

**Surface Water Management
Rules and Regulations
for
Clackamas County Service District No. 1**

February 1, 2005



CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
SURFACE WATER MANAGEMENT RULES AND REGULATIONS

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SECTION 1 – DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

The objective of this ordinance is: (a) to prevent or minimize the introduction of pollutants to surface waters; (b) to meet Federal National Pollutant Discharge Elimination System (NPDES) permit requirements; (c) to establish policies which prevent future pollution and erosion through implementation of Best Management Practices; (d) to provide for the equitable distribution of the costs of the surface water management program; and (e) to better manage and control surface water within Clackamas County Service District No. 1.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

The Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these rules or regulations in accordance with ORS Chapters 198 and 451.

SECTION 2 – DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Advanced Sedimentation and/or Filtration Process.

Any process that through correct application/implementation brings effluent discharge from the site into compliance with local, state and federal requirements. Polymers and electrolytic processes are two possible examples.

2.1.2 Bond.

As required by the District, a surety bond, cash deposit or escrow account, assignment of savings, irrevocable letter of credit or other means acceptable to or required by the District to guarantee that work is completed in compliance with project’s surface water plan and in compliance with all District requirements and for a maintenance period of one year thereafter.

2.1.3 Bioswale. (See Water Treatment/Bioswale)

2.1.4 Buffer/Undisturbed Buffer.

The zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of the sensitive area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from surface water runoff and precipitation, and erosion control.

2.1.5 Civil Penalty.

A civil penalty is a monetary sanction for violation of the District's Rules and Regulations, levied pursuant to Section 8 below, whereby the District may impose a fine or penalty for violation of these Rules and Regulations, as well as recover all costs incurred, which are attributable to or associated with the violations, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damages to the storm sewer system, and contracts or health studies necessitated by the violation.

2.1.6 Contractor.

A person duly licensed or approved by the State of Oregon to perform the type of work to be done under a permit or contract issued by the District.

2.1.7 County. Clackamas County, Oregon.

2.1.8 Detention:

The release of surface water runoff from a site at a slower rate than it is collected by the drainage system, the difference being held in temporary storage.

2.1.9 Developed parcel. See "Development."

2.1.10 Development.

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving excavation or any other activity which results in the removal of substantial amounts of vegetation (either over half the site or such that soil movement occurs) or in the alteration of natural site characteristics.

2.1.11 Discharge.

Any addition of water, storm water, wastewater, process water or any pollutant or combination of pollutants to waters of the State, directly or indirectly, by actions of dumping, spilling, disposing or physically connecting to the public storm system or natural drainage conveyance.

2.1.12 District

Clackamas County Service District No. 1.

2.1.13 Drainageway.

A channel such as an open ditch that carries surface water.

2.1.14 Drywell.

An approved receptacle used to receive storm, surface and other water, the sides and bottom being porous, permitting the contents to seep into the ground. A drywell must conform to the District's current standards.

2.1.15 Easement.

An interest or right to use or occupy real property for construction and maintenance of facilities.

2.1.16 Engineer.

A registered professional engineer licensed to practice in the State of Oregon.

2.1.17 Equivalent Service Unit (ESU).

A configuration of development resulting in impervious surfaces on a parcel which contributes runoff to the storm water system. One ESU is equal to 2,500 square feet of impervious surface area.

The number of ESU's attributable to a user's area is calculated in whole units, with the minimum user's charge set at 1 ESU. For non-single family users with more than 1 ESU, the charge will be rounded to the nearest whole unit with a half value, or more, being rounded up.

2.1.18 Erosion.

Erosion is the movement of soil particles resulting from the flow or pressure from water, wind, or earth movement.

Visible or measurable erosion includes, but is not limited to:

- 2.1.18.1 Deposits of mud, dirt, sediment or similar material exceeding ½ cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion.
- 2.1.18.2 Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of onsite erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.
- 2.1.18.3 Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

2.1.19 Erosion Control Plan.

A plan containing a list of best management practices to be used during construction to control and limit soil erosion in accordance with the District's current erosion prevention manual.

2.1.20 FEMA.

Federal Emergency Management Agency.

2.1.21 Fences.

Structures which consist of concrete, brick, wood, plastic, or metal posts located in the ground, connected by wood, metal, or plastic, and capable of allowing passage of water.

2.1.22 Government Agency.

Any municipal or quasi-municipal jurisdiction, state or federal agency.

2.1.23 Grab Sample.

A sample which is taken from a surface flow, such as a stream, on a one-time basis without consideration of time.

2.1.24 Hazardous Materials.

Materials described as hazardous by the Department of Environmental Quality, including any toxic chemicals listed as toxic under Section 307(a) of the Clean Water Act or Section 313 of Title III of SARA.

2.1.25 Hearings Officer.

Officer, appointed by the Director, for hearings of appeals of administrative actions.

2.1.26 Highly Erodible.

Soils with erosion (K) factors greater than 0.25, as listed in the Soil Survey of Clackamas County Area, Oregon, developed by the Soil Conservation Service.

2.1.27 Illicit Discharge.

Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

2.1.28 Impervious Surface

That surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots, oiled macadam, gravel, or other surfaces which similarly resist infiltration or absorption of moisture.

2.1.29 Industrial Waste.

Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.30 Infiltration System.

A drainage facility designed to use the hydrologic process of surface and storm water runoff soaking into the ground, commonly referred to as recharge, to dispose of surface and stormwater runoff.

2.1.31 In-Lieu of Fee.

A fee paid to the District to cover on-site water quality or water quantity facilities from a site on which stormwater management is not practical.

2.1.32 In-Line Detention.

Detention located in a stream channel, a drainageway, or in a regional or subregional piped system. In-line detention mixes flows to be detained with flows from other areas.

2.1.33 Inspector.

A person authorized by the District to inspect construction sites and activities affecting surface water.

2.1.34 Intermittent Stream.

A stream with no visible surface flows for a period of 30 or more continuous days per year.

2.1.35 Mean High Water Line.

The bank of any river or stream established by the annual fluctuations of water generally indicated by physical characteristics, such as a line on the bank, changes in soil conditions or vegetation line.

2.1.36 National Pollutant Discharge Elimination System, or NPDES, Permit

A permit issued pursuant to Chapter 402 of the Clean Water Act (40 CRF 122, 123, 124, and 504).

2.1.37 Open Spaces.

Land within a development which has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or scenic purposes.

2.1.38 Owner.

The owners of record title or the purchasers under a recorded sale agreement and other persons having an interest of record in the described real property.

2.1.39 Parcel of Land.

A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes yards and other undeveloped areas required under the zoning, subdivision or other development ordinances.

2.1.40 Perennial Stream.

A permanently flowing (non-intermittent) stream.

2.1.41 Permit.

Any authorization required pursuant to this or any other regulation of the District.

2.1.42 Permittee.

The person to whom a building permit, development permit or any other permit described in this ordinance is issued.

2.1.43 Person.

Any individual, firm, company, or corporation, partnership or association, entity, public corporation, political subdivision, governmental agency, municipality, industry, or any department or agency thereof.

2.1.44 Pollutant.

Any of the following, but not restricted to: oil, grease, soil, mining waste, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, heavy metals, asbestos, wrecked or discharged equipment, cellar dirt and untreated industrial, municipal and agricultural discharges into water.

2.1.45 Post-developed.

Conditions after development.

2.1.46 Pre-developed.

Conditions at the site immediately before application for development. Man-made site alterations or activities made without an approved development permit will not be considered as pre-developed conditions.

2.1.47 Pretreatment or Treatment.

The reduction of the amount of pollutants, the elimination of pollutants, or the alternation of the nature of pollutant properties in water to a less harmful state prior to discharging to Waters of the State.

2.1.48 Private Storm System.

That portion of the storm system owned and/or maintained by any person or entity other than the District and is located outside the public right-of-way, except as otherwise approved by the District.

2.1.49 Property (or the site).

The property or the site shall mean the real property undergoing development.

2.1.50 Public Stormwater System.

Those portions of the stormwater system that are accepted for repair and maintenance responsibilities by the District. Natural waterways are defined under State and Federal regulations.

2.1.51 Public Right-of-Way.

Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.52 Qualified Public Improvement.

A capital improvement that is:

- a) Required as a condition of development approval;
- b) Identified in the plan adopted pursuant to Section 6.3.5; and
- c) Not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.53 Rational Method.

A formula for estimating maximum discharge of runoff at a point, using flow (Q), runoff coefficient (C), rainfall intensity (I) for selected recurrence interval, and area (A), in the formula: $Q=CIA$.

2.1.54 Recharge.

The flow to ground water from the infiltration of surface and storm water.

2.1.55 Redevelopment.

A project that proposes to add, replace, and/or alter impervious surface (for purposes other than routine maintenance, resurfacing, regrading, or repair) on a site that is already developed. Requirements related to redevelopment shall be met when the project impacts greater than 800 square feet of impervious surface area. Single family developments on a lot of record are not required to implement water quality and quantity improvements.

2.1.56 Retention:

The process of collecting and holding surface water runoff with no surface outflow.

2.1.57 Sensitive Areas.

Sensitive Areas are:

- 2.1.57.1 Existing or created wetlands, including all mitigated wetlands; limits defined by wetlands reports approved by both the Division of State Lands and the District.

- 2.1.57.2 Rivers, streams, sloughs, swamps, creeks; limits defined by the top of the bank or first break in slope measured upland from the mean high water line;
- 2.1.57.3 Impoundments (lakes and ponds); limits defined by the top of the bank or first break in slope measured upland from the mean high water line.

Sensitive Areas shall not include a constructed wetland, an undisturbed buffer adjacent to a sensitive area, or a water feature, such as a lake, constructed during an earlier phase of a development for specific purposes not including water quality, such as recreation.

2.1.58 Stop Work Order.

An Order issued by the District for violation of the Rules and Regulations. All work contributing to the violation must cease when a Stop Work Order is issued and the Stop Work Order will stay in place until such time as removed by the District in writing.

2.1.59 Storm Drainage/Storm Sewer.

A pipe, or any method of conveyance that carries stormwaters, surface runoff, or drainage.

2.1.60 Stormwater.

Waters on the surface of the ground or underground resulting from precipitation.

2.1.61 Stormwater Management.

A program to provide surface water quality and quantity controls through nonstructural methods and capital improvement projects. Nonstructural controls include maintenance of surface water facilities, public education, water quality monitoring, implementation or intergovernmental agreements to provide for regional coordination, and preparation of water quality control ordinances and regulations.

2.1.62 Stormwater Quality Treatment Facility.

Stormwater Quality Treatment Facility refers to any structure or drainageway that is designed, constructed, and maintained to collect, filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may include, but is not limited to constructed wetlands, water quality swales, and ponds.

2.1.63 Stream

A drainageway that is determined to be jurisdictional by the Oregon Division of State Lands or the U.S. Army Corps of Engineers.

2.1.64 System Development Charge.

A reimbursement fee, improvement fee or combination thereof assessed or collected at the time of increased usage of the capital improvement, at the time of issuance of the development permit or building permit or at the time of connection to the capital improvement. The system development charge does not include fees assessed or collected as part of a local improvement district or charge in lieu of local improvement district assessments, or the cost of compliance with requirements of conditions imposed by a land use decision.

2.1.65 User.

Any person or entity in whose name service is rendered as evidenced by the signature on the application or contract for that service, or in the absence of a signed instrument, but the receipt and payment of utility bills regularly issued in his/her/its name. A user, under this system and structure of rates, is either single family or non-single family.

2.1.66 User – Non-Single Family.

Any user whose impervious surface results from the development of land for purposes of operating a dwelling unit for occupancy by more than one single family or for other business, industrial, commercial or institutional purposes and to whom utility services are provided at a distinct service location.

2.1.67 User – Single Family.

Any user whose impervious surface results from the development of land for purposes of establishing a dwelling unit for occupancy by a single family and to whom utility services are provided at a distinct service location.

2.1.68 User Charge.

The periodic charges applied to all users of the District's Surface Water Management services for the cost of operation, maintenance, and replacement of the public stormwater system, including any other costs, such as, but not limited to, debt service, capital improvements, regulatory compliance, program administration, etc.

2.1.68 Variance

A discretionary decision to permit modification of the terms of any part of this ordinance based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

2.1.70 Vegetated Corridor

See Buffer/Undisturbed Buffer.

2.1.71 Water Quality Facility.

A facility specifically designed for pollutant removal.

2.1.72 Water Quality Resource Areas.

Areas as defined on the Water Quality and Flood Plain Management Areas Map adopted by Metro or Clackamas County and amended.

2.1.73 Water Treatment Bioswale/Water Quality Swale.

A vegetated natural depression, wide shallow ditch, or similar constructed facility used to filter runoff for the purpose of improving water quality.

2.1.74 Waters of the State.

Those waters defined in ORS Chapter 468B.005 or as amended which include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

2.1.75 Wetland.

Areas that are inundated or saturated by surface or groundwater 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 are those areas identified and delineated by a qualified wetlands specialist as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987, or by a DSL/COE 404 permit. Wetlands may also consist of:

- 2.1.75.1 Constructed Wetlands. As defined in Section 404 of the Clean Water Act, constructed wetlands are those areas developed as a water quality or quantity facility, subject to maintenance as such. These areas must be clearly separated from existing or created wetlands.
- 2.1.75.2 Created Wetlands. Created wetlands are those wetlands developed in an area previously identified as a non-wetland to replace or mitigate wetland destruction or displacement.
- 2.1.75.3 Existing Wetlands. Existing Wetlands are those identified and delineated as set forth in the Federal Manual for Identifying the Delineating Jurisdictional Wetlands, January 1987, or as amended, by a qualified wetlands specialist.

2.1.76 Wet Weather Measures.

Erosion prevention and sediment control methods deemed necessary to meet the types of conditions that occur during the wet weather season, as identified in the District's current erosion control manual.

2.1.77 Wet Weather Season.

The portion of the year when rainfall amounts and frequency tend to have the most significant effect on erosion prevention and sediment control (October 1 to April 30).

2.1.78 Work Area.

Areas of disturbance for activities defined under "Development". Work Area includes areas used for storage of equipment or materials that are used for these activities.

SECTION 3 – DISCHARGE REGULATIONS

3.1 DISCHARGE PROHIBITIONS

3.1.1 Discharge to Sanitary Sewer System.

No person shall discharge or contribute to the discharge of any stormwater or other unpolluted water into the District’s sanitary sewerage system.

3.1.2 Discharge to Public Storm Water System

No person shall discharge or cause to be discharged, directly or indirectly, to the public storm system any quantity of stormwater or any pollutant, substance, stormwater, or wash water, that will violate the discharger’s permit, if one is issued, the District’s NPDES permit, this Ordinance or any environmental law or regulation, or water quality standard. Prohibited activities include, but are not limited to, the following:

- 3.1.2.1 Introduction of pollutants or waters to the public stormwater system containing pollutants or concentrations at levels equal to or in excess of those necessary to protect waters of the State.
- 3.1.2.2 Failure to abide by the terms of any NPDES permit, statute, administrative rule, ordinance, stipulated and final order or decree or other permit or contract.
- 3.1.2.3 Discharges of non-stormwater or spills or dumping of materials other than stormwater into public storm system unless pursuant to a conditional permit approved by the District and in compliance therewith.
- 3.1.2.4 Illegal or unpermitted connection or methods of conveyance to the public stormwater system.
- 3.1.2.5 Any discharge that will violate water quality standards.

3.1.3 Discharge to Creeks or Drainageways

Storm drains and roof drains are not allowed to drain to creeks or drainageways or encroach into the buffer unless approved in writing by the District. Encroachment into buffer areas must be approved by the District and will require mitigation. Existing and replacement storm drains shall be constructed according to State and Federal Regulations. Non-single family development shall provide an approved water quality facility prior to any discharge from the site to a storm drain system, a creek or drainageway, as approved by the District.

3.2 PRETREATMENT FACILITIES

3.2.1 If it is determined by the District that pretreatment facilities are necessary to comply with water quality standards, the District may require that such facilities be constructed or modifications made within the shortest reasonable time, taking into consideration the construction time, impact of the surface water on the District’s system, economic impact on the facility and any other appropriate factor. All such facilities shall be constructed and operated under a permit issued by the District.

3.3 PERMIT REQUIREMENTS

3.3.1 Connection Permit

A permit is required to connect to any storm drain facility, including but not limited to pipes, pollution reduction manholes, and detention facilities, whether constructed or natural. Before connecting to any storm drain facilities, a permit authorizing such connection shall first be secured in writing from the District's designate and fees paid.

SECTION 4 – ENVIRONMENTAL PROTECTION AND EROSION CONTROL RULES

4.1 GENERAL POLICY

The policies of this section shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

4.1.1 It is the policy to require temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner or his/her agent, contractor, or employee, shall properly install, operate and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all parcels within the authority of the District.

Nothing in this section shall relieve any person from the obligation to comply with the regulations or permits of any federal, state, or local authority.

4.1.2 Until ownership of the facility is accepted by the District upon terms and conditions set by the District, maintenance and repair or existing facilities shall be the responsibility of the owner of record as shown in the real property records.

4.2 EROSION CONTROL

4.2.1 It is the District's policy to prevent erosion and to minimize the amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470.

4.2.2 Erosion Prohibited.

No visible or measurable erosion shall leave the property during construction or during activity described in Section 4.2.1. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities involve public facilities and sensitive areas including, but not limited to: creeks, drainageways, wetlands, catch basins and storm drains, and sensitive areas, impacted by a project.

4.2.3 General Requirements.

Site Plans for storm drainage, grading and erosion control will be required for all development, construction, grading, filling, excavating, cleaning, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. Such activities impacting areas of 800 square feet or greater must obtain an erosion control permit. Activities impacting areas less than 800 square feet which result in erosion from a site do not need to obtain an erosion control permit but still must comply with the requirements of Section 4.2.2. All sites shall submit an erosion control plan for review, regardless of size. The plans shall use the techniques and methods prescribed in the current WES erosion prevention manual. If the applicant desires to use erosion prevention and sediment control measures different than those contained in the manual, supporting calculations and/or information must be

submitted to WES for approval prior to construction. At a minimum the Erosion Control Plan shall include:

- 4.2.3.1 The methods and/or facilities to be used to prevent erosion and pollution created from the activity both during and after construction. Site specific considerations shall be incorporated.
- 4.2.3.2 Limits of clearing by flagging boundaries in the field before starting site grading or construction. Staging areas shall be included.
- 4.2.3.3 An analysis of source controls such as detention and storage during construction as an alternative method to control erosion from storm water runoff.
- 4.2.3.4 A drainage plan during construction.
- 4.2.3.5 Show existing contours as well as all sensitive areas, creeks, streams, wetlands, and open areas.
- 4.2.3.6 A description of historic localized flooding problems resulting from surface water runoff, FEMA or flooding problems known to the community or the District.
- 4.2.3.7 Erosion control plan shall include a schedule for implementation of erosion control measures. The schedule shall include:
 - measures to cover exposed soil if unworked for 14 days or more.
 - Implementation of wet weather measures between October 1st and April 30th, unless otherwise approved by the District.

On sites where vegetation and ground cover have been removed, District approved ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the wet season with straw mulch, erosion blankets, or other approved method, where appropriate, with long term site plan.
- 4.2.3.8 Water containing sediment shall not be discharged into the surface water management system, wetlands or streams without first passing through an approved sediment filtering facility or device. Discharge from temporary sedimentation ponds or detention facilities used for sedimentation during construction shall be constructed to District standards to provide adequate sediment filtration.
- 4.2.3.9 Re-inspection fees may be charged for those sites that are notified of deficiencies and fail to complete corrective actions in full by the time of the next inspection.

4.2.4 Site Plan.

A site-specific plan prepared by an engineer shall be required and additional erosion control measures may be required for sites having one or more of the following characteristics:

- 4.2.4.1 Sites greater than five acres disturbed
- 4.2.4.2 Sites with slopes greater than 15 percent on any portion of the site;
- 4.2.4.3 Sites with highly erodible soils;
- 4.2.4.4 Sites adjacent to sensitive areas;
- 4.2.4.5 Sites where grading and clearing activities are likely between October 1 and April 30.

Refer to current WES erosion prevention manual for additional measures. Additional measures may include, but are not limited to, one or more of the following:

- 1. Limited area cleared at any one time;
 - 2. Additional drainage requirements during construction;
 - 3. Additional water quality treatment, such as filtering or treatment of runoff;
 - 4. Cover portions of the site;
 - 5. Maintain a vegetated buffer strip between site and sensitive area;
 - 6. Additional facilities to reduce volume and velocity of water runoff;
 - 7. If there are no workable alternatives, limit clearing and grading in some areas between October 1 and April 30.
- 4.2.5 No soils shall remain exposed for more than 14 days in the wet weather season unless an advanced sedimentation or filtration process is used. WES must approve such process prior to implementation.
- 4.2.6 All construction activities disturbing an area that is five (5) or more acres of land shall obtain an NPDES 1200C erosion control permit for construction activities issued by the District.
- 4.2.7 Performance.

The District may require the Applicant to submit a bond, cashiers check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, the District may perform work or remedy violations and draw upon the bond or fund. If the District does not require a bond and the Developer does not perform the erosion control plan in whole or in part, the District may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88.

4.2.8 Erosion Control Certification.

1. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees. See Table 1, Surface Water Management Fees and Administrative Rules for implementation of discount. On large or complex sites, the District may require an individual certified in erosion control to be on site at all times. Developments with certified erosion control staff are subject to all of these Rules and Regulations. Violation of these Rules and Regulations resulting in enforcement procedures described in Section 8.4 will result in revocation of the certification and payment of the full erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions. If certification is revoked, then there may be additional inspection fees as shown in Table 1. See Administrative Rules for details on the certification program.
2. Certification shall involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction shall be required every 2 years.

4.2.9 Maintenance.

The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by the District's site inspector, the permittee shall submit a revised plan within three working days of written notification by the District. In cases where erosion is occurring, the District may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting the District's right to undertake enforcement measures. Upon approval of the revised plan by the District, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within 3 working days of approval by the Director, or their designee.

4.2.10 Inspection.

The erosion control measures necessary to meet the requirements of Section 4.2.2 shall be installed by the owner or their representative and shall be inspected by the District prior to the start of any excavation work.

4.2.11 Deposit of Sediment.

No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system which drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into the road/street or any part of the storm and surface water system without erosion control measures installed to the satisfaction of the District, and any such action shall be an additional violation.

4.2.12 Permit Fee

The District may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the rules contained herein as established and amended by the District.

4.2.13 Permit Duration

- 4.2.13.1 Development or construction must be initiated as per the approved final development plans within one (1) year of the date of erosion control permit issuance or the permit will be null and void. When the Hearings Officer or Board of County Commissioners specify a time period for commencement of a development, that time period shall supersede.
- 4.2.13.2 Erosion Control permits (excluding 1200-C permits) shall expire and become null and void 24 months after the date of permit issuance unless extended by the Director. If the work authorized by such permit has not received final inspection approval prior to the permit expiration date, and the permit has not been extended by the Director, all work shall stop until a new permit is obtained that conforms to the erosion control regulations in effect at the time of re-application. The Director may extend the time for action by the permittee for a period not exceeding 12 months on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. Failure on the part of the District to notify the permittee by mail prior to the original date of expiration shall result in an automatic 12-month extension. No permit shall be extended more than once.
- 4.2.13.3 1200-C permits shall expire and become null and void if the permit is not renewed annually or as per the general permit schedule set forth by the Oregon Department of Environmental Quality (DEQ).

4.3 AIR POLLUTION

4.3.1 Dust.

Dust and other particulate matters containing pollutants may settle on property and be carried to waters of the state through rainfall or other means.

Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

- 4.3.1.1 Sprinkling haul and access roads and other exposed dust producing areas with water.
- 4.3.1.2 Establishing temporary vegetative cover.
- 4.3.1.3 Placing wood chips or other effective mulches on vehicle and pedestrian use areas.
- 4.3.1.4 Maintaining the proper moisture condition on all fill surfaces.

4.3.1.5 Pre-wetting cut and borrow area surfaces.

4.3.1.6 Use of covered haul equipment.

4.4. MAINTAINING WATER QUALITY

4.4.1 Construction of new facilities between stream banks shall be pursuant to permits issued by state and federal agencies having jurisdiction and applying their regulations.

4.4.2 Pollutants such as, but not limited to, fuels, lubricants, asphalt, concrete, bitumens, raw sewage, and other harmful materials shall not be discharged into rivers wetlands, streams, impoundments, undisturbed buffers or any storm drainage system, or at such proximity that the pollutants flow to these watercourses.

4.4.3 The use of water from a stream or impoundment, wetland or sensitive area, shall not result in altering the temperature or water quality of the water body in violation of Oregon Administrative Rules, and shall be subject to water rights laws.

4.4.4 All sediment-laden water from construction operations shall be either routed through sedimentation basins, filtered, or otherwise treated to remove the sediment load before release into the surface water system.

4.5 FISH AND WILDLIFE HABITAT

4.5.1 Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

4.6 NATURAL VEGETATION

4.6.1 As far as is practicable, natural native vegetation shall be protected and left in place in undisturbed buffer areas. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.

4.6.2 During clearing operations, trees shall not be permitted to fall outside the work area. In areas designated for selective cutting or clearing, care in falling and removing trees and brush shall be taken to avoid injuring trees and shrubs to be left in place.

4.6.3 Where natural vegetation has been removed, or the original land contours disturbed, the site shall be revegetated per a submitted and approved seeding and maintenance plan from a list approved by the District as soon as practicable after construction has commenced, not later than September 1. After that date a reseeding and stabilization plan approved by the District must be used.

4.7 PESTICIDES, FERTILIZERS, CHEMICALS

4.7.1 The use of hazardous chemicals, pesticides, including insecticides, herbicides, defoliants, soil sterilants, and the use of fertilizers, must strictly adhere to federal, state, county, and local restrictions.

4.7.2 All materials defined in Section 4.7.1 delivered to the job site shall be covered and protected from the weather. None of the materials shall be exposed during storage. Waste materials, rinsing fluids, and other such material shall be disposed of in such a manner that pollution of groundwater, surface waste, or the air does not occur. In no case shall toxic materials be dumped into drainageways.

4.8 CONTAMINATED SOILS

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statues and rules.

SECTION 5 – ADDITIONAL SURFACE WATER MANAGEMENT STANDARDS

5.1 GENERAL STANDARDS

- 5.1.1 All development shall be planned, designed, constructed and maintained to:
 - 5.1.1.1 Protect and preserve existing streams, creeks, natural drainage channels and wetlands to the maximum practicable extent, and to meet state and federal requirements.
 - 5.1.1.2 Protect property from flood hazards. Provide a flood evacuation route if the system fails.
 - 5.1.1.3 Provide a system by which storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons.
- 5.1.2 All stream crossings must be approved by the Oregon Division of State Lands, US Army Corps of Engineers, and any other authorized federal, state, or local agency.
- 5.1.3 In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch or other natural drainage channel, adequate easements for surface water drainage purposes shall be provided to the District. This does not imply a maintenance obligation by the District.
- 5.1.4 Channel obstructions are not allowed except with District approval.
- 5.1.5 Facilities developed on site shall be constructed in a manner consistent with basinwide or subbasin drainage management plans.
- 5.1.6 All storm conveyance pipes, vaults, detention facilities or other water quality or quantity facilities shall be built to specifications of the District.
- 5.1.7 All surface water facilities shall be constructed per specifications of the District.
- 5.1.8 Inspection of surface water facilities and approval of shop drawings shall be provided by the developer's engineer.
- 5.1.9 Following completion of construction, the engineer shall submit a document, stamped by a professional engineer, indicating all surface water systems have been inspected and installed per approved plans and approved changes.
- 5.1.10 Maintenance is required for all on-site surface water facilities. The maintenance program must be approved by the District.
- 5.1.11 As-built plans of facilities, easements for all facilities, and approved maintenance plans shall be provided to the District upon completion of construction.
- 5.1.12 Each surface water system shall have adequate easements and access for construction, operation and maintenance. A commercial or industrial user having ownership or control of onsite detention facilities shall maintain such facilities in compliance with these Rules and Regulations and provide documentation of annual maintenance.

5.1.13 All surface water facilities shall be maintained as needed and as approved by the District. Proof of maintenance shall be annually submitted in accordance with a schedule approved by the District. If the facility is not maintained, the District may perform the maintenance and charge the owner of the facility.

5.1.14 Plan Review.

All plans and calculations must be stamped and signed by a civil engineer licensed by the State of Oregon and meet the standards of the District.

5.1.15 Bonds.

Developers or owners shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. The amount of the performance bond shall be in the amount of 125% of the engineer's cost estimate for all approved but uncompleted surface water and buffer improvements. A maintenance bond shall be provided to the District prior to release of the performance bond. The maintenance bond shall be in favor of the District, in the amount of 25% of the actual construction cost, for a period of one year from the date of final District inspection and acceptance of all completed buffer mitigation and public surface water facilities. During construction and the guarantee period, the District may perform work if the owner fails to do so, and charge the Bond. At the end of the one year guarantee period, the residual bond amount shall be released and remitted to the owner. Nothing herein shall limit the owner's responsibility for repair and maintenance to the amount of the bond.

5.1.16 All activities must meet State and Federal regulations.

5.1.17 All developments and redevelopments shall provide water quantity, water quality and infiltration systems to meet Sections 5.2 and 5.3.

5.1.18 Development projects shall not be phased or segmented in such a manner to avoid the requirement of these Rules and Regulations.

5.2 WATER QUANTITY STANDARDS

5.2.1 Surface water collection systems with the potential to serve areas up to 10 acres of land must be sized for the post-developed 10-yr storm, using the Rational Method. All other surface water conveyance systems shall be sized for post-developed conditions in accordance with the following criteria:

5.2.1.1 Storm sewers and outfall pipes draining less than 640 acres: 25-yr, 24-hr design storm

5.2.1.2 Storm sewers and outfall pipes draining greater than 640 acres: 50-year, 24-hour design storm

5.2.1.3 Creek or stream channels draining less than 250 acres: 25-year, 24-hour design storm

5.2.1.4 Creek or stream channels draining greater than 250 acres: 50-year, 24-hour design storm

5.2.1.5 Creek or stream channels draining greater than 640 acres: 100-year, 24-hour design storm

Areas draining greater than 10 acres of land may use alternate methods such as SBUH, HEC 1, HSPF, or SWMM, or others as approved by the District.

Exceptions must be documented and approved by the District.

Instream or in-line detention can only be used in locations approved by the Oregon Division of State Lands and US Army Corps of Engineers, and any other authorized federal, state, or local agency.

5.2.2 It shall be the responsibility of the owner to provide a drainage system for all water on site and for water entering the property from off-site. Surface water, springs, and groundwater shall be incorporated into the drainage design. The owner is also responsible for springs and groundwater that surface during construction and within the warranty period of the drainage system.

5.2.3 Where a drainage system of catchbasins and pipes is available, all drains that extend to the curb must be directly connected to the storm system. No drainage will be allowed into the street or roadway where a drainage system is available.

5.2.4 Onsite Detention Design Criteria

Onsite storm quantity detention facilities shall be designed to capture and detain runoff as follows:

- 2-year, 24-hour post-developed runoff rate to a ½ of the 2 year, 24-hour pre-developed discharge rate;
- In areas with limited downstream capacity that cannot be upgraded, (see Standards for maps of specific areas), detention shall be designed to reduce the 25 year, 24-hour, post-developed runoff rate to a 2 year, 24-hour pre-developed discharge rate, and, from the 2 year, 24-hour, post developed rate, to ½ of the 2-year, 24-hour pre-developed discharge rate.

Downstream analysis shall demonstrate adequate conveyance capacity to the distance where the project site contributes less than 15% of the upstream drainage area OR 1500 feet downstream of the project, whichever is greater. If the downstream analysis crosses the jurisdictional boundary of another surface water management agency, that agency must be notified by the Developer or Owner and given the opportunity to review and comment on the analysis.

For residential subdivisions and partitions of parcels with the potential to create more than two additional lots as currently zoned, and for developments having more than 5,000 square feet of impervious surface, on-site stormwater detention, treatment, and infiltration facilities shall be required. For 2 and 3 lot partitions that cannot be further partitioned under current zoning, detention is not required if there are no downstream impacts. All subdivisions and partitions must include a drainage plan for each proposed lot. Infiltration facilities are required where soil conditions permit.

Open detention facilities shall be planted with vegetation as per the Metro Water Quality Treatment Facility Plant List (in the Metro Native Plant List, October 1998), available from the District. See Standards for details. Planting schedule and maintenance of vegetation shall be approved by the District

5.2.5 Onsite Detention Design Method

The procedure for determining the detention quantities is set forth in Chapter 4.4, Retention/Detention Facility Analysis and Design, King County, Washington, Surface Water Design Manual Version 4.21 (ibid), except subchapters 4.4.5 Tanks, 4.4.6 Vaults and Figure 4.4.4G Permanent Surface Water Control Pond Sign. This reference shall be used for procedure only. Local rainfall data and information shall apply. The design criteria shall be as noted herein. Engineers desiring to utilize a procedure other than that set forth herein shall obtain the approval of the District prior to submitting calculations utilizing the proposed procedure.

For all developments other than single family and duplex, the sizing of stormwater quantity detention facilities shall be based on the impervious area to be created by the development, including structures and all roads and impervious areas.

For single family and duplex residential subdivisions or partitions, stormwater quantity detention facilities shall be sized for the impervious areas to be created by the subdivision or partitions, including all residences on individual lots at a rate of one ESU of impervious surface area per dwelling unit, plus all roads. If actual impervious area is to be greater than one ESU per dwelling unit, then the actual impervious numbers shall be used. Such facilities shall be constructed as a part of the subdivision or partition.

Redevelopment of sites shall require detention for the areas impacted by construction.

Subregional detention and water quality facilities are encouraged. Where topographically feasible, detention and water quality facilities may be sized and constructed to provide detention and treatment for more than one development. Maintenance must be provided for the facility. Easements and access must also be provided.

Each development shall address drainage for groundwater and springs. Existing problems shall be addressed in plans submitted for review and approval. Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters shall be submitted to the District for review and approval prior to construction.

In lieu of fees for detention and water quality may be applied in under the following conditions:

- Subregional or regional detention and treatment downstream is available and has been identified.
- Downstream detention and treatment is constructed or an agreement has been approved by the District on implementation of downstream detention and treatment.
- Fees for “in lieu of” detention and treatment would be applied as a percentage of facility costs, including engineering and administration. Percentage of costs would be based on percentage of use of facility.
- Maintenance of facility is provided.

5.2.6 Infiltration systems are required for all new developments and redevelopments to infiltrate all runoff from storm events up to one-half inch of rainfall in 24 hours. Treatment shall occur prior to or concurrent with infiltration systems in accordance with section 5.3. Infiltration

system capacity may be incorporated into the detention system design, in order to reduce the required detention volume. Infiltration facilities shall be sized to infiltrate the design runoff volume within a maximum of 96 hours. Infiltration requirements may be waived, or reduced, if it can be demonstrated by a registered professional engineer that infiltration will destabilize the soil, cause adverse structural or environmental impacts, or due to site constraints such as high groundwater, springs, or impermeable soils.

5.3 WATER QUALITY STANDARDS

All new developments and re-developments shall provide on-site water quality facilities, as required by the District. Water quality facilities shall be designed to capture and treat runoff for all events up to 2/3 of a 2-year, 24-hour post-developed storm. The water quality system shall use vegetation for treatment. Accepted types of vegetated treatment facilities include vegetated swales, filter strips, constructed wetlands, wet ponds and extended dry detention ponds. Alternative systems may be used with approval by the District and shall be designed to provide equivalent treatment as is provided with a vegetated system, as described in the Standards and the "Surface Water Quality Facilities Technical Guidance Handbook", developed by Portland and Lake Oswego, Clackamas County, and the Unified Sewerage Agency, now known as Clean Water Services.

5.4 NATURAL RESOURCE PROTECTION

5.4.1 Study

The District shall require the applicant to provide a study identifying areas on the parcel which are or may be sensitive areas when, in the opinion of the District:

5.4.1.1 An area or areas on a parcel may be classified as a sensitive area;

5.4.1.2 The parcel has been included in an inventory of sensitive areas adopted by the District and more site specific identification of the boundaries are needed.

5.4.2 Undisturbed Buffer Required

New development or a division of land adjacent to sensitive areas shall preserve and maintain an undisturbed buffer wide enough to protect the water quality functioning of the sensitive area. The undisturbed buffer is a facility required to prevent damage to the sensitive area caused by the development. The width of the undisturbed buffer shall be as specified in Table 5.1.

Undisturbed buffers shall be protected, maintained, enhanced or restored as follows: Vegetative cover native to the region shall be maintained or enhanced, or restored, if disturbed in the buffer. Invasive non-native vegetation may be removed from the buffer and replaced with native vegetation. Only native vegetation shall be used to enhance or restore the buffer. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by the District. Any disturbance of the buffer requires prior District approval.

Uncontained areas of hazardous materials as defined by DEQ are prohibited in the buffer.

Starting point for measurements from the Sensitive Area begin at:

- Either the edge of bankfull stage or 2-year storm level for streams; and
- An Oregon Division of State Lands approved delineation marking the edge of the wetland area.

5.4.2.1 Where no reasonable and feasible option exists for not encroaching within the minimum undisturbed buffer, such as at a road crossing or where topography limits options, then onsite mitigation on the intrusion of the buffer will be on a ratio of 1.5 to 1 (one). All encroachments into the buffer, except those listed in 5.4.3, require a written variance from the District. The Surface Water Manager may grant a variance. The District shall give notice by First Class mail of its decision to grant or deny a variance to the applicant and to owners of property within 250 feet of the affected property.

Table 5.1 – Undisturbed Buffers

Sensitive Area	Upstream Drainage Area	Slope Adjacent to Sensitive Area	Width of Undisturbed Buffer
Intermittent Creeks, Rivers, Streams	Less than 50 acres	Any slope	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	<25%	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	≥25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	<25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	≥25%	100 to 200 feet
Perennial Creeks, Rivers, Streams	Any upstream area	<25%	50 feet
Perennial Creeks, Rivers, Streams	Any upstream area	≥25%	100 to 200 feet
Wetlands, lakes (natural), and springs.	Any drainage	<25%	50 feet
Wetlands lakes (natural), and springs.	Any drainage	≥25%	100 to 200 feet

Note: See Administrative Procedures for details for application of undisturbed buffer.

5.4.3 Design Standards for the Undisturbed Buffer

No future structures, development, or other activities shall be allowed which otherwise detract from the water quality protection provided by the buffer, as required by state and federal regulations, except as allowed below:

- 5.4.3.1 A road crossing the undisturbed buffer to provide access to the sensitive area or across the sensitive area.
- 5.4.3.2 Utility construction or approved plans by a governmental agency or public utility subject to Public Utility Commission regulation, providing the buffer is restored and a restoration plan approved by the District.
- 5.4.3.3 A walkway or bike path not exceeding eight feet in width, only if it is part of a regional system of walkways and trails managed or adopted by a public agency.
- 5.4.3.4 A pervious walkway or bike path, not exceeding eight feet in width that does not provide access to the sensitive areas or across the sensitive areas. If the walkway or bike path is impervious, then the buffer must be widened by the width of the path. The average distance from the path to the sensitive area must be at least 60% of the total buffer width. At no point shall a path be constructed closer than ten feet from the boundary of the sensitive area, unless approved by the District.
- 5.4.3.5 Measures to remove or abate hazards, nuisances, or fire and life safety violations.
- 5.4.3.6 Homeowners are allowed to take measures to protect property from erosion, such as protecting river banks from erosion, within limits allowed by State and Federal regulations.
- 5.4.3.7 The undisturbed buffer shall be left in a natural state. Gardens, lawns, or other landscaping shall not be allowed except with a plan approved by the District. The proposal shall include information to demonstrate that improvement and maintenance of improvements will not be detrimental to water quality.
- 5.4.3.8 Fences: The District may require that the buffer be fenced, signed, delineated, or otherwise physically set apart from parcels that will be developed.

5.4.4 Location of Undisturbed Buffer

In any new development or redevelopment, the undisturbed buffer shall be contained in a tract, and shall not be a part of any parcel to be used for the construction of a dwelling unit. The District reserves the right to require separate tracts for undisturbed buffers; however, conservation easements will be considered and allowed if the developer can demonstrate that restrictions for activities on the parcel will protect the resource associated with the buffer. Restrictions may include permanent signage, fencing, documentation with the title of the property, or other acceptable methods. All methods shall be approved by the District.

5.4.5 Construction in Undisturbed Buffer

5.4.5.1 With approval of the District and an approved plan, noxious vegetation may be removed and replaced with native vegetation.

5.4.5.2 Any disturbance of the buffer shall be replaced with native vegetation and with the approval of the District.

SECTION 6 - RATES FOR SURFACE WATER SERVICE

6.1 CUSTOMER CHARGES

Equivalent service unit rate structure.

Except as specifically provided below, a monthly surface water charge shall be paid by the user. The rate is set according to the surface water service area as follows:

North Clackamas Surface Water Service Area.

There is hereby imposed a system of rates for users for surface water services established by this Ordinance. The rates are set forth and amended from time to time to fund the administration, planning, design, construction, water quality and quantity programming, operation, maintenance and repair of surface water facilities.

Rates are hereby established for all users within the North Clackamas Surface Water Service Area as set forth on Table 2, attached hereto and incorporated by reference. The Table may be amended by Resolution or Order of the Board of County Commissioners.

Annexation.

The rates, fees, and system development charges set forth in Table 2 of this Ordinance shall not be charged in areas annexing to the District after January 1, 2005 until urban level¹ sanitary sewer and/or surface water management services are provided to the User. Such charges shall commence upon the date of connection or use of the sanitary sewer and public storm water/surface water management system.

¹ For the purposes of this section, urban level of service shall be defined as connection to the sanitary sewer system; or having any point of the property boundary within three hundred (300) feet of a serviceable public sanitary sewer and participation in an assessment district, local improvement district, or other service funding mechanism; and/or within three hundred (300) feet of a surface water management program collecting, regulating, and/or controlling surface waters and storm drainage in response to a National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permit or other regulation imposed upon Clackamas County Service District No. 1 by the Oregon Department of Environmental Quality, United States Environmental Protection Agency, or other regulatory authority.

Mitigation Reduction Factor.

The amount of surface water service for sites can be controlled through provision of detention and/or other storm water quantity or quality control mitigation facilities. The District's Planning and Engineering Services Manager, or designee, shall determine the appropriate mitigation credit factor for customers who provide such mitigation in a manner consistent with the Administrative Procedures adopted by the District.

6.2 PAYMENT OF CUSTOMER CHARGES

Single family customers will be billed on a two (2) month basis in advance, with payment due within fifteen (15) days of the billing date. Non-single family customers will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

6.3 SYSTEM DEVELOPMENT CHARGE

6.3.1 Purpose

Section 6.3 is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297 - 223.314 for the purpose of creating a source of funds to pay for additional system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system. These charges shall be due and payable at the time of permitted increased usage of the capital improvements that generate a need for those facilities. The system development charges imposed by Section 6.3 are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

6.3.2 System Development Charge Imposed; Method for Establishment Created.

Unless otherwise exempted by the provisions of these Rules and Regulations or other local or state law, a systems development charge is hereby imposed on all development within the District that increases usage upon the surface water facilities for each equivalent service unit. Systems development charges shall be established and may be revised by Resolution or Order of the Board. The Resolution or Order shall set the methodology and amount of the charge.

6.3.3 Methodology

6.3.3.1 The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the Board. The methodology shall promote the objective that future systems users shall contribute not more than an equitable share of the cost of then-existing facilities.

6.3.3.2 The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.

6.3.3.3 The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by Resolution or Order of the Board.

6.3.4 Authorized Expenditure

6.3.4.1 Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

6.3.4.2 Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such

improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by current or projected development.

6.3.4.3 A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Capital Improvement Program adopted by the Board; and

6.3.4.4 Notwithstanding 6.3.4(1) and (2), system development charge revenues may be expended on the direct costs of complying with the provisions of these Rules and Regulations, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

6.3.5 System Development Charge Project Plan

6.3.5.1 The Board has adopted by Resolution or Order the Clackamas County Service District No. 1 System Development Charge Report for the North Clackamas Surface Water Management Area. This Report:

- (a) Lists existing facilities and the capacity available for new development;
- (b) Lists the planned capital improvements that may be funded with improvement fee revenues; and
- (c) Lists the estimated cost and time of construction of each improvement.

6.3.5.2 In adopting this Report, the Board may incorporate by reference all or a portion of any Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains the information required by this section. The Board may modify the projects listed in that Report at any time through the adoption of an appropriate resolution.

6.3.6 Collection of Charge

6.3.6.1 As a condition of connection or contribution to the surface water system, the applicant shall pay all applicable charges. Except as allowed in Section 6.03.7 below, the systems development charge is payable at the time of permitted increased usage upon issuance of:

- (a) A building permit; or
- (b) A development permit for development not requiring the issuance of a building permit; or
- (c) Increased usage of the system or systems provided by the District.

6.3.6.2 The resolution which sets the amount of the charge shall designate the permit or systems to which the charge applies.

6.3.6.3 If development is commenced or connection is made to the systems provided by the District without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.

6.3.6.4 The Director of Water Environment Services, a Department of Clackamas County, or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 6.3.7 or unless an exemption is granted pursuant to Section 6.3.8.

6.3.6.5 All moneys collected through the system development charge shall be retained in a separate fund and segregated by type of system development charge and by reimbursement versus improvement fees.

6.3.6.6 In addition, each person making an application for connection shall pay an inspection charge equal to the average costs incurred by the District in providing storm sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated. The applicant shall pay an estimated inspection charge which may be adjusted as follows:

- (a) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.
- (b) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

6.3.7 Installment Payment of District's Share of System Development Charges

6.3.7.1 Where the District's surface water system development charge is greater than two times the amount of a system development charge for a single family residential unit, the applicant may, at the time of application, with the consent of the District, make a one-time election to pay the charge in installments. If approved, payment in 20 semi-annual installments secured by a lien on the property upon which the development is to occur or to which connection is to occur, including interest on the unpaid balance.

6.3.7.2 The District shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

6.3.7.3 The District reserves the right to reject any application for installments payments. Requirements and procedures for installment payments of the system development charge shall be in accordance with the following:

- (a) A person requesting installment payments shall have the burden of demonstrating the person's authority to assent to the imposition of a lien on the property and that the interest of the person is adequate to secure payment of the lien.

- (b) Any eligible person requesting the installment shall at the time of the application for connection submit to the District an application for deferral on a form provided by the District.
- (c) Upon receipt of an application, the applicant, at his expense, shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon, and provide it to the District.
- (d) The applicant, at his expense, shall furnish the District with a current statement of amount due to each lienholder disclosed by the preliminary title report, the tax assessor's statement of true cash value, and, for property proposed for improvement, an MAI appraisal, certified by the appraiser, as to the estimated fair market value upon completion of the proposed improvement. The applicant shall answer such questions as the District deems proper regarding the applicant's ability to make the installment payments, as well as any other lienholder. The applicant also authorizes the District to contact other lienholders regarding applicant's payment history.
- (e) If, upon examination of the title to the property and other information, the District is satisfied:
 1. That the total unpaid amount of all liens disclosed, together with the amount of the system development charge sought to be paid by installments, does not exceed (1) the appraised value of the property as determined by the current appraisal of the County Assessor or (2) if the District elects, based upon the appraisal or other evidence of value acceptable to the District, the amount does not exceed the estimated fair market value of the property; and
 2. The District, in its discretion, upon review of the applicant's ability to make payments as required under the proposed mortgage or trust deed and other debt obligations and the status of applicant's title to the property, consents to execution of the mortgage or trust deed; then
 3. The applicant shall execute an installment promissory note, payable to the District in the form prescribed by the District for payment in installments not to exceed 20 equal semi-annual installments due January 1 and July 1 of each year, together with interest on the deferred principal balance at the prime rate of interest being charged on each principal payment date by the bank doing business in Oregon and having the largest deposits. The promissory note shall be secured by a mortgage or trust deed covering the property to be connected thereto. The cost of recording, preparation of security documents, title company report and filing fees shall be borne by the applicant in addition to the connection charge. The applicant, by electing to pay in installments, agrees that as an additional remedy to recovery upon the promissory note and foreclosure of the mortgage or trust deed or remedy in lieu thereof, the District may after ten (10) days' notice of delinquent installments cause termination of service to the defaulting property.
- (f) If the District determines that the amount of system development charge, together with all unpaid liens, exceeds the appraised value of the property or that the applicant cannot execute a mortgage or trust deed which will

be a valid lien or if the District believes that it will not have adequate security, or that the applicant cannot make the required payments, it shall so advise the applicant and installment payments shall not be accepted.

6.3.7.4 The District shall docket the lien in the lien docket. From that time, the District shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established in Section 6.3.7.3. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

6.3.8 Exemptions

The System Development Charge shall not apply to:

6.3.8.1 Structures and uses using the surface water system facilities on or before the effective date of the resolution.

6.3.8.2 Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Uniform Building Code or the County's zoning Development Ordinance.

6.3.8.3 An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the surface water system facilities.

6.3.9 Credits

6.3.9.1 A permittee is eligible for credit against the improvement fee element of the system development charge for constructing a qualified public improvement. A qualified public Improvement means one that meets all of the following criteria:

- (a) Required as a condition of development approval by the Board or its designee through the development review process; and
- (b) Identified in the Capital Improvement Plan or other plan set forth in Section 6.3.5; and
 - 1. Not located within or contiguous to the property or parcel that is subject to development approval; or
 - 2. Located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- (c) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the District.

6.3.9.2 Applying the adopted methodology, the District may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.

6.3.9.3 When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

6.3.9.4 All credit requests must be in writing and filed with the District before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the District. The amount of any credit shall be determined by the District and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the District that the contract amounts exceed the prevailing market rate for a similar project, the credit shall be based upon market rates. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

6.3.9.5 Credits shall be apportioned against the property which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

6.3.9.6 Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought and shall not be a basis for any refund.

6.3.9.7 Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.

6.3.9.8 Credits shall be used by the applicant within ten years of their issuance by the District.

6.3.10 Notification/Appeals

6.3.10.1 The District shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 45 days prior to the first hearing to adopt or amend such

methodology(ies). This methodology shall be available at least 30 days prior to the public hearing. Any challenge to the system development charge methodology shall be filed not later than 60 days following final adoption by the Board and only pursuant to the provisions of ORS 34.010 to 34.100.

6.3.11 Annual Accounting

The District shall prepare for public inspection an annual accounting for system development charges showing the total amount of system development charges collected for each system along with a list of projects funded in whole or in part through system development charges.

6.3.12 Payment of Charges

As a condition of connection to the storm sewerage system, the applicant shall pay all fees and charges, except as allowed under Section 6.3.7.

In addition, each person making an application for connection shall pay an Inspection Charge equal to the average costs incurred by the District in providing storm sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated, the applicant shall pay an estimated inspection charge which may be adjusted as follows:

6.3.12.1 If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.

6.3.12.2 If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

6.3.13 Change in Class of Service

Whenever a parcel of property shall have become connected to the District's service system and shall thereafter undergo a change of use so that a different number of service units would be assigned to the property if connection were made after the change, the following shall occur:

6.3.13.1 If the change results in the assignment of a greater number of ESU's pursuant to Table I, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of ESU's times the current system development charge per ESU's.

6.3.13.2 If the change results in the assignment of a lesser number of ESU's pursuant to Table I, there shall be no additional charge of rebate. However, the full number of ESU's originally assigned shall be used as a basis for determining any further change of use resulting in the assignment of additional ESU's.

SECTION 7 - COLLECTION PROCEDURES

7.1 ACCOUNT SETUP

All applications for service shall be on forms provided by the District. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

7.2 NOTICES

Regardless of who is listed as the user, the District will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District to avoid delinquent charges and discontinuance of service.

7.3 COLLECTION OF CHARGES

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the District's records. If the District's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255. If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District's procedures, collection practices may ensue or service may be terminated. The District may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

7.4 DELINQUENT CHARGES

All user charges by the District shall be due within twenty (20) days of billing. Thereafter, a charge shall be considered delinquent. All delinquent charges shall bear interest at the legal interest rate from the date of delinquency until paid. Failure to make payment when due shall give the District the right to undertake such collection action as it deems appropriate under the circumstances including, but not limited to, letters, telephone calls (reasonable as to time and place), legal proceedings or certification to the Tax Assessor. In addition, upon ten (10) days written notice, if feasible, the District may undertake those steps to construct on-site mitigation facilities or obtain cessation of customer's impact upon the District's or public's surface water system and the charges therefore shall be owed by customer to the District. Any costs incurred by the District to cease or mitigate the customer's impact on the surface water system, shall be charged at the District's usual labor and material rates.

In any action or suit to collect any delinquent user charges, the District shall be entitled to its reasonable attorneys fees, costs and disbursements as may be awarded by the trial court, including any appeal therefrom.

7.5 DISCONTINUANCE OF SERVICE

The District may, at any time after any charges or fees hereunder become delinquent, remove or close connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the District system prohibited substances after being notified by the District to do so, service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

7.6 RESTORATION OF SERVICE

Service which has been discontinued by the District shall not be restored until all accrued charges, including the expenses of discontinuance and restoration, shall have been paid and the cause for discontinuance corrected.

7.7 CERTIFICATION TO TAX ASSESSOR

Pursuant to ORS 454.225, the District may certify all delinquent charges to the Clackamas County Assessor for inclusion in the real property tax statement and collected in accordance therewith.

7.8 FEES AND COSTS

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director of Water Environment Services as its designee.

SECTION 8 – ENFORCEMENT

8.1 VIOLATIONS AND CIVIL PENALTIES

8.1.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to stop work orders, fines, modification or revocation of permit and/or cessation of services, or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this ordinance or any rule adopted thereto or any final order entered with respect thereto as well as violation of federal or state statutes, regulations or administrative rules.

The goal of enforcement is to (a) obtain and maintain compliance with applicable Federal and State statutes or administrative rules, the District's NPDES permit, ordinances, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 8.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

8.1.2 Definitions for Enforcement

8.1.2.1 "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

8.1.2.2 "Documented Violation" means any violation which the District or other government agency verified through observation, investigation or data collection.

8.1.2.3 "Enforcement" means any documented action taken to address a violation.

8.1.2.4 "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

8.1.2.5 "Formal enforcement" means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued non-compliance.

8.1.2.6 "Intentional" means respondent consciously and voluntarily took an action or admitted to take an action and knew the probably consequences of so acting or omitting to act.

8.1.2.7 "Magnitude of Violation" means the extent of a violator's deviation from the District's statutes, rules, permits or orders taking into account such factors as, but not limited to, pollutant or concentration, turbidity, volume, duration, toxicity or proximity to human or environmental receptors. Deviations shall be classified as major, moderate or minor.

8.1.2.8 “Prior Significant Action” means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default or a Memorandum of Agreement and Order of the District.

8.1.2.9 “Respondent” means the person to whom a formal enforcement action is issued.

8.1.2.10 “Risk of Harm” means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

8.1.2.11 “Systematic” means any documented violation which occurs on a regular basis.

8.1.2.12 “Violation” means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

8.1.2.13 “Class I” means any violation which poses a major risk of harm to public health or environment, or violation of any compliance schedule contained in a District permit or a District order:

- (a) Violation of a District Order or approved plan;
- (b) Intentional unauthorized discharges;
- (c) Negligent spills or discharges which pose a major risk of harm to public health or the environment;
- (d) Discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;
- (e) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters which pose a major risk of harm to public health or the environment;
- (f) Violation of a permit compliance schedule;
- (g) Failure to provide access to premises or records;
- (h) Any other violation related to water quality which poses a major risk of harm to public health or the environment;
- (i) Two Class II violations or one Class II and two Class III violations or three Class III violations.

8.1.2.14 “Class II” means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:

- (a) Violation of a District order or approved plan;

- (b) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;
- (c) Negligent spills which pose a moderate risk of harm to public health or the environment;
- (d) Failure to submit a report or plan as required by permit or license;
- (e) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

8.1.2.15 “Class III” means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

- (a) Violation of a District order or an approved plan;
- (b) Negligent spills or discharges which pose a minor risk of harm to public health or the environment;
- (c) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;
- (d) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

8.2 PROCEDURE FOR ENFORCEMENT

8.2.1 Inspection, Entry, and Sampling

Authorized District representatives may inspect the property and facilities of any person to determine compliance with the requirements of the Ordinance. The user person shall allow the District or its authorized representatives to enter upon the premises at all reasonable hours for the purpose of inspection, sampling or records examination. The District shall also have the right to set up on the person’s property such devices as are necessary to conduct sampling, inspection, compliance, monitoring and/or metering operations. The right of entry includes but is not limited to access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling surface water and storing records, reports, or other documents related thereto.

8.2.1.1 The District is authorized to conduct inspections and take such actions as required to enforce any provisions of this ordinance or any permit issued pursuant to this ordinance whenever the Director has reasonable cause to believe there exists any violation of this ordinance. If the premises are occupied, credentials shall be presented to the occupant and entry requested. If the premises are unoccupied and no permit has been issued, the District shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused in either case, the District shall have recourse to the remedies provided by law to secure entry.

8.2.1.2 Where feasible, inspections shall occur at reasonable times of the day. If a permit has been issued and the responsible party or their representative is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party. The permittee or person having charge or control of the premises shall allow the Director or the Director's authorized representatives, agents and contractors to:

- a. Enter upon the property where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;
- c. Inspect at reasonable times the property, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required by these rules and regulations or under a permit; and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance with these rules and regulations or as otherwise authorized by local or state law, any substances or parameters at any location.

8.2.2 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; (b) the violation would normally not be in existence for five days, (c) the water pollution might leave or be removed from the jurisdiction of the District.

8.2.3 Notice of Non-Compliance (NON)

A notice of non-compliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued non-compliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 8.1.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events.

8.2.4 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is formal enforcement action which: (a) is issued pursuant to 8.2.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 8.2.1 or the repeated or continued occurrence of documented Class II or III violations where notice of non-compliance has failed to achieve compliance or satisfactory progress toward compliance.

8.2.5 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is issued pursuant to 8.4.5; (b) is calculated pursuant to 8.4; (c) shall be issued by the Director or designee; (d) may be issued for the occurrence of any class of documented violation, for any class of repeated or continuing documented violations or where a person has failed to comply with a notice of violation and intent to assess a civil penalty or other order or Stipulated Final Order.

8.2.6 Memorandum of Agreement and Order (MAO)

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of an agreement or consent order issued by the Director that; (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations.

8.2.7 Other Remedies

The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

8.2.8 Right to Hearing

A civil penalty shall be due and payable fifteen (15) days after the decision is final. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter 'Respondent' by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. The Notice shall specify the violation, the reasons for the enforcement action, and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

8.2.8.1 The name of the Respondent and the case file number or permit number;

8.2.8.2 The name and signature of the respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

8.2.8.3 The date that the Civil Penalty Assessment or other formal enforcement was received by the Respondent;

8.2.8.4 The nature of the decision and the specific grounds for appeal.

8.2.8.5 The appeal shall be limited to the issues raised in the petition. In the Notice of Appeal, the Respondent shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and reasons therefore.

8.2.8.6 The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, who shall enter appropriate orders including the amount of civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 8.8 below. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

8.3 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent as set forth in Paragraph 8.3 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 8.4.3.

8.3.1 Base Penalty Matrix

Magnitude of Violation			
	Major	Moderate	Minor
Class I	\$5,000	\$2,500	\$1,000
Class II	\$2,000	\$1,000	\$500
Class III	\$500	\$250	\$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) for each day of each violation.

8.3.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars (\$100) or more than twenty thousand dollars (\$20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 8.4.1 of this rule in conjunction with the formula contained in 8.3.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction

8.3.3 Civil Penalty Determination Procedure

8.3.3.1 When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

- (a) Determine the class of violation and the magnitude of violation;
- (b) Choose the appropriate base penalty established by the matrices of Section 8.3.1 based upon the above finding;
- (c) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula $BP + [(0.1 \times BP) (P + H + E + O + R + C)]$ where:
 - (1) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:
 - 0 if no prior significant action or there is insufficient information on which to base a finding;
 - 1 if the prior significant action is one Class II or two Class III violations;
 - 2 if the prior significant action is one Class I or equivalent;
 - 3 if the prior significant actions are two Class I or equivalents;
 - 4 if the prior significant actions are three Class I or equivalents;
 - 5 if the prior significant actions are four Class I or equivalents;
 - 6 if the prior significant actions are five Class I or equivalents;
 - 7 if the prior significant actions are six Class I or equivalents;
 - 8 if the prior significant actions are seven Class I or equivalents;
 - 9 if the prior significant actions are eight Class I or equivalents;

- 10 if the prior significant actions are nine Class I or equivalents determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old.

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

(2) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;
- 0 if there is no prior history or insufficient information on which to base a finding;
- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(3) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;

- 4 if the Respondent gained a significant economic benefit through noncompliance.
- (4) “O” is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for “O” and the finding which supports each are as follows:
- 0 if a single occurrence;
 - 2 if repeated or continuous.
- (5) “R” is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for “R” and the finding which supports each are as follows:
- minus 2 if unavoidable accident;
 - 0 if insufficient information to make any other finding;
 - 2 if negligent;
 - 4 if grossly negligent;
 - 6 if intentional;
 - 10 if flagrant.
- (6) “C” is the Respondent’s cooperativeness in correcting the violation. The values for “C” and the finding which supports each are as follows:
- minus 2 if Respondent is cooperative;
 - 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
 - 2 if violator is uncooperative.

8.3.3.2 In addition to the factors listed in 8.3.3.1 of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 8.3.3.1 of this rule and any other relevant rule or statute.

8.3.3.3 If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 8.3.3.1(c)(3) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

8.3.3.4 In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

8.4 STOP WORK ORDERS

8.4.1 Erosion Control Violations

In addition to civil penalties described in Section 8.1, erosion control violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance as included in the Deficiency Notice. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

8.4.2 Other Violations

In addition to civil penalties described in Section 8.1, other violations may be enforced by on-site control activities to mitigate existing violations of these rules including failure to follow approved plans and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for compliance and a specified time period for compliance as included in the Deficiency Notice. If compliance is not achieved, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

8.5 ABATEMENT

Nothing herein shall prevent the District, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. As part of this power, the District may perform tests upon the property to trace sources of water quantity or water quality violation.

8.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

8.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

8.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

8.6.2.1 New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.

8.6.2.2 The effect of compromise or settlement on deterrence.

8.6.2.3 Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

8.6.2.4 Whether Respondent has had any previous penalties which have been compromised or settled.

8.6.2.5 Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.

8.6.2.6 The relative strength or weaknesses of the District's case.

8.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Memorandum of Agreement and Order or any other agreement.

8.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

8.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless the user or person files a writ of review in the Circuit Court in compliance with ORS Chapter 34 relating to writ of review procedures.

8.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

8.10.1 Time Limit: Any civil penalty imposed shall be a judgment and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

8.10.2 Relief in Circuit Court: If full payment is not made, the District may take further action for collection and/or cause service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

8.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable federal or state statutes or rules or regulations in federal and state courts.

SECTION 9 – APPEALS

9.1 APPEALS

9.1.1 Appeals to Director or his/her Designee:

Except for violations and enforcement matters under Section 8, any person aggrieved by ruling or interpretation (decision) of the provisions of this Ordinance may submit a written appeal to the Director. The appeal must be submitted within fourteen (14) days after the decision was made. The appeal shall be in writing and shall set forth the events and circumstances leading to the appeal, the nature of the impact of the ruling on the appellant, together with any other reasons for the appeal. The Director shall make a written decision within 30 days of written notification of appeal. If the appellant chooses to appeal the Director's decision, the Director shall appoint a hearings officer to decide the appeal.

9.1.2 The hearings officer appointed pursuant to section 9.1.1 shall set a *de novo* hearing on the matter at which he or she will take testimony and hear arguments. The Director shall give notice of the time and place for the hearing to the appellant, the applicant, and all property owners within 250 feet of the subject property. The notice called for in this section shall be given by First Class mail, postage prepaid, at least fourteen (14) days in advance of the time scheduled for the hearing. Only persons who have been aggrieved by the Director's decision shall have standing to participate in the hearing. The hearings officer shall issue written findings and a decision on the appeal within thirty (30) days after the *de novo* hearing, with copies to the Board, all persons who participated in the hearing and those persons who have requested a copy.

9.1.3 Circuit Court Review: Decisions of the Governing Body or their Designee shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100

SECTION 10 - SUPPLEMENTARY RULES

10.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state, and local laws, ordinances, rules and regulations which are now, or may in the future, be in effect.

10.1.1 Regulations and Rules as Contract: The terms and conditions contained in this Ordinance, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the district and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and/or connection to, the District's surface water system and programs.

10.1.2 No Property Interest Acquired: A user or connector to the surface water system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state, or local requirements which are, or may hereafter, be imposed upon such user or connector.

10.1.3 Nothing contained herein shall require the District to provide service or access to the system to such user or connector when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

10.2 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provisions or limitations of this Ordinance and any regulation and order adopted pursuant hereto are suspended and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein, provided, always, that any provision of this Ordinance and resolution and order adopted pursuant thereto which are more stringent than any applicable federal, state, or local requirement shall prevail and shall be the standard for compliance by the customers of any connectors to the District surface water system.

10.3 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provision of this Ordinance and any rules adopted pursuant thereto.

10.4 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other portion.

10.5 EFFECTIVE DATE

The provision of this Ordinance and the rules herein adopted shall be in effect on the date of enactment.

TABLE 1: SURFACE WATER MANAGEMENT FEES
Effective 7-1-2007

Permit Fees:

- **Plan Review for Erosion Control*** (Includes 2 site inspections)

Single Family Residential or 800 sq. feet or greater without erosion control certification	\$310
Single Family Residential or 800 sq. feet or greater with erosion control certification	\$205
Non-Single Family or NPDES 1200C without erosion control certification	\$460 base \$80 additional per acre over 1 acre
Non-Single Family or NPDES 1200C with erosion control certification	\$270 base \$80 additional per acre over 1 acre

- **Plan Review for Erosion Control and Surface Water Facilities**

Single Family Residence	\$55
Non-Single Family	4% of the installed cost of any surface water management system or \$400.00, whichever is greater, EXCEPT, no fee will be due where there is no increase in impervious surface area.

- **Erosion Control Re-inspection**

Single Family Residence	\$70 per visit
Non-Single Family	\$70 minimum per visit (1 acre or less) \$25 additional per acre (over 1 acre)

* See Administrative Procedures for further clarification of fees

TABLE 2: SURFACE WATER MANAGEMENT FEES

Monthly Service Charge:

Single Family	\$6.00 per month
Non-Single Family	$\$6.00 \times \text{Impervious Area in Sq. Ft.},$ $\div 2500 \text{ Sq. Ft} *$

Systems Development Charge

\$205 per Equivalent Service Unit (ESU)*

Collection Procedures:

Interest for Delinquent User Charges: 9% per Annum

* Gravel surfaces are charged at 60% of the ESUs measured.