



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

1. PURPOSE

It is the intention of the Sussex Conservation District (District) to require that a financial guarantee be provided by those applying to the District for plan approval to ensure that construction and maintenance of stormwater management practices are accomplished in accordance with the approved sediment and stormwater management plan.

Previously, the bonding requirements for stormwater management practices were included as a part of Sussex County's land use requirements. The County has recently announced it will no longer include stormwater as a part of its bonding requirements, and the District will thus be assuming responsibility 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.

2. APPLICABILITY

2.1. This policy shall be applicable to any project requiring a detailed Sediment & Stormwater Plan in accordance with the Delaware Sediment and Stormwater Regulations (*7 Del. Admin. Code §5101*) located within Sussex County.

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

- i. Agricultural Structures
- 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 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 \$10,000.

3. APPLICATION PROCESS

3.1. Amount of the Performance Security—the amount of the performance security shall be determined in accordance with a detailed cost estimate prepared at the expense of the developer, and 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 Plans. The performance security will be set at One Hundred

Fifty Percent (150%) of the cost shown on the cost estimate. The cost estimate shall be provided to the District prior to the pre-construction meeting for the project.

3.2. Agreement—the developer and the District shall enter into an agreement describing the rights and responsibilities of each party related to the construction and maintenance of the facilities necessary for compliance with the Delaware Sediment and Stormwater Regulations (*7 Del. Admin. Code* § 5101), the approved Sediment and Stormwater Plan, and as required by the policies of the Department of Natural Resources and Environmental Control and/or the Sussex Conservation 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 One Hundred Fifty Dollar (\$150.00) annual administrative fee 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 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 One Hundred Percent (100%) of the site is stabilized or for Two (2) years after completion and approval of the improvements called for under the agreement referenced in section 3.2 above, whichever occurs first.

3.6.1. Final Stabilization—For purposes of this policy, final stabilization shall be defined as stated in the Delaware Sediment and Stormwater Regulations (*7 Del. Admin Code* § 5101)

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—Upon the request of the Developer, the District may, in its sole discretion, reduce the performance security, through a separate written agreement signed by all parties, in proportion to the amount of the Developer's actual completion of the Improvements. The Developer shall be eligible to reduce the security only one (1) time during the project/phase. A new security and agreement recognizing the reduced amount shall be in place 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 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 releases 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, as defined by the Delaware Sediment and Stormwater Regulations (*7 Del. Admin. Code* § 5101), which ever should occur first, then the full warranty security shall be released.

6. COORDINATION WITH SUSSEX COUNTY & MUNICIPAL JURISDICTIONS

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 should be in receipt of a "Notice to Proceed" from the District prior to authorizing projects to proceed within their jurisdiction.