

# ENVIRONMENT COMMITTEE AGENDA

April 17, 2014 – North Conference Room

21630 11<sup>th</sup> Avenue South – Des Moines 98198

**5:00P – 6:30P**

1. Approve minutes of 2.13.2014 meeting
2. Stormwater Comprehensive Plan Elements  
(Discussion Item – 45 min)

*Parametrix/staff will discuss the results of the staff workshop concerning priorities of the SWM Utility. Item agenda and materials attached.*

3. Tree Trimming Draft Ordinance  
(Discussion Item – 20 min)

*Staff will provide an overview of the draft ordinance related to tree pruning and removal per the direction the Committee provided staff on February 13, 2014. Staff will also discuss a draft Public Assistance Memo (PAM) related to tree standards.*

4. Aquatic Lease for Des Moines Creek Basin High-flow By-Pass  
(Discussion Item – 25 min)

*Staff to brief the Committee on the Draft DNR lease issued to the Basin Committee. The existing DNR lease for the Bypass Pipeline will be expiring in October. The Des Moines Creek Committee has received a new draft lease from DNR that contains language for insurance requirements and reduction of pollutants and flows to the aquatic lands that was not included in the previous lease.*

## **DRAFT MINUTES - ENVIRONMENTAL COUNCIL COMMITTEE MEETING 2.13.2014**

The meeting was called to order @ 5:46 PM, Thursday, February 13, 2014, in the North Conference Room @ 21630 11<sup>th</sup> Avenue South, Des Moines with the following in attendance:

### **Council Members**

Dave Kaplan, Chair  
Melissa Musser  
Vic Pennington

### **City Staff**

Tony Piasecki, City Manager  
Dan Brewer, Planning, Building & PW Director  
Brandon Carver, Engineering Services Manager  
Laura Techico, Senior Planner  
Tim George, Asst City Attorney  
Nikole Coleman-Porter, City Planner II  
Peggy Volin, Admin Asst II

### **Guests**

Mitch Treese

### **AGENDA:**

1. Selection of Committee Chair
2. Approve minutes of 11.14.2013 meeting
3. Tree Trimming/Tree Clearing Discussion

### **MEETING:**

1. Selection of Committee Chair: Mayor Kaplan nominated and unanimously selected.
2. Approve minutes of the November 14, 2013 meeting: Unanimously passed.
3. Tree Trimming/Tree Clearing Discussion: Laura Techico provided a memo to the Committee that gave an overview of where we are on tree trimming, topping and removal to date. She requested confirmation from the Committee on the general description of categorical sites, and the policy direction with respect to tree trimming and removal within those categories. Also requested and received direction to proceed with the preparation of draft ordinances that will reflect the policy direction, address areas of ambiguity, remove area of contradiction and provide greater overall clarity on how the City regulates the cutting and maintenance of trees.

She outlined the next steps as: recommending amendments to the Code; adding specific terms and definitions relating to tree cutting and pruning; further clarify when a permit is or is not needed; establish a minor grading/tree review application and associated fee; establish criteria for granting a tree permit; identifying seasonal restrictions; replacement ratios that may apply; identifying federal or state requirements; updating the DMMC 18.195.130; and specific code sections that will be addressed. The final step is to prepare a Public Assistance Memo (PAM) to clarify how the City interprets the code as it relates to the removal and maintenance of trees in the City.

Meeting Adjourned @ 6:25 pm

Submitted by: Peggy Volin, Admin Asst II

DRAFT ORDINANCE NO. 14-043

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON revising and updating City of Des Moines development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 (and section 424 of Ordinance No. 1591, 2013); and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

Comment [d1]: Pending

WHEREAS, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (Chapter 12.05), Land Filing, Clearing and Grading Code (Chapter 14.20 DMMC), Environmentally Critical Areas Code (Chapter 16.10), Shoreline Master Program (Chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (Chapter 17.35), and Landscaping and Screening Requirements (Chapter 18.195 DMMC); and

WHEREAS, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees; and

WHEREAS, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and

WHEREAS, the changes proposed by this ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued by the SEPA responsible official, and published on \_\_, 2014, in the Seattle Times, and the appropriate comment period expired on \_\_, 2014, and the appeal period concluded on \_\_, 2014, and

WHEREAS, notice of the public hearing was given to the public in accordance with the law and a public hearing was held on the \_\_ day of \_\_, 2014 and all persons wishing to be heard were heard, and

**WHEREAS**, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce for a 60-day review and comment period in accordance with State law, and

**WHEREAS**, the City Council environment committee held \_\_\_\_ meetings to consider the proposed amendments and provided recommendations to the City Council of the whole, and

**WHEREAS**; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

## **TITLE 12 EDITS:**

**Sec. \_\_\_\_**. DMMC 12.05.250 Duty to maintain clean rights-of-way and section 40 of Ordinance No. 1578, 2013 are each amended to read as follows.

(1) No person shall willfully or negligently cause or allow dirt, mud, rocks, vegetation, grease, oil, or other foreign material or substance to be deposited, stored, abandoned, discharged, or spread on a public street, alley, sidewalk, walkway, trail, shoulder, or drainage ditch; provided, however, nothing contained in this chapter shall require an adjacent property owner to maintain any drainage ditch.

(2) Removal of dead, diseased or hazard trees on city right-of-way or public utility corridors is subject to approval of a right-of-way use permit.

Comment [d12]: Not sure if this is appropriate

(3) Removal or pruning of private trees on city right-of-way or public utility corridors is subject to approval of a right-of-way use permit.

Comment [d13]: Not sure if this is appropriate

(4) Removal or pruning of trees within environmentally critical areas, shoreline environments, and required landscaping

located on private or public properties are subject to approval of a land clearing, grading, and filling permit and threshold/disturbance limits established in the Environmentally Critical Area regulations (Chapter 16.10 DMMC), Shoreline Master Program (Chapter 16.20 DMMC), and Landscaping and Screening (Chapter 18.195 DMMC).

## **TITLE 14 EDITS:**

Sec. \_\_. DMMC 14.20.050 Definitions – Use of words and phrases and section 57 of Ordinance No. 1581, 2013 are each amended to read as follows.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

“Bench terrace” means an embankment or combination of an embankment and channel constructed across a slope which has a bench-like cross-section and whose purpose is to control erosion by diverting or storing surface water runoff instead of permitting it to flow uninterrupted down the slope.

“Certified arborist” means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture.

“Construction site” means a contiguous area owned and operated as one development unit upon which earth-disturbing activities are planned or underway.

“Developer” means a person engaged in constructing any street, utilities, commercial, industrial, or residential structures.

“Development activity” means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Drainage" means the removal of excess water from land either by surface or subsurface means.

"Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents including such processes as gravitational creep, detachment, and movement of soil or rock fragments by water, wind, ice, or gravity.

"Excavation" or "cut" means the physical manmade removal of earth material.

"Existing grade" means the vertical location of the existing ground surface before excavation or filling.

"Fill" means a deposit of earth or waste materials by artificial means.

"Grading" means any stripping, excavating, and filling, including hydraulic fill, stockpiling, or any combination thereof and includes the land in its excavated or filled condition.

"Ground cover" means land plants growing on the earth's surface and/or their remains and includes trees less than four inches in diameter measured at 24 inches above the ground level.

"Land clearing" means the act of removing, pruning, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

"Partially developed lot" means a lot or parcel of land upon which a usable structure is located and which is of sufficient area so as to be capable of subdivision in accordance with the subdivision code.

"Plan" means a proposed method of achieving an end; including, but not limited to, specifications for design, implementation, and maintenance.

"Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has

been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

"Sedimentation" means the deposition of sediment.

"Significant trees" means healthy evergreen trees six inches (6") DBH (diameter at breast height) in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") DBH in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [d14]: As defined in 17.01.050 as amended here

Comment [d15]: "evergreen" is used elsewhere in code (17.01.050) but "coniferous" is more common

"Site alteration" means grading, excavating, filling, or other alterations of the earth's surface where material or manmade ground cover is destroyed and which may result in or contribute to erosion and sedimentation.

"Slope" means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

"Soil" means unconsolidated mineral and organic material on the immediate surface of the earth, overlying bedrock that serves as a natural medium for the growth of land plants.

"Surface runoff" means water flowing over the ground surface.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree Pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition.

**Optional Text:**

"Tree pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition.

condition. Where the listed types of pruning practices are further defined as:

(1) "Crown cleaning" means the removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches, and watersprouts from a tree's crown;

(2) "Crown raising" means the removal of the lower branches of a tree in order to provide space for pedestrians or vehicles to pass underneath safely or space for buildings and street furniture;

(3) "Crown thinning" means the selective removal of braches not to exceed more than 25 percent of the leaf surface to increase light penetration and air movement, and to reduce weight; and

(4) "Windowing" means the selective removal of branches not to exceed more than 25 percent of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.

**Comment [dl6]:** Does this invite requests from others to have off-site trees pruned for views?

"Tree Topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over." Topping is not an acceptable pruning practice.

**Comment [dl7]:** Do we want to specify that it's not acceptable on public properties, undeveloped properties, environmentally critical areas and shoreline environments?

"Undeveloped lot" means a lot or parcel of land upon which no usable structure exists.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

**Sec. \_\_. DMMC 14.20.060 Permit - Required and section 58 of Ordinance No. 1581, 2013 are each amended to read as follows.**

Except as otherwise exempted by DMMC 14.20.180, no grading, filling, or land clearing within the City shall be performed by any person, corporation, or other legal entity without first having obtained a land clearing, grading and

filling permit from the code official pursuant to DMMC 14.20.070 through 14.20.170 and the following requirements-:

(1) A grading permit does not include the construction of retaining walls or other structures.

(2) Removal of dead, diseased or hazard trees on city-owned property is subject to approval of a land clearing, grading, and filling permit.

(3) Removal of dead, diseased or hazard trees on city right-of-way and utility corridors is subject to approval of a right-of-way use permit.

(4) Removal or pruning of private trees on city right-of-way and utility corridors is subject to approval of a right-of-way use permit, provided that the tree/s are not located within an environmentally critical area, shoreline environment, or required landscaping area.

(5) Removal or pruning of trees within environmentally critical areas, shoreline environments, and required landscaping located on private or public properties are subject to approval of a land clearing, grading, and filling permit and threshold/disturbance limits established in the Environmentally Critical Area regulations (Chapter 16.10 DMMC), Shoreline Master Program (Chapter 16.20 DMMC), and Landscaping and Screening (Chapter 18.195 DMMC).

**Sec. \_\_. DMMC 14.20.150 Operating conditions and standards of performance and section 67 of Ordinance No. 1581, 2013 are each amended to read as follows.**

Permits authorized under this chapter shall conform to the following provisions unless otherwise recommended or as approved by the City Manager or the City Manager's designee:

(1) Excavations. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than two horizontal to one vertical (50 percent) unless the applicant furnishes a soils report justifying a steeper slope.

(2) Fills. Unless otherwise recommended in the soils report and approved by the City Manager or the City Manager's designee, fills shall conform to the following provisions:

(a) The ground surface shall be prepared to receive fill by removing vegetation, top soil, and any other unsuitable materials (oversized rock, concrete slabs, tree stumps, brush, and old car bodies, etc.) and scarifying the ground to provide a bond with the fill material.

(b) Fill material shall not include organic, frozen or other deleterious materials. No rock or similar irreducible material greater than 12 inches (305 mm) in any dimension shall be included in fills.

(c) All fill material shall be compacted to 90 percent of maximum density as determined by ASTM D1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth.

(d) The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes steeper than two horizontal to one vertical (50 percent) shall be justified by soils reports or engineering data.

(3) Erosion/Sedimentation Control. All disturbed areas, including faces of cut and fill slopes, shall be prepared and maintained to control erosion/sedimentation in accordance with the specifications of the surface water design manual.

(4) Setbacks. The crests and toes of cut and fill slopes shall be set back from property boundaries by at least 25 feet to prevent damages resulting from surface runoff or erosion-sedimentation from the slopes. The top and the toes of cut and fill slopes shall be set back from structures by at least one-half the height of the slope plus 25 feet for adequacy of foundation support and to prevent damages resulting from surface runoff or erosion-sedimentation of the slopes.

(5) Excavations to Water-Producing Depth. All excavations must be made to a water-producing depth or grade to permit natural drainage. The excavations made to a water-producing depth shall be reclaimed in the following manner:

(a) Depth of the excavation must not be less than two feet measured below the low-water mark.

(b) All banks shall be sloped to the water line no steeper than 2:1.

(c) In no event shall the term "water-producing depth" be construed to allow stagnant or standing water to collect or remain in the excavations.

(6) Bench Terrace. Benches at least 10 feet in width shall be back-sloped and shall be established at no more than 10-foot vertical intervals to control surface drainage and debris. Swales or ditches on benches shall have a maximum gradient of one percent.

(7) Hazardous Conditions. Signs warning of hazardous conditions, if such exist, shall be affixed at clearly visible locations.

(8) Fencing. Where required by the City Manager or the City Manager's designee to protect life, limb, and property, fencing shall be installed with lockable gates which must be closed and locked when the site is not being attended. The fence must be no less than five feet in height and the fence material shall have no horizontal opening larger than two inches.

(9) Drainage. Provisions shall be made to prevent surface water or seepage from damaging the cut face of excavations or the sloping face of a fill and to carry surface waters that are or might be concentrated as a result of a fill or excavation to a natural watercourse or other means as approved by the City Manager or the City Manager's designee.

(10) Drainage Review. All development activities shall make provisions for drainage pursuant to the requirements of the surface water design manual.

(11) All operations, conditions, and standards of performance shall be subject to the limitations as per required permits.

(12) Environmentally Critical Areas. Any land clearing, grading, or filling activity in an environmentally critical area as defined in Title 16 DMMC is prohibited except for activity conducted in connection with a development exception approved in accordance with the requirements of chapter 18.86 DMMC.

(13) Replacement. Any tree identified to be retained that is removed, destroyed or damaged during land clearing, grading, filling or construction shall be replaced by the applicant with five trees on the subject property:

(a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality.

(c) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

(b) Pruning and removal of trees is subject to the requirements of chapter 14.20 DMMC.

**Sec. \_\_. DMMC 14.20.180 Exemptions and section 70 of Ordinance No. 1581, 2013 are each amended to read as follows.**

Applicants must receive a written letter of exemption from the City Manager or the City Manager's designee before commencing with the exempted work. Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

(1) A grading or land clearing permit shall not be required for any of the following activities; provided, that the clearing and grading activity shall be subject to the minimum requirements specified in this chapter:

Comment [d18]: Should this be smaller? Text is from landscaping and screening code: 18.195.110 Tree retention (as amended)

(a) The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the City or its contractors;

(b) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(c) Removal of trees or ground cover or dumping of fill on partially developed lots for the purpose of general property and utility maintenance, landscaping, or gardening; provided, that this exemption shall not apply to land clearing, grading, or filling for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

~~(d) Removal of dead or diseased ground cover or trees;~~

(~~d~~e) A grading and filling activity less than a total of 50 cubic yards which does not obstruct a drainage course;

(~~e~~f) Grading and filling activity to place a building foundation approved under a City building permit and involves less than 120 cubic yards of grading and filling;

(~~f~~g) Clearing less than 200 square feet;

(~~g~~h) Cemetery graves;

(~~h~~i) Refuse disposal sites controlled by other regulations;

(~~i~~j) Exploratory excavations performed under the direction of a registered design professional. Exploratory excavation is not to begin construction of a building prior to receiving a permit (the sole purpose for preparing a soils report).

(j) Removal or routine pruning of trees on private developed lots in a residential zone, provided that:

(i) Tree removal or pruning is not incident to construction work;

(ii) The tree is not located in an environmentally critical area or shoreline environment; or

(iii) The tree is not part of a required landscaping area.

(k) Removal or routine pruning of trees on private undeveloped lots, limited to the following:

(i) Removal of dead, diseased or hazard trees;

(ii) Removal of small deciduous trees that are less than eight inches (8") DBH (diameter at breast height);

(iii) Removal of small evergreen trees that are less than six inches (6") DBH (diameter at breast height);

(iv) Pruning of not more than 25 percent of a tree's total leaf area;

(v) Pruning conforms to the International Society of Arboriculture standards, to maintain a tree in a healthy and safe condition; and

(vi) The tree is not located in an environmentally critical area or shoreline environment.

**Optional Text:**

(iv) Pruning or removal of trees located within environmentally critical areas shall be reviewed in accordance with the environmentally critical areas regulations codified in Chapter 16.10 DMMC; and

(v) Pruning or removal of trees located within shoreline environments shall be reviewed in accordance with the shoreline master program codified in Chapter 16.20 DMMC.

(2) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this

code or any other laws or ordinances of the City. [Ord. 1581 § 70, 2013.]

## **TITLE 16 EDITS:**

**Sec. \_\_. DMMC 16.01.050 Definitions and section 5 of Ordinance No. 1583, 2013 are each amended to read as follows.**

As used in this Title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"Aquifer" means a consolidated or unconsolidated ground water-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells.

"Area of shallow flooding" means an area designated as AO, or AH Zone on the flood insurance rate map (FIRM). AO Zones have base flood depths that range from one to three feet above the natural ground; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow; AH indicates ponding, and is shown with standard base flood elevations.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). Designated on flood insurance rate maps by the letters A or V.

"Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.

"Bluff" means a steep slope which abuts and rises from Puget Sound. Bluffs contain slopes predominantly in excess of 40 percent, although portions may be less than 40 percent. Bluffs

occur in the area north of South 222nd Street and south of South 232nd Street. The toe of the bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the slope is either the line of vegetation separating the unvegetated slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than 15 percent.

"Breakaway walls" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Buffer" means either: an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being, or property damage resulting from natural disasters; or an area adjacent to a stream or wetland which is an integral part of the stream or wetland ecosystem, providing shade; input of organic debris and coarse sediments; room for variation in stream or wetland boundaries; habitat for wildlife; impeding the volume and rate of runoff; reducing the amount of sediment, nutrients, and toxic materials entering the stream or wetland; and protection from harmful intrusion to protect the public from losses suffered when the functions and values of stream and wetland resources are degraded.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy, as well as any structure having a roof, but excluding all forms of vehicles even though immobilized. When a use is required to be within a building, or where special authority granted pursuant to this Title requires that a use shall be within an entirely enclosed building, then the term "building" means one so designed and constructed that all exterior walls of the structure shall be solid from the ground to the roof line, and shall contain no openings except for windows and doors which are designed so that they may be closed.

"Building setback line" means a line beyond which the footprint or foundation of a building shall not extend.

"Clearing" means the destruction and removal of vegetation by burning, mechanical, or chemical methods.

"Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30, VE or V.

"Commercial and recreational shellfish areas" means areas that include all public and private tidelands or bedlands suitable for shellfish harvest, including shellfish protection districts established pursuant to chapter [90.72](#) RCW.

"Compensation" means the replacement, enhancement, or creation of an undevelopable environmentally critical area equivalent in functions, values, and size to those being altered or lost from development.

"Creation (establishment)" means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. "Establishment" results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

"Critical aquifer recharge areas (CARAs)" mean those areas with a critical recharging effect on aquifers used for potable water, as defined by WAC [365-190-030](#)(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground

water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology.

These areas include but are not limited to the following:

(a) Wellhead Protection Areas. Wellhead protection areas may be defined by the boundaries of the 10-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC [246-290-135](#).

(b) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act.

(c) Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to chapter [173-100](#) WAC.

(d) Special Protection Areas. Special protection areas are those areas defined by WAC [173-200-090](#).

(e) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.

(f) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology.

"Critical areas" includes the following areas and ecosystems:

(a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. RCW [36.70A.030](#)(5).

"Developable area" means the "site area" less the following areas:

(a) Areas within a project site that are required to be dedicated for public rights-of-way;

(b) Environmentally critical areas and their buffers to the extent they are required by the City to remain undeveloped;

(c) Areas required for storm water control facilities, including but not limited to retention/detention ponds/vaults, biofiltration swales and setbacks from such ponds and swales;

(d) Areas required by the City to be dedicated or reserved as on-site recreation areas;

(e) Other areas, excluding setbacks, required by the City to remain undeveloped.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, [clearing](#), grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard.

"Development activity" means any work, condition, or activity which requires a permit or approval under ~~chapter 2.22 DMMC~~ or ~~Titles 11, 12, 14, 16, 17 or 18 DMMC~~.

"Development site" means the entire lot, series of lots, or parcels on which a development is located or is proposed to be located, including all contiguous undeveloped lots or parcels which are under common ownership with the developed lots on or subsequent to June 30, 1990. This definition only applies to chapter [16.10](#) DMMC.

"Drainage facility" means the system of collecting, conveying, and storing surface and storm water runoff. Drainage facilities shall include but not be limited to all surface and storm water runoff conveyance and containment facilities including streams, pipelines, channels, ditches, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and manmade.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.

| ["Environmentally Critical Areas"](#). See "Critical areas."

"Erosion hazard areas" means at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone.

"Exemption" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Fish and wildlife habitat conservation" means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. Fish and wildlife habitat conservation areas include:

- (a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
- (b) State priority habitats and areas associated with state priority species;
- (c) Habitats and species of local importance;
- (d) Commercial and recreational shellfish areas;
- (e) Kelp and eelgrass beds identified by the Washington Department of Natural Resources;
- (f) Herring and smelt spawning areas as outlined in chapter [220-110](#) WAC and the Puget Sound Environmental Atlas as presently constituted or as may be subsequently amended;
- (g) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(h) Waters of the state as defined in Title [222](#) WAC;

(i) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

(j) State natural area preserves and natural resource conservation areas as defined, established, and managed by the Washington State Department of Natural Resources;

(k) Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program; and

(l) Land useful or essential for preserving connections between habitat blocks and open spaces as determined by the City Manager or the City Manager's designee.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters; and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study (FIS)" means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate maps, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events are not suited to the siting of commercial, residential, or industrial development consistent with the public health or safety concerns.

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; and

(d) Other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

"Hazardous substance" means any solid, liquid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any characteristics or criteria of hazardous waste as described in WAC [173-303-090](#), [173-303-101](#), [173-303-102](#), or [173-303-103](#).

"Hazardous waste" means those solid wastes designated by 40 C.F.R. Part 261, and regulated as hazardous and/or mixed waste by the United States EPA, as described in WAC [173-303-040](#). "Hillsides" means geological features of the landscape having slopes of 15 percent and greater. To differentiate between levels of hillside protection and the application of development standards, the City categorizes hillsides into four groups: hillsides of at least 15 percent but less than 25 percent; hillsides of at least 25 percent but less than 40 percent; hillsides of 40 percent slope and greater; and hillsides which are ravine sidewalls or bluffs.

"Land clearing" means the act of removing, pruning, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

"Landslide" means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows.

"Landslide hazard areas" are those areas of the City potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

(ii) Those areas mapped by the Washington State Department of Ecology (Coastal Zone Atlas) or the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;

(b) Any area with a combination of:

(i) Slopes greater than 15 percent;

(ii) Impermeable soils (usually silt and clay) frequently interbedded with granular permeable soils (usually sand and gravel); and

(iii) Springs or ground water seepage;

(c) Any area which has shown movement during the Holocene epoch (from 10,000 years ago to present) or which is underlain by mass wastage debris of that age;

(d) Any area potentially unstable as a result of rapid stream incision, stream bank erosion, or undercutting by wave action;

(e) Any area designated as Class III landslide hazard area by the "Map Showing Relative Slope Stability in Part of West-Central King County, Washington, Map I-852-A, U.S. Geological Survey Miscellaneous Geologic Investigations" as presently constituted or as may be subsequently amended;

(f) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(g) Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief.

"Local administrator" means the City Manager or the City Manager's designee.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Title found at Section 5.2-1(2), (i.e., provided there are adequate flood ventilation openings).

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean sea level" means the average height of the Puget Sound for all stages of the tide.

"Mitigation" means the use of any combination or all of the following actions:

(a) Avoiding impacts to environmentally critical areas by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environmentally critical area;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development proposal;

(e) Compensating for the impact by replacing or enhancing environmentally critical areas, or providing substitute resources; and

(f) Monitoring the impact and taking appropriate corrective measures.

"Monitoring" means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic, and geologic elements of such systems, and assessing the performance of mitigation measures.

"Native vegetation" means plant species which are indigenous to the area in question.

"New construction" means structures for which the "start of construction" commenced on or after July 1, 1992.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"Nonconforming use" means a use which was lawfully established and maintained but which, because of the application of this Title to it, no longer conforms to the use regulations of the zone in which it is located as defined by this Title.

"Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an

"Open record appeal hearing," if no open record predecision hearing has been held on the project permit.

"Ordinary high water mark" means the mark that will be found by examining the bed and banks of a stream or shoreline and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to topography and vegetation.

"Protection/maintenance (preservation)" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the

term "preservation." Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.

"Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant environmentally critical area subject in accordance with WAC [365-195-905\(4\)](#). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

(a) A qualified professional for habitats must have a degree in biology and professional experience related to the subject species.

(b) A qualified professional for wetlands must have a degree in biology, must have taken a wetlands delineation course approved by the Army Corps of Engineers, and must have professional experience.

(c) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(d) A "qualified professional for critical aquifer recharge areas" means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

"Ravine sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain slopes predominantly in excess of 40 percent, although portions may be less than 40 percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is where the slope diminishes to less than 15 percent. Minor natural or manmade breaks in the slope of ravine sidewalls shall not be considered as the top. Benches with slopes less than 15 percent and containing developed or developable areas pursuant to chapter [16.10](#) DMMC shall be considered as the top.

"Recreational vehicle" means a vehicle:

(a) Built on a single chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Restoration" means the return of an environmentally critical area to a state in which its functions, values, and size approach or exceed its unaltered state as closely as possible.

"Restoration, wetlands" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

(a) "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres

(and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

(b) "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

"Retaining wall" means any wall used to resist the lateral displacement of any material.

"Seismic hazard areas" means those areas subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is affected primarily by:

- (a) The magnitude of an earthquake;
- (b) The distance from the source of an earthquake;
- (c) The type of thickness of geologic materials at the surface; and
- (d) The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density usually in association with a shallow ground water table. Known seismic hazard areas are mapped in the "Washington State Department of Natural Resources, Geologic Map GM-41, Liquefaction Susceptibility for the Des Moines and Renton 7.5-minute Quadrangles, Washington," and "Washington State Department of Natural Resources, Geologic Map GM-43, Liquefaction Susceptibility for the Auburn and Poverty Bay 7.5-minute Quadrangles, Washington."

"Shorelines of the state" means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in chapter [90.58](#) RCW.

"Significant trees" means healthy evergreen trees six inches (6") ~~DBH (diameter at breast height)~~ in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") ~~DBH in diameter~~ or greater as measured at fifty-four inches (54") above the ground.

**Comment [d19]:** As defined in 17.01.050 as amended here

**Comment [d110]:** "evergreen" is used elsewhere in code (17.01.050) but "coniferous" is more common

"Slope" means an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

vertical distance		x 100 = %
horizontal distance	slope	

Another method of measuring the inclination of the land surface is by measuring the angle, expressed in degrees, of the surface above a horizontal plane. The following chart shows the equivalents between these two methods of measurement for several slopes:

Percent Slope	Angle of Inclination
8.7	5.0°
15.0	8.5°
25.0	14.0°
30.0	16.7°
40.0	21.8°
50.0	26.6°
100.0	45.0°

"Special environmental study" means a technical report prepared by a qualified professional. Special environmental

studies are intended to evaluate past and present environmental conditions of certain properties, potential environmental impacts associated with certain development proposals, and as appropriate, recommend mitigation measures that can be expected to lessen the severity of identified adverse environmental impacts. The content and scope of required special environmental studies shall be as specified by the Planning, Building and Public Works Director.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State designated endangered, threatened, and sensitive species" means those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC [232-12-014](#) (state endangered species) and WAC [232-12-011](#) (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be

consulted for current listing status. This section shall not apply to hair seals and sea lions that are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

"State priority habitats and areas associated with state priority species" means those areas considered priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

"Stream" means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Stream channels or beds show clear evidence of the passage of water and include, but are not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction. Swales, which are shallow drainage conveyances with relatively gentle side slopes and generally with flow depths less than one foot, shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development. To differentiate between levels of stream and marine shoreline protection and the application of development standards, streams are classified according to the Washington State Department of Natural Resources Forest Practices Board water typing system specified in WAC [222-16-030](#) as follows:

(a) "Type S water" means all waters inventoried as "shorelines of the state," including periodically inundated areas of their associated wetlands, under chapter [90.58](#) RCW and the rules promulgated pursuant to chapter [90.58](#) RCW;

(b) "Type F water" means segments of natural waters other than Type S waters, which contain fish or fish habitat, including waters diverted for use by a federal, state or tribal fish hatchery from the point of diversion for 1,500 feet or the entire tributary if the tributary is highly significant for protection of downstream water quality;

(c) "Type Np water" means all segments of natural waters that are not Type S or F waters. These are perennial nonfish habitat streams that are physically connected to Type S or F waters by an aboveground channel system, stream or wetland. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow;

(d) "Type Ns water" means all segments of natural waters that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an aboveground channel system to Type S, F, or Np waters.

"Storage tank" means a container for the storage of a gas or liquid.

"Stream corridor" means a perennial, intermittent, or ephemeral stream including its channel bottom, lower and upper banks, area beyond the top of the upper bank which influences the stream and is influenced by the presence of water, and the vegetation inhabiting this area. This area is known as the "riparian zone" which is an area transitional between aquatic and terrestrial (upland) ecosystems having distinct vegetation and soil characteristics. Riparian zones are most commonly recognized by bottomland, flood plain, and streambank

vegetation. In developed watersheds, portions of the stream corridor may currently be in a partially culverted or channelized condition by artificial conveyance systems.

"Structure" means a walled and roofed building.

"Substantial improvement" means a repair, reconstruction, or improvement of a structure made during a three-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of a wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(c) The term does not, however, include either:

(i) A project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions; or

(ii) An alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Surface Water Design Manual for the City of Des Moines" means the King County, Washington "Surface Water Design Manual," including all subsequent revisions, adopted by reference as the

"Surface Water Design Manual for the City of Des Moines," and is referred to in this Title as "Surface Water Design Manual."

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree Pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition.

"Tree Topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over." Topping is not an acceptable pruning practice.

"Upper bank" is that portion of the topographic cross-section of a stream which extends from the break in the general slope of the surrounding land to the normal high water line.

"Use" means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

"Water dependent" means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

"Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created for nonwetland areas created to mitigate conversion of wetlands.

To differentiate between levels of wetland protection and the application of development standards, wetlands shall be rated according to the "Washington State Wetland Rating System for Western Washington" (Ecology Publication No. 04-06-025, August 2004) or as revised by the Department of Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.

(a) Category I. Category I wetlands represent a unique or rare wetland type, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain some ecological attributes that are impossible to replace within a human lifetime, or provide a very high level of functions. Category I wetlands are:

(i) Mature forested wetlands larger than one acre; or

(ii) Wetlands that perform many functions well.

(b) Category II. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but they still need a relatively high level of protection. Category II wetlands are:

(i) Wetlands identified by the Washington State Department of Natural Resources as containing "sensitive" plant species;

(ii) Wetlands with a moderately high level of functions.

(c) Category III. Generally, wetlands in this category may have been disturbed in some way and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. Category III wetlands are wetlands with a moderate level of functions.

(d) Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. These are wetlands that should be replaceable, and in some cases may be

improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

## **TITLE 17 EDITS:**

**Sec. \_\_. DMMC 17.01.050 Definitions and section 5 of Ordinance No. 1585, 2013 are each amended to read as follow.**

As used in this Title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this chapter shall have the indicated meanings. All other words or phrases appropriate to the context of their uses shall be interpreted as defined in the Zoning Code.

"Alteration" means a change to any recorded plat, short plat or binding site plan, except as defined in "lot line adjustment" in this section.

"Applicant" means a person who applies for any approval under this Title and who is an owner of the subject property or the authorized agent of the owner. "Applicant" includes any current owner who purchased property from a previous owner who submitted an application.

"Binding site plan" means a scale drawing or map which identifies and shows the areas and locations of all streets, roads, utilities, improvements, open spaces, easements, and any other significant development features and which binds future development to be in accordance with the drawing.

"Block" means a group of lots, tracts, or parcels of common origin or relationship within a boundary which is distinct and separated from other lots, tracts, or parcels by physical features such as public or private streets or topography.

"Comprehensive Plan" means the document as adopted in DMMC [18.05.060](#).

"County auditor" means the office or person as defined in chapter [36.22](#) RCW, as presently constituted or as may be subsequently amended, or the office or person assigned such duties under a county charter.

"County treasurer" means the office or person as defined in chapter [36.29](#) RCW, as presently constituted or as may be subsequently amended, or the office or person assigned such duties under a county charter.

"Dedication" means the deliberate appropriation of land by its owner for any general and public uses, reserving to himself/herself no other rights except those which are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by its owner by the presentment of a document of conveyance, or a final plat, short plat, binding site plan, or lot line adjustment, for filing or recording with the county auditor, showing the dedication thereon; and the acceptance by the public shall be evidenced by the approval of such plat or conveyance for filing by the appropriate governmental unit.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Easement" means a specific air, surface, submerged, or subsurface right, of perpetual duration for a legally described parcel of land, which is conveyed for use by someone other than the owner of the subject property, or to benefit some property other than the subject property.

"Final plat" means the final drawing or map of a subdivision, together with all dedications, covenants, certifications, and signatures prepared for filing for record with the county auditor and containing all elements and requirements set forth in chapter [58.17](#) RCW, as presently constituted or as may be subsequently amended, and in this Title.

"Improvements" means streets, with or without curb or gutter, sidewalks, pedestrian ways, water mains, sanitary and

storm sewers, street trees, lighting, and other appropriate items.

"Lot" means a fractional part of divided lands having fixed boundaries, means of access, and sufficient area and dimension to meet minimum yard, area, and open space requirements of the Zoning Code for the zone in which the lot is located at the time such lot was created.

"Lot line adjustment" means:

(a) A division made for the purpose of alteration by adjusting boundary lines between platted or unplatted lots or both; or

(b) A consolidation of multiple lots into one single lot; provided, that the division or consolidation does not create any additional lot, tract, or parcel; and does not create any lot, tract, or parcel which contains insufficient area and dimension to meet minimum requirements for width and area of a building site as required by Title [18](#) DMMC.

"Material error" means an error in fact or an omission of substantive information in an application, or supplementary study, supplied to the City, which would constitute the basis for a decision.

"Parcel" means an existing lot, tract, or division of land.

"Pedestrian way" means a tract or right-of-way, dedicated to public use, for the purpose of facilitating pedestrian access to nearby streets and properties.

"Planning official" means the Director of the Planning, Building and Public Works Department or his/her designee.

"Preliminary plat" means a scale drawing or map of a proposed subdivision showing the general layout of streets, lots, blocks, restrictive covenants to be applicable to the subdivision, and other related information required by the City of a subdivision. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

"Registered land surveyor" means an individual licensed as a land surveyor pursuant to chapter [18.43](#) RCW (Professional Engineers Registration Act), as presently constituted or as may be subsequently amended.

"Right-of-way" means land dedicated to the public primarily for the movement of vehicles and pedestrians and providing for primary access to adjacent parcels. Secondly, it means that land which provides space for utility lines and appurtenances and similar components.

"Security" means a commitment of funds guaranteeing the payment of a previously specified amount of money if in the opinion of the administrator in charge, certain work is not performed satisfactorily or work results in damage to property or the environment. Security may be in the form of a cash, line of credit, bond, or a set-aside account previously approved by the City.

"Shoreline Master Program" means the document as adopted in chapter [16.20](#) DMMC.

"Short plat" means the final drawing or map of a short subdivision, together with all dedications and covenants, prepared for filing for record with the county auditor and containing all elements and requirements set forth in chapter [58.17](#) RCW.

"Short subdivision" means the division or redivision of land into nine or fewer lots for the purpose of sale, lease, or transfer of ownership.

"Significant trees" means healthy evergreen trees six inches DBH (diameter at breast height) or greater and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches DBH or greater.

"Significant trees" means healthy evergreen trees six inches (6") DBH (diameter at breast height) in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") DBH in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [d11]: As defined in 17.01.050 as amended here

Comment [d12]: "evergreen" is used elsewhere in code (17.01.050) but "coniferous" is more common

"Street Development Standards" means the document adopted by chapter [12.15](#) DMMC.

"Subdivision" means the division or redivision of land into 10 or more lots or the redivision of a short subdivision into 10 or more lots within a period of five years from the filing of such short plat for the purpose of sale, lease, or transfer of ownership.

"Tract" means land reserved for special uses including but not limited to open space, surface water retention, utilities, or access. Tracts are neither counted as lots nor considered as building sites.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Vacation" means the elimination of a recorded lot line, right-of-way, or easement.

"Vehicular access tract" means a privately owned tract providing vehicular and pedestrian access to parcels.

**Sec. \_\_. DMMC 17.35.190 Natural features - General and section 114 of Ordinance No. 1585, 2013 are each amended to read as follow.**

(1) General. The proposed subdivision shall demonstrate sensitivity to the natural features of the property including, but not limited to, topography, streams, lakes, wetlands, habitat, geologic features, and vegetation. Any division of land shall be designed to preserve and enhance as many of these valuable features as possible. In addition to the specific provisions of this chapter, the subdivision shall comply with all applicable provisions of Title [18](#) DMMC and other specific requirements regarding development restrictions due to natural features.

(2) Tracts Required. All wetlands, streams, and required buffers, pursuant to ~~title 18 DMMC~~[chapter 16.20 DMMC](#), shall be located in separate tracts which limit development activity. The

area dedicated under this section shall become the property of the City, which shall thereafter assume all maintenance and other ownership responsibilities.

(3) Lot Area. The area of the open space tracts shall not be included in the computation of lot area for any lot area.

**Sec. \_\_. DMMC 17.35.210 Natural features - Significant vegetation and section 116 of Ordinance No. 1585, 2013 are each amended to read as follow.**

(1) Buffers. Significant trees or other natural vegetation located along the boundary of a subdivision shall be retained if the City determines that retention will provide beneficial buffering for or from abutting properties or rights-of-way. Vegetation which is retained shall be protected by establishing open space easements or tracts. Removal of significant trees, subject to approval of a land clearing, grading and filling permit pursuant to the provisions of Chapter 14.20 DMMC.

Comment [d13]: Do we want to say "provisions of...?"

(2) Rights-of-Way and Tracts. Following preliminary subdivision approval, the applicant shall be allowed, pursuant to the provisions of Title 14 DMMC, to clear all vegetation which the Planning, Building and Public Works Director determines is necessary to install required improvements within rights-of-way and access or utility tracts shown on the approved preliminary subdivision.

(3) Lots. Removal of vegetation in the remainder of the subdivision shall occur on a lot-by-lot basis. No vegetation removal shall occur on any lot until and unless a complete building permit application has been submitted and a land grading, clearing, and filling permit has been issued for that lot in compliance with chapter 14.20 DMMC. On each lot, all significant trees as defined in DMMC 17.01.050, shall be retained except:

(a) Those trees which are located in areas where structures or improvements are proposed or areas which, in the judgment of the planning official, must be cleared to allow construction of proposed structures or improvements; and

(b) Those trees which, in the judgment of the ~~planning official~~Planning, Building and Public Works Director, would constitute a danger to public safety, pursuant to the provisions of Chapter 14.20 DMMC; and

(c) No more than one tree for each 2,400 square feet of lot area shall be required to be preserved on any lot. On lots which contain more than three significant trees, the planning official shall indicate which of the trees shall be retained. In making this decision, the planning official shall give preference to retaining large healthy trees or trees which are of an unusual species.

(4) Replacement. Any tree identified to be retained that is destroyed or damaged during construction shall be replaced by the applicant with five trees on the subject property or within a street planting strip near the subject property. Replacement trees shall be a minimum size of eight feet in height for evergreen trees and two inches in caliper for deciduous and shall be approved by the planning official. These street trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact location for and type of street trees shall be determined by the planning official. [

## TITLE 18 EDITS:

**Sec. \_\_.** DMMC 18.01.050 Definitions and section 5 of Ordinance No. 1591, 2013 are each amended to read as follow.

(1) Use of words and phrases. As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11,12, 14, 16, 17, or 18 DMMC.

"Diameter" means the circumference of tree divided by pi (3.14) and measured at a point 4-1/2 feet above ground.

Comment [dl14]: Should we assume someone knows how to calculate the diameter of a tree?

"Significant trees" means healthy evergreen trees six inches (6") DBH (diameter at breast height) in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") DBH in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [dl15]: As defined in 17.01.050 as amended here

Comment [dl16]: "evergreen" is used elsewhere in code (17.01.050) but "coniferous" is more common

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition. Where the listed types of pruning practices are further defined as:

(1) "Crown cleaning" means the removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches, and watersprouts from a tree's crown;

(2) "Crown raising" means the removal of the lower branches of a tree in order to provide space for pedestrians or vehicles to pass underneath safely or space for buildings and street furniture;

(3) "Crown thinning" means the selective removal of braches not to exceed more than 25 percent of the leaf surface to increase light penetration and air movement, and to reduce weight; and

(4) "Windowing" means the selective removal of branches not to exceed more than 25 percent of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.

Comment [dl17]: Does this invite requests from others to have off-site trees pruned for views?

"Tree topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over." Topping is not an acceptable pruning practice.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

**Sec. \_\_. DMMC 18.195.020 Application and section 413 of Ordinance No. 1591, 2013 is repealed.**

(1) General Applicability. Landscaping required pursuant to this chapter shall be installed throughout the entire building site in accordance with an approved site plan, prior to issuance of the certificate of occupancy or business license for any of the following development activities:

(a) Construction of a new building or structure;

(b) Expansion of an existing building or structure where such expansion contains 20 percent or more of the floor area of the existing building or structure;

(c) Creation or expansion of a parking area or other paved surface; and

(d) Creation or expansion of an outdoor use, activity, or storage area.

(2) Exceptions. The provisions of this chapter shall not apply in the following circumstances:

(a) Single-family residential development activities shall not be subject to the provisions of this chapter except as may be specifically required by any section.

(b) Where the Planning, Building and Public Works Department determines that existing structures are situated so as to preclude installation of required landscaping, such required landscaping shall be waived for the area affected by such structures.

(c) Where compliance with the provisions of chapter [18.210](#) DMMC, loading areas and off-street parking requirements for existing buildings or structures, conflicts with the

requirements of this chapter, the required landscaping shall be waived, or modified in accordance with DMMC [18.195.420](#).

(d) The irrigation requirements of DMMC [18.195.080](#) shall apply only to construction of a new building or structure or expansion of an existing building or structure.

(3) Nothing in this chapter shall be construed to relieve the applicant of open space, buffer, setback, and other such development constraints defined by the zoning code, conditional use permit concomitant rezone agreement, subdivision code, planned unit development, shorelines master program, and terms of approvals associated therewith.

(4) Plan Requirements. The Planning, Building and Public Works Department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the Planning, Building and Public Works Department accurately drawn using an appropriate engineering or architectural scale which shows the following:

(a) Boundaries and dimensions of the site;

(b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;

(c) Proposed topography at a maximum of five-foot contours;

(d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;

(e) Details of any proposed architectural barriers;

(f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;

(g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on-site;

(h) Percentage of landscaping for total site and net square footage of parcel;

(i) Proposed landscaping including location, species, and size at time of planting;

(j) Existing vegetation in general, and identifying all evergreen trees six inches in diameter DBH (diameter at breast height) or greater as measured at fifty-four inches (54") above the ground and all deciduous trees eight inches in diameter DBH ~~or~~ greater as measured at fifty-four inches (54") above the ground;

(k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe size, head capacity, water pressure in pounds per square inch at the pump and sprinkler heads, and timer system.

**Sec. \_\_. DMMC 18.195.110 Tree retention and section 422 of Ordinance No. 1591, 2013 is repealed.**

(1) All existing healthy evergreen trees six inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches in diameter DBH or greater as measured at fifty-four inches (54") above the ground, shall be retained to the extent feasible within landscape areas. The Planning, Building and Public Works Department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

(2) All clearing and grading shall take place outside the drip line of those trees to be retained; provided, that the Planning, Building and Public Works Department may approve hand clearing within the drip line if it can be demonstrated that such grading can occur without damaging the tree. If the roots are damaged, the Planning, Building and Public Works Department may require restoration measures such as the application of phosphate or potash.

(3) Any tree identified to be retained that is destroyed or damaged during construction shall be replaced by the applicant with five trees on the subject property or within a street planting strip near the subject property. Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality. These trees shall be provided in addition to any street trees required under chapter [12.15](#) DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

**Sec. \_\_\_\_.** DMMC 18.95.130 and section 424 of Ordinance No. 1591, 2013 is repealed.

~~18.195.130 Scenic view preservation. Landscaping shall be designed, installed, and thereafter maintained in such a manner which preserves scenic views and vistas of neighborhood and upland properties. Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties.~~

**Sec. \_\_\_\_.** DMMC \_\_\_\_ and section \_\_ of Ordinance No. \_\_ as amended by section \_\_ of Ordinance No. \_\_\_\_ are each amended to read as follows:

**Sec. \_\_\_\_.** **Savings clause.** Ordinance No. \_\_\_\_, which is repealed [or amended] by this Ordinance, shall remain in force and effect until the effective date of this Ordinance.

**NEW SECTION. Sec. \_\_\_\_.** **Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Ordinance No. \_\_\_\_  
Page 48 of 49

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

**NEW SECTION. Sec. 4. Effective date.** This Ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**NEW SECTION. Sec. 4. Effective date.** This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_ day of \_\_\_\_\_, 2014 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

M A Y O R \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

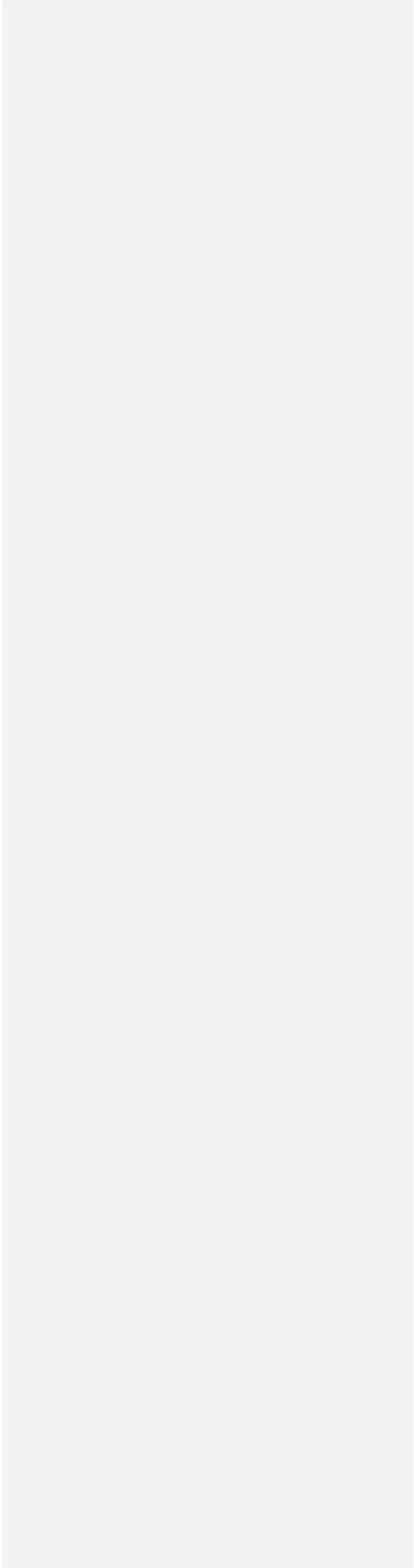
ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Ordinance No. \_\_\_\_  
Page 49 of 49





December 15, 2008

Thomas W. Gut, P.E.  
Director of Public Works  
City of SeaTac  
4800 South 188<sup>th</sup> Street  
SeaTac, WA 98006

Loren Reinhold, P.E.  
Assistant Director of Public Works  
Utilities and Environmental Engineering  
City of Des Moines  
21650 11<sup>th</sup> Avenue South  
Des Moines, Washington 98198 – 6317

Robert M. Duffner  
Water Resources Manager  
Aviation Environmental Program  
Seattle-Tacoma International Airport  
17900 International Blvd., Suite 402  
SeaTac, Washington 98188 – 4236

RE: Des Moines Creek Basin  
Level 1 Flow Control

Dear Loren:

Attached is a letter dated July 23, 2003 from the Department of Ecology approving with conditions an alternative to DOE's recommended requirements for flow control within the Des Moines Creek Watershed. In order to implement these lower flow control criteria the Committee needed to construct the Regional Detention Ponds, the Bypass Pipeline and the Outfall Pipeline. The King County Level 1 flow control standard and the 1994 land uses were to be used as the pre-developed condition for sizing flow control facilities.

The Committee has completed the design and construction of these facilities in accordance with the following documents:

Hydrologic Analysis of the Des Moines Creek Regional Detention Facility

Des Moines Creek Regional Capital Improvement Project, Preliminary Design Report  
(including the Alternative Analysis, Alternative Analysis Addendum, and Appendices A,  
B, D, and E)

Des Moines Creek Basin Plan

As a member of the Des Moines Creek Basin Committee your jurisdiction has complied with DOE's conditions of approval and can now begin using the lower storm water flow control criteria for new development and redevelopment within that portion of your jurisdiction in the Des Moines Creek Watershed. The design for storm water control facilities within the Des Moines Creek Watershed can now be based upon the King County Level 1 flow control standard and the 1994 land uses.

DOE however, encourages the Committee members to continue requiring that water quality treatment comply with the current guidelines.

If you have any question or wish to discuss this mater further please advise.



Donald G. Monaghan, P.E., M.B.A.  
Des Moines Creek Basin Committee  
Operations and Maintenance Coordinator  
*Engineering and Management Solutions*  
6532 117<sup>th</sup> Place S.E.  
Bellevue, Wa. 98006  
425-228-0436 H  
425-736-3686 C



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

July 23, 2003

Mr. David Masters, Project Coordinator  
Des Moines Creek Regional Detention Facility Planning Committee  
P.O. Box 4008  
Seattle, WA 98194

Dear Mr. Masters;

Re: Hydrologic Analysis of the Des Moines Creek Regional Detention Facility

We have reviewed the following reports submitted by you on behalf of the members of the Des Moines Creek Planning Committee:

- *Hydrologic Analysis of the Des Moines Creek Regional Detention Facility Using HSPF*
- *Des Moines Creek Regional Capital Improvement Project, Preliminary Design Report (including the Alternatives Analysis, Alternative Analyses Addendum, and Appendices A, B, D, and E).*
- *Des Moines Creek Basin Plan*

We find that these documents are responsive to the Department of Ecology's *Stormwater Management Manual for Western Washington, Appendix A, Guidance for Altering the Minimum Requirements Through Basin Planning*. The information submitted provides sufficient technical data to justify an alternative to the department's recommended minimum requirement for flow control within the Des Moines Creek Watershed. The alternative receiving the department's concurrence requires the implementation of three recommendations from the subject reports:

- A Des Moines regional detention facility in the Tyee Golf Course at the southern end of Sea-Tac airport, north of South 200<sup>th</sup> St., including two new stormwater detention ponds referred to as the Northwest Pond and the Approach Light Road Pond, as further described in the documents.
- Two bypass pipelines; a 48-inch diameter line to carry flow from the existing Tyee Regional Stormwater Pond to the Northwest Pond, and a 30-inch diameter line from the Tyee Pond to an abandoned sanitary sewer line that will be refurbished to carry stormwater to Puget Sound.

Hydrologic Analysis of the Des Moines Creek Regional Detention Facility

July 23, 2003

Page 2 of 2

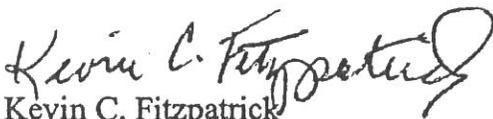
- Application of the King County Runoff Time Series (KCRTS) flow model or other DOE approved models, the King County Level 1 flow control standard, and the 1994 land use condition as the pre-developed condition for sizing flow control facilities for new development and redevelopment once the regional facilities and bypass lines are constructed and operational.

This concurrence should not be construed as the issuance of the necessary permits for construction of the above projects.

Because the planning documents do not provide alternative recommendations to the water quality treatment guidance provided in the 2001 Stormwater Management Manual for Western Washington, the Department of Ecology encourages the local governments to use the manual recommendations for new development and redevelopment. In addition, the Department encourages the Basin Committee to continue planning to address the existing water quality problems of the creek. The chemical parameters identified in the planning documents that exceed applicable water quality standards include: fecal coliform bacteria, temperature, dissolved copper and zinc. In addition, because of the relatively urbanized nature of the watershed, it is likely that concentrations of various polycyclic aromatic hydrocarbons and pesticides are periodically problematic.

We congratulate the local governments on their foresight, determination, and commitment to identify and implement a strategy that should give Des Moines Creek and its biologic resources a much improved chance at not only surviving, but thriving.

Sincerely,



Kevin C. Fitzpatrick  
Water Quality Manager  
Northwest regional Office

KCF:ha:jc

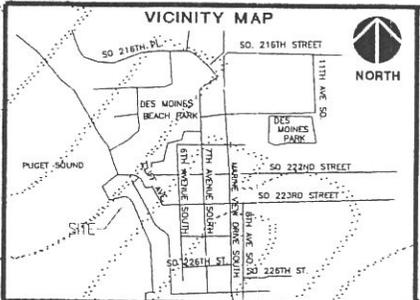
Cc: Donald Althausen, P.E., King County  
Ed O'Brien, P.E., DOE, Water Quality, HQ  
Ed Abbasi, Water Quality, NWRO

238-265

# RECORD OF SURVEY

## SECTION 8, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN

### KING COUNTY, WASHINGTON



**VERTICAL DATUM**  
NATIONAL GEODETIC VERTICAL DATUM OF 1989 (NGVD).  
THE LINE OF MEAN HIGH WATER, AND MEAN LOW WATER,  
WAS BASED ON TIDAL BENCHMARK DES MOINES NO. 2 (1934)  
ELEV.: 22.26 FEET ABOVE MEAN LOWER LOW WATER

**HORIZONTAL DATUM**  
THE WASHINGTON COORDINATE SYSTEM, NORTH ZONE,  
NORTH AMERICAN DATUM OF 1983 BASED ON TIES  
TO KING COUNTY CONTROL MONUMENTS SHOWN HEREON.

**LEGAL DESCRIPTION**

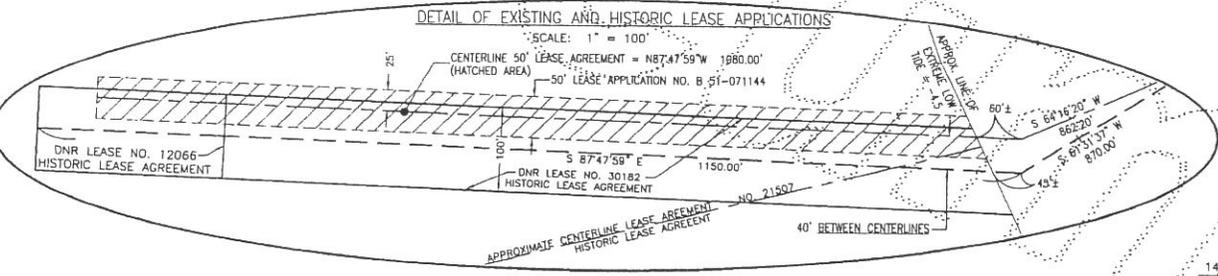
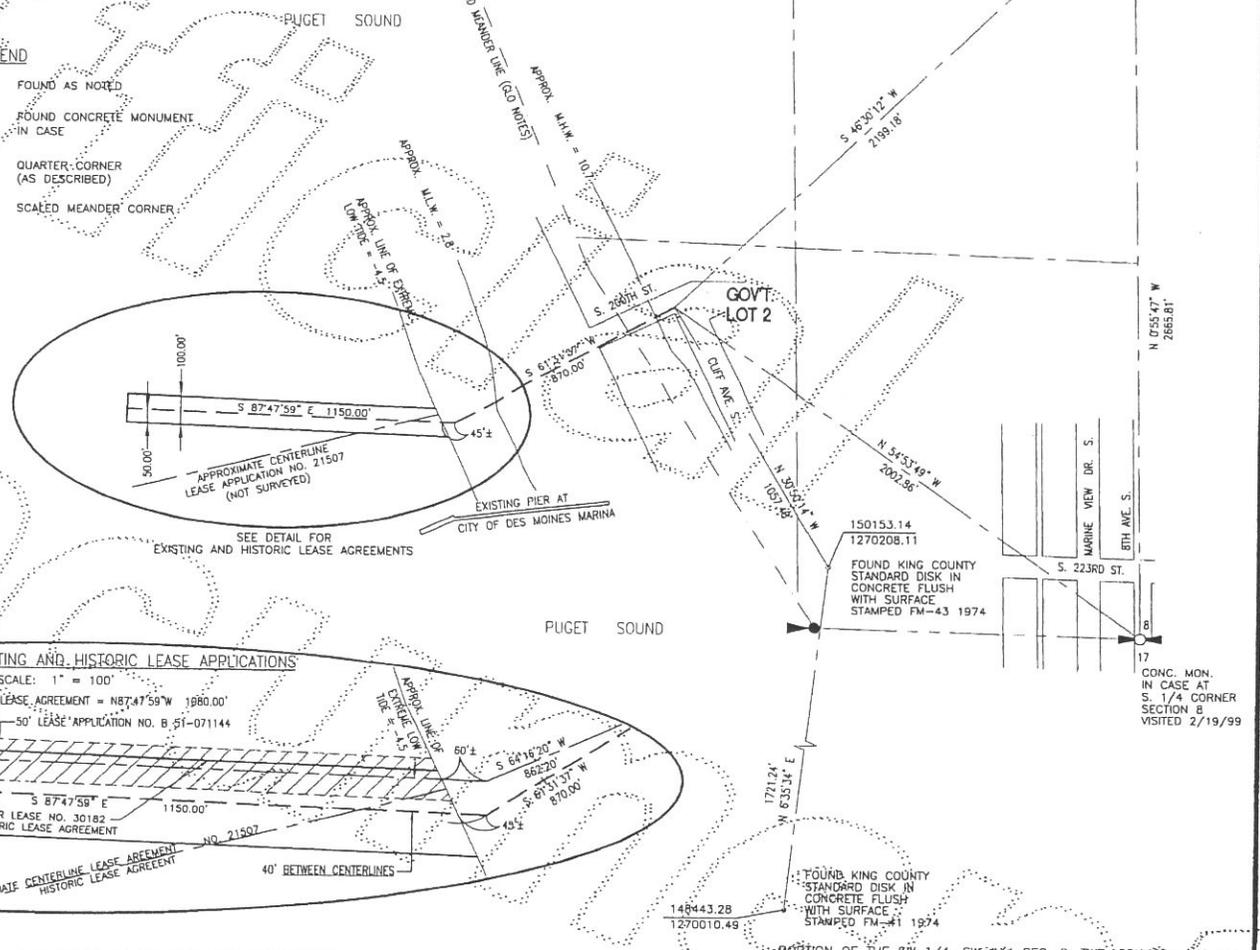
- LEGEND**
- FOUND AS NOTED
  - FOUND CONCRETE MONUMENT IN CASE
  - ◐ QUARTER CORNER (AS DESCRIBED)
  - SCALED MEANDER CORNER

THAT PORTION OF THE BED OF PUGET SOUND LYING BELOW THE LINE OF EXTREME LOW TIDE, OWNED BY THE STATE OF WASHINGTON, IN FRONT OF GOVERNMENT LOT 2, SECTION 8, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., INCLUDED WITHIN THE LIMITS OF A STRIP OF LAND 100 FEET IN WIDTH HAVING 50 FEET OF SUCH WIDTH ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 8;  
THENCE NORTH 88°29'22" WEST ALONG THE SOUTH LINE THEREOF; 2,642.42 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 8;  
THENCE NORTH 54°53'32" WEST 2,002.86 FEET;  
THENCE SOUTH 61°31'36" WEST 870.00 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 87°48'00" WEST 1,150.00 FEET TO THE TERMINUS OF SAID CENTERLINE DESCRIPTION, HAVING AN AREA OF 2.64 ACRES, MORE OR LESS.

SUBJECT, HOWEVER, TO AN EASEMENT FOR RIGHT OF WAY FOR SUBMARINE CABLES GRANTED TO PUGET SOUND POWER AND LIGHT COMPANY UNDER APPLICATION NUMBER 21507, DATED APRIL 7, 1952.

**METHOD OF SURVEY**  
THIS SURVEY WAS PERFORMED BY FIELD TRAVERSE WITH THE FINAL RESULTS MEETING OR EXCEEDING THE CURRENT TRAVERSE STANDARDS CONTAINED IN W.A.C. 332-130-090. ALL MEASUREMENTS WERE MADE WITH A WILD T-2000 AND DI-5 IN ACCORDANCE WITH THE EQUIPMENT MANUFACTURER'S SPECIFICATIONS.



REFERRING CERTIFICATE

20080114900001

SITTS & HILL SURVEY 100.00

PROCESSED BY: 01/14/2008 08:23

KING COUNTY

County Auditor: *Scott D. Borden*

Deputy County Auditor: *Walter D. ...*

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF THE PORT OF SEATTLE

*Robert N. Erb*

ROBERT N. ERB  
WASHINGTON STATE REGISTRATION NUMBER 18082

PREPARED FOR

PORT OF SEATTLE

P.O. BOX 68727  
SEATTLE, WA 98168

PREPARED BY

SITTS & HILL ENGINEERS, INC.

CIVIL ■ STRUCTURAL ■ SURVEYING

2901 S. 40TH STREET ■ TACOMA, WA 98409 ■ (253) 474-9449

DRAWN BY	CHECKED BY	PROJECT NUMBER
TJH	RNE	15761
DATE	SCALE	SHEET NUMBER
11-27-07	1"=300'	1 OF 1

P:\13060151\13060151\13060151.dwg User: rnb Date: 11/27/07 10:42am by: rnb

1/22/14

When recorded, return to:  
Don Monaghan, Basin Coordinator  
Des Moines Creek Basin Committee  
6532 117<sup>th</sup> Place Southeast  
Bellevue, WA 98006



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**  
Peter Goldmark - Commissioner of Public Lands

**AQUATIC LANDS OUTFALL EASEMENT**

**EASEMENT NO. 51-A75748**

Grantor: Washington State Department of Natural Resources  
Grantee(s): DES MOINES CREEK BASIN COMMITTEE  
Legal Description: Section 8, Township 22 North, Range 4 East, W.M.  
Assessor's Property Tax Parcel or Account Number: 2009003390  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: Not Applicable

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and DES MOINES CREEK BASIN COMMITTEE, a government agency/entity ("Grantee").

**BACKGROUND**

Grantee desires to use state-owned aquatic lands located in King County, Washington for the purpose of discharging effluent from an outfall pipeline. Grantee has obtained regulatory authorizations for this purpose including, but not limited to, a National Pollutant Discharge Elimination System ("NPDES") Permit.

State is willing to grant an easement for a term to Grantee in reliance upon Grantee's promises to operate the outfall in compliance with all laws and permits and in the manner as described in all regulatory authorizations.

Nonetheless, State's goals are to promote water re-use and reduce reliance on in-water disposal of waste effluent, storm water and other discharges that affect the use and environmental conditions of state-owned aquatic lands and associated biological communities. Therefore, future grants of easement rights will depend on Grantee's satisfactory progress toward implementation of reasonably practical disposal alternatives.

THEREFORE, the Parties agree as follows:

## SECTION 1 GRANT OF EASEMENT

### 1.1 Easement Defined.

- (a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to the easement.
- (b) This Easement is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials.

### 1.2 Survey and Easement Property Descriptions.

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee warrants that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area.
- (b) Grantee shall not rely on any written legal descriptions, surveys, plats, or diagrams ("property description") provided by State. Grantee shall not rely on State's approval or acceptance of Exhibit A or any other Grantee-provided property description as affirmation or agreement that Exhibit A or other property description is true and accurate. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.

**1.3 Condition of Easement Property.** State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the

suitability of the Easement Property for Grantee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

## SECTION 2 USE

**2.1 Permitted Use.** Grantee shall use the Easement Property for a Stormwater outfall (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in detail in Exhibit B.

**2.2 Restrictions on Use.**

- (a) Grantee shall not cause or permit any damage to natural resources on the Easement Property or adjacent state-owned aquatic lands, regardless of whether the damages are a direct or indirect result of the Permitted Use.
- (b) Unless approved by State in writing, Grantee shall not cause or permit any filling activity to occur on the Easement Property or adjacent state-owned aquatic land. This prohibition includes any deposit of rock, earth, ballast, wood waste, refuse, garbage, waste matter (including chemical, biological, or toxic wastes), hydrocarbons, any other pollutants, or other matter. Outfall discharges in full compliance with a valid NPDES Permit are not subject to this prohibition.
- (c) Grantee shall neither commit nor allow waste to be committed to or on the Easement Property or adjacent state-owned aquatic land.
- (d) Failure to Comply with Restrictions on Use.
  - (1) Grantee's failure to comply with the restrictions on use under this Subsection 2.2 is a breach subject to Subsection 14.1. Grantee shall cure the breach by taking all steps necessary to remedy the failure and restore the Easement Property and adjacent state-owned aquatic lands to the condition before the failure occurred within the time for cure provided in Subsection 14.1. Additionally, Grantee shall mitigate environmental damages in accordance with Paragraph 2.2(d)(3).
  - (2) If Grantee fails to cure the default in the manner described in this Paragraph 2.2(d), State may terminate in accordance with Subsection 14.1. In addition, the State may (1) restore the Easement Property and adjacent state-owned aquatic lands and charge Grantee remedial costs and/or (2) charge Grantee environmental damages. Upon demand by State, Grantee shall pay all remedial costs and environmental damages.
  - (3) Mitigation of Environmental Damages
    - (i) Grantee shall prepare a written plan, subject to State's approval, incorporating measures to (1) eliminate or minimize future impacts to natural resources, (2) replace unavoidable lost or damaged natural resource values, and (3) monitor and report on plan implementation. Grantee shall implement the plan upon State's approval.

- (ii) Grantee shall compensate State in accordance with Subsection 5.4 for lost or damaged resource values that are not replaceable.
- (iii) If a regulatory authority requires Grantee to provide mitigation on state-owned aquatic lands, Grantee shall coordinate the proposed mitigation activities with state and obtain an appropriate use authorization prior to commencement of activities.
- (e) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Subsection 2.2 does not constitute a waiver of any remedies available to State.
- (f) This Section 2.2 does not limit Grantee's liability under Section 8, below.

**2.3 Conformance with Laws.** Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use of the Easement Property.

**2.4 Liens and Encumbrances.** Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

**2.5 Interference with Other Uses.**

- (a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) Except in an emergency, Grantee shall provide State with written notice of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public.

**2.6 Amendment Upon Change of Permit Status.** State reserves the right to amend the terms and conditions of this Easement whenever any regulatory authority (1) modifies a permit in a manner affecting the provisions of this Easement or (2) allows for a change in the manner of outfall operation including, but not limited to, a change in the type, quality, or quantity of discharge.

## SECTION 3 TERM

**3.1 Term Defined.** The term of this Easement is 30 (Thirty) years (the "Term"), beginning on the 1<sup>st</sup> day of October, 2014 (the "Commencement Date"), and ending on the 30<sup>th</sup> day of September, 2044 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

### **3.2 Renewal of the Easement.**

- (a) This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant subject to requirements in Paragraph 3.2(b.) Grantee must apply for a new Easement at least one (1) year prior to Termination Date and State will respond with denial or consent within ninety (90) days.
- (b) Reduction of Discharge on State-Owned Aquatic Lands.
  - (1) Grantee warrants that Grantee considered alternatives to minimize impact of discharge as summarized in Exhibit B.
  - (2) At the time of application to renew the NPDES Permit, or every five (5) years, whichever is first, Grantee shall submit to State a report addressing progress to reduce discharges on state-owned aquatic land and associated biological communities. "Progress" means Grantee is analyzing or developing alternative disposal methods including, but not limited to, (1) reduction of inflow and infiltration; (2) groundwater recharge; (3) stream augmentation, industrial process supply, and/or agricultural application; (4) water conservation programs; (5) other water re-use projects, (6) low impact development, and (7) stormwater treatment processes.
  - (3) State will consider reports submitted under Subparagraph 3.2(b)(2) in evaluation of Grantee's application to enter into a new Easement. If reports demonstrate insufficient progress toward disposal alternatives that abate impacts to state-owned aquatic land and associated biological communities, State may either:
    - (i) Require Grantee to undertake investigation and analysis of reasonably practical disposal alternatives to the Permitted Use or \_\_\_\_\_
    - (ii) Rely on State's alternatives analysis developed in accordance with WAC 332-30-122(2)(d) and other regulations.
  - (4) Grantee's failure to anticipate and conduct disposal alternatives investigation and analysis may delay or prevent issuance of a new Easement.

### **3.3 End of Term.**

- (a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement Property to State restored to a condition substantially like its natural state before construction and operation of the outfall.
- (b) If Easement Property does not meet the condition described in Paragraph 3.3(a), the following provisions apply.

- (1) State shall provide Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right of entry or other use authorization prior to the Grantee entering the Easement Property to remedy any breach of this Subsection 3.3.
- (2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property prior to and during remedial action, and any administrative costs associated with the remedial action.

#### SECTION 4 FEES

**4.1 Fee.** *[For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW [79.110.230(1)] –OR- [79.110.120] payable on or before the Commencement Date.] –OR- [For the Term, Grantee shall pay to State a use fee of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_]) and an administrative fee calculated in accordance with RCW 79.110.240(4) payable on or before the Commencement Date] –OR- [For the Term, Grantee shall pay to State a fee of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_]), which is due and payable on or before the Commencement Date.] –OR- [Grantee shall pay an annual fee of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_]), which is due and payable on or before the Commencement Date and on or before the same date of each year thereafter.] Any payment not paid by State's close of business on the date due is past due.*

**4.2 Payment Place.** Grantee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

#### SECTION 5 OTHER EXPENSES

**5.1 Utilities.** Grantee shall pay all fees charged for utilities in connection with the use of the Easement Property.

**5.2 Taxes and Assessments.** Grantee shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

**5.3 Failure to Pay.** If Grantee fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

**5.4 Environmental Damages.**

- (a) If required to mitigate for environmental damage under Paragraph 2.2(d)(3)(ii), Grantee shall compensate State for lost or damaged resource values upon State's demand. The value of damages shall be determined in accordance with Paragraph 5.4(b).
- (b) Unless the Parties otherwise agree on the value, a three-member panel of appraisers will determine the measure of lost or damaged resource values. The appraisers shall be qualified to assess economic value of natural resources. State and Grantee each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Grantee equally. The panel shall base the calculation of damages on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.

**SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Late Charge.** If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**6.2 Interest Penalty for Past Due Fees and Other Sums Owed.**

- (a) Grantee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Subsection 6.1, above.
- (b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Subsection 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

**6.3 Referral to Collection Agency and Collection Agency Fees.** If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

**6.4 No Accord and Satisfaction.** If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

## SECTION 7 IMPROVEMENTS

### 7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) "Grantee-Owned Improvements" are Improvements made by Grantee with State's consent.
- (e) "Unauthorized Improvements" are Improvements made on the Easement Property without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.
- (f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements are located on the Easement Property: Stormwater outfall. The Improvements are Grantee-Owned Improvements.

### 7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and Easement Property.
- (b) Except in an emergency, Grantee shall not conduct any Work without State's prior written consent, as follows:
  - (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Easement Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.
  - (2) Except in an emergency, Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Grantee and State otherwise agree to coordinate permit applications. At a minimum or if no permits are necessary, Grantee shall submit plans and specifications at least ninety (90) days before commencement of Work.
  - (3) State waives the requirement for consent if State does not notify Grantee of its grant or denial of consent within sixty (60) days of submittal.

- (c) Grantee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Grantee shall provide State with plans and specifications or as-builts of emergency Work.
- (d) Grantee shall not commence or authorize Work until Grantee has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee shall maintain the performance and payment bond until Grantee pays in full the costs of the Work, including all laborers and material persons.
  - (2) Obtained all required permits.
  - (3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).
- (e) Grantee shall preserve and protect Improvements Owned by Others, if any
- (f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers.") If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.
- (g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Subsection 3.3, End of Term.
- (h) Upon completing work, Grantee shall promptly provide State with as-built plans and specifications.
- (i) State shall not charge rent for authorized Improvements installed by Grantee during this Term of this Easement, but State may charge rent for such Improvements when and if the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for Improvements to be removed as provided in Subsection 7.4.

#### **7.4 Grantee-Owned Improvements at End of Easement.**

- (a) Disposition
  - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Subsection 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal or State determines that abandonment of Improvements is in the best interests of State.
  - (2) Grantee-Owned Improvements remaining on the Easement Property on the expiration, termination or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.

- (3) If Grantee-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Grantee shall pay the costs of removal and disposal.
- (b) Determination of Removal or Abandonment.
  - (1) State may waive removal of any or all Grantee-Owned Improvements whenever State determines that it is in the best interests of the State. State will consider it in the best interests of the State to waive removal where abandonment is less detrimental than removal to the long term use and management of state-owned lands and resources.
  - (2) If Grantee renews the Easement or enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.
  - (3) If Grantee does not renew the Easement or enter into a new Easement, State and Grantee shall coordinate removal or abandonment as follows:
    - (i) Grantee must notify State at least one (1) year before the Termination Date of its proposal to either leave or remove Grantee-Owned Improvements.
    - (ii) State, within ninety (90) days, will notify Grantee whether State (1) does not waive removal or (2) consents to abandonment.
- (c) Grantee's Obligations if State Consents to Abandonment.
  - (1) Grantee shall conduct Work necessary for abandonment in accordance with Subsection 7.3.
  - (2) The submittal of plans and specifications shall identify means for plugging pipelines and notifying public of abandoned Improvements.
- (d) Grantee's Obligations if State Waives Removal.
  - (1) Grantee shall not remove Improvements if State waives the requirement for removal of any or all Grantee-Owned Improvements.
  - (2) Grantee shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Improvements State has designated to remain.

**7.5 Disposition of Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
  - (1) Consent to Grantee ownership of the Improvements, or
  - (2) Charge use and occupancy fee in accordance with RCW 79.105.200 of the Improvements from the time of installation or construction and
    - (i) Require Grantee to remove the Improvements in accordance with Subsection 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,
    - (ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or

- (iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

**7.6 Disposition of Personal Property.**

- (a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.
- (b) Grantee shall remove Personal Property from the Easement Property by the Termination Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.
  - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Grantee to the State, and State shall pay the remainder, if any, to the Grantee.
  - (2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including, but not limited to, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, as amended; Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended; and Washington's Sediment Management Standards, WAC Chapter 173-204.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a) or any similar event defined under any such law.
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances: the standard of care established under MTCA, RCW 70.105D.040.

**8.2 General Conditions.**

- (a) Grantee's obligations under this Section 8 extend to the area in, on, under, or above:

- (1) The Easement Property and
  - (2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Grantee's use of the Easement Property.
- (b) Standard of Care.
- (1) Grantee shall exercise the utmost care with respect to Hazardous Substances.
  - (2) In relation to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

### **8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Easement Property. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned lands.
- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.
- (c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property or on adjacent lands that allows Grantee to meet Grantee's obligations under this Easement.

### **8.4 Use of Hazardous Substances.**

- (a) Grantee, its, contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that:
  - (1) Result in a release or threatened release of Hazardous Substances, or
  - (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Grantee's use of the Easement Property.
- (c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law:
  - (1) Grantee shall submit to State any plans for remedying the violation, and
  - (2) State may require remedial measures in addition to remedial measures required by regulatory authorities.

### **8.5 Management of Contamination.**

- (a) Grantee shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities;

- (2) Result in human or environmental exposure to contaminated sediments;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation.
- (b) Grantee shall not interfere with access by:
- (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

#### **8.6 Notification and Reporting.**

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances;
  - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of any Hazardous Substance;
  - (3) Any lien or action arising from the foregoing;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) Grantee's duty to report under Paragraph 8.6(a) extends to the Easement Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances could arise from the Grantee's use of the Easement Property, and any other property used by Grantee in conjunction with Grantee's use of the Easement Property where a release or the presence of Hazardous Substances on the other property would affect the Easement Property.
- (c) Grantee shall provide State with copies of all documents concerning environmental issues associated with the Easement Property, and submitted by Grantee to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

**8.7 Indemnification.**

- (a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.
- (b) Grantee shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:
  - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Grantee uses or has used the Easement Property;
  - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Grantee, its contractors, agents, employees, guests, invitees, or affiliates occurring anytime Grantee uses or has used the Easement Property.
- (c) Grantee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Grantee's breach of obligations under Subsection 8.5.
- (d) Third Parties.
  - (1) Grantee has no duty to indemnify State for acts or omissions of third parties unless Grantee fails to exercise the standard of care required by Paragraph 8.2(b)(2). Grantee's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).
  - (2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Grantee failed to exercise care as described in Subparagraph 8.7(d)(1), Grantee shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.
- (e) Grantee is obligated to indemnify under the Subsection 8.7 regardless of whether a NPDES or other permit or license authorizes the discharge or release of Hazardous Substances.

**8.8 Reservation of Rights.**

- (a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have against the other under law.
- (b) This Easement affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.
- (c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

- (d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

**8.9 Cleanup.**

- (a) If Grantee's act, omission, or breach of obligation under Subsection 8.4 results in a release of Hazardous Substances, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law. Cleanup actions include, without limitation, removal, containment, and remedial actions.
- (b) Grantee's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards.
- (c) At the State's discretion, Grantee may undertake a cleanup of the Easement Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

**8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) Grantee shall conduct sediment sampling, if required, in accordance with Exhibit B.
- (b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (c) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.4, above, Grantee shall promptly reimburse State for all costs associated with such Tests.
- (d) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Grantee shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical.
- (e) Grantee is entitled to obtain split samples of any Test samples obtained by State, but only if Grantee provides State with written notice requesting such samples within twenty (20) calendar days of the date of Grantee's receipt of notice of State's intent to conduct any non-emergency Tests. Grantee solely shall bear the

additional cost, if any, of split samples. Grantee shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Grantee a bill with documentation for such costs.

- (f) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Easement shall provide the other Party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Easement Property performed by or on behalf of State or Grantee. There is no obligation to provide any analytical summaries or the work product of experts.

## SECTION 9 ASSIGNMENT

Grantee shall not assign any part of Grantee's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent, which State shall not unreasonably condition or withhold. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

## SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

**10.1 Indemnity.** Each Party is responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

### 10.2 Insurance Terms.

- (a) **Insurance Required.**
- (1) At its own expense, Grantee shall procure and maintain during the Term of this Easement, the insurance coverages and limits described in this Subsection 10.2 and in Subsection 10.3, Insurance Types and Limits. State may terminate this Easement if Grantee fails to maintain required insurance.
  - (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
  - (3) The State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees must be named as an additional insured on all general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies.

- (4) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
    - (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
    - (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
  - (c) Proof of Insurance.
    - (1) Grantee shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
    - (2) The certificate(s) of insurance must reference additional insureds and the Easement number.
    - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
  - (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, in accordance with the following:
    - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
    - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
  - (e) Adjustments in Insurance Coverage.
    - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
    - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
  - (f) If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
    - (1) Deem the failure an Event of Default under Section 14, or
    - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Grantee's repayment.
  - (g) General Terms.

- (1) State does not represent that coverage and limits required under this Easement will be adequate to protect Grantee.
- (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
- (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Grantee.

### 10.3 Insurance Types and Limits.

(a) General Liability Insurance.

- (1) Grantee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than *[One Million Dollars (\$1,000,000)]* -OR- *[\_\_\_\_\_]* Dollars (\$ *[\_\_\_\_\_]*) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
- (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
- (3) MGL insurance must have no exclusions for non-owned watercraft.

(b) Workers' Compensation.

- (1) State of Washington Workers' Compensation.
  - (i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
  - (ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity includes all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Worker's Act. The Longshore and Harbor Worker's Compensation Act (33 U.S.C. Section 901 *et. seq.*) may require Grantee to provide insurance coverage for longshore and harbor workers other than seaman. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Grantee is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Grantee to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Grantee is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employer's Liability Insurance. Grantee shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than *[One Million Dollars (\$1,000,000)] -OR- [[\_\_\_\_\_] Dollars (\$[\_\_\_\_\_])]* each accident for bodily injury by accident or *[One Million Dollars (\$1,000,000)] -OR- [[\_\_\_\_\_] Dollars (\$[\_\_\_\_\_])]* each employee for bodily injury by disease.
- (d) Pollution Legal Liability Insurance.
- (1) Grantee shall procure and maintain for the duration of this Easement pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. Grantee shall maintain coverage in an amount of at least:
- (i) *[\_\_\_\_\_] Dollars (\$[\_\_\_\_\_])* each occurrence for Tenant's operations at the site(s) identified above, and
- (ii) *[\_\_\_\_\_] Dollars (\$[\_\_\_\_\_])* general aggregate or policy limit, if any.
- (2) Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is provided on a claims-made basis, the following additional conditions must be met:
- (i) The Insurance Certificate must state that the insurer is covering Hazardous Substance removal.
- (ii) The policy must contain no retroactive date, or the retroactive date must precede abatement services.

- (iii) Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the Easement Property.
- (iv) The extended reporting period (tail) must be purchased to cover a minimum of thirty-six (36) months beyond completion of work.

#### 10.4 Financial Security.

- (a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State may approve ("Security"). Grantee shall provide Security in an amount equal to                      Dollars (\$                    ), which is consistent with RCW 79.105.330, and secures Grantee's performance of its obligations under this Easement, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Grantee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to the State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Grantee may submit a request to risk manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) At the same time as revaluation, if any,
    - (ii) As a condition of approval of assignment of this Easement,
    - (iii) Upon a material change in the condition or disposition of any Improvements, or
    - (iv) Upon a change in the Permitted Use.
  - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Easement because of the default.

## SECTION 11 ROUTINE MAINTENANCE AND REPAIR

**11.1 State's Repairs.** This Easement does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, during the Term.

### **11.2 Grantee's Repairs and Maintenance.**

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.
- (b) At Grantee's sole expense, Grantee shall keep and maintain all Grantee-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Grantee's own expense, Grantee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.
- (d) Grantee shall follow procedures for the inspection, routine maintenance, and emergency plans in Exhibit B. Upon State's request, Grantee shall provide State with a copy of complete Operation and Maintenance Manual and/or Facilities Plan.
- (e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

## SECTION 12 DAMAGE OR DESTRUCTION

### **12.1 Notice and Repair.**

- (a) In the event of any known damage to or destruction of the Easement Property or any Improvements, Grantee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Grantee's written notice.
- (b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct, repair, or replace any Improvements in accordance with Subsection 7.3, Construction, Major Repair, Modification, and Demolition, as nearly as possible to its condition immediately prior to the damage or destruction. Where damage to state-owned aquatic land or natural resources is attributable to the Permitted Use or related activities, Grantee shall promptly restore the lands or resources to the condition preceding the damage in accordance with Subsection 7.3 unless otherwise agreed in writing.

**12.2 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Easement Property unless State provides written notice to Grantee of each specific claim waived.

**12.3 Insurance Proceeds.** Grantee's duty to reconstruct, repair, or replace any damage or destruction of the Easement Property or any Improvements on the Easement Property is not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

### SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

### SECTION 14 TERMINATION

**14.1 Termination by Breach.** State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. State shall provide Grantee written notice of breach. Grantee shall have sixty (60) days after receiving notice to cure. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days.

**14.2 Termination by Nonuse.** If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State. Grantee's rights revert to State upon Termination by Nonuse.

**14.3 Termination by Grantee.** Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate.

### SECTION 15 NOTICE AND SUBMITTALS

**15.1 Notice.** Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022

Grantee: DES MOINES CREEK BASIN COMMITTEE  
City of Des Moines  
21630 11<sup>th</sup> Avenue South  
Des Moines, WA 98189

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

**15.2 Contact Persons.** On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: *Name and Title of Contact Person*  
*Telephone number*  
*Fax number*  
*E-mail address*

Grantee: Name and Title of Contact Person: Don Monaghan, Basin Coordinator  
Telephone number: (425)228-0436 or (425) 736-3686  
E-mail address: enmsolutions@comcast.net

## SECTION 16 MISCELLANEOUS

**16.1 Authority.** Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations. This Easement is entered into by State pursuant to the authority granted it in Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 RCW and the Constitution of the State of Washington.

**16.2 Successors and Assigns.** This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

**16.3 Headings.** The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

**16.4 Entire Agreement.** This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

**16.5 Waiver.**

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

**16.6 Cumulative Remedies.** The rights and remedies under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**16.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Easement.

**16.8 Language.** The word "Grantee" as used in this Easement applies to one or more persons, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, includes individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on context.

**16.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

**16.10 Applicable Law and Venue.** This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

**16.11 Recordation.** At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Lease in the county in which the Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number. If Grantee fails to record this Easement, State may record it and Grantee shall pay the costs of recording upon State's demand.

**16.12 Modification.** No modification of this Easement is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

**16.13 Survival.** Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

**16.14 Exhibits.** All referenced exhibits are incorporated in this Easement unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

DES MOINES CREEK BASIN COMMITTEE

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By:  
Title:  
Address:  
Phone:

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By:  
Title:  
Address:

Approved as to form this  
9 day of May 2013  
Terry Pruit, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF )  
 ) ss  
County of )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that (he/she) signed this  
instrument, on oath stated that (he/she) was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ (type of authority) of  
\_\_\_\_\_ (name of corporation) to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of  
Washington, residing at

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)  
County of ) ss  
)

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that (he/she) signed this  
instrument, on oath stated that (he/she) was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of the Department of  
Natural Resources, to be the free and voluntary act of such party for the uses and purposes  
mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of  
Washington, residing at

\_\_\_\_\_  
My appointment expires \_\_\_\_\_



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DOCK AVES

S 223RD ST

5TH AVES

CLIFF AVES

6TH AVES

S 222ND ST

Des Molines

Normandy Park

600

22341

22335

22315

22307

528

22219

22217

22215

22213

22211

521

509

22201

22047

506

516

22028

22017

22005

600

Pre-Workshop Results      Workshop Results

Criteria Rating	Group Rating	Group Rating
Funding: spend money where it will result in the largest overall impact	H	H
Maintenance/Inspection: improve the existing drainage pipe system	H	H
CMP Pipe Replacement	M	M/H
Ditch Removal	M	M
Preventing Pollutants: Removing pollutants from rainwater runoff	M	M
Geology: Addressing landslide/ground settling/seepage/erosion problems	M	L/M
Reduce/Eliminate Flooding	M	L/M
Environmental: Stream enhancements/wildlife habitat/fish access improvements	L	L
LID: Use of more "natural-based" approaches to rainwater management (green stormwater infrastructure/low impact development)	L	L
Geographic: Improvements spread throughout the City/at least one project in each neighborhood and/or stream area	L	L
Other Criteria (Added During Workshop): Safety		H
Other Criteria (Added During Workshop): Public Education / Public Involvement		M/H
Other Criteria (Added During Workshop): Regulatory Requirements		M

Rating:

High
Med/High
Med
Low/Med
Low

## Stormwater Construction Projects/Efforts

Des Moines Memorial Drive - S. 212th to S. 213th Pipeline Replacement

216th Place Culvert Replacement

Lower Massey Creek Channel Modifications

Barnes Creek/Kent-Des Moines Road Culvert Replacement

24th Avenue Pipeline Replacement/Upgrade

Pipe Replacement Program

199th North Hill Trunkline Upgrade

1st Avenue Pond Expansion

North Hill Northeast and 197th Street Trunkline Upgrade

Replace failing CMP pipe at 10th Ave between KDM and 232nd

Replace bottomless basins citywide

Clean-up of private pond located at northwest corner of 27th Ave S and S 246th St

Replace pond facility at 16th/250th with vault

Upgrade pipes between 208th/216th between 4th and 7th and upgrade roadways in area to create drainage

Culvert replacement below 272nd at 14th Avenue

Address flooding/backwatering into Redondo Riveria subdivision

Address ditch/drainage issue west of 16th along the backside of Povidental Soundview subdivision (approx. 258th Ave)

Deep ditches along 222nd, 223rd, and 24th Ave with fog line next to ditch

Confined channel and localized erosion/flooding west of 20th/between 244th and 245th (north fork of McSorley Creek)

Replace deep roadside ditches

Replace old CMP

Create roadside drainage systems in problem areas

Evaluation of stream outfalls for downstream erosion

Treatment or spill control for stream protection

Barnes Creek Wetland area

Des Moines Memorial Drive sliding (north hill drainage)

## Operations and Maintenance

Implement a GIS system for determining a detailed inspection schedule of catch basins and inlets throughout the City

All cities shall prepare to participate in the implementation of a long-term monitoring program to include two components: stormwater monitoring and targeted SWMP effectiveness monitoring.

O&M Manuals and SOPP for large storm ponds and vaults

Stormwater quality education and training for maintenance staff, development of "smart" maintenance schedule

Develop maintenance and inspection frequency for stormwater facilities and components

Increase pipe program and pipe projects

Improve basin inspections

Regular vault and filter maintenance

Decant facility (partner with neighboring cities)

Contracted maintenance services

Improve record keeping system

Standardize and track inspection frequency for NPDES permit

Development of yearly maintenance "work plan" (NPDES permit requirements)

Pipe cleaning schedule

Creation of Public Facilities O&M Manual

Stormwater pond cleaning and maintenance

Annual ditch inspection and maintenance

Installation of debris guards on inlets to pipe system; replace brick manholes with standard structures

Inspection and maintenance of systems within easements

Improve maintenance and cleaning schedule

Evaluate and improve City maintenance yards to reduce pollution runoff

Equipment replacement

Pipe video - condition assessment program

## Drainage System Planning and Policies

Creation of "regional and/or local drainage facilities" within each drainage basin for new developments to "buy" credits

Implementation of priority system for new drainage construction and repair

Normandy Creek Basin Study (in cooperation with Normandy Park)

Installing Stormceptor type devices at all major outfalls to creeks to improve water quality

Relocating problem drainage systems from easements to City right-of-way

Policies related to Huntington Park and other private property

Public Education

Training as required for IDDE, controlling runoff, pollution prevention and operations and maintenance

Develop IDDE procedures to characterize the nature and environmental threat posed by illicit discharges, to trace the source of illicit discharges, and to eliminate source of discharge

Policy related to Transportation contribution to pipe replacement program

Policy for Lower Massey Creek west of Marine View Drive - private segment of stream with fish passage barriers and flooding

Policy for WRIA 9 project funding (sponsoring projects within Des Moines)

Policy for land acquisitions for preservation of stream corridors