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| Title: | AN ORDINANCE relating to surface water management; and amending Ordinance 9163, Section 2, as amended, and K.C.C. 9.04.020, Ordinance 9163, Section 3, as amended, and K.C.C. 9.04.030, Ordinance 2281, Section 5, as amended, and K.C.C. 9.04.050, Ordinance 10636, Section 4, as amended, and K.C.C. 9.12.025, Ordinance 10636, Section 5, as amended, and K.C.C. 9.12.035 and Ordinance 10636, Section 10, as amended, and K.C.C. 9.12.080. | | |
| Sponsors: | Larry Gossett | | |
| Indexes: | Comprehensive Plan, Surface Water | | |
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| Attachments: | 1. 16264.pdf, 2. 2008-0124---0128 Notice of Adoption.doc, 3. 2008-0124--2008-0128 hearing notice.doc, 4. 2008-0125 - SWM Amendment (8-5-08).pdf, 5. 2008-0125 Fiscal Note.xls, 6. 2008-0125 Regulatory Note--Checklist of Criteria.doc, 7. 2008-0125 Transmittal Letter.pdf | | |

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| 10/6/2008 | 1 | Metropolitan King County Council | Passed as Amended | Pass |
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| 9/29/2008 | 1 | Metropolitan King County Council | Deferred | |
| 8/5/2008 | 1 | Growth Management and Natural Resources Committee | | |
| 3/10/2008 | 1 | Metropolitan King County Council | Introduced and Referred | |

AN ORDINANCE relating to surface water management; and amending
Ordinance 9163, Section 2, as amended, and K.C.C. 9.04.020, Ordinance 9163,
Section 3, as amended, and K.C.C. 9.04.030, Ordinance 2281, Section 5, as
amended, and K.C.C. 9.04.050, Ordinance 10636, Section 4, as amended, and
K.C.C. 9.12.025, Ordinance 10636, Section 5, as amended, and K.C.C. 9.12.035
and Ordinance 10636, Section 10, as amended, and K.C.C. 9.12.080.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 9163, Section 2, as amended, and K.C.C. 9.04.020, as amended, are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Adjustment" means a department-approved variation in the application of the requirements of K.C.C. 9.04.050 and the Surface Water Design Manual to a particular project in accordance with K.C.C. 9.04.050C. "Adjustment" replaces "variance," which was used in prior editions of the Surface Water Design Manual.

B. "Applicant" means a property owner or a public agency or public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such an easement under RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval.

C. "Basin" means a geographic area that contains and drains to a stream or river named and noted on common maps, such as the Cedar river, Sammamish river, Green river, Snoqualmie river, Skykomish river or White river, ~~((f))~~ or a geographic area that drains to ~~((j*))~~ a nonflowing water body named and noted on common maps, such as Lake Washington or Puget Sound.

D. "Basin plan" means a plan and all implementing regulations and procedures including, but not limited to, capital projects, public education activities and land use management adopted by ordinance for managing surface and storm water within the basin.

E. "Closed depression" means an area greater than five thousand square feet at overflow elevation that is low-lying and that has no or such a limited surface water outlet that the area acts as a stormwater retention facility.

F. "Construct or modify" means to install a new drainage pipe or ditch or make improvements to an existing drainage pipe or ditch, for purposes other than maintenance, that either serves to concentrate previously unconcentrated surface and storm water runoff or serves to increase, decrease or redirect the conveyance of surface and storm water runoff. "Construct or modify" does not include installation or

maintenance of a driveway culvert installed as part of a single-family residential building permit.

G. "Conveyance system" means the drainage facilities and features, both natural and constructed, that collect, contain and provide for the flow of surface and storm water from the highest points on the land down to a receiving water. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes and wetlands. The constructed elements of the conveyance system include gutters, ditches, pipes, channels and most flow control and water quality treatment facilities.

H. "Department" means the department of natural resources and parks or its successor.

I. "Development" means any activity that requires a permit or approval, including, but not limited to, a building permit, grading permit, shoreline substantial development permit, conditional use permit, special use permit, zoning variance or reclassification, subdivision, short subdivision, urban planned development, binding site plan, site development permit or right-of-way use permit. "Development" does not include a Class I, II, III or IV-S forest practice conducted in accordance with chapter 76.09 RCW and Title 222 WAC or a class IV-G nonconversion forest practice, as defined in K.C.C. chapter 21A.06, conducted in accordance with chapter 76.09 RCW and Title 222 WAC and a county-approved forest management plan.

J. "Director" means the director of the department of natural resources and parks, or any duly authorized representative of the director.

K. "Drainage" means the collection, conveyance, containment or discharge, or any combination thereof, of surface and storm water runoff.

L. "Drainage facility" means a constructed or engineered feature that collects, conveys, stores or treats surface and storm water runoff. "Drainage facility" includes, but is not limited to, a constructed or engineered stream, pipeline, channel, ditch, gutter, lake, wetland, closed depression, flow control or water quality treatment facility, erosion and sediment control facility and other structure and appurtenance that provides for drainage.

M. "Drainage review" means an evaluation by King County staff of a proposed project's compliance with the drainage requirements in the Surface Water Design Manual. The types of drainage review include:

Small project drainage review, targeted drainage review, full drainage review and large project drainage review.

N. "Erosion and sediment control" means any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation and ensure that sediment-laden water does not leave the site or enter into wetlands or aquatic areas.

O. "Financial guarantee" means a form of financial security posted to do one or more of the following: ensure timely and proper completion of improvements; ensure compliance with the King County Code; or provide secured warranty of materials, workmanship of improvements and design. "Financial guarantees" include assignments of funds, cash deposit, surety bonds or other forms of financial security acceptable to the director of the department of development and environmental services. "Performance guarantee," "maintenance guarantee" and "defect guarantee" are considered sub categories of financial guarantee.

P. "Flood hazard reduction plan" means a plan and all implementing programs, regulations and procedures including, but not limited to, capital projects, public education activities and enforcement programs for reduction of flood hazards and prepared in accordance with RCW 86.12.200.

Q "Flow control best management practice" means a method or design for dispersing, infiltrating or otherwise reducing or preventing development-related increases in surface and storm water runoff at, or near, the sources of those increases. "Flow control best management practice" includes the methods and designs specified in the Surface Water Design Manual.

R. "Flow control facility" means a drainage facility designed to mitigate the impacts of increased surface and storm water runoff generated by site development in accordance with the drainage requirements in this chapter. A "flow control facility" is designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration or infiltration into the ground or to hold runoff for a short period of time and then release it to the conveyance system.

S. "Full drainage review" means the evaluation required by K.C.C. 9.04.030 for any proposed project, unless the project is subject to small project drainage review, targeted drainage review or large project drainage

review, that:

1. Would result in two thousand square feet or more of new impervious surface;
2. Would result in thirty-five thousand square feet or more of new pervious surface: or
3. Is a redevelopment project on one or more parcels where the total of new and replaced impervious surface is five thousand square feet or more and when the valuation of proposed improvements exceeds fifty percent of the assessed value of the existing site improvements, including interior improvements and excluding required mitigation and frontage improvements.

T. "High-use site" means a commercial, industrial or road intersection site that generates a higher than average number of vehicle turnovers or has other characteristics that generate the potential for chronic oil accumulation. "High use site" includes:

1. A commercial or industrial site subject to:
 - a. an expected daily traffic count greater than one hundred vehicles per one thousand square feet of gross building area;
 - b. petroleum storage or transfer in excess of one thousand gallons per year, not including routine fuel oil storage or transfer; or
 - c. use, storage or maintenance of a fleet of twenty-five or more diesel vehicles each weighing over ten tons; or
2. A road intersection with average daily traffic counts of twenty-five thousand vehicles or more on the main roadway and fifteen thousand or more vehicles on any intersecting roadway, excluding pedestrian or bicycle use improvement projects.

U. "Hydraulically connected" means connected through surface flow or water features such as wetlands or lakes.

V. "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development or that causes water to run off the surface in

greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas that are paved, graveled or made of packed or oiled earthen materials or other surfaces that similarly impede the natural infiltration of surface and storm water. An open uncovered flow control or water quality treatment facility is not an “impervious surface”.

W. "Improvement" means a permanent, human-made, physical change to land or real property including, but not limited to, buildings, streets, driveways, sidewalks, crosswalks, parking lots, water mains, sanitary and storm sewers, drainage facilities and landscaping.

X. “Land disturbing activity” means an activity that results in a change in the existing soil cover, both vegetative and nonvegetative, or to the existing soil topography. “Land disturbing activity” includes, but is not limited to, demolition, construction, clearing, grading, filling, excavation and compaction. “Land disturbing activity” does not include tilling conducted as part of agricultural practices, landscape maintenance or gardening.

Y. "Lake management plan" means a plan describing the lake management recommendations and requirements adopted by public rule for managing water quality within individual lake basins.

Z. "Large project drainage review" means the evaluation required by K.C.C. 9.04.030 for any proposed project that:

1. Has an urban plan development land use designation in the King County Comprehensive Plan land use map;
2. Would, at full buildout of the project site, result in fifty acres or more of new impervious surface within a drainage subbasin or a number of subbasins hydraulically connected across subbasin boundaries; or
3. Has a project site of fifty acres or more within a critical aquifer recharge area, as defined in K.C.C. Title 21A.

AA. "Licensed civil engineer" means a person registered with the State of Washington as a professional

engineer in civil engineering.

BB. "Maintenance" means those usual activities taken to prevent a decline, lapse or cessation in the use of currently serviceable structures, facilities, equipment or systems, if there is no expansion of the structure, facilities, equipment or system and there are no significant hydrologic impacts. "Maintenance" includes the repair or replacement of nonfunctional facilities or the replacement of existing structures with different types of structures, if the repair or replacement is required by one or more environmental permits or to meet current engineering standards and the functioning characteristics of the original facility or structure are not changed.

CC. "Master drainage plan" means a comprehensive drainage control plan intended to prevent significant adverse impacts to the natural and constructed drainage system, both on- and off-site.

DD. "Native vegetated surface" means a surface in which the soil conditions, ground cover and species of vegetation are like those of the original native condition for the site, as more specifically set forth in the Surface Water Design Manual.

EE. "Natural discharge location" means the location where runoff leaves the project site under existing site conditions as defined in the Surface Water Design Manual.

FF. "New impervious surface" means the creation of a hard or compacted surface such as roofs, pavement, gravel or dirt or the addition of a more compacted surface such as the paving of existing dirt or gravel.

GG. "New pervious surface" means the conversion of a native vegetated surface or other native surface to a nonnative pervious surface, including, but not limited to, pasture land, grassland, cultivated land, lawn, landscaping or bare soil or any alteration of existing nonnative pervious surface that results in increased surface and storm water runoff as defined in the Surface Water Design Manual.

HH. "Pollution-generating impervious surface" means an impervious surface considered to be a significant source of pollutants in surface and storm water runoff. "Pollution-generating impervious surface" includes those surfaces subject to vehicular use or storage of erodible or leachable materials, wastes or

chemicals and that receive direct rainfall or the run-on or blow-in of rainfall. A covered parking area would be included if runoff from uphill could regularly run through it or if rainfall could regularly blow in and wet the pavement surface. Metal roofs are also considered pollution-generating impervious surface unless they are treated to prevent leaching.

II. "Pollution-generating pervious surface" means a nonimpervious surface considered to be a significant source of pollutants in surface and storm water runoff. "Pollution-generating pervious surfaces" include surfaces subject to the use of pesticides and fertilizers, to the use or storage of erodible or leachable materials, wastes or chemicals or to the loss of soil. "Pollution-generating pervious surface" includes, but is not limited to, the lawn and landscaped areas of a residential or commercial site, golf course, park sports field and county-standard grassed modular grid pavement.

JJ. "Project" means any proposed action to alter or develop a site that may also require drainage review.

KK. "Project site" means the portion of a site and any offsite areas subject to proposed project activities, alterations and improvements including those required by this chapter.

LL. "Redevelopment project" means a project that proposes to add, replace or modify impervious surface for purposes other than a residential subdivision or maintenance on a site that:

1. Is already substantially developed in a manner that is consistent with its current zoning or with a legal nonconforming use; or
2. Has an existing impervious surface coverage of thirty-five percent or more.

MM. "Replaced impervious surface" means an existing impervious surface proposed to be removed and reestablished as impervious surface, excluding impervious surface removed for the sole purpose of installing utilities or performing maintenance. For purposes of this definition, "removed" includes the removal of buildings down to bare soil or the removal of Portland cement concrete slabs or pavement or asphaltic concrete pavement (~~((together with any asphalt treated base))~~).

NN. "Runoff" means that portion of water originating from rainfall and other precipitation that flows

over the surface or just below the surface from where it fell and is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands and shallow groundwater as well as on ground surfaces. For the purpose of this definition, groundwater means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

OO. "Salmon conservation plan" means a plan and all implementing regulations and procedures including, but not limited to, land use management adopted by ordinance, capital projects, public education activities and enforcement programs for conservation and recovery of salmon within a water resource inventory area designated by the state under WAC 173-500-040.

PP. "Shared facility" means a drainage facility designed to meet one or more of the requirements of K.C.C. 9.04.050 for two or more separate projects contained within a basin. Shared facilities usually include shared financial commitments for those drainage facilities.

QQ. "Site" means a single parcel, or two or more contiguous parcels that are under common ownership or documented legal control, used as a single parcel for a proposed project for purposes of applying for authority from King County to carry out a proposed project. For projects located primarily within dedicated rights-of-way, "site" includes the entire width of right-of-way subject to improvements proposed by the project.

RR. "Small project drainage review" means the drainage review for a proposed single-family residential project or agricultural project that:

1. Would result in:

- a. ten thousand square feet or less of total impervious surface added on or after January 8, 2001; or
- b. four percent or less of total impervious surface on a site as specified in the Surface Water Design

Manual; and

2. Meets the small project drainage requirements specified in the Surface Water Design Manual, including flow control best management practices, erosion and sediment control measures and drainage plan

submittal requirement; and

3. Limits new pervious surface as specified in the Surface Water Design Manual.

SS. "Stormwater compliance plan" means a plan or study and all regulations and procedures that have been adopted by the county to implement the plan or study, including, but not limited to, capital projects, public education activities and enforcement programs for managing stormwater quantity and quality discharged from the county's municipal separate storm sewer system in compliance with the National Pollutant Discharge Elimination System permit program under the Clean Water Act.

TT. "Subbasin" means a geographic area that:

1. Drains to a stream or water body named and noted on common maps; and
2. Is contained within the basin of the stream or water body.

UU. "Surface and storm water" mean water originating from rainfall and other precipitation that is found on ground surfaces and in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands as well as and shallow ground water.

VV. "Surface Water Design Manual" means the manual, and supporting documentation referenced or incorporated in the manual, describing surface and storm water design and analysis requirements, procedures and guidance that has been formally adopted by rule under the procedures in K.C.C. chapter 2.98. The Surface Water Design Manual is available from the department of development and environmental services or the department of natural resources and parks, water and land resources division or their successor agencies.

WW. "Targeted drainage review" means an abbreviated evaluation required by K.C.C. 9.04.030 for certain types of proposed projects that are not subject to full or large project drainage review. Targeted drainage review may be required for some projects in small project drainage review.

XX. "Water quality treatment facility" means a drainage facility designed to reduce pollutants once they are already contained in surface and storm water runoff. A water quality treatment facility is the structural component of best management practices. When used singly or in combination, a water quality treatment

facility reduces the potential for contamination of both surface and ground waters.

SECTION 2. Ordinance 9163, Section 3, as amended, and K.C.C. 9.04.030 are each hereby amended to read as follows:

A. Drainage review is required when any proposed project is subject to a King County development permit or approval and:

1. Would result in two thousand square feet or more of new impervious surface, replaced impervious surface or new plus replaced impervious surface;
2. Would involve seven thousand square feet or more of land disturbing activity;
3. Would construct or modify a drainage pipe or ditch that is twelve inches or more in size or depth or receives surface and storm water runoff from a drainage pipe or ditch that is twelve inches or more in size or depth;
4. Contains or is adjacent to a flood hazard area as defined in K.C.C. chapter 21A.24;
5. Is located within a critical drainage area;
6. Is a redevelopment project proposing one hundred thousand dollars or more of improvements to an existing high-use site; or
7. Is a redevelopment project on a site in which the total of new plus replaced impervious surface is five thousand square feet or more and whose valuation of proposed improvements, including interior improvements and excluding required mitigation and frontage improvements, exceeds fifty percent of the assessed value of the existing site improvements.

B. The drainage review for any proposed project shall be scaled to the scope of the project's size, type of development and potential for impacts to the regional surface water system to facilitate preparation and review of project applications. If drainage review for a proposed project is required under subsection A. of this section, the department of development and environmental services shall determine which of the following drainage reviews apply as specified in the Surface Water Design Manual:

1. Small project drainage review;
2. Targeted drainage review;
3. Full drainage review; or
4. Large project drainage review.

SECTION 3. Ordinance 2281, Section 5, as amended, and K.C.C. 9.04.050 are each hereby amended to read as follows:

A. A proposed project required to have drainage review by K.C.C. 9.04.030 must meet each of the following core requirements which are described in detail in the Surface Water Design Manual. Projects subject only to small project drainage review that meet the small project drainage requirements specified in the Surface Water Design Manual, including flow control best management practices, erosion and sediment control measures and drainage plan submittal requirements are deemed to comply with the following core requirements:

1. Core requirement 1: Discharge at the natural location. All surface and storm water runoff from a project shall be discharged at the natural location so as not to be diverted onto, or away from, downstream properties. The manner in which runoff is discharged from the project site shall not create a significant adverse impact to downhill properties or drainage systems as specified in the discharge requirements of the Surface Water Design Manual;
2. Core requirement 2: Offsite analysis. The initial application submittal for proposed projects shall include an offsite analysis report that assesses potential offsite drainage and water quality impacts associated with development of the proposed site and proposes appropriate mitigations to those impacts. This initial submittal shall include, at minimum, a Level One downstream analysis as described in the Surface Water Design Manual. If impacts are identified, the proposed projects shall meet any applicable problem-specific requirements as specified in the Surface Water Design Manual;
3. Core Requirement 3: Flow control. Proposed projects that would result in two thousand square feet

or more of new impervious surface or thirty-five thousand square feet or more of new pervious surface, or that are redevelopment projects that would result in a total of five thousand square feet or more of new and replaced impervious surface, shall provide flow control facilities or flow control BMPs, or both, to control surface and storm water runoff generated by new impervious surface, new pervious surface, replaced impervious surface and any existing impervious surface added on or after January 8, 2001, as specified in the Surface Water Design Manual. Flow control facilities shall meet the area-specific flow control facility requirements and the flow control facility implementation requirements applicable to the project site as specified in the Surface Water Design Manual. Flow control BMPs shall also be applied as specified in the Surface Water Design Manual. Projects subject to area-specific flow control facility requirements shall meet one of the flow control facility performance criteria listed in a. through c. of this subsection A.3., as directed by the Surface Water Design Manual:

- a. Level One shall match the predeveloped site's peak discharge rates for the two-year and ten-year return periods;
 - b. Level Two shall meet Level One criteria and also match the predeveloped site's discharge durations for the predeveloped peak discharge rates between the fifty percent of the two-year peak flow through the fifty-year peak flow; or
 - c. Level Three shall meet Level Two criteria and also match the predeveloped site's peak discharge rate for the one hundred-year return period;
4. Core requirement 4: Conveyance system. All engineered conveyance system elements for proposed projects shall be analyzed, designed and constructed to provide the minimum level of protection against overtopping, flooding, erosion and structural failure as specified by the conveyance requirements for new and existing systems and conveyance implementation requirements described in the Surface Water Design Manual;
 5. Core requirement 5: Erosion and sediment control. All proposed projects that will clear, grade or

otherwise disturb the site shall provide erosion and sediment control that prevents, to the maximum extent practicable, the transport of sediment from the site to drainage facilities, water resources and adjacent properties. Erosion and sediment controls shall be applied in accordance with K.C.C. chapter 16.82 as specified by the temporary erosion and sediment control measures and performance criteria and implementation requirements in the King County Surface Water Design Manual;

6. Core requirement 6: Maintenance and operation. Maintenance of all drainage facilities in compliance with King County maintenance standards is the responsibility of the applicant or property owner as described in the Surface Water Design Manual, except those facilities for which King County assumes maintenance and operation as described in K.C.C. 9.04.115 and 9.04.120 and the Surface Water Design Manual;

7. Core requirement 7: Financial guarantees and liability. All drainage facilities constructed or modified for projects, except downspout infiltration and dispersion systems for single family residential lots, must comply with the liability requirements of K.C.C. 9.04.100 and the financial guarantee requirements of K.C.C. Title 27A;

8. Core requirement 8: Water quality. Proposed projects that would result in five thousand square feet or more of new pollution generating impervious surface or thirty-five thousand square feet or more of new pollution-generating pervious surface, or that are redevelopment projects that would result in a total of five thousand square feet or more of new and replaced pollution-generating impervious surface, shall provide water quality treatment facilities to treat polluted surface and storm water runoff generated by new or replaced pollution-generating impervious surface, new pollution-generating pervious surface and any existing pollution-generating impervious surface added on or after January 8, 2001, as specified in the Surface Water Design Manual. However, pervious surfaces are specifically excluded if there is a good faith agreement with the King Conservation District to implement a farm management plan for agricultural uses, and pervious areas for other uses are specifically excluded if King County department of development and environmental services approves

a landscape management plan that controls pesticides and fertilizers leaving the site. Water quality treatment facilities shall meet the area-specific water quality treatment requirements and the water quality implementation requirements applicable to the project site as specified in the Surface Water Design Manual. The facilities specified by these requirements are designed to reduce pollutant loads according to the applicable annual average performance goals listed in a. through d. of this subsection A.8. for ninety-five percent of the annual average runoff volume:

- a. for basic water quality: remove eighty percent of the total suspended solids;
- b. for enhanced basic water quality: remove fifty percent of the total zinc;
- c. for sensitive lake protection: remove fifty percent of the total phosphorus; and
- d. for sphagnum bog protection: remove fifty percent of the total phosphorus and forty percent of the total nitrate plus nitrite. The discharge shall maintain a pH of less than 6.5 and an alkalinity of less than ten milligrams per liter.

B. A proposed project required by K.C.C. 9.04.030 to have drainage review shall meet any of the following special requirements which apply to the site and which are described in detail in the Surface Water Design Manual. The department of development and environmental services shall verify if a proposed project is subject to and must meet any of the following special requirements.

1. Special Requirement 1: Other adopted area-specific requirements. If a proposed project is in a designated critical drainage area, or is in an area included in an adopted master drainage plan, basin plan, salmon conservation plan, stormwater compliance plan, flood hazard reduction plan, lake management plan or shared facility plan, then the proposed project shall meet the applicable drainage requirements of the critical drainage area, master drainage plan, basin plan, salmon conservation plan, stormwater compliance plan, flood hazard reduction plan, lake management plan or shared facility plan;

2. Special Requirement 2: Floodplain/floodway delineation. If a proposed project contains or is adjacent to a stream, lake, wetland or closed depression, or if other King County regulations require study of

flood hazards relating to the proposed project, the one hundred year floodplain boundaries and floodway shall be determined and delineated on the site improvement plans and profiles and any final maps prepared for the proposed project. The flood hazard study shall be prepared for as specified in the Surface Water Design Manual;

3. Special Requirement 3: Flood protection facilities. If a proposed project contains or is adjacent to a stream that has an existing flood protection facility, such as a levee, revetment or berm, or proposes to either construct a new or modify an existing flood protection facility, then the flood protection facilities shall be analyzed and designed as specified in the Surface Water Design Manual to conform with the Federal Emergency Management Agency regulations as found in 44 C.F.R;

4. Special Requirement 4: Source Control. If a proposed project requires a commercial building or commercial site development permit, then water quality source controls shall be applied to prevent rainfall and runoff from coming into contact with pollutants to the maximum extent practicable. Water quality source controls shall be applied in accordance with K.C.C. chapter 9.12, the King County stormwater pollution prevention manual and the Surface Water Design Manual. All structural source controls shall be identified on the site improvement plans and profiles or final maps prepared for the proposed project; and

5. Special Requirement 5: Oil control. If a proposed project is a high-use site or is a redevelopment project proposing one hundred thousand dollars or more of improvements to an existing high-use site, then oil control shall be applied to all runoff from the high-use portion of the site as specified in the Surface Water Design Manual.

C.1. An adjustment to the requirements contained in this section or other requirements in the Surface Water Design Manual may be proposed. The resulting development shall be subject to all of the remaining terms and conditions of this chapter and the adjustment shall:

- a. produce a compensating or comparable result in the public interest; and
- b. meet this chapter's objectives of safety, function, appearance, environmental protection and

maintainability based upon sound engineering judgment.

2. If complying with subsection C.1.a. of this section will deny all reasonable use of a property, the best practicable alternative shall be obtained as determined by the director of the department of development and environmental services according to the adjustment process defined in the Surface Water Design Manual.

3. Requests for adjustments that may conflict with the requirements of any other King County division shall require review and concurrence with that division.

4. A request for an adjustment is a Type 1 land use decision as provided for in K.C.C. ((20.20.060)) 20.20.020 and shall be processed in accordance with the procedures specified in the Surface Water Design Manual.

5. The county may require monitoring of experimental designs and technology or untested applications proposed by the applicant in order to determine compliance with subsection C.1. of this section and the approved plans and conditions.

6. The applicant may appeal an adjustment decision by following the appeal procedures as specified in the Surface Water Design Manual.

D. The drainage review requirements in this section and in the Surface Water Design Manual may be modified or waived under the procedures in K.C.C. 21A.55.060.

SECTION 4. Ordinance 10636, Section 4, as amended, and K.C.C. 9.12.025 are each hereby amended to read as follows:

A.1. It is unlawful for any person to discharge any contaminants into surface and storm water, ground water or Puget Sound. Contaminants include, but are not limited, to the following:

- a. trash or debris;
- b. construction materials;
- c. petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- d. antifreeze and other automotive products;

- e. metals in either particulate or dissolved form;
- f. flammable or explosive materials;
- g. radioactive material;
- h. batteries;
- i. acids, alkalis, or bases;
- j. paints, stains, resins, lacquers or varnishes;
- k. degreasers and solvents;
- l. drain cleaners;
- m. pesticides, herbicides or fertilizers;
- n. steam cleaning wastes;
- o. soaps, detergents or ammonia;
- p. swimming pool backwash;
- q. chlorine, bromine and other disinfectants;
- r. heated water;
- s. domestic animal wastes;
- t. sewage;
- u. recreational vehicle waste;
- v. animal carcasses;
- w. food wastes;
- x. bark and other fibrous materials;
- y. collected lawn clippings, leaves or branches;
- z. silt, sediment or gravel;
- aa. dyes, except as stated in subsection C.1. of this section;
- bb. chemicals not normally found in uncontaminated water;

cc. any hazardous material or waste not listed above.

2. Illicit connections. Any connection identified by the director that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an illicit connection and is prohibited with the following exceptions:

a. connections conveying allowable discharges;

b. connections conveying discharges pursuant to an NPDES permit, other than an NPDES storm water permit, or a State Waste Discharge Permit; and

c. connections conveying effluent from onsite sewage disposal systems to subsurface soils.

B. BMPs shall be applied to any business or residential activity that might result in prohibited discharges as specified in the Stormwater Pollution Prevention Manual or as determined necessary by the director. Activities that might result in prohibited discharges include but are not limited to following:

1. Potable water line flushing;

2. Lawn watering with potable water;

3. Dust control with potable water;

3. Automobile and boat washing;

4. Pavement and building washing;

5. Swimming pool and hot tub maintenance;

6. Auto repair and maintenance;

7. Building repair and maintenance;

8. Landscape maintenance;

9. Hazardous waste handling;

10. Solid and food waste handling; and

11. Application of pesticides.

C. The following types of discharges shall not be considered prohibited discharges for the purpose of

this chapter unless the director determines that the type of discharge, whether singly or in combination with other discharges, is causing significant contamination of surface and storm water or ground water:

1. ~~((Potable))~~ Spring water;
2. ~~((Potable water line flushing))~~ Diverted stream flows;
3. Uncontaminated water from crawl space pumps, foundation drains or footing drains;
4. Lawn watering with potable water or collected rainwater;
5. ~~((Residential car and boat washing))~~ Pumped groundwater flows that are uncontaminated;
6. Materials placed as part of an approved habitat restoration or bank stabilization project;
7. Natural uncontaminated surface water or ground water;
8. Flows from riparian habitats and wetlands;
9. The following discharges from boats: engine exhaust; cooling waters; effluent from sinks; showers and laundry facilities; and treated sewage from Type I and Type II marine sanitation devices;
10. ~~((Prohibited discharges to which BMPs are applied as specified in the Stormwater Pollution Prevention Manual or as determined necessary by the director. Activities that might result in prohibited discharges to which BMPs may be applied include, but are not limited to, residential auto repair and maintenance, residential auto washing, residential hazardous waste handling, residential maintenance and repair, residential solid and food waste handling and residential swimming pool and hot tub maintenance; and))~~
Collected rainwater that is uncontaminated;
11. Uncontaminated groundwater that seeps into or otherwise enters stormwater conveyance systems;
12. Air conditioning condensation;
13. Irrigation water from agricultural sources that is commingled with stormwater runoff; and
14. Other types of discharges as determined by the director.

~~((C.1.))~~ D.1. Dye testing is allowable but requires verbal notification to the King County water and land resources division at least one day prior to the date of test. The King County department of public health is

exempt from this requirement.

2. A person does not violate subsection A. of this section if:

a. That person has properly designed, constructed, implemented and is maintaining BMPs and is carrying out AKART as required by this chapter, but contaminants continue to enter surface and storm water or ground water; or

b. That person can demonstrate that there are no additional contaminants being discharged from the site above the background conditions of the water entering the site.

3. A person who, under subsection ((C.2.)) D.2. of this section, is not in violation of subsection A. of this section is liable for any prohibited discharges through illicit connections, dumping, spills, improper maintenance of BMPs or other discharges that allow contaminants to enter surface and storm water or ground water.

4. Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter in order to avoid an imminent threat to public health or safety, shall be exempt from this section. The director by public rule may specify actions that qualify for this exception in county procedures. A person undertaking emergency response activities shall take steps to ensure that the discharges resulting from such activities are minimized. In addition, this person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence.

SECTION 5. Ordinance 10636, Section 5, as amended, and K.C.C. 9.12.035 are each hereby amended to read as follows:

A. Compliance with this chapter shall be achieved through the use of the best management practices described in the Stormwater Pollution Prevention Manual. In applying the Stormwater Pollution Prevention Manual, the director shall first require the implementation of source control BMPs. If these are not sufficient to prevent contaminants from entering surface and storm water or ground water, the director may require implementation of treatment BMPs as set forth in AKART. The King County water and land resources division

will provide, upon reasonable request, available technical assistance materials and information, and information on outside financial assistance options to persons required to comply with this chapter.

B. In applying the Stormwater Pollution Prevention Manual to prohibited discharges from normal single family residential activities, the director shall use public education and warnings as primary method of gaining compliance with this chapter and shall not use citations, notice and orders, assessment of civil penalties and fines, or other compliance actions as authorized in K.C.C. 23.02.040, unless the director determines:

1. The discharge from a normal single family residential activity, whether singly or combination with other discharges, is causing a significant contribution of contaminants to surface and storm water or ground water; or

2. The discharge from a normal single family residential activity poses a hazard to the public health, safety or welfare, endangers any property or adversely affects the safety and operation of county right-of-way, utilities or other county-owned or maintained property.

C. Persons implementing BMPs through another federal, state or local program will not be required to implement the BMPs prescribed in the county's Stormwater Pollution Prevention Manual, unless the director determines the alternative BMPs are ineffective at reducing the discharge ~~((of))~~ of contaminants. If the other program requires the development of a stormwater pollution prevention plan or other best management practices plan, the person shall make the plan available to King County upon request. Persons who qualify for exemptions include, but are not limited to, persons:

1. Required to obtain a general or individual NPDES permit ~~((for storm water discharges))~~ from the Washington state Department of Ecology;

2. Implementing and maintaining, as scheduled, a King Conservation District-approved farm management plan;

3. ~~((Who have received a permit under a Washington state Department of Ecology NPDES general or individual permit for commercial dairy operations;~~

4.)) Implementing BMPs in compliance with K.C.C. chapter 21A.30;

((5-)) 4. Implementing BMPs in compliance with the management program of the county's municipal NPDES permit;

((6-)) 5. Engaged in forest practices, with the exception of forest practices occurring on lands platted after January 1, 1960, or on lands being converted to another use or when regulatory authority is otherwise provided to local government by RCW 76.09.240; or

((7-)) 6. Identified by the director as being exempt from this section.

SECTION 6. Ordinance 10636, Section 10, as amended, and K.C.C. 9.12.080 are each hereby amended to read as follows:

The enforcement provisions for water quality are intended to encourage compliance with this chapter. To achieve this, violators will be required to take corrective action and comply with the requirements of this chapter, and may be required to pay a civil penalty for the redress of ecological, recreational, and economic values lost or damaged due to their unlawful action.

A. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law.

B. Any person in violation of this chapter shall be subject to civil penalties assessed as follows:

1. An amount reasonably determined by the director to be equivalent to the economic benefit the violator derives from the violation as measured by: the greater of the resulting increase in market value of the property or business value received by the violator, or savings of construction or retrofitting costs realized by the violator performing any act in violation of this chapter; and

2. An amount, not to exceed \$25,000, that is reasonably based upon the nature and gravity of the violation and the cost to the county of enforcing this chapter against the violator.

C. Any person who, through an act of commission or omission, aids or abets in a violation shall be considered to have committed the violation for the purposes of the civil penalty.

D. Each violator is jointly and severally liable for a violation of this chapter. The director may take enforcement action, in whole or in part, against any violator. The decisions whether to take enforcement action, what type of action to take, and which person to take action against, are all entirely within the director's discretion. Factors to be used in taking such enforcement actions shall be:

1. Awareness of the violation;
2. Ability to correct the violation;
3. Cooperation with government agencies;
4. Degree of impact or potential threat to water or sediment quality, human health, or the environment.

In the event more than one person is determined to have violated the provisions of this chapter, all applicable civil penalties may be imposed against each person, and recoverable damages, costs, and expenses may be allocated among the persons on any equitable basis. Factors that may be considered in determining an equitable allocation include:

1. Awareness of the violation;
2. Ability to correct the violation;
3. Ability to pay damages, costs, and expenses;
4. Cooperation with government agencies;
5. Degree of impact or potential threat to water or sediment quality, human health, or the environment.

E. The director or the director's designee may engage in mitigation discussions with the violator. The director or the director's designee may reduce the ((P))penalties ((may be reduced)) based upon one or more of the following mitigating factors:

1. The person responded to county attempts to contact the person and cooperated with efforts to correct the violation;
2. The person showed due diligence and/or substantial progress in correcting the violation; or
3. An unknown person was the primary cause of the violation.

Payment of a monetary penalty pursuant to this chapter does not relieve the person of the duty to correct the violation.

F. All civil penalties recovered during the enforcement of this chapter under this title and K.C.C. Title 23 shall be deposited into a fund of the division taking the enforcement action and shall be used for the protection of surface and storm water or ground water as set forth in this chapter, through education or enhanced implementation.

SECTION 7. Pursuant to K.C.C. 20.44.080, the metropolitan King County council finds that the requirements for environmental analysis, protections and mitigation measures in the chapters of K.C.C. Title 9 amended by this ordinance, provide adequate analysis of and mitigation for the specific adverse environmental impacts to which the requirements apply.

SECTION 8. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.