

City Council Introduction: **Monday**, May 12, 2003
Public Hearing: **Monday**, May 19, 2003, at **1:30 p.m.**

Bill No. 03-81

FACTSHEET

TITLE: MISCELLANEOUS NO. 03002, a text amendment to §§ 26.11.038, 26.23.190, 26.27.060 and 26.31.040 of the Lincoln Municipal Code (the Land Subdivision Ordinance) to revise the land size threshold at which approved erosion and sediment control plans are required from two acres to one acre, and to clarify provisions related to sediment in the public right-of-way.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/30/03
Administrative Action: 04/30/03

RECOMMENDATION: Approval (9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes').

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUESTS: Change of Zone No. 3405, text amendment to the Zoning Ordinance (03-80) and Miscellaneous No. 03003, text amendment to the City of Lincoln Design Standards (03R-124).

FINDINGS OF FACT:

1. This text amendment and the associated amendments to the Zoning Ordinance and City of Lincoln Design Standards were heard at the same time before the Planning Commission.
2. The staff recommendation to approve this text amendment to the Land Subdivision Ordinance is based upon the "Analysis" as set forth on p.3-4, concluding that this text change to modify the land size threshold at which approved erosion and sediment control plans are required from two acres to one acre is in conformance with the Comprehensive Plan. This text change is required by the City's NPDES stormwater permit to meet federal requirements under the Clean Water Act. Review and approval of erosion and sediment control plans will continue to operate as it does presently through the Lower Platte South Natural Resources District.
3. On April 30, 2003, this application was removed from the Consent Agenda and had separate public hearing for clarification (See Minutes p. 5).
4. There was no testimony in opposition.
5. On April 30, 2003, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: May 5, 2003

REVIEWED BY: _____

DATE: May 5, 2003

REFERENCE NUMBER: FS\CC\2003\MISC.03002

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3405
Miscellaneous #03002, 03003

DATE: April 16, 2003

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

SCHEDULED PLANNING COMMISSION MEETING:

DATE: April 30, 2003

PROPOSAL: Amend the Subdivision and Zoning Ordinances and the Stormwater Drainage Design Standards to revise the land size threshold at which approved erosion and sediment control plans are required from two to one acre, and to clarify provisions related to sediment in the public right-of-way.

CONCLUSION: This text change to modify the land size threshold at which approved erosion and sediment control plans are required from two to one acre is in Conformance with the Comprehensive Plan. This text change is required by the City's NPDES stormwater permit to meet federal requirements under the Clean Water Act. Review and approval of erosion and sediment control plans will continue to operate as it does presently through the Lower Platte South Natural Resources District.

<u>RECOMMENDATION:</u>

Approval

GENERAL INFORMATION:

CHANGE OF ZONE NO. 3405 to revise Section 27.81.010, "General Regulations," of the Lincoln Zoning Ordinance regarding the requirement to obtain approval of a drainage and grading plan prior to grading or disturbance of land by reducing the land size threshold at which an approved plan is required from two to one acres.

MISCELLANEOUS NO. 03002 to revise the Lincoln Land Subdivision Ordinance by amending Sections 26.11.038, "Authority to Proceed With Improvements," 26.23.190, "Land Grading," 26.27.060, "Land Preparation and Grading," 26.31.040, "Sediment in Public Right-of Way; Notice to Remove; Penalty," to revise the requirement to obtain approval of a drainage and grading plan prior to grading or disturbance of land by reducing the land size threshold at which an approved plan is required from two to one acres, and to clarify provisions related to sedimentation in the public right-of-way.

MISCELLANEOUS NO. 03003 to revise Chapter 2.05 of the City of Lincoln Design Standards, "Stormwater Drainage Design Standards," regarding the requirement to obtain approval of a drainage and grading plan prior to grading or disturbance of land by reducing the land size threshold at which an approved plan is required from two to one acres.

HISTORY:

April 2003.

The proposed text revisions were presented to the Mayor's Neighborhood Roundtable on April 10, 2003. In addition, the Home Builders Association of Lincoln included an article written by the Public Works and Utilities Department in the HBAL monthly newsletter regarding erosion and sediment control and the upcoming text change to require erosion and sediment control plans for sites 1 acre or larger.

January-March 2003.

Erosion and sediment control education meetings were held with various representatives from the development and building community as well as the City and County departments and other agencies. These meetings included a March 26, 2003 meeting inviting the member of the Home Builders Association of Lincoln, and all meetings included an overview of the upcoming text change to require erosion and sediment control plans for sites one acre or larger.

February 2000.

The City Council Approved Change of Zone 3216, Misc 99011 and Misc 99012, revisions to the Zoning and Subdivision Ordinances and Stormwater Drainage Design Standards to adopt a range of stormwater quantity and quality standards, including provisions for erosion and sediment control. Among other provisions, the standards adopted in 2000 required the approval of an erosion and sediment control plan prior to grading or disturbance of any land greater than two acres in size. New provisions were also included for removal of sediment in the public right-of-way.

These and other new stormwater standards contributed to meeting the City's obligations under Phase I of the National Pollutant Discharge Elimination System program. Since 2000, the City has worked cooperatively with the Lower Platte South NRD and the State Nebraska Department of Environmental Quality to implement and enforce the erosion and sediment control program.

COMPREHENSIVE PLAN SPECIFICATIONS:

Watershed Management; Guiding Principles:

"Watershed planning will continue in order to be proactive and integrate stewardship principles for land conservation, stream and wetland buffers, better site design, Best Management Practices (BMP), and erosion and sediment control". (F-79)

"A comprehensive watershed management program will need to incorporate a range of strategies including land use planning, conservation efforts, appropriate standards for floodplains and stormwater, flood warning system development/expansion, stream stabilization, stormwater storage basins, and other structural flood control efforts". (F-78)

ANALYSIS:

1. The purpose of this text change is to revise the requirement to obtain approval of an erosion and sediment control plan prior to land disturbance by reducing the land size threshold at which

an approved plan is required from two to one acres. The text change also clarifies provisions related to sediment in the public right-of-way by indicating that sediment arrives in the public right-of-way by more means than just stormwater drainage (i.e. tracking).

2. The City of Lincoln has requirements under both Phase I and Phase II of the National Pollutant Discharge Elimination System (NPDES) program. This program is authorized by the Clean Water Act and gives the Environmental Protection Agency the authority to set limits on a water quality basis and to require certain urban areas to have an NPDES permit prior to discharging stormwater into “waters of the state”.
3. Revised stormwater standards adopted in February of 2000 contributed to meeting the City’s Phase I NPDES permit requirements by adopting a standard requiring the approval of an erosion and sediment control plan prior to disturbance of land greater than two acres in size. The City works cooperatively with the Lower Platte South Natural Resources District (NRD) to implement and enforce this program, and erosion and sediment control plans are submitted to the NRD for review and approval.
4. Phase II NPDES requirements became effective in March of 2003. Lincoln’s NPDES permit directs the City to update ordinances and design standards to require approval of erosion and sediment control plans for sites one acre or greater in size in accordance with Phase II regulations. The process for review and approval of plans will continue to operate as it does presently.
5. The text change is in conformance with the Guiding Principles of Watershed Management.

Prepared by:

Becky Horner
Planner

Applicant: Allan Abbott
Director of Public Works & Utilities Department

Contact: Nicole Fleck-Tooze
Public Works & Utilities Department

**CHANGE OF ZONE NO. 3405,
MISCELLANEOUS NO. 03002
and
MISCELLANEOUS NO. 03003**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

Staff recommendation: Approval.

These applications were removed from the Consent Agenda at the request of Chair Schwinn.

Ex Parte Communications Disclosed: None.

Nicole Fleck-Tooze of Public Works and Utilities appeared to answer any questions. Schwinn referred to page 24 of the agenda, §26.31.040, the penalty provision. He has been at meetings where sediment in the roadway has been discussed. He inquired as to an actual definition of what the city means when it says, "any person responsible for sediment". Fleck-Tooze explained that typically the city would consider the property owner to be the responsible person. Where the city is investigating a situation where roads are under sedimentation in public right-of-way, it is addressed first by going back to the owner of the property.

She also explained that "tracking" is being added because there are other circumstances besides rainwater runoff where sediment gets onto the street. The city has an obligation to address it no matter how it gets there, before it gets into the storm drain. The proposed amendments reflect how the city is doing enforcement today. For example, the sediment could come off the wheels of the truck instead of via rainwater.

CHANGE OF ZONE NO. 3405

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 30, 2003

Steward moved approval, seconded by Carlson and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

MISCELLANEOUS NO. 03002

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 30, 2003

Steward moved approval, seconded by Newman and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

MISCELLANEOUS NO. 03003

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 30, 2003

Steward moved approval, seconded by Krieser and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

MISCELLANEOUS NO. 03002

26.11.038 Authority to Proceed With Improvements.

After submittal of a proposed preliminary plat to the City Clerk, the City Clerk shall cause the proposed preliminary plat to be placed on the agenda of the City Council for approval by the City Council by resolution. Receipt by the subdivider of approval of the preliminary plat and acceptance by the City Council shall constitute authority for the subdivider to proceed with plans, profiles, and specifications for the grading and land preparation, presentation of the final plat to the Commission, and the installation of the required improvements, except street lighting and street name signs. No person shall engage in the grading or disturbance of any land one acre or greater than two acres in size without first submitting a drainage and grading plan setting forth the requirements of the design standards applicable to stormwater management, erosion, and sedimentation control and obtaining approval of said plan. Any person who engages in the grading or disturbance of any land in violation of the provisions contained in this section shall be subject to an order to cease and desist such grading work. No utility or improvement shall be installed or constructed until the area to be developed has been graded and the subdivider's licensed surveyor or engineer has submitted a written statement with the seal of the professional to the Director of Public Works and Utilities that the grading and shaping of the land to be developed has been completed in conformance with the grading shown on the preliminary plat, the drainage study, and the final street grades. The Director of Public Works and Utilities may approve the grading, installation, and construction in phases. Also, no utility or improvement shall be installed or constructed until the plans, and if appropriate profiles and specifications, are prepared by the appropriate city department or submitted by the subdivider to the appropriate city department and other governmental agencies required by law, and approval is granted. Plans, and if appropriate profiles and specifications, for street surfacing, sidewalks, public water systems, public wastewater works, storm drains, and drainage systems, land preparation and grading, and temporary turnarounds not prepared by the city engineering staff shall be submitted to the Department of Public Works and Utilities for approval. Plans, profiles, and specifications for community water systems and community wastewater works shall be reviewed and approved pursuant to Section 26.11.040(d) of this title. Individual water well systems and on-site wastewater treatment systems shall be submitted to the City-County Health Department for approval. Plans and specifications for landscape screens and trees shall be submitted to the Planning Director for approval. Plans and specifications for electrical distribution systems and street lighting shall be prepared by the Lincoln Electric System (LES) unless the subdivider requests and receives permission from LES to use a private consulting engineer, then the plans and specifications shall be submitted to LES for approval. The plans and specifications for street name signs shall be prepared by the Department of Public Works and Utilities. The plans and specifications for the grading and land preparation, paving, street surfacing, public water system, public wastewater works and storm drains shall be prepared by a professional engineer or architect registered in the State of Nebraska.

Installation of utilities and improvements may be allowed on all or a portion of the proposed subdivision prior to the approval of the final plat. Street surfacing, public water systems, public wastewater works, and public street lighting shall not be installed or constructed until authorized by executive order of the Mayor or ordered constructed by the city through an assessment district. Storm drainage systems shall not be installed or constructed until authorized by executive order of the Mayor.

The design and installation of each utility and other improvements shall be in strict

accordance with the design standards for that utility or other improvement. Design standards for utilities and other improvements shall be on file with and available from the City Clerk. (Ord. 17959 §7; January 28, 2002: prior Ord. 17617 §2; February 22, 2000: Ord. 17052 §1; August 26, 1996: Ord. 16950 §3; March 11, 1995: Ord. 16431 §1; July 26, 1993: Ord. 14565 §9; December 15, 1986: Ord. 13157 §19; June 29, 1981: Ord. 11370 §1; May 19, 1975).

26.23.190 Land Grading.

No person shall engage in the grading or disturbance of any land one acre or greater than two acres in size without first submitting a drainage and grading plan setting forth the requirements of the design standards applicable to stormwater management, erosion, and sedimentation control and obtaining approval of said plan. Any person who engages in the grading or disturbance of any land in violation of the provisions contained in this section shall be subject to an order to cease and desist such grading work. Earth moving shall be kept to a minimum to protect and preserve the existing trees and grasses and to keep erosion to a minimum. Graded and otherwise disturbed land shall be stabilized to prevent erosion. Trees that are to remain shall be protected to prevent damage to them during construction and development of the subdivision. (Ord. 17617 §7; February 22, 2000: prior Ord. 13157 §58; June 29, 1981).

26.27.060 Land Preparation and Grading.

Any cut, fill, and compaction of land within, and if applicable, adjacent to the subdivision, shall be accomplished in accordance with design standards of the city and subject to the approval of the Department of Public Works and Utilities. No person shall engage in the grading or disturbance of any land one acre or greater than two acres in size without first submitting a drainage and grading plan setting forth the requirements of the design standards applicable to stormwater management, erosion, and sedimentation control and obtaining approval of said plan. Any person who engages in the grading or disturbance of any land in violation of the provisions contained in this section shall be subject to an order to cease and desist such grading work. To control erosion and sedimentation during and after land preparation, the subdivider, his successors and assigns shall provide for disturbing only the areas needed for construction; removing only those trees, shrubs, and grasses that must be removed by construction; installing required sediment basins and diversion dikes before disturbing the land that drains into them; and temporarily stabilizing each segment of graded or otherwise disturbed land by seeding and mulching or by other approved methods. As land preparation is completed, the subdivider, his successors and assigns shall permanently stabilize each segment with perennial vegetation and structural measures. Diversion dikes and sediment basins shall be leveled after areas that drain into them are stabilized, and permanent vegetation shall be established on those areas. Sediment basins that are to be retained for storm water detention shall be seeded to permanent vegetation no later than nine months after completion of the sediment basins and shall be permanently maintained by the subdivider or his successors and assigns. The land shall be graded and shaped as per the approved grading plan. (Ord. 17617 §8; February 22, 2000: prior Ord. 16950 §13; March 11, 1996: Ord. 13157 §65; June 29, 1981: Ord. 11370 §1; May 19, 1975).

26.31.040 Sediment in Public Right-of-Way; Notice to Remove; Penalty.

In addition to the penalty provided in § 26.31.030, any person responsible for sediment deposited upon any street, alley, sidewalk, public way or public ground within the City as a result of tracking, runoff or other erosion and sedimentation from a building or development site shall remove the same within a reasonable period of time as shall be required by notice signed by the Director of Public Works and Utilities or his or her authorized representative and served upon such person responsible for sediment deposited personally or by certified mail. Whenever the person responsible for sediment deposited upon any street, alley, sidewalk, public way, or public ground within the City refuses or neglects to remove the same after receiving notice as provided herein, it shall be the duty of the Director of Public Works and Utilities or his or her designated representative to cause the same to be removed and the expense of the removal shall be recoverable from the person responsible in an action at law. (Ord. 17617 §9; February 22, 2000).

STATE OF NEBRASKA



Mike Johanns
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Michael J. Linder

Director

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Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES)

This NPDES permit is issued in compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. Secs. 1251 *et. seq.* as amended to date), the Nebraska Environmental Protection Act (Neb. Rev. Stat. Secs. 81-1501 *et. seq.* as amended to date), and the Rules and Regulations promulgated pursuant to these Acts. The municipal separate storm sewer system (MS4) identified in this permit is authorized to discharge storm water and other authorized flows, and is subject to the limitations, requirements, prohibitions and conditions set forth herein. This permit regulates and controls the release of pollutants in the discharges authorized herein. This permit does not relieve permittees of other duties and responsibilities under the Nebraska Environmental Protection Act, as amended, or established by regulations promulgated pursuant thereto.

NPDES Permit No.: **NE0133671**

IIS File No.: **PCS 73882 - P**

Permittee: **City of Lincoln**

Coverage: **All discharges from the Lincoln MS4 system that discharge to waters of the State, including any MS4 discharges that may reach waters of the State through intermediate drainageways or conduits**

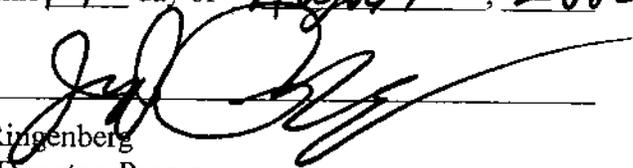
Receiving Water: **Salt Creek and several tributaries**

Effective Date: **September 1, 2002**

Expiration Date: **August 31, 2007**

Pursuant to the Delegation Memorandum dated July 26, 1999 and signed by the Director, the undersigned hereby executes this document on the behalf of the Director.

Signed this 14th day of August, 2002


Jay D. Ringenberg
Deputy Director, Programs

Part III: Storm Water Management Program (SWMP)

A. Implementation of SWMP

The permittee shall implement the Storm Water Management Program (SWMP) submitted to the Department on September 8, 2000 with the following additions set forth below in this subpart, and in accordance with the implementation schedule set forth in Table 1 below. The SWMP and the implementation schedule may be modified pursuant to the *SWMP Amendment Proposals and Approvals* procedures set forth below. The proposed Storm Water Management Program submitted September 8, 2000 by the City of Lincoln is included as an attachment to this permit for reference purposes.

1. Best Management Practices (BMP's)

The City shall review existing and additional storm water Best Management Practices (BMP's), and shall develop and implement an initial schedule for future BMP use. The purpose of the BMP's will be to reduce and/or minimize the discharge of pollutants in storm water. Monitoring to assess BMP effectiveness shall also be conducted (See Wet Weather Monitoring below).

BMP development, implementation and assessment shall consider all land-use settings that exist within the MS4 area, and any potential impacts to endangered/threatened species that may be identified by the NEDQ, the Nebraska Game and Parks Commission, or the US Fish and Wildlife Service. BMP Assessment shall also examine storm water impacts on any impaired water bodies as identified by the NDEQ pursuant to the requirements of § 303(d) of the Federal Clean Water Act (Note: Table FS-B in the Fact Sheet identifies the water bodies considered impaired at the time this permit was issued).

The initial BMP review and implementation schedule shall be completed within 12 months after the issuance of this permit. Follow-up BMP reviews shall be performed annually (See *Phase II Consistency and Annual SWMP Review* below), with a more extensive review to be conducted in the fourth year of permit coverage (See *Fourth Year BMP Review* below). The initial BMP implementation schedule and any subsequent amendments shall be incorporated into the SWMP in accordance with the amendment and approval procedures set forth below.

2. Industrial and High-Risk Runoff Areas

The City shall develop a program to identify high-risk runoff areas; and shall maintain a database of industrial facilities and high-risk runoff areas within the MS4. BMPs and/or other measures shall be implemented to address pollutant concerns from these facilities. "Other measures" may include pollution prevention and waste management programs, periodic inspections or reconnaissance visits; compliance and enforcement follow-up; or referral to the NDEQ for compliance or enforcement follow-up under the NPDES Industrial Storm Water Permit. A summary of inspection, compliance, monitoring and enforcement activities conducted at these sites shall be included in the annual report (See *Annual SWMP Review* below).

3. Construction Site Storm Water

The City shall continue to implement the current Construction Site Storm Water Program in conjunction with the Lower Platte South NRD; or an equivalent program to control erosion and sediment loss that is approved in accordance with the *SWMP Amendment Proposals and Approvals* procedures as set forth below. The City shall update the current Construction Site Storm Water Program to include sites down to 1 acre in size in compliance with time frame set forth in the Phase II Storm Water regulations.

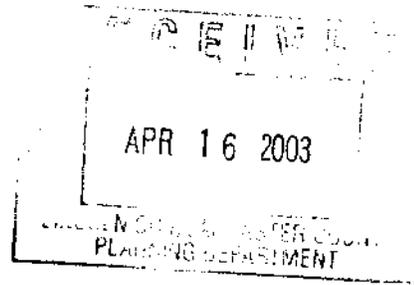
4. Phase II Consistency

The permittee shall initiate SWMP amendments that may be necessary to comply with the six minimum measures set forth in 40 CFR Part 122.34(b) (Reprinted in Appendix B of this permit). The target date for implementing any SWMP amendments that may be required shall be March 10, 2003. On or before January 1, 2003 (i.e., approximately 3 months prior to the implementation deadline), the permittee shall review the SWMP and submit any amendment proposals needed to meet the six minimum measures of the Phase II Storm water regulations set forth in 40 CFR Part 122.34(b). These SWMP amendments and any changes in the time schedules set forth above are subject to the *SWMP Amendment Proposals and Approvals* procedures set forth below.

LOWER PLATTE SOUTH
NATURAL RESOURCES DISTRICT



3125 Portia St., Box 83581, Lincoln NE 68501-3581
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Memorandum

Date: April 14, 2003
To: Ray Hill, Planning Dept.
From:  J.B. Dixon, Stormwater Specialist, Lower Platte South Natural Resources District
Subject: Erosion & Sediment Control (CZ 3405, Misc 03002, Misc 03003)

We have reviewed the proposed ordinance changes referenced above. The National Pollutant Discharge Elimination System Phase II requirements stipulate that as a Phase I municipality, the City of Lincoln shall follow the guidelines set forth by the U.S. Environmental Protection Agency, and the Nebraska Department of Environmental Quality. With the proposed ordinance changes, the City of Lincoln is taking one of the necessary steps to be in compliance with these Federal regulations. We strongly approve of the proposed ordinance changes for erosion & sediment control on construction sites.

If you have any questions, feel free to call.

JBD/jbd

pc: file, Rock Krzycki