



# Sussex Conservation District Financial Guarantee Policy for the Construction and Maintenance of Sediment & Stormwater Improvements

## 1. BACKGROUND & PURPOSE

**1.1 Background.** In 2013, Sussex County announced that it would no longer include stormwater as a part of its land use-related bonding requirements. Effective January 1, 2014, the Sussex Conservation District (the “District”) became the responsible authority for accepting and administering such financial guarantees in accordance with the District’s authority as a Delegated Agency for the Delaware Sediment and Stormwater Regulations.

**1.2. Purpose.** It is the intention of the District to require a financial guarantee provided by those applying to the District for Sediment & Stormwater Plan approval to ensure that construction and maintenance of stormwater management practices are accomplished in accordance with the approved Sediment and Stormwater Management Plan.

## 2. APPLICABILITY

**2.1.** This policy shall be applicable to any project within the jurisdiction of Sussex County, Delaware requiring a detailed Sediment & Stormwater Management Plan in accordance with the Delaware Sediment and Stormwater Regulations (*7 Delaware Code Chapter 40 and 7 Del. Admin. Code § 5101*)(hereinafter, the “Regulations”).

**2.2. Exemptions.** The following uses shall be exempt from the security requirements as contained in this policy:

- i. Agricultural Structure(s) as defined in the Regulations.
- ii. Commercial projects that will not be subdivided where the property owner is the developer, business proprietor, owner of the stormwater facility, and owner of the property upon the development of the property.
- iii. Projects with a total site area less than one (1) acre where the District Coordinator determines the imposition of the bonding requirement provides no benefit to the general public.
- iv. Projects where the total construction value of the improvements to be bonded by SCD per Section 3.1 of this policy are less than Twenty Five Thousand Dollars (\$25,000.00).

## 3. APPLICATION PROCESS

**3.1. Amount of the Performance Security.** Prior to the developer’s pre-construction meeting with the District, the developer shall provide a detailed cost estimate prepared at its sole cost and expense. Said cost estimate must be approved by the District Coordinator, or their designee. The cost estimate shall include but not be limited to erosion and sediment controls, stormwater management structures/facilities, storm drains outside of the Municipal/County/State rights-of-way, and as-built Sediment and Stormwater

Management Plans. The amount of the performance security shall be in the amount of One Hundred Fifty Percent (150%) of the total cost estimate provided by the developer and approved by the District.

- 3.2. Agreement.** The developer and the District shall enter into a written agreement describing the rights and responsibilities of each party related to the construction and maintenance of the sediment and stormwater facilities necessary for compliance with the Regulations, the approved Sediment and Stormwater Management Plan, and as required by the policies of the Department of Natural Resources and Environmental Control and/or the District.
- 3.3. Form of Security.** The District will accept the following forms of performance security: Cash Performance Bond, Performance Surety Bond, or a Letter of Credit (“Performance LOC”).
- 3.4. Fee.** The District will charge a nonrefundable, annual administrative fee in the amount of One Hundred Fifty Dollar (\$150.00) for each performance security issued. The fee shall not be prorated nor returned at the completion of the project. The developer is subject to additional fees in excess of the annual fee for documented expenses incurred by the District directly related to a specific project.
- 3.5. Notice-to-Proceed.** Upon receipt of the fully executed agreement, a fully executed performance security and posting of any applicable security thereunder, payment of all associated fees, and completion of any conditions identified during the pre-construction meeting, the District will issue a notice to proceed letter (“Notice to Proceed”) for the project.
- 3.6. Warranty Bond.** Upon completion of all of the improvements covered under the original performance security and final stabilization of at least Seventy-Five Percent (75%) of the site, the Developer shall post a warranty bond in the amount of Ten Percent (10%) of the value of the original performance security or Twenty-Five Thousand Dollars (\$25,000.00), whichever is greater. The warranty security shall be in the form of a Cash Warranty Bond, Warranty Surety Bond, or a Letter of Credit (“Warranty LOC”). The warranty bond shall remain in place until either One Hundred Percent (100%) of the site is stabilized or for a period of two (2) years following the completion and approval of the specified improvements required by agreement referenced in Section 3.2 above, whichever occurs first.
  - 3.6.1. Final Stabilization.** For purposes of this policy, the term “final stabilization” shall have its same meaning as defined in the Regulations.

#### **4. MODIFICATION/RENEWAL/RELEASE OF PERFORMANCE SECURITY**

- 4.1. Modification/Renewal**—In the event that the performance security documents need to be modified or amended, the developer shall provide a new bond and enter into a new agreement with the District.
- 4.2. Partial Release of Performance Security**—At the developer’s request, the District may, in its sole discretion, reduce the performance security in proportion to the developer’s actual completion of the improvements contemplated in the agreement referenced in Section 3.2. herein. Any such reduction in performance security shall be memorialized by a separate written agreement signed by all parties. The developer shall be eligible to

reduce the security only one (1) time during the project/phase. New security and an agreement recognizing the reduced amount shall be in effect prior to the release of the previously held security, however, at no time shall the security be less than Fifty Thousand Dollars (\$50,000.00).

**4.3. Full Release of Performance Security.** Upon completion of the improvements and other conditions contained in the agreement referenced in Section 3.2. above to the satisfaction of the District (as evidenced by a written statement from the District), the performance security shall be released.

## **5. MODIFICATION/RENEWAL/RELEASE OF WARRANTY SECURITY**

**5.1. Modification/Renewal.** In the event that the warranty security documents need to be modified or amended, the developer shall provide a new bond and enter into a new agreement with the District.

**5.2. Partial Release of Warranty Security Prohibited.** There shall be no partial release(s) of any warranty security.

**5.3. Full Release of Warranty Security.** If the materials and labor performed pursuant to the agreement referenced in Section 3.2 above remain free from defects in materials and workmanship and shall continue to effectively function and endure without the need for repair or replacement for a period of two (2) years from the completion and approval thereof, or until One Hundred Percent (100%) of the site is at the point of Final Stabilization, whichever occurs first, then the full warranty security shall be released.

## **6. COORDINATION WITH SUSSEX COUNTY & MUNICIPAL JURISDICTIONS**

**6.1.** The District will coordinate the status of its project approval and bonding activities with Sussex County and/or the appropriate municipal jurisdictions throughout Sussex County. It is the District's position that County and municipal jurisdictions shall receive a Notice to Proceed from the District before authorizing projects to proceed.