

**CHAPTER 82
CLEARING AND GRADING OF LAND**

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82.001. Purpose. The purpose of this Chapter is to protect life, property, and the environment from loss, injury, or damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity related to clearing and grading activities. The provisions of this Chapter shall be liberally construed to accomplish this purpose. (Ord No. 6-16)

82.005. Definitions.

- (a) Unless the context specifically indicates otherwise, as used in this Chapter the following mean:
- (1) Bench: A relatively level step excavated or constructed into earth material on which fill is to be placed.
 - (2) Compact: To compress fill by mechanical means.
 - (3) Cut: See Excavation.
 - (4) Certified Professional: Any person licensed in Oregon as a civil engineer, geotechnical engineer, engineering geologist, architect, or landscape architect and who possesses the knowledge, experience, and ability to successfully design and oversee a project regulated by this Chapter.
 - (5) Director: The Public Works Director, or the Director's designee.
 - (6) Down Drain. A device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility.
 - (7) Earth material: All naturally occurring rock and soil, or combination thereof, including clay, silt, sand, gravel-size particles, and naturally occurring and naturally formed aggregates. The term does not include manmade materials such as fill, concrete, or asphalt.
 - (8) Erosion: The wearing away of the ground surface, or the movement, detachment or dislocation and transport of sediment including soil particles by the action of water or wind.
 - (9) Excavation: The removal of earth material by artificial means; also referred to as a cut.
 - (10) Fill: Earth material that has been deposited by artificial means.
 - (11) Grade: The vertical location of the ground surface.
 - (12) Grade, existing: The grade of the site prior to grading.
 - (13) Grade, finished: The grade of the site at the conclusion of all ground disturbing activities.

- (14) Grading: The movement of earth material through mechanical or other means to create the finished surface and contour of the project site, which may involve excavation, fill or leveling activities, and is meant to include the resulting conditions, spoils or by-products.
 - (15) Ground disturbing activity: Any activity that exposes earth material through the use of mechanical equipment. By way of illustration, but not of limitation, ground disturbing activity includes: grading, excavating, filling, clearing, grubbing, or working of land. Such disturbance may be permanent, such as gravel mining, farming, gardening, sports fields; or short-term duration, such as construction, excavation, fill, grading, landscape installation, or other vegetative clearing activities.
 - (16) Key: A compacted fill placed in a trench excavated in earth material beneath the toe of a slope.
 - (17) Site: A unit of land, or portions of street, highway, or other right-of-way, or contiguous combination thereof, where a project is proposed or performed.
 - (18) Slope: An inclined surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.
 - (19) Technical Report: The report prepared by a certified professional pursuant to 82.035.
 - (20) Terrace: A relatively level step constructed in the face of a graded slope for drainage and maintenance purposes.
 - (21) Waterway: Any watercourse within the City of Salem as designated by the Director.
- (b) Words and phrases not defined in this section shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning. Words used in the present tense include the future, the singular number includes the plural, and the word "shall" is mandatory and not discretionary. (Ord No. 6-16)

82.010. Limitation of Liability. Nothing contained in this Chapter is intended to be nor shall be construed to create or form the basis for any claim, action, or liability against the City, its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this Chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission, or approval authorized, issued, or done in connection with the implementation or enforcement of this Chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this Chapter by its officers, employees, or agents. Nothing in this Chapter is intended to nor shall be construed to create a standard of care or impose a duty upon the City. (Ord No. 6-16)

82.015. Administration. The Director shall administer and enforce the provisions of this Chapter, and shall have the authority to render written and oral interpretations and to adopt administrative rules, design standards, and procedures for its proper administration and enforcement. (Ord No. 6-16)

82.020. Applicability, Exemptions.

- (a) The standards set forth in this Chapter apply to all ground disturbing activity regardless of whether a permit has been issued by the City, unless the activity is exempted in 82.020(b).
- (b) The following activities are exempt from this Chapter:
 - (1) Ground disturbing activities that constitute "farm use" or "accepted farming practices" as those terms are defined or used in ORS Chapter 215.
 - (2) Mining activities conducted under permits issued by the Oregon Department of Geology and Mineral Industries.
 - (3) Routine maintenance of gravel roads, road shoulders, paths, parking lots, and storage yards.
 - (4) Routine maintenance of sports fields or playgrounds.
 - (5) Ground disturbing activities conducted for the purpose of opening or closing cemetery graves.
 - (6) Ground disturbing activities performed for wells.

- (7) Ground disturbing activities performed for underground utilities.
- (8) Boring or exploration for the purpose of soil analysis or testing as performed under the direction of a certified professional.
- (9) Excavation for basements and footings of a building, retaining wall, or other structure for which a complete building permit application has been submitted or that has been authorized by a building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported height greater than five feet after the completion of such structure.
- (10) Excavation for constructing a segmented wall or other minor landscape terracing that does not require a building permit.
- (11) Excavation for installing fence posts. (Ord No. 6-16)

82.025. Emergencies. Where the Director determines that an emergency exists, the Director is empowered to act with all necessary speed to address the emergency situation, including suspension or waiver of permit requirements when necessary to eliminate an imminent hazard to public health, safety or welfare. Compliance with the provisions of this Chapter may not be required where strict compliance with the provisions would impair the ability of the Director to address an imminent threat to public health, safety or property. (Ord No. 6-16)

82.030. Clearing and Grading Permit.

(a) Permit Required, Exemptions.

- (1) Except as provided in paragraph (2) of this subsection, a Clearing and Grading Permit is required for any activity that involves ground disturbing activity exceeding two feet in depth or 25 cubic yards of volume, if:
 - (A) The ground disturbing activity involves more than 1,000 square feet;
 - (B) The ground disturbing activity is within 50 feet of a waterway as measured from top of bank;
 - (C) The ground disturbing activity is within 50 feet of the boundary of a wetland; or
 - (D) The ground disturbing activity will result in a finished grade slope steeper than two units horizontal to one unit vertical.
- (2) **Permit Exemptions.** A Clearing and Grading Permit is not required for activities exempted by Section 82.020(b), or for ground disturbing activities performed by, or under contract for, the City of Salem and conducted in an existing public right-of-way or easement. An exemption from permit requirements does not authorize work to be done in a manner that violates the provisions of this Chapter or any other laws or ordinances, except to the extent allowed under local, state, or federal permits issued for a specific site or purpose.

(c) Submittal Requirements. An application for a Clearing and Grading Permit shall include the following:

- (1) Location of the property involved;
- (2) Identification of the type of work proposed.
- (3) Identification of soil type, if soil is to be excavated from one location and placed as fill at another location;
- (4) A grading plan, of a size and form and in the number of copies meeting the standards established by the Director, containing the following:
 - (A) Property lines, dimensions, and orientation relative to north;
 - (B) Recorded property lines, easements, and right-of-way locations;
 - (C) Street and curb line locations and elevations, where applicable;
 - (D) Existing and finished grades for the subject property shown by at least two-foot contour intervals and in sufficient detail to identify the nature and extent of the work and demonstrate conformance with the requirements of this Chapter.

- (E) Existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this Chapter;
 - (F) Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of abutting owners that are within 15 feet of the property boundary, or which may be affected by the proposed ground disturbing activity; and
 - (G) Intended methods of stormwater drainage, if applicable.
- (5) The Director may require additional information on the grading plan view or require cross-section views.
 - (6) The Director may require additional information on involved persons, such as the name and address of the permittee, property owner, owner's engineer, certified professional, contractor, and other persons associated with the work.
 - (7) A technical report, prepared by a certified professional, shall be submitted by the applicant if the proposed activity cannot meet the excavation, fill, setback, terracing, or drainage requirements of this Chapter.

(d) Criteria. A Clearing and Grading Permit shall be granted if the proposed ground disturbing activity conforms to the requirements of this Chapter.

(e) Indemnification. The permittee shall indemnify and hold the City, its agents, employees, and officers harmless from and shall process and defend at its own expense any and all claims, demands, or suits of whatsoever kind or nature brought against the City arising out of, or in connection with, or incident to, the execution of the permit or the permittee's performance or failure to perform any aspect of the permit. (Ord No. 6-16)

82.035. Technical Report.

- (a)** The technical report, if required, shall include:
- (1) A comprehensive description of the site topography and geology;
 - (2) An opinion as to the adequacy of the proposed activity;
 - (3) An opinion as to the extent that instability on adjacent properties may adversely affect the project;
 - (4) A description of the field investigation and findings;
 - (5) Conclusions regarding the effect of geologic conditions on the proposed development;
 - (6) Specific requirements for grading plan modification, corrective grading, and special techniques and systems to facilitate a safe and stable development; and
 - (7) Other recommendations, as necessary, commensurate with the project grading and development.
- (b)** The technical report shall bear the signature and stamp of a certified professional.
- (c)** Any recommendations made in the technical report that are more stringent than the requirements of this Chapter shall be made part of any permit issued pursuant to this Chapter. Any recommendations made in the technical report that are less stringent than the requirements of this Chapter may be made part of any permit issued pursuant to this Chapter, if approved by the Director. The Director may require a geotechnical report prepared and stamped by a geotechnical engineer or equally qualified person approved by the Director in order to approve less stringent standards or methods. (Ord No. 6-16)

82.040. Inspections.

- (a) General.** All activities for which a permit is required by this Chapter shall be subject to inspection by the Director
- (1) The Director shall be notified at least 24 hours, but not more than 72 hours, prior to the commencement of any ground disturbing activity requiring a permit under this Chapter.
 - (2) Inspection by the Director may occur at any time during the project.
- (b)** For projects identified as requiring a technical report:

- (1) The certified professional shall be responsible for incorporating all recommendations from the technical report into the grading plan.
- (2) The certified professional shall be responsible for inspecting and approving the activities contained in the grading plan that are regulated by this Chapter.
- (3) The certified professional shall act as the coordinating agent in the event a need arises for liaison between any other professionals, the contractor, and the Director regarding activities regulated by this Chapter.
- (4) The certified professional shall be responsible for preparing as-built plans and submitting plans to the Director upon completion of the work.
- (5) If the certified professional finds that the work is not being done in conformity with this Chapter or the approved grading plan, the discrepancies shall be reported immediately in writing to the person in charge of the work and to the Director.
- (6) If the certified professional is changed during the course of the work, the work shall be stopped until a new certified professional has assumed the responsibilities contained in this Chapter. (Ord No. 6-16)

82.045. Completion of Work.

(a) Upon completion of work, the owner shall notify the Director that the site is ready for final inspection. The Director shall not give final approval until all work has been completed in accordance with the final approved grading plan and all required reports have been submitted.

(b) For projects identified as requiring a certified professional per SRC 82.030(c)(7):

- (1) Upon completion of the work, a final site plan shall be prepared by the certified professional and submitted to the Director that includes original ground surface elevations, finished graded ground surface elevations, lot drainage patterns, and locations and elevations of all surface and subsurface drainage facilities.
- (2) Prior to final approval by the Director, the certified professional shall provide documentation that the work has been done in accordance with the final approved grading plan. (Ord No. 6-16)

82.050. Excavations.

(a) **General.** Unless otherwise recommended in a technical report, excavations shall comply with the provisions of this section.

(b) **Maximum slope.** The finished slope of cut surfaces shall be no steeper than two units horizontal to one unit vertical or as recommended in a technical report.

(c) **Maximum slope, exceptions.**

- (1) A cut surface shall be permitted to be at a slope of 1.5 units horizontal to one unit vertical provided that all of the following are met:
 - (A) It is not intended to support structures or surcharges;
 - (B) It is protected against erosion;
 - (C) It is no more than eight feet in height;
 - (D) Groundwater is not encountered.
- (2) A cut surface in bedrock shall be permitted to be at a slope of one unit horizontal to one unit vertical. (Ord No. 6-16)

82.055. Fills.

(a) **General.** Unless otherwise recommended in a technical report, fills shall comply with the provisions of this section.

(b) **Maximum Depth and Slope.** The depth of fill surfaces shall be no more than four feet. The slope of fill surfaces shall be no steeper than two units horizontal to one unit vertical or as recommended in a technical report.

(c) Surface Preparation. The ground surface shall be prepared to receive fill by removing vegetation, topsoil, and other unsuitable materials, and scarifying the ground to provide a bond with the fill material.

(d) Benching. Where the existing grade is at a slope steeper than five units horizontal to one unit vertical and the depth of the fill exceeds five feet, benching shall be provided in accordance with Figure 1. A key shall be provided that is at least 10 feet in width and two feet in depth.

(e) Fill material. Fill material shall not include organic, frozen, or other deleterious materials. No rock or similar irreducible material greater than 12 inches in any dimension shall be included in fills. Rocks shall be placed so as to assure filling all voids with fines. Topsoil may be used in the top 12-inch surface layer to aid in planting and landscaping.

(f) Compaction. All fill material not intended for use for roadway, landscaping or infiltration purposes shall be compacted to 90 percent of maximum density as determined by ASTM D 1557, Modified Proctor, in lifts not exceeding 12 inches in depth. Fill material intended for use for roadway embankments shall be placed and compacted in accordance with the City of Salem Standard Construction Specifications. A higher relative dry density, or additional compaction tests, or both, may be required as determined by a certified professional. (Ord No. 6-16)

82.060. Setbacks.

(a) General. Unless otherwise recommended in a technical report, cut and fill slopes shall be set back from property lines in accordance with this section. Setback dimensions shall be measured perpendicular to the property line and shall be as shown in Figure 2.

(b) Top of Slope. The setback at the top of a cut slope shall not be less than that shown in Figure 2, or than is required to accommodate the required interceptor drains, whichever is greater.

(c) Slope Protection. Except as otherwise recommended in a technical report, the following minimum slope protection measures shall be included to protect abutting properties at the toe of a slope from adverse effects of the ground disturbing activity:

- (1) Setbacks greater than those required by Figure 2;
- (2) Provisions for retaining walls or similar structures;
- (3) Erosion protection of the fill slopes; and
- (4) Provision for the control of stormwater runoff. (Ord No. 6-16)

82.065. Terracing and Drainage.

(a) General. Unless otherwise recommended in a technical report, terracing and drainage facilities shall comply with the provisions of this section.

(b) Terraces.

- (1) Terraces at least six feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes. Access shall be provided to allow for cleaning and maintenance.
- (2) Where more than two terraces are required, one terrace, located at approximately mid-height, shall be at least 12 feet in width. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height, one terrace at approximately mid-height shall be 12 feet in width.
- (3) Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by a certified professional.

(c) Drainage Facilities on Terraces.

- (1) Swales or ditches shall be provided on terraces. The swales or ditches shall have a minimum gradient of 20 horizontal to 1 vertical and shall be paved with concrete not less than three inches in thickness, or with other materials suitable to the application. Swales and ditches shall have a minimum depth of 12 inches and a minimum width of five feet.
- (2) A single run of swale or ditch shall not collect runoff from a tributary exceeding 13,500 square feet without discharging into a down drain.

(d) Interceptor Drains.

- (1) Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet, measured horizontally.
- (2) Interceptor drains shall have a minimum depth of one foot and a minimum width of three feet. The slope shall not be less than 50 horizontal to 1 vertical. The drain shall be paved with concrete not less than three inches in thickness, or by other materials suitable to the application.
- (3) Discharges from the drains shall be accomplished in a manner to prevent erosion.

(e) Drainage across Property Lines. Drainage across property lines shall not exceed that which existed prior to ground disturbing activity. Excess or concentrated drainage shall be contained on site or directed to a drainage facility. Erosion of the ground in the area of discharge shall be prevented.

(f) Subsurface Drainage.

- (1) Cut and fill slopes shall be provided with subsurface drainage as necessary for site stability.
- (2) Appropriate culverts shall be laid under all fills placed in natural watercourses and along the flow line of any tributary branches in such a manner that the hydraulic characteristics of any stream are not adversely altered.
- (3) Subsurface drainage shall be installed if active or potential springs or seeps are covered by the fill.
- (4) All culverts and subsurface drainage systems shall be installed after subgrade preparation. Design details of culverts and subsurface drainage shall be shown on the grading plan.
- (5) A subsurface drain system shall be provided for embedded foundation/ retaining walls and floor slabs where ground water or seepage has a potential to affect the performance of the structure. The grading plan shall indicate:
 - (A) Subsurface drainage details with appropriate specifications;
 - (B) Location of footing subsurface drain/discharge lines; and
 - (C) Method of disposal.

In lieu of above, walls/floors may be waterproofed and designed to resist hydrostatic pressure. (Ord No. 6-16)

82.070. Stop Work Orders; Permit Revocation; Civil Penalties; Enforcement.

(a) Stop Work Orders and Permit Revocation. The Director may suspend work or revoke a permit specifying the basis for the suspension or revocation that must be remedied prior to resuming other work on the project, upon a finding that:

- (1) The work is not authorized by a valid permit;
- (2) Inaccurate information was used to obtain the permit;
- (3) The applicant is not complying with the terms of the permit, the grading plan, or this Chapter;
- (4) The work is, or threatens to become, risk to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way; or is otherwise adversely affecting the public health, safety, or welfare; or
- (5) The permit was issued in error.

(b) Rescinding a Stop Work Order or Revocation. Penalty fees shall be paid to the City before a stop work order or permit revocation is rescinded.

(c) Civil Penalty. Any person who fails to comply with the requirements of this Chapter, or the terms of a permit issued hereunder, who undertakes an activity regulated by this Chapter without first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this Chapter shall also be subject to a civil penalty, not to exceed \$2,000 per violation. Each day that a permit violation continues shall constitute a separate violation.

(d) Civil Penalties against Agents. Any person who acts as the agent of, or otherwise assists, a person who engages in an activity that would be subject to a civil penalty may likewise be subject to a civil penalty.

(e) Injunctive Relief. The City may seek injunctive relief against any person who has willfully engaged in violation of this Chapter, such relief to be in effect for a period not to exceed five years.

(f) Appeal. Appeals from all orders, decisions and determinations of the Director under this Chapter shall be to the Hearings Officer, and shall be initiated by filing a notice of intent to appeal with the City Recorder within fifteen business days after notice of the Director's final decision is deemed to have been received by the applicant under SRC 20J.100. The notice of appeal shall satisfy the requirements of SRC 20J.110, and the appeal shall proceed as a contested case under the procedures established in SRC 20J.240-20J.430. Notwithstanding SRC 20J.270, the Director's decision, action, or determination shall remain in effect during such period of the appeal. Appeals to the Hearings Officer under this section shall extend any applicable plan review deadline by the number of days it takes for a final decision to be issued upon the appeal.

(g) Prohibition of Further Approvals. The City shall not issue any final approvals or any additional permits for property on which a violation of this Chapter has occurred or is occurring, until the violation has been cured by restoration or other means acceptable to the Director and any penalty imposed for the violation is paid.

82.075. Remedies not Exclusive. The remedies provided in this Chapter are cumulative and not mutually exclusive and are in addition to any other right, remedies, and penalties available to the City under any other provision of law.

82.080. Violations. Violation of any of the provisions of this Chapter is an infraction. Each day that a violation continues shall constitute a separate infraction. (Ord No. 6-16)

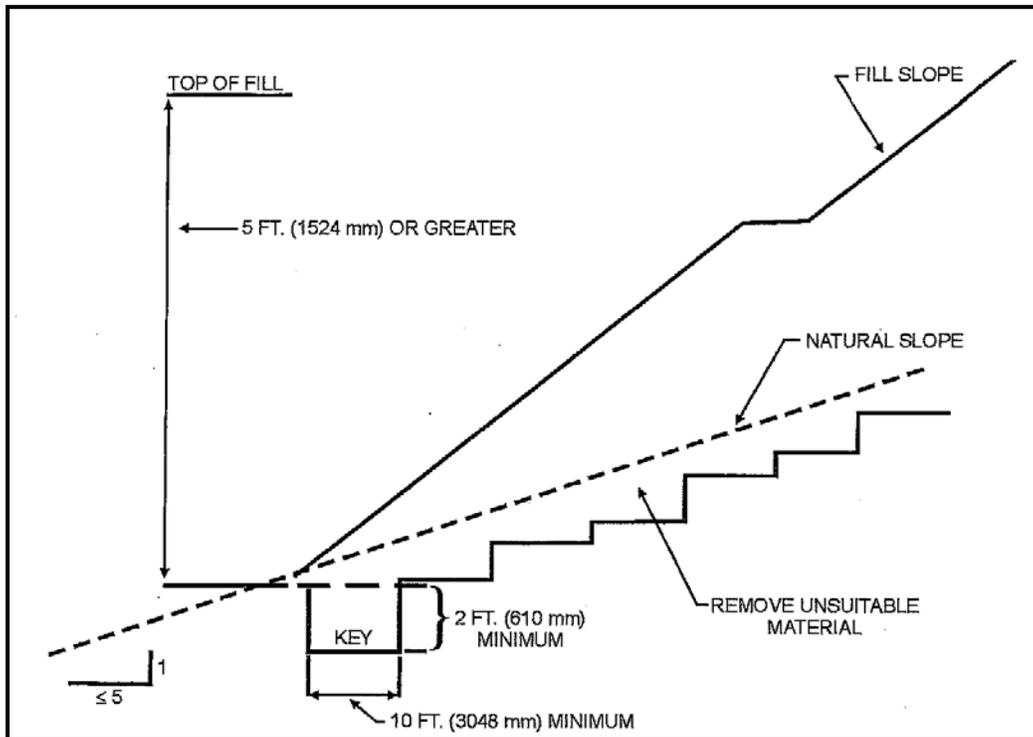


Figure 1: Benching Details

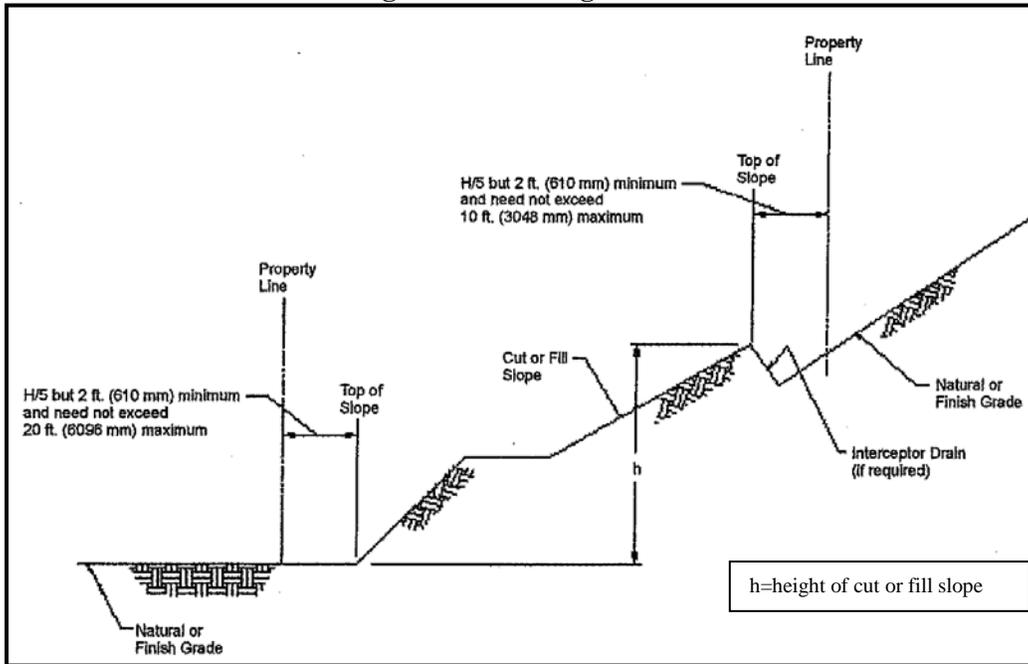


Figure 2: Drainage Dimensions

(Ord No. 6-16)