

11. CHAPTER 11, STORM WATER MANAGEMENT AND EROSION CONTROL³¹

11.1. Purpose

The purpose of this Ordinance is to safeguard persons, protect property, and prevent damage to the environment on the trust and fee lands of the Shakopee Mdewakanton Sioux Community by reducing the amount of pollutants in the waters of the Community. This Ordinance will promote the public welfare by regulating the management of storm water discharges and by regulating the design, construction, and maintenance of any development that disturbs or breaks the topsoil on the trust and fee lands of the Shakopee Mdewakanton Sioux Community.

11.2. Scope

This Chapter controls the discharge of storm water within the jurisdiction of the Shakopee Mdewakanton Sioux Community and provides for regulation of land disturbance, soil storage and any erosion, sedimentation, and storm water resulting from land disturbing activities. It establishes procedures for approval, issuance, administration, and enforcement of a permit for land disturbing activities. The scope of this Ordinance is intended to meet or exceed the scope of the storm water management and erosion control requirements of the federal Clean Water Act as applied to Tribal Governments.

11.3. Relation to other Laws

Neither this Chapter nor any administrative decision made under it exempts any applicant, Permittee or any other person from procuring other required permits or complying with the requirements and conditions of such a permit.

11.4. Definitions

11.4.1. Best Management Practices or BMP

Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the Community and of the United States.

11.4.2. Business Council

For purposes of this Chapter, the Business Council is defined as the elected body charged with administrating the daily affairs of the Community as established in its Constitution.

³¹ Chapter 11 was added to the Consolidated Land Management Ordinance by General Council action on 11 March 2003 by General Council Resolution 03-11-03-004. Chapter 11 was sent to the Bureau of Indian Affairs for approval on 10 March 2003. The Bureau approval was received on 25 March 2003. Chapter 11 was intended to conform SMSC law to the federal Clean Water Act requirements for storm water management and erosion control.

11.4.3. Fee Land(s)

For purposes of this Chapter Fee Land or Lands are defined as any land in which the fee simple absolute title is vested in the Shakopee Mdewakanton Sioux Community and in which no other party has any possessory rights. Said lands are presumed to be subject to the Indian Nonintercourse Act codified at 25 U.S.C. § 177 thus restricted fee lands.

11.4.4. General Council

For purposes of this Chapter, the General Council is defined as the primary governing body of the Community as established in its Constitution.

11.4.5. Illicit Discharge

An illicit discharge means any discharge to any storm sewer that is not composed entirely of storm water except discharges pursuant to any duly issued National Pollution Discharge Elimination System permit and discharges resulting from fire fighting activities.

11.4.6. Permittee

For purposes of this Chapter, a Permittee is any person, agency, business, corporation, partnership, or any other type of entity that applies for a Site Development Permit.

11.4.7. Storm water

” Storm water” means point or nonpoint source precipitation runoff, snowmelt runoff, storm water runoff and other surface runoff or drainage.

11.5. **Discharge of Storm Water**

11.5.1. Uncontrolled Discharge Prohibited

Uncontrolled and untreated discharge of storm water into any natural water of the Community or any other jurisdiction is prohibited from the effective date of this Chapter. Such discharges existing on the effective date of this Chapter shall be excluded from this prohibition until there is a material change, alteration or restructuring of the primary facility contributing to the discharge.

11.5.2. Illicit Discharge

Illicit discharges into any storm water management or treatment system or any natural waters of the Community or any other jurisdiction are prohibited.

11.5.3. Treatment Required

Storm water shall be treated using the most effective method economically available before discharge into any natural surface water of the Community or any other jurisdiction.

11.5.4. Natural Treatment Methods Preferred

Preferred treatment methods for storm water discharges are those that most closely approximate the natural drainage system including, but not limited to, distributed ponding, vegetated swales and created wetland areas.

11.5.5. Infiltration Preferred where Economically Feasible

Infiltration of treated storm water rather than discharge to downstream surface water is preferred where economically feasible and environmentally sound.

11.6. Storm Water Management Plan

11.6.1. Plan Required

The Community shall establish and maintain a Storm Water Management Plan, hereinafter SWMP, which includes all lands held in trust for, or owned by, the Community.

11.6.2. Plan Purpose

The Purpose of the SWMP is to protect the quality of the surface waters of the Community and satisfy the appropriate water quality requirements of the federal Clean Water Act, as applied to Tribes, by reducing the discharge of pollutants into the natural surface water bodies of the Community to the maximum extent practicable and economically feasible.

11.6.3. Plan Contents

The SWMP shall contain, at a minimum, information regarding the areas contained in this Section.

11.6.3.1. Public Education

The SWMP shall contain provisions establishing a public education program related to non-point source pollution and impacts from polluted storm water discharges.

11.6.3.2. Public Participation and Involvement

11.6.3.2.1. Natural Resources Committee

The Business Council is hereby authorized to establish a Natural Resources Committee consisting of the Business Council, two primary members and one alternate member. All Natural Resources Committee members shall be enrolled Members of the Community. The Natural Resources Committee, if such is formed, shall review any SWMP and any amendment to an SWMP. The Natural Resources Committee may provide a report to the General Council on the contents of the SWMP or amendment at the public hearing held before adoption of the plan or amendment.

11.6.3.2.2. Public Meetings

A minimum of one public meeting shall be conducted at least one week before the adoption of any SWMP or amendment to any SWMP. Notice of this public

meting shall be provided by posting in the Community Government Center at least 30 days before the date of the public meeting.

11.6.3.3. Illicit Discharge Detection and Elimination

The SWMP shall include methods for detecting and eliminating illicit discharges to the storm water system on the Community.

11.6.3.4. Construction Site Runoff Controls

The SWMP shall include information that conforms to the requirements of this Chapter. Construction site runoff management practices may be contained in a separate Tribal Manual of Approved Erosion Control and Storm Water Management Practices, they may be incorporated into the body of the SWMP or they may be incorporated into the SWMP as an appendix as long as said practices are available for use and review by applicants and Permittees under this Chapter.

11.6.3.5. Permanent Runoff Controls

The SWMP shall include provisions for permanent management of storm water on Community lands including a map of the existing storm water management system and any proposed modifications. Post construction runoff planning provided in a Site Development Permit issued under the authority of this Chapter shall be integrated into the overall permanent runoff controls.

11.6.3.6. Pollution Prevention

The SWMP shall include provisions for preventing or limiting pollutant runoff from all Community government and enterprise operations. Government and enterprise operations shall review activities that may affect storm water quality in the following sequence.

- Eliminate the use of potential pollutants
- Reduce the use of potential pollutants
- Prevent pollutants from reaching storm water treatment facilities; and
- Use treatment facilities to reduce pollutants in final storm water discharges

11.6.4. Plan Application

The SWMP shall apply to all actual or potential storm water discharges on trust lands as defined in Chapter 1, Section 1.3 (K) or on Fee Lands as defined in this Chapter.

11.7. Permits

11.7.1. Purpose

The following required permits are intended to limit or eliminate erosion and control sediment transport off construction sites on Community lands.

11.7.2. Site Development Permit Required

A Site Development Permit is required for any land disturbing activity requiring disturbance of a significant area of any land under the jurisdiction of the Shakopee

Mdewakanton Sioux Community. For purposes of this Chapter a disturbance of 10,000 square feet or greater shall be deemed significant. Disturbances of lesser areas may be determined to be significant by the General Council or by the Business Council under the authority delegated in this Chapter. The Site Development Permit shall be issued to the Owner, Lessee or the Contractor responsible for the project requiring the land disturbing activity.

11.7.3. Required Plans

The plans listed below are a required part of the application for a Site Development Permit as stated in the following paragraphs and no such permit shall be issued without the required plan.

11.7.3.1. Erosion and Sediment Control Plan

No person shall be granted a Site Development Permit for land disturbing activities that would require the uncovering of 10,000 or more square feet or involving more than five hundred (500) cubic yards of earth without submission of an Erosion and Sediment Control Plan to the Business Council and approval thereof.

11.7.3.2. Storm Water Pollution Prevention Plan

No person shall be granted a Site Development Permit for land disturbing activities that would require the uncovering of 1 acre or more without the approval of an Erosion and Sediment Control Plan and a Storm Water Pollution Prevention Plan by the Business Council of the Shakopee Mdewakanton Sioux Community.

11.7.4. Conformance to Plan Required

A Permittee shall perform all clearing, grading, drainage, construction, and development in strict accordance with any approved plan.

11.7.5. Plan Scale and Sufficiency

All plans shall be drawn to an appropriate scale and shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and measures proposed to minimize soil erosion and off-site sedimentation.

11.7.6. Required Plan Elements

The Business Council shall include information detailing required plan content in the SWMP and Community Manual of Approved Erosion Control and Storm Water Management Practice.

11.7.7. Permit Required Near Waterway or Shoreline

Regardless of any other requirements of this Chapter, an application for a permit for any land disturbing activities conducted within 100 feet of any watercourse, wetland, lake or other water body shall include an Erosion and Sediment Control Plan and a Storm Water Pollution Prevention Plan and no such permit shall be issued without approval of those plans.

11.7.8. National Pollution Discharge Elimination System (NPDES) Permit Requirement

A NPDES Permit may be required for any soil disturbance equal to or greater than one acre. Any plan submitted as part of an application for a Community Site Development Permit involving greater than one acre of soil disturbance must meet the requirements for a federal NPDES permit for such activity.

11.8. Permit Exemptions

The following activities are exempt from obtaining a Site Development Permit and from following the procedures required in this Chapter except the general standards of work included in Section 11.7.1 of this Chapter.

- Drain tiling, tilling, planting, or harvesting of agricultural, horticultural, or silvicultural crops.
- Installation of fence, sign, telephone, or electric poles and other kinds of posts or poles.
- Cemetery graves.
- Emergency work to protect life, limb, or property and emergency repairs, provided the land area disturbed is adequately shaped and stabilized when appropriate in accordance with the requirements of the Community Manual of Approved Erosion Control and Storm Water Management Practice.
- Construction, installation, and maintenance of electric, telephone, or cable television utility lines or individual service connection to these utilities, where less than ten thousand (10,000) square feet of land is anticipated to be disturbed, provided it does not impact a watercourse, and is not located in a floodplain.
- All maintenance, repair, resurfacing and reconditioning activities of existing road, bridge and highway systems which do not involve land disturbing activities outside of the existing surfaced roadway area.
- Any activity where the total volume of material disturbed, stored, disposed of or used as fill does not exceed five³² (500) cubic yards or the area disturbed does not exceed ten thousand³³ square feet provided it does not obstruct a watercourse, and is not located in a floodplain.

11.9. Delegations of Authority

11.9.1. Issuance of Permits

The General Council hereby delegates the authority to the Business Council to issue Site Development Permits as defined in this Chapter and in accordance with the standards and procedures herein.

³² This was intended to read five hundred and did so in earlier drafts.

³³ This was intended to be 500 square feet. This would exempt any disturbance less than 500 square feet thus establishing the minimum limit for "significant disturbance" in Paragraph 11.7.2.

11.9.2. Enforcement of Permit Conditions

The General Council delegates to the Business Council the authority to enforce Site Development Permits to protect the water, soil and other natural resources of the Community in accordance with this Ordinance.

11.9.3. Storm water Management Plan

The General Council delegates the authority to the Business Council to draft, publish, amend and maintain a Community Storm Water Management Plan that conforms to, and meets the requirements of, this Chapter.

11.9.4. Manual of Best Management Practices

The General Council delegates the authority to the Business Council to draft, publish, amend and maintain a Community Manual of Approved Erosion Control and Storm Water Management Practices that directs the types of actions acceptable to meet the conditions of a Site Development Permit and to protect the natural resources of the Community.

11.10. Manner of Work

11.10.1. General Requirement

All land disturbing or land filling activities or soil storage undertaken on land under the jurisdiction of the Shakopee Mdewakanton Sioux Community, whether subject to a Site Development Permit or otherwise, shall be undertaken in a manner designed to minimize surface runoff, erosion and sedimentation.

11.10.2. Performance Standards

A construction project shall be considered in conformance with this Chapter if:

- soils have been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or lake, wetland or watercourse;
- storm water created during and after the project has been accounted for in conformance with the requirements in this permit and the Tribal Manual of Approved Erosion Control and Storm Water Management Practices;
- the design, testing, installation, and maintenance of erosion control and storm water operations and facilities adhere to standards and specifications contained in this Ordinance.

11.10.3. Exempt Activities Included

Activities exempted under this Chapter and any activities excluded under the definition of land disturbance activities in this Chapter are subject to the provisions of this section regardless of their exempt or excluded status.

11.10.4. Notice and Repair

Whenever the Community determines that any land disturbing activity has become a hazard to life and limb, or endangers the property of another, or adversely affects the safety, use, slope, or soil stability of a lake, waterway, or wetland, the owner/lessee of

the property upon which the land disturbing activity is located, or other person or agent in control of said property, upon receipt of notice in writing from the Community, shall within the period specified therein repair or eliminate such conditions.

11.10.5. Recovery of Costs

If the Community incurs costs to enforce the provisions of this section or to remediate the results of any activity that violates this Chapter, reimbursement of those costs to the Community must occur before final inspection and the issuance of any certificate of completion.

11.11. **Application**

11.11.1. Application Required

A written application from the owner of the site or his/her authorized representative shall be required for each permit. All permit applications shall include the required Permit Application Form and three copies of any plan required for the permit.

11.11.2. Certification of Plans

Plans and specifications shall be prepared or approved and signed by a civil engineer, surveyor, architect, professional hydrologist, or landscape architect certified or licensed to act in the State of Minnesota.

11.11.3. Fees and Performance Bond or Letter of Credit

Any Applicant other than the Community itself or one of its enterprises shall be required to file with the Shakopee Mdewakanton Sioux Community an application fee and performance bond or letter of credit or other improvement security in an amount deemed sufficient by the Business Council to cover costs of improvements, landscaping, maintenance of improvements, engineering and inspections for such a period as specified by the Business Council provided that said fee, performance bond or letter of credit shall not exceed 10% of the total cost of the project. Any fees, performance bond or letter of credit for said permit shall be paid before work commences.³⁴

11.11.4. Permit Application Form

The General Council directs the Business Council to develop and update a permit application form suitable for the purposes of this Chapter.

11.12. **Permit Duration**

Permits issued under this Chapter shall be valid for the period during which the proposed land disturbing or filling activities and soil storage takes place or is scheduled to take place, whichever is shorter, but in no event shall such a permit be valid for more than one (1) year unless the Business Council expressly approves an extended permit duration due

³⁴ *The Business Council set the fee for residential permits \$340.00 per permit in 2003 after passage and approval of the amendment.*

to project specific reasons. The Permittee shall commence permitted activities within one hundred eighty (180) days of the scheduled commencement date for grading or the Permittee shall resubmit all required application forms, maps, plans, and schedules to the Business Council, except where an item to be resubmitted is waived by the Business Council.

11.13. **Permit Renewals/Extensions**

A Permittee shall fully perform and complete all of the work required in the sequence shown on the plans within the limit specified in the permit. Before the expiration of a Site Development Permit, a Permittee may present a written request for an extension to the Business Council. A one time no fee extension, not to exceed ninety (90) days, may be granted at the discretion of the Business Council. The Business Council may authorize additional extensions not to exceed a total of one (1) year at a fee rate to be determined by the Business Council.

11.14. **Permit Review, Approval and Denial**

11.14.1. **Review**

The Community Land and Natural Resources Department will review each application for a site development permit to determine its conformance with this Chapter and the Community Manual of Approved Erosion Control and Storm Water Management Practice.

11.14.2. **Notice of Determination**

Within 30 days after receiving the application, the Business Council, upon the advice of the Land and Natural Resources Department, shall provide written notice of one of the following:

All requirements have been met and the permit application is approved;

The permit application is approved subject to conditions necessary to secure substantially the objectives of this Ordinance; or

The permit application is not approved including the reason(s) for that disapproval and the procedure for submitting a revised application. Under this condition, the application shall be resubmitted before a permit is authorized.

11.14.3. **Failure to Act Within 30 Days**

Failure of the Business Council to act on an original or revised application within 30 days of receipt of a full and complete application shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Business Council. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Land and Natural Resources Department and approved by the Business Council.

11.14.4. **Failure to Meet Criteria**

If the Business Council determines that the Erosion and Sediment Control Plan or the Storm Water Pollution Prevention Plan does not meet the requirements of this

Chapter, the Business Council shall not issue a Site Development Permit for the land disturbing activity. All land use and building permits shall be suspended until the Permittee has an approved Site Development Permit.

11.14.5. Required Permit Conditions

All permits shall include the following conditions:

1. The granting or securing from others and the recording in the appropriate land records of easements for drainage facilities, including the acceptance of their discharge on the property of others, and for the maintenance of slopes or erosion control facilities.
2. Adequate control of dust by watering, or other control methods acceptable to the Business Council, and in conformance with applicable air pollution ordinances.
3. Improvements of any existing grading, ground surface or drainage condition of the site (not to exceed the area as proposed for work or development in the application) to meet the standards required in this Chapter for new grading, drainage and erosion control.

11.14.6. Additional Conditions Allowed

In granting any permit pursuant to this Chapter, the Business Council may impose such additional conditions as may be reasonably necessary to prevent creation of a nuisance or unreasonable hazard to persons or to a public or private property.

11.15. **Liability**

The Permittee is responsible for safe completion of the project. Issuance of a Site Development Permit, compliance with the provisions of this Chapter or compliance with any condition imposed by the Business Council shall not relieve any Permittee or other person or party from responsibility for damage to person or property resulting from a soil disturbing activity. By issuing a Site Development Permit the Community shall not be deemed to have waived its sovereign immunity or to have accepted any responsibility or liability for any occurrence related to the soil disturbing activity.

11.16. **Responsibility of Permittee**

11.16.1. Conformance With Plans

A Permittee shall maintain a copy of the permit, approved plans and reports required under the permit on the work site and available for public inspection during all working hours. The Permittee shall, at all times, be in conformity with the approved Site Development Permit, Erosion and Sediment Control Plan, Storm Water Pollution Prevention Plan and conform to the following:

11.16.1.1. General

Notwithstanding other conditions or provisions of the permit, or the minimum standards set forth in this Chapter, the Permittee is responsible for the prevention of damage to adjacent property. No person shall grade or excavate land in any manner, or so close to the property line as to endanger or damage any adjoining public street, sidewalk, alley or any other public or private property without supporting and

protecting such property from settling, cracking, erosion, sedimentation or other damage or personal injury which might result.

11.16.1.2. Public Ways

The Permittee shall be responsible for the prompt removal of, and the correction of damages resulting from, any soil, miscellaneous debris or other materials washed, spilled, tracked, dumped or otherwise deposited on public streets, highways, sidewalks or other public thoroughfare incident to the construction activity or during transit to and from the construction site.

11.17. **Limitation of Permit Authorization**

The issuance of a Site Development Permit shall constitute an authorization to do only that work described in the permit, or shown on the approved site plans and specifications, all in strict compliance with the requirements of this Chapter, unless each and every modification or waiver is specifically listed and given specific approval by the Business Council.

11.18. **Compliance**

The Permittee, his/her agent, contractors and employees shall carry out the proposed work in accordance with the approved plans and specification, and in compliance with all the requirements of the permit.

11.19. **Changes to Plans**

All changes or modifications to an approved Erosion and Sediment Control Plan and/or a Storm Water Pollution Prevention Plan must adhere to the following conditions:

11.19.1. Submittal

All proposals to modify the approved plans must be submitted to the Business Council for approval. No grading or any type of work in connection with any proposed modification shall be undertaken without prior written approval of the Business Council.

11.19.2. All Changes Must Comply With Community Manual

When inspection of a site indicates that the approved plan needs change, the change shall comply with the Community Manual of Approved Erosion Control and Storm Water Management Practice.

11.19.3. Minor Modifications

The Business Council may delegate the authority to Community employees to approve minor modifications to an approved Site Development Permit and the associated plans. Such an authorized employee may approve minor modifications to approved Erosion and Sediment Control Plans and/or a Storm Water Pollution Prevention Plan in the field if documented on a field inspection report. Such modifications shall be noted on the approved plans, signed by the Inspector, and dated. A list of allowable field modifications for use by field inspection personnel will be kept on file in the Land Office.

11.19.4. Major Revisions

The Permittee shall submit requests for major revisions to an approved Erosion and Sediment Control Plan and/or a Storm Water Pollution Prevention Plan to the Business Council. This includes revisions due to plan and site discrepancies and inadequacies in controlling storm water, erosion and sediment as revealed through inspection.

11.20. **Inspection and Supervision**

11.20.1. Pre-Construction Meeting

The contractor and/or its agents shall conduct a pre-construction meeting on-site with the Business Council or its designated staff on each site that has an approved Erosion and Sediment Control Plan.

11.20.2. Inspections

The Business Council may delegate the authority to conduct site inspections to Community staff or qualified contractors or consultants contracted with the Community. After commencing initial grading, excavating or land disturbing activities, the Permittee shall obtain written inspection approvals by the Business Council or an authorized employee at the stages to be determined by the Business Council and detailed in the Community Manual of Approved Erosion Control and Storm Water Management Practice.

11.20.3. Request for Inspections

Permittee requests for inspections shall be made at least twenty-four (24) hours in advance (exclusive of Saturdays, Sundays, and holidays) of the time the inspection is desired. Upon request for inspections, the Business Council, or a designated employee, shall perform the inspection within forty-eight (48) hours of the request.

11.20.4. Permission to Enter

By applying for a Site Development Permit, the Applicant or the landowner performing such work grants the Business Council, and its designated representative, the right to enter the site for the purpose of inspecting compliance with the Erosion and Sediment Control Plan or for performing any work necessary to bring the site into compliance with the Erosion and Sediment Control Plan. This does not include consent to enter into any building which is completed and which has been secured, but does include consent to inspect any area of the property where land disturbing activity is occurring or is thought to be planned as a site of land disturbing activity.

11.21. **Required Reporting**

The Permittee shall submit written reports to the Business Council under the following circumstances along with recommendations for corrective measures, if deemed necessary and appropriate, with such reports unless the requirement is waived by the Business Council:

11.21.1. Delay in Plan Implementation

There are delays in obtaining materials, machinery, services or manpower necessary to the implementation Erosion and Sediment Control Plan and or the Storm Water Pollution Prevention Plan as scheduled.

11.21.2. Delay in Soil Disturbance

There are delays in land disturbing or filling activities or soil storage.

11.21.3. Work out of Conformance

The work is not being done in conformance with the approved Erosion and Sediment Control Plans and/or the Storm Water Pollution Prevention Plan.

11.21.4. Departures from Plan

There are any departures from the approved site plan that may affect implementation of the Erosion and Sediment Control Plans and/or Storm Water Pollution Prevention Plan as scheduled.

11.21.5. Other Departure from Plan Implementation

There are any other departures from implementation of the Erosion and Sediment Control Plan and/or Storm Water Pollution Prevention Plan.

11.22. **Security**

The Business Council may require posting of a surety bond or letter of credit in an amount determined appropriate by the Business Council but in no case shall such fee exceed 10 percent of the total cost of the project requiring the land disturbing activity. The bond or letter of credit shall be in such a form and amount as is necessary to assure that the work, if not completed in accordance with the approved plan and specification, will be corrected.

11.23. **Enforcement**

11.23.1. Authority

The Business Council shall be responsible for the enforcement of this Chapter and is hereby delegated the authority to perform actions required to conduct such enforcement activities as are described in and allowed by this Chapter.

11.23.2. Notice of Noncompliance

Notice of Non Compliance with any part of a Site Development Permit shall be in writing delivered to the Permittee/Owner/Lessee and posted on the permitted work site. After posting or delivery of a Notice of Non-Compliance, the Permittee or his/her contractor shall be required to make the correction within the time period determined by the Business Council and stated on the Notice of Non-Compliance. The Business Council may require that the corrective work begin immediately.

11.23.3. Stop Work Orders

The Business Council may post a stop-work order for the entire project or any specified part thereof if any of the following conditions exist:

4. Any land disturbance activity regulated under this Chapter is being undertaken without a permit.
5. The Erosion and Sediment Control Plan is not being fully implemented.
6. The Storm Water Pollution Prevention Plan, if necessary, is not being fully implemented.
7. Any of the conditions of the permit are not being met.

11.23.4. Posting Required

For the purposes of this section, a notice of non-compliance or a Stop-Work Order is validly posted by posting a copy of the stop-work order on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. Additionally, a copy of the order, in case of work where there is a valid Site Development Permit, shall be mailed by first class mail, postage pre-paid, to the address listed by the Permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as lessee/owner of the property.

11.23.5. Failure to Cease Work Under Permit

If the Permittee does not cease the activity or comply with the Erosion and Sediment Control Plan and/or the Storm Water Pollution Prevention Plan or permit conditions within one (1) day, the Business Council may revoke the Site Development Permit. Continuing work after permit revocation shall make all activity subject to Section 11.23.6 of this Chapter.

11.23.6. Failure to Cease Unpermitted Work

If the owner or land user where no permit has been issued does not cease the land disturbing activity, the Business Council may take whatever action is authorized under tribal law. Failure to cease unpermitted work shall be deemed a public nuisance under the terms of tribal law. Failure to cease un-permitted work shall be deemed a violation of a residential land assignment and lease under tribal law.

11.23.7. Retraction

The Business Council may retract the Stop Work Order at any time it appears the Permittee or person working is complying with this Chapter. Such retraction of the Stop Work Order shall have the effect of nullifying any legal condition of breach or nuisance created by issuance of the Stop Work Order.

11.23.8. Corrective Action Authorized

The Business Council may authorize whatever corrective action is necessary to bring the Permittee(s) into compliance and prevent creation of a nuisance or damage to property or natural resources.

11.23.9. Notice of Intent to Repair

Immediately after posting the Stop Work Order, the Business Council may issue a Notice of Intent to Repair to the Permittee, lessee, or land user of the Business Council's intent to perform work necessary to comply with this Chapter.

11.23.10. Right to Repair

The Business Council shall have the right to proceed with any work required to repair the work in place and bring it into compliance with the Plans filed with any approved Permit or with the general terms of this Chapter if no permit was issued. The Community, or its staff or contracted representative, may go on the land and commence work two working days after issuing the notice of Intent to Repair. The costs incurred by the Business Council to perform this work shall be paid by the owner or Permittee out of the bond referred to in Section 11.23 of this Chapter, to the extent that the amount is covered thereby, with the remainder being directly due and owing by the owner or Permittee. In the event no permit was issued or no bond was posted, the cost, plus interest at the rate authorized by the Business Council, plus a reasonable administrative fee shall be billed to the owner. If in any event the amount due is not paid, the Business Council shall determine the procedure for collection of the amount due.

11.23.11. Cost Chargeback Authorized

Any cost incurred by the Community for corrective action shall be charged back to the Permittee and may be paid for through use of the letter of credit, direct payment, pursuit of bonding or any other means available to the Community.

11.23.12. Tribal Court Review of Payment Recovery

Any decision made by the Business Council to seek and enforce recovery of any payment out of a bond or letter of credit posted by a Permittee may be reviewed by the Tribal Court as provided for herein. A Permittee provided notice of intent to recover payment may appeal such decision to the Tribal Court by filing an appeal petition with the Clerk of Court within seven days from the date notice is received. The sole question on appeal shall be whether the Permittee complied with the requirements of the Site Development Permit as issued. If the Permittee failed to comply with the requirements of the Site Development Permit as issued the recovery of payments by the Community shall be considered valid. The Tribal Court shall set the hearing for any appeal at the next available court date but in no case more than 30 days from the date of filing of the appeal petition. The Tribal court shall issue a finding of fact and order within 90 days of the date of the hearing of the appeal.

11.24. **Final Reports**

Upon completion of the work, the Business Council may require a report (including as-built construction plans) from a civil engineer, surveyor, architect, professional hydrologist, or landscape architect certifying that all storm water and erosion and sediment control devices have been completed in accordance with the conditions of the permit and approved plans and specification, and with specific listing of all approved changes and modifications.

11.25. Certification of Completion

Upon receipt and approval of the final reports, if required, or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this subtitle, the Business Council will issue a letter certifying completion.

11.26. Jurisdiction

Any Applicant, by accepting a permit and beginning work, agrees to be subject to the jurisdiction of the Shakopee Mdewakanton Sioux Community Tribal Court for all permit related matters including adjudication of disputes related to permit conditions, completion of work, conformance to plan specifications and any costs or charges related to remedial work performed by or for the Community to protect natural resources or comply with any plan provision.

11.27. Grant of Jurisdiction to the Tribal Court

The Tribal Court is hereby granted jurisdiction to hear and determine the recovery of possession claims provided by this Chapter.

11.28. Effective date

This Ordinance shall become effective on the date of enactment and when all necessary approvals are final.