

## Section 1. Regulatory and Permitting

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### Overview of Section 1

#### 1.0

Section 1 addresses the following introductory topics:

Section 1.1, **The GESC Permit**, introduces the Southeast Metro Stormwater Authority's (SEMSWA) Grading, Erosion, and Sediment Control (GESC) Permit Program.

Section 1.2, **Reasons for the Permit**, points out the need to control the high rates of erosion and sedimentation from construction sites in an effort to protect valuable land and water resources.

Section 1.3, **Legislative Mandate**, summarizes how the GESC Permit Program is mandated by legislation, including the Federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) Stormwater Phase II Regulations and the Colorado Water Quality Control Act.

Section 1.4, **Authorization of the GESC Manual**, states that the GESC Manual is authorized with adoption of the GESC Regulation by the SEMSWA Board of Directors. This section discusses the interpretation and enforcement of the GESC Permit requirements described herein.

Section 1.5 discusses **State Permitting**, such as the following:

- ◆ Stormwater Management Plan.
- ◆ Dewatering Permit.
- ◆ Air Quality Permitting.

Section 1.6 discusses **Federal Permitting**, including:

- ◆ Federal Emergency Management Agency map revisions.
- ◆ United States Army Corps of Engineers Section 404 Permit.
- ◆ Threatened and Endangered Species approvals.
- ◆ The Migratory Bird Treaty Act

**G**rading,  
**E**rosion, and  
**S**ediment  
**C**ontrol



*Rates of erosion increase dramatically during construction.*

**The GESC Permit**

**Reasons for the GESC Permit**



*Nutrients associated with eroding sediments can lead to undesirable algae blooms.*

**1.1**

SEMSWA has a permitting program for grading, erosion, and sediment control on public and private construction projects within the incorporated areas of the City of Centennial. This Grading, Erosion and Sediment Control Manual (*GESC Manual*) describes the permitting program that has been adopted to promote environmentally-sound construction practices in the City.

**1.2**

The goal of the GESC Permit Program is to implement effective erosion and sediment control Best Management Practices (BMPs) as a standard for all land disturbance activities to reduce increases in erosion and sedimentation over pre-development conditions. During the relatively short period of time when undeveloped land is converted to urban uses or developed land is redeveloped, a significant amount of sediment can erode from a construction site and be transported to adjacent properties and receiving waters. Erosion caused by construction, and the resulting downstream sedimentation, can damage property and degrade the quality of streams and lakes. Sediment is a transport mechanism for many stormwater pollutants. Sediment can disturb riparian and aquatic habitat and, since eroded sediments often contain significant phosphorus, can lead to unwanted algae growth in lakes and reservoirs.

**Terminology**

*The Grading, Erosion, and Sediment Control Permit is termed simply the “GESC” Permit for short (“GESC” has a hard “g” and is pronounced like “desk”).*



*Eroded sediment can clog downstream receiving waters.*

SEMSWA is committed to protecting water resources and ensuring that future development continues in an environmentally sound manner.

### Legislative Mandate

#### 1.3

**1.3.1 NPDES Regulations.** The development, implementation, and enforcement of the SEMSWA GESC Permit Program is mandated by both the Federal Government and the State of Colorado. The Federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) Stormwater Regulations require that stormwater discharges from certain types of facilities be authorized under discharge permits (40 C.F.R., 122.26). The goal of the NPDES stormwater permits program is to reduce the amount of pollutants entering streams, lakes, and rivers as a result of stormwater runoff from residential, commercial, and industrial areas.

The original 1990 regulation (**Phase I**) covered municipal (i.e., publicly-owned) storm sewer systems for municipalities with populations over 100,000. The regulation was expanded in 1999 to include smaller municipalities, as well as some counties, including Arapahoe County. This expansion of the program is referred to as **Phase II**. SEMSWA is required to comply with Phase II requirements parallel to Arapahoe County's efforts.

In Colorado, stormwater discharge permits are issued by the Colorado Department of Public Health and Environment, Water Quality Control Division ("Division"). Such permits are part of the Colorado Discharge Permit System, or CDPS, under Regulation No. 61. Regulation No. 61 was promulgated to assist the Division in implementing its stormwater permits program. The Phase II municipal separate storm sewer systems (MS4s) will be covered under a general permit for stormwater discharges from MS4s. As per the Division's regulation, the main requirement of this general permit will be for SEMSWA, as the MS4, to develop and implement six stormwater management programs, or minimum control measures. One of these six measures is **construction site stormwater runoff control**.



*Control of construction site erosion in the City is mandated by Federal and State law.*

Regulation No. 61 states that the MS4 must "develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from incorporated lands in the MS4 to the Maximum Extent Practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (CWQCA) (Colorado Code of Regulations (CCR) 61.8(11)(a)(i))."

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### **Legislative Mandate, continued**

In short, SEMSWA as the MS4 must develop a stormwater management program that meets the requirements of the six minimum control measures and protects state waters from pollution, contamination, and/or degradation.

### ***The Colorado Water Quality Control Act (CCR 61.8(11)(a)(ii)(D)) Requires SEMSWA to:***

*“...develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of pollutants in stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. The program must be developed and implemented to assure adequate design, implementation, and maintenance of best management practices (BMPs) at construction sites within the MS4 [SEMSWA] to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:*

- ◆ An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;*
- ◆ Requirements for construction site operators to implement appropriate erosion and sediment control BMPs;*
- ◆ Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;*
- ◆ Procedures for site plan review which incorporate consideration of potential water quality impacts;*
- ◆ Procedures for receipt and consideration of information submitted by the public; and*
- ◆ Procedures for site inspection and enforcement of control measures.”*

***The GESC Permit Program complies with these requirements.***

**1.3.2 Cherry Creek Reservoir Control Regulation No. 72.** In addition to the CDPS program requirements, SEMSWA as the MS4 is responsible for complying with Cherry Creek Reservoir Control Regulation No. 72, promulgated by the Division pursuant to the CWQCA, Sections 25-8-202(1)(c) and 25-8-205, *et seq.*, C.R.S. This regulation, affecting approximately 18.6 square miles of Arapahoe County within the Cherry Creek Watershed, identifies specific requirements for erosion and sediment control BMPs on construction sites, including placing limits on the area of land that can be disturbed at any one time. The intent of the regulation is to protect the water quality of Cherry Creek Reservoir.

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### *Authorization of the GESC Manual*

#### **1.4**

The *GESC Manual* is authorized and approved by the SEMSWA Board of Directors.

**1.4.1 Jurisdiction.** The GESC Permit Program shall apply to all land within the incorporated areas of the City of Centennial.

**1.4.2 Amendments and Revisions.** These policies and criteria may be amended and revised as new technology is developed and experience is gained. The SEMSWA Board, following the recommendations of the Executive Director (herein referred to as the “Director”), may consider such amendments and revisions. Minor revisions that do not affect policy may be made without the action of the Board.

**1.4.3 Enforcement Responsibility.** The SEMSWA Board, acting through the Director, shall enforce the provisions of the *GESC Manual*.

**1.4.4 Review and Acceptance.** SEMSWA will review all GESC Plan submittals for general compliance with the criteria contained herein. An acceptance by SEMSWA does not relieve the Permittee(s) or Design Engineer of responsibility for ensuring that calculations, plans, specifications, construction and as-built drawings are in compliance with the criteria contained herein. Additionally, acceptance by SEMSWA does not alleviate the Permittee(s) or Design Engineer from complying with all other applicable Federal, State, or Local regulations.

**1.4.5 Interpretation.** In the interpretation and application of the provisions of this *GESC Manual*, the following shall govern:

These provisions shall be regarded as the minimum requirements for the protection of the public health, safety, comfort, convenience, prosperity, and welfare of the residents of the City. The *GESC Manual* shall therefore, be regarded as remedial and shall be liberally construed to further its underlying purposes.

Whenever a provision in these criteria and any other provision of the City Land Development Code or any provision in any law, ordinance, resolution, rule or regulation of any kind, contain restrictions covering same subject



*The GESC Permit Program is designed to fulfill a legislative mandate and significantly reduce construction erosion.*

*Authorization of the GESC Manual, continued*

matter, **whichever is more restrictive or imposes higher standards shall govern.** In the event that there is a discrepancy in the interpretation of the *GESC Manual*, the Director shall make the final determination of the intent of the *GESC Manual*.

*The GESC Manual shall be considered minimum requirements and SEMSWA reserves the right to apply more stringent criteria. Additionally, SEMSWA reserves the right to change, modify, or alter these requirements at any time.*

The *GESC Manual* shall not abrogate or annul any permits or accepted drainage reports or construction plans issued before the effective date of the *GESC Manual*.

**1.4.6 Relationship to Other Standards.** If a special district imposes more stringent criteria, such differences are not considered conflicts. When differences arise, the more stringent requirements shall apply. If Federal or State law imposes stricter criteria, standards or requirements, such shall be incorporated into SEMSWA's requirements after proper notice and public hearing (s) needed to modify SEMSWA's regulations and standards.

**1.5**

The State of Colorado requires permits for construction-related activities, separately and in addition to permitting requirements of SEMSWA. The Applicant or the Design Engineer shall contact the State of Colorado, Water Quality Control Division (WQCD) for specific State permitting information for a specific project. Contact information for the WQCD is provided in Appendix A.

*State Permitting*

Information on some of the State permits that may be applicable include the following (this is not to be considered an exhaustive list; therefore, applicants are advised to contact the State):

**1.5.1 Stormwater Management Plan.** In compliance with the NPDES Stormwater Permit Program, the State requires that Stormwater Management Plans (SWMPs) be prepared for construction projects exceeding one (1) acre of disturbance.

**1.5.2 Construction Dewatering Permits.** The State issues a permit for "Discharges Associated with Construction Activities" to manage dewatering discharges from construction projects. The permit establishes water quality standards and BMPs for dewatering discharges.

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### State Permitting, continued



*Control of airborne emissions is included in the GESC Plan Standard Notes and may be subject to State regulations.*

**1.5.3 Air Quality Plans.** As described in the Urban Drainage and Flood Control District's *Urban Storm Drainage Criteria Manual -Volume 3, (Volume 3)*, as amended, the surface stabilization measures identified for control of precipitation-induced erosion generally inhibit soils from becoming windborne. Applicable State regulations pertaining to air quality shall be addressed by the Permittee.

The Air Pollution Control Division of the Colorado Department of Public Health and Environment (CDPHE) has passed air quality regulations consistent with Federal legislation. Regulation No. 3 requires submittal of an Air Pollutant Emission Notice (APEN) for sources of fugitive dust from construction sites, as well as other sources. Regulation No. 1 defines particulate emission control regulations for haul roads and roadways. Additional controls, such as road watering, may be necessary to fully comply with these regulations at a construction site. The CDPHE should be contacted about APENs and other air quality requirements.

### Federal Permitting

#### 1.6

Applicants are also responsible for complying with all applicable Federal permitting. This may include, but is not limited to the FEMA map revision process, the United States Army Corps of Engineers Section 404 Permit and the United States Fish and Wildlife Service, Endangered Species Act Section 10 and/or Section 7 Permits.

Information on some of the Federal programs and permits that may be applicable include the following (this is not to be considered an exhaustive list; therefore, applicants are advised to confirm the Federal requirements that may apply):

**1.6.1 FEMA Map Revisions.** As mentioned in Section 2.9.9, projects that impact the regulatory floodplain may need to obtain a Conditional Letter of Map Revision (CLOMR) and/or Letter of Map Revision (LOMR) from FEMA. In this case, proper documentation needs to be submitted to FEMA for review and approval.

Contact Information for FEMA is provided in Appendix A.

**1.6.2 Section 404 Permitting.** Excavation activity associated with a dredge and fill project in "Waters of the United States" (including streams, open water lakes, ponds, wetlands, etc.) may require a Section 404 Permit. The level of permitting is dependent on the extent of disturbance along the water body of interest. It should be determined by the U.S. Army Corps of Engineers as to whether a Nationwide Permit or an Individual Permit is required. Individual Permits will require more de-

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### **Federal Permitting, continued**



*A Preble's Meadow  
Jumping Mouse.*

tailed information about the project and preparation of exhibits specific to the project site.

Contact information for the U.S. Army Corps of Engineers is provided in Appendix A.

### **1.6.3 U.S. Fish and Wildlife Service Threatened and Endangered**

**Species Clearance.** The U.S. Fish and Wildlife Service has established guidelines for surveys to determine the presence or absence of threatened and endangered species within a project's limits. The most prominent of these species in this area are the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) and Ute Ladies' Tresses Orchid (*Spiranthes diluvialis*). Clearance of these species from a project site is dependant on spatial, regional requirements determined by the U.S. Fish and Wildlife Service.



*Ute Ladies' Tresses  
Orchid.*

Contact Information for the U.S. Fish and Wildlife Service is provided in Appendix A.

### **1.6.4 Migratory Bird Treaty Act.**

The Migratory Bird Treaty Act (MBTA) is an Act of Congress which prohibits, unless permitted by regulations, to "pursue, hunt, take, capture, attempt to take, capture or kill, possess..." all migratory birds, nests, and eggs protected by the MBTA. The MBTA protects almost all birds, including common species such as swallows, crows, and geese. The U.S. Fish and Wildlife Service is responsible for administering the MBTA.

Contact Information for the U.S. Fish and Wildlife Service is provided in Appendix A.