

Article VII — Operation and Maintenance

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Article VII — Operation and Maintenance

§ 25-701 General Requirements.

(a) **Borough Determination.** The Borough shall make the final determination on the continuing maintenance responsibilities prior to final approval of the SWM Site Plan. The Borough may require a dedication of such facilities as part of the requirements for approval of the SWM Site Plan. Such a requirement is not an indication that the Borough will accept the facilities. The Borough reserves the right to accept or reject the ownership and operating responsibility for any portion of the stormwater management controls.

(b) **Enumeration and Recording of SWM BMPs.** Facilities, areas, or structures used as SWM BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.

(c) **Commencement of Activities.** No Regulated Earth Disturbance Activities within the Borough shall commence until approval by the Borough of the BMP Operations and Maintenance Plan, which describes how the permanent (*i.e.*, post-construction) stormwater BMPs will be properly operated and maintained.

(d) **Enforcement Actions.** The Borough may take enforcement actions against an owner for any failure to satisfy the provisions of this Article.

§ 25-702 Performance Guarantee.

For SWM Site Plans that involve subdivision and land development, the applicant shall provide a financial guarantee to the Borough for the timely installation and proper construction of all stormwater management controls as required by the approved SWM Site Plan and this Chapter in accordance with the provisions of Sections 509, 510, and 511 of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. §§ 10509, 10510, 10511.

§ 25-703 Adherence to Approved BMP Operations and Maintenance Plan.

It shall be unlawful to alter or remove any permanent stormwater BMP required by an approved BMP Operations and Maintenance Plan or to allow the property to remain in a condition which does not conform to an approved BMP Operations and Maintenance Plan unless an exception is granted in writing by the Borough.

§ 25-704 Operations and Maintenance Agreement.

(a) **In General.** Prior to final approval of the SWM Site Plan, the property owner shall sign an operations and maintenance (O&M) agreement with the Borough covering all stormwater BMPs and control facilities that are to be privately owned. The agreement shall include the terms of the format agreement set forth in Appendix J 25-N (which is incorporated herein by reference).

(b) **Additional Provisions.** Other items may be included in the agreement where determined by the Borough to be reasonable or necessary to guarantee the satisfactory operation and maintenance of all permanent stormwater BMPs. The agreement shall be subject to the review and approval of the Borough.

(c) **Compliance with Maintenance Schedule.** The owner, successor and assigns shall maintain all facilities in accordance with the approved maintenance schedule in the O&M Agreement.

(d) **Conservation Easements.** The owner shall convey to the Borough conservation easements to assure access for periodic inspections by the Borough and maintenance, as necessary.

(e) **Contact Information.** The owner shall keep on file with the Borough the name, address, and telephone number of the person or company responsible for maintenance activities; in the event of a change, new information shall be submitted by the owner to the Borough within ten (10) working days of the change.

(f) **Owner Responsibility; Default.** The owner is responsible for operation and maintenance (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M Agreement, the Borough may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.

§ 25-705 Stormwater Management Easements.

Stormwater management easements shall be provided by the property owner if necessary for access for inspections and maintenance or for preservation of stormwater conveyance, infiltration, detention areas, and other BMPs by persons other than the property owner. The purpose of the easement shall be specified in any agreement under § 25-704.

§ 25-706 Recording of Approved BMP Operations and Maintenance Plan and Related Agreements.

(a) **In General.** The owner of any land upon which permanent BMPs will be placed, constructed, or implemented, as described in the BMP Operations and Maintenance Plan, shall record the following documents in the Office of the Recorder of Deeds for Lehigh County within ninety (90) days after approval of the BMP Operations and Maintenance Plan by the Borough:

- (1) The BMP Operations and Maintenance Plan, as a restrictive deed covenant that runs with the land;
- (2) Operations and Maintenance Agreements under § 25-704; and
- (3) Stormwater management easements under § 25-705.

(b) **Enforcement.** The Borough may suspend or revoke any approvals granted for the project site upon discovery of the failure of the owner to comply with this Section.

§ 25-707 Stormwater BMP Operation and Maintenance Fund.

(a) **In General.** If stormwater BMPs are accepted by the Borough for dedication, the Borough may require persons installing stormwater BMPs to pay a specified amount to the Borough's Stormwater BMP Operation and Maintenance Fund to help defray costs of operations and maintenance activities. The amount shall be determined as follows:

- (1) If the BMP is to be owned and maintained by the Borough, the amount shall cover the estimated costs for operation and maintenance *in perpetuity*, as determined by the Borough.
- (2) The amount shall then be converted to present worth of the annual series values, using reasonable interest rates determined by the Borough.

(b) **Recreation Facility.** If a BMP is proposed that also serves as a recreation facility (*e.g.*, ball field, lake), the Borough may adjust the amount due under subsection (a) accordingly.

§ 25-708 Ongoing Maintenance Inspections.

(a) **Inspection Frequencies.** The landowner or the owner's designee (including the Borough for dedicated and owned facilities) shall inspect SWM BMPs, facilities and/or structures installed under this Chapter according to the following frequencies, at a minimum, to ensure the BMPs, facilities and/or structures continue to function as intended:.

- (1) Annually for the first five (5) years.
- (2) Once every three (3) years thereafter.
- (3) During or immediately after the cessation of a ten (10) year or greater storm. *See* definitions at §§ 25-209 and 25-231.

(b) **Timing.** Inspections should be conducted during or immediately following precipitation events.

(c) **Inspection Reports.** A written inspection report shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable.

(d) **Submission to the Borough.** Inspection reports shall be submitted to the Borough within thirty (30) days following completion of the inspection.