

ORDINANCE NO. 11 095

AN ORDINANCE ESTABLISHING MINIMUM STANDARDS TO GUIDE AND ADVISE ALL WHO MAKE USE OF, CONTRIBUTE TO, OR ALTER THE SURFACE WATERS AND STORMWATER DRAINAGE SYSTEMS OF COWLITZ COUNTY.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COWLITZ COUNTY, WASHINGTON:

SECTION 1: A new chapter is hereby added to the Cowlitz County Code, to read as follows:

CHAPTER 16.22

STORMWATER MANAGEMENT IN THE UNINCORPORATED URBANIZED AREA

Sections:

- 16.22.010 Declaration of Title
- 16.22.020 Authority and Purpose
- 16.22.030 Definitions
- 16.22.040 Applicability
- 16.22.050 Exemptions
- 16.22.060 Minimum Requirements for Construction and Development
- 16.22.070 Modifications, Variances, and Appeals
- 16.22.080 Ownership, Inspection and Maintenance
- 16.22.090 Easements, Deeds, and Covenants
- 16.22.100 Enforcement
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- 16.22.120 Liability
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16.22.010. DECLARATION OF TITLE.

This chapter shall be known as the Cowlitz County Stormwater Drainage Code.

16.22.020. AUTHORITY AND PURPOSE.

Implementation of this chapter is required under the Western Washington Phase II Municipal Stormwater Permit (Phase II Permit) issued by the Washington State Department of Ecology under sections 307, 318, 402 and 405 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq. Under the authority granted to Cowlitz County in RCW Chapter 36.70 and RCW Chapter 90.48 and the provisions of the Phase II Permit and Clean Water Act, Cowlitz County hereby establishes minimum requirements regulating stormwater discharge from construction and

development activities into the surface waters and municipal stormwater facilities of Cowlitz County.

The purpose of this chapter is to:

- A. Promote public awareness;
- B. Prevent accelerated soil erosion, prevent sedimentation and control stormwater runoff resulting from earth changes proposed within Cowlitz County, both during and after construction activities;
- C. Ensure that property owners control the volume and rate of stormwater runoff originating from their property so that surface water and groundwater quality is protected, soil erosion minimized, off-site sedimentation prevented and flooding potential reduced;
- D. Promote site planning, construction and maintenance practices that are consistent with natural geological, topographical, vegetative, and hydrological conditions;
- E. Maintain and protect the County's municipal stormwater facilities and the stormwater facilities located downstream of development and construction activities;
- F. Establish legal authority for the inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.
- G. Define the responsible person and to place the obligation of complying with the requirements of this chapter upon that person.

16.22.030. DEFINITIONS.

- A. For the purposes of this chapter, the following definitions shall apply:
 1. **Applicant** means the person constructing the stormwater facilities and/or the person holding title to the property where the subject stormwater facilities are located. Also see definition of "person" found below.
 2. **Best Management Practices (BMP)** means the physical, educational, structural and/or managerial practices and activities that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of the Washington State or the County's municipal stormwater facilities.
 3. **Clean Water Act (CWA)** means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.).
 4. **Clearing** means the removal of vegetation by manual, mechanical, chemical or other such methods.
 5. **Commercial agriculture** means those activities conducted on lands defined in RCW Section 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use.
 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 (i.e., 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, the disturbed area of the entire plan shall be used in determining the application of Minimum Requirements.

7. **Construction** means a land disturbing activity that results in development. Such activities include but are not limited to clearing, grubbing, grading, excavating, filling, demolition, compaction, and building.
8. **Construction Stormwater Pollution Prevention Plan (SWPPP)** means a document which describes the BMPs, schedules, and activities to be implemented for a Project to eliminate or reduce pollutant discharges to stormwater during construction activities.
9. **Conveyance Facility** means a constructed component of a stormwater drainage system designed or constructed to convey storm water. Conveyance facilities include but are not limited to pipes, ditches, culverts, street gutters, catch basins, manholes, and storm water pump stations.
10. **County** means any and all applicable Departments of Cowlitz County, including employees, representatives or designees representing the County in the administration and enforcement of this chapter.
11. **Detention** means temporary storage of stormwater to facilitate the release of stormwater runoff from the site at a slower rate than collected by the stormwater facility system.
12. **Development** includes construction, new development, and/or redevelopment, including a combination thereof. See definitions for each.
13. **Director** means the Cowlitz County Director of Public Works or his/her designee.
14. **Ecology** means the Washington State Department of Ecology.
15. **Erosion** means the removal of solids (sediment, soil, rock and other particles) in the natural environment due to transport by wind, water, or ice; by down-slope creep of soil and other material under the force of gravity; or by living organisms.
16. **Excavation** means the mechanical removal of earth material.
17. **Fill** means a deposit of earth material placed by artificial means.
18. **Forest practice** means any activity conducted on or directly pertaining to forest land and relating to growing, managing or harvesting timber, as described in WAC Chapter 222-16.
19. **Impervious surface** means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. 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, parking lots or storage areas, concrete or asphalt paving, packed gravel surfaces, packed earthen materials, and macadam or other surfaces which

similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of Minimum Requirements are exceeded, but shall be considered impervious surfaces for purposes of runoff modeling.

20. **Improvements** means improvements to the land on which dwellings or structures intended for supporting or sheltering any use or occupancy are constructed.
21. **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 that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices and gardening are not considered land-disturbing activities.
22. **Land use permit** means an approval from the Department of Building and Planning of a land use application associated with:
 - a. Private roadway or bridge construction pursuant to Cowlitz County Code Chapter 11.36;
 - b. Fill and grade work pursuant to Cowlitz County Code Chapter 16.35;
 - c. Land subdivision or development including but not limited to:
 - i. Planned unit development pursuant to Cowlitz County Code Chapter 18.30;
 - ii. Short subdivision pursuant to Cowlitz County Code Chapter 18.34;
 - iii. Large lot subdivision pursuant to Cowlitz County Code Chapter 18.38;
 - iv. Mobile home parks pursuant to Cowlitz County Code Chapter 18.42.
 - v. Rural subdivision pursuant to Cowlitz County Code Chapter 18.50;
 - vi. Campground and recreation facilities pursuant to Cowlitz County Code Chapter 18.56; or
 - vii. Commercial and industrial binding site plans pursuant to Cowlitz County Code Chapter 18.64.
23. **Maintenance** means activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing use and resulting in no significant adverse hydrological impact. Maintenance includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include but are not limited to removal and replacement of nonfunctional or poorly functioning facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. As an example, the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width, of roadway is a maintenance activity.
24. **Minimum Requirements** means Ecology's Minimum Technical Requirements for New Development and Redevelopment for land disturbances of one acre or more or land

- disturbance less than one acre that are part of a larger common plan of development.
25. **Municipal Separate Storm Sewer System (MS4)** means any part of a man-made physical system owned or maintained by the County, designed and constructed to collect, treat, convey, store, or control the flow of stormwater, including, but not limited to any roads with drainage systems, municipal streets, catch basins, curbs, gutters, inlets, piped storm drains, constructed channels and ditches, stormwater conveyances and containment facilities, including infiltration facilities, retention and detention facilities, stormwater treatment facilities, erosion and sedimentation control facilities, pumping facilities and all other drainage structures and appurtenances which are within the County and not considered a combined sewer or part of a publicly owned treatment works or system used in the conveyance and treatment of municipal sewage or industrial wastes of a liquid nature.
 26. **National Pollutant Discharge Elimination System (NPDES) Permit** means a permit issued and administered by the Washington State Department of Ecology under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to surface waters of the United States.
 27. **Native vegetation** means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples may include but are not limited to trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.
 28. **New development** means land disturbing activities, including Class IV-general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and site plans, as defined in the Cowlitz County Code. Projects meeting the definition of redevelopment shall not be considered new development.
 29. **Person** means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
 30. **Phase II Permit** means the Western Washington Phase II Municipal Stormwater Permit issued to Cowlitz County in February 2007 by the Washington State Department of Ecology under sections 307, 318, 402 and 405 of the Federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the State for a Phase II community.
 31. **Pollutant** means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or

structure; and noxious or offensive matter of any kind.

32. **Pollution** means contamination or other alteration of the physical, chemical, or biological properties of waters , including but not limited to change in temperature, taste, color, turbidity, or odor of the waters, or discharge of pollutants into any waters that 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.
33. **Pre-developed condition** means the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover unless reasonable historic information is provided that indicates the site was prairie prior to settlement.
34. **Premises** mean any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
35. **RCW** means the Revised Code of Washington.
36. **Receiving waters** means body/bodies of water or surface water systems where surface runoff is discharged via outfall or sheet flow. Roadside ditches are not considered receiving waters. They are a part of the MS4.
37. **Redevelopment** means land disturbing activities on a site that is already substantially developed (meaning thirty-five percent or more of the existing site is covered with impervious surfaces). Activities may include the creation or addition of impervious surfaces; the construction, installation or expansion of a building or other structure; or replacement of an impervious surface that is not part of a routine maintenance activity.
38. **Regulatory Threshold** means the threshold for applicability of this chapter and applicability of Ecology's nine Minimum Requirements. The regulatory threshold refers to any land disturbance of one acre or more, or any land disturbance less than one acre that is part of a larger common plan of development.
39. **Replaced impervious surface** means with respect to structures, the removal and replacement of any exterior impervious surfaces or foundation. With respect to other impervious surfaces, the removal down to bare soil or base course and replacement of impervious surface.
40. **Road, street or highway** means a public or private thoroughfare leading from one place to another, which has typically been prepared to allow travel by some conveyance.
41. **Routine Maintenance** means preventative or cyclical maintenance that is an essential part of the on-going care and upkeep of a system or facility against normal wear and tear.
42. **Site** means the area defined by the legal boundaries of one or more parcels of land that are subject to new development or redevelopment. For road projects, the site includes the full length of the project and the associated right-of-way.
43. **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.
44. **Stormwater** means surface runoff of water resulting from natural precipitation.

45. **Stormwater Drainage Manual** means the most current Cowlitz County Stormwater Drainage Manual prepared by Cowlitz County Public Works.
46. **Stormwater Site Plan** means the comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with this chapter.
47. **Stormwater Facility** means a constructed component of a stormwater drainage system designed or constructed to perform a particular (or multiple) function, other than conveyance. Stormwater facilities include but are not limited to swales, detention ponds, retention ponds, constructed wetlands, infiltration devices, oil/water separators, biofiltration swales, LID features and BMPs.
48. **Stormwater Management Manual for Western Washington (SWMMWW)** means the 2005 edition of the manual prepared by Ecology, containing BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the State. The SWMMWW is intended to serve as a reference and supplement to this chapter to control the quantity and quality of stormwater runoff from new development, redevelopment and construction activities.
49. **SWPPP Threshold** means the threshold for applicability of this chapter and applicability of Ecology's second Minimum Requirement (Construction Stormwater Pollution Prevention Plan). The SWPPP threshold refers to any land disturbance of 7,000 square feet or more.
50. **Unincorporated Urbanized Area** means the unincorporated area within Cowlitz County constituting an urbanized area as defined by the State of Washington Department of Ecology's Western Washington Phase II Municipal Stormwater Permit. The area includes those parcels depicted on the map appended to this ordinance as Exhibit "A" and detailed on a listing of parcels identified within such urbanized area maintained on file in the office of Cowlitz County Department of Public Works.
51. **WAC** means the Washington Administrative Code.
52. **Waterbody** means lakes, rivers, ponds, streams, inland waters, sloughs, diking ditches, and all other surface waters and watercourses within the jurisdiction of the State of Washington.
53. **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. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds and landscape amenities or those wetlands created after July 1, 1990 that were unintentionally created as a result of the construction of a road, street, or highway, as approved by the County. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

16.22.040. APPLICABILITY.

- A. The provisions of this chapter shall apply specifically to all development activities, as defined herein, of one acre or more, or development activities less than one acre that are part of a larger common plan of development within the unincorporated urbanized area, unless explicitly exempted herein. This shall hereby be referred to as the regulatory threshold.
- B. The provisions of this chapter that pertain to Minimum Requirement #2 (Stormwater Pollution Prevention Plan) shall apply specifically to all development activities, as defined herein, of 7,000 square feet or more within the unincorporated urbanized area, unless explicitly exempted herein. This shall hereby be referred to as the SWPPP (Stormwater Pollution Prevention Plan) threshold. Common Plan of Development shall not pertain to the SWPPP threshold.
- C. Development activities within a site that do not occur within 2 years of each other shall not be considered a common plan of development. The period of occurrence shall be measured from the acceptance of one project to the vesting date of the next project.
- D. Implementation of this chapter requires use of the Cowlitz County Stormwater Drainage Manual (Stormwater Drainage Manual) and the Stormwater Management Manual for Western Washington (SWMMWW) as amended by Appendix 1 of the Phase II Permit. *The Stormwater Drainage Manual and SWMMWW contain additional technical and administrative details related to design methods, submittal information, and facility selection and design not specifically described in this chapter.*
- E. No Person shall be issued a land use permit, license or authorization by the County for development activities within the parameters of the regulatory threshold without first meeting the provisions of this chapter. All construction activities required by the provisions of this chapter may occur at the time the proposed land disturbing activities occur.
- F. Compliance with provisions of this chapter is considered the minimum level of effort. Additional permits, licenses or authorizations for development activities may be required by local, state or federal agencies.
- G. Nothing in this chapter is applicable to development activities, or a plat, that does not involve land disturbing activities.

16.22.050. EXEMPTIONS.

- A. **General Exemptions.** Exemptions to technical and administrative provisions of this chapter are described in the following:
 - 1. **Forest Practices.** Forest practices regulated under WAC Title 222, except for Class IV General Forest Practices that are conversions from timber land to other uses.
 - 2. **Commercial Agriculture.** Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timberland to agriculture, and the construction of impervious surfaces are not exempt.
 - 3. **Road Maintenance.**
 - a. The following road maintenance activities are exempt: Pothole and square cut patching, overlaying existing bituminous surface treatment (“chip seal”), asphalt or

concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.

- b. The following road maintenance activities are considered redevelopment, and therefore are not categorically exempt:
 - i. Removing and replacing a paved surface to base course or lower, or repairing the roadway base is subject to certain technical and administrative requirements. If the impervious surfaces are not expanded, the activity is considered redevelopment and subject to Minimum Requirements #1 through #5; however, in most cases, only Minimum Requirement #2-Construction Stormwater Pollution Prevention Plan, will be relevant. The Minimum Requirements are further described in section 16.22.060.
 - ii. Resurfacing the roadway by upgrading from dirt to gravel, asphalt, or concrete; upgrading the roadway surface from gravel to asphalt, or concrete (i.e., extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders); or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete are all roadway maintenance activities that would generate new impervious surface and are subject to all technical and administrative requirements of this chapter.
4. **Underground Utility Projects.** Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement #2-Construction Stormwater Pollution Prevention Plan.
5. **Oil and Gas Field Activities or Operations.** 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 are exempt from all technical and administrative requirements in the chapter. Operators are encouraged to implement and maintain Best Management Practices to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.
6. **Diking Districts #1 and #3.** New development and redevelopment within the boundaries of Consolidated Diking Improvement District #1 (CDID #1) and Consolidated Diking Improvement District #3 (CDID #3) are partially exempt from Minimum Requirement #7. Development and redevelopment within these areas shall design flow control facilities utilizing the Santa Barbara Urban Hydrograph (SBUH) modeling method, and the existing site characteristics as the predeveloped condition. Facilities shall be sized such that the peak release rate from the development shall not exceed the peak release rate from half the pre-developed 2-year, 24-hour, the pre-developed 25-year, and the pre-developed 100-year, 24-hour design storms.

B. Construction Stormwater Management Exemption. If the Project disturbs less than five acres and meets the requirements for an “Erosivity Waiver”, as described in the Stormwater Drainage Manual, the Project is exempt from Minimum Requirement #2, described in

section 16.22.060.

16.22.060. MINIMUM REQUIREMENTS FOR CONSTRUCTION AND DEVELOPMENT. All development activities that meet the regulatory threshold shall satisfy one or more of the following nine Minimum Requirements:

1. Preparation of a Stormwater Site Plan
2. Construction Stormwater Pollution Prevention Plan (SWPPP)
3. Source Control of Pollutants
4. Preservation of Natural Drainage
5. On-site Stormwater Management
6. Runoff Treatment
7. Flow Control
8. Wetlands Protection
9. Operations and Maintenance

A. Construction Stormwater Management.

1. All development activities that meet the SWPPP threshold requirement shall satisfy Minimum Requirement #2-Preparation of a Construction SWPPP, unless the Project meets the requirements of the "Erosivity Waiver," see section 16.22.050B.
2. Additionally, development activities that meet the regulatory threshold requirement shall obtain a *General NPDES Permit for Stormwater Discharges Associated with Construction or Industrial Activities* as required by Ecology, unless the Project meets the requirements of the "Erosivity Waiver," see section 16.22.050B.

B. Post-Construction Stormwater Management. Technical Requirements and Thresholds for Development and Redevelopment.

1. All development activities that meet the regulatory threshold requirement, shall satisfy Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the disturbed land if the project:
 - a. Creates or adds two thousand (2,000) square feet or more of new, replaced, or a total of new plus replaced impervious surface area; or
 - b. Has development activities that affect seven thousand (7,000) square feet of area or more.
2. All development activities that meet the regulatory threshold requirement, shall satisfy Minimum Requirements #1 through #9 for the new impervious surfaces and the converted pervious surfaces if the project:
 - a. Creates or adds five thousand (5,000) square feet or more of new impervious surfaces; or
 - b. Converts three-quarters ($\frac{3}{4}$) of an acre, or more of native vegetation to lawn or landscaped areas; or

- c. Converts two and a half (2½) acres, or more of native vegetation to pasture.
- 3. All redevelopment activities that meet the regulatory threshold requirements shall satisfy Minimum Requirements #1 through #9 for the new and replaced impervious surfaces if the project:
 - a. Creates or adds five thousand (5,000) square feet or more of new, replaced or a total of new plus replaced impervious surface area; and
 - b. The valuation of proposed improvements, including interior improvements, exceeds fifty percent of the assessed value of the existing site improvements.
- 4. Road related activities that meet the regulatory threshold requirements shall satisfy Minimum Requirements #1 through #9 for the new and replaced impervious surfaces, including pavement, shoulders, curbs and sidewalks, if the project:
 - a. Creates or adds five thousand (5,000) square feet or more of new impervious surfaces; and
 - b. If the new impervious surface area total meets or exceeds fifty percent of the existing impervious surface area within the project limits, defined by the length of the project and the width of the right-of-way.
- 5. If the runoff generated from the new impervious area and converted pervious area is not separated from runoff from other surfaces on the site, the stormwater treatment facilities shall be sized for the entire flow that is directed to them.
- 6. An equivalent area with similar flow and pollution characteristics within the same site can be used to meet the Minimum Requirements. For public road projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

C. Administrative Requirements

- 1. Applicants proposing any development activities governed by this chapter shall submit to the Department of Public Works, the requisite plans, reports, manuals and other documents as provided herein in addition to any information required for a complete land use application. The Department of Public Works shall review provided plans for compliance with this Chapter.
- 2. All applications for stormwater approval shall be subject to the fees established by Resolution by the Board of County Commissioners.
- 3. Prior to issuance of construction approval for an activity meeting the regulatory threshold, the County shall be provided a copy of the issued State *General NPDES Permit for Stormwater Discharges Associated with Construction or Industrial Activities*, as required by Ecology, indicating Ecology's approval of the submitted Construction SWPPP.

16.22.070. MODIFICATIONS, VARIANCES, AND APPEALS.

- A. **Modifications.** A modification is a technical variation in the application of the Minimum Requirements found in section 16.22.060. The Director may grant a modification to the

Minimum Requirements, provided all the following criteria are met:

1. Written documentation shall be provided describing the rationale for granting a modification;
2. The modification shall provide substantially equivalent protection or a comparable result which is in the overriding public interest; and based upon sound engineering judgment, meet the objectives of safety, function, environmental protection, and facility maintenance;
3. The modification will not otherwise result in noncompliance with this chapter or with any development conditions imposed upon the project; and
4. A modification shall not be used in place of an exception procedure as outlined below in section 16.40.070B, where such procedure is applicable.

A written finding of fact shall be prepared recording the modification determination.

B. Variances.

1. The Director may vary strict compliance to the Minimum Requirements, only if application of the Minimum Requirements imposes a severe and unexpected economic hardship. Legal public notice shall be made for all applications for variance. The application for variance shall be written documentation describing the rationale for granting a variance and shall include:
 - a. The current (pre-project) use of the site;
 - b. How application of the Minimum Requirements restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements;
 - c. The remaining possible uses of the site if the variance were not granted;
 - d. A comparison of the estimated amount and percentage of value loss as a result of the Minimum Requirements versus the estimated amount and percentage of value loss as a result of the requirements that existed prior to adoption of the Minimum Requirements; and
 - e. The feasibility of the owner to alter the project to apply the Minimum Requirements.
2. The Director shall make a determination based upon the following:
 - a. A severe and unexpected economic hardship resulting from the application of the Minimum Requirements does exist;
 - b. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
 - c. The exception results in the least possible alteration that could be granted and still comply with the intent of the Minimum Requirements.
3. A written finding of fact will be prepared and a public notice published to record the County's decision regarding the application.

- C. **Prior Approval.** Any modification or variance shall be approved prior to approval of construction plans and the start of construction.
- D. **Right of Appeal.** The original applicant or an aggrieved party may appeal the decision of the Director to the Hearing Examiner. Any such appeal shall be filed in writing, along with the appropriate fees with the Department of Building and Planning within 30 calendar days of issuance of the Director's decision. Appeal of the Hearing Examiner's decision may be made to the Cowlitz County Superior Court.

16.22.080. OWNERSHIP, INSPECTION AND MAINTENANCE.

A. **Ownership and Responsibility.**

1. **County Ownership of Stormwater and Conveyance Facilities.** County ownership is required for stormwater and conveyance facilities located within or serving the public right-of-way or on land owned by the County. The County shall be responsible for the inspection, operation, maintenance and repair of stormwater and conveyance facilities under any of the following situations:
 - a. The stormwater or conveyance facilities are located in the public right-of-way; or
 - b. The stormwater or conveyance facilities have been dedicated to and accepted by the County.
2. **Private Ownership of Stormwater and Conveyance Facilities.** Any person holding title to property for which stormwater or conveyance facilities that have been required or owners of stormwater or conveyance facilities that collect, convey, treat, detain and/or infiltrate runoff from private properties shall be responsible for the proper construction, inspection, operation, maintenance and repair of said stormwater and conveyance facilities, unless such responsibility is transferred and accepted by the County. See section 16.40.080C. The responsible person or designee shall ensure inspections, operation, maintenance and repairs occur in accordance with an approved Stormwater Operations and Maintenance Manual and Covenant as outlined below in section 16.40.080E.
3. **Ownership and maintenance responsibility for stormwater and conveyance facilities shall be specified in a recorded plat, short plat or covenant.**

B. **Inspection and Maintenance during Construction.**

1. To ensure proper performance and maintenance of stormwater and conveyance facilities during construction, the responsible person or designee shall conduct inspections in accordance with the approved construction plans and any issued land-use permits. The responsible person shall:
 - a. Notify the County two working days prior to the commencement of construction;
 - b. Keep written records of inspections, which shall be retained onsite or within reasonable access to the site;
 - c. Make inspection records available to the County upon request; and
 - d. Transfer these records to the new owner or responsible party upon sale or conveyance of the property.

- a. In addition, a County representative or designee shall conduct inspections prior to and periodically during construction activities to verify proper installation and maintenance of required construction stormwater and conveyance facilities, as indicated in the approved construction plans and any issued land-use permits. Upon completion of construction, a County representative or designee shall conduct a final inspection of the permitted development to ensure proper installation of stormwater and conveyance facilities, including those installed on construction sites that may have had an "Erosivity Waiver" in place.

C. County Acceptance of Conveyance Facilities

Any person holding title to property with conveyance facilities resulting from the Minimum Requirements found in section 16.40.060 may offer to the County for dedication said conveyance facilities, together with such easements, tracts and appurtenances as may be reasonably necessary. Any conveyance facility located within public right-of-way shall be dedicated to the County together with such easements, tracts and appurtenances as may be reasonably necessary. The County, at the Department of Public Works' discretion, may accept inspection, operation and maintenance responsibility for conveyance facilities, existing prior to the effective date of this Chapter. Conveyance facilities that are to be owned by the County will be accepted for ownership upon approval of the following conditions:

1. The applicant, at their sole expense, shall provide any document or information requested by the County in order for a decision to be reached on accepting the facilities;
2. Final surfacing has been installed.
3. The conveyance facilities have been inspected and accepted by the County;
4. All easements and dedications required by this chapter entitling the County to access, inspect, operate and maintain the conveyance facilities have been conveyed to Cowlitz County and have been recorded with the Cowlitz County Auditor; and
5. The applicant has provided a complete and accurate set of reproducible as-built record drawings of the conveyance facilities to Cowlitz County. These drawings shall be stamped and certified as accurate by a professional engineer and accompanied by an operations and maintenance manual.

D. County Acceptance of Stormwater Facilities

Any person holding title to property with stormwater facilities resulting from Minimum Requirements #6 and #7 found in section 16.40.060, serving single family residential developments, may offer to the County said stormwater facilities for dedication, together with such easements, tracts and appurtenances as may be reasonably necessary. The County, at the Department of Public Works' discretion, may accept inspection, operation and maintenance responsibility for stormwater facilities serving residential developments, existing prior to the effective date of this Chapter. Stormwater facilities that are to be owned by the County will be accepted for ownership upon approval of the following conditions:

1. The applicant, at their sole expense, shall provide any document or information requested by the County in order for a decision to be reached on accepting the facilities;
2. Improvements in residential subdivisions have been made on at least eighty percent of

the created lots draining to the facility, unless waived by the County;

3. All stormwater facilities have been in satisfactory operation for at least two years; The two year period begins upon application for County ownership of stormwater facilities;
4. After two years of satisfactory operation and maintenance, the stormwater facilities have been inspected and accepted by the County;
5. All easements and dedications required by this chapter entitling the County to access, inspect, operate and maintain the stormwater facilities have been conveyed to Cowlitz County and have been recorded with the Cowlitz County Auditor; and
6. The applicant has provided a complete and accurate set of reproducible as-built record drawings of the stormwater facilities to Cowlitz County. These drawings shall be stamped and certified as accurate by a professional engineer and accompanied by an operations and maintenance manual.

E. Operations and Maintenance Manual and Covenants.

1. In accordance with Minimum Requirement #9 from section 16.40.060, an operations and maintenance manual and covenants will be required for all stormwater and conveyance facilities installed for any new development project that meets the regulatory threshold requirement.
2. Such operations and maintenance manual and covenants shall be submitted with Minimum Requirement #1-Stormwater Site Plan and approved prior to the County granting final approval for the development under this chapter. The original maintenance manual and covenants shall be recorded in the Cowlitz County Auditor's office and copies shall be attached with the property deed for parcels containing or served by the stormwater facilities referred to in the covenants.
3. A copy of the operations and maintenance manual, covenants and a log of inspections, maintenance activities and repairs shall be retained by the designated responsible party. These records shall be made available to the County upon request and retained onsite or within reasonable access to the site. These records shall be transferred with the property to the new owner or responsible party.
4. The stormwater operations and maintenance covenants shall detail the continued performance of inspection and maintenance obligations required by this chapter. An operations and maintenance manual shall be submitted as an attachment to the actual operations and maintenance covenants. Information required for the operations and maintenance manual and covenants includes:
 - a. Designated Responsible Party. The designated owner or other legally established entity (responsible person), who shall be permanently responsible for the inspection and maintenance of the stormwater and conveyance facilities shall be indicated.
 - b. Successor Responsibility. The agreement shall indicate the succession of inspection and maintenance responsibilities based upon the sale of property (if applicable) or dedication to other entities.
 - c. Right of Entry for Stormwater Authority. The agreement shall grant the County representative or designee the right of entry, at reasonable times and in a reasonable

manner, for the purposes of inspecting stormwater and conveyance facilities, for abatement of a public nuisance or correction of a violation of this chapter.

- d. **Inspection and Maintenance Standards.** The manual shall include inspection and maintenance standards for each stormwater and conveyance facility and BMP, as documented in Volume V, Chapter 4 of the 2005 SWMMWW. In addition, the manual shall include a list of inspection and maintenance tasks, a schedule for routine inspection and maintenance and actions to be taken when maintenance is required. Initial inspection frequencies shall be defined according to the following:
- i. All stormwater facilities and catch basins for new residential developments that meet the regulatory threshold shall be inspected every six months until eighty percent of the created parcels are occupied.
 - ii. All stormwater facilities, excluding catch basins, shall be inspected annually, unless maintenance records justify a different frequency. If a revised frequency is requested, approval of the request shall be based upon actual inspection and maintenance records for a period of time twice that of the proposed inspection frequency interval (i.e., if bi-annual maintenance is requested, then four years of maintenance records would be needed to justify the modification).
 - iii. When inspections identify the need for maintenance, such maintenance shall be conducted in accordance with the following timeframes:
 - A. Within one year for wet pool facilities and retention/detention ponds.
 - B. Within six months for typical system maintenance (i.e. catch basins and ditches).
 - C. Within nine months for revegetation activities.
 - D. Within two years for any maintenance that requires capital construction costs of less than \$25,000.
 - E. Within a timeframe acceptable to the County for any capital construction costs greater than \$25,000.

F. County Inspections of Privately Maintained Stormwater Facilities

1. A County representative or designee shall have authority to conduct periodic inspections of post-construction stormwater facilities in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards set forth in the Operations and Maintenance Manual and Covenants. Inspection procedures shall be as outlined in section 14.60.080E.2.
2. **Inspection Procedure.** Prior to making any inspections, the County representative or designee shall present identification credentials, state the reason for the inspection and request entry of the owner or other person having charge or control of the property, if available, or as provided below:
 - a. **Unoccupied Site.** If the property or structure on the property is unoccupied, the

County representative or designee shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

- b. Imminent Hazard. If, after reasonable effort, the County representative or designee is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the site or of the private stormwater drainage system creates an imminent hazard to persons or property, the inspector may enter.
- c. Special Inspection Warrant If the County has been refused access to any part of the premises from which stormwater is discharged, and if the County is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect as part of a routine inspection program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the County may seek issuance of a search warrant from any court of competent jurisdiction.

16.22.090. EASEMENTS, DEEDS, AND COVENANTS.

- A. Drainage easements shall be required where the conveyance, storage, or treatment of stormwater is identified in development plans that are not located in public rights of way, and where access to stormwater facilities is required. Drainage easements shall be granted to the persons responsible for providing ongoing maintenance of the drainage systems. Drainage easements through structures are not permitted. Easements shall be of a width and location sufficient to allow access for equipment that would normally perform maintenance activities (minimum 15-ft width).
- B. Stormwater and conveyance facilities that are to be maintained by Cowlitz County, together with maintenance access roads to the facilities, shall be located in the public right-of-way, in separate tracts dedicated to Cowlitz County or in drainage easements granted to Cowlitz County.
- C. Private homeowner deed restrictions and homeowners/building covenants shall be required for all properties with onsite low impact development (LID) features to ensure that the stormwater management applications continue to function as designed. The deed restrictions or covenants shall specifically address and/or append the requirements and responsibilities for long-term management and maintenance of any LID features.

16.22.100. ENFORCEMENT

It shall be unlawful to violate any provision or fail to comply with any of the requirements of this chapter. Any person(s) who violates or continues to violate any of the provisions of this chapter or any order issued hereunder, shall be subject to one or more of the actions outlined in this section or may be restrained by injunction or otherwise in a manner provided by law. Violation of any provision of this chapter shall be deemed a nuisance in RCW Section 36.32.120(10) and may be referred to the Prosecuting Attorney as a civil infraction for appropriate action as specified in this section and in Cowlitz County Code Chapter 2.06.

A. **Remedies.** Whenever the County finds failure to meet a requirement of this chapter, the County may order compliance as outlined below:

1. Installation, maintenance, or repair of a component of a stormwater or conveyance facility;
2. The performance of monitoring, analyses, and reporting;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
5. The implementation of source control or treatment BMPs.

The above remedies must be completed before an established deadline in order to avoid County actions, issuance of a stop work order or having the noncompliance declared as a civil infraction. The remedies listed in this section are not exclusive of any other remedies available under any applicable Federal, State or Local law and it is within the discretion of the County to seek cumulative remedies.

B. **County Actions.** In addition to any other remedies that the County may require under this chapter, this chapter shall not prevent the County from conducting repairs or maintenance to stormwater facilities if the County determines that imminent danger to public safety, health or welfare, or public or private property, or critical areas or habitat is likely as a result of the actions or inaction of the property owner(s). If the County conducts repairs or maintenance to a private facility, the cost will be charged to the property owner(s) together with any penalties incurred under this chapter and any costs of collection, including attorneys' fees, all of which shall be considered a lien against the subject property, prorated against the beneficial users of the property, placed on the tax bill and collected as ordinary taxes by the County, and also collectable as an in personal debt against the property owner(s).

C. **Liability for Installation and Maintenance.** The property owner and all persons engaged in development activities shall be liable, jointly and severally, for all costs incurred by the County for any public nuisance action taken hereunder, or on account of damage or threatened damage to County property or facilities or water bodies, or associated remedial actions necessitated by the failure to install and/or maintain required erosion controls and/or stormwater facilities.

16.22.110. INTERPRETATION.

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

16.22.120. LIABILITY.

The requirements of this chapter 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 the hydrologic impacts of development and the pollution of surface waters.

16.22.130. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this ordinance is not intended to imply, nor does it imply, that compliance by any person will ensure that there will be no pollution or unauthorized discharge of pollutants.

16.22.140. SEVERABILITY.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

16.22.150. CONFLICT WITH OTHER REGULATIONS.

Except as may be expressly provided herein, this chapter is not intended to repeal, abrogate or modify any provision of the Cowlitz County Code or any other ordinance, resolution, regulation easement, covenant or deed restriction. The requirements of this chapter should be considered in addition to the requirements of Cowlitz County Code and any other ordinance, resolution or regulation and where any provision of this chapter is in conflict with any other section of the Cowlitz County Code, ordinances, resolutions, or regulations, the more restrictive regulation or the regulation that imposes higher protective standards for human health or the environment shall apply and such application shall extend to those specific provisions which are more restrictive.

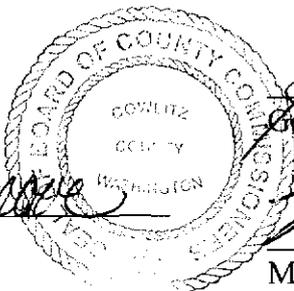
SECTION 2 – EFFECTIVE DATE: This chapter shall be in full force and effect 30-days after its passage and publication of summary as required by law.

Passed by the Board this 13th day of September, 2011.

**BOARD OF COUNTY COMMISSIONERS
COWLITZ COUNTY, WASHINGTON**

ATTEST:

Tuckie M. Musgrave
Clerk of the Board



George Raiter
George Raiter, Chair

Michael A. Karnofski
Michael A. Karnofski, Commissioner

APPROVED AS TO FORM:

[Signature]
Deputy Prosecuting Attorney

James Misner
James Misner, Commissioner