

# BAILIWICK NEWS

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## **State College Borough Water Authority preparing to vote on Toll Brothers April 2018 application for easement to construct sewage pipeline across SCBWA-owned, deed-restricted land.**

(Continuation from May 1 edition.)

By Katherine Watt

*Disclaimer: The author serves as vice-president of Nittany Valley Environmental Coalition, a 501(c)4 nonprofit organization with a mission of “protecting Pennsylvanian’s Constitutionally-guaranteed rights.”*

The State College Borough Water Authority (SCBWA) Source Water Protection Committee will be reviewing a Toll Brothers easement application during a closed meeting on Tuesday, May 8.

The full SCBWA board will be voting on the easement application during a public meeting on Thursday, May 17.

Concurrently, Centre Region Parks and Recreation Director Pam Salokangas is preparing to give a status update on the Whitehall Road Regional Park (WRRP) planning process at the May 29 Centre Region Council of Governments (COG) General Forum meeting.

The Toll Brothers application to the SCBWA relates to the sewage management plan for the forthcoming “Cottages” development by Toll Brothers and the proposed siting and sewage management plan for the forthcoming Whitehall Road Regional Park development by the Centre Region Council of Governments (COG) through the Centre Region Parks and Recreation Authority.

Both planned developments are located in the fragile Zone 2 recharge area of the Harter and Thomas wellfields owned and operated by the SCBWA.

Toll Brothers plans to construct a large sewage pump station and wet well (sewage holding tank) on land owned by the public – COG and Ferguson Township – adjacent to proposed stormwater management basins.

Toll Brothers plans to connect the pump station to the existing University Area Joint Authority (UAJA) sewage conveyance and treatment system through a 4,200-foot, high-pressure, high-density polyethylene (HDPE) pipe running uphill along the Blue Course Drive extension and then along Whitehall Road to Stonebridge Drive.

The system is intended to temporarily store and then convey the raw sewage of the 1,093 future residents of the “Cottages” luxury student housing development and future visitors to the Whitehall Road Regional Park.

Toll Brothers has requested an easement from SCBWA to permit installation of the pipeline along the Whitehall Road edge of a 60-acre parcel of farmland owned by the water authority.

This land is protected by a deed restriction, placed on it during the 2008 sale of the parcel by Penn State University to the water authority, for the purpose of protecting public water sources from contamination.

Once completed, the pump station and related infrastructure will be owned and maintained by the UAJA.

There are a couple of alternative sewage management plans under discussion, but one appears to present about the same level of contamination risk to the Harter and Thomas wells as the SCBWA easement, and the other, while potentially safer, presents significant political hurdles.

If SCBWA denies the easement, Toll Brothers is most likely to apply to the Pennsylvania Department of Transportation (PennDOT) to run the sewer line under the paved bike path along Whitehall Road, just a few feet further away from the Harter and Thomas wellfields than the SCBWA easement route.

Or, Toll Brothers could apply to the Borough of State College for permission to hook up to the Borough’s sewage conveyance system near the intersection of Waupelani Drive and Whitehall Road.

That route would reduce the pipeline length from 4,200 feet to somewhere between 400 and 700 feet (different estimates are in circulation), with the attendant risk reduction of simply having fewer feet of pipe at risk for breaks and clogs.

However, the pipe would run under the paved parking lots of the student housing development.

More problematic, Toll Brothers had preliminary discussions with State College representatives, and came away with the understanding that State College prefers to reserve any available sewage capacity for future development within the Borough, rather than allow it to be used up by Ferguson Township development.

On the other hand, State College has planned for, and is willing to accept, the sewage flow from Whitehall Road Regional Park, and may even have already installed a manhole cover and connection point near the Latter Day Saints church.

Regardless of the ultimate pipeline route, Toll Brothers appears willing use HDPE material, which is the safest material available, according to UAJA Director Cory Miller and SCBWA Director Brian Heiser.

Both alternatives would delay Toll Brothers’ groundbreaking (planned for June) by four to six-months. In the first case, PennDOT would have to conduct a plan review. For the Borough route, Toll Brothers would have to conduct a sewage flow study for Borough review. Both alternatives would also increase future costs for UAJA to maintain and repair the line, because of the higher expense of digging up pavement as compared to digging up turf and soil.

However, forcing Toll Brothers to pursue either alternative would also protect SCBWA from being in the awkward and self-contradictory position of allowing large volumes of raw sewage to be conveyed under pressure, across land originally set aside for the specific purpose of sourcewater protection, thereby undermining the board's credibility as a protector of public water supplies.

Separating the Toll Brothers and WRRP sewage systems from each other – by sending the student sewage to UAJA via Stonebridge in Ferguson Township and the park visitor sewage to UAJA via Waupelani in State College – would also more clearly delineate legal and financial liability for line breakages causing contamination. In that scenario, Centre Region taxpayers would only be on the hook to pay for contamination caused by a break in the shorter line carrying less sewage, rather than entangled in joint public-private liability for a break in the longer line carrying more sewage.

As today's edition went to press, Nittany Valley Environmental Coalition was preparing a memo to the SCBWA Source Water Protection Committee supporting long-term reduction of public water contamination risks through two proposals.

First, NVEC will propose that the water authority board require – in exchange for SCBWA granting the easement – a legally-binding commitment by UAJA (as the operator of the sewage treatment facilities) and by Penn State, Toll Brothers and Ferguson Township/COG (as owners of the land in the immediate vicinity of the pump station) to forego any and all additional land development in the Zone 2 recharge areas apart from The Cottages and the Whitehall Road Regional Park Phase 1 plan.

If the water authority does not obtain such concessions, the SCBWA board's action to approve the easement, coupled with the large capacity of the currently-designed sewage treatment facility, exposes the Harter and Thomas wells to the significant and cumulative risks of *additional* development in the recharge area, while undermining the intended purpose of the 2008 protective covenant.

Second, NVEC will propose that the water authority work with Ferguson Township, Centre Region Council of Governments, and the Centre Region Parks & Recreation Authority to reassign ownership of two parcels, so that the Whitehall Road Regional Park Phase 1 plan can be constructed on a portion of the more level, 60-acre parcel fronting Whitehall Road (currently owned by SCBWA).

If the swap were successful, the sloped, lower 100 acres currently owned by COG and Ferguson Township would be conserved for passive uses and sourcewater protection through reforestation, pollinator plantings, grassland carbon capture, and other ecologically restorative land uses.

Such a land swap has the potential to protect more fragile, more sloped land from excavation, grading and paving, while creating a regional opportunity to strengthen the regional growth boundary.

It could also save COG money that would otherwise be spent on grading, freeing those funds for soccer, lacrosse

and playground equipment, or future field maintenance costs.

If the SCBWA board adopts both hardball positions on May 17, Toll Brothers might consider reducing the size of the planned pump station and siting it farther up the hillside, putting it closer to the Stonebridge UAJA hookup.

If so, SCBWA should facilitate that revision as it goes through the sewer planning module procedures at the Pennsylvania Department of Environmental Protection and UAJA.

As they prepare for the May 17 board meeting, we urge the SCBWA board to be prepared to present to the public a detailed map of the proposed easement route showing the main parcel boundaries in the vicinity; a copy of the contract requiring HDPE for the proposed pipeline; a copy of Penn State's signed authorization for SCBWA to violate the covenant, since Penn State was the seller in the transaction and retained deed enforcement rights; and any correspondence between SCBWA, UAJA, Toll Brothers, Penn State, COG, and Ferguson Township on the topic of binding agreements to forego further land development projects in the Harter and Thomas Zone 2 area.

Citizens can then review those documents and do our part to ensure that the SCBWA board gets the strongest possible citizen support for getting the strongest possible protections on the developed land and on the not-to-be developed adjacent land.

## BACKGROUND

Since March 2015, *Bailiwick News* and its precursor (*Steady State College*) have been deeply engaged in efforts to protect the Harter and Thomas wells, and Slab Cabin Run, from the risks associated with land development in the Zone 2 recharge area.

From the outset, when we first examined the closely-linked Toll Brothers and Whitehall Road Regional Park land development plans, including the extension of Blue Course Drive, within the context of Penn State's ownership of several hundred more acres in the area, we framed our campaign as an effort to stop the first dominoes from falling, describing the Toll Brothers and WRRP developments as "the tip of the spear."

Led by Nittany Valley Environmental Coalition and its precursors (Nittany Valley Water Coalition and before that, a group of unincorporated local environmental activists), citizen efforts during these last three years have included direct participation in public meetings of governmental bodies across the region urging denial of the Toll Brothers Planned Residential Development application; citizen petition management; community research, and public education on regional water resource management issues through our websites, Facebook pages, citizen letters to the editors of local newspapers and newsletters to supporters; litigation in state courts; and a 127-day occupation of the site combined with multiple meetings with Penn State and Toll Brothers representatives aimed at facilitating a win-win-win "land swap" to protect the watershed, raise funds for Penn State

through its' real estate sales program, and allow Toll Brothers to construct student housing closer to campus.

Although the campaign delayed construction on both developments for several years, contributed to improved project design for the "Cottages," and drove forward change on multiple related fronts, we failed at our original goal of keeping intensive land development out of the watershed.

In November 2017, the Pa. Supreme Court declined to hear our appeal of a Commonwealth Court decision, and in late December 2017, Penn State and Toll Brothers closed the land sale for \$13.5 million, clearing the way for both developments to proceed.

Notwithstanding this bitter disappointment, NVEC and *Bailiwick News* are extremely proud of the role we have played in the region, catalyzed by the fight against Penn State and Toll Brothers fight, through which we have contributed to several positive changes, including:

- broader, deeper community understanding and concern about regional watershed and farmland conservation and our uniquely fragile local hydrogeology;
- broader, deeper appreciation of beautiful rural landscapes in the Nittany Valley, particularly the Slab Cabin valley below Tussey Ridge;
- broader, deeper community understanding of Penn State's corporatism, corruption and community abuses;
- election of several conservation-oriented municipal legislators;
- adoption of Ferguson Township's strengthened stormwater management ordinance and forthcoming adoption of a sourcewater protection overlay zoning ordinance;
- reopening of the Whitehall Road Regional Park master planning and financing process, potentially allowing for a lower-intensity, more passive-use, ecologically-suitable regional park;
- commencement of the Centre Region Park and Recreation Regional Comprehensive Plan;
- renewed interest in mutual aid agreements among adjacent water authorities;
- the successful ClearWater Conservancy Slab Cabin Run Initiative, which raised \$2.75 million to permanently protect 300 acres of adjacent farmland from development;
- establishment of mutual liaisons between the State College Borough Water Authority and University Area Joint Authority boards, to promote timely communication between water-related public entities;
- new C-Net video coverage of SCBWA board meetings to facilitate public engagement;
- efforts within UAJA to adopt stricter policies for sewage management plans, including timely notice and review of siting and design for affected water providers; and most importantly

- renewed momentum for adoption of a Centre County integrated water resource management plan, subject of an April 18, 2018 public forum organized by the Spring Creek Watershed Commission.

We also believe our efforts during the Toll Brothers and Whitehall Road Regional Park campaign were instrumental in enabling rapid coalition-building and grassroots organizing when a new threat – from Nestle Waters North America, emerged early this year.

Alongside Concerned Citizens of Pleasant, Gap, Sierra Club-Moshannon Group, ClearWater Conservancy and Trout Unlimited-Spring Creek Chapter, Nittany Valley Environmental Coalition was part of a grassroots team that drove Nestle's proposed water extraction and bottling facility out of the Spring Township Logan Branch sub-basin within four months of the project's public announcement. Sierra Club continues to monitor Centre County water authorities for indications of incursions by Nestle and other extractive bottling corporations, to prevent further attempts to privatize public water.

Nittany Valley Environmental Coalition is moving forward with the continued goals of preventing further intensive land development in the Zone 2 area of the Harter and Thomas wellfields, and establishing a strong, enforceable regional integrated water resource management plan to protect public water.

## CRITICAL ANALYSIS

It seems as though the SCBWA board doesn't want to grant Toll Brothers the easement, but that they're afraid to deny the application. They're afraid of being sued by Toll Brothers for delaying construction. And they're afraid that if they deny the application, whatever Toll Brothers does instead will increase, rather than decrease, the risks of the project, or at least leave risks the same while rendering maintenance and repair more costly.

*Bailiwick News'* position is that government representatives can and should protect public interests, not concern themselves with the profitability of a given project for private corporations.

If Toll Brothers made a bad investment in land that's ill-suited for development, causing delays as maximum mitigations are implemented, no local government entity has an obligation to save the company from the headaches and expense of a poor investment decision.

More broadly, we're concerned about the many ways public taxpayers and public service ratepayers past, present and future are compelled – by private property owners backed by state law and enabled by litigation-shy local governing bodies – to subsidize private profits for land developers while endangering public water and destroying farmland.

More specifically, we're concerned now – and have been for many years now, keeping faith with Centre Region planners dating back to at least 2001 – that Penn State and associated land developers deliberately avoided considering the State College Borough hookup because

they wanted to install a large pump station and long high-pressure line via Ferguson Township to enable future intense development of the rest of the Penn State-owned land in the area.

This suspicion is reinforced by the aligned extension of Blue Course Drive and a provision in the Terms and Conditions for the Toll Brothers project requiring evaluation of further Blue Course extension, beyond the Cottages. See Nov. 11, 2015 Terms and Conditions, Section XV – “A potential future southern extension of the street shall be evaluated as part of the design, although not constructed, to make sure the park driveway location will accommodate a future extension of the street.”

While this land is currently zoned Rural Agricultural (RA), we know that Penn State successfully rezoned RA to Multifamily Residential (R-4) in 2004, to make the Toll Brothers project possible in the first place.

And while we intend to remain alert and engaged to prevent any further upzoning in the area, we are also aware that Penn State and the farmers will have a good argument that their land is less suitable for farming once the housing and park are constructed, and that they should therefore have the right to sell for development.

We also know that deep-pocketed developers may be more than willing to roll the dice and sue for the right to extend development down to Shingletown Road/Route 45 and across.

It would have been great if, back in the late 1990s, the entire area had been placed into conservation easements. Had that occurred, the 300 acres of Meyer and Everhart farmland protected by ClearWater’s Slab Cabin Run Initiative would now be accompanied by more than 500 additional acres, including the Toll Brothers land (45 acres), the COG/FT/WRRP land (100 acres), the SCBWA land (60 acres), and the remaining PSU land on both sides of Shingletown Road (roughly 350 acres)

In another, better hindsight scenario, it would have been great if SCBWA had been fully informed and involved from 2001 forward, in Ferguson Township’s zoning decisions; Penn State’s decisions about upzoning the land; Penn State’s decisions about the type of developer to sell to and the type of housing development to create; and COG’s decisions about regional park siting and design; to ensure the lowest possible risks for the public water supply at every step in the process.

Those things didn’t happen.

But things are getting better. Protections are getting stronger. And protectors are getting braver.

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KW INVESTIGATIONS LLC

156 W. Hamilton Ave.

State College PA 16801

(814) 237-0996

kw.investigations.llc@gmail.com

bailiwicknews.wordpress.com

## STAKEHOLDERS

- **SCBWA** - “Providing the Centre Region with an excellent supply of potable water at the lowest possible cost, and...top-quality service to our customers.”
- **University Area Joint Authority** – “Re-using water and biosolids to benefit the environment, quality of life and economy of the region.”
- **Penn State University** – “Teaching, research, and public service.”
- **Toll Brothers** – Building and selling luxury housing
- **Ferguson Township** – “Providing efficient, cost effective, professional services to our residents in a fair, cooperative, ethical and honest manner” and “endeavoring to manage [township] resources allowing planned, sustainable growth while preserving the quality of life and its unique characteristics.”
- **Borough of State College** – “Enhancing the quality of life by fostering a safe, vibrant, diverse and sustainable community; by providing quality, innovative, cost effective services; and by allocating resources efficiently with professionalism, integrity, transparency and accountability.
- **Centre Region Council of Governments (CRCOG)** – Voluntary association of State College Borough and College, Ferguson, Halfmoon, Harris and Patton townships, established in 1969 “to provide cost effective and high quality public services.”
- **Centre Region Parks and Recreation Authority** – “Serving Centre Region residents of all ages throughout the year with a variety of recreation opportunities to enrich their lives through participation in programs, use of facilities, provision of leadership resources and technical assistance, and serving the participating municipalities, both residents and non-residents, and groups.”
- **CRCOG Parks Capital Committee** – Responsibilities are “to recommend the designation of regional park facilities (i.e., facilities involving joint capital funding such as regional parks, swimming pools, nature centers, etc.) to the General Forum; to develop and recommend a funding strategy for the planning, development and operation of regional park facilities to the General Forum; to cooperate with the Centre Regional Recreational Parks and Recreation Authority Board in the preparation of recommended master site plans for regional recreation facilities for referral to the General Forum and/or the participating municipalities; to study and prepare recommendations on regional parks as requested by the Executive Committee.”
- **ClearWater Conservancy** – Land trust “dedicated to promoting conservation and restoration of natural resources in central Pennsylvania through land conservation, water resources protection, and environmental outreach to the community.”
- **Pennsylvania Department of Conservation and Natural Resources (DCNR)** – “Conserving and sustaining Pennsylvania’s natural resources for present and future generations’ use and enjoyment,” by “maintaining and protecting 121 state parks; managing 2.2 million acres of state forest land; providing information on the state’s ecological and geologic resources; and establishing community conservation partnerships with grants and technical assistance to benefit rivers, trails, greenways, local parks and

recreation, regional heritage parks, open space, and natural areas.”

- **Pennsylvania Department of Environmental Protection (DEP)** - “Protecting Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment” by working “as partners with individuals, organizations, governments and businesses to prevent pollution and restore our natural resources.”
- **Pennsylvania Department of Transportation (PennDOT)** - “Providing a sustainable transportation system and quality services that are embraced by our communities and add value to our customers.”

#### Selected References

Further references and copies available upon request.

- May 18, 1971 – Environmental Rights Amendment to Pa. Constitution, as adopted by state voters
- Oct. 9, 2001 – Sebastian DeGregorio (Centre Region Senior Planner) memo to Ferguson Township re: proposed extension of Blue Course Drive; inconsistency with regional comprehensive plan and sourcewater protection
- March 29, 2004 Sebastian DeGregorio (Centre Region Senior Planner) memo to Ferguson Township re: proposed rezoning of Penn State-owned parcels; inconsistency with regional comprehensive plan and sourcewater protection
- Jan. 2007 SCBWA Source Water Protection Report
- March 17, 2008 Sales Contract, Penn State sale of roughly 60 acres of land to SCBWA, for \$383,500; deed restrictions for sourcewater protection; participation in state “Clean and Green” program for tax exemption; and lack of sewer service to the parcel.
- May 30, 2008, Deed Transfer for sale by Penn State to CRCOG/Ferguson Township for proposed Whitehall Road Regional Park, 75 acres, for \$230,775. Partially funded by PA-DCNR under Keystone Recreation, Park and Conservation Fund Act of 1993. (\$159,000 from DCNR)
- June 20, 2008 Deed Transfer for sale by Penn State to SCBWA for proposed sourcewater protection parcel, 60 acres, for \$383,500.
- Aug. 23, 2010 – Whitehall Road Regional Park Master Plan, as adopted by CRCOG General Forum
- Nov. 2011 – State College Borough Home Rule Charter, Community Bill of Rights Amendment, as adopted by municipal voters
- May 27, 2011 – Deed Transfer for sale by Penn State to CRCOG/Ferguson Township for proposed Whitehall Road Regional Park, 25 acres, for \$375,000. Partially funded by PA-DCNR under Keystone Recreation, Park and Conservation Fund Act of 1993. (\$183,000 from DCNR)
- Nov. 2012 – Ferguson Township Home Rule Charter, Community Bill of Rights Amendment, as adopted by municipal voters
- April 1, 2015 – *Voices of Central Pennsylvania*, “Penn State dominance in regional land use planning another example of boundary violations.”
- Nov. 11, 2015 – Draft Terms and Conditions between Ferguson Township and Toll Brothers re: development of “The Cottages.”
- Nov. 14, 2015 – Draft, unexecuted “Stormwater Management Agreement” between Ferguson Township and Toll Brothers
- Aug. 17, 2016 - Ferguson Township memo to Jim Steff, CR-COG, re: “showstopper” issues for Whitehall Road Regional Park, including that SCBWA concerns about risks to water supply from WRRP development would be a “showstopper” for Ferguson supervisors.
- Oct. 19, 2016 – Patton Township memo to Centre Region Parks & Recreation Authority re: no further Patton Township funding for regional parks program, beyond financial obligations already incurred.
- Sept. 9, 2016 – June 13, 2017 – *Bailiwick News* “Slab Cabin Run Water and Farmland Protection” series
- June 20, 2017 – Pa. Supreme Court opinion in *Pennsylvania Environmental Defense Fund v. Commonwealth* re: fiduciary duty of governmental bodies and enforceability of citizen environmental rights under the 1971 Environmental Rights Amendment.
- March 21, 2018 – Ferguson Township Board of Supervisors letter to Centre Region Parks & Recreation Authority re: Whitehall Road Regional Park planning, Ferguson Township interest low-impact design, reforestation, pollinator plantings, and habitat conservation
- April 8, 2018 – *Bailiwick News*, “Liability for water contamination: who will pay?”
- April 9, 2018 – Angela Kalke (Ferguson Township staff) email to Katherine Watt, re: no executed stormwater management agreement for Toll Brothers development on file with Ferguson Township, in violation of Terms and Conditions provision requiring execution of agreement prior to municipal project approval. “Section XXXIV. A Stormwater Maintenance Agreement shall be executed prior to Final PRD plan approval.”
- April 19, 2018 - Transcript of C-Net video of SCBWA discussions re: proposed Whitehall Road Regional Park and proposed sewage pipeline easement for Toll Brothers.
- April 24, 2018 – SCBWA Letter to Centre Region Parks & Recreation Authority re: proposed Whitehall Road Regional Park and SCBWA board interest in fuller participation in planning and design.
- May 3, 2018 – Attorney Yeager letter to SCBWA re: proposed easement, legal implications of covenant on SCBWA land.
- May 7, 2018 - Draft Post-Construction Environmental Impact Agreement re: financial liability for mitigation of construction and maintenance-related contamination of public water supplies by Toll Brothers, for review by Ferguson Township Board of Supervisors.