

## MEMO

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Date: July 13, 2022

To: Board of Supervisors

From: Jon Altshul, Township Manager and Maggie Dobbs, Director of Planning & Zoning

Re: Consider Act 167 Revised Stormwater Ordinance – Staff recommendations

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In response to Cedarville’s presentation on the proposed stormwater ordinance amendments at the Board’s June 20 meeting, we have prepared the following series of staff recommendations. As a reminder, the Township needs to adopt the amended ordinance by September 30.

**Issue #1—Consider Changes to the “Simplified Approach”** (see §144-106(D) and Appendix A)

**Proposed amendment:** The County is recommending that only underground infiltration trench systems be allowed for BMPs designed under the simplified approach (i.e. when the additional impervious cover from single or cumulative improvements since 2013 exceeds 1,000 sf but less than 2,000 sf). The logic is that infiltration trench systems are by far the easiest Best Management Practice (BMP) to design as well as maintain. This approach is intended to help the homeowner avoid costly repairs or improvements in future years.

**Staff recommendation:** Staff recommends that the Township amend the stormwater ordinance so that only underground infiltration trench systems are permitted BMPs under the simplified approach.

**Issue #2—Green Infrastructure (GI), Low Impact Design (LID) and Conservation Design (CD)**  
(see §144-305 & Appendix B)

**Proposed Amendment:** The County model ordinance provides an option for municipalities to require that developers provide justification for why they can’t use green stormwater infrastructure, low impact design and conservation design with new and re-development. In simple terms, developers would need to demonstrate why they have to install “capture and convey” BMP(s), rather than a “capture and infiltrate (or reuse or evaporate)” BMP(s), such as using a pipe to convey stormwater rather than an overland swale. Please note that there is substantial overlap in the definitions of the three terms, which can be found in §144-202. The terms low impact development and conservation design include green infrastructure, but also refer to a specific site design approach which limits new impervious surface and enhances and preserves existing natural resources. Developers/applicants would also need to demonstrate why they have to utilize a traditional site design approach. The Township would need to develop requirements for how this can be satisfied.

In addition, the model ordinance contains required amendments to the definitions of GI, LID, and CD, and new language that states that developers shall use these methods “wherever possible”.

**Staff recommendation:** This a well-intentioned recommendation that may create confusion and lack meaningful enforcement provisions, but could still nudge developers towards more sustainable stormwater controls. However, it is unclear under what circumstances the Township could challenge or deny a developer's justification for not installing GI, LID or CD infrastructure (e.g. is "cost prohibitive" a valid justification?). Staff can also anticipate disagreement with developers about what improvements do and do not constitute GI, LID and CD. Nevertheless, staff recommends that the Township include the optional, more stringent language about green infrastructure in the amended ordinance in a future stormwater ordinance update.

**Issue #3—Are changes to the Township's Zoning Ordinance or SALDO necessary to effectively implement the GI, LID and CD provisions?**

**Staff recommendation:** While the Township has very little developable land remaining, Maggie plans to begin a review of Township ordinances to ensure that they appropriately encourage sustainable development. It is recommended that the optional, more stringent language be incorporated in a future stormwater ordinance update to ensure that the Zoning Ordinance and SALDO allow for the specific LID and CD site design approaches. No action needed at this time.

**Issue #4—Redevelopment (see §144-306)**

**Proposed Amendment:** Projects that qualify as redevelopment do not have to adhere to the same stormwater management requirements as new development. This is designed to promote redevelopment while requiring installation of some stormwater management on sites that typically previously had none. The County has provided an option to increase the stormwater management requirements for redevelopment in response to public comment from urban municipalities where stormwater management needs to be maximized. These increased requirements are still less stringent than those for new development.

**Staff recommendation:** While the staff does not anticipate any major commercial redevelopment projects in the foreseeable future, this recommendation is worth considering for Westtown. This recommendation is clearly aimed at urban communities, like West Chester or Coatesville, with developments that were constructed 100 or more years ago with no regard for stormwater controls. By contrast, most of Westtown's commercial developments were built with some stormwater controls, albeit less stringent than had they been constructed within the past 20 years. On the flip side, requiring developers to install additional stormwater controls on top of existing BMPs may discourage redevelopment in Westtown and provide only modest water quality benefits to the community. However, on balance, staff supports this recommendation.

**Issue #5—Riparian Buffer Provisions (see §144-301(U))**

**Proposed Amendment:** The County has provided optional riparian buffer provisions in the model ordinance and is recommending municipalities require a 100-foot riparian buffer. It

should be noted that the PA DEP Model Ordinance language contains an optional 35-foot riparian buffer requirement.

**Staff recommendations:** The Township's stormwater ordinance currently restricts structures or development within a 75-foot riparian buffer. While increasing the riparian buffer is a solid environmental protection (and a recommendation of the EAC), the impact on property owners would not be insignificant. There are 664 parcels within the 75' riparian buffer, compared to 747 in the 100' buffer, or a difference of 83 parcels. Importantly, many of those parcels currently within 75', may have some portion of their property outside the buffer (e.g. they can install a shed, only not in one part of their yard), so these figure may be somewhat deceiving. Moreover, because Westtown is primarily built out, the larger buffer would primarily restrict property additions, rather than new development. Finally, it is inevitable that increasing the buffer would also result in an increase in variance applications. Staff therefore takes no position on this issue.

#### **Issue #6—BMP Operations & Maintenance (O&M) Inspection Frequency and Documentation** (see §144-706)

**Proposed Amendment:** The County is requiring that the Township inspect all BMPs, including BMPs that were not installed as part of land development (which, importantly, until now, we have not been inspecting) as well as larger PCSM BMPs (installed as part of land development) that we have been inspecting, and offers three options for inspections:

1) Township inspects

- Once per year for first 5 years
- Once every 3 years thereafter
- During or after every 25-year+ storm event (or alternatively after 10+ year storm event)

2) Property owner inspects

- Once per year for first 5 years
- Once every 3 years thereafter
- During or after every 10+ year storm event

3) Some combination of property owner and Township inspection

Note that municipalities have no discretion over the frequency of these inspections.

**Staff recommendation:** The Township has 38 on-lot BMPs constructed under the simplified approach since 2013 that staff is aware of, plus potentially a dozen or so more that would be subject to inspections (Maggie is looking for an intern to review the permit files to determine the full number), in addition to the 68 PCSM BMPs constructed under land development since the 2003 stormwater ordinance was enacted (which are currently being inspected).

Staff recommends that Cedarville inspect all BMPs on behalf of the Township, as staff believes that asking homeowners to do their own inspections would be too onerous for residents and the Township alike, and result in poor data and poor outcomes.

**Issue #7—Funding for BMP inspections** (see §144-706(E))

**Proposed Amendment:** The County is recommending that municipalities be allowed to levy a fee to cover BMP inspections.

**Staff recommendations:** Staff recommends that the Township begin levying a fee for BMP inspections. For 2022, Cedarville is charging the Township \$7,650 for inspection of the PCSM BMPs constructed under land development, plus up to \$6,260 for compliance support for those inspections, for a total of a little under \$14,000. Currently, the Township does not recover any of those costs. Cedarville estimates that each simplified BMP costs between \$250-\$300 to inspect; therefore, a one-time fee of \$1,000 per “simplified” BMP would cover 3-4 inspections, which represents some, but certainly not all of the future costs that the Township would incur. Meanwhile, new BMPs constructed pursuant to land development could be subject to a one-time fee based on the amount of impervious added, as the inspection costs for larger PCSM BMPs are a function of how large they are. Importantly, the Township would not retroactively levy any new fee on property owners with existing BMPs.

**Issue #8—Authorized Discharges** (see §144-801)

**Proposed Amendment:** The model ordinance would prohibit specific discharges into the Township’s stormwater system, including chlorinated swimming pool discharges, discharges with Total Residual Chlorine, and residential car wash water containing cleaning agents.

**Staff recommendations:** This is a required amendment. Staff will need to publicize this change via the listserv, social media, and the Gazette, with targeted mailings to pool owners.

**Issue #9—Pet Waste** (see §144-XXX between 144-802 and 803)

**Proposed Amendment:** The model ordinance requires that all pet owners properly dispose of pet waste.

**Staff recommendation:** The Township already has a stand-alone pet waste ordinance, so we are covered. However, we will still remind residents via listserv, social media and the Gazette about the requirement.