Commonwealth of Pennsylvania
1-12-0244	Commonwealth of Pennsylvania

EXHIBIT B

[LIST OF WCU TITLED PROPERTIES]

WEST CHESTER BOROUGH STREAM PROTECTION FEE

Tax Parcel No.	Parcel Owner
1-09-1085	West Chester University of Pennsylvania
1-12-0245	West Chester University of Pennsylvania
1-12-0247	West Chester University of Pennsylvania
1-13-0001	West Chester University of Pennsylvania
1-13-0002	West Chester University of Pennsylvania
1-13-0003	West Chester University of Pennsylvania
1-13-0008	West Chester University of Pennsylvania

EXHIBIT C

[STREAM PROTECTION ORDINANCE]

ORDINANCE NO. 10 - 2016

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, ESTABLISHING A USER FEE TO SUPPORT THE BOROUGH'S STORMWATER MANAGEMENT SYSTEM AND TO MEET THE BOROUGH'S REGULATORY REQUIREMENTS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT.

WHEREAS, the Borough of West Chester has constructed, owns, operates and maintains and will continue to construct, own, operate and maintain an extensive public stormwater management system to collect and manage stormwater to protect the health, safety and welfare of its citizens;

WHEREAS, the Borough desires to assess an equitable fee for all developed properties that are connected with, use, are serviced by or are benefitted by such stormwater management system to provide a dedicated funding source for the ongoing expenses associated with the Borough's stormwater management system;

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of West Chester as follows:

SECTION 1. Title.

This Ordinance shall be known as "the Borough of West Chester's Stream Protection Fee Ordinance."

SECTION 2. Statement of Findings.

Borough Council finds that:

- A. The Borough of West Chester owns, operates, and maintains stormwater management facilities and infrastructure.
- B. The Borough currently incurs costs to operate and maintain the stormwater management facilities and infrastructure, much of which was constructed over 100-years ago.
- C. The collection and conveyance system for stormwater includes underground pipes, inlets, catch basins, culverts, streets, curbs and drains.
- D. A comprehensive program of stormwater management is fundamental to the public health, safety, and general welfare of the residents of the Borough.

E. The Borough must adhere to increased regulatory requirements for managing the quantity and quality of stormwater runoff.

F. Inadequate management of accelerated stormwater runoff increases flooding, contributes to erosion and sedimentation, overtaxes the capacity of surface streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces infiltration and groundwater recharge, increases nonpoint source pollution to waterways, reduces ecological health of the stream biota, and threatens public health and safety.

G. Inadequate planning and management of stormwater runoff resulting from land disturbance and development throughout a watershed can harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream beds and stream banks, thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals, and pathogens.

H. Groundwater resources are also impacted through loss of recharge associated with the increased impervious area resulting from land development and redevelopment.

I. Stormwater is an important water resource that provides infiltration and groundwater recharge for water supplies and baseflow of streams, which also protects and maintains surface water quality.

J. Impacts from stormwater runoff can be minimized by reducing the volume of stormwater generated and by using project designs that maintain the natural hydrologic regime and sustain high water quality, infiltration, stream baseflow, and aquatic ecosystems.

K. Public education on the control of pollution from stormwater is an essential component in successfully addressing stormwater.

L. Federal and State regulations require the Borough to implement a program of stormwater controls. The Borough is required to obtain a permit and comply with its provisions for stormwater discharges from its Municipal Separate Storm Sewer System (MS4) under the National Pollutant Discharge Elimination System (NPDES).

M. Non-stormwater discharges to municipal or other storm sewer systems can contribute to pollution of the Waters of the Commonwealth.

N. The Borough's streams have been designated as impaired by PADEP and the Borough is required to control the discharge of certain pollutants into the streams through a Total Daily Maximum Load. Specifically, the following pollutant reduction requirements have been placed on the Borough (Source: Draft MS4 Requirements Table revised 06/05/2016):

Impaired Downstream Waters or Applicable TMDL Name	Cause of Impairment	Requirement
Chester Creek	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)	Pathogens, Siltation
Goose Creek TMDL	Cause Unknown (4a)	Nutrients
Plum Run	Water/Flow Variability (4c)	Siltation

Taylor Run	Cause Unknown (4a), Other Habitat Alterations (4c)	Siltation
Brandywine Creek	n/a	Siltation
Blackhorse Run	Other Habitat Alterations, Water/Flow Variability (4c)	Siltation

O. On December 9, 2013 and February 10, 2014, the Stormwater Management Assessment Advisory Committee, hereinafter referred to as SWMAC, presented a report to the Borough Council on "Stormwater Management Assessment Fee Policy Options and Recommendations", which report summarized the Borough's stormwater program needs and policy options for funding those program needs.

P. The SWMAC worked with Borough staff to define those program needs, level of service and costs, and evaluated alternative funding options that support the need for a dedicated funding source and recommended creation of an impervious area based fee, referred to as the Stream Protection Fee, or hereinafter referred to as the Fee, that would be paid by all owners of properties in the Borough in direct proportion to the amount of impervious area that is on their property using a system of tiers as presented in this Ordinance. In addition, the SWMAC recommended that the Borough establish a system of credits to incentivize property owners to build and maintain stormwater management systems on their property, and therefore reduce their fee.

SECTION 3. Statutory Authority.

The Borough is empowered to regulate and manage stormwater within the Borough by the following acts and laws:

- (i) The Act of October 4, 1978, P.L. 864 (Act 167) 32 P.S. Section 680.1 *et seq.*, as amended, the "Storm Water Management Act";
- (ii) The Clean Water Act, 33 U.S. §1251 *et seq.*;
- (iii) Pa. Clean Streams Law, 35 P.S. §691.1 *et seq.*; and
- (iv) The Borough's Home Rule Charter.

SECTION 4. Interpretation.

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.

B. The word "includes" or "including" shall not limit the term to the specific example, but is intended to extend its meaning to all other instances of like kind and character.

C. The word "person" includes an individual, partnership, public or private association or corporation, firm, trust, estate, Borough, governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. Whenever used in any section prescribing or imposing a penalty, the term "person" shall include the members of a partnership, the officers, members, servants and agents of an association, officers, agents and servants of a corporation, and the officers of a Borough.

D. The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.

E. The words "used" or "occupied" include the words "intended, designed, maintained, or arranged to be used, occupied, or maintained."

F. The definitions in this Ordinance are for the purposes of enforcing the provisions of this Ordinance and have no bearing on other municipal regulations or ordinances.

SECTION 5. Definitions.

Base Rate – the dollar rate per Base Unit per month calculated by the Director, and adopted by the Borough Council from time to time by Resolution.

Base Unit - one thousand (1,000) square feet of impervious surface.

BMP (Best Management Practice) – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from Regulated Activities, to provide water quality treatment, infiltration, volume reduction, and/or peak rate control, to promote groundwater recharge, and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one (1) of two (2) broad categories or measures: "structural" or "nonstructural." In this Ordinance, nonstructural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention

basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the Site.

Condominium Property is a Property subject to a condominium regime established under the Pennsylvania Uniform Condominium Act.

Customer - any Property Owner of a Property in the Borough.

Department - the Borough's Department of Public Works.

Design Manual - the 2006 Pennsylvania Stormwater Best Management Practices Manual, as revised from time to time, which serves as the official guide for stormwater management principles, methods, and practices in Pennsylvania.

Developed - Property where manmade changes have been made which add impervious surfaces to the property, which changes may include, but are not limited to, buildings or other structures for which a building permit must be obtained under the requirements of the Pennsylvania Building Code and this Code, mining, dredging, filling, grading, paving, excavation or drilling operations, or the storage of equipment or materials.

Development - a project that consists of subdividing land or adding buildings and other improvements to individual parcels of land.

Director - the Director of the Department of Public Works of West Chester Borough or the Director's designee.

Drainage Area - That land area contributing runoff to a single point (including but not limited to the point/line of interest used for hydrologic and hydraulic calculations) and that is enclosed by a natural or man-made ridge line.

Green Infrastructure (GI) - small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of development on water resources. Methods to design GI practices are specified in the Design Manual.

Impervious Surface - A surface that has been compacted or covered with a layer of material so that it prevents or is resistant to infiltration of water, including but not limited to, structures such as roofs, buildings, storage sheds; other solid, paved or concrete areas such as streets, driveways, sidewalks, parking lots, patios, decks, swimming pools, tennis or other paved courts; or athletic playfields comprised of synthetic turf materials. For the purposes of determining compliance with this Ordinance, highly compacted soils or stone surfaces used for vehicle parking and movement shall be

considered impervious. Surfaces that were designed to allow infiltration (i.e. areas of porous pavement) will be considered on a case-by-case basis by the Borough Engineer, based on appropriate documentation and condition of the material, etc.

Infiltration - the passage or movement of water into the soil surface.

NPDES – National Pollutant Discharge Elimination System, the Federal government's system for issuance of permits under the Clean Water Act, which is delegated to PADEP in Pennsylvania.

PADEP – Pennsylvania Department of Environmental Protection.

Property - each and every parcel of real estate located within West Chester Borough.

Property Owner - the owner of record for a given Property within the Borough, as registered in the Office of the Recorder of Deeds for Chester County, Pennsylvania.

Property Manager - a person, company or other entity hired by a property owner to manage a Property.

Stormwater - water that originates from precipitation.

Stormwater Management - the collection, conveyance, storage, treatment, and control of stormwater as needed to reduce accelerated stream channel erosion, flood damages and water pollution.

Stormwater Management Facility - an infiltration device, filtering device, stormwater pond, stormwater wetland, hydrodynamic structure, or other practice designed and constructed to control stormwater to reduce accelerated stream channel erosion and pollution of surface waters. A stormwater management facility does not include environmental site design practices or any nonstructural stormwater management systems.

Stream Protection Fee (SPF) - an assessment levied by the Borough to cover the cost of constructing, operating, and maintaining stormwater management facilities and to fund expenses related to the Borough's compliance with PADEP NPDES permit requirements under applicable state law based on the impact of stormwater runoff from impervious areas of developed land in the Borough.

Stormwater Management Fund - the fund established from the collection of the Stream Protection Fees authorized pursuant to this Ordinance.

Stormwater Management System - the system of collection and conveyance, including underground pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, manholes, outfalls, dams, flood control structures, natural areas, structural and non-structural stormwater best management practices, channels, detention ponds, public streets, curbs, drains and all devices, appliances, appurtenances and facilities appurtenant thereto used for collecting, conducting, pumping, conveying, detaining, discharging and/or treating stormwater.

Structural Maintenance - the inspection, construction, reconstruction, modification, repair, and cleaning of any part of a stormwater management facility undertaken to assure that the facility remains in the proper working condition to serve its intended purpose and prevent failure. Structural maintenance does not include landscaping, grass cutting, or trash removal.

Watershed - the total drainage area contributing runoff to a single point.

Undeveloped Land - any land that has not been altered from its natural state and which contains no impervious surfaces, or, if previously developed, land that has been allowed to return to its natural state with no impervious surfaces.

SECTION 6. Imposition of Stream Protection Fee.

A. For the use of, benefit by and the services rendered by the Stormwater Management System, including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, a Stream Protection Fee ("Fee") as described, defined, and calculated herein is hereby imposed upon each and every Developed Property within the Borough that is connected with, uses, is serviced by or is benefitted by the Borough's Stormwater Management System, either directly or indirectly, and upon the owners of such Developed Property as set forth herein.

B. Impervious Area Property Tiers: For purposes of determining the appropriate assessment rate for the Fee, all Properties are assigned to one of the following tiers ("Tier" or "Tiers"):

1. Tier 1: For Properties where the total impervious surface area is greater than zero square feet and less than or equal to 1,000 square feet.
2. Tier 2: For Properties where the total impervious surface area is greater than 1,000 square feet and less than or equal to 1,500 square feet.
3. Tier 3: For Properties where the total impervious surface area is greater than 1,500 square feet and less than or equal to 2,000 square feet.
4. Tier 4: For Properties where the total impervious surface area is greater than 2,000 square feet and less than or equal to 2,500 square feet.
5. Tier 5: For Properties where the total impervious surface area is greater than 2,500 square feet and less than or equal to 3,000 square feet.
6. Tier 6: For Properties where the total impervious surface area is greater than 3,000 square feet.

C. Impervious Area Property Tiers were developed using impervious estimates based on Chester County's geographic information system (GIS) impervious cover data layer from 2010.

SECTION 7. Billing and Payment.

A. The Director will prepare the necessary data for collecting the Fee from Property Owners subject to the Fee, including the identification of every parcel of Property to be charged and the amount of the Fee.

B. Prior to receipt of the first bill for the Fee, all Properties will be issued an assessment notice by the Borough with the Property's estimated Fee and the basis of that Fee.

C. The Fee fixed and established by this Ordinance shall be effective as to all Developed Properties that use, are served by or benefitted by the Stormwater Management System existing as of the effective date of this Ordinance. The first billing pursuant to this Ordinance shall be on or about October 1, 2016 and shall cover the fourth quarter of 2016. Thereafter for subsequent years, the Fee imposed by this Ordinance shall be assessed and billed by the Borough effective as of January 1st each calendar year. Property owners shall have the option to pay the Fee in full within 30 days following the date on which the bill was mailed and receive a 2% discount of the fee. Alternatively, Owners may pay the fee on a quarterly basis at face amount of the bill and upon a schedule designated by Council.

D. Bills for the Fee or charges shall be paid by the owner of the property and mailed to the address listed in the Chester County tax records for the property served by the Stormwater Management System, unless and until a different address is specified, in writing, by the owner of such property to the Borough. Failure of the owner to receive a bill as a result of an incorrect address or otherwise shall not excuse payment of the Fee or charges or extend the time for payment thereof. It shall be incumbent upon all owners of Developed Property who are subject to the Fee to provide the Borough with the correct billing address or any changes thereto.

E. All Fees not paid within 21 days of the date of the bill shall be deemed to be delinquent and shall be subject to a penalty of 1 1/2% per month. All delinquent Fees, together with interest, penalties, charges and costs thereof, shall constitute a municipal claim against the property or properties served by the Stormwater Management System from the date the same first became due and payable. If such Fees, penalties and charges are not timely paid, the Borough shall file a municipal lien against the property served pursuant to the procedure established in the Pennsylvania Municipal Lien Law and such lien shall be collected in the manner provided for by law for the filing and collecting of such municipal liens. The Borough is further authorized to collect reasonable attorney's fees that it incurs in the collection of any delinquent accounts. In addition, the Borough may collect all delinquent Fees, penalties, interest and charges, including attorney's fees, by referring such delinquent claims to a collection agency, by filing an action in assumpsit, or in any manner or by proceeding otherwise provided by law. Any fees that the Borough incurs in exercising its legal

remedies shall be added to the amount of the delinquent account. All of the Borough's remedies shall be cumulative.

G. The Borough shall deposit all payments collected under this Section into the Borough Stormwater Management Fund.

H. When Developed Properties are altered such that the amount of Impervious Surface on the Property increases or decreases, the Fee will be revised as of the date of the issuance of a building permit for the proposed improvements which will alter the amount of Impervious Surface on the Property. A bill will be issued in the next billing cycle and will be prorated for the number of days in which service was provided.

SECTION 8. Calculation of the Stream Protection Fee.

A. The Stream Protection Fee shall be calculated by multiplying the Base Rate by the percentage amount listed herein for the appropriate Tier as follows:

1. The Fee for each Tier 1 Property is 50 percent of the applicable Base Rate.
2. The Fee for each Tier 2 Property is 125 percent of the applicable Base Rate.
3. The Fee for each Tier 3 Property is 175 percent of the applicable Base Rate.
4. The Fee for each Tier 4 Property is 225 percent of the applicable Base Rate.
5. The Fee for each Tier 5 Property is 275 percent of the applicable Base Rate.

B. The Stream Protection Fee for each Tier 6 Property shall be computed based on the actual impervious area on the Property. The Director shall compute the Stream Protection Fee by dividing the actual impervious area of the Property by the number of Base Units, and then multiplying the result by the Base Rate.

C. The Base Rate utilized by the Director shall be the Base Rate as established from time to time by Resolution of Borough Council.

D. If the property is a Condominium Property, the Director shall calculate the Stream Protection Fee to be billed in equal shares to the condominium units owners by dividing the total number of Base Units by the number of individual condominium units and then multiplying that by the Base Rate to determine the amount billable to each condominium unit owner or in such other manners as may be promulgated by the Director in policies and procedures based on square footage, types of condominium units or other similar classification and calculations.

SECTION 9. Stormwater Management Fund.

A. All sums collected from the payment of Stream Protection Fees shall be deposited into the West Chester Borough Stormwater Management Fund.

B. The Stormwater Management Fund shall be used by the Borough for:

1. Implementation and management of a program to manage stormwater within the Borough.
2. Constructing, operating, and maintaining the Borough's Stormwater Management System.
3. Debt service for financing stormwater capital projects.
4. Payment for other project costs and performance of other functions or duties authorized by law in conjunction with the maintenance, operation, repair, construction, design, planning and management of Stormwater facilities, programs and operations.

SECTION 10. Stormwater Credits.

A. The Borough may provide a system of credits against Stream Protection Fees for Properties on which stormwater facility construction or maintenance substantially mitigates the peak discharge or runoff pollution flowing from such Properties or substantially decreases the Borough's cost of maintaining the Stormwater Management System.

B. The Borough has developed written policies and procedures to implement the credit system, known as the Stream Protection Fee Program Rebate and Credit Policies and Procedures Manual ("Credit Manual"). The Credit Manual may be updated from time to time by the Borough Council.

SECTION 11. Appeals.

A. The Borough has developed written policies and procedures to implement the appeal process, known as Stream Protection Fee Program Appeal Policies and Procedures Manual ("Appeals Manual"). The Appeals Manual may be updated from time to time by the Borough Council.

- A. A Property Owner who believes the provisions of this Ordinance have been applied in error may appeal in accordance with the provisions of this Section and as described in greater detail in the Appeals Manual.
- B. An appeal of the assigned Tier and/or the Fee must be filed in writing to the Borough Manager or his designee within thirty (30) days of receipt of the notice of the assigned Tier or Fee. The appeal must state in detail the basis and reasons for the appeal.
- C. Using information provided by the appellant, the Borough Manager, or his designee, shall conduct a technical review of the conditions of the Property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the Borough Manager may adjust the Fee applicable to the property in accordance with the provisions of this Ordinance.
- D. Any person aggrieved by a decision of the Borough Manager relevant to the provisions of this Ordinance may appeal to the Court of Common Pleas of Chester County, Pennsylvania.
- E. Borough Council may, from time to time, by Resolution, establish fees for the processing and handling of an appeal.

SECTION 12. Rules and Regulations.

Borough Council or the Director may promulgate policies and procedures, appeal applications and other forms relating to the interpretation, enforcement and application of the provisions of this Ordinance.

SECTION 13. Limitation on Borough's Liability for Failure of Supply of Stormwater Services

A. Floods from runoff may occur that exceed the capacity of stormwater facilities constructed and maintained by funds made available pursuant to this Ordinance. This Ordinance does not imply that property subject to the fees and charges established herein will be free from stormwater flooding or flood damage. The Borough shall not be liable to any person for any flood damage. Further, payment of a Stream Protection Fee to the Borough does not relieve a Property Owner from any local, State or Federal requirements to obtain flood insurance or other laws applicable to the Property.

B. The Borough, by taking any action pursuant to this Ordinance, does not waive, reduce, lessen or impair the lawful police powers vested in the Borough under applicable Federal, State and local laws and regulations.

C. The failure of the Borough to insist on timely performance or compliance shall not constitute a waiver of the Borough right to later insist on the same. Further, the failure of the Borough to enforce any provision of this Ordinance on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Ordinance on any other occasion, nor shall the failure to enforce any prior ordinance or rule or regulation relating to sewer services, water services, stormwater services, sewer charges, water charges or the Stream Protection Fee, act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.

SECTION 14. Severability. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 15. Repealer. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 16. Effective Date. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS 20th DAY OF July, 2016.

ATTEST:

COUNCIL FOR THE BOROUGH
OF WEST CHESTER

BY:

Ellen Koopman
Ellen Koopman, President

APPROVED THIS 20th DAY OF July, 2016.

Carolyn T. Comitta
Carolyn T. Comitta, Mayor

EXHIBIT D

[RESOLUTION No. 11-2016]

RESOLUTION NO. 11 -2016

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

A RESOLUTION OF BOROUGH COUNCIL OF THE BOROUGH OF WEST CHESTER ESTABLISHING THE STREAM PROTECTION FEE IN ACCORDANCE WITH THE BOROUGH OF WEST CHESTER STREAM PROTECTION FEE ORDINANCE.

WHEREAS, Borough Council of the Borough of West Chester ("Council") enacted a Stream Protection Fee Ordinance on September 21, 2016 in Ordinance No. 2016-11 (the "Ordinance") which imposed upon every Developed Property (as defined in the Ordinance) within the Borough that is connected to, uses, is serviced or benefitted by the Borough's stormwater management system a stream protection fee; and

WHEREAS, Council desires to establish the base stream protection fee to be assessed against all Developed Property in the Borough in accordance with the Ordinance.

NOW THEREFORE BE IT RESOLVED by Borough Council as follows:

1. The Base Stream Protection Fee shall be \$6.70/1,000 square foot of impervious coverage/per month.
2. This Resolution shall be effective as of the date of adoption.

RESOLVED AND ADOPTED THIS 21st DAY OF September, 2016.

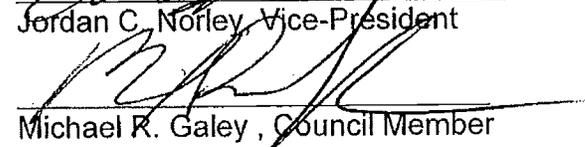
ATTEST:

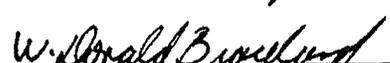

Michael A. Cotter, Secretary

**BOROUGH COUNCIL FOR THE
BOROUGH OF WEST CHESTER**

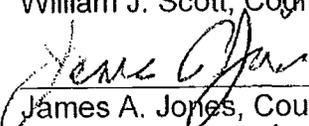

Ellen B. Koopman, President


Jordan C. Norley, Vice-President


Michael R. Galey, Council Member


Donald Braceland, Council Member


William J. Scott, Council Member


James A. Jones, Council Member

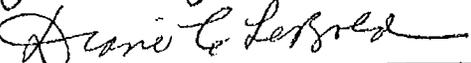

Diane C. LeBold, Council Member

EXHIBIT E

[JANUARY 18, 2018 LETTER]

CC: BOR COUNCIL, MAYOR
R. CAMP.
O.B. LANGE



GOVERNOR'S OFFICE OF GENERAL COUNSEL
Office of Chief Counsel

January 18, 2018

RECEIVED
JAN 23 2017

BY: _____

Mr. Michael Perrone
Manager
Borough of West Chester
The Spellman Building
829 Paoli Pike
West Chester, PA 19380-4551

Re: Storm Water Management Fee
West Chester University of Pennsylvania

Dear Mr. Perrone:

I am Chief Counsel for Pennsylvania's State System of Higher Education ("State System"). As I am sure you are aware, West Chester University of Pennsylvania ("University") is one of fourteen (14) component universities of the State System.

I am writing to you to formally advise the Borough that the University will not be paying the storm water management fee invoices that the Borough sent to the University. As previously explained, the University is not legally authorized to pay those invoices because: (1) the Borough does not have the statutory authority to impose a storm water management fee on a Commonwealth entity, such as the University; and (2) even if such statutory authority existed, the Borough's storm water management fee is a tax, from which the University, as a Commonwealth entity, is immune.

Pursuant to the State System of Higher Education's enabling statute, the State System and its constituent universities are designated a "government instrumentality." 24 P.S. §20-2002-A(a). As an instrumentality of the Commonwealth, the University is a Commonwealth entity that is immune to local taxation unless the Pennsylvania General Assembly has expressly granted the political subdivision the authority to tax property owned by the Commonwealth.

In *Lehigh-Northampton Airport Authority v. Lehigh County Board of Assessment Appeals*, 889 A.2d 1168, 1172 (Pa. 2005), the Pennsylvania Supreme Court described the Commonwealth's tax immunity as follows:

Because the power to tax is vested within the General Assembly, real estate is immune from local taxation unless that body has granted taxing authority to political subdivisions. Even where such local taxing power exists, property owned by the Commonwealth and its agencies remains unaffected by—or immune from—such power absent express statutory



Mr. Michael Perrone
Borough of West Chester
January 18, 2018
Page 2

authorization to the contrary. *SEPTA v. Board of Revision of Taxes*, 833 A.2d 710, 713 ("It cannot be presumed that general statutory provisions giving local subdivisions the power to tax local real estate, were meant to include property owned by the Commonwealth..."); see also *Commonwealth v. Dauphin County*, 335 Pa. 177; 180-181, 6 A.2d 870, 872 (1939) (explaining that legislation generally does not affect the sovereign's rights unless it clearly intends to do so, and that, particularly in the context of taxation, any other rule could "upset the orderly processes of government by allowing the sovereign power to be burdened by municipal taxes").

The Borough's storm water management fees are not charges for actual services provided to the University by the Borough. Instead, they are the imposition of a general tax for the improvement and maintenance of the Borough's storm water infrastructure. As a result, these fees are a tax, regardless of what the Borough chooses to call them. The proper characterization of a governmental charge does not depend on what it has been called, but the purposes for which it has been enacted. See *Clement & Muller, Inc. v. Tax Review Board*, 659 A.2d 596 (Pa. Commonwealth Ct., 1995); *aff'd*, 715 A.2d 397 (Pa. 1998) (distinguishing a tax from a regulatory fee); *Philadelphia v. Southeastern Pennsylvania Transportation Authority*, 303 A.2d 247 (Pa. Commonwealth Ct., 1973) (distinguishing a tax from a license fee).

The Commonwealth pays neither for the general operations of local government nor for local infrastructure improvements, even though the Commonwealth may benefit from both. *Pittsburgh v. Sterrett Subdistrict School*, 54 A. 463 (Pa. Supreme Ct., 1903); see also *Southwest Delaware County Municipal Authority v. Aston Township*, 198 A.2d 867 (Pa. Supreme Ct., 1964); *McCandless Township Sanitary Authority v. PennDOT*, 488 A. 2d 367 (Pa. Commonwealth Ct., 1985).

In this case, none of the sources of legal authority for the imposition of storm water management fees stated in the Borough's ordinance contain the express statutory authority required.

Please let me know if there is anything further you need from the University on this matter.

Sincerely,



Andrew C. Lehman
Chief Counsel

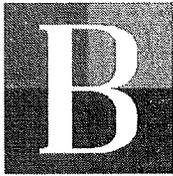
ACL:mar

c: Jennifer Whare, Deputy General Counsel
Christopher M. Fiorentino, President
University Legal Counsel

I:\Legal\Protected\Chief Counsel\Misc\WC Borough Storm Water Management Fee.docx

EXHIBIT F

[FEBRUARY 23, 2018 LETTER]



BUCKLEY BRION
MCGUIRE & MORRIS LLP

February 23, 2018

Andrew C. Lehman, Esquire
Chief Counsel
Pennsylvania State System of Higher Education
2986 North Second Street
Harrisburg, Pennsylvania 17110-1201

Re: Borough of West Chester Stream Protection Fee

Dear Mr. Lehman:

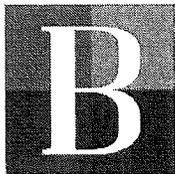
This Firm represents the Borough of West Chester. We received and reviewed your letter dated January 18, 2018, a copy of which we enclose here for your immediate reference. There, you asserted two (2) bases for your claim that the Borough may not collect from West Chester University (either individually, or as part of the State System of Higher Education) the Stream Protection Fee which the Borough established pursuant to Chapter 94A of the Code of the Borough of West Chester (the "Fee"). Those bases are (A) your belief that the Fee is actually a tax, and (B) your belief that the Borough does not have the statutory authority to impose the Fee upon WCU or PASSHE.

Neither of those bases acts to defeat application of the Fee to WCU or PASSHE.

As a preliminary matter, the Borough does not disagree with your conclusion that the Borough may not impose upon WCU or PASSHE a general tax. The Fee, however, is not a tax. The Fee is just that . . . a fee-for-service, and the revenue generated by the Fee is used only to fund the Borough's regulatory stream protection program. Federal and Pennsylvania courts previously described the difference between a fee and a tax, and the Borough is confident that, upon examination of Chapter 94A and other applicable law, a court would hold that the Fee is the former, and not the latter.

Likewise, the Borough is confident that a reviewing court would hold that the Borough is not statutorily prohibited from applying Chapter 94A to WCU or PASSHE. WCU's or PASSHE's compliance with Chapter 94A does not in any manner or form whatsoever limit their ability to discharge the statutory purpose for which PASSHE was created. Conversely, WCU's and PASSHE's refusal to comply with Chapter 94A would substantially and materially interfere with the comprehensive statutory and regulatory purposes for which the Borough enacted that Chapter while allowing WCU and PASSHE to enjoy the benefits of those purposes.

PASSHE must know that litigation with regard to this matter will only cause the needless expenditure of precious public resources. In that regard, we **strongly** urge PASSHE to reconsider the position which you articulated in your letter, and note that the Borough expects that WCU (or, as applicable, PASSHE) will timely remit payment on the enclosed invoices. Failing such remittance, we are authorized by Borough Council to institute legal action to compel that payment.



BUCKLEY BRION
MCGUIRE & MORRIS LLP

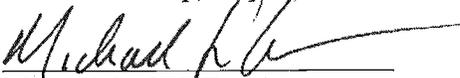
Andrew C. Lehman, Esquire
Chief Counsel
Pennsylvania State System of Higher Education
February 23, 2018
Page 2

Thank you for your courtesies.

Very truly yours,

BUCKLEY, BRION, MCGUIRE & MORRIS LLP

By: 
Kristin S. Camp, Esquire

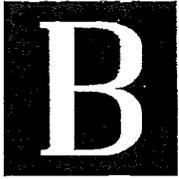
By: 
Michael S. Gill, Esquire

MM/msg
Enclosures

cc: Michael Perrone, Borough Manager (*via electronic mail*)
Mayor (*via electronic mail*)
Borough Council (*via electronic mail*)

EXHIBIT G

[MARCH 5, 2018 LETTER]



BUCKLEY BRION
MCGUIRE & MORRIS LLP

T

KRISTIN S. CAMP
p: 610.436.4400 Ext# 1050
f: 610.436.8305
e: kcamp@buckleyllp.com
118 W. Market Street, Suite 300
West Chester, PA 19382-2928

March 5, 2018

Andrew C. Lehman, Esquire
Chief Counsel
Pennsylvania State System of Higher Education
2986 North Second Street
Harrisburg, Pennsylvania 17110-1201

Re: Borough of West Chester Stream Protection Fee

Dear Mr. Lehman:

With regard to our letter to you dated February 23, 2018, we enclose here the Invoices to West Chester University for the Stream Protection Fee which was due in 2017, but which remain unpaid.

Absent satisfaction of the enclosed Invoices by March 12, 2018, the Borough will institute legal action to compel payment.

Thank you for your courtesies.

Very truly yours,

Kristin S. Camp

KSC/msg
Enclosures

cc: Michael Perrone, Borough Manager (*via electronic mail, with enclosures*)

EXHIBIT H

[POLLUTANT REDUCTION PLANS]

NPDES Stormwater Discharges from MS4

**West Chester Borough
Brandywine Creek
Blackhorse Run
Plum Run
Taylor Run**

Pollutant Reduction Plan

Prepared For:

West Chester Borough

401 East Gay St.
West Chester, PA 19380
610-692-7574

September 2017

Prepared By:

Gilmore & Associates, Inc.
Engineers ♦ Land Surveyors ♦ Planners ♦ GIS Consultants
184 West Main Street, Suite 300
Trappe, PA 19426
(610) 489-4949



**MS4 Pollutant Reduction Plan
West Chester Borough
Chester County, Pennsylvania**

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Appendices

Appendix A	Applicable portion of the MS4 Requirements Table (Municipal) Anticipated Obligations for Subsequent NPDES Permit Term (Revised 6/26/2017)
Appendix B	Public Participation <ul style="list-style-type: none">• Public Notice & Proof of Advertisement• Public Meeting Agenda and Meeting Minutes
Appendix C	Maps <ul style="list-style-type: none">• West Chester Borough MS4 PRP Map• West Chester Borough MS4 PRP Land Uses (MapShed) Map
Appendix D	3800-PM-BCW0100m 5/2016 BMP Effectiveness Values
Appendix E	MapShed GWLF-E Average Loads by Source for Watershed
Appendix F	CH2M Green Infrastructure Concepts

West Chester Borough, Chester County is submitting this Pollutant Reduction Plan (PRP) in accordance with the requirements of the *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4)*; specifically, in accordance with the *MS4 Requirements Table (Municipal) Anticipated Obligations for Subsequent NPDES Permit Term (Revised 6/26/2017)*. West Chester Borough must create a PRP due to discharges from their MS4 to Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run, which have been listed as impaired for Siltation (see Appendix A).

The intent of this MS4 PRP is to establish the existing loading of pollutants discharged from the MS4 to Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run, and to present a plan to reduce these pollutants. This MS4 PRP is organized to follow the 3800-PM-BCW0100k Rev. 3/2017 *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharges from Small Municipal Separate Storm Sewer Systems Pollutant Reduction Plan (PRP) Instructions* included as part of the *PAG-13 MS4 General Permit* package. This PRP may be evaluated and updated by West Chester Borough on an as-needed basis, based on its effectiveness in reducing pollutant loads in discharges from the regulated small MS4. If this occurs, West Chester Borough will work with the Department of Environmental Protection (DEP) for review and approval of any revisions or updates.

Each MS4 PRP must include the following Required PRP Elements:

Section A: Public Participation

Section B: Map

Section C: Pollutants of Concern

Section D: Determine Existing Loading for Pollutants of Concern

Section E: Select BMPs to Achieve the Minimum Required Reductions in Pollutant Loading

Section F: Identify Funding Mechanisms

Section G: Identify Responsible Parties for Operation and Maintenance (O&M) of BMPs

This PRP is organized to follow the above outline of required elements as shown on the following pages. Relevant verbiage from the PRP Instructions are reiterated herein for each of the above required PRP Elements.

A. Public Participation

As part of the preparation of this MS4 PRP, public participation is required. West Chester Borough shall complete the following public participation measures listed below, and report in the PRP that each was completed.

- The Borough shall make a complete copy of the PRP available for public review.
- The Borough shall publish, in a newspaper of general circulation in the area, a public notice containing a statement describing the plan, where it may be reviewed by the public, and the length of time the Borough will provide for the receipt of comments. The public notice must be published at least 45 days prior to the deadline for submission of the PRP to DEP. **Include a copy of the public notice with the PRP.**
- The Borough shall accept written comments for a minimum of 30 days from the date of public notice. **Include a copy of all written comments received from the public with the PRP.**
- The Borough shall accept comments from any interested member of the public at a public meeting or hearing, which may include a regularly-scheduled meeting of the governing body of the municipality or municipal authority that is the permittee.
- The Borough shall consider and make a record of the consideration of each timely comment received from the public during the public comment period concerning the plan, identifying any changes made to the plan in response to the comment. **Include a copy of the Borough's record of consideration of all timely comments received in the public comment period with the PRP.**

West Chester Borough has completed the above-listed Public Participation measures and all required documentation of public participation is included as Appendix B.

- PRP public notice was published in: Daily Local News
- Date PRP public notice was published in newspaper: July 10, 2017
- Date PRP was made available for public review/comment: June 10, 2017
- End date for receipt of written comments (30 days from the date of public notice): August 10, 2017
- Date PRP comments were accepted at a public meeting: August 8, 2017

Questions received were of a general nature only, and no comments were made that required a response in, or revision to, this document.

B. Map

Attach maps that identify **land uses** and the **storm sewershed boundaries** associated with the MS4 that discharge to impaired surface waters, and calculate the storm sewershed area that is subject to Appendix E of PAG-13. In addition, the proposed location(s) of structural BMP(s) that will be implemented to achieve the required pollutant load reductions must be identified on a map.

The map may be the same as that used to satisfy MCM #3 of the PAG-13 General or Individual Permit, with the addition of land use, the storm sewershed boundary, and locations of proposed BMPs, or may be a different map.

The map must be sufficiently detailed to identify the PRP Planning Area relevant to satisfying the requirements of Appendix E, and to demonstrate that BMPs will be located in appropriate storm sewersheds to meet the requirements.

NOTE – Delineation of storm sewersheds associated with individual MS4 outfalls is typically necessary in order to determine the PRP Planning Area. The MS4 may display the storm sewershed for each MS4 outfall or just the PRP Planning Area, at its discretion.

The map may show areas that are to be “parsed” from the PRP Planning Area. In other words, at the MS4’s discretion (subject to DEP rules), certain areas may be shown on the map that are within the Planning Area but are not included in the calculation of land area and existing pollutant loading. Guidance on parsing is outlined below. Note that if parsing is done, BMPs implemented within the parsed area will not count toward achieving pollutant reduction objectives.

Parsing Guidelines for MS4s in Pollutant Reduction Plans

DEP has developed these guidelines to assist owners and operators of MS4s that are required to develop Pollutant Reduction Plans (PRPs) in understanding where it is possible to “parse” land area in the course of developing those plans. For the purpose of this document, parsing is

defined as a process in which land area is removed from a Planning Area in order to calculate the actual or target pollutant loads that are applicable to an MS4.

Parsing is not required by NPDES permits and is therefore optional; however, some MS4 permittees may benefit from parsing. When parsing is done, best management practices (BMPs) implemented within the land area that is parsed may not be considered for meeting pollutant loading reductions.

MS4s must identify the target pollutant loadings (i.e., existing pollutant loading minus loading reduced by existing BMPs). In order to estimate existing pollutant loading, MS4s may parse out appropriate land area.

All parsing must be supported by a map and a determination of the area being parsed and/or appropriate calculations demonstrating how the parsing was done.

Parsing for PRPs

Parsing provides an opportunity for an MS4 permittee to eliminate areas within the storm sewershed that do not drain to the MS4 and areas that are already covered by an NPDES permit (i.e., not a waiver or no exposure certification) for the control of stormwater. For example, the land area of an industrial site that is covered by the PAG-03 General Permit for Stormwater Associated with Industrial Activity that discharges stormwater to the MS4 may be parsed out of the assessment of land area within the storm sewershed that is subject to the calculation of existing pollutant loading. If, however, the industrial land area is removed, BMPs implemented on that land may not be used as credit toward meeting the MS4's pollutant loading reduction requirements. Other examples of land area that may be parsed include:

- The land area associated with non-municipal stormwater NPDES permit coverage that exists within the urbanized area of a municipality (in such cases the entities may submit a combined PRP);
- Land area associated with PennDOT roadways and the Pennsylvania Turnpike (roads and right of ways);

- Lands associated with the production area of a Concentrated Animal Feeding Operation that is covered by an NPDES permit;
- Land areas in which stormwater runoff does not enter the MS4. If an accurate storm sewershed map is developed, these lands may be parsed or excluded as part of that process. Potential examples include homeowner's associations and schools which do not contain municipal roads or other municipal infrastructure.

If parsing is initially done for the PRP but the MS4 permittee decides later that it would be in their best interests to include that land in the PRP, the permittee may submit a modified PRP to DEP, following the public participation requirements of Appendix F of the permit.

The MS4 PRP map(s) shall also show the proposed locations of structural BMPs that will be implemented to achieve the required pollutant load reductions.

The West Chester Borough MS4 PRP Map identifies the PRP Planning Area, which includes all storm sewershed boundaries, as well as the proposed locations of structural BMPs to be implemented to achieve required pollutant load reductions. The PRP Planning Area in the Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run watersheds was calculated to be 789 acres.

For clarity, land uses within the PRP Planning Area are shown separately on the West Chester Borough MS4 PRP Land Uses (MapShed) Map.

The above referenced Maps are included in Appendix C.

C. Pollutants of Concern

Identify the pollutants of concern for each storm sewershed or the overall PRP Planning Area.

The term "nutrients" refers to "Total Nitrogen" (TN) and "Total Phosphorus" (TP) unless specifically stated otherwise in DEP's latest Integrated Report. The terms "sediment," "siltation," and "suspended solids" all refer to inorganic solids and are hereinafter referred to as "sediment." The term, "storm sewershed" is defined in the PAG-13 General Permit as the land area that drains to the municipal separate storm sewer from within the jurisdiction of the MS4 permittee. This term is used in these instructions as well as the term "PRP Planning Area" (or "Planning Area"), which refers to all of the storm sewersheds that an MS4 must calculate existing loads and plan load reductions for.

For all PRPs, MS4s shall calculate existing loading of the pollutant(s) of concern in lb/year; calculate the minimum reduction in loading in lb/year; select Best Management Practice(s) (BMP(s)) to reduce loading; and demonstrate that the selected BMPs will achieve the minimum reductions.

For PRPs developed for Appendix E, impaired waters, the pollutant(s) are based on the impairment listing, as provided in the MS4 Requirements Table. If the impairment is based on siltation only, a minimum 10% sediment reduction is required. If the impairment is based on nutrients only or other surrogates for nutrients (e.g., "Excessive Algal Growth" and "Organic Enrichment/Low D.O."), a minimum 5% TP reduction is required. If the impairment is due to both siltation and nutrients, both sediment (10% reduction) and TP (5% reduction) must be addressed. PRPs may use a presumptive approach in which it is assumed that a 10% sediment reduction will also accomplish a 5% TP reduction. However, MS4s may not presume that a reduction in nutrients will accomplish a commensurate reduction in sediment.

The impaired downstream waters are Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run, which have an impairment of Siltation. Since the impairment is siltation, a minimum 10% reduction is required. This MS4 PRP presents the minimum reduction in loading for siltation as pounds per year (lb/yr).

D. Determine Existing Loading for Pollutants of Concern

Identify the date associated with the existing loading estimate. Calculate the existing loading, in lbs. per year, for the pollutant(s) of concern in the PRP Planning Area.

There are several possible methods to estimate existing loading, ranging from simplistic to complex. One method to estimate existing loading that is acceptable to DEP is to determine the percent impervious and pervious surface within the urbanized area of the storm sewershed and calculate existing loading by multiplying the developed impervious and developed pervious land areas (acres) by pollutant loading rates (lb/acre/year) ("simplified method"). The MS4 may use loading rates for undeveloped land for areas outside of the urbanized area which flows into the urbanized area. Where structural BMPs are currently in place and are functioning, the existing loading estimate may be reduced to account for pollutant reductions from those BMPs.

Use of DEP's simplified method is not required. Any methodology that calculates existing pollutant loading in terms of lbs. per year, evaluates BMP-based pollutant reductions utilizing the BMP effectiveness values contained in 3800-PM-BCW0100m or Chesapeake Bay Program expert panel reports, uses average annual precipitation conditions, considers both overland flow and stream erosion, and is based on sound science may be considered acceptable.

Whatever tool or approach that is used to estimate existing loading from the PRP Planning Area must also be used to estimate existing loading to planned BMPs. This avoids errors in percent pollutant removal calculations that would result if different methods were used. Later BMP design efforts will usually apply a more sophisticated method than used in planning to calculate load to a BMP. The design loading may not however be used to alter the assumed pollutant reduction by the BMP unless the PRP is revised to apply the more sophisticated method to the load from the storm sewershed as a whole.

MS4s may claim "credit" for structural BMPs implemented prior to development of the PRP to reduce existing loading estimates. In order to claim credit, identify all such structural BMPs in Section D of the PRP along with the following information:

- A detailed description of the BMP;
- Latitude and longitude coordinates for the BMP;
- Location of the BMP on the storm sewershed map;
- The permit number, if any, that authorized installation of the BMP;
- Calculations demonstrating the pollutant reductions achieved by the BMP;
- The date the BMP was installed and a statement that the BMP continues to serve the function(s) it was designed for; and
- The operation and maintenance (O&M) activities and O&M frequencies associated with the BMP.

The MS4 permittee may optionally submit design drawings of the BMP for previously installed or future BMPs with the PRP.

Existing loading must be calculated and reported for the portion of the Planning Area which drains to impaired waters as of the date of the development of the PRP. MS4s may not claim credit for street sweeping and other non-structural BMPs implemented in the past, and an MS4 may not reduce its obligations for achieving permit term pollutant load reductions through previously installed BMPs. If structural BMPs were implemented prior to development of the PRP and continue to be operated and maintained, the MS4 may claim pollutant reduction credit in the form of reduced existing loading.

An MS4 may use all BMPs installed prior to the date of the load calculation to reduce its estimate of existing pollutant loading. For example, if a rain garden was installed ten years ago and is expected to remove 100 lbs. of sediment annually, and the overall annual loading of sediment in the storm sewershed is estimated to be 1,000 lbs. without specifically addressing the rain garden, an MS4 may not claim that the rain garden satisfies its obligations to reduce sediment loading by 10%. The MS4 may, however, use the rain garden to demonstrate that the existing load is 900 lbs. instead of 1,000 lbs., and that 90 lbs. rather than 100 lbs. needs to be reduced during the term of permit coverage.

Each impairment identified on the MS4 Requirements Table ("Table") must be addressed in a PRP document. The Table listings for each MS4 are different because they reflect local conditions, which is why an MS4 must carefully interpret the information on the Table.

NOTE - MapShed, or any other watershed model where channel erosion is explicitly modeled, should be run on a minimum of ~10 mi² area to properly account for downstream channel impacts and include impaired waters identified in the MS4 Requirements Table. Aggregation of these waters up to approximately the 12-digit HUC scale for modeling purposes is acceptable. Modeling may not be done at the individual storm sewershed or municipal scale where the extent of downstream impact is not included in load calculation.

For PRPs developed for impaired waters (Appendix E), the pollutant(s) are based on the impairment listing, as provided in the MS4 Requirements Table. If the impairment is based on siltation only, a minimum 10% sediment reduction is required. If the impairment is based on nutrients only or other surrogates for nutrients (e.g., "Excessive Algal Growth" and "Organic Enrichment/Low D.O."), a minimum 5% TP reduction is required. If the impairment is due to both siltation and nutrients, both sediment (10% reduction) and TP (5% reduction) must be addressed. PRPs may use a presumptive approach in which it is assumed that a 10% sediment reduction will also accomplish a 5% TP reduction. However, MS4s may not presume that a reduction in nutrients will accomplish a commensurate reduction in sediment.

All MS4s must use the BMP effectiveness values contained within DEP's BMP Effectiveness Values document (3800-PM-BCW0100m) or Chesapeake Bay Program expert panel reports for BMPs listed in those resources when determining pollutant load reductions in PRPs, except as otherwise approved by DEP. An example of other approaches that may be approved by DEP include the use of thoroughly vetted mechanistic models with self-contained BMP modules (e.g., Storm Water Management Model (SWMM), WinSLAMM) to demonstrate achievement of reduction targets. Application of these data intensive models could allow for a streamlining of the planning and design phases of BMPs that may provide future cost savings as municipalities move toward implementation of the plan. Such resources must be documented in the PRP, and must reflect both overland flow and in-stream erosion components.

NOTE - Calculation of sediment load reductions for PRP purposes using the *Expert Panel to Define Removal Rates for Individual Stream Restoration Projects* report should be done as follows:

- Where existing sediment loads were calculated using modeling at a local watershed scale, the default rate to be used is 115 lb/ft/yr. This default rate comes from a convergence of MapShed modeled streambank erosion loads from a group of urbanized watersheds, the 248 lb/ft default edge-of-field (EOF) rate in the Expert Panel Report with the 50% efficiency uncertainty factor specified for the Protocols applied, and field data were collected following the BANCS methodology where projects have been implemented and load reductions calculated using the Protocols.

NOTE – Use of default effectiveness values (115 lb/ft/yr) will be accepted for the subsequent permit term. It is recommended that the data required to complete load calculations using the Protocols be collected during the design phase for use in subsequent load reduction calculations.

NOTE – Desktop MapShed users may not use the streambank restoration or street sweeping components included in the MapShed BMP editor for pollutant reduction calculations. Pollutant reductions associated with streambank restoration projects must use the methods described above; whereas, reductions from street sweeping must be calculated in accordance with the *Recommendations of the Expert Panel to Define Removal Rates for Street and Storm Drain Cleaning Practices* or the BMP Effectiveness Values Table.

NOTE – If BMP effectiveness values are updated in DEP's BMP Effectiveness Values document or in Chesapeake Bay Program expert panel reports between the time the PRP is approved and the time the final report is developed to document compliance with the permit, those updated effectiveness values may optionally be used.

MapShed was utilized to compute the existing sediment loading of the PRP Planning Area, which drains to Brandywine Creek, via the Blackhorse Run, Plum Run and Taylor Run

watersheds. The date the existing loading was calculated / the date of development of this PRP is September 2017.

West Chester Borough has a total existing sediment loading of 598,792 lbs/year to Brandywine Creek, in its Blackhorse Run, Plum Run and Taylor Run storm sewersheds. This is from the total Sediment loads for "Area1", "Area2", and "Area3" from the Brandywine Creek and the Chester Creek MapShed model runs, included in Appendix E, under "C:\MapShed\Runfiles\Brandywine\Output\Brandywine-1_ua.csv" and "C:\MapShed\Runfiles\ChesterCreek\Output\ChesterCreek-0_ua.csv".

E. Select BMPs to Achieve the Minimum Required Reductions in Pollutant Loading

Identify the minimum required reductions in pollutant loading. Applicants must propose the implementation of BMP(s) or land use changes within the PRP Planning Area that will result in meeting the minimum required reductions in pollutant loading within the Planning Area. These BMP(s) must be implemented within 5 years of DEP's approval of coverage under the PAG-13 General Permit or an individual permit, and may be located on either public or private property. If the applicant is aware of BMPs that will be implemented by others (either in cooperation with the applicant or otherwise) within the Planning Area that will result in net pollutant loading reductions, the applicant may include those BMPs within its PRP.

Historic street sweeping practices should not be considered in calculating credit for future practices. All proposed street sweeping practices may be used for credit if the minimum standard is met for credit (see 3800-PM-BCW0100m). In other words, if sweeping was conducted 1/month and will be increased to 25/year in the future, the MS4 does not need to use the "net reduction" resulting from the increased sweeping; it may take credit for the full amount of reductions from 25/year sweeping.

NOTE – Street sweeping may be proposed as a BMP for pollutant loading reductions if 1) street sweeping is not the only method identified for reducing pollutant loading, and 2) the BMP effectiveness values contained in 3800-PM-BCW0100m or Chesapeake Bay Program expert panel reports are utilized.

The names and descriptions of BMPs and land uses reported in the PRP should be in accordance with the Chesapeake Bay Program Model. The names and descriptions are available through CAST (log into www.casttool.org, select "Documentation," select "Source Data" and see worksheets named "Land Use Definitions" and "BMP Definitions").

Opportunities for BMP installation vary across a municipality, and for that reason MS4s with multiple PRP obligations need not propose BMPs to address each impairment listed in the Table during the permit term. The existing loading must be calculated for the entire PRP

Planning Area which drains to impaired waters, but pollutant controls to be installed during the subsequent permit term may be located such that they reduce the load in one sub-watershed by less than 10% and by more than 10% in another (as long as the overall amount of lbs. reduced constitutes 10% of the existing loading for the entire PRP Planning Area).

MS4s may propose and take credit for only those BMPs that are not required to meet regulatory requirements or otherwise go above and beyond regulatory requirements. For example, a BMP that was installed to meet Chapter 102 NPDES permit requirements for stormwater associated with construction activities may not be used to meet permit term minimum pollutant reductions unless the MS4 can demonstrate that the BMP exceeded regulatory requirements; if this is done, the MS4 may take credit for only those reductions that will occur as a result of exceeding regulatory requirements.

The impairment for West Chester Borough in the Brandywine Creek, via the Blackhorse Run, Plum Run and Taylor Run watersheds is siltation, which requires a minimum 10% reduction. The required reduction is 59,872 lbs/year. The reduction is calculated as follows:

The storm sewershed (the PRP Planning Area) that drains to the municipal separate storm sewer system within the jurisdiction of the MS4 to Brandywine Creek, is via the Blackhorse Run, Plum Run and Taylor Run watersheds, and has been delineated using PAMAP data known as Light Detection and Ranging (LiDAR) contours. For West Chester Borough, the PRP Planning Area consists of three areas, totaling 789 acres. The Brandywine Creek watershed, consisting of the Blackhorse Run, Plum Run and Taylor Run Watersheds consist of 6,837 acres per MapShed.

The first MapShed model run used the PRP Planning Area as an "urban area" to determine the total Brandywine Creek, via the Blackhorse Run, Plum Run and Taylor Run watersheds' loading as well as the loading exclusively from the MS4 storm sewershed(s) / PRP Planning Area. Note that based on MapShed's Basin delineations, there are small portions of the PRP Planning Area located in the adjacent watershed (Goose Creek / Chester Creek), as well as a small area located in the Brandywine watershed that drains to Goose Creek. Closer inspection of contours and stormwater collection system indicated that these areas drain to the Brandywine Creek, via

Blackhorse Run, Plum Run and Taylor Run watershed and to the Goose Creek (Chester Creek) watershed. The adjacent Goose Creek (Chester Creek) watershed basin was also modeled to determine the loading in that watershed that actually drains to Brandywine Creek via the Blackhorse Run, Plum Run and Taylor Run (again as an "urban area"). The loading from these "urban areas" (PRP Planning Area) were then adjusted appropriately from each model run.

Please note that from the MapShed output ("GWLFE Average Loads by Source for Watershed 0", included in Appendix E) Taylor Run is "Area1", Blackhorse Run is "Area2", and Plum Run is "Area3". The Goose Creek /Chester Creek Planning Area is "Area4".

West Chester Borough proposes to install BMP infiltration facilities with a goal of capturing and infiltrating the runoff generated from 1.5" of rainfall. The Borough is considering three (3) projects, located at Veterans Park (which is located at the intersections of Brick Alley, Pine Alley and Veit Alley), Marshall Square Park (which is located within E Marshall Street, N Matlack Street, E Biddle Street and N Franklin Street) and Brandywine Street (between W Niels Street and Juniper Alley). West Chester Borough proposes to install several small BMP infiltration facilities consisting of rain gardens, vegetated curb extensions, bioswales and infiltration trenches at Veterans Park and Brandywine Street and brick pavers with infiltration at Marshall Square Park. These projects have been designed by others (see Appendix F), with the drainage areas supplied for use in the preparation of this PRP. The drainage areas (Veterans Park 0.55 acre; Marshall Square Park 0.28 acres; Brandywine Street 1.29 acres; total of 2.12 acres) shape files were loaded into MapShed and the land uses within these drainage areas noted visually, and consist of HD Mixed and HD Residential for Veterans Park and High Density Residential for both Marshall Square Park and Brandywine Street. The total area of 2.12 acres (0.856 hectares), the land use of HD Residential (used to model the total BMP drainage area as the loading rates for HD Residential and HD Mixed are nearly identical), and an infiltration rate of 1.5" (3.81 cm) were utilized in the BMP Editor in MapShed (Urban BMP Editor) and the model run to ascertain the reduction in sediment loading as a result of these BMPs. The reduction is 1,852 lbs. (4,105,188 lbs total load prior to BMPs, and 4,103,336 lbs. total load after BMPs).

The BMP Editor in MapShed for an Infiltration Basin BMP with 1.5" (3.81 cm) Rainfall Captured utilizes an efficiency rate of 0.82 for TSS. Note that per the BMP Effectiveness Values from

DEP (3800-PM-BCW0100m 5/2016), Infiltration Practices w/Sand, Veg. has a BMP Efficiency Value of 95%; therefore, the MapShed efficiency rate is acceptable. Note that once the designs have been completed, reductions will be more accurately calculated.

Stream bank restoration and street sweeping are calculated outside of the MapShed program, per the PRP instructions, with streambank restoration as 115 lbs/ft/yr reduction. West Chester Borough will consider the potential of streambank restoration in the Blackhorse Run, Plum Run and Taylor Run watersheds. If streambank restoration is undertaken, the Borough would propose to install approximately one-hundred (100) feet of streambank restoration. Therefore, the proposed streambank restoration of one hundred (100) feet would result in 11,500 lbs./yr (i.e., 100 ft * 115 lbs/ft/yr) reduction.

West Chester Borough is proposing to street sweep all streets in the borough more than 25 times annually. Per the BMP Effectiveness Values (5/2016), Street sweeping must be conducted 25 times annually; only count those streets that are swept at least 25 times in a year. The acres associated with all streets that are swept at least 25 times in a year would be eligible for pollutant reductions consistent with the given BMP effectiveness values. The BMP Effectiveness Value for Sediment (TSS) is 9%. As the Borough is proposing to street sweep all streets in the Planning Area, the entire Planning Area is assumed to be the contributing area (as the Planning Area consists of all drainage area to roadways in the Borough). From MapShed, the total sediment loading from the Planning Area in the Brandywine Creek, via the Blackhorse Run, Plum Run and Taylor Run watersheds is 598,792 lbs./yr; therefore the reduction from street sweeping will be 53,891 lbs./yr ($598,792 \text{ lbs./yr} * 9\%$).

West Chester Borough also plants trees every year. The BMP effectiveness values for tree planting are estimated by DEP. DEP estimates that 100 fully mature trees of mixed species (both deciduous and non-deciduous) provide pollutant load reductions for the equivalent of one acre (i.e., one mature tree = 0.01 acre). The BMP effectiveness values given are based on immature trees (seedlings or saplings); the effectiveness values are expected to increase as the trees mature. To determine the amount of pollutant load reduction that can be credited for tree planting efforts: 1) multiply the number of trees planted by 0.01; 2) multiply the acreage determined in step 1 by the pollutant loading rate for the land prior to planting the trees (in

lbs/acre/year); and 3) multiply the result of step 2 by the BMP effectiveness values given. The Tree Planting BMP Effectiveness Value is 20% for Sediment.

In the Brandywine Creek, via the Blackhorse Run, Plum Run and Taylor Run watersheds, the Borough intends to plant a minimum of 175 trees annually. The locations of these trees are unknown at this time; however, given the urban nature of the Borough, they estimate that approximately 140 will be street trees. The HD Residential loading rate from MapShed for the Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run watershed will be used to best represent paved streets / sidewalks (i.e., land prior to planting the trees is along streets, i.e., pavement and sidewalks). The sediment HD Residential loading rate from MapShed is 99.8 lb/ac/yr. The reduction is therefore 27.9 lbs/yr. (140 street trees/yr * 0.01 * 99.8 lb/ac/year * 20%).

The final total proposed potential sediment reduction is summarized below in Table E-1. The actual reductions will be refined at the time of design of each BMP.

TABLE E-1: REQUIRED 10% SILTATION REDUCTION

	Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run Storm Sewershed
Existing Load (lb/yr)	598,792
Percent Reduction	10%
Required Reduction (lb/yr)	59,879
Proposed Reduction (lbs./yr)	1,852 (Three BMPs) 53,891 (Street Sweeping) 28 (Plant Street Trees) 11,500 (Streambank Restoration) <u>Total Potential Reduction 67,271</u>

West Chester Borough plans to achieve the sediment reduction by designing, constructing, operating and maintaining Best Management Practices (BMPs). West Chester Borough is required to implement this plan over the next five (5) years.

The following table summarizes the sediment load and required and proposed potential reductions for West Chester Borough's Brandywine Creek, via that Blackhorse Run, Plum Run and Taylor Run Storm Sewershed / PRP Planning Area.

TABLE E-2: MS4 PRP STRATEGY SUMMARY

Description	Value	Unit
Brandywine Creek, Blackhorse Run, Plum Run and Taylor Run Storm Sewershed / PRP Planning Area	789	acres
Existing Sediment Load	598,792	lb/year
Required Sediment Pollutant Load Reduction Percentage	10%	lb/year
Minimum Required Pollutant Load Reduction	59,879	lb/year
Proposed Sediment Load Reduction from BMPs	67,271	lb/year

F. Identify Funding Mechanism(s)

Prior to approving coverage DEP will evaluate the feasibility of implementation of an applicant's PRP. Part of this analysis includes a review of the applicant's proposed method(s) by which BMPs will be funded. Applicants must identify all project sponsors and partners and probable funding sources for each BMP.

West Chester Borough has adopted a Stream Protection Fee, moneys from which will be used to fund BMP projects the Borough will undertake in the next NPDES Permit term.

G. Identify Responsible Parties for Operation and Maintenance (O&M) of BMPs

Once implemented, the BMPs must be maintained in order to continue producing the expected pollutant reductions. Applicants must identify the following for each selected BMP:

- The party(ies) responsible for ongoing O&M;
- The activities involved with O&M for each BMP; and
- The frequency at which O&M activities will occur.

MS4 permittees will need to identify actual O&M activities in Annual MS4 Status Reports submitted under the Individual Permit. Table G-1 lists the required information.

TABLE G-1 OPERATION AND MAINTENANCE OF BMPs

NAME OF BMP	RESPONSIBLE PARTY	O&M ACTIVITY & FREQUENCY
Street Sweeping	West Chester Borough	Per PA BMP Manual (latest revision)
Street Tree Planting	West Chester Borough	Per PA BMP Manual (latest revision)
Streambank Restoration	West Chester Borough	Per PA BMP Manual (latest revision)
Proposed Infiltration Facilities	West Chester Borough	Per PA BMP Manual (latest revision)

H. GENERAL INFORMATION

Submission of PRP: Attach one copy of the PRP with the NOI or individual permit application that is submitted to the regional office of DEP responsible for reviewing the NOI or application. In addition, one copy of the PRP (not the NOI or application) must be submitted to DEP's Bureau of Clean Water (BCW). BCW prefers electronic copies of PRPs, if possible. Email the electronic version of the PRP, including map(s) (if feasible), to RA-EPPAMS4@pa.gov. If the MS4 determines that submission of an electronic copy is not possible, submit a hard copy to: PA Department of Environmental Protection, Bureau of Clean Water, 400 Market Street, PO Box 8774, Harrisburg, PA 17105-8774.

PRP Implementation and Final Report: Under the NPDES Individual Permit, the permittee must achieve the required pollutant load reductions within 5 years following DEP's approval of coverage under the Individual Permit, and must submit a report demonstrating compliance with the minimum pollutant load reductions as an attachment to the first Annual MS4 Status Report that is due following completion of the 5th year of Individual Permit coverage.

For example, if DEP issues written approval of coverage to a permittee on June 1, 2018, the required pollutant load reductions must be implemented by June 1, 2023 and the final report documenting the BMPs that were implemented (with appropriate calculations) must be attached to the annual report that is due September 30, 2023.

West Chester Borough will submit the PRP in accordance with the above requirements.

APPENDIX A

MS4 Name	NPDES ID	Individual Permit Required?	Reason	Impaired Downstream Waters or Applicable TMDL Name	Requirement(s)	Other Cause(s) of Impairment
Chester County						
WEST BRANDYWINE TWP	PA1130544	Yes	TMDL Plan, SP, IP	West Branch Brandywine Creek Beaver Creek Christina River Basin Nutrients Culbertson Run Unnamed Tributaries to West Branch Brandywine Creek East Branch Brandywine Creek	Appendix C-PCB (4a), Appendix E-Siltation (4a) TMDL Plan-Nutrients, Organic Enrichment/Low D.O. (4a) Appendix E-Siltation (4a)	Water/Flow Variability (4c) Cause Unknown (4a), Other Habitat Alterations, Water/Flow Variability (4c) Other Habitat Alterations (4c) Cause Unknown (4a) Cause Unknown (4a), Other Habitat Alterations, Water/Flow Variability (4c)
WEST CALN TWP	PAG130145	Yes	TMDL Plan, SP	Christina River Basin Nutrients Chesapeake Bay Nutrients/Sediment Christina River Basin Sediment Indian Spring Run Pequea Creek West Branch Brandywine Creek	TMDL Plan-Nutrients, Organic Enrichment/Low D.O. (4a) Appendix D-Nutrients, Siltation (4a) TMDL Plan-Siltation, Suspended Solids (4a) Appendix E-Nutrients, Organic Enrichment/Low D.O., Siltation (4a) Appendix E-Nutrients, Organic Enrichment/Low D.O., Siltation (4a) Appendix C-PCB (4a)	Water/Flow Variability (4c) Cause Unknown (4a), Other Habitat Alterations (4c) Water/Flow Variability (4c) Cause Unknown (4a) Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c) Other Habitat Alterations, Water/Flow Variability (4c)
WEST CHESTER BORO	PAG130002	Yes	TMDL Plan	Taylor Run Plum Run Goose Creek TMDL Chester Creek Brandywine Creek Blackhorse Run	Appendix E-Siltation (4a) Appendix E-Siltation (4a) TMDL Plan-Nutrients (4a) Appendix B-Pathogens (5), Appendix E-Siltation (5) Appendix E-Siltation (4a) Appendix E-Siltation (4a)	Cause Unknown (4a), Other Habitat Alterations (4c) Water/Flow Variability (4c) Cause Unknown (4a) Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c) Other Habitat Alterations, Water/Flow Variability (4c)
WEST GOSHEN TWP	PA1130532	Yes	TMDL Plan, SP, IP	East Branch Chester Creek Broad Run Chester Creek East Branch Brandywine Creek Goose Creek TMDL John Smedley Run Plum Run Taylor Run Christina River Basin Sediment	Appendix E-Siltation (5) Appendix B-Pathogens (5), Appendix E-Siltation (5) TMDL Plan-Nutrients (4a) TMDL Plan-Siltation, Suspended Solids (4a)	Cause Unknown (5), Other Habitat Alterations, Water/Flow Variability (4c) Water/Flow Variability (4c) Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c) Cause Unknown (4a), Water/Flow Variability (4c) Cause Unknown (4a) Water/Flow Variability (4c) Water/Flow Variability (4c) Cause Unknown (4a), Other Habitat Alterations (4c)

APPENDIX B

Public Notice & Proof of Publication

Christine McAllister

To: legals@dailylocal.com
Subject: Public Notice Advertisement
Attachments: ADVERTISEMENT-WC (002).DOCX
Importance: High

Plan needs to be
on July 18 Workweek
Agenda
me

7/7/17

Maureen -- Please advertise the attached Notice on July 10. E-mail me a Proof of Publication and send the invoice to my attention.

Thank you for your help with EVERYTHING!!!!

Regards,

Christine

Christine M. McAllister
Administrative Assistant to the Borough Manager
Borough of West Chester
cmcallister@west-chester.com
610-344-3246 (W)
484-456-8281 (Cell)
610-436-0009 (F)

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BOROUGH OF WEST CHESTER

MS4 POLLUTANT REDUCTION PLANS AND TMDL PLAN

JUNE 30, 2017

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s)*. The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.west-chester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@west-chester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.

Michael A. Cotter
Borough Manager

AFFIDAVIT OF PUBLICATION
307 Derstine Avenue • Lansdale, PA 19446

WEST CHESTER BOROUGH
401 E GAY STREET
WEST CHESTER, PA 19380
Attention:

STATE OF PENNSYLVANIA,
COUNTY OF MONTGOMERY

The undersigned *Anthony Vincent*, being duly sworn the he/she is the principal clerk of Daily Local News, Daily Local News Digital, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

WEST CHESTER BOROUGH

Published in the following edition(s):

Daily Local News 07/10/17
Daily Local News Digital 07/10/17

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MAUREEN SCHMID, Notary Public
Lansdale Boro., Montgomery County
My Commission Expires March 31, 2021

Sworn to the subscribed before me this 7/11/2017

Maureen Schmid
Notary Public, State of Pennsylvania
Acting In County of Montgomery

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.westchester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@west-chester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.
Michael A. Cotter
Borough Manager
DL-July 10-1a

Advertisement Information

Client Id: 884439 Ad Id: 1379705 PO: Sales Person: 093304

and 455-14.C to allow a minimum Front Yard Setback of 30.05 feet and minimum Rear Yard Setback of 55.37 feet where the minimum Front and Rear Yard Setbacks are 75 feet; Section 455-132 to allow a pool and associated structures within the minimum Rear Yard Setback where they are not permitted; and from Section 274-19 to allow land disturbance, improvements, and construction activities within the Riparian Buffer where no disturbance is permitted; and any other relief that may be deemed necessary by the Zoning Hearing Board.

2. ZHB 563 - Nguyen/Vu - 1026A Lancaster Avenue, Berwyn. (VB District TPN 55-2L-4) Applicant has changed the property's use from commercial to single-family detached dwelling without Township approval. Applicant seeks a Variance from Section 455-21.(A)(1) to eliminate the need for commercial uses where second floor apartments are only allowed as accessory uses to nonresidential uses on the ground-level floor; a Special Exception in accordance with Section 455-122.B to change a nonconforming use or in the alternative appeal of the Zoning Officer's determination that the Applicant changed the property's use from commercial to single-family detached dwelling which is not a permitted use, and any other relief that may be deemed necessary by the Zoning Hearing Board.

Copies of applications are available for review in the Easttown Township Building weekdays from 8:00 a.m. through 12:00 p.m. and 12:30 p.m. through 4:30 p.m. If any person wishing to attend the hearing has a disability and/or requires an auxiliary aid, service or other accommodation, he or she should contact the Township at 610-687-3000 to discuss how those needs may be accommodated.
dn. 7/10, 17 - 1a.

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings

from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.westchester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@west-chester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.
Michael A. Cotter
Borough Manager
DL-July 10-1a

BIDS & PROPOSALS

ADVERTISEMENT FOR BIDS

Sealed bids for the construction of the Dogwood / Scott Drive Sewer Extension will be received by the Cain Township Municipal Authority electronically via PennBid™ until 10:00 A.M. local time, Tuesday, August 8, 2017 at which time all bids will be opened online.

Construction of the sewer extension will involve the installation of approximately 4,000 linear feet of low pressure sewer lines by open trench and horizontal directional drilling, installation of approximately 400 linear feet of gravity sanitary sewer by open trench, and the completion of all other necessary work to provide public sewer to approximately 55 existing homes located in Cain Township, Chester County Pennsylvania.

All Bid Documents and solicitation details are available at PennBid™. www.PennBid.net. Click on the "Solicitations" then "View" tabs. Please note the low bidder is responsible for a fee to PennBid™.

Each bid must be accompanied by a bid bond or a certified check in an amount not less than ten percent (10%) of the amount of the bid in the form and subject to the conditions provided in the Instructions to Bidders. No bid may be withdrawn for the

**Public Agenda
And
Meeting Minutes**

Public Works Committee

July 11, 2017 – 5:35 pm

Committee Members Present: Don Braceland (Chair)
Bernard Flynn (Council Member)
Denise Polk

Department Heads Present: O'B Laing, Public Works
Keith Kurowski, Recreation
Mac Cotter (Borough Manager)

1. Call to Order – meeting was called to order at 5:35 PM
2. Comments, suggestions, petitions by residents in attendance regarding items not on the agenda:
 - a) Keith Kurowski reminded everyone that the 35th Annual Turks Head Music Festival was taking place this Sunday, July 16th at Everhart Park.
3. Discuss the Marshall Square Park sidewalk and fieldstone step reconstruction.
 - a) After an extended discussion, this item was tabled for further discussion. It was decided that Jeff Beitel, at his request, would offer reasonable alternative to repair the sidewalk instead of total reconstruction.
4. Discuss substitute material to replace tree well grates throughout the BID.
 - a) Alternative material was shown along with photograph of similar product which is currently in place for over eight (8) years. This was well received by Council and members of the public. No decision was made however, Jeff Beitel indicated that as the Chairman of the Shade Tree Commission he had some concerns about the product and would like Council to allow him some time to look at alternative products to which Council complied.
5. Appraise Council of proposed Bid solicitation for 2017 Pavement Markings project.
 - a) The Public Works Director gave a brief overview of the Pavement Markings project which included the bid documents to be ready for contract award in August.
6. Appraise Council of proposed Bid solicitation for 2017 Street and Alley Resurfacing/Reconstruction project.
 - a) The Public Works Director gave a brief overview of the Street and Alley Resurfacing/Reconstruction project which included the bid documents to be ready for contract award in August.

7. Appraise Council of proposed Bid Solicitation for the Barnard Street Culvert project.
 - a) The Public Works Director informed Council that this project is scheduled for bidding as soon as possible. He also noted that this is one of the projects which was long overdue, but would not be possible to expedite had it not been for the newly implemented Stream Protection Fee (SPF) which will cover all cost for the project. Councilman Flynn, however, remarked that he would suggest that the bridge abutment be painted with graffiti resistant paint. No action needed.

8. Consider Planned University Campus Overlay Traffic Planning Proposal
 - a) Borough Manager gave a brief overview of this project, highlighting scope of work and also indicated it will be joint effort between WCU, West Goshen Township and The Borough.

9. Consider Proposal for Town Center Closed Loop System Upgrade
 - a) Borough Manager gave a synopsis of this project which was subsequently sent through by a vote of 3 - 0.
 - **TO WORK SESSION AGENDA**

10. Consider Stream Protection Program Support Change Order.
 - a) Courtney Finneran, Project Manager of CH2, gave a brief overview highlighting the rationale for the change order request. This was followed by a 3 - 0 vote by Council.
 - **TO WORK SESSION AGENDA**

11. Authorization to Advertise the Goose Creek Pollution Reduction Plan
 - a) Borough Manager gave a brief overview of this plan which was followed by a 3 - 0 approval by Council.
 - **TO WORK SESSION AGENDA**

12. Discuss Tennis Court maintenance at Hoopes Park 2017
 - a) 3 - 0 approval to move ahead with the project
 - **TO WORK SESSION AGENDA**

13. Discuss Kathy McBratnie Park Playground Renovation 2017
 - a) Informative only, no action required or taken.

14. Approve June 2017 Public Works Committee minutes

15. Other Business
 - a) None

16. Adjourn
 - a) Meeting called for adjournment by Don Braceland, all in favor 3 - 0 .

AGENDA

Public Works Committee

August 8, 2017 – 5:30 pm

Committee Members: Donald Braceland (Chair)
Denise Polk
Bernard Flynn

Department Heads: O'B Laing, Public Works
Keith Kurowski, Parks & Recreation

Borough Manager: Michael A. Cotter

1. Call to Order
2. Comments, suggestions, petitions by residents in attendance regarding items not on the agenda.
3. Discuss Gilmore PRP/TMDL Plans (*Issue Briefing (see Agenda Bookmark) & Attachment*)
4. Discuss Marshall Square Park proposal for sidewalk and staircase reconstruction (*Issue Briefing (see Agenda Bookmark) & Attachment*)
5. Discuss PennDOT Winter Traffic Services Agreement (*Issue Briefing (see Agenda Bookmark) & Attachment*)
6. Appraise Council of pending Shade Tree Grant application (*Information only*)
7. Review and approval of Bid Award for Barnard Street Culvert project (*Issue Briefing (see Agenda Bookmark) & Attachment*)
8. Review and approval of Paving Project Bid Award (*Issue Briefing (see Agenda Bookmark) & Attachment*)
9. Review and approval of Bid Award for Pavement markings (*Issue Briefing (see Agenda Bookmark) & Attachment*)
10. Discuss request from Councilman Bernie Flynn to remove bench from the North side of Gay Street in the vicinity of Rite Aid Pharmacy (*Information only*)
11. Friends of Marshall Square Park – discuss two granite in-lay park signs (*Issue Briefing (see Agenda Bookmark) & Attachment*)
12. Friends of Marshall Square Park – discuss “No Smoking Inside Gazebo” signs (*Issue Briefing (see Agenda Bookmark)*)

Updated August 8, 2017

13. Approve July's Public Works Committee meeting minutes (*see Agenda Bookmark*)
14. Other Business
15. Adjourn

Attachment Information:

[Click here to access the Attachments.](#)

Attachments can also be located at www.west-chester.com in the Document Center's "Agenda Attachments" folder.

****IDENTIFIER KEY = PW****

WEST CHESTER BOROUGH
POLLUTANT REDUCTION PLANS
AND
TOTAL MAXIMUM DAILY LOAD STRATEGY PLAN

EXECUTIVE SUMMARY

- West Chester Borough is currently operating under the PADEP's General (PAG-13) Small Municipal Separate Storm Sewer Systems (MS4) permit. Requirements include the following:
 - Public Education and Outreach
 - Public Participation
 - Illicit Discharge Detection and Elimination
 - Construction Site Runoff Control
 - Post-Construction Runoff Control
 - Pollution Prevention / Good Housekeeping

- The first permit was issued in 2003 with renewals every 5 years. The next permit period extends from 2018 to 2023. The Borough is required to prepare and submit a new permit application by September 16, 2017.

- Past permit requirements were limited to the fulfillment and reporting of the above listed efforts. A key component of this next permit cycle is the submission of a Pollutant Reduction Plan (PRP) and/or a Total Maximum Daily Load (TMDL) Strategy Plan to accomplish a specified percentage reduction in the amount of pollutants contributing to impaired streams. Pollutant reductions must be achieved within the 5-year permit period.

- PADEP has identified the following streams in the Borough as having specific impairments:

Goose Creek:	Nutrients (i.e., Total Phosphorus)*
Chester Creek (Goose Creek):	Siltation (i.e., sediment) and pathogens
Brandywine Creek:	Siltation
Blackhorse Run:	Siltation
Plum Run:	Siltation
Taylor Run:	Siltation

*Per U.S. Environmental Protection Agency, Philadelphia, PA report titled Nutrient Total Maximum Daily Load in Goose Creek Watershed, Pennsylvania, dated June 30, 2008.

As a result, the Borough is required to develop one (1) TMDL Strategy Plan to achieve a 53.9% reduction in the Total Phosphorus loading contributing to Goose Creek and two (2) PRPs to demonstrate a 10% reduction in the sediment loading contributing to Chester Creek/Goose Creek and Brandywine Creek/Blackhorse Run/Plum Run/Taylor Run.

- Because the Borough is subject to the Total Phosphorus TMDL Plan reduction requirements, the Borough will no longer be eligible to be covered by the PAG-13 permit, but now will be required to obtain an Individual MS4 Permit from PADEP.
- The existing sediment and Total Phosphorus loadings and reductions have been calculated based on the land uses within the contributing drainage areas to the impaired streams.
- Effective stormwater Best Management Practices (BMPs) are proposed, including the following combinations of various BMPs:
 - Rain gardens
 - Vegetated curb extensions
 - Bioswales
 - Infiltration trenches
 - Brick pavers with underground infiltration
 - Streambank restoration
 - Street sweeping
 - Tree plantings
 - Pretreatment and membrane filtration systems
 - Storm inlet cleaning
- The above listed BMPs are proposed to be installed at the following locations throughout the Borough:
 - John O. Green Memorial Park
 - Fugett Park/Borough Hall
 - Greenview Alley

- **Veterans Park/Pine Alley**
 - **Marshall Square Park**
 - **South Brandywine Street**
 - **Storm sewer system outfalls at E. Nields Street west of S. Franklin Street**
- **The Public Participation component of the TMDL Strategy Plan and PRPs has been satisfied as follows:**
 - **The public notice regarding the draft TMDL strategy plan and PRPs was advertised on July 10, 2017.**
 - **The required public meeting (this discussion) was held on August 8, 2017.**
 - **Public comments were accepted from July 10, 2017 to August 10, 2017.**
 - **Public comments will be incorporated, documents will be finalized, and the permit application will be submitted by September 16, 2017 to PADEP.**

APPENDIX C



Legend

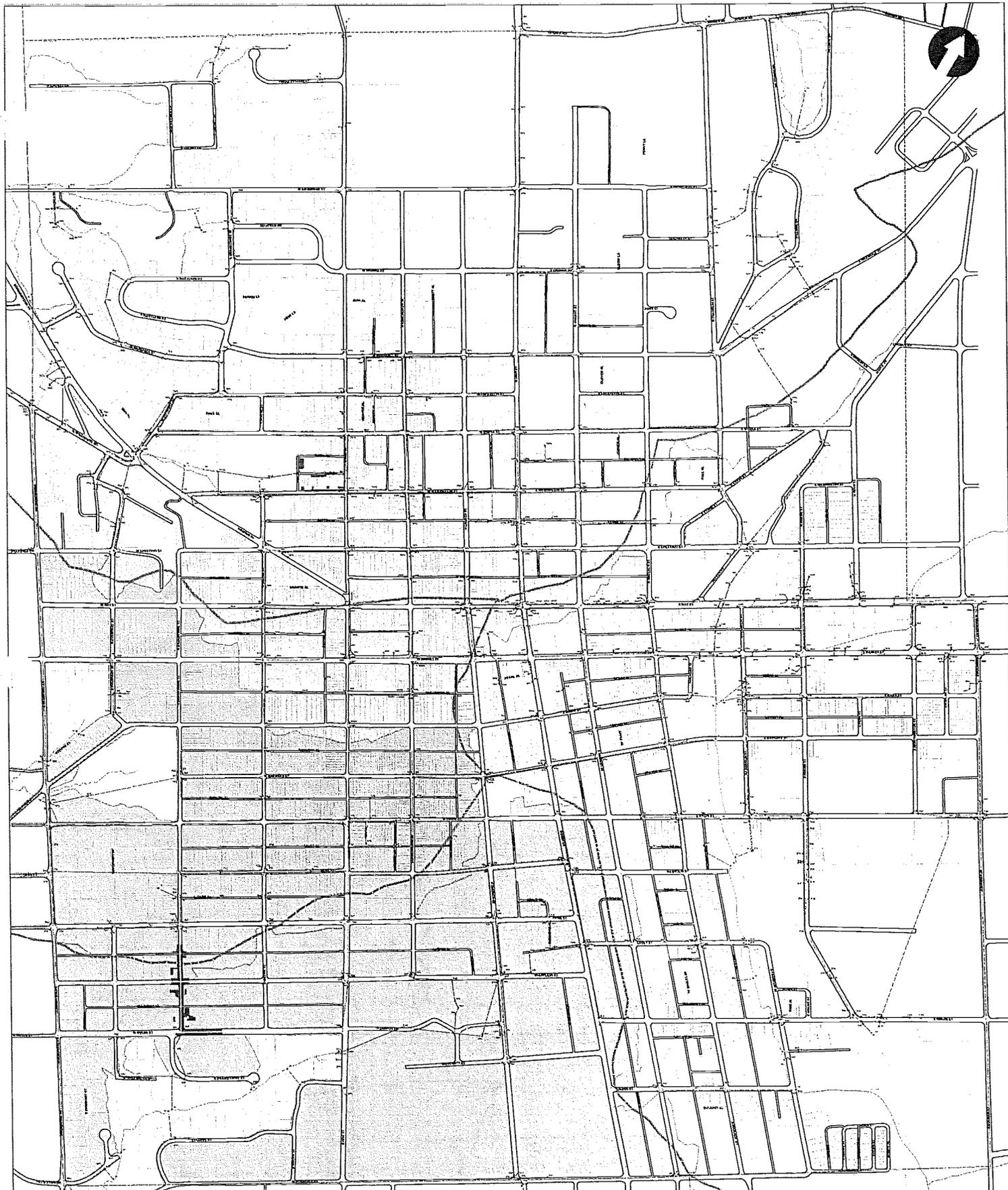
Stormwater Outfall	Water	Coniferous
Stormwater Junctions	Low-Density Residential	Deciduous
Edge of Pavement	Medium-Density Residential	Mixed Woodland
Stormwater Lines	High-Density Residential	Woody Wetland
Streams	Low-Density Mixed Urban	Emergent Wetland
Municipal Boundary	Medium-Density Mixed Urban	Disturbed
Parcels	High-Density Mixed Urban	Disturbed
	Hay/Pasture	Turf/Golf
	Cropland	

**WEST CHESTER BOROUGH
MS4 PRP LANDUSE (MAPSHED) MAP**
WEST CHESTER BOROUGH, CHESTER COUNTY, PA

GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES
45 E. BUTLER AVE. SUITE 100, NEW BULLAIN, PA 19380
PH: 610-328-1111 FAX: 610-328-1112

JOB NO. 15706957 DATE: JUNE 2017

0 100 200 Feet



Legend	
	Stormwater Outfall
	Stormwater Junctions
	Edge of Pavement
	Stormwater Lines
	Streams
	Municipal Boundary
	Small BMPs
	Parcels
Planning Areas	
	BLACKHORSE CREEK
	PLUM RUN
	TAYLOR RUN
	Mapped Basin Boundary

**WEST CHESTER BOROUGH
MS4 PRP MAP**

WEST CHESTER BOROUGH, CHESTER COUNTY, PA

GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

41 E. BUTLER AVE. SUITE 100, NEW BRITAIN, PA 17901-1504 (717) 252-4310
www.gilmore-associates.com

JOB NO: 15-08026T DATE: JUNE 2017

APPENDIX D

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
 STORMWATER DISCHARGES FROM
 SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
 BMP EFFECTIVENESS VALUES**

This table of BMP effectiveness values (i.e., pollutant removal efficiencies) is intended for use by MS4s that are developing and implementing Pollutant Reduction Plans and TMDL Plans to comply with NPDES permit requirements. The values used in this table generally consider pollutant reductions from both overland flow and reduced downstream erosion, and are based primarily on average values within the Chesapeake Assessment Scenario Tool (CAST) (www.casttool.org). Design considerations, operation and maintenance, and construction sequences should be as outlined in the Pennsylvania Stormwater BMP Manual, Chesapeake Bay Program guidance, or other technical sources. The Department of Environmental Protection (DEP) will update the information contained in this table as new information becomes available. Interested parties may submit information to DEP for consideration in updating this table to DEP's MS4 resource account, RA-EPPAMS4@pa.gov. Where an MS4 proposes a BMP not identified in this document or in Chesapeake Bay Program expert panel reports, other technical resources may be consulted for BMP effectiveness values. Note – TN = Total Nitrogen and TP = Total Phosphorus.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Wet Ponds and Wetlands	20%	45%	60%	A water impoundment structure that intercepts stormwater runoff then releases it to an open water system at a specified flow rate. These structures retain a permanent pool and usually have retention times sufficient to allow settlement of some portion of the intercepted sediments and attached nutrients/toxics. Until recently, these practices were designed specifically to meet water quantity, not water quality objectives. There is little or no vegetation living within the pooled area nor are outfalls directed through vegetated areas prior to open water release. Nitrogen reduction is minimal.
Dry Detention Basins and Hydrodynamic Structures	5%	10%	10%	Dry Detention Ponds are depressions or basins created by excavation or berm construction that temporarily store runoff and release it slowly via surface flow or groundwater infiltration following storms. Hydrodynamic Structures are devices designed to improve quality of stormwater using features such as swirl concentrators, grit chambers, oil barriers, baffles, micropools, and absorbent pads that are designed to remove sediments, nutrients, metals, organic chemicals, or oil and grease from urban runoff.
Dry Extended Detention Basins	20%	20%	60%	Dry extended detention (ED) basins are depressions created by excavation or berm construction that temporarily store runoff and release it slowly via surface flow or groundwater infiltration following storms. Dry ED basins are designed to dry out between storm events, in contrast with wet ponds, which contain standing water permanently. As such, they are similar in construction and function to dry detention basins, except that the duration of detention of stormwater is designed to be longer, theoretically improving treatment effectiveness.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Infiltration Practices w/ Sand, Veg.	85%	85%	95%	A depression to form an infiltration basin where sediment is trapped and water infiltrates the soil. No underdrains are associated with infiltration basins and trenches, because by definition these systems provide complete infiltration. Design specifications require infiltration basins and trenches to be built in good soil, they are not constructed on poor soils, such as C and D soil types. Engineers are required to test the soil before approval to build is issued. To receive credit over the longer term, jurisdictions must conduct yearly inspections to determine if the basin or trench is still infiltrating runoff.
Filtering Practices	40%	60%	80%	Practices that capture and temporarily store runoff and pass it through a filter bed of either sand or an organic media. There are various sand filter designs, such as above ground, below ground, perimeter, etc. An organic media filter uses another medium besides sand to enhance pollutant removal for many compounds due to the increased cation exchange capacity achieved by increasing the organic matter. These systems require yearly inspection and maintenance to receive pollutant reduction credit.
Filter Strip Runoff Reduction	20%	54%	56%	Urban filter strips are stable areas with vegetated cover on flat or gently sloping land. Runoff entering the filter strip must be in the form of sheet-flow and must enter at a non-erosive rate for the site-specific soil conditions. A 0.4 design ratio of filter strip length to impervious flow length is recommended for runoff reduction urban filter strips.
Filter Strip Stormwater Treatment	0%	0%	22%	Urban filter strips are stable areas with vegetated cover on flat or gently sloping land. Runoff entering the filter strip must be in the form of sheet-flow and must enter at a non-erosive rate for the site-specific soil conditions. A 0.2 design ratio of filter strip length to impervious flow length is recommended for stormwater treatment urban filter strips.
Bioretention – Raingarden (C/D soils w/ underdrain)	25%	45%	55%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has an underdrain and is in C or D soil.
Bioretention / Raingarden (A/B soils w/ underdrain)	70%	75%	80%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has an underdrain and is in A or B soil.

3800-PM-BCW0100m 5/2016
BMP Effectiveness Values

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Bioretention / Raingarden (A/B soils w/o underdrain)	80%	85%	90%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has no underdrain and is in A or B soil.
Vegetated Open Channels (C/D Soils)	10%	10%	50%	Open channels are practices that convey stormwater runoff and provide treatment as the water is conveyed, includes bioswales. Runoff passes through either vegetation in the channel, subsoil matrix, and/or is infiltrated into the underlying soils. This BMP has no underdrain and is in C or D soil.
Vegetated Open Channels (A/B Soils)	45%	45%	70%	Open channels are practices that convey stormwater runoff and provide treatment as the water is conveyed, includes bioswales. Runoff passes through either vegetation in the channel, subsoil matrix, and/or is infiltrated into the underlying soils. This BMP has no underdrain and is in A or B soil.
Bioswale	70%	75%	80%	With a bioswale, the load is reduced because, unlike other open channel designs, there is now treatment through the soil. A bioswale is designed to function as a bioretention area.
Permeable Pavement w/o Sand or Veg. (C/D Soils w/ underdrain)	10%	20%	55%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, no sand or vegetation and is in C or D soil.
Permeable Pavement w/o Sand or Veg. (A/B Soils w/ underdrain)	45%	50%	70%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, no sand or vegetation and is in A or B soil.
Permeable Pavement w/o Sand or Veg. (A/B Soils w/o underdrain)	75%	80%	85%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has no underdrain, no sand or vegetation and is in A or B soil.
Permeable Pavement w/ Sand or Veg. (A/B Soils w/ underdrain)	50%	50%	70%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, has sand and/or vegetation and is in A or B soil.

3800-PM-BCW0100m 5/2016
BMP Effectiveness Values

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Permeable Pavement w/ Sand or Veg. (A/B Soils w/o underdrain)	80%	80%	85%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has no underdrain, has sand and/or vegetation and is in A or B soil.
Permeable Pavement w/ Sand or Veg. (C/D Soils w/ underdrain)	20%	20%	55%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, has sand and/or vegetation and is in C or D soil.
Stream Restoration	0.075 lbs/ft/yr	0.068 lbs/ft/yr	44.88 lbs/ft/yr	An annual mass nutrient and sediment reduction credit for qualifying stream restoration practices that prevent channel or bank erosion that otherwise would be delivered downstream from an actively enlarging or incising urban stream. Applies to 0 to 3rd order streams that are not tidally influenced. If one of the protocols is cited and pounds are reported, then the mass reduction is received for the protocol.
Forest Buffers	25%	50%	50%	An area of trees at least 35 feet wide on one side of a stream, usually accompanied by trees, shrubs and other vegetation that is adjacent to a body of water. The riparian area is managed to maintain the integrity of stream channels and shorelines, to reduce the impacts of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals. (Note – the values represent pollutant load reductions from stormwater draining through buffers).
Tree Planting	10%	15%	20%	The BMP effectiveness values for tree planting are estimated by DEP. DEP estimates that 100 fully mature trees of mixed species (both deciduous and non-deciduous) provide pollutant load reductions for the equivalent of one acre (i.e., one mature tree = 0.01 acre). The BMP effectiveness values given are based on immature trees (seedlings or saplings); the effectiveness values are expected to increase as the trees mature. To determine the amount of pollutant load reduction that can be credited for tree planting efforts: 1) multiply the number of trees planted by 0.01; 2) multiply the acreage determined in step 1 by the pollutant loading rate for the land prior to planting the trees (in lbs/acre/year); and 3) multiply the result of step 2 by the BMP effectiveness values given.
Street Sweeping	3%	3%	9%	Street sweeping must be conducted 25 times annually. Only count those streets that have been swept at least 25 times in a year. The acres associated with all streets that have been swept at least 25 times in a year would be eligible for pollutant reductions consistent with the given BMP effectiveness values.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Storm Sewer System Solids Removal	0.0027 for sediment, 0.0111 for organic matter	0.0006 for sediment, 0.0012 for organic matter	1 - TN and TP concentrations	<p>This BMP (also referred to as "Storm Drain Cleaning") involves the collection or capture and proper disposal of solid material within the storm system to prevent discharge to surface waters. Examples include catch basins, stormwater inlet filter bags, end of pipe or outlet solids removal systems and related practices. Credit is authorized for this BMP only when proper maintenance practices are observed (i.e., inspection and removal of solids as recommended by the system manufacturer or other available guidelines). The entity using this BMP for pollutant removal credits must demonstrate that they have developed and are implementing a standard operating procedure for tracking the material removed from the sewer system. Locating such BMPs should consider the potential for backups onto roadways or other areas that can produce safety hazards.</p> <p>To determine pollutant reductions for this BMP, these steps must be taken:</p> <ol style="list-style-type: none"> 1) Measure the weight of solid/organic material collected (lbs). Sum the total weight of material collected for an annual period. Note - do not include refuse, debris and floatables in the determination of total mass collected. 2) Convert the annual wet weight captured into annual dry weight (lbs) by using site-specific measurements (i.e., dry a sample of the wet material to find its weight) or by using default factors of 0.7 (material that is predominantly wet sediment) or 0.2 (material that is predominantly wet organic matter, e.g., leaf litter). 3) Multiply the annual dry weight of material collected by default or site-specific pollutant concentration factors. The default concentrations are shown in the BMP Effectiveness Values columns. Alternatively, the material may be sampled (at least annually) to determine site-specific pollutant concentrations. <p>DEP will allow up to 50% of total pollutant reduction requirements to be met through this BMP. The drainage area treated by this BMP may be no greater than 0.5 acre unless it can be demonstrated that the specific system proposed is capable of treating stormwater from larger drainage areas. For planning purposes, the sediment removal efficiency specified by the manufacturer may be assumed, but no higher than 80%.</p>

APPENDIX E



Watershed Totals	Municipality Loads	Regulated Loads	Unregulated Loads
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GWLF-E Average Loads by Source for Watershed 1

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	400	81152.16	202.90	260.59	0.65	66.89	0.17
Cropland	121	217926.95	1801.00	720.96	5.96	134.04	1.11
Forest	1166	21340.75	18.30	99.36	0.09	14.37	0.01
Wetland	126	1256.63	10.00	30.58	0.24	2.16	0.02
Disturbed	5	396.83	79.40	0.97	0.19	0.31	0.06
Turfgrass	151	13756.85	91.30	108.69	0.72	13.07	0.09
Open Land	909	228994.15	251.90	1076.78	1.18	134.66	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	49	1212.54	24.70	28.31	0.58	3.09	0.06
MD Mixed	213	21186.42	99.50	452.41	2.12	51.92	0.24
HD Mixed	870	86707.81	99.70	1851.75	2.13	212.53	0.24
LD Residential	222	5467.46	24.60	127.43	0.57	13.85	0.06
MD Residential	2375	236732.38	99.70	5055.46	2.13	580.21	0.24
HD Residential	227	22663.52	99.80	483.98	2.13	55.53	0.24
Water	3,265,717.5						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3166393.6		1582.9		423.3	
Groundwater				12987.4		250.2	
Point Sources				0.0		0.0	
Septic Systems				1563.1		0.0	
Totals	6837	4105188		26431		1956	

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Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area1 (00001)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	7	128.10	18.30	0.60	0.09	0.10	0.01
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	27	2465.10	91.30	19.40	0.72	2.40	0.09
Open Land	7	1763.30	251.90	8.30	1.18	1.10	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	10	995.00	99.50	21.20	2.12	2.40	0.24
HD Mixed	188	18743.60	99.70	400.40	2.13	45.10	0.24
LD Residential	2	49.20	24.60	1.10	0.57	0.10	0.06
MD Residential	183	18245.10	99.70	389.80	2.13	43.90	0.24
HD Residential	64	6387.20	99.80	136.30	2.13	15.40	0.24
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		309399.59		154.7		41.4	0.137
Groundwater				1298.7		25.0	0.100
Point Sources				0.0		0.0	0.000
Septic Systems				17.2		0.0	0.011
Totals	488	358176.2		2447.7		176.9	

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Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area2 (00002)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	5	91.50	18.30	0.50	0.09	0.10	0.01
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	5	1259.50	251.90	5.90	1.18	0.80	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	2	49.40	24.70	1.20	0.58	0.10	0.06
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	30	2991.00	99.70	63.90	2.13	7.20	0.24
LD Residential	20	492.00	24.60	11.40	0.57	1.20	0.06
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	59	5888.20	99.80	125.70	2.13	14.20	0.24
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		76685.91		38.3		10.3	0.034
Groundwater				324.7		6.3	0.025
Point Sources				0.0		0.0	0.000
Septic Systems				139.1		0.0	0.089
Totals	121	87457.5		710.7		40.2	

Source Weighting

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Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area3 (00003)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	94	9371.80	99.70	200.20	2.13	22.60	0.24
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	67	6696.60	99.80	142.70	2.13	16.10	0.24
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		120731.43		60.4		16.1	0.060
Groundwater				467.5		9.0	0.036
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	161	136789.8		870.8		63.8	

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Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area4 (00004)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	5	498.50	99.70	10.70	2.13	1.20	0.24
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		3922.49		2.0		0.5	0.002
Groundwater				13.0		0.3	0.001
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	5	4421.0		25.7		2.0	

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Exit



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
GWLF-E Average Loads by Source for Watershed 0							
Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	279	25948.41	93.00	120.46	0.43	29.59	0.11
Cropland	151	211731.96	1402.20	778.41	5.16	131.31	0.87
Forest	1139	14660.74	12.90	84.68	0.07	10.52	0.01
Wetland	235	970.03	4.10	54.19	0.23	3.24	0.01
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	870	164222.34	188.80	920.32	1.06	96.89	0.11
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	148	3637.63	24.60	84.94	0.57	9.24	0.06
MD Mixed	403	40013.90	99.30	931.03	2.31	104.01	0.26
HD Mixed	1159	115147.44	99.40	2678.90	2.31	299.26	0.26
LD Residential	638	15652.82	24.50	365.31	0.57	39.71	0.06
MD Residential	1838	182675.03	99.40	4249.67	2.31	474.72	0.26
HD Residential	59	5886.34	99.80	137.08	2.32	15.32	0.26
Water	2						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3255667.6		1627.0		421.1	
Groundwater				9967.5		217.3	
Point Sources				0.0		0.0	
Septic Systems				4500.9		0.0	
Totals	6921	4036214		26500		1852	

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Watershed Totals **Municipality Loads** Regulated Loads Unregulated Loads

View loads for municipality: ▼

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	15	1491.00	99.40	34.70	2.31	3.90	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	2	199.60	99.80	4.60	2.32	0.50	0.26
Water	0						
							Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		12611.73		6.3		1.6	0.006
Groundwater				39.9		0.9	0.004
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	17	14302.3		85.5		6.9	



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area2 (00002)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		0.00		0.0		0.0	0.000
Groundwater				0.0		0.0	0.000
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	0	0.0		0.0		0.0	

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Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area3 (00003)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	2	199.60	99.80	4.60	2.32	0.50	0.26
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		1866.75		0.9		0.2	0.001
Groundwater				10.0		0.2	0.001
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	2	2066.4		15.5		0.9	

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Watershed Totals	Municipality Loads	Regulated Loads	Unregulated Loads
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GWLF-E Average Loads by Source for Watershed 1

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	400	81152.16	202.90	260.59	0.65	66.89	0.17
Cropland	121	217926.95	1801.00	720.96	5.96	134.04	1.11
Forest	1166	21340.75	18.30	99.36	0.09	14.37	0.01
Wetland	126	1256.63	10.00	30.58	0.24	2.16	0.02
Disturbed	5	396.83	79.40	0.97	0.19	0.31	0.06
Turfgrass	151	13756.85	91.30	108.69	0.72	13.07	0.09
Open Land	909	228994.15	251.90	1076.78	1.18	134.66	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	49	1212.54	24.70	28.31	0.58	3.06	0.06
MD Mixed	213	21164.38	99.40	452.19	2.12	51.90	0.24
HD Mixed	870	86663.72	99.60	1850.80	2.13	212.39	0.24
LD Residential	222	5467.46	24.60	127.36	0.57	13.85	0.06
MD Residential	2375	236578.05	99.60	5052.88	2.13	579.86	0.24
HD Residential	227	22641.47	99.70	483.74	2.13	55.51	0.24
Water	3.2657175						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3164786.5		1582.9		423.3	
Groundwater				12987.4		250.2	
Point Sources				0.0		0.0	
Septic Systems				1563.1		0.0	
Totals	6837	4103338		26427		1956	

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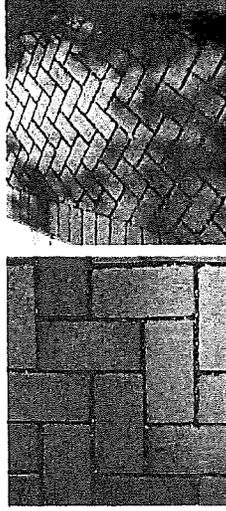
APPENDIX F

MARSHALL SQUARE PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



GI Concept: Permeable Real Brick Pavers

Pine Hall StormPave Permeable Pavers are 4" x 8" x 2.25" thick clay pavers featuring beveled edges and large spacer joints between pavers filled with washed aggregate to allow water to drain freely between the paving units. The pavers are ADA compliant (gaps are less than 0.5") and the pavers offer an initial infiltration rate of over 500 inches per hour. They are available in a range of colors and can come with a "rumbled" surface texture or a smooth surface texture.

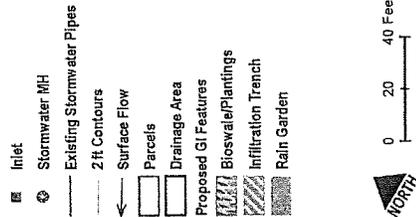
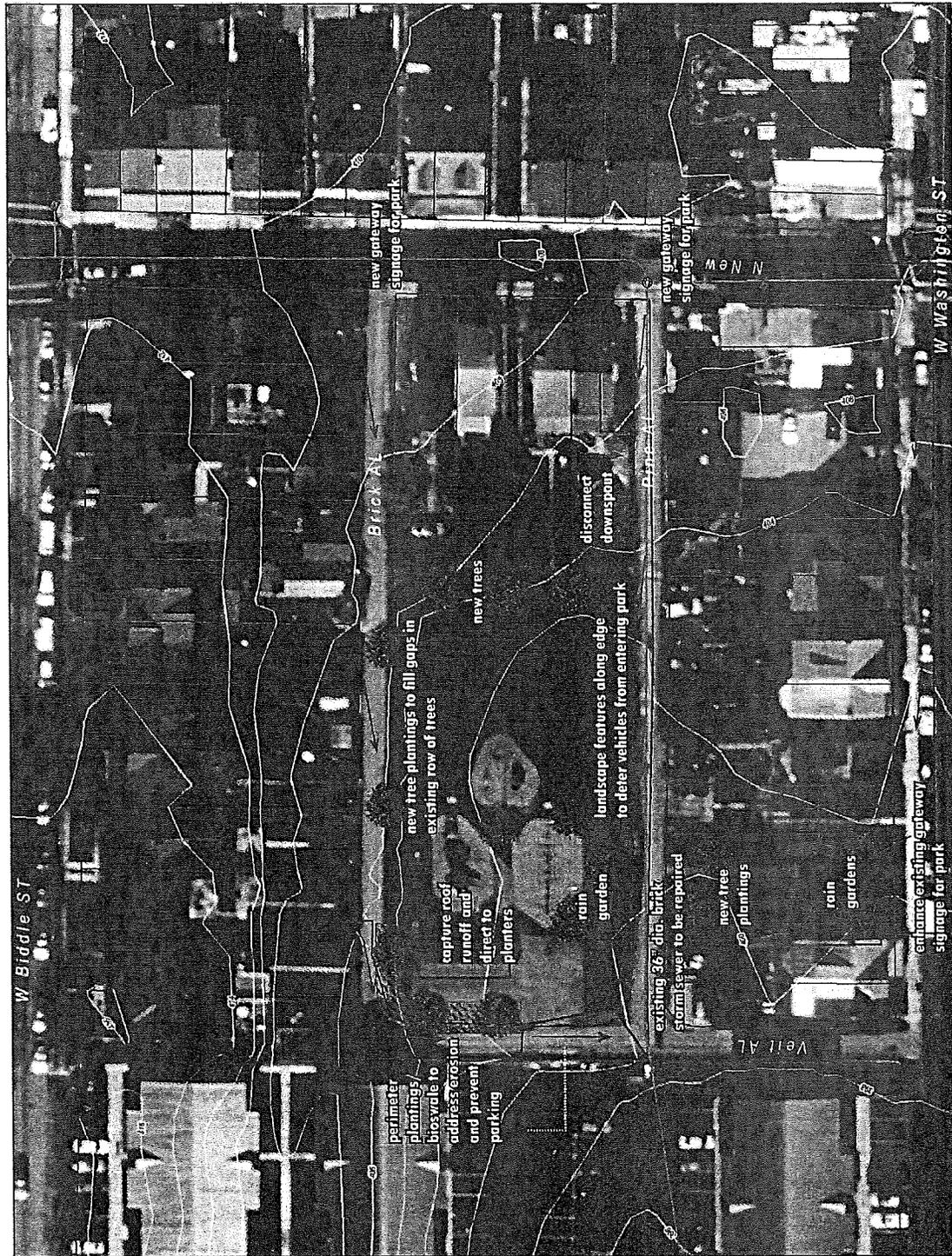


VETERANS PARK/PINE ALLEY: PROPOSED GREEN INFRASTRUCTURE CONCEPTS

Veterans Park is a 0.49 acre park tucked behind residential homes in northwest West Chester. Park visitors can enter the park by car or foot via Brick Alley, Pine Alley, Veit Alley, and by foot at the entrance on W Washington Street.

Proposed green infrastructure (GI) concepts for the park include a vegetated infiltration trench along Pine Alley to capture alley, roadway, and roof runoff, rain gardens (one in the park and two smaller versions near the park entrance on Washington St), planters, and tree plantings throughout to enhance gaps in existing tree canopy. General park enhancement recommendations include improving signage and wayfinding at the park entrances and improving lighting around the park and connecting alleys. There are significant erosion issues along the paved alleys due to vehicular traffic and solutions include introducing vegetated barriers (i.e. dense low-growing shrubs), curbing, ballards, and/or other deterrents. Finally, the amount of impervious paving around the pavilion is excessive and can be slightly reduced and replaced with plantings as shown.

Collectively, these GI features would capture and treat runoff from the park property and several adjacent streets as shown on the concept plan. During larger storm events, overflow structures would allow excess runoff to flow into existing storm sewers. In addition to reducing and treating stormwater runoff, these GI features have the potential to add aesthetic value to the park and work in harmony with the existing active and passive recreational uses on the site. The proposed features along Pine Alley would be closely coordinated with the planned reconstruction of the 36-inch brick storm sewer the runs beneath the alley.



West Chester Borough
SPF Project

P-51

S. Brandywine Street
Green Infrastructure Concept



Legend:

- Inlet
- Stormwater MH
- Existing Stormwater Pipes
- 2 ft Contours
- Surface Flow
- Parcels
- Drainage Area
- Proposed GI Features
- Vegetated Curb Extensions
- Infiltration Trench/Bioswale

Scale: 0 35 70 Feet

NORTH

NPDES Stormwater Discharges from MS4

West Chester Borough Chester Creek / Goose Creek

Pollutant Reduction Plan

Prepared For:

West Chester Borough

401 East Gay St.
West Chester, PA 19380
610-692-7574

September 2017

Prepared By:

Gilmore & Associates, Inc.
Engineers ♦ Land Surveyors ♦ Planners ♦ GIS Consultants
184 West Main Street, Suite 300
Trappe, PA 19426
(610) 489-4949



**MS4 Pollutant Reduction Plan
West Chester Borough
Chester County, Pennsylvania**

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Appendices

Appendix A Applicable portion of the MS4 Requirements Table (Municipal) Anticipated Obligations for Subsequent NPDES Permit Term (Revised 6/26/2017)

Appendix B Public Participation

- Public Notice & Proof of Advertisement
- Public Meeting Agenda and Meeting Minutes

Appendix C Maps

- West Chester Borough MS4 PRP Map
- West Chester Borough MS4 PRP Land Uses (MapShed) Map

Appendix D 3800-PM-BCW0100m 5/2016 BMP Effectiveness Values

Appendix E MapShed GWLF-E Average Loads by Source for Watershed

Appendix F Jellyfish Filter Solutions Guide Contech

Appendix G CH2M Green Infrastructure Concepts

West Chester Borough, Chester County is submitting this Pollutant Reduction Plan (PRP) in accordance with the requirements of the *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4)*; specifically, in accordance with the *MS4 Requirements Table (Municipal) Anticipated Obligations for Subsequent NPDES Permit Term (Revised 6/26/2017)*. West Chester Borough must create a PRP due to discharges from their MS4 to Chester Creek, which have been listed as impaired for Siltation (see Appendix A).

The intent of this MS4 PRP is to establish the existing loading of pollutants discharged from the MS4 to Chester Creek, and to present a plan to reduce these pollutants. This MS4 PRP is organized to follow the 3800-PM-BCW0100k Rev. 3/2017 *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharges from Small Municipal Separate Storm Sewer Systems Pollutant Reduction Plan (PRP) Instructions* included as part of the *PAG-13 MS4 General Permit* package. This PRP may be evaluated and updated by West Chester Borough on an as-needed basis, based on its effectiveness in reducing pollutant loads in discharges from the regulated small MS4. If this occurs, West Chester Borough will work with the Department of Environmental Protection (DEP) for review and approval of any revisions or updates.

Each MS4 PRP must include the following Required PRP Elements:

Section A: Public Participation

Section B: Map

Section C: Pollutants of Concern

Section D: Determine Existing Loading for Pollutants of Concern

Section E: Select BMPs to Achieve the Minimum Required Reductions in Pollutant Loading

Section F: Identify Funding Mechanisms

Section G: Identify Responsible Parties for Operation and Maintenance (O&M) of BMPs

This PRP is organized to follow the above outline of required elements as shown on the following pages. Relevant verbiage from the PRP Instructions is reiterated herein for each of the above required PRP Elements.

A. Public Participation

As part of the preparation of this MS4 PRP, public participation is required. West Chester Borough shall complete the following public participation measures listed below, and report in the PRP that each was completed.

- The Borough shall make a complete copy of the PRP available for public review.
- The Borough shall publish, in a newspaper of general circulation in the area, a public notice containing a statement describing the plan, where it may be reviewed by the public, and the length of time the Borough will provide for the receipt of comments. The public notice must be published at least 45 days prior to the deadline for submission of the PRP to DEP. **Include a copy of the public notice with the PRP.**
- The Borough shall accept written comments for a minimum of 30 days from the date of public notice. **Include a copy of all written comments received from the public with the PRP.**
- The Borough shall accept comments from any interested member of the public at a public meeting or hearing, which may include a regularly-scheduled meeting of the governing body of the municipality or municipal authority that is the permittee.
- The Borough shall consider and make a record of the consideration of each timely comment received from the public during the public comment period concerning the plan, identifying any changes made to the plan in response to the comment. **Include a copy of the Borough's record of consideration of all timely comments received in the public comment period with the PRP.**

West Chester Borough has completed the above-listed Public Participation measures and all required documentation of public participation is included as Appendix B.

- PRP public notice was published in: Daily Local News
- Date PRP public notice was published in newspaper: July 10, 2017
- Date PRP was made available for public review/comment: June 10, 2017
- End date for receipt of written comments (30 days from the date of public notice): August 10, 2017
- Date PRP comments were accepted at a public meeting: August 8, 2017

Questions received were of a general nature only, and no comments were made that required a response in, or revision to, this document.

B. Map

Attach maps that identify **land uses** and the **storm sewershed boundaries** associated with the MS4 that discharge to impaired surface waters, and calculate the storm sewershed area that is subject to Appendix E of PAG-13. In addition, the proposed location(s) of structural BMP(s) that will be implemented to achieve the required pollutant load reductions must be identified on a map.

The map may be the same as that used to satisfy MCM #3 of the PAG-13 General or Individual Permit, with the addition of land use, the storm sewershed boundary, and locations of proposed BMPs, or may be a different map.

The map must be sufficiently detailed to identify the PRP Planning Area relevant to satisfying the requirements of Appendix E, and to demonstrate that BMPs will be located in appropriate storm sewersheds to meet the requirements.

NOTE – Delineation of storm sewersheds associated with individual MS4 outfalls is typically necessary in order to determine the PRP Planning Area. The MS4 may display the storm sewershed for each MS4 outfall or just the PRP Planning Area, at its discretion.

The map may show areas that are to be “parsed” from the PRP Planning Area. In other words, at the MS4's discretion (subject to DEP rules), certain areas may be shown on the map that are within the Planning Area but are not included in the calculation of land area and existing pollutant loading. Guidance on parsing is outlined below. Note that if parsing is done, BMPs implemented within the parsed area will not count toward achieving pollutant reduction objectives.

Parsing Guidelines for MS4s in Pollutant Reduction Plans

DEP has developed these guidelines to assist owners and operators of MS4s that are required to develop Pollutant Reduction Plans (PRPs) in understanding where it is possible to “parse” land area in the course of developing those plans. For the purpose of this document, parsing is

defined as a process in which land area is removed from a Planning Area in order to calculate the actual or target pollutant loads that are applicable to an MS4.

Parsing is not required by NPDES permits and is therefore optional; however, some MS4 permittees may benefit from parsing. When parsing is done, best management practices (BMPs) implemented within the land area that is parsed may not be considered for meeting pollutant loading reductions.

MS4s must identify the target pollutant loadings (i.e., existing pollutant loading minus loading reduced by existing BMPs). In order to estimate existing pollutant loading, MS4s may parse out appropriate land area.

All parsing must be supported by a map and a determination of the area being parsed and/or appropriate calculations demonstrating how the parsing was done.

Parsing for PRPs

Parsing provides an opportunity for an MS4 permittee to eliminate areas within the storm sewershed that do not drain to the MS4 and areas that are already covered by an NPDES permit (i.e., not a waiver or no exposure certification) for the control of stormwater. For example, the land area of an industrial site that is covered by the PAG-03 General Permit for Stormwater Associated with Industrial Activity that discharges stormwater to the MS4 may be parsed out of the assessment of land area within the storm sewershed that is subject to the calculation of existing pollutant loading. If, however, the industrial land area is removed, BMPs implemented on that land may not be used as credit toward meeting the MS4's pollutant loading reduction requirements. Other examples of land area that may be parsed include:

- The land area associated with non-municipal stormwater NPDES permit coverage that exists within the urbanized area of a municipality (in such cases the entities may submit a combined PRP);
- Land area associated with PennDOT roadways and the Pennsylvania Turnpike (roads and right of ways);

- Lands associated with the production area of a Concentrated Animal Feeding Operation that is covered by an NPDES permit;
- Land areas in which stormwater runoff does not enter the MS4. If an accurate storm sewershed map is developed, these lands may be parsed or excluded as part of that process. Potential examples include homeowner's associations and schools which do not contain municipal roads or other municipal infrastructure.

If parsing is initially done for the PRP but the MS4 permittee decides later that it would be in their best interests to include that land in the PRP, the permittee may submit a modified PRP to DEP, following the public participation requirements of Appendix E of the permit.

The MS4 PRP map(s) shall also show the proposed locations of structural BMPs that will be implemented to achieve the required pollutant load reductions.

The West Chester Borough MS4 PRP Map identifies the PRP Planning Area, which includes all storm sewershed boundaries, as well as the proposed locations of structural BMPs to be implemented to achieve required pollutant load reductions. The West Chester PRP Planning Area in the Chester Creek watershed was calculated to be 254 acres.

For clarity, land uses within the PRP Planning Area are shown separately on the West Chester Borough MS4 PRP Land Uses (MapShed) Map.

The above referenced Maps are included in Appendix C.

C. Pollutants of Concern

Identify the pollutants of concern for each storm sewershed or the overall PRP Planning Area.

The term “nutrients” refers to “Total Nitrogen” (TN) and “Total Phosphorus” (TP) unless specifically stated otherwise in DEP’s latest Integrated Report. The terms “sediment,” “siltation,” and “suspended solids” all refer to inorganic solids and are hereinafter referred to as “sediment.” The term, “storm sewershed” is defined in the PAG-13 General Permit as the land area that drains to the municipal separate storm sewer from within the jurisdiction of the MS4 permittee. This term is used in these instructions as well as the term “PRP Planning Area” (or “Planning Area”), which refers to all of the storm sewersheds that an MS4 must calculate existing loads and plan load reductions for.

For all PRPs, MS4s shall calculate existing loading of the pollutant(s) of concern in lb/year; calculate the minimum reduction in loading in lb/year; select Best Management Practice(s) (BMP(s)) to reduce loading; and demonstrate that the selected BMPs will achieve the minimum reductions.

For PRPs developed for Appendix E, impaired waters, the pollutant(s) are based on the impairment listing, as provided in the MS4 Requirements Table. If the impairment is based on siltation only, a minimum 10% sediment reduction is required. If the impairment is based on nutrients only or other surrogates for nutrients (e.g., “Excessive Algal Growth” and “Organic Enrichment/Low D.O.”), a minimum 5% TP reduction is required. If the impairment is due to both siltation and nutrients, both sediment (10% reduction) and TP (5% reduction) must be addressed. PRPs may use a presumptive approach in which it is assumed that a 10% sediment reduction will also accomplish a 5% TP reduction. However, MS4s may not presume that a reduction in nutrients will accomplish a commensurate reduction in sediment.

The impaired downstream waters are Chester Creek, which has an impairment of Siltation. Since the impairment is siltation, a minimum 10% reduction is required. This MS4 PRP presents the minimum reduction in loading for siltation as pounds per year (lb/yr).

D. Determine Existing Loading for Pollutants of Concern

Identify the date associated with the existing loading estimate. Calculate the existing loading, in lbs. per year, for the pollutant(s) of concern in the PRP Planning Area.

There are several possible methods to estimate existing loading, ranging from simplistic to complex. One method to estimate existing loading that is acceptable to DEP is to determine the percent impervious and pervious surface within the urbanized area of the storm sewershed and calculate existing loading by multiplying the developed impervious and developed pervious land areas (acres) by pollutant loading rates (lb/acre/year) ("simplified method"). The MS4 may use loading rates for undeveloped land for areas outside of the urbanized area which flows into the urbanized area. Where structural BMPs are currently in place and are functioning, the existing loading estimate may be reduced to account for pollutant reductions from those BMPs.

Use of DEP's simplified method is not required. Any methodology that calculates existing pollutant loading in terms of lbs. per year, evaluates BMP-based pollutant reductions utilizing the BMP effectiveness values contained in 3800-PM-BCW0100m or Chesapeake Bay Program expert panel reports, uses average annual precipitation conditions, considers both overland flow and stream erosion, and is based on sound science may be considered acceptable.

Whatever tool or approach that is used to estimate existing loading from the PRP Planning Area must also be used to estimate existing loading to planned BMPs. This avoids errors in percent pollutant removal calculations that would result if different methods were used. Later BMP design efforts will usually apply a more sophisticated method than used in planning to calculate load to a BMP. The design loading may not however be used to alter the assumed pollutant reduction by the BMP unless the PRP is revised to apply the more sophisticated method to the load from the storm sewershed as a whole.

MS4s may claim "credit" for structural BMPs implemented prior to development of the PRP to reduce existing loading estimates. In order to claim credit, identify all such structural BMPs in Section D of the PRP along with the following information:

- A detailed description of the BMP;
- Latitude and longitude coordinates for the BMP;
- Location of the BMP on the storm sewershed map;
- The permit number, if any, that authorized installation of the BMP;
- Calculations demonstrating the pollutant reductions achieved by the BMP;
- The date the BMP was installed and a statement that the BMP continues to serve the function(s) it was designed for; and
- The operation and maintenance (O&M) activities and O&M frequencies associated with the BMP.

The MS4 permittee may optionally submit design drawings of the BMP for previously installed or future BMPs with the PRP.

Existing loading must be calculated and reported for the portion of the Planning Area which drains to impaired waters as of the date of the development of the PRP. MS4s may not claim credit for street sweeping and other non-structural BMPs implemented in the past, and an MS4 may not reduce its obligations for achieving permit term pollutant load reductions through previously installed BMPs. If structural BMPs were implemented prior to development of the PRP and continue to be operated and maintained, the MS4 may claim pollutant reduction credit in the form of reduced existing loading.

An MS4 may use all BMPs installed prior to the date of the load calculation to reduce its estimate of existing pollutant loading. For example, if a rain garden was installed ten years ago and is expected to remove 100 lbs. of sediment annually, and the overall annual loading of sediment in the storm sewershed is estimated to be 1,000 lbs. without specifically addressing the rain garden, an MS4 may not claim that the rain garden satisfies its obligations to reduce sediment loading by 10%. The MS4 may, however, use the rain garden to demonstrate that the existing load is 900 lbs. instead of 1,000 lbs., and that 90 lbs. rather than 100 lbs. needs to be reduced during the term of permit coverage.

Each impairment identified on the MS4 Requirements Table ("Table") must be addressed in a PRP document. The Table listings for each MS4 are different because they reflect local conditions, which is why an MS4 must carefully interpret the information on the Table.

NOTE - MapShed, or any other watershed model where channel erosion is explicitly modeled, should be run on a minimum of ~10 mi² area to properly account for downstream channel impacts and include impaired waters identified in the MS4 Requirements Table. Aggregation of these waters up to approximately the 12-digit HUC scale for modeling purposes is acceptable. Modeling may not be done at the individual storm sewer shed or municipal scale where the extent of downstream impact is not included in load calculation.

For PRPs developed for impaired waters (Appendix E), the pollutant(s) are based on the impairment listing, as provided in the MS4 Requirements Table. If the impairment is based on siltation only, a minimum 10% sediment reduction is required. If the impairment is based on nutrients only or other surrogates for nutrients (e.g., "Excessive Algal Growth" and "Organic Enrichment/Low D.O."), a minimum 5% TP reduction is required. If the impairment is due to both siltation and nutrients, both sediment (10% reduction) and TP (5% reduction) must be addressed. PRPs may use a presumptive approach in which it is assumed that a 10% sediment reduction will also accomplish a 5% TP reduction. However, MS4s may not presume that a reduction in nutrients will accomplish a commensurate reduction in sediment.

All MS4s must use the BMP effectiveness values contained within DEP's BMP Effectiveness Values document (3800-PM-BCW0100m) or Chesapeake Bay Program expert panel reports for BMPs listed in those resources when determining pollutant load reductions in PRPs, except as otherwise approved by DEP. An example of other approaches that may be approved by DEP include the use of thoroughly vetted mechanistic models with self-contained BMP modules (e.g., Storm Water Management Model (SWMM), WinSLAMM) to demonstrate achievement of reduction targets. Application of these data intensive models could allow for a streamlining of the planning and design phases of BMPs that may provide future cost savings as municipalities move toward implementation of the plan. Such resources must be documented in the PRP, and must reflect both overland flow and in-stream erosion components.

NOTE - Calculation of sediment load reductions for PRP purposes using the *Expert Panel to Define Removal Rates for Individual Stream Restoration Projects* report should be done as follows:

- Where existing sediment loads were calculated using modeling at a local watershed scale, the default rate to be used is 115 lb/ft/yr. This default rate comes from a convergence of MapShed modeled streambank erosion loads from a group of urbanized watersheds, the 248 lb/ft default edge-of-field (EOF) rate in the Expert Panel Report with the 50% efficiency uncertainty factor specified for the Protocols applied, and field data were collected following the BANCS methodology where projects have been implemented and load reductions calculated using the Protocols.

NOTE – Use of default effectiveness values (115 lb/ft/yr) will be accepted for the subsequent permit term. It is recommended that the data required to complete load calculations using the Protocols be collected during the design phase for use in subsequent load reduction calculations.

NOTE – Desktop MapShed users may not use the streambank restoration or street sweeping components included in the MapShed BMP editor for pollutant reduction calculations. Pollutant reductions associated with streambank restoration projects must use the methods described above; whereas, reductions from street sweeping must be calculated in accordance with the *Recommendations of the Expert Panel to Define Removal Rates for Street and Storm Drain Cleaning Practices* or the BMP Effectiveness Values Table.

NOTE – If BMP effectiveness values are updated in DEP's BMP Effectiveness Values document or in Chesapeake Bay Program expert panel reports between the time the PRP is approved and the time the final report is developed to document compliance with the permit, those updated effectiveness values may optionally be used.

MapShed was utilized to compute the existing sediment loading of the PRP Planning Area, which drains to Chester Creek. The date the existing loading was calculated / the date of development of this PRP is September 2017.

West Chester Borough has a total existing sediment loading of 220,861 lbs/year in its Chester Creek storm sewershed. This is from the total Sediment loads for "Area4" from the Chester Creek and the Brandywine Creek MapShed model runs, included in Appendix E, under "C:\MapShed\Runfiles\ChesterCreek\Output\ChesterCreek-0_ua.csv" and "C:\MapShed\Runfiles\Brandywine\Output\Brandywine-1_ua.csv".

E. Select BMPs to Achieve the Minimum Required Reductions in Pollutant Loading

Identify the minimum required reductions in pollutant loading. Applicants must propose the implementation of BMP(s) or land use changes within the PRP Planning Area that will result in meeting the minimum required reductions in pollutant loading within the Planning Area. These BMP(s) must be implemented within 5 years of DEP's approval of coverage under the PAG-13 General Permit or an individual permit, and may be located on either public or private property. If the applicant is aware of BMPs that will be implemented by others (either in cooperation with the applicant or otherwise) within the Planning Area that will result in net pollutant loading reductions, the applicant may include those BMPs within its PRP.

Historic street sweeping practices should not be considered in calculating credit for future practices. All proposed street sweeping practices may be used for credit if the minimum standard is met for credit (see 3800-PM-BCW0100m). In other words, if sweeping was conducted 1/month and will be increased to 25/year in the future, the MS4 does not need to use the "net reduction" resulting from the increased sweeping; it may take credit for the full amount of reductions from 25/year sweeping.

NOTE – Street sweeping may be proposed as a BMP for pollutant loading reductions if 1) street sweeping is not the only method identified for reducing pollutant loading, and 2) the BMP effectiveness values contained in 3800-PM-BCW0100m or Chesapeake Bay Program expert panel reports are utilized.

The names and descriptions of BMPs and land uses reported in the PRP should be in accordance with the Chesapeake Bay Program Model. The names and descriptions are available through CAST (log into www.casttool.org, select "Documentation," select "Source Data" and see worksheets named "Land Use Definitions" and "BMP Definitions").

Opportunities for BMP installation vary across a municipality, and for that reason MS4s with multiple PRP obligations need not propose BMPs to address each impairment listed in the Table during the permit term. The existing loading must be calculated for the entire PRP

Planning Area which drains to impaired waters, but pollutant controls to be installed during the subsequent permit term may be located such that they reduce the load in one sub-watershed by less than 10% and by more than 10% in another (as long as the overall amount of lbs. reduced constitutes 10% of the existing loading for the entire PRP Planning Area).

MS4s may propose and take credit for only those BMPs that are not required to meet regulatory requirements or otherwise go above and beyond regulatory requirements. For example, a BMP that was installed to meet Chapter 102 NPDES permit requirements for stormwater associated with construction activities may not be used to meet permit term minimum pollutant reductions unless the MS4 can demonstrate that the BMP exceeded regulatory requirements; if this is done, the MS4 may take credit for only those reductions that will occur as a result of exceeding regulatory requirements.

The impairment for West Chester Borough in the Chester Creek watersheds is siltation, which requires a minimum 10% reduction. The required reduction is 22,086 lbs/year. The reduction is calculated as follows:

The storm sewershed (the PRP Planning Area) that drains to the municipal separate storm sewer system within the jurisdiction of the MS4 to the Chester Creek watershed has been delineated using PAMAP data known as Light Detection and Ranging (LiDAR) contours. For West Chester Borough, the PRP Planning Area consists of 254 acres. The East Branch Chester Creek Watersheds used in MapShed consist of 6,922 acres.

The MapShed model run used the PRP Planning Area as an "urban area" to determine the total Chester Creek watershed loading as well as the loading exclusively from the MS4 storm sewershed(s) / PRP Planning Area. Note that based on MapShed's Basin delineations, there is a small portion of the Chester Creek PRP Planning Area located in the adjacent watershed (Brandywine Creek via Blackhorse Run, Plum Run and Taylor Run). Closer inspection of contours and stormwater collection system indicated that these areas drain to the Goose Creek / Chester Creek watershed. The adjacent Brandywine Creek via Blackhorse Run, Plum Run and Taylor Run watershed basin was also modeled to determine the loading in that watershed that actually drains to Goose Creek / Chester Creek (again as an "urban area"). The loading

from these "urban areas" (PRP Planning Area) were then adjusted appropriately from each model run.

Please note that from the MapShed output ("GWLf-E Average Loads by Source for Watershed 0", included in Appendix E) Goose Creek /Chester Creek Planning Area is "Area4". Taylor Run is "Area1", Blackhorse Run is "Area2", and Plum Run is "Area3".

West Chester Borough proposes to install several small BMP infiltration facilities consisting of rain gardens, vegetated curb extensions, bioswales and infiltration trenches proposed at three locations, with the goal to capture and infiltrate the runoff generated from 1.5" of rainfall. These projects have been designed by others (see Appendix G), with the drainage areas supplied for use in the preparation of this PRP. The locations for these facilities are: John O. Green Memorial Park located at the intersection of Railroad Street, East Miner Street, and South Matlack Street; Fugett Park at Borough Hall located at 401 East Gay Street; and Greenview Alley located off South Franklin Street just north of intersection with East Nields Street.

The drainage areas' shape files were loaded into MapShed and the land uses within these drainage areas noted visually. The land use areas were noted to be HD Mixed for John O. Green Park and Fugett Park / Borough Hall, and HD Mixed, LD Mixed, and MD Mixed for Greenview Alley. The total area of 5.53 acres consists of 5.24 acres HD Mixed (2.12 hectares), 0.22 acres MD Mixed (0.09 hectares) and 0.06 acres LD Mixed (0.02 hectares) and an infiltration rate of 1.5" (3.81 cm) were utilized in the BMP Editor in MapShed (Urban BMP Editor) and the model run to ascertain the reduction in sediment loading as a result of these BMPs. The reduction will be 4,995 lbs. (4,036,214 lbs total load prior to BMPs, and 4,031,219 lbs. total load after BMPs).

The BMP Editor in MapShed for an Infiltration Basin BMP with 1.5" (3.81 cm) Rainfall Captured utilizes an efficiency rate of 0.82 for TSS. Note that per the BMP Effectiveness Values from DEP (3800-PM-BCW0100m 5/2016), Infiltration Practices w/Sand, Veg. has a BMP Efficiency Value of 95%; therefore, the MapShed efficiency rate is acceptable. Note that once the designs have been completed, reductions will be more accurately calculated.

Stream bank restoration and street sweeping are calculated outside of the MapShed program, per the PRP instructions, with streambank restoration as 115 lbs/ft/yr reduction. West Chester Borough will consider the potential of streambank restoration in the Chester Creek watershed. If streambank restoration is undertaken, the Borough would propose to install approximately one-hundred (100) feet of streambank restoration. Therefore, the proposed streambank restoration of one hundred (100) feet would result in 11,500 lbs./yr (i.e., 100 ft * 115 lbs/ft/yr) reduction.

West Chester Borough is proposing to street sweep all streets in the borough more than 25 times annually. Per the BMP Effectiveness Values (5/2016), street sweeping must be conducted 25 times annually; only count those streets that are swept at least 25 times in a year. The acres associated with all streets that are swept at least 25 times in a year would be eligible for pollutant reductions consistent with the given BMP effectiveness values. The BMP Effectiveness Value for Sediment (TSS) is 9%. As the Borough is proposing to street sweep all streets, the entire Planning Area is assumed to be the contributing area (as the Planning Area consists of all drainage area to roadways in the Borough). From MapShed, the total sediment loading from the Planning Area in the Chester Creek watersheds is 220,861 lbs./yr; therefore the reduction from street sweeping will be 19,877 lbs./yr ($220,861 \text{ lbs./yr} * 9\%$).

West Chester Borough also plants trees every year. The BMP effectiveness values for tree planting are estimated by DEP. DEP estimates that 100 fully mature trees of mixed species (both deciduous and non-deciduous) provide pollutant load reductions for the equivalent of one acre (i.e., one mature tree = 0.01 acre). The BMP effectiveness values given are based on immature trees (seedlings or saplings); the effectiveness values are expected to increase as the trees mature. To determine the amount of pollutant load reduction that can be credited for tree planting efforts: 1) multiply the number of trees planted by 0.01; 2) multiply the acreage determined in step 1 by the pollutant loading rate for the land prior to planting the trees (in lbs/acre/year); and 3) multiply the result of step 2 by the BMP effectiveness values given. The Tree Planting BMP Effectiveness Value is 20% for Sediment.

In the Chester Creek watershed, the Borough intends to plant a minimum of 100 trees annually. The locations of these trees are unknown at this time; however, given the urban nature of the

Borough, the estimate is that 90% are expected to be street trees. The HD Residential loading rate from MapShed for the Chester Creek watershed will be used to best represent paved streets / sidewalks (i.e., land prior to planting the trees is along streets, i.e., pavement and sidewalks). The sediment HD Residential loading rate from MapShed is 99.5 lb/ac/year. The reduction is therefore 18 lbs/yr. ($100 \text{ trees/year} * 90\% \text{ street trees} * 0.01 * 99.5 \text{ lb/ac/year} * 20\%$).

West Chester Borough is also considering using Jellyfish Filters from Contech. There are two discharge points (i.e., endwalls) that discharge runoff from large collection areas. The two endwall identifications are nos. 13 and 37, with drainage areas of 44 and 35 acres respectively. The endwalls are located off of East Niels Street, west of the intersection with South Franklin Street. From the BMP Effectiveness Table, this type of BMP is Storm Sewer System Solids Removal. DEP will allow up to 50% of total pollutant reduction requirements to be met through this BMP. The drainage area treated by this BMP may be no greater than 0.5 acre unless it can be demonstrated that the specific system proposed is capable of treating stormwater from larger drainage areas. For planning purposes, the sediment removal efficiency specified by the manufacturer may be assumed, but no higher than 80%. The Jellyfish Filter has an 89% removal efficiency for Total Suspended Solids. Therefore, per the DEP Effectiveness Table, 80% removal efficiency is to be used. To ascertain only the land uses and loading rates of the drainage areas to these endwalls, the drainage areas were modeled as "Urban Areas" in MapShed. The GWLF-E Average Loads by Source for Watershed output from this run is included ("WC EW DAs\Output\WCEWDAs-0_ua.csv"). The sediment load from the drainage area to Endwall 13 ("Area1" in output) is 4,373.6 lbs./year (the overland flow, HD Mixed), and from Endwall 37 ("Area2" in output) the sediment load is 3,479 lbs./year (the overland flow, HD Mixed). Note that because the volume and rate reductions are negligible, the conservative assumption is that stream bank loading will not be reduced as a result of the Jellyfish Filters. Additionally, since at this time the design of the units has not been completed, the size of the unit(s) is unknown. Making the assumption that the Borough could remove 25% of the load at either endwall, the reduction at Endwall 13 would be 875 lbs./year ($4,373.6 \text{ lbs./year} * 80\% \text{ Efficiency} * 25\% \text{ Assumed Load Removed}$) and the reduction at Endwall 37 would be 696 lbs./year ($3,479 \text{ lbs./year} * 80\% \text{ Efficiency} * 25\% \text{ Assumed Load Removed}$). Information on the Jellyfish Filter is included as Appendix F.

The final total proposed potential sediment reduction is summarized below in Table E-1. The actual reductions will be refined at the time of design of each BMP.

TABLE E-1: REQUIRED REDUCTION AND PROPOSED BMPS

Existing Load (lb/yr)	220,861
Percent Reduction	10%
Required Reduction (lb/yr)	22,086
Proposed Reduction (lbs./yr)	4,995 (Three BMP Locations) 19,877 (Street Sweeping) 18 (Plant Street Trees) 11,500 (Streambank Restoration) 875 (Endwall 13) 696 (Endwall 37) <u>Total Potential Reduction 37,961</u>

West Chester Borough plans to achieve the sediment reduction by designing, constructing, operating and maintaining Best Management Practices (BMPs). West Chester Borough is required to implement this plan over the next five (5) years.

The following table summarizes the sediment load and required and proposed potential reductions for West Chester Borough's Chester Creek Storm Sewershed / PRP Planning Area.

TABLE E-2: MS4 PRP STRATEGY SUMMARY

Description	Value	Unit
Chester Creek Storm Sewershed / PRP Planning Area	254	acres
Existing Sediment Load	220,861	lb/year
Required Sediment Pollutant Load Reduction Percentage	10%	lb/year
Minimum Required Pollutant Load Reduction	22,086	lb/year
Proposed Sediment Load Reduction from BMPs	37,961	lb/year

F. Identify Funding Mechanism(s)

Prior to approving coverage DEP will evaluate the feasibility of implementation of an applicant's PRP. Part of this analysis includes a review of the applicant's proposed method(s) by which BMPs will be funded. Applicants must identify all project sponsors and partners and probable funding sources for each BMP.

West Chester Borough has adopted a Stream Protection Fee, which will be used to fund all BMP projects the Borough will undertake in the next NPDES Permit term.

G. Identify Responsible Parties for Operation and Maintenance (O&M) of BMPs

Once implemented, the BMPs must be maintained in order to continue producing the expected pollutant reductions. Applicants must identify the following for each selected BMP:

- The party(ies) responsible for ongoing O&M;
- The activities involved with O&M for each BMP; and
- The frequency at which O&M activities will occur.

MS4 permittees will need to identify actual O&M activities in Annual MS4 Status Reports submitted under the Individual Permit. Table G-1 lists the required information.

TABLE G-1 OPERATION AND MAINTENANCE OF BMPs

NAME OF BMP	RESPONSIBLE PARTY	O&M ACTIVITY & FREQUENCY
Street Sweeping	West Chester Borough	Per PA BMP Manual (latest revision)
Street Tree Planting	West Chester Borough	Per PA BMP Manual (latest revision)
Streambank Restoration	West Chester Borough	Per PA BMP Manual (latest revision)
Proposed Infiltration Facilities	West Chester Borough	Per PA BMP Manual (latest revision)
Jellyfish Filter	West Chester Borough	Per Manufacturer's Instructions

H. GENERAL INFORMATION

Submission of PRP: Attach one copy of the PRP with the NOI or individual permit application that is submitted to the regional office of DEP responsible for reviewing the NOI or application. In addition, one copy of the PRP (not the NOI or application) must be submitted to DEP's Bureau of Clean Water (BCW). BCW prefers electronic copies of PRPs, if possible. Email the electronic version of the PRP, including map(s) (if feasible), to RA-EPPAMS4@pa.gov. If the MS4 determines that submission of an electronic copy is not possible, submit a hard copy to: PA Department of Environmental Protection, Bureau of Clean Water, 400 Market Street, PO Box 8774, Harrisburg, PA 17105-8774.

PRP Implementation and Final Report: Under the NPDES Individual Permit, the permittee must achieve the required pollutant load reductions within 5 years following DEP's approval of coverage under the Individual Permit, and must submit a report demonstrating compliance with the minimum pollutant load reductions as an attachment to the first Annual MS4 Status Report that is due following completion of the 5th year of Individual Permit coverage.

For example, if DEP issues written approval of coverage to a permittee on June 1, 2018, the required pollutant load reductions must be implemented by June 1, 2023 and the final report documenting the BMPs that were implemented (with appropriate calculations) must be attached to the annual report that is due September 30, 2023.

West Chester Borough will submit the PRP in accordance with the above requirements.

APPENDIX A

MS4 No.	NPDES ID	Individual Permit Required?	Reason	Impaired Downstream Waters or Applicable TMDL Name	Requirement(s)	Other Cause(s) of Impairment	
WEST BRANDYWINE TWP Chester County	PAI130544	Yes	TMDL Plan, SP, IP	West Branch Brandywine Creek	Appendix C-PCB (4a), Appendix E-Siltation (4a)	Water/Flow Variability (4c)	
				Beaver Creek		Cause Unknown (4a), Other Habitat Alterations, Water/Flow Variability (4c)	
				Christina River Basin Nutrients	TMDL Plan-Nutrients, Organic Enrichment/Low D.O. (4a)	Other Habitat Alterations (4c)	
				Culbertson Run	Appendix E-Siltation (4a)	Cause Unknown (4a)	
				Unnamed Tributaries to West Branch Brandywine Creek			
	East Branch Brandywine Creek			Cause Unknown (4a), Other Habitat Alterations, Water/Flow Variability (4c)			
	WEST CALN TWP	PAG130145	Yes	TMDL Plan, SP	Christina River Basin Nutrients	TMDL Plan-Nutrients, Organic Enrichment/Low D.O. (4a)	
					Chesapeake Bay Nutrients/Sediment	Appendix D-Nutrients, Siltation (4a)	
					Christina River Basin Sediment	TMDL Plan-Siltation, Suspended Solids (4a)	
					Indian Spring Run	Appendix E-Nutrients, Organic Enrichment/Low D.O., Siltation (4a)	
Pequea Creek					Appendix E-Nutrients, Organic Enrichment/Low D.O., Siltation (4a)		
West Branch Brandywine Creek			Appendix C-PCB (4a)	Water/Flow Variability (4c)			
WEST CHESTER BORO	PAG130002	Yes	TMDL Plan	Taylor Run	Appendix E-Siltation (4a)	Cause Unknown (4a), Other Habitat Alterations (4c)	
				Plum Run	Appendix E-Siltation (4a)	Water/Flow Variability (4c)	
				Goose Creek TMDL	TMDL Plan-Nutrients (4a)	Cause Unknown (4a)	
				Chester Creek	Appendix B-Pathogens (5), Appendix E-Siltation (5)	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)	
				Brandywine Creek	Appendix E-Siltation (4a)		
				Blackhorse Run	Appendix E-Siltation (4a)	Other Habitat Alterations, Water/Flow Variability (4c)	
				East Branch Chester Creek	Appendix E-Siltation (5)	Cause Unknown (5), Other Habitat Alterations, Water/Flow Variability (4c)	
				Broad Run		Water/Flow Variability (4c)	
				Chester Creek	Appendix B-Pathogens (5), Appendix E-Siltation (5)	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)	
				East Branch Brandywine Creek		Cause Unknown (4a), Water/Flow Variability (4c)	
WEST GOSHEN TWP	PAI130532	Yes	TMDL Plan, SP, IP	Goose Creek TMDL	TMDL Plan-Nutrients (4a)	Cause Unknown (4a)	
				John Smedley Run		Water/Flow Variability (4c)	
				Plum Run		Water/Flow Variability (4c)	
				Taylor Run		Cause Unknown (4a), Other Habitat Alterations (4c)	
				Christina River Basin Sediment	TMDL Plan-Siltation, Suspended Solids (4a)		

APPENDIX B

Public Notice & Proof of Publication

Christine McAllister

Plan needs to be
on July 18 Workses
Agenda
me

To: legals@dailylocal.com
Subject: Public Notice Advertisement
Attachments: ADVERTISEMENT-WC (002).DOCX
Importance: High

7/7/17

Maureen – Please advertise the attached Notice on July 10. E-mail me a Proof of Publication and send the invoice to my attention.

Thank you for your help with EVERYTHING!!!!

Regards,

Christine

Christine M. McAllister
Administrative Assistant to the Borough Manager
Borough of West Chester
cmcallister@west-chester.com
610-344-3246 (W)
484-456-8281 (Cell)
610-436-0009 (F)

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BOROUGH OF WEST CHESTER

MS4 POLLUTANT REDUCTION PLANS AND TMDL PLAN

JUNE 30, 2017

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s)*. The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.west-chester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@west-chester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.

Michael A. Cotter
Borough Manager

AFFIDAVIT OF PUBLICATION
307 Derstine Avenue • Lansdale, PA 19446

WEST CHESTER BOROUGH
401 E GAY STREET
WEST CHESTER, PA 19380
Attention:

STATE OF PENNSYLVANIA,
COUNTY OF MONTGOMERY

The undersigned *Michael A. Cotter*, being duly sworn the he/she is the principal clerk of Daily Local News, Daily Local News Digital, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

WEST CHESTER BOROUGH

Published in the following edition(s):

Daily Local News 07/10/17
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COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MAUREEN SCHMID, Notary Public
Lansdale Boro., Montgomery County
My Commission Expires March 31, 2021

Sworn to the subscribed before me this 7/11/2017.

Maureen Schmid
Notary Public, State of Pennsylvania
Acting in County of Montgomery

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Michael A. Cotter
Borough Manager
DL-July 10-1a

Advertisement Information

Client Id: 884439 Ad Id: 1379705 PO: Sales Person: 093304

and 455-14.C to allow a minimum Front Yard Setback of 30.05 feet and minimum Rear Yard Setback of 55.37 feet where the minimum Front and Rear Yard Setbacks are 75 feet; Section 455-132 to allow a pool and associated structures within the minimum Rear Yard Setback where they are not permitted; and from Section 274-19 to allow land disturbance, improvements, and construction activities within the Riparian Buffer where no disturbance is permitted; and any other relief that may be deemed necessary by the Zoning Hearing Board.

2. ZHB 563 - Nguyen/Vu - 1026A Lancaster Avenue, Berwyn. (VB District TPN 55-2L-4) Applicant has changed the property's use from commercial to single-family detached dwelling without Township approval. Applicant seeks a Variance from Section 455-21. (A)(1) to eliminate the need for commercial uses where second floor apartments are only allowed as accessory uses to nonresidential uses on the ground-level floor; a Special Exception in accordance with Section 455-122.B to change a nonconforming use or in the alternative appeal of the Zoning Officer's determination that the Applicant changed the property's use from commercial to single-family detached dwelling which is not a permitted use, and any other relief that may be deemed necessary by the Zoning Hearing Board.

Copies of applications are available for review in the Easttown Township Building weekdays from 8:00 a.m. through 12:00 p.m. and 12:30 p.m. through 4:30 p.m. If any person wishing to attend the hearing has a disability and/or requires an auxiliary aid, service or other accommodation, he or she should contact the Township at 610-687-3000 to discuss how those needs may be accommodated.
dn. 7/10, 17 - 1a.

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings

from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.westchester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@westchester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.
Michael A. Cotter
Borough Manager
DL-July 10-1a

BIDS & PROPOSALS

ADVERTISEMENT FOR BIDS

Sealed bids for the construction of the Dogwood / Scott Drive Sewer Extension will be received by the Caln Township Municipal Authority electronically via PennBid™ until 10:00 A.M. local time, Tuesday, August 8, 2017 at which time all bids will be opened online.

Construction of the sewer extension will involve the installation of approximately 4,000 linear feet of low pressure sewer lines by open trench and horizontal directional drilling, installation of approximately 400 linear feet of gravity sanitary sewer by open trench, and the completion of all other necessary work to provide public sewer to approximately 55 existing homes located in Caln Township, Chester County Pennsylvania.

All Bid Documents and solicitation details are available at PennBid™ - www.PennBid.net. Click on the "Solicitations" then "View" tabs. Please note the low bidder is responsible for a fee to PennBid™.

Each bid must be accompanied by a bid bond or a certified check in an amount not less than ten percent (10%) of the amount of the bid in the form and subject to the conditions provided in the Instructions to Bidders. No bid may be withdrawn for the

**Public Agenda
And
Meeting Minutes**

Public Works Committee

July 11, 2017 – 5:35 pm

Committee Members Present: Don Braceland (Chair)
Bernard Flynn (Council Member)
Denise Polk

Department Heads Present: O'B Laing, Public Works
Keith Kurowski, Recreation
Mac Cotter (Borough Manager)

1. Call to Order – meeting was called to order at 5:35 PM
2. Comments, suggestions, petitions by residents in attendance regarding items not on the agenda:
 - a) Keith Kurowski reminded everyone that the 35th Annual Turks Head Music Festival was taking place this Sunday, July 16th at Everhart Park.
3. Discuss the Marshall Square Park sidewalk and fieldstone step reconstruction.
 - a) After an extended discussion, this item was tabled for further discussion. It was decided that Jeff Beitel, at his request, would offer reasonable alternative to repair the sidewalk instead of total reconstruction.
4. Discuss substitute material to replace tree well grates throughout the BID.
 - a) Alternative material was shown along with photograph of similar product which is currently in place for over eight (8) years. This was well received by Council and members of the public. No decision was made however, Jeff Beitel indicated that as the Chairman of the Shade Tree Commission he had some concerns about the product and would like Council to allow him some time to look at alternative products to which Council complied.
5. Appraise Council of proposed Bid solicitation for 2017 Pavement Markings project.
 - a) The Public Works Director gave a brief overview of the Pavement Markings project which included the bid documents to be ready for contract award in August.
6. Appraise Council of proposed Bid solicitation for 2017 Street and Alley Resurfacing/Reconstruction project.
 - a) The Public Works Director gave a brief overview of the Street and Alley Resurfacing/Reconstruction project which included the bid documents to be ready for contract award in August.

7. Appraise Council of proposed Bid Solicitation for the Barnard Street Culvert project.
 - a) The Public Works Director informed Council that this project is scheduled for bidding as soon as possible. He also noted that this is one of the projects which was long overdue, but would not be possible to expedite had it not been for the newly implemented Stream Protection Fee (SPF) which will cover all cost for the project. Councilman Flynn, however, remarked that he would suggest that the bridge abutment be painted with graffiti resistant paint. No action needed.
8. Consider Planned University Campus Overlay Traffic Planning Proposal
 - a) Borough Manager gave a brief overview of this project, highlighting scope of work and also indicated it will be joint effort between WCU, West Goshen Township and The Borough.
9. Consider Proposal for Town Center Closed Loop System Upgrade
 - a) Borough Manager gave a synopsis of this project which was subsequently sent through by a vote of 3 - 0.
➤ TO WORK SESSION AGENDA
10. Consider Stream Protection Program Support Change Order.
 - a) Courtney Finneran, Project Manager of CH2, gave a brief overview highlighting the rationale for the change order request. This was followed by a 3 - 0 vote by Council.
➤ TO WORK SESSION AGENDA
11. Authorization to Advertise the Goose Creek Pollution Reduction Plan
 - a) Borough Manager gave a brief overview of this plan which was followed by a 3 - 0 approval by Council.
➤ TO WORK SESSION AGENDA
12. Discuss Tennis Court maintenance at Hoopes Park 2017
 - a) 3 - 0 approval to move ahead with the project
➤ TO WORK SESSION AGENDA
13. Discuss Kathy McBratnie Park Playground Renovation 2017
 - a) Informative only, no action required or taken.
14. Approve June 2017 Public Works Committee minutes
15. Other Business
 - a) None
16. Adjourn
 - a) Meeting called for adjournment by Don Braceland, all in favor 3 - 0.

AGENDA

Public Works Committee

August 8, 2017 – 5:30 pm

Committee Members: Donald Braceland (Chair)
Denise Polk
Bernard Flynn

Department Heads: O'B Laing, Public Works
Keith Kurowski, Parks & Recreation

Borough Manager: Michael A. Cotter

1. Call to Order
2. Comments, suggestions, petitions by residents in attendance regarding items not on the agenda.
3. Discuss Gilmore PRP/TMDL Plans (*Issue Briefing (see Agenda Bookmark) & Attachment*)
4. Discuss Marshall Square Park proposal for sidewalk and staircase reconstruction (*Issue Briefing (see Agenda Bookmark) & Attachment*)
5. Discuss PennDOT Winter Traffic Services Agreement (*Issue Briefing (see Agenda Bookmark) & Attachment*)
6. Appraise Council of pending Shade Tree Grant application (*Information only*)
7. Review and approval of Bid Award for Barnard Street Culvert project (*Issue Briefing (see Agenda Bookmark) & Attachment*)
8. Review and approval of Paving Project Bid Award (*Issue Briefing (see Agenda Bookmark) & Attachment*)
9. Review and approval of Bid Award for Pavement markings (*Issue Briefing (see Agenda Bookmark) & Attachment*)
10. Discuss request from Councilman Bernie Flynn to remove bench from the North side of Gay Street in the vicinity of Rite Aid Pharmacy (*Information only*)
11. Friends of Marshall Square Park – discuss two granite in-lay park signs (*Issue Briefing (see Agenda Bookmark) & Attachment*)
12. Friends of Marshall Square Park – discuss “No Smoking Inside Gazebo” signs (*Issue Briefing (see Agenda Bookmark)*)

Updated August 8, 2017

13. Approve July's Public Works Committee meeting minutes (*see Agenda Bookmark*)
14. Other Business
15. Adjourn

Attachment Information:

[Click here to access the Attachments.](#)

Attachments can also be located at www.west-chester.com in the Document Center's "Agenda Attachments" folder.

****IDENTIFIER KEY = PW****

WEST CHESTER BOROUGH
POLLUTANT REDUCTION PLANS
AND
TOTAL MAXIMUM DAILY LOAD STRATEGY PLAN

EXECUTIVE SUMMARY

- West Chester Borough is currently operating under the PADEP's General (PAG-13) Small Municipal Separate Storm Sewer Systems (MS4) permit. Requirements include the following:
 - Public Education and Outreach
 - Public Participation
 - Illicit Discharge Detection and Elimination
 - Construction Site Runoff Control
 - Post-Construction Runoff Control
 - Pollution Prevention / Good Housekeeping

- The first permit was issued in 2003 with renewals every 5 years. The next permit period extends from 2018 to 2023. The Borough is required to prepare and submit a new permit application by September 16, 2017.

- Past permit requirements were limited to the fulfillment and reporting of the above listed efforts. A key component of this next permit cycle is the submission of a Pollutant Reduction Plan (PRP) and/or a Total Maximum Daily Load (TMDL) Strategy Plan to accomplish a specified percentage reduction in the amount of pollutants contributing to impaired streams. Pollutant reductions must be achieved within the 5-year permit period.

- PADEP has identified the following streams in the Borough as having specific impairments:

Goose Creek:	Nutrients (i.e., Total Phosphorus)*
Chester Creek (Goose Creek):	Siltation (i.e., sediment) and pathogens
Brandywine Creek:	Siltation
Blackhorse Run:	Siltation
Plum Run:	Siltation
Taylor Run:	Siltation

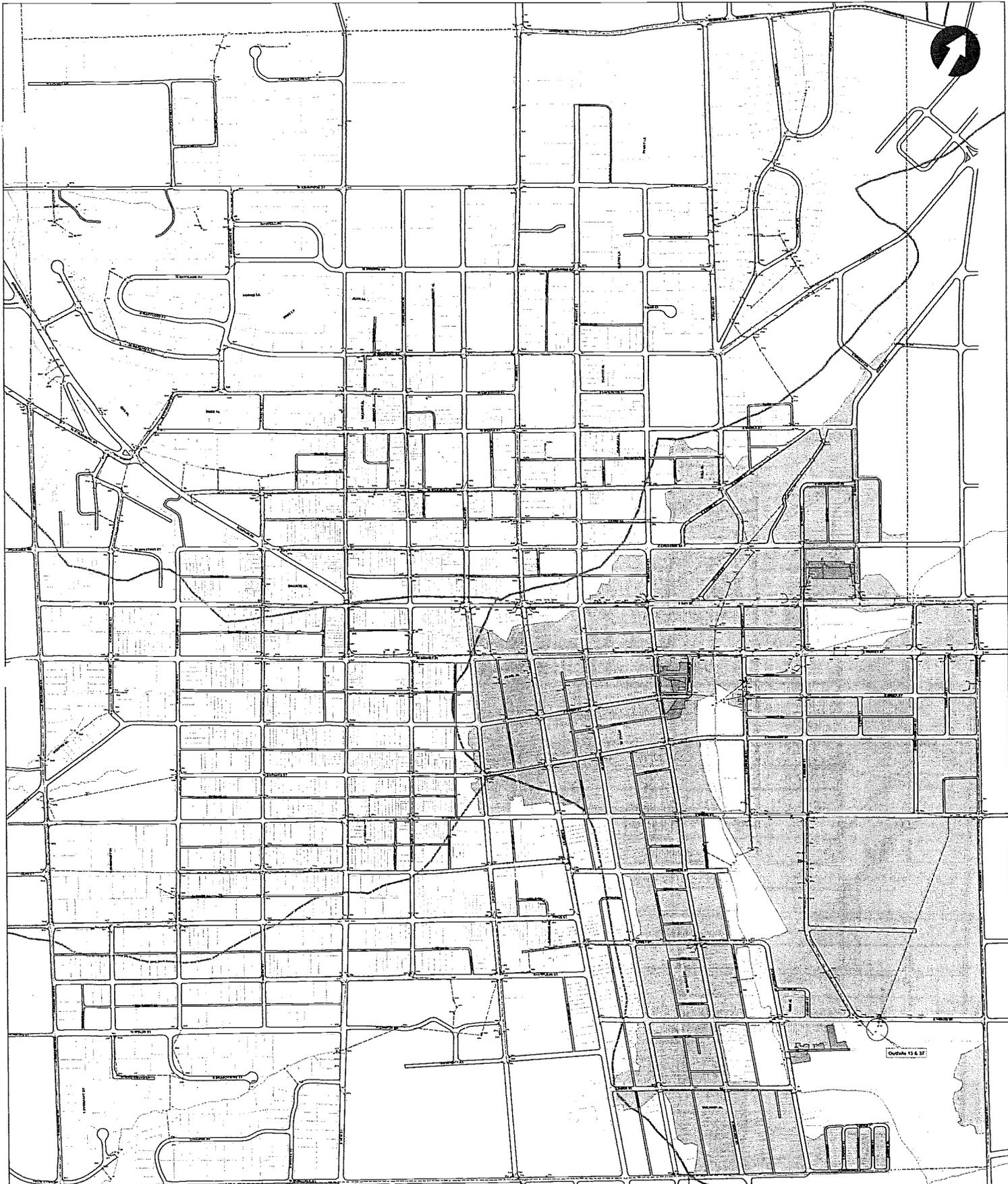
*Per U.S. Environmental Protection Agency, Philadelphia, PA report titled Nutrient Total Maximum Daily Load in Goose Creek Watershed, Pennsylvania, dated June 30, 2008.

As a result, the Borough is required to develop one (1) TMDL Strategy Plan to achieve a 53.9% reduction in the Total Phosphorus loading contributing to Goose Creek and two (2) PRPs to demonstrate a 10% reduction in the sediment loading contributing to Chester Creek/Goose Creek and Brandywine Creek/Blackhorse Run/Plum Run/Taylor Run.

- Because the Borough is subject to the Total Phosphorus TMDL Plan reduction requirements, the Borough will no longer be eligible to be covered by the PAG-13 permit, but now will be required to obtain an Individual MS4 Permit from PADEP.
- The existing sediment and Total Phosphorus loadings and reductions have been calculated based on the land uses within the contributing drainage areas to the impaired streams.
- Effective stormwater Best Management Practices (BMPs) are proposed, including the following combinations of various BMPs:
 - Rain gardens
 - Vegetated curb extensions
 - Bioswales
 - Infiltration trenches
 - Brick pavers with underground infiltration
 - Streambank restoration
 - Street sweeping
 - Tree plantings
 - Pretreatment and membrane filtration systems
 - Storm inlet cleaning
- The above listed BMPs are proposed to be installed at the following locations throughout the Borough:
 - John O. Green Memorial Park
 - Fugett Park/Borough Hall
 - Greenview Alley

- Veterans Park/Pine Alley
 - Marshall Square Park
 - South Brandywine Street
 - Storm sewer system outfalls at E. Nields Street west of S. Franklin Street
- The Public Participation component of the TMDL Strategy Plan and PRPs has been satisfied as follows:
 - The public notice regarding the draft TMDL strategy plan and PRPs was advertised on July 10, 2017.
 - The required public meeting (this discussion) was held on August 8, 2017.
 - Public comments were accepted from July 10, 2017 to August 10, 2017.
 - Public comments will be incorporated, documents will be finalized, and the permit application will be submitted by September 16, 2017 to PADEP.

APPENDIX C



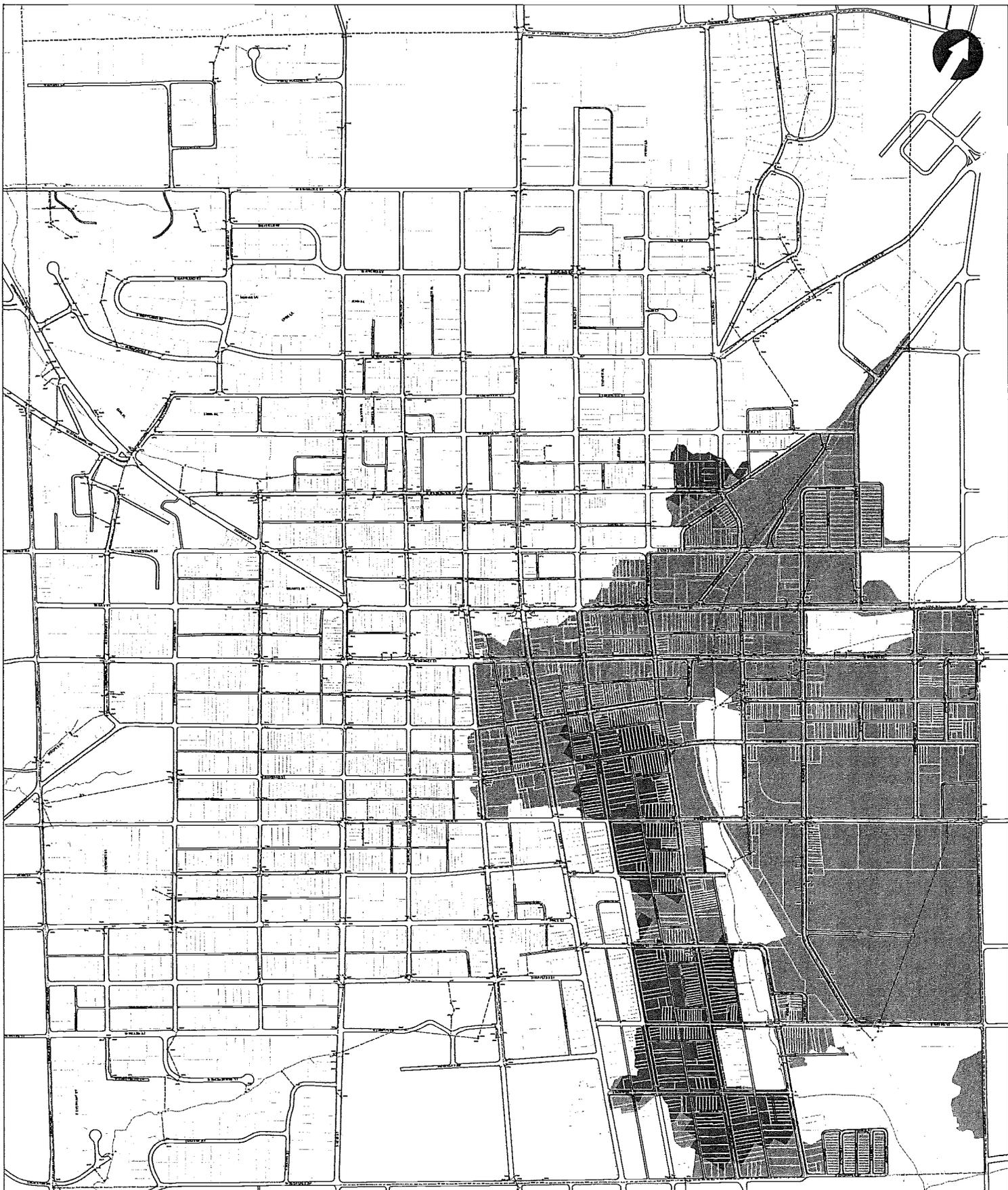
Legend

StormwaterOutfall	Planning Area
StormwaterJunctions	GOOSE CREEK
Edge of Pavement	Mapshed Basin Boundary
StormwaterLines	
Streams	
Small BMP Locations	
Municipal Boundary	
Parcels	

WEST CHESTER BOROUGH
MS4 PRP MAP
 WEST CHESTER BOROUGH, CHESTER COUNTY, PA

GILMORE & ASSOCIATES, INC.
 ENGINEERING & CONSULTING SERVICES
 65 E. BUTLER AVE. SUITE 100 NEW BOSTON, PA 19360-1753 761-4339
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JOB NO: 15-08026T DATE: JUNE 2017



Legend

• StormwaterOutfall	Water	Coniferous
• StormwaterJunctions	Low-Density Residential	Deciduous
— Edge of Pavement	Medium-Density Residential	Mixed Woodland
— StormwaterLines	High-Density Residential	Woody Wetland
— Streams	Low-Density Mixed Urban	Emergent Wetland
- - - Municipal Boundary	Medium-Density Mixed Urban	Disturbed
Parcels	High-Density Mixed Urban	Disturbed
	Hay/Pasture	Turf/Golf
	Cropland	

**WEST CHESTER BOROUGH
MS4 PRP LANDUSE (MAPSHED) MAP**
WEST CHESTER BOROUGH, CHESTER COUNTY, PA

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JOB NO: 15-06025T DATE: JUNE 2017 0 100 200 400 Feet

APPENDIX D

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
 STORMWATER DISCHARGES FROM
 SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
 BMP EFFECTIVENESS VALUES**

This table of BMP effectiveness values (i.e., pollutant removal efficiencies) is intended for use by MS4s that are developing and implementing Pollutant Reduction Plans and TMDL Plans to comply with NPDES permit requirements. The values used in this table generally consider pollutant reductions from both overland flow and reduced downstream erosion, and are based primarily on average values within the Chesapeake Assessment Scenario Tool (CAST) (www.casttool.org). Design considerations, operation and maintenance, and construction sequences should be as outlined in the Pennsylvania Stormwater BMP Manual, Chesapeake Bay Program guidance, or other technical sources. The Department of Environmental Protection (DEP) will update the information contained in this table as new information becomes available. Interested parties may submit information to DEP for consideration in updating this table to DEP's MS4 resource account, RA-EPPAMS4@pa.gov. Where an MS4 proposes a BMP not identified in this document or in Chesapeake Bay Program expert panel reports, other technical resources may be consulted for BMP effectiveness values. Note – TN = Total Nitrogen and TP = Total Phosphorus.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Wet Ponds and Wetlands	20%	45%	60%	A water impoundment structure that intercepts stormwater runoff then releases it to an open water system at a specified flow rate. These structures retain a permanent pool and usually have retention times sufficient to allow settlement of some portion of the intercepted sediments and attached nutrients/toxics. Until recently, these practices were designed specifically to meet water quantity, not water quality objectives. There is little or no vegetation living within the pooled area nor are outfalls directed through vegetated areas prior to open water release. Nitrogen reduction is minimal.
Dry Detention Basins and Hydrodynamic Structures	5%	10%	10%	Dry Detention Ponds are depressions or basins created by excavation or berm construction that temporarily store runoff and release it slowly via surface flow or groundwater infiltration following storms. Hydrodynamic Structures are devices designed to improve quality of stormwater using features such as swirl concentrators, grit chambers, oil barriers, baffles, micropools, and absorbent pads that are designed to remove sediments, nutrients, metals, organic chemicals, or oil and grease from urban runoff.
Dry Extended Detention Basins	20%	20%	60%	Dry extended detention (ED) basins are depressions created by excavation or berm construction that temporarily store runoff and release it slowly via surface flow or groundwater infiltration following storms. Dry ED basins are designed to dry out between storm events, in contrast with wet ponds, which contain standing water permanently. As such, they are similar in construction and function to dry detention basins, except that the duration of detention of stormwater is designed to be longer, theoretically improving treatment effectiveness.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Infiltration Practices w/ Sand, Veg.	85%	85%	95%	A depression to form an infiltration basin where sediment is trapped and water infiltrates the soil. No underdrains are associated with infiltration basins and trenches, because by definition these systems provide complete infiltration. Design specifications require infiltration basins and trenches to be built in good soil, they are not constructed on poor soils, such as C and D soil types. Engineers are required to test the soil before approval to build is issued. To receive credit over the longer term, jurisdictions must conduct yearly inspections to determine if the basin or trench is still infiltrating runoff.
Filtering Practices	40%	60%	80%	Practices that capture and temporarily store runoff and pass it through a filter bed of either sand or an organic media. There are various sand filter designs, such as above ground, below ground, perimeter, etc. An organic media filter uses another medium besides sand to enhance pollutant removal for many compounds due to the increased cation exchange capacity achieved by increasing the organic matter. These systems require yearly inspection and maintenance to receive pollutant reduction credit.
Filter Strip Runoff Reduction	20%	54%	56%	Urban filter strips are stable areas with vegetated cover on flat or gently sloping land. Runoff entering the filter strip must be in the form of sheet-flow and must enter at a non-erosive rate for the site-specific soil conditions. A 0.4 design ratio of filter strip length to impervious flow length is recommended for runoff reduction urban filter strips.
Filter Strip Stormwater Treatment	0%	0%	22%	Urban filter strips are stable areas with vegetated cover on flat or gently sloping land. Runoff entering the filter strip must be in the form of sheet-flow and must enter at a non-erosive rate for the site-specific soil conditions. A 0.2 design ratio of filter strip length to impervious flow length is recommended for stormwater treatment urban filter strips.
Bioretention – Raingarden (C/D soils w/ underdrain)	25%	45%	55%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has an underdrain and is in C or D soil.
Bioretention / Raingarden (A/B soils w/ underdrain)	70%	75%	80%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has an underdrain and is in A or B soil.

3800-PM-BCW0100m 5/2016
BMP Effectiveness Values

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Bioretention / Raingarden (A/B soils w/o underdrain)	80%	85%	90%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has no underdrain and is in A or B soil.
Vegetated Open Channels (C/D Soils)	10%	10%	50%	Open channels are practices that convey stormwater runoff and provide treatment as the water is conveyed, includes bioswales. Runoff passes through either vegetation in the channel, subsoil matrix, and/or is infiltrated into the underlying soils. This BMP has no underdrain and is in C or D soil.
Vegetated Open Channels (A/B Soils)	45%	45%	70%	Open channels are practices that convey stormwater runoff and provide treatment as the water is conveyed, includes bioswales. Runoff passes through either vegetation in the channel, subsoil matrix, and/or is infiltrated into the underlying soils. This BMP has no underdrain and is in A or B soil.
Bioswale	70%	75%	80%	With a bioswale, the load is reduced because, unlike other open channel designs, there is now treatment through the soil. A bioswale is designed to function as a bioretention area.
Permeable Pavement w/o Sand or Veg. (C/D Soils w/ underdrain)	10%	20%	55%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, no sand or vegetation and is in C or D soil.
Permeable Pavement w/o Sand or Veg. (A/B Soils w/ underdrain)	45%	50%	70%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, no sand or vegetation and is in A or B soil.
Permeable Pavement w/o Sand or Veg. (A/B Soils w/o underdrain)	75%	80%	85%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has no underdrain, no sand or vegetation and is in A or B soil.
Permeable Pavement w/ Sand or Veg. (A/B Soils w/ underdrain)	50%	50%	70%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, has sand and/or vegetation and is in A or B soil.

3800-PM-BCW0100m 5/2016
BMP Effectiveness Values

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Permeable Pavement w/ Sand or Veg. (A/B Soils w/o underdrain)	80%	80%	85%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has no underdrain, has sand and/or vegetation and is in A or B soil.
Permeable Pavement w/ Sand or Veg. (C/D Soils w/ underdrain)	20%	20%	55%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, has sand and/or vegetation and is in C or D soil.
Stream Restoration	0.075 lbs/ft/yr	0.068 lbs/ft/yr	44.88 lbs/ft/yr	An annual mass nutrient and sediment reduction credit for qualifying stream restoration practices that prevent channel or bank erosion that otherwise would be delivered downstream from an actively enlarging or incising urban stream. Applies to 0 to 3rd order streams that are not tidally influenced. If one of the protocols is cited and pounds are reported, then the mass reduction is received for the protocol.
Forest Buffers	25%	50%	50%	An area of trees at least 35 feet wide on one side of a stream, usually accompanied by trees, shrubs and other vegetation that is adjacent to a body of water. The riparian area is managed to maintain the integrity of stream channels and shorelines, to reduce the impacts of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals. (Note – the values represent pollutant load reductions from stormwater draining through buffers).
Tree Planting	10%	15%	20%	The BMP effectiveness values for tree planting are estimated by DEP. DEP estimates that 100 fully mature trees of mixed species (both deciduous and non-deciduous) provide pollutant load reductions for the equivalent of one acre (i.e., one mature tree = 0.01 acre). The BMP effectiveness values given are based on immature trees (seedlings or saplings); the effectiveness values are expected to increase as the trees mature. To determine the amount of pollutant load reduction that can be credited for tree planting efforts: 1) multiply the number of trees planted by 0.01; 2) multiply the acreage determined in step 1 by the pollutant loading rate for the land prior to planting the trees (in lbs/acre/year); and 3) multiply the result of step 2 by the BMP effectiveness values given.
Street Sweeping	3%	3%	9%	Street sweeping must be conducted 25 times annually. Only count those streets that have been swept at least 25 times in a year. The acres associated with all streets that have been swept at least 25 times in a year would be eligible for pollutant reductions consistent with the given BMP effectiveness values.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Storm Sewer System Solids Removal	0.0027 for sediment, 0.0111 for organic matter	0.0006 for sediment, 0.0012 for organic matter	1 – TN and TP concentrations	<p>This BMP (also referred to as "Storm Drain Cleaning") involves the collection or capture and proper disposal of solid material within the storm system to prevent discharge to surface waters. Examples include catch basins, stormwater inlet filter bags, end of pipe or outlet solids removal systems and related practices. Credit is authorized for this BMP only when proper maintenance practices are observed (i.e., inspection and removal of solids as recommended by the system manufacturer or other available guidelines). The entity using this BMP for pollutant removal credits must demonstrate that they have developed and are implementing a standard operating procedure for tracking the material removed from the sewer system. Locating such BMPs should consider the potential for backups onto roadways or other areas that can produce safety hazards.</p> <p>To determine pollutant reductions for this BMP, these steps must be taken:</p> <ol style="list-style-type: none"> 1) Measure the weight of solid/organic material collected (lbs). Sum the total weight of material collected for an annual period. Note – do not include refuse, debris and floatables in the determination of total mass collected. 2) Convert the annual wet weight captured into annual dry weight (lbs) by using site-specific measurements (i.e., dry a sample of the wet material to find its weight) or by using default factors of 0.7 (material that is predominantly wet sediment) or 0.2 (material that is predominantly wet organic matter, e.g., leaf litter). 3) Multiply the annual dry weight of material collected by default or site-specific pollutant concentration factors. The default concentrations are shown in the BMP Effectiveness Values columns. Alternatively, the material may be sampled (at least annually) to determine site-specific pollutant concentrations. <p>DEP will allow up to 50% of total pollutant reduction requirements to be met through this BMP. The drainage area treated by this BMP may be no greater than 0.5 acre unless it can be demonstrated that the specific system proposed is capable of treating stormwater from larger drainage areas. For planning purposes, the sediment removal efficiency specified by the manufacturer may be assumed, but no higher than 80%.</p>

APPENDIX E



Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

GWLF-E Average Loads by Source for Watershed 0

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	279	25948.41	93.00	120.46	0.43	29.59	0.11
Cropland	151	211731.96	1402.20	778.41	5.16	131.31	0.87
Forest	1139	14660.74	12.90	84.68	0.07	10.52	0.01
Wetland	235	970.03	4.10	54.19	0.23	3.24	0.01
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	870	164222.34	188.80	920.32	1.06	96.89	0.11
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	148	3637.63	24.60	84.94	0.57	9.24	0.06
MD Mixed	403	40013.90	99.30	931.03	2.31	104.01	0.26
HD Mixed	1159	115147.44	99.40	2678.90	2.31	299.26	0.26
LD Residential	638	15652.82	24.50	365.31	0.57	39.71	0.06
MD Residential	1838	182675.03	99.40	4249.67	2.31	474.72	0.26
HD Residential	59	5886.34	99.80	137.08	2.32	15.32	0.26
Water	2						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3255667.6		1627.0		421.1	
Groundwater				9967.5		217.3	
Point Sources				0.0		0.0	
Septic Systems				4500.9		0.0	
Totals	6921	4036214		26500		1852	

Print Export to JPEG Exit

Select input data file: C:\MapShed\Runfiles\ChesterCreek\Output\ChesterCreek-0_us.csv



Watershed Totals	Municipality Loads	Regulated Loads	Unregulated Loads
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View loads for municipality: Area1 (00001)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	15	1491.00	99.40	34.70	2.31	3.90	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	2	199.60	99.80	4.60	2.32	0.50	0.26
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		12611.73		6.3		1.6	0.006
Groundwater				39.9		0.9	0.004
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	17	14302.3		85.5		6.9	

Source Weighting

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Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area2 (00002)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		0.00		0.0		0.0	0.000
Groundwater				0.0		0.0	0.000
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	0	0.0		0.0		0.0	

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Watershed Totals **Municipality Loads** Regulated Loads Unregulated Loads

View loads for municipality: ▼

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	2	199.60	99.80	4.60	2.32	0.50	0.26
Water	0						
							Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		1866.75		0.9		0.2	0.001
Groundwater				10.0		0.2	0.001
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	2	2066.4		15.5		0.9	



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area4 (00004)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	205	20377.00	99.40	473.60	2.31	53.30	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	44	4391.20	99.80	102.10	2.32	11.40	0.26
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		191671.47		95.8		24.8	0.093
Groundwater				528.3		11.5	0.053
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	249	216439.7		1199.8		101.0	

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Watershed Totals

Municipality Loads

Regulated Loads

Unregulated Loads

GWLF-E Average Loads by Source for Watershed 1

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	400	81152.16	202.90	260.59	0.65	66.89	0.17
Cropland	121	217926.95	1801.00	720.96	5.96	134.04	1.11
Forest	1166	21340.75	18.30	99.36	0.09	14.37	0.01
Wetland	126	1256.63	10.00	30.58	0.24	2.16	0.02
Disturbed	5	396.83	79.40	0.97	0.19	0.31	0.06
Turfgrass	151	13756.85	91.30	108.69	0.72	13.07	0.09
Open Land	909	228994.15	251.90	1076.78	1.18	134.66	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	49	1212.54	24.70	28.31	0.58	3.09	0.06
MD Mixed	213	21186.42	99.50	452.41	2.12	51.92	0.24
HD Mixed	870	86707.81	99.70	1851.75	2.13	212.53	0.24
LD Residential	222	5467.46	24.60	127.43	0.57	13.85	0.06
MD Residential	2375	236732.38	99.70	5055.46	2.13	580.21	0.24
HD Residential	227	22663.52	99.80	483.98	2.13	55.53	0.24
Water	32657175						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3166393.6		1582.9		423.3	
Groundwater				12987.4		250.2	
Point Sources				0.0		0.0	
Septic Systems				1563.1		0.0	
Totals	6837	4105188		26431		1956	

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Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area1 (00001)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	7	128.10	18.30	0.60	0.09	0.10	0.01
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	27	2465.10	91.30	19.40	0.72	2.40	0.09
Open Land	7	1763.30	251.90	8.30	1.18	1.10	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	10	995.00	99.50	21.20	2.12	2.40	0.24
HD Mixed	188	18743.60	99.70	400.40	2.13	45.10	0.24
LD Residential	2	49.20	24.60	1.10	0.57	0.10	0.06
MD Residential	183	18245.10	99.70	389.80	2.13	43.90	0.24
HD Residential	64	6387.20	99.80	136.30	2.13	15.40	0.24
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		309399.59		154.7		41.4	0.137
Groundwater				1298.7		25.0	0.100
Point Sources				0.0		0.0	0.000
Septic Systems				17.2		0.0	0.011
Totals	488	358176.2		2447.7		176.9	

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Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area2 (00002)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	5	91.50	18.30	0.50	0.09	0.10	0.01
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	5	1259.50	251.90	5.90	1.18	0.80	0.15
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	2	49.40	24.70	1.20	0.58	0.10	0.06
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	30	2991.00	99.70	63.90	2.13	7.20	0.24
LD Residential	20	492.00	24.60	11.40	0.57	1.20	0.06
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	59	5888.20	99.80	125.70	2.13	14.20	0.24
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		76685.91		38.3		10.3	0.034
Groundwater				324.7		6.3	0.025
Point Sources				0.0		0.0	0.000
Septic Systems				139.1		0.0	0.089
Totals	121	87457.5		710.7		40.2	

Print Export to JPEG Exit



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area3 (00003)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	94	9371.80	99.70	200.20	2.13	22.60	0.24
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	67	6686.60	99.80	142.70	2.13	16.10	0.24
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		120731.43		60.4		16.1	0.060
Groundwater				467.5		9.0	0.036
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	161	136789.8		870.8		63.8	

Print

Export to JPEG

Exit



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area4 (00004)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	5	498.50	99.70	10.70	2.13	1.20	0.24
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		3922.49		2.0		0.5	0.002
Groundwater				13.0		0.3	0.001
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	5	4421.0		25.7		2.0	

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Watershed Totals

Municipality Loads

Regulated Loads

Unregulated Loads

GWLF-E Average Loads by Source for Watershed 0

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	279	25948.41	93.00	120.46	0.43	29.59	0.11
Cropland	151	211731.96	1402.20	778.41	5.16	131.31	0.87
Forest	1139	14660.74	12.90	84.68	0.07	10.52	0.01
Wetland	235	970.03	4.10	54.19	0.23	3.24	0.01
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	870	164222.34	188.80	920.32	1.06	96.89	0.11
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	148	3637.63	24.60	84.83	0.57	9.22	0.06
MD Mixed	403	39947.76	99.10	929.84	2.31	103.84	0.26
HD Mixed	1159	114949.02	99.20	2675.42	2.31	298.79	0.26
LD Residential	638	15630.77	24.50	364.82	0.57	39.64	0.06
MD Residential	1838	182366.38	99.20	4244.16	2.31	473.99	0.26
HD Residential	59	5986.34	99.80	136.91	2.32	15.30	0.26
Water	2						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3251267.2		1624.8		421.1	
Groundwater				9967.5		217.3	
Point Sources				0.0		0.0	
Septic Systems				4500.9		0.0	
Totals	6921	4031219		26487		1851	

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Exit



Watershed Totals

Municipality Loads

Regulated Loads

Unregulated Loads

GWLF-E Average Loads by Source for Watershed 0

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	279	25948.41	93.00	120.46	0.43	29.59	0.11
Cropland	151	211731.96	1402.20	778.41	5.16	131.31	0.87
Forest	1139	14660.74	12.90	84.68	0.07	10.52	0.01
Wetland	235	970.03	4.10	54.19	0.23	3.24	0.01
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	870	164222.34	188.80	920.32	1.06	96.89	0.11
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	148	3637.63	24.60	84.94	0.57	9.24	0.06
MD Mixed	403	40013.90	99.30	931.03	2.31	104.01	0.26
HD Mixed	1159	115147.44	99.40	2678.90	2.31	299.26	0.26
LD Residential	638	15652.82	24.50	365.31	0.57	39.71	0.06
MD Residential	1838	182675.03	99.40	4249.67	2.31	474.72	0.26
HD Residential	59	5886.34	99.80	137.08	2.32	15.32	0.26
Water	2						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3255667.6		1627.0		421.1	
Groundwater				9967.5		217.3	
Point Sources				0.0		0.0	
Septic Systems				4500.9		0.0	
Totals	6921	4036214		26500		1852	

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Exit



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area1 (00001)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	44	4373.60	99.40	101.60	2.31	11.40	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		34557.21		17.3		4.5	0.017
Groundwater				99.7		2.2	0.010
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	44	38930.8		218.6		18.1	

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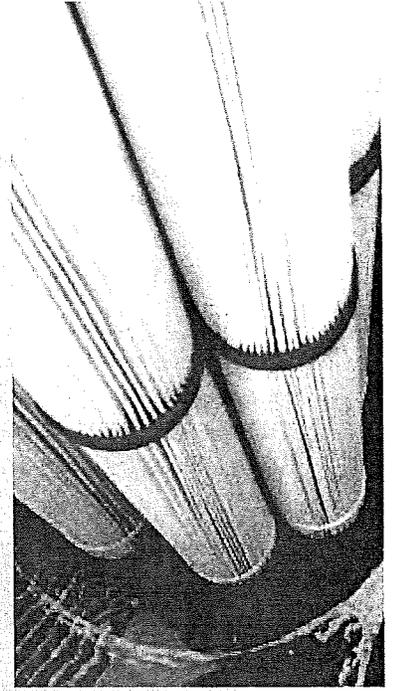
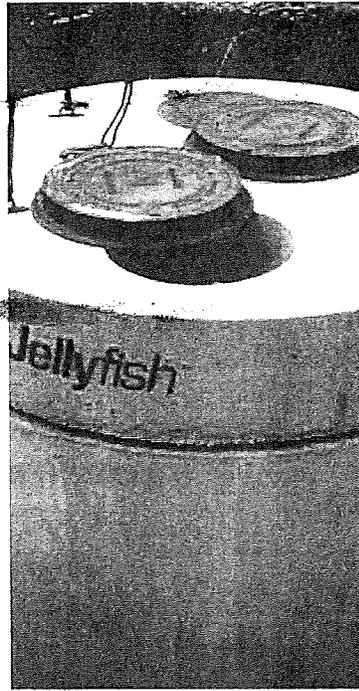
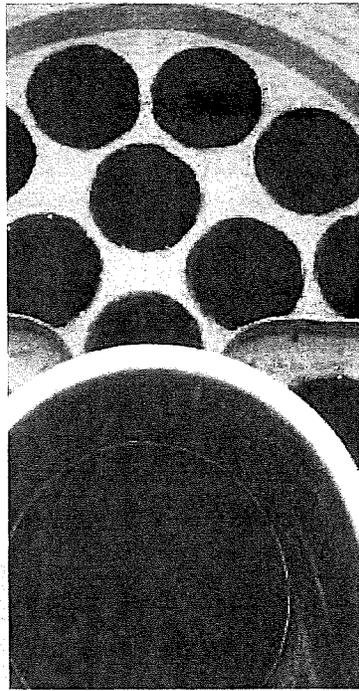
Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area2 (00002)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	35	3479.00	99.40	80.90	2.31	9.10	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
							Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		26807.96		13.4		3.5	0.013
Groundwater				69.8		1.5	0.007
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	35	30287.0		164.1		14.1	

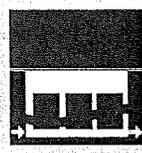
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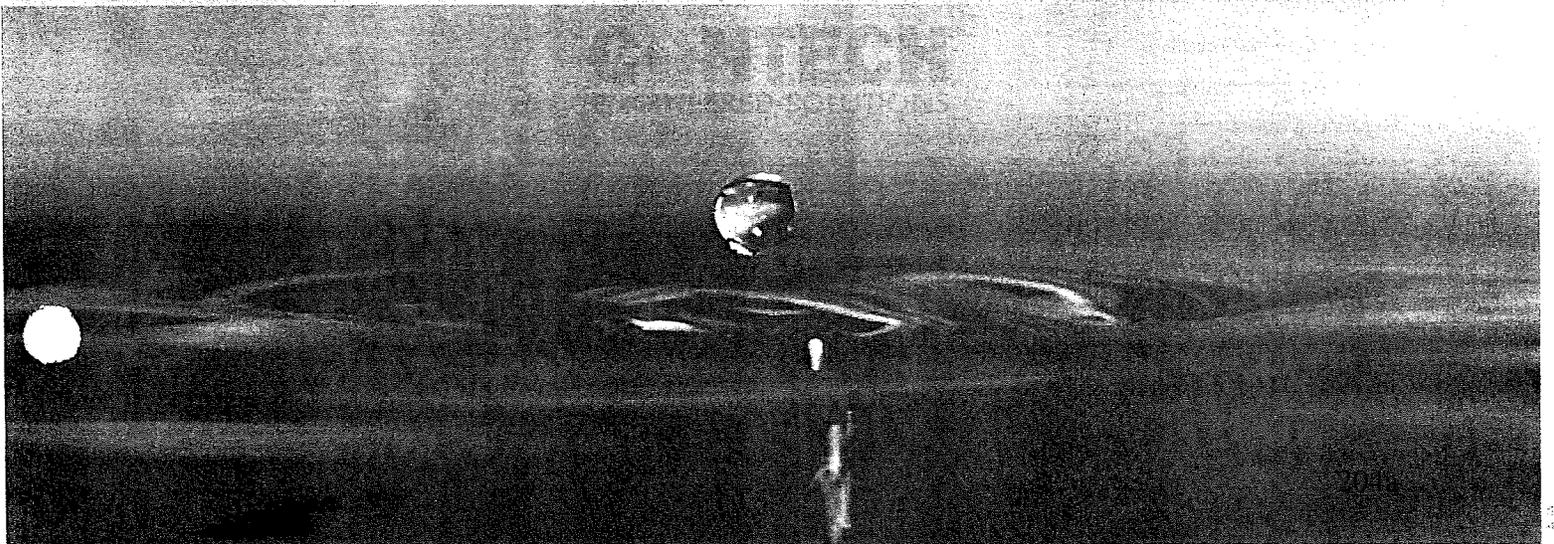
APPENDIX F



CONTECH[®]
ENGINEERED SOLUTIONS

Jellyfish[®] Filter

 **Solutions
Guide**

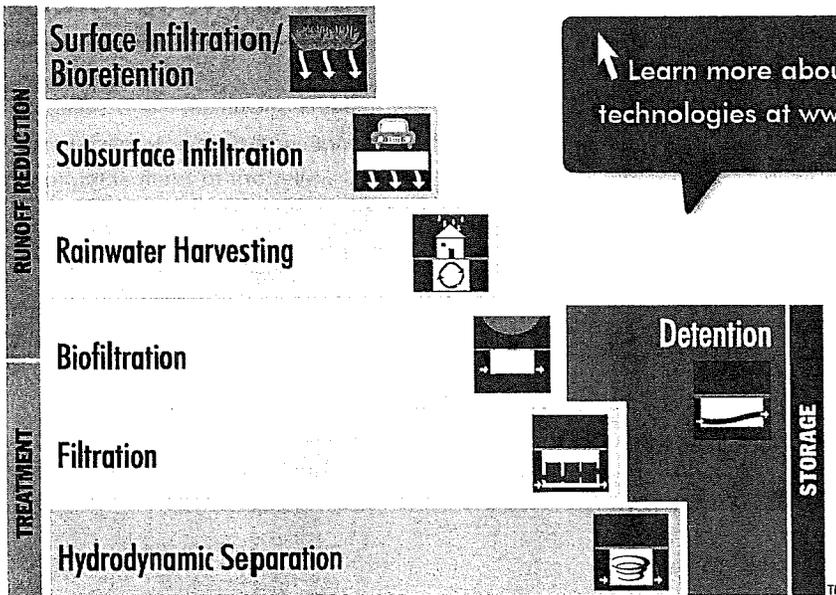


UrbanGreen® Stormwater Solutions from Contech



Selecting the Right Stormwater Solution Just Got Easier...

It's simple to choose the right low impact development (LID) solution to achieve your runoff reduction and treatment goals with the Contech UrbanGreen® Staircase. First, select the runoff reduction practices that are most appropriate for your site, paying particular attention to pretreatment needs. If the entire design storm cannot be retained, select a best management practice (BMP) to treat the balance. Finally, select a detention system to address any outstanding downstream erosion.



Learn more about all of our stormwater technologies at www.ContechES.com/

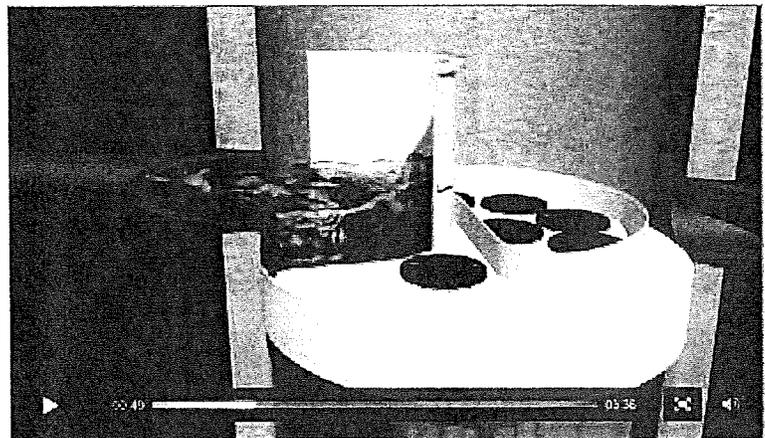
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Learn About the Jellyfish® Filter

Go online and watch our animation to learn how the Jellyfish Filter works. The animation also highlights important features of the Jellyfish Filter including...

- Applications
- Performance test results
- Inspection and maintenance
- Regulatory approvals

To view the Jellyfish Filter animation, visit: www.conteches.com/jellyfish



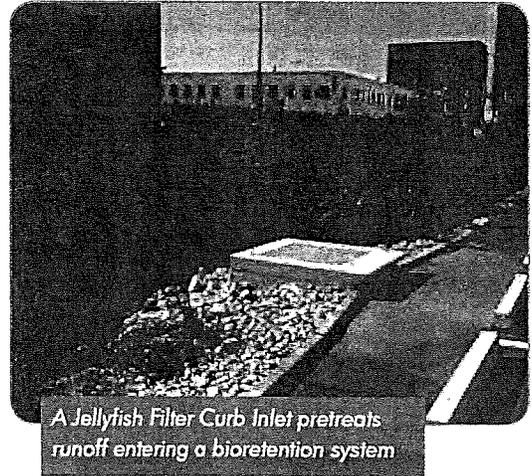
Jellyfish® Filter

Filtration as a Stormwater Management Strategy

Stormwater regulations are increasingly calling for more robust treatment levels. In addition to the removal of suspended solids, many regulations now require best management practices to remove significant amounts of nutrients, metals, and other common pollutants found in stormwater runoff. Meeting these regulations often requires the use of a filtration solution.

Low Impact Development (LID) and Green Infrastructure (GI) are complimented by filtration solutions. Benefits of LID and GI systems include retaining runoff and aesthetic appeal. Keeping LID and GI sites free from fine sediments, oils, trash, and debris while functioning as designed can be time consuming and costly.

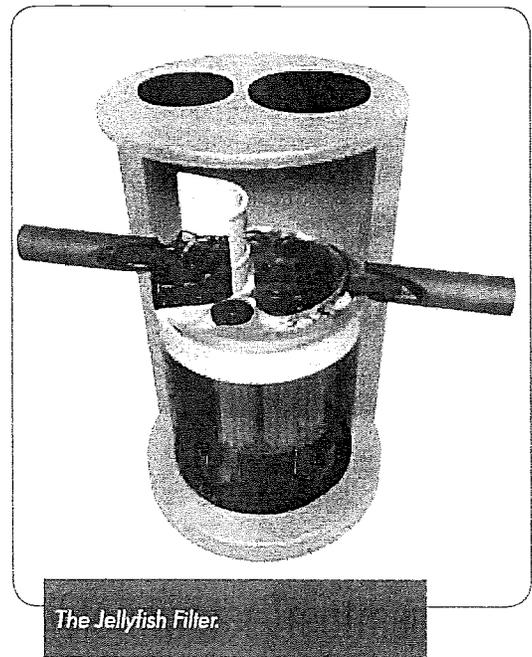
As a result, the practice of combining LID and GI with filtration is becoming more common. Providing a single point of maintenance promotes proper system functionality and increases the aesthetic appeal by removing unsightly trash and debris.



The Jellyfish[®] Filter - Setting New Standards in Stormwater Treatment

The Jellyfish Filter is a stormwater quality treatment technology featuring high surface area and high flow rate membrane filtration at low driving head. By incorporating pretreatment with light-weight membrane filtration, the Jellyfish Filter removes floatables, trash, oil, debris, TSS, fine silt-sized particles, and a high percentage of particulate-bound pollutants; including phosphorus and nitrogen, metals and hydrocarbons.

The high surface area membrane cartridges, combined with up flow hydraulics, frequent backwashing, and rinseable/reusable cartridges ensures long-lasting performance.

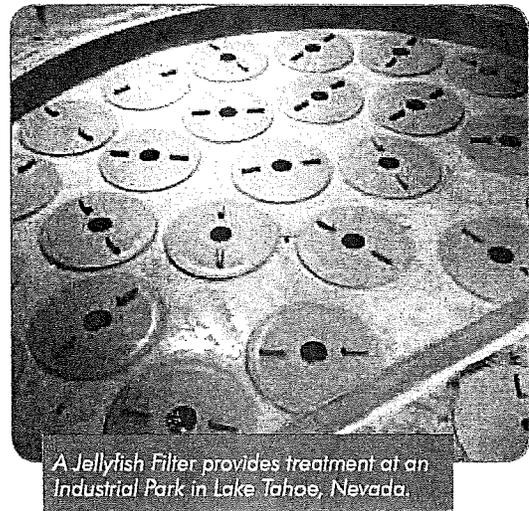
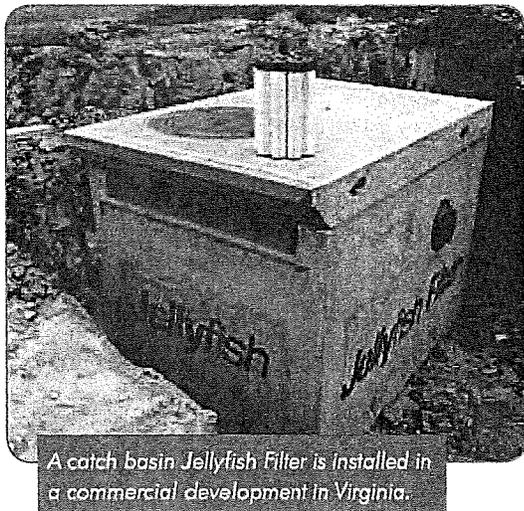
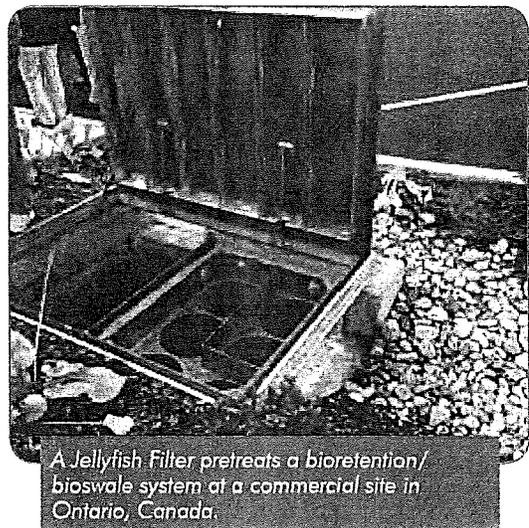


Jellyfish[®] Filter Features and Benefits

FEATURES	BENEFITS
1. High surface area, high flow rate membrane filtration	1. Long-lasting and effective stormwater treatment
2. Highest design treatment flow rate per cartridge (up to 80 gpm (5 L/S))	2. Compact system with a small footprint, lower construction cost
3. Low driving head (typically 18 inches or less (457 mm))	3. Design Flexibility, lower construction cost
4. Lightweight cartridges with passive backwash	4. Easy maintenance and low life-cycle cost
5. 3 rd party verified field performance per TARP protocol	5. Superior pollutant capture with confidence

Jellyfish[®] Filter Applications

- Urban development
- Highways, airports, seaports, and military installations
- Commercial and residential development, infill and redevelopment, and stormwater quality retrofit applications
- Pretreatment for Low Impact Development (LID), Green Infrastructure (GI), infiltration, and rainwater harvesting and reuse systems
- Industrial sites



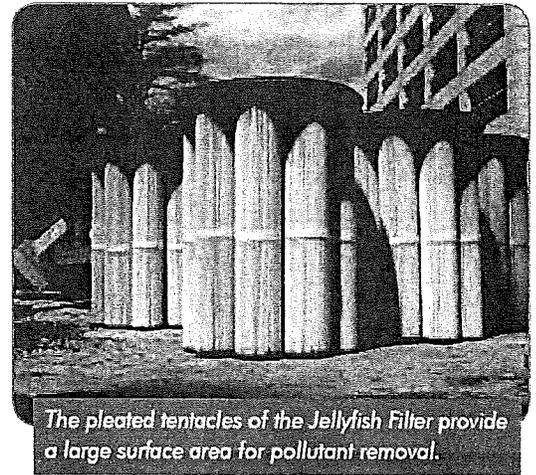
Jellyfish® Filter Field Performance Test Results

POLLUTANT OF CONCERN	% REMOVAL
Total Trash	99%
Total Suspended Solids (TSS)	89%
Total Phosphorus (TP)	59%
Total Nitrogen (TN)	51%
Total Copper (TCu)	> 80%
Total Zinc (TZn)	> 50%
Turbidity (NTU)	< 15%

Sources:

TARP II Field Study – 2012 JF 4-2-1 Configuration

MRDC Floatables Testing – 2008 JF6-6-1 Configuration



The pleated tentacles of the Jellyfish Filter provide a large surface area for pollutant removal.

Jellyfish® Filter Approvals

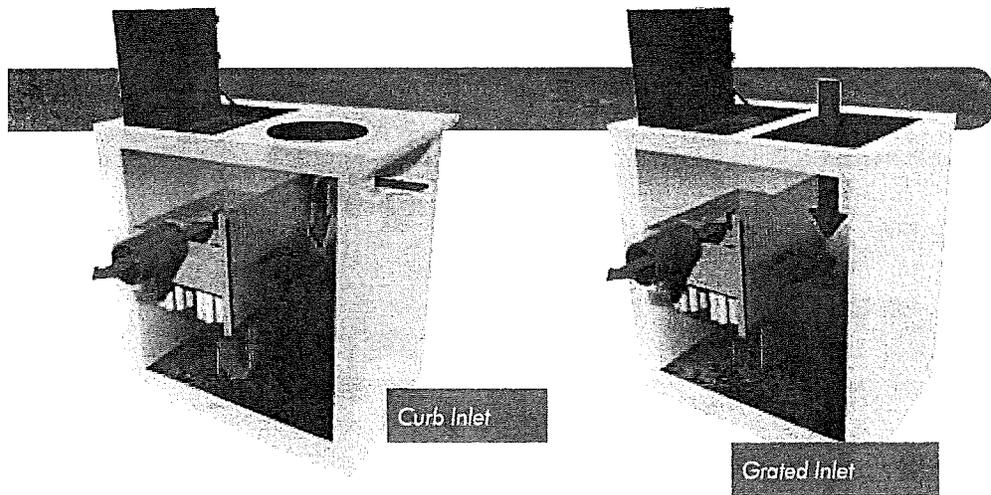
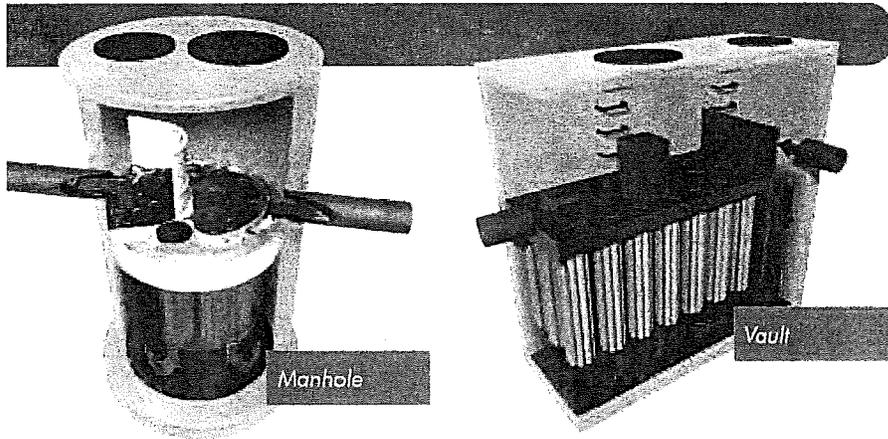
The Jellyfish Filter is approved through numerous state and federal verification programs, including:

- New Jersey Corporation for Advanced Technology (NJCAT) – Field Performance Verification per TARP Tier II Protocol
- New Jersey Department of Environmental Protection (NJDEP) – Certification
- Washington State Department of Ecology (TAPE – CULD)
- Maryland Department of the Environment (MD DOE)
- Texas Commission on Environmental Quality (TCEQ)
- Virginia Department of Environmental Quality (VA DEQ)
- Ontario Ministry of the Environment – New Environmental Technology Evaluation (NETE) – Certification



Jellyfish® Filter Configurations

The Jellyfish Filter is available in a variety of configurations. Typically, 18 inches (457 mm) of driving head is designed into the system. For low drop sites, the designed driving head can be less.



Lightweight Jellyfish Filter Configurations

Custom configurations include Jellyfish Filter tanks made from fiberglass for site specific applications.



A Jellyfish Filter was constructed from fiberglass to reduce the weight of the system, allowing for a suspended installation above an underground parking structure. The reduced weight eliminated the need for structural changes, and suspending the Jellyfish resulted in no loss of parking space, maximizing real-estate value.

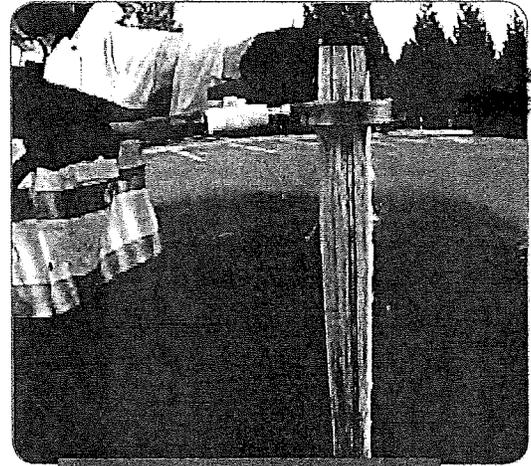
Other custom configurations include:

- On-line capability (internal bypass)
- Peak Diversion Vault Configurations

Jellyfish® Filter Maintenance

Inspection and maintenance activities for the Jellyfish Filter typically include:

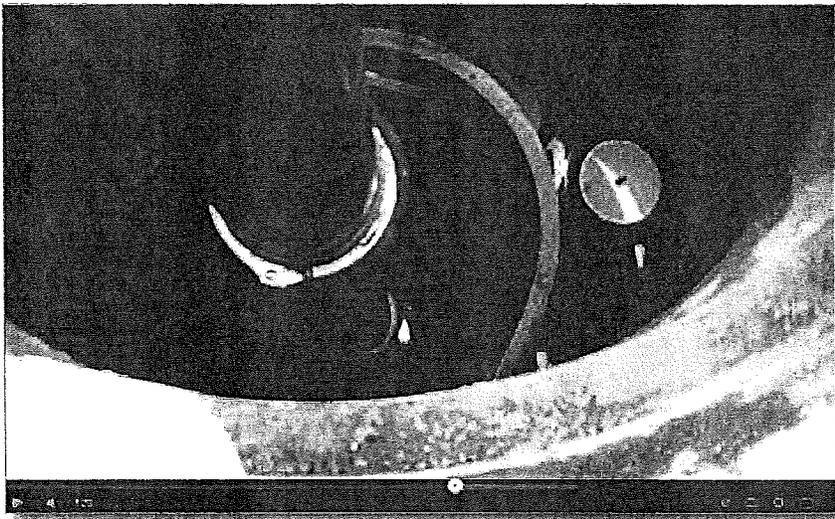
- Visual inspection of deck, cartridge lids, and maintenance access wall.
- Vacuum extraction of oil, floatable trash/debris, and sediment from manhole sump.
- External rinsing and re-installing of filter cartridges.
- Replacement of filter cartridge tentacles as needed. Cartridge replacement intervals vary by site; typical replacement is anticipated every 2-5 years.

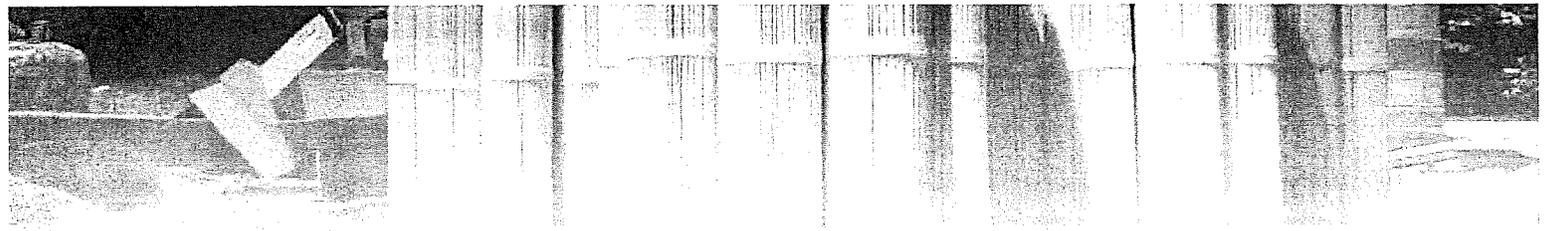


The Jellyfish Filter cartridge is light and easy to clean.

Jellyfish® Filter Inspection and Maintenance Video

Inspecting and maintaining the Jellyfish Filter is easier than you may think. Watch the Jellyfish inspection and maintenance video at www.ContechES.com/jellyfish





LEARN MORE

- Access project profiles, photos, videos and more online at www.ContechES.com/jellyfish

CONNECT WITH US

- Call us at 800-338-1122
- Contact your local rep at www.ContechES.com/localresources

START A PROJECT

- Submit your system requirements on our product Design Worksheet www.ContechES.com/start-project

USE OUR ONLINE TOOLS

- Low Impact Development Site Planner www.ContechES.com/LIDsiteplanner

CONTECH[®] ENGINEERED SOLUTIONS

COMPLETE SITE SOLUTIONS



TREATMENT SOLUTIONS

Helping to satisfy stormwater and wastewater management requirements on land development projects

- Stormwater & Wastewater Treatment
- Detention/Infiltration
- Rainwater Harvesting
- Biofiltration/Bioretenion

PIPE SOLUTIONS

Meeting project needs for durability, hydraulics, corrosion resistance, and stiffness

- Corrugated Metal Pipe (CMP)
- Steel Reinforced Polyethylene (SRPE)
- High Density Polyethylene (HDPE)
- Polyvinyl Chloride (PVC)

STRUCTURES SOLUTIONS

Providing innovative options and support for crossings, culverts, and bridges

- Plate, Precast & Truss bridges
- Hard Armor
- Retaining Walls
- Tunnel Liner Plate

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Jellyfish Brochure (5M) PDF Revision 4/15

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FSC

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APPENDIX G

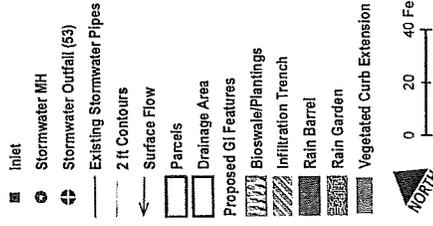
JOHN O. GREEN MEMORIAL PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



John O. Green Memorial Park is a 1.24 acre park in southeast West Chester that features a variety of community amenities such as playgrounds, a full-size basketball court, a spray ground, pavilion with tables, and open areas for free play. This well-used neighborhood park is bordered by S Matlack Street, Cedar Alley, and Railroad Street with E Miner Street dividing the park into two discrete sections. The park is bordered by residential homes to the west and south and is adjacent to the West Chester railroad and parking lot to the east. Formerly a manufactured gas plant owned by PECO, the site was cleaned up and turned over to the Borough in 1998.

The green infrastructure (GI) concepts proposed for the site consist of vegetated curb extensions with subsurface infiltration trench components (one on S Matlack St, one on Railroad St, and two at the northern park entrance on E Miner St), a tree trench on E Miner St, rain gardens in several corners of the park on both parcels, a demonstration rain barrel to capture roof runoff from the pavilion, and overall recommendations for planters, additional groundcover, and new trees to further "green" the park and provide shade to play areas.

Collectively, these GI features would capture and treat runoff from the park property and several adjacent streets as shown on the concept plan. During larger storm events, overflow structures would allow excess runoff to flow into existing storm sewers. In addition to reducing and treating stormwater runoff, these GI features have the potential to add aesthetic value to the park, promote traffic calming, and work in harmony with the park's existing active and passive recreational uses.



E MINER ST IDEAS

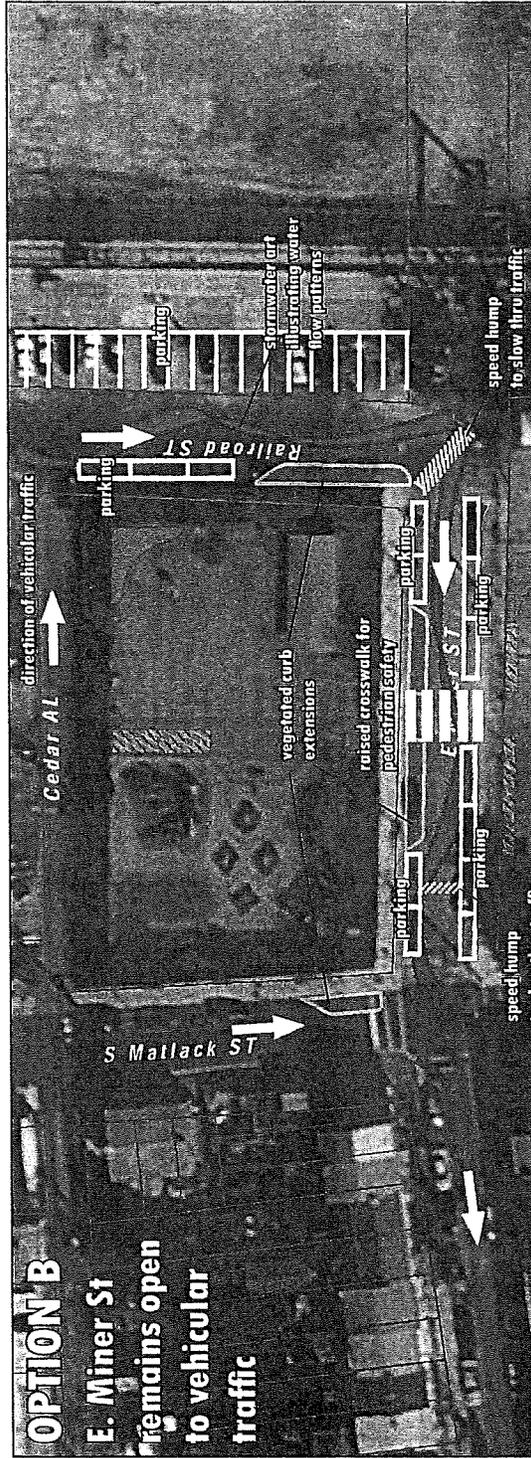
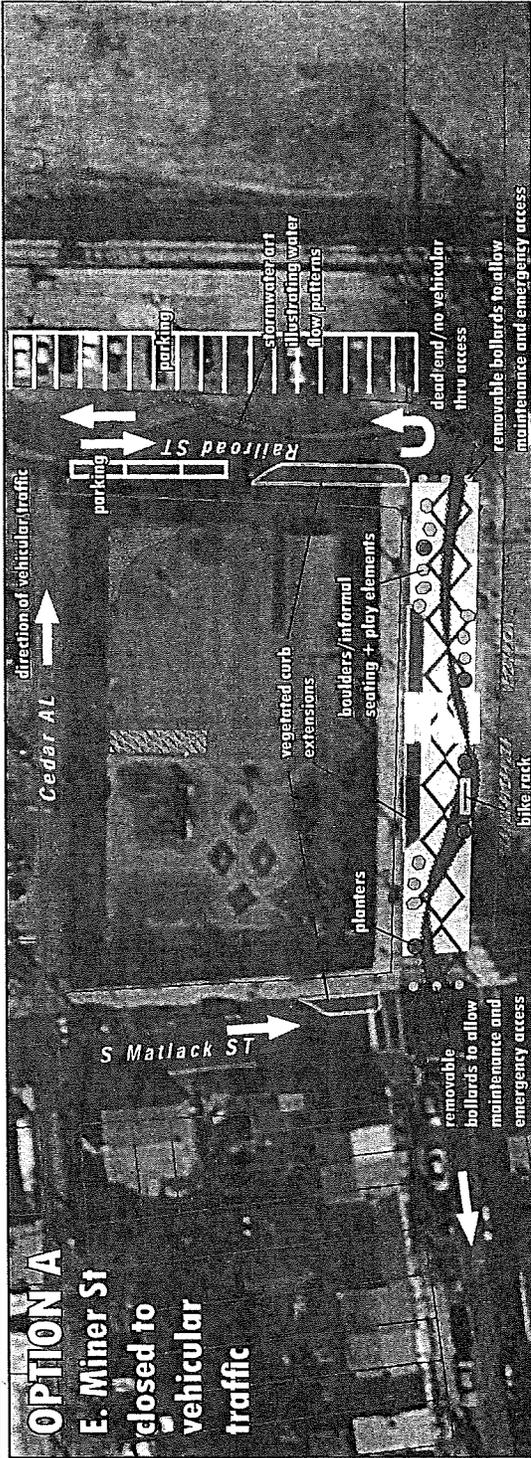
OPTION A:

- close E Miner St to traffic and turn into play area space/extension of playground
- use creative street paint/imprints and have hopscotch and other games on former street
- use Railroad St for parking

OPTION B:

- keep E Miner St open to traffic
- deter high speed traffic on E Miner St by adding speed bumps, areas of raised pavement, and curb extensions
- add creative street paint/imprints to street illustrating water flow patterns

JOHN O. GREEN MEMORIAL PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



In addition to the proposed green infrastructure elements for John O. Green Memorial Park, there are several potential options for addressing vehicular traffic, pedestrian safety, and parking on the block of E. Miner Street between the two park parcels.

Option A would close E. Miner Street between Railroad Street and S. Matlack Street to vehicular thru-traffic. This portion of E. Miner Street would become a car-free zone and a safe place for pedestrians to sit, children to play, and park-goers to freely move between the north and south park areas. Removable bollards would be placed at either ends of the closed block to enable occasional access for emergency and maintenance vehicles. Parking would not be allowed on E. Miner Street, rather all parking would be directed to Railroad Street.

- Option A Pros**
- maximizes pedestrian and park-goer safety
 - maintains emergency vehicular access
 - creates a car-free play zone between the park areas

- Option A Cons**
- removes parking on E. Miner Street
 - removes vehicular thru-way

Option B would keep E. Miner Street between Railroad Street and S. Matlack Street open to vehicular thru-traffic. Parallel parking would be permitted on both sides of the street. Speed humps and a raised crosswalk would be strategically placed to slow vehicular traffic and increase park-user and pedestrian safety.

- Option B Pros**
- maximizes parking on E. Miner Street
 - maintains vehicular thru-way

- Option B Cons**
- less benefits for pedestrian and park-goer safety
 - does not create a car-free play zone

Legend:

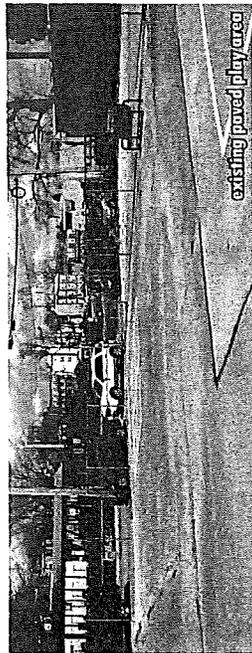
- Inlet
- Parcels
- Proposed GI Features
 - Bioswale/Plantings
 - Rain Barrel
 - Rain Garden
 - Vegetated Curb Extension

Scale: 0 20 40 Feet

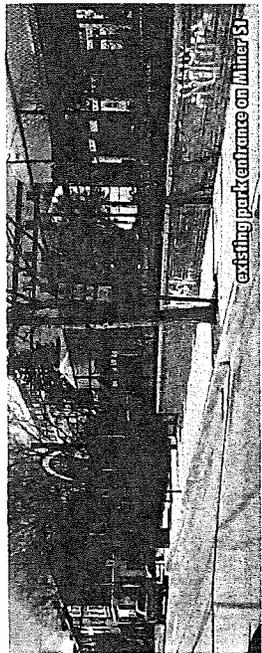
North Arrow

WEST CHESTER BOROUGH SPF PROGRAM

JOHN O. GREEN MEMORIAL PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



existing paved play area



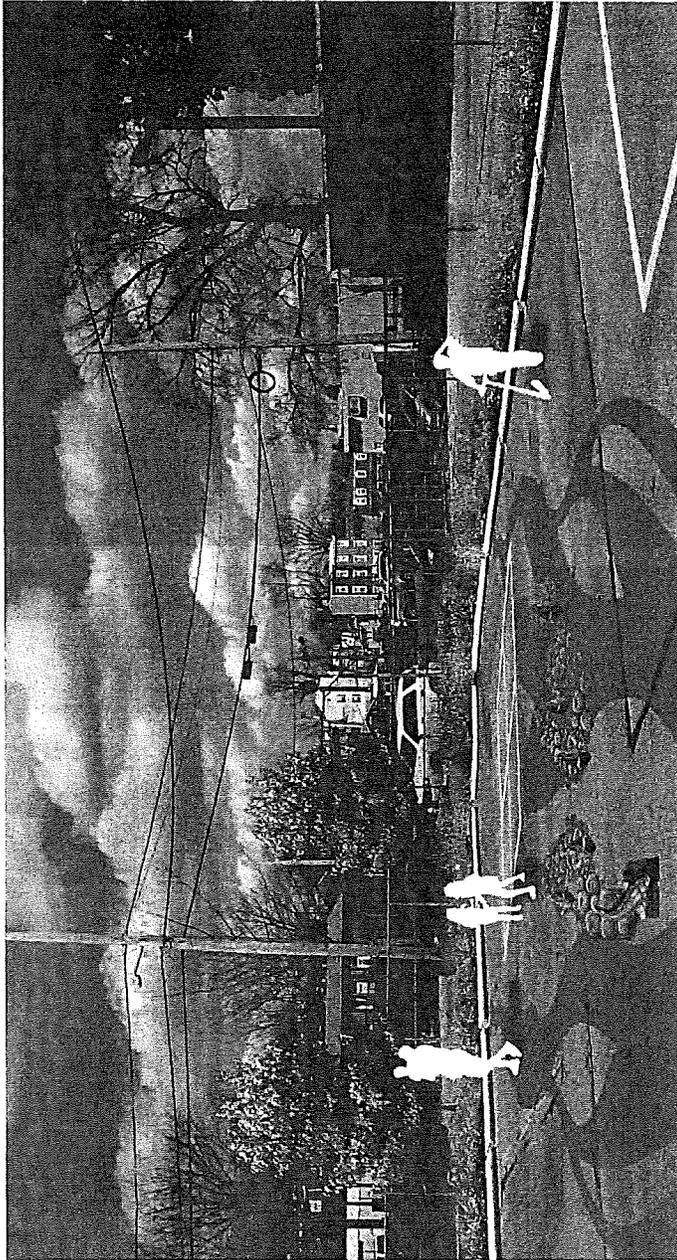
existing park entrance on Miner St



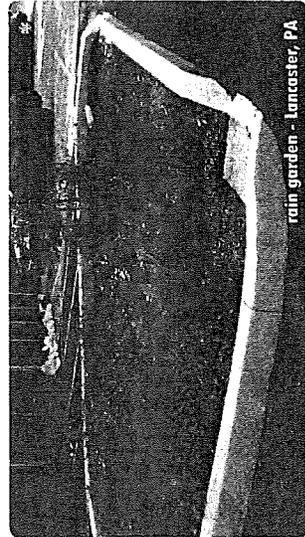
existing stormwater runoff conditions



existing playground and basketball court



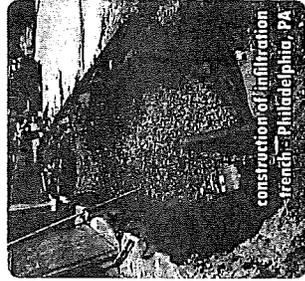
Proposed Rain Garden and Planting Beds



rain garden - Lancaster, PA



curb extension - Lancaster, PA



construction of infiltration trench - Philadelphia, PA

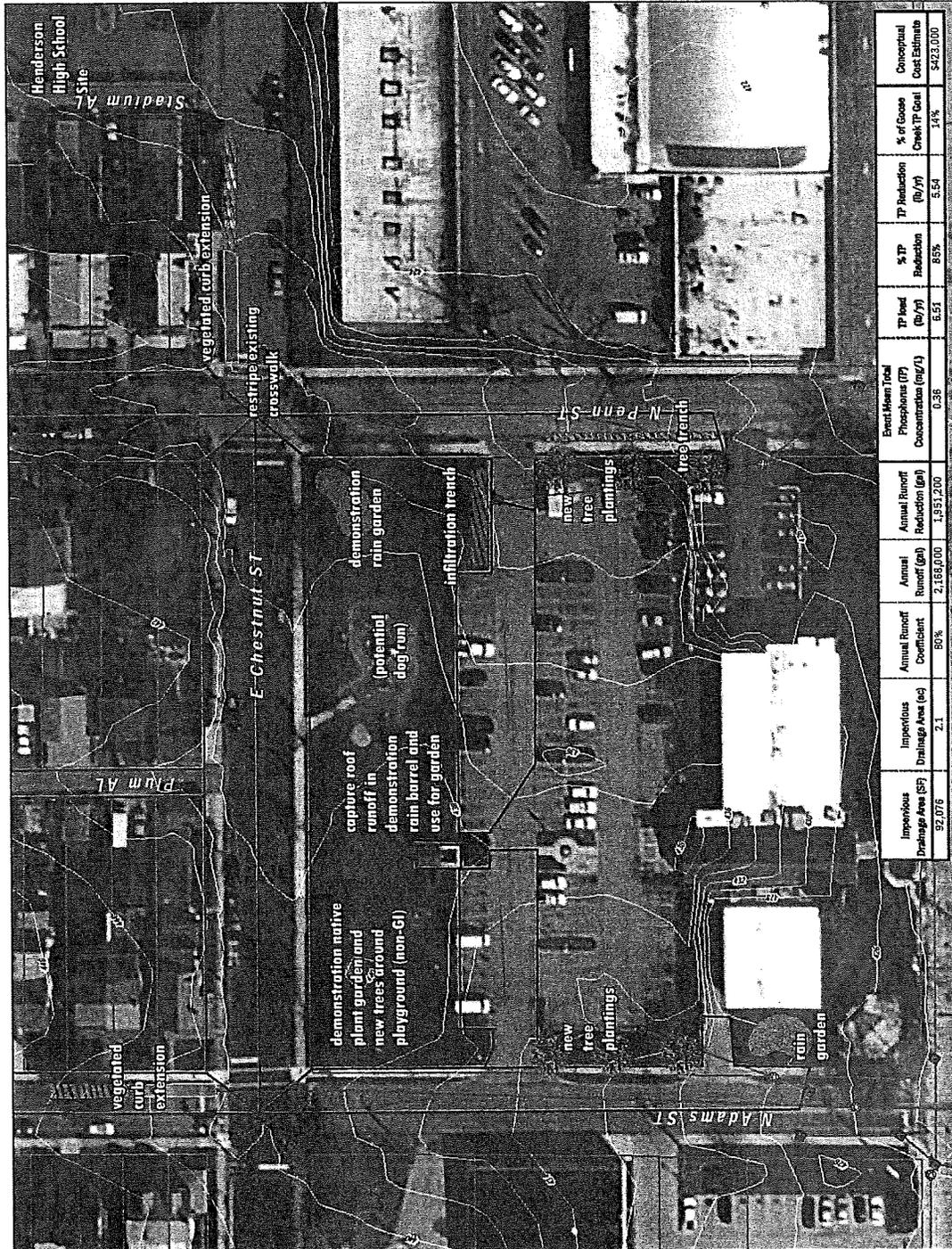
Examples of GI Features

FUGETT PARK/BOROUGH HALL: PROPOSED GREEN INFRASTRUCTURE CONCEPTS

Fugett Park and West Chester Borough Hall make up a 2.66 acre site near the eastern border of West Chester Borough. The park features new playground equipment and several established mature trees. The site is bordered by E Chestnut Street, N Adams St, E Gay St, and N Penn St. The park is bordered by residential homes to the north and west, the Henderson High School site to the northeast, and commercial properties to the east.

This high-visibility site has frequent visitors (both Borough residents and others) and therefore has the potential to feature numerous "demonstration" green infrastructure technologies and showcase the Borough's commitment to green infrastructure and stormwater solutions. With that vision in mind, the green infrastructure concepts proposed for the site consist of vegetated curb extensions with subsurface infiltration trench components (one on N Adams St and one on E Chestnut St), a demonstration rain garden in the northeast corner of the park, another rain garden on the western side of Borough Hall, a subsurface infiltration trench to capture parking lot runoff, a tree trench along N Penn St, and a demonstration rain barrel to capture roof runoff from the shed to be used in a potential demonstration native plant/backyard wildlife garden. In addition, new tree plantings are proposed on both edges of the parking lot.

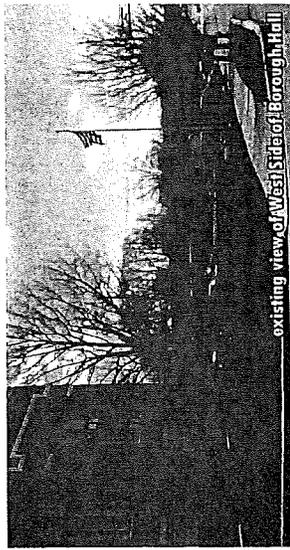
Collectively, these GI features would capture and treat runoff from the site and several adjacent streets as shown on the concept plan. During larger storm events, overflow structures would allow excess runoff to flow into existing storm sewers. In addition to reducing and treating stormwater runoff, these GI features have the potential to add aesthetic value to the park, promote traffic calming, and work in harmony with the site's existing active and passive recreational uses such as the existing playground and proposed dog run areas.



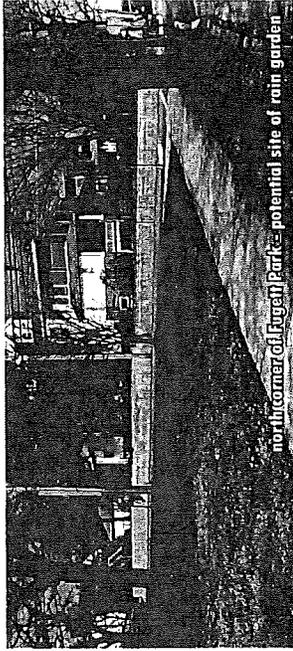
Impervious Drainage Area (SF)	Impervious Drainage Area (ac)	Annual Runoff Coefficient	Annual Runoff (gal)	Annual Runoff Reduction (gal)	Event Mean Total Phosphorus (TP) Concentration (mg/L)	TP Load (lb/yr)	% TP Reduction	TP Reduction (lb/yr)	% of Goals Check TP Goal	Conceptual Cost Estimate
92,076	2.1	80%	2,168,000	1,951,200	0.36	6,511	85%	5,541	14%	\$423,000

WEST CHESTER BOROUGH SPF PROGRAM

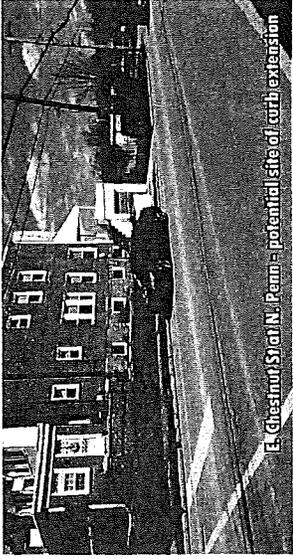
FUGETT PARK/BOROUGH HALL: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



existing view of West Side of Borough Hall

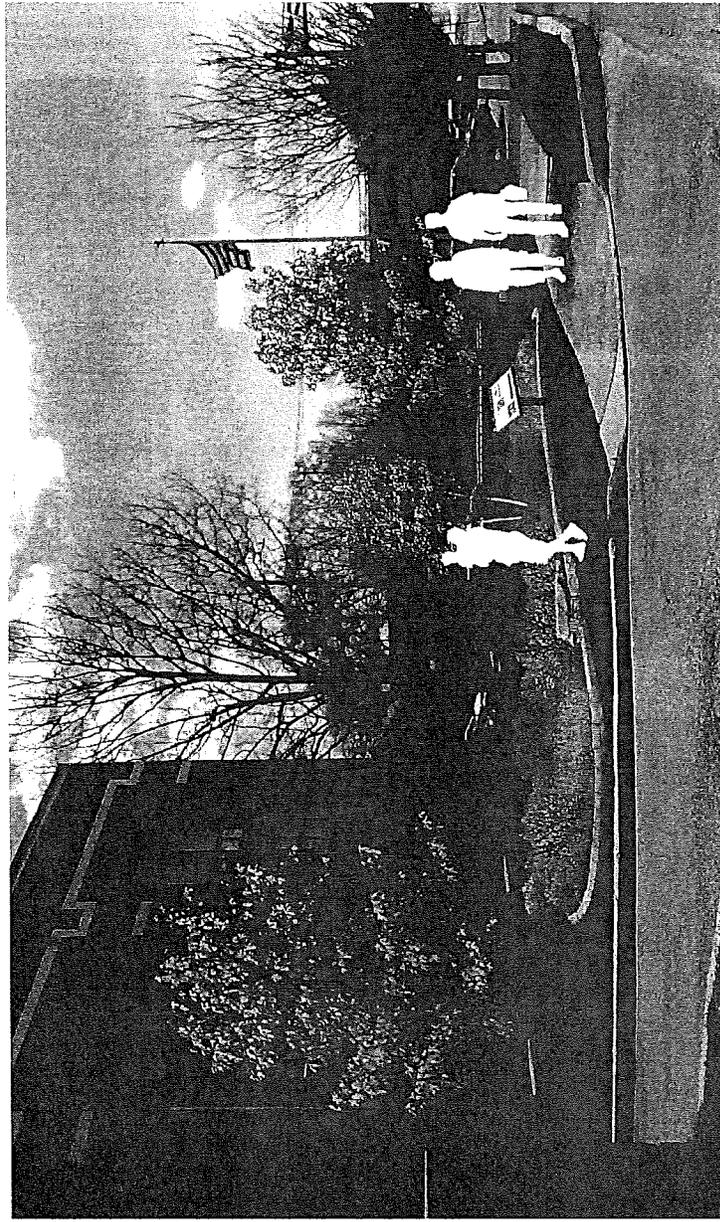


north corner of Fugett Park - potential site of rain garden

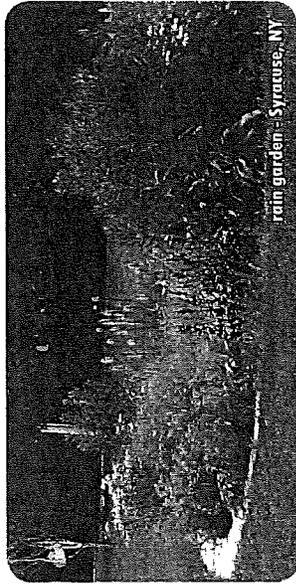


at Chestnut Street / N. Penn - potential site of curb extension

Existing Conditions



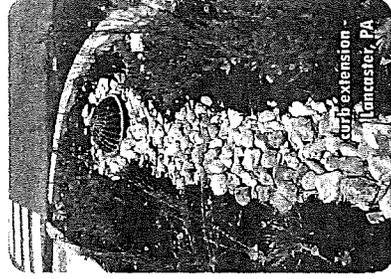
Proposed Rain Garden on West Side of Borough Hall



rain garden - Syracuse, NY



rain barrel



curb extension - Lancaster, PA

Examples of GI Technology

EXHIBIT I

[TMDL PLAN]

**TMDL Plan
West Chester Borough Goose Creek MS4**

MS4 TMDL Strategy

Submitted By: West Chester Borough

September 2017

Prepared By:

Gilmore & Associates, Inc.
Engineers ♦ Land Surveyors ♦ Planners ♦ GIS Consultants
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Appendices

Appendix A Public Participation

- Public Notice & Proof of Advertisement
- Public Meeting Agenda and Meeting Minutes

Appendix B Maps

- West Chester Borough MS4 TMDL Map
- West Chester Borough MS4 TMDL Land Uses (MapShed) Map

Appendix C 3800-PM-BCW0100m 5/2016 BMP Effectiveness Values

Appendix D MapShed GWLF-E Average Loads by Source for Watershed

Appendix E Jellyfish Filter Solutions Guide Contech

Appendix F CH2M Green Infrastructure Concepts

Appendix G MS4 Anticipated Obligations Requirements Table

West Chester Borough, Chester County is submitting this TMDL Strategy in accordance with the requirements of the *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4)*; specifically, in accordance with the *MS4 Requirements Table (Municipal) Anticipated Obligations for Subsequent NPDES Permit Term (Revised 6/26/2017)*. West Chester Borough must create a TMDL due to discharges from their MS4 to Chester Creek, which has been listed as having a Requirement of TMDL Plan Nutrients, for Goose Creek TMDL (see Appendix G).

The intent of this MS4 TMDL is to establish the existing loading of pollutants discharged from the MS4 to Goose (Chester) Creek, and to present a plan to reduce these pollutants. This MS4 TMDL is organized to follow the 3800-PM-BCW0200d Rev. 3/2017 *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) TMDL Plan Instructions* included as part of the *MS4 Individual Permit* package. This TMDL may be evaluated and updated by West Chester Borough on an as-needed basis, based on its effectiveness in reducing pollutant loads in discharges from the regulated small MS4. If this occurs, West Chester Borough will work with the Department of Environmental Protection (DEP) for review and approval of any revisions or updates.

Each MS4 TMDL must include the following Required TMDL Elements:

Section A: Public Participation

Section B: Map

Section C: Pollutants of Concern

Section D: Existing Load for Pollutant(s) of Concern

Section E: Wasteload Allocation(s) (WLA(s))

Section F: Analysis of TMDL Objectives

Section G: Select BMPs To Achieve the Minimum Required Reductions in Pollutant Load

Section H: Identify Funding Mechanisms

Section I: Identify Responsible Parties for Operation and Maintenance (O&M) of BMPs

This TMDL is organized to follow the above outline of required elements as shown on the following pages. Relevant verbiage from the TMDL Instructions is reiterated herein for each of the above required TMDL Elements.

I. General Information

- A. Terms:** The term “nutrients” refers to “Total Phosphorus” (TP) unless specifically stated otherwise in DEP’s latest Integrated Report. The terms “sediment,” “siltation,” and “suspended solids” all refer to inorganic solids and are hereinafter referred to as “sediment.”

The term “storm sewershed” is defined in the PAG-13 General Permit as the land area that drains to the municipal separate storm sewer from within the jurisdiction of the MS4 permittee. This term is used in these instructions as well as the term, “TMDL Planning Area” (or “Planning Area”) which refers to all the storm sewersheds for which an MS4 must calculate existing loads and plan load reductions.

The term “baseline load” is used in these instructions to refer to the pollutant load discharged by an MS4 as reported in a TMDL. A baseline load can be revised by 1) conducting a new modeling effort that utilizes the land use/land cover information from the original TMDL and 2) by considering the reductions achieved through structural BMPs installed prior to approval of a TMDL that were not considered during development of the TMDL.

The term “existing load” refers to the pollutant load that the MS4 estimates is draining to impaired waters from the Planning Area at the time of TMDL Plan submission. The existing load will be the same as the baseline load (regardless of whether or not the baseline load is revised) unless the MS4 accounts for reductions from structural BMPs installed between the date of TMDL approval and TMDL Plan submission.

- B. Pollutant(s) of Concern:** The pollutant(s) of concern for TMDL Plans will be based on the following:

- If a WLA has been established in a TMDL for sediment, the MS4 is expected to develop the TMDL Plan based on the reduction of sediment.

- If WLAs have been established in a TMDL for sediment and nutrients, the MS4 is expected to develop the TMDL Plan based on the reduction of sediment and TP, unless the MS4 chooses to utilize a presumptive approach for TP. DEP will allow MS4s to calculate loads and pollutant reductions based on sediment, under the assumption that the achievement of TMDL Plan objectives for sediment will also achieve the objectives for TP. MS4s must identify use of the presumptive approach in its TMDL Plan if chosen.
- If a WLA has been established in a TMDL for nutrients alone (or surrogates for nutrients such as “excessive algal growth” and “organic enrichment/low D.O.”), the MS4 is expected to develop the TMDL Plan based on the reduction of TP, unless the presumptive approach is chosen, as described above.

C. TMDL Plan Objectives: There are two objectives for a TMDL Plan:

1. **Long-Term Reduction** – Plan for the reduction of pollutant load(s) to achieve the WLA(s) in the TMDL.

The TMDL Plan must describe a general plan as to how WLA(s) will ultimately be achieved.

2. **Short-Term Reduction** – Plan for the short-term reduction of pollutant load(s) that will be achieved within the subsequent NPDES permit term (i.e., the 5-year permit term resulting from DEP’s issuance of a permit in response to the receipt of the MS4’s next submission of an individual permit application).

MS4s must achieve at least one of the following objectives within the 5-year permit term: 1) the WLA(s) in the TMDL, or 2) if the WLA(s) cannot be achieved, a load reduction of at least 10% for sediment and/or 5% for TP, compared to the existing load for these pollutants at the time of TMDL Plan submission. A load reduction of at least 10% for sediment may be used as the objective in lieu of a 5% reduction in TP under the presumptive approach.

NOTE – The presumptive approach cannot be used to assume that meeting TMDL Plan objectives for nutrients will result in meeting objectives for sediment.

NOTE – The minimum required reduction to be to be accomplished during the permit term is based on the existing pollutant load at the time of TMDL Plan submission, not at the time of the original TMDL approval. If an MS4 can demonstrate to DEP’s satisfaction in its TMDL Plan that it has already achieved the WLA(s) of the applicable TMDL(s), the MS4 will not be required to implement further pollutant load reductions during the subsequent permit term.

D. Existing Pollutant Load(s): The estimation or determination of existing loads for TMDL Plans is different than the estimation of existing loads for PRPs. MS4s have two options in establishing the existing pollutant load(s) for pollutant(s) of concern for TMDL Plans:

1. MS4s may report the existing load(s) specified in the TMDL (i.e., the TMDL “baseline load”). The baseline load(s) may be represented in the TMDL as either:
 - Load(s) that are specific to the MS4 (i.e., the load is listed in a table within the TMDL with the name of the MS4 identified); or
 - Load(s) that are not specific to the MS4 (i.e., are represented in the TMDL as bulk/aggregate load(s) for all MS4s in the TMDL watershed), in which the MS4 will need to distribute its individual load(s) UNLESS a collaborative TMDL Plan is developed with all other MS4s identified in the TMDL.
2. MS4s may choose to calculate existing load(s) for a TMDL Plan through a new modeling effort using the MapShed model developed by the Pennsylvania State University (www.mapshed.psu.edu) or a comparable, or more robust, continuous simulation model. Any new modeling effort must focus on the TMDL Planning Area and account for overland flow as well as downstream channel and bank erosion; therefore, modeling must be done at a scale that allows for the

quantification of both impacts. New modeling must utilize the same land use/land cover information that was used to develop the TMDL or other quality assured land use/land cover data from the time of TMDL approval. DEP recommends that prior to and/or during any new modeling effort that MS4s contact DEP's Bureau of Clean Water, Water Quality Division, TMDL Section at (717) 787-5017 for guidance.

If a combined PRP and TMDL Plan is developed (see Section I.F), in which the PRP and TMDL Planning Areas are combined into one Planning Area, the existing loads for the Planning Area may only be derived using a new modeling effort (Option 2 above).

NOTE – If an MS4 is aware of the date(s) of data collection in support of TMDL development, land use/land cover information from this date rather than the TMDL approval date may be used.

NOTE – MapShed, or any other watershed model where channel erosion is explicitly modeled, should be run on a minimum of ~10 mi² area to properly account for downstream impacts and include impaired waters identified in the MS4 Requirements Table. Aggregation of these waters up to approximately the 12-digit HUC scale for modeling purposes is acceptable. Modeling may not be done at the individual storm sewershed or municipal scale where the extent of downstream impact is not included in load calculation.

NOTE – Baseline loads in older TMDLs typically did not account for load reductions from urban stormwater BMPs existing at the time of TMDL preparation. In such cases, MS4s may consider structural BMPs installed **prior to** the TMDL approval date in estimating existing loads. MS4s may also consider the load reductions achieved through structural BMPs installed after the TMDL was approved. Prior to the TMDL approval date, load reductions associated with structural BMPs installed under Chapter 102 NPDES permits may be credited in full. After the TMDL approval date, load reductions associated with structural BMPs installed under Chapter 102 NPDES permits may be credited only to the extent that the BMPs produce a net load reduction (see example below). Existing BMPs

that are used to reduce the existing load(s) must be documented as functional (see Section II.D).

Remodeled TMDL load calculations will typically use updated methods to better estimate the load that existed at the time of the original TMDL load calculation, using the same land use/land cover information as was used for the original TMDL. In a remodeling effort, TMDL Plans may account for all BMPs, including Chapter 102 BMPs, installed after approval of the original TMDL as long as changes in impervious surface in the drainage area of those BMPs are considered in the effort. In other words, the TMDL Plan must include the impacts of increased development/imperviousness in order to count load reductions from BMPs installed during the construction process. Chapter 102 BMPs installed after TMDL Plan development would be assumed to result in zero net loading change (i.e., no progress toward TMDL objectives), unless there is a demonstration that pollutant loading is less following an earth disturbance project compared to prior conditions.

NOTE – MS4s that calculate existing load(s) through a new modeling effort will need to plan for the same percent reduction in pollutant loads as prescribed by the TMDL. This step is optional. MS4s may elect to use the baseline load reported in a TMDL as the existing load at the time of TMDL Plan submission, rather than conduct modeling to revise the baseline load.

- E. **BMP Effectiveness:** All MS4s must use the BMP effectiveness values contained within DEP's BMP Effectiveness Values document (3800-PM-BCW0100m) or Chesapeake Bay Program expert panel reports for BMPs listed in those resources when determining pollutant load reductions in TMDL Plans, except as otherwise approved by DEP. For example, PRPs/TMDL Plans may also apply thoroughly vetted mechanistic models with self-contained BMP modules (e.g. Storm Water Management Model (SWMM), WinSLAMM) to demonstrate achievement of reduction targets. Application of these data intensive models could allow for a streamlining of the planning and design phases of the stormwater control process that may provide future cost savings as municipalities move

toward implementation of the plan. Such resources must be documented in the TMDL Plan, and must reflect both overland flow and in-stream erosion components.

NOTE - Calculation of sediment load reductions for PRP/TMDL Plan purposes using the *Expert Panel to Define Removal Rates for Individual Stream Restoration Projects* report should be done as follows:

- Where existing sediment loads were calculated using modeling at a local watershed scale, the default rate to be used is 115 lb/ft/yr. This default rate comes from a convergence of MapShed modeled streambank erosion loads from a group of urbanized watersheds, the 248 lb/ft/yr default edge-of-field (EOF) rate in the Expert Panel Report with the 50% efficiency uncertainty factor specified for the Protocols applied, and field data that was collected following the BANCS methodology where projects have been implemented and load reductions calculated using the Protocols.

Alternately, sediment reduction from streambank restoration projects when existing loads are calculated using modeling at a local scale may be estimated using the Protocols outlined in Section 5 of the report and must then apply the 50% efficiency uncertainty factor.

NOTE – Use of default effectiveness value (115 lb/ft/yr) will be accepted for the subsequent permit term. It is recommended that the data required to complete load calculations using the Protocols be collected during the design phase for use in subsequent load reduction calculations.

NOTE - Desktop MapShed users may not use the streambank restoration or street sweeping components included in the MapShed BMP editor for pollutant reduction calculations. Pollutant reductions associated with streambank restoration projects must use the methods described above; whereas, reductions from street sweeping must be calculated in accordance with the *Recommendations of the Expert Panel to Define*

Removal Rates for Street and Storm Drain Cleaning Practices or the BMP Effectiveness Values document.

NOTE – If BMP effectiveness values are updated in DEP’s BMP Effectiveness Values document or in Chesapeake Bay Program expert panel reports between the time the TMDL is approved and the time the final report is developed to document compliance with the permit, those updated effectiveness values may optionally be used.

- F. **Combining Planning Obligations:** MS4s with multiple TMDL Plan development obligations may develop one TMDL Plan for submission to DEP, if desired. If this is done, MS4s may elect to address each TMDL water separately or in combination. If done in combination, unless specifically restricted in the TMDL, the MS4 has flexibility when locating BMPs between the TMDL Planning Areas. If the MS4 elects to meet the percent reduction requirements (10% sediment or 5% TP) in lieu of meeting the WLA(s) within the first permit term, it may elect to reduce pollutants by a greater percentage in one TMDL Planning Area over another, as long as the overall reduction for the planning effort achieves the percent reduction requirements.

- G. **Offsets.** An MS4 may propose stormwater pollutant reduction BMPs outside of the TMDL and/or PRP Planning Area for possible approval as offsets toward meeting TMDL and/or PRP load reduction requirements. Unless approved otherwise by DEP, such projects must be located within the jurisdiction of the developer of the TMDL Plan and/or PRP, and treat or manage stormwater that would drain to the impaired waters of interest under a TMDL Plan or PRP. In all cases where offsets are proposed, an individual permit is required.

Examples of projects where offsets may be approved by DEP include but are not limited to a reduction of impervious areas outside of the Planning Area and BMPs at agricultural operations that are outside of the planning area but within the drainage area of the impaired waters of interest. DEP may grant offsets for the amount (lbs) of pollutants expected to be reduced after baseline and regulatory requirements are met. For the purpose of TMDL Plans and PRPs, baseline requirements are, in general, load reduction

requirements established in TMDLs for sectors that do not require NPDES permits. For example, if a TMDL specifies that a sediment load reduction of 80% is necessary from the unregulated or non-urban stormwater sector in order to meet water quality standards, DEP may approve offsets for a reduction in impervious area outside of the planning area for the amount (lbs) of sediment removed after the 80% reduction requirement is met. Where published load reduction requirements are inapplicable or unavailable, DEP's Bureau of Clean Water will establish the baseline. MS4s that are seeking approval for offsets are encouraged to contact DEP during the development phase of plans in order to understand the amount of offsets that may be approved in an individual permit for a proposed project.

An operation and maintenance (O&M) plan as well as assurances for ongoing O&M must be submitted as an attachment to any TMDL Plan and/or PRP proposing the implementation of BMPs for offsets. Permittees must report actual O&M activities on Annual MS4 Status Reports to continue receiving approval for the use of offsets.

- H. BMP Selection:** MS4s may select BMPs from the Pennsylvania Stormwater Best Management Practices Manual (363-0300-002), BMPs recognized by the EPA Chesapeake Bay Program, or other BMPs where the pollutant reduction efficiency is known or may be determined. Land use changes are not BMPs but may be used to demonstrate pollutant load reductions. For land use changes and BMPs implemented within a TMDL Planning Area as part of an NPDES permit requirement (e.g., post-construction stormwater management BMPs for Chapter 102 NPDES permits), pollutant load reduction credit may be claimed based on an analysis of pre- and post-construction or land use conditions, where the credit is a demonstrated net decrease in pollutant load. BMP effectiveness values must be consistent with sources identified in section I.E of these instructions.

NOTE – Street sweeping may be proposed as a BMP for pollutant loading reductions if 1) street sweeping is not the only method identified for reducing pollutant loading, and 2) the BMP effectiveness values contained in 3800-PM-BCW0100m or Chesapeake Bay Program expert panel reports are utilized.

II. Required TMDL Plan Elements

Each TMDL Plan must include the following elements. The paragraph numbers in these instructions correspond to the organization of the TMDL Plan. For example, Section A of the TMDL Plan must be "Public Participation," Section B must be the "Map," Section C must be "Pollutants of Concern," etc.

A. Public Participation.

The MS4 shall complete the following public participation measures listed below, and report in the TMDL Plan that each was completed and attach copies of applicable information.

- The applicant shall make a complete copy of the TMDL Plan available for public review.
- The applicant shall publish, in a newspaper of general circulation in the area, a public notice containing a statement describing the plan, where it may be reviewed by the public, and the length of time the permittee will provide for the receipt of comments. The public notice must be published at least 45 days prior to the deadline for submission of the TMDL Plan to DEP. **Attach a copy of the public notice to the TMDL Plan.**
- The applicant shall accept written comments for a minimum of 30 days from the date of public notice. **Attach a copy of all written comments received from the public to the TMDL Plan.**
- The applicant shall accept comments from any interested member of the public at a public meeting or hearing, which may include a regularly scheduled meeting of the governing body of the municipality or municipal authority that is the permittee.
- The applicant shall consider and make a record of the consideration of each timely comment received from the public during the public comment period concerning the plan, identifying any changes made to the plan in response to the comment. **Attach a**

copy of the permittee's record of consideration of all timely comment received in the public comment period to the TMDL Plan.

West Chester Borough has completed the above-listed Public Participation measures and all required documentation of public participation is included as Appendix A.

- TMDL public notice was published in: Daily Local News
- Date TMDL public notice was published in newspaper: July 10, 2017
- Date TMDL was made available for public review/comment: June 10, 2017
- End date for receipt of written comments (30 days from the date of public notice): August 10, 2017
- Date TMDL comments were accepted at a public meeting: August 8, 2017

Questions received were of a general nature only, and no comments were made that required a response in, or revision to, this document.

B. Map.

Attach a map that identifies land uses and/or impervious / pervious surfaces and the storm sewershed boundary associated with each MS4 outfall that discharges to TMDL waters, and calculate the storm sewershed drainage area. In addition, the map must identify the proposed location(s) of structural BMP(s) that will be implemented to achieve required pollutant load reductions.

The map may be the same as that used to satisfy MCM #3 of the permit, with the addition of land use and/or impervious / pervious surfaces, the storm sewershed boundary, and locations of proposed BMPs, or may be a different map.

The map must be sufficiently detailed to identify the planning area relevant to satisfying TMDL Plan objectives, and to demonstrate that BMPs will be located in appropriate TMDL Planning Areas to meet the objectives. For a single MS4, the planning area constitutes the storm sewersheds of all MS4 outfalls within the permittee's jurisdiction. For MS4s participating in a joint TMDL Plan, the planning area constitutes the storm sewersheds of all MS4 outfalls within the jurisdictions of all MS4s in the joint effort. Planning areas may be reduced through parsing.

For additional information and guidance on parsing, see Attachment A, Parsing Guidelines For MS4s in TMDL Plans.

For clarity, land uses within the TMDL Planning Area are shown separately on the West Chester Borough MS4 TMDL Land Uses (MapShed) Map.

The above referenced Maps are included in Appendix B.

C. Pollutant(s) of Concern.

Identify the pollutant(s) of concern for each storm sewershed (see Section I.B of these instructions).

West Chester Borough is listed with a Waste Load Allocation (WLA) for Total Phosphorus in the *Nutrient Total Maximum Daily Load in Goose Creek Watershed, Pennsylvania* dated June 30, 2008 by the U.S. Environmental Protection Agency, Philadelphia, PA (herein referred to as TMDL Report).

Total Phosphorus (as presented in the applicable TMDL Report listed above) is applicable to West Chester Borough because a Waste Load Allocation has been listed for West Chester Borough. Table C-1 lists the pollutant (total phosphorous, TP) load (lb/day) and Allocated TP Load as presented in the Nutrient TMDL Report for West Chester Borough and for all other municipalities listed in the TMDL Report. The TMDL Report presents WLAs as Required Reduction (%), and the terms and numbers are presented in Table 1 exactly as presented in the TMDL Report.

**Table C-1 Nutrient TMDL Goose Creek (Table 3-3)
TP Load in the Goose Creek Watershed by MS4 Area**

MS4 Permit Holder	Area by MS4 (ac)	Existing TP Load (lb/day)	Allocated TP Load (lb/day)	Required Reduction
West Goshen Township	1,488	1.16	0.54	53.9%
West Chester Borough	310	0.24	0.11	53.9%
Westtown Township	1,791	1.40	0.64	53.9%
Thornbury Township (Chester County)	772	0.60	.028	53.9%
Thornbury Township (Delaware County)	113	0.09	0.04	53.9%
Total	4,474	3.49	1.61	53.9%

D. Existing Load for Pollutant(s) of Concern.

Calculate or report the existing load, in lbs per year, for the pollutant(s) of concern in the TMDL Planning Area. See section I.D of these instructions and Attachment A for guidance.

As noted previously, the options for evaluating existing load for TMDL Plans differs from PRPs. TMDL Plans must use: 1) the baseline load established in a TMDL, or 2) a load that is distributed from a bulk existing load for a group of MS4s in a TMDL, or 3) a recalculated load as determined using the MapShed model or equivalent.

If MapShed or equivalent will be used to estimate existing load, the same model should also be used to estimate future pollutant load for different BMP implementation scenarios to ensure consistency with input parameters between existing and future loading.

MS4s may claim credit for constructed structural BMPs as discussed in Section I.D, assuming those BMPs continue to be maintained and are functioning as designed. In order to claim credit, identify all such structural BMPs in Section D of the TMDL Plan along with the following information:

- A detailed description of the BMP;
- Latitude and longitude coordinates for the BMP;
- Location of the BMP on the storm sewershed map;
- The permit number, if any, that authorized installation of the BMP;
- Calculations demonstrating the pollutant reductions achieved by the BMP;
- The date the BMP was installed and a statement that the BMP continues to serve the function(s) it was designed for; and
- The operation and maintenance (O&M) activities of the BMP, O&M frequencies, and party(ies) who are responsible for O&M.

The MS4 permittee may optionally submit design drawings of the BMP for previously installed or future BMPs with the TMDL Plan.

West Chester Borough is listed with a Waste Load Allocation (WLA) for Total Phosphorus in the TMDL Report. From the TMDL Report *Nutrient Total Maximum Daily Load in Goose Creek Watershed, Pennsylvania*. June 30, 2008, pg. 3-7:

"3.5 Overall Recommended TMDL Allocations

At this time, EPA cannot determine what portion of the municipalities are designated/used for collection or conveying stormwater, as opposed to the portions that are truly nonpoint sources. As part of the Phase II stormwater permit process, MS4 facilities will be responsible for evaluating and mapping out areas that are draining to or discharging to storm sewers. Since these systems have not yet been delineated, the TMDL lumps the nonpoint source loads into the WLA portion of the TMDLs. Once these delineations are available, the nonpoint source loads can then be separated from the WLA and added to the LA."

The West Chester Borough MS4 TMDL Goose Creek Map identifies the TMDL Planning Area, which includes all storm sewershed boundaries. The TMDL Storm Sewershed was delineated for West Chester Borough based on mapping of the MS4 system and topography; and the delineated TMDL Storm Sewershed land area was then used to pro-rate the MS4 Baseline, MS4 Allocation, and Load Reduction requirement. The West Chester TMDL Planning Area in the Goose Creek / Chester Creek watersheds was calculated to be 254 acres.

Table 1, as presented in Section C, lists the applicable pollutant Load Reductions required by the TMDL Report. West Chester Borough is located within the Goose Creek Watershed. Table 1 indicates that a pollutant Load Reduction is required by West Chester Borough for Total Phosphorous.

Phosphorus Reductions: The Nutrient TMDL Report presents pollutant Load Reductions by Municipality by "percent". Calculating the WLA can be done as follows:

$$(MS4 \text{ Load Reduction}) = (MS4 \text{ Baseline Load}) - (MS4 \text{ Allocation})$$

$$(WLA) = (\text{Existing TP Load}) - (\text{Allocated TP Load})$$

$$WLA = 0.24 \text{ lb/day} - 0.11 \text{ lb/day}$$

$$WLA = 0.13 \text{ lb/day}$$

$$(\text{Percent Required Reduction}) = (MS4 \text{ Load Reduction}) / (MS4 \text{ Baseline Load})$$

$$\% \text{ Reduction} = (WLA) / (\text{Existing TP Load})$$

$$53.9\% = WLA / 0.24 \text{ lb/day}$$

$$WLA = 0.13 \text{ lb/day}$$

The TMDL Planning Area is the delineation of the MS4 land area(s) to be used to calculate an Adjusted MS4 Baseline, MS4 Allocation, and required Load Reduction using the following Adjustment Equation. MS4 Allocation is used herein to refer to EPA's "MS4 Allocation", EPA's "MS4 Load Allocation", as used in the TMDL Reports, and which appear to be used by EPA as synonyms for "Waste Load Allocation" (WLA).

$$\text{Adjustment Ratio} = \frac{\left(\begin{array}{l} \text{Actual Contributing land area (acres)} \\ \text{as delineated by the Municipality} \end{array} \right)}{\left(\begin{array}{l} \text{Land area (acres) used by EPA to} \\ \text{calculate the EPA TMDL Allocation} \end{array} \right)}$$

The West Chester TMDL Planning Area in the Goose Creek / Chester Creek watersheds was calculated to be 254 acres. The TMDL Report assigned West Chester Borough 310 acres as the Area by MS4.

$$\text{Adjustment Ratio} = \frac{(254)}{(310)}$$

Therefore, the Adjustment Ratio is 81.9%.

$$\text{Adjusted MS4 WLA} = \text{Adjustment Ratio} \times (\text{TMDL Report WLA}) \times 365 \text{ days/year}$$

$$\text{Adjusted MS4 WLA} = 81.9\% \times 0.13 \text{ lb/day} \times 365 \text{ days/year}$$

$$\text{Adjusted MS4 WLA} = 0.106 \text{ lbs/day} \times 365 \text{ days/year}$$

$$\text{Adjusted MS4 WLA} = 38.86 \text{ lbs./year}$$

E. Wasteload Allocation(s) (WLA(s)).

For TMDLs with specific WLA(s), report the specific WLA(s) established for the MS4(s). For TMDLs with bulk WLA(s), distribute the portion of the WLA(s) that are specific to the MS4 UNLESS all MS4s identified in a TMDL develop a joint TMDL Plan.

The WLA for West Chester Borough was calculated in the previous section, and is 38.86 lbs./year.

F. Analysis of TMDL Objectives.

In this section of the Plan, MS4s must present the following:

1. Long-Term Reduction – The pollutant load reduction required to meet the WLA(s), in lbs/yr, and percentage of existing load.

The percent reduction per the TMDL Report is 53.90%. West Chester Borough is required to reduce 38.86 lbs./year TP (Adjusted MS4 WLA) per the TMDL Report.

2. Short-Term Reduction – The MS4's decision on which objective will be pursued for the subsequent permit term, i.e., either 1) achieve the WLA(s) or 2) reduce existing load by 10% (sediment) or 5% (TP), as well as the pollutant load reduction, in lbs/yr.

West Chester Borough's objective is Long-Term Reduction to meet the WLA, with the Short Term Reduction of reducing the existing sediment load by 10%. Please see *West Chester Borough Chester Creek / Goose Creek Pollutant Reduction Plan* (submitted to DEP September 2017 as required) for sediment reduction calculations. Calculations are included herein to show the potential proposed phosphorous reductions for the subsequent permit term, utilizing the same BMPs as in the *West Chester Borough Chester Creek / Goose Creek Pollutant Reduction Plan*.

MapShed was used to model the Goose Creek (Chester Creek) watershed to ascertain only the land use loading rates, as well as the phosphorous load, from the Planning Area. The Planning Area was modeled as an "Urban Area" in MapShed; Goose Creek is "Area4" in the included MapShed output. Note that a portion of the Planning Area that drains to Goose Creek is, per MapShed, included in adjacent watersheds (also "Area4"); however, per analysis of the storm collection system and LiDAR contours this drains to Goose Creek. Therefore, the portion of the Planning Area located in adjacent watersheds is included in this analysis. The Total Load from Phosphorus is 91.2 lbs./year (for the purposes of this TMDL, the Total Load excludes groundwater as the MS4 does not contribute to groundwater); a 5% reduction of 91.2 lbs./yr is 4.56 lbs./yr.

G. Select BMPs To Achieve the Minimum Required Reductions in Pollutant Load.

This section must be divided into two parts if the MS4 determines it will be unable to achieve the WLA(s) in the subsequent permit term: 1) short-term reductions for the permit term, and 2) long-term reductions to meet the WLA(s).

Short-Term Reductions for the Permit Term

Specific BMP(s), their location(s) and estimated date(s) of implementation must be identified along with calculations demonstrating that the TMDL objective will be achieved. The analysis should be similar to the examples presented in the PRP Instructions (see Attachments C and D therein). The number, type and location of BMPs may be modified following DEP's approval of the TMDL Plan, and the process for modifying TMDL Plans will be specified in the individual permit.

West Chester Borough proposes to install several small BMP infiltration facilities consisting of rain gardens, vegetated curb extensions, bioswales and infiltration trenches proposed at three locations, with the goal to capture and infiltrate the runoff generated from 1.5" of rainfall. The locations for these facilities are: John O. Green Memorial Park located at the intersection of Railroad Street, East Miner Street, and South Matlack Street; Fugett Park at Borough Hall located at 401 East Gay Street; and Greenview Alley located off South Franklin Street just north of intersection with East Niels Street. These projects have been designed by others (See Appendix F), with drainage areas supplied for use in the preparation of this TMDL.

The BMP drainage area shape files were loaded into MapShed and the land uses within these drainage areas noted visually. The land use areas were noted to be HD Mixed for John O. Green Park and Fugett Park / Borough Hall, and HD Mixed, LD Mixed, and MD Mixed for Greenview Alley. The total area of 5.53 acres consists of 5.24 acres HD Mixed, 0.22 acres MD Mixed and 0.06 acres LD Mixed.

Note that per the BMP Effectiveness Values from DEP (3800-PM-BCW0100m 5/2016), Infiltration Practices w/Sand, Veg. has a BMP Effectiveness Value of 85% for TP. Note that

once the designs for each BMP have been completed, reductions will be more accurately calculated.

The table below summarizes the small BMP infiltration facilities.

Table G-1: Proposed BMPs and TP Reductions

Location	Drainage Area (ac)	Land Use	Loading (lbs./ac/yr)	Efficiency (%)	Reduction (lbs./yr)
John O. Green Park	1.58	HD Mixed	0.26	85	0.35
Fugett Park / Borough Hall	3.20	HD Mixed	0.26	85	0.70
Greenview Alley	0.47	HD Mixed	0.26	85	0.10
	0.22	MD Mixed	0.26	85	0.05
	0.06	LD Mixed	0.06	85	0.0
Total Reduction	5.53				1.20

Stream bank restoration and street sweeping are calculated outside of the MapShed program, per the instructions, with streambank restoration as 115 lbs/ft/yr reduction (for sediment). West Chester Borough will consider the potential of streambank restoration in the Chester Creek watershed. If streambank restoration is undertaken, the Borough would propose to install approximately one-hundred (100) feet of streambank restoration. The DEP's BMP Effectiveness Value for TP removal will be utilized. Therefore, the proposed streambank restoration of one hundred (100) feet would result in 6.80 lbs./yr (i.e., 100 ft * 0.068 lbs/ft/yr) reduction TP.

West Chester Borough is proposing to street sweep all streets in the Borough more than 25 times annually. Per the BMP Effectiveness Values (5/2016), street sweeping must be conducted 25 times annually; only count those streets that are swept at least 25 times in a year.

The acres associated with all streets that are swept at least 25 times in a year would be eligible for pollutant reductions consistent with the given BMP effectiveness values. The BMP Effectiveness Value for TP is 3%. As the Borough is proposing to street sweep all streets, the entire Planning Area is assumed to be the contributing area (also note that the Planning Area consists of all drainage area to roadways in the Borough). From the MapShed model run for the Chester Creek, the total phosphorous loading from the Planning Area in the Chester Creek watersheds is 91.2 lbs./yr (loading from groundwater was subtracted as MS4 has no control of groundwater, and loading from Groundwater subtracted as this is not overland flow); therefore the reduction from street sweeping will be 2.74 lbs./yr TP (91.2 lbs./yr * 3%).

West Chester Borough also plants trees every year. The BMP effectiveness values for tree planting are estimated by DEP. DEP estimates that 100 fully mature trees of mixed species (both deciduous and non-deciduous) provide pollutant load reductions for the equivalent of one acre (i.e., one mature tree = 0.01 acre). The BMP effectiveness values given are based on immature trees (seedlings or saplings); the effectiveness values are expected to increase as the trees mature. To determine the amount of pollutant load reduction that can be credited for tree planting efforts: 1) multiply the number of trees planted by 0.01; 2) multiply the acreage determined in step 1 by the pollutant loading rate for the land prior to planting the trees (in lbs/acre/year); and 3) multiply the result of step 2 by the BMP effectiveness values given. The Tree Planting BMP Effectiveness Value is 15% for TP.

In the Chester Creek watershed, the Borough intends to plant a minimum of 100 trees annually. The locations of these trees are unknown at this time; however, given the urban nature of the Borough, the estimate is that 90% are expected to be street trees. The HD Residential loading rate from MapShed for the Chester Creek watershed will be used to best represent paved streets / sidewalks (i.e., land prior to planting the trees is along streets, i.e., pavement and sidewalks). The TP HD Residential loading rate from MapShed is 0.26 lb/ac/year. The reduction is therefore 0.04 lbs/yr. (100 trees/year * 90% street trees * 0.01 * 0.26 lb/ac/year * 15%).

West Chester Borough is also considering using Jellyfish Filters from Contech. There are two discharge points (i.e., endwalls) that discharge runoff from large collection areas. The two

endwall identifications are 13 and 37, with drainage areas of 44 and 35 acres respectively. The endwalls are located off of East Niels Street, west of the intersection with South Franklin Street. From the BMP Effectiveness Table, this type of BMP is Storm Sewer System Solids Removal. DEP will allow up to 50% of total pollutant reduction requirements to be met through this BMP. The drainage area treated by this BMP may be no greater than 0.5 acre unless it can be demonstrated that the specific system proposed is capable of treating stormwater from larger drainage areas. For planning purposes, the phosphorous removal efficiency specified by the manufacturer may be assumed, but no higher than 80%. The Jellyfish Filter has 59% removal efficiency for Total Phosphorus. Therefore, the Jellyfish Filter removal rate will be used.

To ascertain only the land uses and loading rates of the drainage areas to these endwalls, the drainage areas were modeled as "Urban Areas" in MapShed. The GWLF-E Average Loads by Source for Watershed output from this run is included (Appendix D). The phosphorus load from the drainage area to Endwall 13 ("Area1" in output) is 11.4 lbs./year (from overland flow), and from Endwall 37 ("Area2" in output) the phosphorus load is 9.1 lbs./year (from overland flow). Note that because volume is not reduced, the conservative assumption appears to be that stream bank loading will not be reduced as a result of the Jellyfish Filters. Additionally, since at this time the design of the units has not been completed, size and costs are unknown. Making the assumption that the Borough could remove 25% of the load at either endwall, the reduction at Endwall 13 would be 1.68 lbs./year ($11.4 \text{ lbs./year} * 59\% \text{ removal} * 25\% \text{ Assumed Load Removal}$) and the reduction at Endwall 37 would be 1.34 lbs./year ($9.1 \text{ lbs./year} * 59\% \text{ removal} * 25\% \text{ Assumed Load Removal}$). Information on the Jellyfish Filter is included as Appendix E.

West Chester Borough also intends to utilize inlet cleaning as a TMDL BMP, i.e., physically / manually removing debris from inlet boxes. This BMP (also referred to as "Storm Drain Cleaning" in the BMP Effectiveness Table) involves the collection or capture and proper disposal of solid material within the storm system to prevent discharge to surface waters. Examples include catch basins, stormwater inlet filter bags, end of pipe or outlet solids removal systems and related practices. Credit is authorized for this BMP only when proper maintenance practices are observed (i.e., inspection and removal of solids as recommended by the system manufacturer or other available guidelines). The entity using this BMP for pollutant removal credits must demonstrate that they have developed and are implementing a standard operating

procedure for tracking the material removed from the sewer system. Locating such BMPs should consider the potential for backups onto roadways or other areas that can produce safety hazards. DEP will allow up to 50% of total pollutant reduction requirements to be met through this BMP. The drainage area treated by this BMP may be no greater than 0.5 acre unless it can be demonstrated that the specific system proposed is capable of treating stormwater from larger drainage areas.

To determine pollutant reductions for this BMP, the following steps must be taken. Note that at this point, there is insufficient information to provide any calculations as to TP removal.

1. Measure the weight of solid/organic material collected (lbs). Sum the total weight of material collected for an annual period. Note – do not include refuse, debris and floatables in the determination of total mass collected.
2. Convert the annual wet weight captured into annual dry weight (lbs) by using site-specific measurements (i.e., dry a sample of the wet material to find its weight) or by using default factors of 0.7 (material that is predominantly wet sediment) or 0.2 (material that is predominantly wet organic matter, e.g., leaf litter).
3. Multiply the annual dry weight of material collected by default or site-specific pollutant concentration factors. The default concentrations are shown in the BMP Effectiveness Values columns. Alternatively, the material may be sampled (at least annually) to determine site-specific pollutant concentrations.

The final total proposed potential phosphorus reduction is summarized below in Table G-2. The actual reductions will be refined at the time of design of each BMP.

Table G-2: Required Reduction and Proposed BMPs

Adjusted WLA in the TMDL Study (lb/yr)	38.86
Required Short-Term Reduction: 5% of the existing load for TP at the time of TMDL Plan submission	4.56 lbs./yr
Proposed Potential Reduction (lbs./yr)	1.20 (Three BMP Locations) 2.74 (Street Sweeping) 0.04 (Plant Street Trees) 6.80 (Streambank Restoration) 1.68 (Endwall 13) 1.34 (Endwall 37) <u>Potential Total of 13.80</u>

For all structural BMPs, MS4s must report the anticipated operation and maintenance (O&M) responsibilities and the anticipated provider of O&M as part of the TMDL Plan.

Table G-3: Operation and Maintenance of BMPs

NAME OF BMP	RESPONSIBLE PARTY	O&M ACTIVITY & FREQUENCY
Street Sweeping	West Chester Borough	Per PA BMP Manual (latest revision)
Street Tree Planting	West Chester Borough	Per PA BMP Manual (latest revision)
Streambank Restoration	West Chester Borough	Per PA BMP Manual (latest revision)
Proposed Infiltration Facilities	West Chester Borough	Per PA BMP Manual (latest revision)
Jellyfish Filters	West Chester Borough	Per Manufacturer's Instructions
Inlet Cleaning	West Chester Borough	Per PA DEP Direction, BMP Manual (latest revision), and Applicable Manufacturer's Instructions

Historic street sweeping practices should not be considered in calculating credit for future practices. All proposed street sweeping practices may be used for credit if the minimum standard is met for credit (see 3800-PM-BCW0100m). In other words, if sweeping was conducted 1/month and will be increased to 25/year in the future, the MS4 does not need to use the "net reduction" resulting from the increased sweeping; it may take credit for the full amount of reductions from 25/year sweeping.

The names and descriptions of BMPs and land uses reported in the TMDL Plan should be in accordance with the Chesapeake Bay Program Model, to the extent possible. The names and descriptions are available through CAST (log into www.casttool.org, select "Documentation," select "Source Data" and see worksheets named "Land Use Definitions" and "BMP Definitions").

Long-Term Reductions to Meet the WLA(s)

In this section of the TMDL Plan (where applicable), the MS4 must present, at a minimum, a conceptual plan for how the WLA(s) will be achieved, long-term. This section may be less detailed than the section addressing short-term reductions, but nonetheless should describe a feasible plan toward achieving the WLA(s). Calculations are not required, but are recommended. An estimate on the number of years it will take the MS4 to achieve the WLA(s) should be reported based on the preliminary analysis.

West Chester Borough is required to remove 38.86 lbs./year total phosphorous. Table G-4 presents the TMDL implementation timeline and milestones for West Chester Borough.

Table G-4. Timeline for Attaining TMDL Pollutant Load Reductions 2018-2033

TMDL Watershed	Pollutant	Load Reduction Required (lb/year)	Timeframe for Attaining Reduction		Cumulative Percent of Required Pollutant Load Reduction		
			Total years	Calendar Year	2023	2028	2033
Goose Creek	Phosphorus	38.86	15	2033	33%	66%	100%

H. Identify Funding Mechanism(s).

Prior to approving coverage DEP will evaluate the feasibility of implementation of an MS4's TMDL Plan. Part of this analysis includes a review of the applicant's proposed method(s) by which BMPs will be funded. Applicants must identify project sponsors and partners and probable funding sources for each BMP. DEP does not expect that sources identified in the TMDL Plan be guaranteed, but does expect that applicants propose their preferred funding options with alternatives in the event the preferred options do not materialize.

West Chester Borough has adopted a Stream Protection Fee, which will be used to fund all BMP projects the Borough will undertake in the next NPDES Permit term.

I. Identify Responsible Parties for Operation and Maintenance (O&M) of BMPs. Once implemented the BMPs must be maintained in order to continue producing the expected pollutant reductions. Applicants must identify the following for each BMP selected for the subsequent permit term:

- The anticipated party(ies) responsible for ongoing O&M;
- The activities involved with O&M for each BMP; and
- The anticipated frequency at which O&M activities will occur.

MS4 permittees will need to identify actual O&M activities in Annual MS4 Status Reports submitted under the permit.

Table I-1 Operation and Maintenance of BMPs

NAME OF BMP	RESPONSIBLE PARTY	O&M ACTIVITY & FREQUENCY
Street Sweeping	West Chester Borough	Per PA BMP Manual (latest revision)
Street Tree Planting	West Chester Borough	Per PA BMP Manual (latest revision)
Streambank Restoration	West Chester Borough	Per PA BMP Manual (latest revision)
Proposed Infiltration Facilities	West Chester Borough	Per PA BMP Manual (latest revision)
Jellyfish Filters	West Chester Borough	Per Manufacturer's Instructions
Inlet Cleaning	West Chester Borough	Per PA DEP Direction, BMP Manual (latest revision), and Applicable Manufacturer's Instructions

III. Submission of TMDL Plan

Attach one copy of the TMDL Plan with the individual permit application that is submitted to the regional office of DEP responsible for reviewing the application. In addition, one copy of the TMDL Plan (not the application) must be submitted to DEP's Bureau of Clean Water (BCW). BCW prefers electronic copies of TMDL Plans, if possible. Email the electronic version of the TMDL Plan, including map(s) (if feasible), to RA-EPPAMS4@pa.gov. If the MS4 determines that submission of an electronic copy is not possible, submit a hard copy to: PA Department of Environmental Protection, Bureau of Clean Water, 400 Market Street, PO Box 8774, Harrisburg, PA 17105-8774.

IV. TMDL Plan Implementation and Final Report

Under the individual permit, the permittee must achieve the required pollutant load reductions within 5 years following DEP's issuance of the permit, and must submit a report demonstrating compliance with the minimum pollutant load reductions as an attachment to the first Annual MS4 Status Report that is due following expiration of the permit.

For example, if DEP issues a permit to a permittee on June 1, 2018, the required pollutant load reductions must be implemented by June 1, 2023 and the final report documenting the BMPs that were implemented (with appropriate calculations) must be attached to the annual report that is due September 30, 2023.

ATTACHMENT A
PARSING GUIDELINES FOR MS4s IN TMDL PLANS

Please refer to Attachment A of the PRP Instructions (3800-PM-BCW0100k) for information on where it is possible to parse (remove) land area in the course of developing PRPs. Those instructions are also applicable to TMDL Plans.

Parsing may also be undertaken where a TMDL utilized the entire land area of a municipality instead of the storm sewershed of outfalls discharging to TMDL waters (TMDL Planning Area). In such cases the MS4 is not required to take responsibilities for pollutant loads generated outside of the TMDL Planning Area, and may therefore parse out that area.

Two possible parsing methods are outlined in this document. DEP may accept other methods proposed in TMDL Plans not identified herein if based on sound science and if all other MS4s subject to a bulk WLA use the same method. All parsing must be supported by appropriate calculations and mapping.

1. Land Area Approach
 - A. Determine the total land area of the municipality within the TMDL watershed (e.g., 10,000 acres).
 - B. Determine the total land area served by the MS4 within the municipality and within the TMDL watershed (e.g., 6,000 acres).
 - C. Calculate the ratio of land areas by dividing the land area determined in Step B to the land area determined in Step A (e.g., 6,000 acres / 10,000 acres) and apply it to both the existing MS4 pollutant load(s) and the WLA(s) that are assigned to the MS4 in the TMDL. The required percent (%) reduction of pollutant load should not change.

Example:

Inputs: Existing pollutant load = 5,000 lbs/yr, WLA = 3,500 lbs/yr, % reduction = 30%

- Step A: 10,000 acres
- Step B: 6,000 acres
- Step C: Ratio = 6,000/10,000 = 0.6

Outputs:

- Parsed existing load = $0.6 \times 5,000 \text{ lbs/yr} = 3,000 \text{ lbs/yr}$
- Parsed WLA = $0.6 \times 3,500 \text{ lbs/yr} = 2,100 \text{ lbs/yr}$
- New % reduction $[(3,000 - 2,100)/3,000] \times 100 = 30\%$

2. Weighted Land Use Approach

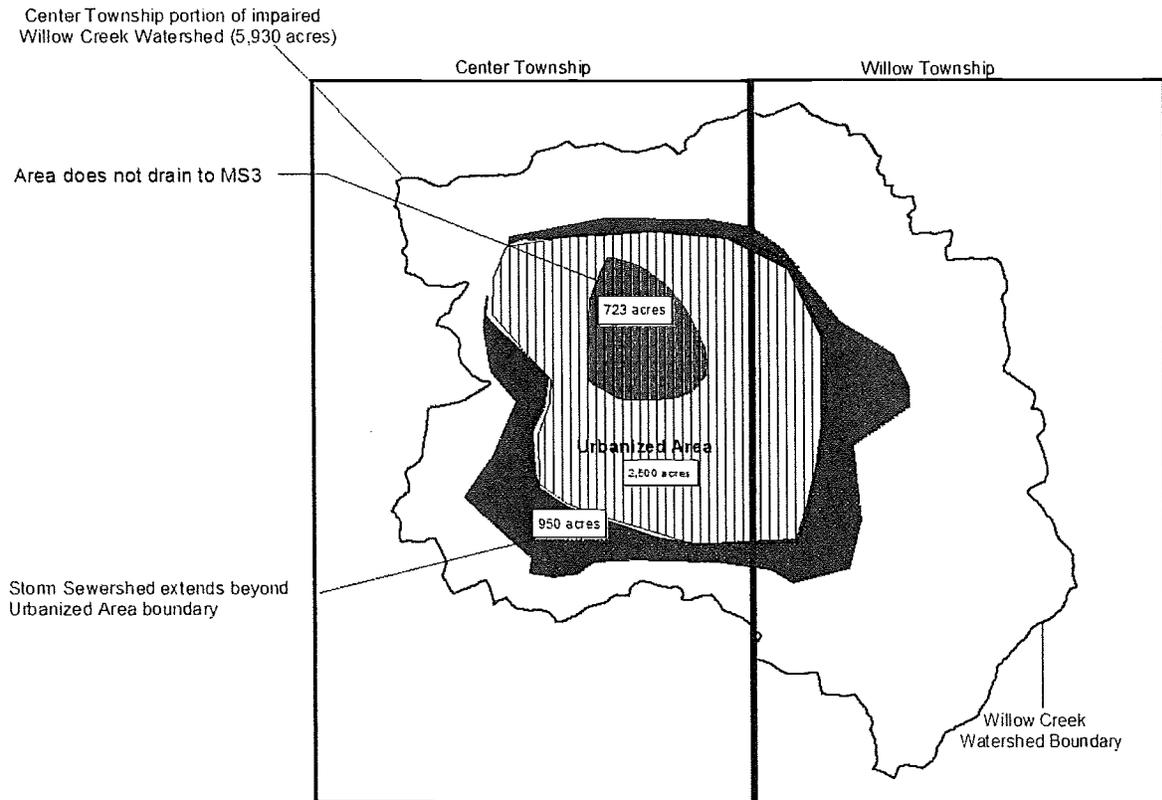
The principle of this approach may be stated as follows: *If the TMDL calculated the WLA based on the entire land area for a municipality that is contained in the impaired watershed, an MS4 permittee may parse (reduce) the WLA using the proportion of the load generated from the TMDL Planning Area. This may be done on a land area basis as described in Example 1. Alternately, another criterion, such as impervious area, may be applied as described in the following example.*

Example: A TMDL was developed and approved for the Willow Creek watershed in 2005. At that time, a bulk WLA was calculated using the entire watershed area. Center Township wishes to use the weighted land use approach to determine its parsed WLAs in the Willow Creek Watershed TMDL (see Figure 1, below). The impaired watershed is 5,930 acres total, including municipalities outside of Center Township. The pink line represents municipal boundaries. The yellow line represents the impaired watershed boundary within Center Township (2,950 acres). The striped area is the UA within Center Township (2,500 acres), and the blue area represents land outside of the UA in Center Township that drains into the MS4 (950 acres). The green area represents land within the UA that does not drain into the MS4 (723 acres). The TMDL Planning Area is

represented by the following formula: UA + Additional Land Draining to MS4 – Land within UA Not Draining to MS4. In this example, the storm sewershed is 2,727 acres (2,500 acres + 950 acres – 723 acres).

Once the planning area is calculated, determine the land uses in the planning area. A GIS-based analysis or assessment using other mapping tools is generally necessary.

Figure 1: Example Storm Sewershed Analysis



Responsible area for Center Township in parsing calculation:

$$\left(\begin{array}{|c|} \hline \text{Urbanized Area} \\ \hline \end{array} + \begin{array}{|c|} \hline \text{Additional Land Draining to MS4} \\ \hline \end{array} \right) - \begin{array}{|c|} \hline \text{Land within UA Not Draining to MS4} \\ \hline \end{array}$$

within both the Center Township municipal boundary  and the Willow Creek Watershed boundary

APPENDIX A

Public Notice & Proof of Publication

Christine McAllister

To: legals@dailylocal.com
Subject: Public Notice Advertisement
Attachments: ADVERTISEMENT-WC (002).DOCX

Importance: High

7/7/17

Maureen – Please advertise the attached Notice on July 10. E-mail me a Proof of Publication and send the invoice to my attention.

Thank you for your help with EVERYTHING!!!!

Regards,

Christine

Christine M. McAllister
Administrative Assistant to the Borough Manager
Borough of West Chester
cmcallister@west-chester.com
610-344-3246 (W)
484-456-8281 (Cell)
610-436-0009 (F)

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Plan needs to be
on July 18 Workses
Agenda
me

BOROUGH OF WEST CHESTER

MS4 POLLUTANT REDUCTION PLANS AND TMDL PLAN

JUNE 30, 2017

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's *National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s)*. The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.west-chester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@west-chester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.

Michael A. Cotter
Borough Manager

PHILADELPHIA GROUP

AFFIDAVIT OF PUBLICATION
307 Derstine Avenue • Lansdale, PA 19446

WEST CHESTER BOROUGH
401 E GAY STREET
WEST CHESTER, PA 19380
Attention:

STATE OF PENNSYLVANIA,
COUNTY OF MONTGOMERY

The undersigned *Kelly Vincent*, being duly sworn the he/she is the principal clerk of Daily Local News, Daily Local News Digital, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

WEST CHESTER BOROUGH

Published in the following edition(s):

Daily Local News 07/10/17
Daily Local News Digital 07/10/17

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MAUREEN SCHMID, Notary Public
Lansdale Boro., Montgomery County
My Commission Expires March 31, 2021

Sworn to the subscribed before me this 7/11/2017

Maureen Schmid
Notary Public, State of Pennsylvania
Acting in County of Montgomery

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.westchester.com. Comments may be provided in writing and delivered in person or via e-mail or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@west-chester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.
Michael A. Cotter
Borough Manager
DL-July 10-1a

Advertisement Information

Client Id: 884439 Ad Id: 1379705 PO: Sales Person: 093304

and 455-14.C to allow a minimum Front Yard Setback of 30.05 feet and minimum Rear Yard Setback of 55.37 feet where the minimum Front and Rear Yard Setbacks are 75 feet; Section 455-132 to allow a pool and associated structures within the minimum Rear Yard Setback where they are not permitted; and from Section 274-19 to allow land disturbance, improvements, and construction activities within the Riparian Buffer where no disturbance is permitted; and any other relief that may be deemed necessary by the Zoning Hearing Board.

2. ZHB 563 - Nguyen/Vu - 1026A Lancaster Avenue, Berwyn. (VB District TPN 55-2L-4) Applicant has changed the property's use from commercial to single-family detached dwelling without Township approval. Applicant seeks a Variance from Section 455-21. (A)(1) to eliminate the need for commercial uses where second floor apartments are only allowed as accessory uses to nonresidential uses on the ground-level floor; a Special Exception in accordance with Section 455-122.B to change a nonconforming use or in the alternative appeal of the Zoning Officer's determination that the Applicant changed the property's use from commercial to single-family detached dwelling which is not a permitted use, and any other relief that may be deemed necessary by the Zoning Hearing Board.

Copies of applications are available for review in the Easttown Township Building weekdays from 8:00 a.m. through 12:00 p.m. and 12:30 p.m. through 4:30 p.m. If any person wishing to attend the hearing has a disability and/or requires an auxiliary aid, service or other accommodation, he or she should contact the Township at 610-687-3000 to discuss how those needs may be accommodated.
dln. 7/10, 17 - 1a.

The Borough Council of the Borough of West Chester will accept comments from the public beginning on June 10, 2017 and extending through August 10, 2017 associated with the Borough's two (2) Pollutant Reduction Plans (PRPs) and one (1) Total Maximum Daily Load (TMDL) Plan as required by the Pennsylvania Department of Environmental Protection as a component of the Borough's National Pollutant Discharge Elimination System (NPDES) Individual Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). The PRPs outline in general terms the Borough's 5-year plan between 2018 and 2023 to reduce sediment loadings

from the MS4 stormwater discharges to Chester Creek/Goose Creek, Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. The TMDL Plan outlines in general terms the Borough's 5-year plan between 2018 and 2023 to reduce Total Phosphorus loadings from the MS4 stormwater discharges to Goose Creek. The PRPs and TMDL Plan will be available for public review Monday through Friday between the hours of 8:30 AM to 4:00 PM at the municipal offices of the Borough of West Chester located at 401 E. Gay Street, West Chester, PA 19380. The PRPs and TMDL Plan is also available for public review on the Borough's website at www.westchester.com. Comments may be provided in writing and delivered in person or via email or regular mail and addressed to Michael A. Cotter, Borough Manager at macotter@westchester.com. The PRPs and TMDL Plan will be on the agenda for the Borough Council Work Session meeting scheduled for July 18, 2017. Comments received after August 10, 2017 will not be considered by the Borough Council.
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Borough Manager
DL-July 10-1a

BIDS & PROPOSALS

ADVERTISEMENT FOR BIDS

Sealed bids for the construction of the Dogwood / Scott Drive Sewer Extension will be received by the Caln Township Municipal Authority electronically via PennBid™ until 10:00 A.M. local time, Tuesday, August 8, 2017 at which time all bids will be opened online.

Construction of the sewer extension will involve the installation of approximately 4,000 linear feet of low pressure sewer lines by open trench and horizontal directional drilling, installation of approximately 400 linear feet of gravity sanitary sewer by open trench, and the completion of all other necessary work to provide public sewer to approximately 55 existing homes located in Caln Township, Chester County Pennsylvania.

All Bid Documents and solicitation details are available at PennBid™ - www.PennBid.net. Click on the "Solicitations" then "View" tabs. Please note the low bidder is responsible for a fee to PennBid™.

Each bid must be accompanied by a bid bond or a certified check in an amount not less than ten percent (10%) of the amount of the bid in the form and subject to the conditions provided in the Instructions to Bidders. No bid may be withdrawn for the

**Public Agenda
And
Meeting Minutes**

Public Works Committee

July 11, 2017 – 5:35 pm

Committee Members Present: Don Braceland (Chair)
Bernard Flynn (Council Member)
Denise Polk

Department Heads Present: O'B Laing, Public Works
Keith Kurowski, Recreation
Mac Cotter (Borough Manager)

1. Call to Order – meeting was called to order at 5:35 PM
2. Comments, suggestions, petitions by residents in attendance regarding items not on the agenda:
 - a) Keith Kurowski reminded everyone that the 35th Annual Turks Head Music Festival was taking place this Sunday, July 16th at Everhart Park.
3. Discuss the Marshall Square Park sidewalk and fieldstone step reconstruction.
 - a) After an extended discussion, this item was tabled for further discussion. It was decided that Jeff Beitel, at his request, would offer reasonable alternative to repair the sidewalk instead of total reconstruction.
4. Discuss substitute material to replace tree well grates throughout the BID.
 - a) Alternative material was shown along with photograph of similar product which is currently in place for over eight (8) years. This was well received by Council and members of the public. No decision was made however, Jeff Beitel indicated that as the Chairman of the Shade Tree Commission he had some concerns about the product and would like Council to allow him some time to look at alternative products to which Council complied.
5. Appraise Council of proposed Bid solicitation for 2017 Pavement Markings project.
 - a) The Public Works Director gave a brief overview of the Pavement Markings project which included the bid documents to be ready for contract award in August.
6. Appraise Council of proposed Bid solicitation for 2017 Street and Alley Resurfacing/Reconstruction project.
 - a) The Public Works Director gave a brief overview of the Street and Alley Resurfacing/Reconstruction project which included the bid documents to be ready for contract award in August.

7. Appraise Council of proposed Bid Solicitation for the Barnard Street Culvert project.
 - a) The Public Works Director informed Council that this project is scheduled for bidding as soon as possible. He also noted that this is one of the projects which was long overdue, but would not be possible to expedite had it not been for the newly implemented Stream Protection Fee (SPF) which will cover all cost for the project. Councilman Flynn, however, remarked that he would suggest that the bridge abutment be painted with graffiti resistant paint. No action needed.

8. Consider Planned University Campus Overlay Traffic Planning Proposal
 - a) Borough Manager gave a brief overview of this project, highlighting scope of work and also indicated it will be joint effort between WCU, West Goshen Township and The Borough.

9. Consider Proposal for Town Center Closed Loop System Upgrade
 - a) Borough Manager gave a synopsis of this project which was subsequently sent through by a vote of 3 - 0.
 - **TO WORK SESSION AGENDA**

10. Consider Stream Protection Program Support Change Order.
 - a) Courtney Finneran, Project Manager of CH2, gave a brief overview highlighting the rationale for the change order request. This was followed by a 3 - 0 vote by Council.
 - **TO WORK SESSION AGENDA**

11. Authorization to Advertise the Goose Creek Pollution Reduction Plan
 - a) Borough Manager gave a brief overview of this plan which was followed by a 3 - 0 approval by Council.
 - **TO WORK SESSION AGENDA**

12. Discuss Tennis Court maintenance at Hoopes Park 2017
 - a) 3 - 0 approval to move ahead with the project
 - **TO WORK SESSION AGENDA**

13. Discuss Kathy McBratnie Park Playground Renovation 2017
 - a) Informative only, no action required or taken.

14. Approve June 2017 Public Works Committee minutes

15. Other Business
 - a) None

16. Adjourn
 - a) Meeting called for adjournment by Don Braceland, all in favor 3 - 0 .

AGENDA

Public Works Committee

August 8, 2017 – 5:30 pm

Committee Members: Donald Braceland (Chair)
Denise Polk
Bernard Flynn

Department Heads: O'B Laing, Public Works
Keith Kurowski, Parks & Recreation

Borough Manager: Michael A. Cotter

1. Call to Order
2. Comments, suggestions, petitions by residents in attendance regarding items not on the agenda.
3. Discuss Gilmore PRP/TMDL Plans (*Issue Briefing (see Agenda Bookmark) & Attachment*)
4. Discuss Marshall Square Park proposal for sidewalk and staircase reconstruction (*Issue Briefing (see Agenda Bookmark) & Attachment*)
5. Discuss PennDOT Winter Traffic Services Agreement (*Issue Briefing (see Agenda Bookmark) & Attachment*)
6. Appraise Council of pending Shade Tree Grant application (*Information only*)
7. Review and approval of Bid Award for Barnard Street Culvert project (*Issue Briefing (see Agenda Bookmark) & Attachment*)
8. Review and approval of Paving Project Bid Award (*Issue Briefing (see Agenda Bookmark) & Attachment*)
9. Review and approval of Bid Award for Pavement markings (*Issue Briefing (see Agenda Bookmark) & Attachment*)
10. Discuss request from Councilman Bernie Flynn to remove bench from the North side of Gay Street in the vicinity of Rite Aid Pharmacy (*Information only*)
11. Friends of Marshall Square Park – discuss two granite in-lay park signs (*Issue Briefing (see Agenda Bookmark) & Attachment*)
12. Friends of Marshall Square Park – discuss “No Smoking Inside Gazebo” signs (*Issue Briefing (see Agenda Bookmark)*)

Updated August 8, 2017

13. Approve July's Public Works Committee meeting minutes (*see Agenda Bookmark*)
14. Other Business
15. Adjourn

Attachment Information:

[Click here to access the Attachments.](#)

Attachments can also be located at www.west-chester.com in the Document Center's "Agenda Attachments" folder.

****IDENTIFIER KEY = PW****

WEST CHESTER BOROUGH
POLLUTANT REDUCTION PLANS
AND
TOTAL MAXIMUM DAILY LOAD STRATEGY PLAN

EXECUTIVE SUMMARY

- West Chester Borough is currently operating under the PADEP's General (PAG-13) Small Municipal Separate Storm Sewer Systems (MS4) permit. Requirements include the following:
 - Public Education and Outreach
 - Public Participation
 - Illicit Discharge Detection and Elimination
 - Construction Site Runoff Control
 - Post-Construction Runoff Control
 - Pollution Prevention / Good Housekeeping

- The first permit was issued in 2003 with renewals every 5 years. The next permit period extends from 2018 to 2023. The Borough is required to prepare and submit a new permit application by September 16, 2017.

- Past permit requirements were limited to the fulfillment and reporting of the above listed efforts. A key component of this next permit cycle is the submission of a Pollutant Reduction Plan (PRP) and/or a Total Maximum Daily Load (TMDL) Strategy Plan to accomplish a specified percentage reduction in the amount of pollutants contributing to impaired streams. Pollutant reductions must be achieved within the 5-year permit period.

- PADEP has identified the following streams in the Borough as having specific impairments:

Goose Creek:	Nutrients (i.e., Total Phosphorus)*
Chester Creek (Goose Creek):	Siltation (i.e., sediment) and pathogens
Brandywine Creek:	Siltation
Blackhorse Run:	Siltation
Plum Run:	Siltation
Taylor Run:	Siltation

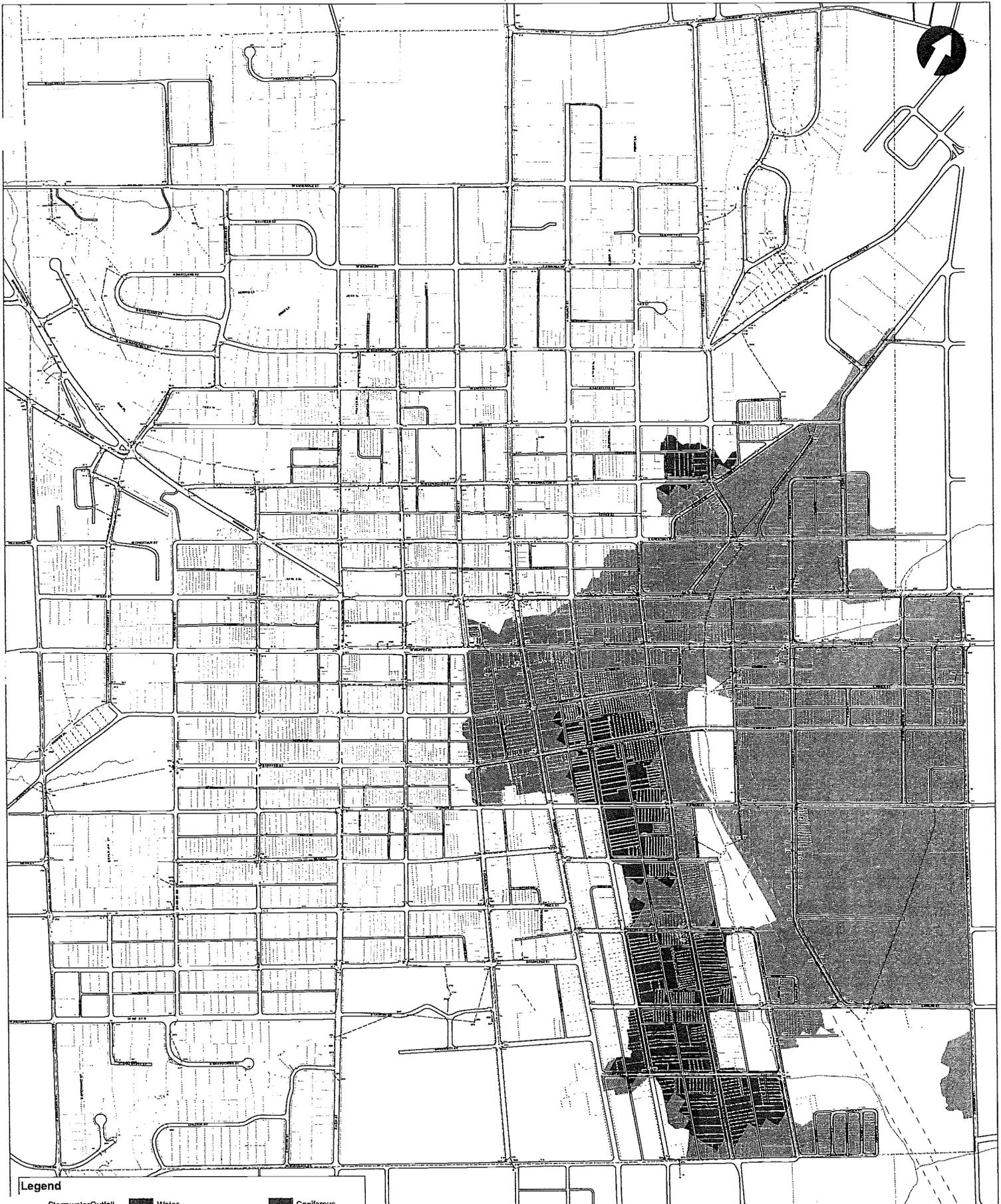
***Per U.S. Environmental Protection Agency, Philadelphia, PA report titled Nutrient Total Maximum Daily Load in Goose Creek Watershed, Pennsylvania, dated June 30, 2008.**

As a result, the Borough is required to develop one (1) TMDL Strategy Plan to achieve a 53.9% reduction in the Total Phosphorus loading contributing to Goose Creek and two (2) PRPs to demonstrate a 10% reduction in the sediment loading contributing to Chester Creek/Goose Creek and Brandywine Creek/Blackhorse Run/Plum Run/Taylor Run.

- Because the Borough is subject to the Total Phosphorus TMDL Plan reduction requirements, the Borough will no longer be eligible to be covered by the PAG-13 permit, but now will be required to obtain an Individual MS4 Permit from PADEP.
- The existing sediment and Total Phosphorus loadings and reductions have been calculated based on the land uses within the contributing drainage areas to the impaired streams.
- Effective stormwater Best Management Practices (BMPs) are proposed, including the following combinations of various BMPs:
 - Rain gardens
 - Vegetated curb extensions
 - Bioswales
 - Infiltration trenches
 - Brick pavers with underground infiltration
 - Streambank restoration
 - Street sweeping
 - Tree plantings
 - Pretreatment and membrane filtration systems
 - Storm inlet cleaning
- The above listed BMPs are proposed to be installed at the following locations throughout the Borough:
 - John O. Green Memorial Park
 - Fugett Park/Borough Hall
 - Greenview Alley

- Veterans Park/Pine Alley
 - Marshall Square Park
 - South Brandywine Street
 - Storm sewer system outfalls at E. Nields Street west of S. Franklin Street
- The Public Participation component of the TMDL Strategy Plan and PRPs has been satisfied as follows:
 - The public notice regarding the draft TMDL strategy plan and PRPs was advertised on July 10, 2017.
 - The required public meeting (this discussion) was held on August 8, 2017.
 - Public comments were accepted from July 10, 2017 to August 10, 2017.
 - Public comments will be incorporated, documents will be finalized, and the permit application will be submitted by September 16, 2017 to PADEP.

APPENDIX B

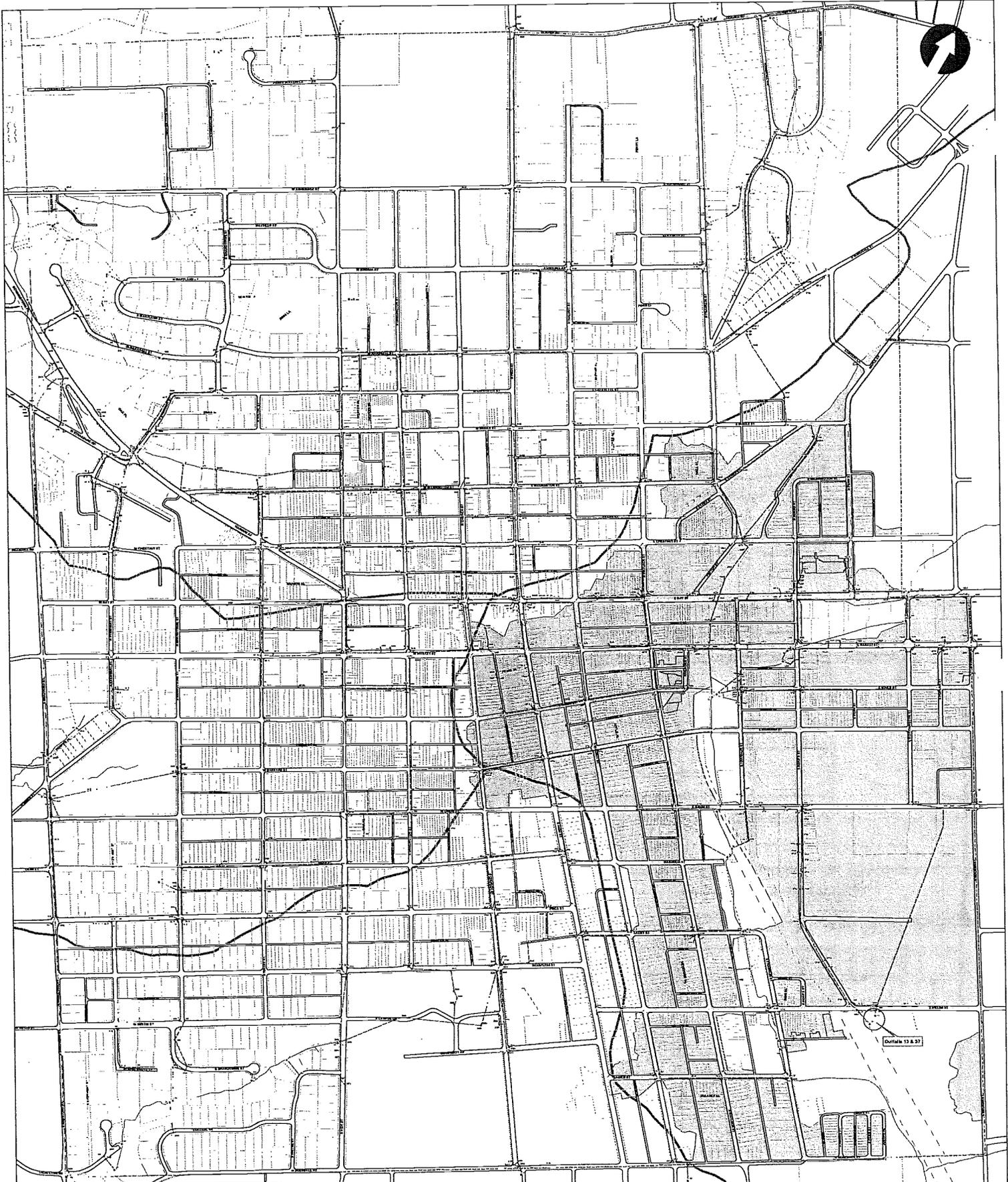


Legend		
Stormwater Outfall	Water	Coniferous
Stormwater Junctions	Low-Density Residential	Deciduous
Edge of Pavement	Medium-Density Residential	Mixed Woodland
Stormwater Lines	High-Density Residential	Woody Wetland
Streams	Low-Density Mixed Urban	Emergent Wetland
Municipal Boundary	Medium-Density Mixed Urban	Disturbed
Parcels	High-Density Mixed Urban	Disturbed
	Hay/Pasture	Turf/Golf
	Cropland	

WEST CHESTER BOROUGH
MS4 TMDL LANDUSE (MAPSHED) MAP
 WEST CHESTER BOROUGH, CHESTER COUNTY, PA

GILMORE & ASSOCIATES, INC.
 ENGINEERING & CONSULTING SERVICES
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 www.gilmore-associates.com

JOB NO. 15-08025T1 DATE: JUNE 2017 0 100 200 400 Feet



Legend

- Stormwater Outfall
- Stormwater Junctions
- Edge of Pavement
- Stormwater Lines
- Streams
- Small BMP Locations
- Municipal Boundary
- ▭ Parcels

Planning Area

- GOOSE CREEK
- ▭ Mapped Basin Boundary

**WEST CHESTER BOROUGH
MS4 TMDL MAP**
WEST CHESTER BOROUGH, CHESTER COUNTY, PA

GILMORE & ASSOCIATES, INC.
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63 E. BUTLER AVE. SUITE 100, NEW BRITAIN, PA 19122 (717) 345-4330
www.gilmore-associates.com

APPENDIX C

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
 STORMWATER DISCHARGES FROM
 SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
 BMP EFFECTIVENESS VALUES**

This table of BMP effectiveness values (i.e., pollutant removal efficiencies) is intended for use by MS4s that are developing and implementing Pollutant Reduction Plans and TMDL Plans to comply with NPDES permit requirements. The values used in this table generally consider pollutant reductions from both overland flow and reduced downstream erosion, and are based primarily on average values within the Chesapeake Assessment Scenario Tool (CAST) (www.casttool.org). Design considerations, operation and maintenance, and construction sequences should be as outlined in the Pennsylvania Stormwater BMP Manual, Chesapeake Bay Program guidance, or other technical sources. The Department of Environmental Protection (DEP) will update the information contained in this table as new information becomes available. Interested parties may submit information to DEP for consideration in updating this table to DEP's MS4 resource account, RA-EPPAMS4@pa.gov. Where an MS4 proposes a BMP not identified in this document or in Chesapeake Bay Program expert panel reports, other technical resources may be consulted for BMP effectiveness values. Note – TN = Total Nitrogen and TP = Total Phosphorus.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Wet Ponds and Wetlands	20%	45%	60%	A water impoundment structure that intercepts stormwater runoff then releases it to an open water system at a specified flow rate. These structures retain a permanent pool and usually have retention times sufficient to allow settlement of some portion of the intercepted sediments and attached nutrients/toxics. Until recently, these practices were designed specifically to meet water quantity, not water quality objectives. There is little or no vegetation living within the pooled area nor are outfalls directed through vegetated areas prior to open water release. Nitrogen reduction is minimal.
Dry Detention Basins and Hydrodynamic Structures	5%	10%	10%	Dry Detention Ponds are depressions or basins created by excavation or berm construction that temporarily store runoff and release it slowly via surface flow or groundwater infiltration following storms. Hydrodynamic Structures are devices designed to improve quality of stormwater using features such as swirl concentrators, grit chambers, oil barriers, baffles, micropools, and absorbent pads that are designed to remove sediments, nutrients, metals, organic chemicals, or oil and grease from urban runoff.
Dry Extended Detention Basins	20%	20%	60%	Dry extended detention (ED) basins are depressions created by excavation or berm construction that temporarily store runoff and release it slowly via surface flow or groundwater infiltration following storms. Dry ED basins are designed to dry out between storm events, in contrast with wet ponds, which contain standing water permanently. As such, they are similar in construction and function to dry detention basins, except that the duration of detention of stormwater is designed to be longer, theoretically improving treatment effectiveness.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Infiltration Practices w/ Sand, Veg.	85%	85%	95%	A depression to form an infiltration basin where sediment is trapped and water infiltrates the soil. No underdrains are associated with infiltration basins and trenches, because by definition these systems provide complete infiltration. Design specifications require infiltration basins and trenches to be built in good soil, they are not constructed on poor soils, such as C and D soil types. Engineers are required to test the soil before approval to build is issued. To receive credit over the longer term, jurisdictions must conduct yearly inspections to determine if the basin or trench is still infiltrating runoff.
Filtering Practices	40%	60%	80%	Practices that capture and temporarily store runoff and pass it through a filter bed of either sand or an organic media. There are various sand filter designs, such as above ground, below ground, perimeter, etc. An organic media filter uses another medium besides sand to enhance pollutant removal for many compounds due to the increased cation exchange capacity achieved by increasing the organic matter. These systems require yearly inspection and maintenance to receive pollutant reduction credit.
Filter Strip Runoff Reduction	20%	54%	56%	Urban filter strips are stable areas with vegetated cover on flat or gently sloping land. Runoff entering the filter strip must be in the form of sheet-flow and must enter at a non-erosive rate for the site-specific soil conditions. A 0.4 design ratio of filter strip length to impervious flow length is recommended for runoff reduction urban filter strips.
Filter Strip Stormwater Treatment	0%	0%	22%	Urban filter strips are stable areas with vegetated cover on flat or gently sloping land. Runoff entering the filter strip must be in the form of sheet-flow and must enter at a non-erosive rate for the site-specific soil conditions. A 0.2 design ratio of filter strip length to impervious flow length is recommended for stormwater treatment urban filter strips.
Bioretention – Raingarden (C/D soils w/ underdrain)	25%	45%	55%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has an underdrain and is in C or D soil.
Bioretention / Raingarden (A/B soils w/ underdrain)	70%	75%	80%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has an underdrain and is in A or B soil.

3800-PM-BCW0100m 5/2016
BMP Effectiveness Values

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Bioretention / Raingarden (A/B soils w/o underdrain)	80%	85%	90%	An excavated pit backfilled with engineered media, topsoil, mulch, and vegetation. These are planting areas installed in shallow basins in which the storm water runoff is temporarily ponded and then treated by filtering through the bed components, and through biological and biochemical reactions within the soil matrix and around the root zones of the plants. This BMP has no underdrain and is in A or B soil.
Vegetated Open Channels (C/D Soils)	10%	10%	50%	Open channels are practices that convey stormwater runoff and provide treatment as the water is conveyed, includes bioswales. Runoff passes through either vegetation in the channel, subsoil matrix, and/or is infiltrated into the underlying soils. This BMP has no underdrain and is in C or D soil.
Vegetated Open Channels (A/B Soils)	45%	45%	70%	Open channels are practices that convey stormwater runoff and provide treatment as the water is conveyed, includes bioswales. Runoff passes through either vegetation in the channel, subsoil matrix, and/or is infiltrated into the underlying soils. This BMP has no underdrain and is in A or B soil.
Bioswale	70%	75%	80%	With a bioswale, the load is reduced because, unlike other open channel designs, there is now treatment through the soil. A bioswale is designed to function as a bioretention area.
Permeable Pavement w/o Sand or Veg. (C/D Soils w/ underdrain)	10%	20%	55%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, no sand or vegetation and is in C or D soil.
Permeable Pavement w/o Sand or Veg. (A/B Soils w/ underdrain)	45%	50%	70%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, no sand or vegetation and is in A or B soil.
Permeable Pavement w/o Sand or Veg. (A/B Soils w/o underdrain)	75%	80%	85%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has no underdrain, no sand or vegetation and is in A or B soil.
Permeable Pavement w/ Sand or Veg. (A/B Soils w/ underdrain)	50%	50%	70%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, has sand and/or vegetation and is in A or B soil.

3800-PM-BCW0100m 5/2016
BMP Effectiveness Values

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Permeable Pavement w/ Sand or Veg. (A/B Soils w/o underdrain)	80%	80%	85%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has no underdrain, has sand and/or vegetation and is in A or B soil.
Permeable Pavement w/ Sand or Veg. (C/D Soils w/ underdrain)	20%	20%	55%	Pavement or pavers that reduce runoff volume and treat water quality through both infiltration and filtration mechanisms. Water filters through open voids in the pavement surface to a washed gravel subsurface storage reservoir, where it is then slowly infiltrated into the underlying soils or exits via an underdrain. This BMP has an underdrain, has sand and/or vegetation and is in C or D soil.
Stream Restoration	0.075 lbs/ft/yr	0.068 lbs/ft/yr	44.88 lbs/ft/yr	An annual mass nutrient and sediment reduction credit for qualifying stream restoration practices that prevent channel or bank erosion that otherwise would be delivered downstream from an actively enlarging or incising urban stream. Applies to 0 to 3rd order streams that are not tidally influenced. If one of the protocols is cited and pounds are reported, then the mass reduction is received for the protocol.
Forest Buffers	25%	50%	50%	An area of trees at least 35 feet wide on one side of a stream, usually accompanied by trees, shrubs and other vegetation that is adjacent to a body of water. The riparian area is managed to maintain the integrity of stream channels and shorelines, to reduce the impacts of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals. (Note – the values represent pollutant load reductions from stormwater draining through buffers).
Tree Planting	10%	15%	20%	The BMP effectiveness values for tree planting are estimated by DEP. DEP estimates that 100 fully mature trees of mixed species (both deciduous and non-deciduous) provide pollutant load reductions for the equivalent of one acre (i.e., one mature tree = 0.01 acre). The BMP effectiveness values given are based on immature trees (seedlings or saplings); the effectiveness values are expected to increase as the trees mature. To determine the amount of pollutant load reduction that can be credited for tree planting efforts: 1) multiply the number of trees planted by 0.01; 2) multiply the acreage determined in step 1 by the pollutant loading rate for the land prior to planting the trees (in lbs/acre/year); and 3) multiply the result of step 2 by the BMP effectiveness values given.
Street Sweeping	3%	3%	9%	Street sweeping must be conducted 25 times annually. Only count those streets that have been swept at least 25 times in a year. The acres associated with all streets that have been swept at least 25 times in a year would be eligible for pollutant reductions consistent with the given BMP effectiveness values.

BMP Name	BMP Effectiveness Values			BMP Description
	TN	TP	Sediment	
Storm Sewer System Solids Removal	0.0027 for sediment, 0.0111 for organic matter	0.0006 for sediment, 0.0012 for organic matter	1 – TN and TP concentrations	<p>This BMP (also referred to as "Storm Drain Cleaning") involves the collection or capture and proper disposal of solid material within the storm system to prevent discharge to surface waters. Examples include catch basins, stormwater inlet filter bags, end of pipe or outlet solids removal systems and related practices. Credit is authorized for this BMP only when proper maintenance practices are observed (i.e., inspection and removal of solids as recommended by the system manufacturer or other available guidelines). The entity using this BMP for pollutant removal credits must demonstrate that they have developed and are implementing a standard operating procedure for tracking the material removed from the sewer system. Locating such BMPs should consider the potential for backups onto roadways or other areas that can produce safety hazards.</p> <p>To determine pollutant reductions for this BMP, these steps must be taken:</p> <ol style="list-style-type: none"> 1) Measure the weight of solid/organic material collected (lbs). Sum the total weight of material collected for an annual period. Note – do not include refuse, debris and floatables in the determination of total mass collected. 2) Convert the annual wet weight captured into annual dry weight (lbs) by using site-specific measurements (i.e., dry a sample of the wet material to find its weight) or by using default factors of 0.7 (material that is predominantly wet sediment) or 0.2 (material that is predominantly wet organic matter, e.g., leaf litter). 3) Multiply the annual dry weight of material collected by default or site-specific pollutant concentration factors. The default concentrations are shown in the BMP Effectiveness Values columns. Alternatively, the material may be sampled (at least annually) to determine site-specific pollutant concentrations. <p>DEP will allow up to 50% of total pollutant reduction requirements to be met through this BMP. The drainage area treated by this BMP may be no greater than 0.5 acre unless it can be demonstrated that the specific system proposed is capable of treating stormwater from larger drainage areas. For planning purposes, the sediment removal efficiency specified by the manufacturer may be assumed, but no higher than 80%.</p>

APPENDIX D

Select input data file: C:\MapShed\Runfiles\ChesterCreek\Output\ChesterCreek-0_ua.csv



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
GWLF-E Average Loads by Source for Watershed 0							
Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	279	25948.41	93.00	120.46	0.43	29.59	0.11
Cropland	151	211731.96	1402.20	778.41	5.16	131.31	0.87
Forest	1139	14660.74	12.90	84.68	0.07	10.52	0.01
Wetland	235	970.03	4.10	54.19	0.23	3.24	0.01
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	870	164222.34	188.80	920.32	1.06	96.89	0.11
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	148	3637.63	24.60	84.94	0.57	9.24	0.06
MD Mixed	403	40013.90	99.30	931.03	2.31	104.01	0.26
HD Mixed	1159	115147.44	99.40	2678.90	2.31	299.26	0.26
LD Residential	638	15652.82	24.50	365.31	0.57	39.71	0.06
MD Residential	1838	182675.03	99.40	4249.67	2.31	474.72	0.26
HD Residential	59	5886.34	99.80	137.08	2.32	15.32	0.26
Water	2						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3255667.6		1627.0		421.1	
Groundwater				9967.5		217.3	
Point Sources				0.0		0.0	
Septic Systems				4500.9		0.0	
Totals	6921	4036214		26500		1852	

Print | Export to JPEG | Exit



Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area4 (00004)

Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	205	20336.00	99.20	473.60	2.31	53.30	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	44	4391.20	99.80	102.10	2.32	11.40	0.26
Water	0						Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		191412.40		95.7		24.8	0.093
Groundwater				528.3		11.5	0.053
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	249	216139.6		1199.7		101.0	

Print Export to JPEG Exit



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area4 (00004)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	5	498.50	99.70	10.70	2.13	1.20	0.24
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
							Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		3922.49		2.0		0.5	0.002
Groundwater				13.0		0.3	0.001
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	5	4421.0		25.7		2.0	

Print | Export to JPEG | Exit

Select input data file: C:\MapShed\Runfiles\WC EW DAs\Output\WCEWDAs-0_ua.csv



Watershed Totals **Municipality Loads** **Regulated Loads** **Unregulated Loads**

GWLF-E Average Loads by Source for Watershed 0

Source	Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	279	25948.41	93.00	120.46	0.43	29.59	0.11
Cropland	151	211731.96	1402.20	778.41	5.16	131.31	0.87
Forest	1139	14660.74	12.90	84.68	0.07	10.52	0.01
Wetland	235	970.03	4.10	54.19	0.23	3.24	0.01
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	870	164222.34	188.80	920.32	1.06	96.89	0.11
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	148	3637.63	24.60	84.94	0.57	9.24	0.06
MD Mixed	403	40013.90	99.30	931.03	2.31	104.01	0.26
HD Mixed	1159	115147.44	99.40	2678.90	2.31	299.26	0.26
LD Residential	638	15652.82	24.50	365.31	0.57	39.71	0.06
MD Residential	1838	182675.03	99.40	4249.67	2.31	474.72	0.26
HD Residential	59	5886.34	99.80	137.08	2.32	15.32	0.26
Water	2						
Farm Animals				0.0		0.0	
Tile Drainage		0.0		0.0		0.0	
Stream Bank		3255667.6		1627.0		421.1	
Groundwater				9967.5		217.3	
Point Sources				0.0		0.0	
Septic Systems				4500.9		0.0	
Totals	6921	4036214		26500		1852	

Print **Export to JPEG** **Exit**



Watershed Totals		Municipality Loads		Regulated Loads		Unregulated Loads	
View loads for municipality:		Area1 (00001)					
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	44	4373.60	99.40	101.60	2.31	11.40	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
							Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		34557.21		17.3		4.5	0.017
Groundwater				99.7		2.2	0.010
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	44	38930.8		218.6		18.1	

Print

Export to JPEG

Exit



Watershed Totals Municipality Loads Regulated Loads Unregulated Loads

View loads for municipality: Area2 (00002)

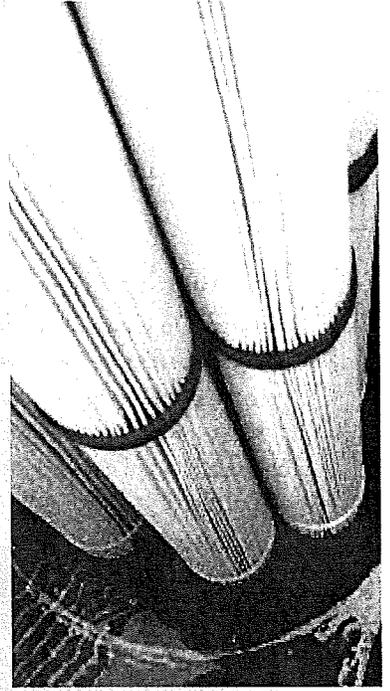
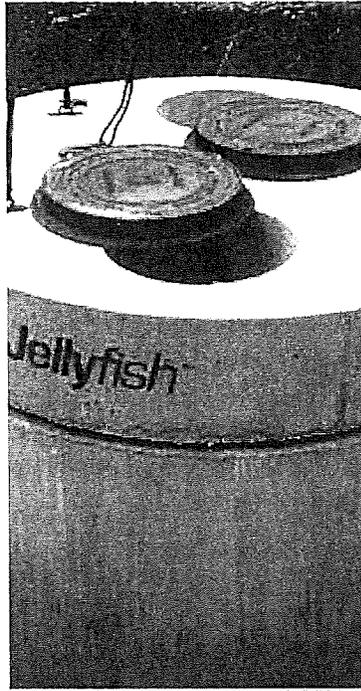
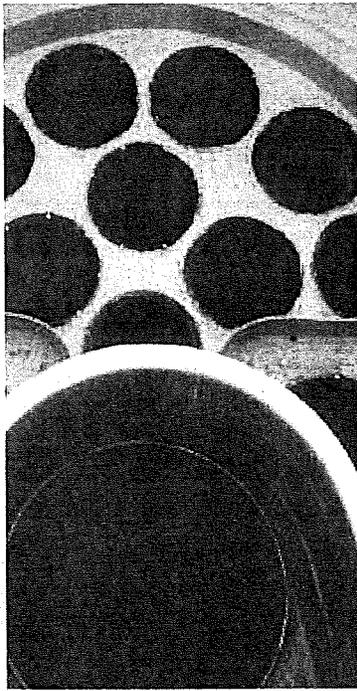
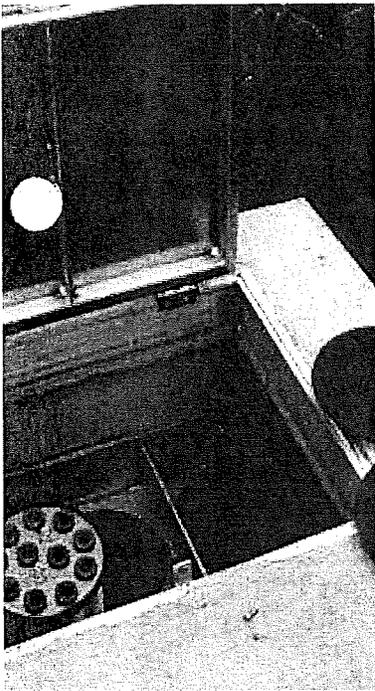
Source	Source Area (ac)	Sediment		Nitrogen		Phosphorus	
		Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)	Total Load (lb)	Loading Rate (lb/ac)
Hay/Pasture	0	0.00	0.00	0.00	0.00	0.00	0.00
Cropland	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest	0	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0	0.00	0.00	0.00	0.00	0.00	0.00
Disturbed	0	0.00	0.00	0.00	0.00	0.00	0.00
Turfgrass	0	0.00	0.00	0.00	0.00	0.00	0.00
Open Land	0	0.00	0.00	0.00	0.00	0.00	0.00
Bare Rock	0	0.00	0.00	0.00	0.00	0.00	0.00
Sandy Areas	0	0.00	0.00	0.00	0.00	0.00	0.00
Unpaved Roads	0	0.00	0.00	0.00	0.00	0.00	0.00
LD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Mixed	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Mixed	35	3479.00	99.40	80.90	2.31	9.10	0.26
LD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
MD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
HD Residential	0	0.00	0.00	0.00	0.00	0.00	0.00
Water	0						
							Source Weighting
Farm Animals				0.0		0.0	0.000
Tile Drainage		0.00		0.0		0.0	0.000
Stream Bank		26807.96		13.4		3.5	0.013
Groundwater				69.8		1.5	0.007
Point Sources				0.0		0.0	0.000
Septic Systems				0.0		0.0	0.000
Totals	35	30287.0		164.1		14.1	

Print

Export to JPEG

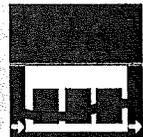
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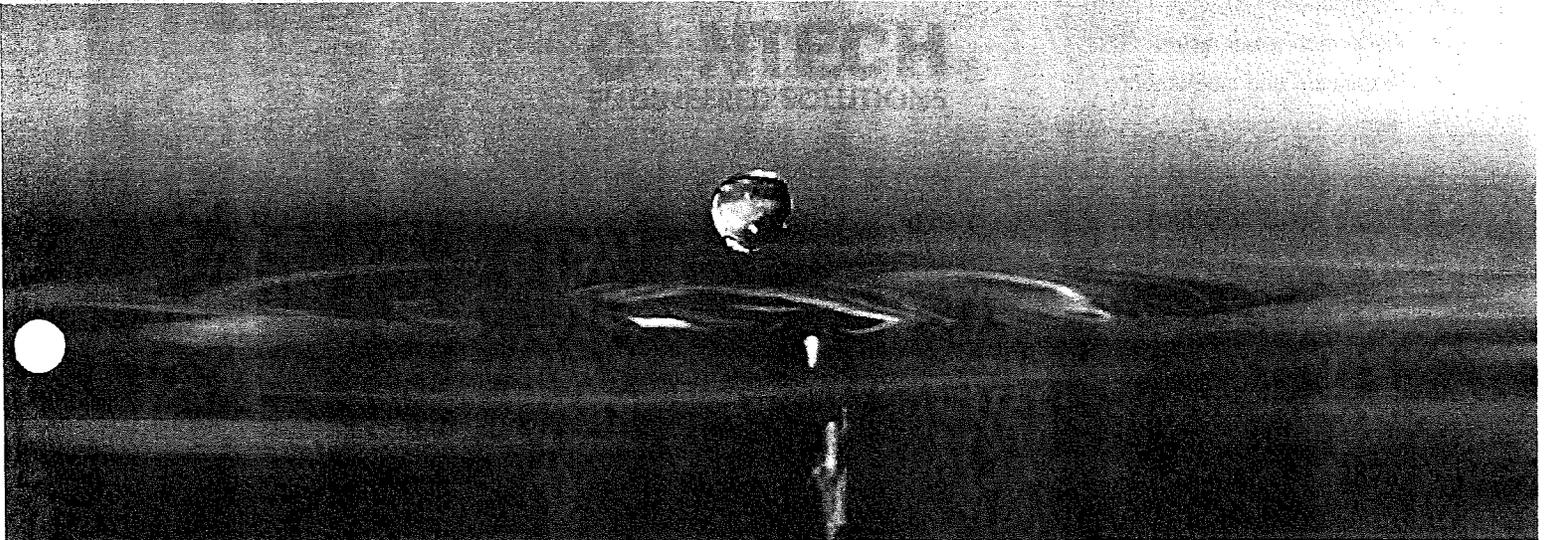
APPENDIX E



CONTECH[®]
ENGINEERED SOLUTIONS

Jellyfish[®] Filter

 **Solutions
Guide**

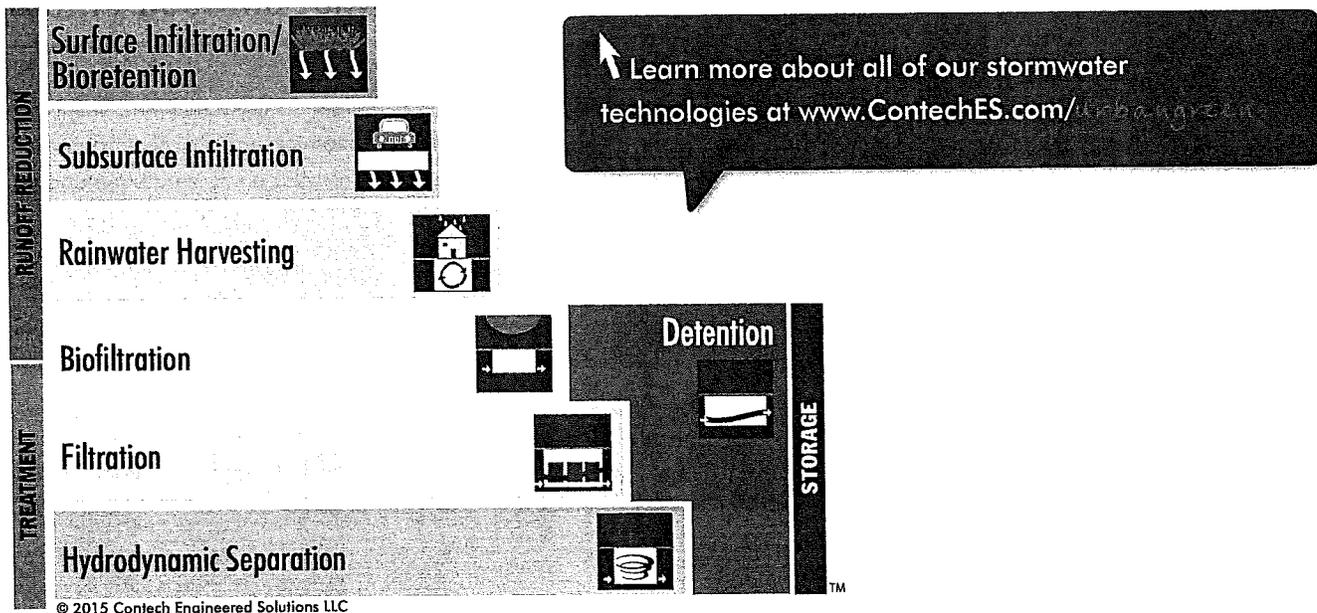


UrbanGreen® Stormwater Solutions from Contech



Selecting the Right Stormwater Solution Just Got Easier...

It's simple to choose the right low impact development (LID) solution to achieve your runoff reduction and treatment goals with the Contech UrbanGreen® Staircase. First, select the runoff reduction practices that are most appropriate for your site, paying particular attention to pretreatment needs. If the entire design storm cannot be retained, select a best management practice (BMP) to treat the balance. Finally, select a detention system to address any outstanding downstream erosion.

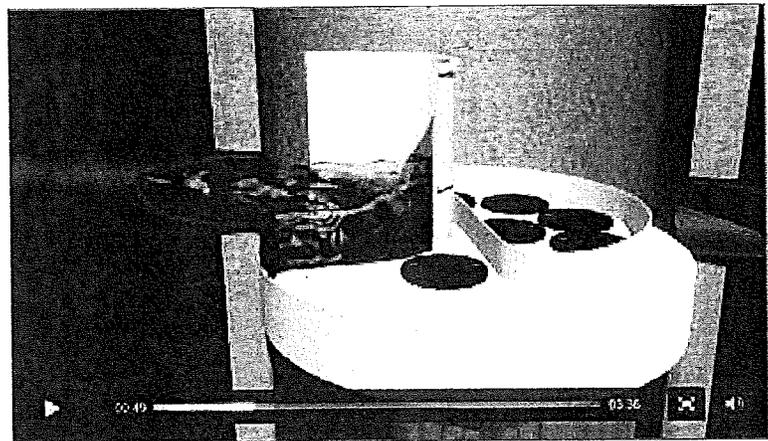


Learn About the Jellyfish® Filter

Go online and watch our animation to learn how the Jellyfish Filter works. The animation also highlights important features of the Jellyfish Filter including...

- Applications
- Performance test results
- Inspection and maintenance
- Regulatory approvals

To view the Jellyfish Filter animation, visit:
www.conteches.com/jellyfish



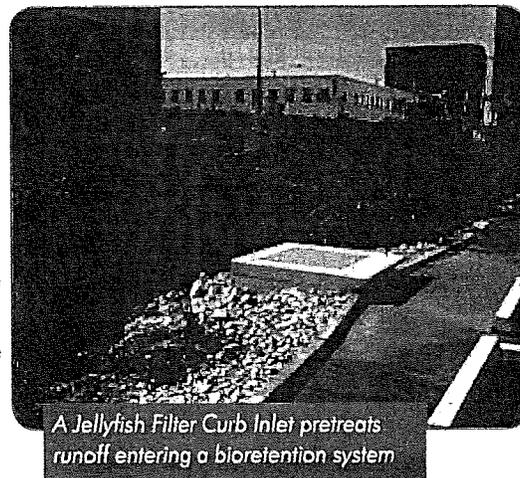
Jellyfish® Filter

Filtration as a Stormwater Management Strategy

Stormwater regulations are increasingly calling for more robust treatment levels. In addition to the removal of suspended solids, many regulations now require best management practices to remove significant amounts of nutrients, metals, and other common pollutants found in stormwater runoff. Meeting these regulations often requires the use of a filtration solution.

Low Impact Development (LID) and Green Infrastructure (GI) are complimented by filtration solutions. Benefits of LID and GI systems include retaining runoff and aesthetic appeal. Keeping LID and GI sites free from fine sediments, oils, trash, and debris while functioning as designed can be time consuming and costly.

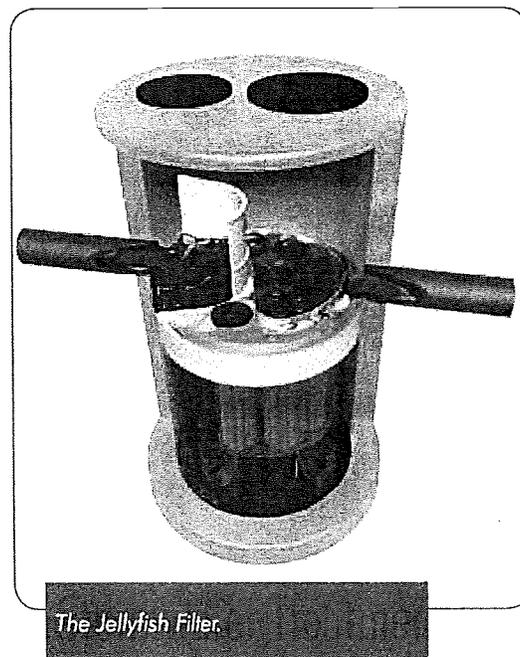
As a result, the practice of combining LID and GI with filtration is becoming more common. Providing a single point of maintenance promotes proper system functionality and increases the aesthetic appeal by removing unsightly trash and debris.



The Jellyfish[®] Filter - Setting New Standards in Stormwater Treatment

The Jellyfish Filter is a stormwater quality treatment technology featuring high surface area and high flow rate membrane filtration at low driving head. By incorporating pretreatment with light-weight membrane filtration, the Jellyfish Filter removes floatables, trash, oil, debris, TSS, fine silt-sized particles, and a high percentage of particulate-bound pollutants; including phosphorus and nitrogen, metals and hydrocarbons.

The high surface area membrane cartridges, combined with up flow hydraulics, frequent backwashing, and rinseable/reusable cartridges ensures long-lasting performance.

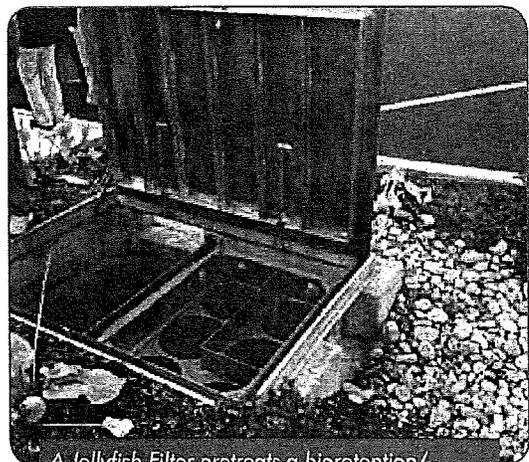


Jellyfish® Filter Features and Benefits

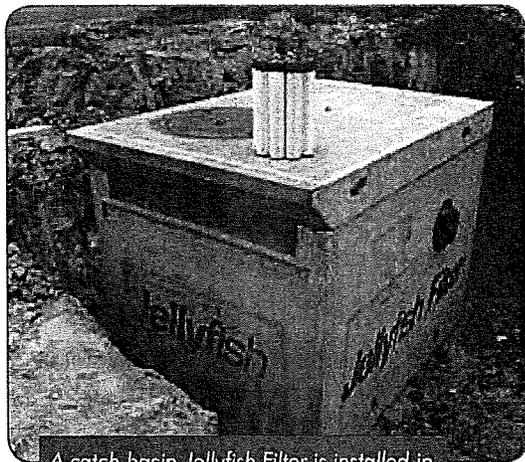
FEATURES	BENEFITS
1. High surface area, high flow rate membrane filtration	1. Long-lasting and effective stormwater treatment
2. Highest design treatment flow rate per cartridge (up to 80 gpm (5 L/S))	2. Compact system with a small footprint, lower construction cost
3. Low driving head (typically 18 inches or less (457 mm))	3. Design Flexibility, lower construction cost
4. Lightweight cartridges with passive backwash	4. Easy maintenance and low life-cycle cost
5. 3 rd party verified field performance per TARP protocol	5. Superior pollutant capture with confidence

Jellyfish® Filter Applications

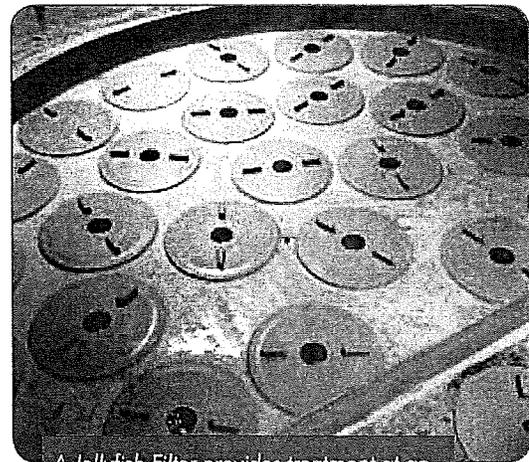
- Urban development
- Highways, airports, seaports, and military installations
- Commercial and residential development, infill and redevelopment, and stormwater quality retrofit applications
- Pretreatment for Low Impact Development (LID), Green Infrastructure (GI), infiltration, and rainwater harvesting and reuse systems
- Industrial sites



A Jellyfish Filter pretreats a bioretention/bioswale system at a commercial site in Ontario, Canada.



A catch basin Jellyfish Filter is installed in a commercial development in Virginia.



A Jellyfish Filter provides treatment at an Industrial Park in Lake Tahoe, Nevada.

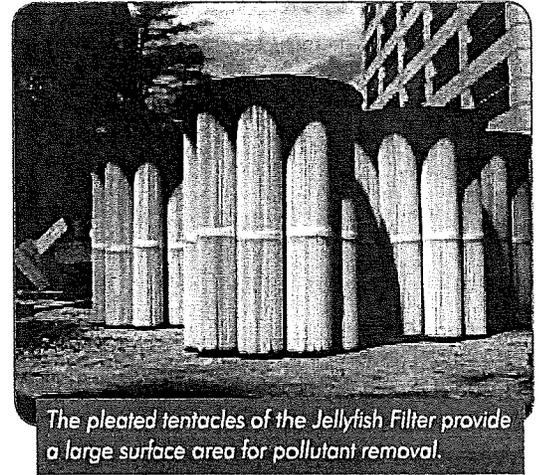
Jellyfish® Filter Field Performance Test Results

POLLUTANT OF CONCERN	% REMOVAL
Total Trash	99%
Total Suspended Solids (TSS)	89%
Total Phosphorus (TP)	59%
Total Nitrogen (TN)	51%
Total Copper (TCu)	>80%
Total Zinc (TZn)	>50%
Turbidity (NTU)	<15%

Sources:

TARP II Field Study – 2012 JF 4-2-1 Configuration

MRDC Floatables Testing – 2008 JF6-6-1 Configuration



The pleated tentacles of the Jellyfish Filter provide a large surface area for pollutant removal.

Jellyfish® Filter Approvals

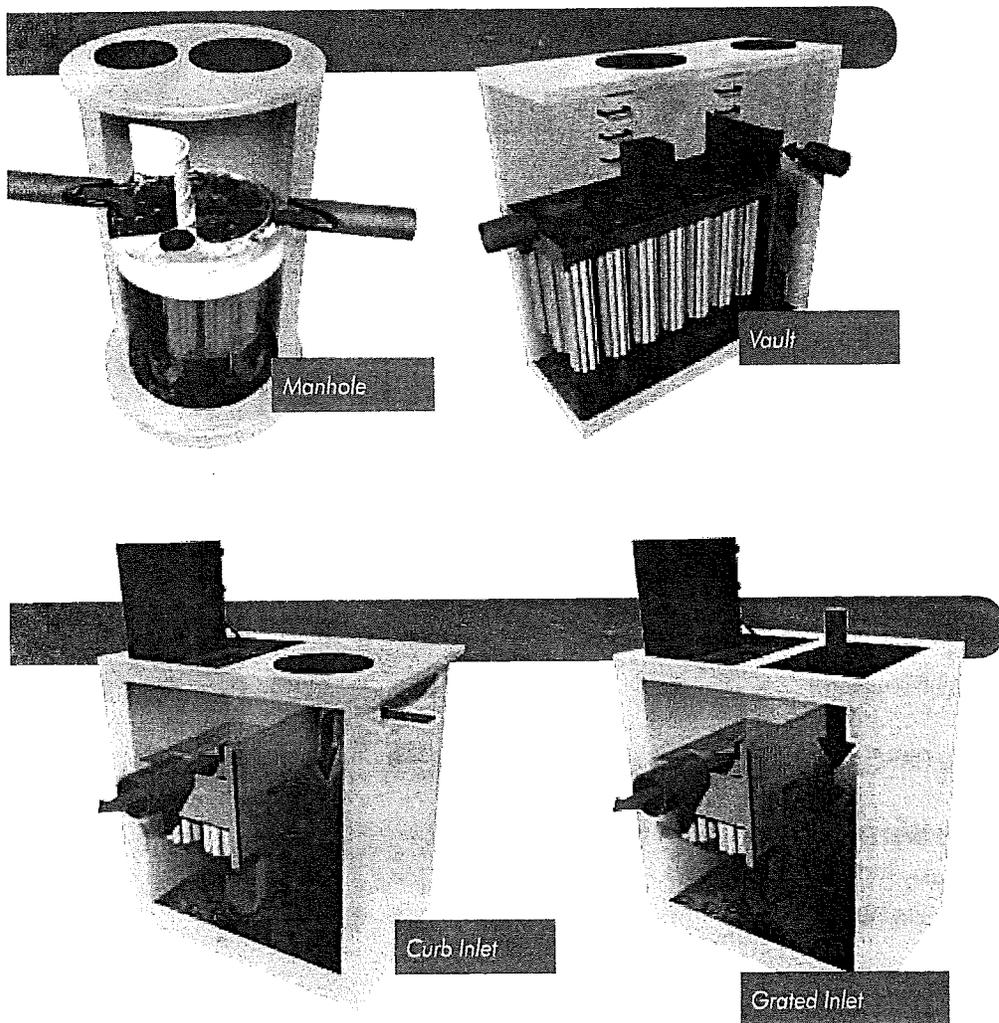
The Jellyfish Filter is approved through numerous state and federal verification programs, including:

- New Jersey Corporation for Advanced Technology (NJCAT) – Field Performance Verification per TARP Tier II Protocol
- New Jersey Department of Environmental Protection (NJDEP) – Certification
- Washington State Department of Ecology (TAPE – CULD)
- Maryland Department of the Environment (MD DOE)
- Texas Commission on Environmental Quality (TCEQ)
- Virginia Department of Environmental Quality (VA DEQ)
- Ontario Ministry of the Environment – New Environmental Technology Evaluation (NETE) – Certification



Jellyfish[®] Filter Configurations

The Jellyfish Filter is available in a variety of configurations. Typically, 18 inches (457 mm) of driving head is designed into the system. For low drop sites, the designed driving head can be less.



Lightweight Jellyfish Filter Configurations

Custom configurations include Jellyfish Filter tanks made from fiberglass for site specific applications.



A Jellyfish Filter was constructed from fiberglass to reduce the weight of the system, allowing for a suspended installation above an underground parking structure. The reduced weight eliminated the need for structural changes, and suspending the Jellyfish resulted in no loss of parking space, maximizing real-estate value.

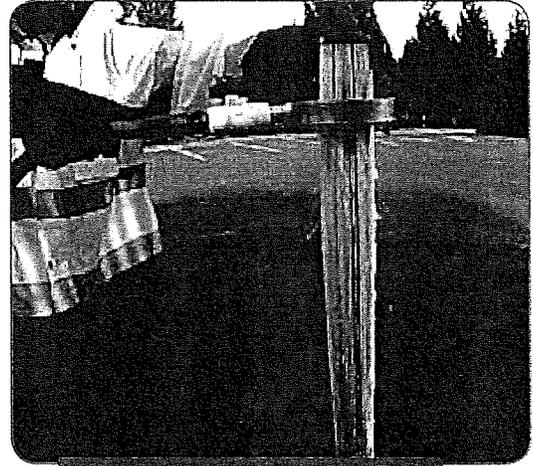
Other custom configurations include:

- On-line capability (internal bypass)
- Peak Diversion Vault Configurations

Jellyfish® Filter Maintenance

Inspection and maintenance activities for the Jellyfish Filter typically include:

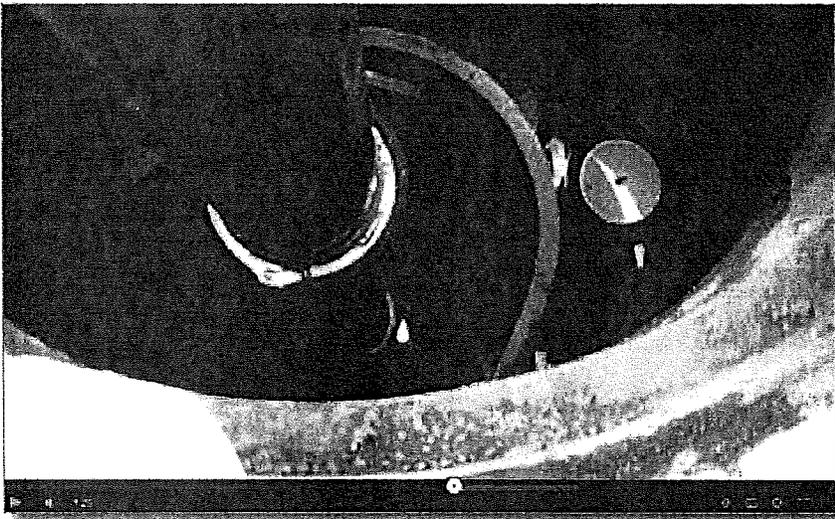
- Visual inspection of deck, cartridge lids, and maintenance access wall.
- Vacuum extraction of oil, floatable trash/debris, and sediment from manhole sump.
- External rinsing and re-installing of filter cartridges.
- Replacement of filter cartridge tentacles as needed. Cartridge replacement intervals vary by site; typical replacement is anticipated every 2-5 years.



The Jellyfish Filter cartridge is light and easy to clean.

Jellyfish® Filter Inspection and Maintenance Video

Inspecting and maintaining the Jellyfish Filter is easier than you may think. Watch the Jellyfish inspection and maintenance video at www.ContechES.com/jellyfish





LEARN MORE

- Access project profiles, photos, videos and more online at www.ContechES.com/jellyfish

CONNECT WITH US

- Call us at 800-338-1122
- Contact your local rep at www.ContechES.com/localresources

START A PROJECT

- Submit your system requirements on our product Design Worksheet www.ContechES.com/start-project

USE OUR ONLINE TOOLS

- Low Impact Development Site Planner www.ContechES.com/LIDsiteplanner

CONTECH
ENGINEERED SOLUTIONS

COMPLETE SITE SOLUTIONS



TREATMENT SOLUTIONS

Helping to satisfy stormwater and wastewater management requirements on land development projects

- Stormwater & Wastewater Treatment
- Detention/Infiltration
- Rainwater Harvesting
- Biofiltration/Bioretenion

PIPE SOLUTIONS

Meeting project needs for durability, hydraulics, corrosion resistance, and stiffness

- Corrugated Metal Pipe (CMP)
- Steel Reinforced Polyethylene (SRPE)
- High Density Polyethylene (HDPE)
- Polyvinyl Chloride (PVC)

STRUCTURES SOLUTIONS

Providing innovative options and support for crossings, culverts, and bridges

- Plate, Precast & Truss bridges
- Hard Armor
- Retaining Walls
- Tunnel Liner Plate

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Jellyfish Brochure (5M) PDF Revision 4/15

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FSC

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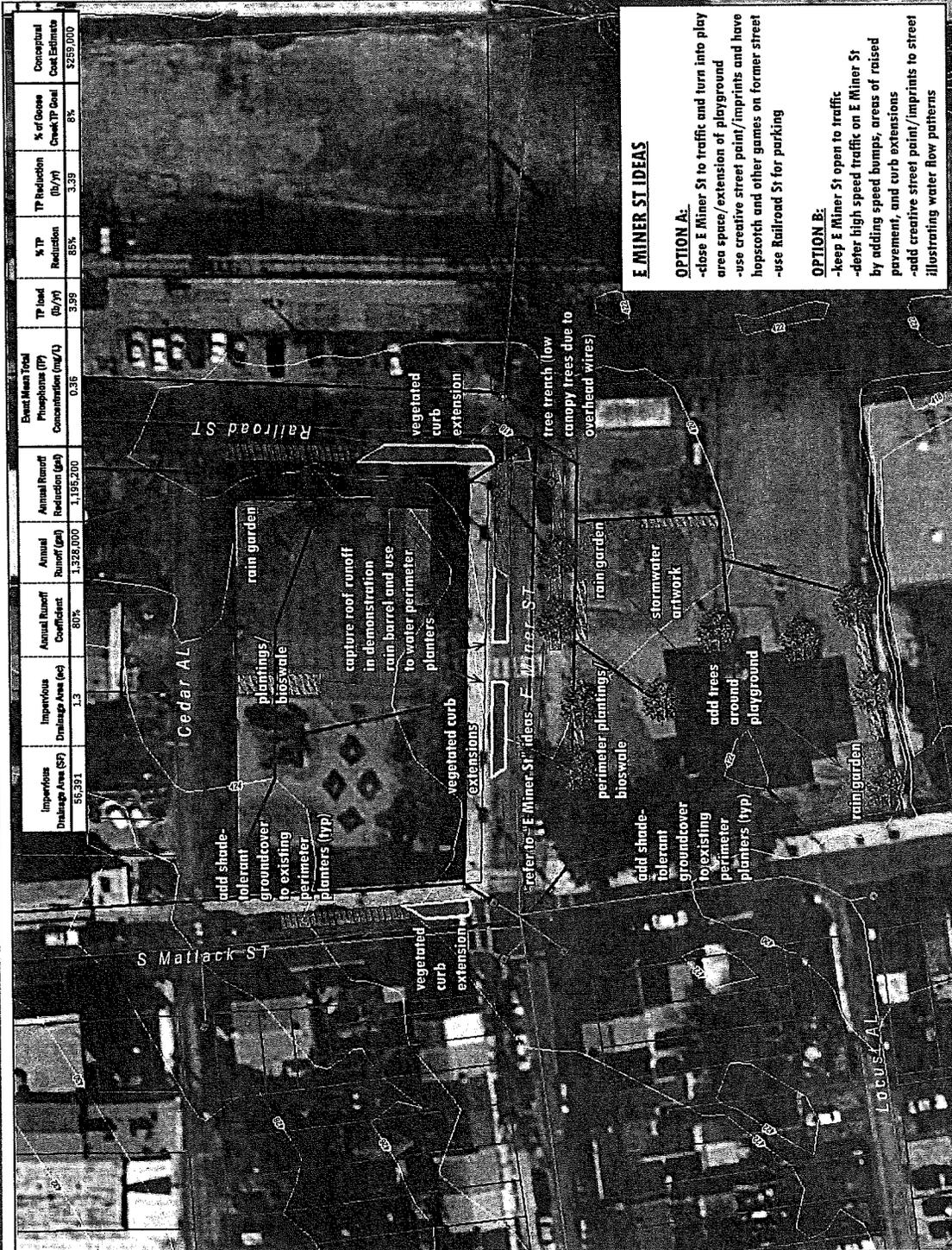
APPENDIX F

JOHN O. GREEN MEMORIAL PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS

John O. Green Memorial Park is a 1.24 acre park in southeast West Chester that features a variety of community amenities such as playgrounds, a full-size basketball court, a spray ground, pavilion with tables, and open areas for free play. This well-used neighborhood park is bordered by S Matlack Street, Cedar Alley, and Railroad Street with E Miner Street dividing the park into two discrete sections. The park is bordered by residential homes to the west and south and is adjacent to the West Chester railroad and parking lot to the east. Formerly a manufactured gas plant owned by PECCO, the site was cleaned up and turned over to the Borough in 1998.

The green infrastructure (GI) concepts proposed for the site consist of vegetated curb extensions with subsurface infiltration trench components (one on S Matlack St, one on Railroad St, and two at the northern park entrance on E Miner St), a tree trench on E Miner St, rain gardens in several corners of the park on both parcels, a demonstration rain barrel to capture roof runoff from the pavilion, and overall recommendations for planters, additional groundcover, and new trees to further "green" the park and provide shade to play areas.

Collectively, these GI features would capture and treat runoff from the park property and several adjacent streets as shown on the concept plan. During larger storm events, overflow structures would allow excess runoff to flow into existing storm sewers. In addition to reducing and treating stormwater runoff, these GI features have the potential to add aesthetic value to the park, promote traffic calming, and work in harmony with the park's existing active and passive recreational uses.



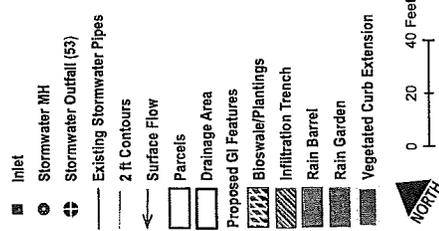
E MINER ST IDEAS

OPTION A:

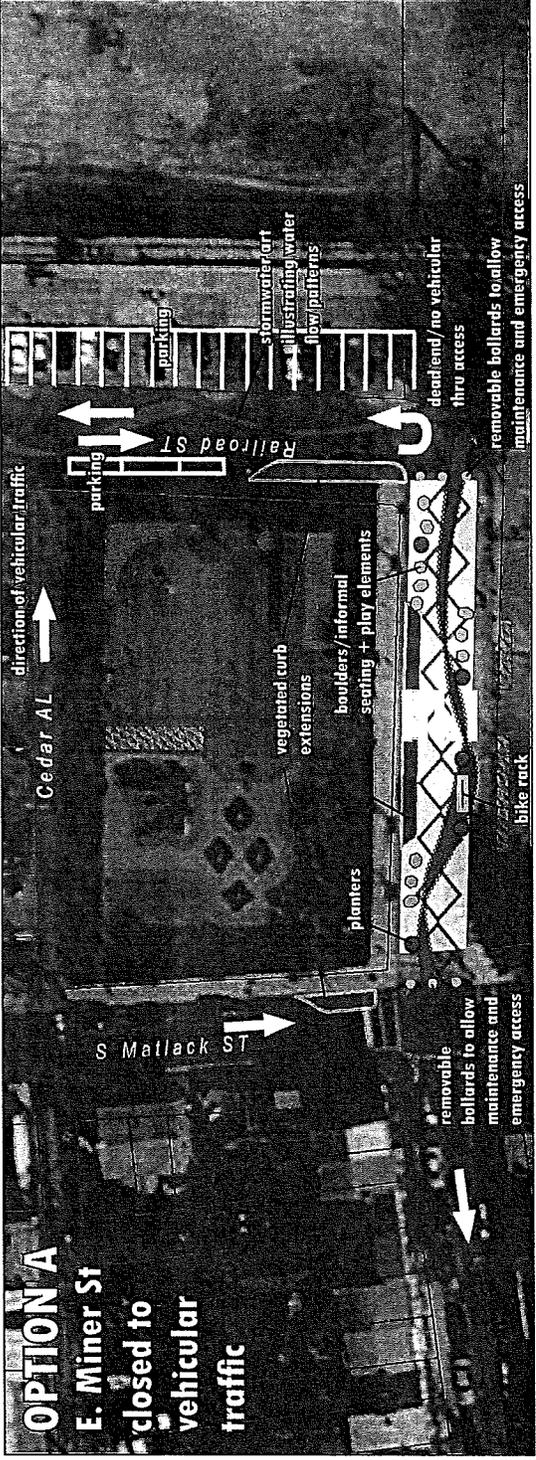
- close E Miner St to traffic and turn into play area space/extension of playground
- use creative street paint/imprints and have hopscotch and other games on former street
- use Railroad St for parking

OPTION B:

- keep E Miner St open to traffic
- deter high speed traffic on E Miner St by adding speed bumps, areas of raised pavement, and curb extensions
- add creative street paint/imprints to street illustrating water flow patterns



JOHN O. GREEN MEMORIAL PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



In addition to the proposed green infrastructure elements for John O. Green Memorial Park, there are several potential options for addressing vehicular traffic, pedestrian safety, and parking on the block of E. Miner Street between the two park parcels.

Option A would close E. Miner Street between Railroad Street and S. Matlack Street to vehicular thru-traffic. This portion of E. Miner Street would become a car-free zone and a safe place for pedestrians to sit, children to play, and park-goers to freely move between the north and south park areas. Removable bollards would be placed at either ends of the closed block to enable occasional access for emergency and maintenance vehicles. Parking would not be allowed on E. Miner Street, rather all parking would be directed to Railroad Street.

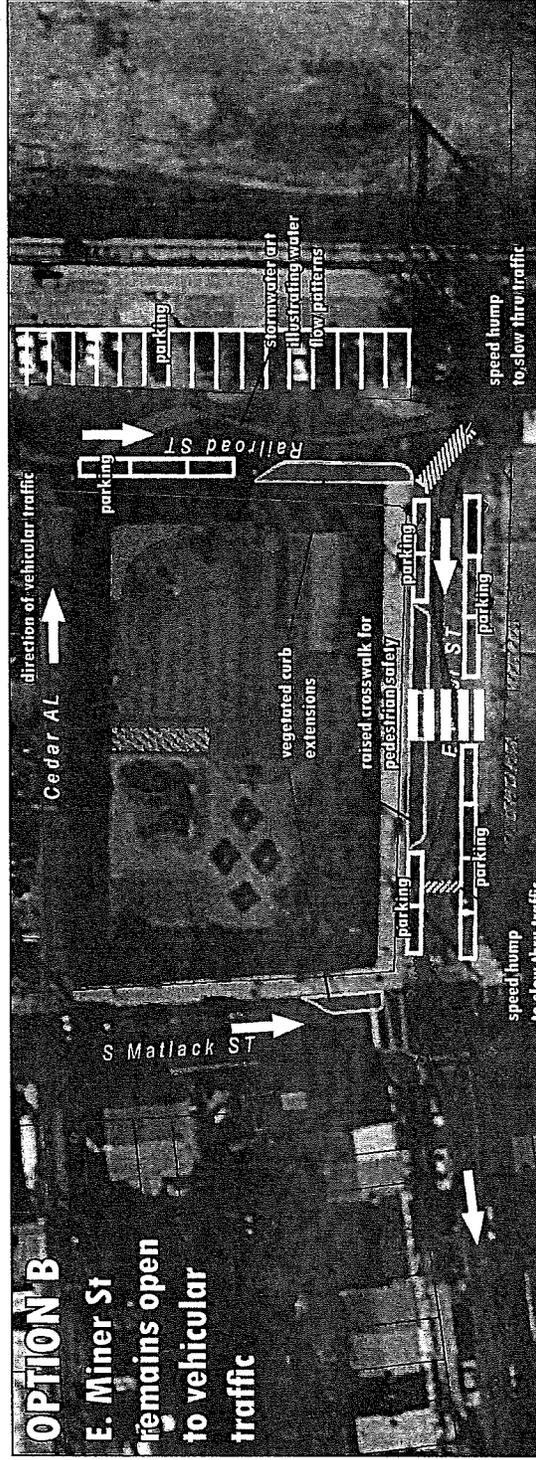
- Option A Pros**
- maximizes pedestrian and park-goer safety
 - maintains emergency vehicular access
 - creates a car-free play zone between the park areas

- Option A Cons**
- removes parking on E. Miner Street
 - removes vehicular thru-way

Option B would keep E. Miner Street between Railroad Street and S. Matlack Street open to vehicular thru-traffic. Parallel parking would be permitted on both sides of the street. Speed humps and a raised crosswalk would be strategically placed to slow vehicular traffic and increase park-user and pedestrian safety.

- Option B Pros**
- maximizes parking on E. Miner Street
 - maintains vehicular thru-way

- Option B Cons**
- less benefits for pedestrian and park-goer safety
 - does not create a car-free play zone



In addition to the proposed green infrastructure elements for John O. Green Memorial Park, there are several potential options for addressing vehicular traffic, pedestrian safety, and parking on the block of E. Miner Street between the two park parcels.

Option B would keep E. Miner Street between Railroad Street and S. Matlack Street open to vehicular thru-traffic. Parallel parking would be permitted on both sides of the street. Speed humps and a raised crosswalk would be strategically placed to slow vehicular traffic and increase park-user and pedestrian safety.

- Option B Pros**
- maximizes parking on E. Miner Street
 - maintains vehicular thru-way

- Option B Cons**
- less benefits for pedestrian and park-goer safety
 - does not create a car-free play zone

Legend

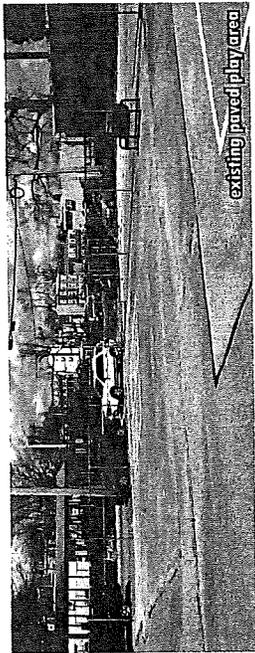
- Inlet
- Parcels
- Proposed GI Features
- Bioswale/Plantings
- Rain Barrel
- Rain Garden
- Vegetated Curb Extension

0 20 40 Feet

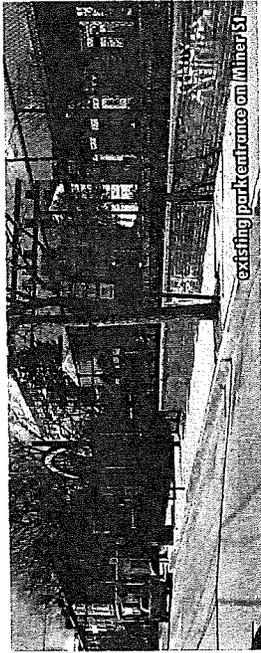
NORTH

WEST CHESTER BOROUGH SPF PROGRAM

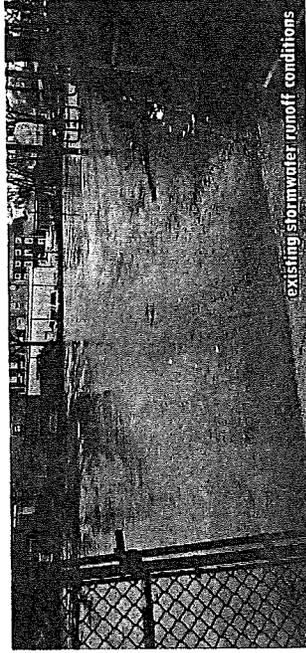
JOHN O. GREEN MEMORIAL PARK: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



existing paved play area



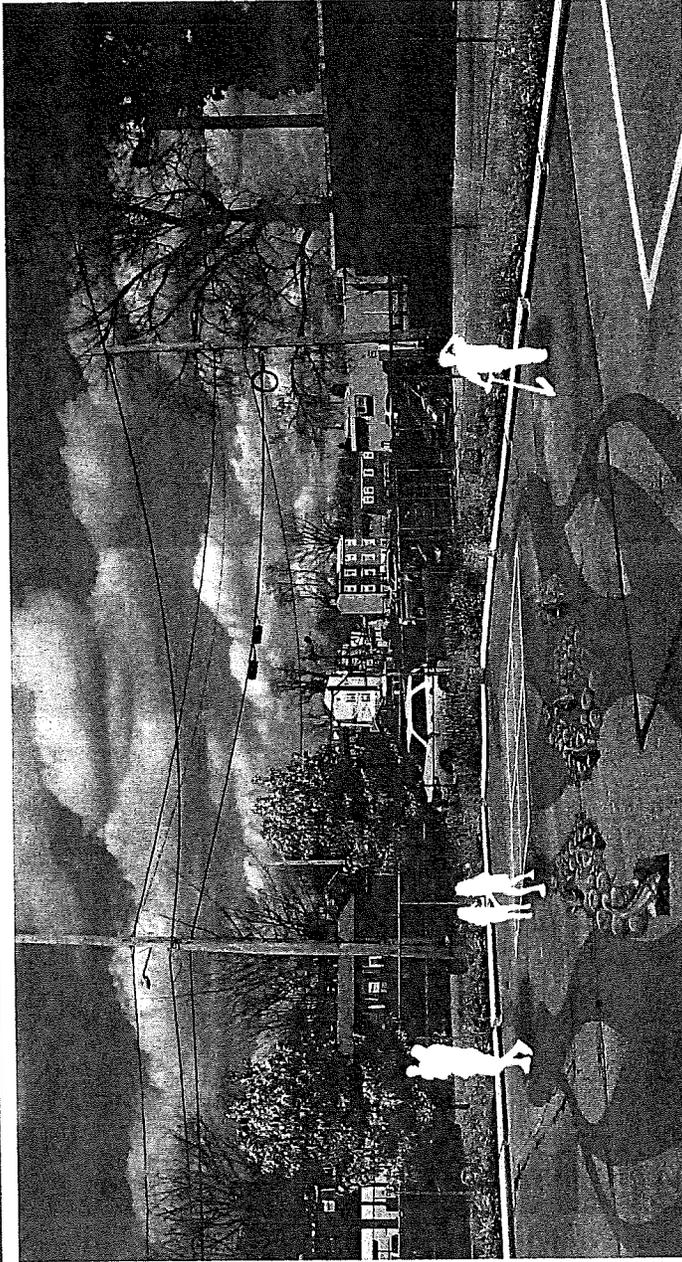
existing park entrance on Miner St



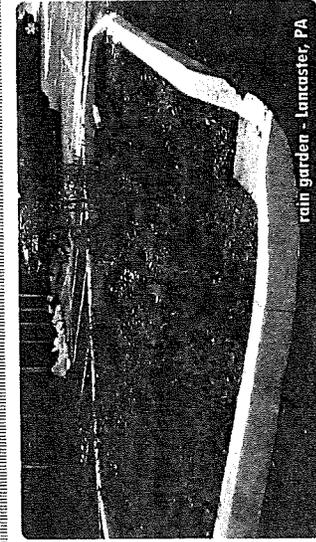
existing stormwater runoff conditions



existing playground and basketball court



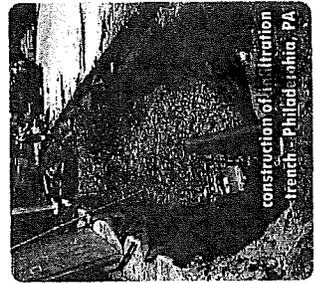
Proposed Rain Garden and Planting Beds



rain garden - Lancaster, PA



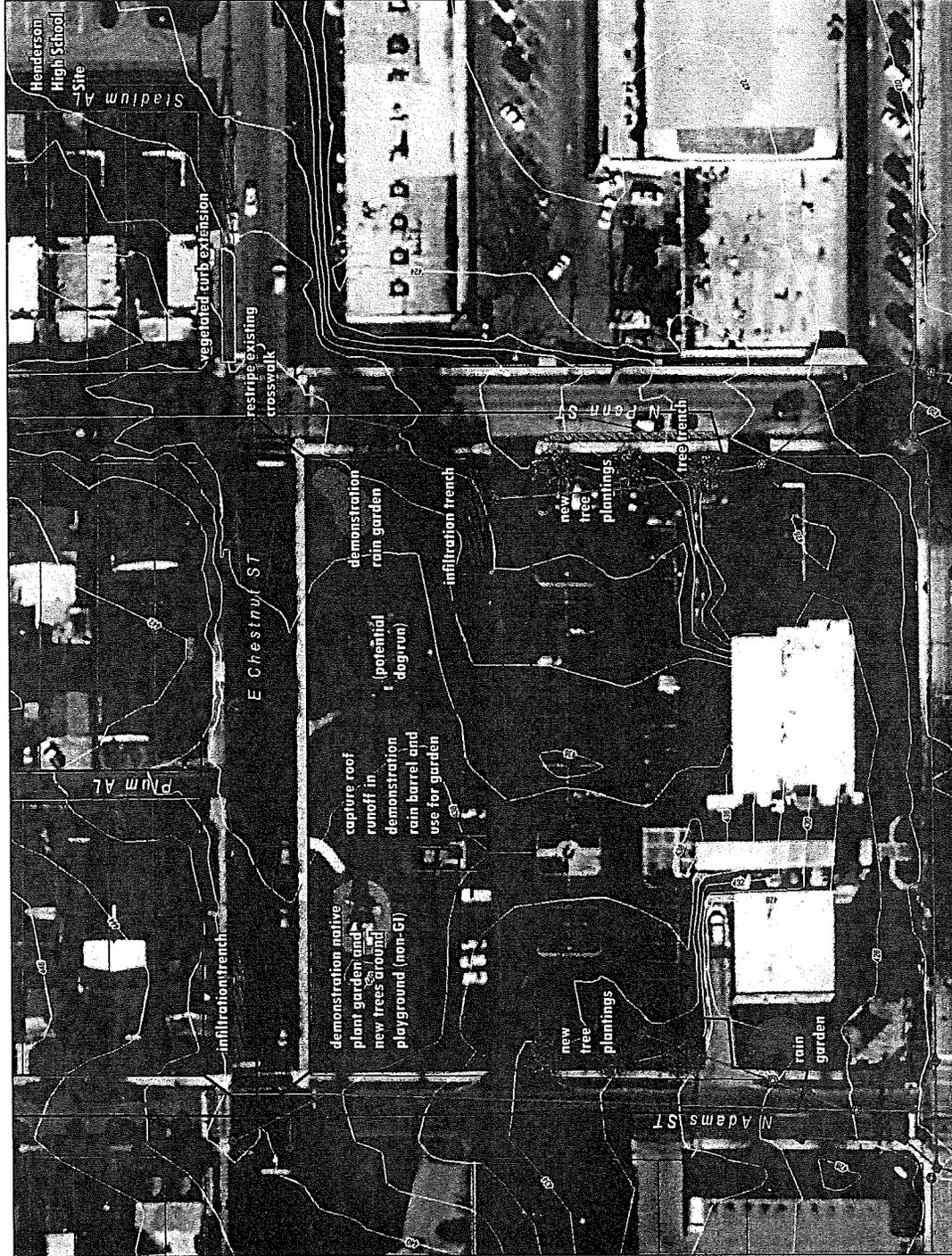
curb extension - Lancaster, PA



construction of infiltration trench - Philadelphia, PA

Examples of GI Features

FUGETT PARK/BOROUGH HALL: PROPOSED GREEN INFRASTRUCTURE CONCEPTS



Fugett Park and West Chester Borough Hall make up a 2.66 acre site near the eastern border of West Chester Borough. The park features new playground equipment and several established mature trees. The site is bordered by E Chestnut Street, N Adams St, E Goy St, and N Penn St. The park is bordered by residential homes to the north and west, the Henderson High School site to the northeast, and commercial properties to the east.

This high-visibility site has frequent visitors (both Borough residents and others) and therefore has the potential to feature numerous "demonstration" green infrastructure technologies and showcase the Borough's commitment to green infrastructure and stormwater solutions. With that vision in mind, the green infrastructure concepts proposed for the site consist of vegetated curb extensions with subsurface infiltration trench components (one on N Adams St and one on E Chestnut St), a demonstration rain garden in the northeast corner of the park, another rain garden on the western side of Borough Hall, a subsurface infiltration trench to capture parking lot runoff, a tree trench along N Penn St, and a demonstration rain barrel to capture roof runoff from the shed to be used in a potential demonstration native plant/backyard wildlife garden. In addition, new tree plantings are proposed on both edges of the parking lot.

Collectively, these GI features would capture and treat runoff from the site and several adjacent streets as shown on the concept plan. During larger storm events, overflow structures would allow excess runoff to flow into existing storm sewers. In addition to reducing and treating stormwater runoff, these GI features have the potential to add aesthetic value to the park, promote traffic calming, and work in harmony with the site's existing active and passive recreational uses such as the existing playground and proposed dog run areas.

APPENDIX G

MS4 Name	NPDES ID	Individual Permit Required?	Reason	Impaired Downstream Waters or Applicable TMDL Name	Requirements(s)	Other Cause(s) of Impairment
Chester County						
WEST BRANDYWINE TWP	PAI130544	Yes	TMDL Plan, SP, IP	West Branch Brandywine Creek	Appendix C-PCB (4a), Appendix E-Siltation (4a)	Water/Flow Variability (4c) Cause Unknown (4a), Other Habitat Alterations, Water/Flow Variability (4c)
				Beaver Creek		
				Christina River Basin Nutrients	TMDL Plan-Nutrients, Organic Enrichment/Low D.O. (4a)	
				Culbertson Run	Appendix E-Siltation (4a)	Other Habitat Alterations (4c) Cause Unknown (4a)
				Unnamed Tributaries to West Branch Brandywine Creek		
				East Branch Brandywine Creek		Cause Unknown (4a), Other Habitat Alterations, Water/Flow Variability (4c)
				Christina River Basin Nutrients	TMDL Plan-Nutrients, Organic Enrichment/Low D.O. (4a)	
				Chesapeake Bay Nutrients/Sediment	Appendix D-Nutrients, Siltation (4a)	
				Christina River Basin Sediment	TMDL Plan-Siltation, Suspended Solids (4a)	
				Indian Spring Run	Appendix E-Nutrients, Organic Enrichment/Low D.O., Siltation (4a)	
WEST CALN TWP	PAG130145	Yes	TMDL Plan, SP	Pequea Creek	Appendix E-Nutrients, Organic Enrichment/Low D.O., Siltation (4a)	Water/Flow Variability (4c)
				West Branch Brandywine Creek	Appendix C-PCB (4a)	
				Taylor Run	Appendix E-Siltation (4a)	Cause Unknown (4a), Other Habitat Alterations (4c)
				Plum Run	Appendix E-Siltation (4a)	Water/Flow Variability (4c)
				Goose Creek TMDL	TMDL Plan-Nutrients (4a)	Cause Unknown (4a)
				Chester Creek	Appendix B-Pathogens (5), Appendix E-Siltation (5)	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)
				Brandywine Creek	Appendix E-Siltation (4a)	
				Blackhorse Run	Appendix E-Siltation (4a)	Other Habitat Alterations, Water/Flow Variability (4c)
				East Branch Chester Creek	Appendix E-Siltation (5)	Cause Unknown (5), Other Habitat Alterations, Water/Flow Variability (4c)
				Broad Run		Water/Flow Variability (4c)
WEST GOSHEN TWP	PAI130532	Yes	TMDL Plan, SP, IP	Chester Creek	Appendix B-Pathogens (5), Appendix E-Siltation (5)	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)
				East Branch Brandywine Creek		Cause Unknown (4a), Water/Flow Variability (4c)
				Goose Creek TMDL	TMDL Plan-Nutrients (4a)	Cause Unknown (4a)
				John Smedley Run		Water/Flow Variability (4c)
				Plum Run		Water/Flow Variability (4c)
				Taylor Run		Cause Unknown (4a), Other Habitat Alterations (4c)
				Christina River Basin Sediment	TMDL Plan-Siltation, Suspended Solids (4a)	

EXHIBIT J

[2017 COMMONWEALTH TITLED PROPERTIES INVOICES]

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 EIGHTEENTH & HERR ST
 HARRISBURG, PA 17103

CURRENT ASSESSMENT	\$2395.94
TOTAL DUE BY 12/31/2017	\$2395.94

ACCOUNT NUMBER	1-12-0244-1		Borough of West Chester	
CUSTOMER	COMMONWEALTH OF PA		401 East Gay Street	
SERVICE ADDRESS	675 S CHURCH ST		West Chester PA 19380	
BILL DATE	12/02/2016		(610) 436-1350	
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	29,800 sf	\$598.98	\$2395.94
TOTAL CURRENT CHARGES				\$2395.94

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0244-1
SERVICE ADDRESS	675 S CHURCH ST
ANNUAL FEE	\$2395.94
ANNUAL FEE IF PAID BY 1/31/17	47.92
QUARTERLY FEE	\$598.98
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

COMMONWEALTH OF PA
 EIGHTEENTH & HERR ST
 HARRISBURG, PA 17103

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

CURRENT ASSESSMENT	\$71045.78
TOTAL DUE BY 12/31/2017	\$71045.78

ACCOUNT NUMBER	1-12-0243	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	705 S NEW ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	883,654 sf	\$17761.44	\$71045.78
TOTAL CURRENT CHARGES				\$71045.78

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0243
SERVICE ADDRESS	705 S NEW ST
ANNUAL FEE	\$71045.78
ANNUAL FEE IF PAID BY 1/31/17	1420.92
QUARTERLY FEE	\$17761.44
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 WEST CHESTER UNIVERSITY
 WEST CHESTER, PA 19383

CURRENT ASSESSMENT	\$180.96
TOTAL DUE BY 12/31/2017	\$180.96

ACCOUNT NUMBER	1-12-0246	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	13 UNIVERSITY AV	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	4	2,079 sf	\$45.24	\$180.96
TOTAL CURRENT CHARGES				\$180.96

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0246
SERVICE ADDRESS	13 UNIVERSITY AV
ANNUAL FEE	\$180.96
ANNUAL FEE IF PAID BY 1/31/17	3.62
QUARTERLY FEE	\$45.24
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 EIGHTEENTH & HERR ST
 HARRISBURG, PA 17103

CURRENT ASSESSMENT	\$19221.21
TOTAL DUE BY 12/31/2017	\$19221.21

ACCOUNT NUMBER	1-12-0250	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	25 W ROSEDALE AV	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	239,070 sf	\$4805.3	\$19221.21
TOTAL CURRENT CHARGES				\$19221.21

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0250
SERVICE ADDRESS	25 W ROSEDALE AV
ANNUAL FEE	\$19221.21
ANNUAL FEE IF PAID BY 1/31/17	384.42
QUARTERLY FEE	\$4805.3
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 EIGHTEENTH & HERR ST
 HARRISBURG, PA 17101

CURRENT ASSESSMENT	\$1974.14
TOTAL DUE BY 12/31/2017	\$1974.14

ACCOUNT NUMBER	1-12-0250-1	Borough of West Chester 401 East Gay Street West Chester PA 19380 (610) 436-1350
CUSTOMER	COMMONWEALTH OF PA	
SERVICE ADDRESS	720 S HIGH ST WEST CHESTER PA 19382	
BILL DATE	12/02/2016	

SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	24,554 sf	\$493.53	\$1974.14
TOTAL CURRENT CHARGES				\$1974.14

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0250-1
SERVICE ADDRESS	720 S HIGH ST
ANNUAL FEE	\$1974.14
ANNUAL FEE IF PAID BY 1/31/17	\$39.48
QUARTERLY FEE	\$493.53
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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 309a

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 MAIN CAPITOL BLDG
 HARRISBURG, PA 17103

CURRENT ASSESSMENT	\$991.46
TOTAL DUE BY 12/31/2017	\$991.46

ACCOUNT NUMBER	1-12-0253	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	615 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	12,332 sf	\$247.87	\$991.46
TOTAL CURRENT CHARGES				\$991.46

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0253
SERVICE ADDRESS	615 S HIGH ST
ANNUAL FEE	\$991.46
ANNUAL FEE IF PAID BY 1/31/17	19.83
QUARTERLY FEE	\$247.87
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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 310a

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 EIGHTEENTH & HERR ST
 HARRISBURG, PA 17103

CURRENT ASSESSMENT	\$2244.88
TOTAL DUE BY 12/31/2017	\$2244.88

ACCOUNT NUMBER	1-09-1066	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	25 SHARPLESS ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	27,921 sf	\$561.22	\$2244.88
TOTAL CURRENT CHARGES				\$2244.88

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-09-1066
SERVICE ADDRESS	25 SHARPLESS ST
ANNUAL FEE	\$2244.88
ANNUAL FEE IF PAID BY 1/31/17	44.9
QUARTERLY FEE	\$561.22
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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EXHIBIT K

[2017 WCU TITLED PROPERTIES INVOICES]

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA
 700 S HIGH ST
 WEST CHESTER, PA 19380

CURRENT ASSESSMENT	\$1376.84
TOTAL DUE BY 12/31/2017	\$1376.84

ACCOUNT NUMBER	1-09-1085	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	15 SHARPLESS ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	17,125 sf	\$344.21	\$1376.84
TOTAL CURRENT CHARGES				\$1376.84

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-09-1085
SERVICE ADDRESS	15 SHARPLESS ST
ANNUAL FEE	\$1376.84
ANNUAL FEE IF PAID BY 1/31/17	27.53
QUARTERLY FEE	\$344.21
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

WEST CHESTER UNIVERSITY
 EDUCATION OF PA
 FACILITIES DIV
 WEST CHESTER, PA 19383

West Chester Borough Stream Protection Fee Notice of Assessment

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

CURRENT ASSESSMENT	\$180.96
TOTAL DUE BY 12/31/2017	\$180.96

ACCOUNT NUMBER	1-12-0245	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY	401 East Gay Street		
SERVICE ADDRESS	15 UNIVERSITY AV	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	4	2,071 sf	\$45.24	\$180.96
TOTAL CURRENT CHARGES				\$180.96

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0245
SERVICE ADDRESS	15 UNIVERSITY AV
ANNUAL FEE	\$180.96
ANNUAL FEE IF PAID BY 1/31/17	3.62
QUARTERLY FEE	\$45.24
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA STATE
 SYSTEM OF HIGHER EDUCATI
 PHILIPS MEMORIAL BUILDING
 ROOM 203
 WEST CHESTER, PA 19383

CURRENT ASSESSMENT	\$281.06
TOTAL DUE BY 12/31/2017	\$281.06

ACCOUNT NUMBER	1-12-0247	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	624 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	3,496 sf	\$70.26	\$281.06
TOTAL CURRENT CHARGES				\$281.06

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-12-0247
SERVICE ADDRESS	624 S HIGH ST
ANNUAL FEE	\$281.06
ANNUAL FEE IF PAID BY 1/31/17	5.62
QUARTERLY FEE	\$70.26
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA OF THE
 STATE ETAL
 201 CARTER DR
 STE 200
 WEST CHESTER, PA 19383

CURRENT ASSESSMENT	\$711.39
TOTAL DUE BY 12/31/2017	\$711.39

ACCOUNT NUMBER	1-13-0001	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	701 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	8,848 sf	\$177.85	\$711.39
TOTAL CURRENT CHARGES				\$711.39

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-13-0001
SERVICE ADDRESS	701 S HIGH ST
ANNUAL FEE	\$711.39
ANNUAL FEE IF PAID BY 1/31/17	14.22
QUARTERLY FEE	\$177.85
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA OF THE
 STATE ETAL
 201 CARTER DR
 STE 200
 WEST CHESTER, PA 19383

CURRENT ASSESSMENT	\$379.47
TOTAL DUE BY 12/31/2017	\$379.47

ACCOUNT NUMBER	1-13-0002	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	703 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	4,720 sf	\$94.87	\$379.47
TOTAL CURRENT CHARGES				\$379.47

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-13-0002
SERVICE ADDRESS	703 S HIGH ST
ANNUAL FEE	\$379.47
ANNUAL FEE IF PAID BY 1/31/17	7.59
QUARTERLY FEE	\$94.87
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA THE
 STATE SYSTM OF HIGHER EDUC
 201 CARTER DR
 STE 200
 WEST CHESTER, PA 19382

CURRENT ASSESSMENT	\$2704.93
TOTAL DUE BY 12/31/2017	\$2704.93

ACCOUNT NUMBER	1-13-0003	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	733 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	6	33,643 sf	\$676.23	\$2704.93
TOTAL CURRENT CHARGES				\$2704.93

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-13-0003
SERVICE ADDRESS	733 S HIGH ST
ANNUAL FEE	\$2704.93
ANNUAL FEE IF PAID BY 1/31/17	54.09
QUARTERLY FEE	\$676.23
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Notice of Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA OF THE
 STATE ETAL
 201 CARTER DR
 STE 200
 WEST CHESTER, PA 19383

CURRENT ASSESSMENT	\$221.16
TOTAL DUE BY 12/31/2017	\$221.16

ACCOUNT NUMBER	1-13-0008		Borough of West Chester 401 East Gay Street West Chester PA 19380 (610) 436-1350	
CUSTOMER	WEST CHESTER UNIVERSITY OF PA			
SERVICE ADDRESS	702 S WALNUT ST WEST CHESTER PA 19382			
BILL DATE	12/02/2016			
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
Annual Stream Protection Fee	5	2,659 sf	\$55.29	\$221.16
TOTAL CURRENT CHARGES				\$221.16

Please detach below perforation and return with payment

ACCOUNT NUMBER	1-13-0008
SERVICE ADDRESS	702 S WALNUT ST
ANNUAL FEE	\$221.16
ANNUAL FEE IF PAID BY 1/31/17	4.42
QUARTERLY FEE	\$55.29
QUARTERLY FEE DUE	3/31/2017

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

EXHIBIT L

[2018 COMMONWEALTH TITLED PROPERTIES INVOICES]

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 West Chester, PA 19383

2018 ASSESSMENT	\$2,395.94
Annual Assessment Due	\$2,395.94

ACCOUNT NUMBER	1-12-0244-1		Borough of West Chester	
CUSTOMER	COMMONWEALTH OF PA		401 East Gay Street	
SERVICE ADDRESS	675 S CHURCH ST		West Chester PA 19380	
BILL DATE	WEST CHESTER PA 19382		(610) 436-1350	
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	29,800 sf	\$598.98	\$2,395.94
TOTAL CURRENT CHARGES				\$2,395.94

Please detach below perforation and return with payment

Use the code 577896 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0244-1
SERVICE ADDRESS	675 S CHURCH ST
ANNUAL FEE	\$2,395.94
ANNUAL FEE IF PAID BY 1/31/2018	\$2,348.02
QUARTERLY FEE	\$598.98
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 West Chester, PA 19383

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

2018 ASSESSMENT	\$71,045.78
Annual Assessment Due	\$71,045.78

ACCOUNT NUMBER	1-12-0243		Borough of West Chester	
CUSTOMER	COMMONWEALTH OF PA		401 East Gay Street	
SERVICE ADDRESS	705 S NEW ST		West Chester PA 19380	
BILL DATE	WEST CHESTER PA 19382		(610) 436-1350	
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	883,654 sf	\$17,761.44	\$71,045.78
TOTAL CURRENT CHARGES				\$71,045.78

Please detach below perforation and return with payment

Use the code 577970 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0243
SERVICE ADDRESS	705 S NEW ST
ANNUAL FEE	\$71,045.78
ANNUAL FEE IF PAID BY 1/31/2018	\$69,624.86
QUARTERLY FEE	\$17,761.44
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PENNSYLVANIA
 201 Carter Drive
 Suite 500
 West Chester, PA 19383

2018 ASSESSMENT	\$7,706.48
Annual Assessment Due	\$7,706.48

ACCOUNT NUMBER	1-12-0243-MH	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PENNSYLVANIA	401 East Gay Street		
SERVICE ADDRESS	50 SHARPLESS ST MCCARTHY HALL WEST CHESTER PA 19383	West Chester PA 19380		
BILL DATE		(610) 436-1350		
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	95,852 sf	\$1,926.62	\$7,706.48
TOTAL CURRENT CHARGES				\$7,706.48

Please detach below perforation and return with payment

Use the code 577955 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0243-MH
SERVICE ADDRESS	50 SHARPLESS ST
ANNUAL FEE	\$7,706.48
ANNUAL FEE IF PAID BY 1/31/2018	\$7,552.36
QUARTERLY FEE	\$1,926.62
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 WEST CHESTER UNIVERSITY
 201 Carter Drive, Suite 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$180.96
Annual Assessment Due	\$180.96

ACCOUNT NUMBER	1-12-0246	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	13 UNIVERSITY AV	West Chester PA 19380		
BILL DATE	WEST CHESTER PA 19382	(610) 436-1350		
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	4	2,079 sf	\$45.24	\$180.96
TOTAL CURRENT CHARGES				\$180.96

Please detach below perforation and return with payment

Use the code 576418 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0246
SERVICE ADDRESS	13 UNIVERSITY AV
ANNUAL FEE	\$180.96
ANNUAL FEE IF PAID BY 1/31/2018	\$177.34
QUARTERLY FEE	\$45.24
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 West Chester, PA 19383

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

2018 ASSESSMENT	\$19,221.21
Annual Assessment Due	\$19,221.21

ACCOUNT NUMBER	1-12-0250	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	25 W ROSEDALE AV	West Chester PA 19380		
BILL DATE	WEST CHESTER PA 19382	(610) 436-1350		
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	239,070 sf	\$4,805.30	\$19,221.21
TOTAL CURRENT CHARGES				\$19,221.21

Please detach below perforation and return with payment

Use the code 577966 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0250
SERVICE ADDRESS	25 W ROSEDALE AV
ANNUAL FEE	\$19,221.21
ANNUAL FEE IF PAID BY 1/31/2018	\$18,836.79
QUARTERLY FEE	\$4,805.30
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 West Chester, PA 19383

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

2018 ASSESSMENT	\$1,974.14
Annual Assessment Due	\$1,974.14

ACCOUNT NUMBER	1-12-0250-1			Borough of West Chester 401 East Gay Street West Chester PA 19380 (610) 436-1350	
CUSTOMER	COMMONWEALTH OF PA				
SERVICE ADDRESS	720 S HIGH ST WEST CHESTER PA 19382				
BILL DATE					
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE	
2018 Annual Stream Protection Fee	6	24,554 sf	\$493.53	\$1,974.14	
TOTAL CURRENT CHARGES				\$1,974.14	

Please detach below perforation and return with payment

Use the code 577881 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0250-1
SERVICE ADDRESS	720 S HIGH ST
ANNUAL FEE	\$1,974.14
ANNUAL FEE IF PAID BY 1/31/2018	\$1,934.66
QUARTERLY FEE	\$493.53
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 WEST CHESTER, PA 19383

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

2018 ASSESSMENT	\$991.46
Annual Assessment Due	\$991.46

ACCOUNT NUMBER	1-12-0253	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	615 S HIGH ST	West Chester PA 19380		
BILL DATE	WEST CHESTER PA 19382	(610) 436-1350		
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	12,332 sf	\$247.87	\$991.46
TOTAL CURRENT CHARGES				\$991.46

Please detach below perforation and return with payment

Use the code 577782 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0253
SERVICE ADDRESS	615 S HIGH ST
ANNUAL FEE	\$991.46
ANNUAL FEE IF PAID BY 1/31/2018	\$971.63
QUARTERLY FEE	\$247.87
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 West Chester, PA 19383

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

2018 ASSESSMENT	\$2,244.88
Annual Assessment Due	\$2,244.88

ACCOUNT NUMBER	1-09-1066		Borough of West Chester 401 East Gay Street West Chester PA 19380 (610) 436-1350	
CUSTOMER	COMMONWEALTH OF PA			
SERVICE ADDRESS	25 SHARPLESS ST WEST CHESTER PA 19382			
BILL DATE				
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	27,921 sf	\$561.22	\$2,244.88
TOTAL CURRENT CHARGES				\$2,244.88

Please detach below perforation and return with payment

Use the code 577893 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-09-1066
SERVICE ADDRESS	25 SHARPLESS ST
ANNUAL FEE	\$2,244.88
ANNUAL FEE IF PAID BY 1/31/2018	\$2,199.98
QUARTERLY FEE	\$561.22
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

COMMONWEALTH OF PA
 201 Carter Drive
 Suite 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$7,706.48
Annual Assessment Due	\$7,706.48

ACCOUNT NUMBER	1-12-0244	Borough of West Chester		
CUSTOMER	COMMONWEALTH OF PA	401 East Gay Street		
SERVICE ADDRESS	25 UNIVERSITY AV	West Chester PA 19380		
BILL DATE	WEST CHESTER PA 19382	(610) 436-1350		
SERVICE FOR	TIER	IMPERVIOUS AREA (SP)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	95,852 sf	\$1,926.62	\$7,706.48
TOTAL CURRENT CHARGES				\$7,706.48

Please detach below perforation and return with payment

Use the code 577956 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0244
SERVICE ADDRESS	25 UNIVERSITY AV
ANNUAL FEE	\$7,706.48
ANNUAL FEE IF PAID BY 1/31/2018	\$7,552.36
QUARTERLY FEE	\$1,926.62
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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EXHIBIT M

[2018 WCU TITLED PROPERTIES INVOICES]

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA
 201 Carter Drive
 Suite 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$1,376.84
Annual Assessment Due	\$1,376.84

ACCOUNT NUMBER	1-09-1085	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	15 SHARPLESS ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE				
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	17,125 sf	\$344.21	\$1,376.84
TOTAL CURRENT CHARGES				\$1,376.84

Please detach below perforation and return with payment

Use the code 577837 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-09-1085
SERVICE ADDRESS	15 SHARPLESS ST
ANNUAL FEE	\$1,376.84
ANNUAL FEE IF PAID BY 1/31/2018	\$1,349.31
QUARTERLY FEE	\$344.21
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY
 201 Carter Drive
 Suite 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$180.96
Annual Assessment Due	\$180.96

ACCOUNT NUMBER	1-12-0245	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY	401 East Gay Street		
SERVICE ADDRESS	15 UNIVERSITY AV WEST CHESTER PA 19382	West Chester PA 19380 (610) 436-1350		
BILL DATE				
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	4	2,071 sf	\$45.24	\$180.96
TOTAL CURRENT CHARGES				\$180.96

Please detach below perforation and return with payment

Use the code 576419 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0245
SERVICE ADDRESS	15 UNIVERSITY AV
ANNUAL FEE	\$180.96
ANNUAL FEE IF PAID BY 1/31/2018	\$177.34
QUARTERLY FEE	\$45.24
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA STATE
 SYSTEM OF HIGHER EDUCATI
 201 Carter Drive
 Suite 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$281.06
Annual Assessment Due	\$281.06

ACCOUNT NUMBER	1-12-0247		Borough of West Chester 401 East Gay Street West Chester PA 19380 (610) 436-1350	
CUSTOMER	WEST CHESTER UNIVERSITY OF PA			
SERVICE ADDRESS	624 S HIGH ST WEST CHESTER PA 19382			
BILL DATE				
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	3,496 sf	\$70.26	\$281.06
TOTAL CURRENT CHARGES				\$281.06

Please detach below perforation and return with payment

Use the code 577171 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-12-0247
SERVICE ADDRESS	624 S HIGH ST
ANNUAL FEE	\$281.06
ANNUAL FEE IF PAID BY 1/31/2018	\$275.44
QUARTERLY FEE	\$70.26
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

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Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA OF THE
 STATE ETAL
 201 CARTER DR
 STE 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$711.39
Annual Assessment Due	\$711.39

ACCOUNT NUMBER	1-13-0001	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	701 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE				
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	8,848 sf	\$177.85	\$711.39
TOTAL CURRENT CHARGES				\$711.39

Please detach below perforation and return with payment

Use the code 577719 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-13-0001
SERVICE ADDRESS	701 S HIGH ST
ANNUAL FEE	\$711.39
ANNUAL FEE IF PAID BY 1/31/2018	\$697.17
QUARTERLY FEE	\$177.85
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

00000047691900000457000000142278017

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA OF THE
 STATE ETAL
 201 CARTER DR
 STE 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$379.47
Annual Assessment Due	\$379.47

ACCOUNT NUMBER	1-13-0002		Borough of West Chester	
CUSTOMER	WEST CHESTER UNIVERSITY OF PA		401 East Gay Street	
SERVICE ADDRESS	703 S HIGH ST		West Chester PA 19380	
BILL DATE	WEST CHESTER PA 19382		(610) 436-1350	
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	4,720 sf	\$94.87	\$379.47
TOTAL CURRENT CHARGES				\$379.47

Please detach below perforation and return with payment

Use the code 577463 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-13-0002
SERVICE ADDRESS	703 S HIGH ST
ANNUAL FEE	\$379.47
ANNUAL FEE IF PAID BY 1/31/2018	\$371.88
QUARTERLY FEE	\$94.87
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

00000047666300000457000000075894016

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA THE
 STATE SYSTM OF HIGHER EDUC
 201 CARTER DR
 STE 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$2,704.93
Annual Assessment Due	\$2,704.93

ACCOUNT NUMBER	1-13-0003	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	733 S HIGH ST	West Chester PA 19380		
	WEST CHESTER PA 19382	(610) 436-1350		
BILL DATE				
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	6	33,643 sf	\$676.23	\$2,704.93
TOTAL CURRENT CHARGES				\$2,704.93

Please detach below perforation and return with payment

Use the code 577908 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-13-0003
SERVICE ADDRESS	733 S HIGH ST
ANNUAL FEE	\$2,704.93
ANNUAL FEE IF PAID BY 1/31/2018	\$2,650.84
QUARTERLY FEE	\$676.23
QUARTERLY FEE DUE	3/31/2018

To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

00000047710800000457000000540986012

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

**West Chester Borough Stream
 Protection Fee Annual Notice of
 Assessment**

The Stream Protection Fee provides a dedicated funding source for the expenses associated with the Borough's Stormwater Management System.

WEST CHESTER UNIVERSITY OF PA OF THE
 STATE ETAL
 201 CARTER DR
 STE 500
 WEST CHESTER, PA 19383

2018 ASSESSMENT	\$221.16
Annual Assessment Due	\$221.16

ACCOUNT NUMBER	1-13-0008	Borough of West Chester		
CUSTOMER	WEST CHESTER UNIVERSITY OF PA	401 East Gay Street		
SERVICE ADDRESS	702 S WALNUT ST	West Chester PA 19380		
BILL DATE	WEST CHESTER PA 19382	(610) 436-1350		
SERVICE FOR	TIER	IMPERVIOUS AREA (SF)	QUARTERLY FEE	ANNUAL FEE
2018 Annual Stream Protection Fee	5	2,659 sf	\$55.29	\$221.16
TOTAL CURRENT CHARGES				\$221.16

Please detach below perforation and return with payment

Use the code 576808 to sign-up online at
<https://WestChesterBorough.secure.munibilling.com>

ACCOUNT NUMBER	1-13-0008
SERVICE ADDRESS	702 S WALNUT ST
ANNUAL FEE	\$221.16
ANNUAL FEE IF PAID BY 1/31/2018	\$216.74
QUARTERLY FEE	\$55.29
QUARTERLY FEE DUE	3/31/2018

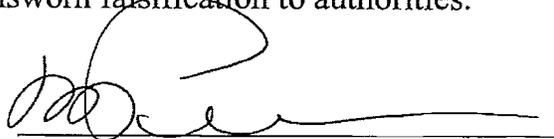
To pay for full year (with 2% discount), remit this stub with amount shown above. To pay quarterly (no discount), remit each payment stub with the amount due by the quarterly due date(s).

Borough of West Chester
 401 East Gay Street
 West Chester, PA 19380

00000047600800000457000000044232015

VERIFICATION

I, Michael Perrone, hereby verify that I am the Borough Manager for the Borough of West Chester, and that I am authorized to execute this Verification on its behalf, and that the facts set forth in the foregoing Action for Declaratory Judgment are true and correct to the best of my knowledge, information and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Michael Perrone', is written over a horizontal line.

MICHAEL PERRONE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER

829 Paoli Pike

West Chester, Pennsylvania 19380-4551

Plaintiff

v.

PENNSYLVANIA STATE SYSTEM
OF HIGHER EDUCATION

2986 North Second Street

Harrisburg, Pennsylvania 17110-1201

&

WEST CHESTER UNIVERSITY
OF PENNSYLVANIA OF THE
STATE SYSTEM OF HIGHER EDUCATION

Defendants

Original Jurisdiction

CERTIFICATION OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: April 13, 2018

Respectfully submitted,

BUCKLEY, BRION, MCGUIRE & MORRIS LLP

By:



Michael S. Gill, Esquire
Attorneys for Plaintiff
The Borough of West Chester

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

NOTICE TO PLEAD

TO: Petitioner, The Borough of West Chester

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Preliminary Objection within thirty (30) days of service or within such other period of time as the Court may direct, whichever is shorter, or a judgment may be entered against you.

Dated: May 23, 2018

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
Pa. ID No. 209495
Deputy Attorney General

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
1600 Arch Street
Philadelphia, PA 19103
Telephone: (215) 560-2940
Fax: (717) 772-4526
skovatis@attorneygeneral.gov

JEFFREY MOZDZIOCK
Pa. ID No. 320543
Deputy Attorney General

KELI M. NEARY
Acting Chief Deputy Attorney General
Civil Litigation Section

Counsel for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

ORDER

AND NOW, this ___ day of _____, 2018, upon consideration of Respondents’ Preliminary Objection to Petitioner’s Action for Declaratory Judgment, and any response thereto, the preliminary objection is SUSTAINED and the Action for Declaratory Judgment is DISMISSED WITH PREJUDICE.

, J.

COMMONWEALTH OF
PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
BY: STEPHEN R. KOVATIS
DEPUTY ATTORNEY GENERAL
ID No. 209495
JEFFREY MOZDZIOCK
DEPUTY ATTORNEY GENERAL
ID No. 320543

1600 Arch Street
Philadelphia, PA 19103
Telephone: (215) 560-2940
Fax: (215) 560-1031

Attorneys for: Respondents
Pennsylvania State System of
Higher Education and West
Chester University

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :

Petitioner, :

v. :

PENNSYLVANIA STATE SYSTEM
OF HIGHER EDUCATION and :

WEST CHESTER UNIVERSITY OF
PENNSYLVANIA OF THE STATE
SYSTEM OF HIGHER
EDUCATION, :

Respondents. :

Original Jurisdiction

No. 260 MD 2018

**RESPONDENTS' PRELIMINARY OBJECTION TO
PETITIONER'S ACTION FOR DECLARATORY JUDGMENT**

Respondents Pennsylvania State System of Higher Education (“State System”) and West Chester University of Pennsylvania of the State System of Higher Education (“University” or, collectively with the State System, “Respondents”), by counsel, file this Preliminary Objection to Petitioner’s Action of Declaratory Judgment, and in support thereof states as follows:

INTRODUCTION

This case concerns the power of a political subdivision to levy a tax or fee on a superior sovereign entity to fund infrastructure projects for stormwater management. It is long established that a local authority possesses no such authority to tax Commonwealth entities. Additionally, whether characterized as a tax or fee, the local authority here lacks the required express statutory authority to impose a duty to pay on the Commonwealth.

This case presents a straightforward question of law that requires judgment in favor of Respondents.

BACKGROUND

1. This is a declaratory judgment action brought by the Borough of West Chester (“Borough”) against the State System and the University, a member institution of the State System. Action for Declaratory Judgment (“Pet.”), attached as Ex. A, ¶¶ 1-9.

2. A “large part” of the University sits within the Borough. Pet. ¶ 11-14.

3. Federal and state regulations require the Borough “to obtain a permit and comply with its provisions for stormwater discharges from its Municipal Separate Storm Sewer System (MS4) under the National Pollutant Discharge Elimination System (NPDES).” Pet. Ex. C. at 2; *see also* Pet. ¶¶ 31-45.

4. The University is also required to, and does actively, maintain its own individual permit for its MS4 under the NPDES. *See, e.g.*, MS4 Annual Report Form, attached as Ex. B (report from previous year).

5. Under state law, the Borough can recover up to 75% of its costs related to its approved storm water management plan from the Commonwealth through the Department of Environmental Protection. *See* 32 P.S. § 680.17.

6. In 2016, the Borough enacted an ordinance requiring owners of developed property within the Borough to pay an assessment for stormwater management (“Stormwater Tax”). Pet. ¶¶ 15-18; Ordinance No. 10-2016, Pet. Ex. C, attached as Ex. C (“Ordinance”).

7. The Borough instituted the Stormwater Tax to offset the costs it was incurring “to operate and maintain [its] stormwater management facilities and infrastructure” due to “increased regulatory requirements.” Ordinance at 1-2.

8. The Stormwater Tax is assessed on the owners of real property within the Borough “where manmade changes have been made which add impervious surfaces to the property.” Pet. ¶ 75.

9. The amount of the Stormwater Tax depends on the total amount of impervious surface on the property. Pet. ¶ 74.

10. To determine the Stormwater Tax, properties are first placed into tiers based on the total impervious surface area. Pet. ¶¶ 80-84; Ordinance at 7.

11. Each tier is assigned a multiplier which is applied to a “base rate”—set by the Borough at \$6.70 per 1,000 square feet of impervious cover—to determine the final Stormwater Tax. Pet. ¶ 87; Ordinance at 9.

12. The Borough avers that all revenue generated by the Stormwater Tax will be deposited into a dedicated fund which can be used for any purpose set forth in the Ordinance. Pet. ¶¶ 88-90.

13. The Borough sent invoices seeking to assess a Stormwater Tax from the Respondents, who replied by informing the Borough that any such charge was improper under the Respondents’ tax immunity and declining to remit payment. Pet. ¶¶ 20-25.

**PRELIMINARY OBJECTION TO COUNT I:
DEMURRER (Rule 1028(a)(4))**

14. Respondents incorporate the preceding paragraphs as if set forth at length.

15. A party may file a preliminary objection to any pleading on the grounds that it is legally insufficient. Pa. R. Civ. P. 1028(a)(4).

16. Here, the Action for Declaratory Judgment is insufficient as a matter of law because both the State System and University are entitled to tax immunity as Commonwealth entities, and the Stormwater Tax is a tax.

Respondents Are Commonwealth Entities Immune from Local Taxation

17. The parties do not dispute that both the State System and the University are Commonwealth entities, which would entitle them to the Commonwealth's tax immunity. Pet. ¶ 106.

The Stormwater Tax Is Subject to the Commonwealth's Tax Immunity

18. “[P]roperty owned by the Commonwealth and its agencies remains unaffected by—or immune from—[local taxation] power absent express statutory authorization to the contrary.” *Lehigh-Northampton Airport Auth. v. Lehigh Cty. Bd. of Assessment Appeals*, 585 Pa. 657, 669, 889 A.2d 1168, 1175 (2005).

19. Government-owned property is presumed to be immune from local taxation, and it is the taxing authority's burden to establish the taxability of a property. *Norwegian Twp. v. Schuylkill Cty. Bd. of Assessment Appeals*, 74 A.3d 1124, 1135 (Pa. Commw. Ct. 2013).

20. It is long established that taxes “proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no

return or special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all. . . .” *Broad St. Sewickley Methodist Episcopal Church’s Appeal*, 30 A. 1007 (Pa. 1895) (quoting *Illinois Central R.R. Co. v. Decatur*, 147 U.S. 190 (1893)).

21. An assessment—that is, a fee for local infrastructure improvements—is a species of tax subject to tax immunity. *Southwest Del. Cty. Mun. Auth. v. Aston Twp.*, 413 Pa. 526, 530, 198 A.2d 867, 870 (1964).

22. The Stormwater Tax is a form of real estate tax—a payment by a property owner assessed based on a condition of the subject property.

23. The Stormwater Tax is a tax because it compels the payment of money for the environmental benefit of all citizens, and it does not render any special benefit to Commonwealth property any greater than the general benefit.

24. Even if the Stormwater Tax can be considered an assessment rather than a general tax, because it is dedicated only to stormwater infrastructure projects, it is still subject to the Commonwealth’s tax immunity.

25. The Stormwater Tax is also not a fee for service.

26. When a municipality performs certain functions in a “proprietary or quasiprivate capacity,” it may collect on a theory “based upon contract rather than taxation,” but only an amount “reasonably proportional to the value of the product

or service received.” *Supervisors of Manheim Twp., Lancaster Cty. v. Workman*, 350 Pa. 168, 173, 38 A.2d 273, 276 (1944).

27. Here, the Borough is not seeking a payment reasonably proportional to the value of a product or service it provided to the Commonwealth in a quasi-private capacity akin to contract, like gas or garbage collection, but rather it seeks the authority to impose payment on Commonwealth property to fund infrastructure projects that have a communal, environmental benefit.

Even if the Stormwater Tax Is Not a Tax, State Law Does Not Authorize the Borough to Compel Payment from a Commonwealth Entity

28. Political subdivisions like the Borough do not have general authority to levy taxes or fees; it may do so only if given the authority to do so under state law. *Lehigh-Northampton Airport Auth.*, 585 Pa. at 669, 889 A.2d at 1175 (“Because the power to tax is vested within the General Assembly, real estate is immune from local taxation unless that body has granted taxing authority to political subdivisions.”); *accord Delaware Cty. Solid Waste Auth. v. Berks Cty. Bd. of Assessment Appeals*, 541 Pa. 81, 85, 626 A.2d 528, 530 (1993).

29. The authority to levy any kind of tax or charge against a Commonwealth entity must be made expressly. *Southwest Del. Cty. Mun. Auth.*, 413 Pa. at 534, 198 A.2d at 872 (noting the presumption of immunity and requiring statutory authority that “demonstrate[s] *clearly* and *unequivocally* the legislative intent to remove such exemption” (emphasis in original)).

30. The Ordinance sets forth two possible sources of the Borough’s authority under state law: the Storm Water Management Act, 32 P.S. § 680.1 *et seq.*, and the Clean Streams Law, 35 P.S. § 691.1 *et seq.*¹ *See* Pet. Ex. C at 3.

31. The Storm Water Management Act does not authorize the Borough to impose any tax, fee, or assessment against a Commonwealth entity (or anyone else) to raise revenue to comply with the Borough’s obligations. *See generally* 32 P.S. § 680.1 *et seq.*

32. In fact, in describing who may be subject to any penalty, the Storm Water Management Act explicitly carved out the Commonwealth, its agencies, and its properties. *See* 32 P.S. § 680.4 (defining “person” in this context to “exclude any department, board, bureau or agency of the Commonwealth”).

33. Notwithstanding this express exclusion in the Storm Water Management Act, the corresponding definition of “person” in the Ordinance—otherwise a verbatim copy of the text from the statute—conspicuously omits this exclusion of Commonwealth entities, without citing any alternative source of statutory authority. *See* Pet. Ex. C at 4.

34. Although the Clean Streams Law expressly authorizes the Pennsylvania Department of Environmental Protection to collect certain fines, fees,

¹ The other two cited authorities are a federal statute and the Borough’s Home Rule Charter, but these cannot convey the necessary authority under state law.

and costs that must be deposited into a Clean Water Fund, *see* 35 P.S. § 691.8(a), and it authorizes a political subdivision to issue “bonds, revenue certificates or other obligations” to finance its obligations under that statute related to sewage pollution, *see* 35 P.S. §§ 691.211-691.213, it does **not** authorize political subdivisions to impose any tax, fee, or assessment against a Commonwealth entity.

35. Given the absence of any statutory authority, the Borough may not impose any stormwater tax, fee, or assessment of any kind against a Commonwealth entity, including the State System and University.

WHEREFORE, Respondents' Preliminary Objection should be sustained and Petitioner's Action for Declaratory Judgment should be dismissed with prejudice.

Dated: May 23, 2018

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
Pa. ID No. 209495
Deputy Attorney General

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
1600 Arch Street
Philadelphia, PA 19103
Telephone: (215) 560-2940
Fax: (717) 772-4526
skovatis@attorneygeneral.gov

JEFFREY MOZDZIOCK
Pa. ID No. 320543
Deputy Attorney General

KELI M. NEARY
Acting Chief Deputy Attorney General
Civil Litigation Section

Counsel for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATION PURSUANT TO Pa. R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 23, 2018

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
Pa. ID No. 209495
Deputy Attorney General

COMMONWEALTH OF PENNSYLVANIA
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Counsel for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing Entry of Appearance is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Electronic Service via PACFile and/or email

Kristin S. Camp, Esq.
Michael S. Gill, Esq.
BUCKLEY, BRION, MCGUIRE, & MORRIS LLP
118 West Market Street
West Chester, PA 19382
kcamp@buckleyllp.com; gillm@bluckleyllp.com

Counsel for Petitioner Borough of West Chester

Dated: May 23, 2018

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
Pa. ID No. 209495
Deputy Attorney General

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
1600 Arch Street
Philadelphia, PA 19103
Telephone: (215) 560-2940
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skovatis@attorneygeneral.gov

JEFFREY MOZDZIOCK
Pa. ID No. 320543
Deputy Attorney General

KELI M. NEARY
Acting Chief Deputy Attorney General
Civil Litigation Section

Counsel for Respondents

Exhibit “A”

Pennsylvania State System of Higher Education and Defendant West Chester University of Pennsylvania of the State System of Higher Education and, in support thereof, avers as follows:

Identification of Parties; Jurisdiction; Venue.

1. Plaintiff is the Borough of West Chester (the "Borough").
2. The Borough is a Home Rule Municipality organized and existing under and pursuant to the laws of the Commonwealth of Pennsylvania including, without limitation, the Pennsylvania Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901 *et seq.*
3. The Borough has a mailing address at 829 Paoli Pike, West Chester, Pennsylvania 19380-4551.
4. Pursuant to Article II of the Home Rule Charter of the Borough, the governing body of the Borough is the Borough Council ("Borough Council").
5. Defendants are Pennsylvania State System of Higher Education ("PASSHE"), and West Chester University of Pennsylvania of the State System of Higher Education ("WCU").
6. Pursuant to 24 P.S. § 20-2002-A.(a), PASSHE is a body corporate and politic constituting a public corporation and instrumentality of the Commonwealth of Pennsylvania.

7. Upon information and belief, PASSHE has a mailing address at 2986 North Second Street, Harrisburg, Pennsylvania 17110-1201.
8. Pursuant to 24 P.S. § 20-2002-A.(a), WCU is a constituent institution within PASSHE.
9. Upon information and belief, WCU has a mailing address at 700 South High Street, West Chester, Pennsylvania 19383.
10. The jurisdictional limits of the Borough extend over an area measuring 1.8 square miles, more or less, within an area generally *situate* within the geographic center of Chester County.
11. A large part of that portion of the campus of WCU known, generally, as North Campus (“North Campus”), is *situate* within the south-central portion of the area which is within the jurisdictional limits of the Borough, as aforesaid.
12. Upon information and belief, the area of North Campus within the jurisdictional limits of the Borough measures approximately fifty-seven (57) acres.
13. Upon information and belief, PASSHE, in the name of the Commonwealth of Pennsylvania, is the owner of fee simple title to those properties which form a part of North Campus within the jurisdictional limits of the Borough and which are more fully identified on Exhibit A attached hereto and incorporated herein by reference (collectively, the “Commonwealth Titled Properties”).

14. Upon information and belief, WCU is the owner of fee simple title to those properties which form a part of North Campus within the jurisdictional limits of the Borough and which are more fully identified on **Exhibit B** attached hereto and incorporated herein by reference (collectively, the “WCU Titled Properties”).
15. In or about 2016, Borough Council enacted the Borough of West Chester’s Stream Protection Fee Ordinance (the “Stream Protection Ordinance”).
16. A true, correct, and complete copy of the presently-in-force version of the Stream Protection Ordinance is attached hereto as **Exhibit C**.
17. On September 21, 2016, Borough Council adopted Resolution No. 11-2016, and thereby imposed the Stream Protection Fee (as hereinafter defined) upon the owners of all developed properties within the jurisdictional limits of the Borough which are benefitted by (A) the Borough Stormwater Collection and Conveyance System (as hereinafter defined) and (B) the public health, safety, and welfare enhancements which are afforded by Borough Stormwater Collection and Conveyance System.
18. A true, correct, and complete copy of Resolution No. 11-2016 is attached hereto as **Exhibit D**.
19. The Commonwealth Titled Properties and the WCU Titled Properties are subject to, and benefitted by (A) the Borough Stormwater Collection and Conveyance System and (B) the public health, safety, and welfare

enhancements which are afforded by the Borough Stormwater Collection and Conveyance System.

20. Notwithstanding that the Commonwealth Titled Properties and the WCU Titled Properties are subject to, and benefitted by (A) the Borough Stormwater Collection and Conveyance System and (B) the public health, safety, and welfare enhancements which are afforded by the Borough Stormwater Collection and Conveyance System, as aforesaid, on January 18, 2018, counsel for PASSHE sent to the Borough the letter attached hereto as **Exhibit E** (the "January 18, 2018 Letter").
21. Pursuant to the January 18, 2018 Letter, PASSHE informed the Borough that WCU "will not be paying the" Stream Protection Fee.
22. On February 23, 2018, counsel for the Borough sent to counsel for PASSHE the letter attached hereto as **Exhibit F** (the "February 23, 2018 Letter").
23. On March 5, 2018, counsel for the Borough sent to counsel for PASSHE the letter attached hereto as **Exhibit G** (the "March 5, 2018 Letter").
24. Pursuant to the February 23, 2018 Letter and the March 5, 2018 Letter, the Borough rejected PASSHE's and WCU's refusal to pay the Stream Protection Fee, and reiterated the Borough's expectation that those entities would, in fact, remit such payment.

25. As of the date of this Action for Declaratory Judgment, PASSHE and WCU have failed to remit payment of the Stream Protection Fee for 2017 and 2018.¹
26. The Borough brings this Action for Declaratory Judgment pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. § 7531 *et seq.*, in order to obtain from the Commonwealth Court a “declaration of rights, status, or other legal relations” between the Borough, PASSHE, and WCU with regard to the Stream Protection Ordinance, generally, and the Stream Protection Fee, specifically.
27. Pursuant to Section 761 of the Pennsylvania Judicial Code, “[t]he Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . [a]gainst the Commonwealth government, including any officer thereof [] acting in his official capacity” 42 Pa.C.S. § 761.
28. The Commonwealth Court has subject matter jurisdiction over this Action for Declaratory Judgment.
29. The Commonwealth Court has *in personam* jurisdiction over PASSHE and WCU.
30. The Commonwealth Court is the proper venue for this matter.

¹ The first year for which payment of the Stream Protection Fee was due was 2017.

Regulatory Requirements.

31. The Borough owns and operates a Small Municipal Separate Storm Sewer System (MS4), as that term is defined at Section 122.26(b)(16) of Title 40 of the Code of Federal Regulations (the “Borough Stormwater Collection and Conveyance System”).
32. The Borough Stormwater Collection and Conveyance System is a Small MS4, as that term is defined at Section 122.26(b)(17) of Title 40 of the Code of Federal Regulations.
33. Stormwater from the Borough Stormwater Collection and Conveyance System is discharged to various watercourses including Plum Run, Blackhorse Run, Taylor Run (and from those watercourse, to Brandywine Creek), and Goose Creek.
34. Pursuant to Section 122.26(a)(9)(i)(A) of Title 40 of the Code of Federal Regulations, in order for stormwater from the Borough Stormwater Collection and Conveyance System to be lawfully discharged, as aforesaid, the Borough must be covered under a National Pollutant Discharge Elimination System Permit (NPDES Permit).
35. Pursuant to Section 92a.32.(a) of Title 25 of the Pennsylvania Code, “[t]he provisions of 40 CFR 122.26(a), (b), (c)(1), (d), (e)(1), (3)-(9) and (f)-(g) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)) and 122.30-122.37 are incorporated [therein] by reference.”

36. In 2013, the Borough obtained NPDES Permit coverage for the Borough Stormwater Collection and Conveyance System under General Permit PAG-13 pursuant to NPDES Permit No. PAG130002 (the “Pre-Existing Borough MS4 NPDES Permit”).
37. Pursuant to applicable law, the Pre-Existing Borough MS4 NPDES Permit was due to expire on March 15, 2018.²
38. Several years ago, the Commonwealth of Pennsylvania Department of Environmental Protection (the “Department”) announced that it would replace General Permit PAG-13 with a new statewide General Permit to be known as the 2018 PAG-13 (the “2018 Statewide General Permit”).
39. On August 21, 2017, and pursuant to applicable law, the Borough submitted to the Department the Borough’s application for NPDES Permit No. PAI130026 (the “2018-2023 Term Borough MS4 Individual NPDES Permit Application”).³

² Notwithstanding that the Pre-Existing Borough MS4 NPDES Permit was due to expire on March 15, 2018, before that date the Department informed the Borough as follows.

The current statewide PAG-13 General Permit expires on March 15, 2018. A new PAG-13 General Permit becomes effective on March 16, 2018. If you are currently covered by the PAG-13 General Permit, as long as you have submitted a timely Notice of Intent (NOI) or individual permit application to renew your permit coverage, you are automatically covered by the new PAG-13 General Permit on March 16, 2018, and you must comply with the terms and conditions of the new General Permit, including any new requirements contained therein. This is true regardless of the expiration date of coverage identified on page 1 of the authorization to discharge under PAG-13 that you may have received in 2013 or 2014.

³ Because at least one watercourse to which the Borough Stormwater Collection and Conveyance System discharges is impaired for chemical nutrient levels (*i.e.* Goose Creek) and requires implementation of a TMDL (Total Maximum Daily Load) with regard to that nutrient, the Borough is not eligible for coverage under the 2018 Statewide General Permit. Rather, the Borough must obtain coverage pursuant to an Individual NPDES Permit. In

40. Pursuant to applicable law including, without limitation, Section 92a.32.(c) of Title 25 of the Pennsylvania Code, the Borough included within the 2018-2023 Term Borough MS4 Individual NPDES Permit Application information with regard to the following Minimum Control Measures which form the basis of the Borough's Stormwater Management Program of Best Management Practices (collectively, the "Minimum Control Measures"):
- A. public education & outreach;
 - B. public participation/involvement;
 - C. illicit discharge detection & elimination;
 - D. construction site runoff control;
 - E. post-construction runoff control; and
 - F. pollution prevention/good housekeeping.
41. As part of its preparation of the 2018-2023 Term Borough MS4 Individual NPDES Permit Application, the Borough was also required to prepare, as applicable, a Pollutant Reduction Plan (collectively, the "Pollutant Reduction Plan") and a TMDL Plan (the "TMDL Plan") with regard to those watercourses (A) to which the Borough discharges stormwater from the Borough Stormwater Collection and Conveyance System and (B) which are impaired for sediment and/or nutrients.⁴
42. The Pollutant Reduction Plan, as attached hereto as **Exhibit H**, forms a part of the 2018-2023 Term Borough MS4 Individual NPDES Permit Application.

order to obtain coverage pursuant to an Individual NPDES Permit, though, the Borough must still comply with, *inter alia*, the requirements as set forth in the 2018 Statewide General Permit.

⁴ Plum Run, Blackhorse Run, Taylor Run and Brandywine Creek are all impaired for sediment. Goose Creek is impaired for total phosphorus.

43. The TMDL Plan, as attached hereto as **Exhibit I**, forms a part of the 2018-2023 Term Borough MS4 Individual NPDES Permit Application.
44. The Borough expects that the Department will approve the 2018-2023 Term Borough MS4 Individual NPDES Permit Application and, in doing so, will issue to the Borough NPDES Permit No. PAI130026 (the “2018-2023 Term Borough MS4 Individual NPDES Permit”).
45. The Borough expects that, pursuant to the 2018-2023 Term Borough MS4 Individual NPDES Permit, the Borough will be required to implement the Pollutant Reduction Plan and the TMDL Plan.

Stormwater-Related Impairment; Public Health, Safety, and Welfare Concerns.

46. As noted by the Department,

[i]n 2016, the Department labeled approximately 19,000 miles of rivers and streams in Pennsylvania impaired for water supply, aquatic life, recreation, or fish consumption. Stormwater runoff pollution is one of the biggest reasons for this impairment.

<http://www.dep.pa.gov/Business/Water/CleanWater/StormwaterMgmt/Pages/Be-Stormwater-Smart-.aspx>

47. The United States Environmental Protection Agency states that

[s]torm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating

pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

40 C.F.R. § 122.30(c).

48. The Department states that

[s]tormwater carries an enormous amount of pollution, including sediment, car oil, lawn fertilizers, pesticides, pet poop (and viruses and bacteria), and cigarette butts. As you might expect, this has many negative impacts on streams and rivers.

<http://www.dep.pa.gov/Business/Water/CleanWater/StormwaterMgmt/Pages/Be-Stormwater-Smart-.aspx>

49. In order to address these (and other) findings, the Borough must comply with certain regulatory requirements with regard to stormwater including, *inter alia*, those to which reference is made in this Action for Declaratory Judgment.

50. Upon information and belief, there is a direct relationship between the amount of impervious surface within a given watershed and the health and quality of the watercourse (and its tributaries) within that watershed, as well as public health, safety, and welfare concerns related to flooding and other stormwater-related issues.

51. Upon information and belief, the impervious area of that portion of North Campus which is *situate* within the jurisdictional limits of the Borough

measures approximately thirty-two (32) acres (the “North Campus Impervious Area”).

52. Upon information and belief, the North Campus Impervious Area constitutes nearly eight percent (8%) of the total impervious area within the Borough.
53. Upon information and belief, stormwater which flows from that portion of North Campus which is *situate* within the jurisdictional limits of the Borough either (A) enters and flows through the Borough Stormwater Collection and Conveyance System via infrastructure which traverses certain parts of North Campus or (B) flows directly into a nearby watercourse.
54. Upon information and belief, stormwater which flows from that portion of North Campus which is *situate* within the jurisdictional limits of the Borough and which enters the Borough Stormwater Collection and Conveyance System, as aforesaid, is, from there, discharged to a receiving watercourse.
55. Stormwater from the Borough Plum Run Watershed ultimately flows to Brandywine Creek.
56. Upon information and belief, Plum Run is characterized by an impaired status due to siltation (the “Plum Run Stormwater-Related Impairment”).
57. Upon information and belief, Brandywine Creek is characterized by an impaired status due to siltation (the “Brandywine Creek Stormwater-Related Impairment”).

58. Pursuant to applicable law, the Borough is implementing Minimum Control Measures and the Selected BMPs in order to remediate existing and ongoing stormwater-related damage to certain watercourses including, *inter alia*, the Plum Run Stormwater-Related Impairment and the Brandywine Creek Stormwater-Related Impairment.
59. Pursuant to the Pollutant Reduction Plan, by the date which is five (5) years from the date on which the Department shall issue to the Borough the 2018-2023 Term Borough MS4 Individual NPDES Permit, the Minimum Control Measures and the Selected BMPs (as hereinafter defined) (which the Borough is implementing pursuant to the Pollutant Reduction Plan) must operate to remove 59,879 pounds of sediment from Brandywine Creek per year (*i.e.* ten percent (10%) of the existing annual load of sediment within Brandywine Creek).⁵
60. As more fully set forth in the Pollutant Reduction Plan, the Borough anticipates that implementation of the Minimum Control Measures and the Selected BMPs will allow the Borough to realize a reduction of 67,271 pounds per year.
61. Stormwater from properties *situate* within the jurisdictional limits of the Borough drains to Goose Creek.
62. Upon information and belief, Goose Creek is characterized by an impaired status due to total phosphorus (the “Goose Creek Impairment”).

⁵ As more fully set forth in the Pollutant Reduction Plan and the TMDL Plan, the Borough intends to accomplish the goals there set forth through, *inter alia*, the construction of infiltration facilities, street sweeping, new tree plantings, and streambank restoration projects (collectively, the “Selected BMPs”).

63. Pursuant to the TMDL Plan, the Borough is implementing Minimum Control Measures and the Selected BMPs in order to remediate existing and ongoing stormwater-related damage to certain watercourses including, *inter alia*, the Goose Creek Impairment.
64. Pursuant to the TMDL Plan, by the date which is five (5) years from the date on which the Department shall issue to the Borough the 2018-2023 Term Borough MS4 Individual NPDES Permit, the Minimum Control Measures and the Selected BMPs must operate to remove from Goose Creek 4.56 pounds per year of total phosphorus.
65. As more fully set forth in the TMDL Plan, the Borough anticipates that implementation of the Minimum Control Measures and the Selected BMPs will allow the Borough to realize (and exceed) the aforementioned total phosphorus removal goal.
66. Implementation of the Minimum Control Measures and the Selected BMPs will allow the Borough to realize the public health, safety, and welfare goals as more fully set forth in the Stream Protection Ordinance.

The Stream Protection Ordinance and the Stream Protection Fee.

67. In December of 2013, the Borough Stormwater Management Assessment Advisory Committee recommended adoption of a stormwater fee to fund compliance with the stormwater-related regulatory requirements which are imposed upon the Borough by the United States of America and the Commonwealth of Pennsylvania.

68. The then-WCU Vice President for Administration and Finance (Mr. Mark P. Mixner) was a member of the Borough Stormwater Management Assessment Advisory Committee and participated fully in that body's deliberations and discussions.
69. Borough Council adopted the Stream Protection Ordinance after making the legislative findings set forth in that document.
70. Those legislative findings include the truism that

[i]nadequate management of accelerated stormwater runoff resulting from land disturbance and development throughout a watershed can harm water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream beds and stream banks, thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations such as sediments, nutrients, heavy metals, and pathogens.
71. Those legislative findings also include acknowledgment of the fact that “[t]he Borough must adhere to increased regulatory requirements for managing the quantity and quality of stormwater runoff.”
72. Pursuant to applicable law, when it prepared the Pollutant Reduction Plan and the TMDL Plan, the Borough was required to identify the proposed mechanisms by which the Borough would fund the Selected BMPs.
73. At Section 94A-6.A. of the Stream Protection Ordinance, Borough Council adopted a fee (the “Stream Protection Fee”) as the mechanism by which the

Borough would raise revenue to fund the Selected BMPs and the Minimum Control Measures, and ordained as follows:

[f]or the use of, benefit by and the services rendered by the [Borough Stormwater Collection and Conveyance System], including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, a stream protection fee . . . as described, defined, and calculated herein is imposed upon each and every developed property within the Borough that is connected with, uses, is served by or is benefitted by the [Borough Stormwater Collection and Conveyance System], either directly or indirectly, and upon the owners of such developed property as set forth herein.

74. Properties for which the Stream Protection Fee is payable are characterized not by the fact that they are *situate* within the jurisdictional limits of the Borough but, rather, by their status as “developed” property which is “connected with, uses, is served by or is benefitted by” the Borough Stormwater Collection and Conveyance System.
75. Pursuant to the Stream Protection Ordinance, the term “developed” is defined as

[p]roperty where manmade changes have been made which add impervious surfaces to the property, which changes may include, but are not limited to, buildings or other structures for which a building permit must be obtained under the requirements of the Pennsylvania Building Code and [the Borough] Code, mining, dredging, filling, grading, paving, excavation or drilling operations, or the storage of equipment or materials.

76. Each of the Commonwealth Titled Properties and the WCU Titled Properties is developed, as that term is defined in the Stream Protection Ordinance.
77. Each of the Commonwealth Titled Properties and the WCU Titled Properties is connected with, uses, is served by, or is benefitted by the Borough Stormwater Collection and Conveyance System.
78. The amount of the Stream Protection Fee for which the owner of a developed property is responsible is dependent upon the amount of impervious surface at the subject property.
79. Pursuant to the Stream Protection Ordinance, the owner of a developed property can reduce the amount of the Stream Protection Fee with regard to that property by reducing the amount of impervious surface at that property or otherwise achieving site-specific credits against the Stream Protection Fee.
80. Pursuant to the Stream Protection Ordinance, Borough Council established “[i]mpervious area property tiers . . . [f]or the purposes of determining the appropriate assessment rate for the [Stream Protection Fee]”
81. Borough Council ordained that “[i]mpervious area property tiers were developed using impervious surfaces based on Chester County’s geographic information system (GIS) impervious cover data layer from 2010.”
82. As so established, a “Tier 4” property is one “where the total impervious surface area is greater than 2,000 square feet and less than or equal to 2,500 square feet.”

83. As so established, a “Tier 5” property is one “where the total impervious surface area is greater than 2,500 square feet and less than or equal to 3,000 square feet.”
84. As so established, a “Tier 6” property is one “where the total impervious surface area is greater than 3,000 square feet.”
85. Several of the Commonwealth Titled Properties and the WCU Titled Properties are either a Tier 4 property or a Tier 5 property, but most of the Commonwealth Titled Properties and the WCU Titled Properties are Tier 6 properties.
86. For purposes of calculating the Stream Protection Fee for a given property, Borough Council (acting pursuant to the Stream Protection Ordinance) adopted Resolution No. 11-2016.
87. Pursuant to Resolution No. 11-2016, Borough Council established the monthly amount of the “Base Fee,” as that term is defined in the Stream Protection Ordinance, at \$6.70 per 1,000 square feet of impervious cover on a given property.
88. All revenue generated by the Stream Protection Fee is, and will continue to be, “deposited into the West Chester Borough Stormwater Management Fund.”

89. The Borough uses the Stormwater Management Fund **only** for the purposes set forth in the Stream Protection Ordinance, which, by extension, include (but are not limited to) funding the Minimum Control Measures and Best Management Practices as set forth in the Pollutant Reduction Plan and the TMDL (as the same may be renewed, revised, updated, or otherwise amended from time-to-time) in order to comply with the regulatory requirements which are imposed upon the Borough by the United States of America and Commonwealth of Pennsylvania, respectively.
90. No revenue generated by the Stream Protection Fee will be used for any purpose other than as set forth in the Stream Protection Ordinance.

The Stream Protection Fee Invoices; Refusal to Pay.

91. The Borough sent to PASSHE the invoices attached hereto, collectively, as **Exhibit J**, and incorporated herein by reference (collectively, the “2017 Commonwealth Titled Properties Stream Protection Fee Invoices”).
92. The aggregate face value of amounts due under the 2017 Commonwealth Titled Properties Stream Protection Fee Invoices is One Hundred Five Thousand Seven Hundred Sixty and 85/100 Dollars (\$105,760.85).
93. The Borough sent to WCU the invoices attached hereto, collectively, as **Exhibit K**, and incorporated herein by reference (collectively, the “2017 WCU Titled Properties Stream Protection Fee Invoices”).

94. The aggregate face value of amounts due under the 2017 WCU Titled Properties Stream Protection Fee Invoices is Five Thousand Eight Hundred Fifty-Five and 81/100 Dollars (\$5,855.81).
95. The aggregate face value of the Stream Protection Fee for 2017 owed by PASSHE and WCU is One Hundred Eleven Thousand Six Hundred Sixteen and 66/100 Dollars (\$111,616.66) (the “2017 PASSHE/WCU Stream Protection Fee”).
96. The deadline for payment of the 2017 PASSHE/WCU Stream Protection Fee passed without PASSHE and/or WCU remitting to the Borough payment of the 2017 PASSHE/WCU Stream Protection Fee.
97. The Borough sent to PASSHE the invoices attached hereto, collectively, as **Exhibit L**, and incorporated herein by reference (collectively, the “2018 Commonwealth Titled Properties Stream Protection Fee Invoices”).⁶
98. The aggregate face value of amounts due under the 2018 Commonwealth Titled Properties Stream Protection Fee Invoices is One Hundred Thirteen Thousand Four Hundred Sixty-Seven and 33/100 Dollars (\$113,467.33).
99. The Borough sent to WCU the invoices attached hereto, collectively, as **Exhibit M**, and incorporated herein by reference (collectively, the “2018 WCU Titled Properties Stream Protection Fee Invoices”).

⁶ That certain property known as Tax Map Parcel No. 1-12-244 was not included in the 2017 Commonwealth Titled Properties Stream Protection Fee Invoices, but is included in the 2018 Commonwealth Titled Properties Stream Protection Fee Invoices.

100. The aggregate face value of amounts due under the 2018 WCU Titled Properties Stream Protection Fee Invoices is Five Thousand Eight Hundred Fifty-Five and 81/100 Dollars (\$5,855.81).
101. The aggregate face value of the Stream Protection Fee for 2018 owed by PASSHE and WCU is One Hundred Nineteen Thousand Three Hundred Twenty-Three and 14/100 Dollars (\$119,323.14) (the “2018 PASSHE/WCU Stream Protection Fee”).
102. The deadline for payment of the 2018 PASSHE/WCU Stream Protection Fee passed without PASSHE and/or WCU remitting to the Borough payment of the 2018 PASSHE/WCU Stream Protection Fee (or, as applicable, electing to pay the 2018 PASSHE/WCU Stream Protection Fee in quarterly installments and making the first quarterly payment thereof).

**COUNT I
DECLARATORY RELIEF**

103. The Borough incorporates herein Paragraph 1 through Paragraph 102 above as if here set forth in their entirety.
104. The Borough brings this Action for Declaratory Judgment pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. § 7531 *et seq.*, in order to obtain from the Commonwealth Court a “declaration of rights, status, or other legal relations” between the Borough, PASSHE, and WCU with regard to the Stream Protection Ordinance, generally, and the Stream Protection Fee, specifically.

105. The express purpose of the Declaratory Judgments Act is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” EQT Prod. Co. v. DEP, 130 A.3d 752, 755 (Pa. 2015) (quoting EQT Prod. Co. v. DEP, 114 A.3d 438 (Pa. Cmwlth. 2015) (quoting 42 Pa.C.S. § 7541(a)).
106. As a threshold matter, the Borough does not dispute the legal accuracy of PASSHE’s counsel’s statement that PASSHE and WCU are “immune to local taxation”
107. The Stream Protection Fee, however, is a fee for service, and not a tax.
108. Through various statutory mechanisms, the Borough is empowered to charge and collect the Stream Protection Fee with regard to the Commonwealth Titled Properties and the WCU Titled Properties.
109. As stated by PASSHE’s counsel in the January 18, 2018 Letter, counsel informed the Borough that WCU “will not be paying the” Stream Protection Fee.
110. Declaratory judgment, therefore, is necessary in order to establish PASSHE’s and WCU’s obligations under and pursuant to the Stream Protection Ordinance.

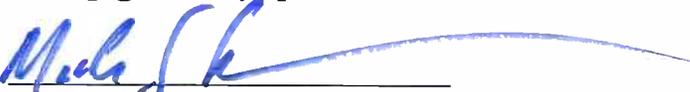
WHEREFORE, Plaintiff Borough of West Chester respectfully requests that the Commonwealth Court enter Declaratory Judgment confirming that PASSHE and WCU are responsible for payment of the Stream Protection Fee with regard to the Commonwealth Titled Properties and the WCU Titled Properties, as applicable, and that the Borough may enforce the Stream Protection Ordinance with regard to those properties.

Dated: April 13, 2018

Respectfully submitted,

**BUCKLEY, BRION,
MCGUIRE, & MORRIS LLP**

By: 
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By: 
Michael S. Gill, Esquire
Attorney ID No. 86140
gillm@buckleyllp.com

118 West Market Street
West Chester, Pennsylvania 19382

Exhibit “B”



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

MS4 ANNUAL REPORT FORM

FOR STORMWATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

Reporting Period

(Check appropriate block. Fill in the year for the reporting period you are submitting the report if not listed.)

- March 10, 2008 through March 9, 2009 (due June 9, 2009)
 March 10, 2009 through March 9, 2010 (due June 9, 2010)
 March 10, 2012 through March 9, 2013 (due June 9, 2013)

SECTION I – SMALL MS4 OPERATOR INFORMATION

1. **Name of MS4 Permittee and NPDES Permit Number**

Name: West Chester University of PA, PASSHE PAG: 130169 PAI: PAR10-G500
Co-permittee : _____

2. **Location**

Municipality: West Chester Borough, East Bradford Township, West Goshen Township
County: Chester
Watershed Name(s): Plum Run

3. **Contact Person from the MS4**

Name: Gail Fellows Title: Director EHS Phone: [REDACTED]
Fax: [REDACTED] Email: [REDACTED]

4. **Permittee Mailing Address**

Address: 201 Carter Drive Suite 100-EHS
City: West Chester State: Pa Zip Code: 19383

5. **MS4 Website (If applicable)**

URL: http://www.wcupa.edu www.depwebstate.pa.us/southeastro/site/default

6. **Permittee's Consultant/Engineer Information (If applicable)**

Company Name: _____
Consultant/Engineer Name: _____ Title: _____
Phone: _____ Fax: _____ Email: _____
Address: _____
City: _____ State: _____ Zip Code: _____

SECTION II – MCM INFORMATION

- 7A. Have you completed all required activities for?
- | | | |
|---------|---|-----------------------------|
| Year 1: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Year 2: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Year 3: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Year 4: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Year 5: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

- 7B. Complete the following section for each watershed-based or Act 167 Storm Water Management Plan.

Watershed Plan Name N/A

Is this an Act 167 Plan? Yes No

If yes, has DEP approved the plan? Yes No

If yes, give date: _____

Is the ordinance required by the plan enacted: Yes No

If yes, give effective date: _____

If the ordinance is not enacted, please provide the anticipated enactment date _____
and explain the status: _____

Watershed Plan Name _____

Is this an Act 167 Plan? Yes No

If yes, has DEP approved the plan? Yes No

If yes, give date: _____

Is the ordinance required by the plan enacted: Yes No

If yes, give effective date: _____

If the ordinance is not enacted, please provide the anticipated enactment date _____
and explain the status: _____

Watershed Plan Name _____

Is this an Act 167 Plan? Yes No

If yes, has DEP approved the plan? Yes No

If yes, give date: _____

Is the ordinance required by the plan enacted: Yes No

If yes, give effective date: _____

If the ordinance is not enacted, please provide the anticipated enactment date _____
and explain the status: _____

7C. Please provide current contact name and phone number information:

MCM #1

Public Education and Outreach on Storm Water Impacts

Name: Gail Fellows

Phone: [REDACTED]

MCM #2

Public Involvement/Participation

Name: Gail Fellows, Paul Morgan

Phone: [REDACTED]

MCM #3

Illicit Discharge Detection and Elimination (IDD&E)

Name: Gail Fellows, Delores Giardina

Phone: [REDACTED]

MCM #4

Construction Site Storm Water Runoff Control

Name: Delores Giardina

Phone: [REDACTED]

MCM #5

Post-Construction Storm Water Management in New Development and Redevelopment

Name: Gregory Cuprak

Phone: [REDACTED]

MCM #6

Pollution Prevention/Good Housekeeping for Municipal Operations

Name: Gregory Cuprak

Phone: [REDACTED]

MCM#1 - PUBLIC EDUCATION AND OUTREACH ON STORM WATER IMPACTS — MINIMUM CONTROL MEASURE

8A. **MS4s USING DEP PROTOCOL for this MCM**

BMP: Update Target Audience Information (Have you reviewed your public education plan for accuracy and content and made any relevant changes regarding your target audiences and their communication channels? If so, include/attach your revised plan.)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

The Public Education Plan was reviewed for accuracy and content in year 10. The target audience of the plan remains all employees, students, and visitors of the University. Public service announcements were added as new source of communication. These announcements were displayed on numerous digital display screens throughout the campus.

Several social media options are also being explored for future utilization to help reach and educate our audience more frequently.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

8B. **BMP: Continue public education and outreach.** (What was accomplished during the past permit year regarding: Developer education/outreach? Storm water ad in local newspaper? Provide posters or other information to schools and businesses? Storm drain stenciling/markings? Maintain website links and provide website educational info? Educational information in your newsletter? Any other public education/outreach?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

The campus Stormwater inlets were inspected and drain markings that were damaged, faded, or missing were replaced. The markers state "Don't Pollute, Flows to waterway" and display images of ducks, fish, swimmers, and a glass of drinking water.

An Environmental Health table was displayed at the University's Wellness Fair. The table contained information on the importance of stormwater and protecting water sheds.

Earth Week, April 14-April22, was celebrated by school clubs, faculty, students, and visitors to campus. Activities during this week included stream clean ups, planting new vegetation, removal of invasive vegetation, workshops, lectures, and tips for living a greener lifestyle.

Brochures on the West Chester University's Poetry Center Rain Garden were distributed. These brochures explain the importance and the benefits of Rain Gardens.

A newspaper article titled "Concerns about Tougher Storm Water Runoff Controls" was published in the local paper, The Daily Local, on May 28, 2012. The Daily Local is available free to the students to read at the library and in several locations.

On March 9, 2012 a sustainability e-newsletter was published highlighting the green measures taken in the construction of the Student Recreation Center, including the installation of the green roof and green wall.

A website is maintained by The Environmental Health and Safety Department on stormwater. The website provides stormwater management facts along with links to other useful websites such as the EPA's page "Stormwater Discharges from MS4s" and the Brandywine Valley Association's web page.

During Earth Week a "Sharing Wall" was placed on campus where people were encouraged to share tips and educate others on living green and other sustainable lifestyle practices.

Educational Postings stating "When It Rains, It Drains" were placed throughout campus.

Environmental Sustainability Research Guide is available to faculty.

Educational stormwater DVDs are offered to departments, student groups, and clubs on campus. The DVDs include Stormwater Run Off- I Can Make a Difference (Coastal Video), Stormwater Pollution Prevention Plan (American Training Resources), and Stormwater Management (Summit Training Source, Inc.).

The Gordon Natural Area for Environmental Studies website includes Plum Run Watershed Tutorial-stream health.

A joint Task Force on Sustainability between West Chester Borough and West Chester University held periodic meetings.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#1 (continued)

9. MS4s USING OWN PROTOCOL FOR THIS MCM

If you are implementing your own protocol, approved by the Department, describe the current status of this Minimum Control Measure. In the boxes below list all BMPs and measurable goals you identified on your NOI or application approved by DEP. If the goals were met, describe how they were met. If they were not met, describe the current status of each and when/how they will be met.

Goal #1

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #2

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #3

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

MCM#2 - PUBLIC INVOLVEMENT/PARTICIPATION — MINIMUM CONTROL MEASURE

10A. **MS4s USING DEP PROTOCOL for this MCM**

BMP: Update your Public Involvement and Participation Plan (PIPP). (Have you reviewed your PIPP for accuracy and content and made any relevant changes? If so, include/attach your revised PIPP.)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: The PIPP was reviewed for accuracy and content. West Chester University uses email distribution, the school website, advertisements in newspapers, and letters to local neighbors to invite all to join in attendance at open forums and participate in campus events. West Chester University's Service Learning and Volunteer Projects Office were also routinely used to distribute newsletters to the local community for volunteer activities. Projects included park clean ups, stream cleanouts, and other opportunities to improve water quality. Attendance of these gatherings depends of the nature of the subject and the faculty making the event mandatory for their students.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

10B. **BMP: Notify and solicit public input/involvement regarding implementation of your Storm Water Management Program.** (How and when did you solicit public input/involvement? What were the results/accomplishments during the past permit year?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: Announcements of programs/activities are provided in Public Relations Campus Events weekly e-mail, Organizational Development newsletters and by separate emails to student groups. Results obtained varied depending on the program. Student involvement is more pronounced when faculty required participation as part of their course work.

The University Safety Committee which includes representatives from the collective bargaining groups (labor and faculty) athletics, facilities, public safety, residence life, student health, and student government meet monthly. Discussion included providing input about water quality and storm water management issues. Discussion continues on how to eliminate/minimize the number of smoking butts thrown on the ground around campus to avoid stormwater contamination.

The University Service Learning and Volunteer Projects Office routinely distribute a newsletter describing volunteer activities in the local community and the surrounding region. These projects have included park clean-ups, streams clean outs, and other volunteer opportunities to improve water quality. Many academic programs have a service learning requirement thus student participation is high.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#2 (continued)

11. MS4s USING OWN PROTOCOL FOR THIS MCM

If you are implementing your own protocol, approved by the Department, describe the current status of this Minimum Control Measure. In the boxes below list all BMPs and measurable goals you identified on your NOI or application approved by DEP. If the goals were met, describe how they were met. If they were not met, describe the current status of each and when/how they will be met.

Goal #1

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #2

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #3

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

MCM#3 - ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDD&E) — MINIMUM CONTROL MEASURE

12A. MS4s USING DEP PROTOCOL for this MCM

BMP: Map all outfalls and receiving water-bodies. (Is your map up-to-date and accurate? Have you mapped additional features that can assist your outfall screening program, such as inlets, piping and outfall drainage areas? If updated, please submit)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

The map was updated to reflect changes. Current map has 16 outfalls identified.

North and South Campus maps included with year 10 report.

Maps are available for campus officials, contractors, and emergency responders use as needed.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

12B. BMP Implement and enforce ordinance to satisfy this Minimum Control Measure. (How was ordinance implemented and enforced during the past permit year in order to meet the goals of this MCM?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

West Chester University is unaware of any illicit discharges or connections to the University owned or operated storm sewer system during the year 10 reporting time period.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

12C. BMP: Distribute IDD&E specific educational material. (What educational material was distributed to public employees, businesses and the general public concerning the hazards associated with illegal discharges and improper disposal of waste? Who received it? When?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

On construction projects, West Chester University's Facilities Design and Construction departments participate in joint site sessions with Municipal Officials. County conservation officials and contractors to review stormwater management requirements with the contractors; to specifically advise contractors how to prevent illicit discharges from their activities; and, to periodically review the stormwater management procedures during the construction process.

Public Safety Officers, Plant Operations Personnel, Grounds Department employees received verbal training from their supervisors on monitoring the grounds as they completed their inspection rounds and landscaping/snow removal duties for possible illicit discharges/abandoned materials and/or for trash, lawn clippings, and other debris near inlets. Residence Life staff are trained by HES personnel on illicit discharge detection. Abandoned car batteries are typically found in campus parking lots. They are picked up and given to the Environmental Health and Safety Department for proper disposal. An environmental Health and Safety officials provide/post When It Rains, It Drains pamphlets to buildings and employees.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#3 (continued)

12D. **BMP: Establish priority areas, conduct screening/sampling and take appropriate actions as needed.**
(Describe how the priority area was established and which outfalls were selected for screening during the past permit year. Summarize the results of your outfall screening/sampling. Include properly completed illicit discharge field screening form for any problem outfall. Include the illicit discharge quarterly summary report form. Describe the corrective actions taken to eliminate any illicit discharges or connections.)

Number of outfalls in system:	<u>16</u>
Number of outfalls screened during the past permit year:	<u>100%</u>
Number of screenings conducted during the past permit year:	<u>30</u>
Number of outfalls/screenings with dry weather flow during the past permit year:	<u>0</u>
Number of dry weather flows sampled during the past permit year:	<u>0</u>
Number of outfalls determined to have an illicit discharge or connection during past permit year:	<u>0</u>

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: Screenings were conducted on June 19, 2012 and again on December 14, 2012. Outfall Inspection Reports on file with the Department of Environmental Health and Safety at West Chester University.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#3 (continued)

13. MS4s USING OWN PROTOCOL FOR THIS MCM

If you are implementing your own protocol, approved by the Department, describe the current status of this Minimum Control Measure. In the boxes below list all BMPs and measurable goals you identified on your NOI or application approved by DEP. If the goals were met, describe how they were met. If they were not met, describe the current status of each and when/how they will be met.

Goal #1

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #2

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #3

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

MCM#4 - CONSTRUCTION SITE STORM WATER RUNOFF CONTROL — MINIMUM CONTROL MEASURE

14A. **MS4s USING DEP *PROTOCOL* for this MCM**

BMP: Implement and enforce ordinance to satisfy this Minimum Control Measure. (How was ordinance implemented and enforced during the past permit year in order to meet the goals of this MCM?).

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

Stormwater Management Ordinances were adopted by the municipalities where WCU resides, including the borough of West Chester (adopted March 27, 2004-Ordinance No.6-2204 and updated Sept. 15, 2005), West Goshen Township (adopted November 12, 2003-Ordinance No. 11-2003 and updated October 15, 2005) and East Bradford Township (adopted May 11, 2004-Ordinance No. 3-2004)

As part of the Land Development process for project approvals at the municipal level, The University engaged consultants to prepare a stormwater management report for each project which defines pre-construction, construction, and post construction conditions, and the recommended designs to conform to the municipal county and states ordinances and regulations. These reports are incorporated into the contracts with each prime contractor responsible for the work.

WCU does have independently constructed and operated stormwater management systems on campus that are outside of those maintained by the local municipalities. In designing, construction and the maintaining of the Stormwater Management Facilities, West Chester University complies with all municipal, county, and state ordinances. In particular, as part of the Land Development process for project approvals at the municipal level. The University engages consultants to prepare a stormwater management report for each project which defines pre-construction, construction, and post construction conditions, and the recommended designs to conform to the municipal, county, and state ordinances and regulations. These reports and their design criteria are incorporated into the contracts with each prime contractor responsible for the work. Post Construction, the University periodically inspects its improvements for compliance in conjunction with municipal engineers. On recently approved capital projects, agreements are being implemented with local municipalities to ensure post construction inspection and upkeep.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

14B. **BMP: Implement procedures for the review and enforcement of Erosion and Sediment (E&S) Control Plans.** (Who reviewed E&S Control Plans during the past permit year? Did the MS4 permittee conduct any E&S site inspections? Briefly describe any enforcement activities undertaken by the MS4 permittee.)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: West Chester University places contractual requirements on the contractors who perform work for the University, requiring them to comply with the local governing municipality's ordinances, as well as requirements of the Chester County Conservation District.

Because much of the campus construction spans multiple years, the University has conditions imposed on the S&E processes that require the university to schedule periodic reviews with the Chester County Conservation District to review "existing" conditions.

During the reporting period, one project was underway:

Construction of a new Geothermal Pump House and the installation of 70 geothermal wells, beneath existing Parking Lot K: The NPDES permit was issued on 11/17/2011. In addition to the daily inspections performed by our on-site construction management team, the County Conservation District visited the site to confirm compliance on 7/30/12, 8/29/12, 10/24/12 and 12/26/12.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

14C. **BMP: Provide education and outreach for developers and builders.** (What educational/outreach materials were distributed to developers/builders during the past permit year?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: WCU places contractual requirements on the contractors who perform work for the University, requiring them to comply with the local governing municipality's ordinances, as well as requirements of the Chester County Conservation District. Periodic site visits are conducted by University, municipal, county, state employees to confirm contractor's compliance

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#4 (continued)

14D. **BMP: Require construction site operators to control waste at the construction site.** (What was done in the past permit year to require construction site operators to control wastes such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary wastes?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: West Chester University used standard contractual language in contracts requiring construction site operators to control waste such as discarded building materials, trucks without liter, chemicals, sanitary waste, and using environmentally sound (i.e. recycling) method. Periodic site visits are conducted by University, municipal, county and state employees to confirm contractor's compliance with earth moving activities, plans, and permits.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

14E. **BMP: Implement procedures for the receipt and consideration of information submitted by the public.** (Summarize any information or complaints received from the public during the past permit year concerning construction site storm water runoff. Briefly describe how you responded to any such information/complaints?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:
Facilities Design and Construction, Public Safety, and the Environmental Health and Safety offices are all available for employees and students to register a complaint. Facilities Design and Construction provided briefings to departmental staff and committees concerning the projects. Residential Students may use these departments to report complaints or they may report complaints directly to their residential hall directors. Employees may also use the listed departments or register complaints to their supervisors or union steward. The phone numbers and addresses for all University departments listed can be found on the school's website.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#4 (continued)

15. MS4s USING OWN PROTOCOL FOR THIS MCM

If you are implementing your own protocol, approved by the Department, describe the current status of this Minimum Control Measure. In the boxes below list all BMPs and measurable goals you identified on your NOI or application approved by DEP. If the goals were met, describe how they were met. If they were not met, describe the current status of each and when/how they will be met.

Goal #1

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #2

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #3

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

MCM#5 - POST-CONSTRUCTION STORM WATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT — MINIMUM CONTROL MEASURE

16A. **MS4s USING DEP PROTOCOL for this MCM**

BMP: Implement and enforce ordinance to satisfy this Minimum Control Measure. (How was ordinance implemented and enforced during the past permit year in order to meet the goals of this MCM?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: West Chester University places contractual requirements on the contractors who perform work for the University, requiring them to comply with the local governing municipalities ordinances as well as requirements of the Chester County Conservation District. Periodic site visits are conducted by University, municipal, county and state employees to confirm contractor's compliance.

Pre-Existing use of the land at parking Lot K, in which 70 geothermal wells were installed, was restored after the completion of the well installation. The land was restored to its former use as a parking lot. No changes were made to inlets or to the grade.

As part of a project installing geothermal wells under the University's tennis courts and Parking lot L, a rain water garden was installed in Fall 2011. This rain water garden is maintained properly by the Grounds staff.

Pervious pavement with infiltration beds were installed and have been maintained properly at the School of Music and Performing Arts Center.

Three new infiltration beds have been installed, and properly maintained at the Student Recreation Center, and the new Pump House (see attached Outfall Plan.)

The Facilities Division PCSM BMP's included periodic inspections, correction of any deficiencies found, performing regular preventative maintenance, and providing education/awareness to the campus and community.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

16B. **BMP: Ensure that all Post-Construction Storm Water Management (PCSWM) BMPs in new or re-development areas are built as designed, and operated and maintained properly.** (Summarize how the MS4 permittee accomplished this during the past permit year. Include a list of all applicable PCSWM BMPs.)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

Construction contracts require a minimum one year period to maintain the condition and the proper operations of the SWM constructed as part of the capital projects. The Chester County Conservation District, if requested to do so, may conduct post construction inspections of the work to confirm the maintenance practices are being performed.

For the Student Recreation Center, as part of the land development process, the University executed a stormwater maintenance agreement with the local municipality requiring annual inspections post construction for a minimum of five years.

West Chester University has taken steps to improve the PCSWM BMP's on campus. The University has implemented several sustainable building designs including an outdoor classroom, green walls, green roofs, and rain gardens. These were designed to reduce storm runoff by the transpiration of plants, delaying the first flush of rain water, and cleansing stormwater via the uptake of contaminants. These PCSWM BMP's need the regular maintenance of water, sunlight, weeding, clearing of dead debris, and the replacing of plants. All were properly maintained during year 10.

The outdoor classroom and its green wall, built in 2011, were cared for by the University's Sustainability Council and volunteers. The classroom successfully grew crops such as Kale, Mustard, Lettuce, and Arugula. The outdoor classroom was properly maintained during year 10 and compost piles were added.

The Poetry Center Rain Garden was cared for by The Environmental Health and Safety office. Maintenance of watering, weeding, up keep of irrigation soaker hoses, and addition of plants was necessary. The Poetry Center Rain Garden was maintained properly.

The recent additions of Green Roof on the third floor of the FHG Library, built April 2012, and a green wall and roof in the new Student Recreation Center, which opened in August 2012, were both properly installed during the year 10 reporting period. These are currently being successfully maintained by the contractors who installed them, via a yearly maintenance contract. This task may belong to the grounds crew in future to ensure their maintained success.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

MCM#5 (continued)

17. MS4s USING OWN PROTOCOL FOR THIS MCM

If you are implementing your own protocol, approved by the Department, describe the current status of this Minimum Control Measure. In the boxes below list all BMPs and measurable goals you identified on your NOI or application approved by DEP. If the goals were met, describe how they were met. If they were not met, describe the current status of each and when/how they will be met.

Goal #1

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #2

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #3

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

**MCM#6 - POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS —
MINIMUM CONTROL MEASURE**

18A. **MS4s USING DEP PROTOCOL for this MCM**

BMP: Implement an operation, maintenance, inspection and repair program for all municipally owned storm water facilities. (Describe how your program was implemented during the past permit year. Include your written Operation & Maintenance (O&M) plan, if not previously submitted.)

Measurable goal for this BMP was met.

Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions: .West Chester University is not a municipal operation; however, the University recognizes stormwater runoff is discharged from campus improvement areas through the local municipality's stormwater systems. The storm water facilities on campus are maintained in accordance with municipal agreements.

The Grounds Department is responsible for the following:

1. Turf in the retention basins is left to grow providing a natural buffer/filtrating system. Areas are mowed two to three times a year for appearance and to keep trees from growing. Average maintenance time per retention basin totals 15 manhours per occurrence. The retention basin below Parking Lot K was cleared of all tree growth in March 2013. Wood was chipped and removed directly from the site. Grass was planted to stabilize the hillside. Total hours on this project totaled 112.5 man hours.

2. The support of the Poetry Center rain garden, the outdoor classroom rain garden, and all other living outdoor laboratories. These were maintained properly during year 10.

3. Storm drains are preventatively cleaned twice per month as close to the 1st and 15th as possible. Drains are cleared of leaves, grass clippings along the curb lines, and any litter.

A. Average spring, summer, winter clean up time is 2 hours.

B. Average autumn clean up time is 5 hours.

C. Drains are cleared prior to and during large storms.

a. Hurricane Sandy: two staff members worked a total of 30 hours off and on during the storm to keep the drains clear.

b. 10 man hours on shift were spent clearing drains and placing hay bales at vulnerable wash out sites in preparation.

D. Staff is instructed to blow grass clippings away from areas of inlets as best they can.

Facilities has instituted an visual inspection program of the basins to ensure that they are operating properly. During heavy downpours, each retention basin is investigated to ensure that water retention occurs, and the outflows drain the retention basin in a measured manner. Outflow structure repairs occurred in the retention basin below Parking Lot K, to encourage more retention to current design standards, which resulted in more retained water during heavy downpours and less immediate outflows.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

18B. **BMP: Implement a pollution prevention/operation and maintenance program for all municipal vehicle/equipment operation, maintenance, fueling, and washing activities.** (Describe how your program was implemented during the past permit year. Include your written pollution prevention/O&M plan, if not previously submitted.)

Measurable goal for this BMP was met.

Measurable goal for this BMP was not met.

MCM#6 (continued)

19. **MS4s USING OWN PROTOCOL FOR THIS MCM**

If you are implementing your own protocol approved by the Department, describe the current status of this Minimum Control Measure. In the boxes below list all BMPs and measurable goals you identified on your NOI or application approved by DEP. If the goals were met, describe how they were met. If they were not met, describe the current status of each and when/how they will be met.

Goal #1

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #2

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Goal #3

List/Describe BMPs and measurable goal (Approved by DEP):

Describe how measurable goal was met:

If not met, describe reason(s), current status, plans and schedule for meeting the goal:

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

West Chester University is not a municipal operation; however, the University recognizes stormwater runoff is discharged from campus improvement areas through the local municipality's stormwater systems. The storm water facilities on campus are maintained in accordance with municipal agreements.

Auto Shop

1. WCU has not washed vehicles on site since before November 2007.
2. The cleaning of equipment for maintenance and repair of vehicles is done within the confines of the Auto shop by trained and certified mechanics. The Auto shop is equipped with an oil/water separation unit. The water siphoned off goes into the sanitary sewer system.
3. Vehicle body damage work, trash truck repair, and other specialized mechanical work was contracted out to vehicle dealers or specialized auto repair shops.
4. The fuel island is situated greater than 100 feet from the nearest inlet. If a spill of malfunction takes place, the auto shop has an emergency shut off switch and the necessary spill response kits needed to contain a spill. No spills impacted the stormwater system. It is outfitted with leak detection and is monitored with a test printed out weekly. Records are maintained for three years.
5. Employees are trained on proper spill response and clean-up.
6. Other pollution prevention activities as identified in previous reports.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

18C. **BMP: Conduct BMP 18A and 18B training for appropriate municipal employees.** (Who was trained? When was the training conducted? What was the subject matter?)

Measurable goal for this BMP was met. Measurable goal for this BMP was not met.

Describe how goal was met; or if not met, give an explanation and proposed corrective actions:

West Chester University is not a municipal operation; however, the University recognizes stormwater runoff is discharged from campus improvement areas through the local municipalities' stormwater systems. The storm water facilities on campus are maintained in accordance with municipal agreements.

Facilities' employees (Physical Plant Operations, Custodial Services and Grounds) are provided training on pollution prevention practices through their supervisors. Educational and awareness materials are available for all employees. Spill response equipment for oil and other vehicle fluids are provided in several locations throughout campus.

Is this BMP appropriate to meet your identified measurable goal? Yes No. If No, please provide additional information on other BMP(s) that would meet the goal.

SECTION III – CERTIFICATION

CERTIFICATION STATEMENT

I certify under penalty of law that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Mark P. Mixner Vice President for Administration and Finance

Name and official title

Mark P. Mixner
Signature

6/6/2013
Date

Sworn and subscribed to before me, this 6th day of June, 2013

Jane D Martorana
Notary Public

My commission expires 11/18/2015

(Notary Public Seal and Stamp)

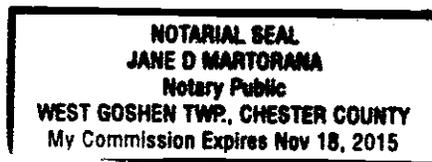


Exhibit “C”

EXHIBIT C

[STREAM PROTECTION ORDINANCE]

ORDINANCE NO. 10 - 2016

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, ESTABLISHING A USER FEE TO SUPPORT THE BOROUGH'S STORMWATER MANAGEMENT SYSTEM AND TO MEET THE BOROUGH'S REGULATORY REQUIREMENTS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT.

WHEREAS, the Borough of West Chester has constructed, owns, operates and maintains and will continue to construct, own, operate and maintain an extensive public stormwater management system to collect and manage stormwater to protect the health, safety and welfare of its citizens;

WHEREAS, the Borough desires to assess an equitable fee for all developed properties that are connected with, use, are serviced by or are benefitted by such stormwater management system to provide a dedicated funding source for the ongoing expenses associated with the Borough's stormwater management system;

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of West Chester as follows:

SECTION 1. Title.

This Ordinance shall be known as "the Borough of West Chester's Stream Protection Fee Ordinance."

SECTION 2. Statement of Findings.

Borough Council finds that:

- A. The Borough of West Chester owns, operates, and maintains stormwater management facilities and infrastructure.
- B. The Borough currently incurs costs to operate and maintain the stormwater management facilities and infrastructure, much of which was constructed over 100-years ago.
- C. The collection and conveyance system for stormwater includes underground pipes, inlets, catch basins, culverts, streets, curbs and drains.
- D. A comprehensive program of stormwater management is fundamental to the public health, safety, and general welfare of the residents of the Borough.

E. The Borough must adhere to increased regulatory requirements for managing the quantity and quality of stormwater runoff.

F. Inadequate management of accelerated stormwater runoff increases flooding, contributes to erosion and sedimentation, overtaxes the capacity of surface streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces infiltration and groundwater recharge, increases nonpoint source pollution to waterways, reduces ecological health of the stream biota, and threatens public health and safety.

G. Inadequate planning and management of stormwater runoff resulting from land disturbance and development throughout a watershed can harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream beds and stream banks, thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals, and pathogens.

H. Groundwater resources are also impacted through loss of recharge associated with the increased impervious area resulting from land development and redevelopment.

I. Stormwater is an important water resource that provides infiltration and groundwater recharge for water supplies and baseflow of streams, which also protects and maintains surface water quality.

J. Impacts from stormwater runoff can be minimized by reducing the volume of stormwater generated and by using project designs that maintain the natural hydrologic regime and sustain high water quality, infiltration, stream baseflow, and aquatic ecosystems.

K. Public education on the control of pollution from stormwater is an essential component in successfully addressing stormwater.

L. Federal and State regulations require the Borough to implement a program of stormwater controls. The Borough is required to obtain a permit and comply with its provisions for stormwater discharges from its Municipal Separate Storm Sewer System (MS4) under the National Pollutant Discharge Elimination System (NPDES).

M. Non-stormwater discharges to municipal or other storm sewer systems can contribute to pollution of the Waters of the Commonwealth.

N. The Borough's streams have been designated as impaired by PADEP and the Borough is required to control the discharge of certain pollutants into the streams through a Total Daily Maximum Load. Specifically, the following pollutant reduction requirements have been placed on the Borough (Source: Draft MS4 Requirements Table revised 06/05/2016):

Impaired Downstream Waters or Applicable TMDL Name	Cause of Impairment	Requirement
Chester Creek	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)	Pathogens, Siltation
Goose Creek TMDL	Cause Unknown (4a)	Nutrients
Plum Run	Water/Flow Variability (4c)	Siltation

Taylor Run	Cause Unknown (4a), Other Habitat Alterations (4c)	Siltation
Brandywine Creek	n/a	Siltation
Blackhorse Run	Other Habitat Alterations, Water/Flow Variability (4c)	Siltation

O. On December 9, 2013 and February 10, 2014, the Stormwater Management Assessment Advisory Committee, hereinafter referred to as SWMAC, presented a report to the Borough Council on "Stormwater Management Assessment Fee Policy Options and Recommendations", which report summarized the Borough's stormwater program needs and policy options for funding those program needs.

P. The SWMAC worked with Borough staff to define those program needs, level of service and costs, and evaluated alternative funding options that support the need for a dedicated funding source and recommended creation of an impervious area based fee, referred to as the Stream Protection Fee, or hereinafter referred to as the Fee, that would be paid by all owners of properties in the Borough in direct proportion to the amount of impervious area that is on their property using a system of tiers as presented in this Ordinance. In addition, the SWMAC recommended that the Borough establish a system of credits to incentivize property owners to build and maintain stormwater management systems on their property, and therefore reduce their fee.

SECTION 3. Statutory Authority.

The Borough is empowered to regulate and manage stormwater within the Borough by the following acts and laws:

- (i) The Act of October 4, 1978, P.L. 864 (Act 167) 32 P.S. Section 680.1 *et seq.*, as amended, the "Storm Water Management Act";
- (ii) The Clean Water Act, 33 U.S. §1251 *et seq.*;
- (iii) Pa. Clean Streams Law, 35 P.S. §691.1 *et seq.*; and
- (iv) The Borough's Home Rule Charter.

SECTION 4. Interpretation.

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.

B. The word "includes" or "including" shall not limit the term to the specific example, but is intended to extend its meaning to all other instances of like kind and character.

C. The word "person" includes an individual, partnership, public or private association or corporation, firm, trust, estate, Borough, governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. Whenever used in any section prescribing or imposing a penalty, the term "person" shall include the members of a partnership, the officers, members, servants and agents of an association, officers, agents and servants of a corporation, and the officers of a Borough.

D. The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.

E. The words "used" or "occupied" include the words "intended, designed, maintained, or arranged to be used, occupied, or maintained."

F. The definitions in this Ordinance are for the purposes of enforcing the provisions of this Ordinance and have no bearing on other municipal regulations or ordinances.

SECTION 5. Definitions.

Base Rate – the dollar rate per Base Unit per month calculated by the Director, and adopted by the Borough Council from time to time by Resolution.

Base Unit - one thousand (1,000) square feet of impervious surface.

BMP (Best Management Practice) – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from Regulated Activities, to provide water quality treatment, infiltration, volume reduction, and/or peak rate control, to promote groundwater recharge, and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one (1) of two (2) broad categories or measures: "structural" or "nonstructural." In this Ordinance, nonstructural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention

basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the Site.

Condominium Property is a Property subject to a condominium regime established under the Pennsylvania Uniform Condominium Act.

Customer - any Property Owner of a Property in the Borough.

Department - the Borough's Department of Public Works.

Design Manual - the 2006 Pennsylvania Stormwater Best Management Practices Manual, as revised from time to time, which serves as the official guide for stormwater management principles, methods, and practices in Pennsylvania.

Developed - Property where manmade changes have been made which add impervious surfaces to the property, which changes may include, but are not limited to, buildings or other structures for which a building permit must be obtained under the requirements of the Pennsylvania Building Code and this Code, mining, dredging, filling, grading, paving, excavation or drilling operations, or the storage of equipment or materials.

Development - a project that consists of subdividing land or adding buildings and other improvements to individual parcels of land.

Director - the Director of the Department of Public Works of West Chester Borough or the Director's designee.

Drainage Area - That land area contributing runoff to a single point (including but not limited to the point/line of interest used for hydrologic and hydraulic calculations) and that is enclosed by a natural or man-made ridge line.

Green Infrastructure (GI) - small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of development on water resources. Methods to design GI practices are specified in the Design Manual.

Impervious Surface - A surface that has been compacted or covered with a layer of material so that it prevents or is resistant to infiltration of water, including but not limited to, structures such as roofs, buildings, storage sheds; other solid, paved or concrete areas such as streets, driveways, sidewalks, parking lots, patios, decks, swimming pools, tennis or other paved courts; or athletic playfields comprised of synthetic turf materials. For the purposes of determining compliance with this Ordinance, highly compacted soils or stone surfaces used for vehicle parking and movement shall be

considered impervious. Surfaces that were designed to allow infiltration (i.e. areas of porous pavement) will be considered on a case-by-case basis by the Borough Engineer, based on appropriate documentation and condition of the material, etc.

Infiltration - the passage or movement of water into the soil surface.

NPDES – National Pollutant Discharge Elimination System, the Federal government's system for issuance of permits under the Clean Water Act, which is delegated to PADEP in Pennsylvania.

PADEP – Pennsylvania Department of Environmental Protection.

Property - each and every parcel of real estate located within West Chester Borough.

Property Owner - the owner of record for a given Property within the Borough, as registered in the Office of the Recorder of Deeds for Chester County, Pennsylvania.

Property Manager - a person, company or other entity hired by a property owner to manage a Property.

Stormwater - water that originates from precipitation.

Stormwater Management - the collection, conveyance, storage, treatment, and control of stormwater as needed to reduce accelerated stream channel erosion, flood damages and water pollution.

Stormwater Management Facility - an infiltration device, filtering device, stormwater pond, stormwater wetland, hydrodynamic structure, or other practice designed and constructed to control stormwater to reduce accelerated stream channel erosion and pollution of surface waters. A stormwater management facility does not include environmental site design practices or any nonstructural stormwater management systems.

Stream Protection Fee (SPF) - an assessment levied by the Borough to cover the cost of constructing, operating, and maintaining stormwater management facilities and to fund expenses related to the Borough's compliance with PADEP NPDES permit requirements under applicable state law based on the impact of stormwater runoff from impervious areas of developed land in the Borough.

Stormwater Management Fund - the fund established from the collection of the Stream Protection Fees authorized pursuant to this Ordinance.

Stormwater Management System - the system of collection and conveyance, including underground pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, manholes, outfalls, dams, flood control structures, natural areas, structural and non-structural stormwater best management practices, channels, detention ponds, public streets, curbs, drains and all devices, appliances, appurtenances and facilities appurtenant thereto used for collecting, conducting, pumping, conveying, detaining, discharging and/or treating stormwater.

Structural Maintenance - the inspection, construction, reconstruction, modification, repair, and cleaning of any part of a stormwater management facility undertaken to assure that the facility remains in the proper working condition to serve its intended purpose and prevent failure. Structural maintenance does not include landscaping, grass cutting, or trash removal.

Watershed - the total drainage area contributing runoff to a single point.

Undeveloped Land - any land that has not been altered from its natural state and which contains no impervious surfaces, or, if previously developed, land that has been allowed to return to its natural state with no impervious surfaces.

SECTION 6. Imposition of Stream Protection Fee.

A. For the use of, benefit by and the services rendered by the Stormwater Management System, including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, a Stream Protection Fee ("Fee") as described, defined, and calculated herein is hereby imposed upon each and every Developed Property within the Borough that is connected with, uses, is serviced by or is benefitted by the Borough's Stormwater Management System, either directly or indirectly, and upon the owners of such Developed Property as set forth herein.

B. Impervious Area Property Tiers: For purposes of determining the appropriate assessment rate for the Fee, all Properties are assigned to one of the following tiers ("Tier" or "Tiers"):

1. Tier 1: For Properties where the total impervious surface area is greater than zero square feet and less than or equal to 1,000 square feet.
2. Tier 2: For Properties where the total impervious surface area is greater than 1,000 square feet and less than or equal to 1,500 square feet.
3. Tier 3: For Properties where the total impervious surface area is greater than 1,500 square feet and less than or equal to 2,000 square feet.
4. Tier 4: For Properties where the total impervious surface area is greater than 2,000 square feet and less than or equal to 2,500 square feet.
5. Tier 5: For Properties where the total impervious surface area is greater than 2,500 square feet and less than or equal to 3,000 square feet.
6. Tier 6: For Properties where the total impervious surface area is greater than 3,000 square feet.

C. Impervious Area Property Tiers were developed using impervious estimates based on Chester County's geographic information system (GIS) impervious cover data layer from 2010.

SECTION 7. Billing and Payment.

A. The Director will prepare the necessary data for collecting the Fee from Property Owners subject to the Fee, including the identification of every parcel of Property to be charged and the amount of the Fee.

B. Prior to receipt of the first bill for the Fee, all Properties will be issued an assessment notice by the Borough with the Property's estimated Fee and the basis of that Fee.

C. The Fee fixed and established by this Ordinance shall be effective as to all Developed Properties that use, are served by or benefitted by the Stormwater Management System existing as of the effective date of this Ordinance. The first billing pursuant to this Ordinance shall be on or about, October 1, 2016 and shall cover the fourth quarter of 2016. Thereafter for subsequent years, the Fee imposed by this Ordinance shall be assessed and billed by the Borough effective as of January 1st each calendar year. Property owners shall have the option to pay the Fee in full within 30 days following the date on which the bill was mailed and receive a 2% discount of the fee. Alternatively, Owners may pay the fee on a quarterly basis at face amount of the bill and upon a schedule designated by Council.

D. Bills for the Fee or charges shall be paid by the owner of the property and mailed to the address listed in the Chester County tax records for the property served by the Stormwater Management System, unless and until a different address is specified, in writing, by the owner of such property to the Borough. Failure of the owner to receive a bill as a result of an incorrect address or otherwise shall not excuse payment of the Fee or charges or extend the time for payment thereof. It shall be incumbent upon all owners of Developed Property who are subject to the Fee to provide the Borough with the correct billing address or any changes thereto.

E. All Fees not paid within 21 days of the date of the bill shall be deemed to be delinquent and shall be subject to a penalty of 1 1/2% per month. All delinquent Fees, together with interest, penalties, charges and costs thereof, shall constitute a municipal claim against the property or properties served by the Stormwater Management System from the date the same first became due and payable. If such Fees, penalties and charges are not timely paid, the Borough shall file a municipal lien against the property served pursuant to the procedure established in the Pennsylvania Municipal Lien Law and such lien shall be collected in the manner provided for by law for the filing and collecting of such municipal liens. The Borough is further authorized to collect reasonable attorney's fees that it incurs in the collection of any delinquent accounts. In addition, the Borough may collect all delinquent Fees, penalties, interest and charges, including attorney's fees, by referring such delinquent claims to a collection agency, by filing an action in assumpsit, or in any manner or by proceeding otherwise provided by law. Any fees that the Borough incurs in exercising its legal

remedies shall be added to the amount of the delinquent account. All of the Borough's remedies shall be cumulative.

G. The Borough shall deposit all payments collected under this Section into the Borough Stormwater Management Fund.

H. When Developed Properties are altered such that the amount of Impervious Surface on the Property increases or decreases, the Fee will be revised as of the date of the issuance of a building permit for the proposed improvements which will alter the amount of Impervious Surface on the Property. A bill will be issued in the next billing cycle and will be prorated for the number of days in which service was provided.

SECTION 8. Calculation of the Stream Protection Fee.

A. The Stream Protection Fee shall be calculated by multiplying the Base Rate by the percentage amount listed herein for the appropriate Tier as follows:

1. The Fee for each Tier 1 Property is 50 percent of the applicable Base Rate.
2. The Fee for each Tier 2 Property is 125 percent of the applicable Base Rate.
3. The Fee for each Tier 3 Property is 175 percent of the applicable Base Rate.
4. The Fee for each Tier 4 Property is 225 percent of the applicable Base Rate.
5. The Fee for each Tier 5 Property is 275 percent of the applicable Base Rate.

B. The Stream Protection Fee for each Tier 6 Property shall be computed based on the actual impervious area on the Property. The Director shall compute the Stream Protection Fee by dividing the actual impervious area of the Property by the number of Base Units, and then multiplying the result by the Base Rate.

C. The Base Rate utilized by the Director shall be the Base Rate as established from time to time by Resolution of Borough Council.

D. If the property is a Condominium Property, the Director shall calculate the Stream Protection Fee to be billed in equal shares to the condominium units owners by dividing the total number of Base Units by the number of individual condominium units and then multiplying that by the Base Rate to determine the amount billable to each condominium unit owner or in such other manners as may be promulgated by the Director in policies and procedures based on square footage, types of condominium units or other similar classification and calculations.

SECTION 9. Stormwater Management Fund.

A. All sums collected from the payment of Stream Protection Fees shall be deposited into the West Chester Borough Stormwater Management Fund.

B. The Stormwater Management Fund shall be used by the Borough for:

1. Implementation and management of a program to manage stormwater within the Borough.
2. Constructing, operating, and maintaining the Borough's Stormwater Management System.
3. Debt service for financing stormwater capital projects.
4. Payment for other project costs and performance of other functions or duties authorized by law in conjunction with the maintenance, operation, repair, construction, design, planning and management of Stormwater facilities, programs and operations.

SECTION 10. Stormwater Credits.

A. The Borough may provide a system of credits against Stream Protection Fees for Properties on which stormwater facility construction or maintenance substantially mitigates the peak discharge or runoff pollution flowing from such Properties or substantially decreases the Borough's cost of maintaining the Stormwater Management System.

B. The Borough has developed written policies and procedures to implement the credit system, known as the Stream Protection Fee Program Rebate and Credit Policies and Procedures Manual ("Credit Manual"). The Credit Manual may be updated from time to time by the Borough Council.

SECTION 11. Appeals.

A. The Borough has developed written policies and procedures to implement the appeal process, known as Stream Protection Fee Program Appeal Policies and Procedures Manual ("Appeals Manual"). The Appeals Manual may be updated from time to time by the Borough Council.

- A. A Property Owner who believes the provisions of this Ordinance have been applied in error may appeal in accordance with the provisions of this Section and as described in greater detail in the Appeals Manual.
- B. An appeal of the assigned Tier and/or the Fee must be filed in writing to the Borough Manager or his designee within thirty (30) days of receipt of the notice of the assigned Tier or Fee. The appeal must state in detail the basis and reasons for the appeal.
- C. Using information provided by the appellant, the Borough Manager, or his designee, shall conduct a technical review of the conditions of the Property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the Borough Manager may adjust the Fee applicable to the property in accordance with the provisions of this Ordinance.
- D. Any person aggrieved by a decision of the Borough Manager relevant to the provisions of this Ordinance may appeal to the Court of Common Pleas of Chester County, Pennsylvania.
- E. Borough Council may, from time to time, by Resolution, establish fees for the processing and handling of an appeal.

SECTION 12. Rules and Regulations.

Borough Council or the Director may promulgate policies and procedures, appeal applications and other forms relating to the interpretation, enforcement and application of the provisions of this Ordinance.

SECTION 13. Limitation on Borough's Liability for Failure of Supply of Stormwater Services

A. Floods from runoff may occur that exceed the capacity of stormwater facilities constructed and maintained by funds made available pursuant to this Ordinance. This Ordinance does not imply that property subject to the fees and charges established herein will be free from stormwater flooding or flood damage. The Borough shall not be liable to any person for any flood damage. Further, payment of a Stream Protection Fee to the Borough does not relieve a Property Owner from any local, State or Federal requirements to obtain flood insurance or other laws applicable to the Property.

B. The Borough, by taking any action pursuant to this Ordinance, does not waive, reduce, lessen or impair the lawful police powers vested in the Borough under applicable Federal, State and local laws and regulations.

C. The failure of the Borough to insist on timely performance or compliance shall not constitute a waiver of the Borough right to later insist on the same. Further, the failure of the Borough to enforce any provision of this Ordinance on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Ordinance on any other occasion, nor shall the failure to enforce any prior ordinance or rule or regulation relating to sewer services, water services, stormwater services, sewer charges, water charges or the Stream Protection Fee, act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.

SECTION 14. Severability. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 15. Repealer. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 16. Effective Date. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS 20th DAY OF July, 2016.

ATTEST:

COUNCIL FOR THE BOROUGH
OF WEST CHESTER

BY:

Ellen Koopman
Ellen Koopman, President

APPROVED THIS 20th DAY OF July, 2016.

Carolyn T. Comitta
Carolyn T. Comitta, Mayor

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER :
 :
 :
 Petitioner, :
 :
 :
 v. : **Original Jurisdiction**
 : **No. 260 MD 2018**
 :
 PENNSYLVANIA STATE SYSTEM :
 OF HIGHER EDUCATION, and :
 :
 WEST CHESTER UNIVERSITY OF :
 PENNSYLVANIA OF THE STATE :
 SYSTEM OF HIGHER :
 EDUCATION :
 :
 Respondents. :

CERTIFICATION OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 21, 2018

Respectfully submitted,

**BUCKLEY, BRION,
MCGUIRE, & MORRIS LLP**

By: /s/
Michael S. Gill, Esquire
Attorney ID No. 86140
gillm@buckleyllp.com

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER	:	
	:	
Petitioner,	:	
	:	Original Jurisdiction
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION, and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION	:	
	:	
Respondents.	:	

**PETITIONER THE BOROUGH OF WEST CHESTER’S
RESPONSE TO RESPONDENTS’ PRELIMINARY OBJECTION**

Petitioner The Borough of West Chester (“Petitioner”), by and through its undersigned counsel, hereby files this Response to the single Preliminary Objection which Respondent Pennsylvania State System of Higher Education (“Respondent State System”) and Respondent West Chester University of Pennsylvania of the State System of Higher Education (“Respondent University” and, sometimes together with Respondent State System, the “Respondents”) filed on May 23, 2018 (the “Preliminary Objection”), and states as follows:

RESPONSE TO INTRODUCTION

The Preliminary Objection begins with an “Introduction” which includes a series of unnumbered conclusions of law. Pursuant to the Pennsylvania Rules of Civil Procedure, these conclusions of law require no response. By way of further response, Respondents’ express and implied assertion that the Stream Protection

Ordinance (and/or the Stream Protection Fee) is a tax is denied.¹ By way of further response, Petitioner denies that either Respondent State System or Respondent University is a “superior sovereign entity” which is entitled to unqualified immunity. Rather, “a Commonwealth agency’s challenge to a municipality’s exercise of authority over it does not represent ‘a contest between superior and inferior governmental entities, but instead a contest between two instrumentalities of the state.’” SEPTA v. City of Philadelphia, 101 A.3d 79, 87 (Pa. 2014) (citing, e.g., Com. v. Ogontz Area Neighbors Ass’n, 483 A.2d 448, 452 (Pa. 1984)). Furthermore, and without admitting Respondents’ characterization of the Stream Protection Fee as a “tax,” Petitioner denies Respondents’ claim that “[i]t is long established that a local authority possesses no such authority to tax Commonwealth entities.” Rather, “for tax immunity purposes, PASSHE is not the equivalent to [*sic*] the sovereign Commonwealth. Property owned by PASSHE is not owned outright by the Commonwealth, and is not entitled to absolute unqualified real estate tax immunity.” State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15.² Furthermore, and without admitting Respondents’ characterization of the Stream Protection Fee as a “tax” or that Petitioner lacked any such authority, Petitioner denies Respondents’ claims that Petitioner was required to have “express statutory authority to impose a duty to pay on” Respondents and that Petitioner “lacks the required express statutory authority to impose a duty to pay on” Respondents. In that regard, and without limiting any other argument which

¹ Capitalized terms used, but not defined, in this Response have the meaning given them in the Action for Declaratory Judgment which Petitioner filed in this Court on April 13, 2018, and which, pursuant to its Order dated April 18, 2018, this Court classified as a Petition for Review (the “Petition for Review”).

² “Parties may . . . cite an unreported panel decision of [the Commonwealth Court] issued after January 15, 2008, for its persuasive value, but not as binding precedent.” Commonwealth Court Internal Operating Procedure § 414.(a).

Petitioner may offer, Petitioner operates under and pursuant to The Home Rule Charter and Optional Plans Law, 53 Pa. C.S.A. §2901 *et seq.* (the “Home Rule Law”). Pursuant to the Home Rule Law, the General Assembly ordained that

[a] municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

53 Pa. C.S.A. § 2961

A home rule municipality “has the legal ability to assess fees for recovery of costs under its home rule powers, which are not constrained by Dillon’s Rule, and generally enable it to undertake government action unless preempted by a law of statewide applicability.”³ PPL Elec. Utilities Corp. v. City of Lancaster, 125 A.3d 837, 851 (Pa. Cmwlth. Ct. 2015). Respondents do not cite, and Petitioner is unaware of, any law of statewide applicability which preempts the Stream Protection

³ Dillon’s Rule is stated as follows:

[n]othing is better settled than that a municipal corporation does not possess and cannot exercise any other than the following powers: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable. Any fair, reasonable doubt as to the existence of power is resolved by the courts against its existence in the corporation, and therefore denied

Trigona v. Lender, Pa. D.&C. (C.C.P. Westmoreland Co. 2006) (citing In re Valley Deposit & Trust Co., 167 A.2d 42, 43 (Pa. 1933)), *aff’d*. 926 A.2d 1226 (Pa. Cmwlth. Ct. 2006).

Ordinance or which operates to preclude Petitioner's authority to charge and collect the Stream Protection Fee.⁴

BACKGROUND

1. Admitted.
2. Admitted in part; denied in part. To the extent that the “‘large part’ of the University” to which Respondents refer at Paragraph 2 of the Preliminary Objection is the same area of land as that to which Petitioner refers at Paragraph 11 of the Petition for Review, Petitioner admits Paragraph 2 of the Preliminary Objection. Otherwise, Petitioner denies Paragraph 2 of the Preliminary Objection, as stated, as the same purports to summarize facts alleged by Petitioner in the Petition for Review. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 2 of the Preliminary Objection to the extent that the same is inconsistent therewith. By way of further response, and upon information and belief, not-insignificant, and to be quantified, portions of North Campus are the subjects of respective ground leases between Respondent University, as lessor, and University Student Housing, LLC, a Pennsylvania limited liability company (“USH”), as lessee. By way of further response, upon information and belief, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief,

⁴ Indeed, there are several examples of the General Assembly granting or considering authority for local governments which do not operate as home rule municipalities to impose stormwater fees. See, e.g., (A) the Municipal Authorities Act, 53 P.S. § 5607.(a) (authorizing the creation of stormwater authorities for “storm water planning, management and implementation...” 53 P.S. § 5607(a), (B) Act of July 1, 2016, P.L. 439, No. 62 (amending the Second Class Township Code to authorize that class of municipalities to assess stormwater management fees without the use of an authority, and (C) House Bill 913 (proposed legislation which, if enacted, would allow non-home rule incorporated towns to assess stormwater management fees without the use of an authority).

the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which is, upon information and belief, wholly legally separate and distinct from Respondents, or either of them.

3. Denied as stated. Petitioner denies Paragraph 3 of the Preliminary Objection, as stated, as the same purports to summarize facts alleged by Petitioner in the Petition for Review. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 3 of the Preliminary Objection to the extent that the same is inconsistent therewith. Furthermore, Paragraph 3 of the Preliminary Objection constitutes a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, and as set forth in, *inter alia*, the Petition for Review, it is admitted that Petitioner is required to comply with certain stormwater-related regulations promulgated by the United States of America and the Commonwealth of Pennsylvania.

4. Admitted, upon information and belief only.

5. Denied as stated. Paragraph 5 of the Preliminary Objection constitutes a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Stormwater Management Act is a statute which speaks for itself, and any summarization or characterization thereof by Respondents is denied.

6. Admitted in part; denied in part. It is admitted only that, in 2016, Borough Council adopted the Stream Protection Ordinance and the Stream Protection Fee. By way of further response, the Stream Protection Ordinance and Resolution No. 11-2016 are legislative enactments which speak for themselves, and any summarization or characterization thereof by Respondents is denied. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

7. Admitted in part; denied in part. It is admitted only that, at Section 2 of the Stream Protection Ordinance, Borough Council made certain findings. By way of further response, the Stream Protection Ordinance is a legislative enactment which speaks for itself, and any summarization or characterization thereof by Respondents is denied. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

8. Admitted in part; denied in part. It is admitted only that, at Section 5 of the Stream Protection Ordinance, Borough Council defined the term "developed," and that certain of the words set forth at Paragraph 8 of the Preliminary Objection are contained within that definition. By way of further response, the Stream Protection Ordinance is a legislative enactment which speaks for itself, and any summarization or characterization thereof by Respondents is denied. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

9. Admitted in part; denied in part. It is admitted only that, as set forth at Paragraph 78 of the Petition for Review, "[t]he amount of the Stream Protection Fee for which the owner of a developed property is responsible is dependent upon the amount of impervious surface at the subject property." Otherwise, Petitioner denies Paragraph 9 of the Preliminary Objection, as stated, as the same purports to summarize facts alleged by Petitioner in the Petition for Review. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 9 of the Preliminary Objection to the extent that the same is inconsistent therewith. By way of further response, the Stream Protection Ordinance and Resolution No. 11-2016 are legislative enactments which speak for themselves, and any summarization or characterization thereof by Respondents is denied. By way of

further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

10. Admitted in part; denied in part. It is admitted only that the methodology pursuant to which the Stream Protection Fee is calculated is as set forth in the Stream Protection Ordinance. Otherwise, Petitioner denies Paragraph 10 of the Preliminary Objection, as stated, as the same purports to summarize facts alleged by Petitioner in the Petition for Review. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 10 of the Preliminary Objection to the extent that the same is inconsistent therewith. By way of further response, the Stream Protection Ordinance is a legislative enactment which speaks for itself, and any summarization or characterization thereof by Respondents is denied. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

11. Admitted in part; denied in part. It is admitted only that the methodology pursuant to which the Stream Protection Fee is calculated is as set forth in the Stream Protection Ordinance. Otherwise, Petitioner denies Paragraph 11 of the Preliminary Objection, as stated, as the same purports to summarize facts alleged by Petitioner in the Petition for Review. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 11 of the Preliminary Objection to the extent that the same is inconsistent therewith. By way of further response, the Stream Protection Ordinance is a legislative enactment which speaks for itself, and any summarization or characterization thereof by Respondents is denied. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

12. Admitted in part; denied in part. The averments in Paragraph 12 of the Preliminary Objection purport to summarize facts alleged by Petitioner pursuant to the Petition for Review to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 12 of the Preliminary Objection to the extent that the same is inconsistent therewith. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied. By way of further response, it is admitted that all revenue generated by the Stream Protection Fee is, and will continue to be, deposited into the West Chester Borough Stormwater Management Fund and used only for the purposes set forth in the Stream Protection Ordinance.

13. Admitted in part; denied in part. It is admitted only that Petitioner sent to Respondents certain invoices for the Stream Protection Fee, and that Respondents refused to remit payment on such invoices for services rendered to them. Otherwise, Petitioner denies Paragraph 13 of the Preliminary Objection, as stated, as the same purports to summarize facts alleged by Petitioner in the Petition for Review. Petitioner refers to the Petition for Review for its full and complete contents and denies Paragraph 13 of the Preliminary Objection to the extent that the same is inconsistent therewith. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

PRELIMINARY OBJECTION TO COUNT I:

14. Petitioner incorporates the preceding paragraphs as if set forth at length.

15. Denied. Paragraph 15 of the Preliminary Objection constitutes a conclusion of law to which no response is required pursuant to the Pennsylvania

Rules of Civil Procedure. By way of further response, Petitioner denies that the Petition for Review is legally insufficient, and notes that “[i]n ruling on preliminary objections, [the Court] must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences deduced therefrom.” Kretchmar v. Dep’t. of Corr., 831 A.2d 793, 800 n.1 (Pa. Cmwlth. Ct. 2003) (citing Mererro v. Tabales v. Commonwealth, 709 A.2d 956 (Pa. Cmwlth. Ct. 1998)). “In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain” the Preliminary Objection. Id.

16. Denied. Paragraph 16 of the Preliminary Objection is comprised of conclusions of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, Petitioner denies that Respondents are entitled to blanket immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes, upon information and belief, that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which (upon information and belief) is wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents’ express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

17. Admitted in part; denied in part. It is admitted that Respondent State System is “a body corporate and politic constituting a public corporation and

government instrumentality.” 24 P.S. § 20-2002-A. It is further admitted that Respondent University is a constituent of Respondent State System. It is further admitted that Respondents are entitled to qualified immunity from real estate taxation. It is denied, however, that Respondents are (A) the equivalent of the sovereign Commonwealth and (B) entitled to absolute and unqualified real estate tax immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes, upon information and belief, that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which (upon information and belief) is wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents’ express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

18. Denied. Paragraph 18 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, it is denied that Respondents are (A) the equivalent of the sovereign Commonwealth and (B) entitled to absolute and unqualified real estate tax immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes, upon information and belief, that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions

of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which (upon information and belief) is wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

19. Denied. Paragraph 19 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, it is denied that Respondents are (A) the equivalent of the sovereign Commonwealth and (B) entitled to absolute and unqualified real estate tax immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes, upon information and belief, that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which (upon information and belief) is wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

20. Denied. Paragraph 20 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania

Rules of Civil Procedure. By way of further response, it is denied that Respondents are (A) the equivalent of the sovereign Commonwealth and (B) entitled to absolute and unqualified real estate tax immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes, upon information and belief, that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which (upon information and belief) is wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

21. Denied. Paragraph 21 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. It is further denied that, in any event, the Stream Protection Fee is an "assessment – that is, a fee for local infrastructure improvements" By way of further response, it is denied that Respondents are (A) the equivalent of the sovereign Commonwealth and (B) entitled to absolute and unqualified real estate tax immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes, upon information and belief, that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student

housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which (upon information and belief) is wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

22. Denied. Paragraph 22 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. It is further denied that, in any event, the Stream Protection Fee is a "tax." By way of further response, the Stream Protection Fee is a fee for service. See Norfolk Southern Railway Co. v. City of Roanoke, No. 7:16CV00176, 2017 U.S. Dist. LEXIS 211453 (W.D.Va. Dec. 26, 2017), *appeal docketed*, No. 0:18-cv.pr-0160 (4th Cir. Jan. 16, 2018) (finding a utility charge associated with city's stormwater ordinance was a fee and not a tax when ordinance was part of a comprehensive regulatory scheme designed to manage stormwater and its negative effects pursuant to the mandates of the Clean Water Act; revenue generated was used to fund stormwater management facilities, operations, and activities. and associated expenses; charge only applied to improved parcels and charge was calculated based on the amount of impervious surface; and, Ordinance encourages owners of improved parcels to implement stormwater management practices that further reduce runoff); Homewood Village, LLC v. Unified Gov't of Athens Clarke Cty., 132 F. Supp. 3d 1376 (M.D. Ga., 2015) (finding a county ordinance which imposes a charge based on how much stormwater runoff a given property contributes (charging only owners of developed property, but not owners of undeveloped property); apportions the cost of the service based on impervious surface area; provides a benefit to property owners that pay the charge because the

service treats polluted water on their properties; and allows property owners to reduce the amount of the charge by creating and maintaining private stormwater management systems, was a fee not a tax.).

23. Denied. Paragraph 23 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. It is further denied that, in any event, the Stream Protection Fee is a “tax.” It is further denied that Respondents do not realize any special benefit from the Borough Stormwater Collection and Conveyance System. See e.g., Homewood Village, LLC v. Unified Gov’t of Athens Clarke Cty., 132 F. Supp. 3d 1376 (M.D. Ga., 2015) (“property owners that pay the charge receive a special benefit from the stormwater service because the service treats polluted water on their properties”); City of Lewiston v. Gladu, 40 A.3d 964, 967 (Me. 2012) (parcels “receive the special benefit of having their stormwater managed in an effort to comply with state and federal laws[.]”).

24. Denied. Paragraph 24 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, Petitioner denies that Respondents are entitled to blanket immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes upon information and belief that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which is (upon information and belief) wholly legally

separate and distinct from Respondents, or either of them. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

25. Denied. Paragraph 25 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied. By way of further response, the Stream Protection Fee is, indeed, a fee for service. Such a fee "is a charge which is imposed pursuant to a sovereign's police power for the privilege of performing certain acts, and which is intended to defray the expense of regulation." Com. v. Tobin, 828 A.2d 415, 425 (Pa. Cmwlth. Ct. 2003). To state it another way, "fees charged by a municipality for services rendered are proper if they are reasonably proportional to the costs of the regulation or the services performed." M&D Properties, Inc. v. Borough of Port Vue, 893 A.2d 858, 862 (Pa. Cmwlth. Ct. 2006). By way of further response, the Stream Protection Fee is just that, a fee for services rendered. See e.g., Homewood Village, LLC v. Unified Gov't of Athens Clarke Cty., 132 F. Supp. 3d 1376 (M.D. Ga., 2015) ("property owners that pay the charge receive a special benefit from the stormwater service because the service treats polluted water on their properties"); City of Lewiston v. Gladu, 40 A.3d 964, 967 (Me. 2012) (parcels "receive the special benefit of having their stormwater managed in an effort to comply with state and federal laws[]").

26. Denied. Paragraph 26 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, the Stream Protection Fee which is payable by the owner of each Developed property is reasonably calculated by Petitioner in a manner reflective of the value which that owner receives from the

Borough Stormwater Collection and Conveyance System. By way of further response, “rates need not be proportioned with exactness to [the] use made or the cost to the individual customer, so long as it is reasonably related to the cost of maintaining the service for all customers, and the customers challenging the rates receive ‘some’ benefit from the system.” Ack v. Carroll Township Authority 661 A.2d 514, 518 (Pa. Cmwlth. Ct. 1995).

27. Denied. It is denied that the Stream Protection Fee is not “proportional to the value of a product or service . . . provided to [Respondents] in a quasi-private capacity akin to a contract.” By way of further response, the Stream Protection Fee which is payable by the owner of each Developed property is reasonably calculated by Petitioner in a manner reflective of the value which that owner receives from the Borough Stormwater Collection and Conveyance System. By way of further response, “rates need not be proportioned with exactness to [the] use made or the cost to the individual customer, so long as it is reasonably related to the cost of maintaining the service for all customers, and the customers challenging the rates receive ‘some’ benefit from the system.” Ack v. Carroll Township Authority 661 A.2d 514, 518 (Pa. Cmwlth. Ct. 1995).

28. Denied. Paragraph 28 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. It is further denied that, in any event, the Stream Protection Fee is a “tax.” Furthermore, and without admitting Respondents’ characterization of the Stream Protection Fee as a “tax,” Petitioner denies Respondents’ claims that Petitioner does not have the authority to charge the Stream Protection Fee to Respondents. In that regard, and without limiting any other argument which Petitioner may offer, Petitioner operates under and pursuant to the Home Rule Law. Pursuant to the Home Rule Law, the General Assembly ordained that

[a] municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

53 Pa. C.S.A. § 2961.

A home rule municipality “has the legal ability to assess fees for recovery of costs under its home rule powers, which are not constrained by Dillon’s Rule, and generally enable it to undertake government action unless preempted by a law of statewide applicability.” PPL Elec. Utilities Corp. v. City of Lancaster, 125 A.3d 837, 851 (Pa. Cmwlth. Ct. 2015). Respondents do not cite, and Petitioner is unaware of, any law of statewide applicability which preempts the Stream Protection Ordinance or which operates to preclude Petitioner’s authority to assess the Stream Protection Fee.

29. Denied. Paragraph 29 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. It is further denied that, in any event, the Stream Protection Fee is a “tax.” Furthermore, and without admitting Respondents’ characterization of the Stream Protection Fee as a “tax,” Petitioner denies Respondents’ claims that Petitioner does not have the authority to charge the Stream Protection Fee to Respondents. In that regard, and without limiting any other argument which Petitioner may offer, Petitioner operates under and pursuant to the Home Rule Law. Pursuant to the Home Rule Law, the General Assembly ordained that

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30. Denied as stated. At Section 3 of the Stream Protection Ordinance Borough Council referred to four (4) separate legislative enactments, only two (2) of which are cited in Paragraph 30 of the Preliminary Objection. By way of further response, the Pennsylvania Stormwater Act is a statute which speaks for itself, and any summarization or characterization thereof by Respondents is denied. By way of further response, Petitioner denies Respondents’ claims that Petitioner does not have the authority to charge the Stream Protection Fee to Respondents. In that regard, and without limiting any other argument which Petitioner may offer, Petitioner operates under and pursuant to the Home Rule Law. Pursuant to the Home Rule Law, the General Assembly ordained that

[a] municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to

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31. Denied. Paragraph 31 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Stormwater Management Act is a statute which speaks for itself, and any summarization or characterization thereof by Respondents is denied.

32. Denied. Paragraph 32 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Stormwater Management Act is a statute which speaks for itself, and any summarization or characterization thereof by Respondents is denied.

33. Denied as stated. The Stream Protection Ordinance is a legislative enactment which speaks for itself, and any summarization or characterization thereof by Respondents is denied. By way of further response, the Pennsylvania Stormwater

Management is a statute which speaks for itself, and any summarization or characterization thereof by Respondents is denied.

34. Denied. Paragraph 34 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Clean Streams Law is a statute which speaks for itself, and any summarization or characterization thereof by Respondents is denied.

35. Denied. Paragraph 35 of the Preliminary Objection is comprised of a conclusion of law to which no response is required pursuant to the Pennsylvania Rules of Civil Procedure. By way of further response, Petitioner denies Respondents' claims that Petitioner does not have the authority to charge the Stream Protection Fee to Respondents. In that regard, and without limiting any other argument which Petitioner may offer, Petitioner operates under and pursuant to the Home Rule Law. Pursuant to the Home Rule Law, the General Assembly ordained that

[a] municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

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A home rule municipality “has the legal ability to assess fees for recovery of costs under its home rule powers, which are not constrained by Dillon’s Rule, and generally enable it to undertake government action unless preempted by a law of statewide applicability.” PPL Elec. Utilities Corp. v. City of Lancaster, 125 A.3d

837, 851 (Pa. Cmwlth. Ct. 2015). Respondents do not cite, and Petitioner is unaware of, any law of statewide applicability which preempts the Stream Protection Ordinance or which operates to preclude Petitioner's authority to assess the Stream Protection Fee. By way of further response, it is denied that Respondents are (A) the equivalent of the sovereign Commonwealth and (B) entitled to absolute and unqualified real estate tax immunity. See, e.g., State Sys. of Higher Educ. v. Indiana Area Sch. Dist., No. 184 M.D. 2011, *slip op.* at 15. By way of further response, Petitioner notes upon information and belief that not-insignificant, and to be quantified, portions of North Campus are the subjects of ground leases between Respondent University, as lessor, and USH, as lessee, and that, upon such portions of North Campus, USH constructed and operates structures which are used (wholly or in part) as student housing which is not owned by either Respondent State System or Respondent University. Furthermore, upon information and belief, the sole member of USH is West Chester University Foundation, a Pennsylvania non-stock, non-profit corporation which is (upon information and belief) wholly legally separate and distinct from Respondents, or either of them. By way of further response, Respondents' express and implied assertion that the Stream Protection Ordinance (and/or the Stream Protection Fee) is a tax is denied.

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WHEREFORE, Petitioner The Borough of West Chester respectfully requests that this Court enter an Order overruling Respondents' Preliminary Objection.

Dated: June 21, 2018

Respectfully submitted,

**BUCKLEY, BRION,
MCGUIRE, & MORRIS LLP**

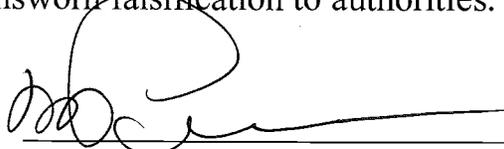
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VERIFICATION

I, Michael Perrone, hereby verify that I am the Borough Manager for The Borough of West Chester, that I am authorized to execute this Verification on its behalf, and that the facts set forth in the foregoing Response to Preliminary Objection are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



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Higher Education and West
Chester University

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :

Petitioner, :

v. :

PENNSYLVANIA STATE SYSTEM :
OF HIGHER EDUCATION and :

WEST CHESTER UNIVERSITY OF :
PENNSYLVANIA OF THE STATE :
SYSTEM OF HIGHER :
EDUCATION, :

Respondents. :

Original Jurisdiction

No. 260 MD 2018

**RESPONDENTS' BRIEF IN SUPPORT OF THEIR PRELIMINARY
OBJECTION TO PETITIONER'S
ACTION FOR DECLARATORY JUDGMENT**

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Respondents Pennsylvania State System of Higher Education (“State System”) and West Chester University of Pennsylvania of the State System (“University” or, collectively with the State System, “Respondents”), by counsel, respectfully submit this Brief in Support of their Preliminary Objection to Petitioner’s Action for Declaratory Judgment.

STATEMENT OF JURISDICTION

This Court has original jurisdiction of this action for declaratory judgment against a Commonwealth agency under 42 Pa. C.S. § 761(a)(1).

DETERMINATION IN QUESTION

This is a challenge to Respondents’ determination that it is not legally required to pay a stormwater maintenance assessment imposed by a borough on Commonwealth property.

SCOPE AND STANDARD OF REVIEW

A party may file a preliminary objection to any pleading on the grounds that it is legally insufficient. Pa. R. Civ. P. 1028(a)(4). “It is well established law in Pennsylvania that preliminary objections in the nature of a demurrer require the court to resolve the issues *solely on the basis of the pleadings*. Thus, no testimony or other evidence outside the complaint may be considered to dispose of the legal issues presented by a demurrer.” *Smith v. Pa. Employees Benefit Trust Fund*, 894 A.2d 874, 879 (Pa. Commw. Ct. 2006) (citation and internal quotation marks omitted, emphasis in original). Although immunity is an affirmative defense, a

party may raise it by preliminary objection where it is applicable on the face of the complaint. *Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1022 (Pa. Commw. Ct. 2014). “The issue of whether a property is tax exempt or immune from taxation is a question of law,” *Reading Housing Auth. v. Bd. of Assessment Appeals of Berks Cty.*, 103 A.3d 869, 872 n.5 (Pa. Commw. Ct. 2014), and thus it is properly addressed by preliminary objection.

QUESTION PRESENTED

Question: Can a borough require a Commonwealth agency to pay a charge assessed on Commonwealth property to fund the borough’s stormwater maintenance projects?

Suggested answer: No.

STATEMENT OF THE CASE

The University, a member institution of the State System, sits in part within the Borough of West Chester, Pennsylvania (“Borough”). Action for Declaratory Judgment (“Pet.”), attached as Ex. A, ¶¶ 11-14. As a member of the State System, the University’s mission is “to provide high quality education at the lowest possible cost” for students seeking postsecondary education. 24 P.S. § 20-2003-A(a). The University is specifically authorized to own and use real property to carry out its mission. *Id.* § 20-2003-A(b)(3).

In 2016, the Borough enacted an ordinance requiring all owners of developed property within the Borough to pay an assessment for stormwater management (“Stormwater Tax”). Pet. ¶¶ 15-18; Ordinance No. 10-2016, Pet. Ex. C, attached as Ex. C (“Ordinance”). The Borough instituted the Stormwater Tax to offset the costs it was incurring “to operate and maintain [its] stormwater management facilities and infrastructure” due to “increased regulatory requirements.” Ordinance at 1-2. The Stormwater Tax is assessed on the owners of real property within the Borough “where manmade changes have been made which add impervious surfaces to the property.” Pet. ¶ 75. The amount of the Stormwater Tax is determined by the total amount of impervious surface on the property. Pet. ¶ 74. To determine the Stormwater Tax, properties are first placed into tiers based on the total impervious surface area. Pet. ¶¶ 80-84; Ordinance at 7. Each tier is assigned a multiplier which is applied to a “base rate”—set by the Borough at \$6.70 per 1,000 square feet of impervious cover—to determine the final Stormwater Tax. Pet. ¶ 87; Ordinance at 9.

The Borough instituted the Stormwater Tax to fund stormwater-related projects throughout its geographic borders that are required by federal and state environmental regulations. *See* Pet. ¶¶ 31-45. Specifically, these regulations require the Borough “to obtain a permit and comply with its provisions for stormwater discharges from its Municipal Separate Storm Sewer System (MS4)

under the National Pollutant Discharge Elimination System (NPDES).” Pet. Ex. C. at 2.¹ The Borough avers that all revenue generated by the Stormwater Tax will be held a dedicated fund which can be used for any purpose set forth in the Ordinance. Pet. ¶¶ 88-90. The Borough has presented plans that include projects for remediation of common waterways. Pet. Ex. H. In addition to using this money to fund its stormwater projects, the Borough can, under state law, recover up to 75% of its costs related to its approved stormwater management plan from the Commonwealth through the Department of Environmental Protection. *See* 32 P.S. § 680.17.

The Borough assessed University property within its jurisdiction in accordance with the scheme set forth by the Ordinance, and it sent invoices to Respondents seeking to collect this Stormwater Tax. Respondents declined to remit payment, informing the Borough that any such charge was improper under the Respondents’ tax immunity as a Commonwealth agency. Pet. ¶¶ 20-25. This lawsuit followed.

¹ The University is also required to, and does actively, maintain its own individual permit for its MS4 under the NPDES. *See, e.g.*, MS4 Annual Report Form, attached as Ex. B to Respondents’ Preliminary Objection (report from previous year).

SUMMARY OF ARGUMENT

This question presented by this case is purely one of law: whether a political subdivision may impose a charge on a Commonwealth agency, based on an assessment of the property owned and operated by the agency, to fund the subdivision's stormwater maintenance projects. Because this charge is akin to a property tax, and because Commonwealth agencies are immune from such taxes, it may not. The charge is a form of tax and not a fee for service because it is an assessment of real property to fund local projects—like a charge for constructing a sewer system, which was held to be a tax—rather than a fee charging for a distinct service received by a property owner. Moreover, the statutes enabling political subdivisions to address stormwater issues do not expressly grant them the authority to impose specific fees to pay for it. The Borough's reliance on its *general* power under the home rule law as authority for the Stormwater Tax does not support an attempt to impose an assessment on a Commonwealth agency because it does not provide the type of *explicit* authority necessary to overcome the Commonwealth's immunity.

For these reasons, Respondents' preliminary objection in the nature of a demurrer should be granted and this action for declaratory relief should be dismissed.

ARGUMENT

I. The Stormwater Tax Is Subject to the Commonwealth's Tax Immunity.

A. University Property Is Commonwealth-Owned Property Used for a Public Purpose, Thus Subject to Tax Immunity.

As a general rule, political subdivisions like a borough cannot levy taxes on real property unless the Pennsylvania General Assembly has granted taxing authority to the subdivision. *Lehigh-Northampton Airport Auth. v. Lehigh Cty. Bd. of Assessment Appeals*, 585 Pa. 657, 669, 889 A.2d 1168, 1175 (2005). But even where a subdivision has been granted taxing authority generally, “property owned by the Commonwealth and its agencies remains unaffected by—or immune from—such power absent express statutory authorization to the contrary.” *Id.* This “long settled” tax immunity “derives from the Commonwealth’s sovereign right to be free of taxation.” *City of Phila. v. Cumberland Cty. Bd. of Assessment Appeals*, 622 Pa. 581, 624, 81 A.3d 24, 50 (2013); *see also Commonwealth v. Dauphin Cty.*, 335 Pa. 177, 6 A.2d 870, 872 (1939) (“The legislators did not intend to upset the orderly processes of government by allowing the sovereign power to be burdened by being subjected to municipal taxes.”).

Immunity in this context is broad but not absolute. A Commonwealth agency “may not automatically claim immunity from local real estate taxation for property leased to third-party commercial entities.” *City of Phila.*, 622 Pa. at 626, 81 A.3d at 51 (citing *Southeastern Pa. Transp. Auth. v. Bd. of Revision of Taxes*,

574 Pa. 707, 833 A.2d 710 (2003) (“*SEPTA*”). When an agency seeks “to raise additional revenue through rental income by entering into commercial leases with commercial entities,” it has surrendered its tax immunity because it acts as nothing more than “a commercial landlord.” *SEPTA*, 574 Pa. at 720, 833 A.2d at 717; accord *Bay Harbor Marina Ltd. Partnership v. Erie Cty. Bd. of Assessment Appeals*, 177 A.3d 406, 424 (Pa. Commw. Ct. 2018) (where port authority leased property “utilized as private, for-profit marinas” for “the sole benefit of [Lessees] and [their] subtenants,” lessees could not invoke tax immunity). But this exception does not apply to *all* third-party leases of a Commonwealth agency. Property used to advance the agency’s public purpose—for example, to use as office space for agency officials—would be subject to tax immunity. *SEPTA*, 574 Pa. at 719 n.4, 833 A.2d at 716 n.4; accord *Reading Housing Auth.*, 103 A.3d at 874-75 (holding that housing authority’s lease of units in building at market rate did not eliminate tax immunity because the leases were “well within its authorized powers” and “consistent with its purpose”). In a challenge to a state agency’s tax immunity, there is a presumption of immunity and the burden is on the local taxing body to demonstrate taxability. *City of Phila.*, 622 Pa. at 624, 81 A.3d at 50.

There is no dispute that both the State System and the University are Commonwealth entities, and thus the properties they own are “immune to local taxation.” See Pet. ¶ 106. The Borough instead relies on the conclusory statement

that this immunity is not “absolute and unqualified,” citing the unpublished opinion of this Court in *Pennsylvania State System of Higher Education v. Indiana Area School District*, No. 184 M.D. 2011, 2012 WL 8667893 (Pa. Commw. Ct. Apr. 5, 2012) (“*Indiana Area*”). See, e.g., Petitioner’s Response to Respondents’ Preliminary Objection (“Resp.”) ¶ 16. The Borough further asserts that “portions” of the property at issue are leased by the University to a separate entity—University Student Housing, LLC—which constructs and operates student housing for the University. See *id.* None of this calls into doubt Respondents’ tax immunity for the property at issue in this case.

First, the mere assertion that immunity is not “absolute and unqualified” does not meet the Borough’s burden to prove that Respondents do not enjoy tax immunity. See *City of Phila.*, 622 Pa. at 624, 81 A.3d at 50 (noting burden of proof on taxing authority). The fact that exceptions might exist does not show that any exceptions actually apply. Here, there is no plausible allegation that the State System or University operate the school’s main campus in a manner that invokes any immunity exception.

Second, the Borough’s focus on the ownership structure of student housing is misplaced and irrelevant.² The Borough relies on *Indiana Area*, but

² Notably, the asserted facts do not appear in the Borough’s Action for Declaratory Judgment. See *Smith*, 894 A.2d at 879 (record on preliminary objections is limited to the facts in the complaint); see also *Stilp v. Commonwealth*,

Respondents’ alleged use of a non-stock, non-profit corporation to construct and operate housing for students does not evince the same kind of commercial purpose. *Indiana Area* held that in a particular instance the State System exceeded its public purpose when it leased property “in exchange for rental income” to third parties that engaged in “commercial ventures.” 2012 WL 8667893, at *6.³ In other words, a school was acting like a “commercial landlord” rather than an educational institution. *Id.* By contrast, student housing supports the core educational mission of the University, which is explicitly within the its statutory purpose. *See Indiana Area*, 2012 WL 8667893, at *6 (quoting 24 P.S. § 20-2003-A(b)(3)) (State System’s purpose includes power to “acquire, purchase, hold, lease as lessee and use any property . . .” that supports its mission “to provide high quality education for the Commonwealth at the lowest possible cost to its students”). The University’s use of a non-profit entity does not create a discrete source of revenue for a discrete commercial purpose. *Indiana Area* presented a situation unlike the allegations here.

910 A.2d 775, 791 (Pa. Commw. Ct. 2006) (a party may not “supply facts missing from the objectionable pleading”).

³ As the Borough rightfully concedes, *Indiana Area* is an unpublished case and therefore has no binding authority. But, regardless, *Indiana Area* does nothing to expand the rule in *SEPTA*, that tax immunity is waived only where the third party lease is private, commercial, and designed to generate revenue for the agency.

Even if Respondents' tax immunity is not absolute—which the Court need not decide here—the Borough has failed to allege any facts that might show that either the State System or University acted in any manner that would obviate their tax immunity under any existing law. For all purposes in this case, Respondents are equivalent to the Commonwealth and entitled to tax immunity.

B. The Stormwater Tax Is a Tax or Assessment, Not a Fee for Service.

Although Commonwealth agencies are entitled to tax immunity as property owners, not all charges related to the property are considered taxes. Taxes, which are subject to immunity, include both general real estate taxes and assessments, with the latter considered a type of tax because it is “enacted in the exercise of the taxing power.”⁴ *Southwest Del. Cty. Mun. Auth. v. Aston Twp.*, 413 Pa. 526, 530, 198 A.2d 867, 870 (1964). An assessment is defined as a type of charge that “pays for a public, though a local, improvement” and “therefore relieves the public from the necessity of contributing to the cost or expense of the improvement.” *Id.* at 531, 198 A.2d at 870. By contrast, when a municipality performs certain functions in a

⁴ It is long established that taxes “proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return or special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all. . . .” *Broad St. Sewickley Methodist Episcopal Church’s Appeal*, 30 A. 1007 (Pa. 1895) (quoting *Illinois Central R.R. Co. v. Decatur*, 147 U.S. 190 (1893)).

“proprietary or quasiprivate capacity,” a Commonwealth agency may be required to pay a fee for that service on a theory “based upon contract rather than taxation,” but only if that fee is “reasonably proportional to the value of the product or service received.” *Supervisors of Manheim Twp., Lancaster Cty. v. Workman*, 350 Pa. 168, 173, 38 A.2d 273, 276 (1944).

The Stormwater Tax is a tax, or at least an assessment, and not a fee for service. The Stormwater Tax walks, talks, and acts like a property tax—it compels the payment of money based on features of the subject property to fund public services that benefit the citizenry generally. The fact that it is dedicated to a particular purpose would simply make the Stormwater Tax an assessment, which is still a species of tax that subject to the Commonwealth’s tax immunity. In fact, the Stormwater Tax resembles the sewer assessment in *Southwest Delaware County Municipal Authority*, in which a municipal authority attempted to assess a public school to cover the cost of installing a sewer system. 413 Pa. at 528-29, 198 A.2d at 869. The Supreme Court there held that a public school was immune from the assessment even though it was levied “against properties benefited by the sewer construction.” *Id.*⁵ Just as the municipal authority could not assess the school to

⁵ The Supreme Court, by contrast, separately held that it was within the public health powers of the municipal authority to compel the school to connect to the sewer system, and as a result the school could be compelled to pay the connection charge and rental fee associated with their use. *Id.* at 539, 198 A.2d at 874. These charges, however, much more closely resemble a fee for use rather than a tax or

pay for a new sewer system, even though the school itself might benefit, the Borough cannot assess the State System or Respondents to fund its environmental projects, because that assessment is a tax.

The Stormwater Tax is not a fee for any service being provided to the State System or University in particular. The Borough is not seeking a payment reasonably proportional to the value of a product or service it provided to the Commonwealth in a quasi-private capacity akin to contract, like providing natural gas or collecting garbage, but rather it seeks the authority to impose payment on Commonwealth property to fund infrastructure projects that have a communal, environmental benefit. *See* Pet. ¶¶ 58-59 (noting that Borough remediation plan intends to address issues in public waterways). The Borough does not allege that it will make improvements to, or even touch, property owned by the State System or the University. *But see* Respondents' Ex. B (Respondents themselves hold an NPDES permit to address stormwater discharge on their own property). To be clear, Respondents do not imply that stormwater runoff is not an important environmental issue—it is. However, the Borough's remedial measures are a **public** function performed in its capacity as local government. And in that capacity, it has no power to levy taxes or assessments on Respondents to fund

assessment. *See also* *Commonwealth v. Tobin*, 828 A.2d 415, 418 (Pa. Commw. Ct. 2003) (mandatory inspections of residential real estate, and associated charges, were not taxes).

those projects. *See Southwest Del. Cty. Mun. Auth.*, 413 Pa. at 531, 198 A.2d at 870 (“If public property purchased by funds raised by taxation is subjected to assessment for a local public improvement, it is the public paying the public, which clearly discloses the absurdity of the proposition.”).

To support its contention that the Stormwater Tax is a fee for service, the Borough cites a series of cases, but none of these cases rely on Pennsylvania law or arise in the context of a state’s tax immunity. This is significant for multiple reasons. Most importantly, tax immunity is a broader and more powerful defense than other statutory exemptions that may be invoked by private parties seeking to avoid stormwater charges. *See Lehigh-Northampton Airport Auth.*, 585 Pa. at 669-70, 889 A.2d at 1175-76 (noting that tax immunity carries a presumption in favor of the Commonwealth while exemptions should be strictly construed to favor taxation). Thus, cases relying on private parties invoking statutory exceptions to a stormwater tax cannot be analyzed under the same framework as the Commonwealth’s claim of tax immunity here. They are simply inapposite.

Additionally, when analyzing whether a stormwater charge might be a tax for some other purpose, particular statutory idiosyncrasies come into play. For example, under certain federal statutes an assessment might not be considered a tax—which is a conclusion inconsistent with tax immunity under Pennsylvania law. *See Norfolk So. Railway Co. v. City of Roanoke*, No. 16-cv-176, 2017 WL

6599008, at *7 (W.D. Va. Dec. 26, 2017) (distinguishing, in case involving federal railway law, “between a ‘tax’ on one hand and a ‘special assessment’ or ‘fee’ on the other”); *see also Homewood Village, LLC v. Unified Gov’t of Athens-Clarke Cty.*, 132 F. Supp. 3d 1376, 1381 (M.D. Ga. 2015) (holding that, for private landowner, a stormwater charge is not a tax for purposes of the federal Tax Injunction Act).⁶ The courts acknowledge that where a stormwater charge might be properly held to be a “fee” in one context, the same reasoning may cause it to be a “tax” in another. *See Norfolk So. Railway Co.*, 2017 WL 6599008, at *8 (noting that, although it held that a stormwater charge was not a tax in that case, “[t]wo federal courts have concluded that similar charges imposed by municipalities in Georgia are taxes for purposes of other constitutional or statutory provisions”); *see also Homewood Village*, 132 F. Supp. 3d at 1381 n.2 (noting that, even within the district courts, there is disagreement about whether a stormwater charge is a tax for purposes of the Tax Injunction Act).⁷ As these cases make clear, both the identity

⁶ Significantly, the district court in *Homewood Village* never actually implemented its decision. It later dismissed the case on comity grounds, finding that the local tax issues at stake were best left to the state courts. *Homewood Village, LLC v. Unified Gov’t of Athens-Clarke Cty.*, No. 15-cv-23, 2016 WL 1306554 (M.D. Ga. Apr. 1, 2016), *aff’d* 677 Fed. Appx. 623 (11th Cir. 2017). This only further underscores the importance of addressing the tax immunity issue under Pennsylvania law rather than cases arising in other contexts.

⁷ Where the Borough has cited Pennsylvania cases, they do not concern anything resembling stormwater charges or tax immunity. *See M&D Properties, Inc. v. Borough of Port Vue*, 893 A.2d 858, 860 (Pa. Commw. Ct. 2006) (holding

of the potential taxpayer and the basis of the exemption or immunity invoked matter significantly.

Because the issue here is one of *Pennsylvania* law, the Court need not tie itself in knots considering whether and when a stormwater charge might not be considered a tax in other contexts and in other jurisdictions. And because the defense here involves *tax immunity* and not simply a statutory exemption, decisions by foreign courts in cases involving non-state parties offer little insight. The answer under applicable Pennsylvania law is sufficiently clear—the Stormwater Tax is a tax for tax immunity purposes, and thus the assessed property here held by Respondents is immune.

II. State Law Does Not Expressly Authorize the Borough to Compel Payment of the Stormwater Tax from a Commonwealth Entity.

Political subdivisions like the Borough do not have general authority to compel payment from Commonwealth entities; it may do so only if given the authority to do so under state law. *Lehigh-Northampton Airport Auth.*, 585 Pa. at 669, 889 A.2d at 1175 (“Because the power to tax is vested within the General Assembly, real estate is immune from local taxation unless that body has granted taxing authority to political subdivisions.”). The authority to levy any kind of tax or charge against a Commonwealth entity must be made expressly. *Southwest Del.*

that garbage collection fees were reasonable); *Tobin*, 828 A.2d at 418 (addressing mandatory real estate inspections for private landowner).

Cty. Mun. Auth., 413 Pa. at 534, 198 A.2d at 872 (“[P]roperty owned by a municipality and devoted exclusively to public purposes is immune from any form of taxation or assessments unless a statute clearly and unequivocally expresses the legislative will that such property shall not be immune); accord *Del. Cty. Solid Waste Auth. v. Berks Cty. Bd. of Assessment Appeals*, 534 Pa. 81, 85, 626 A.2d 528, 530 (1993) (requiring an “explicit statutory grant of authority”). The “general authority” to legislate via a home rule charter “simply does not address” and cannot overcome sovereign immunity for the Commonwealth and its agencies. *Southeastern Pa. Transp. Auth. v. City of Phila.*, 639 Pa. 1, 19, 159 A.3d 443, 453-54 (2017) (“*SEPTA v. Phila.*”).

The Ordinance sets forth two possible sources of the Borough’s express authority under state law with respect to stormwater issues specifically: the Storm Water Management Act, 32 P.S. § 680.1 *et seq.*, and the Clean Streams Law, 35 P.S. § 691.1 *et seq.*⁸ See Pet. Ex. C at 3. Neither gives the Borough the authority it seeks. The Storm Water Management Act does not authorize the Borough to impose any tax, fee, or assessment against a Commonwealth entity (or anyone else) to raise revenue to comply with the Borough’s obligations. See generally 32 P.S. § 680.1 *et seq.* In fact, in describing who may be subject to any penalty, the

⁸ The other two cited authorities are a federal statute and the Borough’s Home Rule Charter, but these cannot convey the necessary authority under state law.

Storm Water Management Act *explicitly carved out* the Commonwealth, its agencies, and its properties. *See* 32 P.S. § 680.4 (defining “person” in this context to “exclude any department, board, bureau or agency of the Commonwealth”). The Borough is well aware of this limitation: Notwithstanding this express exclusion in the Storm Water Management Act, the corresponding definition of “person” in the Ordinance—otherwise a verbatim copy of the text from the statute—conspicuously omits this exclusion of Commonwealth entities. *See* Pet. Ex. C at 4. Further, with respect to the Clean Streams Law, it expressly authorizes the Pennsylvania Department of Environmental Protection to collect certain fines, fees, and costs that must be deposited into a Clean Water Fund, *see* 35 P.S. § 691.8(a), and authorizes a political subdivision to issue “bonds, revenue certificates or other obligations” to finance its obligations under that statute related to sewage pollution, *see* 35 P.S. §§ 691.211-691.213, but it does *not* authorize political subdivisions to impose any tax, fee, or assessment against a Commonwealth entity. There is no source of express authority for the Borough to collect the Stormwater Tax from a Commonwealth agency.

The Borough’s reliance on the Home Rule Law, *see* Resp. ¶ 28, gives away the game. If its authority arises only from *general* power, then the Borough effectively concedes that it has no “express statutory authority” to assess Commonwealth entities. *See Southwest Del. Cty. Mun. Auth.*, 413 Pa. at 534, 198

A.2d at 872 (requiring such authority). The Borough's argument would mean that the Home Rule Law could be invoked to waive all immunity, which is an absurd result and contrary to law. *See SEPTA v. Phila.*, 639 Pa. at 19, 159 A.3d at 454 (rejecting contention that home rule charter waived sovereign immunity). The Borough does not and cannot provide the required express authority.

Given the absence of any express statutory authority, the Borough may not impose any stormwater tax, fee, or assessment of any kind against a Commonwealth entity, including the State System and University.

CONCLUSION

Wherefore, Respondents Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education respectfully request that this Court sustain their preliminary objection and dismiss the Action for Declaratory Judgment with prejudice.

Dated: July 23, 2018

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATION PURSUANT TO Pa. R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 23, 2018

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OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing Brief in Support of Respondents’ Preliminary Objection is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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NO. 260 MD 2018

THE BOROUGH OF WEST CHESTER
Petitioner,

v.

**PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION and
WEST CHESTER UNIVERSITY OF
THE STATE SYSTEM OF HIGHER EDUCATION**
Respondents.

**BRIEF OF PETITIONER THE BOROUGH OF WEST CHESTER
IN OPPOSITION TO RESPONDENTS' PRELIMINARY OBJECTION**

*Petition for Review Challenging the Determination by
Pennsylvania State System of Higher Education and
West Chester University of the State System of Higher Education
Regarding the Borough of West Chester's Stream Protection Fee*

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STATEMENT OF JURISDICTION

Pursuant to Section 761.(a)(1) of the Pennsylvania Judicial Code, 42 Pa. C.S. § 761.(a)(1), the Commonwealth Court has jurisdiction over the Action for Declaratory Judgment which Petitioner Borough of West Chester (the “Borough”) filed with this Court on April 13, 2018.¹

¹ Unless otherwise noted, capitalized terms used, but not defined, in this Brief have the meanings ascribed thereto in the Action for Declaratory Judgment.

DETERMINATION IN QUESTION

The determination by the Pennsylvania State System of Higher Education (the “State System”) (on behalf of itself and its constituent institution, West Chester University of Pennsylvania of the State System of Higher Education (the “University”)) dated January 18, 2018, and pursuant to which the State System and the University informed the Borough that neither the State System nor the University would pay the Stream Protection Fee (the “January 18, 2018 Letter”). A copy of the January 18, 2018 Letter is attached hereto as **Exhibit A**.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

This Court must accept as true all material facts which the Borough included in the Action for Declaratory Judgment and all reasonable inferences which this Court can draw from those facts. See Seitel Data, Ltd. v. Center Twp., 92 A.3d 851, 858 (Pa. Cmwlth. Ct. 2014). The Court may sustain the Preliminary Objection (as hereinafter defined) only when it is clear and free from doubt that the Borough will be unable to prove facts legally sufficient to establish a right to relief. See Hospital & Healthsystem Assoc. of Pa. v. Dep't of Public Welfare, 888 A.2d 601, 607 n.12 (Pa. 2005); Sci Games Int'l, Inc. v. Dep't of Revenue, 34 A.3d 307, 311 n.8 (Pa. Cmwlth. Ct. 2011)

QUESTION PRESENTED

In the context of the Preliminary Objection, did the State System and the University establish without doubt that the Stream Protection Fee is a tax or an assessment and not a fee?

Suggested Answer: No.

STATEMENT OF THE CASE

Acting pursuant to its authority as a home rule municipality, the Borough implemented (A) further regulation of the discharge of stormwater from Developed Properties (as that term is defined in the singular in the Stream Protection Ordinance) into the Borough Stormwater Collection and Conveyance System and (B) collection of fees for the service provided by that system. The amount of the Stream Protection Fee which the owner of any given Developed Property is obligated to pay is a product of the amount of impervious surface at that property. Any owner of a Developed Property can reduce the amount of the Stream Protection Fee with regard to that property by reducing the amount of impervious surface at that property, otherwise achieving site-specific credits against the Stream Protection Fee, or prevailing on an appeal on other specified grounds.

The Borough established the Stormwater Management Fund and directed that all sums which the Borough collects pursuant to the Stream Protection Fee are deposited into that fund. The Borough further directed that monies in the Stormwater Management Fund may only be used by the Borough for specific and limited stormwater-related purposes.

In 2017, the Borough began to include the Stream Protection Ordinance as part of the Borough's larger regulation of stormwater. By early-2018, the State

System and the University informed the Borough of their claim that the Stream Protection Fee is not a fee but, rather, a tax from which they are immune.

The Borough filed the Action for Declaratory Judgment to establish the State System's and the University's obligations under and pursuant to the Stream Protection Ordinance. The State System and the University filed a single preliminary objection in the nature of a demurrer (the "Preliminary Objection"). The Preliminary Objection is now before this Court for determination.

SUMMARY OF ARGUMENT

The Borough may not impose a tax or assessment upon real estate which the State System or the University own and use for their authorized governmental purposes. Though the State System and the University make much of that truism in their Brief in support of the Preliminary Objection, it is wholly irrelevant to this matter.

When it enacted the Stream Protection Fee the Borough did not purport to (and did not actually) impose any tax or assessment. Instead, the Borough collects from the owners of each Developed Property the Stream Protection Fee . . . which, despite the State System's and the University's claims, is neither a tax nor an assessment but, rather, is a fee.²

Stormwater which flows from a Developed Property impacts the natural environment and is subject to supervision and regulation of the Borough by the United States of America and the Commonwealth of Pennsylvania. In turn, and acting pursuant to its own police powers, the Borough actively regulates the flow of

² As a matter of practice, the Borough sends invoices for the Stream Protection Fee to the respective owners of each Developed Property on the presumption that each Developed Property uses, is served by, or is benefitted by the Borough Stream Protection Ordinance. Any such owner can file an appeal pursuant to Section 94A-11 of the Stream Protection Ordinance. BOROUGH OF WEST CHESTER, PA., STREAM PROTECTION ORDINANCE §§ 94A-11 (2016). If the owner can demonstrate that their parcel (or a portion thereof) drains completely outside of the Borough, that property owner may be entitled to a reduction of up to fifty percent (50%) of the amount of the Stream Protection Fee as otherwise calculated for their property.

stormwater from Developed Properties into and through the Borough Stormwater Collection and Conveyance System.

Since enactment of the Stream Protection Ordinance, a part of that Borough-implemented regulatory program includes the requirement that the owner of each Developed Property pay the Stream Protection Fee. Pursuant to the Stream Protection Ordinance, the Stream Protection Fee applies only to those property owners whose properties are “connected with, use[], [are] served by or [are] benefitted by” the Borough Stormwater Collection and Conveyance System. The amount of the Stream Protection Fee as applicable to any given Developed Property is a direct function of the amount of impervious coverage at that Developed Property.

The Borough deposits all funds which it collects through the Stream Protection Fee into a dedicated Stormwater Management Fund. From there, such funds may be used by the Borough only for the express stormwater regulation-related purposes set forth in the Stream Protection Ordinance.

Furthermore, by accepting that stormwater into the Borough Stormwater Collection and Conveyance System, the Borough renders a service for the benefit of each Developed Property by relieving the owner of that property from the obligation of managing on-site all stormwater which otherwise flows from that Developed Property.

All of the foregoing are the hallmarks of a fee and not those of a tax, the characteristics of which include revenue generation for the general purposes of government.

The Borough has all necessary authority to impose and collect the Stream Protection Fee from the State System and the University. As a home rule municipality, the Borough may take any legislative action which is not limited by the Pennsylvania Constitution, Acts of the General Assembly, or the Borough's Home Rule Charter itself. Though the State System and the University do not point to any provision of the Pennsylvania Constitution, any Act of the General Assembly, or any portion of the Borough's Home Rule Charter itself which would limit the Borough's authority in that regard, any ambiguities which do arise during an analysis of the Borough's Home Rule powers must be resolved in favor of the exercise of those powers.

In the Action for Declaratory Judgment, the Borough alleged sufficient material facts to refute the State System's and the University's claim that the Stream Protection Fee is a tax or an assessment. In the context of the Preliminary Objection, this Court must accept as true all those facts and all reasonably deducible inferences and, accordingly, overrule the Preliminary Objection.

ARGUMENT

A. THE STREAM PROTECTION FEE IS NOT A TAX.

The State System and the University go to great lengths to stress that property which they own is immune from taxation. That effort, though, misses the point of this matter.

The Borough does not dispute that real property owned by the State System or the University is qualifiedly immune from taxation. See SEPTA v. Bd. of Revision of Taxes, 833 A.2d 710, 715-16 (Pa. 2003). In the context of the Preliminary Objection, though, this Court need not consider which parts of North Campus are entitled to that qualified immunity. **Rather, the only question which this Court must now answer is whether the Stream Protection Fee is a tax or assessment, as the State System and the University incorrectly claim.**³ At this stage of this litigation (*i.e.* in the context of the Preliminary Objection), and using the standard applicable to preliminary objections, this Court cannot possibly fully

³ In the Brief which it filed with this Court in support of the Preliminary Objection the Commonwealth acknowledged that

when a municipality performs certain functions in a ‘proprietary or quasiprivate capacity,’ a Commonwealth agency may be required to pay a fee for that service on a theory ‘based upon contract rather than taxation,’ but only if that fee is ‘reasonably proportional to the value of the . . . service received.

Brief of Respondents at 10-11, *The Borough of West Chester v. Pennsylvania State System of Higher Education, et al.*, No. 260 MD 2018 (Pa. Cmwlth. Ct. July 23, 2018) (citing Supervisors of Manheim Tp. v. Workman, 38 A.2d 273, 276 (Pa. 1944)).

and finally conclude that the State System and the University will surely prevail on that question.

The State System and the University put the proverbial rabbit in the hat by declaring in conclusory tones that the Stream Protection Fee “is a tax, or at least an assessment, and not a fee for service[]” and, then, marrying that declaration to the undisputed immunity-related precept noted above. In doing so, they ignore the difference between a property tax and a fee.

In that regard, the Stream Protection Fee can be characterized as either a regulatory license fee or a fee-for-service.

The Stream Protection Fee as a Regulatory License Fee.

In National Biscuit Co. v. Philadelphia, the Supreme Court observed that “an excise or property tax . . . is levied by virtue of the government’s taxing power **solely for the purpose of generating revenue.**” National Biscuit Co. v. Philadelphia, 98 A.2d 182, 187 (Pa. 1953) (emphasis added). Conversely, the Court held that

the distinguishing features of a license fee are (1) that it is applicable only to a type of business or occupation which is subject to supervision and regulation by the licensing authority under its police power; (2) that such supervision and regulation are in fact conducted by the licensing authority; (3) that the payment of the fee is a condition upon which the licensee is permitted to transact his business or pursue his occupation; and (4) that the legislative purpose in exacting the charge is to reimburse the licensing authority for the expense of the supervision and regulation conducted by it.

Id. at 188.

Later, this Court held that “[t]he question of whether an enactment is a tax or regulatory measure is determined by the purposes for which it is enacted and not by its title.” White v. Com., Medical Professional Liability Catastrophe Loss Fund, 571 A.2d 9, 11 (Pa. Cmwlth. Ct. 1987) (citing Wilkes-Barre v. Ebert, 349 A.2d 520 (Pa. Cmwlth. Ct. 1975)). “The common distinction [between taxes and fees] is that taxes are revenue-producing measures authorized under the taxing power of government; while license fees are regulatory measures intended to cover the cost of administering a regulatory scheme authorized under the police power of government” Philadelphia v. Southeastern Pennsylvania Transp. Authority, 303 A.2d 247, 251 (Pa. Cmwlth. Ct. 1973). A fee may also be imposed as a charge for services which a municipality renders “to particular persons or groups of persons within the” municipality. Manheim Tp., 38 A.2d at 276 (Pa. 1944).

In the Action for Declaratory Judgment, the Borough alleged facts to establish that the Stream Protection Fee is a license or regulatory fee, and not a tax. Those facts are more than sufficient for the Borough to ultimately prevail in this matter and, certainly, overcome the Preliminary Objection.

Firstly, the Borough alleged that, unlike a tax, the Stream Protection Fee is not applicable to all properties in the Borough and is not “levied by virtue of the government’s taxing power solely for the purpose of generating revenue.” Rather,

the language of the Stream Protection Ordinance provides that the Stream Protection Fee is only applicable to the owners of “developed” properties which are “connected with, use[], [are] served by or [are] benefitted by” the Borough Stormwater Collection and Conveyance System. BOROUGH OF WEST CHESTER, PA., STREAM PROTECTION ORDINANCE §§ 94A-6 & 94A-7.C. (2016). Under that construct, the decision as to whether to subject oneself to the Stream Protection Fee rests entirely with the owner of any given property, as the owner may elect to remove her property from the definition of being a “developed” property.

Secondly, the Borough alleged that it is required to comply with regulatory requirements which are imposed upon it by the United States of America and the Commonwealth of Pennsylvania. In order to comply with those regulatory requirements, the Borough does supervise and regulate the flow of stormwater from each Developed Property and into the Borough Stormwater Collection and Conveyance System. By way of example, the Borough enters into operation and maintenance agreements with the owners of stormwater management systems on individual properties and, on a regular basis, conducts inspections of those and similar systems. Indeed, the Borough regularly inspects the stormwater management facilities which are located at North Campus and which discharge into the Borough Stormwater Collection and Conveyance System.

Thirdly, the Borough alleged facts with regard to the existence of the Stream Protection Fee itself, the manner in which the fee is calculated, and, at least in part, the opportunities which the owners of any Developed Property have to reduce the amount of the Stream Protection Fee for which that owner is charged. As more fully set forth in the Stream Protection Ordinance, any owner of a Developed Property who fails to pay the Stream Protection Fee is in violation of the Stream Protection Ordinance and is subject to the enforcement mechanisms set forth at Section 94A-7 of that enactment.

Fourthly, the Borough alleged that the purposes for which the Stream Protection Fee may be used are limited to those set forth in the Stream Protection Ordinance. Those purposes include, *inter alia*, “[i]mplementation and management of a program to manage stormwater within the Borough[,]” and “[c]onstructing, operating, and maintaining the” Borough Stormwater Collection and Conveyance System. BOROUGH OF WEST CHESTER, PA., STREAM PROTECTION ORDINANCE §§ 94A-9.B. (2016). In short, the clear purpose of the Stream Protection Fee is to reimburse the Borough for the expense of the supervision or regulation of stormwater flowing from each Developed Property into and through the Borough Stormwater Collection and Conveyance System. Indeed, the Borough defined the Stream Protection Fee as, *inter alia*, one levied by the Borough to cover the Borough’s costs associated with the Borough Stormwater Collection and

Conveyance System. BOROUGH OF WEST CHESTER, PA., STREAM PROTECTION ORDINANCE §§ 94A-5 (2016).

Indeed, the Stream Protection Fee is not a general revenue generating measure. Rather, all funds which the Borough collects pursuant to the Stream Protection Ordinance are deposited into the Borough Stormwater Management Fund. From there, such funds may be used by the Borough only for the express purposes set forth in that ordinance.

The State System and the University attempt to make use of that fact by claiming that the Stream Protection Fee is limited to “fund infrastructure projects that have a communal environmental benefit[,]” and “[t]he Borough does not allege that it will make improvements to, or even touch, property owned by the State System or the University.” That claim, like the State System’s and the University’s claim regarding their qualified tax immunity, misses the point of this matter. The Borough is unaware of (and the State System and the University do not point to) any rule of law under which requires that a governing authority which imposes a validly imposed fee must perform work on the fee-payer’s property.

The State System and the University also characterize the Stream Protection Fee as a tax because of the broad societal and environmental benefits which accrue from the Borough Stormwater Collection and Conveyance System. A simple analogy demonstrates why that characterization must fail.

The Supreme Court regulates and supervises lawyers and requires that members of that profession pay an annual fee accordingly. Obviously, there are larger societal benefits which flow from that regulation and supervision. No one would seriously argue, though, that those societal benefits convert that annual fee into a tax upon lawyers. So it is with the Stream Protection Fee.

Of course there are societal and environmental benefits which flow from the fact that the Borough allows the owners of each Developed Property to discharge stormwater into the Borough Stormwater Collection and Conveyance System. Those benefits, though, no more convert the Stream Protection Fee into a tax than do the societal benefits which flow from the Supreme Court's regulation and supervision of lawyers converts the annual attorney registration fee into a tax. Furthermore, as discussed more fully below, the properties at North Campus which the State System and the University own are, in fact, benefitted by the Borough Stormwater Collection and Conveyance System.

The Stream Protection Fee as a Fee-for-Service.

If the Court for some reason concludes that the Borough will be unable to refute the State System's and the University's claim that the Stream Protection Fee is not a regulatory license fee, the Court should still overrule the Preliminary Objection on the basis that the Stream Protection Fee is a fee-for-service. See Manhein Tp., 38 A.2d at 275 (stating that (A) a municipality may provide a service

to its residents while acting in its proprietary or quasi-private capacity and charging a fee for that service and (B) that the hallmark of a fee-for-service is that the amount of the fee is “reasonably proportional to the value of the . . . service received . . .”).

In Manheim Tp., the Supreme Court held that

[c]harges made in connection with such operations are based upon contract rather than taxation because those who consume the product or receive the service act in so doing voluntarily . . . and thereby impliedly agree to pay the price of the . . . service rendered.

Id.

The Borough owns and operates the Borough Stormwater Collection and Conveyance System for the benefit of the owner of each Developed Property which uses that system. Because the Borough Stormwater Collection and Conveyance System exists, those owners do not have to incur the expense which would otherwise be necessary to maintain on their own properties the scope of systems which would be necessary to eliminate the discharge of polluted stormwater from those sites. Rather, the owners can rest assured that the Borough is providing that service through ownership and operation of the Borough Stormwater Collection and Conveyance System.

Those owners, however, are under no compulsion to use the Borough Stormwater Collection and Conveyance System. They could, for example, elect to

simply eliminate impervious coverage on their property such that the lot is no longer within the definition of the term Developed Property.

Furthermore, the amount of Stream Protection Fee which the owner of a given Developed Property must pay is directly related to the amount of impervious cover at that Developed Property. As such, the amount of the Stream Protection Fee is reasonably proportional to the value of the service which the owner of a Developed Property receives through their use of the Borough Stormwater Collection and Conveyance System.

The Borough alleged facts which, when presumed to be true and accurate for this Court's consideration of the Preliminary Objection, prevent the Court from concluding that the Borough has no chance of success in this litigation. Accordingly, this Court must overrule the Preliminary Objection.

B. THE BOROUGH HAS THE POWER TO IMPOSE THE STREAM PROTECTION FEE.

The State System and the University also claim that the Borough does not have the power to impose the Stream Protection Fee upon the State System and the University because “[t]he authority to levy any kind of tax or charge against a Commonwealth entity must be made expressly.” That claim, however, proceeds on the presumption that the Stream Protection Fee is a tax or assessment which, as noted above, is not the case (and cannot be fully and finally determined in the context of the Preliminary Objection). In short, because the Court cannot sustain the

Preliminary Objection on the first leg of the State System's and the University's claim, it cannot possibly sustain the Preliminary Objection on the second leg of that claim.

The State System and the University also claim that they are immune from the Stream Protection Fee because, within the Pennsylvania Stormwater Management Act, 32 P.S. § 680.1 *et seq.* (the "SWMA"), the General Assembly removed the Commonwealth from the scope of entities which could be subject to a penalty for a violation of that statute. 32 P.S. § 680.4. Very simply, that argument is misplaced. The Stream Protection Fee is not intended to be, and is not, a penalty imposed for a violation of the SWMA. Accordingly, the fact that the State System and the University may be immune from penalties under the SWMA is wholly irrelevant to this Court's resolution of the Preliminary Objection.

The State System's and the University's rejection of the Borough's status as a home rule municipality for purposes of this matter is also misplaced. Here, the State System and the University claim that "[t]he Borough's reliance on the Home Rule Law . . . gives away the game. If its authority arises only from general power, then the Borough effectively concedes that it has no 'express statutory authority' to assess Commonwealth entities."

The Supreme Court, though, disagrees.⁴ In 2007, the Supreme Court stated again that

under the concept of home rule . . . [a] locality . . . may legislate concerning municipal governance without express statutory warrant for each new ordinance; rather, its ability to exercise municipal functions is limited only by its home rule charter, the Pennsylvania Constitution, and the General Assembly.

Nutter v. Dougherty, 938 A.2d 401, 411 (Pa. 2007) (quoting City of Philadelphia v. Schweiker, 858 A.2d 75, 84 (Pa. 2004)).

The Court went on to note that

grants of municipal power ‘shall be liberally construed in favor of the municipality’ [and] ‘in analyzing a home rule municipality’s exercise of power [the Court] begin[s] with the view that it is valid absent a limitation found in the Constitution, the acts of the General Assembly, or the charter itself, and . . . resolve[s] ambiguities in favor of the municipality.

Id. (quoting County of Delaware v. Township of Middletown, 511 A.2d 811, 813 (Pa. 1986)).

Here, the State System and the University do not point to any provision of the Constitution, Act of the General Assembly, or portion of the Borough’s own Home Rule Charter which operates to limit the Borough’s power to impose the Stream Protection Fee. Accordingly, and in light of the Supreme Court’s interpretation of the Home Rule clause of the Pennsylvania Constitution, this leg of the Preliminary Objection cannot stand.

⁴ Pa. Const. Art. IX, § 2.

WHEREFORE, Petitioner The Borough of West Chester respectfully requests that this Court enter an Order overruling Respondents' Preliminary Objection.

Dated: August 27, 2018

Respectfully submitted,

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MCGUIRE, & MORRIS LLP**

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EXHIBIT A



GOVERNOR'S OFFICE OF GENERAL COUNSEL
Office of Chief Counsel

January 18, 2018

Mr. Michael Perrone
Manager
Borough of West Chester
The Spellman Building
829 Paoli Pike
West Chester, PA 19380-4551

Re: Storm Water Management Fee
West Chester University of Pennsylvania

Dear Mr. Perrone:

I am Chief Counsel for Pennsylvania's State System of Higher Education ("State System"). As I am sure you are aware, West Chester University of Pennsylvania ("University") is one of fourteen (14) component universities of the State System.

I am writing to you to formally advise the Borough that the University will not be paying the storm water management fee invoices that the Borough sent to the University. As previously explained, the University is not legally authorized to pay those invoices because: (1) the Borough does not have the statutory authority to impose a storm water management fee on a Commonwealth entity, such as the University; and (2) even if such statutory authority existed, the Borough's storm water management fee is a tax, from which the University, as a Commonwealth entity, is immune.

Pursuant to the State System of Higher Education's enabling statute, the State System and its constituent universities are designated a "government instrumentality." 24 P.S. §20-2002-A(a). As an instrumentality of the Commonwealth, the University is a Commonwealth entity that is immune to local taxation unless the Pennsylvania General Assembly has expressly granted the political subdivision the authority to tax property owned by the Commonwealth.

In *Lehigh-Northampton Airport Authority v. Lehigh County Board of Assessment Appeals*, 889 A.2d 1168, 1172 (Pa. 2005), the Pennsylvania Supreme Court described the Commonwealth's tax immunity as follows:

Because the power to tax is vested within the General Assembly, real estate is immune from local taxation unless that body has granted taxing authority to political subdivisions. Even where such local taxing power exists, property owned by the Commonwealth and its agencies remains unaffected by—or immune from—such power absent express statutory

CC: BOR COUNCIL, MAYOR
R. CAMP.
O.B. LANGE

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JAN 23 2018

BY: _____



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Mr. Michael Perrone
Borough of West Chester
January 18, 2018
Page 2

authorization to the contrary. *SEPTA v. Board of Revision of Taxes*, 833 A.2d 710, 713 ("It cannot be presumed that general statutory provisions giving local subdivisions the power to tax local real estate, were meant to include property owned by the Commonwealth..."); see also *Commonwealth v. Dauphin County*, 335 Pa. 177; 180-181, 6 A.2d 870, 872 (1939) (explaining that legislation generally does not affect the sovereign's rights unless it clearly intends to do so, and that, particularly in the context of taxation, any other rule could "upset the orderly processes of government by allowing the sovereign power to be burdened by municipal taxes").

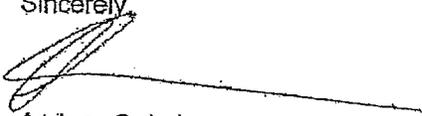
The Borough's storm water management fees are not charges for actual services provided to the University by the Borough. Instead, they are the imposition of a general tax for the improvement and maintenance of the Borough's storm water infrastructure. As a result, these fees are a tax, regardless of what the Borough chooses to call them. The proper characterization of a governmental charge does not depend on what it has been called, but the purposes for which it has been enacted. See *Clement & Muller, Inc. v. Tax Review Board*, 659 A.2d 596 (Pa. Commonwealth Ct., 1995), *aff'd*, 715 A.2d 397 (Pa. 1998) (distinguishing a tax from a regulatory fee); *Philadelphia v. Southeastern Pennsylvania Transportation Authority*, 303 A.2d 247 (Pa. Commonwealth Ct., 1973) (distinguishing a tax from a license fee).

The Commonwealth pays neither for the general operations of local government nor for local infrastructure improvements, even though the Commonwealth may benefit from both. *Pittsburgh v. Sterrett Subdistrict School*, 54 A. 463 (Pa. Supreme Ct., 1903); see also *Southwest Delaware County Municipal Authority v. Aston Township*, 198 A.2d 867 (Pa. Supreme Ct., 1964); *McCandless Township Sanitary Authority v. PennDOT*, 488 A. 2d 367 (Pa. Commonwealth Ct., 1985).

In this case, none of the sources of legal authority for the imposition of storm water management fees stated in the Borough's ordinance contain the express statutory authority required.

Please let me know if there is anything further you need from the University on this matter.

Sincerely,



Andrew C. Lehman
Chief Counsel

ACL:mar

c: Jennifer Whare, Deputy General Counsel
Christopher M. Fiorentino, President
University Legal Counsel

\\Legal\Protected\Chief Counsel\Misc\WC Borough Storm Water Management Fee.docx

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Higher Education and West
Chester University

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :
 :
 : Original Jurisdiction
 :
 Petitioner, :
 :
 v. : No. 260 MD 2018
 :
 :
 PENNSYLVANIA STATE SYSTEM :
 OF HIGHER EDUCATION and :
 :
 :
 WEST CHESTER UNIVERSITY OF :
 PENNSYLVANIA OF THE STATE :
 SYSTEM OF HIGHER :
 EDUCATION, :
 :
 :
 Respondents. :
 :
 :

**RESPONDENTS' REPLY BRIEF IN FURTHER SUPPORT OF
THEIR PRELIMINARY OBJECTION TO PETITIONER'S
ACTION FOR DECLARATORY JUDGMENT**

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Respondents Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System,¹ by counsel, respectfully submit this Reply Brief in Further Support of their Preliminary Objection to Petitioner’s Action for Declaratory Judgment.

INTRODUCTION

The parties agree that the issue before the Court is a straightforward question of law: are the State System and University immune from payment of the Stormwater Tax by their sovereign status, or can the Borough establish that the Stormwater Tax is a type of fee that escapes immunity. Based on the alleged facts and controlling law, the State System and University are immune from the Stormwater Tax.

The Borough fails its attempt to wedge the Stormwater Tax into an exception for tax immunity. First, it is not a license fee under the definition cited by the Borough because Respondents do not operate a business or profession regulated by the Borough and, moreover, the Stormwater Tax is not a fee imposed as a condition for operating that regulated business or profession. Second, even if it were a license fee, the State System and University would still be immune because, like with property taxes, imposition of the license fee would rely on the Borough’s

¹ Respondents incorporate the additional terms defined in their opening brief, which will be referred to here as “Respondents’ Br.” The Borough’s brief in response will be referred to here as “Petitioner’s Br.”

sovereign authority rather a quasi-private, contract-like authority akin to a fee for service. Third, the Borough cites no law showing that the Stormwater Tax could still be considered a fee for service, even though the alleged facts show it to be no different than any other assessment to fund a local infrastructure project. Fourth, the Borough again fails to cite any express source of its authority to impose any kind of fee on sovereign entity or any legal authority to support their claim that home rule powers are sufficient in the context of a state entity.

For any of these reasons, the Preliminary Objection in the nature of a demurrer should be sustained and the case against the State System and University should be dismissed.

ARGUMENT

I. The Borough Fails to Establish that the Stormwater Tax Is a Type of Fee Exempt from Tax Immunity.

A. The Stormwater Tax Does Not Meet the Definition of a License Fee.

As the Borough rightly points out, the legal status of any imposed charge is determined by its substance and not simply by its title. *See* Petitioner's Br. at 12.

The Borough argues primarily that the Stormwater Tax is a license fee by citing the four-part test set forth in *National Biscuit Company*. *See* Petitioner's Br. at 11.²

But the Stormwater Tax does not meet this definition of a license fee.

² As shown later in Section I.B., however, the Borough erroneously assumes that the Stormwater Tax can be imposed on the Respondents if it is a license fee.

First, neither the State System nor the University is “a type of business or occupation which is subject to supervision and regulation” by the Borough. *See National Biscuit Co. v. City of Phila.*, 374 Pa. 604, 98 A.2d 182, 188 (1953). As a municipality, the Borough’s licensing powers are limited and must derive from the state itself; when a local government exceeds its authority to establish license fees, the fees can be struck down. *See Kasper Bros., Inc. v. Falls Twp.*, 672 A.2d 1386, 1389-90 (Pa. Commw. Ct. 1996) (holding that a township “exceeded its authority in imposing a licensing fee upon waste haulers beyond that authorized” by law). In this matter, the Borough lacks any authority to exercise licensing power over state universities for the protection of the public health and welfare. Put differently, the State System and University do not need permission from the Borough to conduct their affairs, and the Borough has no authority to regulate the University’s mission. Because the University is not engaged in the type of business or occupation regulated by the Borough, the Stormwater Tax cannot be a license fee.

The Borough cites no legal authority giving it authority to regulate, and therefore license, a state university. In fact, the cases cited by the Borough demonstrate the need for a specific source of licensing authority. In *City of Philadelphia v. Southeastern Pennsylvania Transportation Authority*, the Court held that the city had no authority to impose a fee—whether characterized as a tax

There is no legal basis for this argument; sovereign immunity would still apply to a license fee.

or a license fee—on the public transit authority, which was a Commonwealth entity *See* 8 Pa. Commw. 280, 289, 303 A.2d 247, 252 (1973); *see also id.* at 285, 303 A.2d at 250 (SEPTA noting its status as an “instrumentality and agency of the Commonwealth”). And *National Biscuit Company*—like *City of Philadelphia*—concerned the City of Philadelphia’s licensing authority that was derived from the express terms of the Sterling Act. *See National Biscuit Co.*, 974 Pa. at 614, 98 A.2d at 187; *see also* 53 P.S. § 15971(a). These cases show that, to be a type of business or occupation licensed by a municipality, there must be a specific source of the locality’s authority. Significantly, there is nothing like the Sterling Act at play here.³ Instead, Respondents’ authority comes solely from the state. *See* 24 P.S. § 20-2001-A, *et seq.* (state statutes establishing and governing the State System).⁴

Second, payment of the Stormwater Tax is not a “condition upon which the [University] is permitted to transact [its] business or pursue [its] occupation.” *See National Biscuit Co.*, 98 A.2d at 188. The Stormwater Tax is not a condition imposed on the operation of a state university. *Cf. Honorbilt Prods. v. City of*

³ The Borough also cites *White v. Commonwealth Medical Professional Liability Catastrophe Loss Fund*, but that case concerned medical licensing fees imposed by the Commonwealth, not the derivative powers of a local government. 131 Pa. Commw. 567, 569, 571 A.2d 9, 10 (1990).

⁴ This also means that the Stormwater Tax fails the second element in *National Biscuit Company* as well, because the Borough does not actually conduct “supervision and regulation” over the State System and University. *See* 98 A.2d at 188.

Phila., 380 Pa. 630, 635-36, 112 A.2d 108, 110-11 (1955) (requirement that bedding carry a stamp sold by the city was a license fee because the manufacturer “cannot sell in Pennsylvania a single article of its manufacture without obtaining the stamp which must be affixed thereto”); *see also White*, 131 Pa. Commw. at 572-73, 571 A.2d at 11 (fee required in order to practice medicine was a license fee).⁵ The Stormwater Tax, rather, is simply a charge levied against property owners based on certain conditions of their property; it does not concern, or even consider, the owner’s business or occupation. It is therefore not a license fee.⁶

B. Even if the Stormwater Tax Is a License Fee, That Does Not Overcome the Commonwealth’s Sovereign Immunity.

The Borough presumes—without any legal authority or analysis—that the State System and University can be compelled to pay the Stormwater Tax if it is a

⁵ The Borough draws an analogy between the Stormwater Tax and the fee required of attorneys. *See* Petitioner’s Br. at 15-16. But, like the professional licensing fee in *White*, this fee might satisfy this element of *National Biscuit Company*, because it is imposed as a condition of practicing law.

⁶ The Borough cites a list of facts regarding the Stormwater Tax, *see* Petitioner’s Br. at 12-15, but it does so without tying the reasons back to a relevant part of the *National Biscuit Company* test. For example, the Borough cites its regulatory burdens imposed by law and the “manner in which the fee is calculated.” *Id.* at 13-14. But fact has anything to do with whether the Stormwater Tax is a license fee. The Borough further stresses that the “purposes for which the [Stormwater Tax] may be used are limited to those set forth in the Stream Protection Ordinance.” Petitioner’s Br. at 14. But this argument does nothing more than attempt to turn the law on its head by converting all assessments—for which the State System and University have immunity—into license fees. *See* Respondents’ Br. at 10 (an “assessment” in this context is a type of tax dedicated to a specific public improvement project).

license fee. But, unlike fees for service, characterization of the Stormwater Tax as a license fee does not overcome sovereign immunity.

License fees are not like fees for service. Although the parties here agree that a municipality can impose a fee for service on a Commonwealth agency, the basis of that authority arises from the contract-like nature of the transaction. *See* Respondents' Br. at 10-12. As previously explained, when a municipality provides natural gas to or hauls garbage away from Commonwealth-owned property, it acts in a quasi-private manner. But this rationale does not support a finding that imposition of a license fee is also an exception to sovereign immunity. In contrast to a fee for service, a license fee is imposed through sovereign authority rather than in a contract-like, quasi-private manner. *See National Biscuit Co.*, 374 Pa. at 615, 98 A.2d at 187 ("A true license fee is . . . 'a charge which is ***imposed by the sovereign***, in the ***exercise of its police power***, upon a person within its jurisdiction for the privilege of performing certain acts" (emphasis added)). It is nonsensical that a municipality can use its limited sovereign authority to overcome the Commonwealth's sovereign immunity. *See City of Phila. v. Schweiker*, 579 Pa. 591, 605, 858 A.2d 75, 84 (2004) (quoting *Appeal of Gagliardi*, 401 Pa. 141, 143, 163 A.2d 418, 419 (1960)) ("Municipalities are creatures of the state and have no inherent powers of their own; rather, they 'possess only such powers of

government as are expressly granted to [them] and as are necessary to carry the same into effect.””).

When it imposes a license fee, a municipality relies on its limited sovereign authority, which is similar to its authority to impose a property tax. And when a municipality relies on this type of authority, there is no dispute that Respondents are immune. *See* Respondents’ Br. at 6. Thus, even if the Court considers the Stormwater Tax to be a license fee, Respondents maintain their sovereign immunity, and the preliminary objection should be sustained.

II. The Borough Lacks Legal Authority or Analysis Showing Why the Stormwater Tax Is a Fee for Service.

The only exception to sovereign immunity the Borough invokes that has any basis in law is the exception for fees for service. But, as Respondents previously demonstrated, the Stormwater Tax cannot be considered a fee for service, as that term has been applied under Pennsylvania law, based on the alleged facts. The Borough offers no substantive rebuttal. It cites a single case—*Supervisors of Manheim Township, Lancaster Cty. v. Workman*, 350 Pa. 168, 38 A.2d 273 (1944)—which only stands for the undisputed proposition that the State System and University must pay charges *if* those charges qualify as fees for service. *See* Petitioner’s Br. at 16-18. The Borough offers no legal authority to support their contention that the Stormwater Tax actually *does* qualify as a fee for service.

The Borough instead relies on the unpersuasive—and unsupported—contention that the Stormwater Tax must be a fee for service because property owners could avoid the charge by “simply eliminat[ing] impervious coverage on their property.” *See* Petitioner’s Br. at 18. But the fact that a taxpayer can control the level of taxation through the taxpayer’s behavior does not turn a tax into a fee for service—a tax is still a tax even if it is calculated based on a taxpayer’s choices or activities. Instead, the clearest answer supported by law is that the Stormwater Tax is a type of property tax or assessment from which the State System and University are immune. *See* Respondents’ Br. at 10-13.

III. The Borough Fails to Present a Basis for its Legal Authority to Impose the Stormwater Tax.

The Borough contends that, even if it has somehow overcome tax immunity, it needs no legal authority beyond its Home Rule Charter to impose a charge on the state. *See* Petitioner’s Br. at 18-20. It argues that, because nothing says that it *cannot* impose a fee on the state, it must be implied that it *can* do so.

This argument misses the point. Whether or not the Borough’s position is correct with respect to a fee against private or other governmental entities, it does not necessarily follow that the Borough also has the authority to impose a burden on the *state itself*. That authority cannot be implied, but must be granted expressly. *See* Respondents’ Br. at 15-18; *see also SEPTA v. Phila.*, 639 Pa. at 19, 159 A.3d at 454 (“The general authority of the City to legislate in this area, simply does not

address the issue of its jurisdiction over [a Commonwealth entity].”). The Borough effectively concedes that it has no such express authority, and that it derives any such authority simply by treating the University and State System as if they were no different than any other entity.⁷ This is not sufficient.

IV. This Case Presents a Pure Question of Law, Allowing Final Determination on Preliminary Objections.

In this case, the Court faces a straightforward question of law that can be resolved on the pleadings. The Borough here has not pointed to any *factual* issue that requires discovery. There is no relevant dispute about the Stormwater Tax or the University’s status. There is no relevant dispute about the property in question. The Borough repeatedly contends that the case should be allowed to proceed beyond the pleadings simply because the case presents a difficult legal question. *See, e.g.*, Petitioner’s Br. at 10 (“At this stage of this litigation (*i.e.* in the context of the Preliminary Objection) . . . this Court cannot possibly fully and finally conclude that the State System and the University will surely prevail.”); *id.* at 18 (“The Borough alleged facts which . . . prevent the Court from concluding that the Borough has no chance of success in this litigation.”). But the existence of *legal*

⁷ Not only does the Borough lack express authority, but it does not refute that the language of the Storm Water Management Act shows a *clear legislative intent* to carve out Commonwealth entities. *See* Respondents’ Br. at 16-17. The Borough’s dismissal of the statutory language as “wholly irrelevant,” *see* Petitioner’s Br. at 19, along with its glaring omission of this language from the Ordinance, *see* Respondents’ Br. at 17, only further highlights that it has always lacked the authority to impose the Stormwater Tax on Commonwealth entities.

doubt is not a reason for a case to proceed to discovery; it is rather the proper role of the courts to resolve such legal issues. Questions of law—even difficult ones—are properly before the Court on preliminary objections. *See Yocum v. Commw. Pa. Gaming Control Bd.*, 639 Pa. 521, 537-38, 161 A.3d 228, 238 (2017) (court could rule on question of law at preliminary objection stage). As the Supreme Court has clarified in response to a similar argument, the question on preliminary objections “is not whether the applicable law is clear and free from doubt, but whether it is clear and free from doubt from the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief.” *Firing v. Kephart*, 466 Pa. 560, 563-64, 353 A.2d 833, 835 (1976).

The Borough is attempting to sow *legal* doubt, hoping the Court will confuse this with *factual* doubt about issues that would be necessary for the case to survive beyond the pleading stage. By failing to demonstrate the latter, the Borough’s argument misapplies the standard for preliminary objections. Based on the facts alleged, and the existing legal authority, the case against the State System and the University should be dismissed.

CONCLUSION

Wherefore, Respondents Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education respectfully request that this Court sustain their preliminary objection and dismiss the Action for Declaratory Judgment with prejudice.

Dated: September 10, 2018

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing Reply Brief in Further Support of Respondents’ Preliminary Objection is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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Dated: September 10, 2018

Respectfully submitted,

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Counsel for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Borough of West Chester,	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania State System of	:	
Higher Education and West Chester	:	
University of Pennsylvania of the	:	
State System of Higher Education,	:	No. 260 M.D. 2018
Respondents	:	Argued: March 13, 2019

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: July 15, 2019

Before this Court in our original jurisdiction is the preliminary objection of the Pennsylvania State System of Higher Education (PASSHE) and West Chester University of Pennsylvania of PASSHE (the University) (collectively, Respondents) filed in response to the Borough of West Chester's (the Borough) declaratory judgment action (Declaratory Judgment Action).

On April 13, 2018, the Borough filed a Declaratory Judgment Action against Respondents in this Court's original jurisdiction, seeking to establish that the

Stormwater Charge¹ is a fee for service, rather than a tax, which Respondents are obligated to pay. Declaratory Judgment Action at 22, ¶¶ 107-10. The Borough makes the following factual allegations.

The Borough is a home rule municipality organized and existing under the laws of the Commonwealth of Pennsylvania including, without limitation, the Pennsylvania Home Rule Charter and Optional Plans Law.² Declaratory Judgment Action at 2, ¶ 2. Pursuant to Section 2002-A(a) of the Public School Code of 1949,³ PASSHE is a body corporate and politic constituting a public corporation and government instrumentality, of which the University is a constituent institution. *Id.* at 2, ¶ 6. Approximately 57 acres of the University’s campus is situated within the south-central portion of the Borough and is generally known as the North Campus. *Id.* at 3, ¶¶ 11-12. PASSHE, in the name of the Commonwealth of Pennsylvania, is the title owner in fee simple of a portion of the property forming the North Campus, and the University is title owner in fee simple of another portion of that property. *Id.* at 3-4, ¶¶ 13-14.

The Borough owns and operates a Small Municipal Separate Storm System (Stormwater System or MS4), as that term is defined in the Code of Federal Regulations. Declaratory Judgment Action at 7, ¶ 31 (citing 40 C.F.R. § 122.26(b)(16), (17)). The Borough maintains a National Pollutant Discharge

¹ The Borough refers to this charge as the Stream Protection Fee and Respondents refer to it as the Stormwater Tax. Because whether the charge is a fee or a tax is at issue in this case, we will instead utilize the neutral term “Stormwater Charge.”

² 53 Pa.C.S. §§ 2901-2984.

³ Act of March 10, 1949, P.L. 30, added by Section 2 of the Act of Nov. 12, 1982, P.L. 660, No. 188, *as amended*, 24 P.S. § 20-2002-A(a).

Elimination System Permit (NPDES), a prerequisite for the lawful operation of its Stormwater System. *Id.* at 7-8, ¶¶ 34-39. On July 20, 2016, the Borough Council enacted the Borough’s Stream Protection Fee Ordinance (Ordinance). Declaratory Judgment Action at 4, ¶ 15; Exhibit C, Ordinance, Section 16, p. 12.⁴ For purposes of determining the appropriate assessment rate for the Stormwater Charge, the Ordinance categorizes property into different tiers, ranging from tier 1 to tier 6, based on total impervious surface area. Declaratory Judgment Action at 17, ¶ 80; Exhibit C, Ordinance, Section 6, p. 7.⁵ The assessment rate is determined by multiplying the base rate by the corresponding percentage amount for each tier. The Stormwater Charge is then calculated by multiplying the assessment rate by the number of base units⁶ in a given property. On September 21, 2016, the Borough Council adopted Resolution No. 11-2016 in order to impose the Stormwater Charge⁷ upon the owners

⁴ “Courts reviewing preliminary objections may consider not only the facts pleaded in the complaint, but also documents or exhibits attached to the complaint” *Diess v. Dep’t of Transp.*, 935 A.2d 895, 903 (Pa. Cmwlth. 2007).

⁵ For example, a tier 4 property is one “where the total impervious surface area is greater than 2,000 square feet and less than or equal to 2,500 square feet.” Declaratory Judgment Action at 17, ¶ 82; *see also* Ordinance, Section 6, p. 7.

⁶ Each base unit is 1,000 square feet of impervious surface. Ordinance, Section 5, p. 4.

⁷ The Ordinance refers to the Stormwater Charge as the “Stream Protection Fee” which is defined as follows:

[A]n assessment levied by the Borough to cover the cost of constructing, operating, and maintaining stormwater management facilities and to fund expenses related to the Borough’s compliance with [Pennsylvania Department of Environmental Protection] NPDES permit requirements under applicable state law based on the impact of stormwater runoff from impervious areas of developed land in the Borough.

Ordinance, Section 5, p. 16.

of all developed properties within the jurisdictional limits of the Borough that are connected to, use, or are serviced or benefit from the Stormwater System. Declaratory Judgment Action at 4, ¶ 17; *see also* Ordinance, Section 5, p. 5 (defining the term “developed” to include “[p]roperty where manmade changes have been made which add impervious surfaces to the property . . .”). For purposes of calculating the Stormwater Charge, this resolution established a monthly base fee of \$6.70 per 1,000 square feet of impervious cover on a given property. Declaratory Judgment Action at 18, ¶¶ 86-87. The Borough adopted the Stormwater Charge as the mechanism by which the Borough would raise revenue to fund pollution remediation measures.⁸ *Id.* at 15-16, ¶ 73. The Borough contends that there is a direct relationship between the amount of impervious surface within a given watershed and the health and quality of the watercourse and its tributaries within that watershed, in addition to public health, safety, and welfare concerns related to flooding and other stormwater-related issues. *Id.* at 11, ¶ 50. The Borough avers that the impervious area of the portion of the North Campus that lies in the Borough covers 32 acres, constituting nearly 8% of the total impervious area within the Borough. *Id.* at 11-12, ¶¶ 51-52. The Borough further avers that stormwater which

⁸ The Stormwater Charge is set forth in Section 94A-6.A of the Borough’s Code and provides:

For the use of, benefit by and the services rendered by the [Stormwater System], including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, a stream protection fee . . . as described, defined, and calculated herein is imposed upon each and every developed property within the Borough that is connected with, uses, is serviced by or is benefitted by the Borough’s [Stormwater System], either directly or indirectly, and upon the owners of such developed property as set forth herein.

Declaratory Judgment Action at 16 (quoting Section 94A-6.A of the Borough’s Code).

flows from the impervious areas of the North Campus situated in the Borough either enters and flows through the Borough's Stormwater System or flows directly into a nearby watercourse. *Id.* at 12, ¶¶ 53-54.

The Borough maintains that each of the North Campus properties subject to the Stormwater Charge is "developed" for purposes of the Ordinance, and that these properties are connected with, use, are served by, or are benefitted by the Borough's Stormwater System. Declaratory Judgment Action at 17, ¶¶ 76-77. The Borough notes that the amount of the Stormwater Charge for which the owner of a developed property is responsible is dependent upon the amount of impervious surface on the property. *Id.* at 17, ¶ 78. The Borough states that the Borough Council established several impervious area property tiers, based upon the total square footage of impervious surface area, with different corresponding assessment rates for the Stormwater Charge. *Id.* at 17-18, ¶¶ 80-84. The Borough avers that all revenue generated by the Stormwater Charge is deposited into the Borough's Stormwater Management Fund, and that this money is only used for the purposes set forth in the Ordinance, which include funding pollution remediation measures to comply with state and federal regulatory requirements. *Id.* at 18-19, ¶¶ 88-89.

Counsel for PASSHE informed the Borough by letter dated January 18, 2018 that the University would not pay the Stormwater Charge. Declaratory Judgment Action at 5, ¶¶ 20-21. Through letters sent on February 23, 2018, and March 5, 2018, the Borough rejected PASSHE's and the University's refusal to pay the Stormwater Charge. *Id.* at 5, ¶¶ 22-24. The Borough sent PASSHE Stormwater Charge invoices listing the aggregate amount due for 2017 as \$105,760.85. *Id.* at 19, ¶¶ 91-92. The Borough sent the University Stormwater Charge invoices indicating a total amount due of \$5,855.81 for 2017. *Id.* at 19-20, ¶¶ 93-94.

Respondents missed the deadline for payment of the 2017 Stormwater Charge. *Id.* at 20, ¶ 96. The Borough avers that Respondents owe similar amounts for the 2018 Stormwater Charge, which they also declined to pay. *Id.* at 20-21, ¶¶ 99-102. The Borough does not dispute that PASSHE and the University are immune to local taxation, but alleges that the Stormwater Charge is a fee for service, rather than a tax. *Id.* at 22, ¶¶ 106-07.

Respondents filed a preliminary objection in the nature of a demurrer, alleging that the Borough's pleading is legally insufficient pursuant to Pennsylvania Rule of Civil Procedure No. 1028(a)(4) because the Stormwater Charge is not a fee for service, but rather a tax from which they are immune as Commonwealth entities. Preliminary Objection to the Borough's Declaratory Judgment Action (Preliminary Objection) at 4-5, ¶¶ 15-25. Respondents assert that "[t]he [Stormwater Charge] is a form of real estate tax—a payment by a property owner assessed based on a condition of the subject property." *Id.* at 6, ¶ 22. Respondents contend that the Stormwater Charge is a tax, because it compels the payment of money in order to generally aid the environment without providing any special benefit to Commonwealth property. *Id.* at 6, ¶ 23. Respondents also assert that even if the Stormwater Charge is considered an assessment rather than a general tax because it is limited to stormwater infrastructure projects, it is still a tax subject to the Commonwealth's tax immunity. *Id.* at 6, ¶ 24. Respondents additionally contend that the Stormwater Charge is not reasonably proportional to the value of any product or service provided to the Commonwealth in a quasi-private capacity, such as the provision of gas or garbage collection. *Id.* at 6-7, ¶ 26 (citing *Supervisors of Manheim Twp., Lancaster Cty. v. Workman*, 38 A.2d 273, 276 (Pa. 1944)). Respondents maintain that "[t]he authority to levy any kind of tax or charge against

a Commonwealth entity must be made expressly.” *Id.* at 7, ¶ 29 (citing *Sw. Del. Cty. Mun. Auth. v. Aston Twp.*, 198 A.2d 867, 872 (Pa. 1964)). Respondents assert that although the Ordinance identifies two possible sources of the Borough’s authority under state law—the Storm Water Management Act (SWMA)⁹ and The Clean Streams Law¹⁰—neither authorizes the Borough to impose any tax, assessment or fee upon a Commonwealth entity to raise revenue to comply with the Borough’s obligations. *Id.* at 8-9, ¶¶ 31 & 34.

In response, the Borough asserts that the Stormwater Charge is a fee for service imposed on Respondents by authority of Section 2961 of the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2961. Borough’s Response to Respondents’ Preliminary Objections (Borough’s Response) at 13 & 16-17, ¶¶ 22 & 28. The Borough further contends that the Stormwater Charge is reasonably proportional to the value of the service provided to Respondents, *id.* at 16, ¶ 27, and that Respondents are not the equivalent of the Commonwealth and enjoy only qualified immunity from taxation. *Id.* at 2, ¶ 17 (citing *Pa. State Sys. of Higher Educ. v. Indiana Area Sch. Dist.* (Pa. Cmwlth., No. 184 M.D. 2011, filed April 5, 2012), slip op. at 15). Further, the Borough maintains that Respondents realize a special benefit from the Borough’s Stormwater System. Borough’s Response at 14, ¶ 23.

In their brief in support of their preliminary objection, Respondents note that “[a]n assessment is defined as a type of charge that ‘pays for a public, though a local, improvement’ and ‘therefore relieves the public from the necessity of contributing to the cost or expense of the improvement.’” Respondents’ Brief at

⁹ Act of October 4, 1978, P.L. 864, *as amended*, 35 P.S. §§ 680.1 – 680.17.

¹⁰ Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001.

10 (quoting *Sw. Del. Cty. Mun. Auth.*, 198 A.2d at 870). Respondents assert that the fact that the Stormwater Charge is dedicated to a particular purpose indicates that it is an assessment, which is still a species of tax subject to the Commonwealth's tax immunity. *Id.* at 11. Respondents contend that the Stormwater Charge resembles the sewer assessment in *Southwest Delaware County Municipal Authority*, in which a municipal authority attempted to assess a public school to cover the cost of installing a sewer system. *Id.* at 11. Respondents note that the Pennsylvania Supreme Court found in that case that the school district and the school authorities were immune from the sewer assessments, even though they benefited from the sewer construction. *Id.* at 11 (citing *Sw. Del. Cty. Mun. Auth.*, 198 A.2d at 869 & 874). Respondents therefore maintain that the fact that they might benefit from the Borough's Stormwater System does not preclude a finding that the Stormwater Charge is a tax or an assessment, rather than a fee. *Id.* at 11-12. Respondents also point out that "[t]he Borough does not allege that it will make improvements to, or even touch, property owned by" Respondents. *Id.* Respondents further contend that they are equivalent to the Commonwealth and entitled to tax immunity. *Id.* at 10. Respondents note that "[a]s a general rule, political subdivisions like a borough cannot levy taxes on real property unless the . . . General Assembly has granted taxing authority to the subdivision." *Id.* at 6 (citing *Lehigh-Northampton Airport Auth. v. Lehigh Cty. Bd. of Assessment Appeals*, 889 A.2d 1168, 1175 (Pa. 2005)). Respondents also assert that "political subdivisions like the Borough do not have general authority to compel payment from Commonwealth entities" and that "[t]he authority to levy any kind of tax or charge against a Commonwealth entity must be made expressly" by the General Assembly. *Id.* at 15-16 (citing *Lehigh-Northampton Airport Auth.*, 889 A.2d at 1175; *Del. Cty. Solid Waste Auth. v. Berks Cty. Bd. of*

Assessment Appeals, 626 A.2d 528, 530 (Pa. 1993)); *Sw. Del. Cty. Mun. Auth.*, 198 A.2d at 872.¹¹

In its brief in opposition to Respondents' preliminary objection, the Borough argues that the Stormwater Charge is a fee for service. Borough's Brief in Opposition to Respondents' Preliminary Objection at 16. The Borough contends that it has the authority to impose the Stormwater Charge pursuant to its home rule charter and asserts that Respondents fail to point to any provision of the home rule charter, statutes or the Pennsylvania Constitution that would limit the Borough's power to impose the Stormwater Charge. *Id.* at 20. The Borough notes that a municipality may charge a fee for service when performing certain functions in a proprietary or quasi-private capacity, but only if that fee is reasonably proportional to the value of the service received. *Id.* at 16-17 (citing *Workman*, 38 A.2d at 276). The Borough further argues that the Stormwater Charge is a fee, because it is "imposed as a charge for services which a municipality renders 'to particular persons or groups of persons within the' municipality[.]" and asserts that the Stormwater Charge is not a general revenue generating measure. *Id.* at 14 & 16-17. The Borough contends that its Stormwater System benefits property owners, because they "do not have to incur the expense which would otherwise be necessary to maintain on their own properties the scope of systems which would be necessary to" manage stormwater. *Id.* The Borough also asserts that "the amount of [the Stormwater Charge] which the owner of a given [d]eveloped [p]roperty must pay is directly related to the amount of impervious cover at that . . . [p]roperty." *Id.* at 18.

In ruling on preliminary objections,

¹¹ We note that the cases cited by Respondents pertain to tax immunity and do not state that Commonwealth entities are immune from "charges" imposed by municipalities. *See Sw. Del. Cty. Mun. Auth.*, 198 A.2d at 872.

our review is limited to the pleadings. . . . We are required to accept as true the well-pled averments set forth in the . . . complaint, and all inferences reasonably deducible therefrom. . . . Moreover, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. . . .

Pa. State Lodge, Fraternal Order of Police v. Dep't of Conservation & Nat. Res., 909 A.2d 413, 415-16 (Pa. Cmwlth. 2006) (citations omitted).¹² A preliminary objection to the legal sufficiency of a pleading, commonly known as a demurrer, raises questions of law, and we “must decide whether it is clear from the well-pleaded facts and reasonable inferences from those facts that the claimant has not established a right to relief.” *Yocum v. Pa. Gaming Control Bd.*, 161 A.3d 228, 233-34 (Pa. 2017) (emphasis added). “Preliminary objections in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted.” *Id.* at 234. “[T]he question presented by [a] demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.” *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 274 (Pa. 2005).

In *PPL Electric Utilities Corporation v. City of Lancaster*, 125 A.3d 837 (Pa. Cmwlth. 2015), we considered a public utility corporation’s application for summary relief following its declaratory judgment action asking this Court to declare invalid an annual right-of-way maintenance fee imposed on the public utility

¹² Courts reviewing preliminary objections may also consider documents and exhibits attached to the complaint. *See supra* note 4.

by a city. *Id.* at 844.¹³ Noting that, as a home rule municipality, the city could “assess fees for recovery of costs under its home rule powers” and “undertake government action unless preempted by a law of statewide applicability,” we identified the central issue as “whether the fee is reasonable and not a tax.” *Id.* at 851-52. We denied summary relief, reasoning that “[t]his issue [could not] be determined at this summary stage of the proceedings and may require further factual development[.]” *Id.* at 852. Similarly, here, whether the Borough has established a right to declaratory relief depends on whether the Stormwater Charge constitutes a tax or a fee—a question necessitating further factual development. For example, questions remain, *inter alia*, as to: whether the Borough’s Stormwater System provides a discrete benefit to Respondents, as opposed to generally aiding the environment and the public at large; whether the value of the Stormwater System to Respondents is reasonably proportional to the amount of the Stormwater Charge; and, apart from general operation, maintenance and repair of the Borough’s Stormwater System, how exactly does the Borough utilize the funds generated by the Stormwater Charge.

Based on the present facts as averred and reasonable inferences therefrom, it is not certain that the law precludes the Borough’s requested declaratory relief. *See Bilt–Rite Contractors, Inc.*, 866 A.2d at 274. Further factual development and the resolution of pending questions may enable the Borough to establish that the Stormwater Charge constitutes a fee for service that is reasonably proportional to the value of the benefit conferred to Respondents in a quasi-private capacity. Thus, the Borough has not “clearly and without a doubt failed to state a claim for which relief may be granted.” *Yocum*, 161 A.3d at 234. As settling the

¹³ Prior to this point, we had also overruled the City’s preliminary objection in the nature of a demurrer. *PPL Elec. Utils.*, 125 A.3d at 843.

question of law presented by the Borough's request requires further factual development, we therefore conclude that it would be premature to sustain Respondents' demurrer. *See McNeill by McNeill v. City of Philadelphia*, 522 A.2d 174, 178-79 (Pa. Cmwlth. 1987) (holding that the trial court's decision to sustain a demurrer was premature where questions of law could not be settled without "amplification of the factual record"). Accordingly, we overrule Respondents' preliminary objection.



CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Borough of West Chester, :
Petitioner :
 :
v. :
 :
 :
Pennsylvania State System of :
Higher Education and West Chester :
University of Pennsylvania of the :
State System of Higher Education, : No. 260 M.D. 2018
Respondents :

ORDER

AND NOW, this 15th day of July, 2019, the preliminary objection of the Pennsylvania State System of Higher Education (PASSHE) and West Chester University of PASSHE (collectively, Respondents) is OVERRULED. Respondents shall file an answer to the Borough of West Chester's declaratory judgment action within thirty (30) days of the date of this order.



CHRISTINE FILZANO CANNON, Judge

Certified from the Record

JUL 15 2019

And Order Exit
531a

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

NOTICE TO PLEAD

TO: Petitioner, The Borough of West Chester

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Affirmative Defenses with New Matter within thirty (30) days of service or within such other period of time as the Court may direct or a judgment may be entered against you.

Dated: August 14, 2019

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
Pa. ID No. 209495
Deputy Attorney General

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*Attorneys for: Respondents
Pennsylvania State System of
Higher Education and West
Chester University*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :
 :
 Petitioner, : Original Jurisdiction
 v. : No. 260 MD 2018
 :
 PENNSYLVANIA STATE SYSTEM :
 OF HIGHER EDUCATION and :
 :
 WEST CHESTER UNIVERSITY OF :
 PENNSYLVANIA OF THE STATE :
 SYSTEM OF HIGHER :
 EDUCATION, :
 :
 Respondents. :
 :

RESPONDENTS’ ANSWER WITH NEW MATTER

Respondents Pennsylvania State System of Higher Education (“State System”) and West Chester University of Pennsylvania of the State System of Higher Education (“University” or, collectively with the State System,

“Respondents”), by counsel, answer Petitioner’s Action of Declaratory Judgment as follows:

1. Admitted.
2. Admitted in part, denied in part. It is admitted that the Borough of West Chester (“Borough”) is a Home Rule Municipality organized and existing under and pursuant to the laws of the Commonwealth of Pennsylvania. It is denied that its laws and powers are without limitation. Specifically, the Borough lacks the power to impose the tax at issue here.
3. Admitted on information and belief.
4. Admitted on information and belief.
5. Admitted.
6. Admitted.
7. Admitted.
8. Denied as stated. The University is a member institution of the State System.
9. Admitted.
10. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

11. Admitted in part, denied in part. It is admitted that a portion of the University's campus sits within the boundaries of the Borough. The remainder of this allegation is denied as stated.

12. Denied. The University's North Campus is approximately 61.7 acres.

13. Admitted in part, denied in part. It is admitted that the parcels identified in Exhibit A are owned by the State System and/or the University, which is a member institution of the State System.

14. Admitted in part, denied in part. It is admitted that the parcels identified in Exhibit B are owned by the State System and/or the University, which is a member institution of the State System.

15. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

16. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

17. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

18. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

19. Admitted in part, denied in part. It is admitted that the Borough Stormwater Collection and Conveyance System confers a general environmental benefit on all property owners and citizens within and around the Borough. The remainder of this allegation is denied. By way of further response, Respondents maintain their own MS4 permit separate from the Borough's MS4 permit, which equally benefits property owners and citizens on campus and in the greater community.

20. Admitted in part, denied in part. It is admitted that counsel for the State System sent the letter attached as Exhibit E. The remainder of this paragraph is denied. Respondents are neither subject to nor directly benefitted by the Borough Stormwater Collection and Conveyance System.

21. Denied as stated. The letter attached as Exhibit E is a document that speaks for itself. Respondents denied and continue to deny that the Borough has the legal right to impose and collect the tax imposed as a result of the Stream Protection Ordinance (the "Stormwater Tax").

22. Admitted.

23. Admitted.

24. Denied as stated. It is admitted that the Borough disputes Respondents' legal immunity from the Stormwater Tax, but it is denied that the Borough has any legal right to "reject[]" Respondents' immunity.

25. Admitted in part, denied in part. It is admitted that no payment has been made, but it is denied that Respondents owe any such payment.

26. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

27. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

28. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

29. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

30. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

31. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied. By way of further response, the University also owns and operates its own MS4.

32. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

33. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

34. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

35. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

36. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

37. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

38. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

39. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

40. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

41. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

42. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

43. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

44. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

45. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

46. Denied as stated. The Pennsylvania Department of Environmental Protection's website speaks for itself, and any characterization thereof is specifically denied.

47. Denied as stated. The Code of Federal Regulations speaks for itself, and any characterization thereof is specifically denied.

48. Denied as stated. The Pennsylvania Department of Environmental Protection's website speaks for itself, and any characterization thereof is specifically denied.

49. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

50. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied. Respondents do not study the environmental effect of impervious surface within a given watershed, but they do comply with all applicable environmental regulations, including by maintaining their own MS4 permit.

51. Admitted on information and belief that the University maintains *roughly* 32 acres of impervious surfaces within the boundaries of the Borough.

52. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

53. Denied as stated upon information and belief. The University owns and operates its own MS4 and maintains its own stormwater maintenance system which collects and manages stormwater runoff.

54. Denied as stated upon information and belief. The University owns and operates its own MS4 and maintains its own stormwater maintenance system which collects and manages stormwater runoff.

55. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

56. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied. By way of further response, while Plum Run passes through the University's campus, it does so underground.

57. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is

therefore denied. By way of further response, Brandywine Creek does not pass through the University's campus.

58. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

59. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

60. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

61. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied. By way of further response, Goose Creek does not pass through the University's campus.

62. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

63. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

64. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

65. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

66. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

67. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

68. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

69. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

70. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied. Respondents do not study the environmental effect of accelerated stormwater runoff within a given watershed, but they do comply with all applicable environmental regulations, including by maintaining their own MS4 permit.

71. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

72. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

73. Denied as stated. The Stream Protection Ordinance is a document that speaks for itself, and any characterization thereof is denied.

74. Denied. The Stormwater Tax applies only to properties that sit within the Borough and, just like other kinds of property tax, the amount of tax assessed depends on characteristics of the property itself. By way of further response, the Stormwater Tax does not assess a fee based on a property owner's use of services.

75. Denied as stated. The Stream Protection Ordinance is a document that speaks for itself, and any characterization thereof is denied.

76. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied. It is specifically denied that Respondents are subject to the Stormwater Tax.

77. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied. It is specifically denied that Respondents are subject to the Stormwater Tax.

78. Admitted in part, denied in part. It is admitted that the Stream Protection Ordinance assesses a tax based on the amount of impervious surface at the subject property. The remainder of this paragraph is denied.

79. Admitted in part, denied in part. It is admitted that the Stream Protection Ordinance assesses a tax based on the amount of impervious surface at the subject property. The remainder of this paragraph is denied. By way of further response, the Stream Protection Ordinance provides no credit to Respondents for their own stormwater maintenance projects on the University's campus.

80. Denied as stated. The Stream Protection Ordinance is a document that speaks for itself, and any characterization thereof is denied.

81. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

82. Denied as stated. The Stream Protection Ordinance is a document that speaks for itself, and any characterization thereof is denied.

83. Denied as stated. The Stream Protection Ordinance is a document that speaks for itself, and any characterization thereof is denied.

84. Denied as stated. The Stream Protection Ordinance is a document that speaks for itself, and any characterization thereof is denied.

85. Denied. Property owned by the Respondents is not subject to the Stormwater Tax and therefore does not fall within any tier.

86. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

87. Denied as stated. Resolution No. 11-2016 is a document that speaks for itself, and any characterization thereof is denied. By way of further response, the Stream Protection Ordinance provides no credit to Respondents for their own stormwater maintenance projects on the University's campus.

88. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

89. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

90. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as the truth of this averment, and it is therefore denied.

91. Admitted.

92. Admitted in part, denied in part. It is admitted that the Borough claims that there is an amount due for Respondents pursuant to the Stormwater Tax. It is denied that the Respondents actually owe any such tax payments.

93. Admitted.

94. Admitted in part, denied in part. It is admitted that the Borough claims that there is an amount due for Respondents pursuant to the Stormwater Tax. It is denied that the Respondents actually owe any such tax payments.

95. Admitted in part, denied in part. It is admitted that the Borough claims that there is an amount due for Respondents pursuant to the Stormwater Tax. It is denied that the Respondents actually owe any such tax payments.

96. Denied. There is no deadline because no tax payment is due.

97. Admitted.

98. Admitted in part, denied in part. It is admitted that the Borough claims that there is an amount due for Respondents pursuant to the Stormwater Tax. It is denied that the Respondents actually owe any such tax payments.

99. Admitted.

100. Admitted in part, denied in part. It is admitted that the Borough claims that there is an amount due for Respondents pursuant to the Stormwater Tax. It is denied that the Respondents actually owe any such tax payments.

101. Admitted in part, denied in part. It is admitted that the Borough claims that there is an amount due for Respondents pursuant to the Stormwater Tax. It is denied that the Respondents actually owe any such tax payments.

102. Denied. There is no deadline because no tax payment is due.

COUNT I

103. Respondents incorporate their responses to the previous paragraphs as if fully set forth herein.

104. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

105. This paragraph contains conclusions of law to which no response is required. To the extent any facts are alleged, they are denied.

106. Admitted.

107. Denied.

108. Denied.

109. Admitted.

110. Denied. It is specifically denied that Respondents owe any tax payment.

WHEREFORE, Respondents Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education deny any and all liability to the Petitioner and respectfully request that the Court enter judgment in their favor.

AFFIRMATIVE DEFENSES WITH NEW MATTER

1. The Petition for Relief fails to state a claim upon which relief can be granted.
2. Plum Run passes through the University's campus underground.
3. Brandywine Creek does not pass through the University's campus.
4. Goose Creek (also known as Chester Creek) does not pass through the University's campus.
5. Blackhorse Run does not pass through the University's campus.
6. Taylor Run does not pass through the University's campus.

7. According to the Borough Council, the Stream Protection Ordinance is designed to address the public health, safety, and general welfare of the residents of the Borough. *See* Stream Protection Ordinance, § 2.

8. The Stream Protection Ordinance does not substitute for a service otherwise provided by private parties, normally paid by property owners in a private commercial transaction.

9. The Pollutant Reduction Plan and TMDL Plan address the general environmental consequences of stormwater runoff in waterways throughout the Borough.

10. The Borough developed the Pollutant Reduction Plan specifically to address siltration (*i.e.* sediment) in Brandywine Creek, Blackhorse Run, Plum Run, and Taylor Run. *See* MS4 Pollutant Reduction Plan, Compl. Ex. H, at 8. *See also* West Chester Borough, Pollutant Reduction Plans and Total Maximum Daily Load Strategy Plan, Executive Summary, attached as part of Appendix B in Compl. Ex. H (“Executive Summary”).

11. With the Pollutant Reduction Plan, the Borough plans to use funds from the Stormwater Tax to install infiltration facilities—including rain gardens, vegetated curb extensions, bioswales, infiltration trenches, and brick pavers—at Veterans Park, Marshall Square Park, and Brandywine Street in the Borough. *See*

MS4 Pollutant Reduction Plan at 16. None of these locations are on the University's campus.

12. With the Pollutant Reduction Plan, the Borough plans to use funds from the Stormwater Tax to conduct streambank restoration in the Blackhorse Run, Plum Run, and Taylor Run watersheds. *See* MS4 Pollutant Reduction Plan at 17. The streambank restoration projects will not take place on the University's campus.

13. With the Pollutant Reduction Plan, the Borough plans to use funds from the Stormwater Tax to fund street sweeping and tree planting throughout the Borough. These projects will not take place on streets owned and/or managed by the State System and/or University.

14. In executing the projects named in the Pollutant Reduction Plan, the Borough does not act for the benefit of property owners in a proprietary or quasi-private capacity.

15. There is no private, commercial market for the services performed by the Borough in the Pollutant Reduction Plan.

16. The Borough developed the TMDL Plan specifically to address phosphorus buildup in Goose Creek. *See* MS4 TMDL Plan Goose Creek, Compl. Ex. I, at 12. *See also* Executive Summary.

17. The Borough shares responsibility with West Goshen Township, Westtown Township, and Thornbury Township in reducing the total phosphorus load in Goose Creek. *See MS4 TMDL Plan Goose Creek at 12.*

18. With the TMDL Plan, the Borough plans to use funds from the Stormwater Tax to install infiltration facilities—including rain gardens, vegetated curb extensions, bioswales, and infiltration trenches—at John O. Green Memorial Park, Fugett Bark, and Greenview Alley in the Borough. *See MS4 TMDL Plan Goose Creek at 18-19.* None of these locations are on the University's campus.

19. With the TMDL Plan, the Borough plans to use funds from the Stormwater Tax to conduct streambank restoration in the Chester Creek watershed. *See MS4 TMDL Plan Goose Creek at 19.* The streambank restoration projects will not take place on the University's campus.

20. With the TMDL Plan, the Borough plans to use funds from the Stormwater Tax to fund street sweeping and tree planting throughout the Borough. These projects will not take place on streets owned and/or managed by the State System and/or University.

21. With the TMDL Plan, the Borough plans to use funds from the Stormwater Tax to install Jellyfish Filters at two discharge points on East Niels Street. *See MS4 TMDL Plan Goose Creek at 20-21.* The Jellyfish Filters will not be installed on the University's campus.

22. With the TMDL Plan, the Borough plans to use funds from the Stormwater Tax to manually clean inlet boxes throughout the Borough.
23. The University also cleans inlet boxes within the boundaries of the Borough.
24. In executing the projects named in the TMDL Plan, the Borough does not act for the benefit of property owners in a proprietary or quasi-private capacity.
25. There is no private, commercial market for the services performed by the Borough in the TMDL Plan.
26. The Stormwater Tax does not fund any projects that would improve real property owned by the University or State System.
27. The University maintains its own MS4 permit separate and apart from any MS4 permit of the Borough and therefore does not utilize the Borough's MS4 to manage stormwater runoff.
28. Measures taken by the University on its campus at its own expense decrease the amount of stormwater runoff that must be managed by the Borough stormwater management system.

29. The measures taken by the University on its campus at its own expense include the following:
- a. The Sciences & Engineering Center and The Commons, which is currently under construction, will include trees, green roofs, and rain water gardens;
 - b. The University installed rain water gardens at the new asphalt pathway between the Student Rec Center and Tyson Hall;
 - c. The University installed a green roof at the Business and Public Affairs Center;
 - d. The University installed a green roof at the FH Green Library;
 - e. The University installed a pervious paver surface along the 600 and 700 block of S. Church St. and 000 block of University Ave.; and
 - f. The University installed two rainwater gardens, on the south side of L Lot on W. Rosedale Ave. and the entrance to 201 Carter Dr., Suite 100.

30. The Stream Protection Ordinance provides no credit to Respondents for their own stormwater maintenance projects that they pay for separate and apart from the Borough's MS4.

31. The Borough lacks the authority to compel payment from Respondents because they maintain their own MS4, covering their own property, separate from the Borough's MS4.

32. Petitioner's claim is barred by the doctrine of tax immunity.

33. Petitioner's claim is barred by the doctrine of sovereign immunity.

Dated: August 14, 2019

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
Pa. ID No. 209495
Deputy Attorney General

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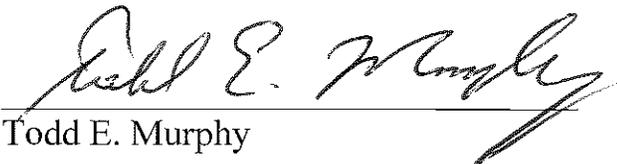
KAREN M. ROMANO
Acting Chief Deputy Attorney General
Civil Litigation Section

Counsel for Respondents

VERIFICATION

I, Todd E. Murphy, hereby state that I am Vice President for Finance and Administration at West Chester University. I verify that the statements made in the foregoing Answer are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: August 14, 2019



Todd E. Murphy

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATION PURSUANT TO Pa. R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: August 14, 2018

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
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Counsel for Respondents

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WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing Answer with New Matter is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Electronic Service via PACFile and/or email

Kristin S. Camp, Esq.
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Counsel for Petitioner Borough of West Chester

Dated: August 14, 2018

Respectfully submitted,

JOSH SHAPIRO
Attorney General

BY: /s/ Stephen R. Kovatis
STEPHEN R. KOVATIS
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Deputy Attorney General

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System of Higher Education did file a Preliminary Objection pursuant to Pa.R.C.P. No. 1028.(a)(4) which this Court overruled pursuant to its Order dated July 15, 2019.

2. Admitted. By way of further response, stormwater runoff flowing from the impervious surfaces on the University's property reaches Plum Run through the Borough's Small Municipal Separate Storm System (the "Borough MS4").

3. Admitted. By way of further response, stormwater runoff flowing from the impervious surfaces on the University's property ultimately reaches Brandywine Creek through the Borough MS4.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied as stated. The Stream Protection Ordinance, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied.

8. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required. By way of further response, individual properties within Petitioner's jurisdiction (including, without limitation, the University's property) do benefit from their connection to the Borough MS4 including, *inter alia*, Petitioner's management and mitigation of the impact of stormwater runoff flowing from the impervious surfaces on property owners' parcels which, otherwise, would

need to be addressed by each property owner on its own property. Strict proof of Respondents' averment is demanded.

9. Denied as stated. The Pollutant Reduction Plan and TMDL Plan, being in writing, speak for themselves and Respondents' characterizations of their provisions are specifically denied. Strict proof of Respondents' averment is demanded.

10. Denied as stated. The Pollutant Reduction Plan and TMDL Plan, being in writing, speak for themselves and Respondents' characterizations of their provisions are specifically denied. Strict proof of Respondents' averment is demanded.

11. Denied as stated. The Pollutant Reduction Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

12. Denied as stated. The Pollutant Reduction Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

13. Denied as stated. The Pollutant Reduction Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

14. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required. By way of further response, by developing and implementing the projects identified in the Pollutant Reduction Plan, the Borough in fact acts for the benefit of property owners in a proprietary or quasi-proprietary capacity by, *inter alia*, managing and mitigating the impact of stormwater runoff flowing from the impervious surfaces on property owners' parcels which, otherwise, would need to be addressed by each property owner on its own property. Strict proof of Respondents' averment is demanded.

15. After reasonable investigation, Petitioner is without knowledge or information sufficient to form a belief as to the truth of this averment, and it is therefore denied. Strict proof of Respondents' averment is demanded.

16. Denied as stated. The TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

17. Denied as stated. The TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

18. Denied as stated. The TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

19. Admitted in part, denied in part. It is admitted only that the streambank restoration projects to which Respondents refer will not take place on the University's property. By way of further response, the TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. Strict proof of Respondents' averment is demanded.

20. Denied as stated. The TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. By way of further response, Respondents' characterization of the Stream Protection Fee as a "Stormwater Tax" is expressly denied. Strict proof of Respondents' averment is demanded.

21. Denied as stated. The TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. By way of further response, Respondents' characterization of the Stream Protection Fee as a "Stormwater Tax" is expressly denied. Strict proof of Respondents' averment is demanded.

22. Denied as stated. The TMDL Plan, being in writing, speaks for itself and Respondents' characterizations of its provisions are specifically denied. By way of further response, Respondents' characterization of the Stream Protection Fee as a "Stormwater Tax" is expressly denied. Strict proof of Respondents' averment is demanded.

23. After reasonable investigation, Petitioner is without knowledge or information sufficient to form a belief as to the truth of this averment, and it is therefore denied. Strict proof of Respondents' averment is demanded.

24. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required. By way of further response, in executing the projects named in the TMDL Plan, the Borough in fact acts for the benefit of property owners in a proprietary or quasi-proprietary capacity by, *inter alia*, managing and mitigating the impact of stormwater runoff flowing from the impervious surfaces on property owners' parcels which, otherwise, would need to be addressed by each property owner on its own property. Strict proof of Respondents' averment is demanded.

25. After reasonable investigation, Petitioner is without knowledge or information sufficient to form a belief as to the truth of this averment, and it is therefore denied. Strict proof of Respondents' averment is demanded.

26. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required. By way of further response, the ability to use the Borough MS4 benefits the University by, *inter alia*, relieving the University of the responsibility of managing and mitigating the impact of stormwater runoff flowing from the impervious surfaces on its property which, otherwise, would need to be addressed by the University itself.

27. Admitted in part, denied in part. It is admitted only that the University maintains its own MS4 permit separate and apart from the Borough's MS4 permit. It is specifically denied, however, that the University does not utilize the Borough MS4 to manage stormwater runoff. To the contrary, the University utilizes, and directly benefits from, its use of the Borough MS4 to capture both stormwater runoff discharged from the University's property and stormwater runoff flowing from impervious surfaces on the University's own property which was not captured by the University's own MS4. Strict proof of Respondents' averment is demanded.

28. Admitted. By way of further response, notwithstanding the decreased amount of stormwater runoff that must be managed by the Borough due to the measures the University has undertaken on its own property, the Borough ultimately manages and mitigates the impact of stormwater runoff flowing from impervious surfaces on the University's property either when it is discharged from the University's own MS4 into the Borough MS4 or when it is not captured by the University's own MS4 at all. Strict proof of Respondents' averment is demanded.

29. Admitted upon information and belief except as to subparagraph (a) which alleges prospective future actions that have not yet occurred. By way of further response, Petitioner incorporates its response to Paragraph 28.

30. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required. By way of further response, the Stream Protection

Ordinance does establish an incentive program which provides rebates or credits to property owners who build or maintain certain stormwater management systems to offset their assessment. *See* Stream Protection Ordinance, § 10.

31. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required.

32. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required.

33. Denied. The averment of this paragraph constitutes a conclusion of law to which no response is required.

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WHEREFORE, Petitioner the Borough of West Chester respectfully requests entry of Declaratory Judgment in its favor.

Date: September 16, 2019

Respectfully submitted,

BUCKLEY, BRION,

MCGUIRE & MORRIS LLP

By: 

Michael S. Gill, Esquire

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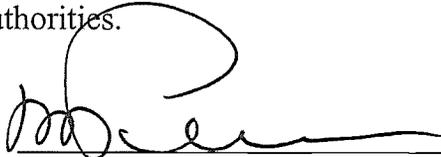
West Chester, Pennsylvania 19382

Phone: 610.436.4400

Attorneys for The Borough of West Chester

VERIFICATION

I, Michael Perrone, hereby verify that I am the Borough Manager for The Borough of West Chester, that I am authorized to execute this Verification on its behalf, and that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



MICHAEL PERRONE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER	:	
	:	
Petitioner,	:	
	:	Original Jurisdiction
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION, and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION	:	
	:	
Respondents.	:	

CERTIFICATION OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 16, 2019

Respectfully submitted,

**BUCKLEY, BRION,
MCGUIRE, & MORRIS LLP**

By: /s/ _____
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