



LUZERNE
CONSERVATION DISTRICT

E&S/NPDES and
Common Plan Of Development

Presented by Hunter Bednarczyk

Conserving Natural Resources for Our Future

Planning

- The District should be notified of projects planned in your municipality. This is their responsibility, but if you also notify us, it helps.
- Municipality may provide guidance documents provided by District or DEP
- When in doubt, have them call the District to find out what they need to prepare



Planning

- People will generally need some kind of permit from the municipality for their project.
- When someone inquires about municipal permits, they should also consult our guidance or contact the District.



Subdivision

- Sometimes a property will be subdivided well before any development plans exist.
- This should raise some flags that future development may be pending.
- Wouldn't hurt to share this information with the District, even if no development is planned yet.



Pre-Application Meeting Request Form

- Applicants are encouraged to set up a pre-application meeting
- This form should be completed accurately in its entirety and submitted to the District.
- If it is unclear if a permit is required, meeting is recommended.



3800-FM-BCW0271e Rev. 12/2019
Pre-Application Form


COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF CLEAN WATER

CHAPTER 102 PRE-APPLICATION MEETING REQUEST FORM

GENERAL INFORMATION	
Applicant Name: _____	Contact Name: _____
Applicant Address: _____	Contact Phone: _____
City, State, ZIP: _____	Contact Company: _____
Project Name: _____	Contact Email: _____
Consultant Name: _____	Consultant Firm: _____
Municipality: _____	County: _____
Application Type: <input type="checkbox"/> PAG-01 NOI <input type="checkbox"/> PAG-02 NOI <input type="checkbox"/> IP Application <input type="checkbox"/> ESCGP NOI <input type="checkbox"/> E&S Application	
Anticipated Submission Date: _____	Anticipated Construction Start Date: _____

PROJECT INFORMATION	
Project Description: _____	
Total Project Site Area: _____ acres	Total Earth Disturbance Area: _____ acres
Name(s) of Surface Waters Receiving Discharges: _____	
Chapter 93 Designated Use or, if applicable, Existing Use of Surface Waters: <input type="checkbox"/> WWF <input type="checkbox"/> CWF <input type="checkbox"/> TSF <input type="checkbox"/> HQ <input type="checkbox"/> EV <input type="checkbox"/> Other: _____	
Stormwater discharges are proposed to HQ or EV surface waters, including wetlands.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Jurisdictional wetlands are known to be present on the project site.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Stormwater discharges are proposed to private or municipal storm sewers or combined sewers.	<input type="checkbox"/> Yes <input type="checkbox"/> No
A riparian buffer or equivalency demonstration will be required per 102.14(a) or Act 162.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Surface waters receiving stormwater discharges are impaired for siltation, suspended solids, turbidity, water/flow variability, flow modifications/alterations, or nutrients.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The earth disturbance area is within an area of known karst topography.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Alternative E&S and/or PCSM BMPs or alternative E&S and/or PCSM design standards are proposed.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Infiltration testing and test pits of on-site soils have been completed.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The project site is associated with an Act 2 remediation project or is otherwise known to contain contaminated soils or groundwater.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Chapter 105 and/or Chapter 106 permit(s) are required for this project.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The project will involve phases or involve a larger common plan of development or sale.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Submit this form via mail, fax or email to the agency that is responsible for reviewing the Notice of Intent (NOI) or individual permit application for a Chapter 102 permit. Attach a site plan and location map to this form or otherwise bring all available plans and maps to the pre-application meeting, if scheduled. The agency responsible for reviewing the NOI or application will notify the contact person identified above of date(s) available to hold the pre-application meeting. The agency may also request that a call, rather than a meeting, be held, or may waive the meeting or call. If the meeting/call is waived, the applicant may proceed to submit the NOI or application.

Planning

- To prevent potential violations, it is recommended that you contact the District prior to issuing any Municipal permits.



Land Development Plans

- Building Permit
- Stormwater Permit
 - Have they submitted for E&S plan review and approval at the District if it is required?
 - Double check with Table III.1



Table III.1

Table III.1. Stormwater Management Requirements and Exemptions.

	Proposed Impervious Area (sq. ft.)	Proposed Total Earth Disturbance (sq. ft.)	Ordinance Exemptions	Stormwater Management Requirements	What is required to submit to municipality?
Level 1	< 1,000	< 5,000	N/A	N/A	N/A
Level 2	1,000 to 5,000	5,000 to 10,000	Section 303, Section 304, and Article IV of this Ordinance	Disconnected Impervious Area (DIA) as in Ordinance Appendix C.1	Ordinance Appendix C.1 Worksheet and Sketch (or equivalent)
				OR	OR
Level 3	5,000 to 10,000	10,000 to 20,000	Section 304 and Article IV of this Ordinance	Capture and control first 1 inch of runoff over proposed impervious areas as in Ordinance Appendix E	Ordinance Appendix E Worksheet and Sketch (or equivalent)
				Capture and permanently remove the first 2 inches of runoff over proposed impervious areas as in Section 303 B. of this Ordinance	Ordinance Appendix D Worksheet and Sketch (or equivalent)
Level 4	> 10,000	> 20,000	None	All requirements of this Ordinance	SWM Site Plan



Level 4

- When you are reviewing a Level 4 stormwater permit application, you will be looking for a full Stormwater Management Site Plan (SWM Site Plan).
- One component of the SWM Site Plan is an E&S Plan approved by the Conservation District.
- Thus, if they have not submitted their E&S Plan to the District for review and approval, they would not have a complete SWM Site Plan.

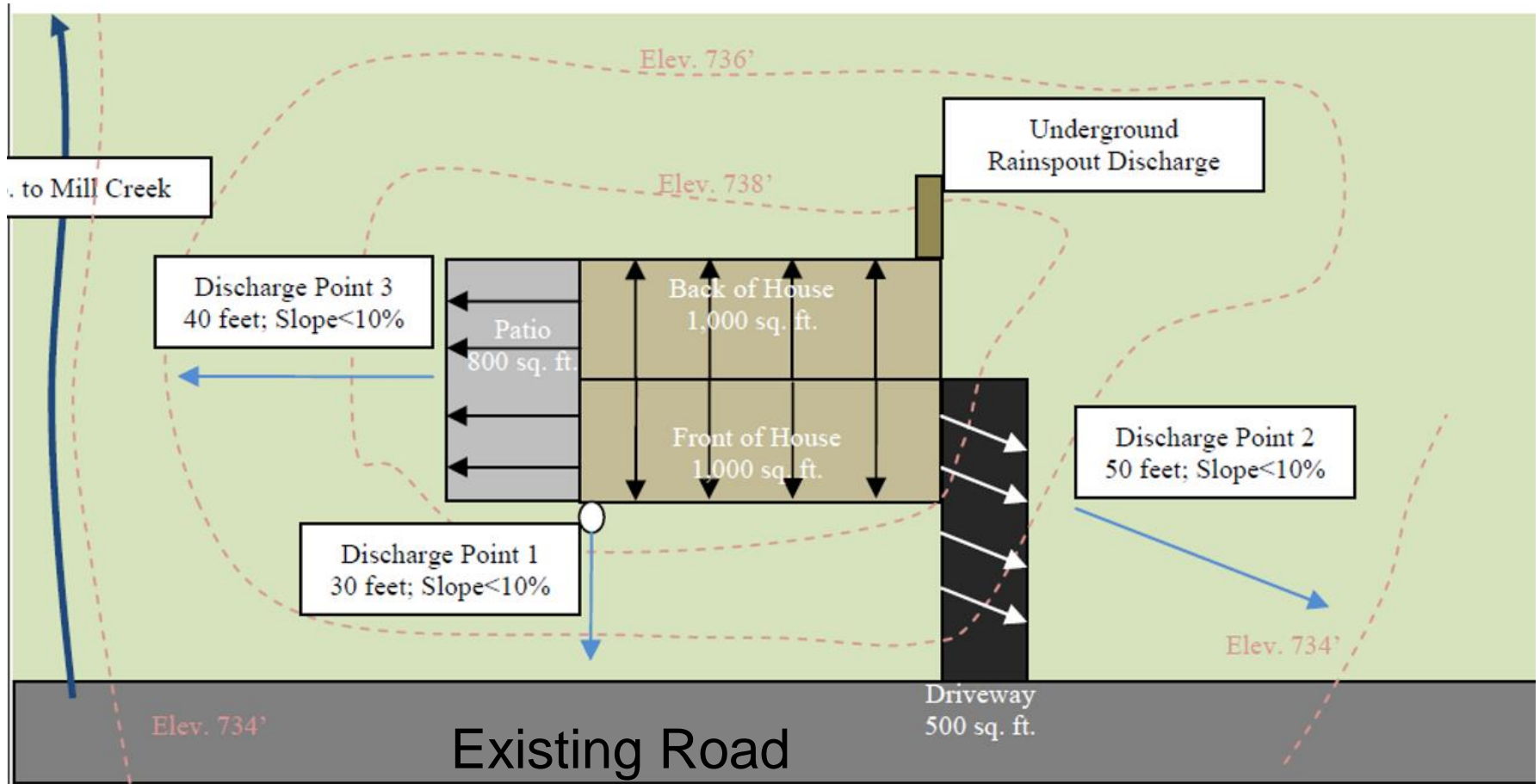


Stormwater Permit

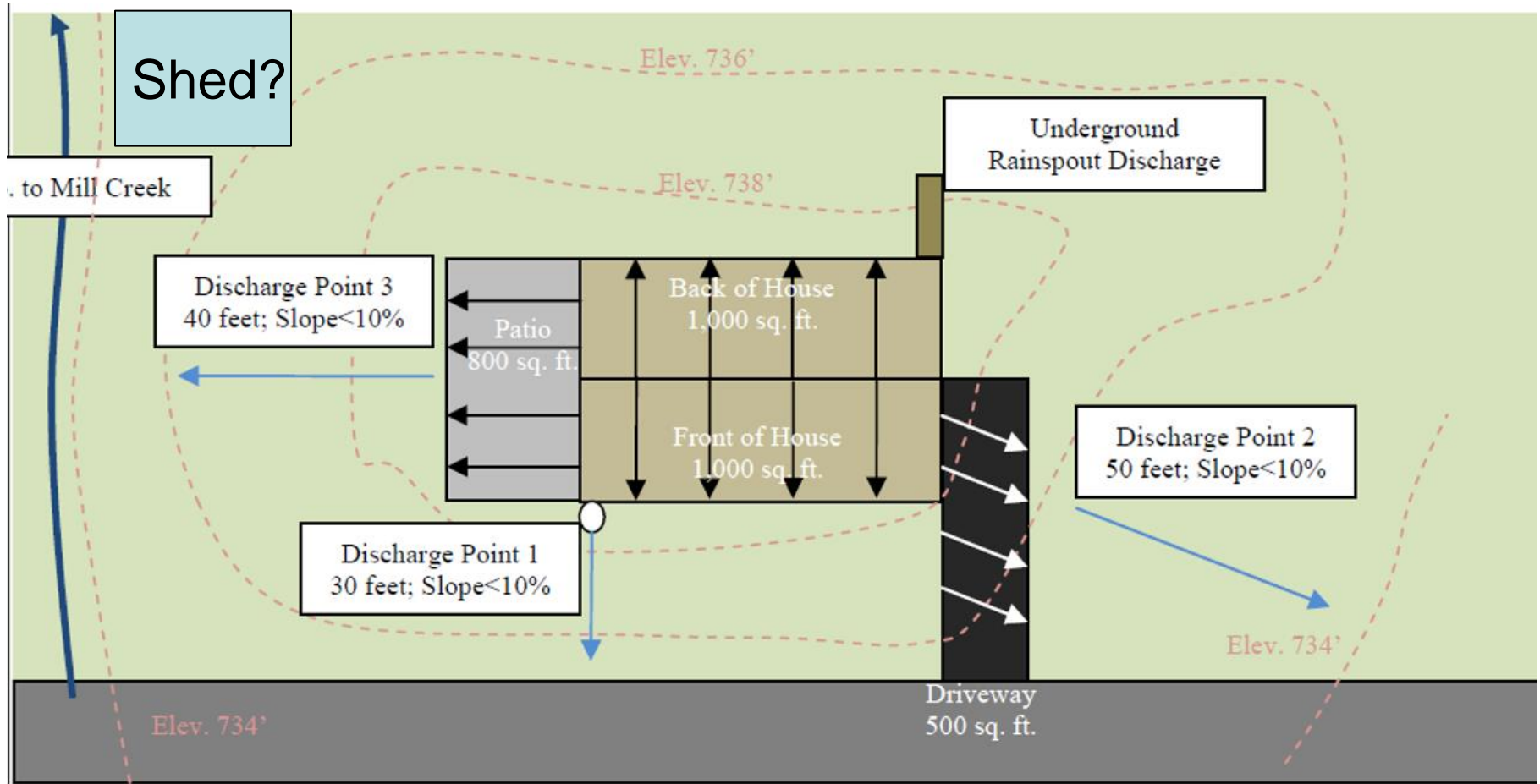
- What to look for
 - Site access (driveway)
 - Building (home, garage, etc.)
 - Utilities (water, sanitary, electric, gas, etc.)
 - Grading for yard
 - BMPs



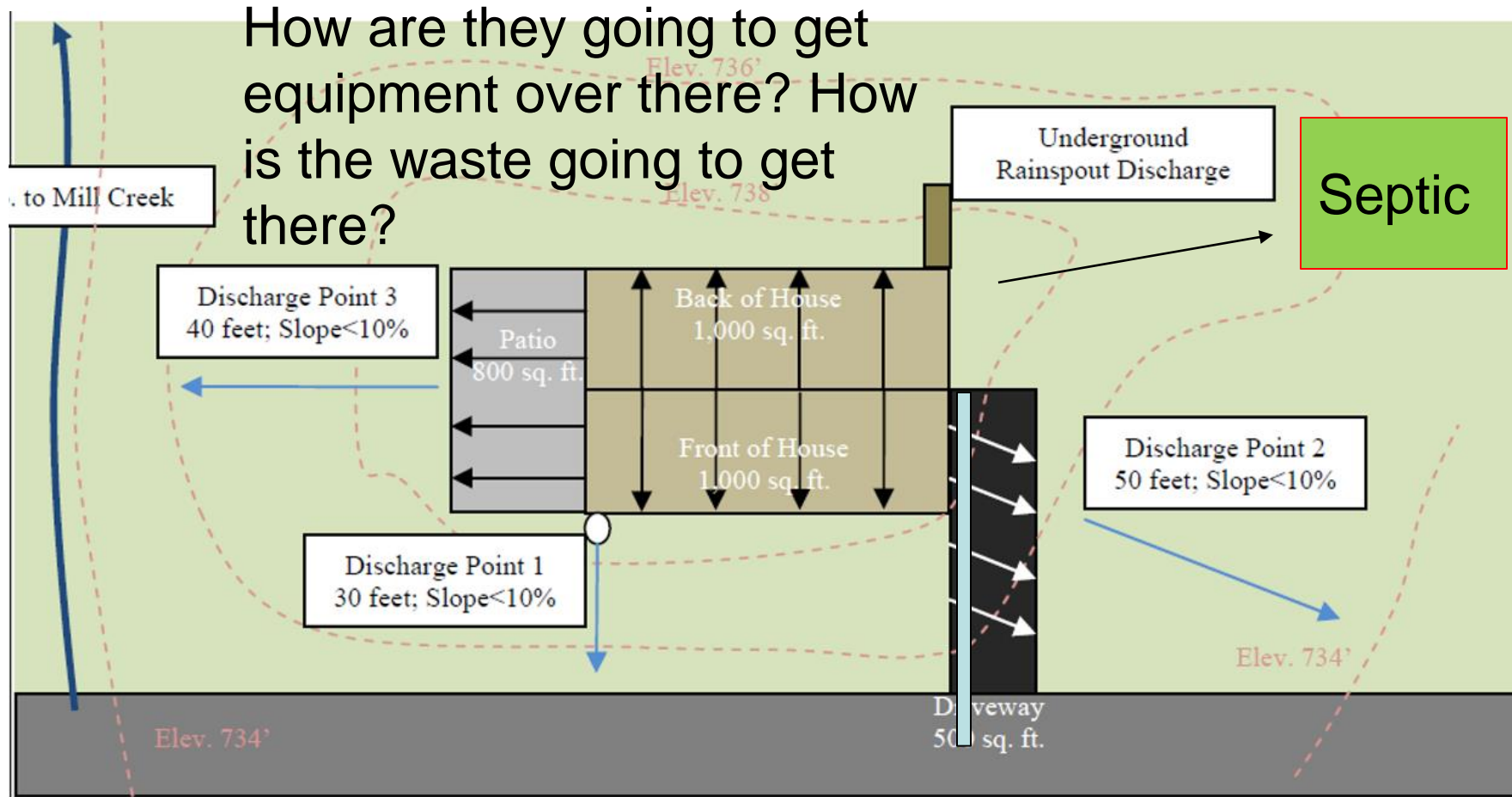
Site Access



Buildings



Utilities



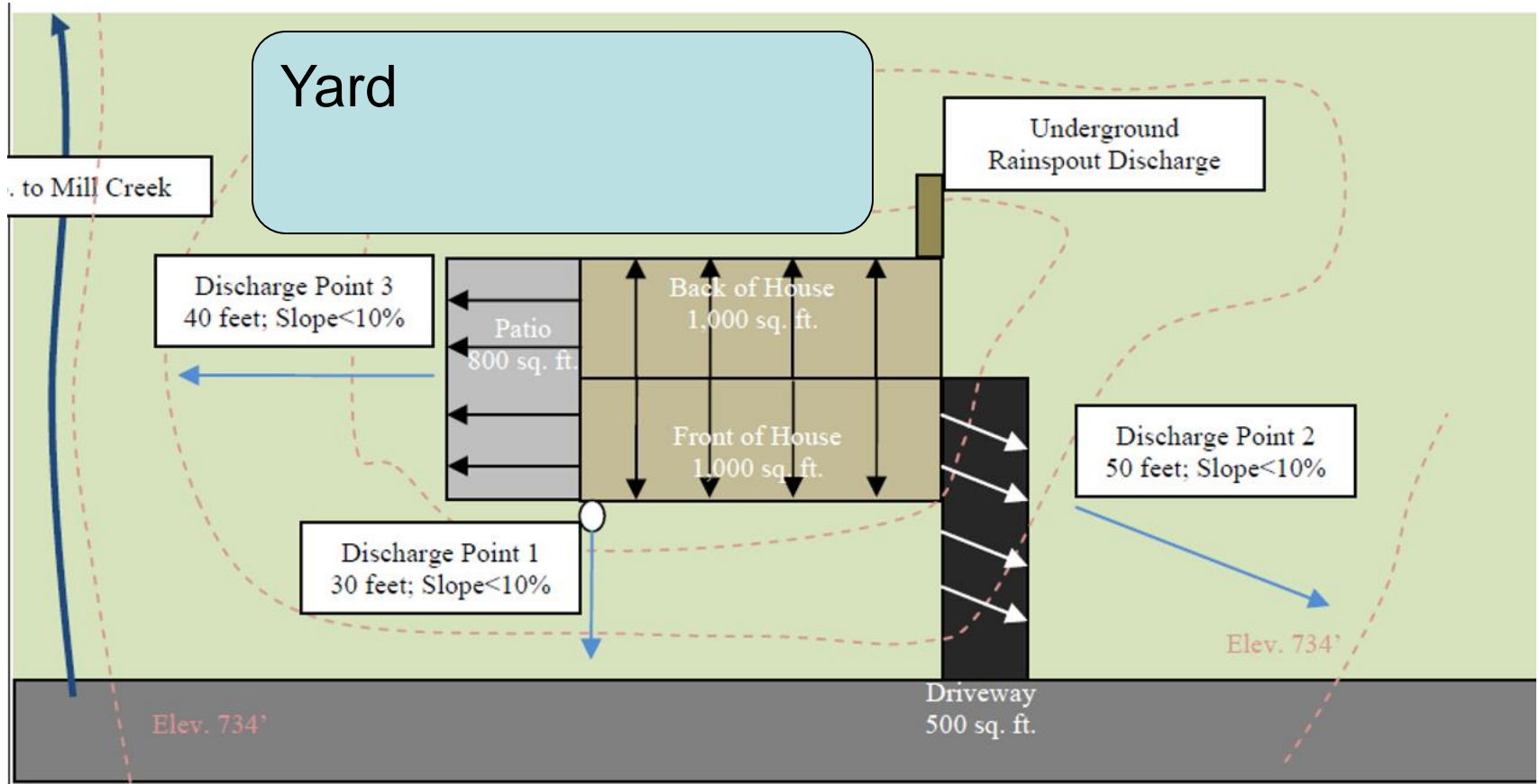
- Utilities are under driveway, but excavation required in existing roadway.



- “I’m not going to disturb the area in between.”



Other Grading



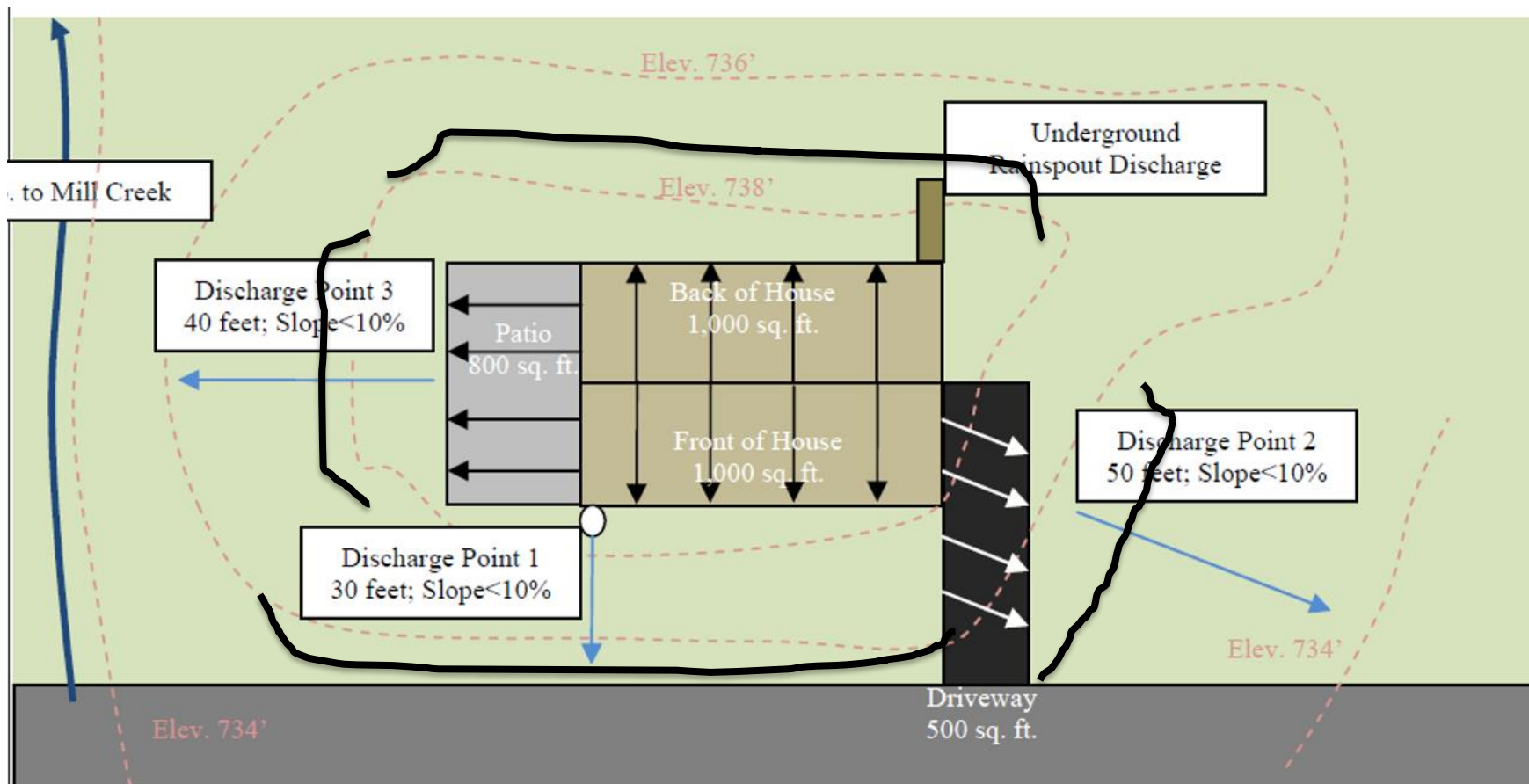
- “Well, my yard can’t have stumps in it, I’m just going to get rid of them to grow grass.”



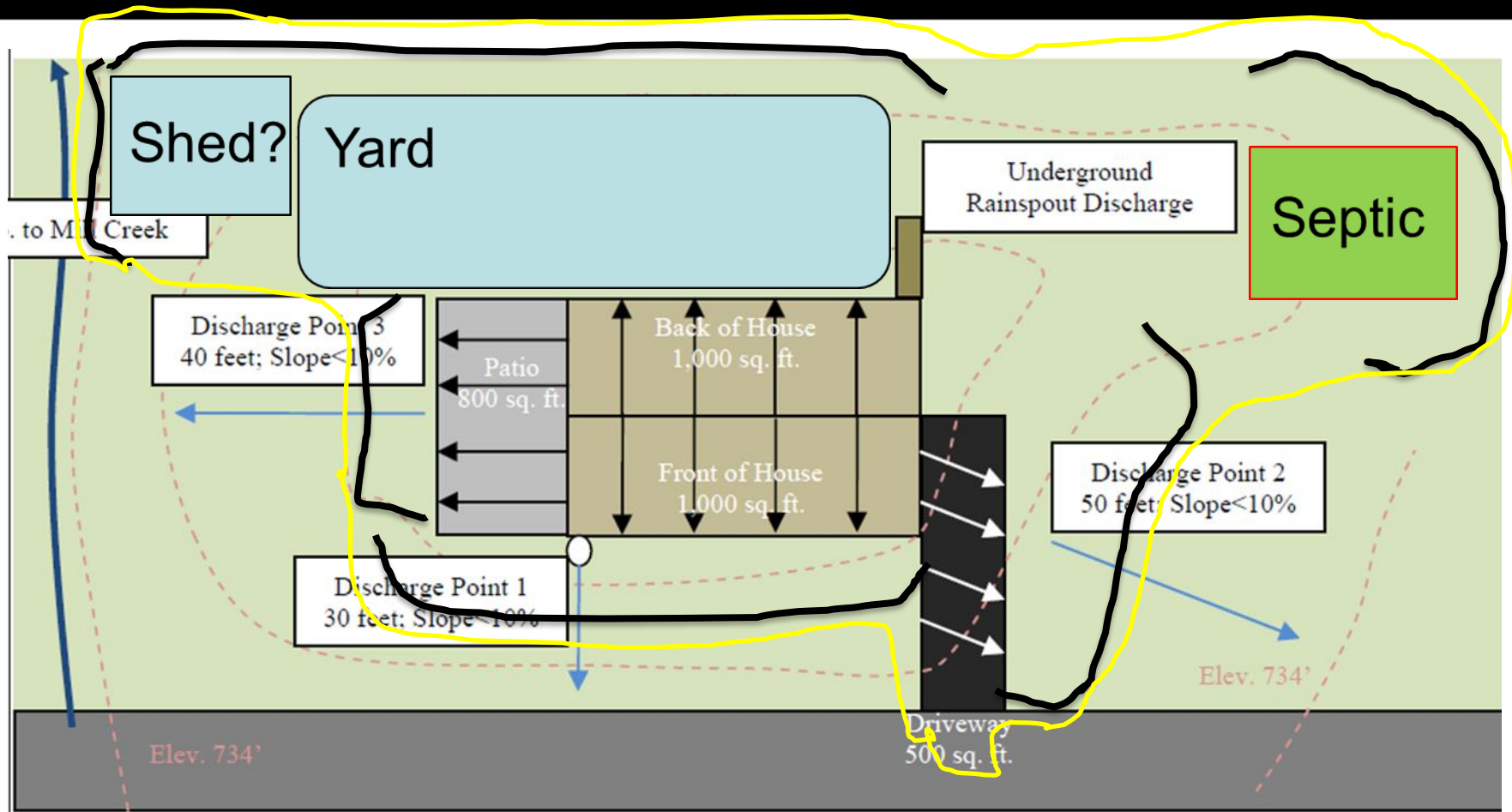
- “I might level out some areas.”



BMPs



$\pm 3,200$ disturbance \rightarrow $\pm 20,000$ sf disturbance



- Maybe we need a rain garden to manage stormwater now that we have accurately identified the proposal and approximate estimated earth disturbance?



Implications

- Often, what we see in the field is different than what appears on a stormwater permit
- Ex: Obtained a level 2 stormwater permit, but upon inspection of the site, it should have been a level 4 permit = E&S Plan should have been submitted to the District for review and approval
 - Or NPDES Permit required



§ 102.43 Letter

- Please be advised that earth disturbance activities at the “Example” site located in “Example Township” have commenced without “Example, LLC” having first received a National Pollutant Discharge Elimination system (NPDES) Permit for Stormwater Discharges associated with Construction Activities from the Pennsylvania Department of Environmental Protection (Department).



§ 102.43 Letter (cont.)

- If “Example Township” has issued permit(s) or approvals for this project, it is in violation of Section 102.43 of the Department’s Erosion and Sediment Control Rules and Regulations, 25 Pa. Code 102.43 and Section 611 of the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. 691.611.



§ 102.43 Letter (cont.)

- Please review this matter as soon as possible and convey your findings to this office by “Date”. Noncompliance with Department rules and regulations could result in referral of this matter to the Pennsylvania Department of Environmental Protection NERO Regional Office for appropriate enforcement action.



§ 102.43

FAQ #16 – What is a municipality’s or county’s obligation under 25 Pa. Code § 102.43 as it relates to people who are not the permittee, a co-permittee, or an operator?

In accordance with 25 Pa. Code § 102.43, a municipality or county may not issue a building or other permit or approval, except for local **stormwater** approvals or authorizations, to those proposing or conducting earth disturbance activities until an NPDES permit (or other Chapter 102 permit) has been issued or authorized for said earth disturbance activity. This regulatory requirement applies to the project/earth disturbance activity as a whole, and not to an individual lot or property owner.

- The letter will also be sent if NPDES Permit coverage expires. When this happens, earth disturbance activities should cease until permit coverage is obtained. This means new building permits should not be issued until NPDES permit coverage is obtained.





**Common Plan of Development or Sale
National Pollutant Discharge Elimination System (NPDES) Permits for
Stormwater Associated with Construction Activities**

**Frequently Asked Questions (FAQ)
Revised, September 14, 2023
Version 1.3**



Common Plan of Development

- “A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one common plan. The ‘common plan’ of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.



Common Plan of Development

- Discrete construction projects within a larger common plan of development that are located $\frac{1}{4}$ mile apart may be treated as a separate plan of development
 - No earth disturbance between them (new or modified access roads, utilities, etc.)



Common Plan of Development

- DEP would not consider existing road frontage lots to be part of the same common plan of development or sale if there are no shared utilities or common interests (including BMPs), regardless of who owned and developed the lots, where those lots existed prior to 2003.



Common Plan of Development

- For lots subdivided in 2003 or later, DEP will evaluate whether existing road frontage lots are part of the same common plan of development
 - Shared Utilities
 - Common Interest



Common Plan of Development

- District will assume that at a minimum $\frac{1}{2}$ of a lot will be disturbed, unless evidence to the contrary is provided.



Common Plan of Development

- Example of NPDES Permit not required:
- Property owner submits land development plan showing a house and driveway w/ proposed earth disturbance of 0.7 acre. Once construction is complete and the site is permanently stabilized, the property owner decides they want a patio and pool. They submit a new plan for the patio and pool w/ proposed earth disturbance of 0.5 acre.
- Since the patio and pool were not on the original plan AND the original plan has been constructed and permanently stabilized already, NPDES Permit coverage would not be required.



Common Plan of Development

- Be aware that this document, as well as other FAQs, exists and needs to be consulted.
- Every situation is unique, so it's easier to inquire with the District in order to confirm a determination.



Potential Violations

- Explain to them that the Municipality is also subject to violations



NPDES

- Application submitted to District
- Municipality will be copied on correspondence
- County and Municipal Notification Forms
 - Signature or proof of delivery and receipt



Stormwater Review

- District is not PCSM delegated
- Do you typically approve stormwater reviews prior to the District issuing NPDES Permit?



Communicate

- Always check FAQ documents and other guidance if something isn't clear
- Call
- Meetings



Conclusion

- The District is the regulatory agency for Ch. 102, but we don't see everything
- The District is a resource
- Encourage open communication with your residents
- Easier for everyone if the information is clearly communicated up front



Questions?

- www.luzernecd.org

