

Maintenance Subcommittee Comments1

Theme	Definition		Comment
Subsection	Date	Comment Received	Commenter
7.2.2	3/13/2009	NCCDLU	It is not understood how an inspection after an extreme flooding event will determine if routine maintenance has been provided. Please define extreme flood events.
Mainten-ance	3/13/2009	New Castle County Special Services	Definitions of routine and non routine maintenance should reflect the same as what we have in our (NCC) codes which have been defined as; □ Routine or minor maintenance are; "Grass mowing and trimming; debris removal; minor sediment removal; fill all eroded areas and animal burrows; and removal of trees or shrubs on embankments; invasive aquatic vegetation removal like Algae and Primrose". □ Non-routine or major maintenance are; structural repair, major sediment removal and major erosion. □ □ Note; Removal of aquatic invasive vegetation should be part of the routine maintenance at least in NCC. □
Mainten-ance	3/13/2009	Kevin McBride, MRA	Reword second sentence - "routine and non-routine maintenance and repair".

Theme	Edits		Comment
Subsection	Date	Comment Received	Commenter
3.11.1	3/11/2009	Jenn Volk, DWR	"of the permanent stormwater management system" is repetitive
7.1.2.3	3/11/2009	Jenn Volk, DWR	Spell out LLC
7.2.3	3/13/2009	NCCDLU	The word "changes" should be revised to "change(s)"
7.2.5	3/11/2009	Jenn Volk, DWR	Does it make sense to move 7.2.5 into section 7.1.2?

Theme	Guidance		Comment
Subsection	Date	Comment Received	Commenter
3.10	3/13/2009	NCCDLU	Standards for review and approval of the Operation and Maintenance Plan need □ included.
3.10	3/20/2009	ACEC	Operations and Maintenance Plan. Please provide detail of what it is to include.

3.11.1 3/20/2009 SCD

Can the statement be elaborated to define the distance from a permanent structure to the pond top of bank etc? Many homes in Sussex County are built too close to stormwater ponds. Sussex County does not have a setback requirement from stormwater facilities.

Theme Law/Legal

Subsection **le Comment Received** **Commenter**

3.3.2 3/12/2009 Kevin Burdette, KNB Associates

Comment

How can an Owner certify what a future HOA will actual do?

7 3/11/2009 Jenn Volk, DWR

The maintenance subcommittee recommended that home buyers be informed of stormwater maintenance needs and responsibilities. Is this still an option/need?

7.1.2 3/18/2009 ACEC

keeping track of transfer of ownership of maintenance responsibility will be difficult, as owners will not be thinking about these issues when they sell the property. I recommend a recorded instrument be required documenting the maintenance requirements that will come up during the title search. That way everyone will reminded that this is one other responsibility that needs to be transferred. In reality the maintenance should "run with the land".

7.1.2.1 3/13/2009 Kevin McBride, MRA

This information needs to be transmitted to the new owners. Typically there is a period of time between the HOA resident board of directors and the developer/owner board representation transitioning voting rights and privileges. During this transition several years of maintenance will have taken place. What is the protection for the new owner that ensures that the O & M has been complied with by the previous owner/developer? Generally getting a group of resident board members to accept unanimous responsibility for such a significant cost item is difficult. May need a current inspection or certification that inspections and maintenance has been preformed on schedule and correctly under 7.3.2.

7.1.2.1 - 3/11/2009 City of Newark Public Works
7.1.2.4

How is this going to happen? When properties are sold, the Owner's do not notify the Public Works Department. Additionally, once the original owner has transferred ownership of the property, how will that owner be kept on the hook for maintenance, if these items have not been completed?

7.2.4 3/11/2009 City of Newark Public Works

While a good idea, how will the Owners be made aware of this requirement?

Theme Matrics

Subsection **le Comment Received** **Commenter**

7.3.1.2 2/9/2009 Ellie Mortazavi, NCC Special Services

Comment

Why are maintenance inspections only required every two years?

Theme	Metrics	Comment	Commenter	Comment
3.11	3/3/2009	Ernie Sheppe, MRA		I suggest those more familiar with past practice and local conditions take a close look at these easement requirements. I would add that a 20-foot minimum easement may be excessive for a small pipe at a shallow depth such as a typical underdrain pipe for a bio-retention facility. I suggest that it would be more appropriate to state the basic criteria in a regulation – e.g., that the size of the easement must accommodate future maintenance, including the equipment needed to perform that maintenance – and then place any specific numerical recommendations in a guidance manual.
3.11.4	3/13/2009	Kevin McBride, MRA		This width on swales seems excessive.
7.3	2/17/2009	Chip Hazel, P.E.		I suggest Inspections by Dept or delegated agency be required only every 4 years unless and until an owner or HOA demonstrates an inability to self manage the inspection and maintenance of their sediment and stormwater facilities. Inability to self manage inspection and maintenance to be evidenced by a) lack of reasonable record keeping and b) poor conditions found at inspection by Dept or delegated agency.
7.3	2/17/2009	Chip Hazel, P.E.		I suggest modification to Section 7.3 Maintenance Inspections to encourage compliance, reduce public and private costs, and manage the maintenance inspection process consistent with the concept of management by exception.
7.3.1.2	3/11/2009	City of Newark Public Works		Even though it will be less burdensome on the City with the two year inspection requirement, there are many BMP's now that recommend more than one inspection a year and many owners typically will not perform regular maintenance unless notified to do so.
7.3.1.2	3/11/2009	Jen Mihills, DNW		Consider revising the frequency of maintenance inspections in 7.3 .1.2 to annually rather than biennially.

7.3.1.2

3/13/2009 New Castle County Special Services

With being involved in inspections for last few years, I still think the inspection should be performed annually. The reasons are;

Right now, with the annual inspections, we are still encountering problems as far as having the Maintenance Corporation to perform their regular and routine maintenance for the facilities in their private open space areas; however, with commercial properties, the magnitude of not inspecting their stormwater management facilities on a yearly basis exacerbates the required maintenance due to the location at intersections, in industrial parks and shopping centers, multiple owners and the cost of this action. As of today we have more than 1,300 SWM facilities in NCC. This number is increasing everyday and with biennial inspections, it wouldn't be beneficial to NCC or to the Maintenance Corporations, as the Private owners. Second reason is our Amnesty program in NCC for the Maintenance Corporation. "A Maintenance Corporation must register and file an annual stormwater management facility inspection and maintenance log with the Department of Special Services to qualify for financial assistance for major repairs, subject to the availability of the funds, as set forth in Section 40.27.320 and Chapter 12, Article 6." If they don't submit their registration form and their maintenance logs by end of each year, their names will be deleted from the Amnesty list and then as a result are ineligible for NCC financial assistance for major maintenance. NCC must perform annual inspections of these facilities to be consistent with what the Maintenance Corporations are currently doing as part of the Amnesty Program requirements. This needs further discussion.

7.3.1.2

3/18/2009 ACEC

Maintenance inspections every two years is counter to somewhat accepted practices of annual inspections.

Theme

Misc.

Subsection **te** **Comment Received** **Commenter**

2/9/2009 Charlie Miller

Comment

Enforcement of maintenance in residential projects will be directed toward HOA; this will result in no one wanting to serve in HOA leadership and no maintenance will get done

2/9/2009 Charlie Miller

Private sector could take a role in routine maintenance inspection of stormwater management facilities but this is currently not allowed in New Castle County.

3.10

2/13/2009 Ric Kautz, Sussex County Planning

design swm systems that are as passive as possible to reduce the long-term maintenance costs to the HOA which will ultimately be responsible. Related to that would be requiring the inclusion of a short and long term budget in the O & M Plan so the HOA's have an idea of what potential expenses they are facing.

3.11.1	3/11/2009	City of Newark Public Works	Our stormwater maintenance agreement addresses the right to inspect private property. We only require easements that have BMPs, pipes, swales, etc. crossing other private properties. We do not require easements if the BMP is entirely owned, maintained and located on one private parcel that is not City maintained.
3.11.2	3/18/2009	ACEC	Similar to New Castle County, blanket easements should be permitted for nonresidential projects.
7.0	3/11/2009	Steve Sisson, DelDOT	Having a maintenance bond for the original owner of the BMP's
7.0 or 10.0	3/11/2009	Steve Sisson, DelDOT	Allowance for HOA's to buy into a stormwater utility or have mandatory escrow accounts.
7.1.1 & 7.1.2	3/18/2009	ACEC	Seems like some sort of database would need to be kept of permanent BMPs and their responsible party. Will each delegated agency be expected to do this? Is there not an existing property ownership process (such as deed restrictions) that could be applied instead?
7.2.2	3/11/2009	Jenn Volk, DWR	I believe the maintenance subcommittee recommended that the HOA or contracted private maintenance corporation do annual inspections, and to submit review forms to the delegated agency. Is this still an option/need?
7.3	2/17/2009	Chip Hazel, P.E.	I further suggest that a brief informal, informational inspection be offered by the Dept or delegated agency 90+/- days prior to the formal inspection every 4 years but only if owner is willing to attend. This would give the Owner a 3-month period to prepare for the formal inspection with input from the Dept or delegated agency.
7.3	2/17/2009	Chip Hazel, P.E.	In addition, I further suggest a 1-day Saturday inspection and maintenance seminar be offered by the Dept each Fall or Winter to assist owners and HOA's in learning about inspections and maintenance. Such seminars to be held annually only as long as attendance justifies and then less often as attendance justifies.

Theme	Process
Subsection	Date Comment Received Commenter
3.10	2/9/2009 Sal Palalay, McCormick Taylor

Comment

O&M Plan should be developed at the same time as the S&S Plan so that cost of future maintenance would be considered in the material selection and design of permanent stormwater management systems.

Theme	Rationale
Subsection	Date Comment Received Commenter

Comment

7.2.4	3/13/2009	Sally Ford, Land Design	Maintaining maintenance records for 5 years will be a burden to owners. An inspection of the stormwater system will tell if it is being maintained or not, and the site will be inspected every 2 years per Section 7.3.1.2..
7.3.2	3/11/2009	City of Newark Public Works	Since routine and non-routine maintenance is often not performed, Public Works would have to send many more notices each year even with only inspecting one half the total sites every year, as most sites are in need of some type of maintenance. Public Works does not have the personnel resources to commit the necessary time to send out first and sometimes second notices, meet with numerous owners and contractors, and provide multiple inspections for many facilities. Currently, we prioritize Owner notification to facilities that have maintenance issues based on emergency, functionality, preventative, and aesthetics. Most of the 15-20 notices we send out each year are for facilities that have some type of functionality concern. The time spent just on these few facilities is very time consuming. With that being said, Public Works does not have the manpower or resources to notify and require all the facilities with any type of deficiency to be corrected in the year following the inspection.
Operation and Mainten-	3/13/2009	Kevin McBride, MRA	This is an entirely new plan which will be very costly to prepare and review. Will add more time and expense to housing.

Theme	Terminology		Comment
Subsection	Date	Comment Received	Commenter
3.10	3/18/2009	ACEC	
3.10.1	3/3/2009	Ernie Sheppe, MRA	Under what circumstances is an Operation and Maintenance Plan required? Projects without structural stormwater management facilities should be exempt. "...each owner shall submit a post construction stormwater management Operation and Maintenance Plan for the entire site." (Emphasis added).Referring to the bold text, I'm not sure this is the best way to word this, or the best way to express the Department's intent. The SWM practices subject to the O&M Plan do not occupy the "entire site." Preparing an O&M Plan for all of the SWM practices would make sense. I suggest the language be revised just a bit to better reflect the Department's intent.
7.1.1	3/13/2009	Jared Adkins, KCD	As worded, this paragraph implies the owner does not have responsibility for permanent stormwater management systems until after the Notice of Completion. If this is the case who is responsible?

7.1.2 3/13/2009 Jared Adkins, KCD

It seems like this section should be broken into two situations; prior to notice of completion and after notice of completion. Requiring notification each time a commercial property changes ownership post-construction is unlikely and burdensome.
This section does not cover the case where the owner is an LLC and goes defunct without transferring responsibility to a HOA or the case where a HOA simply refuses to accept a stormwater facility. Responsibility should run with the land once the Notice of completion is issued, except in the case of 7.1.3 (dedication to public entity.)

7.1.3 3/18/2009 ACEC

This section states that permanent stormwater management systems may be offered for dedication to delegated agencies and others. Do these agencies have to accept the offer for dedication (assuming it is constructed in accordance with the approved plans)?