

Procedure Relating to MS4 Regulation 4.2.5.5.1

The City's storm water regulation ordinance should be amended to require access for the City to inspect storm water control measures on private property for all development that is vested subsequent to the effective date of this Plan. This procedure shall serve as an enforceable administrative rule promulgated by the City until such time that the storm water regulation ordinance is amended to reflect this procedure.

The access for the City to inspect storm water control measures on private property that is vested subsequent to the effective date of this Plan includes both construction-phase and post-construction access. Upon approval of the Public Works Director, and in lieu of City employees inspecting and maintaining storm water controls on private property, the City may allow the owner/operators or a qualified third party to conduct maintenance so long as: a) that at least annual certification, in the form of inspection documentation which has been performed, is provided to the City; and b) the structural controls are adequately operating and maintained as such were designed to protect water quality as provided in the original maintenance agreement and plans submitted upon vesting and approval of the site.

A maintenance agreement is required on private property that is vested subsequent to the effective date of this Plan includes both construction-phase and post-construction access and where owner/operators or a qualified third party to conduct maintenance as provided herein. Said maintenance agreement shall be promulgated in the form and manner as determined by the Public Works Director so long as the agreement includes at a minimum: a) allows the City oversight authority of the storm water measures, b) a provision that the agreement acts as a covenant that runs with the land, c) allows the City to perform necessary maintenance or corrective actions neglected by the owner/operators or the qualified third party, and d) allows the City to recoup the costs from the owner/operator as necessary to cover the expenses for necessary actions conducted by the City.

The City interprets this regulation as secondary and subservient to the United States Constitution and the Utah State Constitution as applied to property rights, land use, development, and similar rights. Specifically, the intent of this regulation is not to be applied to violate vested property rights nor to be a physical invasion of property rights as determined by the United States Supreme Court in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). The City recognizes that the United States Supreme Court interprets property right in conjunction with the laws and constitutions of each state. Therefore, Utah law also plays an important role in defining property rights. For the purpose of determining when a property right is vested the City shall continue to apply the Utah Supreme Court ruling in Western Land Equities, Inc. V. City of Logan, 617 P.2d 388 (1980) that states a property owner is vested to follow the City's regulations in effect at the time a land use application is filed. Furthermore, where there is vagueness in any land use regulation, including the storm water regulations, it shall be interpreted in favor of the property owner.