

ARTICLE V - OPERATION AND MAINTENANCE

Section 501. Responsibilities of Developers and Landowners

- A. The Municipality shall make the final determination on the continuing maintenance and inspection responsibilities prior to final approval of the SWM Site Plan. The Municipality 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 Municipality will accept the facilities. The Municipality reserves the right to accept or reject the ownership and operating responsibility for any portion of the stormwater management controls.
- B. Facilities, areas, or structures used as Stormwater Management BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.
- C. The operation and maintenance plan shall be recorded as a restrictive deed covenant that runs with the land.
- D. The Municipality may take enforcement actions against the landowner for any failure to satisfy the provisions of this Article.

Section 502. Operation and Maintenance Agreements

- A. Prior to final approval of the SWM site plan, the property owner shall sign and record an operation and maintenance (O&M) agreement (see Appendix A)^{III} covering all stormwater control facilities which are to be privately owned.
 - (1) The owner, successor and assigns shall maintain all facilities in accordance with the approved maintenance schedule in the O&M agreement.
 - (2) The owner shall convey to the municipality conservation easements to assure access for periodic inspections by the municipality and maintenance, as necessary.
 - (3) The owner shall keep on file with the municipality 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 municipality within 10 working days of the change.
- B. The landowner is responsible for operation and maintenance of the SWM BMPs. If the landowner fails to adhere to the Operation and Maintenance Agreement (see the sample Operations and Maintenance Agreement in Appendix A), the Municipality may perform the services required and charge the landowner appropriate fees. Non-payment of fees may result in a lien against the property or other judicial action.

ARTICLE VI - FEES AND EXPENSES

Section 601. General

The Borough may include all costs incurred in the review fee charged to an applicant as may be amended time to time by resolution of Borough Council. Any person who has filed a SWM plan pursuant to this chapter shall pay a fee in an amount and according to the Borough's expenses in reviewing the SWM Plan and for review of said Plan by the Borough Engineer or qualified professional. Said fees estimated by the Borough Engineer or qualified personnel shall be paid by applicant at the time of application and held as a non-interest bearing escrow and applied to the project as expended. Applicant shall be responsible for fees that exceed the estimated escrow. To the extent that the actual fees are less than the estimated escrow, applicant shall be refunded the difference. No plan shall be approved until said fee has been paid. The review fee may include but not be limited to costs for the following:

- A. Administrative and clerical processing and services.
- B. Professional and legal consulting and review services.
- C. Attendance at meetings by Borough professionals and legal consultants.
- D. Inspections performed before, during and after construction.
- E. Any additional work required to administer and enforce any provision of this ordinance, correct violations, and ensure proper completion of stipulated remedial actions.

ARTICLE VII - PROHIBITIONS

Section 701. Prohibited Discharges and Connections

- A. Any drain or conveyance, whether on the surface or subsurface, which allows any non-stormwater discharge including, but not limited to, sewage, process wastewater, wash water, ammonia, chlorine, petroleum products (gasoline, fuel oil, etc.) pesticides, pollutants and other hazardous materials to enter the waters of the Commonwealth is prohibited.

Handling and disposal of all materials and wastes shall comply with all Federal and State requirements. Structural and non-structural BMPs, in accordance with Chapters 5 and 6 of the most current version of the SWM Manual, shall be implemented where necessary to preserve the quality of stormwater runoff.

- B. Discharges to Waters of the Commonwealth which are not composed entirely of stormwater shall be prohibited, except (1) as provided in subsection C below, and (2) discharges allowed under a state or federal permit.
- C. The following discharges are authorized unless they are determined to be significant contributors to pollution to the waters of this Commonwealth:

| | |
|---|--|
| - Discharges from fire fighting activities | - Flows from riparian habitats and wetlands |
| - Potable water sources including water line flushing | - Uncontaminated water from foundations or from footing drains |
| - Irrigation drainage | - Lawn watering |
| - Air conditioning condensate | - Dechlorinated swimming pool discharges |
| - Springs | - Uncontaminated groundwater |
| - Water from crawl space pumps | - Water from individual residential car washing |
| - Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used | - Routine external building wash down (which does not use detergents or other compounds) |

- D. In the event that the Municipality or DEP determines that any of the discharges identified in Subsection C, significantly contribute to pollution of the waters of this Commonwealth, the Municipality or DEP will notify the responsible person(s) to cease the discharge.

Section 702. Roof Drains and Sump Pumps

Roof drains and sump pumps shall not discharge to any impervious areas if site conditions permit.

Section 703. Alteration of SWM BMPs

No person shall modify, remove, fill, landscape, or alter any SWM BMPs, facilities, areas, or structures, without the written approval of the Municipality.

ARTICLE VIII - ENFORCEMENT AND PENALTIES

Section 801. Right-of-Entry

Upon presentation of proper credentials, the Municipality may enter at reasonable times upon any property within the Municipality to inspect the condition of the stormwater structures and facilities in regard to any aspect regulated by this Ordinance.

Section 802. Inspection

SWM BMPs must be inspected by the landowner, or the landowner's designee (including the Municipality for dedicated and owned facilities) according to the following list of minimum frequencies or as otherwise specified by the Municipality. All inspection reports shall be submitted to the Municipality:

1. Annually for the first 5 years; and
2. Once every 3 years thereafter.

Section 803. Enforcement

- A. It shall be unlawful for a person to undertake any Regulated Activity except as provided in an approved SWM Site Plan, unless specifically exempted in Section 302.
- B. Inspections regarding compliance with the SWM Site Plan during project construction are a responsibility of the Municipality.

Section 804. Suspension and Revocation

- A. Any approval or permit issued by the Municipality may be suspended or revoked for:
 1. Non-compliance with or failure to implement any provision of the approved SWM Site Plan or Operation and Maintenance Agreement.
 2. A violation of any provision of this Ordinance or any other applicable law, ordinance, rule or regulation relating to the Regulated Activity.
 3. The creation of any condition or the commission of any act during the Regulated Activity which constitutes or creates a hazard or nuisance, pollution, or which endangers the life or property of others.
- B. A suspended approval may be reinstated by the Municipality when:
 1. The Municipality has inspected and approved the corrections to the violations that caused the suspension.
 2. The Municipality is satisfied that the violation has been corrected.

- C. An approval that has been revoked by the Municipality cannot be reinstated. The Applicant may apply for a new approval under the provisions of this Ordinance.
- D. If a violation causes no immediate danger to life, public health, or property, at its sole discretion, the Municipality may provide a limited period in which the Applicant may correct the violation. In these cases, the Municipality will provide the Applicant, or the Applicant's designee, with a written notice of the violation and the time period allowed for the Applicant to correct the violation. If the Applicant does not correct the violation within the allowed time period, the Municipality may revoke or suspend any, or all, applicable approvals and permits pertaining to any provision of this Ordinance.

Section 805. Erroneous Permit

Any permit or authorization issued or approved based on false, misleading or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful. No action may be taken by a board, agency or employee of the Newburg Borough purporting to validate such a violation.

Section 806. Penalties

- A. Anyone violating the provisions of this Ordinance shall be guilty of a summary offense, and upon conviction shall be subject to a fine of not more than \$500 for each violation, recoverable with costs. Each day that the violation continues shall be a separate offense and penalties shall be cumulative.
- B. In addition, the Municipality may institute any appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, or other appropriate forms of remedy or relief.

Section 806. Appeals

- A. Any person aggrieved by any action of the Municipality or its designee, relevant to the provisions of this Ordinance, may appeal to the Municipality within thirty (30) days of that action.
- B. Any person aggrieved by any decision of the Municipality, relevant to the above appeal of this Ordinance, may appeal to the Cumberland County Court of Common Pleas within thirty (30) days of the Municipality's decision.

Section 807. Municipal Liability

The granting of a permit or approval of a stormwater plan or facility shall not constitute a representation, guaranty or warranty of any kind by the Borough of Newburg or by any official or employee thereof and shall create no liability upon the Borough, its officials or employees.

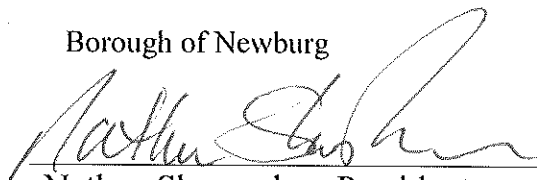
ARTICLE IX - REFERENCES

1. Pennsylvania Department of Environmental Protection (DEP). No. 363-0300-002 (2006), as amended and updated. *Pennsylvania Stormwater Best Management Practices Manual*. Harrisburg, PA.
2. The Pennsylvania Department of Environmental Protection (DEP). 363-2134-008 (2000), as amended and updated. *Erosion and Sediment Pollution Control Program Manual*. Harrisburg, PA.
3. United States Department of Agriculture (USDA), National Resources Conservation Service (NRCS). *National Engineering Handbook*. Part 630: Hydrology, 1969-2001. Originally published as the *National Engineering Handbook*, Section 4: Hydrology. Available online at: <http://www.wcc.nrcs.usda.gov/hydro/hydro-techref-neh-630.html>.
4. United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS). 1986. *Technical Release 55: Urban Hydrology for Small Watersheds*, 2nd Edition. Washington, D.C.
5. US Department of Commerce (USDC), National Oceanic and Atmospheric Administration (NOAA), National Weather Service (NWS), Hydrometeorological Design Studies Center. 2004-2006. *Precipitation-Frequency Atlas of the United States, Atlas 14, Volume 2*, Silver Spring, Maryland, 20910. Internet address: <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

ENACTED and ORDAINED at a regular meeting of the Newburg Borough Council on this
17 day of August, 2020.

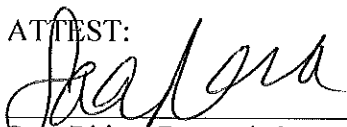
This Ordinance shall take effect immediately.

Borough of Newburg



Nathan Shoemaker, President

ATTEST:



Sara Rhine, Borough Secretary

APPENDIX A

**SAMPLE OPERATION AND MAINTENANCE AGREEMENT
STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by _____, (hereinafter the "Landowner") and the Borough of Newburg, Cumberland County, Pennsylvania, (hereinafter "Borough");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property within Newburg Borough located at _____, as recorded by deed in the land records of Cumberland County, Pennsylvania, Deed Book _____ at Page _____, (hereinafter "Property").

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the SWM Site Plan and BMP Operation and Maintenance Plan approved by Newburg Borough, identified as follows: _____ (hereinafter referred to as the "SWM Site Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, the Landowner, its successors and assigns, agree that the health, safety, and welfare of the residents of the Borough and the protection and maintenance of water quality require that on-site SWM BMPs be constructed and maintained on the Property; and

WHEREAS, Newburg Borough requires, through the implementation of the SWM Site Plan, that SWM BMPs as required by said Plan and the Borough Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, its successors and assigns.

NOW, THEREFORE, the Landowner hereto agrees as follows:

1. The Landowner shall construct the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
2. The Landowner shall operate and maintain the BMPs as shown on the Plan in good working order in accordance with the specific maintenance requirements noted on the approved SWM Site Plan.
3. The Landowner hereby grants permission to the Borough, its authorized agents and employees, to enter upon the Property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever necessary. Whenever possible, the Borough shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMPs per paragraph 2, the Landowner agrees that the Borough or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). It is expressly understood and agreed to by the Landowner that the Borough is under no obligation to maintain or repair said

facilities, and in no event shall this Agreement be construed to impose any such obligation on the Borough.

5. In the event the Borough, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner agrees that it shall reimburse the Borough for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Borough.
6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMPs by the Landowner.
7. The Landowner, its executors, administrators, assigns, and other successors in interests, agrees to release the Borough from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Borough, its officials, employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or the Borough.
8. The Landowner agrees and understands that the Borough may periodically inspect the BMPs to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of Cumberland County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the Municipality:

For the Landowner:

ATTEST:

_____ (City, Borough, Township)

County of Cumberland, Pennsylvania

I, _____, a Notary Public in and for the County and State aforesaid, whose commission expires on the _____ day of _____, 20____, do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 20____, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 20____.

NOTARY PUBLIC

(SEAL)

APPENDIX B

DISCONNECTED IMPERVIOUS AREA (DIA)

B.1. Rooftop Disconnection

When rooftop downspouts are directed to a pervious area that allows for infiltration, filtration, and increased time of concentration, the rooftop may qualify as completely or partially Disconnected Impervious Area (DIA) and a portion of the impervious rooftop area may be excluded from the calculation of total impervious area.

A rooftop is considered to be completely or partially disconnected if it meets the requirements listed below:

- The contributing area of rooftop to each disconnected discharge is 500 square feet or less, and
- The soil, in proximity of the roof water discharge area, is not designated as hydrologic soil group "D" or equivalent, and
- The overland flow path from roof water discharge area has a positive slope of 5% or less.

For designs that meet these requirements, the portion of the roof that may be considered disconnected depends on the length of the overland path as designated in Table B.1.

| Table B.1: Partial Rooftop Disconnection | |
|---|--|
| Length of Pervious Flow Path * | Roof Area Treated as Disconnected |
| (ft) | (% of contributing area) |
| 0 – 14 | 0 |
| 15 – 29 | 20 |
| 30 – 44 | 40 |
| 45 – 59 | 60 |
| 60 – 74 | 80 |
| 75 or more | 100 |

* Flow path cannot include impervious surfaces and must be at least 15 feet from any impervious surfaces.

B.2. Pavement Disconnection

When pavement runoff is directed to a pervious area that allows for infiltration, filtration, and increased time of concentration, the contributing pavement area may qualify as a DIA that may be excluded from the calculation of total impervious area. This applies generally only to small or narrow pavement structures such as driveways and narrow pathways through otherwise pervious areas (e.g. a walkway or bike path through a park).

Pavement is disconnected if the pavement, or area adjacent to the pavement, meets the requirements below:

- The contributing flow path over impervious area is not more than 75 feet, and
- The length of overland flow is greater than or equal to the contributing length, and
- The soil is not designated as hydrologic soil group "D" or equivalent, and

- The slope of the contributing impervious area is 5% or less, and
- The slope of the overland flow path is 5% or less.

If the discharge is concentrated at one or more discrete points, no more than 1,000 square feet may discharge to any one point. In addition, a gravel strip or other spreading device is required for concentrated discharges. For non-concentrated discharges along the edge of the pavement, this requirement is waived; however, there must be a provision for the establishment of vegetation along the pavement edge and temporary stabilization of the area until vegetation becomes stabilized.

REFERENCE

Philadelphia Water Department. 2006. *Stormwater Management Guidance Manual*. Section 4.2.2: *Integrated Site Design*. Philadelphia, PA.

APPENDIX C

CUMBERLAND COUNTY RELEASE RATE MAP

