



August 15, 2023

Board of Supervisors
East Whiteland Township
Municipal Building
209 Conestoga Road
Frazer, PA 19355

Dear Supervisors,

You have recently received an application from Constitution Drive Partners, signature dated 6/20/2023, requesting Final Land Development approval for the Bishop Tube site. Based on the information provided; the status of site remediation; the development proposal as it relates to township ordinance, site remediation, your Preliminary Land Development Plan Approval, and your constitutional authority, you must reject the requested Final Land Development Approval.

In addition, in the future, we respectfully request that you keep the PADEP informed as to any and all developments with regards to the Bishop Tube site. The letter they submitted to you on August 9th contained important information. It was surprising to learn that they had not received a copy, or even notice, of the Final Land Development approval application from the Township but - fortunately - discovered the information as the result of their own ongoing efforts. The August 9, 2023 PADEP letter supports the Delaware Riverkeeper Network assessment of the application materials you received – i.e. that they do not fairly or accurately characterize essential information and key facts, and actually present information in a way that seems designed to mislead. The additional information and clarifications from PADEP also support our assessment that the Township should reject the requested approval.

The Final Land Development Application fails to meet the conditions identified in the Preliminary Land Development Plan Approval Resolution issued February 10, 2021. Therefore, Final Land Development Approval is unwarranted. Given that CDP chose to ask for approval of a proposed application that fails to meet essential criteria put forth in the township's preliminary approval, it is incumbent on the Township to firmly reject the highly deficient and premature CDP application.

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Notably, the CDP Final Plan Application Project Narrative submitted on or about June 20, 2023 includes significant mischaracterizations and/or items of misinformation that fail to fairly or properly represent the project and/or site remediation status. For example, the Final Land Development Application submission seemingly attempts to convince the Township that PADEP has given its stamp of approval for the CDP development plan pursuant to the Hazardous Sites Cleanup Act (HSCA) when, in fact, PADEP has not. The CDP Final Plan Application Project Narrative submitted on or about June 20, 2023 states: “The environmental contamination shall be cleaned up in accordance with the Revised Bishop Tube HCSA Site – Workplan of OU3 Implementation, per DEP letter dated 1/10/23” and then proceeds to include a copy of a letter written by PADEP to Roux Associates regarding this one aspect of the site remediation plan required by PADEP of responsible parties. However, the Project Narrative fails to recognize that OU3 is only one portion of the Remediation Plan for the site, and is, frankly, the easiest to implement.

To be clear, OU3 relates only to a public drinking water supply for a nearby residential property, combined with restrictions on the use of groundwater. As PADEP’s August 9 letter states, “[t]he **public waterline connection work has no relationship with any proposed residential development of the Site source property.**” (emphasis added).

Other than OU3, there are two other key, more complicated, and more intensive aspects of the remediation that relate directly to development of the site and will take years to fully implement. OU1 of the PADEP remediation plan relates to soil contamination on the property, while OU2 addresses site groundwater contamination. The OU1 and OU2 elements of the remediation plan are much more expansive in terms of activity on the landscape, and intensity of implementation activity. The final design and implementation plans for OU1 and OU2 are still under development, and therefore the needs and locations for full implementation are still unknown. As a result, development of the Bishop Tube site as proposed by CDP, particularly given the sizable footprint required for their proposal, has great potential for impeding and/or undermining full remediation of the site as being planned for and mandated by PADEP.

In addition, among the issues identified/highlighted by the PADEP in their August 9, 2023 letter to the Township commenting on CDP’s submitted Project Narrative:

- While the Project Narrative repeatedly refers to 3 hot spot areas, “DEP’s selected remedy for OU1 [i.e. the groundwater component] will address more than just 3 impacted soil areas”.
- “Excavation was not a remedy selected by DEP for the Site.” Instead, the remedy selected is a combination of alternative remedies involving In Situ Chemical Oxidation, In Situ Chemical Reduction, soil mixing, in situ injection, bioremediation, engineering and/or institutional controls, and monitoring to address unsaturated and saturated soils, and groundwater.
- While DEP has selected a response plan, the detailed scope of work for remediation has not yet been finalized and/or approved.

Providing final land development approval to CDP for the Bishop Tube site has serious ramifications for site remediation – if development is approved and advances in places, spaces, and ways that impede or undermine remediation of the site, it may cause the community and environment to continue to suffer the adverse consequences of the site’s toxic contamination.

Importantly, as part of final remediation, DEP will be identifying, and requiring, engineering and institutional controls such as environmental covenants, restrictions in use, identified actions and/or limitations for addressing key issues such as stormwater management and/or site runoff. It is impossible to know at this time what those requirements/limitations will be and/or where they will be located on the site. Therefore, it is impossible for CDP to propose and/or the Township to approve, a development project that will ensure conformance with these essential protective mandates and will not interfere with them.

In addition, granting final land development approval now would violate the many mandates laid out in the Township’s February 10, 2021 Resolution for Preliminary Land Development Plan Approval and the many conditions it provides. The detailed conditions in the Resolution are a foundational reason for why the township’s grant of preliminary approval withstood legal and constitutional challenge. A failure to fully enforce these conditions will surely conflict with the legal findings of the court, and the ability of the township to withstand a future challenge to a prematurely granted final land development approval.

Among the conditions the township said must be met before the Township would consider final land development approval are:

That CDP must maintain unobstructed access for site remediation activities.

Given that PADEP is still developing the details regarding implementation of the remediation plan, including the locations where implementation will take place, if CDP begins construction of its project to any degree, it cannot assure that its activities will not obstruct access for site remediation activities.

Given that upon completion of remediation, PADEP anticipates, but has not yet accomplished, identifying, and requiring engineering and institutional controls - such as environmental covenants, restrictions in use, identified actions and/or limitations for addressing key issues such as stormwater management and/or site runoff – it is impossible for CDP to propose and/or the Township to approve, a development project that will ensure conformance with these remediation mandates, including unobstructed access for the implementation of these essential remediation plan elements.

CDP must implement the remedial scope of work developed by Environmental Standards and approved by PADEP, including remediating all unsaturated soils with any concentrations of TCE

above Act 2 residential standards in the 2 identified soil hot spot areas of concern, and shall secure approval from PADEP for the unsaturated soils in these areas.

CDP has not undertaken any such activity nor, therefore, secured PADEP approval confirming that the unsaturated soils in the hot spot areas or more broadly on the site have been remediated as required. Note, the resolution mandate is to include remediating the unsaturated soils in the hot spot areas of concern, but the resolution mandate is not limited to implementation of this element of the identified scope of work.

No earth disturbance, construction or redevelopment activities (other than building demolition) are to occur at the identified soil hotspot areas until the completion of all necessary soil excavation required in accordance with a PADEP approved Remediation Scope of Work.

CDP's blanket statement reiterating this condition without essential details has little value from a decisionmaking perspective for the township.

CDP must obtain written confirmation from PADEP that soil hot spot remediation has been completed in accordance with a PADEP approved Remediation Scope of Work.

Given that DEP has not released the above described Scope of Work, and given that no hot spot soil remediation has yet been undertaken, CDP has not secured, nor can it secure, the above described and required PADEP approval.

CDP must secure a stormwater construction NPDES permit from PADEP/Chester County Conservation District.

No such NPDES permit has been secured. In addition, it would be inappropriate for CDP to pursue, or for PADEP or the County Conservation District to provide, such a permit given the necessary future development of engineering and institutional controls that will be an essential part of ensuring the remediation activity on the site is properly completed and its integrity protected into the future.

CDP must provide reasonable future access for PADEP and the PRPs to monitor groundwater wells and to implement any future groundwater remedy that may be selected by PADEP.

Given that final implementation of OU1 and OU2 have yet to be designed or implemented, and that future engineering and institutional controls are yet to be developed, it is unknown where monitoring wells may be needed, and/or access for potential groundwater remedies, or other controls may be needed. If CDP is given final land development approval at this time, based on its proposed development proposal, it is unknown whether

CDP can fulfill this required obligation. Failure to ensure access to essential monitoring and or needed future remedies and controls leaves the environment and community open to ongoing impacts from site contamination.

CDP must remediate the soils in the three hot spot areas identified by PADEP. The remediation must be to the residential statewide health standard.

CDP has not performed such remediation and therefore cannot meet this obligation for final site development approval.

CDP is required to submit a Report for PADEP approval demonstrating remediation of the unsaturated soils in the soil hot spot areas of concern. The remediation of the soil hot spot areas must be to the residential statewide health standard for soil and address the related vapor mitigation issue through pathway elimination.

Given that the remediation scope of work is yet to be finalized, and that there is no plan provided by CDP for the soil hot spot areas indicating how the required standards will be met, nor PADEP approval of a report from CDP demonstrating the requisite standards have been met, this mandate is left unaddressed.

The property must be remediated – whether by CDP or any other party. This remediation must be undertaken, and comply with, a plan approved by the PADEP which is consistent with state laws and regulations including, but not limited to, the Hazardous Substances Clean Up Act and its implementing regulations.

The property clearly is not yet remediated - in fact remediation activities have not even begun and critical elements of the remediation plan and scope of work are still under consideration and development by PADEP. Therefore, this mandate for final approval is unachieved.

All remediation performed or undertaken at the Property shall meet the requirements for residential development.

Given that PADEP has not finalized all aspects of the remediation plan, including the scope of work for its full and complete implementation, this element cannot even be assessed.

Site remediation must address any and all risks associated with unsaturated and saturated soil, surface water, dense non-aqueous phase liquid, ground water, and vapor intrusion for residential development.

The site has not been remediated. In fact, critical elements of the remediation plan are still under consideration and development by PADEP and therefore cannot yet be assessed or implemented in terms of ensuring that all risks for residential development associated with unsaturated soils, saturated soils, surface water, dense non-aqueous phase liquid, ground water, or vapor intrusion have been addressed. Therefore, this mandate for final approval is also unachieved.

In addition to full remediation, the preliminary approval also makes clear that no excavation of the property for any purpose shall be allowed to occur until the property has been fully remediated.

Given that the site has not been remediated - to any degree – and that the final design of remediation plans and associated scope of work are not yet even final, it would be wholly irresponsible but also sorely premature, to grant final approval given this important and significant limitation regarding excavation.

CDP must obtain any and all necessary planning modules, permits, approvals, waivers, and/or reviews from all outside agencies.

CDP has not received all approvals and/or permits and/or waivers from all necessary agencies, including permitting needed from PADEP/Chester County Conservation District.

The Township should never have given preliminary approval to this project. Based on local ordinance, the state constitution, and state law, the Township had every authority to simply say ‘no’. Nonetheless, the Township did give approval, but when it did, it did so with significant mandates that must be achieved before final approval could or would be granted - including the mandates listed above. These mandates were put in place to ensure East Whiteland’s communities and environment would be protected from the ongoing contamination issues at the site. It is essential that these requirements be fully met and complied with. Given that CDP has chosen to submit an application for Final Land Development Approval knowing it has not met the above obligations, it is now incumbent on the Township to reject the proposed plan.

The East Whiteland Township Board of Supervisors made a promise to the community when it gave preliminary approval. The Township Supervisors promised that it was going to take seriously its responsibility to protect the community and environment; the Township Supervisors promised it was putting forth robust and meaningful protections that would ensure the community and environment would be fully protected from ongoing toxic contamination at, or leaving, the Bishop tube Site; and the Township Supervisors gave every assurance that you would be diligent in your enforcement of these mandates.

It is time to live up to your promises.

Constitution Drive Partners is asking for your approval at a time when it has clearly failed to fulfill all of the essential mandates and criteria for final approval you included in your February 10, 2021 Preliminary Land Development Plan Approval Resolution. You now have before you a proposal that fails to meet those mandates. As a result, you have the opportunity and the obligation to just say “no”, and to reject the application for final land development approval.

Respectfully,



Maya K. van Rossum
the Delaware Riverkeeper

cc:

PADEP Regional Administrator Southeast Regional Office Pat Patterson
Senator Katie Muth
Representative Kristine Howard
Chester County Board of Commissioners
Steven Brown, Township Manager, East Whiteland Twp