VILLAGE OF LOS LUNAS
ORDINANCE 458

An Ordinance Providing for the Control of Erosion, Flooding and Ensuring the Highest Level of Water Quality Before Entering the Rio Grande or the Ground Through Infiltration; Providing for Penalties; and Providing an Effective Date of Ordinance.

WHEREAS, The Village of Los Lunas is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico; and

WHEREAS, According to the most recent estimates by the US Census Bureau, the Village of Los Lunas has an estimated population of 17,242; and

WHEREAS, The United States Environmental Protection Agency (EPA) provides guidelines for all communities over 10,000 in population to establish regulations for stormwater quality; and

WHEREAS, Regulations for erosion, flooding and water quality must be reflected in plans and designs for development, including building construction, site development and subdivision development;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF LOS LUNAS, COUNTY OF VALENCIA, STATE OF NEW MEXICO THAT,

TITLE 15 (BUILDINGS AND CONSTRUCTION) CHAPTER 15.20 (DRAINAGE REGULATIONS) BE AMENDED AS FOLLOWS:

§15.20.010 – Storm drainage management

All commercial and industrial development within the village municipal limits shall submit a drainage plan and, if applicable, an erosion control plan consistent with the regulations of Chapter 13.22 and the Development Process Manual.

§15.20.020 – Fees

The fee for drainage plan review for commercial and industrial projects shall be based on the total acreage of the project, to be assessed when the developer submits an application for a building permit:
First 5 acres of land: $350
Each additional acre of land: $10

TITLE 16 (SUBDIVISIONS) BE AMENDED AS FOLLOWS:

§16.24.110 – Storm drainage management
All subdivisions shall submit a drainage plan and erosion control plan consistent with the regulations of Chapter 13.22 and the Development Process Manual.

§16.28.110 – Storm drainage management
All subdivisions shall submit a drainage plan and erosion control plan consistent with the regulations of Chapter 13.22 and the Development Process Manual.

TITLE 13 (PUBLIC SERVICES) BE AMENDED AS FOLLOWS, TO CREATE CHAPTER 13.22 – EROSION CONTROL, STORM DRAINAGE AND STORMWATER QUALITY:

§13.22.010 – Title.
This Ordinance shall be known and cited as "The Village of Los Lunas Erosion Control, Storm Drainage and Stormwater Quality Ordinance".

§13.22.020 – Authority.
This ordinance shall apply to all development and redevelopment within the Village and, with respect to planning and platting matters, it shall also apply to all lands within its extraterritorial planning and platting jurisdiction.

§13.22.030 – Interpretation.
In the interpretation and application of this ordinance, all provisions shall be:

A. Considered as minimum requirements.
B. Liberally construed in favor of the Village.
C. Deemed neither to limit nor repeal any other powers granted under state statutes.
D. Not deemed to limit nor repeal any other provisions of this code, adopted by the governing body, unless expressly stated herein.

§13.22.040 – Disclaimer of Liability
The degree of floods protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside flood hazard areas or uses permitted within the areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Village or on any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

§13.22.050 – Intent.
Drainage control considerations specifically address safety, convenience, and economics for both private property and public facilities. This Ordinance is intended to promote the general health, safety, welfare and to minimize public and private losses due to flooding by provisions designed:

A. To establish policies, procedures, criteria and requirements for the assistance and guidance of the Village officials, Village staff and all persons and entities within the jurisdiction in the Village.
B. As to storm drainage, to:

1. Reinforce the Drainage Regulations in Chapter 15.20.
2. Prevent the creation of public safety hazards and seek to eliminate existing problems;
3. Provide a reasonable level of public health and convenience at a reasonable cost; and
4. Provide for timely and effective construction and maintenance of storm drainage facilities.

C. As to stormwater quality, to:
    1. Integrate stormwater quality policies, criteria, and requirements with all other applicable village development regulations.
    2. Reduce quantity and improve the quality of stormwater runoff within the context of retaining runoff onsite and within the limits of state water law.
    3. Address construction and post construction stormwater quality management within the limits of state water law and, where applicable, within flood control agency authorities and limitations.
    4. Ensure to the maximum extent practicable that discharges to and from the Village's stormwater drainage system and facilities do not cause or contribute to exceedances of applicable surface water quality standards.
    5. Prohibit non-stormwater discharges and minimize release of gross pollutants (e.g., trash, fugitive construction dust) to the Village's stormwater drainage system, and provide for appropriate enforcement procedures and actions.
    6. Address discharges and disposals from industrial activities to the Village's stormwater drainage system.
    7. Work cooperatively with the Technical Advisory Committee and other co-permittee's to best manage the discharge of stormwater runoff into co-permittee's facilities, maximize efficient use of stormwater facilities and minimize impact on downstream water quality and stormwater drainage facilities.
    8. Promote and encourage the use of green infrastructure/low impact development (GI/LID) for water conservation in landscaping and in the treatment of stormwater prior to discharge to the waters of the U.S.

§13.22.060 – Definitions.

For the purposes of this Ordinance, the following definitions shall apply unless the context indicates or requires a different meaning.

"10-Year Design Storm" means the storm in which precipitation within a twenty-four-hour period and resulting runoff has a ten percent chance of being equaled or exceeded in any given year.

"100-Year Design Storm" means the storm, as defined by the National Oceanic Atmospheric Administration (NOAA), in which precipitation within a twenty-four-hour period and resulting runoff has a one percent chance of being equaled or exceeded in any given year.

"Best Management Practices (BMP)" means the schedules of activities, labor, equipment and material; prohibitions of practices; maintenance procedures; and other management practices

(public or private) to prevent or reduce the pollution of waters of the U.S. BMP's include devices, practices or methods for removing, reducing, retarding, or preventing targeted stormwater runoff constituents, pollutants, and contaminants from reaching receiving waters. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from material storage.

"Burdon of Proof" means reasonable evidence or presumptions regarding ownership of wastes and/or the responsible party involved in an illicit discharge detection and elimination (IDDE) event. In the presence of prima facie evidence and reasonable assumption, the burden of proof to establish a non-violation of this ordinance falls to the responsible party.

"Channel" means any arroyo, stream, swale, ditch, diversion or water course that conveys storm runoff, including both natural and artificial conveyances.

"Channel Stability" means a condition in which a channel neither degrades to the degree that structures, utilities or private property are endangered, nor aggrades to the degree that flow capacity is significantly diminished as a result of one or more storm runoff events or moves laterally to the degree that adjacent property is endangered.

"Channel Treatment Measure" means a physical alteration of a channel for any purpose.

"Comprehensive Plan" means the village's current approved comprehensive plan and amendments thereto.

"Conceptual Grading and Drainage Plan" means a plan prepared in graphical format showing existing and proposed grading, drainage control, flood control, stormwater quality and erosion control information in sufficient detail to determine project feasibility.

"Construction General Permit (CGP)" means the EPA-issued general permit for stormwater discharge associated with construction activity.

"Cooperator/Cooperative Agreement" means any arrangement, organization, or joint functioning of the co-permittees, or in combination with other governmental agencies, which works constructively with the Village to address mutual stormwater issues. The cooperation, agreements, and functionality may be informal, customary, or more formally documented through the written agreement, contracts, joint planning documents, or ordinances.

"Co-Permittee" means any entity discharging stormwater within the urbanized area as identified by EPA.

"Design Storm" means a storm which deposits a stated amount of precipitation within a stated period over a defined area and which is used in calculating storm runoff and in designing drainage control, flood control, water quality and erosion control measures.

“Developed Land” means any lot or parcel of land occupied by any structure intended for human occupation, including structures intended for commercial enterprise.

“Developer” means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity engaging in the platting, subdivision, filling, grading, excavation or construction of structures.

“Directly Connected Impervious Area (DCIA)” means the portion of impervious area with a direct surface or infrastructure hydraulic connection to the Village’s stormwater system or receiving waters via continuous impervious area or by other means of impervious conveyance features such as gutters, pipes, drains and other impervious features.

“Discharge” means the release of stormwater, in whatever manner or composition, to or from the Village’s stormwater system.

“Disposal” means causing, allowing, abandoning, depositing, placing, injecting, releasing, spreading, dumping, spilling, leaking, or other similar actions by whatever term of use, of wastes in whatever manner or composition to stormwater or to the stormwater drainage system of the Village or its co-permittees. “Dispose” and “Release” share the same definition.

“Dispose”: See Disposal

“Downstream Capacity” means the ability of downstream major facilities to accept and safely convey runoff generated upstream from the 100-year design storm.

“Drainage” means stormwater drainage.

“Drainage Control” means the treatment and/or management of surface runoff from all storms up to and including the 100-year design storm.

“Drainage Plan” means a short, detailed plan prepared in graphical format with or on a detailed grading plan addressing on-site and offsite drainage control, flood control and erosion control issues for lots and parcels of less than five acres.

“Drainage Report” means a comprehensive analysis of the drainage, flood control and erosion control constraints on and impacts resulting from proposed platting, development or construction project, for projects greater than 10 lots or 5 acres.

“EPA” means the United States Environmental Protection Agency.

“Erosion Control” means treatment measures for the prevention of damages due to soil movement and to deposition from the 10-year design storm runoff.

“Erosion Control Plan” means a plan for the mitigation of damages due to soil erosion and to deposition from the 10-year storm runoff.

“Floatables/Floatable Debris” means rubbish/litter/wastes and vegetative debris in stormwater runoff. This includes litter and other manmade pollutants such as plastic, paper products, polystyrene, cigarette butts, diapers, aluminum cans, bottles, construction trash, wood products, and vegetative debris including leaves, tumbleweeds, twigs, grass clippings, manure, yard waste and like items, that float or remain suspended in stormwater flows.

“Flood Control” means the treatment measures necessary to protect life and property from the 100-year design storm runoff.

“Flood Hazard Area” means an area subject to inundation from the 100-year design storm runoff, per FEMA standards.

“Floodway” means the channel of a river, arroyo or other water course and adjacent land areas that must be reserved in order to safely discharge the 100-year storm runoff.

“Fully Developed Watershed” means a hydrological condition in which all areas upstream and downstream of a point in question are assumed completely developed, including any undeveloped areas which are assumed to be developed in accordance with midrange development densities as established by the comprehensive plan, appropriate area plans or sector plans, adopted by the facilities master plans and the hydraulic and hydrologic standards established by this ordinance.

“GI/LID” means Green Infrastructure (GI) and Low Impact Development (LID): any array of products, technologies, and practices that preserve or use natural systems, to enhance overall environmental quality and more specifically that provide treatment resulting in stormwater quality improvement.

“Grading Plan” means a plan describing the existing topography and proposed grading, including retaining wall locations and details, interfaces with adjacent properties, streets, alleys and channels, referenced to mean sea level based on the New Mexico State Plane, Central Meridian, with vertical datum utilizing North American Vertical Datum 1988 (NAVD ’88) and the horizontal datum utilizing North American Datum 1983 (NAD ’83), and showing sufficient contours, spot elevations and cross sections to allow a clear understanding by reviewers, contractors and inspectors.

“Gross Pollutants” means floatables and debris items larger than five millimeters.

“ICIP” means Infrastructure Capital Improvements Program, the Village’s capital improvement program.

“IDDE” means Illicit Discharge Detection and Elimination, the detection and elimination of non-stormwater discharges and pollutants to the MS4. This term may be used synonymously with any number of terms of a nature similar to illicit discharge, illegal disposal, or illegal dumping.

“Illegal Disposal”: See Illicit Discharge.

“Illegal Dumping”: See Illicit Discharge.

“Illicit Discharge” means discharges not composed entirely of stormwater into the Village’s or other co-permittees MS4, except discharges pursuant to an NPDES permit or those otherwise allowed by exception of the Village, or the placement or release of any manner of materials defined as waste, solid waste, or pollutant directly into or in a manner that can reasonably be expected to result in a direct release of materials into the Village’s or a co-permittee’s MS4. Illegal Disposal and Illegal Dumping share the same definition.

“Impervious Area” means conventional constructed surfaces such as pavements, sidewalks, driveways, roadways, parking lots, and rooftops that are intended to be impermeable or water resistant. Highly compacted soils may also be considered to be impervious as may be landscaped areas which are underlain by plastic sheeting which is not intended to allow the passage of water into the underlying soil layer. Impervious Surface shares the same definition.

“Impervious Surface: See Impervious Area.

“Industrial Activity” means a property that has discharges associated with industrial activity as defined by federal regulations in 40CFR 122.26(B)(214)I – XI and the activities which occur on the property. Industrial Facility shares the same definition.

“Industrial Facility”: See Industrial Activity.

“Maintenance” means the cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of the pump stations.

“Major Arroyo” means any channel whose watershed exceeds 320 acres in a 100-year design storm whether the watershed is in its natural unaltered state or has been altered by development, runoff diversions or detention facilities.

“Major Facility” means any facility, including a street or alley, which would collect, divert or convey a peak discharge of more than 50 cubic feet per second (50 cfs) or detains more than two acres-feet of runoff in the event of a 100-year design storm.

“Managed On Site” means the stormwater design volume is controlled, directed and treated on the property, or if from an area of common development, then at an alternate location designed for stormwater management or as otherwise approved by the Village Engineer. The control and treatment and will be for water quality and/or flood volume purposes prior to discharge of the stormwater to the Village’s or a co-permittee’s MS4. Nothing in this definition shall be construed to require an action which the applicant or the Village deems to be contrary to state water law, or to verbal or written state agency guidance regarding flood control or surface water capture, or which requires acquisition or amendment of a water right to legally implement.

“Master Planned Facility” means any drainage control, flood control or erosion control facility recommended in the comprehensive plan, amendments thereto, or any voter-approved, general obligation bond financed drainage control, flood control or erosion control facility.

“Maximum Extent Practicable (MEP)” means a technology based discharge standard for MS4 operators regulated under the NPDES stormwater program to reduce pollutants in stormwater discharges. The water quality standard may be quantitative or in the form of a narrative discharge limitation, requiring BMP’s designed to satisfy the technology requirement of the Clean Water Act (CWA) and protect water quality. BMP’s are determined by permittee.

“Minor Facility” means any facility that would collect, divert or convey a peak discharge of 50 cubic feet per second (50 CFS) or less or detains less than two acre feet of runoff in the event of the 100-year design storm.

“MS4” means Municipal Separate Storm Sewer System: the system of stormwater conveyances and drainages owned, operated, or under the control of the Village, or any such facilities or conveyances owned, operated or under the control of the co-permittees to which or from which the Village discharges or receives discharges of stormwater, and within the urbanized area. The MS4 includes all manner of natural and manmade, lined or unlined, ditches, arroyos, channels, canals, inlets, drains, and piping that are used to convey stormwater. The term is used interchangeably to refer to individually to the Village’s MS4 specifically and collectively to that of the Village and co-permittees.

“Multiple Use Facility” means a drainage control, flood control or erosion control facility in which other secondary uses are planned or allowed, including but not limited to recreation, open space, transportation and utility location.

“Multisector General Permit (MSGP)” means the EPA-issued permit for stormwater discharge associated with industrial activity.

“Narrative Discharge Limitations” means criteria and limitations that describe a desired water quality control.

“NPDES” means the National Pollution Discharge Elimination System administered by the EPA under Title 33 of the United States Code. The EPA administers the NPDES program through issuance and enforcement of permits that authorize discharges to waters of the U.S.

“NPDES Project Manager” means the Village staff person designated by the Village Administrator to oversee and ensure regulatory compliance with regard to the permit, who serves as the primary liaison to co-permittees regarding permit and stormwater quality issues, and who is responsible for application review as relates to stormwater quality issues.

“Nuisance Waters” means those waters leaving a site and entering a public street which do not result from precipitation, such as landscape overwatering or car washing.

"Organics/Organic Debris" means organic material including leaves, branches, seeds, twigs, grass clippings and the like items, including yard wastes.

"Point Source" means any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

"Pollutant" means anything which alters the physical, chemical or biological quality of any waters of the U.S., as stated in the definition for "Pollution". Pollutants include but are not limited to those materials and substances included within the terms Waste and Solid Waste. Included in this definition is all manner of dredged spoil, solid waste, incinerator residues, filter backwash, sewage, garbage, sewage and septic sludges, drill fluids and cuttings, petroleum products and lubricants, floatable material and fats, oils and grease (FOG). It also includes munitions, chemical waste, biological materials, radioactive materials (except those regulated on the Atomic Energy Act of 1954, as amended), heat, wrecked or discarded vehicles and equipment, earthen materials, and industrial, municipal, and agricultural waste. The definition of Pollutant is intended to be inclusive and liberally construed.

"Pollution" means the alteration by pollutants of the physical, chemical, or biological quality of any waters of the U.S. that renders the water harmful, detrimental, or injurious to humans, fauna, flora, property, or public health and safety, or otherwise degrades or impairs (per Section 303 of the Clean Water Act) the quality of the water and stormwater. Pollution occurs when pollutants are improperly, illicitly, or illegally discharged, dumped, or otherwise disposed in the Village's or co-permittee's stormwater system. The definition of Pollution is intended to be inclusive and liberally construed.

"Predevelopment Hydrology" means, generally, the rainfall volume at which runoff would be produced from an area in its natural condition, prior to development disturbances.

"Priority Projects" means categories of development that have been established to address developments that historically have the potential to generate serious stormwater pollution problems during and after construction. Priority projects include.

1. Retail, warehouse, and office developments in excess of one-half acre site size.
2. Automotive repair shops.
3. Restaurants.
4. Gas stations/fueling facilities.
5. Dumpster compactor and waste collection and storage pads on all commercial and industrial sites.
6. Residential developments with more than 10 residential units, excluding single-family housing subdivisions.

"Public Drainage Systems" means the path that stormwater runoff or other flow will follow from the furthest upstream parcel of land to Village limits.

“Release”: See Disposal

“Responsible Party” means the person(s) or entity that has ownership or control of wastes. All wastes generated within or brought into the Village are owned by and are the responsibility of the generator and/or person in control of the wastes, jointly and severably, until such time as the wastes is properly and legally disposed or removed by a licensed private contractor except where the transfer of ownership is prohibited by state or federal requirements. Barring determination/proof of a responsible party other than the property owner on which wastes are found to have been disposed, ownership of the wastes defaults to the property and/or the person(s) or entity having control of the subject property, excepting ownership by the Village and co-permittees when such wastes are disposed in the public rights-of-way.

“Sediments” means soil, sand, and mineral conveyed in or deposited from stormwater runoff.

“Solid wastes” means ashes, debris, garbage, hazardous wastes, litter, refuse and rubbish.

“Stormwater Quality Design” means design including the selection of BMPs that manage the stormwater quality design volume for new development and redevelopment sites. Stormwater quality designs shall be incorporated into the grading and drainage plan as part of the preconstruction review process.

“Stormwater Quality Design Storm/Event” means the 100-year, 24-hour storm event for new development and redevelopment.

“Stormwater Quality Design Volume” means the discharge volume associated with the stormwater quality design storm/event.

“Stormwater Quality Team” means representatives from the Village of Los Lunas and surrounding communities who are all stakeholders in a combined MS4 permit issued by the EPA. All communities included work together to maintain compliance with the EPA permit thru providing programs for school age children, outreach thru volunteering at local events to share literature and education about pollution and sampling of the Rio Grande in several locations along the permitted area.

“Structural Treatment Control BMP” means an engineered system designed, constructed, and maintained to remove pollutants from urban runoff. Structural treatment control BMPs can include gravity settling of particulate pollutants, filtration, screening, biological uptake, media absorption or other physical, biological, or chemical process.

“Targeted Controls” means practices, techniques, or infrastructure implemented to address pollutants of concern.

“Technical Advisory Group (TAG)” means a team mostly made up of the members of the Stormwater Quality Team who meet to discuss the results of sampling, where issues exist, and how they may better the results into the future.

"Temporary Drainage Facility" means a nonpermanent drainage control, flood control, or erosion control facility constructed as part of a phased project or to serve until the time that a permanent facility is in place, including but not limited to desilting ponds, berms, diversions, channels, detention ponds, bank protection and channel stabilization measures.

"Urbanized Area (UA)" means the delineation of densely developed territory that encompasses residential, commercial, and other non-residential urban land uses. The U.S. Census Bureau delineates urban areas after each decennial census by applying specified criteria to decennial census and other data. Urbanized areas (UAs) are as defined in the NPDES permit.

"Village" means the Village of Los Lunas, New Mexico

"Village Administrator" means the chief administrative officer of the village.

"Village Engineer" means an engineer or engineering firm appointed by the village.

"Wastes" See Pollutant.

"Water Quality Volume" means the stormwater quality design volume.

"Waters of The United States (U.S.)" means any of the various waters as defined in 33CFR Part 328 and as designated by the U.S. Army Corps of Engineers.

§13.22.070 – Administration.

A. The village administrator shall be responsible for administering this ordinance, and may designate responsibilities to the NPDES project manager or the village engineer as necessary, including but not limited to: produce, approve, make and retain records of all drainage plans, drainage reports, design analyses, design drawings, as-built drawings and maintenance schedules related to all drainage control, flood control and erosion control facilities constructed within Village rights-of-way or easements.

B. The NPDES permit requires that submittals contain the signature of the principal executive official or ranking elected official or, alternatively, a duly authorized representative of that person, so long as that individual or position has an overall responsibility for environmental matters for the Village. The duly authorized representative may either be a named individual or any individual occupying a named position. The signature authority may be delegated.

§13.22.080 – General Provisions

A. Applications for all development and redevelopment resulting in land treatment changes shall address drainage control, flood control, stormwater quality and erosion control in terms of the interactions of these parameters with other requirements and needs produced by the proposed land changes.

B. The Village shall not approve any plan or report pertaining to proposed construction, platting, or other development where the proposed activity or change in the land affected would result in downstream capacity being exceeded.
    1. Downstream capacity is determined based on the assumption of fully developed watersheds. This assumption prevents "the first come, first served" approach where downstream development unduly constrains upstream development. Parameters used in the determination of downstream capacity include, but are not limited to:
        a. Channel stability;
        b. Crossing structure hydraulic capacity;
        c. Reservoir capacity;
        d. Hydraulic capacity of street, storm sewer or channel;
        e. Public safety; and
        f. Maintenance constraints
    2. Planned public storm drainage facilities are assumed as in place in determining downstream capacity; provided, that construction funds are available and design has progressed to the point where capacity can be ascertained.

C. Temporary facilities are only allowed and/or required on a case-by-case basis as determined by the Village. The level of protection to be provided by temporary facilities shall be determined by considering:
    1. The likelihood and consequences of a failure;
    2. Length of time until permanent facilities will be in place: and
    3. The acceptance of maintenance responsibilities and legal liabilities.

D. Request for approval of construction, development and/or platting proposals to the Village shall be accompanied by drainage control, flood control and erosion control information and/or commitments. This information must be prepared by a professional engineer, licensed in the State of New Mexico.
    1. The particular nature, location and scope of the proposed development defines the degree of detail. One or more of the following levels of submittal, may be required based on the following:
        a. Conceptual grading and drainage plan. A graphic representation of existing and proposed grading, drainage, flood control and erosion control information. The information should be of sufficient detail to determine project feasibility. The purposes of this plan are to check the compatibility of the proposed development within grading, drainage, flood hazard and erosion control constraints as dictated by on-site physical features as well as adjacent properties, streets, alleys and channels. Modifications to the comprehensive plan and the development of area plans, site development plans and landscaping plans on parcels of 5 acres or more are appropriate applications of conceptual grading and drainage plans.
        b. Drainage plans. A short, detailed presentation required for approval of small, simple development approvals. Drainage plans are prepared in combination with the detailed grading plan and address both on-site and off-site drainage control, flood control, stormwater quality and erosion control issues. Drainage plans are required for building permits, site development plans and landscaping plans for developments involving less than 5 acres.

c. Drainage report. A drainage report is a comprehensive analysis of the drainage control, flood control and erosion control constraints on and impacts resulting from a proposed platting, development, or construction project. Drainage reports are required for subdivisions containing more than 10 lots or constituting five acres or more, platting or construction within a designated flood hazard area and for any platting or development adjacent to a major arroyo.
d. Erosion control plan. An erosion control plan may be incorporated into the drainage plan or drainage report, or may be submitted separately as a storm water pollution protection plan (SWPPP). Erosion control plans address all phases of each project from initial grading through and including final occupancy. Phased projects require special attention. All construction projects, both public and private, within the jurisdiction of this ordinance, unless specifically excluded, require and approved erosion control plan prior to start of construction.
e. Stormwater quality design. A stormwater quality design includes a plan for stormwater quality treatment for the stormwater quality design volume, including the incorporation of design elements to manage the stormwater quality design volume on site, or the basis for requesting and the proposed method of alternative treatment options. The stormwater quality design should also address opportunities for the use of GI/LID practices, including, but not limited to, the use of rooftop discharge and passive water harvesting or other water conservation methods as permissibly allowed without water right by state water law and State Engineer Interpretation. Stormwater quality designs are required for all grading, construction, development, and redevelopment projects with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but are part of a larger common plan of development.

E. Design circumstances may require larger or smaller storm volumes. Examples are emergency spillways for dams and erosion control plans, respectively. The sources for rainfall data are current NOAA publications and the Village Engineer. When the need for other design storms is apparent, the Village Engineer will provide requirements concerning appropriate storms, frequencies, and durations.
F. In the event of conflicting design storm events, the design storm with the larger associated runoff volume may be utilized for stormwater management design and stormwater quality purposes. A storm event resulting in a discharge volume larger than the stormwater quality design volume may be utilized for stormwater management design and stormwater quality purposes.

§13.22.090 – Review

Review of development and redevelopment plans shall follow the timelines as proscribed in the specific Village ordinance to which the pertain.

§13.22.100 – Applicable Lands.

The requirements of this ordinance and of the related NPDES permit shall apply to all areas within the jurisdiction of the Village, including the currently incorporated limits within

Valencia County and any other properties annexed by the Village in the future, and the Village's extraterritorial planning and platting jurisdiction.
This chapter shall not apply to federal lands and reservations, or as regards stormwater, to the lands outside of the jurisdiction of the Village or other co-permittees with jurisdictional authority to pass and enforce ordinances, unless specifically mentioned and included. NPDES co-permittees may share jurisdiction in matters of flood control, drainage, and stormwater quality. The jurisdiction of this chapter is not exclusive. In the event of conflict with ordinance or regulations of overlapping jurisdictions, the more stringent of the requirements as determined by the Village shall apply.

§13.22.110 – Compliance.

A. The design, construction and maintenance of all stormwater design, drainage control, flood control and erosion control facilities within the Village shall be performed in accordance with the procedures, criteria and standards formulated by the Village and in accordance with the policies established by this ordinance.
B. All construction activities within the jurisdiction of the Village shall conform to the village design standards with respect to stormwater design, drainage control, flood control and erosion control. All modifications to the public drainage system are subject to approval by the Village.
    1. Construction, grading or paving on any lot within the jurisdiction of the Village shall not increase the damage potential to upstream, downstream, or adjacent properties or public facilities. Damages shall be defined as those caused by flooding from the 100-year design storm and all smaller storms and from erosion and sedimentation resulting from the 10-year design storms and all smaller storms. "Stormwater discharges, allowable non-storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for the listing on the National Register of Historic Places as maintained by the Secretary of the Interior."
    2. Any grading within or adjacent to a watercourse defined as a major facility shall provide for erosion control and the safe passage of the 10-year design storm runoff during the construction phase.
    3. Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more or any grading which would modify the public drainage system or grading which would result in a building pad having an elevation less than 1 foot above the adjoining street or road shall conform to the village's drainage control, flood control, and erosion control policies and design standards. A grading permit, issued by the Village, shall be required for any construction- or development-related grading activity, prior to the commencement of any such grading activity. This permit may be approved as part of a building permit or subdivision plat. Applications for development of areas known to have been sanitary landfills shall be accompanied by a report which discusses potential health and soil mechanics problems and their solutions. The reports shall be prepared by a New Mexico professional engineer, competent in soil mechanics.
    4. Paving an area larger than 1000 square feet shall require a paving permit. Applications for paving permits shall be accompanied by drainage plans, if

deemed necessary by the Village. Repaving of existing pave areas in which no grading is planned is excluded.

5. All residential grading shall comply with the most recent version of the Uniform Building Code adopted by the Village.
6. The Village shall not issue a grading or paving permit unless the proposed grading or paving is in compliance with the policies of this ordinance and the standards and criteria of the Village's Development Process Manual.

C. The Village may participate with the private sector, or other public bodies and agencies operating within the jurisdiction of this policy in order to accomplish the goals and implement the policies adopted in this ordinance. This includes, but shall not be limited to, the development and adoption of master plans, participation in the construction of projects, and exercising control through the planning, platting, zoning and permitting processes. Projects involving Village funding shall be prioritized, funded and scheduled within the guidelines of the Village's ICIP and with the capital improvement projects.

§13.22.120 – Control Standards; design, construction and maintenance.

A. The Village endorses the goal of flood damage reduction through the regulation of development within the flood hazard areas and the preservation of floodways.
B. All developed land within the Village shall be provided with adequate drainage, flood control and erosion control facilities. The protection of life and property shall be considered with primary function in the planning, design, construction and maintenance of drainage control, flood control, and erosion control facilities, but other concerns, not limited to the following, shall be addressed: channel capacity, watershed characteristics, channel stability, maintenance, transitions between treatment types, multiple use goals and appearance. The needs of the community in transportation, utility services, recreation and open space shall be considered in planning, design, construction and maintenance (especially in the selection of channel treatment measures). These needs shall always be considered subsidiary to the primary function of the drainage control, flood control and /or erosion control facility.
C. The design, construction and maintenance of dams, levees and diversions that fall within the jurisdiction of the State Engineer shall meet or exceed standards established by the State Engineer.
D. The design, construction and maintenance of flood control facilities shall be coordinated with other affected flood control agencies.
E. All major facilities shall be constructed within dedicated rights-of-way or recorded drainage easements granted to and accepted by the proper public authority.
F. All detention ponds defined as minor facilities shall be constructed on private property unless otherwise authorized by the Village. Except as is necessary for the treatment of nuisance water, all ponds shall be designed and constructed to be emptied in 96 hours or less. The use of individual lot ponding shall be governed by the standards established by the Village.
G. Wherever flood control, drainage or erosion control improvements are necessary within dedicated public open space, the improvements shall be designed and constructed in a manner reasonably consistent with the natural surroundings. All construction and maintenance activities in dedicated open space shall be performed so as to minimize the

disruption and destruction of vegetation and adjacent landforms. Where the disturbance or destruction is unavoidable, revegetation shall be performed at the earliest practical time by those responsible for the disturbance and/or destruction.

H. Site development, major or minor subdivisions, or replats for industrial activities shall be designed and constructed such that non-stormwater discharges into storm sewers, arroyos or watercourses will not intentionally occur, unless determined as allowable by the village on a case-by-case basis.

I. For all new industrial and commercial development and for all new residential development requiring a grading and drainage plan and approval, all stormwater discharge resulting from the stormwater design event must be managed on site for water quality prior to discharge from the property. Implementation of stormwater BMPs into the landscape and grading design plans to minimize runoff and to increase on-site rainwater retention will be required. No discharge from directly connected impervious areas resulting from the stormwater design storm or lesser storms will be allowed without on-site treatment prior to release to the MS4, or provision of means to minimize such discharges to the maximum extent practicable.

J. For all new development and projects that meet the definition of priority project and require drainage plans, structural treatment control BMPs shall be considered, incorporated, and implemented into project designs as required by the Village of Los Lunas Development Process Manual, or as may be amended from time to time.

K. For all new and redevelopment of industrial and commercial properties requiring a paving permit, the site plan will be evaluated by the applicant for treatment of stormwater from directly connected impervious areas, particularly driveways and parking lots. If, in the opinion of the Village, control and treatment of stormwater prior to discharge from such areas to the MS4 is practicable, such measures shall be implemented, or other practical measures or alternatives to minimize such discharges may be utilized as approved on a case-by-case basis.

§13.22.130 – Stormwater quality protection; construction phase.

A. For all grading, construction, development, and redevelopment projects, both public and private, with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but are part of a larger common plan of development, a stormwater pollution prevention plan (SWPPP) in accordance with EPA NPDES regulations for construction site stormwater runoff control shall be submitted to the Village prior to the issuance of a building or paving permit or approval of a grading and drainage plan. This requirement is in addition to any other provisions of this ordinance that may apply.

B. The SWPPP shall outline the structural and non-structural BMPs to be undertaken by the operator/owner of the project to protect stormwater quality during the construction phase of the project. These BMPs shall be maintained by the owner of the property, and subject to review by the village. Inspection of these BMPs shall be made at a frequency consistent with the CGP by the owner, and a log of this inspection shall be kept on site for review by the Village

§13.22.140 – Stormwater quality protection; post-construction phase.

A. State water laws, flood control authorities and application to post construction BMP selection.
    1. The position of Office of the State Engineer, at the time of enactment of this ordinance, is that all detained stormwater must be released within 96 hours and local flood authority requirements prevail over the requirements of the NPDES permit.
    2. The NPDES permit provides that where state water law limits the ability to fully retain stormwater design volume on site, measures to minimize increased discharge consistent with requirements under state water law must still be implemented. Local flood control requirements and NPDES permit requirements may be met through a combination of on-site and off-site controls.
    3. The NPDES permit contains a list of possible infeasibility considerations for post-construction BMPs. The permit allows consideration of "multiple criteria that rule out an adequate combination of the practices," and further indicates that state water law may limit the ability to fully manage the stormwater quality design volume on site. Authorization to use off-site stormwater quality mitigation shall be solely determined by the Village.
    4. Where applicable state water law limits the ability to address stormwater BMPs requiring infiltration, reuse or other beneficial uses require permits under state environmental or water or acquisition of water rights, such BMPs may be determined by the Village to be "not practicable" and alternative compliance may be considered.

B. Post construction BMP design requirements and implementation.
    1. For all development and redevelopment projects with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but are part of a larger common plan of development, that discharge into the Village's storm drainage system, post-construction water quality BMPs to manage the stormwater design volume are required. This requirement is in addition to any other requirements that may apply. These BMPs shall be subject to the approval of the village.
    2. The selection of management BMPs must be included in a stormwater design (incorporated into the grading and drainage plan as part of the preconstruction review process and, as such, subject to inspection during construction, at final inspection, and as a condition of final construction approval) that manages 100% of stormwater design volume for all new development and redevelopment sites.
    3. Management of the stormwater design volumes on site, as defined in this ordinance, is expected to be implemented, in large part, for new development in a manner consistent with the NPDES permit's intent to reduce pollutants in stormwater (e.g. a water quality facility).
    4. The selection of structural treatment control BMPs for priority projects must be included in a stormwater quality design to meet the criteria listed in the Village of Los Lunas Development Process Manual, or as may be amended from time to time.
    5. Where practicable, BMPs will be selected and designed to first and primarily manage flow from the contributing impervious surfaces. Selected BMPs should include the following elements to improve on-site stormwater runoff quality:

a. Grade impervious surfaces, such as driveways, during construction to drain to vegetated areas.
b. Minimize the area of impervious surfaces such as paved areas, roof, and concrete driveways.
c. Incorporate pervious or porous surfaces where allowable (e.g., gravel, permeable pavers, or blocks, pervious or porous concrete) that minimize runoff.
d. Direct runoff from paved surfaces and roof areas into planting beds or landscaped areas to maximize site water capture and reuse.
e. Incorporate rain gardens, cisterns and other rain harvesting or catchment systems consistent with current New Mexico State Engineer guidance.
f. Incorporate beds, swales, basins and other such features to manage stormwater and dry weather runoff (e.g., irrigation system overspray) and increase percolation into the soil for landscape use.

6. The BMPs and structural treatment control BMPs must include an evaluation by the applicant of the GI/LID practices and a determination and inclusion of the viable BMPs that will be implemented. The evaluated BMPs can and should be integrated with water conservation techniques such as passive water harvesting, rooftop harvesting as allowed by state water law, and/or soil amendment programs that improve the capacity of the soil texture to retain water. Examples of suitable BMPs that employ GI/LID practices can be found within the National Pollutant Discharge Elimination System Manual Stormwater Management Guidelines for Construction and Industrial Activities.
7. As-built plans for stormwater quality designs must be submitted prior to final inspection. Grading and drainage plans or other required planning documents must be specifically identifying post construction BMPs that are required to be maintained and inspected.
8. BMP(s) must be inspected by the village and found to be in compliance with all approved plans and specifications prior to release of certificate of occupancy or other Village required approval for the site.
9. Post-construction agreements and inspection and maintenance requirements are as outlined in §13.22.120 D.

C. Alternative compliance for post-construction due to infeasibility.

1. The applicant may submit to the Village a request for a determination of infeasibility for on-site management of all or a portion of the stormwater design volume based on the limitations provided in subsection (A) of this section. If, at the discretion of the Village, the request is confirmed, an alternative compliance strategy acceptable to the Village shall be implemented to address predevelopment hydrology concern prior to discharge to waters of the U.S. or to a co-permittee's MS4.
2. The limitations of subsection (A) of this section should not be construed to be exclusive, and other valid bases, other than costs, may also be considered. Such bases may include, but are not limited to:
    a. Entitlements granted prior to the effective date of the Development Process Manual.

b. Previous authorization from the Village or co-permittees to utilize existing public off-site infrastructure granted prior to the effective date of the Development Process Manual.
c. Proposed use of public, common, or private facility that is not strictly on site, but that is designed to be utilized by an area of common development (i.e., minor facilities incorporated into a master plan, planned community, subdivision, or village center).
d. Proposed and contracted use of a joint private facility, with agreement terms subject to approval by the Village, though not an area of common development, and located prior to a discharge to the MS4 (e.g. reciprocal drainage agreements and easements).
e. Instances where post-development drainage does not and/or cannot practically connect to the Rio Grande or the MS4 or co-permittees MS4.
f. Instances where appropriate public or private drainage facilities are available off site and will be used in a manner consistent with the goals and intent of this division to manage the stormwater design volume to mimic predevelopment hydrology and to address stormwater quality improvement, and located prior to discharge to waters of the U.S., and as determined and approved by the Village.

3. Availability of off-site private facilities will be demonstrated through appropriate engineering reports demonstrating the shared capacity of the facility and a joint voluntary agreement between parties that addresses ownership, maintenance, and inspection responsibilities that is equally, jointly and severably enforceable against and between all parties.
4. Availability of off-site public facilities of the Village or other co-permittees as documented by and subject to:
    a. A determination by the Village, or other applicable co-permittee, as pertains to their respective facilities conditioned as needed, indicating that:
        i. Existing infrastructure capacity is adequate to accept the stormwater quality design volume from the fully developed watershed or sub-watershed within which the development or redevelopment is located.
        ii. The requirement for on-site retention from the releasing property may, accordingly be waived for all or a portion of the stormwater quality design volume, and clearly stating the proportional volume that must be addressed on site.
        iii. Specifying any water quality treatment that is required prior to release.
        iv. Assurance to the Village that water quality compliance will be fully addressed by accepting parties' infrastructure prior to discharge to waters of the U.S.
    b. Full or partial on-site treatment for stormwater quality acceptable to the Village and to owner and operator of the alternate compliance facility will be required prior to discharge to the receiving facility.

The more stringent of treatment requirements specified by the Village shall apply.

c. No discharge of any portion of the stormwater quality design volume (other than under those approved through other NPDES permit means) will be discharged from the site to any MS4 without a minimum level of treatment (GI/LID or structural) to address floatables, gross pollutants, and /or site-specific pollutants of concern as determined by the Village.

d. The maintenance of the on-site stormwater quality feature remains the responsibility of the property owner/operator.

e. Annual inspection of the installed on-site water quality feature will be performed and documented by the owner/operator and records will be provided upon request by the Village and/or the co-permittee. Because of the reliance on off-site public facilities, an annual inspection applies rather than the three-year inspection schedule for private facilities specified for post construction inspection and maintenance, as described in subsection (D)(2) of this section.

D. Post construction inspection and maintenance.

1. Private stormwater facilities shall be maintained by the facility or property owner to standards established by the Village, published in the Development Process Manual, and/or in related Village ordinances.
2. Periodic inspection and certification of private facilities by a professional engineer licensed in the State of New Mexico or otherwise qualified stormwater person (as determined by the Village) are required of the facility/property owner and shall occur no less frequently than once every three years from the date of final construction inspection.
    a. When reliance on off-site public facilities exists, an annual inspection applies rather than the three-year inspection schedule for private facilities specified for post-construction inspection and maintenance.
    b. The responsibility and cost for the inspection is the responsibility of private facility owner and/or property owner. The owner and property owner for each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record, whether the inspection schedule is annual or every three years.
3. Documentation of the inspection, maintenance activities, and repairs shall be provided to the Village upon request or in the case of offsite mitigation, to the owner of the receiving facility. Copies of the inspection reports shall be kept on file at the subject property/facility or at the offices of the property owner and/or manager and shall be made available within two working days of an inspection request (whether verbal or written). A facility or BMP that cannot be certified or for which records cannot be provided in a timely manner shall be certified by current inspection and/or deficiencies corrected within 90 days of notice from the Village that such correction or inspection is needed unless a more immediate action is deemed necessary by the Village.

4. All onsite post-construction BMPs or alternate compliance methods and techniques are subject to random inspections by the Village per the inspection provisions.
5. Inspections and inspection programs by the Village may be conducted or established on any reasonable basis, including but not limited to routine inspections, random inspections, inspections based upon complaints or other notice of possible violations, and joint inspections with other agencies inspected under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges or surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

§13.22.150 – Stormwater quality protection; MSGP and industrial facility stormwater quality protection.

A. For any existing industrial activities subject to the MSGP, proof of compliance with the relevant EPA industrial sector permit provisions shall be provided to the Village prior to any issuance of any building, zoning, special use, development or redevelopment permit or approval of a grading and drainage plan. For new industrial development projects, such proof will be provided no later than 90 days after receipt of the certificate of occupancy ore other necessary permit or approval from the Village. In cases where MSGP proof of coverage is required, an active EPA notice of Intent or no exposure Certification serves as proof.
B. The Village may require monitoring of non-stormwater discharges if there is reason to believe that such discharges violate the provisions of this ordinance or of the terms of the MSGP provisions.
C. Upon request by the Village, an industrial facility subject to the MSGP shall submit the results of any sampling or monitoring undertaken pursuant to the MSGP or other water-related discharge permit.

§13.22.160 – Surface use of streets.

A. All newly developed land within the Village shall be served by at least one paved access that shall be an all-weather facility during a 100-year design storm, with all channel-crossing structures beneath the roadway being able to pass a 100-year design storm runoff event.
B. Excepting the specified depth, flow line, and velocity restrictions of this section, nothing in this section should be construed to prohibit the use of GI/LID in medians and within off-pavement rights-of-way for stormwater quality treatment purposes upon approval by the Village.

§13.22.170 – Crossings.

A. Channel-crossing structures shall be provided on all arterial and collector streets to safely pass the 100-year design storm runoff from major arroyos and MRGCD drainage facilities, assuming a fully developed watershed.
B. Where feasible, temporary crossings shall be designed so they may be incorporated into the future permanent crossing structure so that they meet street design standards established by the Village.

C. Crossing of major arroyos by arterial and collector streets may be at public expense, when required for sole access to a development, and provided that the developer's share meets the cost required to meet the minimum street width standards established by the Village. Crossings of arroyos by streets other than arterial's and collectors shall be constructed at developer expense and shall meet street design standards established by the Village Engineer.
D. Temporary crossings required for access, including those on arterials and collectors, shall be constructed at developer's expense.

§13.22.180 – Rights-of-way and easements.

A. Multiple use is encouraged for drainage rights-of way and drainage easements, e.g. for utility corridors and for recreation trials. Where multiple use is planned by the Village, another public agency, or a public utility, the Village may require that the dedication statements include language which permits the uses in addition to the primary drainage function. However, land required to be dedicated for drainage rights-of way and easements shall be limited to those land areas necessary for drainage control, flood control, erosion control and necessary appurtenances.

§13.22.190 – Financial and maintenance responsibility.

A. Financial Responsibility
    1. The Village may participate in the construction of permanent flood control facilities to the extent that public benefits are derived from the construction and are consistent with the ICIP priorities. Reimbursement for private funding of such projects may also be available under these conditions.
    2. The Village may participate in the cost of channel-crossing structures for arterial and collector streets which are required for sole access to a development. The developer's share shall not exceed the cost required to meet the minimum street width standards established by the Village.
    3. The Village shall not participate in the funding of flood control facilities in which the sole intent is the reclamation of undeveloped land located within a flood hazard area for private development purposes.
    4. The dedication of land for public purposes does not relieve a developer of responsibilities for the construction of drainage control, flood control and erosion control facilities that would otherwise be necessary. The dedication of rights-of-way or easements for drainage control, flood control; or erosion control facilities does not relieve a developer of responsibilities that would otherwise exist for the construction of other public infrastructure.
B. Maintenance Responsibility
    1. Except as otherwise noted herein, all permanent major facilities shall be maintained by the Village or other public body. The maintenance of multiple use facilities to which the general public is denied access shall be the responsibility of the owners and shall be performed to the Village design standards. The Village may allow private maintenance within the public right-of-way or easement; provided, that adequate guarantees and indemnifications are supplied.
    2. Minor facilities shall be maintained by their owners to Village standards.

3. The maintenance of temporary facilities constructed at private expense (except crossing structures) is the responsibility of the developer until permanent facilities are in place.
4. The developer shall be responsible for maintaining or replacing temporary crossing structures for a period of six years or until a permanent structure is built, whichever comes first. The Village shall maintain temporary crossings which are designated and built such that they may be directly incorporated into the ultimate facilities.

§13.22.200 – Illicit discharge and elimination (IDDE); standards for design, construction and maintenance.

A. Authorized non-stormwater discharges, as described in the NPDES permit, are subject to determination by the Village that such discharges do not constitute a significant contributor of pollutants to the MS4.
B. The IDDE provisions listed herein do not apply to discharges resulting from a spill where discharge to the MS4 is necessary for emergency response personnel to prevent, control, or minimize loss of life, personal injury, property damage or facilitate a flood control response. These functions are, for the purposes of this division, considered a firefighting/emergency response activity. However, the responsible party shall remain liable for all costs, damages, liabilities, and penalties that may have occurred due to the initial spill and all costs related to emergency spill response and remediation.
C. Persons discharging to the Village's MS4 as a result of an accidental spill or accidental release who voluntarily and immediately self-identify and notify the state spill response hotline, if applicable, and who actively cooperate and demonstrate financial responsibility and willingness to address and appropriately remediate the spill and address resulting damages, and who properly and promptly dispose of resulting remediation wastes, will not be considered to have illicitly discharged to the MS4 for enforcement penalty purposes under this ordinance. This provision does not alleviate the responsible party for cost, damages, liabilities, and penalties that may be incurred under other local, state, or federal law or regulations, but does protect against enforcement penalties (but not actions) under the IDDE requirements of this ordinance.
D. The provisions of this section do not apply to irrigation water to or from agricultural irrigation operations but do apply to certain livestock operations as described below.
E. The provisions of this section also apply to industrial facilities addressed under §13.22.120.

§13.22.210 – Illicit discharge and elimination (IDDE); specific protections.

A. No person or entity shall:
    1. Attempt to dispose, release, or discharge wastes, other than pollutant-free stormwater into or through the MS4, except as addressed by an authorized NPDES permit as described in §13.22.120.
    2. Attempt to dispose, release or discharge household hazardous wastes (including, but not limited to: paint, solvents, automotive fluids, fertilizers, pesticides, herbicides, and other hazardous materials) to the MS4; nor dispose, release, or discharge fats, oils, and grease to the MS4.

3. Knowingly allow, or neglect routine maintenance, to a degree that allows the discharge or release of sediment loads and gross pollutants into the MS4 from industrial, commercial, or private property under control or ownership, including the discharge of dust or sediment generated during the construction process and regulated by a SWPPP.
4. Leave, accumulate, discharge, or allow animal wastes of a companion animal on publicly owned property whatsoever, or on private property under the control or ownership in such a manner that it drains or can reasonably be anticipated to drain to the MS4.
5. Accumulate, pile, compost, or dispose of animal wastes of livestock or exhibition animals on publicly owned property without approval of the Village or other MS4 co-permittee, or on private property under their control or ownership in such a manner that it drains or can be reasonably be anticipated to drain to a MS4. Animal wastes resulting from exhibition, stabling, corralling, dairying, feed lot, and confined feeding operations and all operations of a similar manner are included in this prohibition. Nothing in this ordinance should be construed to prohibit handling of livestock or exhibition animal wastes allowed under other ordinances and permits or permissions on either public or private property, so long as the methods and protections employed minimizes or eliminates disposal, discharge, or drainage to the MS4 to the maximum extent practicable. Animal wastes associated with normative pasturing and range feeding of agricultural livestock or exhibition animals does not constitute accumulation, piling, composting, or disposing of livestock wastes.
6. Allow fluids, wastes, or materials from any motor vehicle, equipment, contractor yards, outdoor storage areas, or any related storage or maintenance activities from such areas under their control or ownership to drip, flow, accumulate, or spread onto public property, or onto or through private properties of others, such that it drains or spreads or can reasonably be anticipated to drain or spread to the MS4.
7. Illegally dispose of wastes, solid wastes, or yard wastes originating from private property under their control or ownership or allow it to drain or spread to any public property whatsoever, or the property of others, in such a manner that it drains or can reasonably be anticipated to drain to the MS4.
8. Allow the commercial application of pesticides, herbicides, and fertilizers by any person or enterprise not specifically licensed by the state and permitted, by virtue of business license from the Village, to perform such applications. Applications by private individuals or business owners or their employees is allowed so long as the application is for routine maintenance and sanitation, is performed in accordance with manufacturer directions, purpose of use, and application rates, and the use and application is in accordance with laws and ordinances pertaining to its use.
9. Allow sanitary sewer, septic overflows, overflows from grease traps or flows from grease and fat accumulation areas, or overflows from trash compactors to flow from private property under their control or ownership and enter publicly owned property or the MS4, or property of others, in such a manner that it drains or can reasonably be anticipated to drain to the MS4.

10. Allow flows from sanitary sewers, on-site wastewater treatment facilities, or other treatment devices to enter the MS4 through a cross connection of sanitary sewer pipe or from an open discharge from property under their control or ownership.
11. Attempt to dispose, release, or discharge septage wastes at any location within the Village that is not specifically designated by the state to receive such wastes, nor dispose of septage wastes to any public facility or infrastructure without the express authorization of the owner of that public facility.
12. Allow, cause, or take any action or fail to take an appropriate action that is committed or omitted within their span of control and that in the opinion of the Village results in the release or disposal of non-stormwater discharge to the Village's MS4 or that of its co-permittees.

§13.22.220 – Illicit discharge and elimination (IDDE); village responsibilities and response.

A. Upon notification of a possible IDDE event, the village will determine the severity of the event and determine the likely jurisdiction. Severity of the event will be determined based upon a combination of factors including, but not limited to, volume, nature of material, location, and risk to human life, health, property, and the environment. Upon determination of a significant/severe illicit discharge, the Village shall initiate, either on its own behalf or jointly with appropriate co-permittees, an investigation of the event within 48 hours of notification and shall address other lesser IDDE events as soon as practicable in a similar and timely manner.
B. The Village may make such inspections as are reasonably necessary for investigation and elimination of such discharges as expeditiously as possible.
    1. If the IDDE event is found to be within the jurisdiction of a co-permittee or other jurisdictional entity, the Village promptly notify the appropriate entity upon such determination and document the notification and transfer of responsibility and control of the event to the appropriate entity.
    2. The Village may offer assistance to the lead entity as best meets the Village's interest in remediating the incident in a timely manner.
    3. If the IDDE event falls within Village jurisdiction, the NPDES Project Manager, or other Village employee recognizing such an event, shall initiate an IDDE record of complaint, initiate a site inspection request, and the NPDES Project Manager shall ensure notification of the appropriate state authorities as required based on the nature and magnitude of the event and shall document such notification.
    4. Other cooperative agreements for addressing cross-jurisdictional IDDE events and remediation may be developed and used in lieu of the provisions of this ordinance.
C. Once the Village has determined that an IDDE event has occurred within the Village jurisdiction and an inspection has been performed:
    1. The Village bears the burden of proof for determining who is the responsible party. The Village's burden, considering all the evidence presented, is presumed to have been met if a person's, company's, or entities name or other identification other than the original manufacturer is affixed or found:

a. On three or more items of general rubbish or wastes of a solid nature except as noted below;
b. On one or more items of construction debris or other wastes of a commercial nature;
c. On one or more drums, buckets, or containers containing wastes of a gaseous, sludge, semi-solid or liquid nature; or
d. There is documented and traceable evidence of disposal by parties other than the property owner, such as eyewitness reports, photos, or license plate information, suspicious activity reported to law enforcement, or other similar documentary evidence.

2. Presence of identifying information, such as labels and other markings, except for labels or markings clearly identifying the original manufacturer, found on illegally disposed containers or other rubbish and waste is considered prima facie evidence of waste ownership. Barring such evidence, the property owner and/or person in control of the property is the presumed owner and disposer of such wastes.

D. Once the Village has met its burden of proof establishing the responsible party, the responsible party may present evidence that negates it is the responsible party, but any such claim of a defense shall not provide for a delay in addressing any imminent threat to the public health, safety, or environment as determined by the Village.
E. The NPDES Project Manager shall have the authority to require immediate cessation of illicit discharges.
F. If, in the judgement of the NPDES Project Manager, or fire or law enforcement official, the general safety, public health, the environment, or the waters of the U.S. are at imminent risk, or the public interest otherwise requires that the site be cleaned rapidly, the Village may require the responsible party (as determined above) to provide sufficient workers and resources supplied by the owner to clean the site within 24 hours. If the responsible party or owner cannot be readily determined or contacted, or if the responsible or property owner fails to remedy the IDDE event within the specified time, then the Village will require corrective action to be started at the site immediately, at the expense of the owner of the property, and recoup related costs by means described in §13.22.240 and /or by any other legal means available.

§13.22.230 – Procedures; amendments and criteria.

Amendments to the Village of Los Lunas Erosion Control, Storm Drainage and Stormwater Quality Ordinance shall follow the procedures set forth in NMSA Chapter 3 – Municipalities, Article 17 – Ordinances.

§13.22.240 – Enforcement and penalties

A. For the purposes of discharging their duties imposed by this chapter, any citing officer of the village is authorized to enter upon private property and perform an inspection if they have reasonable cause to believe a violation of this chapter has been committed. If a violation is discovered, a citation may be issued.
B. If the owner or occupant of a private property objects to inspection as stated in §13.22.240 (A), a warrant for the inspection of the premises shall be obtained and presented by the citing officer.

C. In the event that the village determines a recognized or observable spill, release, illicit discharge, illegal dumping, or illegal disposal constitutes an imminent threat to the waters of the U.S. or its tributaries, to the environment generally or to public health or public safety, immediate entry to the property, under the direction of fire or law enforcement officials or state environmental officials, is granted for the purpose of stabilizing, containing, neutralizing or otherwise removing the imminent threat. The costs of such remedies may be imposed against the responsible party and/or property owner.
D. Where, after investigation, an order has been issued by the village to the owner of the property on which a violation has occurred and the order is not complied with, within such reasonable time as may be prescribed by the village, or if the responsible party or violator cannot be found or determined, the village may cause such remedies as are necessary to be made. The reasonable cost of such remedies shall constitute a lien against the property on which the violation occurred and was remedied. The lien shall be imposed and foreclosed in the manner provided in NMSA 3-36-1 through 3-36-6, as amended.
E. A violation of the provisions of this chapter shall be subject to penalties as outlined in §1.12.010 and §1.12.020.

PASSED, APPROVED, SIGNED, AND ADOPTED THIS 16th DAY OF DECEMBER 2021.

_____

Charles Griego, Mayor
Village of Los Lunas

ATTEST:

_____

Gregory D. Martin, Village Administrator
Village of Los Lunas