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ORDINANCE NO. \_\_\_ - \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, PROTECTING PUBLIC HEALTH AND SAFETY AND CITY PROPERTY BY IMPOSING LIMITATIONS ON EXCAVATION AND THE GRADING OF PROPERTY WITHIN THE CITY AND LIMITING RUNOFF AND CONTROLLING DISCHARGES OF POLLUTANTS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AND WATERS OF THE UNITED STATES BY AMENDING CHAPTER 01 OF TITLE 8 OF THE DANA POINT MUNICIPAL CODE**

**WHEREAS**, The Federal Water Pollution Control Act (commonly known as the Clean Water Act or “CWA”), 33 U.S.C. § 1251 et seq., as amended, prohibits the discharge of any “Pollutant” (as defined in the CWA) to waters of the United States from a point source, unless the discharge is authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”); and

**WHEREAS**, Pursuant to the CWA, the United States Environmental Protection Agency (“US EPA”) has defined the term “Municipal separate storm sewer system” (“MS4”) to mean a conveyance, or system of conveyances, including roads with drainage systems, municipal streets, curbs, gutters, catch basins, and storm drains owned or operated by a city, used for collecting Storm Water; and

**WHEREAS**, US EPA reports that stormwater and non-stormwater runoff results in discharges to MS4s which have had a significant adverse impact on the water quality of receiving waters; and

**WHEREAS**, CWA § 402(p), 33 U.S.C. § 1342(p), requires that the City obtain an NPDES permit for the discharge of pollutants from the City’s MS4; and

**WHEREAS**, CWA § 402(p), 33 U.S.C. § 1342(p), further provides that NPDES permits shall require controls to reduce the discharge of Pollutants from the MS4 to the maximum extent practicable, including management practices and such other provisions as may be appropriate for the control of Pollutants; and requires the City to effectively prohibit non-stormwater discharges to the MS4; and

**WHEREAS**, in implementation of CWA § 402(p), US EPA has adopted various regulations at several places in Title 40 of the Code of Federal Regulations (“CFR”) to address compliance and implementation of the CWA; and

**WHEREAS**, the California Water Code, the California Regional Water Quality Control Board – San Diego (“RWQCB-SD”) issued a National Pollutant Discharge Elimination System (“NPDES”) Permit and Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Orange, “WASTE DISCHARGE REQUIREMENTS ORDER NO. R9-2002-0001 [NPDES NO CAS0108740] FOR DISCHARGES OF URBAN RUNOFF FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS FOR THE COUNTY OF ORANGE, INCORPORATED CITIES OF ORANGE COUNTY AND THE ORANGE COUNTY FLOOD CONTROL SYSTEM” (the “NPDES Order”), to cities in Orange County, including the City; and

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**WHEREAS**, the NPDES Order and US EPA regulations implementing the CWA require the City to demonstrate that it has adequate legal authority, through ordinance or other authority, to prohibit illicit discharges and to otherwise require compliance with the NPDES Order; and

**WHEREAS**, under the California Constitution and California statutory law, the City has the authority to define public nuisances and to protect the public health and safety of the residents of and visitors to the City, and the environment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** In order to protect public health, safety and well-being; to carry out obligations imposed on it by the Congress through the Clean Water Act and the US EPA regulations implementing the CWA; to carry out obligations imposed on it through the waste discharge requirements imposed by State laws; to carry out the NPDES Order's requirement that the City "effectively prohibit" non-storm water discharges into MS4s; and to demonstrate that the City has the authority to control, through ordinance or other authority, contribution of pollutants to the MS4 by storm water discharged from sites of construction activity; Title 8 of the Dana Point Municipal Code is hereby amended by replacing Chapter 8.01 with a new Chapter 8.01, "GRADING AND EXCAVATION CONTROL," to read in its entirety as follows:

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## Chapter 8.01

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**CHAPTER 8.01  
GRADING AND EXCAVATION CONTROL**

**ARTICLE 1. GENERAL PROVISIONS**

**8.01.010 Title Reference to Code.**

This Article shall be known as and may be cited as the "City of Dana Point Grading and Excavation Code." "Code" as referred to in this Article, unless the context clearly indicates otherwise, shall mean the City of Dana Point Grading and Excavation Code.

**8.01.020 Grading Manual.**

(a) The Director shall formulate and modify as necessary such rules, procedures, and interpretations as may be necessary or convenient to administer this Article. Such rules, procedures and interpretations shall be referred to as the "City of Dana Point Grading Manual" or the "Grading Manual." The Director is hereby authorized to incorporate further amendments into the Grading Manual provided such amendments are consistent with this division.

(b) The Grading Manual shall include provisions to assure that the Water Quality Requirements relevant to activities subject to this division apply to all such activities.

(c) In the event of any conflict between said Grading Manual and this Code, the provisions of this Code shall govern. The provisions of the Grading Manual, to the extent that they are made conditions of any Grading Permit by the Director, shall be binding on the permittee.

**8.01.030 Purpose and Intent.**

It is the intent of this Code to safeguard life, limb, property, and the public welfare, and to comply with Storm Water Discharge Permits issued to the City, by regulating Grading on private property in the City of Dana Point.

**8.01.040 Scope.**

This Code sets forth rules and regulations to control Excavation, Grading, and earthwork construction, including fills and embankments, and establishes administrative requirements for issuance of Grading Permits and approval of plans and inspection of Grading construction in accordance with the requirements for Grading and Excavation as contained in the Uniform Building Code then in effect as adopted and modified by City ordinance, and any Water Quality Requirements relevant to activity subject to this Chapter.

**ARTICLE 2. DEFINITIONS**

**8.01.050 Definitions.**

"Approval" shall mean a written engineering or geological opinion by the responsible engineer, geologist of record or responsible principal of the engineering company concerning the progress and completion of the work unless it specifically refers to the Director.

"Approved plans" shall mean the current Grading plans which bear the signature of Approval of the Director.

"Approved Testing Agency" shall mean a facility whose testing operations are controlled and monitored by a registered civil engineer and which is equipped to perform and certify

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the tests required by this Code, or the Grading Manual, as determined by the Director. This determination may be appealed to the City Council.

"Borrow" means Earth Material acquired from an off-site location for use in Grading on a site.

"Building Official" shall mean the Director of Community Development or the Director's duly delegated representative.

"City inspector" shall mean an inspector duly authorized by the Director to perform inspection of Grading, concrete placement and related constructed work or other Grading-related work approved by the Director.

"Civil engineer" shall mean a professional engineer registered in the State of California to practice in the field of civil engineering.

"Civil engineering" shall mean the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials for the evaluation, design, and construction of civil works for the beneficial uses of mankind.

"Clearing, Brushing, and Grubbing" shall mean the removal of vegetation (grass, brush, trees, and similar plant types) by mechanical means.

"Compaction" means the densification of a Fill by mechanical means.

"Commercial coach" means a vehicle with or without motive power, designed and equipped for human occupancy for industrial, professional or commercial purposes, and shall include a trailer coach.

"Director" shall mean Director of Public Works and Engineering Services or the Director's duly delegated representative.

"Earth Material" means any rock, natural soil or Fill and/or any combination thereof.

"Engineering Geologist" shall mean a geologist certified in the State of California to practice Engineering Geology.

"Engineering Geology" shall mean the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

"Erosion" means the wearing away of the ground surface as a result of the movement of wind, water, and/or ice.

"Erosion control system" means a combination of desilting facilities, and erosion protection, including effective planting, to protect adjacent private property, watercourses, public facilities and receiving waters from an abnormal deposition of sediment or dust.

(1) "Permanent Erosion Control Devices" are improvements which remain throughout the life of the development. They include terrace drains, down drains, slope landscaping, channels, and storm drains.

(2) "Semi-Permanent Erosion Control Devices" are devices which are used primarily during construction and are not relocatable. They include earthen berms, concrete spillways, desilting basins, and riser/outlet pipes.

(3) "Temporary erosion control devices" are devices which are removable and can rarely be salvaged for subsequent reuse. In most cases, they will last no longer than one rainy

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season. Examples include sandbags, gravel bags, plastic sheeting (visqueen), slit fencing, straw bales, and similar items.

"Excavation" means the mechanical removal of Earth Material.

"Fill" means a deposit of Earth Material placed by artificial means.

"Grade" shall mean the vertical location of the ground surface.

(1) "Existing Grade" is the ground surface prior to Grading.

(2) "Finish Grade" is the final Grade of the site which conforms to the approved plan.

(3) "Natural Grade" is the ground surface unaltered by artificial means.

(4) "Rough Grade" is the stage at which the Grade approximately conforms to the approved plan.

"Grading" means any excavating or filling or combination thereof.

"Grading Contractor" means a contractor licensed and regulated by the State of California who specializes in Grading work or is otherwise licensed to do Grading work.

"Grading Permit" means an official document or certificate issued by the Director authorizing Grading activity as specified by approved plans and specifications.

"Hillside Site" means a site which entails cut and/or Fill Grading of three (3) feet or more in vertical height below or above natural ground; or a combination Fill-over-cut slope equal to or greater than five (5) feet in vertical height; or where the existing Grade is twenty percent (20%) or greater; and which may be adversely affected by drainage and/or stability conditions within or from outside the site, or which may cause an adverse affect on adjacent property.

"Mobilehome" means a structure, transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. Mobilehome does not include recreational vehicle, commercial coach, or factory-built housing.

"Natural state" is the natural environment which existed prior to any Grading and includes but is not limited to native plants and natural undulating slopes with environmentally sensitive habitat indigenous to the area.

"Owner" means any person, agency, firm, or corporation having a legal or equitable interest in a given real property.

"Precise Grading Permit" means a permit that is issued on the basis of approved plans which show the precise structure location, finish elevations, and all on site improvements.

"Preliminary Grading Permit" means a permit that is issued on the basis of approved plans which need not show a structure location but must show interim building pad drainage to the degree required by the Director.

References. Unless indicated otherwise, or as reasonably appears from the context, references in this Code to the civil engineer, the Soil Engineer, the geologist, and the Engineering Geologist refer to the professional person(s) preparing, signing, or approving the project plans and specifications which comprise the approved Grading plan, and which professional person appears of record pursuant to Article 3 of this chapter or that person's successor appearing pursuant to Section 8.01.440 Transfer of responsibility for approval.

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"Site" means any lot or parcel of land or contiguous combination thereof, under the same ownership, where Grading is performed or permitted.

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

"Soil" means naturally occurring surficial deposits overlying bedrock.

"Soil Engineer" means a civil engineer duly registered in the State of California whose field of expertise is soil mechanics.

"Soil Engineering" shall mean the application of the principles of soil mechanics in the investigation, evaluation and design of civil works involving the use of Earth Materials and the inspection and testing of the construction thereof.

"Special inspector" means an inspector duly licensed by the Director to perform inspection of asphalt concrete placement and related construction work or other Grading related work approved by the Director.

Storm Water Permits are any permits issued by a regional, state or federal agency regulating storm water flow over and from any project subject to this division, including, but not limited to National Pollutant Discharge Elimination System ("NPDES") permits for Municipal Separate Storm Sewer Systems (MS4) permits and State General Permits.

"Stockpiling" shall mean imported compactable earth greater than twenty-five (25) cubic yards temporarily placed for future Fill on or off site (no deleterious material).

"Terrace" means a relatively level step constructed in the face of a Graded slope surface for drainage and maintenance purposes.

"Water Quality Requirements" are requirements relevant to activities subject to Storm Water Permits.

### ARTICLE 3. PERMITS REQUIRED

#### **8.01.060 Grading Permits Required.**

No person shall conduct any Grading, Clearing, Brushing, or Grubbing on natural or existing Grade that is preparatory to Grading, without first having obtained a Grading Permit from the Director. Exceptions to this requirement are as follows or as otherwise determined by the Director:

(a) An Excavation below finished Grade for basements and footings of a building, Mobilehome, retaining wall, or other structure authorized by a valid building permit or construction permit. This shall not exempt any Fill made with the material from such Excavation nor exempt any Excavation having an unsupported height greater than five (5) feet after the completion of such structure. This shall not prohibit a minimum fee Grading Permit or soil or geologic report from being required for foundation design and inspection purposes when, in the opinion of the Director, stability or flooding considerations warrant such inspection.

(b) Cemetery graves.

(c) Refuse disposal sites controlled by other regulations.

(d) Earthwork construction regulated by the federal, state, county agencies, or City, or by any local agency as defined by Government Code Sections 53090 through 53095 (special

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districts). Pipeline or conduit Excavation and backfill conducted by local agencies or public utilities. Earthwork construction performed by railway companies on their operating property. This exemption, however, shall apply only when the earthwork construction takes place on the property, or dedicated rights-of-way or easements of the above agencies.

(e) Excavation and backfill for installation of underground utilities by public utilities or companies operating under the authority of a franchise or public property encroachment permit.

(f) Exploratory Excavations under the direction of Soil Engineers or Engineering Geologists, provided all Excavations are properly backfilled. All such Excavations and trenches are subject to the applicable sections of Title 8 of the State Orders, Division of Industrial Safety.

(g) An Excavation which does not exceed twenty-five (25) cubic yards on any one site and which is less than one (1) foot in vertical depth.

(h) A Fill less than one (1) foot in depth placed on natural Grade with a slope flatter than five horizontal to one vertical (5:1), which does not exceed twenty-five (25) cubic yards on any one lot and does not obstruct a drainage course.

(i) A Fill less than three (3) feet in depth, not intended to support structures or Mobilehomes, which does not exceed twenty-five (25) cubic yards on any one lot and does not obstruct a drainage course.

### **8.01.070 Grading Permit, Paving.**

No person shall construct pavement surfacing in excess of three thousand (3,000) square feet, on natural or existing Grade without a valid Grading Permit unless waived by the Director or a separate improvement plan for such paving is approved and signed by an authorized City official. Resurfacing or maintenance of paved surfaces shall be exempt from this requirement.

### **8.01.080 Grading Permit, Watercourse Alteration.**

No person shall alter an existing watercourse, channel, or revetment by excavating, or placing Fill, rock protection or structural improvements without a valid Grading Permit, unless waived by the Director or performed as interim protection under emergency flood fighting conditions.

### **8.01.090 Grading Permit, Construction.**

No person shall perform any construction for which a building permit is required, without a Grading Permit, unless waived by the Director. The following building categories shall be exempt from this requirement, provided that such construction does not alter an existing watercourse, channel or revetment: roofing, block walls, swimming pools, patio covers, driveways or on-site paving less than three thousand (3,000) square feet in area, patio enclosures less than four hundred (400) square feet in area, and building additions less than four hundred (400) square feet in area.

### **8.01.100 Grading Permit, Stockpiling.**

(a) The City requires a Grading Permit to stockpile soil on a lot or parcel. A site plan of the lot showing the area in which the stockpile is to be placed and the approximate amount of soil to be stockpiled shall be required.

(b) The placement of the stockpile shall not adversely effect the safety, use, or stability of any structure, nor create a nuisance because of dust or erosion therefrom, nor block a



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public way or drainage course; nor shall such placement of stockpile material constitute a hazard to public welfare or endanger property. Stockpiling in a residential zone may be permitted under this section for purposes of providing Fill material to be used on site only. Stockpiling in residential zones for purposes of selling of material shall be prohibited.

(c) The Grading Permit for stockpiling shall expire one (1) year after issuance thereof. A new permit shall be required annually.

### **8.01.110 Excavation Blasting Permit.**

No person shall possess, store, sell, transport or use explosives and blasting agents to do any Excavation without a permit from the Orange County Fire Department and authorization by the Director.

### **8.01.120 Types of Grading Permits.**

(a) Either a preliminary Grading Permit or a precise Grading Permit may be issued for Grading work upon completion of an application in accordance with Sub-article 5 of the Grading Manual and Approval by the Director. The preliminary or precise Grading Permit is the option of the permittee provided that the plans satisfy the requirements of Sub-article 5 of the Grading Manual.

(b) Building permits may be issued for a site Graded under a valid precise Grading Permit upon completion and Approval of rough Grade inspection, as specified in Section 8.01.450(e), Site Inspection by the Director, of this Code.

(c) Building permits shall not be issued for a site Graded under a preliminary Grading Permit until a new precise Grading Permit has been issued and the provisions of Subsection (b) of this Section have been satisfied.

## ARTICLE 4. ORGANIZATION AND ENFORCEMENT

### **8.01.130 Powers and Duties of the Director.**

(a) The provisions of Section 202, Powers and Duties of Building Official, of the Uniform Building Code shall apply to Grading construction work. The Director of Public Works shall serve in that capacity in the City of Dana Point.

(b) Stop or Correct Work Orders. Whenever any Grading work is being done contrary to the provisions of this Code or the Grading Permit, the Director may order the work stopped or corrected by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop or correct such work until authorized by the Director to proceed with the work.

(c) Whenever any building or Grading work is being done contrary to any Water Quality Requirements related to activities subject to this Chapter, the Director may take any enforcement action provided under this Code.

### **8.01.140 Violations and Penalties.**

(a) It shall be unlawful for any person, firm or corporation to do Grading in the City of Dana Point, or cause the same to be done, contrary to, or in violation of, any of the provisions of this Code.

(b) The issuance of a building permit, performance of building permit inspections, or issuance of a certificate of use and occupancy may be withheld for property on which a violation of the provisions of this Code exist, including work performed not in accordance

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with approved plans, until such violation has been corrected to the satisfaction of the Building Official. The Building Official, as appropriate, shall consult with the Director.

(c) No tentative tract map or parcel map shall be approved for property on which a violation of the provisions of this Code exists, including work performed not in accordance with approved Grading plans, unless conditioned to require such violation to be corrected or mitigated to the satisfaction of the Director prior to recordation.

(d) No zone change or discretionary permit per the City of Dana Point Zoning Regulations shall be approved for property on which a violation of the provisions of this Code exists, including work performed not in accordance with approved Grading plans, unless conditioned to require such violation to be corrected or mitigated to the satisfaction of the Director prior to the issuance of any building permits.

(e) The Building Official, in consultation with the Director, shall determine if the corrective or mitigating action itself requires the approval of a site development permit per the City of Dana Point Zoning Regulations and/or an Initial Study per CEQA.

(f) Any person, firm, or corporation violating any of the provisions of this Code is guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued, or permitted, and upon conviction of any such violation such person shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. In addition to any such fine or imprisonment, the court may also require such party to correct or mitigate the Grading violation to the satisfaction of the Director.

(g) In addition to the provisions of the subsections above, a notice of violation of this Code may be recorded in accordance with the following procedures:

(1) Notice of Intent. A written notice of intent to record a notice of violation shall be served on the current owner of record of the property. Such notice shall describe the property, the violation and the action necessary to correct or mitigate the violation. The notice shall inform the owner that a notice of violation will be recorded if the owner does not, within twenty (20) days of receipt thereof, either correct the violation or request a meeting with the Director as set forth below. The notice shall include a copy of this Section 8.01.140 and be substantially as follows:

Notice of Continuing Violation of the City of Dana Point Grading and Excavation Code.

Notice is hereby given that the City of Dana Point has determined that a violation of the above Code exists on the following described property (description). The violation consists of (description).

While a violation of the above Code exists, the City of Dana Point may refuse to approve building or occupancy permits, subdivision maps, use permits, and other discretionary permits and development approvals.

(2) Correction of Violation. If, within twenty (20) days of receipt of a notice of intent, the owner corrects the violation, no notice of violation shall be recorded. The Director may grant extensions of time for good cause.

(3) Meeting. If the owner requests a meeting, the Director shall schedule a meeting. Notice of the meeting shall be served on the owner not less than fifteen (15) days prior thereto. The Director may reschedule the meeting from time to time for a good cause with adequate notice to the landowner. At the meeting, the owner may be represented by counsel and may present any relevant evidence that violations do not exist.

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(4) Decision, Notice. Within thirty (30) days following completion of the meeting, the Director shall issue and serve on the owner the Director's determination as to whether or not a notice of violation will be recorded. This determination shall be supported by appropriate findings on all material issues raised at the meeting. The decision of the Director shall be final with respect to recordation of a notice of violation, but shall not affect other proceedings under Section 8.01.140, Violations and Penalties.

(5) Recordation. If the Director determines that a notice will be recorded, such notice shall be recorded fifteen (15) or more days after service of notice of the decision.

(6) Release of Notice. When a violation is corrected or mitigated to the satisfaction of the Director, if a notice of violation had been recorded, the Director shall cause a release to be recorded. Said release shall refer to the notice of violation and shall state that the violation described therein has been corrected.

### **8.01.150 Hazardous Conditions.**

(a) Hazardous conditions exist when the state of any natural ground, natural slopes, Excavation, Fill or drainage device, all of which exist on private property, is a menace to life or limb, or a danger to public safety, or endangers or adversely affects the safety, usability or stability of adjacent property, structures, or public facilities.

(b) The Director may examine or cause to be examined every condition reported as hazardous as set forth in Subsection (a) of this Section.

(c) Notice of Hazardous Condition. In any case where a hazardous condition is found by the Director, the Director shall give notice, setting forth the finding to all owners of the property affected by the hazardous condition, authorized representative of the owners or a permittee under any active permit which gives permittee control of the property issued pursuant to this Code, hereinafter referred to as "owner," of such required corrective work. The notice may state the time and place of a hearing to be held if the owner fails to comply with any demand for corrective work or reports. The purpose of the hearing would be for the presentation of evidence concerning the hazardous conditions and demand for corrective work or submission of reports. The notice shall set forth the right of the owner to be present at the hearing, at the owner's option, and introduce such relevant evidence on the issues as the owner desires. If the time and place of any hearing scheduled for the presentation of evidence is not included in the initial notice(s), it shall be included in a subsequent notice.

(d) Evidence. At the time and place so specified for the hearing, evidence shall be submitted as to the facts of any condition as to reasonably establish its existence, and the Director or the Director's designee, as Hearing Officer, shall determine whether the facts presented reasonably establish the existence of a hazardous condition to the satisfaction of the Hearing Officer. Evidence may further be submitted as to the worker reports considered necessary to correct or determine work to correct said hazard.

(e) Order, Finality and Appeal. If the Director determines the existence of a hazardous condition, the Director shall determine whether such hazards are subject to corrective work and/or the need for more analysis through the preparation of reports and shall order such work or reports and specify a completion time.

(1) Finality of Order. The determination and order may be made orally at the hearing and shall be written and transmitted to the owner within a reasonable time. The determination and order shall become final within five (5) days, excluding Saturdays, Sundays and holidays, from the time it is first rendered, except in the event that the owner was not present at the City hearing, within five (5) days of the mailing of the order to the last known address of said owner.

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(2) Appeal. The owner may, at any time prior to the determination and order becoming final, appeal in writing the decision of the Director to the City Council.

(f) Completion of Work. The owner shall, following the finality of the determination and order of the Director, or if appealed, the determination and order of the City Council, commence the corrective action ordered or preparation of reports and such work or submissions shall be completed within the specified time.

(g) Failure to Complete Work. If the owner neglects or fails to complete the corrective work or submit the reports ordered by the Director or City Council within the specified time, the Director may: (1) cause the work to be performed or reports to be prepared, or (2) advise the owner of the need for corrective work and warn him/her that in the absence of such corrective work, subsequent future hazards may occur which could result in an order to vacate the premises. Nothing in this Subsection (g) shall be construed to limit the type of remedy or relief which the Director may have under any other provision of law.

(h) Costs. Costs incurred by the City to perform any corrective work or prepare reports under Subsection (g) of this section shall be charged to the owner. The Director may apply to the City Council to cause the costs to be paid and levied as a special assessment against the property and collected in a manner provided for special assessments.

(i) Vacation of Property. If necessary, the notice and order in Subsections (c) or (e) of this Section shall include the requirement that the property, a portion thereof or adjacent sites be vacated within a specified time, in the interest of public safety, pending the finality of any determination and order or completion of corrective work.

The Building Official shall cause the property to be posted at conspicuous locations with a notice containing at least the following:

**UNSAFE TO OCCUPY**

**DO NOT ENTER**

**Building Official, City of Dana Point**

**Date Posted** \_\_\_\_\_

Said posted notice may also contain the date, time and place of the hearing and the name, address and telephone number of the office or Building Official where additional information may be obtained.

Such posted notices shall remain posted until any necessary corrective work is completed. Such posted notices shall not be removed without written permission of the Building Official, and no person shall enter the property except for the purpose of making the required corrections or preparing reports.

(j) Service of Notices. The notices and order required by Subsections (c) and (e) of this Section may be served either:

(1) By mailing a copy by certified mail, return receipt requested, to the owner's address as designated on papers, applications, or permits on file with the Director; or

(2) By personally delivering a copy to the owner's address as designated on papers, applications or permits on file with the Director; or

(3) If the owner is absent from his place of residence and from his usual or designated place of business, by leaving a copy with some person of suitable age and discretion at

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either place, and sending a copy by certified mail, return receipt requested, addressed to the owner or authorized representative at his place of residence; or

(4) If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, building, or structure and also delivering copy to person there residing, if any, or to the person in charge if any; and also sending copy by certified mail, return receipt requested addressed to the owner at the place where the property, building or structure is situated, or to the owner at his last known or designated address, or both.

### **8.01.160 Reserved.**

### **8.01.170 Reserved.**

## ARTICLE 5. GRADING PERMIT REQUIREMENTS

### **8.01.180 Permits Required.**

Except as exempted in Section 8.01.060, Grading Permits, of this Code, no person shall conduct any Grading or Clearing, Brushing, or Grubbing on natural Grade or existing Grade that is preparatory to Grading, without first obtaining a Grading Permit from the Director. A separate permit shall be required for each site and may cover both Excavations and Fills.

When such operations involve the extraction or relocation of more than five thousand (5,000) cubic yards, such operations are also subject to the approval of a site development permit application. The total number of cubic yards shall be the larger of cut, including any export, or Fill, including any import.

A site development permit is not required under the following conditions:

- (a) Grading and Excavation conducted in compliance with approved sand and gravel extraction operations, an approved tentative map or use permit;
- (b) Grading and Excavation conducted in compliance with a building permit when limited to the area within the perimeter (footprint) of the structure, e.g., basement/foundation;
- (c) Grading and Excavation conducted in compliance with an approved area plan;
- (d) Emergency Grading to correct recent acts of nature;
- (e) Other exceptions as defined in Section 8.01.060.

When any operation requiring a Grading Permit is in the coastal zone, such operation is also subject to the approval of a coastal development permit.

### **8.01.190 Application.**

(a) To obtain a Grading Permit, the applicant must first file an application in writing on a form furnished by the Director. The Grading Permit application shall be accompanied by information required by the Director and as specified in Sub-article of the Grading Manual. Each person applying to the City for a Grading or building permit for projects for which compliance with regulations governing State Construction Activity Storm Water Permits ("GCASPs") is required, must submit satisfactory proof to City (i) that a Notice of Intent (NOI) to comply with the GCASP has been filed and (ii) that a Storm Water Pollution Prevention Plan has been prepared, before the City shall issue any Grading or building permit on the construction project. A copy of the NOI and the SWPPP shall be maintained on-site during

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Grading and construction and shall be made available for inspection, review and copying upon the request of any City inspector. Each person applying to the City for a Grading or building permit for projects for which compliance with regulations governing State Construction Activity Storm Water Permits ("GCASPs") is not required, must submit evidence of that the Grading project will be in compliance with the provisions of all applicable Storm Water Permits, including, but not limited to, the implementation of all applicable Best Management Practices (BMPs).

(b) Applications for which no Grading Permit is issued within one hundred eighty (180) days following the date of application shall expire by limitation and plans submitted for checking may thereafter be returned to the applicant or destroyed by the Director. The Director may extend the time for action by the applicant for a period not exceeding one hundred eighty (180) days upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. In order to renew action for an application after expiration, the applicant shall resubmit plans and pay a new plan check fee.

(c) The Director shall approve the Grading Permit application once all City requirements have been satisfied.

### **8.01.200 Plans and Specifications.**

(a) Each application for a Grading Permit shall be accompanied by plans and specifications, and supporting data consisting of Soil Engineering and Engineering Geology reports, as specified in Section 8.01.220, Soil Engineering and Engineering Geology Reports, of this Code.

(b) Plans and specifications for earthwork projects of five thousand (5,000) cubic yards or more, and/or subdivisions and hillside commercial, industrial and multi-residential projects, shall be prepared and signed by a civil engineer, unless otherwise approved by the Director. This requirement may be extended to any project when, in the opinion of the Director, critical drainage or geologic factors may be involved and there is need for civil engineering design and control.

### **8.01.210 Information on Plans and Specifications.**

Grading plans and specifications shall be prepared in accordance with the Grading requirements of Section 8.01.420, Grading Requirements, of this Code and Sub-article 5 of the Grading Manual.

### **8.01.220 Soil Engineering and Engineering Geology Reports.**

A Soil Engineering and Engineering Geology report shall be required for Grading projects, unless otherwise waived by the Director. The reports shall include information appropriate for the site including any information required by the Director. Recommendations included in the reports and approved by the Director shall be incorporated in the Grading plans or specifications. The Soil Engineer and Engineering Geologist shall review and sign the Grading plans if required by the Director to assure inclusion of their recommendations. The Director may require that the Soil Engineering Report be reviewed by a third party Registered Civil Engineer and that the Engineering Geology Report be reviewed by a third party certified Engineering Geologist. The cost of the review shall be paid by the Grading Permit applicant.

### **8.01.230 Issuance, Expiration and Renewal.**

(a) Every Grading Permit issued shall be valid for a period of two (2) years from the date of issuance.

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(b) Every Grading Permit issued shall expire by limitation and become null and void if the work authorized by such Grading Permit is not commenced within one hundred eighty (180) days from the date of such Grading Permit or if the work authorized by such Grading Permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days.

(c) The time limitations and provisions of Section 303, Permits issuance, of the Uniform Building Code as amended are applicable to Grading Permits, except as stated in Subsections (c)(1) and (2) below:

(1) A Grading Permit issued hereunder shall expire upon a change of ownership if the Grading work thereon, for which said Grading Permit was issued, has not been completed, and a new Grading Permit shall be required for the completion of the work. If the time limitations of Subsections (a) and (b) of this Section are not applicable and if no changes have been made to the plans and specifications last submitted to the Director, no charge shall be made for the issuance of the new Grading Permit under such circumstances. If, however, changes have been made to the plans and specifications last submitted to the Director, fees based on the valuation of the additional work, additional yardage and necessary plan checking as provided for in Sub-article 6 of the Grading Manual shall be charged to the Grading Permit applicant.

(2) The Director may extend the one hundred eighty (180) day expiration time limit on Grading Permits not to exceed two (2) successive periods of one hundred eighty (180) days each upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken.

(d) The Director may require that Grading operations and project designs be modified if delays occur which incur weather-related problems not considered at the time the Grading Permit was issued, and further subject to the provisions of Section 8.01.240, Denial of Grading Permit, of this Code.

(e) If the permittee presents satisfactory reasons for failure to continue or begin the work within the period specified in Subsection (b) of this Section, the Director, upon receiving a written request, may grant an extension of time as specified in Subsection (c) (2) of this Section without additional fees, provided that:

(1) No changes have been made in the original plans and specifications for such work.

(2) Suspension or abandonment has not exceeded one year.

(3) A re-endorsement of the compliance of the plans with the applicable regulations by the Public Works Department, shall be obtained.

Such request for extensions must be submitted no later than the sixtieth (60th) day following the date on which said Grading Permit would otherwise expire. If the permittee fails to request an extension within the time provided, the Director may renew the Grading Permit for a fee of one-half the amount required for the original Grading Permit provided no changes have been made in the original plans and specifications for such work.

(f) If the permittee is unable to complete the work by the end of a two (2) year period, the Director may renew the Grading Permit on an annual basis for a fee of one-half the amount required for the original permit for such work unless otherwise approved by the Director, provided no changes have been made in the original plans and specifications for such work.

(g) A new Grading Permit shall be required for restoration of a site to a "natural state" as defined in Section 8.01.050. The issuance fee for this restoration permit shall be two (2) times the permit fee normally required for a Grading Permit.

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(h) Any person who commences Grading operations and fails to obtain a Grading Permit required by this Code shall be required to return the property to a "natural state" and shall procure a permit to do so and pay all fees required.

### **8.01.240 Denial of Permit.**

(a) The Director shall not issue a Grading Permit in any case where the Director finds that the work as proposed by the applicant is liable to constitute a hazard to property or result in the deposition of debris on any public way or interfere with any existing drainage course. If it can be shown to the satisfaction of the Director that the hazard can be essentially eliminated by the construction of retaining structures, buttress fills, drainage devices or by other mitigation measures or means, the Director may issue the Grading Permit with the condition that such work be performed.

(b) If, in the opinion of the Director, the land area for which Grading is proposed is subject to geological or flood hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce the hazard to human life or property, the Grading Permit and the Building Permits for habitable structures shall be denied.

(c) The Director may require plans and specifications to be modified in order to mitigate anticipated adverse environmental effects of proposed Grading projects. The Director may, under circumstances where the significant adverse environmental effects of a proposed Grading project cannot be mitigated, deny the issuance of a Grading Permit.

(d) The Director may require plans and specifications to be modified in order to make them consistent with the City of Dana Point General Plan, Specific Plans, Zoning Code, Water Quality Requirements, or other rules, regulations, or conditions applicable to the project, the Director may deny the Grading Permit if the proposed project cannot be designed in accordance with these rules, regulations or conditions.

### **8.01.250 Time of Grading Operations.**

Grading and equipment operations within one-half mile of a structure for human occupancy shall not be conducted between the hours of 5:00 p.m. and 7:00 a.m. nor on Saturdays, Sundays and City of Dana Point recognized holidays. The Director, however, may permit Grading or equipment operations during specific hours after 5:00 p.m. or before 7:00 a.m. or on Saturdays, Sundays and City of Dana Point recognized holidays if the Director determines that such operations are not detrimental to the health, safety, or welfare of the inhabitants of such a structure. Permitted hours of operation may be shortened by the Director's finding of a previously unforeseen effect on the health, safety, or welfare of the surrounding community. However, no Grading Permit that has been issued, nor any provision of this section shall be construed to be a waiver of the applicability of the provisions set forth in Article 1, Division 6, Title 4 of the Codified Ordinances of the County of Orange relating to noise control.

### **8.01.260 Responsibility of Permittee.**

It shall be the responsibility of the permittee to be knowledgeable of the conditions and/or restrictions of the Grading Permit as outlined in applicable sections of this Code, the Grading Manual, and as contained on the approved grading plans and in the approved soil and geology reports. The permittee shall also be responsible to maintain in an obvious and accessible location on the site, a copy of the Grading plans bearing the signature of Approval by the Director.

All Grading Permits, waivers or exemptions issued hereunder shall be deemed to include the provisions that the permittee, the permittee's agents, contractors and employees, shall carry out the proposed work in accordance with the Approved Plans and specifications,



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where such Approval is required, and in accordance with any applicable Water Quality Requirements prepared and maintained pursuant to federal or state requirements or a County directive, and in compliance with all requirements of the Permit and this article. Failure to carry out the work in accordance with Approved Plans and specifications, the applicable Water Quality Requirements, and in compliance with all requirements of the Permit and this article shall be a violation of this article.

### **8.01.270 Protection of Adjoining Property.**

Each adjacent owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual Excavations on the same for purposes of construction or improvement as provided by law. Section 832 of the California Civil Code is contained in appendix G of the Grading Manual.

### **8.01.280 Import and Export of Earth Material.**

Where an excess of five thousand (5,000) cubic yards of earth per project site is moved on public roadways from or to the site of an earth Grading operation, all the following requirements shall apply:

(a) Either water or dust palliative or both must be applied for the alleviation or prevention of excessive dust resulting from the loading or transportation of earth from or to the project site on public roadways. The permittee shall be responsible for maintaining public rights-of way used for handling purposes in a condition free of dust, earth, or debris attributed to the Grading operation.

(b) Loading and transportation of earth from or to the site must be accomplished between the hours of 9:00 a.m. and 3:00 p.m. unless prior Approval is given by the Director. The proposed haul route must be submitted to the Director for review and Approval.

(c) Access roads to the premises shall be only at points designated on the approved Grading plan.

(d) The last fifty (50) feet of the access road, as it approaches the intersection with the public roadway, shall have a Grade not to exceed three percent (3%). There must be three hundred (300) feet clear, unobstructed sight distance to the intersection from both the public roadway and the access road. If the three hundred (300) feet sight distance cannot be obtained, flagmen shall be posted. The last fifty (50) feet of the access road must be constructed of gravel or equivalent material.

(e) A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway.

(f) An advance warning sign must be posted on the public roadway four hundred (400) feet on either side of the access intersection, carrying the words "truck crossing." The sign shall be diamond shape, each side being thirty (30) inches in length, shall have a yellow background, and the letters thereon shall be five (5) inches in height. The sign shall be placed six (6) feet from the edge of the pavement and the base of the sign shall be five (5) feet above the pavement level. The advance warning sign shall be covered or removed when the access intersection is not in use.

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ARTICLE 6. FEES

**8.01.290 Grading Plan Check Fees.**

Before accepting a Grading Permit application and plans and specifications for checking, the Director shall collect a plan-checking fee as approved by resolution of the City Council and as provided in Sub-article 6 of the Grading Manual.

**8.01.300 Grading Permit Fees.**

(a) A fee for each Grading Permit shall be paid to the City prior to issuance of a Grading Permit as approved by resolution of the City Council and as provided in Sub-article 6 of the Grading Manual.

(b) Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this Code, except when it can be proven to the satisfaction of the Director that an emergency existed which made it impractical to first obtain the Grading Permit. A violation shall result in an assessment of double permit fees for work done prior to Grading Permit issuance. Payment of a double fee shall not relieve any person from fully complying with the requirements of this Code nor from any other penalties prescribed herein.

(c) Additional fees approved by resolution of the City Council and contained in Sub-article 6 of the Grading Manual shall be paid as required to the Director.

**8.01.310 Emergency Work; Cost Recovery Fees.**

If the Director performs or causes the performance of emergency or other work on private property, the Director shall charge the property owner all direct and indirect costs which are necessary to complete the work to the Director's satisfaction. In addition, the City may charge a mobilization cost equal to ten (10) percent of the cost for performing the work.

ARTICLE 7. BONDS

**8.01.320 Grading Permit Bonds.**

(a) Grading Permit Bonds Required. A Grading Permit shall not be issued unless the permittee shall first post with the Director a Grading Permit Bond executed by the owner and a corporate surety authorized to do business in the State of California as a surety in an amount specified in Sub-article 7 of the Grading Manual. The Grading Permit Bond is required to assure that the work, if not completed in accordance with approved plans and specifications, will be corrected to eliminate hazardous conditions and/or threats to environmental conditions, including but not limited to a threat to water quality. This requirement may be waived at the discretion of the Director if the Director determines that:

(1) No hazardous situation is likely to occur as a result of incomplete or improper Grading; or

(2) No adverse effect is likely to occur to subject property, adjacent property or an existing or proposed structure thereon as a result of incomplete or improper Grading; or

(3) No significant drainage, erosion, flooding or siltation problems will exist as a result of incomplete or improper Grading; or

(4) No adverse geological or environmental impacts will occur as a result of incomplete or improper Grading; or

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(5) No conditions of the permit warrant a financial guarantee to assure their satisfactory completion.

(b) An additional cash Grading Permit Bond in an amount determined by the Director may be required to ensure the completion of finish Grading under the Grading Permit as a condition of occupancy and energizing utilities. A Grading Permit Bond in an amount determined by the Director may be required for permits involving temporary earthen stockpiles to ensure their timely removal. A Grading Permit Bond in an amount determined by the Director may be required to protect City streets during hauling operations.

(c) Failure to Complete Work. In the event of failure to comply with all of the conditions and terms of the Grading Permit, the Director may order the work authorized by the Grading Permit to be completed or put in a safe condition to the Director's satisfaction. The surety executing such Grading Permit Bond or deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended in causing any and all such work to be done. In the case of a cash deposit, said deposit or any unused portion thereof, shall be refunded to the permittee.

(d) Default in Performance of Conditions. Whenever the Director finds or determines that a default has occurred in the performance of any requirement of a condition of a Grading Permit, written notice thereof shall be given to the principal and when applicable, to the surety on the Grading Permit Bond. Such notice shall specify the work to be done, the estimated cost thereof and the period of time deemed by the Director to be reasonably necessary for the completion.

After receipt of such notice, the surety shall, within the time specified, cause or require the work to be performed, or failing therein, shall pay over to the Director the estimated cost of doing the work as set forth in the notice. Upon receipt of such monies the Director may cause the required work to be performed and completed. The surety shall pay the Director actual costs in excess of the estimate amount plus a mobilization charge specified in Section 8.01.310, Emergency Work: Cost Recovery Fees, of this Code.

(e) Grading Permit Bond or Cash Deposit Required for Return of the Property to "Natural State." Whenever the Director determines that the property shall be returned to its "natural state" in accordance with the provisions of this Code, a Grading Permit Bond or cash deposit, in an amount determined by the Director, will be required for faithful performance, labor and materials, Grading, installation of landscaping and maintenance until the property is returned to the "natural state," which completion date shall be determined by the Director.

### ARTICLE 8. CUTS

#### **8.01.330 Cuts.**

Cut slopes shall be no steeper than two (2) horizontal to one (1) vertical (2:1) unless otherwise recommended in the Soil Engineering or Engineering Geology report and approved by the Director. The slope of cut surfaces shall be no steeper than is safe for the intended use.

### ARTICLE 9. FILL

#### **8.01.340 Fills.**

(a) Unless otherwise approved by the Director and recommended in the approved Soil Engineering report, Fills shall conform to Sub-article 9 of the Grading Manual. The provisions therein may be waived for minor Fills not intended to support structures upon written request by the applicant on a form prescribed by the Director.

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(b) The Director may require that the soil tests or testing be performed by an approved testing laboratory.

(c) Fill slopes shall be no steeper than two (2) horizontal to one (1) vertical (2:1) unless otherwise recommended in the Soil Engineering report and approved by the Director. The slope of Fill surfaces shall be no steeper than is safe for the intended use.

### ARTICLE 10. SETBACKS

#### **8.01.350 Setbacks.**

The setbacks and other restrictions specified by Sub-article 10 of the Grading Manual are minimum and may be increased by the Director or by the recommendation of a civil engineer, Soil Engineer or Engineering Geologist, if necessary for safety and stability or to prevent damage to structures or adjacent properties from sediment deposition, erosion, water runoff of the slopes or to provide access for slope and drainage structure maintenance. The minimum setback may be reduced only in special circumstances where stability is proven to the satisfaction of the Director by the Soil Engineer or Engineering Geologist and other factors are of primary importance.

### ARTICLE 11. DRAINAGE AND TERRACING

#### **8.01.360 Drainage and Terracing.**

Drainage facilities and terracing shall conform to the provisions of Sub-article 11 of the Grading Manual unless otherwise approved by the Director and delineated on the approved Grading plan.

### ARTICLE 12. ASPHALT CONCRETE PAVEMENT

#### **8.01.370 Asphalt Concrete Pavement.**

(a) Asphalt concrete pavement for surfacing of parking lots, private streets or other similar use shall conform to the provisions of Sub-article 12 of the Grading Manual unless otherwise approved by the Director.

(b) The site Soil Engineer or special inspector shall inspect the construction of asphalt paved areas and verify to the Director that the work has been performed in compliance with the provisions of this section.

(c) Asphalt concrete pavement within the public right-of-way shall be tested by the City unless otherwise approved by the Director.

### ARTICLE 13. EROSION CONTROL

#### **8.01.380 Erosion Control and Water Quality Requirement Systems.**

(a) The faces of cut and fill slopes and project site shall be prepared and maintained to control against erosion in accordance with this Article. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted upon Approval by the Director.

(b) Where necessary, temporary and/or Permanent Erosion Control Devices such as desilting basins, check dams, riprap or other devices or methods, as approved by the

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Director, shall be employed to control erosion and provide safety during the rainy season from October 1 to April 30.

(c) No Grading work in excess of two hundred (200) cubic yards will be allowed between October 1 and April 30 on any single Grading site under permit unless an erosion control system has been approved or waived by the Director.

(d) Paved streets, sidewalks, and other improvements shall be maintained in a neat and clean condition free of loose soil, construction debris and trash. Street sweeping or other equally effective means shall be used on a regular basis to prevent storm flows from carrying sediment and debris outside the project boundaries. Watering shall not be used to clean streets except for fine material not otherwise removed by sweeping or other mechanical means.

(e) The civil engineer or other qualified individual who prepared the Grading plan and designed the erosion control devices shall be responsible for inspection and modification of the devices, as necessary, during the rainy season. Significant modifications to erosion control shall be approved by the Director.

(f) Desilting facilities designed for twenty-five (25) year storm intensity shall be provided at drainage outlets from the Graded site.

(g) Desilting basins shall be designed to provide a minimum desilting capacity equal to the current City of Dana Point standards as established by the Director.

(h) Desilting basins shall be constructed around the perimeter of projects whenever feasible when it provides improved maintenance access from paved roads during wet weather.

(i) Desilting basins constructed of compacted earth shall be compacted to a relative compaction of ninety percent (90%) of maximum density. A Soil Engineering report, prepared by the Soil Engineer, which includes the type of field testing performed, location and results of testing, shall be submitted to the Director for Approval upon completion of the desilting basins.

(j) Equipment and workers for emergency work shall be made available at all times during the rainy season. Necessary materials shall be available on-site and stockpiled at convenient locations to facilitate rapid construction of temporary devices when rain is imminent.

(k) Erosion protection shall consist of effective planting of all slopes in excess of five (5) feet high unless otherwise approved by the Director. Slopes exceeding fifteen (15) feet high may require an adequate sprinkler system, as determined by the Director.

(l) City-approved protection for the slopes shall be installed as soon as practicable, which may be prior to rough Grade approval. Effective planting shall be installed and fully germinated, and shall effectively cover the required slopes prior to final approval unless otherwise approved by the Director.

(m) The erosion control provisions shall take into account drainage patterns during the current and future phases of Grading throughout the rainy season.

(n) All removable protective devices shown shall be in place at the end of each working day when the five (5) day rain probability forecast exceeds forty percent (40%).

(o) Graded areas around the tract perimeter must drain away from the face of slopes at the conclusion of each working day.

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(p) Vegetation Clearing and Brushing activities shall not be initiated during the rainy season on any sites which are not adequately protected with desilting basins or other temporary drainage or control measures.

(q) In addition to the requirements specified above, the permittee shall perform all work in accordance with the Water Quality Requirements.

(r) Any violation of an applicable Federal or state-issued Storm Water Permit, or failure to conform to the City's Water Quality Requirements pursuant to such a permit or pursuant to this article or to the City's Code, Chapter 15.10, or failure to comply with storm water related provisions of a City-issued grading permit or of a grading plan prepared to secure such a permit, is also a violation of this Section.

### **8.01.390 Erosion Control Plans.**

Erosion control plans prepared in accordance with Sub-article 13 of the Grading Manual and any applicable Storm Water Permit issued to the City and the permittee and shall be submitted to the Director for Approval by September 1 each year for all projects under Grading Permits. Plans are required to be submitted even though no revisions to the erosion control are required. The erosion control plan may be waived for Grading projects on single residential lot projects providing that an erosion control system, meeting the Approval of the Director, has been installed, placed, planted or constructed before October 15.

### **8.01.400 Erosion Control and Water Quality Control Maintenance.**

(a) After each rainstorm, silt and debris shall be removed from check berms and desilting basins and the basins pumped dry. Manufactured slope protection measures damaged by a rainstorm shall be immediately repaired.

(b) After each rainstorm, the performance of the erosion control system shall be evaluated and revised and repaired as necessary.

(c) Devices shall not be moved or modified without the Approval of the Director.

(d) The contractor shall be responsible and shall take necessary precautions to prevent public trespass onto areas where impounded water creates a hazardous condition.

(e) The contractor and permittee or project owner shall be responsible for continual maintenance of the devices during the rainy season. In the event of failure or refusal by the contractor, permittee or project owner to properly maintain the devices, the Director may cause emergency maintenance work to be done to protect adjacent private and public property and environmental resources. The cost shall be charged to the owner and shall include an initial mobilization cost plus the cost of doing the work as contained in Article 6 of this Chapter.

(f) In the event the Director must cause emergency maintenance work to be done, the Director may revoke the Grading Permit in writing. The Grading Permit shall not be renewed until an erosion control system and/or other systems necessary to comply with Water Quality Requirements approved by the Director are installed and a fee of one-half the amount required for the original Grading Permit paid by the owner. The Director may waive installation of an erosion control system between May 1 and September 30.

(g) If any Grading subject to Section 8.01.060, Grading Permits, of this Code has commenced on private property without a valid Grading Permit, the property owner may be required to prepare and implement an erosion control plan and other plans required under the Water Quality Requirements that have been approved by the Director. In the event of

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failure by the property owner to install an approved erosion control system and/or other systems necessary to comply with Water Quality Requirements, the Director may cause emergency work to be done to protect adjacent private and public property. The procedures of Section 8.01.150, Hazardous Conditions, of this Code need not apply for emergency erosion control work between October 1 and April 30 and emergency work necessary to protect environmental resources. The cost shall be charged to the owner in accordance with Subsection (e) of this Section.

### ARTICLE 14. GRADING INSPECTION

#### **8.01.410 General.**

All Grading operations for which a Grading Permit is required shall be subject to inspection by the Director.

#### **8.01.420 Grading Requirements.**

(a) It shall be the responsibility of the civil engineer, architect or other qualified individual who prepares the Grading plan approved by the Director to incorporate all recommendations from the Soil Engineering and Engineering Geology reports and any applicable Storm Water Permits into the Grading plan. The civil engineer, architect or other qualified individual who prepares the Grading plan shall also be responsible for the professional inspection and Approval of the Grading within that person's area of technical specialty. This responsibility shall include, but need not be limited to, inspection and Approval as to the establishment of line, Grade and drainage of the development area. The project civil engineer and/or general contractor shall act as the coordinating agent in the event the need arises for liaison between the project professional Grading Contractor, and the Director, the civil engineer or other qualified person who prepares and signs the Grading plan shall also be responsible for the preparation of revised plans, erosion control plans, and the submission of as-Graded Grading plans when required by the Director upon completion of the work.

(b) Soil Engineering and Engineering Geology reports shall be required as specified in Section 8.01.220, Soil Engineering and Engineering Geology Reports, of this Code. During Grading, all necessary reports, compaction data, Soil Engineering and Engineering Geology recommendations shall be submitted to the owner by the Soil Engineer and Engineering Geologist. The owner shall submit copies of the report to the civil engineer and two copies of all reports to the Director.

(c) The Soil Engineer's area of responsibility shall include, but need not be limited to, the professional inspection and Approval concerning the preparation of ground to receive fills, testing for required compaction, testing of impermeable fill cap, stability of all finish slopes, design of buttress fills, subdrain installation and incorporation of data supplied by the Engineering Geologist.

(d) The Engineering Geologist's area of responsibility shall include, but need not be limited to, professional inspection and written Approval of the adequacy of natural ground for receiving fills, the stability of cut slopes with respect to geological matters, and the need for subdrains or other ground water drainage devices. He shall report his findings to the Soil Engineer and the civil engineer for engineering analysis. He shall inspect unsuitable soil removal, placement of subdrain and preparation of benching prior to placement of fill.

(e) The Director may expeditiously inspect the project at the various stages of work requiring approval and at any more frequent intervals as may be necessary to determine that adequate control is being exercised by the professional consultants.

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(f) When preliminary Soil Engineering reports are not required by the Director, the Director may require inspection and testing by an Approved Testing Agency. The testing agency's responsibility shall include, but need not be limited to, approval of cleared areas and benches to receive fill, and the compaction of fills.

(g) The Director shall not issue any permit, waiver, or exemption pursuant to this article unless the Director finds that the work authorized by the permit, waiver or exemption complies with applicable Water Quality Requirements.

### **8.01.430 Notification of Noncompliance.**

If, in the course of fulfilling their responsibility under this Code, the civil engineer, the Soil Engineer, the Engineering Geologist, or the testing agency finds that the work is not being done in conformance with the provisions of the approved specifications and Grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the Grading work and to the Director. Recommendations for corrective measures, if necessary, shall be submitted to the owner. The owner shall submit two (2) copies of all recommendations and reports to the Director.

### **8.01.440 Transfer of Responsibility for Approval.**

If the civil engineer, the Soil Engineer, the Engineering Geologist, the testing agency, or the Grading Contractor of record are changed during the course of the work, the work shall be stopped unless: (1) the owner submits a letter of notification verifying the change of the responsible professional; and (2) the new responsible professional submits in writing that that person has reviewed all prior reports and/or plans (specified by date and title) and work performed by the prior responsible professional and that the professional concurs with the findings, conclusions, and recommendations, and is satisfied with the work performed. The professional person may modify or revise recommendations, specifications or work performed if accompanied by supporting data and approved by the Director. The professional must state that the professional assumes all responsibility within that person's professional purview as of a specified date. All exceptions must be justified to the satisfaction of the Director.

Exception. Where clearly indicated that the firm, not the individual engineer and/or geologist, is the contracting party, the designated engineer or geologist may be reassigned and another engineer and/or geologist within the firm may assume responsibility.

### **8.01.450 Site Inspection by the Director.**

(a) Prior to the approval of any Grading plans and specifications, the Director may inspect the site to determine that the plans and specifications are current and reflect existing conditions.

(b) The permittee or the permittee's agent shall notify the Director when the Grading operations specified in Sub-article 14 of the Grading Manual are ready for inspection.

(c) If the inspector finds the soil or other conditions not as stated in the approved plans and soil or geology reports or as in additional information which was required for issuance of the Grading Permit, the inspector, using reasonable judgment, may refuse to allow further work until Approval is obtained for a revised Grading plan which will conform to the conditions.

(d) The provisions of Section 202(d), Stop Orders, of the Uniform Building Code shall apply to all Grading work and whenever the Director determines that any work does not comply with the terms of a permit, or this Code, or that the soil or other conditions are not as stated on the Grading Permit, the Director may order the work stopped by notice in writing served



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on any persons engaged in doing or causing of such work to be done and any such persons shall forthwith stop such work until authorized by the Director to proceed with the work.

(e) Prior to the issuance of building permits for a Graded site, the rough Grading shall be completed in accordance with Sub-article 14 of the Grading Manual and to the satisfaction of the responsible civil engineer, or architect, Engineering Geologist, Soil Engineer, and the Director.

(f) Whenever any work on which inspections are required is covered or concealed by additional work without first having been inspected, the Director may require by written notice, that such work be exposed for examination. The work of exposing and recovering shall not entail or be subject to expense by the City.

(g) Whenever any building or grading work is being done contrary to the provisions of the Water Quality Requirements related to activities subject to this article, the Director, in addition to any duties and powers specified in this article, may utilize any enforcement provisions specified in City Code Chapter 15.10.

### **8.01.460 Special Inspections.**

(a) The Director may establish special inspection requirements in accordance with Section 306, Special Inspections, of the Uniform Building Code, as amended for special cases involving Grading or paving related operations. Special cases may apply to work where in the opinion of the Director it is necessary to supplement the resources or expertise available for inspection.

(b) Inspection fees ensuring compliance with an order to return a property to its "natural state" shall be three (3) times the usual inspection fee for all installation of Grading, landscape and irrigation, until the property has achieved eighty percent (80%) coverage, as determined by the Director. The minimum site inspection for ensuring compliance with an order to return a property to its "natural state" shall be two (2) inspections per month until the eighty percent (80%) coverage is achieved.

## ARTICLE 15. COMPLETION OF WORK

### **8.01.470 Final Reports.**

Upon completion of the rough Grading work and at the final completion of the work, the Director may require the written approvals, reports, drawings and supplements thereto specified in Sub-article 15 of the Grading Manual.

### **8.01.480 Notification of Completion.**

The permittee or his agent shall notify the Director when the Grading operation is ready for final inspection. All work including installation of all drainage facilities and their protective devices and all erosion control measures must be completed in accordance with the final approved Grading plan and the required reports approved by the Director before final Approval of the Grading Permit is given by the Director, the Director may approve the Grading work prior to completion of all work in special cases of extreme hardship and if no hazard exists and an adequate Grading Permit Bond is posted to assure completion of all remaining work.

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would not have adopted this Ordinance and each

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section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
WILLIAM L. OSSENMACHER, MAYOR

ATTEST:

\_\_\_\_\_  
SUSAN RAMOS, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
A. PATRICK MUNOZ, CITY ATTORNEY

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STATE OF CALIFORNIA        )  
COUNTY OF ORANGE        ) ss.  
CITY OF DANA POINT        )

I, Susan Ramos, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. \_\_\_\_ was duly introduced and placed upon its first reading at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2003, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2003, by the following roll-call vote, to wit:

AYES:            COUNCILMEMBERS:

NOES:            COUNCILMEMBERS:

ABSENT:          COUNCILMEMBERS:

ABSTAIN:         COUNCILMEMBERS:

\_\_\_\_\_  
SUSAN RAMOS  
CITY CLERK

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STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.  
CITY OF DANA POINT )

AFFIDAVIT OF POSTING

Susan Ramos, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified Interim City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. \_\_\_\_\_ being:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, PROTECTING PUBLIC HEALTH AND SAFETY AND CITY PROPERTY BY IMPOSING LIMITATIONS ON EXCAVATION AND THE GRADING OF PROPERTY WITHIN THE CITY AND LIMITING RUNOFF AND CONTROLLING DISCHARGES OF POLLUTANTS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AND WATERS OF THE UNITED STATES BY AMENDING CHAPTER 01 OF TITLE 8 OF THE DANA POINT MUNICIPAL CODE**

a certified copy of the full text of Ordinance No. \_\_\_\_, along with the names of those City Council members voting for and against said Ordinance, was caused to be posted in the Office of the City Clerk.

\_\_\_\_\_  
SUSAN RAMOS  
CITY CLERK

(SEAL)