

**ARTICLE VII – OPERATION AND MAINTENANCE (O&M) RESPONSIBILITIES  
AND EASEMENTS**

**Section 701. General Requirements for Protection, Operation and Maintenance of  
Stormwater BMPs and Conveyances**

The following shall apply to all Regulated Activities in accordance with the requirements of the subsequent sections of this Article VII.

- A. Continuing operations and maintenance responsibilities of all permanent BMPs, Conveyances, or other stormwater management facilities shall be reviewed and approved by the Borough along with the SWM Site Plan. The Borough may require an offer of 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 operations and maintenance responsibility for any portion of or all of the BMPs, Conveyances or other stormwater controls and facilities.
- B. An Operation and Maintenance (O&M) Plan shall be submitted to the Borough for review and approval for all existing and proposed permanent BMPs and man-made Conveyances or other stormwater facilities identified in the SWM Site Plan. Multiple BMPs or Conveyances may be addressed by a combined O&M Plan where all such facilities are similar in O&M requirements and ownership.
- C. The O&M Plan(s) and O&M Agreement(s) shall name the person identified in the SWM Site Plan who shall be the owner of and be responsible for ongoing inspections, operation, repair, and maintenance of each BMP or Conveyance following completion of construction.
- D. For any BMP or man-made Conveyance (including any to be located on any property other than the property being developed by the Applicant) to be owned by a person other than the Borough :
  - 1. An O&M Agreement shall be submitted to the Borough for review and approval; and
  - 2. The O&M Plan shall be attached to, incorporated within, and recorded as a public record along with a fully executed O&M Agreement, all of which shall be recorded as a restrictive covenant that runs with the land and shall be binding upon the Landowner and any heirs, administrators, successors in interest or assigns of the Landowner.
- E. The following shall be provided for all BMPs and Conveyances (including any to be located on any property other than the property being developed by the Applicant) by an O&M or other agreement or by otherwise establishing covenants, easements, deed restrictions, or by dedication to the Borough :
  - 1. Permanent protection of the BMP or Conveyance from disturbance or alteration;
  - 2. Right of entry and access for the Borough for inspection and enforcement of this Ordinance (including Subsection 903.G) and any applicable O&M Plan or O&M Agreement; and

3. Right of entry and access for the person owning the BMP or Conveyance and responsible for fulfilling the O&M requirements when that person is not the Borough and is different from the owner of the property on which the BMP or Conveyance is located (such as may be applicable for Subsection 301.G of this Ordinance).

F. All O&M and other agreements, covenants, easements and deed restrictions shall:

1. Be submitted to the Borough for review and approval;
2. Be recorded as a public record, upon approval, against each parcel(s) which is part of the SWM Site Plan or otherwise contains any BMP or Conveyance comprising part of the Regulated Activity which is the subject of an O&M Agreement; and
3. Run with the land and be binding upon the Landowner, its heirs, administrators, successors in interest, and assigns.

G. The materials, documents and content required by this Article VII may be prepared in conjunction with and incorporated with similar materials, documents and content required for other permit or approval applications, such as those required by PADEP for the Post Construction Stormwater Management Plan.

## **Section 702. Operation and Maintenance Plans**

The following items shall be included in the O&M Plan, unless otherwise approved by the Municipal Engineer:

- A. A plan sheet(s) or map(s) showing each BMP and man-made Conveyance and which shall include, but not be limited to:
  1. Property(ies) identification (owner name and address; and property address and/or lot and/or tax parcel number, etc.), property boundaries and tax parcel number of the land parcel on which the BMP or Conveyance is located.
  2. Name, address, phone number, date prepared, signature and seal of the Licensed Professional responsible for preparation of the plan sheet or map.
  3. Clear identification of the location, dimensions, and function of each BMP or Conveyance covered by the O&M Plan.
  4. The location of each BMP and Conveyance relative to roadways, property boundaries, or other identifiable landmarks and existing natural drainage features such as streams, lakes, ponds, or other bodies of water within the immediate vicinity of, or receiving discharge from, the BMP or Conveyance.
  5. Delineation of the land area, structures, Impervious Surfaces and Conveyances draining to and from the BMP.

6. Representative elevations and/or topographic contours at intervals of two (2) feet, or other as acceptable to the Municipal Engineer.
  7. Other features including FEMA floodplain and floodway boundaries, sinkholes, etc. located within the immediate proximity of each BMP and Conveyance.
  8. Locations of areas of vegetation to be managed or preserved that function as a BMP or Conveyance.
  9. The locations of all surface and subsurface utilities, on-lot waste water facilities, sanitary sewers, and water lines within twenty (20) feet of each BMP or Conveyance.
  10. The following as it pertains to any easements, covenants and deed restrictions established for each applicable BMP or Conveyance:
    - a. Boundaries delineated with bearings and distances shown that encompass the BMP or Conveyance and that includes a twenty (20) foot perimeter area surrounding these features and sufficient vehicular ingress to and egress from a public right-of-way and roadway;
    - b. Labels specifying the type and purpose of the easement, covenant, or deed restriction and who it benefits; and
    - c. Labels with reference to any corresponding easement agreement, covenant, deed restriction or other document to be recorded.
  11. The plan sheet or map shall be prepared at sufficient scale for municipal review, and ultimately for the use by the person responsible for operation and maintenance, and shall also be prepared at a legible scale that meets the requirements for recordation along with (and as an attachment to) the O&M Agreement and O&M Plan at the Chester County Office of the Recorder of Deeds.
- B. The following information shall be included in the O&M Plan and written in a manner consistent with the knowledge and understanding of the person who will be responsible for the maintenance activities:
1. The name and address of the following:
    - a. Property(ies) on which each BMP or Conveyance is located;
    - b. Owner of the property;
    - c. Owner of each stormwater BMP or Conveyance who is responsible for implementation of the O&M Plan;
    - d. Person responsible for maintaining adequate liability insurance and payment of taxes; and

- e. Person preparing the O&M Plan.
- 2. A description of each BMP and Conveyance and how the BMPs and Conveyances are intended to function.
- 3. A description of actions necessary to operate, inspect, and maintain each BMP or Conveyance, including but not limited to:
  - a. Lawn care, vegetation maintenance, landscaping and planting;
  - b. Clean out of accumulated debris and sediment (including from grates, trash racks, inlets, etc.); and
  - c. Other anticipated periodic maintenance and repair.
- 4. The following statement shall be included:

*“The Landowner acknowledges that, per the provisions of the Borough’s Stormwater Management Ordinance, it is unlawful to modify, remove, fill, landscape, alter or impair the effectiveness of, or place any structure, other vegetation, yard waste, brush cuttings, or other waste or debris into any permanent stormwater management BMP or Conveyance described in this O&M Plan or to allow the BMP or Conveyance to exist in a condition which does not conform to this O&M Plan, without written approval from the Borough.”*

- 5. Inspection and maintenance schedules.
- 6. Explanation of the purpose and limitations of any easements, covenants, or deed restrictions associated with any BMP or Conveyance that are to be recorded against the property.
- C. A statement that no BMP or man-made Conveyance may be used by the owner or others for any purpose other than its intended stormwater control function, or, if approved by the Municipal Engineer, a statement of specific allowable uses of the BMP (i.e., recreational benefits that maybe associated with certain BMPs owned by a homeowners association, or allowable uses by an individual residential Landowner).
- D. A statement that establishes a reasonable time frame for remedy of deficiencies found by the owner during their inspections.
- E. Language needed to fulfill the requirements of Subsections 705.B, 705.C, and 705.D of this Ordinance.

**Section 703. Operation and Maintenance Agreements**

- A. An O&M Agreement shall be required for any BMP or man-made Conveyance to be owned by a person other than the Borough , and the Agreement shall:

1. Be between the owner of the BMP or Conveyance and the Borough, and shall be substantially the same as the O&M Agreement in Appendix G.
  2. Incorporate the approved O&M Plan(s) for all BMPs or Conveyances to be covered by the O&M Agreement;
  3. Set forth the rights, duties and obligations of the owner of the BMP or Conveyance and the Borough , and be consistent with the approved O&M Plan(s);
  4. Be recorded as a deed restriction or restrictive covenant that runs with the land and shall be binding upon the Landowner, its heirs, administrators, successors in interest, and assigns;
  5. Be submitted to the Borough for review prior to approval of the SWM Site Plan;
  6. Upon approval by the Borough , be signed by the designated owner of the BMP or Conveyance and submitted for signature by the Borough ; and
  7. When fully executed, be recorded by the Landowner at the Chester County Office of the Recorder of Deeds following municipal approval of the O&M Plan and prior to the start of construction.
- B. Other items or conditions may be required by the Borough to be included in the O&M Agreement where determined necessary by the Borough to guarantee the satisfactory operation and maintenance of all permanent BMPs and Conveyances.
- C. After approval of the final As-Built Plans per the requirements of Article V, the Applicant shall review and, if necessary and if required by the Borough, revise and re-record the O&M Plan and O&M Agreement to reflect the final as-built conditions of each BMP and Conveyance if different from the information included in the original recorded documents.

#### **Section 704. Easements and Deed Restrictions**

- A. Easements shall be established in connection with any Regulated Activity for all permanent BMPs and Conveyances that will not be dedicated to or otherwise owned by the Borough , (including any to be located on any property other than the property being developed by the Applicant), and shall:
1. Include all land area occupied by each BMP or Conveyance;
  2. Include a twenty (20) foot wide perimeter (or other width as determined in consultation with the Municipal Engineer) surrounding the feature(s);
  3. Provide sufficient vehicular ingress and egress from a public right-of-way and roadway;
  4. Permanently protect every BMP and Conveyance from disturbance or alteration where not otherwise protected by a recorded O&M Agreement, covenant, deed restriction or other means;

5. Grant the Borough the right, but not the duty, to access every BMP and Conveyance from a public right-of-way or public roadway to conduct periodic inspections and to undertake other actions that may be necessary to enforce the requirements of this Ordinance, or of any applicable O&M Plan or O&M Agreement; where roadways will not be dedicated to the Borough, the Borough shall be granted access to the private roadways as necessary to access every BMP and Conveyance;
  6. Grant the owner of each BMP and Conveyance the right to access, inspect, operate, maintain, and repair the BMP or Conveyance when the feature is to be owned, operated and maintained by a person other than the Borough and other than the owner of the parcel on which it is located;
  7. Be shown, with bearings and distances noted, on the SWM Site Plan map/plan sheets, O&M Plan map/plan sheets, final As-Built Plans, and be signed and sealed by a qualified Licensed Professional;
  8. Include language legally sufficient to ensure that the easement shall run with the land and bind the Landowner granting the easement, its heirs, administrators, successors in interest and assigns, into perpetuity; and
  9. Be recorded at the Chester County Office of the Recorder of Deeds following municipal approval and prior to the start of construction.
- B. For any BMP or Conveyance to be owned by a person other than the Borough or the Landowner owning the parcel upon which a BMP or Conveyance is located, an easement agreement shall be prepared and executed between the Landowner and the owner of the BMP or Conveyance which shall:
1. Describe the ownership interests of all parties to the easement agreement, including the ownership of the BMP or Conveyance;
  2. Include a written legal (metes and bounds) description of the easement area, with reference to a recorded plan sheet showing the legal boundaries of the easement area (or an accompanying plan sheet/map), signed and sealed by a qualified Licensed Professional;
  3. Grant an easement from the Landowner to the owner of each BMP and Conveyance, establishing the right and obligation to occupy, access, inspect, operate, maintain, and repair the BMP or Conveyance;
  4. Include a description of the purpose of the easement and the responsibilities of the parties involved;
  5. Incorporate by reference or be recorded with, the corresponding O&M Plan and O&M Agreement;

6. Restrict the Landowner's use of the easement area of the parcel on which the BMP or Conveyance is located, consistent with the rights granted to the owner of the BMP or Conveyance;
  7. Be submitted to the Borough for review and approval prior to approval of the SWM Site Plan;
  8. Upon approval by the Borough, be signed by the owner of the BMP(s) or Conveyance(s) and the Landowner and submitted for signature by the Borough;
  9. Include language legally sufficient to ensure that the easement will run with the land affected by the easement and that the easement agreement is binding upon the parties to the easement agreement, their heirs, administrators, successors in interest and assigns, into perpetuity;
  10. Contain additional provisions or information as required by the Borough; and
  11. When fully executed, be recorded by the Landowner at the Chester County Office of the Recorder of Deeds against all parcels affected by the terms of the easement agreement, within 90 days of the Borough's approval of the corresponding O&M Plan.
- C. For any BMP or Conveyance which is designed to receive runoff from another parcel or parcels and which is owned by the Landowner of the parcel upon which the BMP or Conveyance is located, in addition to any easement or easement agreement required pursuant to Subsection 704 A. or B., an easement agreement shall be prepared and executed between the Landowner of the parcel or parcels draining to the BMP or Conveyance and the owner of the BMP or Conveyance. This easement agreement shall:
1. Describe the ownership interests of all parties to the easement agreement, including the ownership of all affected parcels and of the BMP or Conveyance;
  2. Provide for the grant of a drainage easement from the owner of the BMP or Conveyance to the Landowner of the parcel(s) draining to the BMP, which shall extend from the shared parcel boundary(ies) to the receiving BMP and shall include the connecting flow path(s) or Conveyance;
  3. Include a written legal (metes and bounds) description of the easement area, with reference to a recorded plan sheet showing the legal boundaries of the easement area (or an accompanying plan sheet/map), signed and sealed by a Licensed Professional.
  4. Incorporate by reference or be recorded with the corresponding O&M Plan and O&M Agreement;
  5. State that the purpose of the easement agreement is to ensure the continuous right of the discharging parcel to discharge onto the parcel containing the BMP and into the BMP or Conveyance;

6. Restrict the BMP or Conveyance owner's use of the easement area of the parcel upon which the BMP or Conveyance is located, consistent with the purpose of the easement granted;
  7. Establish the duty and responsibility of the Landowner of the parcel or parcels draining to the BMP or Conveyance to maintain the existing drainages on the discharging parcel or parcels as designed and constructed to discharge to the receiving BMP;
  8. Include language legally sufficient to ensure that the easement will run with the land and will bind all parties to the easement agreement, their heirs, administrators, successors in interest and assigns, into perpetuity;
  9. Be submitted to the Borough for review and approval prior to approval of the SWM Site Plan;
  10. Contain all additional provisions or information as the Borough may require upon review; and
  11. Be executed by the parties to the easement agreement and recorded at the Chester County Recorder of Deeds Office against the draining parcel(s) and the parcel upon which the BMP or Conveyance is located within 90 days of the Borough's approval of the corresponding O&M Plan.
- D. For any area(s) shown on the SWM Site Plan maps/plan sheets or As-Built Plan sheets as requiring, or area(s) that is otherwise determined to require, deed restriction(s) for the purpose of protecting and prohibiting disturbance to a BMP or Conveyance, such deed restrictions will be incorporated into a written deed, restrictive covenant, or equivalent document. The deed or other document shall:
1. Include a clear and understandable description of the purpose, terms and conditions of the restricted use;
  2. Include the written legal description (metes and bounds description) of the area to which the restrictions apply that is consistent with the boundary shown on the O&M plan sheets and SWM Site Plan maps/plan sheets;
  3. Make reference to any corresponding O&M Plan(s) and O&M Agreement(s);
  4. Include language legally sufficient to ensure that the terms of the restriction run with the land and shall be binding upon the Landowner, its heirs, administrators, successors in interest, and assigns;
  5. Be submitted to the Borough for review and approval prior to approval of the SWM Site Plan;
  6. Upon approval by the Borough, be signed by the Landowner and owner of the BMP or Conveyance and submitted to the Borough; and

7. Be fully executed and recorded at the Chester County Office of the Recorder of Deeds within 90 days of the Borough's approval of the O&M Plan.

#### **Section 705. Other Post-construction Responsibilities**

- A. The provisions of Section 804 of this Ordinance shall apply to any permanent BMP or Conveyance that is constructed as part of an approved SWM Site Plan or covered by an approved O&M Plan.
- B. The person responsible for the operation and maintenance of a BMP or Conveyance shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least ten (10) years. These records shall be submitted to the Borough, if requested.
- C. Upon final inspection, the Borough shall inform the person responsible for the operation and maintenance whether the submission of periodic (annual or other frequency) inspection and maintenance reports will be required.
- D. The owner of each BMP and Conveyance shall keep on file with the Borough the name, address, and telephone number of the person responsible for maintenance activities and implementation of the O&M Plan. In the event of a change, new information shall be submitted by the BMP or Conveyance owner to the Borough within thirty (30) working days of the change.