

**ORDINANCE NO. 10633**

**AN ORDINANCE ADDING CHAPTER 15.42 TO THE BELLINGHAM MUNICIPAL CODE, RELATING TO STORMWATER MANAGEMENT, DELETING SECTION 15.40.150 RELATING TO LAKE WHATCOM WATER QUALITY, PROVIDING FOR PENALTIES AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the State of Washington has required cities to adopt stormwater management regulations and has adopted minimum requirements for stormwater management; and

WHEREAS, this ordinance is intended to comply with state requirements and to establish minimum standards for stormwater management; and

WHEREAS, The provisions of Section 15.40.150 of the Bellingham Municipal Code relating to Lake Whatcom Water Quality will be replaced with the new chapter, 15.42; and

WHEREAS, the proposed adoption of this ordinance has received a declaration of non-significance pursuant to the State Environmental Policy Act, and

WHEREAS, the City Council has held public hearings and received public comment prior to the adoption of this ordinance;

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**SECTION 1: The Stormwater Management Ordinance, is hereby adopted as Chapter 15.42 of the Bellingham Municipal Code, to read as follows:**

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# Stormwater Management Ordinance

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**STORMWATER MANAGEMENT ORDINANCE**

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## STORMWATER MANAGEMENT ORDINANCE

### SECTION .010: FINDINGS OF FACT, NEED AND PURPOSE

#### .010(1) Findings of Fact

The City Council of the City of Bellingham hereby finds that:

- A. Stormwater pollution is a problem associated with land utilization and development and the common use of potential pollutants such as pesticides, fertilizers, petroleum products, and numerous others.

Land utilization and development is also known to increase both the volume and speed of peak flows. The resulting erosion, scouring, deposition of sediment, and flooding affect the ecological balance in the stream and present safety hazards to both life and property.

Sedimentation and stormwater pollution causes diversity of species to decrease and allow more tolerant (and usually less desirable) species to remain.

Stormwater facilities are a common feature of urban development which must be maintained in order to prevent damage to the public and/or pollution of surface and ground water.

- B. In the future such problems and dangers will be reduced or avoided if existing properties and future developers, both private and public, provide for stormwater quality and quantity controls.
- C. Stormwater quality and quantity controls can be achieved when land is developed or redeveloped by implementing appropriate best management practices (BMPs).
- D. Best management practices can be expected to perform as intended only when properly designed, constructed and maintained.

#### .010(2) Need

The City Council finds that this chapter is necessary in order to guide and advise all who make use of, contribute water to, or alter the City drainage system, and to ensure maintenance of all stormwater facilities within the City by setting minimum standards for their inspection and maintenance.

#### .010(3) Purpose

It is the purpose of this Chapter to:

- A. Minimize water quality degradation in streams, ponds, lakes, wetlands and other water bodies;
- B. Minimize the impact of increased runoff, erosion and sedimentation caused by land development and maintenance practices;
- C. Promote site planning and construction practices that are consistent with natural topographical, vegetational and hydrological conditions;
- D. Maintain and protect the City's stormwater management infrastructure and those downstream.

This chapter is not intended to create a special relationship with any individual or individuals, nor to identify and protect any particular class of persons. It is not the intent of this chapter to impose liability upon the city for failure to perform any discretionary act or failure to enforce the provisions of this chapter. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner and/or contractor. Neither the City nor any officer, agent, or employee thereof shall incur or be held as assuming any liability by reason or in consequence of any permission, inspection or approval authorized herein, or issued as provided herein, or by reason or consequence of any thing done or act performed pursuant to the provisions of this chapter.

## **SECTION .020: DEFINITIONS**

For the purposes of this chapter, the following definitions shall apply:

**"Best Management Practice" or "BMP"** means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, and have been approved by Ecology or the City. BMPs are listed and described in the Manual.

- (1) **Source Control BMP.** A BMP that is intended to prevent pollution from entering stormwater.
- (2) **Treatment BMP.** A BMP that is intended to remove pollution from stormwater.
- (3) **Experimental BMP.** Any treatment or methodology proposed for treatment or management of stormwater that is not in the Manual, and is being studied by the City/County and/or the Washington State Department of Ecology for adoption as a BMP.

**"Clearing"** means the destruction and removal of vegetation by mechanical methods.

**"Critical areas"** means, at a minimum, areas which include wetlands and streams as defined in Bellingham Municipal Code chapter 16.50, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

**"Design storm"** means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm of interest or concern for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs.)

**"Detention"** means the release of stormwater runoff from the site at a lesser rate than it is collected by the stormwater facility system, the difference being held in temporary storage.

**"Detention facility"** means an above or below ground facility, such as a pond or tank, that temporarily stores stormwater runoff and subsequently releases it at a lesser rate than it is collected by the drainage facility system. There is little or no infiltration of stored stormwater.

**"Development"** means any land disturbing activity that requires a permit or approval from the City, including a building permit, grading permit, shoreline substantial development permit, subdivision, short subdivision, or right-of-way use permit.

- (1) **"New Development"** means the following: land disturbing activities requiring machinery, structural development, including construction, installation or expansion of a building or other structure; creation of impervious surfaces; Class IV - general forest practices that are conversions from timber land to other uses; and subdivision

and short subdivision of land as defined in RCW 58.17.020. All other forest practices and commercial agriculture are not considered new development.

- (2) **"Redevelopment"** means, development on an already developed site, which involves the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity.

**"Director"** means the Director of the Public Works Department of the City.

**"Drainage basin"** means a geographic and hydrologic subunit of a watershed.

**"Ecology"** means the Washington State Department of Ecology.

**"Ecology's Manual"** and **"the Manual"** mean the Washington State Department of Ecology "Stormwater Management Manual for the Puget Sound Basin" as now or hereafter amended.

**"Erosion"** means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

**"Excavation"** means the mechanical removal of earth material.

**"Existing site conditions"** means

- (1) For developed sites with stormwater facilities that have been constructed to meet the standards in the Minimum Requirements of this manual, existing site conditions shall mean the existing conditions on the site.
- (2) For developed sites that do not have stormwater facilities that meet the Minimum Requirements, existing site conditions shall mean the conditions that existed prior to local government adoption of a stormwater management program. If in question, the existing site conditions shall be documented by aerial photograph records, or other appropriate means.
- (3) For all sites in water quality sensitive areas as identified under Minimum Requirement #7, Water Quality Sensitive Areas, existing site conditions shall mean undisturbed forest, for the purpose of calculating runoff characteristics.
- (4) For all undeveloped sites outside of water quality sensitive areas, existing site conditions shall mean the existing conditions on the site.

**"Fill"** means a deposit of earth material placed by artificial means.

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (1) Road and trail construction.
- (2) Harvesting, final and intermediate.
- (3) Pre-commercial thinning.
- (4) Reforestation.
- (5) Fertilization.
- (6) Prevention and suppression of diseases and insects.
- (7) Salvage of trees.
- (8) Brush control.

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**"Ground water"** means water in a saturated zone or stratum beneath the surface of land or a surface water body.

**"Hydroperiod"** means the seasonal occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.

**"Illicit discharge"** means all non-stormwater discharges to stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality or ground water quality standards, including but not limited to sanitary sewer connections, industrial process water, interior floor drains, car washing and greywater systems.

**"Impervious surface"** means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, paved parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces.

**"Land Disturbing Activity"** is defined as any clearing, grading, filling, or construction, requiring machinery, on a parcel of any size. This is not meant to include normal site maintenance activities such as lawn mowing, fence post digging, garden rototilling or minor landscaping activities not requiring other permits.

**"Master Plan"** means the City of Bellingham's Watershed Master Plan.

**"Mitigation"** means, in the following order of preference:

- (1) Avoiding the impact altogether by not taking a certain action or part of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- (5) Compensation for the impact by replacing, enhancing, or providing substitute resources or environments.

**"Natural location"** means the location of those channels, swales, and other non-manmade conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.

**"Person"** means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

**"Pollution"** means contamination or other alteration of the physical, chemical, or biological properties, of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental



or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

**"Regional retention/detention system"** means a stormwater quantity control structure designed to correct existing excess surface water runoff problems of a basin or sub-basin. The area downstream has been previously identified as having existing or predicted significant and regional flooding and/or erosion problems.

**"Site"** means the portion of a piece of property which is directly subject to development.

**"Soil"** means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

**"Stormwater"** means that portion of precipitation that does not naturally infiltrate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.

**"Stormwater drainage system"** means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater.

**"Stormwater facility"** means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, sediment basins and modular pavement.

**"Stormwater Management Site Plan"** means an erosion and sediment control (esc) plan, depiction of method of stormwater disposal, and permanent water quality and quantity control report as required.

**"Stormwater Technical Manual" or "Ecology's Manual"** means the "Stormwater Management Manual for the Puget Sound Basin" prepared by Ecology that contains BMPs to prevent or reduce pollution.

**"Substantially Unworked Soil Area"** means an exposed soil area which has not undergone fill or grading activity toward completion of final grade contours.

**"Water body"** means surface waters including rivers, streams, lakes, marine waters, estuaries, and wetlands.

**"Watershed Master Plan" or the "Plan"** means the comprehensive watershed management plan for the City of Bellingham urban and suburban fringe areas which is adopted by reference. The Plan contains Volumes I and II, and the Stormwater Management Handbook.

**"Wetlands"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This includes wetlands created, restored or enhanced as part of a mitigation procedure. This does not include the following surface waters of the state intentionally constructed from sites that are not wetlands: drainage ditches, grass-lined swales, and landscape amenities.

**"Vegetation"** means all organic plant life growing on the surface of the earth.

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**SECTION .030: GENERAL PROVISIONS**

**.030(1) Abrogation and greater restrictions**

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

**.030(2) Interpretation**

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

**SECTION .040: REGULATED ACTIVITIES**

**.040(1) Regulated activities**

Consistent with the minimum requirements contained in this chapter, the following activities, unless exempted in Section .040(2) below, shall not be undertaken without first obtaining approval of the City:

**A. New Development**

- (1) land disturbing activities;
- (2) structural development, including construction; installation or expansion of a building or other structure;
- (3) creation of impervious surfaces where any other city permit is required;
- (4) Class IV general forest practices that are conversions from timber land to other uses;
- (5) subdivision, short subdivision and binding site plans, as defined in Chapter 58.17.020 RCW.

**B. Redevelopment**

On an already developed site, the creation or addition of impervious surfaces, structural development including construction, and installation or expansion of a building or other structure, where any other city permit is required.

**.040(2) Exemptions**

Commercial agriculture, and forest practices regulated under Title 222 WAC, except for Class IV General forest practices that are conversions from timber land to other uses, are exempt from the provisions of this chapter.

Development undertaken by the Washington State Department of Transportation in state highway rights-of-way is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.

All other new development and redevelopment is subject to the minimum requirements of this chapter.

**SECTION .050: GENERAL REQUIREMENTS**

**.050(1) Stormwater management plan adopted**

The City of Bellingham's Watershed Master Plan, as now or hereafter modified, is hereby adopted by reference and is hereinafter referred to as the Plan. The Plan contains information assembled for the purposes of identifying existing and projected problems, analyzing alternatives leading to recommendations, and preparing a program to implement recommendations. The City expresses no guarantee of the accuracy of the information, although updates will be made as necessary to reflect best available information. The use of information should be accompanied by adequate checks for accuracy along with good engineering practice and judgment.

The Director shall be authorized to modify the Plan from time to time, in accordance with the City's adopted Policies and Procedures, to reflect newly discovered technical data and other updated information.

**.050(2) Stormwater best management practices (BMPs)**

**General:** BMPs shall be used to control pollution from stormwater. BMPs shall be used to comply with the standards in this Ordinance. BMPs are in the latest edition of Ecology's Stormwater Technical Manual, hereinafter referred to as Ecology's Manual.

**Experimental BMPs:** In those instances where appropriate BMPs are not in Ecology's Manual, experimental BMPs should be considered. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the Manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved in accordance with the approval process outlined in Ecology's Manual.

**.050(3) Illicit Discharges**

Illicit discharges to stormwater drainage systems are prohibited.

**SECTION .060: APPROVAL STANDARDS**

**.060(1) Small Parcel Minimum Requirements**

The following new development shall be required to control erosion and sediment during construction, to permanently stabilize soil exposed during construction, to comply with Small Parcel Requirements 1 through 5 below, and to prepare a small parcel stormwater site plan:

- A. Individual, detached, single family residences and duplexes.
- B. Creation or addition of less than 5,000 square feet of impervious surface area where any other city permit is required.
- C. Land disturbing activities of less than 1 acre.

*\* NOTE: Offsite improvements (such as street construction) required in conjunction with small parcel development are not counted toward the above thresholds.*

**.060(1).1 Small parcel requirement #1 -- Construction access route**

Construction vehicle access shall be, whenever possible, limited to one route. Access points shall be

stabilized with quarry spall or crushed rock to minimize the tracking of sediment onto public roads.

**.060(1).2 Small parcel requirement #2 -- Stabilization of denuded areas**

Land disturbance shall be timed so that soils are not left exposed longer than necessary. All exposed and unworked soils shall be stabilized by suitable application of BMPs, including but not limited to sod or other vegetation, plastic covering, mulching, or application of ground base on areas to be paved. All BMPs shall be selected, designed and maintained in accordance with Ecology's Manual. From October 1 through April 30, no substantially unworked soil areas shall remain exposed for more than 2 days. From May 1 through September 30, no substantially unworked soil areas shall remain exposed for more than 7 days. In addition, at the discretion of the Public Works Director those sites unable to maintain the quality of their stormwater discharge may be required to provide soil stabilization to all exposed soil areas regardless of the working status of the area. Upon written notification, the property owner shall provide full stabilization of all exposed soil areas within 24 hours.

**.060(1).3 Small parcel requirement #3 -- Protection of adjacent properties**

Adjacent properties shall be protected from sediment deposition by appropriate use of vegetative buffer strips, sediment barriers or filters, dikes or mulching, or by a combination of these measures and other appropriate BMPs.

**.060(1).4 Small parcel requirement #4 -- Maintenance**

All erosion and sediment control BMPs shall be regularly inspected and maintained to ensure continued performance of their intended function.

**.060(1).5 Small parcel requirement #5 -- Other BMPs**

If the selected BMPs fail to perform as intended, then other appropriate BMPs to mitigate the effects of increased runoff shall be applied as required by the Director.

**.060(2) LARGE DEVELOPMENT MINIMUM REQUIREMENTS**

**.060(2).1 New development**

The following new developments shall comply with minimum requirements in Sections .060(2).3 through .060(2).12:

- A. All new development that includes the creation or addition of 5,000 square feet, or greater, of new impervious surface area; and/or
- B. Land disturbing activities of 1 acre, or greater.

Compliance shall be demonstrated through the implementation of an approved Stormwater Management Plan, or Stormwater Site Plan. This section does not apply to the construction of one individual, detached, single family residence or one duplex.

**.060(2).2 Redevelopment**

- A. Where redevelopment of  $\geq$  5,000 square feet occurs:

The new development minimum requirements, Sections .060(2).3 through .060(2).12, shall apply to that portion of the site that is being redeveloped, and source control BMPs shall be

applied to the entire site, including adjoining parcels if they are part of the project.

- B.** A Stormwater Site Plan (SSP) is required in addition to the requirements noted above.

Exception: At the discretion of the Public Works Director, redevelopment activities which have physical site constraints that significantly hamper retrofitting of the site and that are judged to have no significant impact to stormwater quality, may be exempted in whole or part from the provisions of this ordinance.

**.060(2).3 Minimum requirement #1 -- Erosion and Sediment Control**

**.060(2).3(1) Erosion and sediment control for land disturbing activities  $\geq$  or = 5,000 sq. ft. and  $<$  1 acre**

All proposed developments where land disturbing activities  $\geq$  5,000 sq. ft. and  $<$  1 acre are planned, shall comply with Minimum Requirements #2 through #10 in sections .060(2).4 through .060(2).12, and the Small Parcel Requirements found in section .060.1, above.

**.060(2).3(2) Erosion and sediment control for land disturbing activities 1 acre and greater**

All new development and redevelopment that includes land disturbing activities  $\geq$  1 acre, shall comply with Erosion and Sediment Control Requirements 1 through 15, below. Compliance with the Erosion and Sediment Control Requirements shall be demonstrated through implementation of an Erosion and Sediment Control Plan.

The following erosion and sediment control requirements shall be met:

- A.** Erosion and sediment control requirement #1: Stabilization and sediment trapping

Land disturbance shall be timed so that soils are not left exposed longer than necessary. All exposed and unworked soils shall be stabilized by suitable application of BMPs, including but not limited to sod or other vegetation, plastic covering, mulching, or application of ground base on areas to be paved. All BMPs shall be selected, designed and maintained in accordance with Ecology's Manual. From October 1 through April 30, no substantially unworked soil areas shall remain exposed for more than 2 days. From May 1 through September 30, no substantially unworked soil areas shall remain exposed for more than 7 days. In addition, at the discretion of the Public Works Director those sites unable to maintain the quality of their stormwater discharge may be required to provide soil stabilization to all exposed soil areas regardless of the working status of the area. Upon written notification, the property owner shall provide full stabilization of all exposed soil areas within 24 hours. Prior to leaving the site, stormwater runoff shall pass through a sediment pond or sediment trap, or other appropriate BMPs.

- B.** Erosion and sediment control requirement #2: Delineate clearing and easement limits

In the field, stake and flag clearing limits and/or any easements, setbacks, sensitive/critical areas and their buffers, trees and drainage courses.

- C.** Erosion and sediment control requirement #3: Protection of adjacent properties

Properties and rights-of-way adjacent to or downstream from the project site shall be protected from sediment deposition.

- D.** Erosion and sediment control requirement #4: Timing and stabilization of sediment trapping measures

Sediment ponds and traps, perimeter dikes, sediment barriers, and other BMPs intended to trap sediment on-site shall be constructed as a first step in grading. These BMPs shall be functional before land disturbing activities take place. Earthen structures such as dams, dikes, and diversions shall be seeded and mulched according to the timing indicated in Erosion and Sediment Control Requirement #1.

**E. Erosion and sediment control requirement #5: Cut and fill slopes**

Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. In addition, slopes shall be stabilized in accordance with Erosion and Sediment Control Requirement #1.

**F. Erosion and sediment control requirement #6: Controlling off-site erosion**

Properties, rights-of-way and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of stormwater runoff from the project site.

**G. Erosion and sediment control requirement #7: Stabilization of temporary conveyance channels and outlets**

All temporary on-site conveyance channels shall be designed, constructed and stabilized to prevent erosion from the expected velocity of flow from a 2-year, 24-hour frequency storm for the developed condition. Stabilization adequate to prevent erosion of outlets, adjacent streambanks, slopes and downstream reaches shall be provided at the outlets of all conveyance systems.

**H. Erosion and sediment control requirement #8: Storm drain inlet protection**

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

**I. Erosion and sediment control requirement #9: Underground utility construction**

The construction of underground utility lines shall be subject to the following criteria:

- (1) Where feasible, no more than 500 feet of trench shall be opened at one time.
- (2) Where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches.
- (3) Trench dewatering devices shall discharge into a sediment trap or sediment pond.

**J. Erosion and sediment control requirement #10: Construction access routes**

Wherever construction vehicle access routes intersect paved roads, provisions must be made to minimize the transport of sediment (mud onto the paved road. If sediment is transported onto a road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or sweeping and be transported to a controlled sediment disposal area. Street washing shall be allowed only after sediment is removed in this manner.

**K. Erosion and sediment control requirement #11: Removal of temporary BMPs**

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. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized.

**L. Erosion and sediment control requirement #12: Dewatering construction sites**

Dewatering devices shall discharge into a sediment trap or sediment pond.

**M. Erosion and sediment control requirement #13: Control of pollutants other than sediment on construction sites**

All pollutants other than sediment that occur on-site during construction shall be handled and disposed of in a manner that does not cause contamination of stormwater.

**N. Erosion and sediment control requirement #14: Maintenance**

All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with Ecology's Manual.

**O. Erosion and sediment control requirement #15: Financial liability / Public Nuisance**

Failure to satisfy the requirements of this chapter relating to erosion and sediment control is hereby declared a public nuisance which is subject to abatement as provided in other laws of the City or the State of Washington. In the event failure to maintain erosion and sediment control as required by this chapter results in erosion or sediment deposit on City property or rights-of-way and the City incurs any cost to restore its property or right-of-way, there shall be imposed a fee in the amount of the City's actual cost for time and materials to restore, provided the minimum fee shall be \$120 per event. The property owner and each person engaged in land-disturbing activities which resulted in the erosion or sediment deposit shall be responsible, jointly and severally, for the restoration fee. The fee shall be imposed in addition to any penalty or other remedy set forth in this chapter, or provided by other laws.

**.060(2).4 Minimum requirement #2 -- Preservation of natural drainage systems**

Natural drainage patterns shall be maintained, and discharges from the site shall occur at the natural location, to the maximum extent practicable.

**.060(2).5 Minimum requirement #3 -- Source control of pollution**

Source control BMPs shall be applied to all projects to the maximum extent practicable. Source control BMPs shall be selected, designed, and maintained according to Ecology's Manual.

An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop source control requirements that are tailored to a specific basin. However, in all circumstances, source control BMPs shall be required for all sites.

**.060(2).6 Minimum requirement #4 -- Runoff treatment BMPs**

All projects shall provide treatment of stormwater. Treatment BMPs shall be sized to capture and treat the water quality design storm, defined as the six-month return period storm. The first priority for treatment shall be to infiltrate as much as possible of the water quality design storm if site conditions are appropriate and ground water quality will not be impaired. Direct discharge of

untreated stormwater to ground water is prohibited. All treatment BMPs shall be selected, designed, and maintained according to Ecology's Manual.

Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the City.

**.060(2).7 Minimum requirement #5 -- Streambank erosion control**

The requirement below applies only to situations where stormwater runoff is discharged directly or indirectly to a stream in which erosion is a problem, and must be met in addition to meeting the requirements in Minimum Requirement #4, Runoff Treatment BMPs:

Stormwater discharges to streams shall control streambank erosion by limiting the peak rate of runoff from individual development sites to 50 percent of the existing condition 2-year, 24-hour design storm while maintaining the existing condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms. As the first priority, streambank erosion control BMPs shall utilize infiltration to the fullest extent practicable, only if site conditions are appropriate and ground water quality is protected. Streambank erosion control BMPs shall be selected, designed, and maintained according to the Plan.

Exception: Those areas in the Plan which are designated to benefit from detention facilities may be exempted from local detention requirements under the following conditions:

The project site area falls within a regional detention basin benefit area. In the event that a project crosses a natural basin boundary only that portion of the project within the tributary benefit area may utilize the regional facility; AND

The detention basin facility has been constructed and is operational prior to project acceptance. If the regional facility has not been constructed, the project proponent has the option of providing local detention, constructing the regional facility or entering into an agreement with the City of Bellingham for the construction of the facility understanding that the City's participation would be subject to funding; AND

A downstream analysis shows the existing system to be capable of conveying the design storm or necessary modifications are made to accomplish this.

Maps specifying regional and local detention facilities are located in Section 4.2 of the City of Bellingham Stormwater Management Handbook.

**.060(2).8 Minimum requirement #6 -- Wetlands**

The requirements below apply only to situations where stormwater discharges directly or indirectly through a conveyance system into a wetland, and must be met in addition to meeting the requirements in Minimum Standard #4, Runoff Treatment BMPs.

- A. Stormwater discharges to wetlands must be controlled and treated to the extent necessary to meet the State Water Quality Standards, Ch. 173-201 WAC, or Ground Water Quality Standards, Ch. 173-200 WAC, as appropriate.
- B. As determined by the City of Bellingham Planning Department, discharges to wetlands shall be maintained to the extent necessary to protect the functions of the wetland. Prior to discharging to a wetland, alternative discharge locations shall be evaluated, and natural water storage and infiltration opportunities outside the wetland shall be maximized.



- C. Created wetlands that are intended to mitigate for loss of wetland acreage, function and value shall not be designed to also treat stormwater.
- D. In order for constructed wetlands to be considered treatment systems, they must be constructed on sites that are not wetlands and managed for stormwater treatment. If these systems are not managed and maintained in accordance with Ecology's Manual or the Plan for a period exceeding three years these systems may no longer be considered constructed wetlands. Discharges from constructed wetlands to waters of the state (including discharges to natural wetlands) are regulated under Ch. 90.48 RCW, Ch. 173-201 WAC, and Ch. 173-200 WAC.

**.060(2).9 Minimum requirement #7: Water quality sensitive areas**

The Lake Whatcom Watershed is hereby declared to be a water quality sensitive area, and where the City of Bellingham determines that the minimum requirements do not provide adequate protection, either on-site or within the basin, more stringent controls shall be required to protect water quality.

Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the City.

**.060(2).10 Minimum requirement #8: Off-site analysis and mitigation**

All development projects shall conduct an analysis of off-site water quality and quantity impacts resulting from the project and shall mitigate these impacts. The analysis shall extend a minimum of one-fourth of a mile downstream from the project. The existing or potential impacts to be evaluated and mitigated shall include, at a minimum, but not be limited to:

- A. Excessive sedimentation
- B. Streambank erosion
- C. Discharges to ground water contributing or recharge zones
- D. Violations of water quality standards
- E. Spills and discharges of priority pollutants
- F. Conveyance Capacity

**.060(2).11 Minimum requirement #9: Basin planning**

The Plan has defined areas within the City where on-site detention facilities, regional facilities, and conveyance improvements are needed to protect public and private property and to also protect our natural stream corridors from degradation associated with increased flow rates and velocities. Those areas that were not included in the analysis performed under the Plan may at their discretion perform a subbasin analysis that can be incorporated into the Plan and that will meet objectives of the minimum requirements.

**.060(2).12 Minimum requirement #10: Operation and maintenance**

An operation and maintenance schedule shall be provided for all proposed stormwater facilities and BMPs, and the party (or parties) responsible for maintenance and operation shall be identified. Maintenance and inspection requirements are listed in Section 8 of this ordinance.

**.060(3) Financial liability / Public Nuisance Declared**

Failure to install and/or maintain stormwater facilities as required in this chapter is hereby declared to be a public nuisance, subject to abatement as provided in other laws of the City or the State of Washington. The property owner and all persons engaged in development or land-disturbing activity shall be liable, jointly and severally, for all costs incurred by the City on account of damage or threatened damage to city property or facilities or water bodies, or associated with remedial actions necessitated by the failure to install and/or maintain required stormwater facilities.

**SECTION .070: MAINTENANCE, INSPECTION AND ENFORCEMENT**

**.070(1) General Requirements**

**.070(1).1 Maintenance required**

All stormwater facilities shall be maintained in accordance with this Ordinance and the Stormwater Management Manual. Systematic, routine preventive maintenance is preferred.

**.070(1).2 Minimum standards**

The following are the minimum standards for the maintenance of stormwater facilities:

- A. Facilities shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility.
- B. Grassy swales and other biofilters shall be inspected monthly and mowed or replanted as necessary. Clippings are to be removed and properly disposed of.
- C. Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken to correct the problem.

**.070(1).3 Compliance**

Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs unless the City has accepted maintenance responsibility and a written easement exists granting the City the right to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this Ordinance and the Stormwater Management Manual.

**.070(2) Administration**

The Director shall develop and administer an inspection program for stormwater facilities in Bellingham.

**.070(3) Inspection Program**

Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this Ordinance has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Bellingham to determine compliance with the provisions of this Ordinance.

**.070(4)      Enforcement**

**.070(4).1      Orders**

The Director shall have the authority to issue to an owner or person an order to install, maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this Ordinance, the Stormwater Manual and/or City regulations. The order shall include:

- A. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;
- B. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and
- C. A reasonable time to comply, depending on the circumstances.

**.070(4).2      Civil penalty**

In addition to any other remedy or sanction available, a person who fails to comply with a final order issued by the Director or City Council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty.

- A. **Amount of Penalty.** The penalty shall be not less than \$100 or exceed \$5000 for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.
- B. **Aiding or Abetting.** Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- C. **Notice of Penalty.** A civil penalty shall be imposed by the Director, by a notice in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.
- D. **Application for Remission or Mitigation.** Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the City Attorney (or designee) for remission or mitigation of such penalty. Upon receipt of the application, the City Attorney may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The City Attorney's decision may be appealed to the City Council within 10 days of the decision.
- E. **Appeal of Civil Penalty.** Persons incurring a penalty imposed by the Director may appeal in writing within 10 days of the receipt of the notice of penalty to the City Council. The City Council shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. Review of the council's decision may be obtained by filing an action for a writ of certiorari with a court of competent jurisdiction within 10 days of the date of the Council's decision.

**.070(4).3      Penalties due**

Penalties imposed under this Section shall become due and payable 10 days after notice of the penalty is mailed or delivered, whichever occurs first, unless application for remission or mitigation is made

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or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable 10 days after the date of the decision regarding the remission or payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this Section, the City may take actions necessary to recover such penalty.

**.070(4).4      Penalty recovered**

Penalties recovered shall be paid to a fund dedicated to enforcement and/or enhancement of the stormwater management program.

**SECTION .080:      ADMINISTRATION**

**.080(1)      Director**

The Public Works Director or a designee shall administer this Ordinance and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this Ordinance.

**.080(2)      Review and approval**

The director may approve, conditionally approve or deny an application for activities regulated by this Ordinance.

**.080(3)      Permit Fees**

A permit fee is charged for each site based on the following scale:

Small parcels:	\$25 per site
Large parcels:	\$5 for each increment of 1000 s.f. of impervious surface created; or
	\$5 per lot for final long plat approval; or
	\$5 per acre for clearing.

The permit fee shall neither be less than \$25 nor greater than \$200 for any single phase of a project. Moneys received for this fee shall be deposited into the surface and storm water utility fund.

**SECTION .090:      VARIANCES AND APPEALS**

**.090(1)      Authority**

The Public Works director may grant a variance from the requirements of this Ordinance. In granting any variance, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

**.090(2)      Variance Criteria**

No variance shall be granted unless the applicant demonstrates, to the satisfaction of the director that:

- A. The variance is not inconsistent with the public interest and that the objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering judgement, are fully met;
- B. That there are special physical circumstances or conditions affecting the property that the strict application of provisions of this Ordinance would deprive the applicant of the reasonable use of the property;

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- C. That the granting of the variance will not be unduly detrimental to the public health, safety and welfare, or injurious to other properties in the vicinity and downstream, and to the quality of the waters of the state; and
- D. The variance is the least possible exception that could reasonably be granted to comply with the intent of this Ordinance.

**.090(3)      Prior approval**

Any variance shall be approved prior to permit approval and construction.

**.090(4)      Duration of variance**

Variances granted shall be valid for 2 years, unless granted for a shorter period.

**.090(5)      Right of appeal**

Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive, unless within 30 days of the date of the director's action, the original applicant or an aggrieved party gives written notice of appeal to the City Council for review of the action. The action of the City Council shall be final and conclusive unless within ten days of the Council's action the aggrieved party files an action for a writ of certiorari in a court of competent jurisdiction.

**SECTION .100:      INFRACTIONS--PENALTY**

A violation of any provision of this chapter, other than as set forth in Section .110 of this chapter, shall be considered an infraction, punishable by a fine not to exceed \$250. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed an infraction shall make restitution to any person damaged by the violation.

**SECTION .110:      MISDEMEANORS--PENALTY**

Any violation of this chapter which results in damage to public or private property, other than the property of the violator, in an amount greater than \$250, or which results in any physical injury to a person shall be a misdemeanor. For purposes of this section "damage" shall include cost to restore as well as loss of value.

Each second or subsequent violation of this chapter by any person within a period of three years shall be a misdemeanor.

Each misdemeanor shall be punishable by a fine not to exceed \$1,500. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed a misdemeanor shall make restitution to any person damaged by the violation.

**SECTION .120:      SEVERABILITY**

If any provision of this Ordinance or its application to any person, entity, or circumstance is held invalid, the remainder of this Ordinance or the application of the provision to other persons, entities, or circumstances shall not be affected.

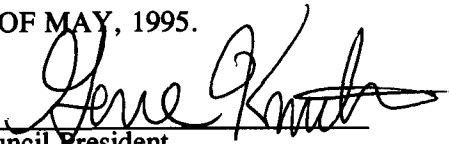
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**SECTION 2:** Section 15.40.150 of the Bellingham Municipal Code, Section 1 of Ordinance No. 10023, is repealed in its entirety.

**SECTION 3:** Nothing contained in this ordinance shall be construed as having retroactive effect. Acts, omissions and rights shall be governed by the ordinances in effect at the time the acts or omissions occurred or rights accrued. The repeal of prior ordinances herein shall not affect any right existing or accrued or any act or proceeding commenced prior to the effective date of this ordinance.


**SECTION 4:** This ordinance shall be effective on the 1st day of September, 1995.

PASSED BY COUNCIL THIS 22<sup>nd</sup> DAY OF MAY, 1995.

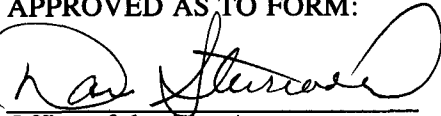
  
Council President

APPROVED BY ME THIS 26<sup>th</sup> DAY OF MAY, 1995.

  
Mayor

ATTEST   
Finance Director

APPROVED AS TO FORM:

  
Office of the City Attorney

Published: MAY 31, 1995

