

## TOWNSHIP OF WEST COCALICO

Lancaster County, Pennsylvania

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**ORDINANCE NO.** \_\_\_\_\_

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AN ORDINANCE TO AMEND THE WEST COCALICO TOWNSHIP STORM WATER MANAGEMENT ORDINANCE TO REVISE DEFINITIONS CONCERNING LAND DISTURBANCE ACTIVITIES, ADD REGULATIONS GOVERNING HIGH TUNNELS AND REVISE REGULATIONS GOVERNING MAINTENANCE OF STORM WATER MANAGEMENT FACILITIES.

BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of West Cocalico, Lancaster County, Pennsylvania, as follows:

Section 1. The West Cocalico Township Storm Water Management Ordinance of 2015, Article II, Definitions, Section 202, shall be amended by adding or revising the following definitions in alphabetical order:

HIGH TUNNEL – A structure which meets the following:

SECTION 601 Is used for the production, processing, keeping, storing, sale or shelter of an agricultural commodity as defined in Section 2 of the Act of December 19, 1974 (P.L.973, No. 319), known as the "Pennsylvania Farmland and Forest Land Assessment Act of 1974," or for the storage of agricultural equipment or supplies.

SECTION 601 Is constructed consistent with all of the following:

1. Has a metal, wood or plastic frame.
2. When covered, has a plastic, woven textile or other flexible covering.
3. Has a floor made of soil, crushed stone, matting, pavers or a floating concrete slab.

LAND DISTURBANCE – Any activity involving grading, tilling, digging, or filling of ground or stripping of vegetation or any other activity that causes an alteration to the natural condition of the land; the erection of a dwelling or other structure; or the modification, removal, filling, or alteration of an existing storm water management facility or drainage easement.

- (1) Major Land Disturbance Activity.

(i) Any use requiring the submission of a subdivision or land development plan as herein defined.

(ii) Any land disturbance not defined as a minor land disturbance activity or deemed to qualify as a minor land disturbance activity by the Township.

(iii) Any use involving the diversion or piping of any natural or man-made watercourse or existing drainage pattern.

(2) Minor Land Disturbance Activity.

(i) The use of land on an existing lot of record, including subdivided lots or land developments approved under a major land disturbance activity, provided that:

1. The use is not within the Floodplain District as defined by the West Cocalico Zoning Ordinance [Chapter 27].

2. No diversion or piping of any natural or man-made water course or existing drainage pattern is involved.

3. The use does not require the submission of a subdivision or land development plan as herein defined.

4. The use does not create more impervious area, or more earth disturbance (the removal of ground cover, grading, filling, or excavation) than shown in the table below, either of which shall be measured on a cumulative basis from September 3, 2015:

Parent Tract Size	*Minimum Distance	**Cumulative New Earth Disturbance	**Cumulative New Impervious Areas
0-0.5 acre	20 feet	2,000 square feet	1,000 square feet
0.5-1 acre	50 feet	5,000 square feet	4,000 square feet
1-2 acres	100 feet	21,780 square feet	10,000 square feet
>2-5 acres	200 feet	43,560 square feet	15,000 square feet
>5 acres	300 feet	43,560 square feet	20,000 square feet

\*For the purposes of this subsection, "Minimum Distance" shall be the minimum distance between the downslope portion of the project site and the down slope property line of the property.

\*\*All post developed storm water runoff from the disturbed area or additional impervious area shall leave the site in the same manner as the pre-development condition and that there will be no adverse effects to the adjacent property.

5. Temporary and final grading shall, wherever possible, discourage concentrated storm water and allow for sheet flow. Unless otherwise provided for by the approved plan(s), all runoff shall be in a non-erosive sheet flow condition at all property lines.

6. All agricultural activities shall have a conservation plan approved by the appropriate officials.

(ii) Any use of land which, in the opinion of the Township, represents minimal land disturbance or impact to the environment.

(iii) Notwithstanding the foregoing, the cumulative installation of 1,000 square feet of impervious surface coverage shall be permitted on an improved lot in single and separate ownership on September 3, 2015, without obtaining storm water management approval provided, however, the installation of such impervious surface coverage shall meet all requirements to be considered a minor land disturbance activity and the landowner makes an application for such exemption.

Section 2. The West Cocalico Township Storm Water Management Ordinance of 2015, Article IV, Storm Water Management Site Plan Requirements, §401, Exemptions, shall be amended as follows:

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4. Except as provided for in Section 401.7, agricultural activity when operated in accordance with a conservation plan or an erosion and sedimentation pollution control plan found to be adequate by the Conservation District and performed according to the requirements of Chapter 102. The agricultural activity such as growing crops, rotating crops, tilling of soil and grazing animals and other such activities are specifically exempt from the requirements of this Ordinance.
5. Except as provided for in Section 401.7, forest management and timber operations which are following the DEP management practices contained in its publication Soil Erosion and Sedimentation Control Guidelines for Forestry and are operating under an erosion and sedimentation control plan in accordance with the requirements of Chapter 102 are specifically exempt from the requirements of this ordinance.
6. A person seeking to erect a high tunnel shall in all cases be required to file an application under this Ordinance. A person seeking exemption from this Ordinance on the basis that the high tunnel is exempted pursuant to the Storm Water Management Act, as amended by Act 15 of 2018, shall provide all information necessary to demonstrate that the high tunnel meets the definition set forth herein and that the proposed high tunnel meets all of the following requirements:
  - A. The high tunnel or its flooring does not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area; and
  - B. The high tunnel meets one of the following:
    - (1) The high tunnel is located at least 100 feet from any perennial stream or watercourse, public road or neighboring property line.

- (2) The high tunnel is located at least 35 feet from any perennial stream or watercourse, public road or neighboring property line and located on land with a slope not greater than 7%. If an applicant desires to locate a high tunnel within 50 feet from any perennial stream or watercourse, the applicant shall provide a copy of the DEP approval for the location of the high tunnel within 50 feet from any perennial stream or watercourse.
  - (3) The high tunnel is supported with a buffer or diversion system that does not directly drain into a stream or other watercourse by managing storm water runoff in a manner consistent with requirements of this Ordinance.
  - C. Nothing in this subsection shall be construed to exempt high tunnels from other requirements applicable under Federal, State or Township ordinances.
  - D. Nothing in this subsection shall apply to impervious surfaces including, but not limited to, driveways or parking and loading areas which may be installed in connection with the high tunnel.
7. The Township may deny or revoke any exemption pursuant to this section at any time for any project the Township believes may pose a threat to public health, safety, property or the environment.

Section 3. The West Cocalico Township Storm Water Management Ordinance, Article VI, Administration, Section 601, Operation and Maintenance Agreements, shall be retitled “Maintenance of Storm Water Management Facilities” and shall be amended in its entirety to provide as follows:

**SECTION 601 MAINTENANCE OF STORM WATER MANAGEMENT FACILITIES.**

- 1. Storm water management facilities and BMPs existing on the effective date of this Ordinance which have not been accepted by the Township or for which maintenance responsibility has not been assumed by a private entity such as a homeowners’ association shall be maintained by the individual Landowner.
  - A. Such maintenance shall include at a minimum all of those items set forth in §601.4 and §601.5 and all inspection and maintenance requirements set forth in notes on recorded plans for the lot and any recorded Storm Water Management Agreement or Operation and Maintenance Agreement applicable to the lot.
  - B. If the Township determines at any time that any permanent storm water management facility has been eliminated, altered, blocked through the erection of structures or the deposit of materials, or improperly maintained, the condition constitutes a nuisance and the Township shall notify the Landowner of corrective measures that are required, and provide for a reasonable period of time within which the property owner shall take such corrective action.
    - (1) If the Landowner does not take the required corrective action, the Township may either perform the work or contract for the performance of the work

and bill the Landowner for the cost of the work plus a penalty of 10% of the cost of the work.

- (2) If such bill is not paid by the property owner within 30 days, the Township may file a municipal claim against the property upon which the work was performed in accordance with the applicable laws.
  - (3) The Township shall have the right to choose among the remedies and may use one or more remedies concurrently.
2. Storm water management facilities and BMPs installed after the effective date of this Ordinance which have not been accepted by the Township or for which maintenance responsibility has not been assumed by a private entity such as a homeowners' association shall be maintained by the individual Landowner in accordance with §601.1.
  3. Assignment of maintenance responsibility for storm water management facilities. When a SWM Site Plan or a subdivision and/or land development plan proposed installation of storm water management facilities, the storm water management facilities shall be designed to consider long-term maintenance of each storm water management facility. The SWM Site Plan or subdivision and/or land development plan shall contain notes, in language acceptable to the Township Solicitor, addressing responsibility for inspection and maintenance. The notes and the required Operation and Maintenance Agreement shall address the following requirements:
    - A. If storm water management facilities are proposed to be installed within the right-of-way of a Township street in existence on the date the SWM Site Plan or subdivision and/or land development plan is filed, the developer and the developer's successors and assigns shall be responsible for the maintenance of such facilities. If the development at issue is a nonresidential development, the owner of the abutting lot shall be responsible for maintenance of the facility. If the proposed development is a residential development of a single lot, the lot owner shall be responsible for the maintenance of such facility. If the development is a residential subdivision, the developer shall create a homeowners' or unit owners' association which shall be responsible for the maintenance of the facility.
    - B. If the SWM Site Plan or the subdivision and/or land development plan creates multiple residential lots, the developer shall assign maintenance responsibility to a landowner, homeowners' association or unit owners' association (hereafter the "responsible entity") as follows:
      - (1) If all storm water management facilities proposed are individual facilities serving a single lot, such as rain gardens serving a single lot and swales on the same lot directing storm water to the such rain garden, maintenance responsibility may be assigned to the individual lot owners or to a homeowners' or unit owners' association.
      - (2) If the SWM Site Plan or subdivision and/or land development plan proposes storm water management facilities that are located on more than one lot or

unit or that serve more than one lot or unit, including, but not limited to, pipes, inlets, and detention or retention basins, the developer shall form a homeowners' association or unit owners' association which shall be responsible to maintain all of the storm water management facilities and which shall be a party to the Operation and Maintenance Agreement.

(3) Where the SWM Site Plan or subdivision and/or land development plan proposes a single lot nonresidential development, the landowner shall be responsible to maintain all storm water management facilities.

(4) When the SWM Site Plan or subdivision and/or land development plan propose a multi-lot nonresidential development, the developer shall provide detailed information as to how maintenance responsibility for storm water management facilities shall be assigned. If storm water facilities on one lot serve multiple lots, the developer shall identify how the costs of long-term maintenance shall be allocated.

4. Maintenance responsibilities for Storm Water Management facilities shall include, but not be limited to, the following:

A. Regular inspection of the Storm Water Management facilities to assure proper implementation of BMPS, maintenance and care, in accordance with §601.5.

B. All pipes, swales and detention facilities shall be kept free of any debris or other obstruction and in original design condition.

C. Removal of silt from all permanent structures which trap silt or sediment in order to keep the material from building up in storm water management facilities and thus reducing their capacity to convey or store water.

D. Mowing grass areas as necessary to maintain adequate growth and to control weeds. Chemical weed control may be used to maintain the specified planting (i.e. grass, wetlands plants, etc.) if federal, state and local laws and regulations are met.

E. Liming and fertilizing vegetated channels and other areas according to the specifications in the PADEP Erosion and Sediment Pollution Control Manual.

F. Re-establishment of vegetation by seeding and mulching or sodding of scoured areas or areas where vegetation has not been successfully established. Selection of seed mixtures shall be subject to approval by the Township.

G. Where the NPDES permit for the project requires that BMPs be installed, annual written reporting of the inspection and maintenance of those BMPs shall be provided to the Township. LID Practices shall be included in the annual written report. A form for reporting shall be available at the Township office. Failure to provide such reports may result in enforcement and penalties by the Township.

5. Storm Water Management BMPs shall be inspected by the responsible entity, according to the following of minimum frequencies:
  - A. Annually for the first five (5) years.
  - B. Once every three (3) years thereafter.
  - C. During or immediately after the cessation of a 10-year or greater storm.

If the Operation and Maintenance Agreement or the notes on the SWM Site Plan or subdivision and/or land development plan provide a more frequent schedule for inspections, the responsible entity shall conduct inspections in accordance with such schedule.

6. Prior to final approval of the development site's SWM Site Plan or subdivision and/or land development plan, the record owner of the development site shall execute and record an Operation and Maintenance Agreement, in a recordable form acceptable to the Township, covering all temporary and permanent storm water management and erosion control facilities that are to be privately owned. The Agreement, as provided in the Appendix, shall include:
  - A. A written description of all temporary and permanent storm water management and erosion control facilities, areas, or structures used as Storm Water Management BMPs and their maintenance requirements.
  - B. Facilities, areas, or structures used as Storm Water Management BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.
  - C. The Operation and Maintenance Agreement shall be recorded as a restrictive deed covenant that runs with the land.
  - D. Identification of a responsible entity for operation and maintenance of temporary and permanent storm water management and erosion control facilities in accordance with §601.3.
  - E. The Landowner and the successor responsible entity in accordance with §601.3 shall maintain all temporary and permanent storm water management and erosion control facilities in good working order in accordance with the approved maintenance schedule and shall keep all facilities in a safe manner.
  - F. The Landowner shall convey to the Township easements and/or rights-of-way to assure access for periodic inspections by the Township and maintenance, if required.
  - G. The Landowner and the responsible entity in accordance with §601.3 shall keep on file with the Township the name, address and telephone number of the person or

company responsible for maintenance activities; in the event of a change, new information will be submitted to the Township within ten (10) days of the change.

- H. The landowner and the responsible entity in accordance with §601.3 are responsible for the operation and maintenance of the storm water management BMPs. If the landowner and the responsible entity in accordance with §601.3 fail to adhere to the Operation and Maintenance Agreement, the Township may perform the services required and charge the landowner and the responsible entity in accordance with §601.3 appropriate fees. Nonpayment of fees shall result in a lien against the property.
  - I. Where the NPDES permit for the project requires that BMPs be installed, annual written reporting of the inspection and maintenance of those BMPs shall be included in the program.
7. The Township reserves the right to accept or reject any proposal to dedicate ownership and maintenance responsibility of any Storm Water Management facilities to the Township.
- A. Where the Board of Supervisors accepts dedication of storm water management facilities, the Board of Supervisors may require the applicant to establish, at the time of dedication, a maintenance fund, in an amount determined by the Township, adequate for the perpetual care of such facilities.
  - B. The Owner/Developer shall be responsible to prepare the necessary deed of dedication and to pay all costs related thereto, including but not limited to: drafting; recording fees; transfer taxes; notary fees; etc., as well as fees attributable to review of the proposed deed by the Township Engineer and Solicitor. Any proposed deed shall be subject to approval of the Township Solicitor. Any deed shall have, as an attached exhibit, a plan showing the proposed dedication in sufficient detail to establish the location and dimensions of any storm water facility located on same. In addition to a deed, the Township Solicitor may, depending on the size of the property and facility, require the Owner/Developer to provide title insurance from a reputable insurer, insuring the dedicated property as having good and marketable title free and clear of all liens and encumbrances except utility easements and other easements of record.

Section 4. All other sections, parts and provisions of the Storm Water Management Ordinance of West Cocalico Township shall remain in full force and effect as previously enacted and amended.

Section 5. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses or parts of this Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 6. This Ordinance shall take effect and be in force five (5) days after its enactment by the Board of Supervisors of the Township of West Cocalico as provided by law.

DULY ORDAINED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2020, by the Board of Supervisors of the Township of West Cocalico, Lancaster County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF WEST COCALICO  
Lancaster County, Pennsylvania

Attest: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
(Vice) Chairman  
Board of Supervisors

[TOWNSHIP SEAL]