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Re: Comments on Application Orchard BJK Company, LLC for National Pollutant Discharge Elimination System (NPDES) Individual Permit for Discharges of Stormwater Associated with Construction Activities (PAD450158).

Dear Ms. Kania:

Citizens for Pennsylvania’s Future and Delaware Riverkeeper Network (“Commenters”) respectfully submit these comments on the application of Orchard BJK Company, LLC (“Applicant”) for a NPDES Individual Permit for Discharge of Stormwater Associated with Construction Activities (PAD450158) (“Application”). Applicant proposes the construction of a 37-acre land development consisting of a 333,000 square foot warehouse/distribution center and associated parking and stormwater facilities (the “Project”) on property located at the intersection of Route 611 and Laurel Road (“Property”).

Commenters attended and testified at the April 24, 2023 public hearing on the Application and note the considerable public opposition to the Project. This letter serves as additional comment on the Project. Commenters may also provide supplemental technical review to the Department before the public comment deadline. At the public hearing, the Department regrettably announced that May 10th would be the deadline for public comment. Commenters requested a longer comment period to allow adequate time for the community to draft and submit comments. We repeat that request now.

PennFuture is a membership-based, non-profit, environmental organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture strives to protect our air, water, and land, and to empower citizens to build sustainable communities for

future generations. A main focus of PennFuture’s work is to improve and protect water resources and water quality across Pennsylvania, with particular emphasis on the Delaware River Basin, through public outreach and education, advocacy, and litigation.

From the New York Highlands to the Delaware Bay, the Delaware Riverkeeper Network (DRN) gives voice to the River and all the communities that depend upon a healthy watershed. Since 1988, DRN has stood as a vigilant protector and defender of the Delaware River and its tributaries, committed to restoring the natural balance where it has been lost and ensuring its preservation where it still exists.

The waterways that the Project would discharge to—Exceptional Value (EV) wetlands to Duckpuddle Run and Duckpuddle Run (a High Quality (HQ) stream)—are among the highest quality waters in the Commonwealth and are entitled under the law to the highest protections. Given the importance of the waters on the Property, Commenters appreciate the Department’s consideration of these comments and hope they are helpful to the Department as it continues its review of the Application.

Commenters are concerned about material inadequacies and omissions in the Application. Without vital information about the Project that Applicant has failed to submit, the Department risks irreparable harm to EV water resources, the climate, and the environment. The Department has a duty to prevent detrimental impacts to the special protection waters on the Property and their associated forested riparian buffers and forests. Commenters urge the Department to deny the Application. If the Department does not deny the Application, because the information submitted with the Application is inadequate for the public to truly evaluate the harms this project could inflict, Commenters request another review and public comment period after Applicant submits the necessary additional information.

I. THE APPLICATION LACKS SUFFICIENT INFORMATION TO ENABLE THE DEPARTMENT TO ENSURE ANTIDEGRADATION REQUIREMENTS ARE MET.

A. Applicant must demonstrate compliance with Chapter 93 antidegradation requirements in addition to Chapter 102 requirements.

Any person who proposes a point source discharge to an EV water, including an EV wetland, must demonstrate that the discharge will comply with the antidegradation regulations found in Chapter 93 of the Department’s regulations, 25 Pa. Code §§ 93.4a–93.4d.¹ The Chapter 93 antidegradation regulations are **in addition to** the permitting program regulations found in Chapter 102.² The Chapter 102 requirements “were not intended to nor do they incorporate fully the Chapter 93.4a-d antidegradation requirements.”³ “Chapter 102 is about BMPs which are ‘activities, facilities, measures, or procedures’ aimed at controlling erosion and sedimentation.”⁴ By contrast, Chapter 93 is about “a detailed and specific preferential hierarchical process and

¹ 25 Pa. Code § 93.4c(b)(1); *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *9 (Pa. Environ. Hrg. Bd. 2006).

² 25 Pa. Code § 93.4c(b)(1); *Blue Mtn. Preservation Assoc.*, 2006 Pa. Environ. LEXIS 55 *9 (Pa. Environ. Hrg. Bd. 2006).

³ *Blue Mtn. Preservation Assoc.*, 2006 Pa. Environ. LEXIS 55 *18, 35–36, 38 (Pa. Environ. Hrg. Bd. 2006).

⁴ *Id.* at *18, 38.

procedure aimed at arriving at an outcome which will prevent degradation by all physical, chemical, biological parameters.”⁵

“[T]he antidegradation regulations, applying as they do to preserving and protecting existing uses, cover more than do the Chapter 102 erosion and sedimentation regulations.”⁶ Consequently, compliance with Chapter 102 regulations **does not** constitute full adherence to the antidegradation regulations of Chapter 93, and the Department must ensure that an application complies with **both** the applicable requirements of Chapter 102 **and** the Chapter 93 antidegradation requirements.⁷

Chapter 93 outlines “a very specific and particular process and procedure” which an applicant proposing a discharge to an EV water “must follow in making certain affirmative demonstrations to the Department as a prerequisite to the Department's granting of a permit for . . . a new, additional or increased discharge.”⁸ This includes demonstrating that the proposed discharge will “maintain and protect the existing quality of receiving surface waters.”⁹ The Environmental Hearing Board (“EHB”) has repeatedly counseled that “compliance with the laws against degradation means more than simply engaging in some exercise using labels such as ‘antidegradation,’ ‘nondischarge alternatives,’ and ‘ABACT.’”¹⁰ It is “ultimately not about checking off boxes on form.”¹¹ The overriding requirement “is that the water quality of HQ and EV waters ‘shall be maintained and protected.’”¹²

Applicant proposes two point source discharges to the EV wetlands to Duckpuddle Run, yet has not made the affirmative demonstrations required by Chapter 102 and Chapter 93.

B. Applicant has not demonstrated that cost-effective, environmentally sound nondischarge alternative(s) are not available.

The first step of the Chapter 93 antidegradation scheme, as well as the Chapter 102 requirements for special protection waters, requires evaluation of nondischarge alternatives to the proposed discharge.¹³ This is a “threshold step” of the analysis, and nondischarge alternatives **must** be considered, regardless of the degree of degradation.¹⁴ If there is a nondischarge alternative that is “environmentally sound and cost-effective when compared with the cost of the proposed discharge,” that alternative must be used.¹⁵ Only if an applicant **has demonstrated** that an

⁵ *Id.*

⁶ *Id.* at *36.

⁷ *Id.* at *22–23, 35–36; see *Borough of Stockertown v. Com. of Pa., Dep’t of Env’t Prot.*, Docket No. 2014-166-M, 2016 Pa. Environ. LEXIS 37, *9 (Pa. Environ. Hrg. Bd. 2016) (water quality program, including antidegradation program, are broader in scope than the NPDES program).

⁸ *Id.* at *22–23 (citing 25 Pa. Code §§ 93.4a(b), (c)) (emphasis added).

⁹ 25 Pa. Code 93.4c(b)(1)(i)(B).

¹⁰ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011).

¹¹ *Id.*

¹² *Id.* (quoting 25 Pa. Code § 93.4a(b-c)).

¹³ 25 Pa. Code §§ 93.4c(b)(i)(A), 102.4(b)(6), 102.8(h)

¹⁴ *Blue Mtn. Preservation Assoc.*, 2006 Pa. Environ. LEXIS 55 *24, 43 (citing 25 Pa. Code § 93.4c(b)(1); Com. of Pa., Dep’t of Env’t Prot., WATER QUALITY ANTIDegradation IMPLEMENTATION GUIDANCE 45 (2003)).

¹⁵ 25 Pa. Code § 93.4c(b)(i)(A).

environmentally-sound, cost-effective, nondischarge alternative is not available is a discharge to an EV water permitted.¹⁶

In the instant case, the Department has required, and Applicant has submitted, *NPDES Discharges of Stormwater Associated with Construction Activities Antidegradation Analysis Module 3*. In accordance with the requirements of Chapter 102 and Chapter 93, Module 3 contains a field requiring Applicant to “explain the rationale for non-selection [of non-discharge alternatives], including why none of the alternatives are considered environmentally sound and cost-effective.” Applicant’s response to this field is cursory at best. For example, Applicant’s explanation for rejecting an alternative configuration of the site is simply that “the proposed layout has been configured to maximize the intended functionality of the proposed use, while minimizing the impact of the surroundings.” Applicant provides no further information to support its contention that functionality of the project would be impaired by an alternative configuration. In fact, the fact that Applicant conducted infiltration testing only after the locations of infiltration basins was determined (presumably by Applicant’s desire to maximize profitability on the site) suggests that Applicant views the evaluation of nondischarge alternatives as secondary to Applicant’s preferred plan for the Property. Moreover, Applicant provides no information about the cost of any nondischarge alternative or how that cost would compare to the cost of the proposed discharge. In the absence of this information, it cannot be said that Applicant has demonstrated the non-availability of a cost-effective nondischarge alternative.

Applicant’s cursory dismissal of nondischarge alternatives is the precise type of hand-waving at the antidegradation requirements that the EHB has cautioned applicants and the Department against. Applicant must demonstrate a more robust consideration of non-discharge alternatives for the Department and the public so both can evaluate the analysis. Without this, the Department cannot issue the requested NPDES permit.

C. Applicant has not demonstrated that the existing water quality of the EV wetlands to Duckpuddle Run will be maintained and protected.

1. Applicant has not evaluated all discharges to the EV wetlands.

Chapter 93 imposes requirements on point source discharges, defined as any “discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.”¹⁷ A person proposing a point source discharge to a High Quality or Exceptional Value Water must “evaluate nondischarge alternatives **to the proposed discharge**” and, if no cost-effective, environmentally sound discharge alternative is available, must “demonstrate that **the discharge** will maintain and protect the existing quality of receiving surface waters.”¹⁸

The E&S and PCSM plans submitted with the Application indicate that Applicant proposes *two* point source discharges to the EV wetlands to Duckpuddle Run: a culvert and rip-rap lined swale from Sediment/Infiltration Basin #1 to the edge of the wetlands (Swale 1), and a culvert and rip-rap line swale from Sediment/Infiltration Basin #2 to the edge of the wetlands (Swale 2). Applicant has not provided any calculations for either of these discharge points. Rather, Applicant provided calculations for a “Discharge Point 1,” identified as the point where Duckpuddle Run

¹⁶ 25 Pa. Code § 93.4c(b)(i)(A), (B).

¹⁷ 25 Pa. Code 93.1 (cross-referencing 25 Pa. Code 92a.2).

¹⁸ 25 Pa. Code 93.4c(b)(1)(i).

crosses the southern boundary of the Property. This is insufficient to satisfy Applicant's obligation under Chapter 93 to evaluate *each* proposed discharge.

2. Applicant has not demonstrated that water quality will be maintained.

Even if Applicant has demonstrated the unavailability of cost-effective, environmentally sound nondischarge alternatives (which Commenters dispute), Chapter 93 requires Applicant to demonstrate that the discharge **will maintain and protect the existing quality of receiving surface waters**.¹⁹ This showing is required "in all cases" and obligates an applicant to "undertake a certain process and make certain showings as a prerequisite to the Department's granting of an NPDES permit."²⁰ By the same token, "**the Department is obligated to see to it that the applicant has done so** before it may grant a permit."²¹

The Department requires applicants for individual NPDES permits to submit *NPDES Discharges of Stormwater Associated with Construction Activities Antidegradation Analysis Module 3*. Applicant submitted Module 3, as well as a report entitled *Duckpuddle Run- Exceptional Wetlands Narrative* ("Antidegradation Report"). However, neither Module 3 nor the Antidegradation Report fully satisfy Applicant's obligation to demonstrate whether the proposed discharge to an EV wetland will maintain and protect the existing quality of receiving surface waters.²²

According to reason and the Department's own antidegradation guidance document (Water Quality Antidegradation Implementation Guidance), assessing whether a proposed activity will maintain and protect the existing quality of receiving surface waters requires data on the existing water quality of the receiving surface waters. This data is necessary for the Department to determine the instream water quality objectives Applicant must satisfy.²³ To this end, an NPDES permit applicant must provide the Department a list of parameters that are known or suspected to be present in the discharge, as well as the expected influent and effluent concentrations of these pollutants, based on the technology it proposes to install. This information is necessary for the Department to evaluate the effluent values and determine if they will exceed the water quality objectives. Here, Applicant has provided no information about existing pollutant concentrations in the EV wetlands to Duckpuddle Run or about parameters known or suspected to be present in the proposed discharge from the Project. Given the nature of the Project, road salts, diesel, and other pollutants commonly associated with heavy truck traffic and parking areas are of particular concern. The fact that Applicant has provided no information about the materials expected to be stored in the warehouses on the Property adds an additional layer of concern based on the industry and types of chemical and pollution loads that may be stored, present, or used on the site.

Furthermore, in addition to maintaining existing water quality, all discharges must meet the specific water quality criteria found in 25 Pa. Code § 93.7, which include limitations on alkalinity, ammonia nitrogen, bacteria, chloride, color, dissolved oxygen, fluoride, iron, manganese, nitrite plus nitrite, osmotic pressure, pH, phenolics, sulfate, temperature, total

¹⁹ *Blue Mtn. Preservation Assoc., Inc.*, 2006 Pa. Envirn. LEXIS 55 at *26 (citing 25 Pa. Code § 93.4c(b)(1)(i)(B)).

²⁰ *Blue Mtn. Preservation Assoc., Inc.*, 2011 Pa. Envirn. LEXIS 51 at *27.

²¹ *Id.*

²² 25 Pa. Code 93.4c(b)(1)(B).

²³ Com. of Pa., Dep't of Env't'l Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 61 (2003). These include aluminum, ammonia nitrogen, C-BOD5, total copper, total iron, total lead, nitrate/nitrite nitrogen, phosphorus, sulfate, suspended solids and total zinc.

dissolved solids and total residual chlorine.²⁴ Without information about the additional parameters listed in 25 Pa. Code § 93.7, the Department cannot effectively evaluate Applicant’s compliance with the antidegradation requirements of Chapter 93.

Applicant has failed to provide any information about the majority of the parameters covered by the water quality criteria set forth in 25 Pa. Code § 93.7. As Applicant acknowledges in its letter, dated December 8, 2022, responding to comments by Fair Shake, dated September 6, 2022: “the pollutants evaluated are limited to Total Suspended Solids (TSS), Total Phosphorus (TP), and Total Nitrogen (TN).” The lack of information about other parameters is concerning because the proposed change in land cover will likely generate thermal impacts and changes in hydrology. Moreover, the removal of the glaciated wetland and acidic bog type plants will likely cause changes to the sensitive pH of the wetland on the Property and downstream waterbodies. The Application does not address this. Furthermore, given the region’s cold climate and the vehicle-intense use of the Property, it can reasonably be expected that significant amounts of road salt may be used. If introduced into the water system, road salt increases salinity and chloride and causes oxygen depletion in the receiving body of water.²⁵ Chloride upticks also can negatively affect sensitive aquatic macroinvertebrate life while also increasing salinity in shallow groundwater.²⁶ This, in turn can impact stream baseflow salinity.²⁷ Chloride is listed among the parameters to be addressed in a Chapter 93 antidegradation analysis, yet the Application does not address whether salt will be discharged to the special protection waters on the Property or whether the chloride level will be affected.²⁸ Commenters also note that significant earth moving on the Property is proposed, which may affect the old Lackawanna Railroad right-of-way. If contamination is present in these soils as can be the case with old rail lines²⁹, it could result in the introduction of new contaminants into the discharge. The Application does not indicate that a brownfields investigation been pursued to test for and ensure that no contaminants are present at this location.

Commenters also note the likelihood that runoff from the Project’s vast impervious surface will contain polycyclic aromatic hydrocarbons (PAHs), a class of contaminants found in coat-tar sealed pavement that may be carcinogenic, mutagenic, teratogenic and/or toxic to aquatic organisms.³⁰ In addition, the NPDES permit, if granted, will cover discharges related to firefighting activities.³¹ Firefighting foam is a major environmentally contaminating source of per- and poly-

²⁴ 25 Pa. Code § 93.7(a); Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 64 (2003).

²⁵ Jeremy Hinsdale, *How Road Salt Harms the Environment*, COLUMBIA CLIMATE SCHOOL (Dec. 11, 2018), <https://news.climate.columbia.edu/2018/12/11/road-salt-harms-environment/>.

²⁶ Steven R. Corsi., et.al. *River chloride trends in snow-affected urban watersheds: increasing concentrations outpace urban growth rate and are common among all seasons*. USGS. Science of the Total Environment. (2015)

²⁷ *Id.*

²⁸ 25 Pa. Code 93.7, Table 3.

²⁹ USEPA. *Successful Rail Property Cleanup and Redevelopment, Lessons Learned and Guidance to Get Your Railfields Projects on Track*. (EPA-560-F-05-231). (August 2005). www.epa.gov/brownfields/.

³⁰ Austin K. Baldwin, et al, *Primary Sources of Polycyclic Aromatic Hydrocarbons to Streambed Sediment in Great Lakes Tributaries Using Multiple Lines of Evidence*, 39 ENVT’L TOXICOLOGY & CHEM. 1392 (Jun. 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7383861/>.

³¹ Pa. Dep’t of Env’tl. Prot., NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) INDIVIDUAL PERMIT FOR DISCHARGES OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES APPLICATION INSTRUCTIONS 3 (2022).

fluoroalkyl substances (PFAS).³² These chemicals are known pollutants and feature fluorine-carbon bonds that make them virtually indestructible, earning them the name “forever chemicals.”³³ PFAS exposure may be linked to multiple health issues, including cancer and reproductive and developmental effects, even at low levels of exposure. Last month, the Environmental Protection Agency (EPA) announced proposed rulemaking to limit PFAS in drinking water.³⁴

Although neither PAHs nor PFAS are expressly addressed by Chapter 93 or Chapter 96, the regulations recognize that not all possible pollutants are listed.³⁵ For unlisted pollutants, the general criterion is that these may not be inimical or injurious to the existing or designated water uses or to human, animal, plant or aquatic life.³⁶ The Department must use the best available scientific information to develop a criterion for these substances.³⁷ Commenters contend that the presence of PAHs and/or PFAS in the discharge from the Project would be inimical and injurious to the EV wetlands to Duckpuddle Run and to Duckpuddle Run if not properly mitigated. However, because Applicant has failed to provide any information about the likely presence of PAHs and PFAS in the proposed discharge to these waters, the Department cannot fulfill its obligation to ensure that no injury will result from the introduction of these chemicals.

In summary, Applicant has not provided information sufficient to establish that discharges from the Project to the EV wetlands to Duckpuddle Run will satisfy the antidegradation requirements of Chapter 93. Therefore, the Department cannot issue and must deny the requested NPDES permit.

II. APPLICANT’S CLEAR-CUTTING OF INTACT MATURE FOREST WILL RESULT IN LOSS OF IRREPLACEABLE WATER QUALITY BENEFITS.

Of particular concern to Commenters is Applicant’s proposal to convert vast swaths of mostly native forest on the Property to impervious surface and structural stormwater facilities. Research at the Stroud Water Center and elsewhere has shown that stream health is dependent on the presence of woody vegetation.³⁸ Forests naturally filter and regulate the flow of water, slow the fall of rainwater to the ground, filter sediment, shade and modify stream temperature, and provide habitat for many species.³⁹ Trees are also especially good at removing nutrients and contaminants such as metals, pesticides, solvents, oils and hydrocarbons from soil and water.⁴⁰ In addition, forests reduce stream velocity and downstream flooding by absorbing and use tremendous amounts of water that would otherwise flow to surface waters.⁴¹ Research reported by the Penn State Extension shows that an intact forest can take up 60% of the annual rainfall through

³² *Id.*

³³ Micah Dickinson, *Firefighting Foam & PFAS: What You Need to Know*, VANGUARD-FIRE.COM (Feb. 16, 2022), <https://vanguard-fire.com/firefighting-foam-pfas-what-you-need-to-know/>.

³⁴ U.S. Dep’t of Envir. Prot., FACT SHEET: EPA’S PROPOSAL TO LIMIT PFAS IN DRINKING WATER 1, 5 (Mar. 2023), https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.

³⁵ 25 Pa. Code § 93.7(c).

³⁶ 25 Pa. Code §§ 93.6(a), 93.7(c).

³⁷ 25 Pa. Code § 93.7(c).

³⁸ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

the process of evapotranspiration, leaving only 40% to flow to surface waters.⁴² If forest is removed, evaporation drops to 35%, and surface waters receive 65% of the rainfall.⁴³ When forest is replaced by impervious surface, the impacts are especially egregious. The runoff from one acre of paved parking generates the same amount of annual runoff as 36 acres of forest.⁴⁴

In addition to water quality and stormwater management, forests provide diverse habitats. Clear-cutting the Property as Applicant proposes will destroy this habitat and sever the connection with the adjacent State Game Lands 127. These concerns have led private citizens to preserve similar habitats with conservation easements due to the importance of the ecosystems that remain.

Intact forest buffers also provide substantial economic benefits. The Monroe County 2022 ROE report found that headwater forests and wetlands, including those on the Property, have an estimated annual return on investment (ROE) value of up to \$5,750–\$6,568 per acre, the highest ROE value of any land cover type.⁴⁵ Another study examining the economic value of riparian buffers in the Delaware River Basin found that riparian buffers provide over \$10,000 per acre annually in monetized benefits in addition to non-monetized benefits.⁴⁶ The same study estimated an annual loss to the Delaware River Basin of approximately \$981,000 to \$2.5 million in monetized ecosystem services if riparian buffers are not adequately protected. This research shows the critical importance of protecting forested buffers and headwater tributaries and wetlands, the very thing Applicant proposes to develop.⁴⁷

Structural stormwater controls simply cannot take the place of the myriad water quality, water quantity, habitat and economic benefits naturally provided by an intact forest. Yet, not only does Applicant propose destruction of acres of mature forest in this sensitive headwater area, but the proposed sediment basins do so on the border of the sensitive wetlands to Duckpuddle Run. In some places, applicant proposes only a meager fifty (50) ft. buffer between the commercial footprint and the EV wetland. Commenter Delaware Riverkeeper Network, Stroud Water Research Center, Schmid Wetlands experts, and other wetland scientists have long recommended forested buffers of at least 300 feet to adequately protect water quality and wildlife species.⁴⁸

While Commenters recognize that Chapter 102 does not govern forest clearing or impose forest buffer requirements on wetlands, the destruction of mature forest on the site and the absence of an adequately protective buffer call for special scrutiny to ensure that the water quality benefits of an intact forested buffer will be maintained. The Application does not adequately demonstrate that this will be accomplished and, therefore, must be denied.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Return on Environment Map, KITTATINNY RIDGE.ORG, <https://wplan.maps.arcgis.com/apps/webappviewer/> (last visited Apr. 28, 2023).

⁴⁶ ECONorthwest, *The Economic Value of Riparian Buffers in the Delaware River Basin* 7 (2018).

⁴⁷ Onlot Septic Systems Proposed in High Quality and Exceptional Value Watersheds (PADEP Doc: #385-2208-001) Michele Adams, Meliora Design. May 7, 2013

⁴⁸ Delaware Riverkeeper Network, *Buffers*, DELAWARERIVERKEEPER.ORG, <https://www.delawareriverkeeper.org/ongoing-issues/buffers> (last visited Apr. 25, 2023).

III. THE PROJECT THREATENS GLOBALLY RARE AND VALUABLE WETLAND AREAS.

The swamps, marshes, upland forest, pine barrens and heath of the Pocono Plateau provide pristine habitats for more than 25 species of rare or endangered plants and animals and have earned the Pocono Plateau a place on the Nature Conservancy’s global list of “Forty Last Great Places.”⁴⁹ “Almost every rare species that occurs in this watershed is an outstanding example of the species . . . Nowhere on the planet is there anything like this place.”⁵⁰

Duckpuddle Run and its associated EV wetlands form part of this exceptionally rare and valuable ecosystem. Applicant’s wetland delineation, performed by Vortex Environmental, Inc., indicates that the vegetation on the Property consists of diverse native tree species, including canopy species and understory canopy species, shrub species and a variety of forbs and ephemerals and wetland plants. The presence of a multi-tiered natural forest and extensive wetland complex indicate a high value functioning ecosystem that is integrally connected to the water quality of Duckpuddle Run. The wetlands on the Property also form part of a large, high quality wetland complex that extends to the property, also owned by Developer.

The River Continuum Concept, developed by scientist Robin Vennote of the Stroud Water Research Center, recognizes that a stream must be understood as a single continuum, from source to sea.⁵¹ “To understand what is happening at any point along the way, you must understand what is happening upstream and what is entering from the watershed.”⁵² The science supporting the River Continuum Concept is decades old, and the Department will be failing this science if it does not recognize the essential connections between the EV wetlands, Duckpuddle Run, and the downstream waters. The Property, with its headwater forested areas, is part of a critical wetland complex that helps keep the downstream area of the watershed and aquifer clean and protected. In addition, organic byproducts from insects feeding, growing and dying are washed downstream by the current and provide a valuable food resource to downstream reaches while also helping to support the chemical signature of the local reaches.

This River Continuum Concept is particularly crucial for the instant Application because Duckpuddle Run and its associated wetlands form part of the headwaters of the Lehigh River, recently named by American Rivers as one of the nation’s ten most-endangered rivers.⁵³ The importance of protecting the Lehigh’s headwater streams, associated wetlands and riparian buffers cannot be overstated.⁵⁴ Commenters contend that putting a large-scale warehouse on the Property, with all the parking lot runoff and contaminants it would bring, will have cascading negative impacts on the EV wetlands, Duckpuddle Run, and the Lehigh River. The uptake of stormwater

⁴⁹ Michael Decourcy Hinds, *Pocono Journal; Winds of Secession Chill One of the World’s ‘Last Great Places,’* NYTIMES.COM (Dec. 4, 1993), <https://www.nytimes.com/1993/12/04/us/pocono-journal-winds-of-secession-chill-one-of-the-world-s-last-great-places.html>.

⁵⁰ *Id.*

⁵¹ Stroud Water Research Center, *The River Continuum Concept*, STROUDCENTER.ORG, <https://stroudcenter.org/continuum/> (last visited Apr. 28, 2023).

⁵² *Id.*

⁵³ American Rivers, *Lehigh River Named Among America’s Most Endangered Rivers of 2023*, AMERICANRIVERS.ORG (Apr. 18, 2023), <https://www.americanrivers.org/media-item/lehigh-river-named-among-americas-most-endangered-rivers-of-2023/>.

⁵⁴ Protecting Headwaters: The Scientific Basis for Safeguarding Stream and River Ecosystems. Stroud Water Research Center, <http://www.stroudcenter.org/research/PDF/ProtectingHeadwaters.pdf>. 2008.

and the quality of the aquifer that interfaces with the wetland will also be negatively impacted from stormwater runoff generated from the warehouse and its parking areas.

Any negative impact on water resources caused by the Project could also result in significant detrimental economic impact. According to American Rivers' Director of Clean Water Supply, "unprecedented development of open space for warehousing and distribution centers threatens the region's clean water and wildlife, and the communities and economies that rely on them." Monroe County is among those communities.⁵⁵ The 2022 Monroe County Return on Environment Study found that benefits provided by nature save the county \$1.1 billion annually, including \$164 million attributed to health riparian buffers.⁵⁶ Outdoor recreation, including activities dependent on high-quality waters such as fishing, kayaking/canoeing, hunting and birding, bring in \$368 million in revenue annually.

Furthermore, the Project would negatively impact groundwater aquifers. The forested headwater area on the Property is connected to and drains to the aquifer beneath the Pocono Plateau, a primary source for water in Monroe County and an important groundwater supply that the surrounding community relies on for drinking water. In addition, emissions and air pollutants associated with vehicle-intensive uses such as warehouses may affect ground water and surface water, as well as acid rain, increased air pollution, and other threats.

In short, the Project and others like it threaten irreparable harm to a globally rare and exceptionally valuable ecosystem that provides irreplaceable habitat, water quality, biodiversity, and economic benefits. Commenters contend that the Property simply is not an appropriate site for a sprawling warehouse. Intense industrial development of this kind is more properly sited on existing spoiled land, mined areas, or already deforested lands. Commenters recognize that the siting of these projects is largely controlled by local governing bodies, but given the sensitive nature of the site, Commenters contend that the Department must subject the Application to the utmost scrutiny to ensure that the Project will not irreparably damage this pristine landscape or degrade invaluable waters of the Commonwealth. It is Commenters' position that the Application does not withstand this high level of scrutiny and must be denied.

IV. APPLICANT HAS NOT SUBMITTED COUNTY AND MUNICIPAL LAND USE LETTERS.

The Pennsylvania Municipalities Planning Code ("MPC") provides that "when a county adopts a comprehensive plan in accordance with [MPC] sections 301 and 302 and any municipalities therein have adopted comprehensive plans and zoning ordinances accordance with [MPC] sections 301, 303(d) and 603(j), Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities"⁵⁷

To satisfy the obligation imposed by the MPC, DEP has created a *Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Authorizations for Facilities and Infrastructure* ("Land Use Policy"). The Land Use Policy creates a "land use review

⁵⁵ American Rivers, *Lehigh River Named Among America's Most Endangered Rivers of 2023*, AMERICANRIVERS.ORG (Apr. 18, 2023), <https://www.americanrivers.org/media-item/lehigh-river-named-among-americas-most-endangered-rivers-of-2023/>.

⁵⁶ Kittatinny Ridge, 2022 RETURN ON ENVIRONMENT STUDY: MONROE COUNTY 26 (2022).

⁵⁷ 53 P.S. § 10619.2.

process” for certain permit applications for projects located in counties and municipalities that are covered by the MPC and have enacted a comprehensive plan or zoning ordinances.

The land use review process has three major components:

1. Inclusion of land use question as part of the Department’s General Information Form (GIF);
2. An opportunity for an applicant to provide Municipality and County Land Use Letters; and
3. Should the applicant fail to provide Municipal and County Land Use Letters, an opportunity for municipalities and counties to comment to the Department on the accuracy of the applicant’s answers to the land use questions.

Applicant indicates on the GIF that the Application is subject to the Land Use Policy and further indicates that Land Use Letters from the County and Municipality are included in the Application. The Land Use Letters are not among the Application materials made available to Commenters. The Department should verify whether Monroe County and Coolbaugh Township have issued Land Use Letters and, if not, should proceed accordingly under the Land Use Policy. Without these important documents, especially for such a sensitive forested wetland and headwaters site that would be irreparably harmed, the Department would be shirking its duties to proceed at this time.

V. OTHER CONCERNS

Commenters note the following additional concerns and urge the Department to consider them in reviewing the Application:

- Given the extremely important and sensitive nature of the EV wetlands on the Property, Commenters contend that an Army Corps of Engineers wetland delineation is warranted.
- Groundwater infiltration and soil tests were only conducted by the applicant at five locations and limited to “areas of the proposed stormwater management facilities.” Of the five limited locations, three of the test areas encountered sensitive groundwater. Infiltration rates varied between 0.27 and 5.13 inches/hour with an average of 2.23 inches/hour. Is uptake due to existing forested nature of the site? How will the destruction of the forested areas affect infiltration and stormwater changes? What hydrological studies have been conducted by the Applicant to ensure protection of EV wetlands, groundwater, and existing hydrology?
- Department regulations do not adequately address the various unique impacts warehouse/distribution center/logistics developments like the Project have on surface waters and groundwater, including impacts resulting from massive impervious surfaces and intense heavy traffic use. Development of this nature is proliferating at an unprecedented rate in northeastern Pennsylvania and beyond and should be treated as a distinct category of development.
- The Application states the Project will not encroach on a waterbody or wetland, yet also notes that a Chapter 105 permit will be required. These statements appear inconsistent.

- The Application does not provide any data on existing water quality in the EV wetland or Duckpuddle Run or indicate that water quality will be monitored post-construction. Without pre and post monitoring data, the Department will be unable to determine if water quality in the receiving water is degraded by the Project.
- The Property is one small piece of a much larger contiguous property owned by Applicant, through which the EV wetland complex and Duckpuddle Run extend. Although Applicant has not yet formally proposed development of the remaining tract, it is Commenters' understanding that Applicant intends to develop the remainder of the tract (identified as "Lot 2" on Applicant's plans) for a warehouse/distribution center use similar to the Project. The Department should consider the potential cumulative impact of further industrial development of the adjacent land, as well as the precedent set by the Department's treatment of the instant Application.
- With more than 10 proposed warehouses/logistics centers in the Monroe County area (of which Commenters are aware), the concerns attending the Project cannot be viewed in a vacuum. Significant cumulative impacts to the high quality and exceptional valuable waters of the Poconos, including the invaluable Lehigh River headwaters, can be expected from this unprecedented pace of industrial development. To examine the projects piecemeal and one project at a time is not in the spirit of protecting anti-degradation waters; the Department should consider this unprecedented pattern of development as a whole. Across the Delaware River, the New Jersey State Planning Commission has adopted recent policies and guidance on distribution warehousing to encourage less greenfield development of warehouses that would damage natural capital/forests (such as the Project) and focus instead on areas in urban cores and nodes near major ports, in designated redevelopment areas, contaminated sites and brownfields.⁵⁸ Cumulative impact of warehouses especially in sensitive anti-degradation watersheds must be better considered by the Department. Commenters share guidance here for the New Jersey highlands that is addressing some of the concerns this warehouse buildout holds for the highlands region, especially as it relates to unique and sensitive habitats, vernal pools, wetlands and forests.⁵⁹

VI. CONCLUSION

For the above reasons, the Department should deny Applicant's request for an NPDES permit for the Project. If the Application is not denied and the Department requires Applicant to submit additional information, as Commenters contend they should, the public should be given ample time to review any additional materials submitted. When all materials are submitted, another public comment period of at least 30 days should be provided to the public. Thank you for your time and consideration.

⁵⁸ NJ State Planning Commission. Office of Planning Advocacy. *Distribution Warehousing and Goods Movement Guidelines*. (Sept., 2022) <https://www.costar.com/article/1046334129/new-jersey-adopts-guidelines-on-warehouse-projects-amid-nationwide-development-debate>

⁵⁹ NJ Highlands Council. *Policy Standards for Warehousing in the New Jersey Highlands Region*. (April, 2023).

Sincerely,

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