

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: September 30, 2025 **Approx. Start Time:** 11:30AM **Approx. Length:** 30 minutes

Presentation Title: New Erosion Control State Requirements and Proposed Code Change

Department: Department of Transportation and Development (DTD)

Presenters: Dan Johnson, DTD Director; Cheryl Bell, DTD Assistant Director

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Board approval of a new County Code chapter to implement a state-required erosion prevention and sediment control program for unincorporated Clackamas County.

EXECUTIVE SUMMARY:

The purpose of this Policy Session is to propose County Code Chapter 9.04, which if approved will allow DTD's Building Codes Program to implement and administer erosion prevention and sediment control requirements in unincorporated areas of the county. Approval of Chapter 9.04 would allow staff to continue program implementation. As part of implementation, **staff will request a new fee for the program as part of the annual fee and fine approval process in early 2026.** Any new fees will be full cost recovery to fund the program.

Background

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 Clean Water Act. The major pathway for mercury to enter waterways is erosion of sediment-bound mercury and surface runoff as a result of disturbing soil for clearing, grading and excavation. For each impaired waterbody, the state must develop a Total Maximum Daily Load (TMDL) program. A TMDL is a technical plan that calculates the maximum amount of pollutants a waterbody can receive while still meeting water quality standards.

To address mercury in the Willamette River basin, the Oregon Department of Environmental Quality (DEQ) first completed a *Willamette Basin Mercury Total Maximum Daily Load (TMDL)* and associated *Water Quality Management Plan (Plan)* in 2006 (background on the TMDL, Plan and associated statutes is provided in Attachment 1).

In March 2021 Clackamas County was notified that as a Designated Management Agency (DMA) it was required under OAR 340-42-0080 to prepare a TMDL implementation plan to incorporate strategies to reduce mercury pollution. In response to this requirement, Clackamas County along with Water Environment Services (WES), and the cities of Rivergrove and Happy Valley, combined their required TMDL implementation plans into one Plan.

The most recent Plan was approved by DEQ in May 2025, and included a requirement for the County to implement erosion control permitting, inspections and enforcement in the 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, the Building Codes Program is proposing to implement and perform the work required by the TMDL Plan through its existing permitting programs.

Proposed Erosion Control Requirements

To comply with the requirements imposed by DEQ, County Code Chapter 9.04 proposes for the Building Codes Program to regulate erosion control within the unincorporated County outside cities and districts, for work that falls within the following thresholds:

- Construction activities including clearing, grading & excavation that will disturb ½ acre (21,780sq. ft.) or more.
- Construction activities including clearing, grading & excavation that will disturb less than ½ 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 & excavation that will disturb 500 square feet or more within 50 feet of surface waters of the state.
- All development activity within Clackamas County which disturbs 1 acre or greater is currently required to obtain a DEQ 1200-C Construction Stormwater (Erosion Control) Permit or obtain coverage from WES under their 1200-CN Permit, as a result, these sites will not require an erosion control permit from DTD.

These thresholds are very specific, currently staff is estimating they may apply to no more than 10-20 projects annually.

Proposed new County Code Chapter 9.04 outlines these provisions and gives Clackamas County Building Codes the authority to perform permitting, review, inspections and enforcement of erosion prevention and sediment control. To remain consistent with WES and other cities in the area that use WES standards for their erosion control work, the proposed Chapter 9.04 uses the WES [Erosion Prevention and Sediment Control Planning and Design Manual](#) and [Best Management Practices Drawings](#) as the guiding documents for regulating the work. Using these common documents will provide a comprehensive approach towards controlling erosion on construction sites that is consistent throughout the area.

Operations

DTD Building Codes is proposing to operate the DEQ required erosion control program, which offers efficiency and cost savings as new staff do not need to be hired, and new materials, software, and vehicles are not needed to launch the erosion control program. Additionally, having Building Code inspectors incorporate performance of erosion control inspections into existing site visits lower the number of trips required to provide inspections, and offers streamlined inspection services to our customers.

Future Fee Proposal

Under ORS 455.210 and OAR 918-020-0080, state rules require maintaining building code revenue in a dedicated fund, with revenue from state building code related activities only used for performing the work of enforcing these codes. Due to these rules and to ensure consistency with County Policy FIN # 1.100, a new fee will be requested as a part of the annual fee and fine approval process in early 2026.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? ☐ YES ☒ NO

What is the cost? \$ **N/A**

What is the funding source? **Future Fees for Service**

This is a new program that will impact a limited number of properties. Preliminary estimates for the administration of this program are likely not to exceed \$10,000.

DTD is happy to provide a report after completion of the first year of the program.

No County General Funds will be involved. Any new fees will be full cost recovery to fund the program.

STRATEGIC PLAN ALIGNMENT:

- **How does this item align with your Department's Strategic Business Plan goals?**
Our Departmental and Program mission includes providing planning, property information and permitting services to residents, property owners, the development community and businesses so they can experience a safe, thriving and well-planned community, make informed decisions, invest and develop property.
- **How does this item align with the County's Performance Clackamas goals?**
Healthy People – The proposed Chapter 9.04 would reduce erosion and sediment that deposits mercury into state waters.

LEGAL/POLICY REQUIREMENTS:

Requirement for the Expansion of Erosion Prevention and Sediment Control Permitting and Inspection Services

DEQ is the Oregon state agency responsible for implementing the Clean Water Act in Oregon. The Clean Water Act allows for the delegation of responsibility for many Clean Water Act programs to states, which in Oregon is administered by Oregon Environmental Quality Commission through Oregon Revised Statute. The Commission granted the DEQ Director authority to develop TMDLs and issue them as orders (Oregon Administrative Rule 340-042-0060).

Failure to comply with the rule is a violation under OAR 340-012-0053(2). If found in violation the matter could be referred to the DEQ Office of Compliance and Enforcement for formal enforcement action, including the assessment of civil penalties and/or a Department Order. Civil penalties could be assessed for each day of violation. Additionally, the County could be at risk of third-party liability under the clean water act if the County cannot demonstrate a program that requires erosion control through building and grading permits.

Requirements for County Adoption Process

The legal requirements for adoption of the proposed Chapter 9.04 are approval by the Board at two business meetings at least thirteen (13) days apart, at which point the amendments shall take effect 90 days after the second approval, unless an emergency is declared and the Board establishes an earlier effective date. The Department of Transportation and Development has requested that the changes are effective **January 5, 2026**.

Upon adoption by the Board, DTD may choose to adopt policies, procedures, and/or practices pertaining to implementation of the Code amendments.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The Clackamas County Building Codes program has worked closely with Water Environment Services to ensure consistency in erosion control requirements to provide predictability for homeowners, contractors and developers. Clackamas DTD will be utilizing the WES Erosion Prevention and Sediment Control Planning and Design Manual as well as the Best Management Practices Drawings. Water Environment Services has reviewed the proposed language code to ensure it complies with the TMDL requirements.

Prior to the new erosion control measures being required for development, DTD will prepare a website and other public outreach materials to assist customers in obtaining the necessary permits and understanding the requirements.

OPTIONS:

1. Direct staff to schedule the first required public hearing on the addition of Chapter 9.04 to County Code.
2. Provide alternate direction on the addition of Chapter 9.04 to County Code.
3. Take no action at this time.

RECOMMENDATION:

Staff recommends Option 1: Direct staff to schedule the first required public hearing on the addition of Chapter 9.04 to County Code.

ATTACHMENTS:

1. Background on DEQ TMDL and Associated Water Quality Management Plan
2. Proposed County Code 9.04

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Matt Rozzell @ 503-742-4744
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Background: The *Willamette Basin Mercury Total Maximum Daily Load (TMDL)* and *Associated Water Quality Management Plan (Plan)*

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 Clean Water Act. Fish consumption advisories for mercury are in place throughout the Willamette Basin. The major pathways for mercury to enter waterways are erosion of sediment-bound mercury and surface runoff. Of the many different types of land uses that exist within the Willamette Basin, forestry, agriculture and urban uses comprise most of the area within the basin. Management actions on these land uses influence the amount of mercury from these sources that reach streams and rivers in the basin.

The Oregon Department of Environmental Quality (DEQ) first completed a ***Willamette Basin Mercury Total Maximum Daily Load (TMDL)*** and associated ***Water Quality Management Plan (Plan)*** in 2006. In 2019 the DEQ and the EPA worked together to revise the 2006 Plan to meet the fish tissue methylmercury criterion adopted by Oregon in 2011. The Water Quality Management Plan describes DEQ's plan for implementing actions to reduce mercury in fish tissue. Mercury minimization measures must be applied for both point and nonpoint source activities, with primary focus on reducing runoff and erosion from nonpoint source activities and urban stormwater.

Clackamas County received a letter in March 2021 providing notification that as a Designated Management Agency (DMA) it is responsible for implementing strategies to reduce mercury according to requirements outlined in the Water Quality Management Plan that are specific to the county. OAR 340-042-0030(2) defines Designated Management Agency as a federal, state, or local governmental agency that has legal authority over a sector or source contributing pollutants and is identified as such by DEQ in a TMDL.

As a DMA, Clackamas County is required under OAR 340-42-0080 to prepare a TMDL implementation plan to incorporate strategies to reduce nonpoint source pollutant loadings for mercury. Clackamas County along with Water Environment Services, Rivergrove, and Happy Valley (also DMAs) combine their required TMDL implementation plans into one Plan. The most recent plan was approved by DEQ in May 2025 where DEQ concluded that the Plan contains sufficient actions and policies for reducing TMDL pollutants into surface waters within the jurisdiction of the parties.

A required management strategy for counties under the Water Quality Management Plan includes erosion control. Clackamas County and WES meet some of these requirements through stormwater management activities in the urban area. However, the county is also required to implement erosion control strategies outside of the urban area where it has jurisdiction over development activities. The county must incorporate erosion control requirements into county building and grading permit applications, specifically to include in building and grading permits language that requires erosion, sediment and waste material management controls to be used and maintained at construction sites from initial clearing through final site stabilization. The county must be able to, through an ordinance or other regulatory mechanism, be able to pursue enforcement and technical assistance, as appropriate, at construction sites where pollutants could discharge to waters of the state, either directly to stream or through a public conveyance system.

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 county may issue a stop work order under Section 9.02.110 to address any visible or measurable erosion. 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 though 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. _____]