

ORDINANCE – 2019-01 (TO REPLACE ORDINANCE 01-09)

AN ORDINANCE PROVIDING FOR THE CONTROL OF  
SOIL EROSION AND SEDIMENTATION FROM AREAS UNDERGOING DEVELOPMENT  
IN THE FALLING WATERS CONSERVANCY DISTRICT

ARTICLE I

FINDINGS AND PURPOSE

**A. Findings**

The Board of Directors of the Falling Waters Conservancy District hereby finds that:

1. Excessive quantities of soil may erode from areas undergoing development for certain non-agricultural uses including but not limited to the construction of dwelling units, the building of roads and highways, alterations for landscaping, and the creation of recreational facilities;
2. The washing, blowing, and falling of eroded soil across and upon roadways endangers the health and safety of visitors and residents by decreasing vision and reducing traction of vehicles utilizing roadways;
3. Soil erosion necessitates the costly repairing of gullies, washouts and eroding embankments;
4. Sediment from soil erosion fills ditches and the silt pollutes rivers, lakes, reservoirs; and clogs streams and pond waterways;
5. Sediment limits the use of water and waterways for most beneficial purposes, promotes the growth of undesirable aquatic weeds, destroys fish and other desirable aquatic life, and is costly and difficult to remove;
6. Sediment reduces the channel capacity of waterways, resulting in increased chances of flooding at risk to public health and safety; and
7. Sediment fills and clogs storm water lines, causing infiltration of particles which disrupt

the flow of storm water and causes damage to lift stations, grinders, pumps and related necessary storm water line equipment, exacerbating replacement and maintenance costs.

**B. Purpose**

The Board of Directors of the Falling Waters Conservancy District hereby declares that the purpose of this ordinance is to safeguard persons, protect property, prevent damage to the environment, and promote the public welfare by guiding, regulating , and controlling the design, construction, use, and maintenance of any development or other activity which disturbs or breaks the topsoil or otherwise results in the movement of earth on or onto land situated in the boundaries of the Conservancy District, replacing the restrictions previously enunciated in Ordinance 01-09.

**ARTICLE II DEFINITIONS**

For the purposes of this ordinance certain terms used here in shall be defined as set forth below:

**BUILDING PERMIT** means a permit issued by the Porter County Plan Commission for the construction, erection, or alteration of a structure or building.

**CERTIFY or CERTIFICATION** means formally attesting that the specific inspections and tests where required have been performed, and that such tests comply with the applicable requirements of this ordinance.

**CUBIC YARDS** means the amount of material in excavation and/or fill measured by the method of “average end areas.”

**DISTRICT** means the Falling Waters Conservancy District.

**EROSION** means the wearing away of the land surface by the action of wind, water, or gravity.

**EXCAVATION** means any act by which organic matter, earth, sand, gravel, rock, or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed and shall include the conditions resulting therefrom.

EXISTING GRADE means the vertical location of the existing ground surface prior to excavation or filling.

FILL means any act by which earth, sand, gravel, rock, or any other material is deposited, placed, replaced, pushed, dumped, pulled, transported, or moved by man to a new location and shall include the conditions resulting therefrom.

FINAL GRADE means the vertical location of the ground or pavement surface after the grading work is completed in accordance with the site development plan.

GRADING means excavation or fill or any combination thereof and shall include the conditions resulting from any excavation or fill.

NATURAL DRAINAGE means channels formed surface in the existing topography of the earth prior to changes made by unnatural causes.

PARCEL means all contiguous land under one ownership.

PERMITTEE means any person to whom a site development permit is issued.

PERSON means any individual, firm or corporation, public or private, the State of Indiana and its agencies or political subdivisions, and the United State of American, its agencies and instrumentalities, and any agent, servant, officer or employee of any of the foregoing.

REMOVAL means cutting vegetation to the ground or stumps, complete extraction, or killing by spraying.

SEDIMENT means matter which settles to the bottom of a stream or lake.

SEDIMENTATION means the deposition or accumulation of sediment.

SITE means a lot or parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

SITE DEVELOPMENT means altering terrain and/or vegetation and constructing improvements.

SITE DEVELOPMENT PERMIT means a permit issued by the District for the construction or alteration of ground improvements and structures for the control of erosion, runoff, and grading.

STRIPPING means any activity which removes the vegetative surface cover including tree removal, clearing, and storage or removal of topsoil.

VACANT means land on which there are no structures or only structures which are secondary to the use or maintenance of the land itself.

### ARTICLE III

#### GENERAL PRINCIPALS

It is the objective of this ordinance to control soil practices, erosion and sedimentation caused by development activities in the District. Measures taken to control erosion and sedimentation should be adequate to assure sediment is not transported from the site by a storm event of ten-year frequency or less. The following principles shall apply to all development activities within the District and to the preparation of the submissions required under Article IV of this ordinance.

1. Development should be related to the topography and soils of the site so as to create the least potential for erosion. Areas of steep slopes where high cuts and fills may be required should be avoided wherever possible, and natural contours should be followed as closely as possible.
2. Natural vegetation should be retained and protected wherever possible. Areas immediately adjacent to natural watercourses should be left undisturbed wherever possible.
3. The smallest practical area of land should be exposed for the shortest practical time during development. This shall include the dumping or piling of topsoil on a property.
4. Sediment basins, debris basins, desilting basins, or silt traps or filters should be installed and maintained to remove sediment from runoff waters from land undergoing development or receiving dumping or piling of topsoil on a property.

5. The selection of erosion and sedimentation control measures should be based on assessment of the probable frequency of climatic and other events likely to contribute to erosion, and on evaluation of the risks, costs, and benefits involved. Silt fences or natural barriers (such as hay/straw bales) shall be used as erosion/sediment control measures adjacent to roadways and waterways).
6. In the design of erosion control facilities and aesthetics and the requirements of continuing maintenance considered.
7. Provisions should be made to accommodate the increased runoff caused by changed soil and surface conditions during and after development. Drainage ways should be designed so that their final gradients and the resultant velocities of discharges will not create additional erosion.
8. Permanent vegetation and structures should be installed as soon as practical during development. Or, if dumping or piling of topsoil shall not be spread, temporary vegetation measures may be required.
9. When work is commenced to develop a property (such as modification to grade, excavation to dig foundation, final grade, or landscaping), sedimentation control measures, such as the installation of an aggregate driveway (in sufficient size as to avoid being caught in wheels of construction vehicles), or related measures, shall be installed to minimize the relocation of topsoil from the property into the adjacent street. This installation shall occur prior to significant excavation/grading of a property and in conjunction with the placement of erosion control measures surrounding a property while it is being developed. Erosion control measures shall butt up to the aggregate driveway to minimize topsoil leaching into public roadways and storm-water systems.

## ARTICLE IV

### SITE DEVELOPMENT PERMIT

#### A. Permit May Be Required

In each instance where an owner or developer/contractor of real estate is required to obtain a building permit from the Porter County Building Department, in which exterior work shall be performed which impacts the topography of the surface or excavation, said owner or developer of real estate may also be required to obtain a site development permit from the Falling Waters Conservancy District. Or, if no building permit is required, but the owner or developer/contractor will be grading, stripping, excavating or filling land in excess of two hundred and fifty square feet (250), unless the surface area is within fifteen (15) feet of the location of a storm water drain, pond, roadway or other surface water, a permit may be required. **Whether or not the District requires a Permit, in all circumstances,** the erosion control measures outlined herein shall be followed.

#### B. Exceptions

Even in those instances where a building permit is not required under Article IV , Section A of this ordinance, no person shall commence or perform any grading, stripping, excavating, or filling of land without complying with the applicable standards and requirements for control of soil erosion and sedimentation as contained in Article III of this ordinance, as well as implement necessary erosion and sedimentation control measures to satisfy the general principles contained in Article III of this Ordinance.

A permit shall not be required for any of the following:

1. Where the building permit only considers the renovation of the home/building on a property and does not involve excavation or grading on the property (does not involve land disturbing activities);

2. Where the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity affects a surface area of less than 250 square feet (unless the surface area is within 15 feet of the location of a storm water drain, pond, roadway or other surface water.)

3. Installation, renovation, or replacement of a sewer line, waterline, or septic system to serve an existing dwelling or structure pursuant to the prior approval of same by the Porter County Board of Health.

C. Application for Permit

Application for a site development permit may be required by the owner of the property or his authorized agent to the Falling Waters Conservancy District on a form furnished for that purpose. Each application shall bear the name(s) and address(es) of the owner or developer of the site and of any consulting firm retained by the application together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee of one hundred (\$100) dollars. Each application shall include certification that any land clearing, construction, or development involving the movement of earth shall be in accordance with the plans approved upon issuance of the permit.

D. Submissions

Each application for a site development permit, if required shall be accompanied by the following information:

1. A vicinity map in sufficient detail to enable easy location in the field or the site for which the permit is sought, and including the boundary line and approximate acreage of the site, existing zoning, and a legend and scale.

2. A copy of the site plan showing:

- a. Existing topography of the site and adjacent land within approximately 100 feet of the boundaries, drawn at no greater than two-foot contour intervals and clearly portraying the conformation and drainage pattern of the area.
  - b. The location of the existing or proposed structure, buildings, structures, utilities, water bodies, flood plains, drainage facilities, vegetative cover, paved areas, and other significant natural or man-made features on the site and adjacent land within approximately 100 feet of the boundary.
  - c. Proposed use of the site, including present development and planned utilization; areas of excavation, grading, and filling; proposed contours, finished grades, and street profiles; provisions for storm drainage, including the control of accelerated runoff, with a drainage area map and computations; kinds and locations of utilities; and areas and acreages proposed to be paved, covered, sodded or seeded, vegetatively stabilized, or left undisturbed.
3. An erosion and sedimentation control plan showing:
- a. All erosion and sedimentation control measures necessary to meet the objectives of this ordinance throughout all phases of construction and permanently after completion of development of the site.
  - b. Identification of the person(s) or entity which will have legal responsibility for maintenance of erosion control structures and measures during and after development.

These submissions shall be standards and requirements prepared contained in accordance within the "Indiana Storm Water Quality Manual" as prepared, adopted, and approved October 2007 by the Indiana Department of Environmental Management, which standards and requirements are



hereby incorporated into this ordinance by reference.

The Conservancy District may waive specific requirements for the content of submissions upon finding that the information submitted is sufficient to show that the work will comply with the objectives and principles of this ordinance.

#### E. Bonds

The applicant may be required to file with the Conservancy District a faithful performance bond or bonds, letter of credit, or other improvement security satisfactory to the Board of Directors of the Conservancy District in an amount deemed sufficient by the Board of Directors of the Conservancy District to cover all costs of improvements, landscaping, maintenance of improvements and landscaping for such period as specified by the Board of Directors of the Conservancy District, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

#### F. Review and Approval

Each application for a site development permit, if required, shall be reviewed and acted upon according to the following procedures:

1. The Conservancy District Engineer/Appointed Official shall review each application for a site development permit to determine its conformance with the provisions of this ordinance. Within 30 days after receiving an application, the Chairman of the Board of Directors of the Conservancy District shall upon the recommendation and advice of the District Engineer/Appointed Official make one of the following findings in writing, (a) approve the permit application if it is found to be in conformance with the provisions of this ordinance, and issue the permit; (b) approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this ordinance, and issue the permit subject to

these conditions; or (c) disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.

2. No site development permit shall be issued for an intended development site unless:

- a. Such permit is accompanied by or combined with a valid building permit issued by the Porter County Building Department, or
- b. The proposed earth moving is, coordinated with any overall development program previously approved by the Conservancy District for the area in which the site is situated.

3. Failure of the Chairman of the Board of Directors of the Conservancy District to act on the original or revised application within 30 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the Chairman of the Board of Directors of the Conservancy District and the applicant. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Board of Directors of the Conservancy District.

#### G. Appeals

The applicant, or any person or agency which receives notice of the filing of the application, may appeal the decision of the Chairman of the Board of Directors as provided in paragraph F(3) of this Article IV, to the Full Board of Directors of the Conservancy District. Upon receipt of an appeal, the Full Board of Directors of the Conservancy District shall schedule and hold a public hearing, after giving 15 day's notice thereof. The Board of Directors of the Conservancy District shall give such notice of such public hearing as it deems necessary and appropriate. The Board of Directors of the Conservancy District shall hear evidence at such hearing and render a decision within thirty (30) days after the hearing. Factors to be considered on review shall include, but need

not be limited to, the effects of the proposed development activities on the surface water flow to tributary and downstream lands, any comprehensive watershed management plans, or the use of any retention facilities; possible situation of fill and unsupported cuts by water, both natural and domestic; runoff surface waters that produce erosion and silting of drainage ways; nature and type of soil or rock which when disturbed by the proposed development activities may create earth movement and produce slopes that cannot be landscaped; and excessive and unnecessary scarring of the natural landscape through grading or removal of vegetation.

#### H. Retention of Plans

Plans, specifications, and reports for all site developments shall be retained in original form or on electronic form by the Conservancy District.

### ARTICLE V

#### OPERATION STANDARDS AND REQUIREMENTS

##### A. Applicability

All grading, stripping, excavating, and filling which is subject to the permit requirements of this ordinance, and any grading, stripping, excavating, and filling which is exempted from the permit requirement by paragraph B of Article IV, shall be subject to the applicable standards and requirements set forth in this Article III.

##### B. Responsibility

The permittee shall not be relieved of responsibility for damage to persons or property otherwise imposed by law, and the Conservancy District or its officers or agents will not be made liable for such damage, by (1) the issuance of a permit under this ordinance, (2) compliance with the provisions of that permit or with conditions attached to it by the Conservancy District, (3) failure of the Conservancy District officials to observe or recognize hazardous or unsightly conditions,

(4) failure of Conservancy District officials to recommend denial of or to deny a permit, or (5) exemptions from the permit requirements of this ordinance.

C. Procedures and Standards Adopted by Reference

The standards and specifications contained in the "Indiana Storm Water Manual", cited in paragraph D of Article IV, are hereby incorporated into Article V and made a part hereof by reference for the purpose of delineating procedures and methods for operation under site development and erosion and sedimentation control plans approved under Article IV and as the standard and guideline to be utilized by any person engaged in any grading, stripping, excavating, or filling of land within the boundaries of the Conservancy District. In the event of conflict between provisions of said manual and of this ordinance, the ordinance shall govern.

D. Inspection

The Conservancy District shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee where in the work fails to comply with the site development or erosion or sedimentation control plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Conservancy District shall be maintained at the site during progress of the work in order to obtain inspections, the permittee shall notify the Conservancy District at least two (2) working days before the completion of:

1. Final grading,

If stripping, clearing, grading and/or landscaping are to be done in phases or areas, the permittee shall give notice and request inspection at the completion of each of the above work stages in each phase or area. If an inspection is not made and notification of the results given within five working days after notice is received by the Conservancy District from the permittee, the permittee may

disapproved in the same manner as the original plans. Field modifications of a minor nature may be authorized by the Conservancy District Engineer/Agent by written authorization to the permittee.

#### G. Expiration of Permit

Every site development permit shall expire and become null and void if the work authorized by such permit has not been commenced within three hundred and sixty five (365) days, or is not completed by a date which shall be specified in the permit; except that the Conservancy District may, if the permittee presents satisfactory evidence that unusual difficulties have prevented work being commenced or completed within the specified time limits, grant a reasonable extension of time if written application is made before the expiration date of the permit .

### ARTICLE VI ENFORCEMENT

#### A. Exceptions

The Board of Directors of the Conservancy District may, in accordance with the following procedures, authorize exceptions to any of the requirements and regulations set forth in this ordinance:

1. Application for any exception shall be made by a verified petition of the applicant for a site development permit, stating fully the grounds of the petition and the facts relied upon by the applicant. Such petition shall be filed with the site development permit application. In order for the petition to be granted, it shall be necessary that the Board of Directors of the Conservancy District find all of the following facts with respect to the land referred to in the petition:

- a. That the land is of such shape and size or is affected by such physical conditions or is subject to such title limitations of record that it is impossible or impractical for the applicant to comply with all of the requirements of this ordinance;

- b. That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
  - c. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity of the subject property.
2. Each application for an exception shall be referred to the Conservancy District Engineer for review. The Conservancy District Engineer shall transmit his recommendation to the Board of Directors of the Conservancy District, which shall review such recommendations prior to the granting or denying of the exception.
3. The Board of Directors of the Conservancy District shall hold a public hearing on each application for exception, within thirty (30) days after receiving application, in the manner provided with respect to appeals. After public hearing, the Board of Directors of the Conservancy District may approve the site development permit application with the exceptions and conditions it deems necessary or it may disapprove such site development permit application and exception application or it may take such other action as deemed appropriate.

#### B. Stop-Work Order

In the event any person holding a site development permit pursuant to this ordinance violates the terms of the permit, or carries on site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood of the development site or so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Chairman of the Board of Directors of the Conservancy District or his/her authorized representative may suspend or revoke the site development permit or engage in other remedial action as outlined herein.

1. Suspension of a permit shall be by a written stop-work order issued by the Chairman of the

Board of Directors of the Conservancy District or his authorized representative and delivered to the permittee or his agent or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited, and shall state the conditions under which work may be resumed. A stop-work order shall remain in effect until the next regularly scheduled meeting of the Board of Directors of the Conservancy District at which the conditions of subparagraph 2 below can be met.

2. No site development permit shall be permanently suspended or revoked until a hearing is held by the Board of Directors of the Conservancy District. Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:

a. the grounds for complaint suspension or reasons for suspension or revocation, in clear and concise language;

b. the time when and place where such hearing will be held.

Such notice shall be served on the permittee at least five (5) days prior to the date set for the hearing. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his/her behalf. At the conclusion of the hearing the Board of Directors of the Conservancy District shall determine whether the permit shall be suspended or revoked.


#### C. Violations and Penalties


No person shall construct, enlarge, alter, repair, or maintain any grading, excavation or fill, or cause the same to be done, contrary to or in violation of any terms of this ordinance. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted shall constitute a separate offense. Upon conviction of any such violation,


such person, partnership or corporation shall be punished by a fine of not more than (\$500) for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to restore the site to the condition existing prior to commission of the violation, or to bear the expense of such restoration.

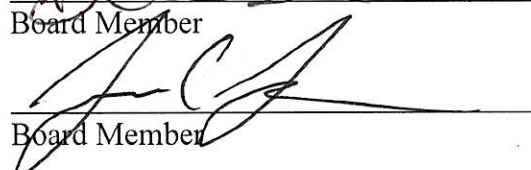
Upon observation of failure to comply with these erosion control measures, the District shall notify the homeowner or representative of same. Should no corrective action occur within forty eight (48) hours, the District may employ a necessary contractor to install proper erosion control measures and apply the cost for same (include all legal and related costs) to the homeowner or contractor, including recordation of a lien for same.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE FALLING WATERS CONSERVANCY DISTRICT ON THE 9 TH DAY OF September, 2019.

ATTEST:  
  
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Board Member

  
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Board Member

  
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Board Member

  
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Board Member

Attested to:   
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