

**PLANNING COMMISSION
AGENDA COVER SHEET**

MEETING DATE: October 20, 2020

FROM: Barry Berezowsky, Director DCD

Initials

SUBJECT/ISSUE: Discussion of Proposed Grading Ordinance

Discussion dates	10/20/20			
CATEGORY	<input type="checkbox"/> City Manager Report	<input type="checkbox"/> Information Only	Time Needed for Presentation 15 min.	
	<input checked="" type="checkbox"/> Public Meeting/Hearing	<input type="checkbox"/> Consent Agenda		
	<input type="checkbox"/> Unfinished Business	<input type="checkbox"/> New Business		

PROBLEM/ISSUE STATEMENT:

During the construction process or even some routine non development related modifications to the land, drainage patterns are often altered and soil is highly vulnerable to erosion by wind and water. Improper grading can concentrate or redirect drainage flow negatively impacting neighborhoods and increase soil erosion. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair and cleaning of sewers, ditches, streams and ponds. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

ATTACHMENTS:

1. Proposed Grading Ordinance

DISCUSSION / ANALYSIS:

The purpose of this proposed local regulation is to safeguard persons, protect property, and prevent damage to the environment within the City of Sequim. This ordinance will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil, results in the movement of earth or impacts drainage flow on land in City of Sequim.

FINANCIAL IMPLICATIONS:

Reduce the potential for property damage as a result of erosion, sedimentation, and runoff; thus, reducing the potential for costly repairs and mitigation.

RECOMMENDATION:

Staff recommends the Planning Commission recommend approval of the proposed clearing and grading ordinance and schedule the matter for public hearing on November 3, 2020.

MOTION:

Move that the Planning Commission forward the proposed clearing and grading ordinance to staff for scheduling a public hearing on November 3, 2020.

Chapter 18.82 GRADING

Sections:

<u>18.82.010</u>	<u>Purpose.</u>
<u>18.82.020</u>	<u>Applicability and authority.</u>
<u>18.82.030</u>	<u>Interpretation.</u>
<u>18.82.040</u>	<u>Definitions.</u>
<u>18.82.050</u>	<u>Grading permit.</u>
<u>18.82.060</u>	<u>Activities requiring grading permit.</u>
<u>18.82.070</u>	<u>Activities exempt from grading permit.</u>
<u>18.82.080</u>	<u>Application submittal requirements.</u>
<u>18.82.090</u>	<u>Financial guarantee.</u>
<u>18.82.100</u>	<u>Performance standards.</u>
<u>18.82.110</u>	<u>City inspections.</u>
<u>18.82.120</u>	<u>Work completion.</u>
<u>18.82.130</u>	<u>Enforcement and violations.</u>

18.82.010 Purpose.

The purpose of this chapter is to:

- A. Promote, protect and preserve the public interest by regulating land alteration, particularly the **grading** of land in the city;
- B. Ensure prompt construction, restoration, replanting and effective erosion and sedimentation control in properties before, during, and after **grading**;
- C. Prevent water quality degradation and the sedimentation of streams, wetlands and other water bodies, and preserve natural drainage paths and outfalls;
- D. Minimize the impact of runoff, sedimentation or erosion caused by improper land development and maintenance practices;
- E. Promote safety upon public and private property;
- F. Promote the health, safety and welfare of the public.

18.82.020 Applicability and authority.

- A. This chapter sets forth rules and regulations to control excavation, **grading** and earthwork construction, including cuts, fills and embankments; establishes the procedures for issuance of permits; provides for approval of plans, inspections, enforcement and penalties.

- B. The city engineer or designee has the authority to take actions appropriate to implement the provisions of this chapter. The city engineer may further enforce the requirements of this chapter and shall proceed under the provisions of Section [18.82.130](#) and Chapter [1.16](#).

18.82.030 Interpretation.

This chapter shall be liberally interpreted and construed to secure the public health, safety, morals, and welfare, to implement the city of Sequim comprehensive plan, and to comply with all applicable requirements of Washington State law, and the rule of strict construction shall have no application.

18.82.040 Definitions.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases shall have the following meanings:

“Applicant” means the individual, partnership, association or corporation applying for a permit to do the work under this chapter, and includes property owners, employees, agents, consultants, contractors and successors in interest.

“Approval” means approval by the city engineer for the **grading** permit.

“Backfilling” means returning a site to its original or approved contours after earth materials were removed.

“Best management practices (BMP)” means activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the city that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to the waters of Washington State.

“City engineer” means the designated Sequim city engineer or a duly authorized designee.

“Civil engineer” means a professional engineer licensed by the state of Washington in civil engineering.

“Compaction” means the densification or consolidation of earth materials or fill resulting from the weight of overlying deposits or mechanical means.

“Construction” means the building of something, typically a building or structure but may include underground utilities, surface ponds, etc.

“Cut” means the change of a **grade** by excavation.

“Development” means land-disturbing activity or the addition or replacement of impervious surface for the purpose of subdividing or preparing land for construction. For the purpose of this chapter, routine maintenance activities are not considered development.

“Earth material” means any rock, soil, or combination thereof.

“Engineer of record” means a licensed engineer who has overall responsibility for the **grading** portion of the application, and whose stamp is on the application materials.

“Erosion” means the wearing away of the ground surface as a result of mass wasting or of the movement of wind, water, ice or other geological agents.

“Excavation” means the physical, manmade removal of earth material.

“Existing **grade**” means the current surface contour of a site, including minor adjustments to the surface of the site in preparation for construction, or the surface contour that existed immediately prior to **grading** done without a permit.

“Existing site” means a site prior to any **grading** activity or any site prior to the passage of the ordinance codified in this chapter.

“Exploratory excavation” means borings or small pits, hand-dug or excavated by mechanical equipment, for the purpose of determining soil characteristics or location of utilities.

“Fill” means a deposit of earth material placed by artificial means which increases the ground surface elevation.

“Filling” means the activity of depositing fill.

“Finished **grade**” means the land surface elevation of the site after alterations are completed.

“Geotechnical engineer” means a professional civil engineer licensed by the state of Washington who is qualified by reason of experience and education in the practice of evaluating and predicting the engineering properties of soils and geologic formations or a professional engineering geologist licensed by the state of Washington.

“**Grade**” means the vertical elevation of the ground surface.

“**Grading**” means the excavation, filling, in-place ground modification, removal of roots or stumps that includes ground disturbance, stockpiling of earth materials, or any combination thereof, including the establishment of a **grade** following demolition of a structure.

“**Grading permit**” means a permit issued by the city engineering department giving permission for land-disturbing activity.

“Impervious surface” means a nonvegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A nonvegetated surface area which 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 examples include, but are not limited to, roof tops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

“Land-disturbing activity” means any activity resulting in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography. Land-disturbing activities include, but are not limited to, tree and stump removal, **grading**, filling, excavation, or addition of new or the replacement of impervious surface. Vegetative maintenance practices are not considered land-disturbing activities.

“Owner” means the owner of record for real property as shown on the tax rolls of Clallam County, or a person purchasing a piece of property under contract.

“Permittee” means the person or entity to whom a permit is issued for **grading** purposes.

“Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, or local government entities.

“Preloading” means the temporary stockpiling of earth materials over a site for the purpose of consolidating the existing soils.

“Review authority” means the person or body responsible for interpreting and/or directing a land use permit or activity, and as set forth in Title [20](#), Project Permit Application Procedures.

“Site” means the defined portion of any lot(s) or parcel(s) of land or contiguous combination thereof, where **grading** is performed or permitted.

“Slide” means the movement of a mass of loosened rocks or earth down a hillside or slope.

“Slope” means an inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance or as an angle from the horizontal.

“Soil” means a mass of mineral particles, with or without organic constituents, resulting from chemical and mechanical weathering of rock and decomposition of organic matter.

“Terrace” means a relatively level step constructed in the face of a **graded** slope surface.

“Topsoil” means the weathered surface soil, usually including the organic layer, in which plants have most of their roots.

18.82.050 Grading permit.

- A. Except as otherwise specifically provided in this chapter, a **grading** permit shall be obtained from the city before commencing any activity for which a permit is required as specified in Section [18.82.060](#). **Grading** permit approval shall be by the city engineer or authorized designee.
- B. Speculative **grading** is prohibited. A land use development permit must be approved before a **grading** permit will be issued, except as otherwise specifically allowed by this chapter.

- C. Issued **grading** permits shall be posted on the construction site at all times when work is underway. To ensure that the actual work in the field conforms with the approved plans, permitted activities shall be inspected by the city during construction.
- D. All **grading** permit approval shall be subject to meeting the requirements of the adopted city of Sequim stormwater management and erosion control requirements.
- E. In general, **grading** permits shall expire one year from the date of issuance; provided, that the specific time limit shall be identified in the permit's conditions of approval. The city engineer may impose a time limit which the proposed site work must be completed based upon weather and/or environmental concerns. The city engineer is authorized to grant one or more extensions not exceeding ninety days each. The extension shall be requested in writing with justifiable cause demonstrated and shall include a detailed schedule for completion.

18.82.060 Activities requiring grading permit.

Projects involving earthwork of more than fifty cubic yards of material, or projects which change existing **grade** by more than four feet, within a twelve-month period, are required to obtain a **grading** permit unless specifically exempt in Section [18.82.070](#). The quantity threshold is the total earthwork completed and not a net of cut and fill.

18.82.070 Activities exempt from grading permit.

The following activities are exempt from needing a **grading** permit; however, the work must be in compliance with Section [18.82.100](#) and meet the minimum performance standards outlined in that section.

- A. An excavation below finish **grade** for basements, footings of a building retaining wall, or other structure or activity authorized by any valid building permit.
- B. Utility trenching within a public right-of-way or upon an easement by a public agency or their designee.
- C. Routine maintenance of existing landscaping such as applying new mulch each year, removing weeds, or other similar activities.
- D. Emergency situations involving immediate danger to life or property, substantial fire hazards or other public safety hazards, provided verbal authorization by the city has been acquired and written authorization communicating the need and verifying the nature of the emergency is provided by the city afterward.
- E. Routine agricultural activities such as plowing, harrowing, disking, ridging, listing, leveling and similar operations to prepare a field or crop.
- F. **Grading** associated with construction of a single-family home with a valid building permit when the zoning is RL and the site is developed with a single-family residence.

- G. Limited exploratory excavations under the direction of soils engineers, engineering geologists or civil engineer licensed in Washington State.
- H. Excavation and filling of cemetery graves in an approved cemetery.
- I. In any one year an excavation of less than fifty cubic yards of material which:
 - 1. Is less than one foot in depth; and
 - 2. Does not obstruct a stream or surface water; and
 - 3. Does not create a cut slope greater than five feet in height and steeper than two horizontal to one vertical; and
 - 4. Is adequately protected against erosion.
- J. In any one year a fill less than fifty cubic yards of material which:
 - 1. Is less than one foot in depth; and
 - 2. Does not obstruct a stream or surface water; and
 - 3. Is not intended to support structures; and
 - 4. Does not create a fill slope greater than three feet in height and steeper than three horizontal to one vertical; and
 - 5. Is adequately protected against erosion.
- K. Except for subsection B of this section for maintenance only, and subsection D of this section, the exemptions set forth in this section shall not apply to activity within critical areas and associated buffers as defined in Chapter [18.80](#). See Chapter [18.80](#) for restricted **grading** activities restricted in critical areas.
- L. Activities that are exempted from a **grading** permit as set forth in this section must still provide BMPs as necessary to protect water quality and provide site stability. Minimum requirements may be obtained by request from the city's engineering department accompanied by an adequate description of proposed work.

18.82.080 Application submittal requirements.

An application for a **grading** permit shall contain the following:

- A. A completed **grading** permit application form and all identified submittal requirements.
- B. The required application fees.

- C. A description of work covered by the permit.
- D. An estimate of the quantities of work to be done to include area under application, area to be altered, amount of fill, amount of excavation, impervious area, slope of site.
- E. A description of any potential hazards, including but not limited to slides, erosion, siltation, flooding.
- F. A description of past land use activities at the site.
- G. The signature of the permittee or agent who may be required to show proof of authority.
- H. Completed environmental checklist in compliance with SEPA, when required. (Note: This requirement may be met with the SEPA checklist/threshold determination for the approved land use permit.)
- I. Each completed application shall be accompanied by the required number of plans and specifications. The plans and specifications shall be prepared by a professional engineer licensed in the state of Washington and have his/her stamp affixed. The plans and specifications shall be at a scale as prescribed by the city engineer, and include:
 - 1. Existing topographic information with a contour interval of not less than five feet, including identification of any slopes over thirty percent in gradient. Contour intervals shall extend a minimum of one hundred feet off-site.
 - 2. Proposed topographic information, including dimensions, elevations and finish contours of not greater than five-foot intervals, to be achieved by the proposed **grading** and related construction.
 - 3. Designation of all critical areas and buffers, tree retention areas, natural vegetation protection areas, or other areas that are not subject to the **grading** activity.
- J. A drainage plan and temporary erosion and sediment control plan that complies with the requirements in Chapter [13.104](#), Stormwater Management.
- K. Any additional studies required by the city engineer such as a soils report, in situ soils testing, hydrology report or geotechnical engineer report.
- L. Approved **grading** permit plans shall not be amended without prior authorization from the city engineer.

18.82.090 Financial guarantee.

- A. The requirements of this section shall apply to development subject to the following permits:
 - 1. All **grading** permits; and

2. Building permits for development that are exempt per Section [18.82.070\(F\)](#) but are determined by the city engineer to involve soil disturbing activity to an extent that is potentially damaging to the environment or property.
- B. As a condition of approving the permits identified in subsection A of this section, the city engineer shall, in addition to any other permit conditions, require the permit applicant to:
1. Make a cash deposit with the city in an amount determined by the city engineer, in accordance with fee schedule adopted by council per Section [3.68](#), to be sufficient to guarantee performance of any and all slope stabilization, drainage, and erosion control measures specified in the interim erosion control plan required for **grading** permit and any analogous requirements for building permits, and if such measures are not performed, to restore the site to such condition as may be necessary to control erosion and prevent slope destabilization and drainage impacts from the **grading** work. The cash deposit shall be made pursuant to an agreement in a form approved by the city attorney and providing for the automatic forfeiture of the cash deposit upon a determination by the city engineer that the interim erosion control plan has not been complied with and after notice of the intended forfeiture and an opportunity to cure the noncompliance has been provided to the permittee; provided, however, that such preforfeiture notice and opportunity to cure may be dispensed with in the event that the city engineer determines that the nonperformance has resulted in an emergency condition which endangers life or property, in which case notice shall be provided as soon as practicable.
 2. Any cash deposit forfeited under this section shall be used solely for the purpose of performing the work specified in subsection B of this section and reimbursing the city for its costs associated with administering the work and enforcing the secured permit conditions. Any unused portion of the deposit will either be refunded to the permittee or, if the permittee intends to pursue the remainder of the work authorized by the permit, retained to guarantee performance of the remainder. The city engineer may require replenishment of the deposit if the city engineer determines, in his/her discretion, that replenishment is needed in order to provide a sufficient guarantee of performance.

18.82.100 Performance standards.

- A. No **grading** activity shall occur on any site without the written consent of the property owner.
- B. All public rights-of-way and easements for roads and utilities shall be kept clear of silt, dirt, mud and debris and immediately cleaned and/or restored to its original condition prior to impact.
- C. **Grading** boundaries shall be marked by flagging, stakes, paint spots, a continuous ribbon or other readily visible means around the perimeter. Property lines and corners shall be clearly identified if **grading** is to occur in close proximity to property boundaries.
1. Open space tracts, tree retention tracts, protected critical areas and buffers, and other areas not subject to **grading** shall be protected from potentially damaging activities. The applicant and/or authorized contractor shall:
 - a. Install visible protective fencing in accordance with Section [18.80.070](#) and Chapter [18.80](#).

- b. Maintain the protective barriers in place until the city authorizes their removal or a final certificate of occupancy is issued, whichever occurs first.
 - c. Additional protection during construction consistent with requirements of Section [18.80.070](#) may be required by the planning director.
 2. Areas proposed for infiltration shall be protected during construction and **grading** activities.
- D. Cuts. 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 unless the permittee provides a soils engineering and/or a geotechnical engineering report stating that site has been investigated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property. The report shall be reviewed and approved by the city engineer prior to earth work. The city may require a third-party review of the report, with the costs of review the responsibility of the permittee.
- E. Fills.
 1. Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section.
 2. These provisions may be waived by the city engineer for minor fills not intended to support structures.
 3. Fill slopes shall not be constructed on natural slopes steeper than two to one unless a geotechnical report has been prepared, reviewed, and approved.
 4. On slopes less than five to one and height is less than five feet, the ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, scarifying to provide a bond with the new fill. Fills greater than five feet or on slopes steeper than five to one shall be completed in accordance with the recommendations and methodology outlined by the geotechnical engineer.
 5. Organic material shall not be permitted in fills.
 6. In general, rocks or similar irreducible material with a maximum dimension greater than twelve inches shall not be used for fill. In limited circumstances the city engineer may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement, and approves the fill stability. All rocks shall be placed so as to assure filling of all voids.
 7. Compaction. All fills shall be compacted to a minimum of ninety percent of maximum density or as determined by the geotechnical engineer.
 8. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two horizontal to one vertical.

- F. Terracing. Any terracing proposed as part of the project shall be designed by a geotechnical engineer and be constructed in accordance with the proposed plan and methodology. The terrace design shall account for interceptor drains, terrace widths and locations, and runoff.
- G. The city engineer may restrict the timing of **grading** activities to specific dates when such restrictions are necessary for the public health, safety or protection of the environment.
 - 1. During the dry weather period, between May 1st and September 30th, no soils shall remain unstabilized for longer than seven days.
 - 2. During the wet weather period, between October 1st and April 30th, no soils shall remain unstabilized for longer than two days.
 - 3. On or around September 1st, the city shall meet with project proponents working under an approved and issued **grading** permit to discuss the wet weather period and site stabilization requirements. Activity under a permit may be suspended or restricted.
- H. **Grading** activities shall maintain appropriate setbacks to all utilities, including existing drain fields and wells.
- I. **Grading** may be phased or may be required to be phased based on the size, complexity, and risk of the project as determined by the city engineer. Individual phases may be conditioned to be completed and stabilized prior to start of work on next phase.

18.82.110 City inspections.

- A. All projects which require a **grading** permit shall be subject to inspection by the city. The city shall be granted unlimited right of entry to the work site by submittal of the **grading** application for the purposes of review, making inspections to determine that the requirements of the plans and permits are being complied with, and for the purpose of taking corrective measures of an emergency nature. The cost of such corrective measures shall be borne by the permittee. The city may require inspection and testing by an approved testing agency at any stage of the project.
- B. Every contractor or other person performing or directing the performance of any work requiring a **grading** permit shall have in his/her possession prior to commencement of and during all phases of the work an original or copy of the approved **grading** permit, and shall further have a duty to be familiar with the terms and conditions of the permit and approved plans.
- C. Whenever the city determines that the act or intended act of **grading** (excavation or fill) has become or will constitute a hazard, endangers property, or adversely affects the safety, use or stability of a public way, drainage channel, stream or surface water, including siltation and sedimentation therein, the city shall immediately suspend the **grading** activity. The permittee or agent in control of the **grading** activity, upon receipt of the stop work notice from the city, shall terminate such **grading**, excavation, embankment or fill.

18.82.120 Work completion.

- A. Upon completion of the rough **grading** work, and at the final completion of the work the **grading** permit authorized, the following drawings and reports may be required by the city engineer:
 - 1. As-**graded** record drawing prepared by a licensed civil engineer. The civil engineer will state that to the best of his/her knowledge the work was done in accordance with the final approved **grading** plan.
 - 2. A soils-**grading** report prepared by the soils engineer, including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during **grading**. The soils engineer shall render a finding as to the adequacy of the site for the intended use.
 - 3. A geologic **grading** report prepared by engineering geologist, including a final description of the geology of the site and any information disclosed during the **grading**. The engineering geologist shall render a finding as to the adequacy of the site for the intended use.
- B. The city shall complete a final inspection of the **grading** operation. Final approval shall not be given until all work and all erosion-control measures have been completed in accordance with the final approved **grading** plan and any required reports have been submitted.
- C. Permanent measures shall be implemented to stabilize the site completely. This includes establishing vegetation on exposed soils, installation of stormwater facilities and controls, and other measures as required under the permit.

18.82.130 Enforcement and violations.

- A. The city engineer is authorized with the enforcement of the provisions of this chapter to designate city employees as authorized representatives to investigate suspected violations and to issue stop work notices, correction notices and/or notices of infraction.
 - 1. City staff shall first post and provide written correction notice to on-site contractor as well as site owner/project proponent. The correction notice will include requirements to achieve compliance as well as a time frame for completion. The site shall be inspected to determine if compliance has been achieved or if further action is required.
 - 2. The city engineer may post a stop work order on site and provide copy to site owner/project proponent. All site work shall stop once a stop work order has been posted with the exception of items necessary to achieve compliance and ongoing erosion and sediment maintenance activities. Stop work order fees must be paid in accordance with adopted fee schedule.
- B. Violations of the provisions of this chapter and/or the **grading** permit conditions of approval shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation or to such other condition acceptable to the city.

1. Restoration shall include but not be limited to the replacement of all improperly removed materials and the removal of improper fill and stabilization of slopes.
 2. Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored groundcover and vegetation reach sufficient maturation to function.
 3. No further work shall be allowed until the property is fully restored in compliance with this chapter and requirements of the city engineer.
- C. The violation of any provision of this chapter or **grading** permit condition, where such violation constitutes a first offense, shall constitute a civil infraction. The city engineer may issue a notice of infraction in accordance with Chapter [1.13](#). Any person who has been found to have committed five or more civil violations pursuant to this chapter within the past five years will be deemed to have committed a misdemeanor and is subject to criminal prosecution and a fine in a sum not exceeding \$1,000 or imprisonment for a term not exceeding 90 days, or both. Every day of continued noncompliance with a notice and order or order enforced in accordance with this chapter or any of the code provisions that incorporate this chapter by reference is a separate offense [SMC 1.13.210(A)].
- D. Notwithstanding any provision of this chapter, the city engineer may take immediate action to prevent an imminent and substantial danger to the public health, safety or the environment by the violation of any provision of this chapter.
- E. In addition to any other remedy provided in this section, the city engineer may, but shall not be obligated to, forfeit any cash deposit made pursuant to Section [18.82.090](#) and may, but shall not be obligated to, take such steps as are necessary to provide interim erosion control, slope stabilization, and control of drainage as required in any interim erosion control plan upon the failure of the permittee to comply with such plan.