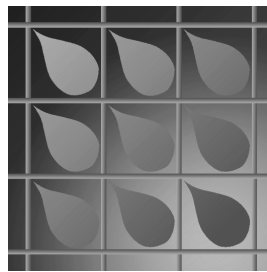


**City of Seattle**

# Stormwater, Grading and Drainage Control Code



**ORDINANCE 116425**  
Effective February 11, 1993

**ORDINANCE 117432**  
Effective January 19, 1995

**ORDINANCE 117697**  
Effective August 13, 1995

**ORDINANCE 117789**  
Effective October 1, 1995

**ORDINANCE 119965**  
Effective July 5, 2000



City of Seattle  
**Department of Design, Construction and Land Use**

R. F. Krochalis, Director  
Paul Schell, Mayor

## Chapter 22.800

# TITLE, PURPOSE, SCOPE AND AUTHORITY

### 22.800.010 TITLE

This subtitle, comprised of SMC Chapters 22.800 through 22.808, shall be known as the “Stormwater, Grading and Drainage Control Code,” and may be cited as such.

### 22.800.020 PURPOSE

A. The provisions of this subtitle shall be liberally construed to accomplish its remedial purposes, which are:

1. Protect, to the greatest extent practicable, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;
2. Protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;
3. Protect surface waters and receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging of groundwater, or endanger aquatic and benthic life within these surface waters and receiving waters of the State;
4. Meet the requirements of state and federal law and the City’s municipal stormwater NPDES permit; and

5. Fulfill the responsibilities of the City as trustee of the environment for future generations.

It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public. This subtitle is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms.

- C. It is expressly acknowledged that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, the water quality protection measures in this subtitle are necessary to protect the health, safety and welfare of the residents of Seattle and the integrity of natural resources for the benefit of all and for the purposes of this subtitle. Such water quality protection measures are required under the federal Clean Water Act, 33 U.S.C. Section 1251, et seq., and in response to the obligations of the City's municipal stormwater discharge permit, issued by the State of Washington under the federal National Pollutant Discharge Elimination System program.

### 22.800.030 SCOPE

This subtitle applies to:

- A. All grading and drainage and erosion control, whether or not a permit is required; and
- B. All new or replaced impervious surface and all land disturbing activities, whether or not a permit is required; and
- C. All discharges directly or indirectly to a public drainage control system; and
- D. All new and existing land uses.

### 22.800.050 POTENTIALLY HAZARDOUS LOCATIONS

- A. Any site on a list, register, or data base compiled by the United States Environmental Protection Agency (“EPA”) or the Washington State Department of Ecology (“DOE”) for investigation, clean up, or other action regarding contamination under any

federal or state environmental law shall be a potentially hazardous location under this subtitle. When EPA or DOE removes the site from the list, register or data base, or when the owner otherwise establishes contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.

- B. The following property may also be designated by the Director of the Department of DCLU as potentially hazardous locations:
1. Existing and abandoned solid waste disposal sites;
  2. Hazardous waste treatment, storage, or disposal facilities, all as defined by the federal Solid Waste Disposal Act, 42 U.S.C. 6901, et seq.

#### **22.800.060 COMPLIANCE WITH OTHER LAWS**

- A. The requirements of this subtitle are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this subtitle imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this subtitle shall prevail.
- B. Approvals and permits granted under this subtitle are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this subtitle.
- C. Compliance with the provisions of this subtitle and of regulations and manuals adopted by the City in relation to this subtitle does not necessarily mitigate all impacts to the environment. Thus, compliance with this subtitle and related regulations and manuals should not be construed as mitigating all stormwater impacts, and additional

mitigation may be required to protect the environment. The primary obligation for compliance with this chapter, and for preventing environmental harm on or from property, is placed upon responsible parties as defined by this subtitle.

#### **22.800.070 CITY PROJECTS**

##### **A. Compliance.**

1. City agencies shall comply with all the requirements of this subtitle except they shall not be required to obtain permits and approvals under this subtitle for work performed within a public right-of-way and for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation. Where the work occurs in a public right-of-way, it shall comply with Seattle Municipal Code Title 15, Street and Sidewalk Use, including the applicable requirements to obtain permits or approvals. Where appropriate as set forth in Section 22.804.040C of this Code, a soils report and analysis by an experienced geotechnical engineer shall be prepared for City projects.
2. A City agency project, as defined in Section 22.801.170, that is not required to obtain permit(s) and approval(s) per subsection A1 above, is not required to comply with Sections 22.802.015 C4, 22.802.016 B1, and 22.802.016 B2, if the project begins land disturbing activities on or before July 1, 2002, and if the project meets one or more of the following criteria:
  - a. Project funding was appropriated as identified in Ordinance 119750, titled, "An ordinance adopting a budget, including a capital improvement program and a position list, for the City of Seattle for fiscal year 2000," or
  - b. Project received or will receive voter approval of financing before January 1, 2001, or

- c. Project received or will receive funds based on grant application(s) submitted before January 1, 2001, or
- d. Project conducted or will conduct land disturbing activity before January 1, 2001.

**B. Inspection.**

- 1. When the City conducts projects for which review and approval is required under Section 22.802.020 or 22.804.030, the work shall be inspected by the City agency conducting the project or supervising the contract for the project. The inspector for the City agency shall be responsible for insuring that the grading and drainage control is done in a manner consistent with the requirements of this subtitle.
- 2. Where a soils analysis and report has been prepared as required under subsection A of this section, the grading shall also be inspected by the geotechnical engineer who prepared the report.
- 3. A City agency need not provide an inspector from its own agency provided either:
  - a. the work is inspected by an appropriate inspector from another City agency; or
  - b. the work is inspected by the licensed civil or geotechnical engineer who prepared the plans and specifications for the work; or
  - c. a permit or approval is obtained from the Director of DCLU, and the work is inspected by the Director.

**C. Certification of Compliance.** City agencies shall meet the same standards as non-City projects, and shall certify that each individual project meets those standards.

**22.800.080 AUTHORITY**

- A. 1. The Director of DCLU has authority regarding the provisions of this subtitle pertaining to grading, review of drainage control plans, and review of erosion control plans, and has inspection and enforcement authority pertaining to

temporary erosion/sediment control measures.

- 2. The Director of SPU has authority regarding all other provisions of this subtitle pertaining to stormwater, drainage, and erosion control, including inspection and enforcement authority.

B. The Directors of DCLU and SPU are authorized to take actions necessary to implement the provisions and purposes of this subtitle in their respective spheres of authority, including, but not limited to, the following: promulgating and amending rules and regulations, pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code; establishing and conducting inspection programs; establishing and conducting or, as set forth in Section 22.802.012, requiring responsible parties to conduct, monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage control system, or surface water; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving or disapproving required submittals and applications for approvals and permits.

C. The Director of SPU is authorized to develop drainage basin plans for managing surface water, drainage water, and erosion within individual subbasins. A drainage basin plan may, when approved by the Director of SPU, be used to modify requirements of this subtitle, provided the level of protection for human health, safety and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved.

**22.800.090 CITY NOT LIABLE**

- A. Nothing contained in this subtitle is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this subtitle, or by reason or

in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this subtitle, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this subtitle by its officers, employees or agents.

- B. The Director or any employee charged with the enforcement of this subtitle, acting in good faith and without malice on behalf of the City, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the City, or by reason of any act or omission in the discharge of these duties. Any suit brought against the Director of DCLU, Director of SPU or other employee because of an act or omission performed in the enforcement of any provisions of this subtitle, shall be defended by the City.
- C. Nothing in this subtitle shall impose any liability on the City or any of its officers or employees for clean up or any harm relating to sites containing hazardous materials, wastes or contaminated soil.

## **Chapter 22.801 DEFINITIONS**

### **22.801.010 GENERAL**

For the purpose of this subtitle, the words listed in this Chapter have the following meanings unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this subtitle, shall be as defined in Washington Administrative Code Chapters 173-303, 173-304 and 173-340, the Seattle Building Code or the Seattle Fire Code, including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular.

Effective July 5, 2000, all references in the Seattle Municipal Code Chapters 22.800 through 22.808 to "Department of Construction and Land Use," "Department of Design,

Construction and Land Use," "Director of Construction and Land Use," "Director of Design, Construction and Land Use," or "Seattle Public Utilities" shall be deemed references to "DCLU," "DCLU," "Director of DCLU," "Director of DCLU" or "SPU," respectively. The City's Code Reviser is authorized to amend the Seattle Municipal Code Chapters 22.802 through 22.808 over time as he or she deems appropriate in order to carry out these changes.

### **22.801.020 "A"**

#### **ABANDONED SOLID WASTE DISPOSAL**

**SITE** means a site that is no longer in use and where solid waste was disposed with or without a permit.

**AGENCY** means any governmental entity or its subdivision.

**AGENCY WITH JURISDICTION** means those agencies with statutory authority to approve, condition or deny permits, such as the United States Environmental Protection Agency, the Washington State Department of Ecology or the Seattle/King County Department of Public Health.

**AMERICAN PETROLEUM INSTITUTE (API) OIL/WATER SEPARATOR:** See

**OIL/WATER SEPARATOR, AMERICAN PETROLEUM INSTITUTE (API).**

**APPROVED** means approved by either the Director of Design, Construction and Land Use or the Director of Seattle Public Utilities.

**AS-GRADED** means the surface condition existing after completion of grading.

### **22.801.030 "B"**

**BACKFILLING** means returning a site to its original or approved contours after earth materials were removed for construction purposes.

**BASIN PLAN** means a plan to manage the quality and quantity of stormwater in a watershed, including watershed action plans.

**BENCH** means a relatively level step excavated into earth material on which fill is to be placed.

**BEST MANAGEMENT PRACTICE (BMP)**

means a physical, chemical, structural or managerial practice or device that prevents, reduces, or treats contamination of water or which prevents or reduces soil erosion. When the Directors develop rules and/or manuals prescribing best management practices for particular purposes, whether or not those rules and/or manuals are adopted by ordinance, BMPs prescribed in the rules and/or manuals shall be the BMPs required for compliance with this subtitle.

1. **NON-STRUCTURAL or OPERATIONAL BEST MANAGEMENT PRACTICES** are those pollution control strategies that require modified or additional behavioral practices, such as sweeping a parking lot, or maintaining special equipment on site, such as spill response equipment.
2. **STRUCTURAL: BEST MANAGEMENT PRACTICES** are those pollution control strategies that require the construction of a structure or other physical modification on the site.

**BIOFILTRATION SWALE** means a long, gently sloped, vegetated channel designed and maintained to treat stormwater runoff through sedimentation, adsorption, and biological uptake. Grass is the most common vegetation, but wetland vegetation can be used if the soil is saturated.

**BUILDING PERMIT** means a document issued by The City of Seattle Department of Design, Construction and Land Use giving permission for construction or other specified activity in accordance with the Seattle Building Code (Chapter 22.100 SMC).

**22.801.040 "C"**

**CAUSE OR CONTRIBUTE TO A VIOLATION** means and includes acts or omissions that create a violation, that increase the duration, extent or severity of a violation, and that aid or abet a violation.

**CIVIL ENGINEER, LICENSED** means a person who is licensed by the State of Washington to practice civil engineering.

**COALESCING PLATE OIL/WATER**

**SEPARATOR** means a multi-chambered vault, containing a set of parallel, corrugated plates that are stacked and bundled together in the center of the vault. Coalescing plate separators are designed to remove dispersed oil and floating debris as well as in containing spills.

**COMBINED SEWER** - see PUBLIC COMBINED SEWER.

**COMPACTION** means the densification of a fill by mechanical means.

**CONTAINMENT AREA** means the area designated for conducting high-risk pollution generating activities for the purposes of implementing operational source controls or designing and installing structural source controls or treatment facilities.

**CONTAMINATE** means the addition of sediment, any other pollutant or waste, or any illicit discharge.

**CUT** means the changing of a grade by excavation.

**22.801.050 "D"**

**DCLU** means the Department of Design, Construction and Land Use.

**DAMAGES** means monetary compensation for harm, loss, costs, or expenses incurred by the City, including, but not limited to, the following: costs of abating violations of this subtitle or public nuisances; fines or penalties the City incurs as a result of a violation of this subtitle; and costs to repair or clean the public drainage control system as a result of a violation. For the purposes of this subtitle, it does not include compensation to any person other than the City.

**DESIGN STORM** means a rainfall event used in the analysis and design of drainage facilities.

**DESIGNATED RECEIVING WATERS** means the Duwamish River, Puget Sound,

Lake Washington, Lake Union, and the Lake Washington Ship Canal, and other receiving waters designated by the Director of SPU as having the capacity to receive drainage discharges.

**DETENTION** means temporary storage of drainage water for the purpose of controlling the drainage discharge rate.

**DETENTION SYSTEM** means a facility designed to control the discharge rate of stormwater runoff from a site by detaining flows in a tank or vault.

**DEVELOPMENT** means land disturbing activity or the addition or replacement of impervious surface.

**DEVELOPMENTAL COVERAGE** means all areas within a site planned for land disturbing activity or new or replaced impervious surface.

**DIRECTOR** means the Director of the Department authorized to take a particular action, and the Director's designees, who may be employees of that department or another City department.

**DIRECTOR OF DESIGN, CONSTRUCTION AND LAND USE** means the Director of the Department of Design, Construction and Land Use of The City of Seattle and/or the designee of the Director of Department of Design, Construction and Land Use, who may be employees of that department or another City department.

**DIRECTOR OF SEATTLE PUBLIC UTILITIES** means the Director of Seattle Public Utilities of The City of Seattle and/or the designee of the Director of Seattle Public Utilities, who may be employees of that department or another City department.

**DISCHARGE POINT** means the location to which drainage water from a specific site is released.

**DISCHARGE RATE** means the rate at which drainage water is released from a specific site. The discharge rate is expressed as

volume per unit of time, such as cubic feet per second.

**DRAINAGE BASIN** means the tributary area through which drainage water is collected, regulated, transported, and discharged to receiving waters.

**DRAINAGE CONTROL** means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a site, or separating, treating or preventing the introduction of pollutants.

**DRAINAGE CONTROL FACILITY** means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water.

**DRAINAGE CONTROL PLAN** means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities.

**DRAINAGE CONTROL SYSTEM** means a system intended to collect, convey and control release of only drainage water. The system may serve public or private property. It includes constructed and/or natural components such as ditches, culverts, streams and drainage control facilities.

**DRAINAGE WATER** means stormwater, snow melt, surface water, surface and irrigation runoff, water from footing drains and other drains approved by the Director of SPU or installed in compliance with this subtitle and rules which may be adopted hereunder. Other water which is not an illicit discharge as defined in Section 22.802.012C shall be considered drainage water if it drains from the exterior of a building or structure, a pervious or impervious surface, or undeveloped land, or by surface or shallow subsurface flow.

**DREDGING** means the excavation of earth materials from land covered by water. The

term includes dredging that maintains an established water depth.

#### **22.801.060 "E"**

**EARTH MATERIAL** means any rock, gravel, natural soil or resedimented soil, or any combination thereof, and does not include any solid waste as defined by RCW Chapter 70.95.

**ENVIRONMENTALLY CRITICAL AREA** means an area designated in Chapter 25.09 of the Seattle Municipal Code.

**EROSION** means the wearing away of the ground surface as a result of mass wasting or of the movement of wind, water and/or ice.

**EXCAVATION** means the mechanical removal of earth material.

**EXISTING GRADE** means the natural surface contour of a site, including minor adjustments to the surface of the site in preparation for construction.

**EXPLORATORY EXCAVATION** means borings, or small pits, hand-dug or excavated by mechanical equipment. Exploratory excavation does not include preloading of the site.

#### **22.801.070 "F"**

**FILL** means material deposited, placed, pushed, pulled or transported to a place other than the place from which it originated.

**FILTER STRIP** means a gently sloping vegetated area that is designed and maintained to treat, through sedimentation, adsorption and biological uptake, stormwater runoff from overland sheet flow from adjacent paved areas before it concentrates into a discrete channel.

**FINISHED GRADE** means the grade upon completion of the fill or excavation.

**FLOW CONTROL** means controlling the discharge rate of stormwater runoff from the site through means such as infiltration or detention.

**FLOW CONTROL FACILITY** means a method, such as pursuant to this subtitle or

associated rules, for controlling the discharge rate of stormwater runoff from a site.

#### **22.801.080 "G"**

**GARBAGE** means putrescible waste.

**GEOTECHNICAL ENGINEER, EXPERIENCED** or **GEOTECHNICAL/CIVIL ENGINEER, EXPERIENCED** means a professional civil engineer licensed by the State of Washington who has at least four years of professional experience as a geotechnical engineer, including experience with landslide evaluation.

**GRADE** means the ground surface contour (see also EXISTING GRADE and FINISHED GRADE).

**GRADING** means excavation, fill, in-place ground modification, or any combination thereof, including the establishment of a grade following demolition of a structure.

**GRADING APPROVAL** means an approved component of a building permit relating to grading, as required by this subtitle.

#### **22.801.090 "H."**

**HIGH-RISK POLLUTION GENERATING ACTIVITIES** are the following:

1. Fueling operations that involve transferring fuel into mobile vehicles or equipment at permanent stations, temporary stations, and mobile fueling stations. Permanent stations include facilities, such as, but not limited to, commercial gas stations, maintenance yards, and private fleet fueling stations, where fuel is transferred from a dedicated fueling station. Temporary fueling stations include, but are not limited to, construction sites and any other site where fuel is temporarily stored and dispensed into vehicles or equipment. Mobile fueling stations are fueling operations where fuel is delivered to vehicles and equipment via mobile tank trucks.
2. Vehicle, equipment or building washing or cleaning, including any of the following:



mobile vehicle steam cleaning operations or vehicle washing at commercial car wash facilities, charity car washes, or permanent parking lots such as new, used, and rental car lots and fleet lots; outside washing of tools or other manufacturing equipment; outside cleaning of commercial cooking equipment such as filters and grills; or washing of buildings, including exteriors or mobile interior building cleaning services.

3. Truck or rail loading or unloading of liquid or solid materials that involves transferring non-containerized bulk liquids from truck or rail, or loading/unloading materials at a commercial or industrial loading dock.
4. Liquid storage in stationary above ground tanks, including storing liquid chemicals, fertilizers, pesticides, solvents, grease, or petroleum products in stationary above ground tanks.
5. Outside portable container storage of liquids, food wastes, or dangerous wastes including storing any of the following: vegetable grease, animal grease, or other accumulated food wastes; used oil; liquid feedstock; cleaning compounds; chemicals; solid waste as defined by SMC 21.36; or dangerous waste.
6. Outside storage of non-containerized materials, by-products, or finished products, including outside storage of any of the following: non-liquid pesticides or fertilizers; contaminated soil; food products or food wastes; metals; building materials, including, but not limited to, lumber, roofing material, insulation, piping, and concrete products; or erodible materials, including, but not limited to, sand, gravel, road salt, topsoil, compost, excavated soil, and wood chips.
7. Outside manufacturing activity including any of the following: processing; fabrication; repair or maintenance of vehicles, products or equipment; mixing; milling; refining; or sand blasting, coating,

painting, or finishing of vehicles, products, or equipment.

8. Landscape construction or maintenance, including any of the following: land disturbing activities as described in SMC 22.801.130; fertilizer or pesticide application near public drainage control system; and disposal of yard waste near a public drainage control system or riparian corridor.

**HIGH-USE** means any project planned to generate or accommodate any of the following:

1. Expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area. In addition, the following is high-use unless the responsible party demonstrates to the satisfaction of the Director of DCLU or of the Director of SPU that the project will generate less than 100 vehicles per 1,000 square feet of gross building area: uncovered parking lot accessory to any fast-food restaurant, convenience market, supermarket, shopping center, discount store, movie theater, athletic club, or bank.
2. Petroleum storage or transfer in excess of 1,500 gallons per year, not including delivered heating oil.
3. Storage, or maintenance of a fleet of 25 or more diesel vehicles that are over 10 tons net weight (including, but not limited to, trucks, buses, trains, heavy equipment).
4. Road intersections with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

#### **22.801.100 "I"**

**ILLCIT DISCHARGE** means the discharges defined by Section 22.802.012.

**IMPERVIOUS SURFACE** means any surface exposed to rainwater from which most water runs off including, but not limited to, paving,

packed earth material, oiled macadam or other treated surfaces, and roof surfaces, patios, and formal planters.

**IMPERVIOUS SURFACE, REPLACED -**

See REPLACED OR REPLACEMENT OF IMPERVIOUS SURFACE.

**INFILTRATION FACILITY** means a drainage facility that temporarily stores, and then percolates stormwater runoff into the underlying soil. Examples include, but are not limited to, infiltration trenches, ponds, vaults, and tanks.

**IN-PLACE GROUND MODIFICATION**

means activity occurring at or below the surface which is designed to alter the engineering parameters and physical characteristics of soil or rock, including, but not limited to, in-situ consolidation, solidification, void space reduction and infilling.

**INSPECTOR** means the City inspector, inspection agency, or licensed civil engineer performing the inspection work required by this subtitle.

**22.801.130 “L”**

**LAND-DISTURBING ACTIVITY** means any activity that results in a movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land-disturbing activities include, but are not limited to, clearing, grading, filling, excavation or addition or replacement of impervious surface.

**LARGE PROJECT** means a project including 5,000 square feet or more of new or replaced impervious surface or 1 acre or more of land disturbing activity.

**22.801.140 “M”**

**MASTER USE PERMIT** means a document issued by DCLU giving permission for development or use of land or street right-of-way in accordance with the Land Use Code (Title 23, Seattle Municipal Code).

**MEDIA FILTER** means a stormwater treatment system that utilizes a filtration

medium such as sand or leaf compost to remove pollutants via physical filtration and chemical adsorption or precipitation. Filters may be constructed underground in a vault or above ground in a pond. In both systems, stormwater that has passed through the filter media is collected in an underground pipe and discharged to the nearby drainage system.

**MUNICIPAL STORMWATER NPDES**

**PERMIT** means the permit issued to the City under the federal Clean Water Act for public drainage control systems within the City limits.

**22.801.150 “N”**

**NPDES** means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act.

**NPDES PERMIT** means an authorization, license or equivalent control document issued by the United States Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

**NONDESIGNATED RECEIVING WATERS**

means all creeks, streams and lakes in The City of Seattle not designated as receiving waters, including Green Lake, Haller Lake, and Bitter Lake and all the creeks and streams.

**22.801.160 “O”**

**OIL/WATER SEPARATOR** means a structure, usually underground, that is designed to provide quiescent flow conditions so that globules of free oil or other floatable materials that may be present in stormwater can float to the water surface and become trapped in the structure.

**OIL/WATER SEPARATOR, AMERICAN PETROLEUM INSTITUTE (API)** means a vault that has multiple chambers separated by baffles and weirs to trap oil in the vault. API oil/water separators are designed to remove

dispersed oil and floating debris and in containing spills.

**OIL/WATER SEPARATOR, COALESCING PLATE.** See COALESCING PLATE OIL/WATER SEPARATOR.

**OWNER** means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee, and the owner's duly authorized agent.

## **22.801.170 "P"**

**PERSON** means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual's or entity's heirs, successors and assigns.

**PLAN** means, for the purposes of this subtitle, and unless a different meaning is set forth or clearly required, a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents.

**PLOT PLAN** means a scaled map of a site and adjacent public rights-of-way showing locations and dimensions of various existing and proposed features, such as buildings, curbs, driveways, sidewalks, trees, grades and drainage patterns.

**PRELOADING** means the temporary stockpiling of earth material over a site for the purpose of consolidating the existing soils.

**PROJECT** means the addition or replacement of impervious surface or the undertaking of land disturbing activity on a site.

**PUBLIC COMBINED SEWER** means a publicly owned and maintained sewage system which carries drainage water and sewage and flows to a publicly owned treatment works.

**PUBLIC DRAINAGE CONTROL SYSTEM** means a drainage control system owned or used by The City of Seattle serving City streets and adjacent property.

**PUBLIC PLACE** means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

**PUBLIC STORM DRAIN** means the part of a public drainage control system which is wholly or partially piped, is owned or operated by a public entity, and is designed to carry only drainage water.

## **22.801.190 "R"**

**RECEIVING WATERS** means the waters ultimately receiving drainage water, including the Duwamish River, Puget Sound, Lake Washington, Lake Union, and the Lake Washington Ship Canal, including associated bays, but not including tributary streams, creeks and lakes. See also DESIGNATED RECEIVING WATERS and NONDESIGNATED RECEIVING WATERS.

**REPLACED IMPERVIOUS SURFACE or REPLACEMENT OF IMPERVIOUS SURFACE** means impervious surface that is removed down to earth material and a new impervious surface is installed.

**RESPONSIBLE PARTY** means all of the following persons:

1. owners and occupants of property within The City of Seattle; and,
2. any person causing or contributing to a violation of the provisions of this subtitle.

## **22.801.200 "S"**

**SPU** means Seattle Public Utilities.

**SAND FILTER** means a depression or basin with the bottom made of a layer of sand designed and maintained to filter pollutants. Stormwater is treated as it percolates through the sand layer.

**SANITARY SEWER** is as defined in the Side Sewer Ordinance, Seattle Municipal Code Section 21.16.030.

**SERVE** or **SERVICE**, when used regarding a document, means the procedures set forth in Section 22.808.030.

**SERVICE DRAIN** means a privately owned and maintained drainage control facility or system which carries only drainage water. Service drains include, but are not limited to, conveyance pipes, catch basin connections, downspout connections, pipes, and subsurface drain connections.

**SHORELINE DISTRICT** means all land regulated by the Shorelines Management Act of 1971 (RCW Chapter 90.58) or City Ordinances implementing it, as defined in the Land Use Code, Title 23 of the Seattle Municipal Code.

**SIDE SEWER** is as defined in the Side Sewer Ordinance, Seattle Municipal Code Section 21.16.030.

**SITE** means the lot or parcel, or portion of street, highway or other public right-of-way, or contiguous combination thereof, where a permit for the addition or replacement of impervious surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For development limited to a public street, each segment from mid-intersection to mid-intersection shall be considered a separate site.

**SLOPE** means an inclined ground surface. In this subtitle, the inclination of a slope is expressed as a ratio of horizontal distance to vertical distance.

**SMALL PROJECT** means a project with:

1. less than 5,000 square feet of new and replaced impervious surface; and
2. less than 1 acre of land disturbing activities.

**SOIL** means naturally deposited non-rock earth materials.

**SOLID WASTE** means solid waste as defined by SMC Section 21.36.016.

**SOURCE CONTROLS** mean structures or operations that prevent contaminants from coming in contact with stormwater through

physical separation or careful management of activities that are known sources of pollution.

1. **OPERATIONAL SOURCE CONTROLS** are those which require modified or additional behavioral practices, such as sweeping a parking lot, or maintaining special equipment on site, such as spill response equipment.
2. **STRUCTURAL SOURCE CONTROLS** are those which require the construction of a structure or other physical modification on the site.

**STANDARD DESIGN** is a design pre-approved by Seattle Public Utilities for drainage and erosion control available for use by a site with pre-defined characteristics.

**STORM DRAIN** - see PUBLIC STORM DRAIN and SERVICE DRAIN.

**STORMWATER** means water originating from rainfall and other precipitation, and from footing drains and other subsurface drains approved by the Director of SPU or installed in compliance with rules which may be adopted hereunder.

## **22.801.210 "T"**

**TERRACE** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

**TOPSOIL** means the weathered surface soil, usually including the organic layer, in which plants have most of their roots.

**TREATMENT FACILITY** means a method, such as pursuant to this subtitle and associated rules, designed to remove pollutants from stormwater runoff.

## **22.801.220 "U"**

**UNCONTAMINATED** means, for the purposes of this subtitle, not containing sediment or other pollutants or contaminants above natural background levels when referring to surface or groundwater; and not containing pollutants or contaminants in

levels greater than City-supplied drinking water when referring to potable water.

#### **22.801.240 “W”**

**WATERCOURSE** means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks or sides, in which surface waters flow. Watercourse includes small lakes, bogs, streams, creeks, and intermittent artificial components (including ditches and culverts) but does not include receiving waters.

**WETPOOL** means a permanent pool of water that is contained in the bottom of a wet pond or wet vault stormwater treatment facility. Water in the wetpool is normally lost only through evaporation, evapotranspiration, or slow infiltration into the ground. The wetpool, also referred to as dead storage, is designed to reduce the velocity of incoming stormwater flows, encouraging particulates and particulate-bound pollutants to settle in wet ponds and wet vaults.

**WETPOND** and **WETVAULT** mean stormwater treatment facilities that contain a permanent pool of water (wetpool). They are designed to settle out particles of fine sediment, and allow biologic activity to occur to metabolize nutrients and organic pollutants, by providing a long retention time. Wetvaults are covered by a lid.

## **Chapter 22.802**

# **STORMWATER, DRAINAGE, AND EROSION CONTROL**

#### **22.802.010 SCOPE AND EXEMPTIONS FROM SUBTITLE**

**A. General.** All discharges subject to this subtitle as set forth in Section 22.800.030, all land uses, additions and replacement of impervious surface, land disturbing activity, and grading shall comply with all requirements of this subtitle unless explicitly

exempted by this subtitle or by the Director exercising authority granted under this subtitle.

**B. Exemptions.** The following land uses are exempt from the provisions of this subtitle.

1. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade.
2. Forest practices regulated under Title 222 Washington Administrative Code, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses; and
3. Development undertaken by the Washington State Department of Transportation in state highway right-of-way that complies with standards found in Chapter 173-270 Washington Administrative Code, the Puget Sound Highway Runoff Program.

#### **22.802.012 PROHIBITED DISCHARGES**

**A. Stormwater Discharges to Sanitary and Combined Sewers.** In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of stormwater to a public combined sewer or sanitary sewer if other methods of controlling pollutants in the discharge are not adequate or reasonable, the discharging party certifies that the discharge will not harm the environment and will not overburden or otherwise harm the public combined sewer or sanitary sewer systems. The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations.

**B. Discharges Prohibited to Public Drainage Control Systems.** It is unlawful to make illicit discharges, as defined in subsection C below, either directly or indirectly to a public drainage control system.

### **C. Illicit Discharges Defined.**

1. Except as provided in subsection D below, all discharges which are not composed entirely of stormwater are illicit discharges. See Section 22.808.020 for defenses available to responsible parties.
2. The following is a partial list, provided for informational purposes only, of common substances which are illicit discharges when allowed to enter a public drainage control system:

Solid waste; human and animal waste; antifreeze, oil, gasoline, grease and all other automotive and petroleum products; flammable or explosive materials; metals in excess of naturally occurring amounts, whether in liquid or solid form; chemicals not normally found in uncontaminated water; solvents and degreasers; painting products; drain cleaners; commercial and household cleaning materials; pesticides; herbicides; fertilizers; acids; alkalis; ink; steam-cleaning waste; laundry waste; soap; detergent; ammonia; chlorine; chlorinated swimming pool or hot tub water; domestic or sanitary sewage; animal carcasses; food and food waste; yard waste; dirt; sand; and gravel.

- D. Permissible Discharges.** Discharges from the sources listed below shall only be illicit discharges if the Director of SPU determines that the type of discharge, whether singly or in combination with others, is causing or contributing to a violation of the City's NPDES stormwater permit or is causing or contributing to a water quality problem, such as those which contain more contamination than typical discharges in the City, or which contain a type of contamination that is more toxic or is otherwise a more serious problem than typical discharges in the City:

Potable water sources; washing of potable water storage reservoirs; flushing of potable water lines; natural uncontaminated surface water; natural uncontaminated groundwater; air conditioning condensation; natural springs; uncontaminated water from crawl

space pumps; runoff from lawn watering; irrigation runoff; runoff from residential car washing by individuals; flows from riparian habitats and wetlands; heat; discharges in compliance with an NPDES permit; and discharges from approved footing drains and other subsurface drains or, where approval is not required, installed in compliance with this subtitle and rules promulgated pursuant to this subtitle.

- E. Exemption.** Discharges resulting from public firefighting activities, but not from activities not related to firefighting such as the maintenance or cleaning of firefighting equipment, are exempt from regulation under this Section.

- F. Testing for Illicit Discharges.** When the Director of SPU has reason to believe that any discharge is an illicit discharge, the Director of SPU may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the Director of SPU may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

### **22.802.013 REQUIREMENTS FOR ALL DISCHARGES AND LAND USES**

- A.** For all discharges except those that drain only to the public combined sewer, responsible parties shall implement and maintain operational source controls, including, but not limited to, the following, as further described in rules promulgated by the Director:
1. Maintaining drainage control systems such as conveyance systems, detention systems and treatment systems;
  2. Maintaining streets, driveways, parking lots and sidewalks; and
  3. Identifying and eliminating illicit connections to the drainage control system.

B. For high-risk pollution generating activities except those that discharge only to the public combined sewer:

1. Operational source controls shall be implemented for the high-risk pollution generating activities as specified in rules promulgated jointly by the Directors of SPU and DCLU. Operational source controls for high-risk pollution generating activities shall include, but are not limited to, enclosing, covering, or containing the activity, developing and implementing inspection and maintenance programs, sweeping, and training employees on pollution prevention.
2. Spill prevention shall be required. Parties responsible for undertaking, operating, or maintaining the high-risk pollution generating activities are required to do the following, as further defined in rules promulgated by the Director:
  - a. Develop and implement plans and procedures to prevent spills and other accidental releases of materials that may contaminate stormwater. This requirement may be satisfied by a Stormwater Pollution Prevention Plan prepared in compliance with an NPDES industrial stormwater permit for the site;
  - b. Implement procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of stormwater; and
  - c. Provide necessary containment and response equipment on-site, and training of personnel regarding the procedures and equipment to be used.
3. The responsible parties are required to make plans, procedures, and schedules required by this subsection available to the Director of SPU when requested.

C. If the Director of SPU determines that discharges from a drainage control facility are causing or contributing to a water quality problem, such as, but not limited to,

discharges that violate the City's municipal stormwater NPDES permit or that cannot be adequately addressed by the required operational or structural best management practices, then the Director of SPU may require the responsible party to undertake more stringent or additional best management practices. These best management practices may include operational or structural best management practices or other action necessary to cease causing or contributing to the water quality problem or violation of the City's permit. Structural best management practices may include but shall not be limited to drainage control facilities, structural source controls, treatment facilities, constructed facilities such as enclosures, covering and/or berming of container storage areas, and revised drainage systems. For existing discharges as opposed to new projects, the Directors of SPU and DCLU shall allow twelve (12) months to install a new flow control facility, structural source control or treatment facility after a Director determines pursuant to this subsection that discharges from a site are causing or contributing to a water quality problem and notifies the responsible party in writing of that determination and of the flow control facility, structural source control or treatment facility that must be installed.

- D. Release reporting requirements. A responsible party is required to, at the earliest possible time, but in any case within 24 hours of discovery, report to the Director of SPU, a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage control system. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.
- E. Natural drainage patterns. Natural drainage patterns shall be maintained.
- F. Obstruction of watercourses. Watercourses shall not be obstructed.

**22.802.015 DRAINAGE, EROSION CONTROL, AND SOURCE CONTROL REQUIREMENTS FOR ALL LAND DISTURBING ACTIVITIES OR ADDITION OR REPLACEMENT OF IMPERVIOUS SURFACE**

**A. Compliance required.** All land disturbing activities or addition or replacement of impervious surface are required to comply with this section, even where drainage control review is not required. Exception: Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, is not required to comply with the provisions of this section except subsection C3 below.

**B. Approval of exceptions required.** Exceptions to the requirements of this subtitle may not be used on any projects, including those that do not require drainage control review, unless allowed by this subtitle, by rule promulgated jointly by the Director of SPU and the Director of DCLU, or approved by the Director of DCLU. Approval shall be obtained prior to initiating land disturbing activities or adding or replacing impervious surface. Approvals are required for exceptions to any and all requirements of this subtitle, including, but not limited to, the requirement that natural drainage patterns be maintained and the requirement that watercourses not be obstructed.

**C. Requirements for all projects.**

1. Discharge Point. The discharge point for drainage water from each site shall be selected as set forth in rules promulgated jointly by the Directors of SPU and DCLU specifying criteria, guidelines, and standards for determining drainage discharge points to meet the purposes of this subtitle. The criteria shall include, but not be limited to, preservation of natural drainage patterns and whether the capacity of the drainage control system is adequate for the additional volume. For those projects meeting the drainage review threshold, the proposed discharge

point shall be identified in the drainage control plan required by Section 22.802.020, for review and approval or disapproval by the Director of DCLU.

2. Flow control. The peak drainage water discharge rate from the portion of the site being developed shall not exceed 0.2 cubic feet per second per acre under 25-year, 24-hour design storm conditions or 0.15 cubic feet per second per acre under 2-year, 24-hour design storm conditions unless the site discharges water directly to a designated receiving water or to a public storm drain which the Director of SPU determines has sufficient capacity to carry existing and anticipated loads from the point of connection to a designated receiving water body. Projects with more than 2,000 square feet of new and replaced impervious surface shall be required to install and maintain a flow control facility, in accordance with rules promulgated by the Director, that is sized for the volume of runoff routed through the facility. Approved exceptions and flow control methods may be prescribed in rules promulgated by the Director.
3. Construction stormwater control. During land disturbing activities or addition or replacement of impervious surface, temporary and permanent construction controls shall be used to accomplish the following (a-g). Rules promulgated jointly by the Directors of SPU and DCLU specify the minimum required controls as well as additional controls that may be required by the Director of DCLU when minimum controls are not sufficient to prevent erosion or transport of sediment or other pollutants from the site.
  - a. Prevent on-site erosion by stabilizing all soils, including stock piles, that are temporarily exposed. Methods such as, but not limited to, the installation of seeding, mulching, matting, and covering may be specified by rules promulgated by the Director. From October 1 to April 30, no soils shall remain unstabilized for more than two



- days. From May 1 to September 30, no soils shall remain unstabilized for more than seven days.
- b. Before the completion of the project, permanently stabilize all exposed soils that have been disturbed during construction. Methods such as permanent seeding, planting, and sodding may be specified by rules promulgated by the Director.
  - c. Prevent the transport of sediment from the site. Appropriate use of methods such as, but not limited to, vegetated buffer strips, stormdrain inlet protection, silt fences, sediment traps, settling ponds, and protective berms may be specified in rules promulgated by the Director.
  - d. During construction, prevent the introduction of pollutants in addition to sediment into stormwater. Appropriate methods, as prescribed in rules promulgated by the Director, include operational source controls such as, but not limited to, spill control for fueling operations, equipment washing, cleaning of catch basins, treatment of contaminated soils, and proper storage and disposal of hazardous materials.
  - e. Limit construction vehicle access, whenever possible, to one route. Stabilize access points as specified in rules promulgated by the Director to minimize the tracking of sediment onto public roads.
  - f. Inspect and maintain required erosion and sediment controls as prescribed in rules promulgated by the Director to ensure continued performance of their intended function.
  - g. Prevent sediment from entering all storm drains, including ditches, which receive runoff from the disturbed area.
4. Source control.
    - a. Effective January 1, 2001, structural source controls shall be installed for high-risk pollution generating activities to the maximum extent practicable to the portion of the site being developed, in accordance with rules promulgated by the Director, except in the following circumstances:
      - i. When that portion of the site being developed discharges only to the public combined sewer; or
      - ii. For normal residential activities unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; or adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City.
    - b. The structural source controls shall include, but not be limited to, the following, as further defined in rules promulgated jointly by the Directors:
      - i. Enclose, cover, or contain within a berm or dike the high-risk pollution generating activities;
      - ii. Direct drainage from containment area of high-risk pollution generating activity to a closed sump or tank for settling and appropriate disposal, or treat prior to discharging to a public drainage control system;
      - iii. Pave, treat, or cover the containment area of high-risk pollution generating activities with materials that will not interact with or break down in the presence of other materials used in conjunction with the pollution generating activity; and
      - iv. Prevent precipitation from flowing or being blown onto containment areas of high-risk pollution generating activities.
  5. Flood-prone areas. On sites within flood prone areas, responsible parties are

required to employ procedures to minimize the potential for flooding on the site and for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Seattle Municipal Code and rules promulgated thereunder, including, but not limited to, SMC Chapter 25.06 (Floodplain Development) and Chapter 25.09 (Environmentally Critical Areas), and in rules promulgated jointly by the Directors of SPU and DCLU to meet the purposes of this subtitle.

6. Natural drainage patterns. Natural drainage patterns must be maintained.
7. Obstruction of watercourses. Watercourses shall not be obstructed.
8. Water Quality Sensitive Areas. The Director of SPU may impose additional requirements for areas determined to be water quality sensitive areas.

D. The Director of DCLU may require sites with addition or replacement of 5,000 square feet or less of impervious surface and with less than one acre of land disturbing activity to comply with the requirements set forth in 22.802.016, in addition to the requirements set forth in this Section, when necessary to accomplish the purposes of this subtitle. In making this determination, the Director of DCLU may consider, but not be limited to, the following attributes of the site: location within an Environmentally Critical Area; proximity and tributary to an Environmentally Critical Area; proximity and tributary to an area with known erosion or flooding problems.

#### **22.802.016 ADDITIONAL REQUIREMENTS FOR LARGE PROJECTS**

**A. Applicability.** One acre or more of land disturbing activity or addition or replacement of 5,000 square feet or more of impervious surface shall comply with the requirements set forth in this section, in addition to the other applicable requirements of this subtitle.

Exception: Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, is not required to comply with the provisions of this section except subsection B7.

#### **B. Requirements**

1. Flow Control. Effective January 1, 2001, in addition to the discharge rate specified in Section 22.802.015, the peak drainage water discharge rate shall not exceed 0.5 cubic feet per second per acre in a 100-year, 24-hour design storm for portions of the site being developed that drain to a Class A or Class B Riparian Corridor, excluding Bitter Lake and Haller Lake, as defined by Section 25.09.020 or to a drainage control system that drains to a Class A or Class B Riparian Corridor, excluding Bitter Lake and Haller Lake.
2. Stormwater Treatment.
  - a. Effective January 1, 2001, stormwater treatment facilities shall be installed and maintained to treat that portion of the site being developed, as specified in this section and in rules promulgated jointly by the Directors of DCLU and SPU, unless the following conditions exist:
    - i. The site produces no stormwater runoff discharge as determined by a licensed civil engineer; or
    - ii. The entire project drains to a public combined sewer.
  - b. Stormwater treatment facilities shall be designed to treat the runoff volume from the 6-month, 24-hour storm, collected from the drainage area being routed through the facility.
  - c. One of the following stormwater treatment facilities shall be installed and maintained in accordance with rules promulgated jointly by the Directors: infiltration, wetpond, stormwater wetland, biofiltration swale, filter strip, wet vault, media filter, or an

- alternative technology if the conditions in subsection e below are met.
- d. For high-use sites, one of the following stormwater treatment facilities shall be installed and maintained in accordance with rules promulgated by the Director, in addition to other required treatment facilities:
    - i. Coalescing plate/oil water separator;
    - ii. Media filter;
    - iii. API oil/water separator; or
    - iv. An alternative technology if the conditions in subsection e below are met.
  - e. Alternative technology to meet runoff treatment requirements may be permitted if the following criteria are met, as further specified in rules promulgated jointly by the Directors of SPU and DCLU:
    - i. Treatment effectiveness monitoring is conducted, which requirement may be waived if sufficient research has been conducted to demonstrate to the Director of SPU's satisfaction that an alternative technology offers equivalent protection;
    - ii. Monitoring and maintenance records are reported to the Director of SPU at the end of each of the first three years following installation; and
    - iii. The applicant demonstrates to the Director of SPU's satisfaction that the alternative will provide protection equivalent to the methods prescribed in the applicable subsection c or d above.
  - f. The Director of SPU may ask the Washington State Department of Ecology to approve a commitment by the City to develop a water quality improvement plan to identify pollutants of concern and associated sources, prioritize drainage basins, and evaluate alternative improvement strategies. After such approval and consistent with its terms, the Directors may grant exemptions to or make inapplicable the treatment requirements of this Section 22.802.016 B2, pursuant to rules promulgated by the Directors.
3. Protection of Streams. Where stormwater is discharged directly to a stream or to a conveyance system that discharges to a stream, streambank erosion and effects on water quality in streams shall be minimized through the selection, design, installation, and maintenance of temporary and permanent controls.
  4. Protection of Wetlands. Where stormwater discharges directly to a wetland, as defined by SMC Chapter 25.09, or to a conveyance system that discharges to a wetland, the introduction of sediment, heat, and other pollutants and contaminants into wetlands shall be minimized through the selection, design, installation, and maintenance of temporary and permanent controls. Discharges to wetlands of exceptional value, as defined by SMC Chapter 25.09, shall maintain existing flows to the extent necessary to protect the functions and values of the wetland. Detention and treatment systems shall not be located within any wetland or its buffer. Prior to discharging to a wetland, alternative discharge locations shall be evaluated and infiltration options outside the wetland shall be maximized.
  5. Off-site Analysis. When the portion of a site being developed is within 1/4 mile of a stream and discharges directly to that stream, or to a drainage system that drains to that stream, impacts to off-site water quality resulting from the project are to be analyzed and mitigated. The analysis shall comply with this Section and rules the Directors may jointly promulgate pursuant to this Section. The analysis shall provide for mitigation of all surface water quality

or sediment quality impacts. The analysis shall evaluate impacts likely to occur 1/4 mile downstream from the project. The impacts to be evaluated and mitigated shall include at least the following:

- a. Amount of sedimentation;
  - b. Streambank erosion;
  - c. Discharges to groundwater contributing to recharge zones;
  - d. Violations of state or federal surface water, groundwater, or sediment quality standards; and
  - e. Spills and other accidental illicit discharges;
6. Inspection and Maintenance Schedule. Temporary and permanent drainage control and stormwater treatment facilities and other controls shall be inspected and maintained according to a schedule submitted to the Director. The schedule shall meet the requirements of this subtitle and rules promulgated under this subtitle.
7. Construction Stormwater Control. In addition to the requirements described above in Section 22.802.015, construction stormwater controls shall be used to accomplish the following (a-j). Rules promulgated by the Directors of SPU and DCLU specify the minimum required controls as well as additional controls that may be required by the Director when minimum controls are not sufficient to prevent the erosion or transport of sediment or other pollutants from the site. These controls (a-j below) and those required by 22.802.015 C3 shall be shown on a construction stormwater control plan complying with the requirements and purposes of this subtitle and rules promulgated hereunder and submitted to the Director. The construction stormwater control plan shall address at least the following (a-j) and Section 22.802.015 C3:

- a. Before leaving the site, stormwater runoff shall pass through a sediment trap, sediment pond, or similar device;
- b. In the field, clearing limits and any easements, setbacks, critical areas and their buffers, trees, and drainage courses shall be marked;
- c. Sediment ponds and traps, perimeter dikes, sediment barriers, and other erosion and sedimentation controls intended to trap sediment on site shall be constructed as a first step in grading. These controls shall be functional before the land disturbing activities take place. Earthen structures such as dams, dikes, and diversions shall be stabilized in accordance with Section 22.802.015 C3;
- d. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. In addition, slopes will be stabilized in accordance with Section 22.802.015 C3 above;
- e. Properties and waterways downstream from the project site shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of stormwater from the project site;
- f. All temporary on-site conveyance channels shall be designed, constructed, and stabilized to prevent erosion from the expected velocity of a 2-year, 24-hour design storm for the developed condition. Stabilization adequate to prevent erosion of outlets, adjacent streambanks, slopes, and downstream reaches shall be provided at the outlets of all conveyance systems;
- g. Whenever construction vehicle access routes intersect paved roads, the transport of sediment onto the paved road shall be minimized. If sediment is transported onto a paved road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from paved roads by shoveling or sweeping and shall be

transported to a controlled sediment disposal area. Street washing shall be allowed only after sediment is removed in this manner;

- h. All temporary erosion and sediment controls shall be removed within 30 days after final site stabilization is achieved or after the temporary controls are no longer needed, whichever is later. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized;
- i. When dewatering devices discharge on site or to a public drainage control system, dewatering devices shall discharge into a sediment trap or sediment pond or gently sloping vegetated area; and
- j. In the construction of underground utility lines, where feasible, no more than 500 feet of trench shall be opened at one time, unless soil is replaced within the same working day, and where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches. Trench dewatering devices shall discharge into a sediment trap or sediment pond.

## **22.802.020 DRAINAGE CONTROL REVIEW AND APPLICATION REQUIREMENTS**

### **A. Thresholds for drainage control review.**

Drainage control review and approval shall be required for any of the following:

- 1. Standard drainage control review and approval shall be required for the following:
  - a. Any land disturbing activity encompassing an area of 750 square feet or more;
  - b. Applications for either a master use permit or building permit that includes the cumulative addition of 750 square feet or more of land disturbing activity

and new and replaced impervious surface;

- c. Applications for which a grading permit or approval is required;
  - d. Applications for street use permits for the cumulative addition of 750 square feet or more of new and replaced impervious surface and land disturbing activity after the effective date of the Ordinance codified in this subtitle;
  - e. City public works project or construction contracts, including contracts for day labor and other public works purchasing agreements, for the cumulative addition of 750 square feet or more of new and replaced impervious surface and land disturbing activity to the site after the effective date of the Ordinance codified in this subtitle, except for projects in a City-owned right-of-way and except for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation;
  - f. Permit approvals and contracts that include any new or replaced impervious surface on a site deemed a potentially hazardous location, as specified in Section 22.800.050; or
  - g. Whenever an exception to a requirement set forth in this subtitle or in a rule promulgated under this subtitle is desired, whether or not review and approval would otherwise be required, including, but not limited to, alteration of natural drainage patterns or the obstruction of watercourses.
- 2. Large project drainage control review and approval shall be required for projects that include:
    - a. 5,000 square feet or more of new or replaced impervious surface; or
    - b. 1 acre or more of land disturbing activity.

3. The City may, by interagency agreement signed by the Directors of SPU and DCLU, waive the drainage and erosion control permit and document requirements for property owned by public entities, when discharges for the property do not enter the public drainage control system or the public combined sewer system. Whether or not they are required to obtain permits or submit documents, public entities are subject to the substantive requirements of this subtitle, unless exceptions are granted as set forth in Section 22.808.010.

**B. Submittal requirements for drainage control review and approval**

1. Information Required for Standard Drainage Control Review. The following information shall be submitted to the Director for all projects for which drainage control review is required.
  - a. Standard Drainage Control Plan. A drainage control plan shall be submitted to DCLU. Standard designs for drainage control facilities as set forth in rules promulgated by the Director may be used.
  - b. Construction Stormwater Control Plan (Standard Erosion and Sediment Control Plan). A construction stormwater control plan demonstrating controls sufficient to determine compliance with Section 22.802.015 C3 shall be submitted. The Director may approve a checklist in place of a plan, pursuant to rules promulgated by the Director.
  - c. Memorandum of Drainage Control. The owner(s) of the site shall sign a "memorandum of drainage control" that has been prepared by the Director of SPU. Completion of the memorandum shall be a condition precedent to issuance of any permit or approval for which a drainage control plan is required. The applicant shall file the memorandum of drainage control with

the King County Department of Records and Elections so as to become part of the King County real property records. The applicant shall give the Director of SPU proof of filing of the memorandum. The memorandum shall not be required when the drainage control facility will be owned and operated by the City. A memorandum of drainage control shall include:

- i. The legal description of the site;
- ii. A summary of the terms of the drainage control plan, including any known limitations of the drainage control facilities, and an agreement by the owners to implement those terms;
- iii. An agreement that the owner(s) shall inform future purchasers and other successors and assignees of the existence of the drainage control facilities and other elements of the drainage control plan, the limitations of the drainage control facilities, and of the requirements for continued inspection and maintenance of the drainage control facilities;
- iv. The side sewer permit number and the date and name of the permit or approval for which the drainage control plan is required;
- v. Permission for the City to enter the property for inspection, monitoring, correction, and abatement purposes;
- vi. An acknowledgment by the owner(s) that the City is not responsible for the adequacy or performance of the drainage control plan, and a waiver of any and all claims against the City for any harm, loss, or damage related to the plan, or to drainage or erosion on the property, except for claims arising from the City's sole negligence; and

- vii. The owner(s)' signatures acknowledged by a notary public.
  - 2. Information required for large project drainage control review. In addition to the submittal requirements for Standard Drainage Control Review, the following information is required for projects that include 1 acre or more of land disturbing activities or 5,000 square feet or more of new and replaced impervious surface.
    - a. Comprehensive Drainage Control Plan. A comprehensive drainage control plan, in lieu of a Standard Drainage Control Plan, to comply with the requirements of this subtitle and rules promulgated hereunder and to accomplish the purposes of this subtitle shall be submitted with the permit application. It shall be prepared by a licensed civil engineer in accordance with standards adopted by the Director of DCLU.
    - b. Inspection and Maintenance Schedule. A schedule shall be submitted that provides for inspection of temporary and permanent drainage control facilities, treatment facilities, and source controls to comply with Sections 22.802.015 and 22.802.016.
    - c. Off-site analysis. When the portion of a site being developed is within 1/4 mile of a stream and discharges directly to that stream, or to a drainage control system that discharges to that stream, an analysis of impacts to off-site water quality resulting from the project prepared in accordance with Section 22.802.016 shall be submitted.
    - d. Construction Stormwater Control Plan. A construction stormwater control plan prepared in accordance with Sections 22.802.015 and 22.802.016 shall be submitted.
  - 3. Applications for drainage control review and approval shall be prepared and submitted in accordance with provisions of this Section, with Chapter 21.16, Side Sewers, and with associated rules and regulations adopted jointly by the Directors of DCLU and SPU.
  - 4. The Director of DCLU may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this subtitle and other laws and regulations, including, but not limited to, SMC Chapter 25.09, Regulations for Environmentally Critical Areas. The Director of DCLU may also require appropriate information about adjoining properties that may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.
  - 5. Where an applicant simultaneously applies for more than one of the permits listed in subsection A above for the same property, the application shall comply with the requirements for the permit that is the most detailed and complete.
- C. Authority to Review.** The Director of DCLU may approve those plans that comply with the provisions of this subtitle and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this subtitle. submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. The Director of DCLU may review and inspect activities subject to this subtitle and may require compliance regardless of whether review or approval is specifically required by this Section. The Director of DCLU may disapprove plans that do not comply with the provisions of this subtitle and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

#### **22.802.040 DRAINAGE CONTROL PLAN REGISTRY**

The Director of SPU shall maintain an official registry and permanent file of all approved drainage control plans. Each plan shall be cataloged in the registry according to the property address, legal description of the property, and the side sewer permit number of the permit or approval for which the plan is required. Where a drainage control plan covers more than one property, the approved plan shall be cataloged for each property covered by the plan.

#### **22.802.060 INSTALLATION OF DRAINAGE CONTROL FACILITIES**

- A. All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage control system, shall be considered side sewers and shall be subject to Title 21 of the Seattle Municipal Code, the SPU Director's Rules promulgated under that Title, and the design and installation specifications and permit requirements of the SPU and the Department of DCLU for side sewer and drainage control systems.
- B. Side sewer permits and inspections shall be required for construction, capping, alterations, or repairs of privately owned and operated drainage control systems as provided in Chapter 21.16 of the Seattle Municipal Code. When the work is ready for inspection, the permittee shall notify the Director of SPU. If the work is not in accordance with plans approved under this subtitle and in accordance with Chapter 21.16, SPU and Department of DCLU Director's Rules, and SPU and Department of DCLU design and installation specifications, the SPU, after consulting with the Department of DCLU, may order the work stopped by written notice to the persons engaged in performing the work or causing the work to be done, and may require modifications as provided in this subtitle and Chapter 21.16.

#### **22.802.070 MODIFICATIONS OF DRAINAGE CONTROL FACILITIES DURING CONSTRUCTION**

- A. During construction the Director of SPU may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be modified if physical conditions are discovered on the site which are inconsistent with the assumptions upon which the approval was based, including, but not limited to, unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas. Modifications shall be submitted to the Director of DCLU for approval prior to implementation.
- B. Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the Director of SPU.

#### **22.802.090 MAINTENANCE AND INSPECTION**

- A. **Responsibility for Maintenance and Inspection.** Drainage control facilities, source controls, and stormwater treatment facilities required by this subtitle and by rules adopted hereunder, shall be maintained as specified in rules promulgated by the Director, by the owner and other responsible party. The owner and other responsible party shall inspect permanent drainage control facilities at least annually, and shall inspect temporary drainage control facilities and other temporary best management practices or facilities on a schedule consistent with Section 22.802.016 B6 of this subtitle and sufficient for the facilities to function at design capacity. The Director of SPU may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to insure functioning at design capacity. The owner(s) shall inform future purchasers and other successors and assignees to the property of the existence of the drainage control facilities and the elements of the drainage control plan, the



limitations of the drainage control facilities, and the requirements for continued inspection and maintenance of the drainage control facilities.

**B. Inspection by City.** The Director of SPU may establish inspection programs to insure compliance with the requirements of this subtitle and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the City's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices.

**C. Entry for Inspection and Abatement Purposes.**

1. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall execute a permission form provided by the Director of SPU. The property owner shall grant the City the right to enter the property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant to

subsection B above, and to enter the property when the City has a reasonable basis to believe that a violation of this subtitle is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this subtitle.

2. Existing Land Uses and Discharges. Owners of property with existing discharges or land uses subject to this subtitle who are not installing a new drainage control facility or making a new connection between private property and a public drainage control system, sanitary sewer or combined sewer, has the option to execute a permission form for the purposes described above when provided with the form by the Director of SPU.

**D. Disposal of Waste from Maintenance**

**Activities.** Disposal of waste from maintenance of drainage and stormwater control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, Chapter 173-303 WAC, including any subsequent amendments to these provisions.

**E. Records of Installation and Maintenance**

**Activities.** When a new drainage control facility is installed, the party having the facility installed shall obtain a copy of the as-built plans from the Director of SPU. Responsible parties shall make records of the installation and of all maintenance and repair, and shall retain the records for at least ten years. These records shall be made available to the Director of SPU during inspection of the facility and at other reasonable times upon request of the Director of SPU.

## CHAPTER 22.804

### GRADING

#### 22.804.010 SCOPE

All grading shall comply with this subtitle and with federal, state and local laws and regulations, even where no permit or approval is required.

#### 22.804.020 GRADING IN AREAS OF SPECIAL FLOOD HAZARD

In addition to requirements for grading approval or permit set forth in this subtitle, any grading in areas of special flood hazard, as identified in the report entitled "Flood Insurance Study for King County, Washington and Incorporated Areas" and the accompanying Flood Insurance Rate Maps that are filed with the City Clerk in C.F. 296948, or located in a flood-prone area, is subject to additional standards and requirements, including floodplain development approval or a Floodplain Development License, as set forth in Chapter 25.06, the Seattle Floodplain Development Ordinance, of the Seattle Municipal Code, and any applicable requirements of Chapter 25.09, the Environmentally Critical Areas Ordinance.

#### 22.804.030 GRADING PERMIT OR APPROVAL REQUIRED

**A. Grading Permit Required.** A grading permit is required for all grading activities as specified below. Actions exempt from a grading permit are specified in subsection C.

**1. Special Sites.** A permit shall be required for any site located in any of the following areas if the combined volume of excavation, fill, dredging, or other movement of earth materials is more than twenty-five (25) cubic yards:

- a. Shoreline districts as defined in SMC 23.60.010. In addition to the permit requirement established in A.1, a permit is also required for any grading within ten feet (10') of the line

of mean higher high tide adjoining saltwater or the line of mean high water adjoining fresh water and for any grading of lands covered by water;

- b. Environmentally Critical Areas as defined in SMC 25.09 except liquefaction-prone and abandoned landfills. In addition to the permit requirement established in A.1:
  - i. A permit is required for any grading within wetlands and their buffers, or Riparian corridor buffers;
  - ii. Grading activities that increase the potential for earth movements or the risk of damage due to earth movement within steep slopes or other landslide hazard areas is prohibited;
- c. The drainage basins of Thornton Creek, Pipers Creek, Longfellow Creek, and Taylor Creek, as mapped by SPU, unless stormwater runoff from the site is discharged to a combined sewer system or otherwise piped (tightlined) to a drainage basin other than the named drainage basin.

**2. Potentially Hazardous Locations.** A permit is required for any site identified under the provisions of Section 22.800.050 for any volume of excavation, fill, dredging or other movement of earth materials.

**3. Grading Near Public Places.** A permit is required for all grading activities in excess of four feet (4'), measured vertically, on private property within any area between the vertical prolongation of the margin of a public place, and a one hundred percent (100%) slope line (forty-five degrees (45°) from a horizontal line) from the existing elevation of the margin of a public place to the proposed elevation of the private property.

**4. General Sites.** For sites not included in subsections A.1 and A.2 above, a permit is required where the grade at any location is

changed more than three feet (3') and either:

- a. The cumulative volume of excavation, fill, dredging or other movement of earth materials is more than 100 cubic yards over the lifetime of the site; or
- b. The grading will result in a slope steeper than three (3) horizontal to one (1) vertical.

**5. In-Place Ground Modification.** A permit is required for any site where in-place ground modification will take place. The Director of DCLU may waive the requirement for a permit when the Director determines the in-place ground modification will be insignificant in amount or type.

**6. Temporary Stockpiles.** A grading permit or approval is required for temporary stockpiles which meet the thresholds of subsections A-1, A-2 and A-4 above and are not located on sites for which a valid grading permit or grading approval has been issued.

#### **B. Grading Approvals Required.**

1. A grading approval is required for grading activities located on any site where a concurrent building permit is requested except that no approval is required for grading activities where the combined volume is less than the amounts specified for each site in subsection A above.
2. Where a grading approval is required and issued as a component of a building permit, no separate grading permit shall be required. This provision shall apply to grading which is incidental to construction, the temporary stockpiling of earth materials during construction and grading needed for other site improvements. Where there will be construction or placement of a building within the lifetime of the permit, the grading approval shall be a component of the building permit.

**C. Exemptions.** The following grading activities shall be exempt from a grading permit, but shall still comply with the provisions of this subtitle:

1. Activity conducted under a street use permit that specifically authorizes the grading work to be performed;
2. Excavations and filling of cemetery graves;
3. Exploratory excavations that comply with the requirements of Section 22.804.050;
4. Operation of sewage treatment plant sludge settling ponds;
5. Operation of surface mines for the extraction of mineral and earth materials subject to the regulations and under a permit of the State of Washington;
6. Stockpiling and handling of earth material when the earth material is consumed or produced in a process which is the principal use of the site and which complies with the requirements of Section 22.804.050;
7. Maintenance or reconstruction of active tracks and yards of a railroad in interstate commerce within its existing right-of-way;
8. Maintenance or reconstruction of the facilities of parks and playgrounds including work required for the protection, repair, replacement or reconstruction of any existing paths, trails, sidewalks, public improvement or public or private utility, and the stockpiling of material for maintenance activities;
9. Excavation and filling of post holes;
10. On-site work required for construction, repair, repaving, replacement or reconstruction of an existing road, street or utility installation in a public right-of-way;
11. Trenching and backfilling for the installation, reconstruction or repair of utilities on property other than a public right-of-way;

12. Grading done in performance of work authorized by the City for public works projects (see also Section 22.800.070);
13. Public works and other publicly funded activities on property owned by public entities, when discharges from the property do not enter the public drainage control system or the public combined sewer system, and the project will not undercut or otherwise endanger adjacent property, and the Director has waived the permit requirements by interagency agreement;
14. Underground storage tank removal and replacement that is subject to regulation by a state or federal agency, except where excavation meets the criteria of Section 22.804.030 A3, Grading Near Public Places.

**D. Compliance Required for All Grading.**

Any grading activity, whether or not it requires a grading permit or approval, shall comply with the provisions of this subtitle.

**22.804.040 GRADING PERMIT OR APPROVAL: APPLICATION REQUIREMENTS**

**A. General.** Application for a grading permit or approval shall be made to the Director of DCLU by the owner of the property to be graded. All applications shall contain the submittal information detailed in this section.

**B. Plans Required.**

1. **Projects Requiring Plans.** The information listed in subsection B2 below shall be provided on plans submitted with each application for a grading permit or approval. However, when the only grading included in an application is for an approved drainage control plan or is for excavation and replacement of earth material within an area four feet or less from the footing lines of a building or structure, the only information required is the location of temporary stockpiles.
2. **Information to Be submitted on Plans.** The following information shall be

submitted with applications for projects requiring plans.

- a. A general vicinity map and legal description of the site;
- b. A plot plan showing: location of existing buildings and structures, easements, utilities and other surface and above-ground improvements on the property where the work is to be performed; the approximate location of all buildings, structures and other improvements on adjacent land; the location of existing and planned temporary and permanent drainage control facilities, existing and proposed drainage discharge points, watercourses, drainage patterns, environmentally critical areas, and areas of standing water; the approximate location, type and size of trees and other vegetation on the site; designation of trees and vegetation to be removed, and the minimum distance between tree trunks and the nearest excavation and/or fill; and areas where equipment traffic will be permitted and excluded;
- c. The latest available topographic map, including cross-sections of the site and adjacent property, showing the present and proposed contours of the land at not more than two-foot (2') contour intervals, and the location and amount of all temporary stockpiles and excavations. On steeper sites, the Director of DCLU may authorize plans to show a contour interval greater than two feet (2') but in no case more than a five-foot (5') interval. The information relating to adjacent properties may be approximated;
- d. A drainage control plan as set forth in Section 22.802.020, except when the grading is limited to the area providing for vehicular and pedestrian access to the building or to the temporary stockpiling of excavated material.

3. **Number Required.** A minimum of three (3) sets of plans shall be submitted with each application for a grading permit. The number of plan sets required for grading approval applications shall be the same as required for the specific permit application. Additional sets may be required by the Director.
4. **Clarity of Plans.** Plans shall be drawn to a clearly indicated and commonly accepted scale upon substantial paper such as blueprint quality or standard drafting paper. Tissue paper, posterboard or cardboard will not be accepted. The plans shall be of microfilm quality and limited to a minimum size of 18 inches by 18 inches (18" x 18") and a maximum size of 41 inches by 54 inches (41" x 54").
5. **Preparation by Civil Engineer.** The grading plans shall be prepared by, or under the direction of, a licensed civil engineer for all applications where the total amount of materials graded is more than two thousand five hundred (2,500) cubic yards. The Director of DCLU may require that grading plans for lesser quantities be prepared by or under the direction of a licensed civil engineer for sites such as, but not limited to, those in geologic hazard zones and areas with known erosion problems.
6. **Stamping by Geotechnical Engineer.** When required by the Director of DCLU in accordance with the provisions of this subtitle, the grading plans shall be reviewed and stamped by the geotechnical engineer who performed the site analysis and report to indicate that the plans conform to the conclusions and recommendations of the report.

### **C. Information Required.**

1. **Required with Application.** The following information shall be submitted with grading plans at the time of application:
  - a. The disposal site for any excavated materials to be removed from the site. If the disposal site is located within the

City limits and is not an approved disposal site, an application for a grading permit for the disposal site shall be submitted at the same time as the application for grading permit or approval at the excavation site. In the event that the applicant is unable to specify the disposal site at the time of application, the applicant shall request, in writing, a postponement of the identification of the disposal site. The request shall include a commitment that the applicant will specify a disposal site acceptable to the Director of DCLU prior to any excavation;

- b. Where placement of a fill is proposed, a description of the composition of fill material and its structural qualities;
- c. Where any portion of the grading will encroach on an adjacent property, proof of ownership and an easement or authorization in accordance with Section 22.804.100;
- d. The immediate and long-term intended use of the property;
- e. Identification of past industrial or manufacturing uses or hazardous materials treatment, disposal or storage that have occurred on the site;
- f. Where a site is located in an area identified pursuant to Section 22.800.050, a copy of all applicable permit or approval applications, and/or permits and approvals from the appropriate regulatory agencies;
- g. When required by Section 22.802.020, an erosion/sediment control plan;
- h. Where the site is located in an area of potential landslide, a draft covenant complying with the requirements of Section 22.808.130.
- i. Each grading proposal shall contain provisions for the preservation of natural drainage patterns and watercourses; for reasonable

preservation of natural land and water features and other indigenous natural features of the site; and for replacement, where necessary, of vegetation or other means to control runoff.

2. Required after Initial Screening. The Director of DCLU may require the following information after the initial screening of a grading application:

- a. A description of methods to be used to minimize sediment or other pollution from leaving the site during and after construction and to protect cleared areas and cut and fill slopes from erosion;
- b. A time schedule of operations, including, but not limited to, implementation of the applicable requirements of Sections 22.802.015 and 22.802.016, clearing, minimization of grading of unprotected soil surfaces, restoration of topsoil and vegetative cover, and construction of improvements;
- c. A survey of boundaries and topography of the site and the grades of adjacent public rights-of-way prepared by a surveyor licensed by the State of Washington;
- d. A soils analysis complying with the following:
  - i. When Required. A soils analysis and report may be required when an application for a grading permit or approval is made for property located:
    - (A) In areas described in Section 22.800.050
    - (B) In areas where there is a potential for landslide
    - (C) In areas where grading may result in instability of the site or adjoining property
    - (D) In areas where soils may not be suitable for the use intended

(E) In areas where the Director determines pollutants are likely to be present or

(F) In any area where the Director determines that the information which would be supplied by a soils analysis and report is necessary for the review of the application.

ii Contents. The soils analysis and report shall include:

- (A) Data regarding the nature, distribution and strength of existing soils and subsurface conditions
- (B) History of the site including history of landslides, known excavations and fills, and location of utilities
- (C) Where appropriate as indicated by information provided under subsection B above, analytical testing of soils to determine the concentration of pollutants
- (D) Conclusions and recommendations for clearing the site, of the adequacy of the site for proposed immediate and long-term intended use, foundation, retaining and structural designs, grading methods, and construction and post-construction monitoring and
- (E) Other information as determined necessary by the Director to adequately evaluate compliance with the requirements of this subtitle and accomplishment of its purposes, such as an assessment of contamination when past industrial or chemical use have been present on the site.

iii. Preparation. The soils analysis and report shall be prepared by an

experienced geotechnical engineer or other equally qualified person approved by the Director. The Director may require that the plans and specifications be stamped and signed by the geotechnical engineer to indicate that the grading and proposed structure comply with the conclusions and recommendations of the reports.

- iv. **Minimal Risk.** In geologic hazard areas as identified in SMC Chapter 25.09, Regulations for Environmentally Critical Areas, the geotechnical engineer who prepared the soils analysis and report may be required to submit a letter stating that the plans and specifications conform to the recommendations of the soils analysis and report. The letter shall also state that, so long as conditions stated in the soils report are satisfied, areas disturbed by construction will be stabilized, the risk of damage to the proposed development or to adjacent properties from soil instability will be minimal, and the proposed grading and development will not increase the potential for soil movement.
- e. **Site Analysis.** For properties located in any of the areas identified in subsection d, an analysis and report of the following site factors. The analysis and report shall be prepared by a licensed civil engineer or other person approved by the Director.
  - i. A description of the hydrology of the site and the drainage basin in which the development is located.
  - ii. The effect of grading upon surrounding properties, watercourses and the drainage basin, including impacts on water quality and fish habitat when a stream, lake or other body of water

is affected. Where applicable, the analysis specified in Section 22.802.016 B5 may also be required.

- f. A letter in a form acceptable to the Director from the owner of the site stating that the owner understands and accepts the risk of developing in an area with potentially unstable soils and that the owner will advise, in writing, any prospective purchasers of the site, structures or portions of a structure about the landslide potential of the site.
- g. The Director may require additional information pertaining to the specific site and any other relevant information needed in order to assess potential hazards associated with the site and to determine whether a grading permit or approval should be issued.

## **22.804.050 GRADING REQUIREMENTS**

- A. Earth Movement.** Grading shall not create or increase the likelihood of earth movement, including, but not limited to, landslides, accelerated soil creep, settlement and subsidence, and hazards associated with strong ground motion and soil liquefaction of the site to be graded and adjoining properties.
- B. Natural Features.** Each grading proposal shall contain provisions for the preservation of natural drainage patterns and watercourses; for reasonable preservation of natural land and water features and other indigenous natural features of the site; and replacement, where necessary, of vegetation or other means to control runoff.
- C. Watercourses.** Grading shall not create or contribute to flooding, erosion, or increased turbidity, siltation or other forms of pollution in a watercourse, and shall comply with the applicable requirements of Chapter 22.802.
- D. Pollution Control.** Grading shall be performed, and the completed work shall be in accordance with, all applicable environmental laws, rules and regulations,

and with the applicable requirements of Chapter 22.802.

**E. Conformance with Plans.** Grading shall be performed in accordance with the plans approved by the Director of DCLU.

**F. Slopes.** Final graded slopes shall be no steeper than is safe for the intended use, and shall in no case be steeper than two (2) horizontal to one (1) vertical. For requirements for temporary slopes see Sections 22.804.050M and 22.804.100.

**G. Surface Preparation.** The ground surface shall be prepared to receive fill by removing vegetation, non-approved materials, topsoil and other unsuitable materials, including, but not limited to, mud, peat, and other materials with insufficient strength to satisfy the design as determined by the Director.

**H. Fills.** Fills shall be located so that the base edge of the fill is located more than 12 feet (12') horizontally from the top edge of an existing slope or a planned cut slope. A sloping fill shall not be placed on top of slopes which are steeper than one and one-half (1 1/2) horizontal to one vertical (1).

**I. Requirements For Fill Material.** Materials used in fills shall comply with the following requirements:

1. Material used in filling shall be appropriate to the site and the intended use of that portion of the site.
2. Fill shall be composed of earth materials. Any rock or other similar irreducible material used in a fill shall be of a maximum diameter of 12 inches (12") and shall compose not more than twenty percent (20%) of the total fill material.
3. Topsoil shall not be used as a fill material except that the upper 12 inches (12") of a fill site may be covered with topsoil.
4. No frozen or thawing material shall be used in a fill.
5. No solid waste, hazardous waste or hazardous material may be used in a fill.
6. No organic material shall be used in a fill unless approved by the Director.

7. As necessary, the Director shall specify other characteristics of the fill material used, the degree of compaction, moisture content and the method of placement appropriate to the site and the intended use of that portion of the site and the requirements for water retention, drainage control and erosion control.

**J. Terraces.** The Director may require steps and terraces sufficient to control surface drainage and deposit of debris. Suitable access to the terraces shall be provided to permit proper cleaning and maintenance.

**K. Subsurface Drainage.** Cut and fill slopes shall be provided with subsurface drainage when needed to maintain slope stability.

**L. Access.** When an adjoining site relies on the site to be graded for pedestrian or vehicular access, the Director may require reasonable access to be maintained to the adjoining site.

**M. Stockpiling of Earth Materials.**

1. General. Stockpiling of any kind shall not adversely affect the lateral support or significantly increase the stresses in or pressure upon any adjacent or contiguous property. Stockpiling shall comply with the applicable erosion control requirements for temporarily exposed soils set forth in Sections 22.802.015 and 22.802.016, and rules promulgated under those Sections.
2. Temporary Stockpiling During Construction or Grading. Temporary stockpiles of earth materials during construction or grading shall not exceed ten feet (10') in height. Stockpiles has slopes no greater than one (1) horizontal to one vertical (1).
3. Temporary Stockpiling During Dredging. Temporary stockpiles of earth materials excavated during dredging or maintenance dredging shall be subject to the approval of the Director of DCLU.
4. Stockpiling and Handling of Earth Materials in Processing. Earth materials consumed or produced in a process may



be stockpiled and handled on a site provided the process is the principal use of the site.

5. **Removal.** Temporary stockpiles shall be removed prior to final inspection for a grading permit where no building permit is issued on the same site. Where grading is approved as a component of a building permit, temporary stockpiles shall be removed prior to issuance of a Final Certificate of Occupancy or approval for occupancy after a final inspection.

**N. Exploratory Excavations.** Exploratory excavations shall be under the direction of a licensed civil engineer or experienced geotechnical engineer. No stockpiles of materials shall remain after completion of the exploratory activities. The grading shall comply with other requirements that may be established by the Director.

## **22.804.100 PROTECTION OF ADJOINING PROPERTY**

**A. General.** The provisions of this Section shall apply to permanent and temporary protection of, and encroachment on, adjoining property except as specifically limited. Permanent encroachment of grading on adjoining property shall require a separate permit under Section 22.804.030 for the adjoining property.

**B. Maximum Slopes.** When the existing grade of a site is altered by filling, excavating, dredging or moving of earth materials, the owner shall protect all adjoining property during construction from encroachment or collapse by sloping the sides of the temporary grading at a slope which is safe and not more than one horizontal to one vertical. In addition, adjoining property shall be protected from encroachment or collapse by sloping the sides of the permanent grading at a slope not greater than two horizontal to one vertical. The Director may approve temporary or permanent slopes of greater steepness based on a design by an experienced geotechnical engineer. In areas of known unsuitable soils, the Director may

require slopes of lesser steepness to assure protection of adjoining property.

### **C. Encroachments.**

1. All grading shall occur entirely within the site unless encroachment on adjoining property is allowed by the Director of DCLU. Encroachment may be permitted where the applicant provides one of the following:
  - a. Proof of ownership; or
  - b. An easement, granted by the fee owner of the encroached-upon property, which authorizes the encroachment on the adjoining property; or
  - c. A letter signed by the owner of the adjoining property, which authorizes such temporary encroachments during construction on the adjoining property as temporary change of grade, temporary stockpiling or shoring tiebacks.
2. Where an application for grading permit or approval includes an easement authorizing permanent encroachment on adjoining property, the easement instrument shall be provided to the Director by the applicant prior to issuance of any grading permit or approval. The instrument shall specify the purpose for granting the encroachment. The instrument shall be recorded with the King County Department of Records and Elections.
3. Any instrument authorizing temporary encroachment may terminate only after the grading work is completed in accordance with Section 22.804.200.

**D. Setbacks.** The tops and toes of graded slopes shall be set back from property boundaries and structures as far as is necessary for safety and foundation support and to prevent damage resulting from drainage or other water runoff, erosion or excessive loading.

**E. Screening.** The Director shall require view-obscuring planting or ground cover on sites with cut or fill slopes more than four feet in

height adjacent to lots zoned for or developed with residential uses.

#### **22.804.110 EROSION CONTROL**

**A. Methods.** Grading operations shall comply with the applicable requirements set forth in Sections 22.802.015 and 22.802.016 and rules promulgated thereunder. Devices or procedures for erosion control shall be initiated or installed prior to commencing grading operations when technically feasible, and in any case as soon thereafter as is technically feasible, and shall be maintained to function at design capacity.

**B. Exposure.** Grading operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. Grading operations shall comply with the applicable requirements for exposed soils, including best management practices, promulgated pursuant to Sections 22.802.015 and 22.802.016.

#### **22.804.120 BOUNDARY LOCATION**

The Director may also require sufficient staking of property lines, top and toe of the fill and all areas where equipment traffic is to be excluded. Stakes shall be at least two-inch by two-inch posts or one-half-inch pipes which are readily visible and durable. Stakes shall be maintained and visible during grading operations to enable the Director to determine property lines, the top and toe of the fill and excluded areas. A survey prepared by a land surveyor licensed by the State of Washington may be required.

#### **22.804.130 FENCING**

The Director may, where unauthorized material has been deposited during grading operations at a permitted grading site, require fencing and a lockable gate of suitable materials to control access to the grading site until all grading activity is complete, or until a Certificate of Occupancy is issued, whichever occurs last. Failure of the Director to require a fence shall not relieve the owner of liability arising out of access to and use of the site.

#### **22.804.140 GRADING APPLICATION: REFERRAL AND CONSULTATION**

The Director of DCLU may refer applications for grading, including plans and other required information and reports, to, and consult with, other agencies or City departments as may be appropriate. Comments and recommendations received shall be considered by the Director in making a decision regarding the grading application.

#### **22.804.150 GRADING APPLICATION: CANCELLATION**

An application shall be deemed abandoned and void if a permit is not issued after a period of 60 days from the date of notice of approval for issuance or if corrections are not received after a period of 60 days from the date of notification of required corrections. The Director of DCLU may extend the period for issuance or submission of corrections if it is determined that there are good reasons for the delay, such as litigation or appeals.

If the application is canceled, the site may be inspected to verify that no work has taken place. The application and any accompanying plans and specifications may be destroyed.

#### **22.804.160 GRANTING OR DENIAL OF GRADING APPROVALS AND PERMITS**

##### **A. Approval.**

1. The Director of DCLU may grant a grading permit or approval that complies with the requirements of this subtitle and rules promulgated thereunder. An approval may be granted with or without conditions, to assure compliance with the requirements of this subtitle. Conditions may include, but are not limited to, the following: restricting permit work to specific seasons or weather conditions; limiting vegetation removal; sequencing of work; requiring recommendations contained in the soils analysis and report to be followed; requiring observation by a licensed civil or geotechnical engineer; requiring special inspection pursuant to

Section 1701 of the Seattle Building Code; limiting quantities of soils; requiring structural safeguards; specifying methods of erosion, sedimentation, and drainage control; requiring compliance with other applicable provisions of this subtitle; specifying methods for maintenance of slope stability; retaining existing trees; requiring revegetation and grass seeding and/or long term maintenance activities; requiring compliance with SMC Chapter 25.09, Regulations for Environmentally Critical Areas, and other regulations of the City or other agencies with jurisdiction.

2. The Director may require that plans and specifications be stamped and signed by a licensed civil engineer or experienced geotechnical engineer to indicate that the grading and proposed structure comply with the conclusions and recommendations of any required reports.

**B. Denial.** The application for grading permit or approval may be denied if the Director determines that the plans do not comply with the requirements of this subtitle and rules promulgated hereunder, or do not accomplish the purposes of this subtitle, or the grading is inconsistent with the proposed development of the site, or the plans do not comply with other applicable federal, state and local laws and regulations.

**C. Limitations.** The issuance or granting of a grading permit of approval shall not be construed to be permission for, or an approval of, any violation of any of the provisions of this subtitle or rules promulgated hereunder, or of any other law or regulation.

#### **22.804.170 EXPIRATION OF GRADING PERMIT**

Grading permits shall be valid for eighteen (18) months and may be renewed for up to eighteen (18) additional months. Where advisable to satisfy the requirements or purposes of this subtitle, the Director may issue nonrenewable grading approvals which shall expire within a

period less than 18 months from date of issue. Requirements of this subtitle that are not explicitly temporary during the grading operations, including, but not limited to, requirements for erosion control, drainage and slope management, do not terminate with the expiration of the grading approval.

#### **22.804.180 GRADING INSPECTION**

**A. General.** The Director of DCLU may conduct or require inspection of grading sites to determine that work is done according to the grading approval. The permittee and owner shall be notified if the work is in violation. The Director may initiate enforcement action for work that is in violation.

**B. Preloading.** Preloading shall be conducted as directed and supervised by a licensed civil or experienced geotechnical engineer.

**C. Special Inspections.** The Director of DCLU may require periodic or continuous inspection from site inspection through foundation inspection by a licensed civil engineer, experienced geotechnical engineer or special inspector at the permittee's expense. Licensed civil and experienced geotechnical engineers or special inspectors shall be designated in accordance with Section 1701 of the Seattle Building Code, Chapter 22.100 of the Seattle Municipal Code. The approved inspector shall inspect in accordance with the duties specified in Section 1701 of the Seattle Building Code and rules adopted thereunder and shall:

1. Be present during the execution of all work the inspector has been approved to inspect;
2. Report to the job site in advance of grading operations to become familiar with approved plans and to inspect all materials to be used;
3. Not undertake or engage in other occupations which interfere or create a conflict of interest with the inspection duties during the work on the project;

4. Inspect the clearing, excavating, filling, compaction, grading, erosion and drainage control measures, and all other soils control aspects of the construction, and observe whether there is compliance with the approved plans;
5. Inspect soils for evidence of hazardous substances or wastes;
6. Observe whether the approved plans are sufficient to control the soil on the site and prevent off-site transport of sediment;
7. Immediately report all evidence of hazardous substances or wastes, irregularities, insufficiencies, substitutions of material or other changes from approved plans, and violations of this subtitle to the owner's architect, engineer or contractor. If the project is not brought immediately into compliance, the Director of DCLU shall be immediately notified. In any event, the Director of DCLU shall be immediately notified when any condition threatens public health, safety or welfare, private or public property, or the environment, whether or not the threat is immediate or likely;
8. Notify DCLU of the time schedule for off-site disposal of excavated material and, when within the City limits, of the location of and permit number of the approved disposal site; and
9. The special inspector may require soil grading reports prepared by a licensed civil engineer or experienced geotechnical engineer. These tests may include field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading but not shown on the approved plans and their effect on the recommendations.

**D. Other Inspections.** subject to the approval of the Director of DCLU, a person other than a licensed civil or experienced geotechnical engineer or special inspector may conduct the required inspection provided the person is under the supervision of a licensed civil

engineer or experienced geotechnical engineer and is qualified to conduct the inspection.

## **22.804.200 COMPLETION OF GRADING WORK**

**A. Final Inspection.** Upon completion of the work, the owner shall notify the Director of DCLU that the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage control facilities and their protective devices and all erosion control measures, have been completed in accordance with the final approved plans and required reports have been submitted. The owner also shall submit proof of the approval of other agencies with jurisdiction, if any are required, before a final grading approval is issued.

**B. Final Plans and Reports.** When grading plans have been modified during construction, the Director of DCLU may require an as-graded plan including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations, location of discharge points, elevations, and location and maintenance requirements of all surface and subsurface drainage control facilities as called out by a drainage control plan. The Director may require the comments from the person who prepared the original grading plans or soils report about changes made during grading and the effect of the changes.

## **22.804.210 GRADING MODIFICATIONS DURING CONSTRUCTION**

The Director of DCLU may require that grading operations and project designs be modified during operations if physical conditions are discovered on the site which are inconsistent with the assumptions upon which the approval was based, including, but not limited to, unexpected soil and/or water conditions, weather-generated problems, and undue delays caused by labor disputes.

## **CHAPTER 22.808**

# **ADMINISTRATION AND ENFORCEMENT**

### **22.808.010 EXCEPTIONS TO REQUIREMENTS**

**A. General.** Requests for exceptions to the requirements of this subtitle shall be made according to this section. Exceptions shall include alternative requirements, waivers, reductions, or modifications of the requirements. An exception shall only be granted to the extent necessary to meet the criteria set forth in this Section. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met. The Director may require an applicant to submit an engineer's report or analysis with a request for an exception. When an exception is granted, the Director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.

**B. Equally Protective Exceptions.** The Director may approve a request for an exception if the Director determines that it is likely to be equally protective of public health, safety and welfare, the environment, and public and private property as the requirement from which an exception is sought.

**C. Other Exceptions.** The Director may approve a requested exception even if it is not equally protective of public health, safety and welfare, the environment, and public and private property, or if the Director cannot determine whether it is equally protective, if the Director determines that substantial reasons exist for approving the requested exception. substantial reasons may include, but are not limited to:

1. The requirement is not technically feasible;
2. An emergency situation necessitates approval of the exception;
3. No reasonable use of the property is possible unless the exception is approved;
4. The requirement would cause harm or a significant threat of harm to public health, safety and welfare, the environment, or public and private property, or would cause extreme financial hardship, which outweighs its benefits, and the requested exception would not cause significant harm.

**D. Public Notice.** Public notice of an application for an exception under the criteria set forth in subsections C3 and C4 above, and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions, as set forth in SMC Chapter 23.76.

**E. Appeal.** In addition to rights under Chapter 3.02 of the Seattle Municipal Code, any person aggrieved by a Director's decision on an application for an exception under subsections C3 and C4 above may appeal to the Hearing Examiner's Office by filing an appeal, with the applicable filing fee, as set forth in SMC 23.76.022.

**F. Burden of Proof on Appeal.** The Hearing Examiner shall affirm the Director's determinations unless a determination is clearly erroneous. The person requesting an exception has the burden of proving, by a preponderance of the evidence, all issues related to justifying the exception.

### **22.808.020 LIABILITY AND DEFENSES OF RESPONSIBLE PARTIES**

**A. Who Must Comply.** It is the specific intent of this subtitle to place the obligation of complying with its requirements upon the responsible parties, as defined in Section 22.801.190. The City of Seattle and its agencies are intended to have the same obligation for compliance when the City is a responsible party. No provision of this

subtitle is intended to impose any other duty upon the City or any of its officers or employees.

**B. Joint and Several Liability.** Each responsible party is jointly and severally liable for a violation of this subtitle. The Director of SPU or the Director of DCLU or both of them may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party. In the event enforcement action is taken against more than one responsible party, recoverable damages, costs, and expenses may be allocated among the responsible parties by the court or the Hearing Examiner based upon the extent to which each responsible party's acts or omissions caused the violation, unless this factor cannot be determined, or the party receiving the allocation under this factor is unable to correct the violation, or is unable to pay the damages, costs, expenses, and any penalty imposed, in which case the trier of fact shall consider:

1. Awareness of the violation;
2. Ability to correct the violation;
3. Ability to pay the damages, costs, and expenses;
4. Cooperation with government agencies;
5. Degree to which any impact or threatened impact on water or sediment quality, human health, or the environment is related to acts or omissions by each responsible party.
6. Degree to which the responsible parties made good faith efforts to avoid a violation or to mitigate its consequences; and
7. Other equitable factors.

**C. Defenses.** A responsible party shall not be liable under this subtitle when the responsible party carries the burden of proving, by a preponderance of the evidence, one of the following defenses:

1. The violation was caused solely by an act of God;
2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;
3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. However, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant.
4. The responsible party implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls and best management practices identified in rules promulgated by the Director of DCLU and the Director of SPU, or in manuals published by the State Department of Ecology until superseded by rules of the Directors, or as otherwise identified and required of the responsible party by the Director in writing pursuant to this subtitle.

#### **22.808.025 RIGHT OF ENTRY**

With the consent of the owner or occupier of a building or premises, or pursuant to a lawfully-issued warrant, the Director of DCLU may enter a building or premises at any reasonable time to perform the duties imposed by this code.

#### **22.808.030 ENFORCEMENT ACTIONS**

**A. Investigation.** The Director of SPU or the Director of DCLU or both of them may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this subtitle.

**B. Notice of Violation.**

1. Issuance. Whenever the Director determines that a violation of this subtitle has occurred or is occurring, the Director is authorized to issue a Notice of Violation to the property owner or other responsible party. The Notice of Violation shall be considered an order of the Director.
2. Contents.
  - a. The Notice of Violation shall include the following information:
    - (1) A description of the violation and the action necessary to correct it;
    - (2) The date of the notice; and
    - (3) A deadline by which the action necessary to correct the violation must be completed.
  - b. A Notice of Violation may be amended at any time to correct clerical errors and to add citations of authority.
3. Service. The Director of SPU or the Director of DCLU shall serve the notice upon the responsible party either by personal service or by certified mail, return receipt requested, sent to the party's last known address and, where possible, by posting a copy on the site. Service by certified mail shall be effective on the date of mailing. If the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and either Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.

### **C. Alternatives to Notice of Violation.**

1. Stop Work Order.
  - a. In lieu of issuing a Notice of Violation, the Director of SPU or the Director of DCLU may order work on a site stopped when he or she determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this subtitle or rules promulgated hereunder

or to correct a violation of a permit or approval granted under this subtitle. The stop work notice shall contain the following information:

- (1) A description of the violation; and
  - (2) An order that the work be stopped until corrective action has been completed and approved by either Director.
- b. The stop work order shall be posted conspicuously on the premises or personally served on the property owner or other person known to be responsible for the work. It is unlawful for any work to be done after posting or service of a stop work order, except work necessary to conduct the required corrective action, until authorization to proceed is given by either Director. It is unlawful for any person to remove, obscure or mutilate a posted stop work order.
2. Emergencies.
    - a. The Director of SPU and the Director of DCLU are each authorized to enter any property when it reasonably appears that a condition associated with grading, drainage, erosion control or a drainage control facility creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The Director of SPU and the Director of DCLU each may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained.
    - b. The Director of SPU or the Director of DCLU or both of them may order the responsible party to take corrective action and set a schedule for compliance and may require immediate

compliance with an order to correct. Any emergency which is not corrected as ordered by the Director of SPU or the Director of DCLU is a public nuisance which each Director is authorized to abate summarily. The costs of abatement shall be collected as set forth in Section 22.808.080.

**D. Appeal of Director's Decisions.** Any Notice of Violation or final order other than a stop work order or emergency order issued by the Director of SPU or the Director of DCLU pursuant to this subtitle may be appealed to the Hearing Examiner by an aggrieved person. Appeals shall be initiated by filing a written notice with the applicable fee, as set forth in SMC Section 23.76.022. When, as set forth in Section 22.808.070, an invoice is issued without a prior hearing, the appeal period shall commence upon issuance of the invoice.

**E. Filing Notice or Order.** A Notice of Violation, voluntary compliance agreement or an order issued by a Director of SPU, Director of DCLU, Hearing Examiner or municipal Judge, may be filed with the King County Department of Records and Elections.

**F. Change of Ownership.** When a Notice of Violation, voluntary compliance agreement or an order issued by a Director of SPU, Director of DCLU, Hearing Examiner or municipal Judge has been filed with the King County Department of Records and Elections, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director of SPU or Director of DCLU may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

## **22.808.040 ENFORCEMENT OF NOTICE OF VIOLATION**

### **A. Hearing Examiner and Municipal Court.**

The Director of SPU or Director of DCLU or both of them may choose to enforce a Notice of Violation through either of the following means:

1. An enforcement hearing through the Hearing Examiner's Office, as set forth in this Section; or
2. Referral to the City Attorney's Office for action in the appropriate court according to that court's normal rules and procedures.

### **B. Enforcement Through Hearing**

**Examiner's Office.** Enforcement actions through the Hearing Examiner's Office shall proceed according to this subsection.

1. **Hearing Schedule.** The Hearing Examiner's Office shall schedule a hearing after notification by the Director that enforcement will be pursued through the Hearing Examiner's Office.
2. **Conduct of the Hearing.** The Hearing Examiner shall conduct a hearing on the violation pursuant to the rules of procedure of the Hearing Examiner, as modified by this Section. The Director, the person to whom the Notice of Violation was issued, and any other responsible party regarding the matters addressed in the Notice of Violation may participate as parties in the hearing, with or without representation by an attorney. Each party may call and compel the attendance of witnesses.
3. **Standard of Review and Burden of Proof.** The determinations of the Director of SPU and the determinations of the Director of DCLU shall be accorded substantial weight by the Hearing Examiner. The defending responsible party has the burden of proving by a preponderance of the evidence all defenses, mitigating factors and objections to the required corrective action or schedule.



4. **Hearing Examiner's Order.** The Hearing Examiner shall affirm, vacate or modify the Director's determinations. The Hearing Examiner shall issue an order within 15 days following the close of the record unless all parties agree to an extension of time. The order shall contain the following information:
  - a. The decision regarding the alleged violation;
  - b. Findings of fact and conclusions based thereon in support of the decision;
  - c. The required corrective action (if any);
  - d. The date and time by which the corrective action must be completed;
  - e. The monetary penalties and other costs, expenses, or damages being assessed against the responsible party;
  - f. Notice that the responsible party has twenty-one days from the date of issuance of the decision to petition for judicial review; and
  - g. Authorization for the City to abate or correct the violation following expiration of the appeal period and the time set for compliance with the order if the responsible party has not completed the required corrective action, and to charge the responsible party for its costs, as set forth in Section 22.808.080. The order shall not require the City to abate or correct the violation.
5. **Failure to Appear.** If the responsible party to whom the Notice of Violation was issued fails to appear at a scheduled hearing before the Hearing Examiner, and no other responsible party appears to defend, then, upon an offer of proof by the City, which may be made by declaration, the Hearing Examiner shall issue an order finding that the violation occurred. The order shall contain the information set forth in subsection B4 above. In the absence of an offer of proof by the City, the Hearing Examiner shall issue an order

finding the responsible party to be in default, and setting forth the penalties and other relief described in subsection B4.

#### **22.808.050 VOLUNTARY COMPLIANCE AGREEMENT**

- A. Initiation.** Either a responsible party or the Director of SPU or the Director of DCLU may initiate negotiations for a voluntary compliance agreement at any time. Neither Director has any obligation to enter into any voluntary compliance agreement.
- B. Contents.** A voluntary compliance agreement shall set forth actions to be taken by the responsible party that will correct past or existing violations of this subtitle. It may also set forth actions to mitigate the impacts of violations. The voluntary compliance agreement shall set forth a schedule for completion of the corrective and mitigating actions. It shall contain a provision allowing the Director of SPU and the Director of DCLU to inspect the premises to determine compliance with the agreement.
- C. Effect of Agreement.**
  1. A voluntary compliance agreement is a binding contract between the party executing it and the City. It is not enforceable by any other party. All voluntary compliance agreements shall provide that the responsible party agrees the City may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the City incurs in performing the actions, as set forth in Section 22.808.080 regarding abatements. By entering into a voluntary compliance agreement, a responsible party waives the right to an administrative appeal of the violation.
  2. Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the

responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred.

**D. Modification.** The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and either Director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications.

## **22.808.060 PENALTIES AND DAMAGES**

**A. Commencement of Penalties.** The Hearing Examiner and any Judge hearing matters under this subtitle has the following options in assessing monetary penalties:

1. Assess monetary penalties beginning on the date the Notice of Violation was issued and thereafter; or
2. Assess monetary penalties beginning on the correction deadline set by the Director or an alternate deadline for corrective action set by the Judge or Hearing Examiner, and thereafter; or
3. Assess no monetary penalties; or
4. When it appears likely the responsible party will perform the required corrective action, suspend assessment of the penalty conditioned upon completion of the corrective action by the ordered deadline.

### **B. Schedule of Penalties.**

1. **Basic Penalty.** Each day or portion thereof during which a violation of this subtitle exists is a separate violation of this subtitle. The cumulative monetary penalty for each violation of this subtitle shall be as follows:
  - a. The penalty for the first day a violation exists is one hundred dollars;
  - b. The penalty for the second day a violation exists is two hundred dollars;

- c. The penalty for the third day a violation exists is three hundred dollars;
- d. The penalty for the fourth day a violation exists is four hundred dollars;
- e. The penalty for each day a violation exists beyond four days is five hundred dollars.

### **Schedule of Penalties per Violation**

<i>Day</i>	<i>Fine for that Day</i>	<i>Cumulative Total</i>
1	\$100	\$100
2	\$200	\$300
3	\$300	\$600
4	\$400	\$1000
5	\$500	\$1500
6&up	\$500	

2. **Triple penalties.** Penalties may be trebled for:
  - a. A repeat violation, which means an additional violation of a requirement of this subtitle for which the responsible party has previously received a Notice of Violation and failed to correct the violation by the compliance date;
  - b. A violation resulting in physical harm to persons or to private or public property;
  - c. A knowing or deliberate violation;
  - d. A violation resulting from gross negligence or reckless conduct.
3. **Reduction of Penalties.** Penalties may be reduced based upon one or more of the following mitigating factors:
  - a. The person showed due diligence and/or substantial progress in correcting the violation;
  - b. Another responsible party was the primary cause of the violation;
  - c. The person was unaware of the violation and had not acted negligently or recklessly.

4. **Penalty for Significant Violation.** Responsible parties for violations causing significant harm to public health, safety or welfare, the environment, or public or private property shall be assessed the penalties set forth in the schedule above, or an amount equivalent to the economic benefit the responsible party derived from the violation, whichever is greater. "Significant harm" is harm which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of penalties, costs, expenses or damages under this subtitle. Economic benefit may be determined by an increase in market value of property, value received by the responsible party, savings in costs realized by the responsible party, increased income to the responsible party, or any other method reasonable under the circumstances.

**C. Damages.** Whoever violates any of the provisions of this subtitle shall, in addition to any penalties provided for such violation, be liable for any cost, expense, loss or damage occasioned thereby to the City, plus a charge of 15% for administrative costs. This subtitle does not establish a cause of action that may be asserted by any party other than the City. Penalties, damages, costs and expenses may be recovered only by the City.

**D. Effect of Payment of Penalties.** The person to whom an order is directed is not relieved of the duty to take corrective action to correct the violation by payment of a monetary penalty pursuant to this subtitle.

## **22.808.070 COLLECTION OF COSTS AND PENALTIES**

**A. Invoice and Demand for Payment.** When either Director has abated a public nuisance or corrected a violation of this subtitle and a hearing has not been conducted, the Director shall issue an invoice and demand for payment of the City's abatement costs. The invoice shall include:

1. The amount of the City's abatement or correction costs;
2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
3. A notice that the Director's determinations regarding the abatement and correction, including the amount owed, may be appealed to the Hearing Examiner by following the procedure set forth in SMC Section 23.76.022;
4. Notice that if the amount due is not paid within 30 days, the outstanding balance may be collected in any of the manners set forth in subsection B of this Section; and
5. Notice that interest shall accrue on the unpaid balance.

**B. Collection Following a Hearing.** The Director of DCLU and the Director of SPU are not required to issue an invoice for payment when a hearing has been conducted as set forth in Section 22.808.040, and an order has issued imposing any penalties, costs, damages, expenses or abatement costs. If the order is not appealed within 15 days of mailing or other delivery of the order to the responsible party, the Director of DCLU or the Director of SPU may immediately seek to collect the amounts owed by:

1. Referral to the City Attorney's Office for action in the appropriate court; or
2. Referral, after consultation with the City Attorney's Office to a collection agency; or
3. Addition of a surcharge in the amount owed under the order to the bill for drainage and wastewater services to the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law or SMC Section 21.33.110.

## **22.808.080 PUBLIC NUISANCE**

**A. Abatement Required.** A public nuisance affecting stormwater, drainage, erosion control, grading and other public nuisances set forth in this Section are violations of this subtitle. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

**B. Dysfunctional Facility or Practice.** Any private drainage control facility or best management practice relating to grading, stormwater, drainage control or erosion not installed or maintained as required by this subtitle, or otherwise found to be in a state of dysfunction creating, presently or in the event of a design storm, a threat to the public health, safety or welfare, the environment, or public or private property is hereby declared to be a public nuisance.

**C. Obstruction of Watercourse.** Obstruction of a watercourse without authorization by the Director, and obstruction in such a manner as to increase the risk of flooding or erosion should a design storm occur, is hereby declared to be a public nuisance.

**D. Dangerous Conditions.** Any condition relating to grading, stormwater, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a design storm, to the public health, safety or welfare, the environment, or public or private property is hereby declared to be a public nuisance.

**E. Abatement by the City.** The Director of SPU and the Director of DCLU are authorized, but not required, to investigate a condition that either Director suspects of being a public nuisance under this subtitle, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the Director of SPU or the Director of DCLU may summarily and without prior notice abate the condition. The Director of SPU or the Director of DCLU shall give notice of the abatement to the responsible party as soon as reasonably possible after the abatement.

**F. Collection of Abatement Costs.** The costs of abatement may be collected from the responsible party, including a reasonable charge for attorney time and a 15 percent charge for administrative expenses as set forth in Section 22.808.060C. Abatement costs and other damages, expenses and penalties collected by the City shall go into an abatement account for the department collecting the monies. The money in the abatement account shall be used for abatements and corrections of violations conducted by the City. When the account is insufficient the Director of SPU and the Director of DCLU may use other available funds.

## **22.808.090 VIOLATIONS**

### **A. Civil Violations.**

1. General. It is a violation of this subtitle to not comply with any requirement of, or to act in a manner prohibited by, this subtitle, or a permit, approval, rule, manual or order issued pursuant to this subtitle.
2. Aiding and Abetting. It is a violation of this subtitle to aid, abet, counsel, encourage, commend, incite, induce, hire or otherwise procure another person to violate this subtitle.
3. Alteration of Existing Drainage. It is a violation of this subtitle to alter existing drainage patterns which serve a tributary area of more than five acres without authorization or approval by the Director.
4. Obstruction of Watercourse. It is a violation of this subtitle to obstruct a watercourse without authorization or approval by the Director.
5. Dangerous Condition. It is a violation of this subtitle to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, stormwater, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property.

6. Interference. It is a violation of this subtitle for any person to interfere with or impede the correction of any violation, or compliance with any notice of violation, emergency order, stop work order, or the abatement of any nuisance.

#### **B. Criminal Violations.**

1. Failing to Comply with Orders. Failing to comply with an order properly issued pursuant to this subtitle by the Director of SPU, the Director of DCLU, the Hearing Examiner, or a Judge is a criminal violation, punishable upon conviction by a fine of not more than \$5,000 per day of each violation or imprisonment for each violation for not more than 360 days or both such fine and imprisonment.
2. Tampering and Vandalism. Tampering with or vandalizing a drainage control facility or other best management practice, a public or private drainage control system, monitoring or sampling equipment or records, or notices posted pursuant to this subtitle is a criminal violation, punishable upon conviction by a fine of not more than \$5,000 or imprisonment for not more than 360 days or both such fine and imprisonment.
3. Repeat Violations. Anyone violating this subtitle who has had a judgment or Hearing Examiner's order against them pursuant to this subtitle in the preceding five years, shall be subject to criminal penalties for the present violation, and, upon conviction thereof, be fined in a sum not to exceed \$5,000 dollars, or imprisonment for not more than 360 days, or both such fine and imprisonment.

#### **22.808.100 ADDITIONAL RELIEF**

In lieu of or in addition to any enforcement procedure provided in this subtitle, the Directors of SPU and DCLU may seek any other available legal or equitable relief, including to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this subtitle or a public nuisance.

#### **22.808.110 SUSPENSION OR REVOCATION**

Approvals or permits granted in error, or on the basis of incomplete, inaccurate or misleading information, or in violation of any law, ordinance or regulation may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this Section, including Certificates of Occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or revoked, the Director of SPU or the Director of DCLU may require the applicant to take corrective action to bring the project into compliance with this subtitle by a deadline set by the Director of SPU or the Director of DCLU, or may take other enforcement action.

#### **22.808.120 FEES**

Fees for grading permits, drainage control plan review and approvals shall be as set forth in the Fee Subtitle, Subtitle IX of Title 22, Seattle Municipal Code. Fees for recordkeeping or other activities pursuant to this subtitle shall, unless otherwise provided for in this subtitle, be prescribed by ordinance.

#### **22.808.130 FINANCIAL ASSURANCE AND COVENANTS**

As a condition precedent to issuance of any permit or approval provided for in this subtitle, the Director of DCLU may require an applicant for a permit or approval to submit financial assurances as provided in this Section.

##### **A. Insurance.**

1. The Director of DCLU may require the owner(s), or contractor to carry liability and property damage insurance against damage, naming the City as an additional insured. The amount shall be commensurate with the risks as determined by the Director.
2. The Director of DCLU may also require the owner(s) to maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted

pursuant to the permit or approval, or conditions caused by such activities, and naming the City as an additional insured. The policy shall be in an amount which the Director determines to be commensurate with the risks. It shall cover a period of not more than ten years from the date of issuance of a Certificate of Occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the Director of DCLU before issuance of a Certificate of Occupancy or finalization of a permit for any single family dwelling or duplex.

3. The insurance policy shall provide that the City will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the Director of DCLU who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a Certificate of Occupancy or approval for occupancy.

#### **B. Bonds, Cash Deposits or Instruments of Credit.**

##### **1. Surety Bond.**

- a. The Director of DCLU may require that the owner or contractor deliver to the Director for filing in the Office of the City Clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the Director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in the State of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be left in a safe condition. The bond shall also be conditioned that the

site and nearby, adjacent or surrounding areas will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.

- b. The bond will be exonerated one year after a determination by the Director of DCLU that the requirements of the permit or approval have been met. For work under a building permit, issuance of a Certificate of Occupancy or approval for occupancy following a final inspection shall be considered to be such a determination. For grading, completion of the final grading inspection and submittal of required final reports in accordance with Section 22.804.200 shall be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owner may elect to file a cash deposit or instrument of credit with the Director in an amount equal to that which would be required in the surety bond and in a form approved by the Director of DCLU. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

#### **C. Covenants.**

1. The Director of DCLU may require a covenant between the owner(s) of the property and the City. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the City. The covenant shall include:
  - a. A legal description of the property;
  - b. A description of the property condition making this subsection applicable;

- c. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
  - d. The application date, type, and number of the permit or approval for which the covenant is required; and
  - e. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the City by reason of or arising out of issuance of the permit or approval by the City for the development on the property, except only for such losses that may directly result from the negligence of the City.
2. The covenant shall be filed by the Director of DCLU with the King County Department of Records and Elections, at the expense of the owner, so as to become part of the King County real property records.

**D. Bonds for Grading Near Public Places.**

Security for grading activity covered under Section 15.44.020 shall be in accordance with Section 15.44.030.

**22.808.140 SEVERABILITY**

The provisions of this subtitle are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, Section or portion of this subtitle, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this subtitle or the validity of its application to other persons or circumstances.

**22.808.150 DATE OF INITIAL ENFORCEMENT**

The Directors of SPU and Construction and Land Use shall allow existing discharges and land uses six (6) months to adopt operational and nonstructural best management practices

after adoption of rules or after such best management practices have been communicated in writing by the Director following a site inspection, whichever comes first. The Directors shall allow existing discharges and land uses twelve (12) months to install structural best management practices after the Directors determine that discharges from a site are causing or contributing to a water quality problem, and notify the discharger in writing of that determination and of the best management practices which must be installed.