

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

| | |
|----------------------|---------------------------------------------------------------------|
| Chapter 10.10 | GENERAL |
| 10.10.010 | Short Title. |
| 10.10.020 | Purpose. |
| 10.10.030 | Authority. |
| 10.10.040 | Complaints. |
| 10.10.050 | Compliance with Other Laws. |
| Chapter 10.20 | DEFINITIONS |
| 10.20.010 | Definitions. |
| 10.20.020 | Referenced Regulations. |
| Chapter 10.30 | REQUIREMENTS |
| 10.30.010 | General Scope. |
| 10.30.020 | Minimum Requirements. |
| 10.30.030 | Additional Requirements for Special Sites. |
| 10.30.040 | Maintenance. |
| Chapter 10.40 | PERMITS & PLANS |
| 10.40.010 | Plan Required. |
| 10.40.020 | Permit and Plan Requirements. |
| 10.40.030 | Approval or Denial of Erosion, Sediment and Pollutant Control Plan. |
| 10.40.040 | Alternate Methods Review Process. |
| 10.40.050 | Issuance of Permit. |
| 10.40.060 | Public Works Projects. |
| 10.40.070 | Cancellation of Permit or Expiration of Permit. |
| Chapter 10.50 | INSPECTIONS |
| 10.50.010 | General. |
| 10.50.020 | Inspections for Non-Permitted Activities. |
| 10.50.030 | City Inspections. |
| 10.50.040 | Other Inspections. |
| 10.50.050 | Refusal of Entry. |
| 10.50.060 | Release of Bond or Other Guarantee. |
| Chapter 10.60 | REVISIONS |
| 10.60.010 | Revisions to Erosion, Sediment and Pollutant Control Plan. |

Chapter 10.70 ENFORCEMENT AND PENALTIES

- 10.70.010 Violation of Title
- 10.70.020 Notice of Violation
- 10.70.030 Stop Work Orders
- 10.70.040 Erosion, Sediment and Pollutant Control Plan for Non-Permitted Activities
- 10.70.050 Voluntary Compliance Agreement
- 10.70.060 Civil Penalties
- 10.70.070 Appeal of Notice of Violations and Penalties

Chapter 10.80 NUISANCE ABATEMENT

- 10.80.010 Summary Abatement Authorized.
- 10.80.020 Notification Following Summary Abatement.
- 10.80.030 Financial Responsibility.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

Chapter 10.10

GENERAL

(New Title added by Ordinance No.
173979, effective March 1, 2000)

Sections:

- 10.10.010 Short Title.
- 10.10.020 Purpose.
- 10.10.030 Authority.
- 10.10.040 Complaints.
- 10.10.050 Compliance with Other Laws.

10.10.010 Short Title.

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

10.10.020 Purpose.

This Title provides requirements for development and construction related activities in order to control the creation of sediment and to prevent the occurrence of erosion at the source during construction and development. 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.

(Amended by Ordinance Nos. 176955, 177092, 179690 and 182389, effective January 2, 2009.)

- A.** General.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

1. This Title shall be administered and enforced by the Director of the Bureau of Development Services (BDS) for all ground disturbing activities, except as set forth in Subsections A.2 & A.3.
 2. For development and construction related activities within the public right-of-way, in a public easement, or under a public works permit or contract, this Title shall be administered and enforced by the director of the Bureau that is performing or contracting for the development or construction, specifically, the Director of the Bureau of Transportation, the Director of the Bureau of Environmental Services, the Director of Parks and Recreation, and the Administrator of the Bureau of Waterworks.
 3. For non-permitted ground disturbing activity, this Title shall be administered and enforced by the Bureau of Environmental Services (BES) on a complaint based response basis.
- B. The Directors, as specified in Subsection A. above, may implement procedures, forms, specifications, and written policies for administering the provisions of this Title.
- C. The Directors, as specified in Subsection A above, may issue interpretations on the meaning and intent of the Erosion and Sediment Control Regulations. Such interpretations shall conform to the purposes of this Title.
- D. Rulemaking.
 1. The Director of the BDS shall have the authority to adopt rules and supplemental regulations for permitted development activities with the concurrence of the Directors as specified in Subsection A., above. Each of the Directors shall have the authority to adopt amendments to the Erosion Control Manual with the concurrence of the other Directors specified in Subsection A. above. All the Directors specified in Subsection A. above shall have the authority to administer and enforce such rules and regulations. Such rules and regulations shall be in conformance with the intent and purpose of this Title.

The Director of BES shall have authority to adopt rules and supplemental regulations for non-permitted ground disturbing activities with the concurrence of the Directors as specified in Subsection A., above.
 2. Permanent Rules.
 - a. Prior to the adoption of a permanent rule, the Director developing the rule shall:

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

- (1)** Publish a notice in a newspaper of general circulation in the City. The notice shall be published not less than thirty days before the hearing. The notice shall identify the place, time and purpose for the hearing; a brief description of the subjects covered by the proposed rule; the final date for acceptance of written comments; the location to submit comments and the location where copies of the full set of the proposed rules may be obtained. A copy of notice shall be provided to the Office of Neighborhood Involvement at least thirty days before the hearing.
 - (2)** At the hearing, a designee of the Director shall hear testimony and receive written comments regarding the proposed rules. The designee shall provide a recommendation to the Directors. The recommendation shall take into consideration the comments received.
 - (3)** The Director shall review the recommendation of the designee, and with the concurrence of the Bureaus shall either adopt the proposed rule, modify or reject it.
 - (4)** If a substantial modification is made to the proposed rule, the Director may adopt the modification as an Interim Rule or shall provide an additional public review prior to adoption.
 - b.** Unless otherwise stated, all rules shall be effective two weeks after adoption by the Director.
- 3.** Interim Rules.
 - a.** An interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious threat of injury or hazard to the public health, the environment or public or private property. The rule shall include specific written reasons for the finding.
 - b.** Interim rules shall be effective for a period of not longer than 180 days.
 - c.** Not more than 30 days after adoption of an interim rule, public notice of interim rules shall be given by publication in a newspaper of general circulation and notice sent to the Office of

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

Neighborhood Involvement. Such notice shall also identify the location at which copies of the full set of the interim rules may be obtained.

4. All final and interim rules shall be filed in the office of the Director. All final and interim rules shall be available to the public at the Development Services Center.
 5. Notwithstanding Subsections D.1. through D.4., above, the administrative rules contained in the Erosion Control Manual filed with the Council together with the ordinance creating this Title may be adopted by any Director named in Subsection A. above without further public review or comment. Thereafter, any Director thus identified may with the concurrence of the other Directors amend, modify or repeal any of the administrative rules contained in the Erosion Control Manual following the adoption of the rules procedure set forth in Subsection D.
- E. The Directors, as specified in Subsection A above, may set fees for all permits, plan reviews and inspections under this Title. The fees shall be established by administrative rule. Fees shall set at levels sufficient to cover all administrative costs associated with processing applications, reviewing plans, inspections and enforcement. Fees under this Title are in addition to any other fees required by the 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.

(Amended by Ordinance No. 179690, effective November 18, 2005.) A single coordinated complaint process shall be established by all Bureaus authorized to administer this Title. Each Bureau authorized to administer this Title shall create a public complaint process that provides a single point of contact for receiving a complaint.

10.10.050 Compliance with Other Laws.

(Amended by Ordinance No. 179690, effective November 18, 2005.)

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

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- C. Precedence - State or Federal Regulation. Where a State or Federal natural resource agency permit requirements address erosion prevention and sediment control, the State or Federal natural resource protection requirements shall control. For any portions of a site where State or Federal permit requirements do not apply, City Code requirements shall control.

Chapter 10.20

DEFINITIONS

Sections:

- 10.20.010 Definitions.
10.20.020 Referenced Regulations.

10.20.010 Definitions.

(Amended by Ordinance Nos. 176955, 179690 and 182389, effective January 2, 2009.)

- A. General. For the purpose of this Title, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this Chapter. Throughout this Title, the following words and phrases shall 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 Director 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 Director that the provisions of this Title 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 which prevents or reduces soil erosion.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

6. "Bureau" means the Bureau of Environmental Services, the Bureau of Development Services, the Bureau of Transportation and the Bureau of Waterworks.
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. "Director" means those persons specified in Section 10.10.030 or those persons' designees.
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. "Dwelling" means any structure containing dwelling units.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- a.** "Single Family Dwelling" means a structure containing only one dwelling unit.
 - b.** "Duplex" means a structure containing two dwelling units.
- 15.** "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 City of Portland Zoning Code.
- 16.** "Erosion" means the wearing away of the ground surface as a result of the effects of gravity, wind, water or ice.
- 17.** "Erosion Control Manual" means the collection of administrative rules adopted to implement the purpose and intent of this Title.
- 18.** "Final GRADE means the finished grade of the site which conforms to the approved plan.
- 19.** "Grade" means the vertical location of the ground surface.
- 20.** "Greenway" means a Greenway Overlay Zone as determined by the City of Portland Zoning Code Title 33, Section 33.440.030.
- 21.** "Ground Disturbing Activity" means any activity that exposes soil.
- 22.** "Nuisance" (See Chapter 10.80.010 of this Title).
- 23.** "Owner" means the person whose name and address is listed as the owner of the property by the County Tax Assessor on the County Assessment and Taxation records.
- 24.** "Permanent measures" or "permanent stabilization" means a combination of plants, mulch, sod, matting, erosion control blankets, and permanent structures that will provide long-term soil stabilization.
- 25.** "Permanent non-permitted ground disturbing activities" means activities or businesses that do not require a development permit and which expose soils for extended periods as an integral part of their production or maintenance. Examples include agriculture, quarries, mining, nurseries, and maintenance of sports fields.
- 26.** "Permit" means an official document issued by the Director authorizing performance of a specified activity.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

- 27. "Person" means any individual, partnership, association or corporation.
- 28. "Plan" means a text narrative, or graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents.
- 29. "Pollutant" means any substance which is prohibited or limited by the provisions of Chapter 17.39 of the City Code, released or discharged in conjunction with development.
- 30. "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.
- 31. "Sediment" means mineral or organic matter deposited as a result of erosion.
- 32. "Site" means any lot or parcel of land or contiguous combination where development 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").
- 33. "Slope" means an inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.
- 34. "Soil" means naturally occurring surficial deposits overlaying bedrock.
- 35. "Special Site" (See Section 10.30.030 of this Title).
- 36. "Stabilization" means the process of establishing an enduring soil cover of vegetation or mulch or other ground cover and may be in combination with installation of temporary or permanent structures. Stabilization shall reduce to the maximum extent practicable the erosion process and the resultant transport of sediment.
- 37. "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.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- 38. "Storm Event" means a storm that produces one-half inch of rain or more during any 24 hour time period.
- 39. "Stormwater" means water runoff, snowmelt runoff or surface runoff and drainage.
- 40. "Visible and Measurable" means:
 - a. Deposits or tracking of mud, dirt, sediment or similar material exceeding one-half cubic foot in volume 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 evidence of 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 which leaves the property.
- 41. "Water Body" means rivers, sloughs, continuous and intermittent streams and seeps, ponds, lakes, aquifers, and wetlands.
- 42. "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently with some degree of regularity. Watercourses may be either natural or artificial.
- 43. "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which 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.

(Amended by Ordinance No. 176955 and 182671, effective May 15, 2009.) All referenced regulations are available as specified below:

- A. Erosion Control Manual. The Erosion Control Manual is maintained by the Bureau of Development Services.
- B. City of Portland Plant List. The City of Portland Plant List is maintained by the Bureau of Planning and Sustainability.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

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

Chapter 10.30

REQUIREMENTS

Sections:

- 10.30.010 General Scope.
10.30.020 Minimum Requirements.
10.30.030 Additional Requirements for Special Sites.
10.30.040 Maintenance.

10.30.010 General Scope.

(Amended by Ordinance Nos. 175205 and 179690, effective November 18, 2005.)

- A. This Title applies to all ground disturbing activities whether or not a permit is required, unless such activities otherwise are exempted by Portland City Code. All non-permitted ground disturbing activities shall comply with this Title unless otherwise noted.

B. Exemptions:

1. Installation of signs is exempt from this Title.
2. Emergencies: Development which is subject to Subsection A. may commence without complying with the requirements of this Title if the Director 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 Director that such emergency has passed, the provisions of this Title shall apply.

10.30.020 Minimum Requirements.

(Amended by Ordinance No. 179690, effective November 18, 2005.) The following minimum requirements apply to all development and ground disturbing activities.

- A. Purpose

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

1. No visible and measurable sediment or pollutant shall 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 shall provide adequate public notification of the City's Erosion Control Complaint Hotline.
- B.** Requirements and Standards. In order to meet the purpose set forth in Subsection A. above, the responsible party shall do all or any of the following:
1. Install measures intended to keep soil on site or out of water bodies, storm drainage systems or the public right-of-way as the first step in any development. These measures shall be made functional prior to any upslope development taking place.
 2. Remove any soil that enters the public right-of-way.
 3. Protect stormwater inlets that are functioning during the course of the development by approved sediment control measures so that sediment-laden water cannot enter the inlets without first being filtered.
 4. Apply permanent or temporary soil stabilization to denuded development site areas in conformance with the following schedule. Permanent non-permitted ground disturbing activities may achieve compliance with this schedule by installing and maintaining approved permanent Best Management Practices (BMPs) that meet the purpose of this Title.
 - a. Between October 1 and April 30, all denuded sites shall be provided with either temporary or permanent soil stabilization as soon as practicable, but in no case more than two days after ground disturbing activity occurs.
 - b. Between May 1 and September 30, temporary erosion and sediment control measures to reduce dust and sediment transport shall be applied as soon as practicable, but in no case more than seven days after ground disturbing activity occurs.
 - c. Ground cover shall be installed on any portion of a site that is denuded for more than six months. Sports fields or playgrounds surrounded by vegetative cover or permanently installed curbing are exempt from this requirement.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

- d.** Temporary measures shall be maintained until permanent measures are established.
 - e.** Ground disturbing activity taking place between October 1 and April 30 for sites located in the Balch Creek Subdistrict of the Northwest Hills plan district is prohibited, and is not subject to Alternate Methods review per Section 10.40.040. (See Chapter 33.563 of the City of Portland Zoning Code.)
- 5.** Plant replacement vegetative cover that does not include plants listed in either the Nuisance or the Prohibited Plant List, as set forth in the City of Portland Plant List. Permanent non-permitted ground disturbing activities are exempted from this requirement.
- 6.** Secure or protect soil stockpiles throughout the project with temporary or permanent soil stabilization measures. The responsible party is accountable for the protection of all stockpiles on the site, and those transported from the site. Depositions of soil may be subject to additional regulations requiring permit, review or erosion and sediment control.
- 7.** Select BMPs from the Erosion Control Manual.
- 8.** Post signage on the site of the permitted ground disturbing activity that identifies the City's Erosion Control Complaint Hotline number or the responsible City project manager/inspector. Permanent non-permitted ground disturbing activities are exempted from this requirement.
 - a.** Post a sign on the site that is clearly visible from the right-of-way. The sign shall be at least 18" by 18" and made of materials that shall withstand weather for the duration of the project. Lettering shall be at least 3" high and easily readable. Signs shall be color coded or otherwise marked to identify the appropriate enforcing bureau; or
 - b.** Another visual notification method approved by the Director of the designated enforcing bureau.
- 9.** Demonstrate that any trench dewatering and trench spoils will be managed onsite or provide discharge approval from the Bureau of Environmental Services for offsite discharge.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

10. Identify sites where potential pollutants will be stored, used, or disposed. Such sites must provide adequate containment to prevent the release of non-soil pollutants.

10.30.030 Additional Requirements for Special Sites.

(Amended by Ordinance No. 179690, effective November 18, 2005.) When the Director determines that special site conditions may prevent compliance with Section 10.30.020, the Director may require additional erosion, sediment and pollutant control measures.

- A. Special site conditions may include, but are not limited to, the following:
 1. Slopes before development that are greater than 10 percent (1 Vertical:10 Horizontal).
 2. Ground disturbance of a natural vegetative buffer within 50 feet of a wetland and or water body.
 3. The development site is located entirely or partially within an Environmental Overlay Zone or Greenway Overlay Zone.
 4. The development site or development phase will have ground disturbing activity at any one time of 10,000 square feet or more. Single family dwellings and duplex dwellings are exempt from this size limitation.
 5. The development includes a land division containing 10,000 square feet or more.
 6. Project timing is such that ground disturbing activity will take place between October 1 and April 30.
 7. The development involves discharge or offsite disposal of dewatering or trench spoils.
- B. Additional requirements imposed by the Director to achieve compliance with Section 10.30.020 A. may include, but are not limited to, the following:
 1. Requiring drainage control in compliance with Titles 17 and 24 during all development phases.
 2. Requiring that a State of Oregon registered professional engineer, other professional certified by the State of Oregon with experience or qualifications in preparing erosion control plans, or a registered CPESC prepare or implement the erosion and sediment control plan.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

3. Prohibiting ground disturbing activities between October 1 and April 30.
4. Limiting the amount of denuded soil at any given time
5. Requiring a bond, letter of credit or other guarantee.

10.30.040 Maintenance.

(Amended by Ordinance No. 179690, effective November 18, 2005.) The requirements of this Section apply to all permitted ground disturbing activities.

- A. The responsible party shall maintain all erosion, sediment and pollutant control measures, temporary and permanent, in proper functioning order.
- B. The responsible party shall inspect, maintain, adjust, repair, and replace erosion, sediment and pollutant control measures within 24 hours following a storm event to ensure that the measures are functioning properly.
- C. During active ground disturbing activity, the responsible party shall inspect and maintain erosion, sediment and pollutant control measures daily between October 1 and April 30.
- D. All inspections conducted by a responsible party in Subsections B. and C. above shall be noted in an inspection log indicating the date and time of the inspection. The inspection log shall be made available to the Director upon request.
- E. All site public notification signs required by 10.30.020 shall be maintained to remain easily readable from the public right-of-way throughout the duration of the ground disturbing activity.

Chapter 10.40

PERMITS & PLANS

Sections:

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|-----------|---------------------------------------------------------------------|
| 10.40.010 | Plan Required. |
| 10.40.020 | Permit and Plan Requirements. |
| 10.40.030 | Approval or Denial of Erosion, Sediment and Pollutant Control Plan. |
| 10.40.040 | Alternate Methods Review Process. |
| 10.40.050 | Issuance of Permit. |
| 10.40.060 | Public Works Projects. |
| 10.40.070 | Cancellation of Permit or Expiration of Permit. |

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

10.40.010 Plan Required.

(Amended by Ordinance No. 179690, effective November 18, 2005.)

- A. The responsible party shall submit an erosion, sediment and pollutant control plan for permitted development projects to the Director 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 (see Section 10.30.030 A. for definition).
- 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 hand held tools, unless otherwise required by the terms of a compliance order or land use decision.
- C. Where a plan is required, the responsible party shall not commence any development before the Director has approved the proposed plan.

10.40.020 Permit and Plan Requirements.

(Amended by Ordinance No. 179690, effective November 18, 2005.)

- A. All permit applications or contract submittals that require an erosion, sediment, and pollutant control plan shall be accompanied by the plans at the time of application or submittal. The number of erosion, sediment and pollutant control plans required shall be determined by the applicable permit or contract process. All erosion, sediment and pollutant control plans shall comply with the Minimum Erosion, Sediment and Pollutant Control Plan Standards in the Erosion Control Manual.
- B. The Director shall review all erosion, sediment and pollutant control plans. The Director may waive items required under Subsection A above where the Director determines that certain items are not applicable to a specific application or project.
- C. The responsible party shall be accountable for any plan modifications needed due to conflicts, omissions or changed conditions that arise in the field. The responsible party shall bear all costs to comply with the City of Portland Standard Construction Specifications, the Erosion Control Manual and the City Code.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

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

The erosion, sediment and pollutant control plan shall be reviewed by the Director. If the Director finds that the plan complies with this Title, it shall be approved. Such approval shall be indicated on the plan documents. The approved plan shall not be changed, modified, or altered without authorization from the Director. All development regulated by this Title shall be done in accordance with the approved plan. If the Director approves only a portion of the plan, development may commence on only that portion of the site for which the plan that has been approved.

10.40.040 Alternate Methods Review Process.

(Amended by Ordinance Nos. 176955, 179690 and 182389, effective January 2, 2009.)

- A.** The Director may approve the use of alternate methods that provide protection that is greater than or equal to the protection provided by the methods prescribed in the Erosion Control Manual.
- B.** In order to determine the suitability of alternate erosion control methods not specifically addressed by this Title and not approved by the Director as described in Subsection A. above, and to provide interpretation of this Title, there is created an alternate methods review process. The process shall consist of an Administrative Review Board and an Erosion Control Review Board.
 - 1.** Administrative Review Board. The Administrative Review Board shall be established as the initial review process. The Bureau of Development Services shall provide staff for the Administrative Review Board.
 - a.** Administrative Review Board Membership. The Administrative Review Board shall comprise one member and one alternate appointed by the Director, or Manager, of each of the following Bureaus: Bureau of Environmental Services, Bureau of Transportation, Portland Water Bureau, Bureau of Development Services and the Urban Forestry Division.
 - b.** Meeting Schedule and Quorum. The Administrative Review Board shall meet on an as needed basis, based on review requests. The board shall not meet more than once per week. At least one member or alternate must attend from the Bureau of Development Services, and at least one member or alternate must attend from the Bureau of Environmental Services to constitute a quorum. When the Administrative Review Board considers a petition concerning work in the right-of-way, at least one member or alternate from the Bureau responsible for the work in the right-of-way must also attend to constitute a quorum.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- c.** Duties. The Administrative Review Board shall review and reach determination on all petitions which request the use of alternate methods of erosion control and provide interpretation of the requirements of this Title. Any alternate method allowed shall provide an equivalent or greater level of protection than the methods prescribed in the Erosion Control Manual. The decision of the Administrative Review Board shall have full force and effect unless petitioned to the Erosion Control Review Board. The Administrative Review Board shall give written notice to the responsible party of its decision.

- 2.** Erosion Control Review Board. The Erosion Control Review Board is established to hear petitions regarding decisions made by the Administrative Review Board. The Commissioner in charge of the Bureau of Development Services shall appoint members to serve on the Erosion Control Review Board, and shall designate a Chair. The Bureau of Development Services shall provide staff for the Erosion Control Review Board.

- a.** Board Membership.

- (1)** The Erosion Control Review Board shall consist of three members. Members must be qualified by experience and training to make decisions on matters pertaining to erosion control methods.
- (2)** Members shall be appointed for a period of three years.
- (3)** Any member of the Erosion Control Review Board may be removed from office by the Commissioner in charge for due cause, such as malfeasance in office, incapacity or neglect of duty.
- (4)** The Commissioner in charge shall appoint a qualified alternate for each member, who shall attend meetings and vote when the member is unavailable.

- b.** Meeting of the Board. Meetings of the Erosion Control Review Board shall be held at the call of the Chair or upon notice from the Commissioner in charge.

- c.** Duties. The Erosion Control Review Board shall review and make decisions on all petitions from decisions made by the Administrative Review Board. The Erosion Control Review Board

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

may, by a majority vote, affirm, reverse or modify the action of the Administrative Review Board. Any alternate method of erosion control shall provide an equal or greater level of protection than the methods prescribed in the Erosion Control Manual. The decision of the Erosion Control Review Board shall be final. The Erosion Control Review Board shall give written notice to the petitioner of its decision.

- C.** Petitions to the Administrative Review Board. Whenever the responsible party wishes to pursue an alternate method of erosion control not addressed by this Title, the responsible party may request review of the alternate method by the Administrative Review Board. Any alternate method of erosion control shall provide an equal or greater level of protection than the methods prescribed in the Erosion Control Manual. All requests for review shall be in writing and addressed to the Director of the Bureau of Development Services.
- D.** Petitions to the Erosion Control Review Board. The responsible party may petition for further review of a decision made by the Administrative Review Board to the Erosion Control Review Board. Any petition shall be addressed to the Director of the Bureau of Development Services and must be received within fifteen days of the Administrative Review Board's decision. The Director shall forward the notice or a copy to the Erosion Control Review Board and the Board shall determine a hearing date. The petitioner and any interested parties shall be notified of the time and place for the hearing.
- E.** Burden of proof. The burden of proof for all alternate methods reviews falls upon the responsible party.
- F.** Fee for petition. All required fees are stated in the Fee Schedule adopted by City Council. Fees will be updated annually or on an as-needed basis. The approved Fee Schedule shall be available at the Development Services Center. The fee shall be paid at the time the petition is filed.

10.40.050 Issuance of Permit.

- A.** No permit requiring an erosion, sediment and pollutant control plan shall be issued until the plan is approved.
- B.** As a condition of permit issuance, the responsible party shall agree to allow all inspections to be conducted.
- C.** Where a bond, letter of credit or other guarantee is required, the permit shall not be issued until the bond or guarantee has been obtained and approved.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

10.40.060 Public Works Projects.

(Amended by Ordinance No. 179690, effective November 18, 2005.) Projects within the public right-of-way shall 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 Director may require that all denuded soil on the site be permanently stabilized before a permit is cancelled or expires.

Chapter 10.50

INSPECTIONS

Sections:

- 10.50.010 General.
- 10.50.020 Inspections for Non-Permitted Activities.
- 10.50.030 City Inspections.
- 10.50.040 Other Inspections.
- 10.50.050 Refusal of Entry.
- 10.50.060 Release of Bond or Other Guarantee.

10.50.010 General.

- A.** The Director may conduct inspections whenever it is necessary to enforce any provisions of this Title, to determine compliance with this Title or whenever the Director has reasonable cause to believe there exists any violation of this Title.
- B.** Inspections shall occur at reasonable times of the day. If the responsible party is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party and request entry. If such entry is thereupon refused, the Director shall have recourse to any remedy provided by law to obtain entry, including obtaining an administrative search warrant.

10.50.020 Inspections for Non-Permitted Activities

- A.** Non-permitted ground disturbing activities shall be inspected as the result of a complaint.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

- B.** Inspections in response to complaints shall 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.

(Amended by Ordinance No. 179690, effective November 18, 2005.) The Director shall conduct the following inspections on permitted development activities. It shall be the duty of the responsible party to notify the Director 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 Director shall 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 shall occur at the beginning of each phase.
- B.** Permanent measures inspection. The Director shall conduct inspections after permanent measures are put in place. When the development is being conducted in phases, this inspection shall occur after permanent measures have been installed for each phase.
- C.** Interim inspections. The Director may conduct other inspections not specifically addressed above to determine compliance with this Title.
- D.** Final erosion control inspection. For special sites as defined in Section 10.30.030 A., an inspection shall be conducted after construction completion to determine the effectiveness of permanent erosion and sediment control measures. This inspection shall be conducted six months after construction completion or at other times determined by the Director. This inspection may be conducted at sites other than special sites as determined by the Director.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

10.50.040 Other Inspections.

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

10.50.050 Refusal of Entry.

No person shall refuse entry or access to a permitted development project to any authorized representative of the Director who provides proper credentials and requests entry for the purpose of conducting an inspection. In addition, no person shall 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.

(Amended by Ordinance No. 179690, effective November 18, 2005.) At the time of project approval, when the Director determines that all provisions of this Title have been met, the bond, letter of credit or other guarantee that has been provided shall be released. Public works permit and contract performance guarantees shall be released as dictated in the applicable permit or warranty agreements.

Chapter 10.60

REVISIONS

Sections:

10.60.010 Revisions to Erosion, Sediment and Pollutant Control Plan.

10.60.010 Revisions to Erosion, Sediment and Pollutant Control Plan.

- A.** During development, the Director or the responsible party may request revisions to the approved erosion, sediment or pollutant control plan. The Director may approve, (or for projects within the public right-of-way accept), or deny all revisions.
- B.** The Director may require revisions to the approved erosion, sediment and pollutant control plan when:
 - 1.** It is determined that approved erosion, sediment and pollutant control measures do not meet the purposes set forth in Subsection 10.30.020.A.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

2. An alternate method, measure or control fails to perform as claimed by the responsible party.
 3. A change in project timing has occurred due to an adverse change in weather.
 4. During development, relevant new information about soil, site, topography or water conditions is discovered.
 5. Changes to the area or type of ground disturbing activity or equipment used are proposed or implemented.
 6. The project schedule has changed which results in development being conducted at a different time of year than originally accepted or approved.
 7. Additional or substitute construction or maintenance materials or chemicals will be used during development that require pollutant BMPs as set out in the Erosion Control Manual.
- C. Revised plans shall show all actual and proposed changes made on the site, the new locations of the drainage patterns, and the affect that the revisions will have on the site. The new plans shall show how problems associated with the prior plan have been corrected, and indicate all new erosion, sediment and pollutant control measures. The Director may require that the new plans be prepared by a State of Oregon registered engineer, a State of Oregon registered landscape architect, or a CPESC, and that the revisions be stamped as such.
- D. The responsible party shall be solely responsible for the costs associated with any revisions, including but not limited to, any additional or alternate methods, measures, performance criteria or controls.

Chapter 10.70

ENFORCEMENT AND PENALTIES

Sections:

| | |
|-----------|---------------------------------------------------------------------------|
| 10.70.010 | Violation of Title |
| 10.70.020 | Notice of Violation |
| 10.70.030 | Stop Work Orders |
| 10.70.040 | Erosion, Sediment and Pollutant Control Plan for Non-Permitted Activities |

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- 10.70.050 Voluntary Compliance Agreement
- 10.70.060 Civil Penalties
- 10.70.070 Appeal of Notice of Violations and Penalties

10.70.010 Violation of Title.

- A.** The following actions shall constitute a violation of this Title:
 - 1.** Any failure, refusal or neglect to comply with any requirement of this Title.
 - 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 Director.
- B.** Each specific incident and each day of non-compliance shall be considered a separate violation of this Title.

10.70.020 Notice of Violation.

- A.** Written Notice of Violation. When the Director determines that a violation of this Title has occurred, the Director shall notify the responsible party and the property owner in writing that a violation of this Title has occurred. The notice of violation shall either be delivered to the responsible party or posted at the property site of the violation, and mailed to all responsible parties. If the address of the responsible party is unknown, then the notice shall, in addition to being posted at the site, be published in a local newspaper for one week. This publication shall serve as the mailed notice.
- B.** The written notice shall include the following information:
 - 1.** Date violation has occurred;
 - 2.** Permit number, where applicable;
 - 3.** Site address, legal description or project location;
 - 4.** Description of violation;
 - 5.** Disclosure that civil penalties, charges and liens may result from a failure to remedy the violations;

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

6. Deadline to correct violation prior to assessment of civil penalties. If there is a threat of injury to the public health, the environment, or public or private property, the Director may require correction of the violation within 24 hours. All violations shall be corrected within 14-calendar days;
 7. The date that civil penalties, administrative enforcement fees, charges or liens will begin accumulating; and,
 8. Information about the responsible party's ability to appeal.
- C. Failure to respond to notice of violation may result in civil penalties, administrative enforcement fees and stop work orders.

10.70.030 Stop Work Orders.

- A. When it is necessary to obtain compliance with this Title, the Director may issue a stop work order requiring that all work, except work directly related to the elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, the responsible party shall not resume work until such time as the Director gives specific approval in writing. The stop work order shall be in writing and shall include:
1. Date of order;
 2. Permit number, where applicable;
 3. Site address, legal description or project location of stop work order;
 4. A description of all violations; and,
 5. The conditions under which the work may resume.
- B. The stop work order shall be in writing and posted at a conspicuous location at the site. In addition, a copy shall be sent to the responsible party by certified mail. For projects in the public right-of-way, the stop work order shall be delivered to the responsible party.
- C. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order.
- D. A stop work order shall be effective upon posting.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

- E.** When an emergency condition exists, the Director may issue a stop work order orally. The Director shall then issue a written notice under Subsection A. above within 24 hours.

10.70.040 Erosion, Sediment and Pollutant Control Plan for Non-Permitted Activities

If non-permitted ground disturbing activities 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.

10.70.050 Voluntary Compliance Agreement.

- A.** General. When a violation of this Title has occurred, as an enforcement option, the Director may enter into a Voluntary Compliance Agreement with the responsible party.
- B.** Contents. A Voluntary Compliance Agreement shall set forth the actions to be taken by the responsible party to correct violations of this Title. It may also set forth the actions to mitigate the impacts of violations. The agreement shall set forth a schedule for correction and completion of the mitigation.
- C.** Effect of Agreement.
- 1.** A Voluntary Compliance Agreement is not enforceable by any third party. By entering into a Voluntary Compliance Agreement, the responsible party waives the right to an appeal under Section 10.70.060.
 - 2.** The Director may reduce or waive civil penalties if the responsible party performs all the terms of the Voluntary Compliance Agreement. The Director may not waive civil penalties in any case where the responsible party is a repeat violator. If the responsible party fails to perform according to the terms of the Voluntary Compliance Agreement, the Director shall assess civil penalties from the date the violation occurred for each violation addressed in the Agreement.
 - 3.** Subject to the approval of the Director, the responsible party may elect to substitute in-kind services for up to 90% of the amount of all assessed penalties. The Director shall determine the actions that can be deemed in-kind services.

10.70.060 Civil Penalties

Violations of this Title may result in any of the following penalties:

- A.** Civil Penalties.

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

1. For each violation, a civil penalty may be assessed of up to \$1,000 per day. Each day a violation exists shall be considered a separate violation.
2. The Director shall consider the following criteria in determining the amount of any civil penalty to be assessed under this Section:
 - a. The nature and extent of the person's involvement in the violation;
 - b. The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
 - c. Whether the violation was isolated and temporary, or repeated and continuous;
 - d. The magnitude and seriousness of the violation;
 - e. The City's costs of investigation and remedying the violation;
 - f. Whether any criminal charges have been issued against the person; and
 - g. Any relevant, applicable evidence bearing on the nature and seriousness of the violation.

B. Administrative Enforcement Fees.

1. The Director may charge a penalty in the form of a monthly enforcement fee for each project found in violation of this Title that meets the following conditions:
 - a. The project is subject to a notice of violation or stop work order as described in Sections 10.70.020 and 10.70.030;
 - b. A response period of 30 days has passed since the effective date of the notice of violation or stop work order; and
 - c. The project remains out of compliance with the initial notice of violation or stop work order or any subsequent notice of violation or stop work order.
2. The amount of the monthly enforcement fee shall be:
 - a. For projects with development in an Environmental Overlay Zone: \$800.00

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

- b.** For all other projects: \$400.00

If all violations are not corrected within six months from the date of the initial notice of violation, subsequent enforcement fees shall be twice the amount stated above.

- 3.** Once the monthly enforcement fees begin, they shall continue until all violations listed in the first or any subsequent notice of violation have been corrected, inspected and approved.
- 4.** Whenever the responsible party believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the Director. Upon receipt of such notice, the Director shall promptly schedule an inspection of the project and shall notify the responsible party if any violations remain uncorrected.
- 5.** When a project meets the conditions for charging an enforcement fee as described in this Section, the Director shall file a statement with the City Auditor that identifies the property, the amount of the monthly fee, and the date from which the charges are to begin. The Auditor shall then:
 - a.** Notify the responsible party of the assessment of enforcement fees;
 - b.** Record a property lien in the Docket of City Liens; and,
 - c.** Bill the responsible party monthly for the full amount of the enforcement fees owing, plus additional charges to cover the administrative costs of the City Auditor; and
 - d.** Maintain lien records until:
 - (1)** The lien and all associated interest, penalties, and costs are paid in full; and
 - (2)** The Director certifies that all violations listed in the first or any subsequent notice of violation have been corrected.

10.70.070 Appeal of Notice of Violations and Penalties.

- A.** Whenever the responsible party has been given a written notice or order pursuant to this title 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 have the notice or order reviewed by the Director. If a review is sought, the responsible party shall submit a written request to the

**TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS**

Director within 10 days of the date of the notice or order. Such review shall be conducted by the Director. The responsible party requesting such review shall be given the opportunity to present evidence to the Director. Following a review, the Director shall issue a written determination. Nothing in this Section shall limit the authority of the Director to initiate a code enforcement proceeding under Title 22.

- B.** A responsible party may appeal a written notice of a violation or civil penalty to the Codes Hearings Officer in accordance with Title 22 of the City Code.

Chapter 10.80

NUISANCE ABATEMENT

Sections:

- 10.80.010 Summary Abatement Authorized.
10.80.020 Notification Following Summary Abatement.
10.80.030 Financial Responsibility.

10.80.010 Summary Abatement Authorized.

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

10.80.020 Notification Following Summary Abatement.

- A.** When summary abatement is authorized by this Title, the decision regarding whether or not to use summary abatement shall be at the Director's discretion. In case of summary abatement, notice to the responsible party prior to abatement is not required. However, following summary abatement, the Director shall post upon the development site liable for the abatement a notice describing the action taken to abate the nuisance.
- B.** Additional Notification by Mail.

TITLE 10
EROSION AND SEDIMENT
CONTROL REGULATIONS

1. Upon posting of the notice described in Subsection A above, the Director shall 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 shall include the content described in Subsection 10.70.020 B.
2. An error in the name of the property owner or address listed in the county assessment and taxation records shall not render the notice void but in such case the posted notice shall be deemed sufficient.

10.80.030 Financial Responsibility.

- A. Whenever a nuisance is abated under this Title, the Director shall keep an accurate account of all expenses incurred including a civil penalty of \$500 plus 100% 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 which 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 shall be added to the costs charges and civil penalties provided for in this Subsection. The additional civil penalty shall 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 Director shall file a statement of such costs or penalties with the Auditor. Upon receipt of the statement, the Auditor shall 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 City Auditor. In the event that amount due set forth in the notice is not paid in full within 30 days of the date of notice, the Auditor shall enter the amount of the unpaid balance, plus charges to cover administrative costs of the City Auditor, in the Docket of City liens which shall therefore constitute a lien against the property.

