



**Floyd County**  
2524 Corydon Pike | New Albany, IN 47150

# Stormwater Ordinance

**October 2019**  
**Revised 2024**

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# 1. CONSTRUCTION SITE RUNOFF

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## 1.1 TITLE, PURPOSE AND GENERAL PROVISIONS

### 1.1.1 Title

This Article shall be known as the "Stormwater Ordinance" of Floyd County, Indiana and may be so cited.

### 1.1.2 Jurisdiction, Alternatives, and Exemptions

#### 1.1.2.1 Jurisdiction

This Article shall govern all properties and controlled activities within the jurisdictional boundaries of unincorporated Floyd County and all properties that are served by City of New Albany Plan Commission under the two-mile fringe authority.

#### 1.1.2.2 Alternatives

There are two alternatives for permit application and processing procedures as described by the following:

##### 1.1.2.2.1 For Projects Located within the Floyd County's MS4 Areas

The project site owner shall submit an application for a stormwater management permit to Floyd County. The application will include the information specified in Sections 3 and 4 of this Ordinance. Two copies of each application must be submitted. Additionally, the County does require digital submission of construction plans in an approved format. The copies will be reviewed by departments within the County.

Once all comments have been compiled from the departments and the SWCD, the project will be placed on the agenda of the next scheduled meeting of the Plan Commission. The County will furnish the applicant with a complete list of comments and objections to the plans and supporting documentation submitted by the applicant, at least 10 days prior to the scheduled meeting.

Within 10 days after the meeting, the County will either issue a permit, or request modification to the construction plans.

##### 1.1.2.2.2 For Projects Located Only Partially within the Floyd County's MS4 Area

The project site owner must comply with the requirements of this Ordinance and may also be required to comply with the Construction Stormwater General Permit (CSGP) and/or another MS4 community's construction site control Ordinance.

#### 1.1.2.3 Exemptions

The following development activities are exempt from the provisions of this Ordinance:

- Additions to or modifications of existing detached, single-family dwellings;
- Development of individual lots which are not part of a larger development and if the disturbed land area of the project is less than one (1) acre;



- Multi-lot development where the individual that owns the parcels of platted lots does not make improvements and only sells the lots; however, upon sale of the lots the lot operator of one or more of the lots must follow the provisions of this ordinance;
- Forest harvesting activities (not associated with development site preparation work) including the actual area where the forest product is being cut, including skid roads. However, specific operations are not considered exempt and must be considered when estimating land disturbance. These operations include staging areas, access roads, and haul roads.
- Stormwater discharges associated with oil and gas exploration, production, processing and treatment operations, or transmission facilities under 40 CFR 122.26
- Agricultural land-disturbing activities including operations for the production of agricultural crops, pasture renovation and establishment, and construction of agricultural conservation practices. However, the construction of the following infrastructure is not exempt:
  - Barns
  - Out buildings
  - Roads associated with infrastructure
    - Applies primarily to roads that are being constructed to provide access to a facility, barn, out building, etc.
  - Waste lagoons and facilities
  - Lakes and ponds
  - Constructed wetlands
  - Other infrastructure

NOTE: These exemptions apply only to permitting procedures under this Article and do not, necessarily, apply to any discharge of sediment or other form of water pollution that may leave a site. Such discharges may, in fact, constitute prohibited illicit discharges.

1.1.2.4 This ordinance is required by the Indiana Department of Environmental Management's Construction Stormwater General Permit (CSGP). The CSGP applies to all construction activity that results in the disturbances of one (1) acre or more of land area. Areas smaller than one (1) acre are also regulated under the CSGP if the project is part of a larger common plan of development or sale.



## 1.2 RECITALS

WHEREAS,

uncontrolled stormwater drainage/discharge may have a significant adverse impact on the health, safety and welfare of the citizens of Floyd County, Indiana. More specifically, surface water runoff can carry pollutants and sediment pollution into receiving waters. The potential impacts include:

- Changing natural ecosystems through the destruction of habitat and the loss of plant and animal life.
- Posing significant health risks through an increase in bacteria and toxic materials.
- Accelerating eutrophication of receiving waters by introducing excessive nutrients.
- Increasing metal deposits creating toxicity for aquatic life.
- Reducing oxygen levels because of oil, grease and organic matter.
- Affecting animal and plant life, adversely, due to changing temperatures of receiving waters.
- Accumulation of excess sediment and/or debris that limits the function of flood control infrastructure.

WHEREAS,

adverse water quantity and quality consequences described above may result in substantial economic losses. Potential losses include, but are not limited to, increased wastewater treatment costs, diminished property values, as well as state and federal fines associated with water quality violations.

WHEREAS,

every parcel of property, both private and public, either uses or benefits from Floyd County's stormwater system.

WHEREAS,

current and anticipated growth will contribute to and increase the need for an effective stormwater system.



## 1.3 OBJECTIVES

- 1.3.1 Protection of the short-term and long-term public health, safety, and general welfare. This objective will be achieved by:
- Providing for regulation and management of Floyd County's stormwater system, including public and private facilities in its service area.
  - Protecting and preserving water quality and fish and wildlife habitat within Floyd County and in downstream receiving waters.
  - Protecting those downstream from water quality impairment.
- 1.3.2 Compliance with state and federal stormwater regulations developed pursuant to the Clean Water Act Amendments of 1987 and subsequent amendments through 2001. As well as compliance with the Indiana Department of Environmental Management's (IDEM) Municipal Separate Storm Sewer System General Permit (MS4GP) and the Construction Stormwater General Permit (CSGP). The objectives of these regulations include:
- Managing the quality of water discharged to the municipal stormwater system by controlling the contribution of pollutants associated with residential, commercial and industrial activity.
  - Controlling stormwater pollution caused by the suspension and transport of soils and other sediments.
  - Protecting or enhancing stormwater quality to a level of "designated use" and minimize the impacts from new development and/or areas of significant redevelopment.
- 1.3.3 To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to maximize beneficial use without increasing flood hazard potential or diminishing the quality of the natural stormwater resources.
- 1.3.4 Ensure the use of the public and private stormwater management system and assure that it will not result in excessive maintenance costs.
- 1.3.5 Encourage the use of natural and aesthetically pleasing designs that maximize preservation of natural areas.
- 1.3.6 Control the discharge of sediment and construction site materials into the stormwater system.
- 1.3.7 Guide the construction of stormwater management facilities by developing comprehensive master plans to address stormwater quantity and quality.
- 1.3.8 Encourage preservation of flood plains, flood ways and open spaces to protect and benefit the community's quality of life and natural resources.



## 1.4 DEFINITIONS

The definitions hereinafter set forth are in addition to those appearing elsewhere in Floyd County Ordinance 1967-4, all of which definitions shall be applicable in the interpretation and enforcement of this Article.

**Equivalent Residential Unit (ERU)** – a billing unit for the amount of stormwater runoff from the impervious area of the average-sized residential parcel. One (1) ERU equals three thousand seven hundred (3,700) square feet of impervious surface.

**Perimeter/Outfall Protection Permit** - a legal document that allows the permit holder to break ground or disturb soil in order to install sediment control practices at the hydrologic perimeter outfall(s) of a construction site. This document does not give permission to the permit holder to break ground or disturb soil on an entire construction site, as is granted through the issuance of a Stormwater Quality Management Permit.

**Floyd County** - means and includes, for purposes of this Article, Floyd County, Indiana, acting through its duly appointed, qualified, and acting advisory plan commission, together with the officers, employees, attorneys, and designees of said commission.

**Person** - except to the extent exempted from this Article, any individual, partnership, firm, association, joint venture, public or Private Corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

**Responsible Party** - the person causing or permitting a prohibited act in violation of this Article, or the person in control of, or having the right to control, the property or premises from which a prohibited act has occurred.

**Stormwater Quality Management Permit** - a legal document that allows the permit holder to break ground or disturb soil on an entire construction site within the provisions of an Erosion Protection and Sediment Control Plan and a Stormwater Pollution Prevention Plan. The permit addresses erosion prevention, sediment control and non-sediment pollution prevention activities. The plans for this permit and the Perimeter/Outfall Protection Permit are approved simultaneously. However, the Stormwater Quality Management Permit is only issued after the provisions of the Perimeter/Outfall Protection Permit have been implemented, inspected and accepted. Approval of plans for a Stormwater Quality Management Permit does not constitute issuance of the permit.

**Qualified Professional Inspector** - a person who has been certified by Floyd County to be qualified to inspect stormwater quality management activities and oversee maintenance activities.

**Construction Activity** – Land-disturbing activities and land-disturbing activities associated with the construction of infrastructure and structures. This term does not include routine ditch or road maintenance or minor landscaping projects.

**Land-Disturbing Activity** – Any manmade change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting, and grading.





**Larger Common Plan of Development or Sale** – A plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name, such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased or other construction activity by a single entity for its own use.

## 1.5 AUTHORITY AND RIGHT-OF-ENTRY

Floyd County shall have right-of-entry on or upon the property of any Person subject to this Article and any permit document issued hereunder. The County shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this Article.

- 1.5.1 Where a property, site, or facility has security measures in force which require proper identification and clearance before entry into its premises.
- 1.5.2 The Responsible Party shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, Floyd County will be permitted to enter without delay.
- 1.5.3 Access by Floyd County shall include the right to erect upon the property such devices as are necessary to conduct sampling and/or metering of stormwater operations or discharges.
- 1.5.4 Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly upon request and at no cost to Floyd County.
- 1.5.5 Floyd County may inspect the facilities of any Person in order to ensure compliance with this Article, except in an emergency relating directly to the health, safety, and welfare of the public. An inspection shall be made only after reasonable notice to, and consent of, the responsible party. However, if such consent is refused, denied, or not promptly tendered, Floyd County, may seek appropriate judicial orders permitting such entry.
- 1.5.6 Floyd County has the right to determine and impose inspection schedules necessary to enforce the provisions of this Article. Inspections may include, but are not limited to, the following:
  - An initial inspection prior to stormwater management approval plan;
  - An inspection prior to burial of any underground drainage structure;
  - Erosion control inspections as necessary to ensure effective control of sediment prior to discharge to the municipal separate sewer system;
  - A final inspection when all work, including installation of stormwater management facilities, have been completed; and
  - An inspection to determine the effectiveness or operational viability of a permanent or long-term stormwater quality management practice.



## 1.6 Land Disturbance Calculation and Project Applicability

Projects are regulated where land disturbance is projected to be greater than or equal to one (1) acre. The land disturbance must be calculated for all proposed land-disturbing activities that will be associated with a project site. Land disturbance includes grading, soil disposal, and stockpiling that exposes soil material to stormwater. Activities associated with land disturbance include grading, the installation of infrastructure (i.e. roads, stormwater drainage systems, etc.), utility work, and construction within developments and on individual building lots.

### 1.6.1 Land Disturbance Calculation on Multi-lot Projects

The project site owner should estimate all land-disturbing activities that will be associated with the overall project by adding the total projected area of land disturbance including all site improvements, such as roads, utilities and/or common areas and expected land disturbance for each individual lot based on the criteria below:

- Single Family Residential Lots within a multi-lot project:
  - Size of the lot is one half (0.5) acre or more – the land disturbance is assumed to be one half (0.5 acre).
  - Size of the lot is less than one half (0.5) acre – the land disturbance is assumed to be the actual size of the lot.
- Commercial, Industrial, and multi-family dwellings: land disturbance on each individual lot is estimated to be:
  - To estimate the lot size for purposes of initial determinations of disturbance use the actual size of the lot.
  - Once each individual lot is prepared to be developed, a minimum of one (1) acre disturbed must be used for each lot. To further clarify, all out lots associated with a multi-lot commercial project must obtain their own permit coverage regardless of lot size. This determination has been made based on the overall development is a larger common plan of development.

### 1.6.2 Applicability of Specific Project Types and Operations

#### 1.6.2.1 Strip Developments

A strip development is defined as a multi-lot project that fronts on an existing road. A strip development is considered one Project Site. Strip developments may or may not include land-disturbing activities associated with grading or the installation of infrastructure. Strip developments that include initial grading and/or the installation of infrastructure must include the projected land disturbance for these operations plus the projected land disturbance for each lot. Strip development that will not require any initial grading or installation of infrastructure are still required to obtain a permit provided that the projected land disturbance of each individual lot combined is one acre or more.

#### 1.6.2.2 Single Family Residences

A single-family residential dwelling that is not part of a multi-lot project or a larger common plan of development or sale is excluded from filing for a permit if the land disturbance is less than one acre. Land disturbance for single family residential lots is limited to those activities associated with construction of a dwelling/garage, driveways, septic system, and others essential to the residence. Land-disturbing activities that are not considered essential include, but are not limited to ponds, out buildings, etc. These types of activities will require submittal for a permit based on the one-acre land disturbance threshold.



### 1.6.2.3 Off-site Construction Activities that Provide Services to a Project

Many projects require the construction or installation of special services for the project. These activities include, but are not limited to, the construction of road extensions, storm/sanitary sewers, water, and other utilities. These activities are required to be permitted under the CSGP. The Stormwater Pollution Prevention Plan for the overall project should include off-site activities if the Project Site Owner is required to construct or manage the construction of these activities.

## 1.7 PERIMETER CONTROL PLAN

- 1.7.1 The Perimeter Control Plan shall include measures to prevent sediment from leaving the site during initial disturbance activities and prior to temporary or permanent erosion prevention and/or sediment control practices.
- 1.7.2 The Perimeter Control Plan shall address downstream outfall points, while the Erosion Protection and Sediment Control Plan defines site-wide erosion prevention and sediment control measures.
- 1.7.3 The Perimeter Control Plan shall address prevention of sediment deposition on properties adjacent to the project site. Utilizing well-vegetated buffer strips along lower perimeters, sediment barriers, filters, diversion berms, sediment basins or other means accepted by Floyd County may all be employed or combined to adequately protect adjacent properties.
- 1.7.4 In selection of sediment control measures, the type of flow, site terrain, soil type, and other relevant factors shall be considered. Buffer strips may only be utilized for sheet flow and must be at least twenty-five (25) feet in width. If ineffective, a single sediment control device shall be supplemented with additional perimeter controls.
- 1.7.5 The Perimeter Control Plan shall address stabilizing construction entrances/exits to reduce the amount of sediment transported onto nearby roadways, and potentially into waterways. Where possible, traffic entering a public right-of-way, alley, sidewalk, or parking lot, shall first pass over a stabilized stone pad. This pad shall be at least six (6) inches thick, one hundred and fifty (150) feet long, and contain two (2) to three (3)-inch crushed coarse graded stone. If operating under seasonally wet conditions and/or soft soils, filter fabric shall underlie the stabilized stone pad.
- 1.7.6 The Perimeter Control Plan shall address protection of outlets such as pipes, drains, culverts, conduits or channels by significantly minimizing erosion and sedimentation through reduction of the velocity of flows from the project site. The placement of rock, grouted rip- rap, or concrete rubble at the outlet of a pipe to prevent scour of the soil around the culvert mouth caused by the high pipe flow velocities or similar measures are encouraged.
- 1.7.7 For construction sites less than one (1) acre or that may not meet the requirements for an Erosion Protection and Sediment Control Plan, a Perimeter Control Plan may be required if deemed necessary.

## 1.8 ACCEPTANCE

- 1.8.1 Site inspection and approval by Floyd County must be received before any land disturbance or grading may proceed.



- 1.8.2 Floyd County shall make inspections of the site prior to the acceptance of the perimeter control plan. Inspection will be performed within seven (7) days after the submission of the plan and installation of the perimeter protection devices but before any disturbance or clearing has been performed. The inspector shall either approve the portion of work completed or shall advise the permittee as to the noncompliance with the perimeter protection plan as approved.
- 1.8.3 Inspection of perimeter protection BMPs shall consist of a visual check list for each type of BMP, to ensure that each was designed and installed according to site specific conditions.
- 1.8.4 Acceptance of the perimeter control plan and inspection of the appropriate best management practices (BMPs) shall compensate for and address any seasonal variations which may hinder the effectiveness of the BMPs. Seasonal variations may include changes in flow, hydrology, temperature, and vegetation. BMPs shall be designed according to these variations and appropriately to maintain a level of service.
- 1.8.5 The Indiana Department of Natural Resource's guidance documents, including the *Handbook for Erosion Control in Developing Areas* (1985) or the *Indiana Stormwater Quality Manual*, should be reviewed and considered when preparing the Perimeter Control Plan.
- 1.8.6 Floyd County reserves the right to develop or adopt other guidance documents to serve as design and implementation standards.

## 1.9 STORMWATER QUALITY MANAGEMENT PERMIT

- 1.9.1 Floyd County requires that all non-exempt development or redevelopment activities obtain a Stormwater Quality Management Permit.
- 1.9.2 A Stormwater Quality Management Permit must be issued prior to the initiation of any land disturbing activities to ensure the protection of the County's stormwater system, public health, water quality and aquatic life.
- 1.9.3 It will be the responsibility of the project site owner to complete a stormwater permit application and to ensure that a sufficient construction plan, including a Stormwater Pollution Prevention Plan (SWPPP), is completed and submitted to the Stormwater Board in accordance with this Article.
- 1.9.4 It will be the responsibility of the project site owner to ensure compliance with this Article and implementation of the SWPPP during the construction activity, and to notify the County of project termination via a Notice of Termination (NOT) letter upon completion and stabilization of the site. However, all persons engaging in construction and land disturbing activities on a permitted project site must comply with the requirements of this Article.



1.9.5 Submissions for a Stormwater Quality Management Permit application must include but not limited to (1) a Notice of Intent letter with proof of publication of a Public Notice, (2) Construction Plans, (3) a Stormwater Pollution Prevention Plan, and (4) any other necessary information or documentation requested by the County.

1.9.6 The Notice of Intent (NOI) letter is a standard form that includes the following information:

- Applicant Name,
- Applicant Mailing address,
- Location of the project site for which the notification is submitted,
- The project site owner's name, address, telephone number, e-mail address (if available), and
- Ownership status as federal, state, public, private or other entity.
- Contact information (if different than project site owner) including person's name, company name, address, e-mail address (if available) and telephone number.
- A brief description of the construction project, including a statement of the total acreage of the project site. Total acreage claimed in the NOI letter shall be consistent with the acreage covered in the construction plan.
- Estimated dates for initiation and completion of construction activities.
- The latitude and longitude of the approximate center of the project site to the nearest fifteen (15) seconds, and the nearest quarter section, township, range, and civil township in which the project site is located.
- Total impervious surface area, in square feet, of the final project site including structures, roads, parking lots, and other similar improvements.
- The number of acres to be involved in the construction activities.

1.9.7 Proof of publication of a Public Notice in a newspaper of general circulation in Floyd County for at least one day notifying the public that construction activities are to commence, and that states the following:

"(Company name, address) is submitting an NOI letter to notify Floyd County Stormwater Department and the Indiana Department of Environmental Management of our intent to comply with the requirements the Construction Site Runoff Control Ordinance of Floyd County, Indiana, and the requirements of the CSGP and the MS4GP to discharge stormwater from construction activities for the following project: (name of the construction project, address of the location of the construction project). Runoff from the project site will discharge to stream(s) receiving the discharges."

1.9.8 As applicable, a list of all MS4 areas designated under the MS4GP in which the project site lies together with a signed certification that:

- The stormwater quality measures included in the construction plan comply with the requirements of this Article and that the SWPPP complies with all applicable federal, state, and local stormwater requirements;
- The measures required by this Article will be implemented in accordance with the SWPPP;
- Stormwater quality measures beyond those specified in the Stormwater Pollution Prevention Plan will be implemented during the life of the permit, if necessary, to comply with this Article; and



- Installation and maintenance of stormwater quality measures will be inspected by trained individuals

1.9.9 The name of the receiving water(s) or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

1.9.10 The NOI letter must be signed by a Qualified Professional.

1.9.11 The NOI Letter must be submitted to the Floyd County Stormwater Department and Plan Commission at the following location/address:

Pine View Government Center  
Attn: Floyd County Stormwater Department  
2524 Corydon Pike Suite 201  
New Albany, IN 47150

Pine View Government Center  
Attn: Floyd County Plan Commission  
2524 Corydon Pike Suite 203  
New Albany, IN 47150

1.9.12 Construction plan sheets and an accompanying narrative report shall be submitted describing existing and proposed site conditions, including the following:

1.9.13 Project narrative and supporting documents, including the following information:

- An index indicating the location in the construction plans of all information required by this subsection.
- Description of the nature and purpose of the project.
- Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.
- Soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
- General construction sequence of how the project site will be built, including phases of construction.
- 14-Digit Watershed Hydrologic Unit Code (HUC).
- A reduced plat or project site map showing the lot numbers, lot boundaries, and road layout and names. The reduced map must be legible and submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site.
- A general site plan exhibit with the proposed construction superimposed on an ortho-aerial map at a scale of 1" = 100'. The exhibit should provide two (2)-foot contour information and include all roads and buildings within a minimum five hundred (500)-foot radius beyond the project boundaries.
- Identification of any other state or federal water quality permits that are required for construction activities associated with the owner's project site.



- Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map or county or municipal road map.

1.9.14 An existing project site layout that must include but not limited to the following information:

- Location, name and normal water level of all wetlands, lakes, ponds and water courses on, or adjacent to, the project site.
- Location of all existing structures on the project site.
- One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.
- Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or as determined by a soil scientist. A soil legend must be included with the soil map.
- Identification and delineation of vegetative cover, such as grass, weeds, brush, and trees, on the project site.
- Location of storm, sanitary, combined sewer and septic tank systems and outfalls.
- Location of regulated drains, farm drains, inlets and outfalls, if any exist of record.
- Land use of all adjacent properties.
- Existing topography at a contour interval appropriate to indicate drainage patterns.

1.9.15 Final project site layout, including the following information:

- Location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.
- One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.
- Proposed final topography at a contour interval appropriate to indicate drainage patterns.

1.9.16 An Erosion Protection and Sediment Control (EPSC) Plan, including the following information:

- The EPSC Plan shall include provisions for operation and maintenance of measures identified in the Perimeter Control Plan.
- The EPSC Plan shall make clear the erosion prevention and sediment controls which are most appropriate to the specific site conditions.
- The EPSC Plan shall illustrate the location and extent of erosion prevention and sediment controls.
- The EPSC Plan shall include sequencing and schedule information, structural and non- structural Best Management Practices (BMPs), temporary and permanent stabilization measures.
- The EPSC Plan shall include anticipated inspection and maintenance requirements for permanent and temporary measures. This shall include the expected frequency of routine inspections and maintenance activities (such as removal of sediment and construction debris).
- The EPSC Plan shall include provisions for construction phasing. If construction phasing is going to occur it must be disclosed at the time of initial plan submittal. This shall be designed so that stripping and clearing of the site exposes only the area necessary for immediate activities and minimizes the amount of soil exposed at any one time. This includes rough grading, construction of utilities, infrastructure and buildings, and final grading and landscaping. Phasing should identify the expected date on which clearing of the area will begin and the estimated duration of exposure. The sequence of phased clearing and the installation of temporary and permanent erosion control measures should be identified.



- 1.9.17 The EPSC Plan shall include provisions for a no-disturbance waterway buffer, including:
- The no-disturbance waterway buffer shall be defined as fifty (50) feet from the top of waterway bank as defined by geomorphic shape and not by the current water surface elevation.
  - The no-disturbance waterway buffer shall be applied to all waterways and open-air drainage systems that drain more than one hundred (100) acres of tributary area or is presented on a United States Geological Survey map as a solid and dashed blue line stream.
- 1.9.18 The EPSC Plan shall include provisions for stabilizing denuded areas and soil stockpiles:
- Soil stabilization shall be designed to prevent the erosive forces of rain and water flow from washing soil from the site. Soil stabilization measures may be temporary and/or permanent and should be appropriate to the seasonal hydrology, site conditions, and estimated duration the measure will be in place.
  - Disturbed areas must be stabilized with permanent or temporary soil stabilization measures within fifteen (15) days of either achieving final grade, or within fifteen (15) days to any area that will remain dormant for over sixty (60) days.
  - Soil stockpiles, if left undisturbed for fifteen (15) or more days, shall be stabilized. Sediment trapping measures such as sediment traps and detention ponds shall be utilized to prevent soil loss from the project site through the duration of soil stockpiling practices.
- 1.9.19 The EPSC Plan shall include provisions for stabilizing cut and fill slopes.
- 1.9.20 Minimization of erosion must be considered when designing and constructing cut and fill slopes. Length, steepness, soil type, upslope tributary area, groundwater, and other relevant factors must all be taken into account.
- 1.9.21 Stabilization practices such as rock rip-rap, geosynthetic material, or other methods approved by Floyd County shall be used on cut and fill slopes at three (3) to one (1) or greater subject to approval by Floyd County Planning and Zoning.
- 1.9.22 Stabilization of cut and fill slopes with permanent or temporary soil stabilization measures must be initiated by the end of the seventh day that the area is left idle and completed within fourteen (14) days after initiation.
- 1.9.23 The EPSC Plan shall include provisions for erosion prevention measures. Erosion prevention measures shall be designed to minimize the suspension of sediment from the soil. The controls may function independently or in combination with sediment control measures, to prevent sediment laden runoff from leaving the construction site. Acceptable erosion prevention practices include:
- Phased Construction/Clearing
  - Dust control
  - Construction Road Stabilization
  - Temporary seeding
  - Top Soiling





- Mulching
- Nets and Mats
- Geotextiles
- Terracing
- Soil bioengineering
- Slope and stream stabilization
- Rip-rap
- Channel linings
- Temporary diversions, drains, and swales
- Stream crossings
- Water bar
- Other measures reviewed and accepted by the County are also appropriate erosion prevention practices.

1.9.24 The EPSC Plan shall include provisions for sediment control measures. Sediment control measures shall be designed to remove sediment by settling, flocculating, filtering, or other means, from storm runoff prior to discharge from the construction site. The controls may function independently or in combination with erosion prevention measures, to prevent sediment-laden runoff from leaving the construction site. Acceptable sediment control practices include:

- Stabilized construction entrance
- Construction entrance tire washing
- Buffer zones
- Check dams
- Silt fence
- Double layered straw bale barrier
- Sand bag barrier
- Brush, rock filter, and continuous berms
- Sediment traps
- Temporary sediment/detention basin
- Temporary inlet protection
- Temporary outlet protection
- Infiltration systems
- Wet detention ponds
- Dry detention ponds
- Constructed wetlands
- Bio-filter swales
- Water quality inlets and hydrodynamic separators
- Other measures reviewed and accepted by the County are also appropriate sediment control practices.

1.9.25 A drainage plan, including the following information:

- An estimate of the peak discharge, based on the ten (10)-year storm event, of the project site for both pre-construction and post-construction conditions.
- Calculation showing that the peak runoff rate post-development for the ten (10)-year and one hundred (100)-year return period storms of critical duration will not exceed the two (2)-year and ten (10)-year return period pre-development peak runoff rates, respectively.
- Location, size, and dimensions of all stormwater drainage systems, such as culverts, storm sewers, and conveyance channels.



- Locations where stormwater may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exists.
- Locations of specific points where stormwater discharge will leave the project site.
- Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.
- Location, size, and dimensions of features, such as permanent retention or detention facilities, including existing or manmade wetlands, used for the purpose of stormwater management. Include existing retention or detention facilities that will be maintained, enlarged or otherwise altered and new ponds or basins to be built and the basis of their design.
- The estimated depth and amount of storage required by the design of the new pond(s) or basin(s).

1.9.26 A Stormwater Pollution Prevention Plan (SWPPP) for construction activities must be designed to, at a minimum, meet the requirements of this Article, and must include the following:

- Location, dimensions, detailed specifications, and construction details of all temporary and permanent stormwater quality measures.
- Temporary stabilization plans and sequence of implementation.
- Permanent stabilization plans and sequence of implementation.
- Temporary and permanent stabilization plans shall include the following:
  - Specifications and application rates for soil amendments and seed mixtures.
  - The type and application rate for anchored mulch.
  - Construction sequence describing the relationship between implementation of stormwater quality measures and stages of construction activities.
- Anticipated inspection and maintenance requirements for permanent and temporary measures. This shall include the expected frequency of routine inspections and maintenance activities (such as removal of waste concrete).

1.9.27 A description of potential pollutant sources associated with the construction activities that may reasonably be expected to add a significant amount of pollutants to stormwater discharges, including:

- Waste concrete management
- Material delivery, handling and storage
- Sanitary septic waste management
- Solid waste trash and debris management
- Spill prevention control and countermeasures
- Vehicle and equipment cleaning, fueling and maintenance
- Sensitive and vegetated area preservation
- Material delivery, handling and storage associated with construction activities shall meet the spill prevention and spill response requirements of 327 IAC 2-6.1.

1.9.28 The SWPPP must include provisions for addressing the following issues as applicable to the site-specific construction activities:

- De-watering operations
- Contaminated soil management
- Hazardous materials and waste management
- Pesticides, herbicides and fertilizer use



- Collection system maintenance
  - Drainage system flushing
  - Over-water activities
  - A typical erosion and sediment control plan for individual lots.
  - Self-monitoring program including plan and procedures.
- 1.9.29 The Indiana Department of Natural Resource's guidance documents, including the *Handbook for Erosion Control in Developing Areas (1985)* or the *Indiana Stormwater Quality Manual*, should be reviewed and considered when preparing the EPSC Plan and Stormwater Pollution Prevention Plan.
- 1.9.30 Floyd County reserves the right to develop or adopt other guidance documents to serve as design and implementation standards.
- 1.9.31 Requirements for Individual lots
- Although no permit is required for individual lots disturbing less than one (1) acre within a larger permitted project, a formal stormwater review will be required prior to the issuance of a building permit. All stormwater management measures necessary to comply with this Article must be implemented in accordance with the permitted plan for the larger project.
  - The information described must be submitted for review and approval, prior to the issuance of a building permit for an individual lot regardless of size.
  - A site location plan showing the individual lot and all adjacent lots' dimensions, elevations, drainage patterns, and swales.
  - Individual lot plans must show how on-site stormwater will drain onto adjacent parcels.
- 1.9.32 An EPSC Plan shall also include, at a minimum, the following measures:
- Installation and maintenance of a stable construction site access.
  - Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance.
  - Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved.
  - Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that complies with all applicable statutes and rules.
  - Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.
  - Self-monitoring program, including a plan and procedures.
  - Certification of Compliance stating that the individual lot plan is consistent with the stormwater management permit approved by the county for the larger project.
- 1.9.33 The individual lot operator is responsible for the installation and maintenance of all erosion and sediment control measures until the site is stabilized.
- 1.9.34 Stormwater Quality Management Permit (SWQMP) Termination
- 1.9.34.1 The project site owner shall plan an orderly and timely termination of the construction activities, including the implementation of stormwater quality measures that are to remain on the project site.



1.9.34.2 The project site owner shall submit a Notice of Termination (NOT) letter to the County and IDEM and in accordance with the following:

When the following is met:

- All land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized.
- All temporary erosion and sediment control measures have been removed.
- The NOT letter must contain a verified statement that each of the conditions in this subdivision has been met.
- The project site owner may submit an NOT letter to obtain early release from compliance with this Article, if the following conditions are met:
  - The remaining, undeveloped acreage does not exceed five (5) acres, with contiguous areas not to exceed one (1) acre.
  - A map of the project site, clearly identifying all remaining undeveloped lots, is attached to the NOT letter. The map must be accompanied by a list of names and addresses of individual lot owners or individual lot operators of all undeveloped lots.
  - All public and common improvements, including infrastructure, have been completed and permanently stabilized and have been transferred to the appropriate local entity.
  - The remaining acreage does not pose a significant threat to the integrity of the infrastructure, adjacent properties, or water quality.
  - All permanent stormwater quality measures have been implemented and are operational.

1.9.34.3 Following acceptance of the NOT letter, the project site owner shall notify all current individual lot owners and all subsequent individual lot owners of the remaining undeveloped acreage and acreage with construction activity that they are responsible for complying with this Article. The remaining individual lot owners do not need to submit an NOT letter. The notice must inform the individual lot owners of the requirements to:

- Install and maintain appropriate measures to prevent sediment from leaving the individual building lot; and
- Maintain all erosion and sediment control measures that are to remain on-site as part of the construction plan.

1.9.34.4 The SWCD, DNR-DSC, other entity designated by the department or a regulated MS4 Entity, or the department may inspect the project site to evaluate the adequacy of the remaining stormwater quality measures and compliance with the NOT letter requirements. If the inspecting entity finds that the project site owner has sufficiently filed an NOT letter, the entity shall forward notification to the department. Upon receipt of the verified NOT letter by the department and receipt of the written approval from the department, the project site owner shall no longer be responsible for compliance with this rule. After a verified NOT letter has been submitted for a project site, maintenance of the remaining stormwater quality measures shall be the responsibility of the individual lot owner or occupier of the property.

1.9.35 A Stormwater Quality Management Permit shall be considered open and active until a time when Floyd County accepts the site conditions and as-built requirements have been completed.



- 1.9.36 Acceptance of site conditions shall be made by Floyd County based upon an inspection. If any of the following items are deemed to be insufficient, not appropriate and/or inconsistent with the EPSC Plan, Stormwater Pollution Prevention Plan, or objectives stated in this Article, the approval will not be granted.
- 1.9.36.1 Pipes, channels, catch basins, water quality treatment devices and other infrastructure are clear of sediment, obstructions and debris, and are designed and operating as appropriate for final site conditions.
- 1.9.36.2 Slopes are permanently stabilized.
- 1.9.36.3 Temporary erosion prevention or sediment control devices (such as silt fence and staking, outlet protection, etc.) have been removed (as appropriate) and any resulting soil disturbance stabilized.
- 1.9.36.4 Temporary pollution prevention practices have been demobilized or removed and affected areas stabilized.
- 1.9.36.5 Sediment has been removed and slopes stabilized for permanent flood control and water quality control practices.
- 1.9.36.6 Detention pond grading is stabilized and/or excess sediment removed so that actual volume is at least equal to designed volume and condition.
- 1.9.36.7 Other items as deemed to be important by Floyd County.
- 1.9.37 As-built requirements
- 1.9.37.1 Prior to issuance of a use and occupancy permit or final release of bond, the as-built condition of critical stormwater management facilities must be reviewed and approved
- 1.9.37.2 The volume, capacity, slope, configuration, condition, "as-planted" plans, and topographic information, as well as pipe size, material, lengths for all detention, retention, and water quality practices shall be certified by a Professional Engineer licensed in the State of Indiana. This information shall be provided to County in the form of an as-built drawing or other electronic form accepted/required by The County. The as-built certification shall indicate if final conditions are consistent with, or exceed, the Stormwater Quality Management Permit provisions.
- 1.9.37.3 If it is determined that information provided in the as-built drawing, certification, inspection, or survey of the site do not meet or exceed the Stormwater Quality Management Permit requirements, Floyd County reserves the right to withhold Certification of Occupancy or final bond. Furthermore, other enforcement mechanisms, as identified within this Article, may be applied to the Person certifying the as-built information.
- 1.9.37.4 If upon inspection by Floyd County it is determined that there is an item that must be addressed to receive acceptance of site conditions, then the Person shall be required to continue inspections and maintenance as described in the Stormwater Quality Management Permit.
- 1.9.38 Floyd County Stormwater Department requires that any and all bonds be submitted in the form of Cash or a Surety Bond.



## 1.10 INSPECTIONS AND MAINTENANCE

### 1.10.1 Permittee-Performed Inspections and Maintenance

- 1.10.1.1 Permittee-Performed Inspections (Self Inspections) must be performed by a Qualified Professional.
- 1.10.1.2 Inspections shall be performed at all control measures every seven (7) days and within twenty-four (24) hours of a one-half (0.5) inch rain event. The inspections will determine the overall effectiveness of the EPSC and Stormwater Pollution Prevention Plans, needed maintenance activities and the need for additional control measures.
- 1.10.1.3 All inspections shall be documented in written form and made available to Floyd County or submitted at the time interval specified in the approved permit.
- 1.10.1.4 Inspections shall be performed consistent with specific visual maintenance checklists approved by Floyd County
- 1.10.1.5 Documentation of permittee performed inspections and inspection findings shall be kept on site, if appropriate facilities (such as a project trailer or building) are available. In the event, that appropriate facilities are not available then a copy of the most recent inspection shall be displayed at the site along with other documents that must be displayed to the public per other local, state, and federal regulations.
- 1.10.1.6 Documentation of permittee performed inspections and inspection findings shall be made available within three (3) days of a request by Floyd County. Failure to post or timely submit documentation as requested will be assumed to indicate that inspections were not performed and may result in corresponding enforcement procedures. Inspection documentation shall include, but shall not be limited to, the following:
- The address of the site
  - The parcel identification number.
  - The name of the owner or owner's agent.
  - The location of the stormwater system(s).
  - The name and signature of the Qualified Professional Inspector performing the inspection and the date of the inspection
  - The Qualified Professional Inspector is responsible for the reporting of the results of the inspection to the site owner or owner's representative including stormwater quality management system maintenance needs.
- 1.10.1.7 A description of the current operational or functional status of the stormwater system(s). For sediment control structures, an indication of used and remaining capacity (fraction, percentage, depth or volume) shall be given to identify when the control must be cleaned out.
- 1.10.1.8 Identification of any necessary repairs, sediment debris removal or replacement of all or portions of the stormwater system(s).



- 1.10.1.9 The results of any field or laboratory analyses performed.
- 1.10.1.10 Other relevant or unusual observations related to the system(s).
- 1.10.1.11 Action plan to prevent premature stormwater system failure as consistent with the Stormwater Quality Management Permit provisions.
- 1.10.1.12 Action plan to prevent the premature system failure that exceeds the Stormwater Quality Management Permit provisions, but are necessary to prevent stormwater pollution from leaving the site.
- 1.10.2 Oversight Inspections
- 1.10.2.1 Floyd County shall have the authority to periodically inspect the site of land disturbing activities for which permits have been issued; may make inspections of the site at its discretion; and shall either approve the portion of the work completed or shall notify the permittee wherein the work fails to comply with the EPSC or Stormwater Pollution Prevention Plans as approved or is ineffective (regardless of consistency with an approved EPSC Plan).
- 1.10.2.2 After erosion protection and sediment control measures have been installed it is required to schedule a meeting with Floyd County to ensure that the measures have been installed properly prior to the initiation of the rest of the construction.
- 1.10.2.3 The results of the inspections and findings will be presented and reviewed with the permittee at the time of inspection (as available to site personnel), and be available in the permit file within seven (7) days.
- 1.10.2.4 In order to obtain inspections, the permittee shall contact the County at least seventy-two (72) hours before the following activities:
- Bond release inspections.
  - Upon completion of the project in order to receive approval to cease permittee inspections in compliance with the Stormwater Quality Management Permit.
- 1.10.2.5 Floyd County may identify any repairs, sediment/debris removal or replacement of all or portions of the stormwater system(s) necessary to comply with the objectives of this Article and the Stormwater Quality Management Permit. Floyd County may develop and require the implementation of an action plan and compliance schedule that prevents the premature stormwater quality management system failure as consistent with the Stormwater Quality Management Permit provisions.
- 1.10.2.6 Floyd County may develop and require the implementation of an action plan to prevent the premature system failure that exceeds the Stormwater Quality Management Permit provisions, but are necessary to prevent stormwater pollution from leaving the site.



1.10.3 Maintenance

1.10.3.1 Maintenance must be performed under the direction and/or supervision of a Qualified Professional Inspector.

1.10.3.2 Maintenance of erosion prevention, sediment control, and pollution prevention practices shall be performed according to the EPSC and Stormwater Pollution Prevention Plans.

1.10.3.3 Maintenance activities shall be performed in accordance with action plans developed through the course of permittee-performed inspections. This may represent activities that exceed provisions of the EPSC and Stormwater Pollution Prevention Plans, but are necessary to prevent stormwater pollution from leaving the site.

1.10.4 Qualified Professional Registration and Certification

1.10.4.1 A Qualified Professional is required to perform routine inspections and direct and/or supervise maintenance activities to ensure that the Stormwater Quality Management Permit provisions are being implemented properly.

1.10.4.2 All Qualified Professionals performing inspections or overseeing maintenance activities under this Article must be registered with Floyd County and certified prior to execution of those actions. All applicants must file an application with Floyd County. Applicants must demonstrate knowledge of 1.) Construction practices, 2.) Operational standards, 3.) Cause and failure indicators and 4.) Maintenance measures used to prevent and correct failures.

1.10.4.3 Floyd County reserves the right to require that Qualified Professional applicants pay a registration fee.

1.10.4.4 Floyd County reserves the right to require that Qualified Professional applicants satisfactorily complete an approved training course.

1.10.4.5 Floyd County reserves the right to require that Qualified Professional applicants be re-certified as often as every three (3) years.

1.10.4.6 Floyd County reserves the right to require that Qualified Professional applicants successfully pass a written exam covering construction practices, operational standards, causes and indicators of stormwater quality management system failures, and corrective actions as approved by Floyd County.

1.10.4.7 Floyd County may de-certify any Qualified Professional under one or more of the following circumstances:

- The individual fails to comply with this Article.
- Floyd County determines that the individual is not qualified to perform his/her duties hereunder.
- The individual is unable to properly perform an evaluation of a stormwater quality management system.
- The individual is negligent in the discharge of his/her duties as outlined in the certification requirements.
- The individual submits false or misleading information.
- The individual fails to maintain the required certification as required by this Article.





1.10.5 Floyd County shall give written notice to a Qualified Professional Inspector prior to revoking Qualified Inspector registration. The inspector shall be given an opportunity at an informal meeting to show cause why he/she should continue to be registered. Any Qualified Professional Inspector may appeal that decision by following the procedure set out in Ordinance for re-instatement.

1.10.5.1 If a Qualified Professional Inspector loses his/her registration, he/she may apply to be re-instated contingent upon completing the requirements established in this Ordinance after a period of at least one (1) year. The application to be re-instated shall not be permitted prior.

1.10.6 It shall be the responsibility of Floyd County to:

- Administer and enforce this Article.
- Develop and administer a process for certifying Qualified Professionals.
- Maintain a list of certified Qualified Professionals.
- Require corrective actions where there is evidence of a system failure.
- Establish criteria for the inspections and the certification of Qualified Professionals and make such criteria and related forms available to the public.

1.10.7 Fees

1.10.7.1 Floyd County reserves the right to require fees to cover expenses including, but not limited to, overhead, labor, storage, training, etc., associated with the certification, training, and inspection process.

1.10.7.2 Fees shall be paid prior to a certification training course and/or exam.



## 1.11 ENFORCEMENT

- 1.11.1 Floyd County may institute appropriate actions or proceedings by law or equity for the enforcement of this Article and shall, in each instance, be entitled to recover its costs and attorney fees. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent Floyd County from taking such other lawful action as necessary to prevent or remedy any violation, including application for injunctive relief. Any of the following enforcement remedies and penalties may be applied independently, collectively, or in a sequence deemed necessary and shall be available to Floyd County in response to violations of this Article. If the Person, property, or facility has, or is required to have, a stormwater discharge permit from the IDEM, Floyd County shall alert the appropriate State authorities of the violation.
- 1.11.1.1 Notice of Violation (NOV) -Whenever Floyd County finds that any Person owning or occupying premises has violated or is violating this Article or an order issued hereunder, the enforcement official may serve such person, personally, or by registered or certified mail, a written NOV. Within thirty (30) days of the receipt of this notice, or shorter period as may be prescribed in the NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, shall be submitted to Floyd County. Submission of this plan shall not, however, affect liability for violations of this Article. Floyd County may limit other inspections or approvals during the time that a site is under a NOV.
- 1.11.1.2 Revocation of Permit - Floyd County may revoke and require the surrender of a permit or certificate by notifying the permit holder, in writing, the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application plans or specifications; refusal or failure to comply with the requirements of State or local law; or, for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable state or local law may also be revoked.
- 1.11.1.3 Stop Work Order- Floyd County may issue a Stop Work Order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge. Unacceptable or untimely actions to eliminate the illicit discharge may be used as grounds to revoke permits for the construction site as described in this Ordinance.
- 1.11.1.4 Compliance Order - If any Person shall violate the provisions of this Article, Floyd County may give notice to the owner, responsible party, or to any Person in possession of the subject property ordering that all unlawful conditions existing thereupon be abated within a scheduled period defined from the date of such notice.
- 1.11.1.5 The enforcement official shall have the authority to establish elements of a Stormwater Pollution Prevention Plan and require any business to adopt and implement such a plan as may be reasonably necessary to fulfill the purposes of this Article. The enforcement official may establish the requirements of BMPs for any premises.



- 1.11.1.6 If it is determined by Floyd County that the unlawful condition is such that there is an imminent danger or peril to the public, then Floyd County may, with or without notice, proceed to abate the same, with the costs of such abatement shall be charged to the owner, responsible party, or against the property.
- 1.11.2 Civil Penalties - Any Person that has been found to have violated any provision of this Article may be assessed a civil penalty not to exceed the lesser of (1) the amount presented in this subsection, or (2) the maximum amount permitted by law.
- 1.11.2.1 The penalty shall increase by twenty-five percent (25%) of the previous penalty amount for every subsequent but separate offense made by the same Person. This penalty shall be in addition to other enforcement actions of this section.
- 1.11.2.2 The penalty may be assessed for each day that the prohibited activity continues beyond those schedules set forth in compliance orders or other abatement schedules issued to the property owner or other person deemed responsible by Floyd County.
- 1.11.2.3 In determining the amount of the penalty the Court shall consider the following:
- The degree and extent of the harm to natural resources, the public health, or public or private property resulting from the violation;
  - The duration and gravity of the violation;
  - The effect on ground or surface water quality;
  - The cost of rectifying the damage;
  - The amount of money saved by noncompliance;
  - Whether the violation was committed willfully or intentionally;
  - The cumulative effect of other enforcement actions applied for the same offense;
  - The prior record of the violator in complying or failing to comply with the stormwater quality management program; and
  - The costs of enforcement to Floyd County.
- 1.11.2.4 A civil penalty of not more than twenty-five hundred (2,500) dollars may be assessed for each of the following offenses:
- Development without permit.
    - To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon, subject to the jurisdiction of this Article without all required permits, certificates, or other forms of authorization as set forth in this Article.
  - Development inconsistent with permit.
    - To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.



- Violation by act or omission.
  - To violate, by act or omission, any term, variance, modification, condition, or qualification placed by Floyd County or its designated representative upon any required permit, certificate, or other form of authorization of the use, development, or other activity upon land or improvements thereon.

1.11.2.5 In the event there are penalties assessed by the State against Floyd County and resulting from a violation of this Article, the Person responsible for such violation may be assessed the lesser of (1) the amount of the penalty assessed as against Floyd County, or (2) twenty-five hundred (2,500) dollars.

1.11.3 Order to clean and abate/restore - Any violator may be required to clean and/or restore land to its condition prior to the violation.

1.11.4 Cost Recovery- If corrective action, including maintenance delinquency, is not taken in the time specified or within a reasonable time, Floyd County may undertake the corrective action, and the cost of the abatement or corrective action shall be assessed against the responsible party, owner of the premises, and/or the developer. If these costs are not paid within ninety (90) days of invoice, the enforcement official may initiate all appropriate legal actions to enforce the claim.

1.11.5 Injunctions and/or proceedings at law or in equity- Any violation of this Article or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.

1.11.6 Civil Actions - In addition to any other remedies provided in this Article, any violation of this Article may be enforced by civil action brought by Floyd County. Monies recovered under this subsection shall be paid to Floyd County to be used exclusively for costs associated with implementing or enforcing the provisions of this Article. In any such action, Floyd County may seek, as appropriate, any or all of the following remedies:

- A temporary and/or permanent injunction;
- Assessment of the violator for the costs of any investigation, inspection or monitoring survey which lead to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection, to include reasonable attorney fees and costs of the action.
- Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
- Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life.
- Emergency Orders and Abatements. Floyd County may order the abatement of any discharge from any source to the stormwater conveyance system when, in the opinion of Floyd County, the discharge causes or threatens to cause a condition that presents an imminent danger to the public health, safety, or welfare of the citizens of Floyd County, the environment, or is a violation of a NPDES permit. If such emergency situations occur and the property owner or other responsible party is unavailable or time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare, Floyd County may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement may be recovered as stated in this Ordinance.
- Remedies Not Exclusive – The remedies listed in this Article are not exclusive of any remedies available under any applicable Federal, State, or local law and Floyd County may seek cumulative remedies.



**1.12 FEES**

1.12.1 Fee Amount: As a condition of the submittal and the review of development plans by Floyd County, the applicant shall agree to pay Floyd County the applicable fee, as set by Floyd County with respect to the review of all EPSC/drainage submittals, preliminary plans, final plans, construction plans and accompanying information and data, as well as prepaid inspection fees. EPSC/drainage submittal fees shall be based on the amount of disturbed acreage associated with any proposed project. Disturbed acres are defined as the area of the project in which the surface of the land is disturbed by excavation, embankments, land development, residential lot construction, mineral extraction and moving, depositing or storing of soil, rock, or other earthmoving activity. Final Plat or Site Plan submittal fees shall be based on the number of lots and impervious surface respectively.

1.12.2 Time of Payment: Applications for EPSC/drainage review will not be accepted for review without payment of the appropriate fee. The fees below shall include inspection for perimeter control, EPSC, and stormwater quality management permits. Fees for the approval of Final Plats and Site Plans will be collected at the time of approval via Building and Development Services.

Floyd County shall have the right to not accept the drainage improvements or to not approve the advancement of any project for which the applicable fees have not been paid.

1.12.3 Method of Payment: Fees shall be paid by one of the following methods:

- o Check
- o Certified Check
- o Cashier's Check
- o Money Order
- o Cash

All checks shall be made payable to the: Floyd County Stormwater  
Payments can be made at: 2524 Corydon Pike, Suite 201, New Albany, IN 47150

1.12.4 Refund of Payment: Fees are refundable **only** if Floyd County determines that compliance by the development or project to this Ordinance is not necessary

1.12.5 Stormwater Permit Application and Inspection Fees will be in accordance with the fee schedule outlined below:

<b>Submission of EPSC/Drainage Review Plan</b>	
Up to 15 acres	\$1,500
15 acres or more	\$2,500

1.12.6 Fees for Submission of Final Plat and Site Plan for Approval are outlined below:

- o Final Plat: \$64.36 per lot on the final plat
- o Site Plan: \$64.36 per ERU



### 1.13 COMPATIBILITY AND SEVERABILITY

- 1.13.1 Should any Article, section, subsection, clause, or provision of this Article be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Article as a whole or any part thereof, other than the part declared to be unconstitutional or invalid, each Article, section, clause and provision being declared severable.
- 1.13.2 If any provision of this Article is inconsistent with any other, law, regulation, statute, or Ordinance; or results in the imposition of overlapping or contradictory regulations; or if this Article contains any restriction covering any of the same subject matter of another law, regulation, statute, or Ordinance, the provision which is most restrictive or imposes the highest standard or strictest requirement shall govern.



## 2. STORMWATER ILLICIT DISCHARGE CONTROL

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### 2.1 JURISDICTION

- 2.1.1 This Article shall govern all properties and controlled activities within the jurisdictional boundaries of unincorporated Floyd County and all properties that are served by City of New Albany Plan Commission under their two (2) mile fringe authority.

### 2.2 RECITALS

WHEREAS,

the community's municipal separate storm sewer system (MS4) receives discharges that are not composed entirely of stormwater runoff causing increased non-point source pollution and receiving water degradation.

WHEREAS,

surface water runoff can carry pollutants into receiving waters and uncontrolled stormwater drainage and/or discharges may have significant adverse impacts on the health, safety and welfare of the citizens of Floyd County, Indiana. The potential impacts of these pollutants and pollution may include:

- Adverse impacts to public health and safety, drinking water supplies, recreation, fish, and other aquatic life, property values, and other land and water uses;
- Changing natural ecosystems through the destruction of habitat and the loss of plant and animal life; posing significant health risks through an increase in bacteria and toxic materials;
- Accelerating eutrophication of receiving waters by introducing excessive nutrients;
- Increasing metal deposits creating toxicity for aquatic life;
- Reducing in-stream oxygen levels because of oil, grease and organic matter; and
- Affecting animal and plant life, adversely, due to changing temperatures of receiving waters.

WHEREAS,

the adverse water quality consequences described above may result in substantial economic losses. Potential losses include, but are not limited to, increased drinking water and wastewater treatment costs and diminished property values, as well as state and federal fines associated with water quality violations.

WHEREAS,

every parcel of property, both private and public, either uses or benefits from Floyd County's stormwater system.



WHEREAS,

Current and anticipated growth will contribute to and increase the need for an effective stormwater system.

## 2.3 OBJECTIVES

2.3.1 Protection of short-term and long-term public health, safety, and general welfare will be achieved by:

- Providing for regulation and management of Floyd County's stormwater system, including public and private facilities within Floyd County's service area;
- Protecting and preserving water quality and fish and wildlife habitat within Floyd County and in downstream receiving waters; and
- Protecting those downstream from stormwater quality impairment(s).
- Compliance with state and federal stormwater regulations developed pursuant to the Clean Water Act Amendments of 1987 and subsequent amendments through 2004. As well as compliance with the Indiana Department of Environmental Management's (IDEM) Municipal Separate Storm Sewer System General Permit (MS4GP) and the Construction Stormwater General Permit (CSGP). The objectives of these regulations include:
  - Controlling the quality of water discharged by controlling the contribution of pollutants to the stormwater system by stormwater discharges associated with residential, commercial and industrial activity;
  - Prohibiting illicit discharges to stormwater;
  - Controlling the discharge of spills and dumping or any disposal of materials other than stormwater into the stormwater system.

## 2.4 DEFINITIONS

The definitions hereinafter set forth are in addition to those appearing elsewhere in this Floyd County Ordinance, all of which definitions shall be applicable in the interpretation and enforcement of this Article:

**Accidental Discharge** - A discharge or release prohibited by this Ordinance which occurs by chance and without planning or thought prior to occurrence.

**Clean Water Act**-The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

**Construction Activity**- Land disturbance activities subject to state NPDES General Construction Permits related to "MS4GP" or "CSGP" or local permits. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

**Floyd County**- Means and includes, for purposes of this Ordinance, Floyd County, Indiana, acting through its duly appointed, qualified, and acting advisory plan commission, together with the officers, employees, attorneys, and designees of said commission.

**Illicit discharge** -Any discharge to a Municipal Separate Storm Sewer System (MS4) or any discharge directly or indirectly into waters of the state that is not composed entirely of stormwater except discharges pursuant to a





National Pollutant Discharge Elimination System permit (other than Floyd County's NPDES stormwater permit) or otherwise defined by this ordinance.

**Industrial Activity** - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit** -A permit issued by the Indiana Department of Environmental Management (IDEM) under delegated authority by the United States Environmental Protection Agency (USEPA), whether the permit is applicable on an individual, group, or general area-wide basis.

**Municipal Separate Storm Sewer System (MS4)** - Any facility designed or used for collecting and/or conveying stormwater, including, but not limited to, any roads with drainage systems, highways, streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and manmade or altered drainage channels, reservoirs, and other drainage structures, and which is:

- Owned or maintained by Floyd County;
- Not a combined sewer; and
- Not part of a publicly-owned treatment works.

**Non-Stormwater Discharge** - Any discharge to the storm drainage system that is not composed entirely of stormwater.

**Person** - Except to the extent exempted from this Ordinance, any individual, partnership, firm, association, joint venture, public or Private Corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

**Pollutant** - Anything of a chemical component or nature which causes or contributes to pollution.

**Pollution** - The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent.

**Premises** - Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Qualified Professional** – An individual who is trained and experienced in stormwater treatment techniques and related fields as may be demonstrated by state registration, professional certification, or completion of annual training that enable the individual to make sound, professional judgements regarding stormwater control or treatment and monitoring, pollutant fate and transport, and drainage planning.

**Responsible Party** -The person causing or permitting a prohibited discharge in violation of this Ordinance, or the person in control of, or having the right to control, the property or premises from which a prohibited discharge has occurred.



**Standard of Practice for Residential Construction Stormwater Management** - A document that defines the management practices for erosion prevention, sediment control and other construction site waste management by which homebuilders may use as guidance and minimum expectations to be achieved during inspections by Floyd County. In the event that this document is not published, then the *Indiana Stormwater Quality Manual* (1985) or the *Indiana Handbook for Erosion and Sediment Control in Urban Areas* developed by Indiana Department of Natural Resources (IDNR) may be used as an equivalent guide.

**Stormwater Runoff or Stormwater** - Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**Structural Stormwater Control or Best Management Practice (BMP)** - A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

**Undiluted Discharges** – A discharge that has not been mixed with that of another source such as another septic tank.

**Waters of the State** - Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Indiana which are not entirely confined and retained completely upon the property of a single person.

## 2.5 AUTHORITY AND RIGHT OF ENTRY

- 2.5.1 Floyd County shall have right-of-entry on or upon the property of any Person subject to this Ordinance and any permit document issued hereunder. The County shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this Ordinance.
- 2.5.2 Where a property, site, or facility has security measures in force which require proper identification and clearance before entry, the Responsible Party shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, Floyd County will be permitted to enter without delay.
- 2.5.3 Access by Floyd County shall include the right to erect upon the property such devices as are necessary to conduct sampling and/or metering of stormwater operations or discharges.
- 2.5.4 Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly upon request of, and at no cost to, Floyd County.
- 2.5.5 Floyd County may inspect the facilities of any person in order to ensure compliance with this Ordinance. Except in an emergency relating directly to the health, safety, and welfare of the public, an inspection shall be made only after reasonable (forty-eight (48) hours) notice to, and consent by, the responsible party. However, if such consent is refused, denied, or not promptly tendered, Floyd County may seek appropriate judicial orders permitting such entry.



2.5.6 Floyd County has the right to determine and impose inspection schedules necessary to enforce the provisions of this Article. Inspections may include, but are not limited to, the following:

- An initial inspection prior to stormwater management plan approval;
- An inspection prior to burial of any underground drainage structure;
- Erosion control inspections as necessary to ensure effective control of sediment prior to discharge to the municipal separate storm sewer system;
- A final inspection when all work, including installation of stormwater management facilities, have been completed; and
- An inspection to determine the effectiveness or operational viability of permanent or long-term stormwater quality management practice



## 2.6 ILLICIT DISCHARGES

### 2.6.1 Prohibition of illegal discharges

2.6.2 Pursuant to the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System (MS4) Program, illicit discharges to the MS4 are defined as illegal.

2.6.2.1 Except as hereinafter provided, all non-stormwater discharges into the MS4 are prohibited and declared to be unlawful.

2.6.2.2 It is unlawful for any Person to connect any pipe, open channel, or any other conveyance system that discharges into the MS4 anything except (1) stormwater, or (2) unpolluted water, or (3) such other substance which is approved by Floyd County.

2.6.2.3 It is unlawful for any Person to discharge waters from residential construction activities that are not in compliance with the "Standard of Practice for Residential Construction Stormwater Management" as approved by Floyd County.

2.6.2.4 In addition to illicit discharges, the discharge of spills and the dumping and/or disposal of materials other than stormwater including, but not limited to, industrial and commercial wastes, commercial car wash wastes, sewage, garbage, yard waste, trash, petroleum products (including used motor vehicle fluids), leaf litter, grass clippings, and animal wastes, into the MS4, whether directly or indirectly, is prohibited, unless authorized under a NPDES permit.

### 2.6.3 Allowable Discharges

2.6.3.1 Unless Floyd County has identified a discharge as an unacceptable source of pollutants to the "Waters of the State of Indiana", the following non-stormwater discharges into the MS4 are lawful:

- Discharges from emergency firefighting activities;
- Diverted stream flows;
- Rising ground waters;
- Uncontaminated groundwater infiltration to separate storm sewer systems (as defined by 40 CFR35.2005(20));
- Uncontaminated pumped ground water;
- Discharges from potable water sources as required for system maintenance;
- Air conditioning condensate;
- Uncontaminated landscape irrigation;
- Uncontaminated irrigation water;
- Lawn watering;
- Uncontaminated springs;
- Uncontaminated water from crawl space pump;
- Uncontaminated water from footing drains and pump;
- Individual residential car washing;
- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges;
- Controlled flushing stormwater conveyances (contained and treated by appropriate BMPs);
- Discharges made from residential construction sites fully and completely utilizing guidance provided by "Standard of Practice for Residential Construction Stormwater Management";



- Discharges within the constraints of a National Pollutant Discharges Elimination System (NPDES) permit from the Indiana Department of Environmental Management (IDEM);
- Discharges approved at the discretion of Floyd County;
- Water line and hydrant flushing for maintenance;
- Uncontaminated excess storm sewer cleaning water not collected by a vacuum truck;
- Springs;
- Non-commercial car washing by community organizations;
- External building wash down, without detergents;
- Pavement wash waters provided spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used.

#### 2.6.4 Illegal Discharges

2.6.4.1 It shall be unlawful for any Person to improperly dispose of any contaminant into the MS4. Contaminants include, but are not limited to, the following:

- Trash or debris;
- Construction materials or uncontrolled sediment;
- Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil or hydraulic fluids;
- Antifreeze and other automotive products;
- Metals in either particulate or dissolved form;
- Flammable or explosive materials;
- Radioactive materials;
- Batteries, including but not limited to, lead acid automobile batteries, alkaline batteries, lithium batteries or mercury batteries;
- Acids, alkalis or bases;
- Paints, stains, resins, lacquers, or varnishes;
- Degreasers and/or solvents;
- Drain cleaners;
- Pesticides, herbicides or fertilizers;
- Steam cleaning wastes;
- Soaps, detergents, or ammonia;
- Swimming pool backwash including chlorinated swimming pool discharge;
- Chlorine, bromine, and other disinfectants;
- Heated water;
- Animal waste, either from domestic animals or from feeder lot operations;
- Leakage from sanitary sewers and connections that have remained uncorrected for more than seven (7) days;
- Recreational vehicle waste;
- Animal carcasses;
- Food wastes;
- Medical wastes;
- Bark and other fibrous materials;
- Collected lawn clippings leaves or branches;
- Silt, sediment, or gravel;
- Dyes, except with permission from Floyd County;
- Chemicals not normally found in uncontaminated water;
- Water from fresh concrete or water used for cleaning, finishing, and/or to expose aggregates;
- Junk motor vehicles;
- Leakage from solid waste disposal containers;



- Sewage or sewage sludge;
- Any polluted household wastewater, such as, but not limited to, laundry wash water and dishwater, except that water discharged to a sanitary sewer or septic system;
- Leakage from water lines that has remained uncorrected for seven days or more;
- Commercial, industrial, or public vehicle wash discharge;
- Garbage or sanitary waste;
- Dead animals or animal fecal waste;
- Dredged or spoil material;
- Wrecked or discarded vehicles or equipment;
- Wash waters to the storm drain system from the cleaning of gas stations, auto repair garages, or other types of auto repair facilities;
- Wastewater to the storm drain system from mobile auto washing, steam cleaning, mobile carpet cleaning and other such mobile commercial, and industrial operations;
- Waters from areas devoted to the repair of machinery and equipment, including motor vehicles, which are visibly leaking oil, fluids or coolants;
- Waters from storage areas for materials containing grease, oil, hazardous materials (or uncovered receptacles containing hazardous materials), grease, or oil;
- Toxic materials from paved or unpaved areas;
- Discharge into the storm drain system from the washing or rinsing of restaurant mats, roof vents, grease traps, equipment, garbage bins, or cans;
- Sewage, industrial wastes (or other wastes if discharged into a well or a location that is likely that the discharged substance will move into a well), or the underground placement of fluids and other substances which do or may affect the waters of the State; and
- Any hazardous material or waste not listed above.

2.6.4.2 It is not the intent of Floyd County, by this Ordinance, to propose penalties for de minimis discharges that have no significant adverse impact on the safety, health, and the welfare of the environment or the functionality of the stormwater drainage/collection system, and to this end, such de minimis discharges are expressly exempted from the application of this Ordinance.



## 2.7 ACCIDENTAL DISCHARGES

- 2.7.1 In the event of any discharge of a hazardous substance in amounts that could cause a threat to public drinking supplies, a spill beyond that of de minimis levels, or any other discharge that could constitute a threat to human health or the environment, the person causing the discharge or the owner or operator of the facility responsible for same or his/her designee (collectively, Responsible Party) shall give notice to Floyd County and IDEM as soon as practicable, but in no event later than of two (2) hours after one (1) discovery of the accidental discharge or two (2) when the Responsible Party becomes aware of the circumstances of the incident.
- 2.7.2 If an emergency response by governmental agencies is needed, the Responsible Party shall call 911 immediately to report the discharge. Reports required by the Indiana Spill Rule (327 IAC 2-6.1-7), shall be made within two (2) hours of discovery, and a written report shall be provided to Floyd County within five (5) days of the time the incident, unless this requirement is waived by Floyd County for good cause shown on a case-by-case basis. The report shall contain the following information:
- A description of the discharge,
  - The exact dates and times of discharge, and
  - Steps being taken to eliminate and prevent recurrence of the discharge.
- 2.7.3 The responsible party shall take all reasonable steps to minimize any adverse impact to the MS4 or the Waters of the State, including accelerated or additional monitoring necessary to determine the nature and impact of the discharge.

## 2.8 ENFORCEMENT

- 2.8.1 Any Person responsible for any connection to the MS4 which results in a prohibited discharge shall immediately cause such illegal connection to be discontinued and redirected, if necessary, to an approved sanitary sewer system. Such Person shall provide Floyd County with written confirmation, in a form satisfactory to Floyd County, that the connection has been discontinued, and, if necessary, redirected to the sanitary sewer.
- 2.8.2 Any Person responsible for illicit discharges or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of Floyd County, shall be liable to the County for expenses incurred in abating pollution. Such expenses may include those incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.



- 2.8.3 Floyd County may institute appropriate actions or proceedings at law or in equity for the enforcement of this Ordinance, and Floyd County shall be entitled to recover its costs expended and reasonable attorney fees in any such proceeding. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Each day of noncompliance is considered a separate offense and nothing herein contained shall prevent Floyd County from taking such other lawful action as necessary to prevent or remedy any violation, including application for injunctive relief. Any of the following enforcement remedies and penalties, to be applied independently or in a sequence as deemed necessary, shall be available to Floyd County in response to violations of this Ordinance. If the Person, property or facility has or is required to have a stormwater discharge permit from the IDEM, Floyd County shall notify the appropriate State authorities of the violation.
- 2.8.3.1 Notice of Violation (NOV) - Whenever Floyd County finds that any Person owning or occupying premises has violated or is violating this Ordinance or an order issued hereunder, the enforcement official may serve, by personal service, registered, or certified mail, upon said Person a written NOV. Within thirty (30) days of the receipt of this notice, or shorter period as may be prescribed in the NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, shall be submitted to Floyd County. Submission of this plan shall not, however, affect liability for violations of this Ordinance.
- 2.8.3.2 Revocation of Permit- Floyd County revoke and require surrender of a permit or certificate by notifying the permit holder, in writing, of the reason for the revocation. Permits or certificates may be revoked for any substantial departure from the approved application plans or specifications; refusal or failure to comply with the requirements of State or local law; or, for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable state or local law may also be revoked.
- 2.8.3.3 Stop Work Order - Floyd County may issue a Stop Work Order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge. Unacceptable or untimely actions to eliminate the illicit discharge may be used as grounds to revoke permits for the construction site.
- 2.8.3.4 Compliance Order- If any Person shall violate the provisions of this Ordinance, Floyd County may order the Owner, Responsible Party, or any Person in possession of the subject property that all unlawful conditions existing thereupon be abated within a scheduled period defined from the date of such notice.
- 2.8.3.4.1 The enforcement official shall have the authority to establish elements of a Stormwater Pollution Prevention Plan and require any business to adopt and implement such a plan as may be reasonably necessary to fulfill the purposes of this Article. The enforcement official may establish the requirements of BMPs for any premises.





- 2.8.3.4.2 If it is determined by Floyd County that an unlawful condition is such that there is imminent danger or peril to the public health, safety, or welfare, Floyd County may, with or without notice, proceed to abate the same, with the costs of such abatement to be charged against the property, its owner, or the responsible party, jointly and severally.
- 2.8.3.5 Civil Penalties - Any Person who has been found to have violated any provision of this Ordinance may be assessed a civil penalty not to exceed the amount the lessor of one (1) that set forth in this subsection or two (2) the maximum amount permitted by law.
- 2.8.3.5.1 The penalty shall increase by twenty-five percent (25%) of the previous penalty amount for every subsequent but separate offense made by the same Person. This penalty shall be in addition to other enforcement actions of this section.
- 2.8.3.5.2 The penalty may be assessed for each day that the prohibited activity continues beyond those schedules set forth in compliance orders or other abatement schedules issued to the property owner or other Person responsible by Floyd County.
- 2.8.3.5.3 In determining the amount of the penalty the Court shall consider the following:
- The degree and extent of the harm to the natural resources, to the public health, or to the public or private property resulting from the violation;
  - The duration and gravity of the violation;
  - The effect on ground or surface water quality;
  - The cost of rectifying the damage;
  - The amount of money saved by noncompliance;
  - Whether the violation was committed willfully or intentionally;
  - The cumulative effect of other enforcement actions applied for the same offense;
  - The prior record of the violator in complying or failing to comply with the stormwater quality management program; and
  - The costs of enforcement to Floyd County.
- 2.8.4 A civil penalty of not more than two thousand five hundred (2,500) dollars may be assessed for each of the following offenses:
- Development without permit.
    - To engage in any development, use, construction, remodeling or other activity of any nature upon land or improvements thereon, subject to the jurisdiction of this Ordinance without all required permits, certificates or other forms of authorization as set forth in this Ordinance.
  - Development inconsistent with permit.
    - To engage in any development, use, construction, remodeling or other activity of any nature in any way inconsistent with any approved plan, permit, certificate or other form of authorization granted for such activity.
  - Violation by act or omission.
    - To violate, by act or omission, any term, variance, modification, condition or qualification placed by Floyd County upon any required permit, certificate, or other form of authorization of the use, development, or other activity upon land or improvements thereon.



- Illicit Discharge
  - To improperly dispose of any substance defined as an illicit discharge.
- Household Products.
  - To improperly dispose of any substance, not included in Section 3.1 or 3.3, that was purchased over-the-counter for household use, in quantities considered normal for household purposes, which upon discharge to the MS4 or drainage network would have an adverse impact on water quality or cause Floyd County to be in noncompliance with any applicable environmental permit.

2.8.4.1 In the event there are penalties assessed by the State against Floyd County and resulting from a violation of this Ordinance, the Person responsible for such violation may be assessed the lesser of one (1) the amount of the penalty assessed as against Floyd County, or (2) two thousand five hundred (2500) dollars.

2.8.5 Order to Clean and Abate/Restore -Any violator may be required to clean and/or restore land to its condition prior to the violation.

2.8.6 Cost Recovery- If corrective action, including required maintenance, is not completed in the time specified or within a reasonable time, Floyd County may take the corrective action, and the cost of abatement or corrective action may be assessed against the responsible party, owner of the premises, and/or the developer. If these costs are not paid within ninety (90) days or invoice, the enforcement official may initiate all appropriate legal actions to enforce the claim.

2.8.7 Injunctions and/or proceedings at law or in equity-Any violation of this Ordinance or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.

2.8.8 Civil Actions - In addition to any other remedies provided in this Ordinance, any violation of this Ordinance may be enforced by civil action brought by Floyd County. Monies recovered under this subsection shall be paid to Floyd County to be used exclusively for costs associated with implementing or enforcing the provisions of this Ordinance. In any such action, Floyd County may seek, as appropriate, any or all of the following remedies:

- A temporary and/or permanent injunction;
- Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which lead to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
- Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
- Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life.



- 2.8.9 Emergency Orders and Abatements - Floyd County may order the abatement of any discharge from any source to the stormwater conveyance system when, in the opinion of Floyd County, the discharge causes or threatens to cause a condition that presents an imminent danger to the public health, safety, or welfare of the citizens of Floyd County the environment, or is a violation of a NPDES permit. If such emergency situations occur and the property owner or other responsible party is unavailable, or time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare, Floyd County may undertake the abatement of said threat or danger. The costs of any such action by Floyd County may be recovered as in this Ordinance.
- 2.8.10 Violations Deemed a Public Nuisance - Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is deemed a threat to the public health, safety, welfare, and environment, and is declared nuisance which may be abated by injunctive or other equitable relief.
- 2.8.11 Remedies Not Exclusive - The remedies listed in this Ordinance are not exclusive of any remedies available under any applicable Federal, State, or local law and Floyd County may seek cumulative remedies.

## 2.9 COMPATIBILITY AND SEVERABILITY

- 2.9.1 Should any Article, section, subsection, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part declared to be unconstitutional or invalid, each Article, section, clause and provision being declared severable.
- 2.9.2 If any provision of this Ordinance is inconsistent with any other, law, regulation, statute, or Ordinance; or results in the imposition of overlapping or contradictory regulations; or if this Ordinance contains any restriction covering any of the same subject matter of another law, regulation, statute, or Ordinance, the provision which is most restrictive or imposes the highest standard or strictest requirement shall govern.



## 3. POST-CONSTRUCTION STORMWATER MANAGEMENT

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### 3.1 APPLICABILITY

All new development and redevelopment activities that result in the disturbance of one (1) or more acres of land within Floyd County, Indiana, including land disturbing activities on individual lots of less than one (1) acre as part of a larger common plan of development of sale, as defined in the IDEM CSGP, shall develop a post-construction Stormwater Pollution Prevention Plan (SWPPP) which includes provisions necessary for minimizing the impacts of pollutants from the proposed land use.

### 3.2 POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN REQUIREMENTS

- 3.2.1 A Stormwater Quality Management Permit may only be issued after the review and acceptance of a Post-Construction SWPPP. The Post-Construction SWPPP is part of the Stormwater Quality Management Plan (SWQMP) and must include, but not be limited to, the following information:
- A description of potential pollutant sources from the proposed land use that may reasonably be expected to add an amount of pollutants to stormwater discharges.
  - Location, dimensions, detailed specifications, and construction details of all post-construction stormwater quality Best Management Practices (BMPs).
  - A description of BMPs that will be installed to control pollutants in stormwater discharges that will occur after construction activities have been completed. Such practices include infiltration of runoff, flow reduction by use of open vegetated swales and natural depressions, buffer strips and riparian zone preservation, filter strip creation, minimization of land disturbance and surface imperviousness, maximization of open space, and stormwater retention and detention ponds.
  - A sequence describing when each post-construction stormwater quality BMP will be installed.
  - Stormwater quality BMPs that will remove or minimize pollutants from stormwater runoff.
  - Stormwater BMPs that will be implemented to prevent or minimize adverse impact to stream and riparian habitat.
  - A narrative description of the maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long-term function. This narrative description shall be made available to future parties who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.



3.2.2 The SWPPP shall include provisions for buffers.

3.2.3 No-Disturbance Buffer

3.2.3.1 The No-Disturbance Buffer will be used to define areas where land disturbance activities shall not be permitted. Grading, clearing, and grubbing shall not be permitted in this area, but pruning, trimming, and partial removal of standing vegetation is permitted.

3.2.3.2 The no-disturbance waterway buffer shall be defined as fifty (50) feet from the top of the waterway bank as defined by geomorphic shape (not by the current water surface elevation).

3.2.3.3 The no-disturbance waterway buffer shall be applied to all waterways and drainage systems that drain more than twenty-five (25) acres of contributing area or are represented on a United States Geological Survey map as a blue line stream.

3.2.4 Waterway Buffer

3.2.4.1 The waterway buffer will be used to define areas where land disturbance activities shall be permitted, but construction of any building or structure shall not be permitted.

3.2.4.2 A waterway buffer shall be applied to all waterways serving more than twenty-five (25) acres of tributary area or those represented on a United States Geological Survey map as a blue line stream.

3.2.4.3 Automatic exemptions may be applied for the following (provided erosion prevention and sediment control, water quality, and cut-fill policies are adequately addressed):

- Roads and utilities crossing waterways.
- Pedestrian trails and walkways proximate to waterways.

3.2.4.4 The waterway buffer shall be defined as the area contained within a boundary established twenty-five (25)-feet beyond the flood plain boundary as defined by FEMA or fifty (50) feet from top of waterway bank as defined by geomorphic shape (not by the current water surface elevation) whichever is larger.

3.2.4.5 At a minimum, the waterway buffer shall be at least the width of the no-disturbance buffer, if applicable.

3.2.4.6 The waterway buffer and flood plain may be used for application of water quality devices. This may only be permitted provided erosion prevention and sediment control, water quality, and cut-fill policies are adequately addressed as determined by Floyd County according to the provisions of this Ordinance.



### 3.3 APPROVED STORMWATER BEST MANAGEMENT PRACTICES (BMPs)

The SWPPP shall include provisions for stormwater quality BMPs functioning independently or in combination. Acceptable stormwater quality BMPs include:

- Vegetated Buffers
- Bio retention Swales
- Vegetated and Forested Buffer Strips
- Level Spreaders
- Infiltration Systems
- Dry Detention Ponds
- Wet Detention Ponds
- Retention Ponds
- Constructed and Pocket Wetlands
- Media Filtration and Screening Systems
- Baffle Boxes and Grit Separators
- Hydrodynamic Separator Systems
- Sediment Forebays
- Oil/Water Separators
- Vault Storage/Infiltration BMPs (infiltration prohibited within wellhead protection areas)
- Other measures reviewed and accepted by Floyd County.

### 3.4 BMP DESIGN REQUIREMENTS AND CRITERIA

3.4.1 The SWPPP shall include provisions for stormwater quality BMPs that are designed to achieve the following design/performance objectives:

- Reduce Total Suspended Solids (TSS) from the first flush as defined by land use characteristics and contributing area; or, capture and treatment of at least one-half (0.5) inch precipitation applied over the contributing area.
- Reduction of stormwater runoff temperature caused by contact with impervious surfaces.
- Stormwater detention/ retention facilities shall be designed to address the rate at which flow is released over the entire runoff discharge period and the volume of discharge over the critical design-storm period. The outlet structure shall be designed as av-notch weir or other multiple stage configurations capable of controlling the discharge rates for the 2 (two), ten (10), and one hundred (100) year design-storm events.
- The Indiana Drainage Handbook or the Indiana Stormwater Quality Manual should be reviewed and considered when preparing the SWPPP.



- 3.4.2 Floyd County reserves the right to develop or adopt other guidance documents to serve as design and implementation standards. Other guidance documents distributed by Floyd County should be reviewed and considered when preparing the SWPP. These documents may be applied as standard by which designs are to be prepared and controls implemented. Floyd County shall have authority to implement this Ordinance by appropriate regulations, guidance, or other related materials. In this regard, technical, administrative, or procedural matter may be modified as needed to meet objectives define herein, so long as such modifications as to technical, administrative, or procedural matters are not contrary to or beyond the intent of the objectives define herein.
- 3.4.3 Regulations, guidance, or other related materials that maybe given authority by this Ordinance may include, but are not limited to: Best Management Practice (BMP) manuals, design regulations and requirements, submission checklists, review checklists, inspection checklists, certifications, stormwater management manuals, and operation and maintenance manuals.
- 3.4.4 Materials may include information deemed appropriate by Floyd County including guidance and specifications for the preparation of EPSC plans, selecting environmentally-sound practices for managing stormwater, minimum specifications and requirements, more complete definitions, and performance standards.
- 3.4.5 The above referenced documents shall not in any way require specific commercially available products. However, they may refer to performance specifications, class of devices, construction, or management practices.
- 3.4.6 The above referenced documents may restrict or prevent the use of specific products, techniques or management practices (that are to be accepted by the public or are deemed to have a negative impact on public infrastructure or the MS4) that have been identified as unacceptable for performance, maintenance, or other technically based reasons.
- 3.4.7 Documents referenced above may be updated periodically to reflect the most current and effective practices and shall be made available to the public. However, the failure to update the manual shall not relieve any applicant from the obligation to comply with this Ordinance, and shall not prevent Floyd County from imposing the most current and effective practices.
- 3.4.8 Soil bioengineering, "green" and other "soft" slope and stream bank stabilization methods shall receive preference over riprap, concrete, and other hard armoring techniques. "Hard" alternatives shall only be permitted when their necessity can be demonstrated given site- specific conditions.



- 3.4.9 Retention - Supportive data must be submitted to justify the type of facility selected. If the facility is designed to retain (volume control) all or a significant portion of runoff (as opposed to temporarily detain it), then appropriate soils analyses shall be submitted to Floyd County. This submission shall also discuss the impacts the facility will have on local karst topography as found through a geotechnical investigation of the site. The facility may be designed to infiltrate runoff to groundwater rather than transmit it downstream under conditions up to a ten (10)-year storm event. It must be able to bypass all other storms up to a one hundred (100)-year event with a discharge rate equivalent to or less than pre-development conditions without negatively impacting the one hundred (100)-flood plain above or below the site. If data indicates that the facility cannot retain a significant portion of the runoff (95%) then the facility must be sized to detain runoff.
- 3.4.10 Detention facilities may, and are encouraged to be, designed to serve multiple purposes. For example, runoff may be detained under wet-weather conditions in facilities that also serve as common or recreational areas during dry-weather conditions. Where multi-purpose facilities are provided, or where flat grades or poorly draining soils are encountered, provisions for adequate low-flow stormwater management systems may be required. Where the retention/ detention facility is planned to be used as a lake, pond, or stormwater quality management practice with a permanent pool, water budget calculations shall be performed and submitted to demonstrate that an adequate pool is expected during dry summer months.
- 3.4.11 A licensed Professional Engineer shall approve and sign all plans for construction, to include all proposed improvements or modifications to existing or new stormwater infrastructure and other related improvements or modifications.
- 3.4.12 Floyd County reserves the right to require superseding or additional treatment criteria or objectives for specific pollutant(s) as necessary to meet overall stormwater quality management program objectives or directives under a watershed improvement or Total Maximum Daily Load (TDML) program.
- 3.4.13 Any and all detention or retention facilities must be installed during the first phase of construction or as roadway infrastructure is installed. The Floyd County Stormwater Board may waive this requirement on a case-by-case basis.





### 3.5 BMP OWNERSHIP AND EASEMENTS

- 3.5.1 Any stormwater management facility or BMP which services individual property owners or subdivisions shall be privately owned. General routine maintenance (controlling vegetative growth and removing debris) shall be provided by the owner(s). The owner(s) shall maintain a perpetual, non-exclusive easement that allows access for inspection and emergency maintenance by Floyd County. Floyd County has the right, but not the duty, to enter premises for emergency repairs.
- 3.5.2 Any stormwater management facility or BMP which services an individual subdivision in which the facility or BMP is within designated open areas or an amenity with an established homeowners association shall be privately owned and maintained by the owner consistent with provisions of this Ordinance. The owner shall maintain a perpetual, non-exclusive easement which allows for access for inspection and emergency maintenance by Floyd County. Floyd County has the right, but not the duty, to enter premises for emergency repairs.
- 3.5.3 If a homeowners association was never developed or it has been dissolved, each individual homeowner is not released of his/her responsibility for the maintenance of the stormwater facility that serves the neighborhood. That as a collective, the property owners within the subdivision may be assessed the expense to maintain and or repair the stormwater facility if necessary.
- 3.5.4 Any stormwater management facility or BMP which services commercial and industrial development shall be privately owned and maintained. The owner shall maintain a perpetual, non-exclusive easement which allows for access for inspection and emergency maintenance by Floyd County. Floyd County has the right, but not the duty, to enter premises for emergency repairs.
- 3.5.5 Floyd County may inspect a privately owned stormwater management facility or BMP via the perpetual, non-exclusive easement. If a stormwater management facility or BMP is inaccessible, Floyd County will provide the owner with a notice requesting access to the site within seven days.
- 3.5.6 All regional stormwater management control facilities proposed by the owner(s), if approved and accepted by Floyd County, shall, upon dedication as a public regional facility, be publicly owned and/or maintained.
- 3.5.7 All other stormwater management control facilities and BMPs shall be privately owned and/or maintained unless accepted for maintenance by Floyd County.
- 3.5.8 Floyd County may require dedication of privately owned stormwater facilities, which discharge to the Floyd County stormwater system.



### 3.6 COORDINATION WITH REGIONAL BMPs

- 3.6.1 All property owners are expected to implement adequate on-site stormwater quality control measures, but the extent thereof may be reduced given the availability, proximity, and nature of regional stormwater quality BMPs.
- 3.6.2 The extent and type of on-site stormwater quality management practices implemented must be proportionate to the land use, pollutant discharge potential, and proximity to regional stormwater quality management practices.
- 3.6.3 For properties where stormwater quantity management practices are either not feasible, or not necessary in lieu of regional stormwater quantity controls, Floyd County has the right to require on-site controls for stormwater quality.
- 3.6.4 Floyd County encourages regional stormwater quantity and/or quality management practices which may be consistently and efficiently managed and maintained. These types of practices will be encouraged in order to replace or reduce the implementation of on-site stormwater quantity and/or quality management practices, as determined to be appropriate by Floyd County.
- 3.6.5 Where a regional stormwater management facility has been established by one (1) or more local governments, or by an authority operation on behalf of one (1) or more local governments, a development or property owner may participate in said program in lieu of runoff control required by this Ordinance. This may be permitted provided that:
- Runoff from the development drains to an approved existing or proposed public regional stormwater management facility that will be operational within one (1) year of commencement of development.
  - The total value of such participation by contribution of funds, contribution of land, contribution of stormwater management facility construction work, or a combination of these, shall equal or exceed the appropriate fee imposed or to be imposed by Floyd County with respect to alternative private controls.
  - Floyd County finds that the stormwater quality management plans are in compliance with all other applicable requirements and Ordinances.
  - Each fiscal or in-kind contribution from a development owner participating in a regional stormwater quality management facility shall be used for acquisition, design, construction or maintenance of one (1) or more such facilities in the same watershed in which the development is located.
  - Redevelopment of properties containing on-site stormwater quantity management practices may be permitted, at the discretion of Floyd County, provided the subject property and downstream public and private properties, infrastructure or "Waters of the State" are adequately protected by a regional facility(s) from stormwater quantity or quality impacts.



### 3.7 COORDINATION WITH MASTER PLANS AND WATERSHED STUDIES

- 3.7.1 If available, each SWPPP shall be evaluated for consistency with the stormwater master plan or watershed study for the major watershed(s) within which the project site is located. The individual project evaluation will determine if stormwater quantity and quality management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a regional facility(s) will be considered in determining the extent to which quantity and/or quality controls will be necessary.
- 3.7.2 Special design criteria or requirements may be applied to stormwater quality BMPs based on the direction or results of Master Plans, Watershed Studies and/or Total Maximum Daily Load (TMDL) requirements.

### 3.8 STORMWATER QUALITY MANAGEMENT PLAN PERMIT CLOSURE

- 3.8.1 A SWQMP shall be considered open and active until the time when Floyd County accepts the site conditions, as-built requirements have been completed, and a *Long-Term Operation and Maintenance Agreement* has been accepted.
- 3.8.2 Acceptance of site conditions shall be made by Floyd County through inspection. If any of the following items are deemed to be insufficient, not appropriate, and/or inconsistent with the SWPPP or objectives stated in this Ordinance, then approval will not be granted.
- 3.8.3 Pipes, channels, catch basins, water quality treatment devices, and other infrastructure are clear of sediment, obstructions, and debris, and are designed and operating as appropriate for final site conditions.
- 3.8.4 Slopes are permanently stabilized.
- 3.8.5 Temporary erosion prevention or sediment control devices (such as silt fence and staking, outlet protection, etc.) have been removed (as appropriate) and any resulting soil disturbance stabilized.
- 3.8.6 Sediment has been removed and slopes stabilized for permanent flood control and water quality control practices.
- 3.8.7 Detention pond grading is stabilized and/or excess sediment removed so that actual volume is at least equal to design volume and condition.
- 3.8.8 Other items as deemed important by Floyd County.



### 3.9 AS-BUILT REQUIREMENTS

- 3.9.1 Prior to issuance of a use and occupancy permit, or final release of bond, the as-built condition, including invert elevations, size, shape, and location of critical stormwater management features, must be identified and approved.
- 3.9.2 The volume, slopes, configuration, condition, and topographic information of all detention, retention, and water quality practices shall be certified by a licensed Professional Engineer. This information shall be provided to Floyd County in the form of an as-built drawing or other electronic form accepted/required by Floyd County. The as-built certification shall indicate if final conditions are consistent with, or exceed, the SWQMP provisions. As-built plans shall be submitted in an online GIS format in the following coordinate system: NAD 1983 State Plane Indiana East FIPS 1301 feet.
- 3.9.3 If it is determined that information provided in the as-built drawing, certification, inspection, or survey of the site do not meet or exceed the SWQMP provisions, Floyd County reserves the right to withhold the Certificate of Occupancy or release of final bond. Furthermore, other enforcement mechanisms, as identified within this Ordinance, may be initiated to insure compliance.
- 3.9.4 If, upon inspection by Floyd County or its designated representative(s), it is determined that acceptance of site conditions is inappropriate by virtue of deficiencies, the permittee shall continue inspections and maintenance, as described in the SWQMP, pending such acceptance.

### 3.10 LONG-TERM OPERATION AND MAINTENANCE

- 3.10.1 A SWQMP may not be closed until a *Long-Term Operation and Maintenance Agreement* has been accepted by Floyd County.
- 3.10.2 *Long-Term Operation and Maintenance Agreements* shall include a maintenance plan for all stormwater quality BMPs in new development or redevelopment that require more than general maintenance (e.g. periodic mowing).
  - 3.10.2.1 The plan will be developed to ensure that the stormwater quality BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.
  - 3.10.2.2 The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants, and other forms of pollution.
  - 3.10.2.3 The agreement shall be noted on the final plat with the appropriate notation on the particular lot(s).
  - 3.10.2.4 The agreement shall be recorded so as to be binding on the OWNER, its administrators, executors, assigns, heirs, and any other successors in interest.
  - 3.10.2.5 A suggested format for the *Long-Term Operation and Maintenance Agreement* is included in Appendix A.



- 3.10.2.6 Provisions shall be made to assure that water detention and retention facilities do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in a *Long-Term Operation and Maintenance Agreement*.
- 3.10.2.7 When a stormwater quality BMP serves more than one (1) parcel, an owners association or binding contract for the purpose of operation and maintenance is required. The owners association shall be responsible for operation and maintenance as directed by this Ordinance.
- 3.10.2.8 The maintenance responsibilities for permanent stormwater quality BMPs shall be determined based upon the type of ownership of the property which is controlled by the facilities.
- 3.10.2.9 Single entity ownership - where the permanent stormwater runoff control facilities are designed to manage runoff from property in single entity ownership, the maintenance responsibility for the stormwater control facilities shall be with the single entity owner.
- 3.10.2.9.1 A single entity shall be defined as an association, public or Private Corporation, partnership firm, trust, estate, or any other legal entity allowed to own real estate, exclusive of individual lot owner.
- 3.10.2.9.2 The stated responsibilities of the entity shall be documented in the form of a *Long-Term Operation and Maintenance Agreement*. Terms including ownership, operation, and maintenance of the facilities shall be submitted with an application for a *SWQMP*, so as to permit a determination of adequacy. Approval of a *SWQMP* shall be conditioned upon the approval of the Agreement, which shall be in writing and recordable form, and shall, in addition to any other terms deemed necessary by Floyd County, contain a provision permitting inspection of all facilities at any reasonable time by Floyd County.
- 3.10.2.9.3 As a condition for approval of the stormwater quality BMPs by Floyd County, the facility owner(s) shall demonstrate the ability to guarantee and apply the financial resources necessary for long-term maintenance requirements. Floyd County will accept a funding mechanism for long-term maintenance responsibilities only if same can be demonstrated to be permanent or transferable to another entity with equivalent longevity.
- 3.10.2.9.4 In the event that proposed funding is through an owners association, it must be demonstrated that the association may not be dissolved unless long-term operation and maintenance activities are accepted by another entity with equivalent longevity and adequate funding. Furthermore, the owners association's responsibility must be stated in the association's declaration, covenants, or by-laws, as appropriate.
- 3.10.2.9.5 Unless made specifically clear in the preliminary stages of the site design and construction plan review procedure, it will be assumed that all stormwater detention, retention, treatment or storage facilities and/or devices shall be owned, operated and maintained by a single entity as defined above.



- 3.10.2.9.6 If a homeowners association was never developed or it has been dissolved, each individual homeowner is not released of his/her responsibility for the maintenance of the stormwater facility that serves the neighborhood. That as a collective, the property owners within the subdivision may be assessed the expense to maintain and or repair the stormwater facility if necessary.
- 3.10.3 Floyd County Ownership – Where Floyd County has accepted an offer of dedication of permanent stormwater quality BMPs, Floyd County shall be responsible for operation and maintenance.
- 3.10.4 Maintenance Bond – Floyd County may require the posting of a maintenance bond to secure the structural integrity of said facilities as well as the functioning of said facilities in accordance with the approved *SWQMP* for a term of eighteen (18) months from the date of acceptance of dedication. Floyd County may approve a cash contribution in lieu of a maintenance bond, provided that the contribution be approximately equivalent to the amount that would be estimated for such bond.
- 3.10.5 In the event a claim is asserted against Floyd County, its agents, or employees for the construction, presence, existence, operation or maintenance of the stormwater quality management practices by the OWNER, Floyd County shall notify the OWNER and the OWNER shall defend at its own expense any suit based on such claim. If any judgment or claims against Floyd County, its agents, or employees shall be allowed, the OWNER shall pay all costs and expenses in connection therewith.
- 3.10.6 This Agreement, as attached by the SWPPP and *Long-Term Operation and Maintenance Agreement*, shall be recorded among the land records of Floyd County, and shall constitute a covenant running with the land, and shall be binding on the OWNER, its administrators, executors, assigns, heirs, and any other successors in interest.



## 4. STORMWATER DRAINAGE MAINTENANCE STANDARDS & CONTROL

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### 4.1 AUTHORITY

This Ordinance is adopted under the authority granted by Indiana Code 14-33-5-20 which mandates that the Stormwater Board make regulations for the administration of the affairs of Floyd County.

### 4.2 FINDING AND PURPOSE

**FINDING.** The Stormwater Board find that the original stormwater drainage facilities constructed within the developed areas of Floyd County have become inadequate or of limited use because of aging, neglect, encroachment, pollution, changing of topography of the drainage area, lack of maintenance, and that immediate steps need to ensure that the purposes of the Board relating to Stormwater drainage are accomplished.

**PURPOSE.** The purpose of Ordinance is to:

- Prevent the degradation of the Stormwater drainage facilities within the County;
- Correct problems associated with encroachment of constructed improvements in drainage easements;
- Correct problems associated with uncontrolled vegetative growth within drainage easements;
- To protect and promote the health, safety, and welfare of persons within the County by improving Stormwater drainage in order to minimize standing water that could provide a habitat for the proliferation of insects that are potential carriers of diseases affecting the residents of the County.

### 4.3 APPLICABILITY

This ordinance applies to all conditions and activities that are serviced by the MS4 permit holder within the boundaries and jurisdiction of Floyd County.

### 4.4 DEFINITIONS

**Board** - Floyd County Stormwater Board

**Floyd County**- Means and includes, for purposes of this Ordinance, Floyd County, Indiana, acting through its duly appointed, qualified, and acting advisory plan commission, together with the officers, employees, attorneys, and designees of said commission.

**Drainage Way**- Any drainage easement, channel, swale, ditch, or other facilities in which the general public or the County has a right or interest for stormwater drainage purposed or right to use, that conveys surface stormwater runoff to waters of the state throughout the County.

**Grading**- The cutting and filling of the land surface to a desired slope or elevation.



**Individual Parcel** - A single parcel of land within the County.

**Owner** - A single property or, collectively as all the homes, within a neighborhood, even if a homeowners association has never been developed or has dissolved, where the home(s) directly contribute to the stormwater facility, structure, or feature.

**Individual Parcel Owner** - A person who has an ownership interest in, financial control of, or a leasehold interest in, an individual parcel.

**Person** - Except to the extent exempted from this Ordinance, any individual, partnership, firm, association, joint venture, public or Private Corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

**Qualified Professional Inspector** - A person who has been certified by Floyd County to be qualified to inspect stormwater quality management activities and oversee maintenance activities.

**Stormwater Runoff** - The portion of precipitation from such sources as rainfall, snow melt, or irrigation water that flows over the ground surface.

**Waters of the State** - Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Indiana which are not entirely confined and retained completely upon the property of a single person.

## 4.5 GENERAL REQUIREMENTS

The following requirements apply to all drainage ways located with the MS4 permit holder of Floyd County.

- 4.5.1 No Individual Parcel Owner shall allow a Drainage Way on an Individual Parcel that the Individual Parcel Owner has an interest in:
- To be blocked by vegetative growth of a height or more than twelve (12) inches above the ground level such that the vegetative growth restricts the flow of Stormwater Runoff.
  - To be blocked by any fence or other man-made object that restricts the flow of Stormwater Runoff.
- 4.5.2 No Individual Parcel Owner shall allow anything to be constructed in a drainage way on an Individual Parcel that the Individual Parcel Owner has an interest in such a way that it restricts the flow of Stormwater Runoff.
- 4.5.3 No Individual Parcel Owner shall change the grading in a drainage way on an Individual Parcel that the Individual Parcel Owner has an interest in even if it will not restrict or alter the flow of the Stormwater Runoff without first acquiring an approval from the County to do so.





- 4.5.4 No person shall hinder Stormwater Runoff in a Drainage Way or fail to keep and maintain any part of a drainage way free of trash, debris, yard waste, excessive vegetation, and other obstacles that would pollute, contaminate, obstruct, hinder, or significantly retard the flow of water through the Drainage Way. In addition, every Individual Parcel Owner shall maintain existing privately owned structures on their Individual Parcel adjacent to a watercourse, so that such structure will not become a hazard or impediment to the use, function, or physical integrity of any Drainage Way.
- 4.5.5 Floyd County will first notify the Owner of required maintenance. The Owner has forty-five (45) days to act on the notification and remedy needed maintenance and/or repairs to meet Floyd County's requirements. If, after forty-five (45) days, it has not been remedied to meet Floyd County's standards, Floyd County may enter the property and take necessary action(s) to maintain and/or repair the stormwater facility, feature, and/or structure.
- 4.5.6 In the case of an emergency situation, Floyd County has the right to enter the property and immediately perform the necessary repair or maintenance.

## 4.6 INSPECTIONS

The board or its representatives may enter any Individual Parcel site to verify compliance with this Ordinance or for performing any action necessary to bring an Individual Parcel into compliance with terms of this Ordinance.

## 4.7 ENFORCEMENT AND REMEDIES

The Board shall proceed with enforcement action under the authority of this Ordinance. The Floyd County Stormwater Board direct the employees of the County to utilize the rules, procedures, duties, and powers authorized by statute in enforcing this Ordinance. The Stormwater Coordinator shall have primary responsibility to administer and enforce the provisions of this Ordinance.

- 4.7.1 Remedies Not Exclusive – The various remedies provided for in this Ordinance are not exclusive of each other or any other remedies available under any applicable federal, state, or local law, and it is within the discretion of Floyd County to seek cumulative remedies.
- 4.7.2 Notice of Violation (NOV) -The Board shall deliver a notice of violation of this ordinance to one or more Individual Parcel Owners if a violation of the requirements is discovered. That notice shall provide the Individual Parcel Owner with a description of the violation and give an opportunity to remedy the violation within forty-five (45) days. If, within forty-five (45) days after issuance of an NOV, an Individual Parcel Owner does not comply with the requirements of this Ordinance, the Board may seek enforcement of the requirements of this Ordinance and seek fines, as provided below. Each day a violation exists shall constitute a separate offense. However, subsequent continuing violations are not entitled to a separate NOV.
- 4.7.3 Fines - Any person causing or contributing to a violation of this Ordinance may be fine as follows:
- First Violation -A person in violation of this Ordinance shall be fine a minimum of two hundred fifty (250) dollars and a maximum of one thousand (1000) dollars for each day which the property has not been brought into compliance with the requirements of this Ordinance.



- Second and/or Subsequent Violation -The second (2nd) subsequent violation of this Ordinance for the same property owned and/or occupied by the same person shall result in the owner and/or lessee being fined a minimum of seven hundred and fifty (750) dollars and a maximum of two thousand (2000) dollars for each day the violation continues.

- 4.7.4 Violations Deemed a Public Nuisance - In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. In an emergency situation Floyd County representatives reserve the right to enter any Individual Parcel or site to perform maintenance or repairs as required. After the grace period required by the notice of violation, Floyd County representatives reserve the right to enter any Individual Parcel or site to verify compliance.
- 4.7.5 Cost of Abatement of the Violation - Within thirty (30) days after the abatement of the violation, the owner of the property should be notified in writing of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within fifteen (15) days from the date of the cost of abatement notification letter. If the amount due is not paid within a timely manner as determined by the decision of the County or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this Article shall become liable to the Board by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the legal rate of judgments shall accrue on the balance beginning on the first day following discovery of the violation.
- 4.7.6 Injunctive Relief- It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the Board may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations, or compelling the person to perform abatement or remediation of the violation. This remedy is in addition to, not as an alternative to, the fines and corrective measures that maybe undertaken, as provided for elsewhere in this Ordinance.
- 4.7.7 Judicial Review-Violations of this Ordinance can be enforced by an action being filed in any court in Floyd County, Indiana, having jurisdiction to issue an injunction and impose fines and other remedies provided for hereunder.

## 4.8 EACH SECTION ADOPTED SEPARATELY

Each section of this Ordinance is adopted separately. In the event that any provision of this Ordinance is deemed to be illegal or invalid, only that part or section shall be replaced. The remaining parts or sections of the Ordinance shall remain in effect.



**4.9 ORDINANCE SUBJECT TO OTHER LAWS**

This Ordinance does not supersede Federal, State, or Local Laws, statutes, or regulations except as allowed.

**4.10 ADOPTION OF ORDINANCE**

This Ordinance shall in full force and effect immediately after it final passage and publications as required, if any. All prior ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

ORDAINED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024;

By \_\_\_\_\_

Floyd County Commissioner

By \_\_\_\_\_

Floyd County Commissioner

By \_\_\_\_\_

Floyd County Commissioner

Attest: \_\_\_\_\_



## 5. APPENDIX A: LONG TERM OPERATION AND MAINTENANCE AGREEMENT

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# LONG-TERM OPERATION AND MAINTENANCE AGREEMENT

File No.: \_\_\_\_\_ Parcel Number: \_\_\_\_\_

As accepted through SWQMP No.: \_\_\_\_\_

Project Name: \_\_\_\_\_

Primary function or description of activities to be executed at the site:

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THIS AGREEMENT, made and entered on this \_\_\_\_ day, of the month \_\_\_\_\_, of the year \_\_\_\_\_ by and between \_\_\_\_\_ ("OWNER") and Floyd County, Indiana, acting by and through its duly authorized representative.

WITNESS, that

WHEREAS, Floyd County Ordinance establishes requirements for stormwater quality best management practices and a Stormwater Quality Management Permit (SWQMP) to manage the quality of stormwater discharged from areas of urban development and redevelopment; and

WHEREAS, under said Ordinance Floyd County shall have the authority to inspect private systems within Floyd County and to order such corrective actions to said private stormwater management systems as are necessary to maintain properly the stormwater management systems within Floyd County; and

WHEREAS, under said Ordinance it is provided that Stormwater Quality Best Management Practices (BMPs) not owned municipally must be maintained by the property owner according to the terms of Long-Term Operation and Maintenance Agreement, that must be implemented before a SWQMP is approved; and

WHEREAS, Floyd County has adopted and approved technical guidelines relating to stormwater BMPs in Floyd County; and

WHEREAS, the OWNER is the legal title-holder of certain real property commonly known as, and more particularly described by, an instrument recorded in the office of the Recorder of Floyd County, in Deed number \_\_\_\_\_, or as Instrument number \_\_\_\_\_ (herein after called the "Property"); and



WHEREAS, OWNER is proceeding to build on, develop, or redevelop the property; and

WHEREAS, the Stormwater Pollution Prevention Plan (SWPPP) and Long-Term Operation and Maintenance Plan, certified by \_\_\_\_\_, a licensed Professional Engineer, dated this day of \_\_\_\_\_ 20\_\_\_\_, is on file in Floyd County; is expressly made a part hereof; and as approved or to be approved by Floyd County, provides for stormwater quality management within the confines of the property; and

WHEREAS, Floyd County and the OWNER agree that the health, safety, and general welfare of the residents of Floyd County require that on-site stormwater quality BMPs be constructed, operated, and maintained on the property; and

WHEREAS, Floyd County requires that onsite stormwater facilities in accordance with the Stormwater Pollution Prevention Plan (SWPPP) and Long-Term Operation and Maintenance Plan be adequately constructed and installed, operated, and maintained by the OWNER; and

WHEREAS, an approved Stormwater Pollution Prevention Plan and Long-Term Operation and Maintenance Plan will adequately illustrate the location type and extent of stormwater quality BMPs, minimum inspection procedures and schedule, minimum operation procedures and schedule, and anticipated minimum maintenance activities including when and how to remove accumulated/collected/filtered/amassed/grown excess vegetation, sediment, debris, trash, pollutant and/or forms of pollution from the stormwater quality best management practices.

NOW, THEREFORE,

In consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

1. The on-site stormwater quality BMPs shall be constructed by the OWNER in accordance with the SWPPP and Long-Term Operation and Maintenance Plan.
2. The OWNER shall operate and maintain the stormwater quality BMPs as directed by the Long-Term Operation and Maintenance Plan in good working order acceptable to Floyd County.
3. The OWNER agrees that inspections will be performed by a Qualified Professional.
4. The OWNER agrees that inspections will be documented and include the following information:
  - a. A description of the current operational or functional status of the stormwater quality BMPs. For structures that accumulate sediment, trash, debris, or other pollutant or form of pollution, an indication of used and remaining capacity (fraction, percentage, depth or volume) shall be given to identify when the BMP must be cleaned out.
  - b. Identification of any necessary repairs, sediment/debris removal or replacement of all or portions of the stormwater system(s).
  - c. The results of any field or laboratory analyses performed.



- d. Other relevant or unusual observations related to the system(s).
  - e. Action plan to prevent premature stormwater system failure as consistent with the Long-Term Operation and Maintenance Agreement(s) provisions.
  - f. Action plan to prevent the premature system failure that exceeds the Long-Term Operation and Maintenance Agreement(s) provisions, but are necessary to prevent stormwater pollution from leaving the site.
5. The OWNER hereby grants permission to Floyd County, its authorized agents and employees, the right to enter the property to inspect the stormwater quality best management practices whenever it deems necessary. Whenever possible, Floyd County shall notify the OWNER prior to entering the property.
6. In the event the OWNER fails to maintain stormwater quality best management practices in accordance with the SWPPP and Long-Term Operation and Maintenance Plan in good working order acceptable to Floyd County, Floyd County may enter the property and take whatever steps it deems necessary to repair or maintain said stormwater quality best management practices. This provision shall not be construed to allow Floyd County to erect any structure of a permanent nature on the land of the OWNER without first obtaining written approval of the OWNER. It is expressly understood and agreed that Floyd County is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on Floyd County.
7. In the event Floyd County, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the OWNER shall reimburse Floyd County upon demand, within ninety (90) days of receipt thereof, for all costs incurred by Floyd County hereunder. In the event the OWNER shall fail to reimburse Floyd County within said ninety (90) days, Floyd County may institute such legal measures as are deemed necessary to insure compliance with this agreement and to recover all sums expended hereunder, to include costs' and reasonable attorney fees.
8. It is the intent of this Agreement to guarantee the proper maintenance of onsite stormwater quality best management practices by the OWNER; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of the OWNER for damages alleged to have resulted from or been caused by stormwater management practices.
9. The OWNER, its executors, administrators, assigns, and any other successors in interest, shall indemnify and hold Floyd County and its agents and employees harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against Floyd County from the construction, presence, existence, operation or maintenance of the stormwater quality best management practices by the OWNER or Floyd County.
10. In the event a claim is asserted against Floyd County, its agents or employees for the construction, presence, existence, operation, or maintenance of the stormwater quality BMP by the OWNER, Floyd County shall notify the OWNER, and the OWNER shall defend at its own expense any suit based on such claim. If any judgment or claims against Floyd County, its agents or employees shall



be allowed, the OWNER shall pay all costs and expenses in connection therewith.

11. This Agreement, as attached by the SWPPP and Long-Term Operation and Maintenance Plan, shall be recorded among the land records of Floyd County, and shall constitute a covenant running with the land, and shall be binding on the OWNER, its administrators, executors, assigns, heirs, and any other successor in interest. The name and mailing address of the OWNER shall be noted on the plat as well.

WITNESS the following signatures and seals:

Floyd County, Indiana

OWNER

By: \_\_\_\_\_

Owner Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Stormwater Board President

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

WITNESS my hand and seal this \_\_\_\_\_ day

Instrument prepared by:

of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

Notary Public

My Commission Expires:

Printed Name

\_\_\_\_\_

Resident of \_\_\_\_\_ County,





) SS:

COUNTY OF \_\_\_\_\_)

Before the undersigned a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally came the above-named Board of Commissioners of Floyd County, Indiana, and acknowledged the execution of the foregoing Ordinance.

In Witness Whereof, I have hereunto subscribed my name and Notarial Seal.

County of Residence:

Floyd

\_\_\_\_\_

Notary Public

\_\_\_\_\_

Printed

My Commission Expires:

\_\_\_\_\_

I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

BY: \_\_\_\_\_

PREPARED BY: RICHARD R. FOX, ATTORNEY AT LAW, 409 BANK STREET,  
NEW ALBANY, IN 47150

