



AGENDA COVER MEMO

Memorandum Date: January 12, 2024

First Reading Date: August 8, 2023

Second Reading / Public Hearing Date: August 22, 2023

Third Reading / Public Hearing Date: September 19, 2023

Fourth Reading / Public Hearing Date: November 28, 2023

Fifth Reading / Public Hearing Date: December 12, 2023

Sixth Reading / Public Hearing Date: January 30, 2024

TO: Board of County Commissioners

DEPARTMENT: Public Works / Land Management

PRESENTED BY: Dan Hurley, Lane County Public Works Director
Louranah Janeski, Stormwater Permitting Specialist
Mauria Pappagallo, Environmental Engineering Supervisor
Rachel Serslev, Senior Planner

AGENDA ITEM TITLE: ORDINANCE 23-06 / In the Matter of Amending Lane Code to
Establish an Erosion Policy, Effective May 1, 2024 (LC 9.090.005
through 9.090.065, LC 10.091, LC 11.016, and LC 16.096)

and

ORDER 23-08 / In the Matter of Amending Lane Manual Chapter 9
to Add a Provision for Erosion Prevention, Effective May 1, 2024
(LM 9.030)

I. MOTION

January 30, 2024 (6th Reading and Public Hearing):

- 1) Provide direction to staff regarding revisions to Ordinance No. 23-06; AND
- 2) Move to set the Seventh Reading and continue the Public Hearing to March 12, 2024, at 1:30 PM (as already scheduled on the Board calendar).

March 12, 2024 (7th Reading and Public Hearing):

- 1) Move to approve the Seventh Reading and set an Eighth Reading and continue the Public Hearing to April 2, 2024 (Date Certain), at 1:30 PM; OR
- 2) Move to set an Eighth Reading and continue the Public Hearing to April 2, 2024 (Date Certain) at 1:30 PM and direct staff to revise Ordinance No. 23-06 as directed by the Board (summarize revisions).

II. AGENDA ITEM SUMMARY

This is a request for Board direction for Ordinance 23-06 and Order 23-08 to adopt new erosion prevention code requirements within the Municipal Separate Storm Sewer System (MS4) areas of Lane County that are not within the urban growth boundaries (UGBs) of the Cities of Eugene and Springfield.

This Hearing will be the Sixth Hearing in the adoption process. At the Fifth Hearing, the Board directed staff to return for a Sixth Hearing and to provide to the Board a discussion of where the Option B language of the proposed code exceeds the minimum requirements of the County's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase II General Permit. This Agenda Cover Memo (ACM) is intended be a supplemental document to specifically address the direction given by the Board. This ACM will also address comments and concerns from the Fifth Hearing and public commentary received as of January 8, 2024. Please see previous ACMs for more information about the following items:

- Technical details about erosion and erosion prevention
- History of the code options presented to the Board in the first five Hearings
- The federal and state regulations that the previous code language options were designed to address
- Section III.A., Board Action and Other History
- Section III.B., Policy Issues
- Section III.C., Board Goals
- Section III.D., Financial and/or Resource Considerations
- Section III.E., Health Considerations

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Analysis

The proposed erosion prevention changes to Lane Code Chapter 9 are new measures designed to meet federal Environmental Protection Agency (EPA) requirements to protect the waters of the United States. The Oregon Department of Environmental Quality (DEQ) administers the federal standards through Oregon Revised Statute (ORS) 468B and the associated Oregon Administrative Rules (OARs). The County's Public Works Department, in turn, manages County compliance through stormwater-related plans and permits that are assessed and reported to DEQ on a regular basis.

The County's MS4 Phase II General Permit requires that the County adopt an erosion prevention ordinance within its MS4 area (see the MS4 map in the **Attachments**). The County MS4 areas and the properties within it are diverse; covering areas with both urban and rural developments, areas in the floodplain, varying topography including some with steep slopes, and varying soil types including some with highly erodible soils.

The following discussions are included in this Analysis section. Each section heading is underlined with a double line, so they may be more easily found within the text of the Analysis.

1. A discussion of how the proposed code compares to the minimum requirements of the County's MS4 Phase II General Permit, where the code may exceed those minimum requirements, and why.
 2. A comparison of the proposed code to the cities of Eugene and Springfield.
 3. A comparison of the proposed code to Benton County.
 4. An update on the Erosion Prevention Manual.
 5. Responses to particular Board comments and public testimony received as of January 8, 2024.
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1. Comparison of Proposed Erosion Prevention Code Language to Minimum MS4 Phase II General Permit Requirements

At the Fifth Hearing, staff presented two potential options (Option A and Option B) for the proposed erosion code language. Option A, containing additional regulations specific to Sensitive Areas, was motioned for approval but failed to

pass. Option B, will now be referred to as the proposed code, however Staff understands that the Board may desire additional changes to this draft code. Staff have not yet made any amendments to the Option B code language that was previously presented. The goal of this Sixth Reading is to obtain direction from the Board on certain items. Staff will then amend the code and return to the Board in March.

This section of the ACM will compare the code language to the minimum requirements of the County's MS4 Phase II General Permit. A table comparing the requirements of the MS4 Permit to the proposed code language is included in the **Attachments**.

The goal of the code development process has remained to create code that meets regulations, provides consistency with other local agencies, and is scaled to the potential for pollutant loads such as sediment and construction-related materials that may enter waterbodies. The proposed code has been written to provide consistency with the neighboring cities that adjoin our MS4 area to be protective of local waterways and minimize erosion impacts from development.

Following are the areas in which the proposed erosion prevention code exceeds the minimum requirements of the County's MS4 Phase II General Permit. A discussion about code applicability is also included, since it is an item that had previously exceeded the MS4 Permit requirement, but has since been reduced to the minimum requirement.

a. Applicability

Staff's initial code language proposed to adopt erosion prevention code within the entire county. Following direction from the Board, the applicability area has been reduced to the MS4 area only, which is the only area that requires coverage at this immediate time. It should be noted, however, that the County's NPDES Total Maximum Daily Load (TMDL) for the Willamette River Basin also requires the adoption of erosion prevention measures, but for a larger area of the county. Those measures must be adopted by 2025. As directed by the Board, staff will continue public involvement on the TMDL code-writing effort and will return to the Board at a later date.

b. Erosion Prevention Permit Triggers

The proposed code would apply to all land disturbance activities except those

specifically exempted in the code. This exceeds the minimum required by the DEQ because it would apply to land disturbance activities in addition to construction sites. The MS4 Phase II General Permit only requires controls for construction site runoff. The rationale for extending beyond the minimum requirement is that land cleared of vegetation can cause erosion regardless of whether or not construction is planned for the site. To trigger the need for an erosion control permit, the land disturbance activity would also need to meet size or volume triggers as discussed below.

The MS4 Phase II General Permit requires permitting triggers based upon the area of disturbance. At a minimum, construction projects that disturb one-quarter (1/4) acre or larger must obtain a permit within the MS4 area. The proposed code language meets this 1/4-acre permit trigger, but also provides additional permit triggers. The following permit triggers included in the proposed code exceed the minimum requirement of the MS4 Phase II General Permit:

- Land disturbance of 400 cubic yards (CY) or more.

This volume-based permit trigger approximates a 1-foot-deep excavation over a 1/4-acre (which is the minimum square footage of disturbance that requires a permit per the MS4 Phase II General Permit). The use of a volume-based trigger accounts for disturbances that may disturb a large amount of soil but have a small footprint, such as projects with basements or deep slope cuts. This additional trigger is proposed because large volumes of excavation over a smaller area can potentially cause similar impacts for soil leaving the site.

- Land disturbance of 500 square feet (SF) or 20 CY or more for (1) a commercial, industrial, or multi-family development, or (2) development on a commercial-, industrial-, or multi-family-zoned property.

This additional permit trigger was included because these types of developments tend to have more complex designs with more contractors operating on the site - potentially causing greater impacts to soil erosion. These types of projects are also typically located in more densely urbanized areas and have a higher likelihood of sediment and pollutant discharges to public stormwater collection infrastructure.

c. Outcomes

Outcome based requirements are conditions that must be met; they are not specific best management practices (BMPs) that must be used. Since each site and each project are unique, there are a variety of ways that a contractor may meet the outcomes. Often, outcomes may be met by simple practices and procedures that are easily and cheaply implemented, or by using materials (soil, leaves, brush, mulch) that are already on the site. The outcomes listed in the proposed code are located in section 9.090.030. The outcomes are used to clearly state the expectations of the MS4 Phase II General Permit while still providing options to the contractor on how those requirements are met.

The proposed code exceeds the MS4 Phase II General Permit by extending outcome requirements to all land disturbances except those that are exempted from the code. While the MS4 Permit does not specifically require that all land disturbances meet outcome based standards, it does require that the County must “...implement and enforce a Stormwater Management Program (SWMP) designed to reduce pollutants from the MS4 to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act.”

The MS4 Permit prohibits the County from allowing non-stormwater discharges from the MS4, except in specific conditions. It also requires the County to take corrective action within 48 hours of becoming aware of an exceedance to applicable water quality standards as established in OAR 340-041. Outcome based requirements will provide the County the authority to require landowners to take corrective action when outcomes aren't being met.

Outcome requirements help to protect not only the environment, but neighboring properties as well. Within the MS4 area, there are many small properties where landowners may place construction projects close to neighboring properties and structures. While property owners with smaller projects may not be required to obtain an erosion prevention permit, they would be required, per the outcomes, to responsibly manage their site. In so doing, they exhibit care not only for their neighbors, their property, and the environment, but also avoid potentially costly cleanups.

2. Comparisons of the Proposed Erosion Prevention Code to the Cities of Eugene and

Springfield

The County's MS4 area is located around the cities of Eugene and Springfield. A map of the MS4 area is included in the **Attachments**. Through intergovernmental agreements, the Cities each administer their own erosion prevention code within their city's urban growth boundary (UGB). The County's MS4 Phase II General Permit requires that the County adopt and administer erosion prevention code within the MS4 areas outside of the UGBs.

The City of Eugene is a Phase I community, as opposed to Lane County and Springfield which are Phase II communities. Phase I communities are larger communities with larger populations and are managed by different and stricter MS4 Phase I Individual Permits. DEQ renewed the Eugene's MS4 Permit in 2021 and issued an NPDES Inspection Report Narrative in July 2023. Per DEQ's Report Narrative, the Eugene program is effective and is having a positive impact on Oregon's waters of the state.

The City of Springfield is a Phase II community and is under the same MS4 Phase II General Permit as Lane County. Springfield already has an erosion prevention program for development on properties. Springfield is currently in the process of updating its erosion prevention code to meet the new MS4 Phase II General Permit requirements. Springfield plans to have new code adopted by February 2024. The new code has not yet been reviewed or approved by DEQ.

A chart comparing Lane County's proposed erosion prevention code to the City of Eugene's erosion prevention code and Springfield's proposed code is located in the **Attachments**. The table notes where each jurisdiction is either meeting or exceeding various MS4 Permit requirements. It should be noted that the Eugene MS4 permit, because it is a Phase I Individual permit, has different requirements than the Phase II General Permit that includes Lane County and Springfield.

Following are comparisons of various aspects of the proposed Lane County erosion prevention code to how those aspects are addressed by the Cities.

a. Applicability and City Definitions of Construction Activity

Except for standard exemptions (which are not listed in the table), both Eugene and Springfield apply erosion prevention code to all land disturbance activities. For Eugene, this practice is a part of their DEQ-approved Phase I Individual Permit.

For Springfield, the practice is in exceedance of the minimum MS4 Phase II General Permit requirements. The MS4 Phase II Permit only requires that projects from construction sites meet the standards of erosion prevention practices. By adopting outcomes for all land disturbances, the County would maintain consistent permitting language with the cities abutting the County MS4 area, allowing contractors to easily understand when a permit would be required.

b. Outcomes

Both the City of Eugene and the City of Springfield have outcomes-based rules that require all persons to implement erosion prevention and sediment control measures regardless of whether a permit is required.

Eugene Code:

“Regardless of whether a permit is required under section 6.635, no person shall engage in any construction activity covered by subsection (1) in a manner that can potentially impact water quality, adjacent properties or stormwater related natural resource areas except as allowed by this code. All persons shall implement erosion prevention and sediment control measures designed to meet the outcomes established in administrative rules promulgated by the city manager. Failure to meet those outcomes shall subject the person to the same enforcement provisions as those applicable to a permit holder...”

Springfield Code:

8.408 Outcomes.

(1) All persons conducting construction activities specified in section 8.404(1) shall employ, to the maximum extent practicable, erosion prevention and construction site management practices which will achieve during both the construction period and wet weather season the following outcomes:

(a) Adjacent properties, water features, and natural resources inventory sites are kept free of deposits or discharges of soil, sediment or construction-related material from the site except those that would occur through natural processes from an undisturbed site.

(b) Vegetation in water features, natural resources inventory sites, and associated bank and/or riparian areas adjacent to construction sites are preserved or protected from impacts that exceed those that occur

through natural processes on an undisturbed site.

(c) Public rights-of-way, the public stormwater system and natural resources inventory sites, private streets and private stormwater drainage systems that discharge to the public stormwater system are kept free of mud, soil, hazardous materials, concrete washout, trash, or other similar construction-related material. Direct deposit, dropping, dumping, erosion, tracking, or other discharge by construction vehicles of materials shall not occur in excess of those that occur through natural processes from an undisturbed site. Any discharges that occur shall be prevented from entering water features or the public stormwater system and removed not later than the end of the day in which the discharge occurred, or as directed by the director. During the wet weather season all other work shall cease until such time the discharge has been corrected.

(d) Soils and stockpile areas shall not be exposed to precipitation or stormwater runoff without the provision of secondary containment, perimeter controls, and other approved BMPs.

(e) Earth slides, mudflows, earth sloughing, or other earth movement that has the potential to leave the property shall not occur in excess of those that occur through natural processes on an undisturbed site.

(f) No discharge into the public stormwater system or natural resources inventory sites of construction related contaminants resulting from activities including, but not limited to, cleaning or washing of equipment, tools, or vehicles, shall occur.

(g) No hazardous substances, including paints, thinners, saw cutting slurry, fuels and other chemicals shall be released onto the site, onto adjacent properties, or into water features, the public stormwater system, or natural resources inventory sites.

(h) Maintain, on the site, all materials and supplies to implement the Land and Drainage Alteration Plan.

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

(a) Construction site entrances shall be graveled with crushed rock of sufficient size and grading as necessary to prevent any off-site

tracking.

(b) All stormwater facilities, water features, and natural resources inventory sites shall be protected.

(c) All exposed soil and stockpile areas shall be covered.

(d) Sediment, soil, or construction related material shall be removed immediately from the right-of-way, adjacent property, and the public stormwater system, including water features and natural resources inventory sites.

c. Erosion Prevention Permit Triggers

Both Eugene and Springfield exceed minimum MS4 Permit requirements in how erosion prevention permits are triggered. Eugene, rather than using a square footage for its primary disturbance area trigger, instead uses a volume trigger. DEQ has approved this approach. The use of a volume trigger allows the City to apply permit requirements to developments that may disturb comparable volumes of soil, but within smaller areas. The City of Eugene's volume trigger (5,000 Cubic Feet) is significantly lower than the volume trigger in the proposed code of 400 Cubic Yards. (Note: 5,000 CF = 185 CY). Springfield also includes a much lower volume permit trigger of 50 Cubic Yards.

A land disturbance of 7,000 SF is the minimum area trigger for the City of Springfield. This is significantly lower than minimum MS4 Permit requirement of 1/4 acre disturbance, which is the minimum required by the MS4 Permit and what is contained in the proposed code. (Note: 1/4 acre = 10,890 SF)

Both Cities also include sensitive area permit triggers in their codes. Contractors in the area have been working with these codes for many years and are educated in their application and know their importance. Sensitive area triggers were contained in the proposed code listed as "Option A" in the materials for the Fifth Hearing. Sensitive area triggers are not in the current proposed code (previously listed as "Option B" for the Fifth Hearing).

3. Comparison of the Proposed Erosion Prevention Code to Benton County

At the Fifth Hearing, Benton County was mentioned as a possible example of an approach that the County may want to follow for implementing new erosion prevention code. Benton County is a rural county that abuts the urban City of

Corvallis. The Benton County MS4 area is located around the Corvallis UGB and the Adair Village development on Highway 99 to the north. Like Lane County, Benton County's MS4 area does include some steep slopes; erodible soils; small, densely developed properties; and many properties with small streams and river frontage. A table showing comparisons of key Lane County and Benton County code sections is located in the **Attachments** as well as excerpted pages from Benton County Code.

The Benton County erosion prevention code exceeds the MS4 Permit in its application scope as it applies to the entire county.

The Benton County code is written to require erosion prevention permits for the minimum area of land disturbance that is required in the MS4 Permit: 1/4 acre or more.

The Benton County code does not incorporate Outcomes as a requirement for land disturbances that do not require a permit.

The Benton County code exceeds the MS4 Permit by including additional protections for Sensitive Areas. The Planning Official or Building Official may require an erosion and sediment control permit for developments on land identified on sensitive land - including, but not limited to, landslide hazards and highly erodible soils. Guidance is provided to mitigate erosion on sensitive land through conditions to preserve native vegetation and minimize disturbance on steep slopes. In Sensitive Areas, an engineering assessment is required for determining hazard potentials and geotechnical investigations are required for roads and foundations in slide-prone areas and development in areas with slopes over 15%.

DEQ has not yet reviewed or approved Benton County's code.

4. Erosion Prevention Manual

Staff has drafted a Construction Erosion Prevention and Materials Management Manual. A link to the draft document is included in the **Attachments**. The Manual provides guidance to property owners on how to assess their property and their project for erosion concerns, how to choose erosion prevention measures (BMPs), and how to install and maintain them. Once the final erosion prevention code is adopted, the Manual, and accompanying handouts and forms, will be finalized and will be made available to the public.

5. Responses to Board Comments and Public Comment Items

a. Appeal Language

In the Fifth Hearing, a question was asked about appeal language in the proposed code, LC 9.090.060. In reviewing the appeal language, staff have noticed a formatting typo in the appeals text. Correcting the typo should address Board concerns about the code language. The following correction will be presented to the Board at the next Hearing (NOTE: the attached code has not been updated for this Hearing).

9.090.060 – Appeals.

A permit applicant may appeal **any of the following items within the time and in the manner prescribed by LC 5.025.035:**

- A. The denial of an erosion prevention permit,
- B. Any conditions imposed on a permit,
- C. The determination that a permit is required, or
- D. A stop work order, ~~within the time and in the manner prescribed by LC 5.025.035.~~

While the appeal process is not detailed in the erosion prevention code language, it points to the appeal process language in Chapter 5, which is clear and detailed. It should be noted that most appeals, however, happen informally and are resolved prior to engaging in a formal appeal process. If an applicant has questions about or does not agree with staff determinations, the first step is that the applicant will ask staff to revisit the determination. Most questions are resolved through this back-and-forth review and discussion process. If needed, supervisors and managers may be pulled in to weigh in on the informal appeal. It is only after these informal avenues are exhausted that the applicant would take their concerns to the formal appeal process.

Lane Code LC 5.025.035 details the process to submit a formal appeal. Appeals proceed to administrative enforcement hearings with a Hearings Official. Additional appeals are available through judicial review by filing a writ of review in Lane County Circuit Court, pursuant to ORS Chapter 34 (2021).

If an erosion prevention project is non-compliant with code and staff have exhausted all routes to achieve compliance, the project may be turned over to the

Code Enforcement staff for assistance in nuisance abatement procedures (see proposed code LC 9.090.065). Nuisance abatement procedures are found in LC 9.057.592, which includes appeal process language similar to the language in Chapter 5.

In the review of the appeal process, staff noted that Chapter 5 requires that the appeal be submitted on a “designated appeal form.” Because the current appeal form is specific to other offices in the Land Management Division, staff will compose a new appeal form specifically for the erosion prevention permitting process.

b. Bond Language

In the Fifth Hearing, a question was asked about Bond language. Staff have determined that the Bond requirements are unnecessary. This language will be removed from the proposed code.

c. Permit Trigger Definitions

Public testimony received from Bill Kloos (letter dated December 11, 2023) raised the question about what types of activities must be permitted per the MS4 Phase II General Permit. The question revolves around the code’s definition of “land disturbance” and whether that definition is consistent with the MS4 Phase II General Permit requirements.

The MS4 Permit states that *“the permit registrant [Lane County] must require erosion controls, sediment controls, and waste materials management controls to be used and maintained at all qualifying construction projects from initial clearing through final stabilization.”* While the permit does not define “construction” or “construction project,” it does define “construction activity” as *“including, but not limited to, clearing, grading, excavation, and other site preparation work related to the construction of residential buildings and non-residential buildings, and heavy construction (for example, highways, streets, bridges, tunnels, pipelines, transmission lines and industrial non-building structures).”* The Oregon DEQ has conveyed to staff that the definition in the MS4 permit is incomplete and DEQ will be working to update and clarify the definition in future iterations of the MS4 Permit. DEQ points to the definition in the 1200-C Construction Stormwater General Permit (which is required for land

disturbances 1 acre or larger) as the expectation of how land disturbances are to be assessed by jurisdictions. The 1200-C permit defines “construction activity” more clearly as *“including, but not limited to clearing, grading, excavating, grubbing, stumping, demolition, and land disturbing activities.”* Both Eugene and Springfield, as well as most other Oregon jurisdictions reviewed by staff, incorporate this complete meaning of “construction activity” into their code definitions and requirements. In staff discussions with other jurisdictions and with the Oregon Association of Clean Water Agencies (ACWA), this has also been the understanding of the DEQ requirement. Additionally, the EPA’s 2022 “National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for Stormwater Discharges from Construction Activities” defines “construction activity” very generally as earth-disturbing activities that could lead to the generation of pollutants.

Public comment noted that the City of Eugene only regulates “construction activities.” It should be noted that both the Eugene and Springfield definitions of “construction activity” mirror the DEQ 1200-C definition and DEQ expectations for coverage. These Cities do not limit erosion prevention permitting to only the construction of structures.

d. Permit Processing and Procedure

The Bill Kloos testimony asked about erosion prevention permit processing. The erosion prevention permit program is designed to fit within the existing framework of the development permit review timeline. Approval of the erosion prevention permit is not required in order to begin the development permit submittal process. The two reviews may happen concurrently. Applicants have the option of submitting before the development permit, but it is not required. In fact, as Mr. Kloos notes in his letter, concurrent application is preferred, since, at the point of development permit submittal, the project and site plan design are pretty much settled and the applicant knows what they want to build and there is, therefore, less likelihood of changes occurring between the submittal of the erosion prevention permit and submittal of the development permit.

B. Motions and Board Direction

The Track-Changes version of the proposed code language is included in the **Attachments**, so that the changes staff made prior to the Fourth Reading are more apparent. Once the Board provides direction to staff, the code will be updated per

that direction and presented in the Board packet for the next Reading. That Reading will constitute the first reading of the revised code. A second reading of the revised code will then be required in order to adopt the code.

Board direction requested:

Staff request that the Board comment upon and provide direction regarding the following items:

- The applicability to “land disturbing activities.”
- The inclusion of the 400 cubic yards (CY) of land disturbance as a volume-based permitting trigger for having to obtain an erosion prevention permit.
- The inclusion of 500 square feet (SF) and/or 20 CY of land disturbance as a permitting trigger for commercial, industrial, or multi-family projects; or development on land that is zoned as commercial, industrial, or multi-family.
- The application of Outcomes to all non-exempted land disturbances, regardless of whether an erosion permit is required.
- The removal of bond language.

Motion to proceed forward:

- 1) Approve the Sixth Reading, continue the Public Hearing to March 12, 2024 (Date Certain), at 1:30 PM, and direct staff to revise Ordinance No. 23-06 and/or Order 23-08_____per Board summarized revisions.

IV. RECOMMENDATION

Staff recommends the following actions:

- Provide direction to staff to:
 - Retain the following items in the proposed code:
 - Applicability to “land disturbing activities.”
 - 400 CY volume-based permit trigger
 - 500 SF / 20 CY trigger for commercial, industrial, and multi-family projects and for projects on properties zoned commercial, industrial, and multi-family.
 - Requirement of all non-exempted land disturbances to meet Outcomes, regardless of whether a permit is required.

- Remove bond language.
- Consider adding Sensitive Area protections similar to the City of Springfield or Benton County
- Approve the Sixth Reading and direct staff to make changes to the code per the Board direction on the above items.
- Continue the Public Hearing to March 12, 2024 (Date Certain), at 1:30 PM, when staff will return to Board with the amended code.

V. TIMING/IMPLEMENTATION

Once approved, the Code changes will become effective May 1st, 2024. A May implementation date will allow for customer planning time to prepare for the 2024 summer construction period. The additional period will also allow time for staff to provide staff training and to develop more customer education tools as needed. In order to comply with the County's NPDES permit, the erosion prevention Ordinance needs to be adopted as soon as possible, as the MS4 Phase II permit required adoption date was February 28, 2023.

The related Ordinance for updated language for the adoption of the revised Eugene erosion prevention code to be applied by Eugene in the urban growth boundary will be brought to the Board for approval in March 2024.

The Ordinance for the adoption of the revised Springfield erosion prevention code to be applied by Springfield in the urban growth boundary will be brought to the Board for approval within the next few months, once the City has completed its Code revisions.

VI. FOLLOW-UP

Two more Readings will be required to adopt the erosion prevention code. Once the Ordinance is enacted, it will go into effect on May 1, 2024.

VII. ATTACHMENTS

1. Proposed Lane Code Chapter 9
2. Lane County NPDES MS4 Phase II Area Map
3. Table: A Comparison of the Proposed Code Language to MS4 Phase II General Permit

Minimum Requirements

4. Table: A Comparison of Lane County MS4 Permit Requirements & Proposed Erosion Prevention Code to Eugene and Springfield
5. Table: A Comparison of Lane County MS4 Permit Requirements & Proposed Erosion Prevention Code to Benton County
6. Excerpt pages from Benton County Code

To conserve paper, the following reference materials may be viewed at the following links:

- [DRAFT Lane County Construction Erosion Prevention and Materials Management Manual](#)
- [2021 NPDES MS4 Phase II General Permit Modified](#)
- [2020 DEQ 1200-C General Permit](#)

9.090 – EROSION PREVENTION

9.090.005 – Purpose.

The purpose of this Erosion Prevention Code is to safeguard public health, safety, and welfare by protecting the quality of surface and subsurface waters for drinking water supply, recreation (such as fishing) and other beneficial uses through the application of best management practices (BMPs) for erosion prevention. This Code is intended to meet ~~both~~ the conditions of the County National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase II permit- ~~and the Willamette River Mercury Total Maximum Daily Load.~~

9.90.10 – Definitions.

“Accumulation” means the deposit of mud, sand, soil, sediment, or construction-related materials.

“Adjacent Property” means property that adjoins the subject property on which the construction site is located, and is potentially subject to erosion, accumulation, or construction material impacts resulting from the construction activity.

“Area of Disturbance” or “Disturbance Area” means a unit of land or portion of a unit of land with land disturbance. See also “Land Disturbance.”

“Best Management Practices (BMPs)” means, as determined by the Director, those schedules of activities; prohibitions of practices; maintenance procedures; and other physical, structural, or managerial practices that are implemented to avoid or mitigate erosion and prevent or reduce the pollution of waters of the state. BMPs include treatment systems, erosion and sediment controls, source controls, and operating procedures and practices to control site runoff, spillage or leaks, and waste disposal.

~~“Certified Professional” means a person with a background or training in erosion prevention techniques and who holds a license or certification to practice in Oregon in one of the following professions: engineering, architecture, landscape architecture, geology, or is in a similar profession as determined by the County Director; or a person who is certified as a professional in erosion and sedimentation control by the International Erosion Control Association, or any other similar organization, as determined by the County Director.~~

“Common Erosion and Sediment Control Plan” means an erosion and sediment control plan for a common plan of development.

“Common Plan of Development” means a contiguous construction project or projects where multiple separate and distinct construction activities may be taking place at different times or phases on different schedules but under one plan. Common plans of development include plans to construct multiple improvements on a lot (e.g., a dwelling and a detached garage) and plans to subdivide parcels of land. ~~Floodplain fill/removal permits~~Grading and electrical, plumbing, and mechanical ~~permits-work~~ may also be included in the common plan of development.

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

“Construction Site Management Plan” see Erosion and Sediment Control Plan.

~~“County Director” or “Director” means the Director of the Lane County Department of Public Works~~

~~or the Director's designee.~~

"Development Permit" means, for the purpose of this code, a permit for planning, building, or onsite wastewater that may trigger, due to land disturbance, the requirement of an erosion prevention permit.

"Development Site Plan" means the site plan required by the County as part of an application for building, sanitary, planning, or erosion prevention approval. Site plans must show all existing and proposed conditions and improvements so that staff may review the proposed development and its impacts; determine permitting requirements; and apply policies, regulations, and code requirements accordingly.

"Director" means the Director of the Lane County Department of Public Works or the Director's designee.

"Disturbance" see "Land Disturbance."

"Ephemeral Flow" means water that flows only during, and for a short duration after, precipitation events in a typical year. Sources for ephemeral flow do not include groundwater.

"Erosion" ~~or "Construction Erosion"~~ means the collapse, undermining or subsidence of land that is accelerated when soil is disturbed, left bare, or exposed to wind and water during the construction process or due to land disturbance.

"Erosion and Sediment Control Plan (ESCP)" or "Erosion Prevention Plan" means a set of plans, schedules, sizing calculations, and maintenance practices indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

"Erosion Prevention Manual" means a compilation, adopted by the Director, containing guidelines, instructions, best management practices, and other information to assist persons to comply with erosion control requirements.

"Final Stabilization" means a state in which the Director determines that the following criteria have been satisfied:

- A. There is no reasonable potential for discharge of a significant amount of construction-related sediment or turbidity to surface waters;
- B. Construction materials and waste have been removed and disposed of properly. This includes any sediment that was being retained by temporary erosion and sediment controls;
- C. All temporary erosion and sediment controls have been removed and disposed of properly, unless doing so conflicts with local requirements;
- D. All ground-disturbing activities have stopped and all stormwater discharges from construction activities that are authorized by this permit have ceased; and
- E. All disturbed or exposed areas of the site are covered by either final vegetative stabilization or permanent stabilization measures.
 - 1. Temporary or permanent stabilization measures are not required for areas that are intended to be left unvegetated or unstabilized following construction (such as dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials); provided, that measures are in place to eliminate or minimize erosion.
 - 2. Final vegetative stabilization is accomplished by establishing a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a

density of seventy percent (70%) of the native background vegetative cover for the area on all unpaved areas and areas not covered by permanent structures.

~~“Final Stabilization” means the condition in which all soil disturbing activities at the site have been completed and either of the two following criteria are met:~~

~~A. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or~~

~~B. Equivalent approved permanent stabilization measures have been employed.~~

~~“Floodplain” means the Special Flood Hazard Area (SFHA), as identified by the Flood Insurance Rate Maps adopted by the County as part of LC 16.244.~~

~~“Hazardous Material” or “Toxic Material” means a substances or chemicals that poses a health-hazard or a physical hazard, or that harm the environment. risk to life forms and/or the environment.~~

~~“Highly Erodible Soil” means soil that, when exposed or displaced by construction activity, has the potential to be readily moved and transported by wind and water at an excessive rate.~~

“Improper Disposal” means the disposal of any construction-related material in a manner that causes, or has the potential to cause:

A. Depletion of the capacity of the County’s stormwater system;

B. Contamination of soils; or

C. Discharge of pollutants to the County’s stormwater system, private stormwater drainage systems, or related natural resource areas.

~~“Improper Disposal” means the disposal of any construction-related material in a manner that causes, or has the potential to cause, the depletion of the capacity of the County’s stormwater system; the contamination of soils; or the discharge of pollutants to the County’s stormwater system, private stormwater drainage systems, or related natural resource areas.~~

“Improper Storage” means the handling or storing of any construction-related materials in a manner that, due to as a result of leaks, spills, leachates, deposits, or dumps, causes or has the potential to cause the depletion of the capacity of the County’s stormwater system; ~~the~~ contamination of soils; or ~~the~~ discharge of pollutants to the County’s stormwater system, private stormwater drainage systems, or related natural resource areas.

“Intermittent Flow” means water that flows during certain times of the year and is supported by groundwater flow. During dry periods, intermittent flow streams may not have flowing surface water.

“Land Disturbance” or “Disturbance” means ~~activities~~ any activity that changes the physical conditions of landforms, vegetation, and/or hydrology, including, but not limited to, digging, clearing, grading, grubbing, excavating, filling, logging, and the ~~storing~~ storage of materials. Such disturbance may be either on-going (e.g., gravel mining, farming, gardening,) or temporary (e.g., construction, excavation, filling, grading, landscape installation, or other vegetative clearing activities).

“Landscaping Maintenance Activities” means activities necessary to maintain the health and function of existing, developed landscaped areas, including but not limited to, tilling, sodding, mowing, aerating, and pruning.

“Maximum Extent Practicable” means the greatest degree of pollutant reduction achievable through the application of technically feasible and reasonable best management practices, processes, siting criteria, operating methods, or other alternatives approved by the ~~County~~ Director.

“Municipal Separate Storm Sewer System (MS4)” means, for the purpose of this code, a collection

and conveyance system that is owned, operated, or under the jurisdiction of Lane County for the sole purpose of collecting and conveying naturally occurring precipitation or stormwater runoff, including roads, ditches, channels, pipes, culverts, catchbasins, outfalls, and manholes. The stormwater sewer system is not a combined sewer system and does not include conveyance of any wastewater.

“Municipal Separate Storm Sewer System (MS4) Area” The Lane County MS4 area is located within the federal-Census-defined urbanized area surrounding the cities of Eugene and Springfield. This area includes portions of the cities’ urban growth boundaries (UGBs). Through intergovernmental agreements, the Cities enforce erosion prevention requirements within the UGBs. This code applies to those MS4 areas that are outside of the UGBs of those cities. The Director will publish a map showing the Lane County MS4 area.

“Outcomes” means the beneficial results of employing, ~~to the maximum extent practicable,~~ erosion prevention and construction site management practices, during both the construction period and the wet weather season, as defined in LC 9.090.030.

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

“Phased Development” means a development project that:

- A. Proposes more than one improvement requiring a County permit,
- B. Is located on a single piece of property or an assemblage of contiguous properties,
- C. Contains elements that are expected to be ~~Will begin and be~~ completed at different times, and
- D. Is proposed for development by ~~the same~~ a single person, or by a single group of related persons.

“Private Way” means any street, road, alley, right-of-way, or easement that is intended or used for passage by vehicles, bicycles, or pedestrians, or for ingress and egress to private land ~~or is intended to provide for ingress and egress to land that is not controlled by a city, the County, or the State~~ not under the jurisdiction of a public body. A “private way” includes:

- A. A driveway,
- B. The portion of a panhandle lot or property that is used for access purposes, and
- C. A road or driveway used for access purposes and not dedicated to the use of the public ~~in which the underlying fee belongs to two or more persons or entities.~~

“Public Way” means any street, road, alley, right-of-way, pedestrian or bicycle easement, storm drainage easement, wastewater or sanitary sewer easement, or other utility easement which has been dedicated for public use ~~which is controlled by a city, the County, or the State.~~

“Related Natural Resource Areas” means areas such as waterways, wetlands, conservation zones or easements, and riparian areas, which, due to their location, topography, vegetation, or other factors, provide one (1) or more of the following stormwater functions: flood control; habitat; streambank stabilization; and water quality treatment, including pollutant removal, shading, and temperature stabilization.

“Responsible Person” means a permit holder, property owner, an agent or contractor acting on behalf of a permit holder or property owner, or any other person who has been assigned responsibility for meeting the erosion prevention outcomes, and who will be responsible for any violation of this Erosion Prevention Code. ~~or their agent or contractor, or other person who is responsible for meeting the erosion prevention outcomes, and is responsible for any violation of this Erosion Prevention Code.~~

“Riparian Area” means the land bordering a body of water that acts as a transitional area between terrestrial and aquatic ecosystems, and is distinguished by wet or moist soils and plants

~~adapted to growing conditions associated with periodically saturated soils, a water feature, acting as a transitional area between terrestrial and aquatic ecosystems, distinguished by wet or moist soils and plants adapted to growing conditions associated with periodically saturated soils.~~

“Routine Maintenance” means those activities and practices that are necessary to maintain the operating capacity, functional integrity, or aesthetics of a place or facility. Routine maintenance includes, but is not limited to, landscaping, ~~the~~ repair of recreation facilities (e.g., ball diamonds, play areas, fields), ~~the~~ cleaning of stormwater facilities, and ~~the~~ patching of roads and driveways.

~~“Slope” means the extent to which a soil surface has an incline relative to the horizontal grade. Expressed in percentage terms, slope represents the elevation change (rise) divided by the horizontal distance (run) between two (2) different points.~~

“Stormwater” or “Stormwater Runoff” means rainwater runoff, snow melt runoff, surface runoff, and drainage, including the portion of precipitation that does not evaporate or naturally percolate into the ground, but accumulates on the ground or flows via overland flow, interflow, channels, or pipes. ~~water that flows off of impervious surfaces and/or over the ground surface as a result of naturally occurring precipitation, such as a snowstorm or rainstorm, and does not infiltrate into the soil.~~

“Stormwater Management Facility” means any structure, drainage device, or configuration of the ground that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of maintaining or improving surface and/or groundwater quality or managing the quantity or rate of discharge of runoff to an approved destination.

“Stormwater System” ~~or “Stormwater Sewer System”~~ or “Storm Drainage System” means a drain and collection system, which may include roads, ditches, channels, pipes, culverts, catch basins, and manholes, that collects naturally occurring precipitation or stormwater runoff. The stormwater system is not a combined sewer system and does not include conveyance of any wastewater.

~~“Top of Bank” means the point along the edge of a water feature where an abrupt change in slope is evident, and where the water feature is generally able to overflow the banks and inundate upland areas during flows at or exceeding the average annual high water stage.~~

“Visible or Measurable Erosion” means evidence of concentrated flows of water over bare soils, turbid or sediment laden flows, or evidence of on-site erosion such as rills and gullies on bare soil slopes where the flow of water is not filtered or captured on the site ~~using the techniques recommended in the County’s Erosion Prevention Manual, an approved erosion and sediment control plan, or comparable techniques.~~ Visible or measurable erosion also includes earth slides, mud flows, earth sloughing, or other earth movement that leaves the property.

~~“Watercourse” means a natural or human-made channel, as measured from top of bank to top of bank, in which a flow of water occurs, either continuously, intermittently, or ephemeral, with some degree of regularity.~~

“Water Feature” or “Connected Water Feature” means natural or human-made bodies of water (either perennial, intermittent, or ephemeral flow); that are part of or connected to the county stormwater system or are part of or connected to a private, shared stormwater system, including creeks, streams, ponds, rivers, lakes, related natural resource areas, drainage channels, and jurisdictional wetlands, and post-construction stormwater management facilities. Self-contained stormwater features on private properties that do not drain to a county stormwater system or to a privately-owned, shared stormwater system are not included in this definition for the purpose of this code.

“Wetland” means any parcel or portion of a ~~parcel property~~ that meets the state or federal definition of wetland under ~~the jurisdiction of~~ state or federal laws. Depending upon the context, “wetland” is sSynonymous with jurisdictional wetlands.

“Wet Weather Season” means October 15 through April 30, unless otherwise ~~designated~~ determined by the ~~County~~ Director.

9.90.15 - Applicability.

- A. The provisions of this Erosion Prevention Code apply to all new development, redevelopment, land-disturbing activities, and drainage projects that occur on property within the Lane County MS4 area, namely the federal-Census-defined urbanized area surrounding the cities of Eugene and Springfield and outside the urban growth boundaries of the City of Springfield and the City of Eugene, and outside the incorporated areas of other cities in Lane County those cities.
1. The Director will publish a map showing the Lane County MS4 area.
- 1.2. Erosion prevention requirements for land-disturbing activities located on public rights-of-way will be regulated by LC Chapter 15.
- B. Lane County has adopted by ordinance the City of Eugene's erosion prevention regulations and the City of Eugene will apply those regulations within the Eugene Urban Growth Boundary, as set forth in LC 10.600-20. Copies of the applicable erosion prevention regulations will be on file at the Lane County Land Management Division.
- C. Lane County has adopted by ordinance the City of Springfield's erosion prevention regulations and the City of Springfield will apply those regulations within the Springfield Urban Growth Boundary as set forth in LC 10.600-10. Copies of the applicable erosion control regulations will be on file at the Lane County Land Management Division.

9.090.020 - Exemptions.

Notwithstanding LC 9.090.015A, the following activities are exempt from the provisions of this chapter.

- A. Activities that constitute a "farm use" as defined by ORS 215, except the construction of buildings ~~and~~, the development of associated private ways and parking areas, and any floodplain fill/removal permits grading required to create construction sites for such improvements.
- B. Forest practices regulated under the Oregon Forest Practices Act, except conversions from timber to other uses, so long as such forest practices are in compliance with Oregon Department of Forestry rules regarding protection of water quality.
- C. Excavations for gas or oil facilities for which the operator demonstrates compliance with Title 40 Code of Federal Regulations 122.26.
- D. Mining activities conducted under permits issued by the Oregon Department of Geology and Mineral Industries.
- D-E. Above-ground cutting and pruning of vegetation; above-ground mechanical mastication or mulching; or the use of grazing animals, such as goats, to remove above-ground vegetation.

9.090.025 - Erosion Prohibited.

All new development, redevelopment, land-disturbing activities, and drainage projects must be conducted in a manner to prevent and/or control erosion, sedimentation, and other construction-related impacts to stormwater quality, in order to achieve the outcomes specified in LC 9.090.030. All erosion prevention measures must be in place and in working condition prior to conducting any activities covered by this Erosion Prevention Code.

9.090.030 - Outcomes.

- A. Target Outcomes. All persons conducting activities covered by this Erosion Prevention Code must employ, to the maximum extent practicable, erosion prevention and construction site management practices that will achieve, during both the construction period and the wet weather season, the following outcomes:
1. Public and private ways, adjacent properties, water features, public and private stormwater systems, onsite wastewater treatment systems, stormwater management facilities, and related natural resource areas are kept free of deposits or discharges of soil, sediment, and concentrated runoff flows from the site except those that would occur through natural processes from an undisturbed site.
 2. Vegetation in water features, related natural resource areas, and associated bank and/or riparian areas adjacent to construction sites are preserved or protected from impacts that exceed those that occur through natural processes on an undisturbed site.
 3. Public and private ways, adjacent properties, water features, public and private stormwater systems, onsite wastewater treatment systems, stormwater management facilities, and related natural resource areas are kept free of:
 - a. ~~e~~C construction-related pollution and debris, including mud, concrete washout, trash, and other contaminants resulting from construction activities including, but not limited to, vehicle movement; material storage; and the cleaning or washing of equipment, tools, and vehicles; and.
 - ~~3.b.~~ Stormwater runoff containing construction-related contaminants resulting from activities such as, but not limited to, cleaning or washing of equipment, tools, or vehicles.
 4. Soils, stockpile areas, and clearing debris piles must not be exposed to precipitation or stormwater runoff without the provision of secondary containment, perimeter controls, or other approved BMPs.
 5. Earth slides, mudflows, earth sloughing, or other earth movement which may leave the property must not occur in excess of that which occurs through natural processes on an undisturbed site.
 - ~~6. No discharge into public and private ways, adjacent properties, water features, public and private stormwater systems, onsite wastewater systems, and related natural resource areas of construction-related stormwater runoff containing contaminants resulting from activities such as, but not limited to, cleaning or washing of equipment, tools, or vehicles, is permitted to occur.~~
 - ~~7.6.~~ Hazardous substances, ~~such as paints, thinners, fuels, and other chemicals~~ will not be released onto the site, adjacent properties, or onsite wastewater treatment systems, or into water features, public and private stormwater systems, stormwater management facilities, or related natural resource areas.
 - ~~8.7.~~ The use of plastic and petroleum-based materials in BMPs is limited to temporary installations that can be removed easily and completely prior to final stabilization. Plastic and petroleum-based products may not be left in the landscape to deteriorate.
 - ~~9.8.~~ At final stabilization stage, long-term erosion or sediment accumulation are ~~not permitted to occur~~ prevented from occurring.
- B. Use of Best Management Practices (BMPs).
1. When designing and implementing best management practices (BMPs) to meet the above outcomes, the following phases of work ~~will~~ must be considered:
 - a. Site Planning. Developing a work plan for construction that incorporates appropriate erosion prevention.

- b. Mobilization. Preparing the site such that erosion prevention measures are installed prior to beginning land disturbing activities.
 - c. Construction. Adjusting erosion prevention BMPs such that they address any changing construction site conditions to meet the above outcomes.
 - d. Final Stabilization. Ensuring that all disturbed areas are appropriately stabilized upon completion of land disturbing activities.
 2. Best management practices, along with guidance for their design, installation, and use, are included in the Lane County Erosion Prevention Manual.
- C. The responsible person must consider the seasonal variation of rainfall, temperature, and other climatic factors relative to the timing of land disturbance activities. All construction activity that ~~will~~ may result in soil disturbance during the wet weather season ~~will, at a minimum, prepare for~~ must accommodate wet weather conditions by:
 1. Maintaining additional BMP materials on site in order to respond immediately to changing conditions.
 2. Graveling construction site entrances with crushed rock of sufficient size and grading as necessary to prevent off-site tracking.
 3. Protecting all related natural resource areas, stormwater facilities, and water features.
 4. Covering all exposed stockpile areas not protected by approved perimeter controls.
 5. Conducting wet weather monitoring of BMPs and conducting inspections the day following a storm.
 6. Providing temporary stabilization anytime an area will not involve active construction activities for more than five (5) consecutive days.

9.090.035 – Issuance of Permit Not Proof of Compliance.

A permit or other approval issued through these rules may not be construed as ~~authorizing any violation~~ the authority to waive any of the above outcomes or wet weather requirements.

9.090.040 – Erosion Prevention Permits.

A. Permit Required.

1. Except as otherwise provided by ~~Lane this~~ Code, an erosion prevention permit is required for any land disturbing activity that:
 - a. Requires a Department of Environmental Quality (DEQ) 1200-C Construction Stormwater General Permit and such permit has been obtained; or
 - b. Disturbs one quarter (¼) acre or more of land or involves the movement of ~~two~~ four hundred (~~200~~ 400) cubic yards of soil or more; or
 - ~~c. Disturbs five hundred (500) square feet or more of land or involves the movement of twenty (20) cubic yards or more of soil and either involves commercial, industrial, or multi-unit residential development or is located on a property that is zoned for commercial, industrial, or multi-family activities. Is conducted on land with one (1) or more of the following:~~
 - ~~(1) Is located within the floodplain;~~
 - ~~(2) Contains highly erodible soils or slopes of fifteen percent (15%) or greater;~~

~~(3) Involves commercial, industrial, or multi-unit residential development or is located on a property that is zoned for commercial or industrial activities;~~

~~(4) Is located within fifty (50) feet of a water feature.~~

~~2. For purposes of LC 9.090.040A.1.c(4), the fifty (50) feet will be measured from the closest point of the boundary of the jurisdictional wetland to the regulated activity. For watercourses where the County has previously determined the "ordinary highwater mark" per LC 16.253, that mark is the point from which the fifty (50) feet is measured. Otherwise, the point from which the fifty (50) feet is measured will be the top of bank.~~

~~3.2.~~ Notwithstanding LC 9.090.045B.3, a separate erosion prevention permit will be required for each project covered by a common plan of development.

~~4.3.~~ Where an erosion prevention permit is required, no person may commence any land disturbing activity without first obtaining the required permit.

~~B. County Soil and Contour Maps.~~

~~1. To determine when an erosion prevention permit is required, the County will prepare a map showing contours and highly erodible soils located within the County. The County will use the map to make a preliminary determination of the slope and soil erodibility of the property to be developed. The map will be available for public review.~~

~~2. An applicant may challenge the County's preliminary determination that a site contains highly erodible soils or has a slope of fifteen percent (15%) or greater through submission of field information from a certified professional that demonstrates that the determination is inconsistent with the criteria in LC 9.090.040A.1.~~

~~If an applicant chooses not to contest the designation or is unable to satisfy the above criteria, an erosion prevention permit will be required.~~

~~G.B.~~ Exceptions. Notwithstanding any other provisions of this Erosion Prevention Code, the following land disturbing activities do not require an erosion prevention permit:

1. Routine maintenance of driveways, private ways, parking areas, parking lots, trails, and paved or graveled storage areas (including the pavement maintenance practices listed below) that does not:

- a. Alter the existing function or patterns of runoff, or
- b. Violate LC 9.021 (Illicit Discharge).

The following pavement maintenance practices are considered routine maintenance: pothole and square cut patching, crack sealing, management of vegetation within a private road or easement area, overlaying existing asphalt or concrete pavement without expanding the existing area of coverage, shoulder and drainage system regrading, and resurfacing with in-kind material without expanding the road prism.

~~2. Routine landscape maintenance activities on developed properties necessary to maintain the existing developed landscape and its existing function, including, but not limited to, home gardening and weed removal. Home gardening and landscaping maintenance activities, unless such activity takes place within fifty (50) feet of a water feature.~~

~~3. The planting of trees and other vegetation by hand-held tools.~~

~~2.4. Weed removal by digging with hand-held tools.~~

~~3.5.~~ Activities that are regulated by this Erosion Prevention Code may commence without complying with the requirements of this Code if the Director determines there is a hazard posing imminent danger to life or property, such as substantial fire hazards, risk of flood or other emergency.

However, upon determination by Director that such emergency has passed, the provisions of this Code apply.

D.C. Permit Classifications. The ~~County~~ Director may issue the following types of erosion prevention permits.

1. Tier 1. This permit applies to a property owner or agent conducting activity that satisfies LC 9.090.040A.1.a. An application for a Tier 1 permit requires submittal of a copy of the approved DEQ 1200-C Construction Stormwater General Permit and erosion and sediment control plan.
2. Tier 2. This permit applies to a property owner or agent conducting activity that satisfies LC 9.090.040A.1.b or LC 9.090.040A.1.c(1) – (3) and where a 1200-C permit has not been obtained through DEQ. An application for a Tier 2 permit requires the submittal of an erosion and sediment control plan.
- ~~2. Tier 3. This permit applies to a property owner or agent conducting activity that is located within fifty (50) feet of a water feature and where a Tier 1 or a Tier 2 permit is not required. This permit requires submittal of the development site plan.~~

E.D. Fee. Fees for erosion prevention Tier 1, ~~and~~ Tier 2, ~~and Tier 3~~ permits will be established by the Director. Application fees must be paid when the application is submitted to the County.

F.E. Review Criteria and Approval. If the County finds that the proposed activities will result in visible or measurable erosion, or will otherwise violate the outcomes set forth in LC 9.090.030, the County must deny the permit. The County will approve the application or approve the application with conditions if the County finds that the proposal, with any reasonable conditions, will not result in visible or measurable erosion, and will satisfy the outcomes.

G.F. Conditions of Approval. Every erosion prevention permit will include standard conditions and any special conditions determined to be necessary to satisfy the outcomes. The County may require, as a condition of approval, that the responsible person obtain a bond, letter of credit, or other guarantee to ensure compliance with erosion prevention requirements.

H.G. Issuance of Permit.

1. Compliance with the requirement to obtain a permit under this Erosion Prevention Code does not in any way imply, either directly or indirectly, compliance with any other requirement of the Lane Code, nor does it relieve any person from the obligation to comply with regulations or permits of any other federal, state, or local authority.
2. The application and processing of other County development permits, such as, but not limited to, floodplain removal/fill, agricultural, building, and onsite wastewater treatment system permits, are interdependent with the erosion prevention permit process. The County will not issue any of these other permits:
 - a. Until the County has approved the required erosion prevention permit for installation, conducted a site inspection if necessary, and issued ~~a required~~the erosion prevention permit, unless the County has determined an erosion prevention permit is not required; or
 - b. If the property owner or permit applicant is in violation of an erosion prevention permit, or any conditions contained therein.
3. No erosion prevention permit requiring an erosion prevention and sediment control plan will be issued without prior submittal and review of the plan requirements set forth in this Erosion Prevention Code.
4. As a condition of erosion prevention permit issuance, the responsible party agrees to allow all inspections to be conducted.
5. Where a bond, letter of credit, or other guarantee is required, the erosion prevention permit will

not be issued until the bond or guarantee has been obtained and approved.

5.6. Emergency development work on a property, including, but not limited to, an emergency onsite wastewater repair, may be performed without first obtaining an erosion prevention permit. If an erosion prevention permit is required, it must be applied for within three (3) working days after the emergency repairs commence.

I.H. Permit Duration.

1. Permit Period of Validity. An erosion prevention permit will be valid for one (1) year from the date of issuance. The permit may be renewed for additional periods of one (1) year during the course of construction. Once construction has been completed, the permit may be renewed for additional one (1) year periods up to, but not to exceed, two (2) years after completion of the construction activities, if the County determines the extension is necessary to ensure that construction activity has stabilized in accordance with the outcomes listed in these rules.

2. Renewal/Extension.

- a. The responsible person must submit a permit renewal application form and fee at least thirty (30) days prior to expiration of the current permit.

b. Renewal applications shall provide a description of the reason the renewal is needed, as well as any needed changes to the erosion and sediment control plan.

b.c. The Director will review the renewal request and inspect, as needed, the current status of erosion prevention at the site and may approve the renewal request if conditions are substantially consistent with the original erosion and sediment control plan.

2.3. Expiration. Expiration of an erosion prevention permit that has not received final inspection approval (including confirmation of final stabilization) is a violation of this Code.

J.I. Transfer of Ownership. Upon receiving an application filed upon the appropriate County form, the County may approve the transfer of an Erosion Prevention Permit where:

1. The new permittee is the owner of the property where the permitted erosion prevention measures are occurring or will occur;
2. The permit has not expired;
3. Conditions have not changed since the permit was issued; and
4. The new permittee certifies in writing, on a form designated by the County, that they will comply with the permit as approved.

9.090.045 – Erosion and Sediment Control Plan.

A. Plan Required. An application for a Tier 1 or Tier 2 erosion prevention permit must submit with the application an erosion and sediment control plan that meets the requirements of LC 9.090.045B.

B. Requirements of Plan.

1. The erosion and sediment control plan must:
 - a. Describe the techniques and methods, including best management practices for wet weather conditions, used to achieve the required outcomes, prevent erosion, and control the discharge of pollutants at the various stages of development;
 - b. Show and describe conditions before, during, and after development. All proposed phasing and stages of construction, including grading and utilities, must also be shown. Multiple plan sheets may be required to accurately and clearly show all BMPs and all stages or phases of

development;

- c. Include sizing criteria and design specification drawings for each BMP chosen;
 - d. Include performance criteria for each chosen BMP and operation and maintenance requirements, including appropriate inspection intervals and self-inspection checklists; and
 - e. Demonstrate the methods to be used to achieve final stabilization of the site following the completion of land disturbing activities.
2. For Tier 1 permits, the erosion and sediment control plan and 1200-C permit must be approved by the Oregon Department of Environmental Quality (DEQ). must be prepared by a certified professional who must certify that, in their professional opinion, implementation of the plan will ensure compliance with the outcomes set forth in LC 9.090.030.
 3. An erosion and sediment control plan for a common plan of development may be submitted for multiple development permits on one or more lots or parcels that are under the same ownership and are being developed at the same time.
 4. More detailed information about erosion and sediment control plans may be found in the Lane County Erosion Prevention Manual. This Manual will be maintained by the County.
- C. Implementation of Plan.
1. The responsible person or their agent must install, perform, and maintain the best management practices as shown and described in the approved erosion and sediment control plan.
 2. All erosion prevention measures must be in place and in working condition prior to disturbing and exposing any soil surfaces, and throughout all phases of construction.
 3. The area of disturbance must be clearly delineated and marked in the field, and in the area needed to meet construction requirements.
 4. All related natural resource areas must be clearly delineated and marked in the field.
 5. All infiltration systems, including stormwater and onsite wastewater treatment systems, must be clearly delineated, marked, and protected, as needed.
- D. Availability of Plan. The permit holder will keep at the construction site a copy of the approved plan so that it may be reviewed by the County, DEQ, or other administering entity, when on site.

9.090.050 – Maintenance.

- A. The responsible person must maintain the erosion prevention facilities and BMPs contained in the approved erosion and sediment control plan to ensure continued effectiveness during any ground disturbing activity.
- B. The responsible person must update the erosion and sediment control plan as site conditions change, or as needed.
- C. If the approved facilities and techniques are not effective or are insufficient, the responsible person must take immediate action to stop sediment from leaving the site and update the erosion and sediment control plan. Additionally, the County may require the following:
 1. On-site modifications to the erosion and sediment control measures or waste management controls.
 2. A revised erosion and sediment control plan.
 - a. The revised plan will be submitted by the responsible person within five (5) working days of

the County notifying the responsible person, and/or those conducting ground disturbing activities on behalf of the responsible person, of the need for updates to the existing plan.

- b. The responsible person must fully implement the revised plan within three (3) working days of approval by the County.
3. In cases where significant erosion is occurring, as determined by the County, the County may require immediate installation of interim control measures, before submittal of the revised plan.

9.090.055 – Construction Material Management Controls.

In addition to compliance with specific requirements contained in an approved erosion prevention permit, all persons conducting activities regulated by this Code must establish and implement construction material management and pollution reduction controls that will prevent toxic materials and other debris from entering the County's storm drainage and waterways systems, private stormwater systems, and onsite wastewater treatment systems. The following activities are prohibited and are a violation of this Code:

- A. Improper storage of chemicals (e.g., pesticides, fertilizers, fuels, paints, thinners).
- B. Improper disposal of construction-related waste materials (e.g., garbage, rubbish, sanitary waste, plaster, drywall, concrete, grout, and gypsum).
- C. Failure to immediately clean up spills of hazardous or toxic materials.
- D. Washing excess concrete material or other construction-related material into a private or public way, catch basin, or other public facility, the County's stormwater system, private stormwater drainage systems that discharge to the County's stormwater system, private stormwater systems, onsite wastewater treatment systems, related natural resource areas, or other protected area identified on the approved erosion and sediment control plan.
- E. Allowing construction vehicles to track or spill soil or debris into or onto a public or private way.
- F. Ground disturbing activities or destruction of vegetation in protected areas.

9.090.060 – Appeals.

A permit applicant may appeal:

- A. The denial of an erosion prevention permit,
- B. Any conditions imposed on a permit,
- C. The determination that a permit is required, or
- D. A stop work order, within the time and in the manner prescribed by LC 5.025.035.

9.090.065 - Enforcement.

A. Enforcement Policy. The County will use the amount of enforcement necessary to achieve compliance. Where possible and as allowed by the County's MS4 Phase II permit, the County will rely upon education rather than enforcement. The Director may provide educational programs or other informational materials that will assist permittees in meeting the desired erosion prevention outcomes.

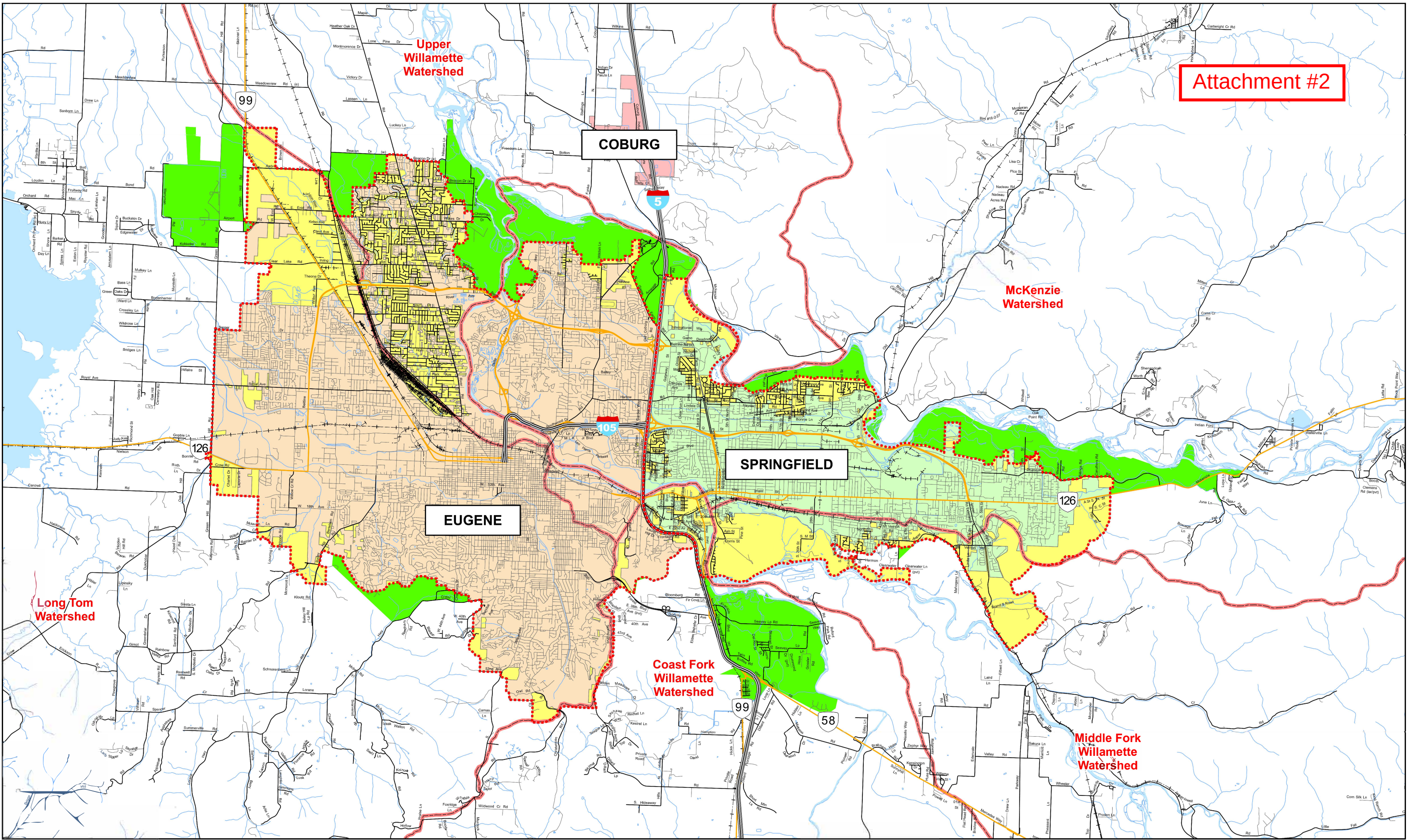
A-B. Violation of this Erosion Prevention Code is a Class A violation, as defined by ORS Chapter 153.

B-C. A person who violates any provision of this Erosion Prevention Code is subject to administrative

Lane Code

enforcement as outlined in LC Chapter 5, nuisance abatement procedures as outlined in LC Chapter 9, or both. Nuisance abatement or correction through administrative enforcement may include installation of erosion prevention best management practices by the County as necessary to achieve the outcomes set forth in LC 9.090.030.

G.D. Whenever any regulated activity is being done contrary to and in violation of this Code or an erosion prevention permit, the enforcement officer may order the activity stopped by notice in writing, posted on the premises, or served on the responsible person, who will immediately stop such work until authorized by the enforcement officer to proceed.



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

- County NPDES MS4 Area -- Erosion prevention in this area is managed by Lane County
- City UGB NPDES MS4 Area -- Erosion prevention in this area is managed by the Cities
- Urban Growth Boundary (UGB) Line

- Watershed Boundary
- Water Feature
- River/Stream
- Interstate Freeway
- State Highway
- County Road
- Other Road
- Railroad



Figure 1: Lane County NPDES MS4 Phase II Area*
*NPDES MS4 stands for National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System. This area is set by the Oregon Department of Environmental Quality based on the US Census.

A Comparison of Option B Code Language to MS4 Phase II General Permit Minimum Requirements

1-5-24

BOLD BLUE TEXT = Lane Code that Meets Minimum MS4 Permit Requirements
RED TEXT = Lane Code Language Exceeding Minimum MS4 Permit Requirements

	MS4 Phase II General Permit Construction Site Runoff Control Minimum Requirements	Lane County Proposed Code (Option B) Requirements
Applicability Area	<p>Applicability and Notification Requirements, Section 2 & Schedule A, Section 3.d</p> <p>County MS4 Area outside of Eugene and Springfield UGBs</p>	<p>9.090.015 - Applicability.</p> <p>County MS4 Area outside of Eugene and Springfield UGBs</p>
Erosion Prevention Permit Triggers	<p>Schedule A, Section 3.d.ii(B)</p> <p>Permits required for construction project sites that result in a minimum land disturbance of:</p> <ul style="list-style-type: none">1/4 acre (10,890 SF) or more	<p>9.090.040.A & B – Erosion Prevention Permits</p> <p>Permits required for land disturbances that are:</p> <ul style="list-style-type: none">1/4 acre (10,890 SF or ~1164 SY) or more400 CY (equal to 1/4 acre disturbed to a depth of 1 foot) or more500 SF / 20 CY or more land disturbance for a commercial, industrial, or multi-family development, or for development on a commercial-, industrial-, or multi-family-zoned property
Outcomes	<p>The MS4 Phase II General Permit does not require Outcomes language for land disturbances that do not require a permit.</p> <p>The MS4 Permit does note:</p> <ul style="list-style-type: none">Non-stormwater discharges due to soil disturbances are not authorized, regardless of size of disturbance area.County must “implement and enforce a Stormwater Management Program to the maximum extent practicable to protect water quality and to satisfy the... requirements of the Clean Water Act.” <p>Under ORS 468.946, the discharge of any pollution to waters of the state is punishable by a fine up to \$200,000. Violations of the federal Clean Water Act can carry penalties up to \$50,000 per day of violation.</p>	<p>9.090.030 – Outcomes.</p> <p>All land disturbing activities except those exempted from the code must meet outcomes.</p>

A Comparison of Lane County MS4 Permit Requirements & Proposed Erosion Prevention Code to Eugene and Springfield

BOLD BLUE TEXT = Minimum MS4 Permit Triggers ----- RED TEXT = Code Language Exceeding Minimum NPDES Phase II MS4 General Permit Requirements

1-6-2024

	Lane County – Proposed Code	Eugene – Existing Code	Springfield – Proposed Code
Applicability & City Definitions of Construction Activity (NOTE: Exemptions are not included in this table.)	9.090.015 - Applicability <ul style="list-style-type: none">Applies to all land disturbing activities.	6.630 Erosion Prevention - Applicability and Compliance <ul style="list-style-type: none">Applies to all construction activity that results in land disturbance. <p>Construction Activity = The developing, redeveloping, enhancing, or maintaining of land, including, but not limited to, land disturbance, building construction, surfacing, and construction-related uses.</p>	8.404 Applicability <ul style="list-style-type: none">Applies to all construction-related activities that result in land disturbance. <p>Construction Activity = The developing, redeveloping, enhancing, or maintaining land, including, but not limited to: land disturbance, building construction, surfacing, and construction-related uses.</p>
Outcomes	9.090.030 – Outcomes All land disturbing activities except those exempted from the code must meet outcomes	6.630 (2) Outcomes All land disturbing activity except exemptions must meet outcomes	8.408 Outcomes All land disturbing activities except exemptions must meet outcomes
Erosion Prevention Permit Triggers	9.090.040.A & B – Erosion Prevention Permits Permits required for disturbances that are: <ul style="list-style-type: none">1/4 acre (= to 10,480 SF or ~1164 SY) or more400 CY (= to 1/4 acre disturbed to a depth of 1 foot) or more500 SF / 20 CY or more land disturbance for a commercial, industrial, or multi-family development, or for development on a commercial-, industrial-, or multi-family-zoned property	6.635 Erosion Prevention - Permits. Permits required for disturbances that are: <ul style="list-style-type: none">5,000 CF or more (= ~185 CY or ~1/8 acre disturbed to 1 FT depth)500 SF or 20 CY or more & in sensitive area:<ul style="list-style-type: none">Drains to a water feature10%+ slopesHighly erodible soils	8.412 Land and Drainage Alteration Permits. Permits required for disturbances that are: <ul style="list-style-type: none">7,000 SF (= ~780 SY) or more50 CY or more on any one lotAdversely affects drainage on adjacent landCut or fill for placement of inhabited structure500 SF or more & in a sensitive area:<ul style="list-style-type: none">FloodplainAdjacent to a drainage way or swale15%+ slopes OR Hillside OverlayWetlands

MS4 Permit Erosion Prevention Code Status

Lane County = MS4 Phase II community (county)

- The county’s MS4 Phase II General Permit requires that erosion code be adopted by Feb 2023.
- DEQ may place fines upon County if code not adopted ASAP.

Eugene = MS4 Phase I Individual Permit community

- Per Eugene’s 2021 permit, they must continue to implement their existing 2010 plan requirements while DEQ reviews for new Phase I requirements.
- Eugene erosion program received a positive Inspection Report from DEQ on 7-14-23.

Springfield = MS4 Phase II community (city)

- Springfield is rewriting their erosion code to meet new MS4 Phase II General Permit requirements.
- The requirements listed above reflect the proposed code, not the current code.
- DEQ has not yet reviewed or approved the new code.

A Comparison of Lane County MS4 Permit Requirements & Proposed Erosion Prevention Code to Benton County

BOLD BLUE TEXT = Minimum MS4 Permit Triggers ----- RED TEXT = Code Language Exceeding Minimum MS4 Permit Requirements

1-6-2024

	Lane County – Proposed Code	Benton County – Existing Code
Area of Applicability	9.090.15 – Applicability <ul style="list-style-type: none">Applies to the County MS4 area only.	99.660(2) – Applicability <ul style="list-style-type: none">Applies to all unincorporated areas of Benton County.
Activities Requiring Permits <i>(NOTE: Exemptions are not included in this table.)</i>	9.090.015 – Applicability <ul style="list-style-type: none">Applies to all land disturbing activities.	99.660(3)(a)(A) – Activities Requiring Erosion and Sediment Control Permit <ul style="list-style-type: none">Applies to ground-disturbing activities associated with:<ul style="list-style-type: none">Construction or land uses that require a permit or other review; andAny of the following:<ul style="list-style-type: none">Roads, driveways, or structures; orSite preparation, associated installations, landscaping, and other ground-disturbing activities related to such construction. <p>NOTE: This code language may not meet future DEQ requirements. See memo for explanation.</p>
Outcomes	9.090.030 – Outcomes <p>All land disturbing activities except those exempted from the code must meet outcomes.</p>	No outcome based requirements.
Erosion Prevention Permit Triggers	9.090.040.A & B – Erosion Prevention Permits <p>Permits required for disturbances that are:</p> <ul style="list-style-type: none">1/4 acre (= to 10,480 SF or ~1164 SY) or more400 CY (= to 1/4 acre disturbed to a depth of 1 foot) or more500 SF / 20 CY or more land disturbance for a commercial, industrial, or multi-family development, or for development on a commercial-, industrial-, or multi-family-zoned property	99.660(3)(a)(B) – Activities Requiring Erosion and Sediment Control Permit <p>Permits required for disturbances that are:</p> <ul style="list-style-type: none">1/4 acre or more

MS4 Permit Erosion Prevention Code Status

Lane County = MS4 Phase II General Permit community

- The county’s MS4 Phase II General Permit requires that erosion code be adopted by Feb 2023.
- DEQ may place fines upon County if code not adopted ASAP.

Benton County = MS4 Phase II General Permit community

- Benton County adopted new code to meet the MS4 Permit in March 2023.
- DEQ has not yet reviewed or approved the new code.

Chapter 99

General Development Standards

99.005 Scope. All development within Benton County, including land partitions, subdivisions and associated land development, and the construction of residential dwellings, industrial, commercial, or public buildings and other accessory structures shall conform to applicable standards of this chapter. [Ord 26, Ord 7, Ord 90-0069]

SENSITIVE LAND

99.105 Description of Sensitive Land. Certain land characteristics may render a site "sensitive" to development. Sensitive land includes, but is not limited to:

(1) Land having geologic hazard potential or identified by the Oregon Department of Geology and Mineral Industries in Geologic Hazards of Eastern Benton County or Preliminary Earthquake Hazard and Risk Assessment and Water-Induced Landslide Hazard in Benton County, Oregon, hereby incorporated by reference.

(2) Land containing soils subject to high erosion hazard when disturbed, or lands containing soils subject to high shrink-swell potential as identified by the USDA Soil Conservation Service in the Soil Survey of Benton County Area, Oregon, or the Soil Survey of Alsea Area, Oregon, hereby incorporated by reference, or by a successor document produced by the USDA Soil Conservation Service or a successor agency. [Ord 7, Ord 90-0069, Ord 2006-0214]

99.110 Consideration. An applicant for a land division or building permit shall consider the geology, topography, soils, vegetation and hydrology of the land when designing a parcel or lot, or siting improvements. The Planning Official or Building Official may impose conditions or modifications necessary to mitigate potential hazards or otherwise provide for compliance with adopted Comprehensive Plan policies, and may require an erosion and sediment control permit. The Planning Official or Building Official shall consider the recommendation of the County Engineer, municipal officials within urban growth boundaries, and other technical sources in the determination of sensitive land conditions and mitigating measures. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214; Ord 2011-0240]

99.115 Mitigating Sensitive Land Conditions. The following guidelines shall be considered in the establishment of conditions and mitigating measures:

(1) Roads should be located in upland areas on benches, ridge tops and gentle slopes as opposed to steep hillsides and narrow canyon bottoms.

(2) Native vegetation removal or soil disturbance should be minimized on moderate and steep slopes and hillsides. If possible, avoid such activities during winter months.

(3) Surface water runoff should be minimized or provide appropriate means for handling surface water runoff.

(4) Techniques should be utilized that minimize erosion, such as protective groundcover.

(5) Engineering assessment of hazard potential should be required for land development.

(6) Geotechnical investigations should be required for roads and foundations in slide-prone areas. [Ord 7, Ord 90-0069]

99.660 Erosion and Sediment Control

- (1) **Purpose:** The purpose of this section is to:
 - (a) Preserve and enhance the health, safety, welfare, financial investment in public and private infrastructure, private property value, and the quality of life of the inhabitants of Benton County by minimizing the risk of flooding, erosion, sedimentation, and other stormwater impacts; and
 - (b) Maintain or improve water quality within Benton County as required under State and Federal National Pollution Discharge Elimination System law.
- (2) **Applicability.** The provisions of this section shall apply to all unincorporated areas of Benton County.
- (3) **Activities Requiring Erosion and Sediment Control Permit.**
 - (a) The responsible party shall obtain an Erosion and Sediment Control (ESC) Permit from Benton County prior to initiation of ground-disturbing activities , if both (A) and (B) are met. Ground-disturbing activities listed in subsection (4) of this section are exempt from ESC permitting requirements.
 - (A) The ground-disturbing activities are associated with:
 - (i) Construction or land uses that require a permit or other review by Benton County; and
 - (ii) any of the following:
 - (a) Construction of a public or private road, driveway, or structure; or
 - (b) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, and other ground-disturbing activities related to such construction.
 - (B) The total area disturbed will be 0.25 acre (10,890 square feet) or more.
 - (b) All activities shall comply with the Benton County Illicit Discharge Detection and Elimination Code, whether or not the activity requires an Erosion and Sediment Control Permit.
 - (c) The responsible party shall also comply with other local, state and federal erosion control regulations that may apply. Ground disturbance that is part of a common plan of development is required to comply with DEQ permitting even if the ground disturbance alone is below the threshold for requiring a Benton County ESC Permit.
- (4) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):
 - (a) Accepted farm practices;
 - (b) Construction of buildings used exclusively for agricultural purposes and located outside the MS4. The applicant shall demonstrate to the satisfaction of the Planning Official that the structure will be used only for agricultural purposes. The Planning Official may require a deed restriction acknowledging and notifying future property owners of the limitation on use of the structure;
 - (c) Forest practices performed pursuant to the Oregon Forest Practices Rules. Upon completion of such forest practices or expiration of Forest Practices authorization, a Benton County ESC Permit is immediately required unless the land has been replanted at stocking levels consistent with Oregon Department of Forestry standards;
 - (d) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
 - (e) Emergency measures to protect life, property, public infrastructure, or essential services, in which case an ESC Permit shall be obtained as soon as possible after-the-fact;



ORDINANCE 23-06 / In the Matter of Amending Lane Code to Update/Establish an Erosion Policy

Sixth Hearing
January 30, 2024



Staff Report Overview

- Recap of DEQ stormwater regulations and previous code proposals.
- Comparisons of proposed code to:
 - MS4 Phase II General Permit
 - Eugene and Springfield codes
 - Benton County code
- Updates on proposed code changes and Manual.
- Request for Board direction.



*** Following this Hearing, staff will make amendments to the Code and return for a Seventh Hearing on March 12th. ***

Erosion Prevention Regulations

Lane County maintains two permits/programs through the DEQ that require the adoption of erosion prevention code:

- **MS4**: Municipal Separate Storm Sewer System (MS4) Phase II General Permit
 - o Erosion prevention regulations were required to be adopted February 2023. Must be adopted ASAP.
- **TMDL**: Total Maximum Daily Load for the Willamette River Basin
 - o Erosion prevention regulations must be adopted by Fall 2025

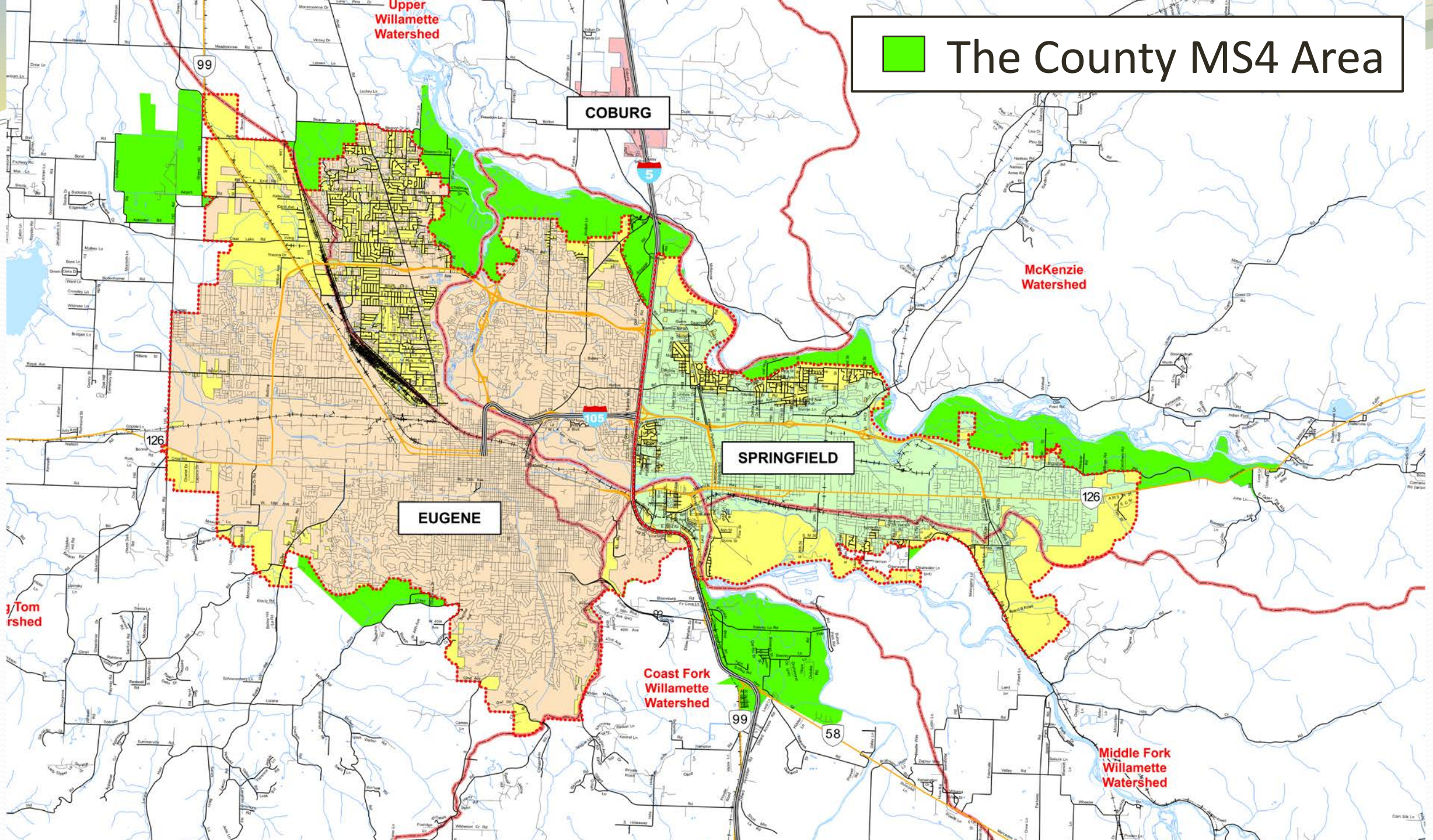


Where We Have Been

- The original version of the proposed code was written to apply county-wide.
- Iterative versions addressed concerns raised through the hearing process.
- All versions have contained requirements above DEQ minimum requirements in areas related to applicability, permit triggers, and outcomes.
- At the Fifth Hearing on December 12th staff presented 2 code language options:
 - **Option A** retained sensitive area protections.
 - **Option B** removed include sensitive area protections.

Board directed staff to return with a presentation comparing Option B to the minimum requirements of the MS4 Permit.

 The County MS4 Area



Comparison of Proposed Code to MS4 Permit

- Land disturbance vs. construction activity
- MS4 Permit requires erosion prevention controls based upon the size of the land disturbance area. Trigger requiring a permit = $\frac{1}{4}$ acre (10,890 SF)
- Proposed code exceeds minimum MS4 requirements:
 - Volume permit trigger
 - Smaller area/volume triggers for commercial, industrial, or multi-family
 - Outcome requirements for all non-exempted land disturbances

A Comparison of Option B Code Language to MS4 Phase II General Permit Minimum Requirements

1-5-24

BOLD BLUE TEXT = Lane Code that Meets Minimum MS4 Permit Requirements

RED TEXT = Lane Code Language Exceeding Minimum MS4 Permit Requirements

	MS4 Phase II General Permit Construction Site Runoff Control Minimum Requirements	Lane County Proposed Code (Option B) Requirements
Applicability Area	<p>Applicability and Notification Requirements, Section 2 & Schedule A, Section 3.d</p> <p>County MS4 Area outside of Eugene and Springfield UGBs</p>	<p>9.090.015 - Applicability.</p> <p>County MS4 Area outside of Eugene and Springfield UGBs</p>
Erosion Prevention Permit Triggers	<p>Schedule A, Section 3.d.ii(B)</p> <p>Permits required for construction project sites that result in a minimum land disturbance of:</p> <ul style="list-style-type: none"> 1/4 acre (10,890 SF) or more 	<p>9.090.040.A & B – Erosion Prevention Permits</p> <p>Permits required for land disturbances that are:</p> <ul style="list-style-type: none"> 1/4 acre (10,890 SF or ~1164 SY) or more 400 CY (equal to 1/4 acre disturbed to a depth of 1 foot) or more 500 SF / 20 CY or more land disturbance for a commercial, industrial, or multi-family development, or for development on a commercial-, industrial-, or multi-family-zoned property
Outcomes	<p>The MS4 Phase II General Permit does not require Outcomes language for land disturbances that do not require a permit.</p> <p>The MS4 Permit does note:</p> <ul style="list-style-type: none"> Non-stormwater discharges due to soil disturbances are not authorized, regardless of size of disturbance area. County must "implement and enforce a Stormwater Management Program to the maximum extent practicable to protect water quality and to satisfy the... requirements of the Clean Water Act." <p>Under ORS 468.946, the discharge of any pollution to waters of the state is punishable by a fine up to \$200,000. Violations of the federal Clean Water Act can carry penalties up to \$50,000 per day of violation.</p>	<p>9.090.030 – Outcomes.</p> <p>All land disturbing activities except those exempted from the code must meet outcomes.</p>

Land Disturbance vs. Construction Activity

- MS4 Permit requires the County to require erosion prevention permits for construction project sites that result in the ¼-acre minimum area of land disturbance.
 - The MS4 permit does not define “construction.” The definition of “construction activity,” when strictly read, only applies to the construction of structures and heavy construction.
- The County proposed code applies to land disturbance, regardless of whether a structure is proposed
 - Cleared and disturbed land is prone to erosion, regardless of whether a structure is proposed.
 - Maintains consistency with adjacent cities and 1200-C and EPA definitions. 1200-C and EPA definitions of “construction activity” include non-structure-related land disturbances.
 - Simplicity of code: different permit trigger language is not required for 1200-C permitting.
 - DEQ has communicated that it is probable that the MS4 definition of “construction activity” will be updated in this year’s revisions to the MS4 Permit requirements.

400 CY Volume Permit Trigger

- 400 CY is equivalent to:
 - $\frac{1}{4}$ acre disturbance at
 - 1 foot depth
- Provides trigger for smaller area disturbances that are deep and disturb the same amount of soil as a standard $\frac{1}{4}$ acre or more disturbance.
- Excavation and movement of material is often directly related to a cost item. Cubic yardage may be easier for the contractor to define than a disturbed area.



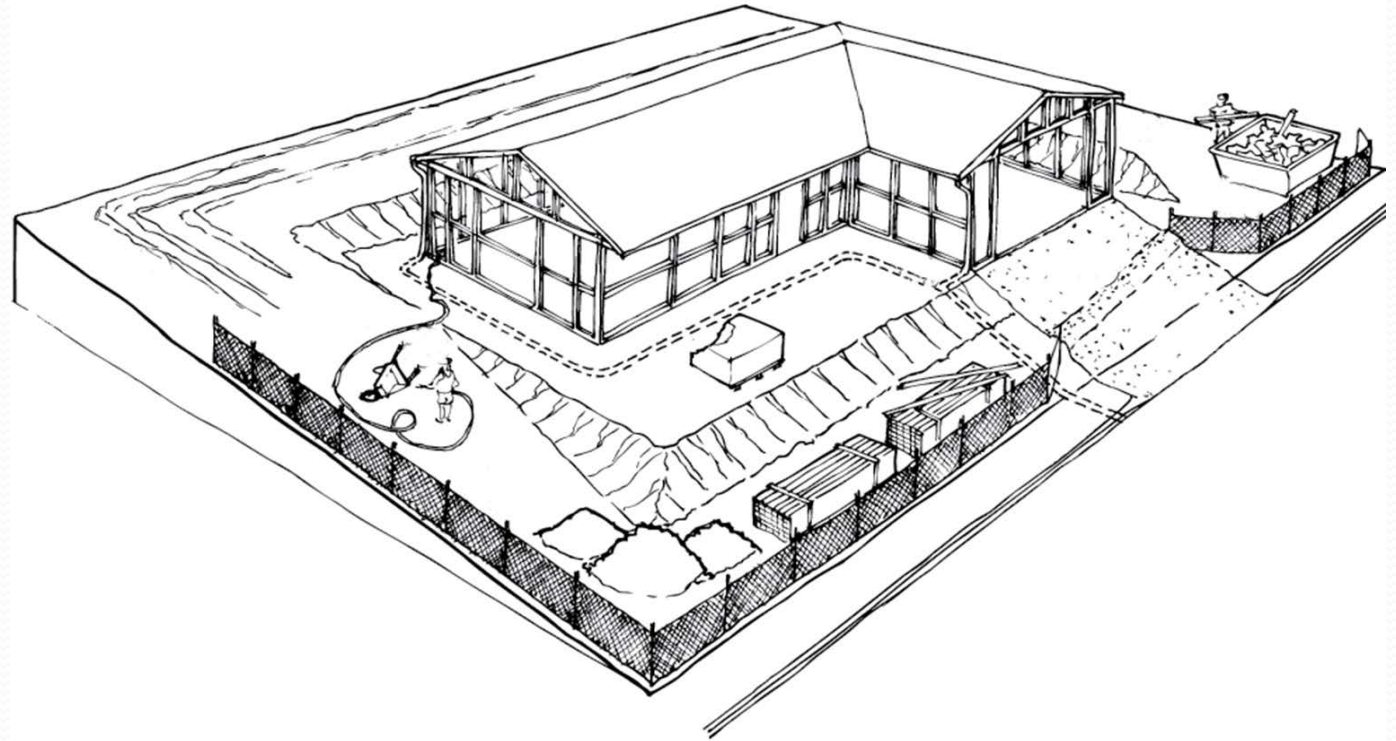
500 SF / 20 CY Permit Trigger for Commercial, Industrial, and Multi-Family

- Tend to have more complex designs with more contractors working on the site.
- Potential to involve higher quantities of pollutant-generating materials
- Typically located in more densely urbanized areas.
- Higher likelihood of discharge/impacts to the stormwater system, ROW, and neighboring properties.



Application of Outcomes to All Non-Exempted Land Disturbances

- Prevent discharges of soil, sediment, and concentrated runoff flows
- Protect riparian vegetation
- Contain stockpile areas
- Prevent soil movement
- Prevent release of hazardous substances
- Removal of plastic and petroleum products
- Ensure final stabilization



Application of Outcomes to All Non-Exempted Land Disturbances

- Provides framework for staff to educate and work with professional contractors to achieve outcomes
- Requires developers to ensure responsible stewardship of site and construction process
- Protects stormwater system, adjacent properties, and ROW
- County's NPDES permits require that County take immediate corrective actions for pollutants in exceedance of water quality standards
 - Illicit discharges must be addressed within 48 hours



Applicability – Outcomes Apply to All Land Disturbances

- The proposed code includes outcome requirements for all land disturbances.
- MS4 Permit requires:
 - *The County “implement and enforce a Stormwater Management Program (SWMP) designed to reduce pollutants from the MS4 to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act”.*
 - Prohibits the County from allowing non-stormwater discharges to the storm system.
- Outcome language provides the County the authority to require landowners to take corrective action when discharge elimination requirements aren’t being met.

Comparison of Proposed Code to Eugene and Springfield Codes

- Eugene = MS4 Phase I Individual Permit
- Springfield = MS4 Phase II General Permit
 - Same permit as Lane County
 - MS4 Permit requires that Springfield follow city-specific requirements (Lane County has county-specific requirements).

A Comparison of Lane County MS4 Permit Requirements & Proposed Erosion Prevention Code to Eugene and Springfield

BOLD BLUE TEXT = Minimum MS4 Permit Triggers ----- **RED TEXT = Code Language Exceeding the County's Minimum MS4 Permit Requirements**

1-22-2024

	Lane County – Proposed Code	Eugene – Existing Code	Springfield – Proposed Code
Applicability & City Definitions of Construction Activity <i>(NOTE: Exemptions are not included in this table.)</i>	9.090.015 - Applicability <ul style="list-style-type: none"> Applies to all land disturbing activities. 	6.630 Erosion Prevention - Applicability and Compliance <ul style="list-style-type: none"> Applies to all construction activity that results in land disturbance. <p><u>Construction Activity</u> = The developing, redeveloping, enhancing, or maintaining of land, including, but not limited to, land disturbance, building construction, surfacing, and construction-related uses.</p>	8.404 Applicability <ul style="list-style-type: none"> Applies to all construction-related activities that result in land disturbance. <p><u>Construction Activity</u> = The developing, redeveloping, enhancing, or maintaining land, including, but not limited to land disturbance, building construction, surfacing, and construction-related uses.</p>
Outcomes	9.090.030 – Outcomes All land disturbing activities except those exempted from the code must meet outcomes	6.630 (2) Outcomes All land disturbing activity except exemptions must meet outcomes	8.408 Outcomes All land disturbing activities except exemptions must meet outcomes
Erosion Prevention Permit Triggers	9.090.040.A & B – Erosion Prevention Permits Permits required for disturbances that are: <ul style="list-style-type: none"> 1/4 acre (= to 10,480 SF or ~1164 SY) or more 400 CY (= to 1/4 acre disturbed to a depth of 1 foot) or more 500 SF / 20 CY or more land disturbance for a commercial, industrial, or multi-family development, or for development on a commercial-, industrial-, or multi-family-zoned property 	6.635 Erosion Prevention - Permits. Permits required for disturbances that are: <ul style="list-style-type: none"> 5,000 CF or more (= ~185 CY or ~1/8 acre disturbed to 1 FT depth) 500 SF or 20 CY or more & in sensitive area: <ul style="list-style-type: none"> Drains to a water feature. 10%+ slopes Highly erodible soils 	8.412 Land and Drainage Alteration Permits. Permits required for disturbances that are: <ul style="list-style-type: none"> 7,000 SF (= ~780 SY) or more 50 CY or more on any one lot Adversely affects drainage on adjacent land. Cut or fill for placement of inhabited structure 500 SF or more & in a sensitive area: <ul style="list-style-type: none"> Floodplain Adjacent to a drainage way or swale 15%+ slopes OR Hillside Overlay Wetlands

Applicability – Construction Activities

- Both Cities apply code to land-disturbing activities, regardless of whether a structure is being constructed.
- The County's proposed code also applies to land disturbance, regardless of whether a structure is proposed.
 - Maintains consistency with:
 - Neighboring codes
 - Environmental needs
 - 1200-C and EPA definitions and guidelines

Applicability – Outcomes Apply to All Land Disturbances

- Both Cities require that all land disturbances meet the erosion prevention outcomes, whether a permit is required or not.
- Springfield's adoption of outcomes to all disturbances exceeds the MS4 General Permit.
- Eugene's adoption is a part of their Individual Permit.

Applicability – Land Disturbance Areas

Eugene's existing code and Springfield's proposed code include permit trigger language that exceed the minimums proposed in the County code.

- Eugene
 - Employs a volume-based permit trigger (5000 CF = 185 CY), rather than one based upon square footage, as required by their MS4 Phase I Individual Permit.
 - 500 SF / 20 CY in sensitive areas
- Springfield
 - 7000 SF trigger is their minimum trigger per the MS4 Permit
 - 50 CY or more on any one lot
 - Adversely affects drainage on adjacent land
 - Cut or fill for inhabited structure placement
 - Sensitive areas

NOTE: Springfield code to be adopted in February 2024.

Their new language reflects the regulation needs they have assessed over years of implementing erosion prevention regulations through their Land & Drainage Alteration Permit (LDAP) program.

Comparison of Proposed Code to Benton County Code

- Benton County is an MS4 Phase II General Permit community.
- Benton adopted its erosion prevention code in 2023.
- The new code has not yet been reviewed by DEQ.

A Comparison of Lane County MS4 Permit Requirements & Proposed Erosion Prevention Code to Benton County

Attachment #5

BOLD BLUE TEXT = Minimum MS4 Permit Triggers ----- **RED TEXT = Code Language Exceeding Minimum MS4 Permit Requirements**

1-6-2024

	Lane County – Proposed Code	Benton County – Existing Code
Area of Applicability	9.090.15 – Applicability <ul style="list-style-type: none"> Applies to the County MS4 area only. 	99.660(2) – Applicability <ul style="list-style-type: none"> Applies to all unincorporated areas of Benton County.
Activities Requiring Permits (NOTE: Exemptions are not included in this table.)	9.090.015 – Applicability <ul style="list-style-type: none"> Applies to all land disturbing activities. <p>Note: The County does not have a grading permit requirement.</p>	99.660(3)(a)(A) – Activities Requiring Erosion and Sediment Control Permit <ul style="list-style-type: none"> Applies to ground-disturbing activities associated with: <ul style="list-style-type: none"> Construction or land uses that require a permit or other review; and Any of the following: <ul style="list-style-type: none"> Roads, driveways, or structures; or Site preparation, associated installations, landscaping, and other ground-disturbing activities related to such construction. <p>NOTE: This code language might not meet DEQ requirements. Per DEQ, the definition of <i>Construction Activity</i> that requires a permit equals that of the 1200-C permit: <i>Including, but not limited to, clearing, grading, excavating, grubbing, stumping, demolition, and land disturbing activities. Construction activity is not limited to the construction of roads, driveways, or structures, and their related activities.</i></p>
Outcomes	9.090.030 – Outcomes All land disturbing activities except those exempted from the code must meet outcomes.	No Outcomes.
Erosion Prevention Permit Triggers	9.090.040.A & B – Erosion Prevention Permits Permits required for disturbances that are: <ul style="list-style-type: none"> 1/4 acre (= to 10,480 SF or ~1164 SY) or more 400 CY (= to 1/4 acre disturbed to a depth of 1 foot) or more 500 SF / 20 CY or more land disturbance for a commercial, industrial, or multi-family development, or for development on a commercial-, industrial-, or multi-family-zoned property 	99.660(3)(a)(B) – Activities Requiring Erosion and Sediment Control Permit Permits required for disturbances that are: <ul style="list-style-type: none"> 1/4 acre or more

Comparison of Proposed Code to Benton County Code

- Benton erosion prevention code is county-wide. (Exceeds minimums)
- Applies to ground disturbing activities associated with a construction permit. (Meets minimums)
- Area trigger is ¼ acre (Meets minimums)
- Does not include Outcomes (May not meet minimums for permitted projects)
- Includes additional protections for sensitive areas. (Exceeds minimums)

Erosion Prevention Manual

- A draft version of the Erosion Prevention and Construction Material Management Manual has been posted for Board review.
- Upon direction from the Board, the Manual will be updated to reflect proposed code and then uploaded for public viewing and comment.
- The Manual accompanies the code, to increase public understanding of what is expected.
- Manual contains:
 - BMP installation and maintenance information
 - Forms and handouts
 - Erosion control plan example

Table 5. 2 BMP Effectiveness and Uses. This table notes where certain BMPs may be useful on a construction-site. Proper BMP choices will be site- and project-dependent and multiple BMPs may be needed to achieve requirements. Additional measures may be needed to retain the BMP as a permanent landscape feature.

BMP APPLICATION	OVERALL EFFECTIVENESS RATING	A	B	C	D	E	F	G	H	I	J	K	L	M	N
EROSION PREVENTION															
Buffer Zone	E	X	X		X	X	X		X	X	X	X	X	X	X
Preserve Natural Vegetation	E	X	X		X	X	X		X	X	X	X	X	X	X
Dust Control	E		X						X		X	X	X	X	
Ground Cover (w/o seed)	E		X	X				X		X	X		X		
Hydraulic Applications (w/o seed)	E		X	X				X		X	X	X	X		
Matting/Blankets (w/o seed)	M		X	X	X	X		X	X	X	X	X	X	X	X
Plastic Sheet piling	M		X	X				X		X	X	X	X		
Seeding Temporary/Permanent	E		X	X	X	X		X	X	X	X	X	X	X	X
Sod	M		X		X				X	X	X	X	X	X	X
RUNOFF CONTROL															
Check Dams	M				X	X		X	X	X	X	X	X	X	X
Diversion Dikes and Swales	M		X	X	X			X		X	X	X	X	X	X
Grass-Lined Swale	M				X	X		X	X	X	X	X	X	X	X
Outlet Protection	E	X						X	X	X	X		X	X	X
Pipe Slope Drain	E		X		X			X		X	X	X	X	X	X
Surface Roughening	E		X					X		X	X	X	X		
SEDIMENT CONTROL															
Biofilter Bags	M		X	X	X	X	X	X		X	X	X	X		
Construction Entrance	E	X				X		X		X	X	X	X		
Dewatering	E		X		X	X		X		X			X		
Filter Berm	M		X	X	X	X	X	X		X	X	X	X	X	X
Inlet Protection	M	X			X	X		X		X			X		
Oak Mats	E	X				X		X		X			X	X	
Pre-Fabricated Barriers	M	X		X	X	X		X		X	X	X	X	X	X
Sand Bags	M	X		X	X			X		X	X	X	X		
Sediment Basin	E				X	X	X	X	X	X			X	X	X
Sediment/Silt Fence	M	X	X	X		X	X	X		X	X	X	X	X	X
Sediment Trap/Pond	E				X	X	X	X		X	X		X		
Side walk Subgrade Gravel Barrier	M	X				X		X		X			X	X	X
Tire Wash	E	X				X				X			X	X	X
Wattles	M	X	X	X	X	X		X	X	X	X	X	X	X	X

KEY:

OVERALL EFFECTIVENESS RATING: E = Excellent; M = Moderate

A - Perimeter Controls

B - Slope Protection

C - Borrow Piles and Stockpiles

D - Drainage Detention, Retention, and

Conveyance

E - Sediment Trapping

F - Stream Protection

G - Temporary Stabilizing

H - Permanent Stabilizing

I - Slope 0 - 3%

J - Slope 3 - 8%

K - Slope > 8%

L - Effective Duration, < 6 Months

M - Effective Duration, 6 - 12 Months

N - Effective Duration, > 12 Months

Appeal Process Language

- The proposed code contains appeal process language.
- Proposed language points to the appeal process in LC Chapter 5.
- A correction below resolves previous concerns.

9.090.060 – Appeals.

A permit applicant may appeal **any of the following items within the time and in the manner prescribed by LC 5.025.035:**

- A. The denial of an erosion prevention permit,
- B. Any conditions imposed on a permit,
- C. The determination that a permit is required, or
- D. A stop work order, ~~within the time and in the manner prescribed by LC 5.025.035.~~

Bond Language

- The bond language has been removed from the proposed code.

Direction Requested

Staff asks that the Board provide direction on the following items:

1. Removal of bond language from proposed code.
2. Retention of the following items in the proposed code:
 - Applicability to “**land disturbing activities**” vs. only disturbances that are construction-related.
 - 400 CY **volume**-based permit trigger
 - 500 SF / 20 CY trigger for **commercial, industrial, and multi-family** projects/zoning.

Direction Requested (continued)

Staff asks that the Board provide direction on the following items:

3. The application of **outcomes** to all land disturbances, whether an erosion prevention permit is required or not.
4. The inclusion of **sensitive area protections** similar to Eugene, Springfield, and Benton County for areas such as for steep slopes, highly erodible soils, and floodplains.

Motion

- Direct staff to make changes to the code per the Board direction on the above items and return for a Seventh Reading.
- Continue the Public Hearing to March 12, 2024 (Date Certain), at 1:30 PM.

Timing

Once approved, the Code changes will become effective May 1st, 2024.

Thank You.

