

## CASE NO. 769-AT-13

### SUPPLEMENTAL MEMORANDUM

September 11, 2014

Petitioner: **Zoning Administrator** Prepared by: **John Hall**, Zoning Administrator  
**Susan Chavarria**, RPC Planner

#### Request:

Amend the Champaign County Zoning Ordinance by amending the Champaign County Stormwater Management Policy by changing the name to Storm Water Management and Erosion Control Ordinance and amending the reference in Zoning Ordinance Section 4.3.10; and amend the Storm Water Management and Erosion Control Ordinance as described in the legal advertisement (see attached) which can be summarized as follows:

- I. Revise existing Section 1 by adding a reference to 55 ILCS 5/5-15015 that authorizes the County Board to have authority to prevent pollution of any stream or body of water. (Part A of the legal advertisement)
- II. Revise existing Section 2 by merging with existing Sections 3.1 and 3.2 to be new Section 2 and add purpose statements related to preventing soil erosion and preventing water pollution and fulfilling the applicable requirements of the National Pollution Discharge Elimination System (NPDES) Phase II Storm Water Permit. (Part B of the legal advertisement)
- III. Add new Section 3 titled Definitions to include definitions related to fulfilling the applicable requirements of the National Pollution Discharge Elimination System (NPDES) Phase II Storm Water Permit. (Part C of the legal advertisement)
- V. Revise existing Sections 3.3, 3.4, and 4 and add new Sections 5, 11, 12, 13, 14, and 15 and add new Appendices C, D, and E. Add requirements for Land Disturbance activities including a requirement for a Land Disturbance Erosion Control Permit including Minor and Major classes of Permits that are required within the Champaign County MS4 Jurisdictional Area; add a requirement that land disturbance of one acre or more in a common plan of development must comply with the Illinois Environmental Protection Agency's ILR 10 Permit requirements; add fees and time limits for each class of Permit; add requirements for administration and enforcement of Permits; and add new Appendices with new standards and requirements for both Minor and Major Permits. (Parts D, E, L, M, N, O, T, U, and V of the legal advertisement)
- IV. Revise existing Section 7 to be new Section 6 and add a prohibition against erosion or sedimentation onto adjacent properties and add minimum erosion control and water quality requirements that are required for all construction or land disturbance. (Part F of the legal advertisement)
- VI. Revise existing Section 5 to be new Section 8 and add a Preferred Hierarchy of Best Management Practices. (Part H of the legal advertisement)
- VII. Revise and reformat existing Sections 6, 8, 9, 10, 11, 12, and the Appendices and add new Section 18. (Parts G, I, J, P, Q, R, S and W of the legal advertisement)

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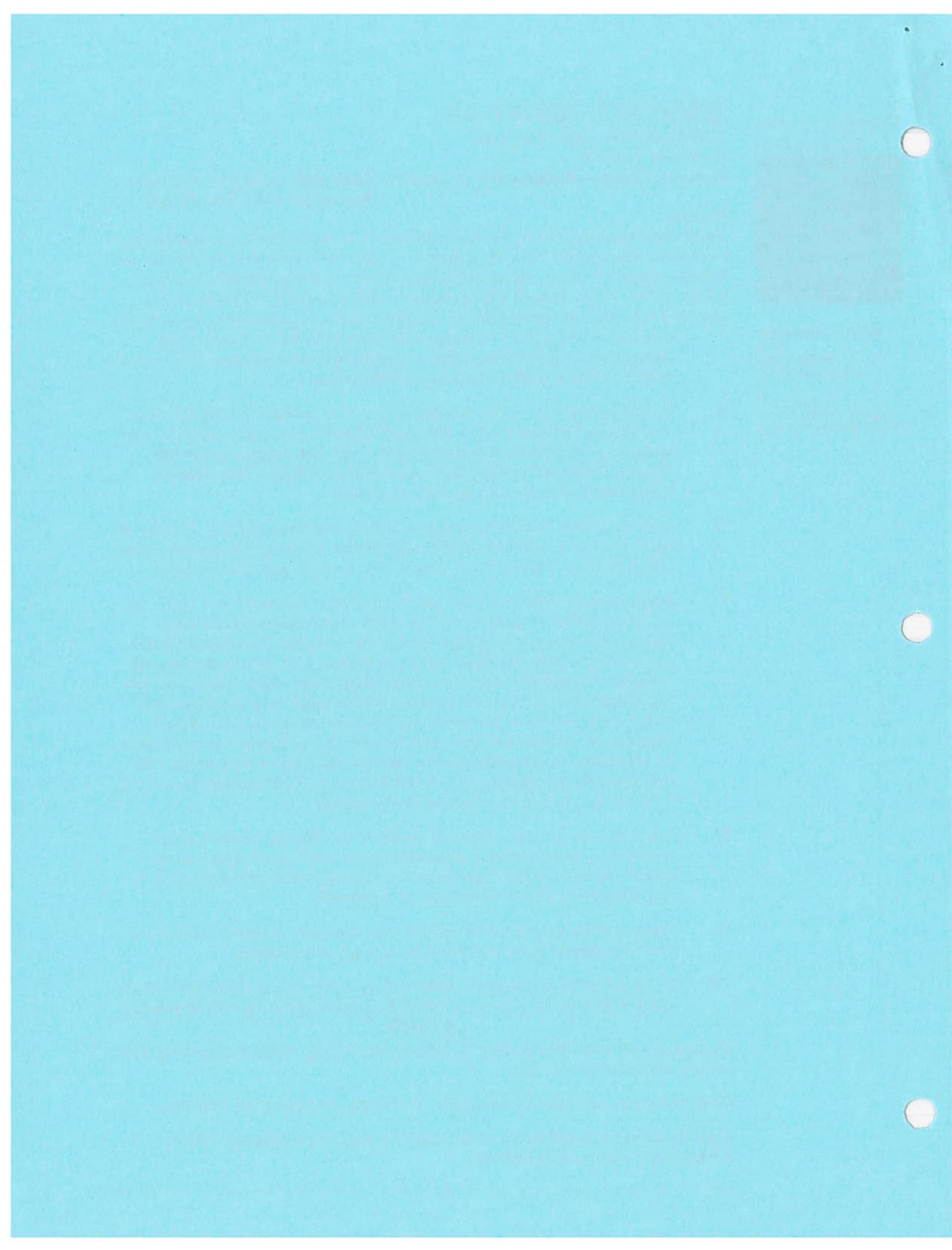
#### STATUS

This case is continued from the June 12, 2014, public hearing. Minutes from those public hearings are included separately.

Draft evidence is included related to Policy 8.4.5 and the Purpose of the Ordinance.

Draft illustrations that will be used in both the Technical Appendices and a Public Information Handout are also attached.

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**ATTACHMENTS (\* = Attachments lettered consecutively from the Preliminary Memorandum)**

- A Case Description from Legal Advertisement
- \*FF Excerpt of Minutes for Cases 769-AT-14 and 773-AT-14 from the of the Approved Minutes of May 29, 2014 (included separately)
- \*GG Excerpt of Minutes for Cases 769-AT-14 and 773-AT-14 from the of the Approved Minutes of June 12, 2014 (included separately)
- \*HH. Draft Evidence Regarding Achievement of Policy 8.4.5
- \*II. Draft Evidence Regarding Cost Impact
- \*JJ. Draft Illustration of Example Zoning Use Permit Site Plan for a New Home on a Typical Rural Lot (included separately)
- \*KK Draft Illustration of Example Erosion and Sediment Control Plan (ESCP) for a New Home on a Typical Rural Lot (Example 1. Grass already established) (included separately)
- \*LL Draft Illustration of Example Erosion and Sediment Control Plan (ESCP) for a New Home on a Typical Rural Lot (Example 2. All soil disturbed on property) (included separately)

## Attachment A. Case Description from Legal Advertisement

Case 769-AT-13

FEBRUARY 6, 2014

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Amend the Champaign County Zoning Ordinance by amending the Champaign County Stormwater Management Policy by changing the name to Storm Water Management and Erosion Control Ordinance and amending the reference in Zoning Ordinance Section 4.3.10; and amending the Storm Water Management and Erosion Control Ordinance as follows:

Part A. Revise Section 1 Authority by adding a reference to 55 ILCS 5/5-15015 that authorizes the County Board to have authority to prevent pollution of any stream or body of water.

Part B. Revise Section 2 as follows:

1. Merge existing Intent and Requirements (Sections 3.1) and General Requirements (Section 3.2) with existing Purpose (Section 2).
2. Add purpose statements related to preventing soil erosion and preventing water pollution and fulfilling the applicable requirements of the National Pollution Discharge Elimination System (NPDES) Phase II Storm Water Permit.

Part C. Add new Section 3 titled Definitions and add definitions related to fulfilling the applicable requirements of the National Pollution Discharge Elimination System (NPDES) Phase II Storm Water Permit.

Part D. Change the title of existing Section 4 to Scope and make the following changes:

1. Add a requirement that Land Disturbance have requirements identified in the Ordinance.
2. Add a requirement that all sections of the Ordinance are applicable to land disturbance activities in the Champaign County MS4 Jurisdictional Area.
3. Add a requirement that land disturbance of one acre or more in a common plan of development must comply with the Illinois Environmental Protection Agency's ILR 10 Permit requirements.
4. Add a requirement that all Sections except those related to the Land Disturbance Erosion Control Permit (Sections 12, 13, 14, and 15) are only applicable when a land subdivision requires approval of the Champaign County Board and when construction occurs that requires a Zoning Use Permit.
5. Add a requirement that Protect Existing Drainage and Water Resource (Section 6) and Easement (Section 7) are applicable to all subdivisions, zoning use permits and land disturbances regardless of the amount of area involved or percent impervious surface.
6. Add a requirement that Land Disturbance and Erosion Control Requirements (Section 11) are applicable with any Storm Water Drainage Plan or necessary enforcement action.
7. Add a requirement for erosion and sedimentation controls when there is more than 10,000 square feet of land disturbance in total, after the Effective Date.
8. Add exemptions to Land Disturbance Erosion Control Permits.

Part E. Add a new Section 5 titled Authorizations and Project Termination and make the following changes:

1. Relocate existing Reviewing Authorities (existing Section 4.1) and remove Special Use Approvals
2. Relocate existing Authorization to Construct (existing Section 3.3) and add authorizations for Land Disturbance Erosion Control Permits.
3. Relocate existing Requirements for Final Approvals (existing Section 3.4) and rename to Project Termination, and add requirements for Land Disturbance Erosion Control Permits.

**Attachment A. Case Description from Legal Advertisement**

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Part F. Renumber existing Section 7 to new Section 6 titled Protect Existing Drainage and Water Resource and make the following changes:

1. Add new requirement to prohibit erosion or sedimentation onto adjacent properties.
2. Add new requirements for discharges from sump pumps.
3. Add new minimum erosion control and water quality requirements including a minimum requirement for proper disposal of construction waste; minimum requirement for location and control of soil stockpiles; and a requirement to cleanup sediment that enters onto public areas and adjacent properties.

Part G. Renumber existing Section 9 to new Section 7.

Part H. Change existing Section 5 to new Section 8 titled Storm Water Drainage System and add a Preferred Hierarchy of Best Management Practices.

Part I. Change existing Section 6 to new Section 9 titled Storm Water Drainage Plan and merge with existing Section 12.

Part J. Renumber existing Section 8 to new Section 10.

Part K. Add new Section 11 titled Land Disturbance and Erosion Control and include the following:

1. Add general requirements for erosion and sediment control operations.
2. Add list of practices that should be applied to minimize soil erosion.
3. Add list of practices that should be applied to minimize sediment.
4. Add requirements for filtering dewatering practices at construction sites.
5. Add requirements for soil stockpiles.
6. Add requirements for maintenance of erosion and sediment control measures.

Part L. Add new Section 12 titled Land Disturbance and Erosion Control Permits and include the following:

1. Add a requirement for Land Disturbance Erosion Control Permits.
2. Add a requirement that the class of permit Land Disturbance Erosion Control Permit – Minor is required for any land disturbance of less than one acre that is part of a common plan of development or sale of record that is not otherwise exempt.
3. Add a requirement that the class of permit Land Disturbance Erosion Control Permit – Major is required for any land disturbance of one acre or more that is not otherwise exempt.
4. Add required forms and procedure requirements for each permit class.
5. Add that the class of permit Land Disturbance Erosion Control Permit – Major shall comply with current ILR10 requirements.
6. Add a fee schedule with fees for each class of permit.
7. Add a requirement that an issued permit authorizes only those activities shown on approved plans.
8. Add time limitations for Land Disturbance Erosion Control Permits.
9. Add responsibilities of the holder of the Land Disturbance Erosion Control Permit.
10. Add requirements for maintenance of erosion control facilities and other drainage structures during and after construction.

**Attachment A. Case Description from Legal Advertisement**

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Part M. Add new Section 13 titled Administration of Land Disturbance and Erosion Control Permits and include the following:

1. Add duties of the Zoning Administrator as established in the Champaign County Zoning Ordinance.
2. Add conditions of Land Disturbance and Erosion Control Permit approval to prevent the creation of a nuisance or unreasonable hazard to persons or to public or private property including specific erosion and sediment controls, safety structures, grading improvements, adequate dust controls, and acceptance of discharges on others property.
3. Add conditions to which a Land Disturbance Erosion Control Permit might be denied if the Erosion and Sediment Control Plan does not meet the requirements of the ordinance and restrictions if the permit is denied.
4. Add conditions to Land Disturbance Erosion Control Permit and plans to ensure that no work occurs without prior written approval, that any changes to plans must be submitted prior to work being conducted, and methods for changing an approved document.
5. Add requirement of site inspections during specific phases of the work to ensure compliance with the conditions of the Ordinance.

Part N. Add new Section 14 titled Liability Related to Land Disturbance and Erosion Control Permits and include a requirement that all responsibilities and liabilities are held by the permit holder and no liability is held by Champaign County.

Part O. Add new Section 15 titled Enforcement of Land Disturbance and Erosion Control Permits and include the following:

1. Add a requirement that work shall be done in accordance with the approved plans, the approved permit, and the Ordinance.
2. Add a classification of deficient sites and the related enforcement activities.
3. Add a classification of Non-Compliance on a sites-and the related enforcement activities.
4. Add a classification of Notice of Violation on a sites and the related enforcement activities.
5. Add that the Zoning Administrator may require activities that shall be undertaken in order to prevent imminent hazards, dangers and adverse effects.
6. Add conditions and procedures that allow the Zoning Administrator to issue a stop-work order and that all work must stop immediately.
7. Add conditions and procedures for initiating legal proceedings.
8. Add penalties for violation of the ordinance at not less than one hundred dollars (\$100.00) per day and not more than five hundred dollars (\$500.00) per day.

Part P. Renumber existing Section 10 to new Section 16.

Part Q. Change existing Section 11 Waivers to new Section 17 titled Appeal, Waiver or Variance and include the following:

1. Add designation that the reviewing authority may issue a waiver or variance to the ordinance except for ILR10 requirements.
2. Add procedure for appealing a decision made by a reviewing authority.

Part R. Add new Effective Date (Section 18).

**Attachment A. Case Description from Legal Advertisement**

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- Part S. Re-letter existing Appendix B to be new Appendix A and re-letter existing Appendix A to be new Appendix B.
- Part T. Add new Appendix C titled Champaign County MS4 Jurisdictional Area to include a map of the Champaign County MS4 Jurisdictional Area.
- Part U. Add new Appendix D titled Technical Manual Minor Land Disturbance Erosion Control Permit Standards and Standard Details and include application templates, erosion control plan examples, and standard construction drawings.
- Part V. Add new Appendix E titled Technical Manual Major Land Disturbance Erosion Control Permit Standards and Standard Details and include application templates, erosion control plan examples, and standard construction drawings.
- Part W. Revise and reformat the text, and update all references to new and renumbered Sections.

**Attachment HH. Draft Evidence Regarding Achievement of Policy 8.4.5**  
**Case 769-AT-14**  
**SEPTEMBER 10, 2014**

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The following evidence is proposed for the Draft Finding of Fact (anticipated to be item 13.A.(3)):

- (3) Policy 8.4.5 states **“The County will ensure that non-point discharges from new development meet or exceed state and federal water quality standards.”**

The proposed amendment ***WITH OR WITHOUT the Optional Minimum Requirements in Section 6 and WHETHER OR NOT ILR10 compliance will be required by the County outside of the MS4 Jurisdictional Area, WILL ACHIEVE*** Policy 8.4.5, as follows:

- a. Regarding the relevant non-point water quality standard for Champaign County:
- (a) As defined on the USEPA webpage “What is Nonpoint Source Pollution?”, “Non-point source” is defined by the USEPA to mean any source of water pollution that does not meet the legal definition of “point source” in section 502(14) of the Clean Water Act. Nonpoint source pollution (NPS) comes from many diffuse sources and is caused by rainfall or snowmelt moving over and through the ground and the pollutants that are picked up by that runoff and eventually deposited into receiving waters.
- (b) In 1987 Congress amended the Clean Water Act to require implementation of a two phase national program for addressing storm water discharges. The second phase (Phase II) regulations were published in the Federal Register on December 9, 1999. The National Pollution Discharge Elimination System (NPDES) portions of the Code of Federal Regulations (CFR) are contained in 40 CFR Parts 9, 122, 123 and 124. Excerpts of the Phase II Final Rule were included as attachments to the Preliminary Memorandum for this case. The Phase II Final Rule expanded the National Pollutant Discharge Elimination System (NPDES) storm water program to address storm water discharges from small municipal storm water sewer systems (MS4s) and construction sites of one to five acres.
- (c) The regulatory definition of an MS4 (*40 CFR 122.26(b)(8)*) is "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created to or pursuant to state law) including special districts under state law such as a sewer district,

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flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States. (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

- (d) The relevant storm water conveyance system operated by Champaign County consists of County Highways 1, 15, 17 and 18 with drainage systems located in the Champaign Urbanized Area as delineated by the U.S. Census Bureau according to the 2010 Census. A map entitled Champaign County MS4 Jurisdiction was included as Attachment M to the Supplemental Memorandum dated 2/13/14
- (e) The Champaign-Urbana Urbanized Area was included in the list of Urbanized Areas in Appendix 3 to the Preamble of the Phase II Final Rule on p. 68805 of 64 Federal Register 235 (8 December 1999) and Champaign County was included in the list of Governmental Entities Located Fully or Partially Within an Urbanized Area in Appendix 6 to the Preamble of the Phase II Final Rule on p. 68812 of 64 Federal Register 235 (8 December 1999), both
- (f) Small MS4 operators are regulated under the NPDES storm water program unless they qualify for a waiver. The threshold for a waiver of the permit coverage is available if the MS4 serves a population of fewer than 10,000 people and other criteria are met (*40 CFR 122.32(e)*). See p. 68842 of 64 Federal Register 235 (8 December 1999) included in Attachment F to the Preliminary Memorandum. Champaign County does not currently qualify for a waiver from the NPDES storm water program as the population in the MS4 jurisdiction is approximately 11,565.
- (g) The Phase II Final Rule provides that if a regulated small MS4 operator is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated (*40 CFR 122.32(a)*). See p. 68842 of 64 Federal Register 235 (8 December 1999) included in Attachment F to the Preliminary Memorandum. Champaign County operates County Highways outside of the Champaign Urbanized Area and therefore only the unincorporated portions of Champaign County that are within the

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Champaign Urbanized Area are regulated under the Phase II Final Rule.

- (h) NPDES requirements may apply to land disturbance activities outside of the Urbanized Area and are regulated by the State of Illinois. The County may adopt requirements independent of NPDES based on its authority to control water pollution.
- (i) The Phase II Final Rule requires that a regulated small MS4 must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants to the maximum extent practicable to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. Paragraph (b) of 40 CFR 122.34 requires that the storm water management program must at a minimum include the following six control measures:
- Public education and outreach on storm water impacts.
  - Public involvement/ participation.
  - Illicit discharge detection and elimination.
  - Construction site storm water runoff control.
  - Post-construction storm water management in new development and redevelopment.
  - Pollution prevention/ good housekeeping for municipal operations.
- (j) Regarding the minimum control measure of construction site storm water runoff control required by the Phase II Final Rule, a regulated small MS4 must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Control of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more or has been designated by the permitting authority. Paragraph (b)(4) of 40 CFR 122.34 requires the minimum construction site storm water runoff control measure to include the following six elements:
- i.* An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance to the extent allowable under law.

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- ii.* Requirements for construction site operators to implement appropriate erosion and sedimentation best management practices.
  - iii.* Requirements for construction site operators to control waste at the construction site that may cause adverse impacts to water quality.
  - iv.* Procedures for site plan review to incorporate considerations of potential water quality impacts.
  - v.* Procedures for receipt and consideration of information submitted by the public.
  - vi.* Procedures for site inspection and enforcement of erosion and sedimentation control measures.
  
- (i) The Illinois Environmental Protection Agency (IEPA) is the relevant permitting authority for National Pollution Discharge Elimination System (NPDES) permits in the State of Illinois. Requirements are detailed in the General NPDES Permit for Discharges from Small Municipal Separate Storm Sewer Systems No. ILR40. The current ILR40 was issued on February 20, 2009, and expired on March 31, 2014. A Final Draft version of a proposed update to the ILR40 is undergoing a public comment period.
  
- (j) ILR40 references the Illinois Pollution Control Board Rules and Regulations (35 IAC Subtitle C Ch. 1) and the Clean Water Act.
  
- (k) Paragraph B in Part I of ILR40 authorizes discharges of storm water from small municipal separate storm sewer systems (MS4s) as defined in the Phase II Final Rule in 40 CFR 122.26(b)(16) as designated for permit authorization pursuant to 40 CFR 122.32. Note that 40 CFR 122.32(a) is that part of the Phase II Final Rule that provides that if a regulated small MS4 operator is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.
  
- (l) Part IV of ILR40 requires the permittee to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the small municipal separate storm sewer system to the maximum extent practicable to satisfy the appropriate requirements of the Illinois Pollution Control Board Rules and Regulations (35 IAC Subtitle C Ch. 1) and the Clean Water Act.

- (m) Paragraph B.4. of Part IV of ILR40 requires the permittee to develop, implement, and enforce a storm water management program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre and construction activities that disturbing less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more. Paragraph B.4. identifies the same six minimum elements as required by paragraph (b)(4) of 40 CFR 122.34 (the Phase II Final Rule) including an ordinance to require construction site operators to implement appropriate erosion and sedimentation controls and sanctions to ensure compliance and procedures for site plan review and procedures for site inspection and enforcement of control measures except that appropriate erosion and sediment control best management practices shall include green infrastructure storm water management techniques where appropriate and practicable and also includes a seventh required element which is to require all regulated construction sites to have a storm water pollution prevention plan that meets the requirements of Part IV (Storm Water Pollution Prevention Plan) of NPDES permit No. ILR10 . Because Paragraph B.4. of Part IV of ILR40 applies to the “small MS4” it apparently applies only to that portion of unincorporated Champaign County that is within the Champaign-Urbana Urbanized Area.
- (n) Paragraph B.5. of Part IV of ILR40 establishes the ILR40 requirements for post-construction storm water management in new development and redevelopment. Paragraph B.5. of Part IV of ILR40 includes eight sub-paragraphs. The fifth sub-paragraph (sub-paragraph e.) requires an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects (apparently a reference to sub-paragraph a. which refers to the “small MS4”), public surfaces (apparently a reference to sub-paragraph c.) and existing developed property (apparently a reference to sub-paragraph d. which refers to the MS4) and to implement strategies which include a combination of structural and/ or non-structural best management practices (BMPs; this is apparently a reference to six strategies included under sub-paragraph b.) that will reduce the discharge of pollutants and the volume and velocity of storm water flow to the

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maximum extent practicable, as “set forth above” which is apparently a reference to the preceding four sub-paragraphs. Sub-paragraph f. requires “all regulated construction sites to have post-construction management plans that meet or exceed the requirements of Section IV(D)(2)(b) of NPDES Permit No. ILR10 including management practices, etc. at least as protective as the Illinois Urban Manual 2002”. Sub-paragraph f. does not mention MS4 in relation to construction sites but, logically, sub-paragraph f. only applies to construction sites located in that portion of unincorporated Champaign County that is within the Champaign-Urbana Urbanized (ie, MS4 Jurisdictional) Area that result in a land disturbance of greater than or equal to one acre and construction activities that disturbing less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more. In paragraph B.5.f. of Part IV of ILR40 the reference to Section IV(D)(2)(b) of NPDES Permit No. ILR10 is confusing for the following reasons:

- i.* There is no Section IV(D)(2)(b) of NPDES Permit No. ILR10 but there is a Section IV. D.2.b. of NPDES Permit No. ILR10.
  - ii.* Section IV. D.2.b. of NPDES Permit No. ILR10 does not regulate post-construction storm water management but does regulate soil stabilization practices in general.
  - iii.* Requirements for post-construction storm water management are established by Section IV D.2.h. of NPDES Permit No. ILR10.
  - iv.* The current ILR40 expired on March 31, 2014, and in the Final Draft Update ILR40 circulated on June 9, 2014, paragraph B.5.f. of Part IV has apparently been renumbered B.5.h. and refers to Section IV(D)(2)(h) of the ILR10. In the ILR10 that became effective on August 1, 2013, Section IV.D.2.h. is titled “Best Management Practices for Post-Construction Storm Water Management”.
- (o) The relevant non-point water quality standard for Champaign County related to a storm water management program that applies to new construction, consists of the following:

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- i.* In that portion of unincorporated Champaign County that is within the Champaign-Urbana Urbanized (ie, MS4 Jurisdictional) Area, an ordinance to require a construction site operator of construction that results in a land disturbance of greater than or equal to one acre and construction activities that disturb less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more, the requirement is do the following:
- implement appropriate erosion and sedimentation controls at least as protective as the Illinois Urban Manual 2002 and including green infrastructure storm water management techniques where appropriate and practicable; and
  - control construction site waste; and
  - include sanctions to ensure compliance; and
  - include procedures for site plan review; and
  - include procedures for site inspection and enforcement of erosion and sedimentation control measures; and
  - require the construction site operator to have a storm water pollution prevention plan that meets the requirements of Part IV (Storm Water Pollution Prevention Plan) of NPDES permit No. ILR10.
- ii.* Also in that portion of unincorporated Champaign County that is within the Champaign-Urbana Urbanized (ie, MS4 Jurisdictional) Area, an ordinance or other regulatory mechanism to require of any construction that results in a land disturbance of greater than or equal to one acre and construction activities that disturb less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more, to have a post-construction storm water pollution prevention plan that implements strategies which include a combination of structural and/ or non-structural best management practices to minimize storm water runoff and reduce the discharge of pollutants and the volume and velocity of storm water flow to the maximum extent practicable, and that meets or exceeds the

requirements of Part IV (Storm Water Pollution Prevention Plan) of NPDES permit No. ILR10.

- (p) In addition to the above, the Phase II Final Rule and NPDES permit ILR40 establish other requirements for Champaign County related to non-point discharges that will have to be addressed in other ordinances or other regulatory mechanisms including public education and outreach on storm water impacts; public involvement/ participation; illicit discharge detection and elimination; post-construction storm water management to minimize the volume of storm water runoff and pollutants from public surfaces and existing developed property; and pollution prevention/ good housekeeping for County operations.
  - (q) Note that the relevant non-point water quality standard for Champaign County does not require Champaign County to enforce compliance with the NPDES permit ILR10 outside of the Champaign-Urbana Urbanized (ie, MS4 Jurisdictional) Area.
- b. The existing Champaign County Stormwater Management Policy does not meet the relevant non-point water quality standard for Champaign County for the following reasons:
- (a) The erosion and sediment control standard referenced in the Champaign County Stormwater Management Policy is not the *Illinois Urban Manual* but is the *Procedures and Standards for Urban Soil Erosion and Sedimentation Control in Illinois*, which is a forerunner to the *Illinois Urban Manual*, and is referenced in paragraph 6.2 D. of the Stormwater Management Policy. Paragraph 6.2 D. only requires permanent erosion control measures. Paragraph 6.2 C. requires temporary seeding or other soil stabilization measures but provides no more specific requirement.
  - (b) The Champaign County Stormwater Management Policy only requires construction site operators on sites with an acre or more of impervious area to implement appropriate erosion and sedimentation best management practices and does not require erosion and sedimentation controls if there is a land disturbance of greater than or equal to one acre or if construction activities that disturb less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more.

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- (c) The Champaign County Stormwater Management Policy does not require construction site operators to control waste at the construction site that may cause adverse impacts to water quality; and does not require procedures for site plan review to incorporate considerations of potential water quality impacts; and does not require procedures for receipt and consideration of information submitted by the public; and does not require procedures for site inspection and enforcement of erosion and sedimentation control measures; and does not require a post-construction storm water pollution prevention plan that implements strategies which include a combination of structural and/ or non-structural best management practices to minimize storm water runoff and reduce the discharge of pollutants and the volume and velocity of storm water flow to the maximum extent practicable, and that meets or exceeds the requirements of Part IV (Storm Water Pollution Prevention Plan) of NPDES permit No. ILR10, as required by the Phase II Final Rule and ILR40.
  
- c. Regarding whether or not the proposed amendment will result in meeting or exceeding the relevant non-point water quality standard for Champaign County:
  - (a) The proposed amendment references the *Illinois Urban Manual* in paragraph 11.1B.
  
  - (b) Regarding the requirement to adopt an ordinance to require a construction site operator to implement appropriate erosion and sedimentation controls at least as protective as the *Illinois Urban Manual* 2002 and including green infrastructure storm water management techniques where appropriate and practicable, when construction results in a land disturbance of greater than or equal to one acre and construction activities that disturb less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more in the MS4 JURISDICTIONAL AREA:
    - i. Proposed paragraph 6.4A. of the proposed amendment requires all construction or land disturbance anywhere in the unincorporated area to be provided with erosion and sedimentation controls as needed to minimize erosion and sedimentation. As originally proposed, paragraph 6.4 A. will apply to all construction sites in the unincorporated area but the County Board has the option of not adopting paragraph 6.4 A.



- construction activity is part of a larger common plan of development or sale that will disturb one acre or more in the MS4 JURISDICTIONAL AREA:
- i.* Proposed paragraph 6.4C. of the proposed amendment requires all construction site operators to control waste at the construction site that may cause adverse impacts to water quality. As originally proposed, this requirement will apply to all construction sites in the unincorporated area but the County Board has the option of making this a requirement only in the MS4 JURISDICTIONAL AREA in which case paragraph 6.4C. will become paragraph 11.1C.
- (e) Regarding requirements and procedures for site inspection and enforcement of erosion and sedimentation control measures for construction with a land disturbance of greater than or equal to one acre and construction activities that disturb less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more in the MS4 JURISDICTIONAL AREA:
- i.* Proposed paragraph 6.5 of the proposed amendment provides for site inspection and enforcement of erosion and sedimentation controls in limited circumstances. As originally proposed, paragraph 6.5 will apply to all construction sites in the unincorporated area but the County Board has the option of not adopting paragraph 6.5.
  - ii.* Proposed subparagraph 12.2 D. and Section 13.5 establish requirements and procedures for site inspection of erosion and sedimentation control measures. These requirements are not optional.
  - iii.* Proposed Section 15 establishes requirements and procedures for enforcement of erosion and sedimentation control measures in addition to relevant parts of the Champaign County Zoning Ordinance. These requirements are not optional.
- (f) Regarding the requirement that any construction in the MS4 JURISDICTIONAL AREA shall have a post-construction management plan that implements strategies which include a combination of structural and/ or non-structural best management practices to minimize storm

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water runoff and reduce the discharge of pollutants and the volume and velocity of storm water flow to the maximum extent practicable, and that meets or exceeds the requirements of Part IV (Storm Water Pollution Prevention Plan) of NPDES permit No. ILR10 when the construction results in a land disturbance of greater than or equal to one acre and construction activities that disturb less than an acre if that construction activity is part of a larger common plan of development or sale that will disturb one acre or more:

- i.* Proposed Section 6 requires non-erosive velocities and prevents modification of existing perennial streams and these requirements apply throughout the County zoning jurisdiction and not just in the MS4 Area;
- ii.* Proposed Sections 8 and 9 require the use of both structural and non-structural Best Management Practices in the design of the drainage system and these requirements apply throughout the County zoning jurisdiction and not just in the MS4 Area;
- iii.* Proposed Section 9 requires that post-construction storm water runoff must be less than pre-construction storm water runoff when there is one acre or more of new impervious area (defined as any land cover other than vegetation) and these requirements apply throughout the County zoning jurisdiction and not just in the MS4 Area;
- iv.* Proposed Section 11 requires conformance with the Technical Appendices (based on the Illinois Urban Manual) and the Illinois Urban Manual and requires that land disturbance be minimized to the extent practical and these requirements apply throughout the County zoning jurisdiction and not just in the MS4 Area.

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The following evidence is proposed for the Draft Finding of Fact (anticipated to be item 16.B):

- B. Paragraph 2.0 (b) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to conserve the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY.

The proposed amendment *{WITH / WITH OR WITHOUT/ WITHOUT}* the **Optional Minimum Requirements in Section 6** and *{PROVIDED THAT / WHETHER OR NOT}* ILR10 compliance *{WILL / WILL NOT}* be required by the County outside of the MS4 Jurisdictional Area, *{WILL / WILL NOT}* conserve the value of real estate throughout the COUNTY, based on the following:

- (1) The proposed text amendment is only indirectly related to this purpose to the extent that preventing water pollution may help to conserve the value of land throughout the COUNTY and the costs of minimizing water pollution will increase the cost to develop land in the COUNTY and that could also affect the value of land throughout the COUNTY.
- (2) The requirement to establish an MS4 program to minimize erosion and sedimentation due to construction is a mandate by the USEPA and the County has no alternative to establishing such a program regardless of the costs of that program. In 1998 the USEPA prepared a national cost-benefit analysis of the Phase II Rule which was summarized in the record of the Phase II Final Rule. See pages 68791- 68796 of 64 Federal Register 235 (8 December 1999) included in Attachment F to the Preliminary Memorandum. The USEPA determined that for the nation as a whole, the estimated benefits of the Phase II Rule are likely to exceed the estimated costs. The following is a brief overview of the summary as reported in the Phase II Final Rule:
  - a. The USEPA estimated both the annual municipal costs of the Phase II program and the annual construction costs of the program.
  - b. For annual municipal costs, USEPA estimated approximately \$9 per household to be the annual costs for the Phase II Final Rule program, based on the actual annual costs of 35 Phase I communities. Alternatively, USEPA estimated it would cost approximately \$9.16 per household based on a national survey of Phase II communities and \$298 million in total municipal costs.
  - c. USEPA estimated annual construction costs as follows:
    - (a) USEPA followed a basic construction estimating approach using a national construction cost estimate reference and prepared cost estimates for three different sizes of assumed lots (one acres, three acres, and five acres); three different slope variations (3%, 7%, and 12%) and three different soil

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erosivity conditions (low, medium, and high). USEPA estimated that the average costs for sediment and erosion controls would be \$1,206 for a one acre site and \$4,598 for a three acre site and \$8,709 for a five acre site.

- (b) USEPA also estimated that the annual administrative costs (providing notice, preparing the storm water pollution prevention plan, and records retention) per construction site would be \$937.
- (c) USEPA also estimated the potential costs for construction site operators to implement the post-construction minimum measures and also estimated the costs related to the available waivers for construction sites. Average annual costs for post-construction minimum measures were estimated for the three sites of one acre, three acres, and five acres. Nationwide, the annual costs were expected to range from \$44 million to \$178 million.
- d. USEPA estimated the annual federal and state administrative costs to be \$5.3 million.
- e. When all average annual costs were multiplied by the estimated number of annual Phase II construction starts for each lot size category and municipal and state and federal administrative costs are also considered, USEPA estimated the total cost for the Phase II Rule to range from \$847.6 million to \$981.3 million.
- f. USEPA estimated the annual benefits of the Phase II Rule using two different approaches to water quality which are briefly summarized as follows:
  - (a) USEPA used a National Water Pollution Control Assessment Model that estimated water quality changes in five water quality indicators for a total of 632,000 miles of rivers and streams. The value of the changes in water quality was estimated by using a “willingness to pay” model based on previous national survey research that found that households were willing to pay from \$158 annually for water quality improvements providing “fishable” water to \$210 annually for water quality improvements providing “boatable” water. Value was also estimated both for local and non-local waters based on research suggesting that most people placed a greater value on the quality of local waters versus non-local waters. The annual value of national water quality benefits estimated using the National Water Pollution Control Assessment Model was \$1,628.5 million.

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- (b) USEPA also used a National Water Quality Assessment method to estimate the value of benefits accruing from improvements in the quality of fresh water from municipal measures (other than construction site runoff controls) using the same “willingness to pay” data as used in the previous model; and the value of benefits from improvements in the quality of marine waters (ie, beaches); and the value of benefits from improvements related to erosion and sediment control for construction sites and using data from a second type of “willingness to pay” study. The annual value of national water quality benefits estimated using the National Water Quality Assessment method was \$671.5 million to \$1,096.2 million.
- (3) Regarding the added construction cost that the proposed amendment is likely to cause for a typical new home in the unincorporated area:
- a. As reviewed above in Finding of Fact item 16.B.(2)c.(a)., USEPA estimated that the average costs (using 1997 dollars) for sediment and erosion controls would be \$1,206 for a one acre site. The Consumer Price Index Inflation Calculator maintained by the Bureau of Labor Standards (<http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1206&year1=1987&year2=2014>) shows that \$1,206 in 1997 is comparable to \$1,790 in 2014.
- b. The City of Bloomington, Illinois Engineering Department prepared an evaluation of the estimated cost for a similar erosion and sedimentation ordinance in 2004. A copy of that evaluation titled “Erosion And Sediment Control Compliance Cost Evaluation” was included as an attachment to the October 29, 2013, ELUC memo which itself was included as Attachment B to the Preliminary Memorandum. Regarding the cost evaluation by the City of Bloomington Engineering Department:
- (a) The City of Bloomington Engineering Department found that the cost of installation of the erosion and sedimentation controls in that proposed ordinance ranged from \$2,194.70 to \$4,891.10. The assumed lot area was 10,400 square feet with an average lot width of 100 feet.
- (b) Even though the proposed City of Bloomington requirements for erosion and sedimentation were similar to the proposed requirements for Champaign County, there are important differences in the standards and differences between the two settings (urban vs. rural). The attachment

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to the October 29, 2013, ELUC memo (Attachment B to the Preliminary Memorandum in this case) identified relevant differences between the two sets of requirements and differences based on the two settings and based on those differences, estimated the following costs for the proposed Champaign County requirements:

- i.* For an assumed typical Champaign County urban lot, the proposed erosion and sedimentation controls are estimated to add between \$2,322 and \$3,093 to the cost of construction for a new home.
  - ii.* For an assumed typical Champaign County rural lot, the proposed erosion and sedimentation controls are estimated to add between \$3,898 and \$5,493 to the cost of construction for a new home.
- c. The cost of erosion and sedimentation controls should also be considered in terms of the percent of the total construction cost. There is no identified average cost of a new home for unincorporated Champaign County but the following are two relevant considerations:
- (a) As reported by the U.S. Census and supported by a review of Zoning Use Permit Applications in the Department of Planning and Zoning in the fall of 2013, by 10/1/13 there had been 12 new permits for new dwellings in unincorporated Champaign County with a reported average cost of construction of \$283,417. The 12 new dwellings were all rural. Based on that average cost, the cost of compliance with the proposed Ordinance for rural dwellings ranges from 1.4% to 1.9%.
  - (b) The Illinois Association of Realtors reports the “median sales price” (includes both new homes and existing homes) of homes in each Illinois county. The Median Sales price in Champaign County for the second quarter of 2013 was \$142,250. Based on that Median Sales Price, the cost of compliance with the proposed Ordinance for rural dwellings ranges from 1.6% to 2.2% for urban dwellings and 2.7% to 3.9% for rural dwellings.
- (4) The ILR10 requirement for erosion and sedimentation controls for construction activities that result in a land disturbance of greater than or equal to one acre is already a statewide requirement enforced by the IEPA.

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- (5) As reported in the most recent ILR40 Notice of Intent submitted to the IEPA in October 2013, the Champaign County MS4 Jurisdictional Area is only 10.4 square miles which is about 1% of the total area of Champaign County.

**EXCERPT OF JUNE 12, 2104, APPROVED MINUTES  
FOR CASES 769-AT-13 AND 773-AT-14**

**Case 769-AT-13 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning Ordinance by amending the Champaign County Storm Water Management Policy by changing the name to the Storm Water Management and Erosion Control Ordinance and amending the reference in Zoning Ordinance Section 4.3.10; and amend the Storm Water Management and Erosion Control Ordinance as described in the legal advertisement which can be summarized as follows: I. Revise existing Section 1 by adding a reference to 55 ILCS 5/5-15-15 that authorizes the County Board to have authority to prevent pollution of any stream or body of water. (Part A of the legal advertisement); and II. Revise existing Section 2 by merging with existing Sections 3.1 and 3.2 to be new Section 2 and add purpose statements related to preventing soil erosion and preventing water pollution and fulfilling the applicable requirements of the National Pollutant Discharge System (NPDES) Phase II Storm Water Permit. (Part B of the legal advertisement); and III. Add new Section 3 titled Definitions to include definitions related to fulfilling the applicable requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water Permit. (Part C of the legal advertisement); and IV. Revised existing Sections 3.3, 3.4, and 4 and add new Sections 5, 11, 12, 13, 14, and 15 and add new Appendices C, D, and E. Add requirements for Land Disturbance activities including a requirement for a Land Disturbance Erosion Control Permit including Minor and Major classes of Permits that are required within the Champaign County MS4 Jurisdictional Area; add a requirement that land disturbance of one acre or more in a common plan of development must comply with the Illinois Environmental Protection Agency's ILR 10 Permit requirements; add fees and time limits for each class of Permit; add requirements for administration and enforcement Permits; and add new Appendices with new standards and requirements for both Minor and Major Permits. (Parts D, E, L, M, N, O, T, U, and V of the legal advertisement); and V. Revise existing Section 7 to be new Section 6 and add a prohibition against erosion or sedimentation onto adjacent properties and add minimum erosion and water quality requirements that are required for all construction or land disturbance; and VI. Revise existing Section 5 to be new Section 8 and add a Preferred Hierarchy of Best Management Practices. (Part H of the legal advertisement); and VII. Revise and reformat existing Section 6, 8, 9, 10, 11, 12, and the Appendices and add new Section 18. (Parts G, I, J, P, Q, R, S and W of the legal advertisement).**

**Case 773-AT-14 Petitioner: Zoning Administrator Request to amend the Champaign County Storm Water Management and Erosion Control Ordinance that is the subject Zoning Case 769-AT-13, by adding the following: A. Add a requirement for a Grading and Demolition Permit for any grading or demolition that disturbs on acre or more of land or for any grading or demolition that is part of a larger common plan of development in which one acre or more of land disturbance will occur, and that is not related to any proposed construction; and B. Add fees for Grading and Demolition Permits; and C. Add required information to be provided in the application for a Grading and Demolition Permit; and D. Add a requirement that any grading or demolition pursuant to a Grading or Demolition Permit shall comply with the Illinois Environmental Protection Agency's ILR 10 General Storm Water Permit for Construction; and E. Add a requirement that any demolition pursuant to a Demolition Permit shall comply with the Illinois Environmental Protection Agency's regulations enforcing the National Emission Standard for Hazardous**

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**Air Pollutants for regulated asbestos; and F. Add prohibitions against changing the flow of water and blocking the flow of water; and G. Add other requirements related to Grading and Demolition Permits.**

Mr. Thorsland called Cases 769-AT-13 and 773-AT-14 concurrently.

Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register they are signing an oath. He asked the audience if anyone desired to sign the witness register at this time.

Mr. Thorsland asked the petitioner if he would like to make a brief statement regarding the requests.

Mr. John Hall, Zoning Administrator, distributed a new handout which is a table which responded to comments received on the Draft Ordinance. He said that in some instances the table includes a staff reply and in areas where the comment resulted in a change staff has tried to actually include the specific language which was changed. He said that the fourth cell at the top of page 4 of the table indicates the following: Regarding 4.2.E., could drainage districts be exempt as there is a statewide permit and conditions. Mr. Hall said that the following will be inserted in Section 4.2, LAND DISTURBANCE activities by or for a recognized Drainage District. He said that this may not be the exact language but staff does intend to add the exemption for drainage district activities.

Mr. Hall stated that at the previous meeting regarding these cases there was a question regarding driveway maintenance, which was a wonderful question because there are large areas of Champaign County where there are no streets to many homes and there is only a shared driveway. He said that while making the maintenance of those shared driveways require a permit would give them some incentive of making the shared driveways a public road it is easier to exempt them which is consistent with what we do elsewhere. He reminded the Board that in some portions of the County this will be pretty important.

Ms. Griest asked Mr. Hall if this exemption will only include shared driveways or will it include all driveways.

Mr. Hall stated that it will include all driveways.

Mr. Hall stated that he had hoped to have a written document regarding the overall approach as to why we are proposing so many options for the County Board but he was unsuccessful therefore tonight he would like to provide a brief synopsis of that approach. He said that staff is only proposing the Grading and Demolition Permit in the very slight chance that the County Board chooses to require compliance with ILR10 and if they do then they should add the Grading and Demolition Permit. He said that if the County Board decides not to require compliance with ILR10 outside of the MS4 area then he does not believe that adding a Grading and Demolition Permit will provide any benefit. He said that most of the benefit for people who have neighbors who are changing grades and regrading and doing things like that, most of the

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benefits will come in with those minimum standards. He said that the minimum standards make it clear that you are not supposed to cause erosion or sedimentation on to your neighbor and you are supposed to minimize it. He said that you are not supposed to be changing drainage drastically or tracking mud on to the roads or if you do you are supposed to clean it off. He said that these minimum standards are the kinds of things that are supposed to help people. He said that there are no standards related to Grading and Demolition Permits and the only reason why they were proposed was if the County Board wants to require ILR10 compliance.

Mr. Thorsland clarified that the Board will also take testimony at this time for Case 773-AT-14.

Mr. Hall stated that he could envision a table that could be added in as a Document of Record to help County Board members in the future.

Mr. Thorsland asked the Board if there were any questions for Mr. Hall.

Mr. Thorsland stated that the one thing that stood out was addressing the issue of the long private drives. He said that roughly a standard drive has to be one-half mile before it is one acre. He said that there are not a lot of these drives but there are some located in the County and some of those drives are shared drives with other homes rather than one private home. He said that he believes that it is a good call to have something addressing that because that is not the intent of the proposed permit to affect those things but has a lot more to do with what the Board spoke about at the last meeting.

Mr. Hall stated that another thing that he did not hear any discussion about at the last public hearing was the primary way to defuse the impact this regulation might be to change the minimum lot size in the AG and CR Districts. He said that he does not know if Board members thought much about this proposal and if the Board does not see this change as a benefit then that is fine but he just wanted to remind the Board that we had mentioned it.

Mr. Passalacqua stated that the change to minimum lot size was .9 acre instead of 1 acre so that the lot would fall under the wire.

Mr. Hall stated that Mr. Passalacqua was correct. He said that the .9 acre, by definition, would not be disturbing one acre.

Mr. Thorsland stated that a lot of times there is a one acre lot and if you take away the road right-of-way, which is hopefully not going to be disturbed either, the lot would fall into less than one acre of disturbance. He said that his Board has had variances because a one acre lot was not a true one acre lot minus the right-of-way. He asked if the density would be increased if the minimum lot size is reduced to .9 acre and what is used as a definer because a corner lot in CR or AG would have two right-of-ways. He asked if having two road right-of-ways would consider the minimum lot size and what standard frontage would be used.

Mr. Hall stated that he would also recommend reducing the frontage as well but most of the lots that we see are 200 foot wide lots. He said that the statutory right-of-way width is 60 feet therefore it the center of the right-of-way would be 30 feet on either side. He said that we do not

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consider the road right-of-way as part of the minimum lot area so the minimum lot is not nearly one acre but 1.15 acres to make up for the right-of-way. He said that the change that he was talking about was what is currently required, which is one acre, and reduce it to something like .9 and there is still that .15 acre that is still right-of-way on the minimum size lot. He said that there really are not that many minimum size lots in the County because most people want more than one acre.

Mr. Thorsland asked Mr. Hall if the future impact of reducing the minimum lot size is very small but would be big when it relates to this Ordinance and who requires a permit. He said that we could save the County and staff a lot of time and people a lot of money if we consider changing the minimum lot size.

Ms. Griest stated that she disagrees. She said that Mr. Hall stated that there are so few lots coming in at the one acre minimum that changing it from one acre to .9 acres is probably going to have a negative impact and it seems not the best practice to change it just for the sake of changing it when the impact is not going to be significant. She said that where we are seeing impacts requiring variances are on older lots that were previously platted many years ago when the right-of-way was not taken out of the one acre minimum area. She said that there are some lots out in the County that are platted that are not built upon that included the right-of-way at one acre and now when they go to build the lot is already under the one acre of disturbed are by counting it without the right-of-way.

Mr. Thorsland stated that if they strip the whole lot.

Ms. Griest stated that even if they strip all of the buildable area, when you take the right-of-way out of play they have less than one acre to begin with.

Mr. Hall stated that he hates to be the bearer of bad news to the County Board unless he has a little bit of good news to throw along with it because then it is not the County that is causing someone to have to put up erosion controls on their lot. He said that the County would have done all it could to have reduced that requirement but if those people still want their two acres graded to within an inch of its life then they have the right to do that but we are not going to make them. He said that the County is going to make them have .9 acre.

Mr. Thorsland stated that when we talk about the development of a five acre lot and someone wants to construct a home many people want to claim a portion of the lot as agriculture so that they pay less in property taxes. He asked Mr. Hall if the County has the less than one acre aspect then hopefully they will be careful to not disturb less than one acre so that they do not trip the need for a permit.

Mr. Hall stated that if the County Board is not going to require compliance with ILR10 it is primarily a moot point but there is still a state law that can be enforced by the IEPA and he would hope that we would at least make people aware of the state law even though we do not require compliance. He said that the worst situation would be not telling people that there is a law. He said that reducing the minimum lot size is probably much less critical if the County Board is not going to require ILR10 compliance outside of the MS4 area.

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Mr. Thorsland suggested that if a table is provided indicating if the County Board does or does not adopt ILR10 compliance outside of the MS4 area and the impact of proposing or not proposing the .9 acre requirement, such a table would be easier for the Zoning Board of Appeals, especially those members who are absent tonight, and the County Board to see what has been considered and discussed.

Mr. Hall stated that he is not attempting to obtain a decision tonight but just wanted the Board to discuss the option. He said a minimum lot size reduction would require a separate text amendment and legal advertisement.

Mr. Thorsland stated that the Board may want to see just a little more about the driveways although the direction that it is going appears to be perfectly acceptable to the Board. He said that staff previously indicated that any enforcement regarding driveways would be complaint based anyway.

Mr. Hall stated that at this point it isn't even a question therefore any complaint received will not be valid.

Mr. Thorsland asked the Board if there were additional questions for Mr. Hall and there were none.

Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony for Cases 769-AT-13 and 773-AT-14 and there was no one.

Mr. Thorsland requested a continuance date for Cases 768-AT-13 and 773-AT-14.

Mr. Hall stated that July is a very busy month for staff but the two cases could be continued to the July 31<sup>st</sup> meeting.

Mr. Thorsland entertained a motion to continue Cases 769-AT-13 and 773-AT-14 to the July 31, 2014, meeting.

**Ms. Griest moved, seconded by Ms. Lee to continue Cases 769-AT-13 and 773-AT-14 to the July 31, 2014, meeting. The motion carried by voice vote.**



*EXCERPT OF MAY 29, 2014, APPROVED MINUTES  
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**Case 769-AT-13 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning Ordinance by amending the Champaign County Storm Water Management Policy by changing the name to the Storm Water Management and Erosion Control Ordinance and amending the reference in Zoning Ordinance Section 4.3.10; and amend the Storm Water Management and Erosion Control Ordinance as described in the legal advertisement which can be summarized as follows: I. Revise existing Section 1 by adding a reference to 55 ILCS 5/5-15-15 that authorizes the County Board to have authority to prevent pollution of any stream or body of water. (Part A of the legal advertisement); and II. Revise existing Section 2 by merging with existing Sections 3.1 and 3.2 to be new Section 2 and add purpose statements related to preventing soil erosion and preventing water pollution and fulfilling the applicable requirements of the National Pollutant Discharge System (NPDES) Phase II Storm Water Permit. (Part B of the legal advertisement); and III. Add new Section 3 titled Definitions to include definitions related to fulfilling the applicable requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water Permit. (Part C of the legal advertisement); and IV. Revised existing Sections 3.3, 3.4, and 4 and add new Sections 5, 11, 12, 13, 14, and 15 and add new Appendices C, D, and E. Add requirements for Land Disturbance activities including a requirement for a Land Disturbance Erosion Control Permit including Minor and Major classes of Permits that are required within the Champaign County MS4 Jurisdictional Area; add a requirement that land disturbance of one acre or more in a common plan of development must comply with the Illinois Environmental Protection Agency's ILR 10 Permit requirements; add fees and time limits for each class of Permit; add requirements for administration and enforcement Permits; and add new Appendices with new standards and requirements for both Minor and Major Permits. (Parts D, E, L, M, N, O, T, U, and V of the legal advertisement); and V. Revise existing Section 7 to be new Section 6 and add a prohibition against erosion or sedimentation onto adjacent properties and add minimum erosion and water quality requirements that are required for all construction or land disturbance; and VI. Revise existing Section 5 to be new Section 8 and add a Preferred Hierarchy of Best Management Practices. (Part H of the legal advertisement); and VII. Revise and reformat existing Section 6, 8, 9, 10, 11, 12, and the Appendices and add new Section 18. (Parts G, I, J, P, Q, R, S and W of the legal advertisement).**

Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register they are signing an oath. He asked the audience if anyone desired to sign the witness register at this time.

Mr. Thorsland asked the petitioner if he would like to make a brief statement regarding the request.

Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum dated May 29, 2014, and a revised draft of the Stormwater Management and Erosion Control Ordinance dated May 29, 2014, to the Board for review. He said that the revised draft of this Ordinance does not include the changes that are going to be made to the technical appendices but those changes are intended to be made in the future. He said that he does not expect this draft to be the

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last version although he does believe that it is very close to being the last revised version.

Mr. Hall stated that the Supplemental Memorandum dated May 29, 2014, summarizes the revisions. He said that if we had to group these changes into large groups they would be the bulleted items on page 2 of the memorandum and Mr. Levy has been able to address almost all of the comments that have been received thus far during the public hearings for this case. He said that Board members will recall that a memorandum was mailed on May 1<sup>st</sup> that had the comments from Berns, Clancy and Associates and most of those comments are addressed in this version but not all. He said that by the next meeting staff will have a compilation of all of the comments that have been received and all of the changes that have been made.

Mr. Hall stated that Berns, Clancy and Associates recommended adding several storm water technical terms.

Mr. Andrew Levy noted that the only technical terms that were added are those that already existed in the Ordinance and the content was verified to make sure that the definitions matched the intended term but the ones that were in the Ordinance are now defined terms.

Mr. Hall stated that staff will consider the definitions that are not in the Ordinance to see if they need to be added but staff have done the things that are in there already. He said that the definition of final stabilization was added which is a critical term and he predicts that in the future a common thing that people will ask from staff is a statement of final stabilization so that they can document that their property has achieved final stabilization. He said that this will be important for projects that don't have to comply with ILR10 because when they can prove that they have achieved final stabilization any disturbance that they do after that would be considered separate. He said that staff has not added any specific provision of this but he is assuming that this will be a consistent request.

Mr. Hall stated that staff clarified applicability and by stating clarified he means that staff greatly simplified it. He said that in Section 4 the Board may recall in the beginning how staff tried to define applicability and it was logical when staff started but it got illogical therefore staff took another look at it to make it simpler. He said that staff was relying on exemptions but now we talk about all sections of the Ordinance that apply to the MS4 Jurisdictional Area and all of the sections that apply outside of the MS4 Jurisdictional Area. He said that at the beginning of Applicability staff has added new information about applicability of ILR10. He said that he recalled that at the last public hearing it was clear that the Ordinance didn't actually provide clear guidance to a citizen when they may have to worry about ILR10 or not. He said that what has been added in Section 4.1.A. may not amount to a lot but it is all that we have to work with about ILR10 requirements and those requirements apply both in the MS4 area and outside. He said that ILR10 is discussed a lot in the Land Disturbance and Erosion Control Permits section but previously we did not have a lot of information for folks living outside of the MS4 area therefore staff has tried to add that here. He said that another thing that has been added under Applicability is guidance regarding the conversion of farmland in compliance with ILR10. He said that staff received new information at the last public hearing on this case regarding USEPA's determination about the conversion of farmland and he tried to verify that information but was unsuccessful but he did find that other counties in Illinois had addressed it. He said that

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staff added Section 4.1.A.3 as follows: When a lot is converted from agricultural use to other land use, the land shall be vegetated with an appropriate protective land cover prior to any application for a Zoning Use Permit or else the land shall be considered to be in a state of land disturbance and appropriate erosion and sedimentation controls provided as necessary unless documentation from the Illinois Environmental Protection Agency or the US Environmental Protection Agency indicates otherwise. He said that if someone is converting farmland to nonagricultural use and it doesn't have an appropriate vegetative cover it is considered to be in a state of land disturbance. He said that staff will continue to attempt to make this sound like plain English but this is staff's understanding to date. He said that staff did find that Kankakee County has something like this in their Ordinance and is a little less informative.

Mr. Passalacqua stated that this has no regard to the size of the parcel.

Mr. Hall stated that staff did not get into size although it is critical if it amounts to one acre or more. He said that the risk when something like this is added is that the County may be getting ahead of the IEPA and staff does not want to require things that the IEPA does not require. He said that staff was told that if someone sends a Notice of Intent to the IEPA and the IEPA believes that it is not required the IEPA will let that applicant know therefore we never want to be in front of the IEPA with these regulations and we always want to provide for their determination that it doesn't apply.

Mr. Thorsland stated that Section 4.1.B. defines Section 4.1.A.3. in regards to size.

Mr. Hall stated that technically it does but it could be made more clear in Section 4.1.A. 3. He said that it may save future lot purchasers a headache if we would reduce our minimum lot size from one acre to perhaps 9/10<sup>th</sup> of an acre so that if they just had the minimum lot size they would never be disturbing an acre. He said that he believes if the Board is going to make it a change like this it would be worthwhile but the change has to be made small enough that we are still meeting all of those other requirements for lot size in regards to an active septic system or replacement septic system, area for adequate buildings, etc. He said that it is a known fact that most people do not limit themselves to just one acre but in the future, if what we have been told how the IEPA operates is true, there might be a big incentive to limit lot size to something less than one acre in which case less best prime farmland would be used or less wooded areas would be used. He said that if someone wants to deal with the ILR10 complications they could still go with an eight acre lot and disturb as much as they want.

Mr. Thorsland asked if such a change would be a separate case.

Mr. Hall stated yes.

Mr. Thorsland stated that the Board has had cases in the past where what was implied by the tax map to be one acre but was technically not one acre therefore needed a variance to replace their home or build an accessory structure.

Mr. Hall stated that the rules that are in place at the time were for certain reasons.

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Mr. Thorsland stated that a change like that would prevent in the future someone who believed that they were completely compliant in having a one acre minimum and trying to do something like that, that they were actually okay and did not need a variance. He said that changing the minimum could take some of the variance cases away.

Ms. Lee stated that in discussing changing agriculture land and reviewing the definition of agriculture, many times a farmer may have been growing their crop next to the drainage ditch and they put in a certain area of grass to protect the drainage ditch. She said that according to the definition the farmer is not growing any crop from an agricultural point of view therefore technically even though agriculture is exempted this practice of planting grass to protect the drainage ditch may not be accepted.

Mr. Hall stated that this is a good instance where that portion of the land that gets converted already has an appropriate vegetative cover, the grass filter strip, so he believes that it would be compliant.

Ms. Lee stated that it makes sense but someone may argue that even though it has a vegetative cover it was converted from agriculture use and is not exempt.

Mr. Hall stated that Section 4.1.A.3. states that when it is converted from agricultural use to other land use it has to have appropriate vegetative cover and a grass filter strip is the most appropriate and there will always be people that will argue.

Ms. Lee stated that Section 4.2, General Exemptions, does not include an exemption for drainage districts. She said that it includes other units of government and it talks about public street and railroad right-of-ways but it does not discuss drainage right-of-ways and it should be included.

Mr. Hall stated that a blanket exemption was not given to drainage districts. He said that the drainage districts operate under the rules of IDNR in terms of the statewide permits and those are exempted. He said that if exempting drainage districts is something that the Board wants to include in Section 4.2 then it can be added but he would bet that it would be very controversial.

Ms. Lee asked if there could be any references to the fact that as long as the drainage districts comply with the statewide permits they are exempt.

Mr. Hall stated that this reference is already in the Ordinance under Section 4.2.E. He said that Section 4.2.E. reads as follows: Land disturbance pursuant to a statewide or regional permit administered by the Illinois Department of Natural Resources Office of Water Resources (IDNR/OWR) and provided that information sufficient to document compliance with the relevant statewide or regional permit is submitted to the Zoning Administrator at least one week prior to the start of land disturbance. This exemption is only applicable to that portion of construction or land disturbance that is eligible for the statewide or regional permit.

Mr. Thorsland stated that Section 4.2.F. indicates that any land disturbance that is done by or for either the unit of government that has maintenance authority or the street right-of-way.

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Ms. Griest stated that Section 4.2.F. does not state or the street right-of-way but states of the street right-of-way. She said that typically the drainage district does not maintain streets.

Mr. Thorsland stated that in addressing Ms. Lee's concerns text could be added to Section 4.2.F.

Ms. Griest suggested that staff review the drainage law first before the Board tampers with this and if staff feels that there is some appropriate text that could be added they could propose it but she does not believe that this concern fits in Section 4.2.F. She said that there is an expert in the audience who could enlighten the Board about drainage districts and whether or not they always need to get an OWR permit from IDNR.

Mr. Thorsland called Don Wauthier to testify.

Mr. Don Wauthier, Engineer with Berns, Clancy and Associates stated that he serves as the Volunteer Technical Advisor for the Illinois Association of Drainage Districts therefore he believes he could answer any question that the Board may have regarding drainage districts.

Ms. Griest asked Mr. Wauthier if a drainage district is required to obtain an IDNR/OWR permit when they are performing any kind of maintenance.

Mr. Wauthier stated yes and no. He said that in many cases a drainage district is not always required to obtain a permit. He said that there are statewide permits that are issued and as long as they fall under the statewide permit requirement they do not have to make an application and can proceed as long as they follow the statewide guidelines. He said that in many cases they do not need a permit to do general maintenance work from the Office of Water Resources. He said that the Office of Water Resources, by state law, their jurisdiction on regulating construction activities only occurs once the watershed exceeds ten square miles in an agricultural area and one square mile in an urban area. He said that if a drainage district is out in a rural area and they are in the upper nine square miles of the watershed there is no permit requirements at all because the Office of Water Resources does not have any regulatory authority.

Ms. Griest stated that Section 4.2.E. would not give the drainage districts an exemption under the way that the section is written.

Mr. Wauthier stated that they will be disturbing more than one acre of ground so they will have to apply for and obtain an ILR10 from the IEPA even though they don't have to get an Office of Water Resource Construction Permit.

Mr. Hall stated that he knew that if they comply with all of the IDNR/OWR conditions they do not have to have a permit but doesn't that really amount to the same thing as having a permit.

Mr. Wauthier stated that you automatically have a permit.

Mr. Hall asked Mr. Wauthier, that in the first instance, stating that it is exempt pursuant to a statewide permit, does Section 4.2.E. need to be clarified more and in the second instance he hadn't thought of when there is a less than a ten square mile watershed in a rural area and he

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does not know what to do about it. He said that as long as they are compliant with ILR10 they should be okay.

Mr. Wauthier stated if there is more than one acre of land disturbance an ILR10 is required. He said that an interesting element that is coming in to play is that the Army Corps of Engineers has published a new nationwide permit that is changing the regulations for drainage district maintenance activities and making those requirements stringent and whether or not those are going to be passed or not is unknown therefore it will be another six or eight months before they are enacted.

Mr. Hall asked Mr. Wauthier that when a drainage district meets the conditions of an IDNR statewide permit does the IDNR still make them apply for a joint application with the Army Corps of Engineers.

Mr. Wauthier stated no, and right now the nationwide permits with the Army Corps of Engineers sync up very closely with statewide permits so that for the most part if you qualify for an IDNR statewide permit you will also qualify for a nationwide Army Corps of Engineers permit. He said that the Army Corps of Engineers requires you to send in a letter but you do not have to do the application process you only send in the letter and tell them what you are doing but that may not be the case in a few months.

Mr. Randol stated that he believes that the drainage districts are under enough scrutiny without the County trying to tell them what to do.

Mr. Hall asked Mr. Randol to clarify his statement in relation to this Ordinance. He asked Mr. Randol if he would like to see a blanket exemption for drainage districts.

Mr. Randol stated that the Board does not deal with drainage districts in telling them what they can and cannot do and the Army Corp of Engineers and IDNR/OWR are agencies that are already enforcing their activities therefore why should we add another layer as to what the drainage districts can or cannot do.

Mr. Thorsland asked Mr. Randol if he believes that the language in Section 4.2.E. is adequate.

Mr. Randol stated that he believes that Section 4.2.E. is adequate.

Ms. Griest asked Mr. Randol if Section 4.2.E. is adequate enough to give the drainage districts a blanket exemption.

Mr. Randol stated yes. He said that the drainage district is already governed by other units of government.

Mr. Hall stated that the only possible change that he could see is based on Mr. Wauthier's comments and clarify when there is no IDNR statewide permit applicable then they would be expected to comply with ILR10, which is the State's expectation.

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Ms. Griest asked Mr. Hall if the County has a regulatory responsibility to govern and permit drainage districts and if not then revise Section 4.2.A. and include drainage district along with agriculture.

Mr. Hall stated that outside of the MS4 area the County has no obligation but the Ordinance has to be written so that it is clear as to what rules are being adopted. He said that the intent was not to add any new regulations but to exempt them under the current regulations and we have just been told that there is some drainage district activity out there that this does not exempt. He said that his only concern about doing a blanket exemption is that he knows some people who would not support that at the County Board.

Ms. Lee asked Mr. Hall to indicate on what grounds the County Board would not support a blanket exemption for drainage districts.

Mr. Hall stated that there is probably no issue with the drainage districts which are in a watershed that is less than 10 square miles because those are almost always going to be intermittent flowing ditches therefore the problems that we could run into may not be a big as he fears. He said that anyone who has lived in Champaign County for very long knows that there are different opinions about drainage ditch maintenance.

Mr. Thorsland stated that the Board should remember that they are the Zoning Board of Appeals and the Board sends their recommendations to the County Board therefore we should not worry about what they will or will not take because the County Board has never had any fear in sending back recommendations that they do not agree with. He said that the ZBA needs to be comfortable with their recommendations first and whether or not we add this exemption or not is up to this Board at this time and then if the County Board does not agree they can remove it or send it back to the ZBA.

Mr. Passalacqua asked Mr. Hall how staff is going to police or reprimand the drainage district.

Mr. Hall stated that citizens expect staff to investigate when a complaint is received regarding the rural area.

Mr. Passalacqua stated that this would be complaint driven like everything else is. He said that there are so much criteria that the drainage districts have to abide by already he does not think that it behooves the ZBA to put another layer on someone who is already well regulated.

Mr. Thorsland asked the Board if they were comfortable with the language in Section 4.2.E. or do we want to clarify it based on Mr. Wauthier's testimony or take the full leap and exempt drainage districts.

Mr. Passalacqua asked Mr. Hall if he is apprehensive of just placing a blanket exemption on drainage districts.

Mr. Hall stated that if we added the enhancement of watersheds which are less than 10 square miles ILR10 compliance would be a requirement and the County Board could chose to agree or not. He said that if the County Board chooses not to require ILR10 compliance then his view is

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that in those watersheds which are less than 10 acres and the only existing State requirement is ILR10 compliance then the County Board would have decided that they will not require it and will be able to address it.

Mr. Passalacqua stated that he is in favor of saying that compliance is required from the State as opposed to saying that we have nothing to do with it.

Mr. Wauthier stated that it isn't just drainage districts but all the other units of local government. He said that a school district could decide to build a new school that is outside a city or village's jurisdiction. He said that an exemption could be given to units of government that still have to comply with the ILR10 but don't have to meet the County's.

Mr. Passalacqua asked Mr. Wauthier if that would push the complaints off onto the State instead of the County's Department of Planning and Zoning.

Mr. Hall stated that he would be concerned about giving a blanket exemption to all local units of government. He said that in street and railroad right-of-ways the area is so limited that they should be able to do what they need to do. He said that we have fought long and hard to establish our jurisdiction for schools and they are largely exempt but not completely and he does not understand why they would not comply with ILR10 but on the other hand if the County Board does not want to worry about it outside of the MS4 then that settles that. He said that being able to assess what a blanket exemption might mean concerns him greatly.

Ms. Capel stated that all of this will apply to outside of the MS4 but the blanket exemptions will not apply within the MS4.

Mr. Hall stated that the general exemptions in Section 4.2. apply inside and outside the MS4.

Ms. Capel stated that if a blanket exemption were provided for the school districts it would also apply inside or outside the MS4 as well.

Mr. Hall stated that school districts cannot be exempted from the ILR10 because it is a State requirement and there is no need for us to add anything on top of that for sure but it is up to the County Board as to whether or not they want to document that is in compliance. He said that we are never proposing to take over compliance away from what the IEPA does.

Ms. Capel stated that this would be adding another level of local compliance. She said that they would have to supply copies of what they submitted at the State level.

Mr. Hall stated that outside of the MS4 it is up to the County Board. He said that we do need to address these small watersheds to make sure that we are not leaving gaps in what we are proposing.

Mr. Thorsland asked staff to work with Mr. Levy to come up with language regarding this issue based upon the testimony from Mr. Wauthier.

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Mr. Hall stated that regarding clarification of exemptions in Section 4.3, Storm Water Drainage Plan Exemptions and Section 4.4, LDEC Permit Exemptions, there were previous comments that the exemptions were confusing therefore he hopes that the revised version will make more sense and staff is always open to suggestions.

Mr. Hall stated that in regards to clarification of Authorizations and Project Termination (Sections 5.2 and 5.3) additional detail has been added to both. He said that the previous version was not real clear in regards to ILR10 approvals and how that coincides with County approvals outside of the MS4 area so we nailed those down and if the County Board chooses not to do that those things that would not be required. He said that all of the revised material is double underlined so that it is highlighted. He said that previously there was a requirement for no erosion or sedimentation on to adjacent properties and he still likes that but he has had enough people tell him that it is crazy therefore it has been revised from "no" to "minimize" but the intent is the same.

Mr. Hall stated that there were several comments received regarding Section 8.3, Hierarchy of Best Management Practices, indicating that we had establishing native vegetation above things that seemed more important therefore it was revised. He said that we want to preserve the existing natural streams, channels and drainage ways as much as practicable.

Mr. Hall stated that some detail was added to Section 12, Minor and Major LDEC Permits, to specify things about ILR10 compliance so that someone in that area, a homeowner wanting to build a new home, would have better guidance on what to expect when they come in to apply for a permit.

Mr. Hall stated that Mr. Levy has made a lot of other minor changes based on comments and staff wanted to get the revised draft Ordinance to the Board tonight even though we know there will be other changes. He said that there were so many questions in our mind at the end of the last public hearing that staff thought they owed it to the Board to try and resolve some of those questions. He said that more questions and comments have been received tonight therefore there is more detail to add and staff will do that.

Mr. Hall noted that staff has started a Preliminary Finding of Fact but staff is not going to share it with the Board until staff has more confidence of the document and not distribute ten different versions of evidence.

Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.

Mr. Hall stated that staff made it clear in Case 773-AT-14 that staff is completely confident that ILR10 compliance outside of the MS4 is completely optional for the County Board. He said that normally we do not like to show the County Board as many options as we have in this case but we have never had an amendment that is as complicated as this case and he thinks that the options that we have are reasonable and this Board should only recommend the options that it is comfortable with. Mr. Hall stated that staff is not out there trying to think up new options but some of these things seem so significant and we know that the County Board would like to have a degree of freedom to deal with these issues so we do have these options. He said that the

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options are discussed in the memorandum and the options are reviewed. He said that it may be very confusing but the changes related to these options are really very small and are documented in the memorandum. He said that staff believes that it would be a good idea to go into the draft Ordinance and add some kind of notation so that when you are reading a phrase that is optional there would be a footnote to make it clear. He said that the draft that is in front of the Board tonight does not have that kind of notation and if the Board does not believe that it is necessary staff will not add it.

Ms. Capel stated that the options that Mr. Hall are discussing are all based on whether the Board is going to require compliance outside of the MS4 or not.

Mr. Hall stated that Ms. Capel's statement is one option but when staff was at ELUC they were thinking that it wasn't optional but we realized after ELUC that staff did not do a very good job of specifying what it meant. He said that the only option that ELUC was aware were the optional minimum requirements that apply to all properties, such as, minimize erosion and sedimentation, take care of your construction trash, don't get mud on the road, etc. He said that ELUC wanted those as options but when it comes back to them it doesn't mean that they will be approved. He said that we have two options, the option of ILR10 compliance outside of the MS4 area and Case 773-AT-14, Option to Require Permits for Grading and Demolition outside of MS4 Jurisdiction which doesn't change anything in Case 769-AT-13 and is a separate case but it should be considered during review of Case 769-AT-13.

Ms. Lee stated that in one of the written materials Mr. Levy indicated that soil is a pollutant. She said that the soil itself is not a pollutant it is only the movement of the soils which make it a pollutant.

Mr. Hall stated that this Ordinance only discusses soil as a pollutant when it gets washed into a drainage ditch.

Mr. Levy stated that indicating soil as a pollutant may have been an over simplification just to get across the point that when you think of soil the term pollutant does not normally come to mind. He said that when soil is included in storm water the USEPA defines that soil as a pollutant.

Mr. Thorsland called Mr. Herb Schildt to testify.

Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet, stated that the definition of grading reads as follows: Excavation or fill or any combination thereof. He said that one thing that has come up is the concept of private roads and we need to be very careful with this definition. He said that a private road is typically maintained with gravel when potholes occur and a grade box is used behind a tractor to smooth out the ruts. He said that he does think that it would be appropriate under any circumstance to require a permit to drag their road to smooth out the ruts but the definition does not clearly exempt such a practice. He said that Case 773-AT-14 hinges on these definitions and since the definition of grading occurs during Case 769-AT-13 he thought that it would be appropriate to raise this concern. He said that there are probably some other specialized cases where someone could call the office indicating that grading was occurring and

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no permit was obtained.

Mr. Schildt stated that Section 6.4.E. discusses that no construction or land disturbance pursuant to construction shall occur within 50 feet of the top of the bank of a drainage ditch or stream or within 30 feet of the centerline of a drainage swale that is indicated as an intermittent stream on a USGS 7.5 Minute Quadrangle Map. He stated that it is his understanding that drainage districts already have easement or right-of-way rights and perhaps Mr. Wauthier could provide clarification.

Mr. Hall stated that he appreciates the mentioning of grading of a driveway because this Ordinance is materially different than the Zoning Ordinance and it is another Ordinance which discusses land disturbance and if a common type of land disturbance has been considered and has not been exempted then it applies. He said that someone would have to be doing one-half mile of private road to disturb one acre so if you have a driveway that is one-half mile long perhaps it could be maintained in a cycle where you do one-half at one time. He said that it is unlikely that people will complain about the maintenance of a driveway therefore it is unlikely that it will even be brought to staff's attention. He said that perhaps an exemption for driveways is necessary.

Mr. Schildt stated that near his home there is a long private road and it has side roads that run off it. He said that perhaps one of the neighbors decided that he was going to maintain the entire private road it is possible that it could exceed one acre if it were made 20 feet wide and a few passes for grading were made. He said that to be honest he does not like the concept of grading permits and he does not like laws which make people "criminals" for doing normal activity on their property. He said that he understands staff's concept but it should be made specific.

Mr. Hall stated that he is certain that people have the legal right to continue access to their home therefore he does not know what regulating driveway maintenance would accomplish. He said that perhaps driveway maintenance merits an exemption.

Ms. Lee stated that there are rural driveways with grass in the middle and many times those rural driveways have to be maintained by removing the grass so that it does not scrape the bottom of vehicles. She said that in this situation vegetation is being disturbed.

Mr. Thorsland asked the audience if anyone else desired to sign the witness register at this time and there was no one.

Mr. Thorsland asked the Board if they had any further questions regarding Case 769-AT-13 at this time and there were none.

Mr. Thorsland closed the witness register.

Mr. Thorsland entertained a motion for continuance of Case 769-AT-13.

Mr. Hall recommended that Case 769-AT-13 be continued to the next public hearing which is June 12, 2014.

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Ms. Lee moved, seconded by Mr. Randol to continue Case 769-AT-13 to the June 12, 2014, public hearing. The motion carried by voice vote.

**6. New Public Hearings**

**Case 773-AT-14 Petitioner: Zoning Administrator Request to amend the Champaign County Storm Water Management and Erosion Control Ordinance that is the subject Zoning Case 769-AT-13, by adding the following: A. Add a requirement for a Grading and Demolition Permit for any grading or demolition that disturbs one acre or more of land or for any grading or demolition that is part of a larger common plan of development in which one acre or more of land disturbance will occur, and that is not related to any proposed construction; and B. Add fees for Grading and Demolition Permits; and C. Add required information to be provided in the application for a Grading and Demolition Permit; and D. Add a requirement that any grading or demolition pursuant to a Grading or Demolition Permit shall comply with the Illinois Environmental Protection Agency's ILR 10 General Storm Water Permit for Construction; and E. Add a requirement that any demolition pursuant to a Demolition Permit shall comply with the Illinois Environmental Protection Agency's regulations enforcing the National Emission Standard for Hazardous Air Pollutants for regulated asbestos; and F. Add prohibitions against changing the flow of water and blocking the flow of water; and G. Add other requirements related to Grading and Demolition Permits.**

Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register they are signing an oath. He asked the audience if anyone desired to sign the witness register at this time.

Mr. Thorsland asked the petitioner if he would like to make a brief statement regarding the request.

Mr. John Hall, Zoning Administrator, stated that the Preliminary Memorandum dated May 23, 2014, clarifies that staff believes that there is value that could be achieved by adding this to the Ordinance. He said that he wants to propose it so that when he is asked later by citizens why the County Board doesn't worry about this he can reply that staff gave them the opportunity and they decided not to. He said that complaints regarding changes in drainage, mud being tracked onto the roads, and mud washing onto adjacent properties are really one of our more common complaints in the rural area and the ETJ area. He said that he does not want the Board to think that adding this little bit of change will give us a tremendous tool that we can go out and stop all of those things from happening because it won't although we might be able to make some of those situations better. He said that drainage is the kind of thing where people will always be changing drainage at a scale that we cannot hope to do anything about but this will at least give us the opportunity to step in to a situation and try to minimize damage or stop the bad activity that is going on. He said that the Grading and Demolition Permit is separate from the ILR10 compliance because they are two different things and the County Board can do one without doing the other and obviously if you are trying to prevent water pollution requiring permits for

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grading and demolition that involve one acre or more of land disturbance it makes a lot of sense which is why he would like to present it as an option to the County Board.

Mr. Passalacqua asked Mr. Hall if the State of Illinois has any jurisdiction for some of these complaints such as a construction site that puts mud on the road. He asked if mud on the road is a violation of the Illinois EPA.

Mr. Hall stated that a construction site can track mud onto the road but they are supposed to clean it up at the end of the day.

Mr. Passalacqua asked if some of the complaints that staff receive are forwarded to the state level for enforcement because we don't have an ordinance for now.

Mr. Hall stated that when he becomes aware of such an issue and the disturbance is for an acre or more he notifies the state inspector.

Mr. Passalacqua stated that most of the complaints that staff receives are for less than one acre of disturbance. He said that he understands that there are complaints about these kinds of things and they are not currently addressed by an ordinance but are they governed by the IEPA.

Mr. Hall stated that if it is one acre or more the state is the only agency that has any rules that apply. He said that Grading and Demolition Permit, as proposed, is only necessary if there is one acre or more however the minimum requirements in Case 769-AT-13 apply to all acreages. He said that Case 769-AT-13 requirements will be the only means for doing anything for small disturbances and the one acre or more is for the larger stuff.

Mr. Thorsland stated that the minutes for the March 14, 2014, public hearing indicated testimony from Mr. Rob Parker. Mr. Thorsland stated that Mr. Parker discussed a property, approximately one acre in size, near his that was having a new home constructed upon it and that it was receiving a lot of fill dirt. He said that if it rained mud would be all over the road therefore if someone called staff about the mud on the road and the property was over one acre in size, staff could call IEPA but if it were less than one acre the township highway commissioner would be called. Mr. Thorsland asked Mr. Hall if the body of the Ordinance is based on complaints regarding this kind of problem.

Mr. Hall stated yes.

Mr. Thorsland asked Mr. Hall if we have a rainy harvest season and farmers are pulling their trucks and wagons out of the field and leaving mud on the road.

Mr. Hall stated that this would be considered agriculture and the township highway commissioner would be notified.

Mr. Randol asked Mr. Hall what applies if someone does not disturb more than one acre of their land but does affect the water flow for adjacent properties consisting of more than one acre combined.

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Mr. Hall stated that the optional minimum requirements would provide a little leverage in an instance like that because that person has obviously obstructed drainage, even though in his mind he hasn't, and it would be easy to prove. He said that staff has cases sitting at the State's Attorney's Office now which are much more serious than this and they have never been taken to court therefore something like this will probably never be taken to court but that does not mean that staff does not try to get something done in the office.

Mr. Randol asked what if someone causes the drainage to flood someone's home.

Mr. Hall stated that hopefully that would go to court if it is not corrected.

Mr. Randol stated that the Ordinance would at least add minimal clout.

Mr. Hall stated that hopefully if staff is called early enough we can discourage things like that happening in the future.

Ms. Griest asked if he had any statistical information on how many complaints have been received which involve a construction permit that required ILR10 compliance and complaints that would not would have required ILR10 compliance so that the Board could compare the impact of the grading. She said that she believes that grading and demolition fall into two different categories because the grading may not include construction or demolition but demolition isn't going to include construction necessarily. She asked Mr. Hall if his permitting data indicates how many of the new permits will be taken out of the queue which would not be taken out by Case 769-AT-13 anyway.

Mr. Hall stated that it is not a great number but as he recalls filling about 9 acres of land to a depth of 12 feet of fill, carefully selected so that it is outside of the mapped floodplain did not fall under any regulations because it was just fill. He said that it turns out that there was a Storm Water Prevention Plan in place and a copy was submitted to staff and that was the end of that. He said that in another instance there was filling of a drainageway to a depth of close to 20 feet of fill in a drainageway that affected a neighbor's land and in terms of area it amounted to a couple of acres. He said that they were filling the drainageway with a culvert at the bottom so at least drainage was not completely blocked and it was not related to any other construction and it was agriculture related therefore staff could not have done anything about it anyway. He said that in another instance a person was and still is grading a three acre lot in the floodplain and mulching it heavily to great depths, which is good because that protects the soil, but there is mud being tracked onto the road and there was bad access to the road. He said that this instance actually ended up being in the MS4 area so the IEPA got involved and there is now no mud being tracked onto the road. He said that the fill is outside of the floodplain and the soil is heavily mulched so there is no erosion. He said that the neighbors are still wondering what is going on because no home has been built but at least their concerns about drainage and mulch blocking the visibility triangle have been corrected. He said that if we would have a permit process in place staff may have known about it in the beginning which would have prevented the mud from being tracked onto the road and staff could have answered the calls that were received in the very beginning. He said that the complainant was amazed that these types of changes

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could be done without requiring any type of permit which is why staff is proposing this.

Ms. Griest asked if we are more concerned about it in the floodplain than in the general area. She said that if the County Board were not in favor of something like this they might lean more to it if it is applied to floodplain areas.

Mr. Hall stated that the County's Special Flood Hazard Areas Ordinance regulates filling and grading in the floodplain therefore we already have a lot of authority on that which is why in each of those instances the line of grading matched the line of the mapped flood hazard area therefore they knew what they were doing to be within the law.

Ms. Griest asked if we will be proposing an Ordinance that is going to affect a very limited number of Champaign County residents but put the burden on a larger number that are not causing a problem whereas most of those issues will come in under Case 769-AT-13.

Mr. Hall stated that the greatest amount of earth moving and reshaping has never been related to construction and has been just filling the property in case someone wants to use it someday. He said that if it is out of the mapped floodplain it is completely exempt from all of our regulations unless the County Board adopts a grading permit. He said that the filling of the drainageway was agriculture so it was exempt. He said that something like creating a new building site is exempt from our regulations and will be exempt from Case 769-AT-13 unless there is a requirement for a grading permit. He said that he has never encountered demolition but now that he knows that demolition can lead to the need for an ILR10 permit it is something that he is sensitive to and once we start regulating demolition you better be regulating compliance with asbestos removal. He said that these are all things that neighbors will call about therefore it is something that he wants to give the County Board an option to do or not.

Ms. Marilyn Lee asked if any of Case 773-AT-14 is required by the IEPA or is this going completely beyond what is required by IEPA.

Mr. Hall stated that we are going beyond what is required although we do have to regulate grading and demolition in the MS4 area but we do not have to do it outside of the MS4 area. He said that regulating grading and demolition outside the MS4 area is completely optional which is just like ensuring compliance with ILR10.

Mr. Thorsland asked Mr. Hall if the County Board were to adopt Case 773-AT-14 most people would make staff aware ahead of time that there was a plan therefore would this reduce or increase staff work load.

Mr. Hall stated that if they are going to grade one acre or more they would have to submit a grading application. He said that we are not setting any standards for grading but we are requesting that they tell us what they are going to do. He said that if the County Board adopts the optional minimum requirements staff would make people aware that they cannot track on to the road or at least clean it up and minimize erosion and sedimentation. He said that he does not believe that the rules are burdensome rules and if the County Board adopts the requirement to require compliance with ILR10 then that will add costs to those kinds of developments and it

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will be in the order of \$5,000 minimum per instance. He said that this is not burdensome unless the County Board wants to require compliance with ILR10 and then it will be a significant change and there is no doubt about it.

Mr. Thorsland asked the Board if there were any additional questions for Mr. Hall and there were none.

Mr. Hall stated that staff wrote the grading and demolition thing and that it occurred to us that we have a model there for general exemptions. He said that if Case 774-AT-14 is adopted the grading and demolition permitting exemptions will be a little bit different but staff has not had a chance to update that information.

Mr. Levy stated that the numbering may also change and in Section #5.2.A.3 we want to reiterate that we want the applicant to include the extent and nature of all proposed land disturbance which will be the critical piece of information that they will be providing to the Zoning Administrator. He said that these changes will be consistent with Case 769-AT-13.

Mr. Hall stated that in regards to this case staff hasn't shown the Board what this looks like integrated into the text for Case 769-AT-13 and staff can do that if the Board desires but it is pretty self contained.

Mr. Thorsland asked the Board if there were any further questions for Mr. Hall or Mr. Levy and there were none.

Mr. Thorsland called Mr. Herb Schildt to testify.

Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet, stated that Mr. Hall's comment on page 2 of the Preliminary Memorandum dated May 23, 2014, indicates that the following: The benefit is slight but complaints about drainage changes are common enough that the County Board should consider requiring Grading and Demolition Permits even if it does not require ILR10 compliance outside of the MS4 Jurisdictional Area. Mr. Schildt stated that he believes Mr. Hall is correct with this statement. He said that Mr. Hall indicated that from time to time staff receives complaints regarding grading although it is Mr. Schildt's understanding that if someone harms your personal property you have recourse by law. He said that he may be mistaken but he believes it is true that if someone willfully harms your property it is a criminal act and if someone inadvertently harms your property you have civil recourse therefore he does not believe that neighbors are without recourse. He said that it seems that we are going to place a great burden on a vast number of people who are innocent with nearly zero impact on the person who maybe sort of fast and loose with things and he does not like laws like that. He said that he does not like laws which punish everybody because somebody once in a while does not do the right thing. Mr. Schildt stated that he does not like the concept of implementing Grading and Demolition Permits and should this go forward spending a great amount of time on the definition of "Grading" is important and careful thought and input from many others who maybe in the business who do all sorts of things that may be considered grading would be very important. He said that it is his hope that this does not go forward and he hopes that the case is withdrawn. He said that it seems that we could go through a lot of time and effort for something

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that he feels is not right for Champaign County. He thanked the Board and staff for the opportunity to voice his comments regarding this case.

Mr. Thorsland asked the Board if there were any questions for Mr. Schildt and there were none.

Mr. Thorsland asked if staff had any questions for Mr. Schildt and there none.

Mr. Thorsland requested a continuance date from staff.

Mr. Hall stated that it would make sense to continue Case 773-AT-14 to the June 12, 2014, public hearing.

Mr. Thorsland entertained a motion to continue Case 773-AT-14 to the June 12, 2014, public hearing.

**Ms. Griest moved, seconded by Mr. Passalacqua to continue Case 773-AT-14 to the June 12, 2014, public hearing. The motion carried by voice vote.**



# EROSION CONTROL REQUIREMENTS IN CHAMPAIGN COUNTY

DRAFT SEP. 11, 2014

Soil erosion and sedimentation can damage property and pollute streams. Disturbance of one acre or more of land (or less than an acre if it is part of a "common plan of development or sale of record" that ultimately disturbs one acre or greater) by construction and earth moving activities is regulated by the Illinois Environmental Protection Agency (IEPA) for the purpose of minimizing erosion and sedimentation and the resulting water pollution.

Champaign County is also required by the State of Illinois to regulate soil erosion and sedimentation caused by non-agricultural activities. Erosion and sedimentation caused by construction and other related land disturbance is regulated by the *Champaign County Storm Water Management and Erosion Control Ordinance*.

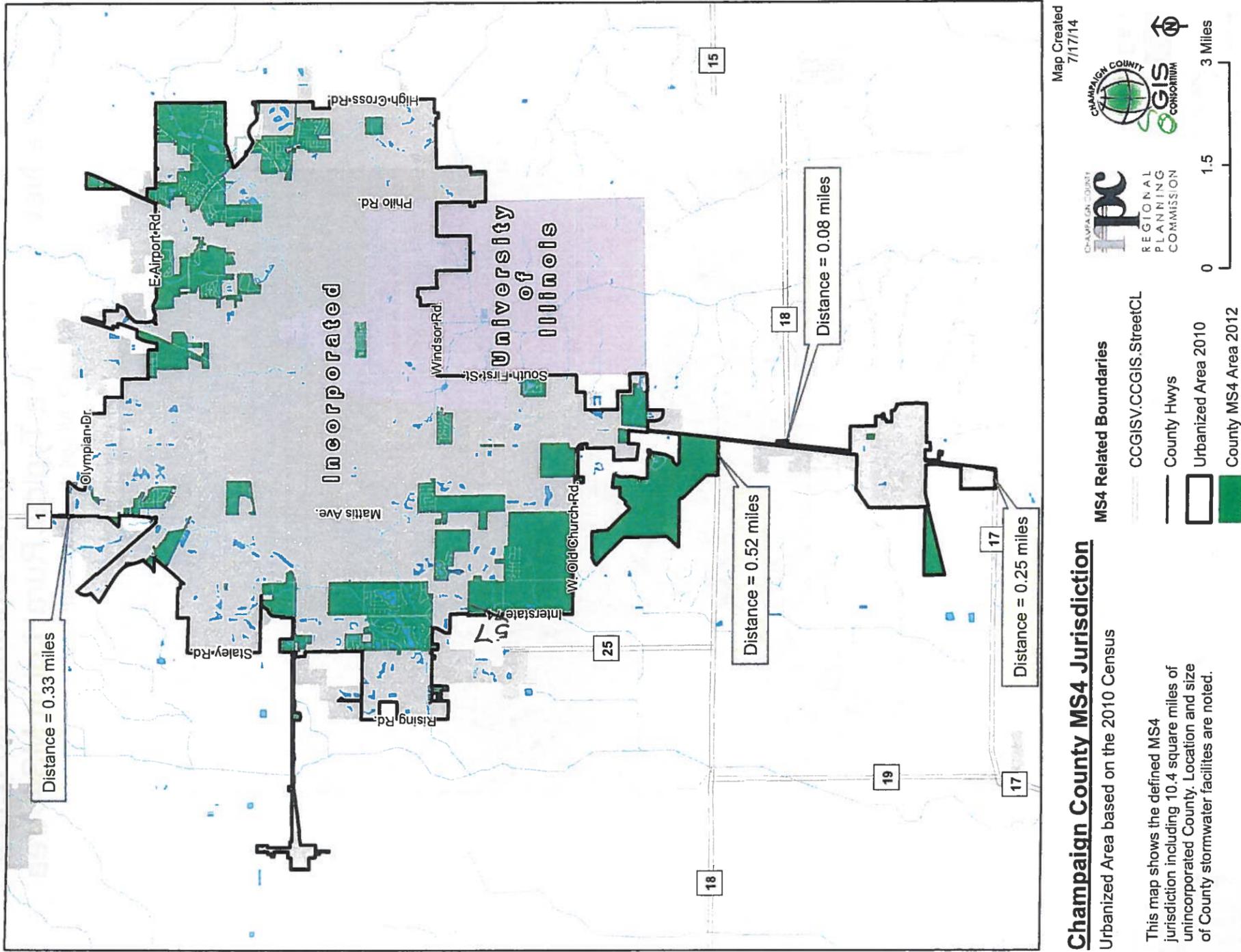
In most of rural Champaign County, erosion and sedimentation controls must only be provided as necessary to minimize erosion and sedimentation. Consult with your contractor or builder.

The following related requirements also apply throughout all of rural Champaign County:

- **New sump pump or private wastewater system discharges shall not discharge directly into or within 25 feet** of a roadside ditch, off-site drainage swale, stream, property line, or in such a way that it creates a nuisance condition or causes erosion.\*
- **Construction waste must be properly disposed of and prevented from being carried off-site by either wind or water.\***
- **Stockpiles of soil and other erodible material (such as sand) shall not be located in a drainage ditch easement or less than 50 feet from the top of bank of a drainage ditch or stream or 30 feet from the centerline of a ditch or swale or property line.** See the attached Zoning Use Permit Site Plan.
- **Any stockpile or multiple stockpiles with a total volume of 150 cubic yards or more must also have appropriate erosion and sedimentation controls.\***
- **Any soil or sediment tracked onto a street, sidewalk or public area shall be removed before the end of each workday or sooner if directed by the relevant Authority.\***
- **In the Special Flood Hazard Area (100-year floodplain) an ILR10 permit with the IEPA and appropriate erosion and sedimentation controls are required for land disturbance if there is one acre or more of land disturbance.**

"Land Disturbance Erosion Control" (LDEC) permits are required in the Champaign County MS4 Jurisdictional Area. See the attached map. The following is required:

- **An Erosion and Sedimentation Control Plan is required.** See the Example Erosion and Sediment Control Plan (ESCP) for a New Home on a Typical Rural Lot in the MS4 Area.
- **Erosion and sedimentation controls (such as a silt fence or stabilized construction entrance) must be in place before construction is authorized.** Extra inspections are also required and additional fees are charged.\*
- **An ILR10 permit with the IEPA is required if there is disturbance of one acre or more of land (or less than an acre if it is part of a "common plan of development or sale of record" that ultimately disturbs one acre or greater).**



## Champaign County MS4 Jurisdiction

Urbanized Area based on the 2010 Census

This map shows the defined MS4 jurisdiction including 10.4 square miles of unincorporated County. Location and size of County stormwater facilities are noted.

- MS4 Related Boundaries**
- CCGIS.V.CCGIS.StreetCL
  - County Hwy
  - Urbanized Area 2010
  - County MS4 Area 2012

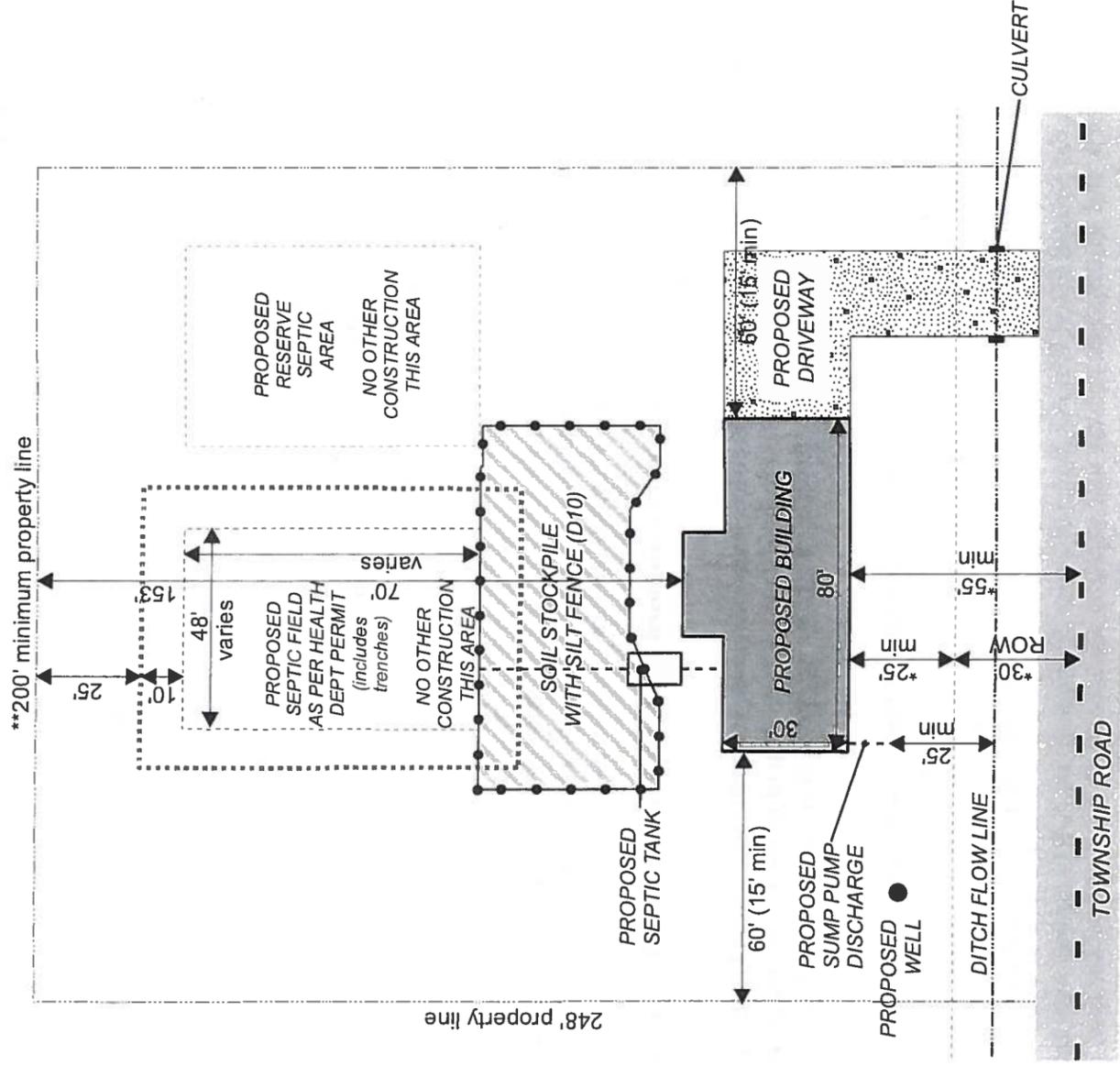
Map Created 7/17/14

CHAMPAIGN COUNTY GIS CONSORTIUM

CHAMPAIGN COUNTY REGIONAL PLANNING COMMISSION

Scale: 0, 1.5, 3 Miles

# Example Zoning Use Permit Site Plan for a New Home on a Typical Rural Lot



\* minimum setback varies depending on street classification  
 \*\* minimum lot width in AG-1 and CR Districts

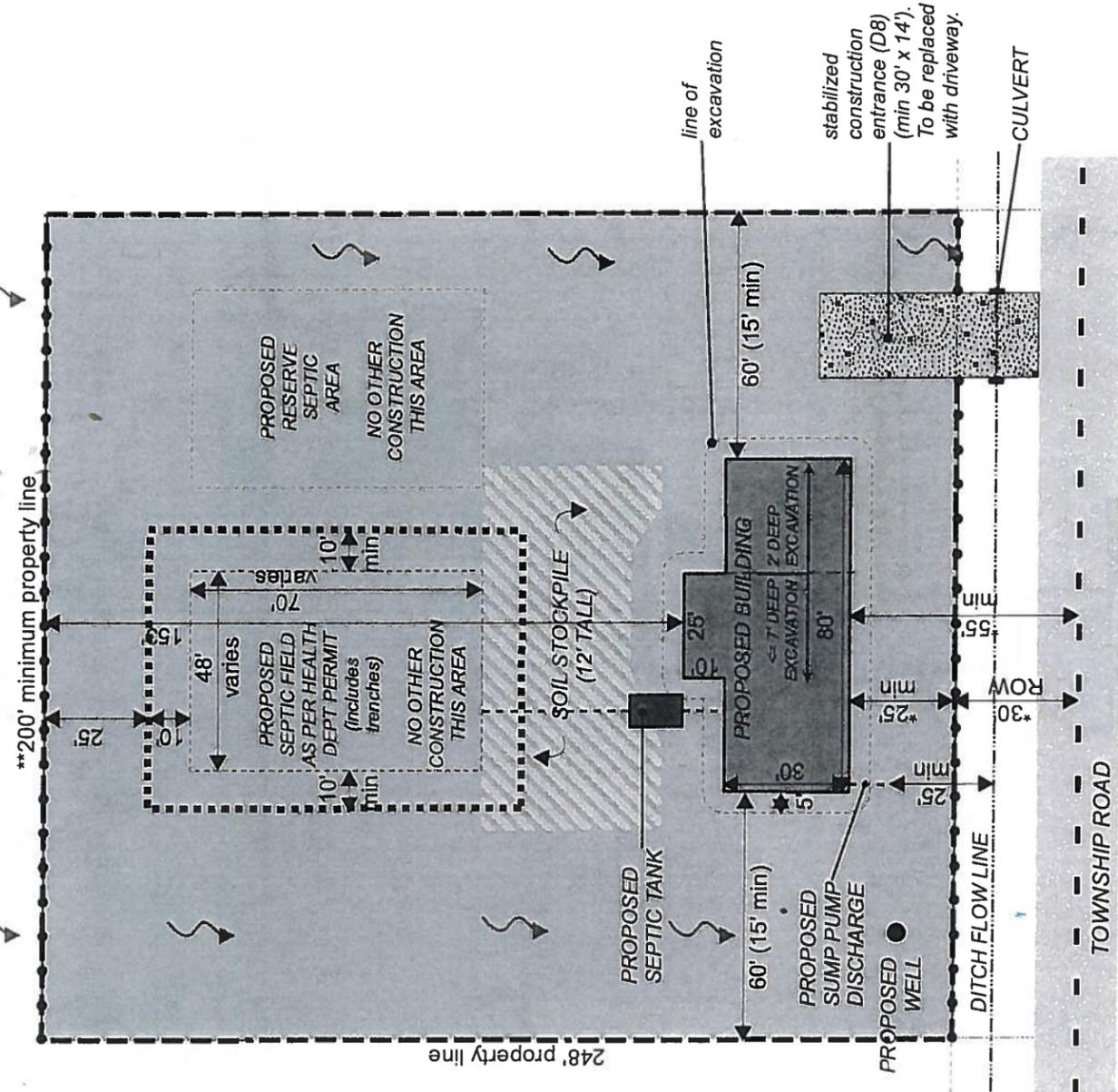


## Legend

- ..... Curtain Drain
- Septic Field
- Reserve Septic Field
- SILT FENCE (D10)
- Soil Stockpile Area
- Proposed Driveway
- Residence
- Property Line
- Township Road

# Example Erosion and Sediment Control Plan (ESCP) for a New Home on a Typical Rural Lot in MS4 Area

Example 2: All soil disturbed on property



\* minimum setback varies depending on street classification  
 \*\* minimum lot width in AG-1 and CR Districts



## Legend

- LIMIT OF SOIL DISTURBANCE (Indicate by pencil shading or use of highlighter, etc.)
- SILT FENCE (D10)
- Direction of Drainage
- ..... Curtain Drain
- Septic Field
- Reserve Septic Field
- Stabilized Construction Entrance
- Soil Stockpile Area
- Residence
- Property Line
- Township Road