ARTICLE 8

GRADING AND CLEARING

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SEC. 10-8.00 PURPOSE. The purpose of these provisions is to safeguard life and property and to implement City plans and policies concerning the protection of both natural and man-made environmental features when grading or clearing activities are undertaken.

SEC. 10-8.01 SCOPE. This article sets forth rules and regulations for grading and clearing and establishes procedures for issuance of permits required therefor.

SEC. 10-8.02 DEFINITIONS.

a. Building Pad. The portion of a site that underlies or will underlie a building other than an accessory building as defined in the Zoning Ordinance.

b. Civil Engineer. A professional engineer registered in the State of California to engage in practice of civil works.

c. Clearing. The removal or destruction of plant materials.

d. Development Plan. A plan that shows the proposed utilization of a site and the grading or clearing intended to accommodate that use or activity. Development plans include, but are not limited to, tentative, final and parcel maps, planned development plans, and site plans.

e. Earth Material. Naturally occurring superficial deposits overlying bedrock.

f. Erosion. The wearing away of the ground surface as a result of the movement of wind, water, or ice.

g. Excavation. The removal of earth material.

h. Fill. A deposit of earth material placed by artificial means.

i. Grading. Any excavating or filling or combination thereof.

j. Manual of Standards. Manual of Standards for Erosion and Sediment Control Measures, prepared by the Association of Bay Area Governments, a copy of which is on file in the Office of the City Engineer.

k. Retention or Sediment Basin. A reservoir constructed for the purpose of temporary storage and trapping of storm water and its sediment while releasing the storm water at controlled rates.

l. Sediment. Any material carried in suspension by water which would settle to the bottom if the water lost velocity.

m. Site. Any lot or parcel of land or contiguous combination thereof, under the same

ownership, where grading or clearing is performed or permitted.

n. Slope. An inclined ground surface, the inclination of which may be expressed as a ratio of horizontal distance to vertical distance or as a percentage.

o. Soils Engineer or Geotechnical Engineer. A civil engineer, or soils engineer registered by the State of California to engage in the practice of civil engineering, who is experienced in and is engaged in the practice of soils engineering. (No person may use the title "Soil Engineer," "Soils Engineer," or "Geotechnical Engineer," unless he or she is currently authorized to do so by the California State Board of Registration of Professional Engineers and Land Surveyors.) Business & Professions Code section E736.1.

p. Waterway. Any natural or artificial channel or depression in the surface of the earth which provides a course for water flowing either continuously or intermittently.

SEC. 10-8.03 REFERENCES BY TITLE. Where reference is made herein to other documents, standards, or procedures, it shall mean the latest edition thereof, unless that document is specifically adopted as a standard by the City. In those cases where the document is adopted as a City Standard, the reference shall mean the edition last adopted by the City.

SEC. 10-8.10 GRADING/CLEARING PERMIT REQUIRED. It shall be unlawful for any person to commence or perform any of the following grading or clearing activities without first obtaining a permit authorizing same on each of the sites or portions of sites to be graded or cleared.

a. Grading Activities

(1) The grading of an area where the average slope of the area to be excavated or filled exceeds 5 to 1.

(2) The excavation, fill, or rearrangement of 300 or more cubic yards of earth material on any site. This volume shall be the aggregate of all grading or clearing operations over a 12-month period.

(3) The excavation or fill of any portion of a site that increases or decreases its elevation following the completion of grading by a height of five feet or more at any point.

(4) The diversion of rainwater runoff from an area 15,000 square feet or larger.

(5) The blockage or alteration of a waterway or drainageway that has a capacity of greater than two cubic feet per second.

(6) The repair of earth material slides involving 300 or more cubic yards of earth material.

(7) The excavation for the installation, removal, or repair of any underground storage tank.

b. Clearing Activities

(1) The clearing of an area one acre in size or larger.

(2) The clearing of an area greater than 7500 square feet with an average slope exceeding 5 to 1.

SEC. 10-8.11 EXCEPTIONS TO PERMIT REQUIREMENTS. Notwithstanding the provisions of section 10-8.10, no grading or clearing permit shall be required for:

a. Grading or clearing activity approved by the City Building Official in issuing a building permit for a structure having below-grade foundations, basements, or walls, and the excavation or fill required for same where the limits of the excavation thus authorized do not extend beyond the required perimeter excavation of the structure for which they are approved. Excavation or fill conducted pursuant to this exception shall not be considered for purposes of determining whether other on-site grading or clearing requires a permit as provided in section 10-8.10.

b. Grading that is part of the plans which have been approved by the City Building Official or other City Official authorized to issue permits for which grading plans may be required and that is considered minor grading or clearing activity by the City Engineer.

c. Exploratory excavation conducted under the direction of a soils engineer or engineering geologist that is required by the City as a condition of a permit approval, provided that such exploratory excavation is conducted in compliance with any conditions imposed by the City.

d. Grading or clearing activities incidental to the installation, inspection, repair, or replacement of underground facilities that are regulated by Chapter 10, Article 15, of this code.

e. Salt harvesting.

f. Sanitary land fills for solid waste disposal that are regulated by Chapter 5, Article 1 of this code.

g. Grading in connection with an approved subdivision for which a Final Map or Parcel Map has been filed with the County Recorder and Improvement Plans have been approved by the City Engineer.

h. Clearing for weed abatement purposes that is required or accomplished at the direction of the enforcement officer as provided in Article 1 of Chapter 4 of this code.

i. Grading or clearing activities that are directed by a public official to eliminate an imminent danger to life, health, property, or provision of essential public services.

SEC. 10-8.12 TIME OF PERMIT APPROVAL. No grading/clearing permit application shall be approved or issued without compliance with the California Environmental Quality Act (CEQA) and until all other permits or approvals required to undertake the activity or use proposed on the site to be graded or cleared have been granted or completed.

SEC. 10-8.20 APPLICATION FOR PERMIT. Application for a grading/clearing permit shall be in writing and shall be filed with the City Engineer on forms provided for that purpose. Applications shall be signed by the individual requesting the permit and by the owners of each of the properties involved and shall be accompanied by all of the following information or

material that the City Engineer determines is applicable to the grading or clearing activities being proposed.

a. Description of Proposed Activities. A description of the proposed grading or clearing activities, including:

(1) Purpose for the grading or clearing;

(2) Approximate volumes of earth material to be moved within, onto, or off the site;

(3) Routes of travel to be used for hauling earth material and the location where such material is to be disposed of;

(4) Starting and completion dates of the proposed work;

(5) The type and volume of any plant material to be removed. Identify any existing trees subject to the Tree Preservation Ordinance;

(6) Plant materials to be planted on the site. A Landscape Plan to be reviewed and approved by the city Landscape Architect;

(7) Days of the week and hours of the day when grading or clearing will be performed. No work shall be performed on Saturdays, Sundays, or holidays, or outside the hours of 7:30 a.m. to 6:00 p.m., without the specific authorization of the City Engineer;

(8) Name(s), address(s), and telephone number(s) of contractor(s), subcontractor(s), or other person(s) the applicant intends to have actually do the work proposed and their respective tasks, to the extent such is known at the time the application is submitted;

(9) Name(s), address(s), and telephone number(s) of the Civil Engineer and/or the Land Surveyor responsible for the preparation of the Site Map and Grading Plan;

(10) Name, address, and telephone number of the Civil Engineer responsible for the preparation of the Interim Erosion and Sediment Control Plan and the Final Erosion and Sediment Control Plan;

(11) Name(s), address(s), and telephone number(s) of the soils or geotechnical engineer(s) responsible for the preparation of the soils engineering and engineering geology reports;

(12) A vicinity map showing the location of the site in relationship to any watercourses, water bodies, or other significant geographic features and all roads or other significant structures in the surrounding area;

(13) An estimate of the cost of the proposed work submitted in a form that is acceptable to the City Engineer. In all cases in which a Site Map and Grading Plan, interim Erosion and Sediment Control Plan, or Final Erosion and Sediment Control Plan, and Post-Construction Structures, Best Management

Practices (BMPs), in accordance with the Regional Water Quality Control Board staff recommendations, are required. The cost estimate shall segregate and separately identify the cost of work to be accomplished under each plan;

(14) Two sets of address labels showing names, addresses, and Assessor's Parcel Numbers of all owners of property located within 300 feet of the boundary of the property to be graded or cleared, as such names and addresses are shown on the latest equalized assessment roll for Alameda County;

(15) Listing of all permits and/or applications approved or pending and reference to any City of Hayward permits or entitlements granted which affect the development of such property.

b. A Site Map and Grading Plan. If the City Engineer determines that a Grading Plan is required, the applicant shall submit four copies of a Grading Plan which shall be prepared by a registered civil engineer and shall contain:

(1) Existing and proposed topography of the site taken at a contour interval sufficiently detailed to define the topography over the entire site;

(2) Contour intervals that extend a minimum of 100 feet off-site, or that further extent necessary to show on and off-site drainage;

(3) Existing and proposed property lines of the site shown in true location with respect to the topographic information included in the plan;

(4) Location and graphic representation of all existing on-site utility facilities;

(5) Location and graphic representation of all existing natural and man-made drainage facilities, all proposed facilities, the construction methods and materials specifications for all proposed drainage facilities, and a hydrology map prepared by a Registered Civil Engineer with hydraulic calculations;

(6) Detailed plans of all surface and subsurface drainage devices, including walls, cribbing, dams, and other protective devices to be constructed with or as a part of the proposed work and materials specifications for all proposed drainage devices;

(7) Location and graphic representation of proposed excavations and fills, on-site storage of earth material, and on-site disposal of earth material;

(8) Location of existing vegetation by type and identification of all vegetation to be left undisturbed;

(9) Location and specifications for all proposed erosion and sediment control measures;

(10) Proposed sequence and schedule of excavation, filling and other proposed activities, including earth material storage and disposal;

(11) Location of any building or structure on the site and the location of any building or structure on adjacent land that is within 15 feet of the site or which

may be affected by the proposed grading operations;

(12) Sanitary sewer mains and facilities may be included if the grading and clearing permit is for work authorized by a tentative map approved by the City Council, and the City Engineer has determined that the sanitary sewers installation is reasonable and appropriate. The installation shall be in conformance with Chapter 11, Article 3, of this code and City of Hayward Standard Specifications and Details.

c. An Interim Erosion and Sediment Control Plan (Interim Plan). If the City Engineer determines that an Interim Plan is required, the applicant shall submit four copies of an Interim Plan that contains the following information concerning conditions on the site during clearing, land-disturbing or filling activities, and earth material storage:

(1) Maximum surface runoff from the site and contributing adjacent properties calculated using a method approved by the City Engineer;

(2) A delineation and brief description of the measures to be undertaken to retain sediment on the site, including but not limited to the designs and specifications for sediment detention basins and traps and a schedule for their maintenance and upkeep;

(3) A delineation and brief description of the surface runoff and erosion control measures to be implemented, including but not limited to the types and method of applying mulches, and designs and specifications for diverters, dikes and drains, and a schedule for their maintenance and upkeep;

(4) A delineation and brief description of the vegetative measures to be used, including but not limited to the types of seeds and fertilizer and their application rates, the type, location and extent of pre-existing and undisturbed vegetation types, and a schedule for maintenance and upkeep;

(5) The location of all the measures listed by the applicant under paragraphs (2), (3), and (4) of this subsection shall be depicted on the Grading Plan or on a separate plan at the direction of the City Engineer;

(6) The applicant may propose the use of any erosion and sediment control techniques in the Interim Plan provided such techniques are proved to the satisfaction of the City Engineer to be as or more effective than the equivalent best management practices contained in the Manual of Standards.

d. A Final Erosion and Sediment Control Plan (Final Plan). If the City Engineer determines that a Final Plan is required, the applicant shall submit four copies of a Final Plan that contains the following information concerning conditions on the site after all final structures and improvements that have not been covered by an Interim Plan have been completed:

(1) Maximum surface runoff from the site and contributing adjacent properties, calculated using a method approved by the City Engineer;

(2) A description of and specifications for sediment retention devices;

(3) A description of and specifications for surface runoff and erosion control devices;

(4) A description of vegetative erosion control measures;

(5) A graphic representation of the location of all items required in paragraphs (2), (3), and (4) of this subsection;

(6) The applicant may propose the use of any erosion and sediment control techniques in the Final Plan provided such techniques are proven to the satisfaction of the City Engineer to be as or more effective than the equivalent best management practices contained in the Manual of Standards;

(7) The Grading Plan, Interim Plan, and Final Plan may be combined if the required information for each plan can be clearly shown on the combined plan to the satisfaction of the City Engineer;

(8) A Storm Water Quality Plan for the operations and maintenance of the project. This plan shall identify all site wash areas and include Structures and BMPs appropriate to the uses conducted on site to effectively prohibit the entry of pollutants into the storm water system.

e. A Work Schedule. A master work schedule showing the following information.

(1) Proposed grading schedule;

(2) Proposed conditions of the site on each January 15, April 15, July 15, and October 15 during which the permit is in effect;

(3) Proposed schedule for installation of all interim erosion and sediment control measures including but not limited to the state of completion of erosion and sediment control devices and vegetative measures on each of the dates set forth in paragraph (2) of this subsection;

(4) Schedule for construction of final improvements, if any;

(5) Schedule for installation of permanent erosion and sediment control devices where required.

f. Additional Material. The applicant shall submit any additional place, drawings, calculations, or other materials required by the City Engineer, including but not limited to:

(1) A preliminary engineering geological report that includes an adequate description of the geology of the site, the conclusions, recommendations, and professional opinions regarding the effect of the proposed work or development on the geological conditions of the site, noting particularly the adequacy of the natural ground to receive fills, cut, and fill slope stabilities, and exposed or subsurface drainage devices or slide repair, and the following further information:

(i) A professional opinion of the geological hazards on the site;

(ii) A map showing the location of property lines, proposed structures, fault lines as located by the soils engineer, all accurately plotted and referenced using conventional survey methods prepared by a person authorized to practice land surveying;

(iii) Research of previous reports showing the relationship of the site and the proposed structures to the known or suspected geologic conditions;

(iv) Pertinent geologic features identified by aerial stereo photographic or other acceptable method;

(v) A site investigation which includes subsurface profiles, a search for and the locations of fault creep, previous landslides, expansive soils, liquefiable material, and other features critical to grading and foundation design;

(vi) Statements that static and dynamic hazardous conditions do not exist or specifications for corrective site preparation and structural design criteria; and

(vii) Where the site is within the Alquist-Priolo Special Study Zone, the report shall also be in conformance with the State of California Mining and Geology Board Policies, Criteria and Outline.

(2) A preliminary terrain design soils report that includes:

(i) Identification of the investigative method used to evaluate soil conditions on the site and description of the investigative procedure;

(ii) A description of test data presenting a comprehensive cross-section of the area to be cut or filled and the material to be used as fill;

(iii) A plot showing the location of all test borings and excavations;

(iv) Laboratory soil analysis of the material proposed for the fill, including its expansive potential, and a statement as to its suitability;

(v) A description of groundwater characteristics;

(vi) A plot of critically expansive soils, contact zones, and other soil problems with recommended corrective action and design criteria to prevent structural damage;

(vii) Bearing value and adequacy of soil to receive fills or structures;

(viii) Estimated settlement of areas receiving fills;

(ix) A statement concerning the safe load-bearing capacity of controlled fills;

(x) A detailed description for clearing, grubbing excavation, surface

preparation, filling. and slide repair, including subsurface drainage moisture content in relation to optimum moisture, depth, and compaction of fill layers, frequency of testing, and design of buttress fills;

(xi) Maximum slope ratios for slope stability incorporating an engineering geologist's data and recommendations;

(xii) A stability analysis of cut slopes steeper than 1-1/2:1, and fill slopes steeper than 2.1, based on an acceptable lateral force of .2g or greater;

(xiii) A stability analysis of existing slopes that are potentially unstable; and

(xiv) A professional opinion as to the physical suitability of the site for its intended use.

SEC. 10-8.21 GRADING/CLEARING PERMIT FEES. The fee for each grading/ clearing permit shall be the actual cost to the City for reviewing the proposal and inspection, testing, and administration of the permit. Each application for a grading/clearing permit shall be accompanied by a deposit of an amount set by resolution of the City Council to cover the cost of the initial City review of the application. The City Engineer shall review the application to determine if such permit is required. The applicant will be billed for city charges monthly, based upon actual time and material. If the applicant becomes more than one month in arrears, no further services will be provided until the account is brought up to date. No Certificate of Completion shall be issued until such time as all outstanding charges are paid.

SEC. 10-8.22 SECURITY REQUIRED AND CONDITIONS THEREOF.

a. Security Required. Applicants for a grading/clearing permit shall post with the City Engineer one of the following securities:

(1) An instrument of credit from a financial institution, subject to regulation by the State of California or the federal government, pledging that the funds necessary to meet the performance are on deposit and guaranteed for payment upon demand, and agreeing that the funds designated by the instrument shall be trust funds for the purposes set forth in the instrument;

(2) A Certificate of Deposit in a federally insured saving institution with the City of Hayward named as an owner;

(3) A deposit of cash in U.S. Currency;

(4) A certified check payable to the City of Hayward;

(5) A bond executed by the owner and secured by a corporate surety company authorized to do business in this state, if specifically approved by the City Engineer.

The form of the security shall be approved by the City Engineer and the City Attorney.

b. Amount of Security. The amount of the security shall be determined by the City

Engineer and shall be equal to the estimated cost of all work and devices needed to protect the safety of individuals and the use of private and public property, and shall further include provisions for the reclamation of the site should compliance with the conditions of the permit not be obtained. When the rough grading has been completed in conformance with the requirements of this article, the City Engineer may consent to proportionate reduction of the security to an amount estimated to be adequate to insure completion of the grading or clearing work remaining to be performed.

c. Conditions of Security. Among other appropriate provisions every security shall include the following conditions to which the principal and surety shall each be bound:

(1) To comply with all of the provisions of this article and all other applicable laws, ordinances, rules, and regulations;

(2) To comply with all of the terms and conditions of the grading/clearing permit;

(3) To complete all of the work contemplated under the permit within a specified time schedule;

(4) To pay all grading/clearing permit fees and charges levied for failure to comply with approved time schedules; and

(5) To pay all reasonable costs incurred or expended by the City including but not limited to, court costs and attorney's fees in doing or causing to be done any of the work set forth in the permit, any other work which is required to be done as a result of any work or activity done under the permit or the abatement of any nuisance created by any work or activity done under the permit, or in collecting money or damages in connection with any of the foregoing.

d. Term of Security. The term of the security shall begin on the date of its posting and shall end on the satisfactory completion of the terms and conditions of the permit. Completion shall be evidenced by a Certificate of Completion to be issued by the City Engineer and filed with the records of the permit.

e. Notice of Default. Whenever the City Engineer finds that a default has occurred in the performance of any obligation the security guarantees, he or she shall give written notice thereof separately to the permit holder and to the surety. Said notice shall state the nature of the default, actions necessary to cure the default, and the period of time deemed reasonable by the City Engineer to accomplish such corrective actions. Said notice shall be served personally or by deposit in the United States mail, addressed to the permit holder and to the surety at the mailing address shown on the application or security or, if there is no mailing address indicated, to the business address shown on the application or in the security, as the case may be. It shall be the obligation of the applicant to keep the City Engineer informed of any changes of address.

f. Duty of Surety. Upon service of the notice of default, the surety shall cause the corrective actions specified in the notice to be taken within the time specified.

g. Completion of Work with Surety. If notice of default has been served and the corrective actions specified in the notice have not been taken within the time period

set forth, the City Engineer may use such surety to accomplish those corrective actions or to carry out reclamation work on the site that will restore trees and other forms of vegetation, retard erosion, and, to the greatest extent reasonably possible, re-establish slopes and drainage conditions that were present on the site prior to the time the grading activities commenced. The balance of the surety, if any, shall be returned to the person entitled thereto after completion of the work undertaken at the direction of the City Engineer and payment of outstanding permit fees and charges due the City.

SEC. 10-8.23 ISSUANCE OR DENIAL OF PERMIT.

a. Administrative Permit. When a grading/clearing permit is required, the City Engineer shall determine the average slope for the site in the application. If the average slope is determined to be less than 20 percent, the City Engineer may approve, conditionally approve, or disapprove the application based on the requirements of this article, or he or she may refer the application to the City Council for disposition.

In the event the application for the grading/clearing permit is for a site that is the subject of an approved, unexpired tentative map for which the final/parcel map has not yet been filed, the City Engineer may approve, conditionally approve, disapprove, or refer the application to the City Council regardless of the average slope on the site.

When the City Engineer approves, conditionally approves, disapproves, or refers a grading/clearing permit application to the City Council, he or she shall within five days give written notice of that action to the applicant. The City Engineer's action in approving, conditionally approving, or disapproving a grading/clearing permit may be appealed to the Director of Public Works by the applicant within 15 days of the date of the City Engineer's notification. The Director of Public Works' action on any such appeal shall be final for the grading or clearing activities proposed.

b. Council Permit. If the City Engineer determines that the average slope for the site is greater than 20 percent, he or she shall refer the application for the grading/ clearing permit to the City Council for disposition. Prior to the consideration of the application by the Council, the City Clerk shall give at least 10 days prior notice, by U.S. Mall, to all the owners of property located within 300 feet of the site designated in the application, of the date that the grading/clearing permit application will be considered by the City Council. After consideration of the application, the City Council may, by resolution, approve, conditionally approve, or disapprove the application based on the requirements of this article. The City Council's action shall be final.

c. Denial for Hazardous Grading. A grading/clearing permit shall not be issued in any case where it is found that the work as proposed by the applicant is liable to endanger any private 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 issuing authority that the hazard can be essentially eliminated by the construction of retaining structures, buttresses fills, drainage devices, or by other means, the permit may be issued with the condition that such protective work be performed.

d. Denial for Geological or Flood Hazard. If it is found that the land area for which grading or clearing 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 permit shall be denied.

e. Emergency Administrative Permit. If in the opinion of the City Engineer, a condition exists which requires immediate action to prevent personal injury or damage to public or private property, and a Council Permit would normally be required under the provisions of this article, the City Engineer shall be empowered to issue an Emergency Administrative Permit for the work. If an Emergency Administrative Permit is issued, the City Engineer shall report his actions and the reasons therefor, to the City Council within 10 working days or at the next regular Council Meeting after the 10 day period.

f. Changes to Permit Conditions. Subsequent to the issuance of any grading/clearing permit, if in the opinion of the City Engineer, field conditions are such that approval conditions must be modified to protect the public interest or insure proper completion of the work, the City Engineer shall be empowered to add, delete, or modify permit conditions. The City Engineer's action under this section shall be final. If a Council Permit is modified under the provisions of this section, the City Engineer shall report his action, and the reasons therefor, to the City Council within 10 working days or at the next regular Council Meeting after the 10 day period.

g. Compliance with Article and Permit Provisions. Following the issuance of a grading/clearing permit, the City Engineer shall perform those functions necessary to administer the requirements of this article and the conditions of the permit pertaining to the grading/clearing authorized.

SEC. 10-8.24 COMPLETION OF WORK. The permittee shall notify the City Engineer when the work authorized by the permit has been completed.

SEC. 10-8.25 FINAL ENGINEERING, GEOLOGICAL AND SOILS REPORT. Upon notification that the work authorized by a permit has been completed, the City Engineer shall determine whether a Final Civil Engineer's Report, Final Geological Report, or Final Soils Report shall be prepared.

a. If the City Engineer determines that a Final Civil Engineer's Report is required, the civil engineer who prepared the Grading Plan shall:

(1) Review the work performed pursuant to such plan;

(2) Verify and submit a statement that the work performed has been accomplished as set out in the Grading Plan or prepare and submit a record plan and statement in regard to the adequacy of the work as actually built; and

(3) Verify the line, grade, and drainage of the site.

b. If the City Engineer determines that a Final Geological Report is required, such report shall include the following:

(1) A final description of the geology of the site and any new information disclosed during grading and the effect of same on recommendations incorporated in the approved grading/clearing permit; and

(2) The engineering geologist's professional opinion as to the adequacy of the site

for the intended use as affected by geologic factors.

c. If the City Engineer determines that a Final Soils Report is required, such report shall include the following:

(1) A description of all work performed;

(2) The results of tests, including locations and elevations of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the Preliminary Soils Report; and

(3) A soils engineer's opinion as to the adequacy of the work completed, the conformance with plans and specifications, and the adequacy of the site for its intended use.

SEC. 10-8.26 CERTIFICATE OF COMPLETION. The City Engineer shall issue a Certificate of Completion when he or she has determined that all work authorized by the permit, including but not limited to the installation of required drainage facilities and their protective devices, completion of all required erosion control measures in accordance with the conditions of the permit, and submittal of all required reports has been completed.

SEC. 10-8.30 LIMITATIONS AND IMPLIED CONDITIONS OF A PERMIT.

a. General. The issuance of a permit under this article shall constitute an authorization to do only the work which is described or illustrated on those plans approved subject to and pursuant to the provisions of this article.

b. Compliance with Plans and Requirements. All permits issued hereunder shall be deemed to include the provision that the permittee and its agents, contractors, and employees shall carry out the proposed work only in accordance with the plans and specifications described or illustrated on the approved grading/clearing permit and in compliance with all the requirements of this article.

c. Continued Compliance. The issuance of a Certificate of Completion shall not void or excuse the continued maintenance of all equipment and facilities needed to protect the stability of a site or prevent the erosion of soils, nor shall the issuance of such a certificate void or excuse the required conformance of future development and site utilization with the conditions of the grading/clearing permit.

d. Liability. Neither the issuance of a permit under the provisions of this article nor the compliance with the provisions hereof or with any conditions imposed in the permit issued hereunder shall relieve any person from responsibility for damage to other persons or property. The permittee shall execute a hold harmless clause on the permit which shall read substantially as follows:

The permittee, for himself, his contractors and employees, agrees to save, indemnify, defend, and hold harmless the City of Hayward and its officers, employees, and agents from all liabilities and claims for damages by reason of injury or death to any person or persons or damage to property from any cause whatsoever while in, upon, or in any way connected with the work covered by this grading/clearing permit.

e. On-Site Inspection. Each permit issued hereunder shall be deemed to include a provision giving the City the right to enter upon and to inspect the site and all the grading or clearing work at such times and intervals as the City Engineer determines is necessary.

f. Jurisdiction of Other Agencies. Applications approved pursuant to the provisions of this article shall not relieve the owner or applicant of any requirement or responsibility for fully conforming to any other requirement for the work to be done, including but not limited to securing permits and licenses established by any law, ordinance, rule, or regulation of the City, or of any other public agency having jurisdiction over such work.

g. Permit Expiration. The permittee shall fully perform and complete all of the work required before the expiration date of the permit. If the permittee is proceeding under the permit but has encountered unforeseen delays, the City Engineer may extend the permit expiration date up to a maximum of twice the original time limit. There shall be no provision for reinstatement of an expired permit and a new application will be required. Upon expiration of a permit, the City Engineer may issue a Notice of Default or take other actions as provided in this article. If no time limit is specified on the face of the permit, the permit shall expire one hundred and eighty (180) days after the date of its issuance.

SEC. 10-8.31 PERMIT CONDITIONS. Grading/clearing permits granted shall be subject to those conditions that are reasonably necessary to implement the requirements and purposes of this article, and to assure compliance with other City regulations or the conditions of other City authorizations that receive prior or concurrent evaluation with the grading/clearing permit application. Grading/clearing permits may be subject to the following kinds of conditions:

a. Requirements for fencing of excavations, basins, fills, or ponds;

b. Designation of more restrictive design standards for slopes, grades, and elevations or fills than are specified in this article;

c. Safety precautions to guide pedestrian and vehicular traffic in, around, and by the grading or clearing;

d. The removal of rock or other earth material that may pose a hazard or nuisance to adjacent public or private properties;

e. Limitation on the location and type of future uses and activities to be established or constructed on the site;

f. Screen planting, landscaping, erosion control planting, or other treatment to maintain the good appearance of the graded area, foster good fire preventive practices, and reduce the detrimental impact on adjacent properties, the community, or environmental quality;

g. Completion of the work in accordance with approved grading and erosion control plans within periods of time specified for such work;

h. Cleaning up the area and planting in accordance with approved plans;

i. Designation of the area in which work may be done;

j. Procedures, equipment, and water supplies to be used to abate dust and maintain the cleanliness of the site, adjacent properties, and public rights-of-way;

k. Hours of operation;

l. The route and time of travel over public streets so as to cause the least interference with traffic and the least damage to public streets;

m. The payment of costs for repairing damage to public streets and utilities;

n. Conformance with an approved development plan when any grading activities are proposed or when clearing is proposed over an area of one acre or more;

o. Preservation and protection of existing trees and other forms of vegetation; and

p. The granting of a drainage release or easements for public facilities.

SEC. 10-8.32 PERFORMANCE STANDARDS. Grading or clearing activity, whether or not of a nature that requires a permit under the provisions of this article, shall be performed in accordance with the following standards:

a. General Safety Precautions. Adequate provisions shall be made to prevent any surface waters from damaging the cut face of an excavation or sloping surface of a fill. Retaining walls or cribbing shall be used wherever necessary to prevent the surface of any excavation or fill from exceeding at any point the maximum allowable slopes set forth herein.

b. Storm Damage Precautions. All persons performing any grading or clearing shall remove all loose dirt not protected by adequate erosion control measures from the site and provide adequate anti-erosion or drainage devices, debris basins, or other devices to protect private and public property from damage of any kind and to avoid adverse effects to upstream and downstream of waterways.

c. Protection of Utilities. During grading or clearing operations, public utilities or services shall be protected. This requirement applies both to the site of grading or clearing activity and along routes of travel serving the site.

d. Protection of Adjacent Property. No excavation shall be made so close to the property line of the site that any adjoining public street, sidewalk, alley, or other public property or any adjoining private property is endangered without supporting and protecting such adjoining public or private property from settling, cracking, or other damage. No fill shall be made so as to cause soil to be deposited upon or to roll, wash upon, or over any privately or publicly owned parcel of land unless that land has been designated for such disposition on an approved grading/clearing permit. No combustible material, including but not limited to cleared vegetation, shall be stored, placed, or located in a manner that increases the risk of fire on the site or adjacent property.

e. Traffic Safety Precaution. During the hauling of earth material to or from a site, proper traffic safety precautions shall be observed, including but not limited to the

posting of warning signs and the employment of personnel to direct traffic as specified in the State of California Manual of Warning Signs, Lights and Devices for Use in Performance of Work Upon Highways.

f. Tree Protection. The provisions of Chapter 10, Article 15 of this code shall apply to all grading and clearing activities. Prior to and during grading or clearing activity trees shall be protected as follows.

(1) Trees that are to be saved shall be clearly marked. The City Engineer may require that protective devices be constructed and maintained around any tree located within or adjacent to sites where grading or clearing activity is proposed;

(2) The limits of grading and stockpiling around any tree that is to be saved shall be at the drip line or a minimum of five feet from the trunk, whichever is greater. Retaining walls and tree wells shall be constructed where needed to achieve compliance with these standards and the slope standards for cuts and fills contained in this article;

(3) Subject to conditions imposed by the City Engineer, any tree whose root system has been disturbed shall be properly pruned by a competent tree surgeon to compensate for such root loss and enhance chances for its survival; and

(4) Pipelines shall tunnel under tree root systems in lieu of being placed in trenches within the drip line;

If any tree that was to be saved is nonetheless removed during the grading or clearing activities, it shall be replaced by an equivalent tree as directed by the City Engineer.

g. Dust Control. All persons performing any grading or clearing shall take measures to control all dust caused by their grading or clearing activities. Dust control shall take the form of applying water or a dust palliative as necessary to contain dust on the work site. Any soil or earth material being imported or exported from the site shall be watered to prevent dust during transport. Any earth material spilling or accumulating on a public street as a result of grading or clearing activities shall be immediately removed and the street cleaned to the satisfaction of the City Engineer.

SEC. 10-8.33 DESIGN STANDARDS. Grading or clearing activity, whether or not of a nature that requires a permit under the provisions of this article, shall be designed in accordance with the following standards.

a. General Provisions. All grading or clearing shall be designed to:

(1) Preserve or imitate the existing slope of the land, especially at all apparent horizons;

(2) Retain trees and other native vegetation which stabilize steep hillsides, retain moisture, prevent erosion, and enhance the appearance of the City;

(3) Replace removed plant life with plants that are drought resistant, easily established, fast growing, aesthetically pleasing, suited to slope and soil

conditions, and that inhibit the spread of fire;

(4) Locate building pads in such a manner as to permit ample room for adequate landscaping drainage and erosion control between and around buildings;

(5) Minimize cuts and fills and avoid permanent scarring on hillsides;

(6) Round off, in a natural manner, the top and toe of cut-and-fill slopes for both building pads and road grades;

(7) Take into consideration geologic hazards and adverse soil conditions and their effect on the future stability of the development;

(8) All grading/clearing for development located in the Hayward hills as defined in the "City of Hayward Hillside Design and Urban/Wildland Interface Guidelines," adopted February 16, 1993, by Resolution 93-037 shall be in conformance with the Hillside Design Guidelines encompassed within said guidelines.

b. Minimum Design Standards for Cuts.

(1) Maximum Slope. Cut surfaces shall not be steeper than is safe for the intended use or steeper than the ratio of one and one-half horizontal to one vertical unless a soils engineer investigates the site and states that the proposed deviation will not endanger any private property, public way or place, or adversely affect any drainage facilities. Excavation may be required to be made with a cut face flatter in slope than the ratio of two horizontal to one vertical to maintain either the stability of the slope or the appearance of the site.

(2) Drainage and Terracing. Drainage and terracing shall be provided as required in paragraph (e) of this section, "Minimum Design Standards for Drainage and Terracing," as shown on Standard Detail, SD-104;

c. Minimum Design Standards for Fills.

(1) General. Unless otherwise recommended in the approved soils engineering report or, in the absence of an approved soils engineering report unless specifically waived by the City Engineer, fills shall conform to the standards set forth herein.

(2) Compaction. All fills shall be placed under the general observation of a soils engineer. Unless otherwise stated in the soils report, all fills shall be placed in layers not to exceed six inches and compacted to a minimum of 90 percent of maximum density as determined by California Test Method 216 and 231 or ASTM 1557 Test Method. The frequency of testing shall be specified in the "California Department of Transportation Construction Manual." The City Engineer may at any time perform soils tests, at the permittee's expense, to evaluate the characteristics of the material in or being placed.

(3) Preparation of Ground. The natural ground surface shall be prepared to receive fill by removing vegetation, topsoil, miscellaneous debris, or

previously non-engineered fill. Fills shall be keyed and benched into sound bedrock or competent material as determined by the soils engineer. A drainage bench, exposed beyond the toe of the fill and sloped for sheet overflow, shall be constructed. A V-ditch designed to intercept this water runoff may be provided as an alternate. Compacted fills, terminating onto natural slopes steeper than the ratio of two horizontal to one vertical will be permitted only when the total slope can be demonstrated to be stable by a stability analysis performed by a soils engineer.

(4) Fill Slope. No compacted fill shall be made which creates an exposed surface steeper in slope than the ratio of two horizontal to one vertical unless recommended by the soils engineer based on slope analysis that demonstrates the integrity of the slopes proposed. Fill slopes may be required that are flatter than the ratio of two horizontal to one vertical to maintain either the stability of the slope or the appearance of the site.

(5) Fill Material. No detrimental amounts of organic material shall be permitted in structural fills. No rock or similar irreducible materials with a maximum dimension greater than 12 inches shall be buried or placed in fills except as recommended in a soils engineer's report that:

(i) Designates the area on the grading plan where the irreducible material will be placed;

(ii) Requires the placement of the irreducible material ten vertical feet or more below grade;

(iii) Specifies that fine-grained earth material shall fill all spaces between the irreducible material;

(iv) Provides for the continuous inspection of the placement of the irreducible material.

(6) Drainage and Terracing. Drainage and terracing shall be provided as required in paragraph (e) of this section.

d. Minimum Design Standards for Setbacks. Cuts and fills shall be set back from property lines and buildings shall be set back from cut or fill slopes in accordance with City of Hayward Standard Detail SD-104. Minimum setbacks may be increased or retaining walls may be used to reduce the required setback when approved by conditions of a grading/clearing permit. Upon recommendation of the soils engineer of foundation design, encroachment into this area may be allowed by the City Engineer provided that said encroachment conforms to all applicable regulations of the City.

e. Minimum Design Standards for Drainage and Terracing.

(1) General. Storm drainage structures, systems, and facilities shall be provided as required by the City Engineer and in accordance with Standard Specifications and Standard Details of the City of Hayward. Design shall be in accordance with recognized principles of hydraulics.

(2) Disposal. All drainage facilities shall be designed to carry surface waters to the nearest practical street, storm drain, or waterway approved by the City Engineer as a safe place to discharge such waters. If the drainage device discharges onto natural ground, erosion shall be prevented by installation of riprap, energy dissipator, or other devices, as shown on Standard Details, SD-414, SD-415, SD-416, SD-417, and SD-418.

(3) Site Drainage. Graded building sites or building pads for future construction shall have a minimum slope of 1 percent for unpaved areas and 0.5 percent for paved areas towards an approved drainage facility. A lesser slope may be approved by the City Engineer for sites graded in relatively flat terrain or where special drainage provisions are made.

(4) Terrace. Terraces at least six feet in width shall be established at not more than 25-foot intervals vertical distance on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required it shall be located as approved by the City Engineer. Suitable access shall be provided to permit proper cleaning and maintenance. Swales or ditches on terraces shall have a uniform longitudinal grade of not less than 1 percent nor more than 3 percent and a minimum depth and width in conformance with the Standard Details. Such terraces shall drain into a paved gutter, pipe, or approved waterway adequate to convey the water to a safe disposal area. In environmentally or visually sensitive areas, alternative methods recommended by the Planing Director may be substituted for the above, if approved by the City Engineer.

(5) Overflow Protection. Berms, swales, or other devices shall be provided at the top of cut or fill slopes to prevent surface waters from flowing over, onto, and damaging the face of the slope.

f. Design Standards for Erosion and Sediment Control.

(1) General. All grading or clearing activities shall be conducted in a manner that will minimize the potential for erosion from the site. Both temporary and permanent erosion control measures may be necessary to comply with this requirement. Erosion control measures may include, but shall not be limited to, the following.

(i) Temporary and permanent planting of exposed soils;

(ii) Temporary dikes and swales;

(iii) Sediment basins and traps;

(iv) Retention basins;

(v) Temporary and permanent storm drainage piping;

(vi) Temporary straw bale dikes; and

(vii) Temporary silt fences.

(2) Design and Construction. The design and construction of erosion and sediment control facilities shall comply with the procedures and technical requirements of the "Manual of Standards." Retention and sediment basins designed for water depths of two feet or greater shall be enclosed with a six-foot chain-link fence, with an extension arm and three strands of barbed wire.

(3) Reduction of Fire Hazard. Temporary and permanent planting of exposed soil shall be done in a manner that will minimize potential for grass or brush fires.

(4) Maintenance. All sediment and erosion control measures shall be maintained so that they will fulfill their intended function throughout the October 1 to May 1 rainy season.

(5) City Interventions.

(i) In the event that necessary measures for the control of sediment or erosion are not taken at or prior to the occurrence of any rainstorm or other phenomenon that might cause any sedimentation or erosion, the City shall have the right to enter upon the site and construct such measures or do such other work as may be necessary to prevent further erosion or sedimentation, provided the City shall first give five days' written notice to the owner of the site, or the permittee, if a permit has been issued for the activity on the site, of its intent to do so. City shall be reimbursed for the cost of the work performed pursuant to this provision. In an emergency situation, no notice need be given.

(ii) If, in the judgment of the City Engineer, measures for the control of sediment or erosion have been constructed according to approved design standards but such measures inadequately control sediment or erosion, the owner of the site or the permittee shall revise the erosion and sediment control measures to affect such control. In the event the owner or permittee fails to do so, the City may make the required revisions and may enter upon the site and make the necessary changes upon giving five days' written notice to the owner or permittee of its intent to do so. The City shall be reimbursed for the cost of the work performed pursuant to this provision. In an emergency situation, no notice need be given.

(iii) In the event measures for the control of sediment or erosion have been constructed, but in the opinion of the City Engineer fail through overload or inadequate maintenance to perform the function for which they were intended, the owner of the site or the permittee shall reconstruct or maintain the sediment and erosion control measures as directed by the City Engineer. In the event the owner or permittee fails to do so, the City may enter upon the site and perform the reconstruction or maintenance that is necessary to restore proper performance of the erosion or sediment control measures upon giving five days' written notice to the owner or permittee of its intent to do so. The City shall be reimbursed for the cost of the work performed pursuant to this provision. In an emergency situation, no notice need be given.

SEC. 10-8.45 NUISANCE ABATEMENT. The following shall constitute a public nuisance and shall be abated as such:

a. Any grading or clearing without a permit where same is required by this article;

b. Any grading or clearing or other work that fails to comply with the conditions of a permit issued pursuant to the provisions of this article;

c. The hazardous instability or potential excessive erosion of slopes that threaten the safety of persons or property, whether resulting from natural conditions or grading or clearing activities.