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Mr. Denis Kelly, Regional Clerk
Regional Municipality of York
Corporate Services Department
York Region Administration Building
17250 Yonge Street, 4th Floor
Newmarket, Ontario
L3Y 6Z1

Attn: Regional Chairman W. Fisch and Members of Regional Council

Dear Mr. Kelly:

Re: Proposed Amendments 73 to 77 to the Official Plan of the Township of King, considered at the Meeting of the Planning and Economic Development Committee of February 6, 2013

We are co-counsel, together with Mr. Michael Melling of Davies Howe Partners LLP, to York Energy Centre LP ("YEC"), and are writing to you with respect to proposed Amendments No. 73 to 77 to the Official Plan of the Township of King ("the Township") ("the Proposed OPAs"). The Proposed OPAs were considered by the Regional Planning and Economic Development Committee ("the Committee") at its meeting of February 6, 2013. I appeared before the Committee to make a deputation concerning YEC's request for a site-specific amendment to OPA 73. Following the deputation and a presentation by staff Planner Mr. Josh Reis, M.C.I.P., R.P.P., the Committee adopted the staff recommendation to approve the Proposed OPAs.

The purpose of this letter is to reiterate YEC's request for a site-specific amendment to OPA 73, which would recognize the existing York Energy Centre and permit power generation facilities on the entirety of the YEC Lands, as set out in Mr. Melling's letter to the Committee dated February 5, 2013 (copy attached). In addition, we wish to provide a response to questions raised by the Committee following our deputation.

We would ask that a copy of this letter be distributed to all members of Regional Council in advance of its consideration of the Proposed OPAs at its meeting of February 21, 2013.

Power Generation Facility is an Expressly Permitted Use

Regional Chairman W. Fisch asked staff to address YEC's position that power generation facilities are currently permitted "as of right" on the YEC Lands, and that OPA 73 will have the effect of stripping YEC of those land use rights. In response, Ms. Heather Konefat, M.C.I.P., R.P.P. provided an explanation about the privatization of power generation in Ontario. The Committee appeared to infer from Ms. Konefat's comments that power generation facilities are not permitted "as of right" on the YEC Lands.

For the purpose of clarification, the Township's Comprehensive Zoning By-law No. 74-53 ("the Zoning By-law") expressly permits all public uses, including power generation facilities, on all lands within the Township. The York Energy Centre is clearly permitted "as of right" on the YEC Lands. The ambiguity to which Ms. Konefat alluded is that the Zoning By-law only refers to public uses that are operated by public agencies, and the York Energy Centre was proposed to be operated by a private corporation.

By letter dated October 31, 2008, Mr. Melling provided a legal opinion to the Township, which concluded that the proposed York Energy Centre was permitted by the Region's 1994 Official Plan, the Township's Official Plan, and the Zoning By-law, notwithstanding that it would be operated by a private corporation.

In a Report dated January 19, 2009, Township staff advised that the Township agreed that a power generation facility, irrespective of whether it is operated by a public or private corporation, is expressly permitted on the YEC Lands, and that neither an official plan amendment nor a zoning by-law amendment was required in order to permit the York Energy Centre.

We note that on March 12, 2009, Ms. Konefat wrote to Mr. Allan Windrem, M.C.I.P., R.P.P., planning consultant for YEC, to confirm the Region's agreement that an amendment to the Region's Official Plan was not required. A copy of Ms. Konefat's letter is attached.

In summary, we would like to reiterate that:

- Power generation facilities are permitted "as of right" on the YEC Lands, including both the Plant Site and the Accessory Lands;
- The Proposed OPAs provide that new power generation facilities and expansions greater than 5 MW may only be permitted if site-specific official plan and zoning by-law amendments are obtained; and

- If OPA 73 is approved in its current form and implemented in a zoning by-law, the effect will be to downzone the YEC Lands, stripping YEC of its existing land use rights.

Community Benefits

Following our deputation, Regional Councillor J. Taylor, Committee Chair, asked if YEC had provided any community benefits to the Township as part of its proposal to construct the York Energy Centre. This will confirm that YEC has made a significant investment in the Township through provision of community benefits, including:

- Following construction of the York Energy Centre, YEC voluntarily repaved the entire length of Dufferin Street, from Millers Side Road to the York Energy Centre Site, a distance of approximately 1.6 km.
- YEC donated \$50,000.00 to the Holland Marsh District Christian School in support of its HMDCS Capital Campaign to build a new school.
- In order to screen the view of the York Energy Centre from Graham Side Road, YEC installed a berm on the north side of the facility site and planted it with trees.
- YEC donated \$10,000.00 to the local chapter of the Children's Wish Foundation.
- YEC has also sponsored several events in the Township, including the Holland Marsh Soupfest and the Mayor's Annual Golf Tournament.

We trust that this clarifies the issues raised at the February 6 Committee meeting. However, if you have any questions, please do not hesitate to contact Mr. Melling or me.

Yours sincerely,
DAVIES HOWE PARTNERS LLP

Best regards,



Amber Stewart

encls.: As above

copy Mr. Gabriel Szobel
Mr. Michael Melling, Davies Howe Partners
Ms. Heather Konefat
Mr. Allan Windrem, M.C.I.P., R.P.P.
Client



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Please refer to: **Michael Melling**
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File No. 702269

February 5, 2013

By E-Mail Only to regionalclerk@york.ca

Mr. Denis Kelly, Regional Clerk
Regional Municipality of York
Corporate Services Department
York Region Administration Building
17250 Yonge Street, 4th Floor
Newmarket, Ontario
L3Y 6Z1

Attn: Regional Councillor J. Taylor, Chair, and Members of the Planning and Economic Development Committee

Dear Mr. Kelly:

**Re: Deputation Request on behalf of York Energy Centre LP
Planning and Economic Development Committee
February 6, 2013
D2 – Amendments 73 to 77 to the Official Plan of the Township of King**

We are co-counsel, together with Amber Stewart of Amber Stewart Law, to York Energy Centre LP ("YEC"), and are writing to you with respect to the Report of the Planning and Economic Development Committee dated January 24, 2013 ("the Staff Report") regarding proposed Amendments No. 73 to 77 to the Official Plan of the Township of King ("the Township") ("the Proposed OPAs"). We would ask that a copy of this letter be distributed to all members of the Planning and Economic Development Committee in advance of its meeting of February 6, 2013.

By way of background, YEC is the owner of lands legally described as Part of Lot 9, Concession 2 Old Survey King ("the Plant Site"), in the Township. YEC, through related corporations, also owns three properties abutting the Plant Site: one to the north and two to the west ("the Accessory Lands") (together with the Plant Site, "the YEC Lands"). A location plan showing the YEC Lands is attached as **Schedule 1**.



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The York Energy Centre is a 400 MW (nominal) natural gas-fired power generation facility, which is located on the Plant Site. Construction of the facility was completed in the spring of 2012, and it is now fully operational.

On October 31, 2012, we wrote to the Region to summarize our client's concerns regarding the Proposed OPAs and to request a meeting with planning staff. Our client's planning consultant, Mr. Allan Windrem, met with staff in advance of the preparation of the Staff Report to discuss our concerns. To date, we have not received a written response to our correspondence, nor were our concerns addressed in detail in the Staff Report. While we regret that the Region has declined to incorporate our comments into the Proposed OPAs, we continue to be open to pursuing a constructive dialogue with staff.

The purpose of this letter is to provide detailed comments regarding the Proposed OPAs. We note that only Proposed OPA 73 applies to the YEC Lands. While we have significant site-specific concerns that relate exclusively to OPA 73, we also have concerns that are general in nature and apply to all of the Proposed OPAs. For ease of reference, all numeric references in the below comments will correspond to the numeric sequence in OPA 73.

Site-Specific Concerns

Our client's primary concern is that OPA 73 proposes to strip YEC of existing land use rights. At page 6, the Staff Report indicates that Regional staff's "preliminary assessment" of OPA 73 is that it "would not appear" to prohibit power generation facilities on the Accessory Lands. We disagree with this assessment. The current, in-force Official Plan for the Township, and the Township's Comprehensive Zoning By-law No. 74-53 ("the Zoning By-law"), permit power generation facilities on all lands in the Township. As such, a power generation facility is an expressly permitted use on both the Plant Site and the Accessory Lands.

If OPA 73 is approved in its current form, and an implementing zoning by-law is enacted, a power generation facility would be *prima facie* prohibited. The use would only be permitted if an amendment to both the Official Plan and Zoning By-law were obtained. The effect would be to make the York Energy Centre a legal non-conforming use, and to downzone the YEC Lands.

This is simply not appropriate land use planning, and it is not acceptable to our client. The York Energy Centre is an existing use, which was selected by the Ontario Power Authority through a statutory bid process, and approved by the Province pursuant to the *Environmental Assessment Act*, R.S.O. 1990, c. E.18



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("the EAA"). The facility conforms with all applicable policy documents, including the *Greenbelt Plan, 2005* ("the *Greenbelt Plan*"), the Region's Official Plan, and the Township's Official Plan. It also complies with the Township's Zoning By-law.

Construction of the York Energy Centre was recently completed, and commercial operations began in 2012. In short, the York Energy Centre is a new facility that is part of the long-term power planning vision of the Province, and it's in the early years of its life cycle.

As such, it would be totally inappropriate to render the facility a legal non-conforming use. Given that the York Energy Centre is a long-term use, as opposed to a use that is intended to be phased out over time, it should be expressly recognized in the Official Plan.

We note that at page 6 of the Staff Report, staff indicate that the Plant Site is exempt from OPA 73 by virtue of Ontario Regulation 305/10 ("the Regulation"). In our view, the Regulation is irrelevant to the consideration of whether OPA 73 is appropriate and represents good land use planning. And, the York Energy Centre should be recognized in OPA 73, notwithstanding that the Plant Site is currently not subject to it.

In addition, as set out in the Staff Report, OPA 73 does apply to the Accessory Lands, because they are not subject to the Regulation. In our view, it would also be appropriate to permit power generation facilities on the Accessory Lands. YEC acquired the Accessory Lands for the purpose of, among other things, providing additional lands that may be required for accessory uses, expansion, or upgrading of the York Energy Centre in the future. The acquisition of additional surplus lands is a common practice when constructing infrastructure facilities of this nature. As such, these lands are an integral part of the York Energy Centre.

Because the Accessory Lands are adjacent to the Plant Site, they would be the most logical location for any ancillary or accessory uses, and possibly the only functional location. In addition, using the Accessory Lands would have the effect of concentrating the location of power generation facilities in the Township, which is in the public interest and most appropriate from a planning perspective.

In our view, the Township should incorporate site-specific policies into OPA 73 that recognize a power generation facility as a permitted use on the YEC Lands. This approach would clarify that the York Energy Centre is a planned, appropriate and approved use which is intended to remain indefinitely, and it would recognize the Accessory Lands as the most appropriate location for any accessory uses to the



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York Energy Centre. This approach would also be consistent with policy 5(11)(b)(vii) of OPA 73, which requires power generation facilities to have a site-specific zone classification in the implementing zoning by-law.

We prepared a draft Official Plan Amendment to this effect, a copy of which is attached hereto as **Schedule 2**, which our client respectfully requests be incorporated into the proposed OPA 73 by Council.

General Concerns

i. Ambiguity with respect to large facilities

OPA 73 is ambiguous with respect to the nature and size of facility that may be permitted within the Township. Although policy 5(11)(b)(v) contemplates that new power generation facilities and expansions may be permitted subject to a site-specific amendment to the Official Plan and Zoning By-law, the introductory paragraph of policy 5(11) states as follows:

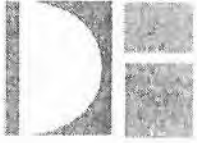
It is the intent of the Township that only small scale, rural or locally oriented power generation facilities shall be located on lands within the Greenbelt Plan.

However, OPA 73 does not include any definition or provide any criteria to provide guidance regarding the size or type of facility that would be considered "small scale, rural, or locally oriented".

Even more important, the introductory paragraph is inappropriate. The Ontario Power Authority ("the OPA"), a provincial government agency, is responsible for long-term power planning in Ontario. The OPA mandates the size, type, and general location of power generation facilities needed to serve the province. In our view, an Official Plan should not impose blanket restrictions on the size or type of facility that may be permitted within the Township.

ii. Prohibition of power plants in certain areas

Policy 5(11)(b)(iii) provides that power generation facilities are prohibited on all lands that "(i) are designated Natural Core Area or Natural Linkage Area or are identified as Key Natural Heritage Features or Key Hydrological Features within the Oak Ridges Moraine Conservation Plan Area and (ii) are within Natural Heritage System or Holland Marsh Specialty Crop Areas of the Greenbelt Plan".



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This policy is inappropriate, as it is more restrictive than the infrastructure policies contained in the *Greenbelt Plan*. Policy 4.2.1 of the *Greenbelt Plan* permits infrastructure facilities to be located on lands subject to the Natural Heritage System provided that certain locational criteria are met. For example, policy 4.2.1 (2)(a) provides that the amount of the Natural Heritage System occupied by infrastructure should be minimized wherever possible, and policy 4.2.1 (2)(e) provides that negative impacts and disturbance to features or functions should be minimized.

The Staff Report states at page 5 that infrastructure policies in municipal Official Plans may be more restrictive than the *Greenbelt Plan* and the *Oak Ridges Moraine Conservation Plan* ("the ORMCP"). However, the Staff Report does not provide any planning rationale or justification for including more restrictive policies. In our view, it would be appropriate to include more flexible policies in OPA 73. A flexible approach would recognize that it may be necessary or desirable to locate infrastructure within sensitive land uses, and that this can be appropriate in certain circumstances.

We also note that at page 4 of the Staff Report, staff have identified that the prohibition against power generation facilities on sensitive lands would apply to approximately 71% of lands within the Township, not including additional buffers required around sensitive land uses. The Staff Report goes on to state that "*staff are satisfied that sufficient lands would remain to provide future opportunities for power generation facilities in the Township of King, should there be such a need*". However, no detail or background study is provided to substantiate this claim, including an inventory of lands that remain that could potentially accommodate a power generation facility.

Given the lack of planning rationale to justify the inclusion of more restrictive policies, policy 5(11)(b)(iii) should be amended to be consistent with the infrastructure policies in the *Greenbelt Plan* and the ORMCP.

iii. *Cross-application of the ORMCP to Greenbelt Lands*

Policy 5(11)(b)(iv) provides that power generation facilities located within the Greenbelt must comply with the development and site alteration provisions and setbacks set out in the Minimum Areas of Influence and Minimum Vegetation Protection Zones Table of the ORMCP. This policy could lead to confusion, as it references requirements that are found in an external policy document.



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In addition, the effect is to render policies in the ORMCP applicable to lands that are subject to the *Greenbelt Plan*. This cross-application of the ORMCP to Greenbelt lands could also lead to ambiguity in policy interpretation, particularly if a conflict exists between the *Greenbelt Plan* and the ORMCP.

It would be preferable to incorporate all applicable policies into OPA 73, so that it is a stand-alone document.

iv. Requirement to establish local need

Policy 5(11)(b)(v) provides that new power generation facilities greater than or equal to 5 MW, or expansions greater than 5 MW, may be permitted by site-specific amendments to the Official Plan and Zoning By-law. It also enumerates the studies and reports that must be filed with any site-specific amendment application. Pursuant to item #1, a planning justification report must, among other things, outline the "local need" for the facility or expansion. This policy is ambiguous, as it does not indicate what constitutes "local need".

More importantly, it is totally inappropriate to require an assessment of "need" for a power generation facility. First, it is impossible to trace the path of electricity once it is generated and deposited into the power grid. Once generated, electricity could serve any area that is connected to the grid. As such, it would be impossible to specifically define the area that is served by a power generation facility, notwithstanding the establishment of "need" for the facility.

Second, the issue of "need" for power generation facilities falls within the purview of the Province – not the Township. As set out above, the OPA is the agency responsible for identifying when and where additional power is needed. It would be very difficult for a land use planner to establish local need for a power generation facility, and it would be outside the scope of a municipality's authority to purport to assess need.

v. Test of "no adverse effects"

Policy 5(11)(b)(v)(2) provides that technical studies must demonstrate "no adverse effects on existing or proposed development with regard to the natural environment, noise and vibration, plume, air quality and affected airshed, natural and cultural heritage, water resources, shadows, viewsheds and rural character, agriculture, land use compatibility, public health, safety and risk, soils stability and geotechnical engineering".



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In our view, the test of “no adverse effects” is not appropriate, because it is designed to ensure that a power generation facility could never be approved. It is an impossible test to meet. The development of any power generation facility – in fact, any development whatsoever – would have some adverse impact on the enumerated elements such as the natural environment. The policy should be amended to reflect the correct test for approval of a site-specific amendment application, i.e., that technical studies should demonstrate no unacceptable adverse impact, and that a proposal represents good land use planning.

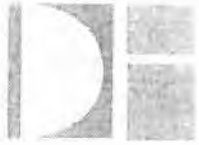
And, we note that power generation facilities are subject to rigorous evaluation under provincial approvals processes, such as environmental assessments under the EAA. Proponents are required to prepare detailed technical studies that address the impact of a proposed facility, including on the natural environment.

vi. Insufficient criteria to guide development of power generation facilities

At page 3, the Staff Report states that the Proposed Amendments provide “locational criteria and policy guidance” for the development of new power generation facilities in the Township. And on page 7, staff conclude that the Proposed Amendments represent good planning because they “outline a clear process and define criteria to guide the development of power generation facilities” in the Township.

In our view, OPA 73 does not provide sufficient criteria or guidance with respect to the development of power generation facilities. For example:

- As set out above, OPA 73 is ambiguous with respect to whether certain types and sizes of power generation facility, such as larger facilities, may be permitted in the Township, and if so, where they may be located.
- As noted above, policy 5(11)(b)(iv) prohibits power generation facilities in certain sensitive lands, such as the Natural Heritage System. In addition, policy 5(11)(b)(vi) provides that certain small power generation facilities may be permitted in lands designated Industrial within a Settlement Area. However, OPA 73 does not include any other criteria to assist with the identification of appropriate locations for a power generation facility – particularly a larger facility – within the Township.
- Policy 5(11)(b)(v)(4) requires the submission of a site design and development plan that “demonstrates that the scale of the facility or expansion is compatible with the rural character of the area”, and which



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incorporates appropriate buffering and design features to mitigate views of the site. This is virtually the only policy that may assist proponents and members of the public in understanding how a site-specific application will be evaluated by the Township.

- Moreover, the assistance provided in the above-referenced policy is limited. Although it establishes a test of compatibility with the rural character of the area, it does not enumerate any criteria or factors identifying how to assess compatibility. Appropriate criteria should be included, such as massing of buildings, building heights, continuation of landscape features, street patterns, lot configuration, etc.

In summary, OPA 73 should be amended to include comprehensive policies that assist proponents, public agencies, and members of the public in understanding what types of facilities are permitted, where they should be located, and how site-specific amendment applications will be evaluated by the Township. These amendments would add certainty and clarity to the land use planning process, which is in the public interest.

vii. Broad discretion of the Township to require studies

OPA 73 affords unlimited discretion of the Township to require the submission of studies and reports as part of a site-specific amendment application. Policy 5(11)(b)(v) identifies numerous issues that must be addressed and technical reports that must be submitted. In addition, item #7 requires the submission of "any other studies required by the Township".

This policy would permit the Township to require the submission of any study, even if that study is not required as part of the rigorous provincial approvals process. Once again, this policy should be amended to set out a comprehensive and complete list of technical studies and reports that could potentially be required. This would ensure that only reasonably required studies could be requested, and would afford certainty to the land use planning process.

viii. Discretion to require provincial bid documents

Policy 5(11)(b)(x) also purports to authorize the Township to require an applicant to provide any documents prepared to meet the requirements of the Province, including under the *Environmental Assessment Act*, the *Environmental Protection Act*, and the *Ontario Water Resources Act*. Again, this policy provides unlimited discretion of the Township to request all documents, notwithstanding that some documents contain confidential information of a sensitive and proprietary nature,



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which is not otherwise in the public realm. The Township's right to participate in the provincial approvals process is limited; it has no authority to request these documents, and they are protected from public disclosure through privacy legislation. In our view, this policy is inappropriate and should be deleted.

Conclusion

In summary, YEC requests the following:

1. That the Region incorporate our proposed Official Plan Amendment into OPA 73, which would recognize the existing York Energy Centre and permit power generation facilities on the entirety of the YEC Lands; or
2. In the alternative, that the Region exempt the entirety of the YEC Lands from the application of OPA 73.

Thank you for your consideration of this submission. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

DAVIES HOWE PARTNERS LLP

PM - Michael Melling

MWM:tn

Encls.

copy Mr. Gabriel Szobel
Ms. Amber Stewart, Amber Stewart Law
Ms. Heather Konefat
Mr. Allan Windrem, M.C.I.P., R.P.P.
Client

Schedule 1



Schedule 2

Amendment No. ____ to the Official Plan of the Township of King Planning Area

Background to the Amendment

1. The York Energy Centre is a 400 MW (nominal) natural gas-fired electricity generation facility, which is located on the lands shown on Map 1, attached to this Official Plan Amendment.
2. The York Energy Centre was approved pursuant to O.Reg. 116/01, promulgated under the *Environmental Assessment Act*, R.S.O. 1990, c. E.18.
3. Ontario Regulation 305/10, promulgated pursuant to the *Planning Act*, R.S.O. 1990, c. P.13, prescribes the York Energy Centre as an undertaking that is not subject to the *Planning Act* in accordance with s. 62.0.1 thereof.
4. The purpose of this Official Plan Amendment is to implement a site-specific zone classification recognizing the York Energy Centre, any accessory buildings, structures or uses, and any *ancillary services* as a permitted *power generation facility* on the lands shown on Map 1.

Details of the Amendment

Section 5 of the Official Plan for the Township of King Planning Area is hereby amended by adding the following subsection:

“5(12) York Energy Centre”

1. Notwithstanding s. 5(11) of the Official Plan, the following uses are permitted on the lands shown on Map 1, attached hereto:
 - a. A *power generation facility*;
 - b. Accessory buildings, structures, or uses incidental to the operation of a *power generation facility*; and
 - c. *Ancillary services* incidental to the operation of a *power generation facility*.
2. The *power generation facility*, accessory buildings, structures or uses, and *ancillary services* must be operated in accordance with any approvals granted pursuant to provincial legislation, including the:
 - a. *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B;
 - b. *Electricity Act*, 1998, S.O. 1998, c. 15, Sched. A;
 - c. *Environmental Assessment Act*, R.S.O. 1990, c. E.18;

Schedule 2

- d. *Environmental Protection Act*, R.S.O. 1990, c. E.19; and
 - e. *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.
3. Notwithstanding s. 5(11) of the Official Plan, an expansion to the *power generation facility* greater than 5 MW will not require an amendment to the Official Plan or Zoning By-law.
 4. Notwithstanding s. 5(11) of the Official Plan, the YEC Lands are not designated as a site plan control area, and are not subject to s. 41 of the *Planning Act*.
 5. Notwithstanding that the YEC Lands are not subject to site plan control, in the event of a proposed expansion to the *power generation facility*, the proponent shall submit plans and drawings to the Township of King for its review, showing:
 - a. the location of all buildings and structures to be erected, and the location of all facilities and works to be provided in conjunction therewith;
 - b. elevations and cross-section views for each building to be erected;
 - c. facilities to provide access to and egress from the lands, and facilities for site circulation;
 - d. facilities for the lighting of the lands or of any buildings or structures;
 - e. facilities for the landscaping of the lands or the protection of adjoining lands;
 - f. facilities for the storage of garbage and other waste materials;
 - g. the proposed grading of the lands; and
 - h. facilities for the disposal of storm, surface, and waste water from the lands and from any buildings or structures thereon.