

STATE AGRICULTURE DEVELOPMENT COMMITTEE

POLICY

Construction of Stormwater Management Facilities to Service Residential and Agricultural Uses Located on Exception Areas

I. Purpose

To establish a policy regarding the construction of stormwater management facilities that service residential and agricultural uses located within exception areas.

II. Authority

N.J.S.A. 4:1C-5f.

III. Policy

A. Definitions. For purposes of this policy:

“Stormwater” means water resulting from precipitation (including rain and snow) that runs off the land’s surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities.

“Stormwater management facilities” shall mean any structures designed and constructed for the purpose of managing stormwater runoff.

“Stormwater runoff” means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

B. Severable Exception Areas (Exception areas that may be severed and subdivided from the preserved property):

Stormwater management facilities that service structures in a severable exception area shall not be located on the preserved portion of the farm.

C. Non-severable Exception Areas (Exception areas that cannot be severed or subdivided from the preserved property):

1. Applicability

Subject to the conditions and limitations contained in paragraph 2 below, stormwater management facilities can be located outside

the boundary of a non-severable exception area to service only residential and agricultural uses that are located within the non-severable exception area and are directly associated with agricultural activities on the preserved farmland.

2. Conditions and limitations

A landowner who seeks to construct stormwater management facilities outside the delineated boundary of the exception area shall be permitted to do so only if the owner of the development easement and SADC find that:

- (a) there is no feasible alternative location for the facilities within the exception area; and
- (b) construction of the facilities outside the exception area results in minimal impacts to the farm's agricultural resources and the agricultural operation;
- (c) the nature and scale of the improvements to be constructed in the exception area are reasonable and do not result in a self-imposed hardship by the landowner. For example, the construction of a larger-than-average home, or extensive garages, driveways, or associated outbuildings and structures, could be considered the result of unnecessary, self-imposed requirements on the part of the landowner.

3. Demonstrating No Feasible Alternative

To demonstrate that there is no feasible alternative location as described in paragraph 2(a) above, the landowner shall provide a written narrative report demonstrating that it is infeasible to construct the stormwater management facilities within the exception area pursuant to N.J.A.C. 7:8-1.1, et seq. and municipal stormwater management ordinances.

The report must be signed and sealed by a licensed professional engineer as defined pursuant to N.J.A.C. 7:9A-2.1 and include sufficient supporting documentation.

4. Demonstrating Minimal Impacts on Agricultural Resources and Agricultural Operation

The landowner shall provide a written narrative report demonstrating that the proposed location(s) of the facilities is/are suitable and minimize(s) negative impacts to the agricultural resources and agricultural operation on the preserved farmland to the greatest extent practicable. The design and construction of facilities on preserved farmland shall give priority to nonstructural methods and techniques for the control of stormwater runoff that

minimize negative impacts to the farm's agricultural resources and agricultural operation.

The report must be signed and sealed by a licensed professional engineer as defined pursuant to N.J.A.C. 7:9A-2.1 and include sufficient supporting documentation.

When considering whether the stormwater management facilities will have a minimal impact on agricultural resources and the agricultural operation, the owner of the development easement and the SADC shall consider how much agricultural land will be displaced; the location of the land being displaced; and whether, and to what extent, the facilities will restrict utilizing the preserved farm for a variety of agricultural uses.

5. Demonstrating Absence of Self-Imposed Hardship

The landowner must clearly demonstrate in detail that the agricultural and/or residential uses within the exception area necessitating the construction, nature and extent of the stormwater management facilities outside the exception area, are reasonable in nature and scale.

IV. Procedures

A. Landowner Application

An application to consider the construction of stormwater management facilities located outside of an exception area must be directed to the owner of the development easement on the Premises for consideration. A copy of the application shall be forwarded to the SADC and to the land use board of the municipality in which the Premises are located. If the municipality's stormwater control ordinance requires the submission of an application for the construction of the landowner's proposed stormwater management facilities, then a copy of the landowner's municipal application shall also be submitted to the owner of the development easement and to the SADC. The landowner shall include with the application written notice to the land use board that the proposed stormwater management facilities will be located on a preserved farm and that the land use board may provide written comments on the application to the owner of the development easement and to the SADC.

B. Action by Owner of the Development Easement

The owner of the development easement shall conduct a review of the landowner's application to construct stormwater management facilities outside of an exception area pursuant to Policy P-51.

The review shall include consideration of any written comments submitted by the municipal land use board. The resolution by the owner of the development easement shall include consideration of the municipal land use board's written comments, if any, and attach a copy thereto. The resolution shall also clearly articulate reasons for approving or denying the application in accordance with the standards set forth in this Policy, and the resolution shall be forwarded to the SADC.

C. SADC Action

If an application was approved by the owner of the development easement, then the SADC shall conduct a review of the application pursuant to Policy P-51 and approve or deny the application.

The SADC shall notify the owner of the development easement, the landowner and the municipality of its action.

D. Other Approvals

Approval of a landowner's application by the SADC and, where appropriate, by the owner of the development easement, shall not affect the landowner's need to obtain all other necessary approvals or permits as otherwise required by ordinances, regulations or statutes.

The landowner shall provide a copy of all such approvals to the SADC and, if appropriate, to the owner of the development easement upon receipt thereof. The owner of the development easement and the SADC may condition their approval of the application on receipt of all such additional approvals.