

ADMINISTRATIVE ORDER NO. 58-03-01-F
of the
City Manager pro tem of the City of Eugene

**AMENDMENT OF EROSION PREVENTION AND
CONSTRUCTION SITE MANAGEMENT PRACTICES
ADMINISTRATIVE RULE 6.645; AND REPEAL OF
ADMINISTRATIVE ORDER NO. 58-00-26-F.**

The City Manager pro tem of the City of Eugene finds that:

A. Sections 2.019 and 6.645 of the Eugene Code, 1971, authorize the City Manager to adopt rules deemed necessary for the administration and enforcement of the provisions of the Eugene Code, 1971.

B. Pursuant to that authority and based on the findings contained in Administrative Order No. 58-03-01 issued on January 15, 2003, I proposed the amendment of the Erosion Prevention and Construction Site Management Practices Administrative Rule and repeal of Administrative Order No. 58-00-26-F.

C. Notice of the proposed amendment was given by making copies available to any person who had requested such notice and by publication for five consecutive days in the Register Guard, a newspaper of general circulation within the City, on January 19, 20, 21, 22 and 23, 2003. Notice provided that written comments would be received for a period of 15 days from the date of the first publication. Two comments were received to which I make the following findings:

Comment 1: The definition of "Maximum Extent Practicable" provides that a practice or action shall be considered "cost-effective" so long as the cost is less than or equal to \$1.50 per square foot of disturbed area. Costs to be considered include implementation and maintenance of construction site management measures. Costs not considered include: design preparation, preparation of construction site management plan/template, actions taken to correct violations, including any civil penalties imposed, and permanent landscaping and associated fees. Why shouldn't design and processing costs be included in the per square foot cost?

Finding: The revised definition of "Maximum Extent Practicable" removed permit fees from the costs that will be considered cost-effective in order to focus on the implementation and maintenance of BMPs. Design preparation, preparation of construction site management plan/template, actions taken to correct violations, including any civil penalties imposed, and permanent landscaping and associated fees, have never been included in the \$1.50 calculation. The \$1.50 per square foot of disturbed area is to represent the effective implementation which is strictly material and installation costs to protect a site. No changes were made to this rule as a result of this comment.

Comment 2: The definition of "Perimeter Control" allows no stormwater to leave the site in a five-year storm event. This seems unreasonable. Is the correct reading of the rule that they only apply perimeter control measures to stockpiled material?

Findings: Perimeter controls are an option available to protect both exposed soils and stockpiles, but perimeter controls are not the only option. During the wet weather season all exposed soil and stockpile areas not protected by perimeter control must be covered. During the non-wet weather season soils and stockpile areas cannot be exposed to precipitation or stormwater runoff without the provision of secondary containment, perimeter controls and other approved BMPs. Thus, during the wet-weather season exposed soils and stockpile areas must be covered, which is our preferred BMP, or other measures must be taken so that no runoff leaves the site during any storm events up to a five-year storm, *i.e.*, perimeter controls. During the non-wet weather season the applicant has more options to choose from. They could cover all soils, provide secondary treatment, which include both a preventative measure and a control measure, or not allow runoff to leave the site during any storm event up to a five-year storm. No changes were made to this rule as a result of this comment.

Now, therefore, based on the findings in Administrative Order No. 58-03-01 and the above findings, which are hereby adopted, and pursuant to the authority contained in Sections 2.019 and 6.645 of the Eugene Code, 1971, I hereby repeal Administrative Order No. 58-00-26-F as of the effective date of this Order, and adopt the Erosion Prevention and Construction Site Management Practices Administrative Rule 6.645, to provide as follows:

EROSION PREVENTION AND CONSTRUCTION SITE MANAGEMENT PRACTICES ADMINISTRATIVE RULE R-6.645

R-6.645-A Purpose and Intent.

1. **Purpose.** These rules implement Sections 6.625 to 6.645 of the Eugene Code, 1971, which were adopted to restrict the discharge of sediments or other construction related materials, including hazardous substances, into the City's stormwater system in order to:

1.1 Prevent or minimize, to the maximum extent practicable, negative impacts to adjacent properties, water quality and Related Natural Resource Areas resulting from construction activities; and

1.2 Maintain the capacity of the City's stormwater system by minimizing sedimentation.

2. **Intent.** The intent of these rules, in implementing sections 6.625 to 6.645 of the Eugene Code, 1971, is to ensure that construction related activities prevent or minimize erosion,

sedimentation, and other stormwater related problems identified in subsection 1 above. To carry-out the intent of these rules, it is the goal of the City's erosion prevention program to review and respond to all erosion permit applications in a timely manner so that these provisions do not increase the time frame for issuing other permits. These rules are designed to provide developers and property owners with broad discretion for addressing potential impacts of construction related activities, so long as the erosion prevention measures achieve the desired outcomes. Therefore, except for the wet-weather requirements contained in R-6.645-D-2, these rules do not specify or mandate the use of certain erosion prevention measures, and instead, provide applicants with flexibility to choose or design erosion prevention measures subject to review by the City. The issuance of an erosion prevention permit by the City will not necessarily reflect concurrence by the City that the proposed measures will work. Instead, the City's review may be more limited in many cases, relying on the certification of the owners' certified professional that the proposed measures will achieve the mandated outcomes. In such cases, the City's review may be limited to making an evaluation that the proposed measures address anticipated impacts. Where the City is uncertain about the likely success of the proposed measures, the City may issue the permit, and monitor the site to determine whether the measures are achieving the outcomes. If the erosion prevention measures have not been successful in achieving those outcomes, the City may require the submission of an amended construction site management plan or implementation of other changes or measures that will ensure compliance in achieving the outcomes.

R-6.645-B Definitions.

In addition to the definitions contained in Sections 6.406 of the Eugene Code, 1971, as used in these rules, the following words and phrases mean:

Adjacent property. Property in close proximity to a construction site, and potentially subject to erosion, sedimentation, or construction material impacts resulting from the construction activity.

Annual landscape activities. Activities necessary to maintain the health and function of developed landscaped areas, including but not limited to: tilling, sodding, mowing, aerating, and pruning.

Best management practices (BMP's). Physical, structural, and/or managerial practices employed to avoid or mitigate erosion, sedimentation, or contamination of the City's stormwater system and related natural resource areas, or to otherwise meet the requirements of this rule.

Certified professional. A person with a background or training in erosion prevention techniques and who holds a license or certification to practice in Oregon in one of the following professions: engineering, architecture, landscape architecture, geology, or is in a similar profession as determined by the City Manager; or a person who is certified as a professional in erosion and sedimentation control by the International Erosion Control

Association, or any other similar organization, or by the City, as determined by the City Manager.

City manager. The City Manager of the City of Eugene, or the Manager's designee.

City stormwater system. Those stormwater facilities located on city-owned property, city right-of-way, city easements and any stormwater facility the city is contractually or legally obligated to operate and maintain, including but not limited to:

(a) An open drainage way, headwater stream, creek, wetland, spring, or pond, including those not maintained by the city which drain onto city-owned property or into city maintained facilities;

(b) A pipe or sewer and its related appurtenances that carry stormwater and have been designed and constructed expressly for use by the general public and accepted by the city;

(c) Streets, curbs and gutters and other surfaces in the public way which are designed to carry stormwater, roadside drainage ditches along unimproved city streets but not access drive culverts; and

(d) Flood control and stormwater quality facilities (levees, dikes, overflow channels, swales, biofiltration facilities, infiltration facilities, detention basins, retention basins, dams, pump stations, groundwater recharging basins, sediment traps, wetlands, etc.) that have been designed and constructed expressly for use by the general public and accepted by the city.

Construction activity. An activity used in the process of developing, redeveloping, enhancing, or maintaining land, including but not limited to: land disturbance, building construction, paving and surfacing, storage and disposal of construction related materials.

Construction footprint. That area of a parcel where disturbance to vegetation and land form is necessary for the construction of buildings, parking lots, walkways, landscaping, utilities, and for staging of construction equipment and other similar uses associated with construction activities.

Construction related materials. Potential water quality pollutants that are used or created during construction activities including, but not limited to; off-site deposits of sediments by vehicles (e.g. tracking, spilling); building material wastes (e.g. scrap metals, rubber, plastic, glass, masonry, wood; paints and thinners; packaging materials; insulation, plaster grout); hazardous substances (e.g. cleaning solvents; chemical additives; concrete curing compounds; acids for cleaning masonry surfaces; paints, thinners); pavement saw-cutting effluent; and concrete washout.

Construction site management plan (CSMP). A set of maps, data, drawings, and narrative that describes expected runoff from new construction sites and establishes measures to be taken for preventing erosion, sediments, and other pollutants from construction related

activities.

Designated buffer. An area established by the Eugene Code, 1971, including but not limited to sections 9.4700 - 9.4720 and 9.4800 - 9.4820, that separates a protected natural resource site, such as a wetland or water feature, from a conflicting use; and any conservation zone or protected area established during the land use review and approval process that is designed to protect natural resource sites or drainageways.

Development site. A tract of land under common ownership or control, either undivided or consisting of two or more contiguous lots of record. Property under common ownership that is bisected by a public street or alley shall be considered one development site unless the land was legally divided.

Dewatering. The removal and disposal of surface water or groundwater for purposes of preparing a site for construction or facilitating construction.

Directly drains. The conveyance and discharge of stormwater runoff - either on the surface or by an open channel or pipe - into a water feature that is located on or adjacent to the parcel or tax lot of record for which construction activities are planned, or onto/into its designated buffer area.

Disturbed area. A parcel or a portion of a parcel of land where the vegetation, landform, or topography is altered due to logging, clearing, grubbing, grading, paving, stock piling, or building.

Emergency condition. An immediate danger to life, property, or the environment due to circumstances beyond the control of the property owner, including, but not limited to, natural and human-caused disasters such as fires, floods, slides, earthquakes, sinkholes, and tree blow-down.

Enforcement officer. The person designated by the City Manager to enforce the provisions of Sections 6.625 to 6.645 of the Eugene Code, 1971 and these rules.

Erosion prevention. Measures to be taken for preventing and/or minimizing sedimentation and negative impacts to water quality in the City's stormwater system and Related Natural Resource Areas due to erosive impacts on exposed soil from water and wind forces. For the purposes of this rule, Erosion Prevention shall also include measures taken to prevent and/or minimize potential impacts to the City's stormwater system and Related Natural Resource Areas associated with construction activities such as handling and storage of construction related materials and disposal of building material wastes.

Fully developed property. A parcel of land that contains buildings, pavement and other facilities, including landscaped areas and due to these uses is not capable of additional

expansion.

Highly erodible soils. Soils classified as highly erodible, erodibility index of 8 or larger, by the Natural Resources Conservation Service (NRCS - formerly the Soil Conservation Service).

Improper disposal. Disposal of any construction related material in a manner that causes, or has the potential to cause, the discharge of pollutants to the City's stormwater system or Related Natural Resource Areas, the depletion of the capacity of the City's stormwater system, or the contamination of soils.

Improper storage. Handling or storing of any construction related materials in a manner that, due to leaks, spills, leachates, deposits or dumps, causes or has the potential to cause the discharge of pollutants to the City's stormwater system or Related Natural Resource Areas, the depletion of the capacity of the City's stormwater system, or the contamination of soils.

Jurisdictional wetlands. Any parcel or portion of a parcel which meets the state or federal definition of wetlands that are under the jurisdiction of state or federal laws. Synonymous with wetlands.

Land disturbance. Activities that can change the physical conditions of landform, vegetation, and hydrology including, but not limited to, clearing, grading, grubbing, excavating, filling, logging, and storing of materials.

Maximum extent practicable. The greatest degree of pollutant reduction achievable through the application of technically feasible, cost effective best management erosion practices, processes, siting criteria, operating methods, or other alternatives approved by the City. A practice or action shall be considered "cost effective" so long as the cost is less than or equal to \$1.50 per square foot of disturbed area. Costs to be considered under the previous sentence shall include implementation and maintenance of construction site management measures. Costs do not include: design preparation, preparation of construction site management plan/template, actions taken to correct violations, including any civil penalties imposed, and permanent landscaping and associated design fees.

Minor recurring activities. Repetitive construction or maintenance activities that are performed at different sites as part of an overall work plan or program when no individual disturbance exceeds more than 500 square feet of land area and 50 cubic yards of fill or excavated material.

Perimeter control. A facility or combination of facilities that result in no stormwater runoff leaving a site during a 5-year storm event and saturated soil conditions including, but not limited to, constructed ponds, ditches, swales, infiltration trenches, or pipes. For

development sites over 40 acres, the design storm shall be a 10-year storm event.

Permit holder. The property owner, or easement holder or permittee of record of the parcel or tax lot for which construction activities are planned.

Person. An individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the federal government, including any agency thereof.

Related natural resource areas. Areas located within or adjacent to the City's stormwater system, such as waterways, wetlands, conservation zones or easements, and riparian areas, which due to their location, topography, vegetation, or other factors provide one or more of the following stormwater functions: flood control, habitat, streambank stabilization, and water quality treatment including pollutant removal, shading and temperature stabilization.

Responsible person or responsible party. A permit holder, property owner, or their agent or contractor, or other person who is responsible for meeting the outcomes, or responsible for violation of this Rule.

Routine maintenance. Activities and practices that are necessary to maintain the operating capacity, functional integrity, or aesthetics of a place or facility. Routine maintenance includes, but is not limited to, landscaping, repair of recreation facilities (e.g., ball diamonds, play areas, fields), cleaning of stormwater facilities, and patching of streets.

Secondary containment. On-site erosion prevention measures that include both a preventative measure (soil coverage, vegetative buffer) and a control measure (sediment fence, mulch berm, straw bales).

Sedimentation. The deposit of mud, sand, soil, sediment or construction materials exceeding one-half cubic foot in volume for every 1,000 square feet of lot size onto adjacent properties, into the City's stormwater system, onto Related Natural Resource Areas located on-site, into public rights of way or private streets, and/or into any private stormwater system that discharges into a City stormwater system located off-site by dropping, discharging, directly depositing, or resulting from the action of erosion.

Sensitive area. Sites that meet the criteria contained in R-6.645-E.1.

Template. An example of a construction site management plan provided by the City of Eugene that - when modified by the erosion prevention permit holder to address site specific conditions - can be used to satisfy CSMP requirements for a single dwelling or duplex dwelling. The template may be prepared by the permit holder or the permit holder's designee.

Untreated runoff. Contaminated stormwater runoff due to construction activities that has not been filtered, screened, settled, or otherwise treated for the removal of pollutants, prior to discharge into the City's stormwater system, designated buffers, or Related Natural Resource Areas.

Water features. Permanent or intermittent bodies of water, including creeks, streams, ponds, rivers, lakes, Related Natural Resource Areas, drainage channels and jurisdictional wetlands.

Vegetative buffer. A strip of protected land not less than 25 feet in width separating ground disturbed by construction activity from a water feature, related natural resource area, or a property line, whichever is nearest, containing vegetation at least 1 inch in height that covers at least 80% of the buffer area. The buffer area must be on the site covered by the permit or be reserved for such use in writing by the property owner.

Visible or measurable erosion. Evidence of concentrated flows of water over bare soils, turbid or sediment laden flows, or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on the site using the techniques recommended in the City's Erosion Prevention and Construction Site Management Practices Manual or an approved Construction Site Management Plan, or comparable techniques; and, earth slides, mud flows, earth sloughing, or other earth movement which leaves the property.

Wetlands. Any parcel or portion of a parcel which meets the state or federal definition of wetlands that are under the jurisdiction of state or federal laws. Synonymous with jurisdictional wetlands.

Wet weather season. October 15 through April 30, unless otherwise designated by the City Engineer.

R-6.645-C Applicability.

1. These rules, and Sections 6.625 to 6.645 of the Eugene Code, 1971 apply to all construction related activities that result in any one or all of the following:

1.1 Land disturbance, including but not limited to clearing, grading, grubbing, logging, excavating, filling, and storing of materials;

1.2 Structural development, including, but not limited to buildings, bridges, roads, and other infrastructure such as utilities and sewers;

1.3 Impervious surfaces, including, but not limited to parking lots, driveways,

walkways, and patios; or

1.4 Dewatering.

2. No person shall engage in any construction related activity covered by Subsection R-6.645-C.1 of these Rules except as allowed by the Eugene Code 1971 and these rules. All persons shall prevent and/or control erosion, sedimentation, and other construction related impacts to stormwater quality in a manner designed to meet the outcomes specified in R-6.645-D. Failure to implement measures that meet those outcomes shall subject the person to the same enforcement provisions as those applicable to a permit holder under section 6.640 of the Eugene Code and R-6.645-F of the Rules. This requirement shall be implemented through one of the following provisions:

2.1 Issuance of an Erosion Prevention Permit in accordance with Section R-6.645-F of these Rules;

2.2 For all other construction activities not subject to the erosion prevention permit requirements, compliance by property owners with the standards for preventing and controlling erosion, sedimentation, and other impacts associated with construction site management practices. The City will make information about these requirements available through a variety of techniques, including public outreach programs, handout materials, and other educational efforts to assist property owners in meeting this obligation.

3. Notwithstanding Subsection 1 above, the following activities are exempt from the provisions of Sections 6.625 to 6.645 of the Eugene Code, 1971 and these rules:

3.1 Actions by a public utility, the City, or any other governmental agency, to remove or alleviate an emergency condition, restore utility service, or reopen a public thoroughfare to traffic; or

3.2 Actions by any other person when the City determines, and documents in writing, that such actions are necessary to remove or alleviate an emergency condition, restore utility service, or reopen a public thoroughfare to traffic.

3.3 The exemption in this subsection shall terminate at the time the emergency condition is alleviated, utility service is restored, or a thoroughfare is reopened to traffic.

3.4 The agency or public utility performing the work shall take reasonable steps to minimize sediment, dirt, debris, or other contaminants from entering the City stormwater system.

R-6.645-D Outcomes.

1. All persons conducting construction activities covered by R-6.645-C.1. shall employ, to the maximum extent practicable, erosion prevention and construction site management practices which will achieve during both the construction period and wet weather season the following outcomes:

1.1 Adjacent properties, water features, and Related Natural Resource Areas are kept free of deposits or discharges of soil, sediment or construction-related material from the site except those that would occur through natural processes from an undisturbed site;

1.2 Vegetation in water features, Related Natural Resource Areas, and associated bank and/or riparian areas adjacent to construction sites are preserved or protected from impacts that exceed those that occur through natural processes on an undisturbed site;

1.3 Public rights of way, the City's stormwater system and Related Natural Resource Areas, private streets and private stormwater drainage systems that discharge to the City's stormwater system are kept free of mud, soil, sediment, concrete washout, trash, or other similar construction-related material exceeding one-half cubic foot in volume for every 1,000 square feet of disturbed area. Direct deposit, dropping, dumping, erosion, tracking, or other discharge by construction vehicles of materials shall not occur in excess of those that occur through natural processes from an undisturbed site. Any such discharges that occur shall be prevented from entering water features or the City's stormwater system and removed not later than the end of the day in which the discharge occurred, or as directed by the City. During the wet weather season corrective action shall be taken immediately for such discharges.

1.4 Soils and stockpile areas shall not be exposed to precipitation or stormwater runoff without the provision of secondary containment, perimeter controls, and other approved BMP's.

1.5 Earth slides, mudflows, earth sloughing, or other earth movement which may leave the property, shall not occur in excess of those that occur through natural processes on an undisturbed site;

1.6 No discharge into the City's stormwater system or Related Natural Resource Areas of construction related contaminants resulting from activities such as, but not limited to, cleaning or washing of equipment, tools, or vehicles, shall occur.

1.7 No hazardous substances, such as paints, thinners, fuels and other chemicals shall be released onto the site, onto adjacent properties, or into water features, the City's stormwater system, or Related Natural Resource Areas.

1.8 A supply of materials necessary to meet the above outcomes and implement the construction site management plan and maintain approved best management erosion

practices under all weather conditions shall be kept at all times on the construction site.

2. When designing and implementing management BMP's to meet the above outcomes, the applicant shall consider the seasonal variation of rainfall, temperature, and other climatic factors relative to the timing of land disturbance activities. All construction activity that will result in soil disturbance during the wet weather season shall, at a minimum, implement and maintain the following Best Management Practices (BMP) on site:

2.1 Construction site entrances shall be graveled with crushed rock of sufficient size and grading as necessary to prevent any off-site tracking.

2.2 All stormwater facilities, water features, and Related Natural Resource Areas shall be protected.

2.3 All exposed soil and stockpile areas not protected by perimeter control consistent with an approved CSMP shall be covered.

2.4 Sediment, soil, or construction related material shall be removed immediately from the right-of-way, adjacent property, and the city's stormwater system, including water features and Related Natural Resource Areas.

3. No permit or other approval issued pursuant to these rules shall be deemed to authorize any violation of the above outcomes or wet-weather requirements.

R-6.645-E Designation of Sensitive Areas.

1. **Criteria for Sensitive Area Designation.** For the purposes of administering these Rules, any construction site that meets one or more of the following criteria shall be considered a sensitive area for which an erosion prevention permit will be required:

1.1 The slope of the parcel in the area of disturbance is greater than 10%;

1.2 The site contains highly erodible soils; or

1.3 The parcel or tax lot of record has the potential to directly drain into a water feature or its designated buffer area.

2. **Determination of Sensitive Area.** To assist with the administration of these provisions, the City has prepared a map indicating sites that appear to meet the above criteria. The Public Work's Director, or designee, shall use this map to make a preliminary determination of a site's sensitive area status. The map is on file at the City's Public Works Engineering Department

(858 Pearl Street) and Permit & Information Center (99 West 10th Avenue).

An applicant may challenge the Director's preliminary determination that a site is a sensitive area through submission of actual field or site information that demonstrates that the determination is inconsistent with the criteria in subsection 1 of this section.

If an applicant chooses not to contest the designation or is unable to satisfy the above criteria, the site shall be considered a sensitive area and an erosion prevention permit shall be required.

3. **Appeal of designation.** An applicant who disagrees with the Director's final determination may appeal that decision within the time and manner prescribed in section R-6.645-F.11 of these Rules.

R-6.645-F Erosion Prevention Permits.

1. **Permit Required.** Except as otherwise provided in these rules or provisions of the Eugene Code, 1971, no person shall commence any construction related activity without first obtaining from the City an erosion prevention permit if the construction related activity will:

1.1 Disturb one or more acres of land at any one time by one or more phases of development, and the disturbance is located on the same parcel of land or on contiguous parcels of land that at the time the development application was submitted was under the same ownership; or

1.2 Is located in a sensitive area as designated pursuant to R-6.645-E of these rules.

2. **Waiver of Erosion Prevention Permit.** Notwithstanding any other provisions of this section, the following activities shall not require an erosion prevention permit. However, under no circumstances shall this waiver be construed to mean that these activities are exempt from any of the erosion prevention requirements of the Eugene Code, 1971 and these rules other than the requirement to obtain an erosion prevention permit; the following activities are subject to other provisions, including but not limited to Outcome requirements in Section R-6.645-D of this Rule.

2.1 Construction activities involving the disturbance of less than 500 square feet of land surface area, or which consist of the excavation and/or fill of less than 20 cubic yards of material;

2.2 The issuance of permits and/or approvals for land divisions, interior improvements to an existing structure, or other approvals for which there is no physical disturbance to the surface of the land; and

2.3 Annual landscape maintenance activities on fully developed properties,

necessary to maintain the existing developed landscape.

3. **Permit Classifications.** A variety of permits may be issued to address different circumstances. Regardless of permit type, the property owner or easement holder of record is the responsible party for the permit. If property ownership changes before the permit is finalized, the new property owner assumes the responsibility of the permit and any outstanding issues associated with the permit. The following permits may be issued to meet the requirements of these rules provided the associated eligibility requirements are met:

3.1 **Individual Permit.** A property owner or easement holder of record may obtain a separate, individual permit for each construction activity on the same parcel of land. For example, the individual permit allows a property owner to obtain a permit for building construction activities and a utility to obtain a separate permit for utility purposes.

3.2 **Umbrella Permit.** A property owner or easement holder of record may obtain an umbrella permit for multiple construction activities on the same parcel of land or development site that are proposed in connection with a development, including site grading, utility work, public and private infrastructure, structures, and other site improvements. All construction activities and all phases of development that are addressed in the Construction Site Management Plan are covered by this single umbrella permit.

3.3 **Annual Permit.** An annual permit may be issued for minor recurring activities. The annual permit is intended to provide a streamlined permit process for entities that perform repetitive activities such as routine maintenance of facilities on a frequent basis. This provision allows one permit to be issued for more than one project within a calendar year. To qualify for an annual permit, the following criteria shall be met:

3.3.1 Construction activities are minor and recur on a frequent basis. Examples include but are not limited to: utility service connections and extensions, repair of utility and infrastructure facilities, maintaining capacity of storm drainage facilities, etc.

3.3.2 Permits may be issued for a full calendar year, and shall expire on or before December 31 of the year issued.

4. **Application.** In addition to the payment of any required fees, an application for an erosion prevention permit shall include a completed Construction Site Management Plan (except for an Annual Permit, refer to Section R-6.645-F-7.4), prepared in accordance with Subsection 7 of this Section, or a template prepared in accordance with subsection 7.3 and approved by the City.

5. **Interdependent Permit Processing.** The application and processing of other City of Eugene permits, such as, but not limited to, grading, utility cut permits, tree removal, foundation and building permits, are interdependent with the Erosion Prevention permit process. The City of

Eugene shall not issue any of these other permits:

5.1 Until the City has issued, conducted a site inspection if necessary, and approved a required Erosion Prevention permit, unless the City has determined an Erosion Prevention permit is not required; or

5.2 If the property owner or applicant is in violation of an Erosion Prevention permit, or any conditions contained therein.

Notwithstanding the requirements in this subsection, the City Engineer may issue permits for construction of Privately-Engineered Public Improvements in accordance with provisions in Chapter 7 of this Code prior to the approval of the Erosion Prevention permit. No construction activities shall begin on the public improvements until the City approves the implemented erosion and sedimentation measures.

6. **Completeness Check.** At the time of application submittal, the City shall conduct a completeness check to determine if the application meets all of the submittal requirements. The City shall not accept the application until all requirements have been met. After the application has been accepted, the City may find after a more thorough review that the applicant submitted inadequate or inaccurate information. In that case, the City may require that certain additional information be submitted. A complete application submittal includes:

6.1 Completed and signed application form;

6.2 Fee;

6.3 Construction Site Management Plan prepared by a certified professional, except as provided in subsections 7.3 and 7.4 of these rules.

7. **Construction Site Management Plan.** A Construction Site Management Plan (CSMP) must be submitted with an application for Individual Permits and for Umbrella Permits. The CSMP is necessary to identify potential water quality impacts associated with the proposed construction activity and to ensure that appropriate and effective techniques and methods are utilized to prevent and control erosion and sedimentation and other pollutants associated with construction activities. The CSMP shall be prepared by a Certified Professional, unless the development is one single-family dwelling or one duplex dwelling. The CSMP shall outline the techniques and methods to be used to achieve the required outcomes including specific BMP's for wet-weather conditions, describe conditions before and after development, and the proposed methods to prevent and control water quality impacts during and after construction. The Certified Professional, as part of the CSMP shall certify that in his or her professional opinion, implementation of the CSMP will ensure compliance with R-6.645-D.1. The City shall review the CSMP prior to issuance of an erosion prevention permit and may monitor the development thereafter for continued compliance.

7.1 Individual Permit - CSMP Contents. Except as provided in subsection 7.3 below, the Construction Site Management Plan for Individual Permits shall include, as appropriate, the following:

7.1.1 Site location and vicinity map.

7.1.2 A site development drawing at a standardized engineering or architectural scale, such as 1"= 40', containing the following:

- (a) Soil type.
- (b) On-site elevations and surface drainage patterns.
- (c) Contours, if the site is located in a sensitive area.
- (d) Existing vegetation type.
- (e) Existing and proposed drainage facilities including catch basins, area drains, curb inlets, outfalls, manholes, etc.
- (f) Existing and proposed water quality or pre-treatment facilities.
- (g) Water bodies, wetlands, conservation areas, buffer areas, natural resource areas.
- (h) All areas where ground-disturbing activities are prohibited.

7.1.3 All proposed BMP's needed to meet the outcomes in Section 6.645-D including but not limited to:

- (a) All areas of disturbed ground or vegetation and methods of covering, or methods of preventing/containing erosion and sedimentation.
- (b) BMP's for physically protecting areas where ground-disturbing activities are prohibited.
- (c) Access points and haul routes for all vehicles
- (d) Location and design of wheel wash areas
- (e) Location and design of concrete wash areas
- (f) Location of stockpiles and BMP's for preventing erosion or sedimentation.
- (g) Location of debris and garbage disposal or temporary storage and BMP's for containment.
- (h) Location, dimensions, and vegetation types for proposed vegetative buffers.
- (i) Protection of existing storm drainage facilities and water quality treatment facilities.
- (j) Specifications for temporary and permanent stabilization of disturbed areas.
- (k) All other proposed Best Management Practices, measures, or techniques to prevent and control erosion and sedimentation.

7.1.4 Identification of the person responsible for implementation of the CSMP and maintenance of the BMP's, if not the property owner. For phased

projects, a responsible person must be identified for each phase.

7.1.5 A construction schedule, including identification of any work that will be done during the wet-weather season (October 15 - April 30) and for that work, all additional BMP's to be implemented to meet wet-weather requirements.

7.1.6 If any of the required information is to be provided by a contractor, indicate on the CSMP that it is to be provided by others. The information must be submitted prior to approval of the permit.

7.2 Umbrella Permit - CSMP Contents. The Construction Site Management Plan for Umbrella Permits shall address all of the factors listed in subsection 7.1 above, and shall also include:

7.2.1 Identification of all construction activities or phases which will be covered by the permit.

7.2.2 A construction schedule for each of the construction activities or phases identified.

7.2.3 Identification of any period covered by the permit when no construction activity will be occurring, and the person that will be responsible for maintaining the BMPs and providing for any needed site stabilization during the periods of no construction.

7.3 Individual Residential Permit - Template. If the proposed construction is for one single family dwelling, or one duplex dwelling, the property owner need not utilize the services of a certified professional in the preparation of the Plan. A template plan may be submitted, and upon approval by the City it will serve to satisfy requirements for the single family dwelling and duplex construction activities.

7.4 Annual Permit. If the proposed construction activity qualifies for an annual permit, preparation of a CSMP is not necessary. In lieu of a CSMP, the applicant shall submit all of the following information with the application:

7.4.1 Description of the scope of work and types of construction activities to be performed.

7.4.2 Identification of the sites where construction activities will occur during the life of the permit, if known at the time the application is submitted.

7.4.3 Description of the erosion, sedimentation, and construction site management practices, including a description of erosion prevention materials located

at each site, to be employed during construction activities for meeting the requirements of the Eugene Code, 1971 and these Rules and specifically addressing BMP's to be implemented during wet-weather season.

7.4.4 Description of the training provided to applicant's crews or employees on implementation of management practices to prevent sedimentation or erosion.

7.5 Availability. The approved Construction Site Management Plan and Template shall be kept at the construction site and be available during on-site inspections.

8. Review Criteria and Approval. The City shall review the Erosion Prevention Permit application, including the Construction Site Management Plan, template, and such other documents as may be submitted, and approve, approve with special conditions, or deny the permit application. If the City finds that the construction related activities will result in sedimentation, visible or measurable erosion, or will otherwise violate the conditions specified in R-6.645-D.1., then the City shall deny the permit, or approve the permit with special conditions. In the absence of such an affirmative finding, the City shall approve the permit, with or without special conditions. Permit approval shall not be effective until a site inspection has occurred and the permit is endorsed with the approval of the site inspector, which approval may include additional conditions imposed as a result of the inspection.

9. Conditions. Every Erosion Prevention Permit shall include as conditions the outcomes set forth in R-6.645-D of these rules, and any special conditions imposed as a result of the permit review and/or the site inspection.

10. Permit Duration. An approved erosion prevention permit shall remain in effect for the full period of construction activity as described in the CSMP or template (i.e., dry weather only, wet weather only, or a combination of the two seasons). The permit may be extended for a period of up to, but not to exceed, two years after completion of the construction activities if the City Manager determines the extension is necessary to ensure the construction activity has stabilized in accordance with the outcomes listed in these rules. If the CSMP submitted with the permit application did not identify work that will be done during October 15 - April 30 and provide additional BMPs addressing wet-weather requirements (in accordance with D-7.1.5 of this Rule) no construction can occur during October 15 - April 30 without the applicant first submitting the information.

11. Appeal. An applicant may appeal (a) the denial of a permit, (b) any conditions imposed on a permit, or (c) the designation of a site as a sensitive area within the time and in the manner prescribed in section 2.021 of the Eugene Code, 1971.

R-6.645-G Construction Site Control Measures and Design Standards.

1. Construction Site Practices. In addition to compliance with specific requirements contained in an approved permit, all permittees shall establish and implement construction site management practices that will prevent toxic materials and other debris from entering the City's storm drainage and waterway systems. The following construction site practices are prohibited and constitute a violation of these rules:

- 1.1 Improper storage of chemicals (pesticides, fertilizers, fuels, paints, thinners);
- 1.2 Improper disposal of construction waste material, garbage, rubbish, and sanitary waste, plaster, dry-wall, grout, gypsum;
- 1.3 Failure to immediately clean up spills of toxic materials;
- 1.4 Washing excess concrete material or other construction related material into a street, catch basin, or other public facility, the City's stormwater system, private stormwater drainage systems that discharge to the City's stormwater system, Related Natural Resource Areas, or other protected area identified on the approved Construction Site Management Plan;
- 1.5 Allowing construction vehicles to track or spill soil or debris into or onto a street or public right of way; or
- 1.6 Ground disturbing activities or destruction of vegetation in protected areas.
- 1.7 Beginning construction activities without a valid permit or prior to initial site inspection by city.

2. Prevention Measures and Design Standards. The City's Erosion Prevention and Construction Site Management Practices Manual may be utilized to obtain ideas as to how to achieve the outcomes mandated by R-6.645-D.1. The Manual is a guidance document only. Except as provided in R-6.645-D, it is not necessary to utilize any of the specific best management practices contained in the Manual, nor is the use of one or more of those best management practices a guarantee that a permit will be issued. Each site and the proposed construction related activities need to be examined to determine what measures are required for that specific site.

R-6.645-H Enforcement.

1. Intervention. The primary focus of sections 6.625 to 6.645 of the Eugene Code, 1971 and these Rules is to achieve compliance with the outcomes specified in R-6.645-D and prevent erosion and control stormwater impact, and the City will use the amount of enforcement necessary to achieve compliance. Where possible the City will rely on education rather than enforcement. The City Manager may provide educational programs or other informational materials that will assist

permittees in meeting the desired erosion and sedimentation controls, and other construction site management practices outcomes.

2. **Stop Work Order.** Whenever any construction related activity is being done contrary to and in violation of Sections 6.625 to 6.645 of the Eugene Code, 1971, these rules, or an erosion prevention permit, the enforcement officer may order the construction related activity stopped by notice in writing, posted on the premises, or served on the permittee. The permittee shall forthwith stop such work until authorized by the enforcement officer to proceed.

3. **Citation for Violation.** Upon a determination that a person is violating Sections 6.625 to 6.645 of the Eugene Code, 1971 or these rules, a citation may be issued to the permittee to appear in Municipal Court.

4. **Administrative Compliance Order.** The City may issue an Administrative Compliance Order for any violation. The Order shall be in writing, specify the violation(s) and require compliance measures. The order also may include a Notice of Imposition of Administrative Civil Penalty Assessment for the violation.

5. **Notice of Imposition of Administrative Civil Penalty.** If a person fails to comply with applicable provisions of the Eugene Code, 1971, these rules, an erosion prevention permit, conditions imposed thereon, or an administrative compliance order, the enforcement officer may issue to the person a Notice of Imposition of an administrative civil penalty pursuant to the provisions of Section 2.018 of the Eugene Code, 1971.

6. **Service.** All notices/orders shall be served by personal service or sent by certified mail and first class mail. Any notice/order served by mail shall be deemed received for purposes of any time computations hereunder, three days after the date mailed, if to an address within this state, and seven days after the date mailed, if to an address without this state.

7. **Penalties Not Exclusive.** Any administrative civil penalty imposed pursuant to this section shall be in addition to, and not in lieu of, any other penalty authorized by Section 6.992 of the Eugene Code, 1971, or any other action authorized by law.

8. **Settlement of Administrative Civil Penalty Assessment.** Upon receipt of Notice of Administrative Civil Penalty Assessment, the violator may request a conference with the City Manager or designee. The City Manager or designee may compromise or settle any unpaid administrative civil penalty assessment where authorized under Section 2.582 of the Eugene Code, 1971. A request under this paragraph shall not act as a stay, or otherwise affect the filing or processing of an appeal under R-6.645-J.

R-6.645-I Determination of Amount of Civil Penalty.

Notwithstanding the provisions of Administrative Rule R-2.018, the amount of the administrative civil penalty to be assessed under Section H shall be determined in accordance with the following formula:

(a) The dollar amount of the assessment is calculated by multiplying the amount of the BASE (subsection (b)) by the MULTIPLIER (subsection (c)) and multiplying that by \$20.00. That is:

$$\text{Penalty} = \text{Base} \times \text{Multiplier} \times \$20$$

$$\text{Penalty} = H(V+C) \times G \times \$20$$

Notwithstanding this formula, the maximum assessment for a violation for a single day shall be that established as the maximum amount that may be assessed under Section 2.018 of the Eugene Code, 1971 in effect at the time the violation occurs.

(b) The BASE is "H" multiplied by the sum of "V" plus "C" where:

1. "H" is the history of the actions and efforts undertaken by the responsible party to correct the violation. The value of "H" shall be:

a. 1, if the responsible party could not be contacted at the time of the incident.

b. 1, if no action is possible to mitigate the situation.

c. 1, if the responsible party made a major effort to correct the violation and minimize impacts within the time frame set by the enforcement officer.

d. 2, if the responsible party made a minor effort to correct the violation and minimize impacts within the time frame set by the enforcement officer, or when they became aware of the discharge causing the violation.

e. 2, if the responsible party made a major effort to correct the violation and minimize impacts outside the time frame set by the enforcement officer, and/or only after repeated requests by the enforcement officer for action.

f. 3, if the responsible party made a minor effort to correct the violation and minimize impacts outside the time frame set by the enforcement officer, and/or only after repeated requests by the enforcement officer for action.

g. 4, if no clean-up action is undertaken by the responsible party after being made aware of the violation by federal, state, or local regulatory agency personnel, or when they became aware of the discharge causing the violation by any means.

h. 5, if the responsible party hindered clean-up efforts.

i. If the violator had knowledge that the discharge may enter the public system and failed to report or attempt to report the discharge to the City of Eugene in a time frame that would allow for mitigation, even if mitigation is not possible, a value of one may be added to any of the values determined in section E, (b)(1)(a-h).

j. If a single violation can fall into more than one of the categories in section E, (b)(1)(a-h), the value of "H" shall be the largest value in any of those categories.

2. "V" is the extent of violations of erosion or stormwater related statutes, rules, orders, or permits by a responsible party. The value of "V" shall be equal to the number of erosion or stormwater violations within the past 10 years regardless of whether enforcement actions were pursued.

3. "C" is the level of care exercised by the responsible party. It is based on whether the cause of the violation was an unavoidable accident, negligence, or a reckless or intentional act. The value of "C" shall range from 1 to 4, and shall be:

a. 1, if the violation was an unavoidable accident or was caused by others. This category is used when the civil penalty is assessed either (a) against a party who is responsible for the property, such as an owner, but who was not physically in charge of the property when the violation occurred; or (b) against the party who caused the violation but could not have reasonably foreseen that a violation would occur.

b. 2 or 3, if the violation was caused by a responsible party's negligence. Negligence is the failure to exercise the care that a prudent person would exercise under the circumstances. This category is used where a party either caused a violation by carelessness or was negligent in taking the necessary corrective or preventative steps to reduce the possibility of the violation occurring.

c. 4, if the violation was due to reckless or intentional acts. A reckless act is marked by a lack of proper caution, or carelessness of consequences. An intentional act is an act done by intention or design.

(c) The MULTIPLIER "G" is the factor for gravity and magnitude of the violation. The value of "G" shall be determined and set at the time the enforcement officer initiates compliance efforts. This value shall not be decreased if, after compliance efforts are initiated, actions are taken to reduce the gravity of the situation. The value of "G" shall range from 1 through 10 and shall be based on the following considerations:

1. The significance of the violation due to the quantity and/or type of substance released.
2. The proximity to the City's stormwater system and Related Natural Resource Areas.
3. Weather Conditions, and the potential for dispersion of the released substance.
4. The threat posed to life, public safety, property, or the environment.
5. The necessity for immediate action to capture the released substance, prevent further dispersal of the released substance, or to prevent damage to property and/or the environment.

A violation may rate a "G" value of 1 if there is no immediate or significant threat to life, public safety, property, and/or the environment due to the quantity and/or type of substance released; or if there is low potential for further dispersion of a released substance with either no or only minor potential consequences.

A violation may rate a "G" value of 10 if there is an immediate or significant threat to life, public safety, property, habitat, and/or the environment, and/or Related Natural Resource Areas due to the quantity and/or type of substance released. To protect both public and environmental health the situation cannot be tolerated and immediate actions are necessary in order to capture and contain a released substance, prevent further dispersion of a released substance, and/or prevent additional damage to life, property, and/or the environment.

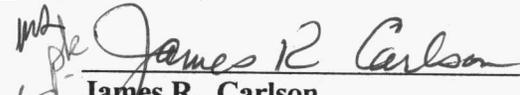
R-6.645-J Appeals.

1. **Stop Work Order, Administrative Civil Penalty, Administrative Compliance Order.** Any person to whom a Stop Work Order, Notice of Imposition of an Administrative Civil Penalty or Administrative Compliance Order is issued pursuant to these rules may appeal that determination to the City Manager. A Stop Work Order or Administrative Compliance Order shall be effective upon issuance, and shall continue in effect during the pendency of any appeal. The notice of appeal must be in writing, and filed with the City Manager within 15 days from the date of the Notice being appealed. The appeal shall state the name and address of the appellant, the nature

of the determination being appealed, the reason the determination is incorrect, and what the correct determination of the appeal should be. Failure to file such a statement within the time or in the manner required waives the appellant's objections, and the appeal shall be dismissed. Unless the appellant and City agree to a longer time period, the appeal shall be heard by a hearings official within 30 days of receipt of the notice of appeal. At least ten days prior to the hearing, the City shall mail notice of the time and place of the hearing to the appellant. The hearings official shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence deemed appropriate. The appellant may present testimony and oral argument at the hearing either personally or by counsel. The hearings official shall issue a written decision within ten days of the date of the hearing. The decision of the hearings official is final, and may include a determination that the appeal fee be refunded to the appellant upon a finding by the hearings official that the appeal was not frivolous.

2. **Appeal Fees.** Appeals filed under this section shall be accompanied by an appeal fee in an amount established by the City Manager pursuant to Section 2.020 of the Eugene Code, 1971.

Dated and effective this 6 day of March, 2003.

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pk
tc 

James R. Carlson
City Manager pro tem