

1224.09 LAND DISTURBANCE PERMIT.

(1) Purpose.

(A) The purpose of this section is to establish a procedure to review grading and clearing activities within the City to ensure the promotion of the public health, safety, comfort, and general welfare of the citizens of the City. This permit and review procedure also helps to eliminate the unnecessary clearing of trees and vegetation so as to maintain them as long as possible in order to preserve the benefits associated with their existence. Regulating grading and clearing activities will also assure that adequate provisions are made for the prevention of surface erosion and pollution of water resources prior to the grading of land.

(B) This Chapter will:

- 1.) Allow development while minimizing increases in erosion and sedimentation.
- 2.) Reduce water quality impacts to receiving water resources and wetland that may be caused by new development or redevelopment activities.

(2) Applicability. No clearing and/or grading activities shall be commenced within the City without first obtaining a land disturbance permit from the Planning Department. This regulation requires that a Storm Water Pollution Prevention Plan (SWP3) be developed and implemented for all parcels disturbing one acre or more of land and an Abbreviated SWP3 shall be submitted for the following activities:

- (A) Residential construction disturbing less than one acre and within a larger common plan of development.
- (B) All non-residential construction disturbing less than one acre.

Activities disturbing 1/10th (one tenth) or less of an acre are not required to submit a Storm Water Pollution Prevention Plan or an Abbreviated Storm Water Pollution Prevention Plan, unless required by the City. These activities must comply with all other provisions of this regulation.

(3) Initiation. Pursuant to Subsection 1224.03(1): Authority to File Applications, any person having authority to file applications may initiate an application for a land disturbance permit.

(4) Procedure.

(A) Step 1 - Application.

- 1.) An application for a land disturbance permit shall comply with the provisions of Section 1224.03: Common Application Requirements.
- 2.) An application for a land disturbance permit shall be submitted a minimum of thirty days prior to commencement of the clearing and/or grading activities.
- 3.) An application for a land disturbance permit shall include either a storm water pollution prevention plan (SWP3) or an Abbreviated SWP3, as appropriate and as outlined below:
 - a) The applicant shall submit two sets of the SWP3 and the applicable fees to the Planning Department and two sets of the SWP3 and the applicable fees to the Summit Soil and Water Conservation District (Summit SWCD); or
 - b) The applicant shall submit two sets of the abbreviated SWP3 to the Planning Department (there shall be no fee for an Abbreviated SWP3).

(B) Step 2 - Planning Department and Applicable Agency Review and Decision or Staff Report.

Storm Water Pollution Prevention Plan

- 1.) Submitted plans must be reviewed and approved by the Planning Department, the Summit Soil and Water Conservation District, and any other applicable City department.
- 2.) Within thirty days after the application (Step 1) is determined to be complete, the Planning Department shall review the application and approve, approve with conditions, or deny the land disturbance permit based on the approval criteria established in

subsection (5), below.

3.) All comments from the City and other review agencies shall be provided to the Planning Department for transmission of comments to the applicant. The applicant shall be required to revise all applicable plans and resubmit such revised plans to the Planning Department prior to the issuance of a land disturbance permit.

Abbreviated Storm Water Pollution Prevention Plan

1.) Submitted plans must be reviewed and approved by the Planning Department or any other applicable City department.

2.) Within ten days after the application (Step 1) is determined to be complete, the Planning Department shall review the application and approve, approve with conditions, or deny the land disturbance permit based on the approval criteria established in Subsection (5), below.

3.) All comments from the City and other review agencies shall be provided to the Planning Department for transmission of comments to the applicant. The applicant shall be required to revise all applicable plans and resubmit such revised plans to the Planning Department prior to the issuance of a land disturbance permit.

(C) Step 3 - Notification. The land disturbance permit holder shall agree to notify the city and, if applicable, the Summit Soil and Water Conservation District a minimum of forty-eight hours before commencing with permitted clearing and/or grading activities.

(5) Approval Criteria. In order to approve a land disturbance permit, the Planning Department shall use the following review criteria:

(A) Compliance with applicable provisions of this Code; and

(B) Conformance with current NPDES permit requirements.

(C) No land disturbance permit shall be issued until a SWP3 or Abbreviated SWP3 has been approved by the Summit Soil and Water Conservation District and/or appropriate City Departments.

(D) All current best management practices (BMP's) are considered to control erosion and sediment and a plan for implementation of such practices is approved by the Summit Soil and/or Water Conservation District and appropriate City departments.

(E) A land disturbance permit shall not be approved without a drafted storm water management maintenance agreement (not applicable to sites submitting an Abbreviated SWP3). The Storm Water Management Maintenance Agreement shall be executed upon completion of construction. The post construction water quality practices must be maintained in perpetuity by those parties identified in the Storm Water Management Agreement.

(F) A pre-construction meeting was held with either the City of Green or, if required, the Summit Soil and Water Conservation District (not applicable to sites submitting an Abbreviated SWP3). The applicant, contractor and applicant's engineer should be in attendance at the pre-construction meeting.

(G) An Abbreviated SWP3 for an individual subplot in a subdivision may not be approved unless the larger common plan of development containing the subplot is in compliance with this Chapter.

(6) Storm Water Pollution Prevention Plan.

(A) The applicant shall submit a Storm Water Pollution Prevention Plan (SWP3) consistent with the requirements the most recent Ohio EPA NPDES General Construction Permit. For specific requirements of a SWP3 the designer shall refer to the NPDES Ohio general construction permit and the Summit SWCD/OEPA SWP3 Check List. The SWP3 must address erosion and sediment control during construction as well as post construction water quality and water quality volume practices. Post construction practices must meet the requirements of the current NPDES Ohio general construction permit, the Summit County Storm Water Management Manual and the Ohio Rainwater and Land Development Manual.

(B) The SWP3 shall be certified by a professional engineer, a registered surveyor, certified professional erosion and sediment control specialist, or a registered landscape architect.

(C) The SWP3 shall incorporate measures as recommended by the most current edition of the Rainwater and Land Development Manual as published by the Ohio Department of Natural Resources or other technical manuals approved by the City of Green and/or the Summit SWCD.

(D) Soils erodibility report: The Summit SWCD may require the SWP3 to include a Soils Engineering Report based upon his or her determination that the conditions of the soils are unknown or unclear to the extent that additional information is required to protect

against erosion. This report shall contain all the information listed below.

- 1.) Data regarding the nature and erodibility of existing soils.
- 2.) If applicable, data regarding the nature and erodibility of the soil to be placed on the site.
- 3.) Conclusions and recommendations for grading procedures.
- 4.) Conclusions and recommended designs for interim soil stabilization devices and measures for permanent soil stabilization after construction is completed.

(7) Compliance with Local, State, and Federal Regulations. All submittals are required to show proof of compliance with all state and federal regulations. Approvals issued in accordance with this Chapter do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from the Ohio EPA, the U.S. Army Corps of Engineers, and other federal, state, and/or county agencies. If requirements vary, the most restrictive requirement shall prevail. These permits may include, but are not limited to, those listed below.

(A) Ohio EPA NPDES Permits authorizing storm water discharges associated with construction activity or the most current version thereof: Proof of compliance with these requirements shall be the applicant's Notice of Intent (NOI) number from Ohio EPA, a copy of the Ohio EPA Director's Authorization Letter for the NPDES Permit, or a letter from the site owner certifying and explaining why the NPDES Permit is not applicable.

(B) Section 401 of the Clean Water Act: Proof of compliance shall be a copy of the Ohio EPA Water Quality Certification application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 401 of the Clean Water Act is not applicable. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter.

(C) Ohio EPA Isolated Wetland Permit: Proof of compliance shall be a copy of Ohio EPA's Isolated Wetland Permit application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Ohio EPA's Isolated Wetlands Permit is not applicable. Isolated wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter.

(D) Section 404 of the Clean Water Act: Proof of compliance shall be a copy of the U.S. Army Corps of Engineers Individual Permit application, public notice, or project approval, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include one of the following:

- 1.) A statement from a qualified wetland professional who has determined that Section 404 of the Clean Water Act is not applicable.
- 2.) A site plan showing that any proposed fill of waters of the United States conforms to the general and special conditions specified in the applicable Nationwide Permit. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter.

(E) Ohio Dam Safety Law: Proof of compliance shall be a copy of the Ohio Department of Natural Resources Division of Soil and Water Resources dam safety permit application tracking number, a copy of the project approval letter from the Ohio Department of Natural Resources Division of Soil and Water Resources, or a letter from the applicant's engineer certifying and explaining why the Ohio Dam Safety Law is not applicable.

(F) Chapter 1229.13 of the Land Development Code: Riparian Setbacks: Proof of compliance shall be a copy of the Planning Department approval letter, and/or zoning permit. Riparian setbacks must be shown on the SWP3.

(8) Performance Standards.

(A) The SWP3 must contain a description and location of all appropriate BMPs for each construction operation. Prior to the start of grading and within seven days from the start of grubbing the applicant must implement such controls. The SWP3 must clearly describe for each major construction activity the appropriate control measures; the general sequence during the construction process under which the measures will be implemented; and the person(s) responsible for implementation. The SWP3 shall be consistent with the current Ohio EPA NPDES Construction permit. No project subject to this Chapter shall commence without a SWP3 approved by the Summit SWCD. No project subject to this Chapter shall commence without a pre-construction meeting being held with the City of Green and/or the Summit SWCD. It will be the applicant's responsibility to contact the City of Green and/or the Summit SWCD.

(B) The applicant shall inform all contractors and subcontractors not otherwise defined as "operators" as defined in the Ohio EPA's NPDES Permit, who will be involved in the implementation of the SWP3 of the terms and conditions of the SWP3. The applicant shall maintain a written document containing the signatures of all contractors and subcontractors involved in the implementation of the SWP3 as proof acknowledging that they have reviewed and understand the conditions and responsibilities of the SWP3. The written document shall be created and signatures shall be obtained prior to commencement of work on the construction site. A copy shall be provided to the City of Green and the Summit SWCD prior to commencing with the project.

(C) A SWP3 must include BMP's to minimize erosion and off site sedimentation. The controls shall include the following minimum components:

1.) DURING ACTIVE CONSTRUCTION

(a) **NON-STRUCTURAL PRESERVATION MEASURES:** The applicant must make use of practices that preserve the existing natural condition to the maximum extent practicable. Such practices may include preserving riparian areas, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time, and designation of tree preservation areas or other protective clearing or grubbing practices. The requirements of Section 1229.13 Riparian Setbacks shall be followed for stream and wetland protection in addition to state and federal regulations.

(b) **EROSION CONTROL PRACTICES:** The applicant must make use of erosion controls that are capable of providing cover over 70% of disturbed soils. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, the use of construction entrances, and the use of alternative ground cover.

(c) **RUNOFF CONTROL PRACTICES:** The applicant must make use of measures that control the flow of runoff from disturbed areas so as to prevent erosion. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable.

(d) **SEDIMENT CONTROL PRACTICES:** The applicant must install structural practices that shall store runoff, allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than seven days. Such practices may include, among others: sediment settling ponds, silt fences, storm drain inlet protection, and earth diversion dikes or channels which direct runoff to a sediment settling pond. All sediment control practices must be capable of ponding or filtering runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless used in conjunction with a sediment settling pond.

(e) **NON-SEDIMENT POLLUTANT CONTROLS:** No solid or liquid waste, including building materials and concrete wash out water shall be discharged in storm water runoff. The applicant must implement site best management practices to prevent toxic materials, hazardous materials, or other debris from entering water resources or wetlands.

(f) **COMPLIANCE WITH OTHER REQUIREMENTS:** The SWP3 shall be consistent with applicable state and/or local waste disposal, sanitary sewer, or septic system regulations, including provisions prohibiting waste disposal by open burning, and shall provide for the proper disposal of contaminated soils located within the development area.

(g) **TRENCH AND GROUND WATER CONTROL:** There shall be no sediment-laden or turbid discharges to water resources or wetlands resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment-settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be treated prior to discharge. However, care must be taken when discharging ground water to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.

(h) **APPLICANT INSPECTIONS:** An initial inspection of all erosion and sediment control practices shall be conducted by a qualified individual to certify that the installations comply with the approved SWP3. All controls on the site shall be inspected by the applicant's agent at least once every seven calendar days and within twenty-four hours after any storm event greater than one-half inch of rain per twenty-four-hour period. The applicant shall assign a qualified individual to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate, or whether additional control measures are required. Internal inspections and documentation of corrective actions taken must be made available upon request.

(i) MAINTENANCE: The SWP3 shall be designed to minimize maintenance requirements. All control practices shall be maintained and repaired as needed to ensure continued performance of their intended function until final stabilization. All sediment control practices must be maintained in a functional condition until all up slope areas they control reach final stabilization. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices and shall ensure a responsible party and adequate funding to conduct this maintenance, all as determined by the City of Green and/or the Summit SWCD.

(j) FINAL STABILIZATION: All soil disturbing activities are complete and a uniform perennial vegetative cover with a density of seventy percent coverage for the area has been established on all unpaved areas and areas not covered by permanent structures. In addition, all temporary erosion and sediment control practices have been removed and disposed of in an acceptable manner.

2.) POST CONSTRUCTION WATER QUALITY PRACTICES

(a) NON-STRUCTURAL WATER QUALITY PRACTICES: Non- structural post construction best management practices include preservation, planning, or procedures that direct development away from water resources or limit creation of impervious surfaces. Practices such as conservation easements, riparian and wetland setbacks, and conservation subdivision design are all non-structural controls.

i. All non-structural water quality practices must be protected from disturbance through the construction phase of the project.

ii. All non-structural water quality practices must be protected in perpetuity through the use of appropriate legal tools. All easement or conservation areas must appear on the final plat and be disclosed to potential buyers.

(b) STRUCTURAL WATER QUALITY PRACTICES: Structural post construction best management practices are permanent features constructed to provide treatment of storm water runoff either through storage, filtration, or infiltration.

i. All structural water quality practices must be established prior to the completion of the project. Structural water quality practices should be made functional once the disturbed areas on site are stabilized. If detention/retention facilities were used for sediment control during development sediments must be removed prior to the basin being used for post construction storm water quality.

ii. All structural water quality practices must be designed to treat water quality volume using the design criteria found in the ODNR Rainwater & Land Development Manual or as otherwise approved by the City Engineer.

iii. Maintenance. The post construction water quality practice must be maintained in perpetuity by those parties identified in the SWP3 or the Storm Water Management Maintenance Agreement.

(9) Abbreviated Storm Water Pollution Prevention Plan.

(A) In order to control sediment pollution of water resources and wetland, the applicant shall submit an Abbreviated SWP3 in accordance with the requirements of this regulation.

(B) The Abbreviated SWP3 shall include a minimum of the following BMPs. The City of Green may require other BMPs as site conditions warrant.

1.) Construction Entrances: Construction entrances shall be built and shall serve as the only permitted points of ingress and egress to the development area. These entrances shall be built of a stabilized pad of aggregate stone or recycled concrete or cement sized greater than two inches in diameter, placed over a geotextile fabric, and constructed in conformance with specifications in the most recent edition of the Rainwater and Land Development Manual.

2.) Sediment Control: Silt fences shall be installed along the perimeter of the lot's down slope side(s) to trap sediment. Silt socks may be used where appropriate.

3.) Concrete Truck Wash Out: The washing of concrete material into a street, catch basin or other public facility or natural resource is prohibited. A designated area for concrete washout shall be made available.

4.) Street Sweeping: Streets directly adjacent to construction entrances and receiving traffic from the development area, shall be cleaned daily to remove sediment tracked off-site. If applicable, the catch basins on these streets nearest to the construction entrances shall be cleaned weekly.

5.) Stabilization: Any disturbed area that will be dormant for more than twenty-one days, erosion controls shall be applied within

seven days of the most recent disturbance. Any disturbed area that will be idle over winter, erosion controls shall be applied prior to November 1.

6.) Inlet Protection: Erosion and sediment control practices, such as boxed inlet protection, shall be installed to minimize sediment-laden water entering active storm drain systems. Straw or hay bales are not acceptable forms of inlet protection.

7.) Internal Inspection and Maintenance: All controls on the development area shall be inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. Maintenance shall occur as detailed in Section 10(B) of this Chapter.

8.) Final Stabilization: All soil disturbing activities are complete and a uniform perennial vegetative cover with a density of seventy percent coverage for the area has been established on all unpaved areas and areas not covered by permanent structures. In addition, all temporary erosion and sediment control practices have been removed and disposed of in an acceptable manner.

(10) Inspections.

(A) All permitted clearing and/or grading activities shall be inspected on a regular basis by appropriate City staff and/or the Summit Soil and Water Conservation District to ensure compliance with the approved SWP3.

(B) When inspections reveal the need for repair, replacement, or installation of erosion and sediment control BMPs, the following procedures shall be followed:

1.) When practices require repair or maintenance. If an inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment-settling pond, it must be repaired or maintained within three days of the inspection. Sediment settling ponds must be repaired or maintained within ten days of the inspection.

2.) When practices fail to provide their intended function. If an inspection reveals that a control practice fails to perform its intended function as detailed in the SWP3 and that another, more appropriate control practice is required, the SWP3 must be amended and the new control practice must be installed within ten days of the inspection.

3.) When practices depicted on the SWP3 are not installed. If an inspection reveals that a control practice has not been implemented in accordance with the schedule, the control practice must be implemented within ten days from the date of the inspection. If the internal inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.

(C) The Planning Department shall issue violation notices, if necessary, as determined through the inspection process. Violations shall be rectified within the period stated and the City of Green may take action as detailed in Section (14) of this Chapter.

(11) Time Limit.

(A) Work permitted by a land disturbance permit shall commence within ninety days of the permit approval or the grading and permit shall become invalid.

(B) The land disturbance permit shall also become invalid if the work is suspended or abandoned for a period of 120 days at any time after the work has commenced or one year after the date of issuance.

(C) Once a project is started it shall remain the responsibility of the permit holder to maintain all elements of an approved SWP3 or Abbreviated SWP3 until completion of the project, including any periods during which work has been suspended or after any abandonment of the work prior to completion.

(D) If a permit expires, no work may commence until a new permit is issued.

(12) Burning Prohibited. Open burning shall be prohibited for the clearing of land. All clearing must be performed by generally accepted means, unless otherwise permitted as part of the land disturbance permit review procedure.

(13) Enforcement.

(A) All development areas will be subject to inspections by the City of Green and/or Summit SWCD to ensure compliance with the approved SWP3 or Abbreviated SWP3.

(B) After each inspection the City of Green and/or the Summit SWCD may prepare and distribute a status report to the applicant.

(C) If an inspection determines that operations are being conducted in violation of the approved SWP3 or Abbreviated SWP3 the

City of Green may take action as detailed in Section 14 of this Chapter.

(14) Violations. In addition to the penalties outlined in Chapter 1230, the City will also have the ability to enforce any or all of the following penalties for violations to this chapter:

(A) If the Summit SWCD or the Planning Department determines that a violation of the rules adopted under this section exists, the Planning Department shall issue a notice of violation. If, after a period of not less than thirty days has elapsed following the issuance of the notice of violation, the violation continues, the Planning Department shall issue a second notice of violation. If, after a period of not less than fifteen days has elapsed following the issuance of the second notice of violation, the violation continues, the Mayor shall have the authority to request the Law Director to immediately institute legal action for a temporary restraining order and/or preliminary injunction against the violator to cease operations until such time that the violator proves that they are conducting operations in compliance with this Code and the approved SWP3 or Abbreviated SWP3.

(B) The City may assess a fine in the amount of one hundred dollars (\$100.00) per violation for each day a violation to this chapter exists and/or continues up to a maximum fine of ten thousand dollars (\$10,000).

(C) The Planning & Zoning Commission may deny the issuance of any further plat approvals for the property in question until the site is brought into compliance with this chapter.

(D) The Zoning Division may suspend the issuance of zoning permits and/or certificates of use and compliance within developments that are not in compliance with this chapter.

(E) The Planning Department may suspend the inspection of site improvements and/or refuse the release of bonds on developments that are not in compliance with this chapter. The City will have the right to proceed with the capture of bond funds to bring the site into compliance.

(F) An assessment may be placed on the property upon failure to maintain the storm water management maintenance agreement as outlined in the agreement.

(Ord. 2009-21. Passed 10-27-09; Ord. 2011-07. Passed 8-23-11; Ord. 2012-24. Passed 11-13-12.)