

# **Regional Construction Stormwater MODEL Ordinance**

## **Final Model**



**For:**

**Yakima County**

**City of Yakima**

**City of Union Gap**

**City of Sunnyside**

Blue highlight = same as Post-const.; *blue italic = source*, *red italic = comments*

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## **General**

### **1.1. Purpose**

*(Center for Watershed Protection Model ordinance. Not all purposes in model ordinance used)*

- 1.1.1. The purpose of this ordinance is to establish minimum construction stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in [JURISDICTION]. This ordinance seeks to meet that purpose through the following objectives:
  - 1.1.1.1. To protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased sediment discharges from new land development and redevelopment.
  - 1.1.1.2. To enable [JURISDICTION] to comply with the National Pollution Discharge Elimination System permit, Washington Department of Ecology's *Guidance for UIC Wells that Manage Stormwater*, and applicable federal and state regulations.
  - 1.1.1.3. To regulate the contribution of pollutants, especially sediment, to the MS4 or UICs by stormwater discharges from development, redevelopment.
  - 1.1.1.4. To protect the condition of state (and U.S.) waters for all reasonable public uses and ecological functions.
  - 1.1.1.5. To provide long-term responsibility for and maintenance of construction stormwater BMPs.
  - 1.1.1.6. To facilitate the integration of stormwater management and pollution control with other ordinances, programs, policies, and the comprehensive plan of [JURISDICTION].
  - 1.1.1.7. To establish legal authority to carry out all the inspection and monitoring procedures necessary to ensure compliance with this ordinance.
  - 1.1.1.8. To facilitate compliance with state and federal standards and permits by owners of construction sites, developments, and permanent stormwater BMPs within [JURISDICTION].

### **1.2. Applicability**

- 1.2.1. This ordinance shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Section 1.3. These provisions apply to any new development or redevelopment site within [JURISDICTION] *(for County, Jurisdiction to be defined as Stormwater Utility as defined in County Code 12.09)* that meets one or more of the following criteria:

1.2.1.1.Land development that disturbs one acre or more through clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

1.2.1.2.Redvelopment that disturbs one acre or more through clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

1.2.1.3.Land development activities that are smaller than the minimum applicable criteria set forth above if such activities are part of a larger common plan of development, even though multiple, separate and distinct land development activities may take place at different times on different schedules. (*Municipal NPDES permit, S5.B.5*)

### 1.3. Exemptions

1.3.1. **Activities Exempt:** The following activities are exempt from this ordinance:

1.3.1.1.Public and private development or redevelopment that disturbs less than one acre through clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

1.3.1.2.Construction activities which discharge all stormwater and non-stormwater to ground water, and have no point source discharge to surface water or a storm sewer system that drains to surface waters of the state (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*) UIC wells must be protected from sediment in runoff generated during construction. (*DOE Guidance for UIC Wells That Manage Stormwater*)

1.3.1.3.Stormwater from any site covered under an existing NPDES individual permit in which stormwater management and/or treatment requirements are included for all stormwater discharges associated with construction activity. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

1.3.1.4.Any emergency activity that is immediately necessary for the protection of life, property, or natural resources. (*EPA Model Construction Ordinance*)

- 1.3.1.5. Forest practices regulated under Title 222 WAC. Conversions of forest lands to other uses are not exempt. Silvicultural roads that are used to access other land uses subject to this ordinance are not exempt. (*Municipal NPDES permit, Appendix 1*)
- 1.3.1.6. Commercial agriculture practices involving working the land for production. Construction of impervious surfaces are not exempt. (*Municipal NPDES permit, Appendix 1*)
- 1.3.1.7. Oil and gas field activities such as construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. (*Municipal NPDES permit, Appendix 1*)
  - 1.3.1.7.1. Discharge of sediment or other stormwater pollution from an oil or gas field activity is subject to the illicit discharge ordinance of [JURISDICTION], [Chapter/title]
- 1.3.1.8. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

#### **1.4. Authority**

- 1.4.1. This ordinance is adopted pursuant to authority conferred by and in accordance with the provisions of the State of Washington Water Pollution Control Law Chapter 90.48, Revised Code of Washington, and the Federal Water Pollution Control Act (the Clean Water Act) Title 33 United States Code, Section 1251 et seq. (*Center for Watershed Protection Model ordinance*)

#### **1.5. Compatibility with Other Permit and Ordinance Requirements**

- 1.5.1. This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence. (*Center for Watershed Protection Model ordinance*)

#### **1.6. Severability**

- 1.6.1. If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or

clause of this ordinance. (*Center for Watershed Protection Model ordinance*)

### **1.7. Liability**

1.7.1. Any person who undertakes or causes to be undertaken any land development shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this ordinance are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters. (*Center for Watershed Protection Model ordinance*)

1.7.2. By approving a plan under this regulation, [JURISDICTION] does not accept responsibility for the design, installation, and operation and maintenance of stormwater BMPs. (*Center for Watershed Protection Model ordinance*)

### **1.8. Authority Designated.**

1.8.1. The [POSITION TITLE] of the [JURISDICTION] [DEPARTMENT] is hereby authorized and designated as the Official responsible for the enforcement and administration of this Title. The [POSITION TITLE] may designate employees within his division to act on his behalf. The use of the terms "Stormwater Authority," "Administrative Authority," "Code Official," "Authority Having Jurisdiction" and similar such terms as contained in this ordinance and in the codes and standards adopted by reference under this ordinance shall be construed as referring to the [POSITION TITLE] of the [JURISDICTION] [DEPARTMENT] and their designees. (*adopted from existing County Building Code 13.04.010*)

### **1.9. Design Manuals**

1.9.1. The [STORMWATER AUTHORITY] will utilize information including technical specifications of the latest edition of the Stormwater Manual for Eastern Washington, (or approved local equivalent), or another technical stormwater manual approved by Ecology, as the basis for decisions about design, implementation, maintenance, and performance of structural and non-structural post-construction stormwater BMPs. The Stormwater Management Manual for Eastern Washington, (or approved local equivalent), includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Use of BMPs from other technical stormwater manuals approved by Ecology shall be consistent with [JURISDICTION] climate, soils, and specific site conditions appropriate for said BMP use. Stormwater practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Eastern Washington NPDES Phase II Municipal Stormwater Permit requirements. (*Burlington, North Carolina*)

*ordinance modified for Eastern WA; Standards have been removed from wording to reflect that the manual is guidance and not regulatory)*

- 1.9.2. Use of BMPs not designed, constructed, and maintained in accordance with manuals identified in the preceding section (*insert section number*) shall be subject to [STORMWATER AUTHORITY] approval and must be monitored for performance to demonstrate that they meet the minimum water quality performance standards of the Eastern Washington NPDES Phase II Municipal Stormwater Permit requirements.

### **1.10. Amendments to Design Manuals**

- 1.10.1. The Stormwater Management Manual for Eastern Washington, (or approved local equivalent), may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience. The most current version of the Stormwater Management Manual for Eastern Washington, (or approved local equivalent) is to be used where referenced by this ordinance. (*Center for Watershed Protection Model ordinance*)
- 1.10.2. Prior to amending or updating the [approved local equivalent] manual, proposed changes shall be publicized and made available for review, and an opportunity for comment by interested persons shall be provided (*Burlington, North Carolina ordinance*).
- 1.10.3. If the specifications, guidelines, or other information in the Stormwater Management Manual for Eastern Washington, (or approved local equivalent), are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application. (*Burlington, North Carolina ordinance modified for Eastern WA*)

### **1.11. Right of entry**

*(insert Right of Entry language from adopted illicit discharge ordinance)*

## **2. Definitions**

- 2.1. **“Applicant”** means a person, party, firm, corporation, or other legal entity that proposes a development, construction or use on a site. (*existing County Code 16A.02.00*)
- 2.2. **“Best Management Practices (BMPs)”** means schedules of activities, prohibitions of practices, maintenance procedures, and other physical, structural and/or managerial practices to prevent or reduce the pollution of waters of the state. BMPs include treatment systems, operating procedures, and practices to control: stormwater associated with construction activity, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

- 2.3. “**Certified Erosion and Sediment Control Lead** or **CESCL**“ means a person who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by Ecology. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)(*this differs from the Eastern WA Stormwater Management Manual glossary definition of CESCL that defines a Contractor Erosion and Sediment Control Lead*)
- 2.4. “**Channel**”, or “**Waterway**” means an open conduit, either naturally or artificially created, which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water. (*existing County Code 16A.02.085*)
- 2.5. “**Clearing**“ or “**Site Clearing**” means the removal of timber, brush, grass, ground cover or other vegetative matter from a site. (*existing Yakima County Code, 16C.02.100*)
- 2.6. “**Common Plan of Development**” means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (*e.g. a development where lots are sold to separate builders*); a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements. (*Municipal NPDES permit, Definitions*)
- 2.7. “**Detention**” means the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system, the difference being held in temporary storage with the goals of controlling peak discharge rates and providing gravity settling of pollutants.(*Stormwater Management Manual for Eastern Washington & Center for Watershed Protection Model ordinance*)
- 2.8. “**Development**” means new development, redevelopment, or both. See definitions for each. (*Stormwater Management Manual for Eastern Washington*)
- 2.9. “**Ecology**” means the Washington State Department of Ecology. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)
- 2.10. “**Erosion and Sediment Control**” Any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment-laden water does not leave the site. (*Stormwater Management Manual for Eastern Washington*)
- 2.11. “**Erosion and Sediment Control BMPs**” means BMPs that are intended to prevent erosion and sedimentation, such as preserving natural vegetation,

seeding, mulching and matting, plastic covering, filter fences, sediment traps, and ponds. Erosion and sediment control BMPs are synonymous with stabilization and structural BMPs. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

- 2.12. “**Finish Grade**” means the final grade of the site which conforms to an approved plan. (*existing Yakima County Code, 16C.02.250*)
- 2.13. “**Grading**” means any excavation, filling, or combination thereof. (*existing Yakima County Code, 16C.02.255*)
- 2.14. “**Impaired Waters**” means those streams, rivers and lakes that currently do not meet their designated use classification and associated water quality standards under the Clean Water Act and listed on the most current State of Washington 303(d) list. (*Center for Watershed Protection Model ordinance, modified to specify listing on the 303(d) list*) (*Stormwater Management Manual for Eastern Washington definition considered, but is very general*)
- 2.15. “**Land Development**” or “**Development**” means the division of land into lots or parcels in accordance with the [JURISDICTION] Subdivision Ordinance, and any clearing, excavation, dredging, drilling, filling, dumping, removal of earth and mineral materials, or other permanent or temporary modification of a site up to, but not including, construction as defined in this chapter. For the purpose of this chapter, “development” also means any manmade change to improved or unimproved real estate located within the special flood hazard area, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling, temporary or permanent storage of equipment and works defined in this chapter. (*existing County Code 16C.02.135, “Development”*)
- 2.16. “**Land Disturbing Activity**” means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity. (*Stormwater Management Manual for Eastern Washington*)
- 2.17. “**Municipal Separate Storm Sewer System**” or “**MS4**” means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters

of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (*Municipal NPDES permit, Definitions*) In the County, the MS4 is that portion regulated by the Eastern Washington Phase II Municipal Stormwater Permit.

- 2.18. **“National Pollutant Discharge Elimination System”** or “NPDES” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology. (*c*)
- 2.19. **“New Development”** means land disturbing activities, including Class IV general forest practices development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development. (*Stormwater Management Manual for Eastern Washington*)
- 2.20. **“Non-Stormwater Discharge”** means any discharge to the storm drain system that is not composed entirely of stormwater. (*Center for Watershed Protection Model ordinance*)
- 2.21. **“Owner(s)”** or **“Property owner(s)”** means the legal owner or owners of the property. (*existing County Code 15.02.020(148)*) As used herein, owner also refers to, in the appropriate context: (i) any other person authorized to act as the agent for the owner; (ii) any person who submits a stormwater management concept or design plan for approval or requests issuance of a permit, when required, authorizing land development to commence; and (iii) any person responsible for complying with an approved stormwater management design plan. (*Center for Watershed Protection Model ordinance*)
- 2.22. **“Point Source”** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state. This term does not include return flows from irrigated agriculture. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)
- 2.23. **“Project Site”** means that portion of a property, properties, or right of way subject to land disturbing activities, and new or replaced impervious surfaces. (*Stormwater Management Manual for Eastern Washington*)
- 2.24. **“Public Development”** or **“Public”** as used in this chapter shall mean any land development or redevelopment upon any real property, or interest therein, belonging to the [JURISDICTION] or a trust or authority of which the [JURISDICTION] is a beneficiary. Public development shall also

include private development whenever all or a portion thereof will eventually be dedicated or provided for ownership, operation and/or maintenance to the [JURISDICTION] or a public trust or authority of which the [JURISDICTION] is a beneficiary. (*adopted from Oklahoma City Code, 13-400(g) – Public Property*)

- 2.25. **“Receiving Stream or Receiving Water”** means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. (*Stormwater Management Manual for Eastern Washington*)
- 2.26. **“Redevelopment”** means on a site that is already substantially developed, the replacement or improvement of impervious surfaces, including buildings and other structures, and replacement or improvement of impervious parking and road surfaces, that is not part of a routine maintenance activity. (Any new impervious surfaces created by a redevelopment project are subject to the requirements for new development.) (*Stormwater Management Manual for Eastern Washington*)
- 2.27. **“Responsible Party”** means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns that is named on a stormwater maintenance agreement as responsible for long-term operation and maintenance of one or more stormwater BMPs. (*Center for Watershed Protection Model ordinance*)
- 2.28. **“Rough Grade”** means a stage where grade conforms approximately to an approved plan. (*existing Yakima County Code, 16C.02.250*)
- 2.29. **“Sediment Control”** means measures that prevent eroded sediment from leaving the site. (*EPA Model Construction Ordinance*)
- 2.30. **“Site”** See Project Site
- 2.31. **“Source Control BMPs”** means physical, structural or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater. A few examples of source control BMPs are erosion control practices, maintenance of stormwater facilities, constructing roofs over storage and working areas, and directing wash water and similar discharges to the sanitary sewer or a dead end sump. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)
- 2.32. **“Stabilization”** means the use of practices that prevent exposed soil from eroding. (*EPA Model Construction Ordinance*)
- 2.33. **“Stop Work Order”** means an order issued that requires that all construction activity on a site be stopped. (*Center for Watershed Protection Model ordinance*)
- 2.34. **“Stormwater Authority”** means the department or agency, and its authorized agents, which is responsible for coordinating the review, approval, and permit

process as defined by this ordinance. (*Center for Watershed Protection Model ordinance*)

- 2.35. **“Stormwater Management”** means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat. (*Center for Watershed Protection Model ordinance*)
- 2.36. **“Stormwater Pollution Prevention Plan”** or **“SWPPP”** or **“Construction SWPPP”** means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction. (*EPA Model Construction Ordinance*)
- 2.37. **“Stormwater Runoff”** or **“Stormwater”** means runoff during and following precipitation and snowmelt events, including surface runoff, drainage and interflow (*Municipal NPDES permit, Definitions*)
- 2.38. **“Stream”** means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water including, but not limited to, hydraulically sorted sediments, or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, stormwater runoff devices or other entirely artificial watercourses, unless they are used to convey streams naturally occurring prior to construction. Those topographic features that resemble streams but have no defined channels (i.e., swales) shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development. (*Stormwater Management Manual for Eastern Washington*)
- 2.39. **“Structure”** means anything constructed or erected which requires location on the ground or attached to something having a location on the ground (*existing County Code 15.02.020(189)*).
- 2.40. **“Watercourse”** means any regulated body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the Washington Department of Ecology. (*EPA Model Construction Ordinance*)
- 2.41. **“Waterway”** see “Channel”.
- 2.42. **“Waters of the state”** includes those waters as defined as “waters of the United States” in 40 CFR 122.2 within the geographic boundaries of Washington State and “waters of the state” as defined in Chapter 90.48 RCW which includes: lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the State of Washington. (*Municipal NPDES permit, Definitions*)

### 3. Construction Stormwater Pollution Prevention Plan (SWPPP)

### 3.1. **Construction SWPPP Required**

- 3.1.1. Projects meeting the **regulatory threshold** shall prepare, submit, and implement a Stormwater Pollution Prevention Plan (SWPPP) for construction activity. The SWPPP shall be implemented beginning with initial soil disturbance and continue until final stabilization. (*municipal NPDES permit, Appendix 1*)
- 3.1.2. Each SWPPP shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee. (*EPA Model Construction Ordinance*)
- 3.1.3. Each SWPPP shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the SWPPP and that a Certified Erosion and Sediment Control Lead (CESCL) shall be on site or on call on all days when construction or grading activity takes place. (*EPA Model Construction Ordinance*)
- 3.1.4. **SWPPP Compliance:** SWPPP compliance may be obtained in one of four ways, as follows:
  - 3.1.4.1. Preparation, submittal and implementation of a Construction SWPPP in accordance with Section 3.2 of this ordinance.
    - 3.1.4.1.1. All such projects shall provide a copy of the Construction SWPPP, including an anticipated schedule, to the (Stormwater Authority) at least one working day before any land disturbing activity.
  - 3.1.4.2. Preparation and implementation of a SWPPP developed in accordance with the requirements of Ecology's *General NPDES Permit for Stormwater Discharges Associated with Construction Activities*.
    - 3.1.4.2.1. All such projects shall provide a copy of the Construction SWPPP prepared in accordance with Ecology requirements, including an anticipated schedule, to the (Stormwater Authority) at least one working day before any land disturbing activity.
  - 3.1.4.3. Public and private development or redevelopment that qualify for and obtain an "Erosivity Waiver" in accordance with requirements of the Washington State Department of Ecology "General NPDES Permit for Stormwater Discharges Associated with Construction Activities" (*Municipal NPDES permit, Appendix 1*).
  - 3.1.4.4. Public and private development or redevelopment that qualify for and obtain an "Erosivity Waiver" in accordance with the following: (*Municipal NPDES permit, Appendix 1*).
    - 3.1.4.4.1. The Erosivity Waiver contains the following conditions:

3.1.4.4.1.1. The total acres to be disturbed within the entire construction project or common plan of development does not exceed 5 acres; and,

3.1.4.4.1.2. Calculation of Erosivity “R” Factor:

3.1.4.4.1.2.1. The project’s rainfall erosivity factor (“R” Factor) must be less than 5 during the period of construction activity, as calculated using the Texas A&M University online rainfall erosivity calculator at: <http://ei.tamu.edu/>. The period of construction activity begins at initial earth disturbance and ends with *final stabilization*; and, in addition:

3.1.4.4.1.3. Operators must submit a complete Erosivity Waiver Certification Statement at least one week prior to commencing land disturbing activities. Certification must include:

3.1.4.4.1.3.1. A statement that the operator will comply with applicable local stormwater requirements; and

3.1.4.4.1.3.2. A statement that the operator will implement appropriate *erosion and sediment control BMPs* to prevent violations of water quality standards.

3.1.4.4.1.1.4. This waiver is not available for facilities declared a significant contributor of pollutants by Ecology.

3.1.4.4.1.2. The project has no other discharges including, but not limited to excavation dewatering, wash waters and hydrostatic test waters; and,

3.1.4.4.2. Appropriate erosion and sediment control BMPs be implemented to prevent violations of water quality standards (*Washington Department of Ecology, Erosivity Waiver Certification*)

3.1.4.4.3. Discharge of sediment or other pollutants from a construction site qualifying under an Erosivity Waiver is subject to the illicit discharge ordinance of [JURISDICTION], [Chapter/title]

3.1.4.5. For projects subject to (insert post-construction reference), a Construction SWPPP or Erosivity Waiver prepared in accordance with this ordinance is required as part of the Stormwater Site Plan.

## 3.2. Construction SWPPP Elements

3.2.1. The Construction SWPPP shall include the 12 elements of a Construction SWPPP. Guidance for design and implementation of the 12 elements in a Construction SWPPP are found in the *Stormwater Management Manual for Eastern Washington* dated 2004 (or approved local equivalent). (*EPA Model Construction Ordinance*)

3.2.1.1.Preserve Vegetation/Mark Clearing Limits (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)(*through Section 3.4, Map Contents and Requirements*)

3.2.1.1.1. Prior to beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits, *sensitive areas* and their *buffers*, and trees that are to be preserved within the construction area.

3.2.1.1.2. The duff layer, native top soil, and natural vegetation shall be retained in an undisturbed state to the maximum degree practicable.

3.2.1.2.Establish Construction Access

3.2.1.2.1. Construction vehicle access and exit shall be limited to one route, if possible.

3.2.1.2.2. Access points shall be stabilized with a pad of quarry spalls, crushed rock, or other *equivalent BMP*, to minimize the tracking of sediment onto public roads.

3.2.1.2.3. Wheel wash or tire baths shall be located on site, if the stabilized construction entrance is not effective in preventing sediment from being tracked onto public roads.

3.2.1.2.4. If sediment is tracked off site, public roads shall be cleaned thoroughly at the end of each day, or more frequently during wet weather. Sediment shall be removed from roads by shoveling or pickup sweeping and shall be transported to a controlled sediment disposal area.

3.2.1.2.5. Street washing is allowed only after sediment is removed in accordance with 3.2.1.2.4. Street wash wastewater shall be controlled by pumping back on site or otherwise be prevented from discharging into systems tributary to waters of the state.

3.2.1.3.Control Flow Rates

3.2.1.3.1. Properties and waterways downstream from development sites shall be protected from erosion due to increases in the velocity and peak volumetric flow rate of stormwater runoff from the project site, as required by local plan approval authority.

3.2.1.3.2. Where necessary to comply with 3.2.1.3.1., stormwater retention or *detention* facilities shall be constructed as one of the first steps in grading. Detention facilities shall be functional prior to construction of site improvements (e.g., impervious surfaces).

3.2.1.3.3. If permanent infiltration ponds are used for flow control during construction, these facilities shall be protected from siltation during the construction phase.

#### 3.2.1.4. Install Sediment Controls

3.2.1.4.1. Stormwater runoff from disturbed areas shall pass through a sediment pond or other appropriate sediment removal BMP, prior to leaving a construction site or prior to discharge to an infiltration facility. Runoff from fully stabilized areas may be discharged without a sediment removal BMP, but shall meet the flow control performance standard of 3.2.2.3.1.

3.2.1.4.2. Sediment control BMPs (sediment ponds, traps, filters, etc.) shall be constructed as one of the first steps in grading. These BMPs shall be functional before other land disturbing activities take place.

3.2.1.4.3. BMPs intended to trap sediment on site shall be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

#### 3.2.1.5. Stabilize Soils

3.2.1.5.1. Exposed and unworked soils shall be stabilized by application of effective BMPs that prevent erosion. Applicable BMPs include, but are not limited to: temporary and permanent seeding, sodding, mulching, plastic covering, erosion control fabrics and matting, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control.

3.2.1.5.2. No soils shall remain exposed and unworked for more than the time periods set forth below to prevent erosion:

3.2.1.5.2.1. For areas with mean annual precipitation 12 inches or greater:

3.2.1.5.2.1.1. During the dry season (July 1 - September 30): 10 days

3.2.1.5.2.1.2. During the wet season (October 1 - June 30): 5 days

3.2.1.5.2.2. For areas with mean annual precipitation less than 12 inches:

3.2.1.5.2.2.1. During the dry Season (July 1 - September 30): 30 days

3.2.1.5.2.2.2. During the wet season (October 1 - June 30): 15 days

3.2.1.5.3. Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast.

3.2.1.5.4. Soil stockpiles shall be stabilized from erosion, protected with sediment trapping measures, and where possible, be located away from *storm drain* inlets, waterways, and drainage channels.

#### 3.2.1.6. Protect Slopes

3.2.1.6.1. Design and construct cut and fill slopes in a manner that will minimize erosion. Applicable practices include, but are not limited to, reducing continuous length of slope with terracing and diversions, reducing slope steepness, and roughening slope surfaces (e.g., track walking).

3.2.1.6.2. Off-site stormwater (run-on) or groundwater shall be diverted away from slopes and disturbed areas with interceptor dikes, pipes, and/or swales. Off-site stormwater should be managed separately from stormwater generated on the site.

3.2.1.6.3. At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion. Temporary pipe slope drains and channels shall handle the expected peak flow velocity from a 6-month, 3-hour storm for the developed condition, referred to as the short duration storm.

3.2.1.6.4. Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.

3.2.1.6.5. Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.

#### 3.2.1.7. Protect Drain Inlets

3.2.1.7.1. All storm drain inlets made operable during construction shall be protected so that stormwater runoff does not enter the conveyance system without first being filtered or treated to remove sediment.

3.2.1.7.2. Inlet protection devices shall be cleaned or removed and replaced when sediment has filled one-third of the available storage (unless a different standard is specified by the product manufacturer).

#### 3.2.1.8. Stabilize Channels and Outlets

3.2.1.8.1. All temporary on-site conveyance channels shall be designed, constructed, and stabilized to prevent erosion from the following expected peak flows:

3.2.1.8.1.1. Channels shall handle the expected peak flow velocity from a 6-month, 3-hour storm for the developed condition, referred to as the short duration storm.

3.2.1.8.2. *Stabilization*, including armoring material, adequate to prevent erosion of outlets, adjacent stream banks, slopes, and

downstream reaches shall be provided at the outlets of all conveyance systems.

#### 3.2.1.9. Control Pollutants

- 3.2.1.9.1. All pollutants, including waste materials and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of stormwater.
- 3.2.1.9.2. Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment. On-site fueling tanks shall include secondary containment.
- 3.2.1.9.3. Maintenance, fueling, and repair of heavy equipment and vehicles shall be conducted using spill prevention and control measures. Contaminated surfaces shall be cleaned immediately following any spill incident.
- 3.2.1.9.4. Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the *sanitary sewer* with local sewer district approval.
- 3.2.1.9.5. Application of fertilizers and pesticides, shall be conducted in a manner and at application rates that will not result in loss of chemical to stormwater runoff. Manufacturers' label requirements for application rates and procedures shall be followed.
- 3.2.1.9.6. BMPs shall be used to prevent or treat contamination of stormwater runoff by pH modifying sources. These sources include, but are not limited to: bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, dewatering concrete vaults, concrete pumping and mixer washout waters. Responsible Parties shall adjust the pH of stormwater if necessary to prevent violations of water quality standards.
- 3.2.1.9.7. Responsible Parties shall obtain written approval from Ecology prior to using chemical treatment, other than CO<sub>2</sub> or dry ice to adjust pH.

#### 3.2.1.10. Control De-Watering

- 3.2.1.10.1. Foundation, vault, and trench de-watering water, which have similar characteristics to stormwater runoff at the site, shall be discharged into a controlled conveyance system prior to discharge to a sediment trap or sediment pond.

3.2.1.10.2. Clean, non-turbid de-watering water, such as well-point ground water, can be discharged to systems tributary to, or directly into surface waters of the state, as specified in Ecology's Construction Stormwater General Permit (November, 2005) at S9.D.8, provided the de-watering flow does not cause erosion or flooding of receiving waters. Clean de-watering water should not be routed through stormwater sediment ponds.

3.2.1.10.3. Other de-watering disposal options may include:

3.2.1.10.3.1. infiltration

3.2.1.10.3.2. transport offsite in a vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute state waters,

3.2.1.10.3.3. Ecology-approved on-site chemical treatment or other suitable treatment technologies,

3.2.1.10.3.4. sanitary sewer discharge with local sewer district approval, if there is no other option, or

3.2.1.10.3.5. use of a sedimentation bag with *outfall* to a ditch or swale for small volumes of localized de-watering.

3.2.1.10.4. Highly turbid or contaminated dewatering water shall be handled separately from stormwater.

3.2.1.11. Maintain BMPs

3.2.1.11.1. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function in accordance with BMP specifications.

3.2.1.11.2. All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed.

3.2.1.12. Manage the Project

3.2.1.12.1. Development projects shall be phased to the maximum degree practicable and shall take into account seasonal work limitations.

3.2.2. Inspection and Monitoring

3.2.2.1. All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function. The SWPPP shall identify an inspection and maintenance schedule for the BMPs contained in the SWPPP. Specific BMP inspection and maintenance guidance is contained in the latest version of the Stormwater Management Manual for Eastern Washington, other

Ecology approved stormwater manuals, (or approved local equivalent).

### **3.3. Maintenance of the Construction SWPPP**

- 3.3.1. The Construction SWPPP shall be retained on-site or within reasonable access to the site. The Construction SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance of any BMP. (*Stormwater Management Manual for Eastern Washington*)

### **3.4. Construction SWPPP – Map Contents and Requirements**

- 3.4.1. The SWPPP shall also include a vicinity map or general location map (e.g. USGS Quadrangle map, a portion of a county or city map, or other appropriate map) with enough detail to identify the location of the construction site and receiving waters within one mile of the site.
- 3.4.2. The SWPPP shall also include a legible site map (or maps) showing the entire construction site. The following features shall be identified, unless not applicable due to site conditions:
  - 3.4.2.1. The direction of north, property lines, and existing structures and roads;
  - 3.4.2.2. Cut and fill slopes indicating the top and bottom of slope catch lines;
  - 3.4.2.3. Approximate slopes, contours, and direction of stormwater flow before and after major grading activities;
  - 3.4.2.4. Areas of soil disturbance and areas that will not be disturbed;
  - 3.4.2.5. Locations of structural and nonstructural controls (BMPs) identified in the SWPPP
  - 3.4.2.6. Locations of off-site material, stockpiles, waste storage, borrow areas, and vehicle/equipment storage areas;
  - 3.4.2.7. Locations of all surface water bodies, including wetlands;
  - 3.4.2.8. Locations where stormwater or non-stormwater discharges off-site and/or to a surface water body, including wetlands;
  - 3.4.2.9. Location of water quality sampling station(s), if sampling is required by state or local permitting authority; and
  - 3.4.2.10. Areas where final stabilization has been accomplished and no further construction-phase requirements apply.

## **4. Enhanced Criteria for Impaired Waters**

*(Center for Watershed Protection Model ordinance)(NPDES permit requires adherence to impaired water (TMDL) requirements when implemented. This language clarifies that the municipality may require more stringent standards in the future if TMDLs are designated in the NPDES permit)*

4.1.1. Construction activity that discharges via the [JURISDICTION] MS4 to impaired waters and wetlands with a stormwater waste load allocation, as designated in the most recent Eastern Washington Phase II Municipal Stormwater Permit, or individual municipal stormwater permit issued to [JURISDICTION], by the Washington State Department of Ecology, shall meet enhanced criteria.

4.1.1.1. In these cases, the [STORMWATER AUTHORITY] may require additional storage, treatment, filtering, infiltration, or other techniques. The use of non-structural practices shall be used to the maximum extent practical to meet enhanced criteria.

4.1.1.2. Where an applicable Total Maximum Daily Load (TMDL) specifically precludes or prohibits discharges from construction activity, the applicant is not eligible for discharge to the MS4 under this ordinance. (*Washington Department of Ecology, General NPDES permit for Stormwater Discharges Associated with Construction Activities*)

## 5. Procedures and Requirements

*(The municipal NPDES permit only requires that permittees develop a process for review and approval of construction SWPPPs. The process does not have to be codified, however, doing so provides consistency and clarity to the requirements)*

5.1. **Application Requirements:** Applications shall be submitted and considered in the manner established by [JURISDICTION SUBDIVISION REVIEW CODE], [SECTION] and as follows: (*existing County Ordinance 15.12.020*) (*All municipalities have some type of review process codified. Referring to these sections for a review process will necessitate changes to those codes to apply to this ordinance. The specific sections are: County 16B; Yakima, 16; Union Gap, 18; and Sunnyside, 19*)

5.2. **Substantive Changes to Plan:** No substantive changes shall be made to an approved plan without review and written approval by the [STORMWATER AUTHORITY]. The [STORMWATER AUTHORITY] may request additional data with a plan amendment as may be necessary for a complete review of the plan and to ensure that changes to the plan will comply with the requirements of this ordinance. (*Center for Watershed Protection Model ordinance*)

5.3. **Expiration of Plan Approval:** The Construction SWPPP's approval expires in one year from the date of approval unless a final plat is recorded or unless work has actually begun on the site. The recordation of a final plat for a section of a subdivision (or initiation of construction in a section) does not vest the approval of the construction SWPPP for the remainder of the subdivision. If the Construction SWPPP expires, the applicant shall file with the [STORMWATER AUTHORITY] for re-approval of the Construction SWPPP. (*Center for Watershed Protection Model ordinance*)

## 6. Fees

6.1.1. **Fee Authority.** The [STORMWATER AUTHORITY] may obtain with each submission an application fee established by the [STORMWATER AUTHORITY] to cover expenses connected with the review of the construction SWPPP and a technical review fee sufficient to cover professional review services for the project. The [STORMWATER AUTHORITY] is authorized to retain a Registered Professional Engineer or other professional consultant to advise the [STORMWATER AUTHORITY] on any or all aspects of these plans.

6.1.1.1. Applicants must pay review fees before the review process may begin.

6.1.1.2. Application fees are payable at the time of application and are non-refundable.

6.1.1.3. Application fees shall be calculated by the [STORMWATER AUTHORITY] in accordance with the fee schedule below.

6.1.1.4. These fees are in addition to any other local or state fees that may be charged under any other law, bylaw, or local ordinance.

6.1.1.5. When a construction SWPPP is submitted as part of a stormwater site plan required by [JURISDICTION] Post-construction Stormwater Ordinance (*insert ordinance number*), fees from the Post-construction Stormwater Ordinance apply in lieu of fees required by this ordinance.

#### 6.1.2. **Application Fees**

6.1.2.1. A non-refundable application fee of [\$XX.00] shall be due and payable to the [JURISDICTION] at the time an application is filed. The application fee will provide up to XX (XX) hours of services for administration, review, inspection, and monitoring for each project.

6.1.2.2. The [STORMWATER AUTHORITY] may require any applicant to pay an additional fee of [\$XX.00] per hour for review, inspection and monitoring services for any project filing that requires an excess of XX (XX) hours of administration, review, inspection, and monitoring time by [JURISDICTION] staff member(s).

OR

6.1.2.3. The [STORMWATER AUTHORITY] may adopt reasonable administrative fees and technical review fees for construction stormwater pollution prevention plans, administration, review, inspection, and monitoring of projects subject to this ordinance. These fees are described at Title XX, [JURISDICTION] code.

#### 6.1.3. **Revision Of Fee Schedules And Regulations Governing Fees**

6.1.3.1. The [STORMWATER AUTHORITY] may review and propose revision to its regulations and fee schedules periodically as it sees fit.

6.1.3.1.1. Amendments shall be preceded by a public hearing.

6.1.3.1.2. The schedule of fees and charges proposed by the [STORMWATER AUTHORITY] shall be adopted by the [GOVERNING BOARD OF JURISDICTION] and established in this chapter and may be altered or amended only by the [GOVERNING BOARD OF JURISDICTION].

#### 6.1.4. Automatic Fee Schedule Adjustment.

*(existing County Ordinance 20.00.006)(Municipalities may adopt other language to provide for fee increases)*

6.1.4.1. Beginning on January 1, 2010 and each successive January 1st thereafter, the [JURISDICTION] fee schedule adopted as a part of this title shall automatically be adjusted to account for any increase in the consumer price index (CPI) as established by the U.S. Department of Commerce for the Seattle Metropolitan Area. The twelve-month period utilized to establish the fee schedule adjustment will be as established by the Department of Commerce for the Seattle CPI. Fees adjusted in this manner may be rounded to the nearest five (5) dollar increment. This section shall not preclude the [JURISDICTION] from modifying the base fee, where the [GOVERNING BOARD OF JURISDICTION] finds it necessary to do so.

## 7. Inspection

### 7.1. Stormwater Authority Inspections and Notification

7.1.1. The [STORMWATER AUTHORITY] or designated agent shall make at least one inspection during construction and shall notify the Responsible Party wherein the work fails to comply with the SWPPP. The SWPPP and inspection record shall be maintained at the site during the progress of the work.

7.1.1.1. The Responsible Party shall notify the [STORMWATER AUTHORITY] one working day before beginning land disturbing activity and whenever the construction schedule in the SWPPP changes.: *(EPA Model Construction Ordinance)(modified from model to separate notification from inspection requests)*

### 7.2. Responsible Party inspection

7.2.1. The Responsible Party or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule identified in the approved SWPPP. The purpose of such inspections will be to determine the overall effectiveness of the SWPPP and the need for additional control measures. All inspections shall be documented in written form and submitted to the [STORMWATER AUTHORITY] at the time interval specified in the approved SWPPP. *(EPA Model Construction Ordinance)*

Blue highlight = same as Post-const.; *blue italic = source, red italic = comments*

## **8. Violations, Enforcement and Penalties**

*(insert Violations, Enforcement and Penalties language from adopted illicit discharge ordinance)*

## **9. Effective Date**

*(The NPDES permit does not require an effective date in the ordinance, however, an adoption date and effective date are specified in the permit. One is included here for clarity and provide consistency in adoption by multiple jurisdictions)*

8.1.1. The ordinance codified in this chapter shall go into effect within [JURISDICTION] on February 16, 2011. *(existing County code, 12.09.210)*