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DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
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October 16, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

**Public Hearing and First Reading of an Ordinance Adopting Clackamas County Code Chapter 9.04,
Erosion Prevention and Sediment Control. No County General Funds are involved.**

Previous Board Action/Review	Policy Session - September 30, 2025		
Performance Clackamas	1. Healthy people		
Counsel Review	Yes	Procurement Review	No
Contact Person	Matt Rozzell	Contact Phone	503-742-4744

EXECUTIVE SUMMARY: The attached ordinance adopting Clackamas County Code Chapter 9.04 would authorize the Department of Transportation and Development's (DTD's) Building Codes Program to implement and administer erosion prevention and sediment control requirements in unincorporated areas of the county, outside cities, and districts.

The Willamette River and many of its tributaries do not currently meet water quality standards for mercury and are included on Oregon's list of impaired waters under the Federal Clean Water Act (CWA). The major pathways for mercury to enter waterways are erosion of sediment-bound mercury and surface runoff where soil is disturbed through clearing, grading, and excavation related to development activity.

To address mercury in the Willamette River Basin and comply with the CWA, the Oregon Department of Environmental Quality (DEQ) developed a Willamette Basin Mercury Total Maximum Daily Load (TMDL) and associated Water Quality Management Plan (WQMP). As required by these regulations, the County, along with Water Environment Services (WES) and the cities of Rivergrove and Happy Valley, prepared a TMDL Implementation Plan (IP) to incorporate strategies to reduce mercury pollution.

The County's most recent TMDL IP was approved by DEQ in May 2025 and includes a requirement for the County to implement erosion control permitting, inspections, and enforcement in rural (unincorporated) areas where the County has jurisdiction over development activities. As DTD's Building Codes Program is responsible for managing development activity within Clackamas County's rural (unincorporated) areas, through Chapter 9.04, the Building Codes Program would implement and perform the work required by the TMDL IP through its existing permitting programs.

Proposed Erosion Control Requirements

Under Chapter 9.04, work that falls within the following thresholds would require erosion prevention and sediment control (EPSC) permits through the Building Codes Program:

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- Construction activities including clearing, grading, and excavation that will disturb 1/2 acre (21,780 sq. ft.) or more.
- Construction activities including clearing, grading, and excavation that will disturb less than 1/2 acre but are part of a common plan of development or sale that will ultimately disturb 1/2 acre or more.
- Construction activities including clearing, grading, and excavation that will disturb 500 square feet or more within 50 feet of surface waters of the state.

All development activity within the county, which disturbs 1 acre or more, is currently required to obtain a DEQ 1200-C Construction Stormwater (Erosion Control) Permit or obtain coverage from WES under its 1200-CN Permit. As a result, these sites will not require an EPSC permit from DTD.

Chapter 9.04 outlines these provisions and authorizes the Building Codes Program to perform permitting, plan review, inspections, and enforcement of erosion prevention and sediment control requirements. To remain consistent with WES and other cities in the area that use WES standards for their erosion control requirements, Chapter 9.04 would use WES's [Erosion Prevention and Sediment Control Planning and Design Manual](#) and [Best Management Practices Drawings](#) as the guiding documents for regulating the work. Using these documents will ensure a comprehensive approach towards controlling erosion on construction sites that is consistent throughout the area.

RECOMMENDATION: Staff recommends that the Board hold this public hearing, read the attached ordinance by title only, and direct staff to schedule another public hearing and second reading on October 30, 2025.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation and Development

ATTACHMENTS:

Ordinance with Exhibit

Ordinance No. _____

**An Ordinance Adopting Clackamas County Code
Chapter 9.04, Erosion Prevention and Sediment Control**

WHEREAS, the Willamette River and many of its tributaries do not currently meet water quality standards for mercury and are included on Oregon's list of impaired waters under the Federal Clean Water Act (CWA); and

WHEREAS, the major pathways for mercury to enter waterways are erosion of sediment-bound mercury and surface runoff where soil is disturbed through clearing, grading, and excavation related to development activity; and

WHEREAS, to address mercury in the Willamette River Basin and comply with the CWA, the Oregon Department of Environmental Quality (DEQ) developed a Willamette Basin Mercury Total Maximum Daily Load (TMDL) and associated Water Quality Management Plan (WQMP); and

WHEREAS, as required by these regulations, the County, along with Water Environment Services (WES) and the cities of Rivergrove and Happy Valley, prepared a TMDL Implementation Plan (IP) to incorporate strategies to reduce mercury pollution; and

WHEREAS, the County's most recent TMDL IP includes a requirement for the County to implement erosion control permitting, inspections, and enforcement in rural (unincorporated) areas where the County has jurisdiction over development activities;

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

Section 1: Clackamas County Code Chapter 9.04, Erosion Prevention and Sediment Control, as shown on Exhibit "A," attached hereto and by this reference incorporated herein, is hereby adopted.

Section 2: This ordinance shall be effective on February 1, 2026.

ADOPTED this _____ day of _____, 2025.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Chapter 9.04

9.04 EROSION PREVENTION AND SEDIMENT CONTROL

9.04.010 Purpose

The purpose of this chapter is to minimize water pollution and safeguard the health of local waterways, public storm drainage systems, and adjoining properties by minimizing the amount of sediment, construction waste, and other pollutants reaching the surface water management system as a result of construction, grading, excavating, clearing, and any other activity which causes or accelerates erosion, and by minimizing the disturbance of existing vegetation.

The purpose of this chapter is also to implement the requirements of the Clean Water Act, the U.S. Environmental Protection Agency Total Maximum Daily Load (TMDL) for Mercury in the Willamette Basin, the Oregon Department of Environmental Quality Water Quality Management Plan, and the Non-Point Source TMDL Implementation Plan for the Tualatin, Willamette, Molalla-Pudding, and Sandy River Watersheds.

[Codified by Ord. _____]

9.04.020 Scope

This chapter sets forth rules and regulations to control sediment and prevent erosion caused by development activities performed on private property located within Clackamas County, and which is not within the jurisdiction of the Oregon Department of Environmental Quality, other state agencies, a municipality, or a surface water district which regulates erosion prevention and sediment control.

[Codified by Ord. _____]

9.04.030 Definitions

When used in this chapter, the following terms, phrases, words, and their derivatives shall have the meanings ascribed to them below. Terms that are not defined below shall have the ordinary accepted meanings that are appropriate to their context. Words used in the singular include the plural, and those used in the plural include the singular.

- A. Building Official. The Clackamas County Building Official, as defined in Section 9.02.030, or their deputies or designees.
- B. Erosion. The visual or measurable movement of soil particles resulting from the flow of, or pressure from, water, wind, or earth movement.
- C. Sediment. Any material that is in suspension, is being transported, or has been moved from its site of origin by water, wind, or gravity as a product of erosion.

[Codified by Ord. _____]

9.04.040 Measures During Construction

- A. For all construction projects, regardless of whether a permit is required under this chapter, the property owner or their representative shall properly install, operate, and

maintain both temporary and permanent measures to lessen the adverse effects of erosion and sedimentation, and to protect the environment, adjacent properties, and the public storm system during the useful life of the project. Such measures shall be in accordance with the current edition of the Erosion Prevention and Sediment Control Planning and Design Manual published by Water Environment Services, unless specifically authorized by the Building Official. No visible or measurable erosion shall leave the property during construction or other activity. The property owner, together with any person who takes any action from which visible or measurable erosion occurs, shall be responsible for cleanup, fines, and damages. Cleanup responsibilities include cleaning up the storm system, creeks, drainage ways, wetlands, or rights-of-way impacted by the project. For the purpose of this section, "visible and measurable erosion" includes, but is not limited to, the following:

- a. Deposits of mud, dirt, sediment, construction waste such as concrete washout debris or saw cutting slurry, construction materials such as rocks or asphalt, or similar material on public or private streets, on adjacent property, or into the storm and surface water system, by direct deposit, dropping, or discharge, or as a result of erosion or construction activity.
 - b. Evidence of concentrated flows of water over bare soils, turbid or sediment-laden flows, or on-site erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.
 - c. Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.
- B. Dust and other particulate matters containing pollutants have the potential to settle on property and be carried to waters of the state through rainfall or other means. Dust shall be minimized to the extent practicable.
- C. Maintenance and repair of existing erosion prevention and sediment control facilities shall be the responsibility of the property owner.

[Codified by Ord. _____]

9.04.050 Erosion Prevention and Sediment Control Permit

- A. An erosion prevention and sediment control permit (EPSC Permit) is required for the following:
- a. Construction activities including clearing, grading, and excavation that will disturb 1/2 acre (21,780 square feet) or more and may discharge to surface waters or conveyance systems leading to surface waters of the state.
 - b. Construction activities including clearing, grading, and excavation that will disturb less than 1/2 acre but that are part of a common plan of development or sale that will ultimately disturb 1/2 acre or more and may discharge to surface waters or conveyance systems leading to surface waters of the state.
 - c. Construction activities including clearing, grading, and excavation that will disturb 500 square feet or more within 50 feet of surface waters of the state.
- B. Obtaining an EPSC Permit is required prior to the following, whichever comes first:
- a. Issuance of grading permits, building permits, construction plans and other applicable development permits.
 - b. The construction activities in subsection (A) of this section.

- C. Applications, plans, and permits under this chapter shall expire in accordance with Section 9.02.270.
- D. The following activities are exempt from this chapter:
 - a. Farming practices, as defined in ORS 30.930.
 - b. Development activities performed as part of stream or habitat improvements under the direction of another governmental agency.
 - c. Home gardening.

[Codified by Ord. _____]

9.04.060 Erosion Prevention and Sediment Control Plan

Prior to approval of an EPSC Permit, the applicant shall submit an erosion prevention and sediment control plan (EPSC Plan) for review and approval. The EPSC Plan shall contain a list and description of the measures to be used during construction to limit soil erosion and control sediment (EPSC Measures). The EPSC Measures shall be in accordance with the current edition of the Erosion Prevention and Sediment Control Planning and Design Manual published by Water Environment Services, unless specifically authorized by the Building Official. The EPSC Plan shall include an explanation of why the EPSC Measures are adequate to ensure that siltation and pollutants from the grading, site clearing, or construction are contained onsite during the period of activity on the site until the final landscaping is sufficiently established to control erosion.

[Codified by Ord. _____]

9.04.070 Review of Plans and Issuance of Permits

The application, plans, specifications, computations, and other data filed by an applicant for an EPSC Permit shall be reviewed by the Building Official. Such plans may be reviewed by other departments and programs of Clackamas County to verify compliance with any applicable laws and ordinances. If the Building Official finds that the work described in an application for an EPSC Permit and the plans, specifications, computations, and other data filed therewith conform to the requirements of this chapter and other applicable laws and ordinances, and that the fees have been paid, the Building Official shall issue an EPSC Permit to the applicant. When the Building Official issues an EPSC Permit for which plans and specifications are required, the Building Official shall endorse in writing or stamp the plans and specifications. Such approved plans and specifications shall not be changed, modified, or altered without authorization from the Building Official, and all work regulated by this chapter shall be done in accordance with the approved plans and specifications.

[Codified by Ord. _____]

9.04.080 Maintenance and Amendment of Inadequate Measures

The permittee shall implement and maintain all EPSC Measures required by an approved EPSC Plan to ensure their continued effectiveness during construction or other permitted activity until the completion of the project. The Building Official may allow for the removal of EPSC Measures at an earlier date if erosion control is assured by established landscaping and approved by the Building Official.

If the EPSC Measures approved in an EPSC Plan are not effective or sufficient as determined by the Building Official, the permittee shall submit a revised EPSC Plan within three (3) working days of written notification. In cases where erosion is occurring, the Building Official may require the permittee to immediately implement interim control measures. If approved, the permittee shall immediately implement the revised EPSC Plan. The permittee shall also immediately remove any eroded sediment carried or tracked onto pavement surfaces or off-site areas, or into the surface water management system such as storm drain inlets, pipes, ditches, culverts, stream corridors, wetlands, or other water bodies. Sediment shall be removed from wetlands, vegetated swales, stream corridors, and other water bodies in accordance with the Rules and Regulations adopted by Water Environment Services and other applicable laws and ordinances.

[Codified by Ord. _____]

9.04.090 Inspection

The EPSC Measures shall be installed by the property owner or their representative and shall be inspected and approved by the Building Official prior to the start of any excavation work or at the time of the footing or foundation inspection. The permittee or their representative shall be responsible for inspecting and monitoring the EPSC Measures during the project and keeping records of their inspection. These records shall be made available to the Building Official upon request. The Building Official may inspect the development site to determine compliance with the EPSC Plan and EPSC Permit at any time during the construction of the project. The development site must satisfactorily pass a final erosion control inspection prior to approval of the Certificate of Occupancy.

The Building Official is hereby authorized to make any such inspections and take such actions as may be required to enforce the provisions of this chapter.

[Codified by Ord. _____]

9.04.100 Fees

Fees are as set forth in Appendix A, “DTD – Building Codes Division.”

[Codified by Ord. _____]