

Exhibit B

Title 10 Erosion and Sediment Control Regulations

Chapter 10.10 General

10.10.010 Short Title.

Title 10 of Portland City Code is known as the “Erosion and Sediment Control Regulations.”

10.10.020 Purpose.

This Title provides requirements for ground-disturbing activities related to construction or other uses in order to reduce erosion and discharges of sediment and pollutants. The Erosion and Sediment Control Regulations seek to:

- A.** Reduce the sediment and pollutants contained in erosion caused by construction and development;
- B.** Reduce the amount of sediment and pollutants entering storm drainage systems and surface waters from all ground disturbing activity;
- C.** Reduce the amount of erosion placing dirt and mud on the public right-of-way and surrounding properties during construction and development; and,
- D.** Reduce the amount of soil and dust placed into the air during ground disturbing activity.

10.10.030 Authority, Rulemaking, Fees.

- A.** General. This Title is administered and enforced by the City Administrator
- B.** The City Administrator may implement administrative rules, procedures, forms, specifications, and written policies for administering the provisions of this Title.
- C.** The City Administrator may issue interpretations on the meaning and intent of the Erosion and Sediment Control Regulations.
- D.** The City Administrator may set fees for all permits, plan reviews and inspections under this Title. The fees will be established by the City Council under an adopted fee schedule or by administrative rule. Fees will be set at levels sufficient to cover all

administrative costs associated with processing applications, reviewing plans, inspections and enforcement. Enforcement fees may include penalties or fines if allowed by Title 3, Administration. Fees under this Title are in addition to any other fees required by Portland City Code. Fees under this Title are also not part of any required bond, letter of credit or other form of guarantee.

10.10.040 Complaints.

Each bureau authorized to administer this Title will create a public complaint process that provides a single point of contact for receiving a complaint.

10.10.050 Compliance with Other Laws.

A. General. The requirements of this Title are minimum requirements. Compliance with this Title does not in any way imply, either directly or indirectly, compliance with any other law.

B. Precedence - Portland City Code. Where the provisions of this Title are more restrictive than those set forth in other regulations under Portland City Code or ordinance, the provisions of this Title will control.

C. Precedence - State or Federal regulation. Where a State or Federal natural resource agency permit requirements address erosion prevention and sediment control, both the State or Federal natural resource protection requirements and requirements of this Title must be met. Where State or Federal requirements conflict with requirements of this Title or the Erosion and Sediment Control Manual, the most restrictive requirement will control. For any portions of a site where State or Federal permit requirements do not apply, Portland City Code requirements will control.

Chapter 10.20 Definitions

10.20.010 Definitions.

A. General. For the purpose of this Title, certain abbreviations, terms, phrases, words and their derivatives will be construed as specified in this Chapter. Throughout this Title, the following words and phrases will be construed as set forth in this Section, unless the context requires otherwise.

B. Definitions.

1. Accepted means, for projects in the public right-of-way, that the required plans have been reviewed by the City Administrator and have been found to be in conformance with the Erosion and Sediment Control Regulations.

2. Applicant means the person who applies for a permit.

3. Approval or approved means a determination by the City Administrator that the provisions of this Title and the Erosion and Sediment Control Manual have been met.

4. Bedrock means in-place solid rock.

5. Best management practice or BMP means a physical, chemical, structural or managerial practice that prevents, reduces, or treats the contamination of water or that prevents or reduces soil erosion or sediment transport.

6. Bureau means the Bureau of Environmental Services, Portland Permitting & Development, Portland Parks & Recreation, the Bureau of Transportation, and the Portland Water Bureau.

7. Certified Professional in Erosion and Sediment Control or CPESC means a person who has been so determined by the Soil and Water Conservation Society and the International Erosion Control Association.

8. Contract work means capital improvement program or other City funded public works activities provided by an outside contractor in compliance with the City's Standard Construction Specifications and other applicable special standards.

9. Denuded means land that has had the natural vegetative cover or other cover removed leaving the soil exposed to the elements.

10. Development means any human induced change to improved or unimproved real estate, whether public or private, including but not limited to construction, installation, or expansion of a building or other structure, land division, street construction, drilling, and site alteration such as that due to dredging, grading, paving, parking or storage improvements, excavating, filling or clearing.

11. Discharge means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking, or placing of any material so that such material leaves the site.

12. Disturbance area means an area where soils are exposed or disturbed by development, both existing and proposed. The disturbance area includes staging and storage areas, structures, and areas needed for vehicle access and maneuvering. When a disturbance area is delineated for new development, it must be a contiguous area. Agricultural and pasture land and native vegetation planted for resource enhancement are not considered part of the disturbance area.

For utility lines, trenches, or other similar linear work, the disturbance area includes staging and storage areas, the linear feature, and the areas on each

side of the linear feature 15 feet wide for public works projects and 10 feet wide for all other projects. Where necessary for safety in deep trenches, the disturbance area may be made wide enough to allow for bending and shoring of the trench.

13. Drainage control means the collection, conveyance and discharge of stormwater.

14. Environmental overlay zone means any location in a “C” or “P” overlay zone shown on Official Zoning Maps or described in Chapter 33.430 of the Portland City Zoning Code.

15. Erosion means the wearing away of the ground surface as a result of the effects of gravity, wind, water or ice.

16. Erosion and Sediment Control Manual means the collection of administrative rules adopted to implement the purpose and intent of this Title.

17. Final grade means the finished grade of the site that conforms to the approved plan.

18. Grade means the vertical location of the ground surface.

19. Ground disturbing activity means any activity that exposes soil.

20. Nuisance (See Section 10.80.010 of this Title).

21. Owner means the person whose name and address are listed as the owner of the property by the County Tax Assessor on the County Assessment and Taxation records.

22. Permanent stabilization means stabilization of exposed soil after construction to provide long-term soil stabilization.

23. Permit means an official document issued by the City Administrator authorizing performance of a specified construction-related activity.

24. Person means any individual, partnership, association or corporation.

25. Plan means a text narrative, or graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents.

26. Pollutant means any substance that is prohibited or limited by the provisions of Chapter 17.39 of Portland City Code, released or discharged in conjunction with Development.

27. Responsible party means:

- a. The property owner or person authorized to act on the owner's behalf;
or
- b. Any person causing or contributing to a violation of this Title or the Erosion and Sediment Control Manual.

28. Sediment means mineral or organic matter discharged from a site.

29. Site means any lot, tract, parcel of land, right-of-way, or contiguous combination where any ground-disturbing activity occurs. For utility lines, trenches or other similar linear work, the site includes only the Disturbance Area directly related to the linear work activity (see "Disturbance Area").

30. Slope means an inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

31. Soil means naturally occurring surficial deposits overlaying bedrock.

32. Special site means a site that has conditions, established in the Erosion and Sediment Control Manual, that may require additional erosion, sediment, and pollutant control measures.

33. Stabilization means the process of establishing soil cover of plants, mulch, sod, matting, erosion control blankets, permanent structures, or other material and may be in combination with installation of temporary or permanent structures.

34. Storm drainage system means facilities by which stormwater runoff is collected or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, culverts, pumping facilities, retention and detention basins, natural and constructed (or altered) drainage channels, reservoirs, and other drainage structures.

35. Stormwater means water runoff, snowmelt runoff or surface runoff and drainage.

36. Temporary stabilization means stabilization of exposed soil during construction to provide short-term stabilization between construction activities.

37. Visible or measurable means:

- a. Deposits or tracking of mud, dirt, sediment or similar material on public or private streets, adjacent property, or into the storm or surface water

system, either by direct deposit, dropping, discharge or as a result of the action of erosion.

b. Evidence of concentrated flows of water over bare soils, turbid or sediment laden flows, or on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.

c. Earth slides, mud flows, earth sloughing, or other earth movement that leaves the property.

38. Water body means rivers, sloughs, continuous and intermittent streams and seeps, ponds, lakes, aquifers, and wetlands.

39. Wetland means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs and similar areas.

10.20.020 Referenced Regulations.

All referenced regulations are available as specified below:

A. Erosion and Sediment Control Manual. The Erosion and Sediment Control Manual is maintained by Portland Permitting & Development.

B. City of Portland Plant List. The City of Portland Plant List is maintained by the Bureau of Planning and Sustainability.

C. City of Portland Standard Construction Specifications. The City of Portland Standard Construction Specifications are maintained by the City Engineer.

Chapter 10.30 Requirements

10.30.010 General Scope.

A. This Title and the Erosion and Sediment Control Manual applies to all ground disturbing activities whether or not a permit is required, unless such activities otherwise are exempted by Portland City Code. All ground disturbing activities must comply with this Title and the Erosion and Sediment Control Manual unless otherwise noted.

B. Exemptions:

1. Installation of signs is exempt from this Title.

2. Emergencies: Development that is subject to Subsection A. may commence without complying with the requirements of this Title and the Erosion and Sediment Control Manual if the City Administrator determines that there is a hazard posing imminent danger to life or property, such as substantial fire hazards, risk of flood or other emergency. However, upon a determination by the City Administrator that such emergency has passed, the provisions of this Title and the Erosion and Sediment Control Manual will apply.

10.30.020 Minimum Requirements.

The following minimum requirements apply to all development and ground disturbing activities.

A. Purpose.

1. No visible or measurable sediment or pollutant may exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system.
2. Depositing or washing soil into a water body or the storm drainage system is prohibited.
3. Ground disturbing activities requiring a permit must provide adequate public notification of the City's Erosion Control Complaint Hotline.

B. Requirements and standards. Minimum requirements and standards are established in the Erosion and Sediment Control Manual.

10.30.030 Additional Requirements for Special Sites.

When the City Administrator determines that special site conditions may prevent compliance with Section 10.30.020, the City Administrator may require additional erosion, sediment and pollutant control measures. Conditions that constitute a special site and additional requirements for special sites are established in the Erosion and Sediment Control Manual.

10.30.040 Maintenance.

The responsible party must maintain all erosion, sediment and pollutant control measures, temporary and permanent, in proper functioning order for all ground disturbing activities that require a permit. Specific requirements for inspection and maintenance of such measures are established in the Erosion and Sediment Control Manual.

Chapter 10.40 Permits & Plans

10.40.010 Plan Required.

A. The responsible party must submit an erosion, sediment and pollutant control plan for any ground disturbing activity that requires a permit to the City Administrator for review if:

1. The disturbance area is 500 square feet or greater in area; or
2. The disturbance area is in a special site as defined in the Erosion and Sediment Control Manual.

B. An erosion, sediment, and pollutant control plan is not required for work that does not require a permit or for planting of trees or other vegetation by handheld tools, unless otherwise required by the terms of a compliance order or land use decision.

C. Where a plan is required, the responsible party may not commence any development before the City Administrator has approved the proposed plan and the required pre-construction inspection has been approved.

10.40.020 Permit and Plan Requirements.

A. All permit applications or contract submittals that require an erosion, sediment, and pollutant control plan must be accompanied by the plans at the time of application or submittal. The number of erosion, sediment and pollutant control plans required will be determined by the applicable permit or contract process. All erosion, sediment, and pollutant control plans must comply with minimum requirements established in the Erosion and Sediment Control Manual.

B. The City Administrator will review all erosion, sediment and pollutant control plans. The City Administrator may waive items required under Subsection A. above where the City Administrator determines that certain items are not applicable to a specific application or project.

C. The responsible party will be accountable for any plan modifications needed due to conflicts, omissions or changed conditions that arise in the field. The responsible party will bear all costs to comply with the City of Portland Standard Construction Specifications, the Erosion and Sediment Control Manual and Portland City Code.

10.40.030 Approval or Denial of Erosion, Sediment and Pollutant Control Plan.

The erosion, sediment and pollutant control plan will be reviewed by the City Administrator. If the City Administrator finds that the plan complies with this Title and the Erosion and Sediment Control Manual, it will be approved. Such approval will be indicated on the plan documents. The approved plan may not be changed, modified, or altered without authorization from the City Administrator. All development regulated by

this Title must be completed in accordance with the approved plan. If the City Administrator approves only a portion of the plan, development may commence, but it must be limited to only that portion of the site for which the plan has been approved.

10.40.040 Alternate Methods or Materials Review Process.

A. The City Administrator may approve the use of alternate methods or materials that provide protection that is greater than or equal to the protection provided by the methods prescribed in the Erosion and Sediment Control Manual.

B. In order to determine the suitability of alternate erosion control methods not specifically addressed by this Title or the Erosion and Sediment Control Manual and not approved by the City Administrator as described in Subsection A. above, and to provide interpretation of this Title and the Erosion and Sediment Control Manual, there is created an alternate methods and materials review process. The alternative methods and materials review process is established in the Erosion and Sediment Control Manual.

C. The burden of proof for all alternative methods or materials reviews is on the responsible party.

10.40.050 Issuance of Permit.

A. No permit requiring an erosion, sediment and pollutant control plan will be issued until the plan is approved.

B. As a condition of permit issuance, the responsible party must agree to allow all inspections to be conducted.

C. Where a bond, letter of credit or other guarantee is required, the permit will not be issued until the bond or guarantee has been obtained and approved.

10.40.055 Revisions.

Requirements for revisions are established in the Erosion and Sediment Control Manual.

10.40.060 Public Works Projects.

Projects within the public right-of-way may not be commenced until the erosion, sediment and pollutant control plan has been accepted and controls are in place.

10.40.070 Cancellation of Permit or Expiration of Permit.

The City Administrator may require that all denuded soil on the site be permanently stabilized before a permit is cancelled or expires.

Chapter 10.50 Inspections

10.50.010 General.

A. The City Administrator may conduct inspections whenever it is necessary to enforce any provisions of this Title or the Erosion and Sediment Control Manual, to determine compliance with this Title and the Erosion and Sediment Control Manual or whenever the City Administrator has reasonable cause to believe there exists any violation of this Title or the Erosion and Sediment Control Manual.

B. Inspections will occur at reasonable times of the day. If the responsible party is at the site when the inspection is occurring, the City Administrator or authorized representative must first present proper credentials to the responsible party and request entry. If such entry is refused, the City Administrator will have recourse to any remedy provided by law to obtain entry, including obtaining an administrative search warrant.

10.50.020 Inspections for Activities that Do Not Require a Permit.

A. Ground disturbing activities that do not require a permit will be inspected as the result of a complaint or whenever the City Administrator becomes aware of a possible violation of this Title or the Erosion and Sediment Control Manual.

B. Inspections in response to complaints will occur from one of the following locations:

1. The adjacent right-of-way;
2. Adjacent public property;
3. Adjacent private property with approval of entry from the property owner; or
4. The property that is the subject of the complaint with approval for entry by the property owner.

10.50.030 City Inspections.

The City Administrator will conduct the following inspections on development activities that require a permit when an erosion, sediment, and pollutant control plan is required. It is the duty of the Responsible Party to notify the City Administrator at the appropriate inspection phase as set forth below. Inspections of erosion, sediment and pollutant control measures may occur with other inspections being conducted on the development or construction project.

A. Pre-construction inspection. The City Administrator will conduct inspections after initial, temporary erosion, sediment and pollutant control measures have been put in place and prior to any ground disturbance in addition to that necessary for the

installation of the erosion, sediment and pollutant control measures. When the development is being conducted in phases, this inspection will occur at the beginning of each phase.

B. Permanent stabilization inspection. The City Administrator will conduct inspections after permanent stabilization is in place. When the development is being conducted in phases, this inspection will occur after permanent stabilization has been installed for each phase.

C. Interim inspections. The City Administrator may conduct other inspections not specifically addressed above to determine compliance with this Title. When the City Administrator determines an interim inspection is necessary, the interim inspection must be completed and receive inspection approval prior to subsequent inspections.

D. Post-construction erosion control inspection. An inspection may be conducted after construction completion to determine the effectiveness of permanent erosion and sediment control measures. This inspection will be conducted six months after construction completion or at other times determined by the City Administrator. This inspection may be conducted at sites other than special sites as determined by the City Administrator.

10.50.040 Other Inspections.

Where the City Administrator has determined that special site conditions exist, the City Administrator may require a special inspector to monitor erosion, sediment and pollutant control at that site. The special inspector must be qualified to perform such monitoring.

10.50.050 Refusal of Entry.

No person may refuse entry or access to a permitted development project to any authorized representative of the City Administrator who provides proper credentials and requests entry for the purpose of conducting an inspection. In addition, no person may obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties.

10.50.060 Release of Bond or Other Guarantee.

At the time of project approval, when the City Administrator determines that all provisions of this Title and the Erosion and Sediment Control Manual have been met, the bond, letter of credit or other guarantee that has been provided will be released. Public works permit and contract performance guarantees will be released as dictated in the applicable permit or warranty agreements.

Chapter 10.70 Enforcement and Penalties

10.70.010 Violation of Title.

A. The following actions constitute a violation of this Title:

1. Any failure, refusal or neglect to comply with any requirement of this Title or the Erosion and Sediment Control Manual.
2. Allowing or causing a condition that threatens to injure public health, the environment, or public or private property.
3. Failure to correct ineffective erosion, sediment and pollutant control measures after being required to do so by the City Administrator.

B. Each specific incident and each day of noncompliance will be considered a separate violation of this Title.

10.70.040 Erosion, Sediment and Pollutant Control Plan for Activities that Do Not Require a Permit.

If ground disturbing activities that do not require a permit violate provisions of this Title, the responsible party may be required to submit an ESPC Plan to demonstrate what measures will be revised or added to comply with the requirements of this Title.

10.70.070 Administrative Review.

A. Whenever the responsible party has been given a notice or order pursuant to this Title, the Erosion and Sediment Control Manual, or the Erosion and Sediment Control Enforcement Administrative Rule, and has been directed to make any correction or to perform any act and the responsible party believes the finding of the notice or order was in error, the Responsible Party may request to have the notice or order reviewed by the City Administrator. If a review is sought, the Responsible Party must submit a written request to the City Administrator within 15 calendar days of the date of the notice or order. Such review will be conducted by the City Administrator. The Responsible Party requesting such review will be given the opportunity to present evidence to the City Administrator regarding the notice or order. Following a review, the City Administrator will issue a written determination. Nothing in this Section limits the authority of the City Administrator to initiate a code enforcement proceeding under Title 22.

B. A responsible party may appeal the City Administrator's decision regarding a notice or order rendered pursuant to Subsection A. above to the Code Hearings Officer in accordance with Title 22 of Portland City Code.

Chapter 10.80 Nuisance Abatement

10.80.010 Summary Abatement Authorized.

The City Administrator may determine that the failure or non-existence of erosion, sediment and pollutant control measures as required by this Title or the Erosion and Sediment Control Manual constitute a nuisance presenting an immediate threat of injury to the public health, the environment, or public or private property. Such nuisances will be subject to the requirements of this Chapter. In cases where the City Administrator determines it is necessary to take immediate action in order to meet the purposes of this Title or the Erosion and Sediment Control Manual, summary abatement of such nuisance is authorized.

10.80.020 Notification Following Summary Abatement.

A. When summary abatement is authorized by this Title or the Erosion and Sediment Control Manual, the decision regarding whether or not to use summary abatement will be at the City Administrator's discretion. In case of summary abatement, notice to the Responsible Party prior to abatement is not required. However, following summary abatement, the City Administrator will post upon the development site liable for the abatement a notice describing the action taken to abate the nuisance.

B. Additional notification by mail.

1. Upon posting of the notice described in Subsection A. above, the City Administrator will cause a notice to be mailed to the owner at the owner's address as recorded in the county assessment and taxation records for the property. The mailed notice will include the content described in the Erosion and Sediment Control Enforcement Administrative Rule.

2. An error in the name of the property owner or address listed in the county assessment and taxation records will not render the notice void but in such case the posted notice will be deemed sufficient.

10.80.030 Financial Responsibility.

A. Whenever a nuisance is abated under this Title, the City Administrator will keep an accurate account of all expenses incurred, including any civil penalties plus 100 percent of contractor's costs for each nuisance abated. When the City has abated a nuisance maintained by an owner of real property, for each subsequent nuisance that is abated by the City within two consecutive calendar years concerning real property, owned by the same person, an additional civil penalty of 50 percent (minimum of \$100) of the cost of abatement will be added to the costs charges and civil penalties provided for in this Subsection. The additional civil penalty will be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

B. When a property meets the conditions for costs or penalties as described in this Section, the revenue service and program of the City Administrator will file a statement of such costs or penalties. Upon receipt of the statement, the revenue service and

program of the City Administrator will mail a notice to the property owner, stating the City's intent to assess the property in question the amount due plus charges to cover the costs of the revenue service and program of the City Administrator. In the event that the amount due as set forth in the notice is not paid in full within 30 days of the date of notice, the revenue service and program of the City Administrator will enter the amount of the unpaid balance, plus charges to cover administrative costs of the revenue service and program of the City Administrator, in the Docket of City Liens, which will therefore constitute a lien against the property.