

CHAPTER 209 – SEDIMENT CONTROL

209-1 PURPOSE AND AUTHORITY

The purpose of this Ordinance is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with land disturbances. The goal is to minimize soil erosion and prevent off-site sedimentation by using soil erosion and sediment control practices designed in accordance with the Code of Maryland Regulations (COMAR) 26.17.01, the 2011 Maryland Standards and Specifications (Standards and Specifications) and the Stormwater Management Act of 2007 (Act). Implementing this Ordinance will help reduce the negative impacts of land development on water resources, maintain the chemical, physical, and biological integrity of streams, and minimize damage to public and private property.

The provisions of this Ordinance pursuant to Title 4, Environment Article, Subtitle 1, Annotated Code of Maryland are adopted under the authority of the City Code of the City of Hagerstown and shall apply to all land grading occurring within the City of Hagerstown. The application of this Ordinance and the provisions expressed herein shall be the minimum erosion and sediment control requirements and shall not be deemed a limitation or repeal of any other powers granted by State statute.

209-2 DEFINITIONS

- (1) "Administration" means the MDE (Maryland Department of the Environment) Water Management Administration (WMA).
- (2) "Adverse impact" means any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses, which are or may potentially be harmful or injurious to human health, welfare, safety or property, biological productivity, diversity, or stability or that unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
- (3) "Agricultural land management practices" means those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. Logging and timber removal operations are not to be considered a part of this definition.
- (4) "Applicant" means any person, firm, or government agency that executes the necessary forms to apply for a permit or approval to carry out construction of a project.
- (5) "Approval authority" means the entity responsible for the review and approval of erosion and sediment control plans.
- (6) "Best management practice" (BMP) means a structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding,

reduce pollution, and provide other amenities.

- (7) "Clear" means to remove the vegetative ground cover while leaving the root mat intact.
- (8) "Concept plan" means the first of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02 and shall include the information necessary to allow an initial evaluation of a proposed project.
- (9) "Department" means the MDE.
- (10) "Drainage area" means that area contributing runoff to a single point measured in a horizontal plane that is enclosed by a ridge line.
- (11) "Environmental site design" (ESD) means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.
- (12) "Erosion" means the process by which the land surface is worn away by the action of wind, water, ice, or gravity.
- (13) "Erosion and sediment control" means a system of structural and vegetative measures that minimizes soil erosion and off-site sedimentation.
- (14) "Erosion and sediment control plan" means an erosion and sediment control strategy or plan designed to minimize erosion and prevent off-site sedimentation.
- (15) "Exemption" means those land development activities that are not subject to the erosion and sediment control requirements contained in this Ordinance.
- (16) "Final erosion and sediment control plan" means, along with the final stormwater management plan, the last of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02. Final erosion and sediment control plans shall be prepared and approved in accordance with the specific requirements of the Washington County Soil Conservation District and this Ordinance and designed in accordance with the Standards and Specifications.
- (17) "Grade" means to disturb earth by, including but not limited to, excavating, filling, stockpiling, grubbing, removing root mat or topsoil, or any combination thereof.
- (18) "Grading unit" means the maximum contiguous area allowed to be graded at a given time. For the purposes of this Ordinance, a grading unit is 20 acres or less.
- (19) "Highly erodible soils" means those soils with a slope greater than 15 percent or those soils with a soil erodability factor, K, greater than 0.35 and with slopes greater than 5 percent.

- (20) "Inspection agency" means the Administration or, if delegated enforcement authority, City of Hagerstown.
- (21) "Maximum extent practicable" (MEP) means designing stormwater management systems so that all reasonable opportunities for using ESD planning techniques and treatment practices are exhausted and only where absolutely necessary is a structural BMP implemented.
- (22) "Owner/Developer" means a person undertaking, or for whose benefit, activities covered by this Ordinance are carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.
- (23) "Permittee" means any person to whom a building or grading permit has been issued.
- (24) "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.
- (25) "Responsible personnel" means any foreman, superintendent, or project engineer who is in charge of on-site clearing and grading operations or the implementation and maintenance of an erosion and sediment control plan.
- (26) "Sediment" means soils or other surficial materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.
- (27) "Site" means any tract, lot, or parcel of land, or combination of tracts, lots or parcels of land that are in one ownership, or are contiguous and in diverse ownership, where development is to be performed as part of a unit, subdivision, or project.
- (28) "Site development plan" means the second of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02. A site development plan shall include the information necessary to allow a detailed evaluation of a proposed project.
- (29) "Stabilization" means the protection of exposed soils from erosion by the application of seed and mulch, seed and matting, sod, other vegetative measures, and/or structural means.
- (30) "Standards and Specifications" means the "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control" or any subsequent revisions.
- (31) "Stormwater" means water that originates from a precipitation event.

- (32) "Stormwater management system" means natural areas, ESD practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates, or discharges from a site.
- (33) "Variance" means the modification of the minimum erosion and sediment control requirements for exceptional circumstances such that strict adherence to the requirements would result in unnecessary hardship and not fulfill the intent of this Ordinance.
- (34) "Watershed" means the total drainage area contributing runoff to a single point.

209-3 SCOPE

No person shall disturb land without implementing soil erosion and sediment controls in accordance with the requirements of this Ordinance and the Standards and Specifications except as provided within this section.

209-4 EXEMPTIONS

The following activities are exempt from the provisions of this Ordinance:

- A. Agricultural land management practices and agricultural BMPs;
- B. Clearing or grading activities that disturb less than 5,000 square feet of land area and disturb less than 100 cubic yards of earth; and
- C. Clearing or grading activities that are subject exclusively to State approval and enforcement under State law and regulations.

209-5 VARIANCES

The Washington County Soil Conservation District may only grant a variance from the requirements of the Standards and Specifications when strict adherence will result in exceptional hardship and not fulfill the intent of this Ordinance. The owner/developer shall submit a written request for a variance to the Washington County Soil Conservation District. The request must state the specific variance sought and the reasons for the request. The Washington County Soil Conservation District shall not grant a variance unless and until sufficient information is provided describing the unique circumstances of the site to justify the variance.

209-6 REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLANS

- A. A person may not grade land without an erosion and sediment control plan approved by the Washington County Soil Conservation District.
- B. The Washington County Soil Conservation District shall review erosion and sediment control plans to determine compliance with this Ordinance and the Standards and Specifications prior to approval. In approving the plan, the Washington County Soil Conservation District may impose such conditions that may be deemed necessary to ensure compliance with the provisions of this Ordinance, COMAR 26.17.01, the Standards and Specifications, and the preservation of public health and safety.
- C. The review and approval process shall be in accordance with the comprehensive and integrated plan approval process described in the Standards and Specifications, the City of Hagerstown's Stormwater Ordinance, and the Act.
- D. At a minimum, a concept plan must include the mapping of natural resources and sensitive areas including highly erodible soils and slopes greater than 15 percent as well as information required under the City of Hagerstown's Stormwater Ordinance. These areas are to remain undisturbed or an explanation must be included with either the concept or site development plan describing enhanced protection strategies for these areas during construction.
- E. A site development plan submittal must include all concept plan information and indicate how proposed erosion and sediment control practices will be integrated with proposed stormwater management practices. The latter is to be done through a narrative and an overlay plan showing both ESD and erosion and sediment control practices. An initial sequence of construction and proposed project phasing to achieve the grading unit restriction should be submitted at this time.
- F. An applicant shall submit a final erosion and sediment control plan to the Washington County Soil Conservation District for review and approval. The plan must include all of the information required by the concept and site development plans as well as any information in section 4.2 not already submitted.
- G. A final erosion and sediment control plan shall not be considered approved without the inclusion of the signature and date of signature of the Washington County Soil Conservation District on the plan.
- H. Approved plans remain valid for two (2) years from the date of approval unless extended or renewed by the Washington County Soil Conservation District.
- I. Grandfathering of Approved Plans:

- (1) Any plans that receive final approval after January 9, 2013 must be in compliance with the requirements of this Ordinance and the Standards and Specifications.
- (2) A plan that receives final approval by January 9, 2013 may be reapproved under its existing conditions if grading activities have begun on the site by January 9, 2015, with the exception of stabilization requirements.
- (3) Stabilization practices on all sites must be in compliance with the requirements of this Ordinance and the Standards and Specifications by January 9, 2013, regardless of when an approved erosion and sediment control plan was approved.

209-7 CONTENTS OF EROSION AND SEDIMENT CONTROL PLANS

- A. An applicant is responsible for submitting erosion and sediment control plans that meet the requirements of the Washington County Soil Conservation District, this Ordinance, the City of Hagerstown's Stormwater Ordinance, the Standards and Specifications, and the Act. The plans shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation.
- B. At a minimum, applicants shall submit the following information:
 - (1) A letter of transmittal and/or application;
 - (2) Name, address, and telephone number of:
 - (a) The owner of the property where the grading is proposed;
 - (b) The developer; and
 - (c) The applicant;
 - (3) A vicinity map indicating north arrow, scale, site location, and other information necessary to easily locate the property;
 - (4) Drainage area map(s) at a 1" = 200' minimum scale showing existing, interim, and proposed topography, proposed improvements, standard symbols for proposed sediment control features, and pertinent drainage information including provisions to protect downstream areas from erosion for a minimum of 200 feet downstream or to the next conveyance system;
 - (5) The location of natural resources, wetlands, floodplains, highly erodible soils, slopes 15 percent and steeper, and any other sensitive areas;

- (6) A general description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local soil conservation district or the USDA Natural Resources Soil Conservation Service;
- (7) Proposed stormwater management practices;
- (8) Erosion and sediment control plans including:
 - (a) The existing topography and improvements as well as proposed topography and improvements at a scale between 1" = 10' and 1" = 50' with 2 foot contours or other approved contour interval. For projects with more than minor grading, interim contours may also be required;
 - (b) Scale, project and sheet title, and north arrow on each plan sheet;
 - (c) The limit of disturbance (LOD) including:
 - (i) Limit of grading (grading units, if applicable); and
 - (ii) Initial, interim, and final phases;
 - (d) The proposed grading and earth disturbance including:
 - (i) Total disturbed area;
 - (ii) Volume of cut and fill quantities; and
 - (iii) Volume of borrow and spoil quantities;
 - (e) Storm drainage features, including:
 - (i) Existing and proposed bridges, storm drains, culverts, outfalls, etc.;
 - (ii) Velocities and peak flow rates at outfalls for the two-year and ten-year frequency storm events; and
 - (iii) Site conditions around points of all surface water discharge from the site;
 - (f) Erosion and sediment control practices to minimize on-site erosion and prevent off-site sedimentation including:
 - (i) The salvage and reuse of topsoil;

- (ii) Phased construction and implementation of grading unit(s) to minimize disturbances, both in extent and duration;
- (iii) Location and type of all proposed sediment control practices;
- (iv) Design details and data for all erosion and sediment control practices; and
- (v) Specifications for temporary and permanent stabilization measures including, at a minimum:
 - 1. The “Standard Stabilization Note” on the plan stating:

“Following initial soil disturbance or re-disturbance, permanent or temporary stabilization must be completed within:

 - a. Three (3) calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes steeper than 3 horizontal to 1 vertical (3:1); and
 - b. Seven (7) calendar days as to all other disturbed or graded areas on the project site not under active grading.”
 - 2. Details for areas requiring accelerated stabilization; and
 - 3. Maintenance requirements as defined in the Standards and Specifications;
- (g) A sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization, and the various stages or phases of earth disturbance and construction. Any changes or revisions to the sequence of construction must be approved by the Washington County Soil Conservation District prior to proceeding with construction. The sequence of construction, at a minimum, must include the following:
 - (i) Request for a pre-construction meeting with the appropriate enforcement authority;
 - (ii) Clearing and grubbing as necessary for the installation of perimeter controls;
 - (iii) Construction and stabilization of perimeter controls;

- (iv) Remaining clearing and grubbing within installed perimeter controls;
 - (v) Road grading;
 - (vi) Grading for the remainder of the site;
 - (vii) Utility installation and connections to existing structures;
 - (viii) Construction of buildings, roads, and other construction;
 - (ix) Final grading, landscaping, and stabilization;
 - (x) Installation of stormwater management measures;
 - (xi) Approval of the appropriate enforcement authority prior to removal of sediment controls; and
 - (xii) Removal of controls and stabilization of areas that are disturbed by removal of sediment controls.
- (h) A statement requiring the owner/developer or representative to contact the MDE or its agent at the following stages of the project or in accordance with the approved erosion and sediment control plan, grading permit, or building permit:
- (i) Prior to the start of earth disturbance;
 - (ii) Upon completion of the installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading;
 - (iii) Prior to the start of another phase of construction or opening of another grading unit; and
 - (iv) Prior to the removal of sediment control practices;
- (i) Certification by the owner/developer that any clearing, grading, construction, or development will be done pursuant to the approved erosion and sediment control plan. The certification must also require that the responsible personnel involved in the construction project have a Certificate of Training at an MDE approved training program for the control of erosion and sediment prior to beginning the project. The Certificate of Training for Responsible Personnel may be waived by the Washington County Soil Conservation District on any project involving

four or fewer residential lots. Additionally, the owner/developer shall allow right of entry for periodic on-site evaluation by the Washington County Soil Conservation District, the City of Hagerstown, and/or MDE; and

- (j) Certification by a professional engineer, land surveyor, landscape architect, architect, or forester (for forest harvest operations only) registered in the State that the plans have been designed in accordance with erosion and sediment control laws, regulations, and standards, if required by the Washington County Soil Conservation District or the Administration.
- (9) Any additional information or data deemed appropriate by the Washington County Soil Conservation District.

209-8 MODIFICATIONS TO EROSION AND SEDIMENT CONTROL PLANS

- A. The Washington County Soil Conservation District may revise approved plans as necessary. Modifications may be requested by the owner/developer, the inspection agency, or the City of Hagerstown in accordance with COMAR 26.17.01.09(H) Plan Modifications.
- B. The Washington County Soil Conservation District may develop a list of minor modifications that may be approved as field revisions by the inspection agency. The Administration must approve any list of minor modifications prior to its implementation.

209-9 STANDARD EROSION AND SEDIMENT CONTROL PLAN

- A. The Washington County Soil Conservation District may adopt a standard erosion and sediment control plan for activities with minor earth disturbances, such as single-family residences, small commercial and other similar building sites, minor maintenance grading, and minor utility construction.
- B. A standard erosion and sediment control plan must meet the requirements of this Ordinance and the Standards and Specifications.
- C. MDE shall review and approve a standard plan prior to its adoption.

209-10 PERMIT REQUIREMENTS

Before a grading or building permit for any site is issued by the City of Hagerstown, the Washington County Soil Conservation District must review and approve an erosion and sediment control plan for the site.

209-11 PERMIT EXPIRATION AND RENEWAL

The building or grading permit shall expire two (2) years from the date of issuance unless extended or renewed by City of Hagerstown. Application for permit renewal shall be made at least two (2) months prior to the permit expiration date.

209-12 PERMIT FEE

A permit fee schedule may be established by the City of Hagerstown for the administration and management of the erosion and sediment control program. Capital improvement projects, refuse disposal areas, sanitary landfills, and public works projects may be exempt from this permit fee.

209-13 PERMIT SUSPENSION AND REVOCATION

The City of Hagerstown may suspend or revoke any grading or building permits after providing written notification to the permittee based on any of the following reasons:

- A. Any violation(s) of the terms or conditions of the approved erosion and sediment control plan or permits;
- B. Noncompliance with violation notice(s) or stop work order(s);
- C. Changes in site characteristics upon which plan approval and permit issuance were based;
or
- D. Any violation(s) of this Ordinance or any rules and regulations adopted under it.

209-14 PERMIT CONDITIONS

In issuing a grading or building permit, the City of Hagerstown may impose such conditions that may be deemed necessary to ensure compliance with the provisions of this Ordinance or the preservation of the public health and safety.

209-15 PERFORMANCE BOND

When deemed necessary by the City of Hagerstown, the owner/developer shall furnish a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the City of Hagerstown. The bond amount should be equal to at least the cost of the installation, maintenance, and removal of the erosion and sediment controls shown on the approved plan.

209-16 INSPECTION

The Administration is responsible for the inspection and enforcement of all land disturbing activities, including those sites requiring an erosion and sediment control plan as specified by this Ordinance. This enforcement authority may be delegated to City of Hagerstown through a request by City of Hagerstown or required as a condition of a National Pollutant Discharge Elimination System (NDPES) municipal separate storm sewer system permit. This section applies to the Administration, or, City of Hagerstown, if delegated enforcement authority.

209-17 INSPECTION FREQUENCY AND REPORTS

- A. The owner/developer shall maintain a copy of the approved erosion and sediment control plan on site.
- B. Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on average once every two (2) weeks.
- C. A written report shall be prepared by the inspection agency after every inspection. The report shall describe:
 - (1) The date and location of the site inspection;
 - (2) Whether the approved plan has been properly implemented and maintained;
 - (3) Practice deficiencies or erosion and sediment control plan deficiencies;
 - (4) If a violation exists, the type of enforcement action taken; and
 - (5) If applicable, a description of any modifications to the plan.
- D. The inspection agency shall notify the on-site personnel or the owner/developer in writing when violations are observed, describing:
 - (1) The nature of the violation;
 - (2) The required corrective action; and
 - (3) The time period in which to have the violation corrected.

209-18 RIGHT OF ENTRY

It shall be a condition of every grading or building permit that the inspection agency has the right to enter property periodically to inspect for compliance with the approved plan and this Ordinance.

209-19 COMPLAINTS

The inspection agency shall accept and investigate complaints regarding erosion and sediment control concerns from any interested parties and:

- A. Conduct an initial investigation within three (3) working days from receipt of the complaint;
- B. Notify the complainant of the initial investigation and findings within seven (7) days from receipt of the complaint; and
- C. Take appropriate action when violations are discovered during the course of the complaint investigation.

209-20 ENFORCEMENT

- A. The inspection agency shall, through the authority of this Ordinance and COMAR 26.17.01 use enforcement action when erosion and sediment control violations occur.
- B. Enforcement actions may include, but are not limited to:
 - (1) Issuance of a corrective action order;
 - (2) Issuance of a stop work order, the extent of which is determined by the inspection agency;
 - (3) Issuance of a penalty or fine as allowed; and
 - (4) Referral for legal action.
- C. The City of Hagerstown may deny the issuance of any permits to an applicant when it determines that the applicant is not in compliance with the provisions of a building or grading permit or approved erosion and sediment control plan.
- D. The inspection agency shall stop work on a site where land disturbance is occurring without an approved erosion and sediment control plan. Measures shall be required to be implemented to prevent off-site sedimentation.

209-21 SEVERABILITY

If any portion, section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance, it being the intent of the City of Hagerstown that this Ordinance shall stand, notwithstanding the invalidity of any portion, section, subsection, sentence, clause, or phrase, hereof.

209-22 PENALTIES

- A. Any person who violates any provision of this Ordinance is guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding one year or both for each violation with costs imposed in the discretion of the court. Each day upon which the violation occurs constitutes a separate offense.
- B. Any agency whose approval is required under this Ordinance or any interested person may seek an injunction against any person who violates or threatens to violate any provision of this Ordinance.
- C. In addition to any other sanction under this Ordinance, a person who fails to install or to maintain erosion and sediment controls in accordance with an approved plan shall be liable to the City of Hagerstown or the State in a civil action, for damages in an amount equal to double the cost of installing or maintaining the controls.
- D. Any governing authority that recovers damages in accordance with this subsection shall deposit them in a special fund, to be used solely for:
 - (1) Correcting to the extent possible the failure to implement or maintain erosion and sediment controls; and
 - (2) Administration of the sediment control program.

209-23 EFFECTIVE DATE

And be it further enacted, that this Ordinance shall take effect thirty (30) days from the date it becomes enacted.