# APPENDIX D.7 SPECIAL CIRCUMSTANCES AND APPEALS SUBMITTAL GUIDE

## **Special Circumstances**

Special circumstances on a proposed site may make it impractical to implement onsite pollution reduction or flow or volume control to the standards specified in Chapter 1 of this manual. In that case, the Bureau of Environmental Services (BES) will determine if all or a portion of the stormwater management obligations may be fulfilled in other ways, such as in the public right-of-way or outside of the limits of the development proposal, improvement or site. The **Special Circumstances Form** is required to request consideration for special circumstances. Development or improvement proposals on private property or in the right-of-way, such as land use cases, building permits, or public works permits, must use Form 3a. Improvements initiated by public agencies, such as Capital Improvement Projects or Public Works Projects, must use Form 3b.

For special circumstances or appeals regarding Section 1.3.3 and Chapter 4 of the *Stormwater Management Manual*, see **Appendix D.9**.

No exceptions to meeting the stormwater management obligations are allowed. The applicant must account for the management of all stormwater runoff from the site. Stormwater management within the site must be achieved to the maximum extent feasible, as approved by BES, in all cases before any facilities outside of the proposed site or fees will be allowed.

Properties are **not** eligible for special circumstances if they were divided or partitioned after this *Stormwater Management Manual* was adopted (July 1, 1999) and the division or partition resulted in the special circumstance (e.g., structural or other physical limitations at the site).

If BES approves a special circumstances request, the applicant must construct an appropriately sized facility outside of the proposed site or pay a fee for the City to construct facilities outside of the proposed site. This **Offsite Management Fee** is calculated per square foot of unmanaged impervious surface. The fee may be pro-rated to account for portions of the stormwater management obligation met onsite (as determined by the City's review of proposed facilities within the site). The current Offsite Management Fee can be found on the BES website with the Sewer and Drainage Rates and Charges.

Special circumstances review will be conducted by an Administrative Review Committee of City staff and the BES Stormwater System Program Manager or designee.

How to Prepare a Special Circumstances Application No application will be reviewed unless it is complete. A complete special circumstances application consists of the following elements:

- Completed appropriate **Special Circumstances Form** (Form 3a or 3B)
- One set of plans (site plan and any necessary details)
- Special Circumstances Application Fee
- Supplemental information specific to the project circumstances.

It is critical that information provided in the special circumstances application be clear, concise, accurate, and complete. Each special circumstances request must stand on its own merit and will be reviewed based on the specific conditions related to the project under consideration.

<u>Form</u>: Each of the <u>Special Circumstances Forms</u> consists of the following sections:

- 1. **Project Information.** Provide information about the project, its location, the property owner, and the project team.
- 2. **Special Circumstance.** Specify the request being made and the features of the project that make it a special circumstance.
- 3. **Stormwater Management Information**. Generally explain the proposed stormwater management facilities. Summarize how stormwater will be managed for pollution reduction, flow control, and infiltration, and indicate the proposed disposal point.

<u>Plans</u>: One set of plans (in addition to any plans submitted for permit processing) must accompany the Special Circumstance application. Plans must show the total amount of impervious area being created and all stormwater management and conveyance facilities. They should provide sufficient information to detail the areas considered to be a special circumstance, as well as any areas that may be affected by or that may affect those circumstances. The plans submitted under the Special Circumstances application must match the plans submitted for the development proposal.

<u>Fee:</u> For the current fee for a Special Circumstances application for development a proposals, see the BES website for the Sewer and Drainage Rates and Charges. There is no fee for projects initiated by public agencies.

<u>Supplemental information (optional)</u>: Submitting supplemental information (engineering analyses, test data, etc.) that will help clarify the request or make it easier to understand is encouraged.

How to File a Special Circumstances Application

Applications will be screened for completeness, and the applicant will be notified within 3 working days that the application has been received and is complete. If an application is submitted with a building permit, public works permit, or land use case application, the completeness check will occur following BES staff assignment. Submittal of inaccurate or incomplete applications may cause a delay in considering the request.

*Note*: If the owner is different from the applicant, both the owner and the applicant are required to sign any required forms and attend any meetings as arranged.

If an application is submitted with a building permit, public works permit, or land use case application, the submittal should be submitted to the BES staff assigned to that development proposal.

For questions regarding the special circumstances submittal requirements or for instructions on submissions outside of the development review process, call 503-823-7761.

#### **Decisions**

Administrative reviews will be completed within 21 calendar days of the completeness check. Appointed staff will review the submittal before convening the Administrative Review Committee. Decisions are reached by consensus. The decisions will be recorded and e-mailed to the applicant within 5 business days of the decision. If an Offsite Management Fee is allowed, the fee must be paid prior to BES approval of the development proposal.

## **Appeals**

## **Applicability**

This appeals process applies to special circumstances decisions, as described above. It also applies to administrative or technical decisions related to other requirements of Chapters 1 through 3 (except Section 1.3.3) and decisions rendered regarding the approval of manufactured stormwater treatment devices (Appendix B). **Appendix D.9** describes a separate appeals process for Section 1.3.3 and for the source control requirements in Chapter 4.

The appeals process allows applicants to appeal staff interpretation of the City Code and of adopted policies and procedures that guide the review of development proposals. Applicants may appeal any issue related to interpretation of the stormwater management policy. For example, an applicant may appeal staff assessment of a site's stormwater management level or a permit denial. Applicants may not appeal the content or requirements of the policy, or technical parameters such as design storms, coefficients, and other technical criteria through this process.

This appeals process is not intended to address requested changes to technical specifications as adopted in the *Portland Standard Construction Specifications* or the Bureau of Environmental Services (BES) *Sewer and Drainage Facilities Design Manual*. In those cases, applicants should contact the BES Development Review Team (503-823-7761) to request consideration by the BES Standards and Practices Committee. That committee has a separate process to consider changes to technical standards.

#### **Process**

Appellants not satisfied with administrative or technical decisions may request in writing a public hearing by the BES Appeals Board, which comprises the Chief Engineer, Systems Development Manager, Pollution Prevention Services Manager, and Watershed Services Manager (or their designees). An outside member may also be included at the discretion of the Chief Engineer, depending on the nature of the appeal. The Stormwater System Program Manager will schedule a BES Appeals Board meeting to occur within 14 working days of receipt of the written appeal application. The applicant will be notified of the meeting date, place, and time. Public notice of the appeal request is given. At least three members of the board must be present for the meeting to take place. A member of the Administrative Review Committee or Technical Review Committee will present an overview of the request and the decision. The applicant, if present, may briefly address the board. Decisions are reached by a majority opinion of the board and are binding.

## How to Prepare an Appeal Application

A complete appeal review application consists of:

- A written request to the Stormwater System Program Manager explaining the reason for the appeal.
- A copy of the Special Circumstance Administrative Review Committee's or Technical Review Committee's original determination.
- One set of plans (if applicable).
- Appeal Application Fee
- Supplemental information specific to the project circumstances.

It is critical for information provided in the appeal application to be clear, concise, accurate, and complete. Each appeal must stand on its own merit and will be reviewed based on the specific conditions related to the project under consideration.

## **Written Request:** The written request must include:

- Information about the project or product (i.e., location, property owner, and the project team, etc).
- The decision being appealed.
- General reasons for the denial and new information rebutting the denial.
- General summary of the proposed stormwater management approach as applicable, including how stormwater is being managed for pollution reduction, flow control, and infiltration and the discharge point.

<u>Plans</u>: For development projects, one set of plans (in addition to any plans submitted for permit processing) must accompany the appeal application. Plans should provide sufficient information to detail the areas that are being appealed, as well as any areas that may be affected by or affect the appeal.

<u>Fee</u>: For the current application fee for Stormwater Appeals, see the BES website for the Sewer and Drainage Rates and Charges.

<u>Supplemental information:</u> Supplemental information (engineering analyses, test data, etc.) that will clarify the appeal is a welcome accompaniment to the submittal. For appeals related to the approval of manufactured stormwater treatment devices, all reports and analysis relevant to the performance of the device must be included.

### How to File an Appeal

Applications will be screened for completeness. Submittal of inaccurate or incomplete applications may cause a delay in hearing the appeal.

*Note*: If the owner is different from the applicant, both the owner and the applicant are required to sign any required forms and attend any meetings as arranged.

Application packets should be mailed or delivered to:

City of Portland, BES 1120 SW 5<sup>th</sup> Ave., Room 1000 Portland, OR 97204 Attention: Stormwater System Program Manager

For questions regarding the appeal packet submittal, call the BES Development Review Hotline at 503-823-7761.

#### **Decisions**

Decisions will be recorded and e-mailed to the appellant within 5 business days.