

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

January 9, 2025

Tinmill LLC (Owner of Part of Lot 21 & all of Lots 22 & 23 Block 3 Tract A unit B North Albuquerque Acres)
C/O Robert Tinnin Esq.
4333 Pan American Fwy NE
Suite A
Albuquerque, NM 87107-6833

**Sites: Lot 24-A Blk 3 Plan for Lots 24-A and 24-B Block 3 Tract A Unit B North Albuquerque Acres –
Rocky Ledge Properties LLC - B18E026**

Tr A-1 Blk 3 Tr A Unit B North Albuq Acres – Verde Management LLC - B18E022

**Part of Lot 21 & all of Lots 22 & 23 Block 3 Tract A Unit B North Albuquerque Acres – Tinmill
LLC**

Re: Drainage Ordinance (14-5-2-11) Violations for Erosion and Sediment Control

Mr. Tinnin;

The City of Albuquerque Stormwater Quality Section (SWQ) performs Erosion and Sediment Control (ESC) Inspections for active construction sites. The City recently performed an inspection based on a complaint regarding your property for the construction activities occurring on the neighboring properties along Venice Ave NE, adjacent to your property on both the west and east.

During the inspection, it was observed that contractors have been using your property for construction support activities, which include equipment staging, concrete washout, and vehicle parking that have contributed to earth-disturbing activities throughout your property. The area of the disturbed soil on your property exceeds 1 acre and requires permit coverage under the EPA's Construction General Permit (CGP).

City Ordinance §14-5-2-11 states that, for projects that disturb one acre or more, the property owner is to provide the CGP Electronic Notice of Intent (eNOI) documentation and perform regular self-inspections once every 14 days and after any precipitation event of ¼ inch or greater until the disturbances have been determined as stabilized by the City. The other property owners have submitted an eNOI and ESC Plan to the City SWQ, but did not include any construction support activity on your property.

Since the City holds property owners responsible for any violations of the CGP and City Ordinance §14-5-2-11 (included), you are being notified of unapproved construction activity on your property. A Notice of Violation (NOV) is being issued for all three property owners and is included in this package. The intent is to ensure that stormwater controls are implemented for active land disturbing activities and that the criteria for Final Stabilization listed in CGP Part 2.2.14 will be met at the construction's end. This is the second NOV issued for

your property. Failure to mitigate the violations detailed in the NOV before a follow-up inspection may result in financial penalties of \$500 per day.

The NOV has details and options for mitigation of these violations. If these violations are not mitigated by the next City stormwater inspection in seven days, financial penalties may occur as detailed in the Escalation Policy (included).

If you have any questions, please contact me at 924-3325 or cenglish@cabq.gov.

Sincerely,

Chancellor English

Chancellor English, CPESC

Erosion and Sediment Control Specialist, Stormwater Quality - Planning Dept.

English, Chancellor

To: Craig Erdman; Bill Hoberg
Cc: shannon mick; Dave Brown; 'Madelyn Schauer'; Hughes, James D.; EHD, AQD
Subject: 25.01.07 ESC Notice of Violation for 3 properties - Venice Volleyball Complex at 5801 Venice Ave NE - B18E022 - NMR1006A0; Glass-Rite at 5605 Venice Ave NE - B18E026 - NMR1005UB; The Tinmill LLC property on Venice Ave NE - no NOI
Attachments: B18E022, B18E026, Tinmill LLC Violation.pdf; City Ordinance 14-5-2-11.pdf; Escalation Process for Violations_Dec2020.pdf; Concrete washout VVC.jpg; Tracks on neighbor and parking VVC.jpg; Parking on neighbor GR.jpg; Stockpile with washout GR.jpg

Mr. Erdman, Mr. Holberg, and Mr. Tinnin;

The City SWQ received a complaint concerning concrete washout from construction activities. The City found the remains of washout on the bare soil of the neighboring property of each of your sites. Construction support activities have been observed from each of the construction sites. The City has never approved any construction support activities on the property owned by The Tinmill LLC. Your submitted ESC plans did not include the support activities on the neighboring property, and the City has not received an NOI from The Tinmill LLC for approval. The City SWQ is issuing this formal Notice of Violation (NOV) to all 3 property owners for failure to obtain City approval for land-disturbing activity on the property between the 2 construction sites. The violations include the following:

1. Starting land-disturbing activities without submission of NOIs for each property owner for City approval.
2. Starting land-disturbing activities without installing stormwater controls and BMPs.
3. Concrete washout on bare soil without a proper container.
4. There was no posting of CGP coverage viewable from a public ROW.
5. There were no SWPPP or self-inspection reports available during the inspection.

The attached NOV has details of the violations and the required mitigation. The City will perform a follow-up inspection in 7 days to verify compliance with the CGP and City Ordinance §14-5-2-11. Non-compliance with the CGP will result in a financial penalty of \$500, and repeated violations may incur a \$500 per day fine and a hold placed on further inspections and permit or certificate issuance. Your stormwater team can assist with mitigating the violations.

A copy of this email and any relevant attachments will be mailed to The Tinmill LLC.

Thank you,



CHANCELLOR ENGLISH, CPESC
Erosion and Sediment Control Specialist
o 505.924.3325
e cenglish@cabq.gov
cabq.gov/planning

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January 9, 2025

Verde Management LLC – Craig Erdman, ckeconstructionllc@gmail.com – 505-907-1715

Rocky Ledge Properties LLC – Bill Holberg, billh@glass-rite.com – 505-300-2420

The Tinmill LLC
C/O Robert Tinnin Esq.
4333 Pan American Fwy NE
Suite A
Albuquerque, NM 87107-6833

Sites: Lot 24-A Blk 3 Plan for Lots 24-A and 24-B Block 3 Tract A Unit B North Albuquerque Acres – Rocky Ledge Properties LLC – B18E026

Tr A-1 Blk 3 Tr A Unit B North Albuq Acres – Verde Management LLC - B18E022

Part of Lot 21 & all of Lots 22 & 23 Block 3 Tract A Unit B North Albuquerque Acres – The Tinmill LLC

Re: Drainage Ordinance (14-5-2-11) Violations for Erosion and Sediment Control

Mr. Holberg, Mr. Erdman and Mr. Tinnin;

The Storm Water Quality (SWQ) Section of the City of Albuquerque conducted an Erosion and Sediment Control (ESC) inspection for construction sites along Venice Ave NE to determine compliance with City Ordinance § 14-5-2-11 (attached) and the Environmental Protection Agency's (EPA's) Construction General Permit (CGP) [2022 Construction General Permit \(CGP\) | US EPA](#).

The City SWQ was advised of illicit concrete washout onto property owned by The Tinmill LLC from construction support activities from neighboring properties. During the City SWQ's ESC inspection following the complaint, the remains of concrete washout were documented on bare soil on the property owned by The Tinmill LLC. The City has previously observed other construction support activities on The Tinmill LLC's property including equipment access and vehicle parking from both construction sites. These land-disturbances are in violation of City Ordinance §14-5-2-11.

Usually, there are two options when a construction site disturbs the neighboring property due to construction activities. These typical options are as follows:

1. The owners of each property reach an agreement for land use, and the NOIs for each property owner are submitted to the City, along with an ESC Plan and Landscape Plan detailing the entirety of land disturbance including the proper stormwater controls and stabilization measures, or
2. The construction entities cease all construction support activities on any unowned property, remove all equipment and/or materials from said property, and stabilize all land disturbance caused by construction support activities according to the criteria in CGP Part 2.2.14.c.

The City leaves the decision to the property owners, so long as the requirements detailed in the CGP and City Ordinance are satisfied.

Bernalillo County property lines with the approximate areas of concern.

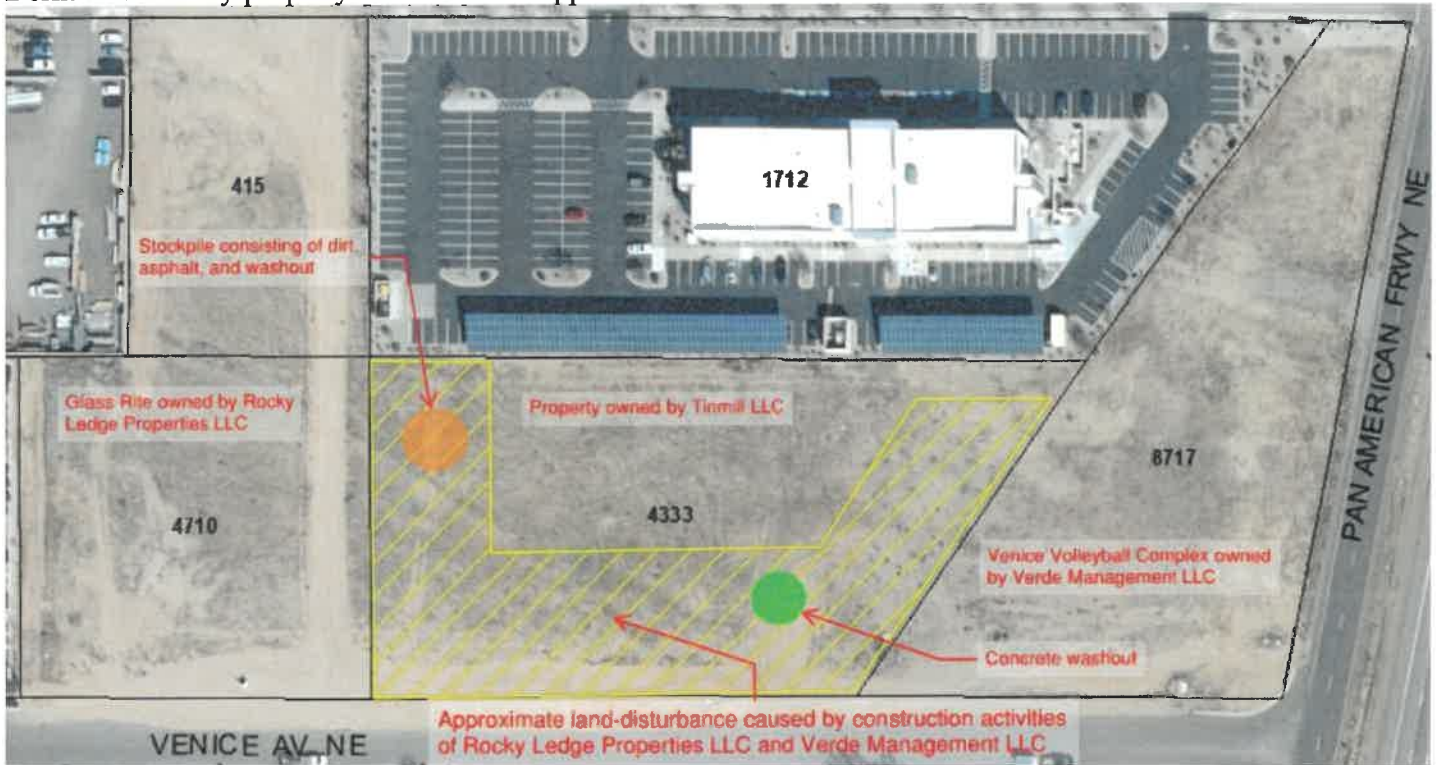


Photo of concrete washout occurring on the site owned by Tinmill LLC.



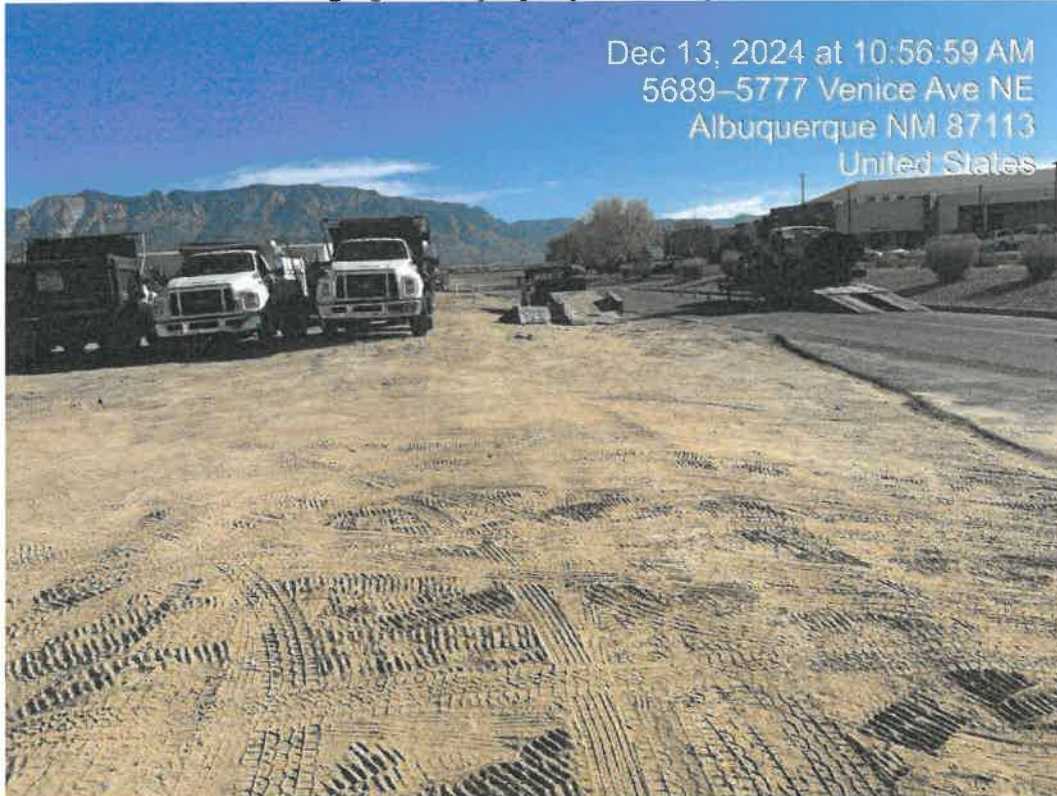
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Construction vehicles staging on the property owned by The Tinmill LLC.

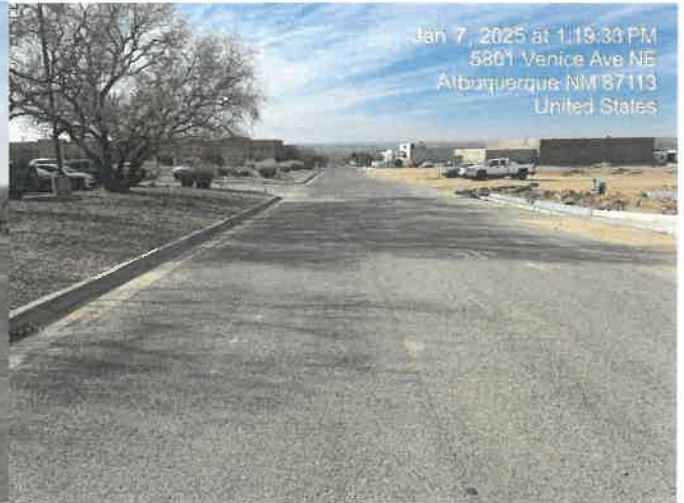


These and additional violations observed by the City inspection are detailed as follows:

1. **NOI** - Land disturbance on Tinmill, LLC's property was not approved by the City because the property owner's NOI and ESC Plan for the additional construction support activity weren't submitted to the City in Violation of City Ordinance § 14-5-2-11(A).



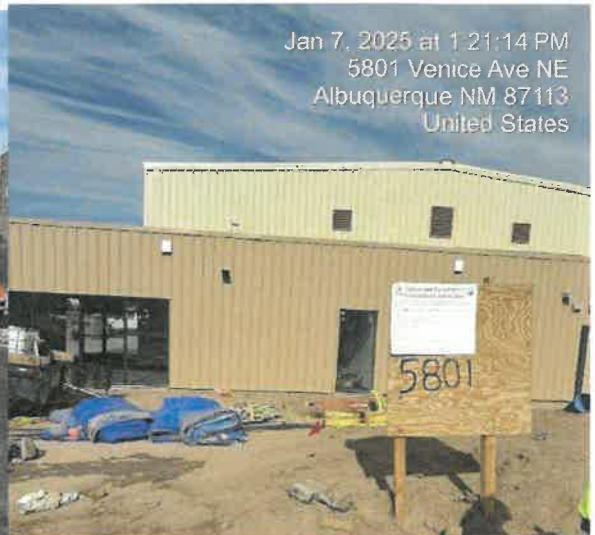
2. **BMPs** - Erosion and sediment controls for the perimeter were not implemented for the land disturbance on Tinhill, LLC's property to minimize the discharge of pollutants in stormwater from this site in violation of CGP Parts 2.1.3 and 2.2.3.



3. **Washout** – Concrete washout on bare soil and not in proper containment in violation of CGP Part 2.3.4.



4. **Posting** – The CGP Coverage posting was missing or not visible from the right-of-way in violation of CGP Part 1.5.



5. **SWPPP** – The SWPPP and self-inspection reports were unavailable on-site during the inspection in violation of CGP Parts 4.7.3 and 7.3. If the additional construction support activities and areas were not addressed in the SWPPP, the Plan would be considered out-of-date in violation of CGP Part 7.4.

CITY OF ALBUQUERQUE

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Required Mitigation:

1. **NOI** - You must either provide an ESC Plan and NOI per CGP 1.4 to the City's Storm Water Quality (SWQ) Section for approval for Tinmill LLC, the owner of Lot 21 & all of Lots 22 & 23 Block 3 Tract A unit B North Albuquerque Acres per ordinance § 14-5-2-11, or you must stabilize the disturbed portion of that property with "Native Seed and Aggregate Mulch" per City Std Spec 2012 or equivalent, to comply with the Final Stabilization Criteria in the CGP Part 2.2.14.c.
2. **BMPs** – Complete installation of stormwater controls by the time each phase of construction activities has begun per CGP Part 2.1.3. Install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas per CGP Part 2.2.3.
3. **Washout** – Direct wash water into a leak-proof container or leak-proof and lined pit designed so no overflows can occur due to inadequate sizing or precipitation per CGP Part 2.3.4. Do not allow liquid wastes to be disposed of through infiltration or to otherwise be disposed of on the ground.
4. **Posting** – You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site per CGP Part 1.5. The notice must be located so it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.
5. **SWPPP** – You must keep a current copy of your SWPPP and all inspection reports at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection per CGP Parts 4.7.3 and 7.3. You must modify your SWPPP, including the site map(s), within seven (7) days whenever you make changes to your construction plans, stormwater controls, or other activities at your site that are no longer accurately reflected in your SWPPP and if inspections or investigations by EPA or its authorized representatives determine that SWPPP modifications are necessary for compliance with the permit per CGP Part 7.4.

History of Violations:

Notice of the following types of violations for Rocky Ledge Properties LLC was sent on the dates noted below:

1. **NOI** – 12/17/24, 1/9/25 (Level 2)
2. **BMPs** – 12/17/24, 1/9/25 (Level 2)
3. **Washout** – 6/26/24, 1/9/25 (Level 2)
4. **Posting** - 1/9/25 (Level 2)
5. **SWPPP** – 6/26/24, 1/9/25 (Level 2)

Notice of the following types of violations for Verde Management LLC was sent on the dates noted below:

1. **NOI** – 1/9/25 (Level 2)
2. **BMPs** – 1/9/25 (Level 2)
3. **Washout** – 1/9/25 (Level 2)
4. **Posting** - 8/13/24, 12/16/24, 1/9/25 (Level 2)
5. **SWPPP** – 8/13/24, 12/16/24, 1/9/25 (Level 2)

Notice of the following types of violations for The Tinmill LLC was sent on the dates noted below:

1. **NOI** – 12/17/24, 1/9/25 (Level 2)
2. **BMPs** – 12/17/24, 1/9/25 (Level 2)
3. **Washout** – 1/9/25 (Level 2)
4. **Posting** - 1/9/25 (Level 2)
5. **SWPPP** – 1/9/25 (Level 2)

The City Escalation Process (attached) describes four levels of escalation based on the number of repeats and/or recalcitrant violations of each type. Beginning land disturbance without approval from the City or starting land disturbance without BMPs is considered an egregious violation and results in Level 2 Violations.

If the current Level 2 violations are not mitigated within seven days from receipt of this notice, the property owners will be subject to a fine of \$500/day per the City's Drainage Control Ordinance. The non-compliance will also be reported to the EPA. Repeat violations are also subject to a fine of \$500/day and a hold placed on all inspections along with the issuance of permits or certificates.

If you have any questions, contact me at 924-3325, cenglish@cabq.gov.

Sincerely,

Chancellor English

Chancellor English, CPESC
Erosion and Sediment Control Specialist, Stormwater Quality
Planning Dept.



Escalation Process for Drainage Ordinance Violations during the Construction Phase

Mayor Tim Keller

The City Ordinance includes several specific means of enforcing the City's regulations including but not limited to § 14-5-2-11(C)(3).

The city will utilize sanctions and penalties to enforce upon violations of permit requirements.

Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.

The four levels of escalation apply to each specific violation type (e.g. sediment in the street, BMP maintenance, waste, washout, self-inspection reports, posting, expired permit, stabilization, etc...). Each recalcitrant or repeat offence for a particular violation type results in escalation to the next level.

1st Level - Optional Informal Warning w/o Fine (not required by Ordinance) w

- E-mail with explanation of violation(s) with a corrective action date. Standard mitigation time is seven days. Additional time may be given at the City's discretion⁽¹⁾.
- This step is skipped if land disturbance began without City approval and/or without BMPs, the

2nd Level - Formal Warning w/o Fine – (1st) Notice of Violation (NOV) Letter

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. The NOV letter will state that the property owner is subject to a \$500 fine/day if the violations are not mitigated within the specified time frame (escalation to 3rd Level). Additional time to mitigate may be given at the discretion of the City⁽¹⁾.
- Level 2 applies to the second time a particular violation type is noted during a City inspection (first repeat violation).
- Level 2 also applies to the first time for either of the following two egregious violation types: either starting land disturbance without approval from the City or starting land disturbance without BMPs.

3rd Level – Formal Notice of Violation w/ Fine for 1 day - (2nd & up) NOV Letter

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. A fine will be issued to the property owner(s) per the Penalty provisions of §§ 14-5-2-1 et seq. typically \$500 for the first day of violation. Failure to pay the fine may result in additional sanctions. The NOV letter will state that the property owner is subject to a \$500 fine/day if the violations are not mitigated within the specified time frame (escalation to 4th Level). Additional time may be given at the discretion of the City⁽¹⁾.

4th Level – Formal Notice of Violation w/ Fine for each new day of violation since the last day of fine.

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. A fine will be issued to the property owner(s) per the Penalty provisions of §§ 14-5-2-1 et seq. typically \$500/day of violation since the last day of fine. The NOV letter will state that the property owner is subject to a \$500 fine/day and additional sanctions if the violations are not mitigated and the fine paid within the specified time frame.
- The EPA is typically notified when NOV's with fines are sent.

- 1) Additional time is typically not granted unless the owner is cooperative and makes significant progress mitigating the violations within the specified time frame (3 out of 4 violations mitigated).

Revised December 18, 2020

§ 14-5-2-11 CONSTRUCTION SITE RESPONSIBILITY BY PROPERTY OWNER.

(A) For projects that disturb one acre or more, or less than one acre but are part of a larger common plan of development exceeding one acre, the property owner is to provide the Construction General Permit (CGP) Electronic Notice of Intent (eNOI) documentation that contains the property owner name and contact information a minimum of 14 days prior to earth disturbance and prior to obtaining Work Order or Building Permit approval. To be accepted, the eNOI is to be properly filled out and certified. If the eNOI is a Low Erosivity Waiver by the contractor, then an Erosion and Sediment Control Permit per § 14-5-2-11(B) is to be approved by the city.

(B) For projects that are less than one acre and are not part of a larger common plan of development, but meet the criteria as specified in § 14-5-2-12(B)(6), an approved Erosion and Sediment Control Permit is required prior to earth disturbance, Work Order approval and Building Permit approval.

(1) The Erosion and Sediment Control Permit or eNOI holder must be either the owner of the property or an authorized agent of the owner in order for the permit to legally cover the activities occurring at the site. If the permit holder is other than the owner, evidence of delegation of authority acceptable to the city shall be provided prior to issuance of a permit by the city.

(2) A project will be approved for earth disturbance, work order, or building permit only upon approval of plans and conditions by the City Engineer.

(C) Construction site inspections and quality controls shall include:

(1) Self-inspections by permittee. At a minimum a routine compliance self-inspection is required to review the project for compliance with the Construction General Permit once every 14 days and after any precipitation even of 1/4 inch or greater until the site construction has been completed and the site determined as stabilized by the city. Reports of these inspections shall be kept by the person or entity authorized to direct the construction activities on the site and shall be conducted during progress of the work, during work suspensions, and until final acceptance of site stabilization by the city. An owner's or his/her agent's failure to properly maintain records shall subject that owner to the penalty provisions of §§ 14-5-2-1 et seq.

(2) City compliance inspections. The city will conduct routine compliance inspections of projects for compliance with the Construction General Permit. The city will conduct routine compliance inspections of all construction projects cumulatively disturbing one acre or more or as specified in § 14-5-2-12(B)(6) for compliance with the Construction General Permit. Site inspections will be followed by any necessary compliance or enforcement action to ensure corrective action has occurred. Corrective action is to be completed within seven days or the owner is subject to escalation per §§ 14-5-2-1 et seq. All projects will be inspected at completion for confirmation of stabilization.

(a) Construction site compliance. If the city finds that the site is not in compliance with the Construction General Permit and that stormwater controls will not prevent sediment and waste from entering the city's drainage system and/or leaving the construction site the city may direct the owner or his/her agent by written order to come into compliance. If deficiencies are required to be mitigated, the owner or his/her agent shall be verbally notified with a follow-up written confirmation occurring later. It shall be the duty of the owner or his/her agent to immediately take all necessary steps to prevent such migration of sediment and waste off the premises or from entering receiving waters. Delivery of an order by the city to the owner or his/her agent shall be deemed to be notice thereof, and binding upon the owner. An owner's or his/her agent's failure to substantially comply with the order shall subject that owner to the penalty provisions of §§ 14-5-2-1 et seq.

(b) Maintenance of control measures. The property owner or the owner's agent carrying out the Construction General Permit requirements shall maintain all control measures, retaining walls, structures, plantings, and other protective devices. Should the applicant or any other subsequent property owners fail to maintain the temporary control facilities, retaining walls, structures, plantings, and other protective devices, the city reserves the authority to enter affected property, provide needed maintenance, and to charge the owner for the work performed by the city or its contractors and to place a lien on the property to cover the costs of said actions. Such municipal lien shall be a statutory lien against the real property. This provision is in addition to the city's ability to assess penalties or pursue any other remedies as necessary to effectuate the purpose of §§ 14-5-2-1 et seq.

1. The maintenance of facilities constructed at private expense on public property is the responsibility of the owner or owner's agent until permanent facilities are in place.

2. The developer shall be responsible for maintaining or replacing temporary crossing structures for a period of six years or until a permanent structure is built, whichever comes first. The city shall maintain temporary crossings which are designed and built such that they may be directly incorporated into the ultimate facilities.

(3) The city will utilize sanctions and penalties to enforce upon violations of permit requirements. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.

(D) Post-construction maintenance shall be performed as follows:

(1) Except as otherwise noted herein, all public stormwater facilities shall be maintained by the city or other public body. The maintenance of multiple use facilities to which the general public is denied access shall be the responsibility of the owners and shall be performed to City Engineer standards. The City Engineer may allow private maintenance within public right-of-way or easement provided that adequate guarantees and indemnifications are supplied.

(2) Private stormwater facilities:

(a) Maintenance of drainage facility - The owner shall maintain the drainage facility at the owner's cost in accordance with §§ 14-5-2-1 et seq.

(b) City compliance inspections - The city's post-construction inspection program will begin routine compliance inspections of projects at three years after final acceptance of the BMP's. Notwithstanding, nothing herein prevents the city from performing an unscheduled inspection when reasonably necessary to implement the goals and requirements of §§ 14-5-2-1 et seq.

(c) City's right of entry - No owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made, as herein provided, to promptly permit entry by authorized city officials for the purpose of inspection and investigation pursuant to §§ 14-5-2-1 et seq., or to provide maintenance or repair of the drainage facilities as it deems appropriate without liability to the city. In the event that the city is denied reasonable entry for purposes of inspection on a voluntary basis, the authorized city official shall obtain a proper inspection warrant or other remedy provided by law to secure entry. In the event of an emergency, where immediate entry is necessary to protect life or property, the city has the right to enter and perform inspections, maintenance or repair of the drainage facilities as it deems appropriate, without liability to the city.

(d) Demand for construction or repair - The city may send written notice ("notice") to the owner requiring maintenance, construction, or repair to the drainage facility within 30 days ("deadline") of receipt of the notice, and the owner, at their expense, must comply with the requirements of the notice by the deadline provided.

(e) Failure to perform by owner and emergency work by city - If the owner fails to comply with the terms of the notice by the deadline, or if the city determines that an emergency condition exists, the city may perform the work itself. The city may assess the owner for the cost of the work and for any other expenses or damages, which result from owner's failure to perform. The owner shall pay the city the amount assessed. If the owner fails to pay the city within 30 days after the city gives the owner written notice of the amount due, the city may impose a lien against owner's property for the total resulting amount.

(f) Liability of city for repair after notice or as a result of emergency - The city shall not be liable to the owner for any damages resulting from the city's maintenance or repair following notice to the owner as required in §§ 14-5-2-1 et seq., or in an emergency, unless the damages are the result of the reckless conduct or gross negligence of the city.

(g) Indemnification - The city, its officials, agents and employees are indemnified and shall be held harmless from all claims, actions, suits and proceedings, whether known or unknown arising out of, or resulting from the owner's negligent maintenance, construction, repair or use of the drainage facility. Such indemnification shall encompass actions brought by third parties against any non-city party when such actions are related to the aforementioned drainage facility. Furthermore, and notwithstanding the provisions of Section 56-7-1 NMSA 1978 (if applicable), such indemnification specifically extends to liability, for all claims, whether known or unknown, damages, losses or expenses, including attorneys' fees, arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications (except those created by the city or its agents or employees); or (2) the giving of or the failure to give directions or instructions by the city.

(h) Sections 14-5-2-1 et seq. are not intended to replace, supersede, undermine or otherwise alter or replace any existing covenant or other written agreement between the city and any property owner. To the extent that the provisions herein conflict with the covenant or other agreement's language, then the covenant language or other agreement's language shall apply.

('74 Code, § 7-9-11) (Ord. 63- 1982; Am. Ord. 89-1989; Am. Ord. 2013-016; Am.Ord. 2018-020)