



Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

JACK MOORE, CBCO *Building Official*

Staff Report

From: Dale Pernula, AICP, Director

Re: Code Update for Stormwater Permit and Low Impact Development (LID) Standards

Date: January 27, 2015

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Summary

The Board of County Commissioners has directed the Planning and Public Works Departments to update the County’s development code to fully comply with our National Pollution Discharge Elimination System (NPDES) permit. Our NPDES permit is intended to manage both water *quality* and *quantity* and ensure that pollutants do not enter our municipal stormwater system (i.e., principally our roadside ditches).

This memo describes the approach the departments will take in drafting the code updates so that the Planning Commission can offer feedback on that approach at its February 3 meeting. The departments currently plan to:

- Reduce minimum parking requirements;
- Reorganize SCC Chapter 14.32, Drainage, so that it’s shorter, easier to read, and makes more sense;
- For new development **inside** the NPDES permit area, require full compliance with the 2012 Stormwater Management Manual, including requiring Low-Impact Development stormwater management techniques where feasible; and *require* retention of native vegetation;
- For new development **outside** the NPDES permit area, require compliance with the 2012 Stormwater Management Manual but relax certain thresholds and *encourage* but not require LID techniques.

Legal Background

Congress adopted the Federal Water Pollution Control Act (FWPCA) Amendments of 1972, which contains the National Pollution Discharge Elimination System (NPDES). As a general matter, any facility that discharges pollutants from any point source into waters of the United States must obtain an NPDES permit. EPA writes rules to implement the NPDES program, and has gradually incremented the level of pollution control that dischargers must implement. In 2003, EPA rules requiring NPDES permits for smaller jurisdictions like ours went into effect.

In Washington State, the Department of Ecology issues and administers the NPDES permits. Skagit County (and other municipal governments) are required NPDES permittees because our municipal stormwater system (i.e., our ditches) discharges to waters of the United States.

Along with 80 cities and four other counties, Skagit County is a **Phase II permittee in Western Washington**, meaning we obtained our permit after Phase I jurisdictions with larger populations, e.g. Snohomish and King Counties and Seattle. We currently are subject to our third permit, effective August 1, 2013. That permit, which was modified and reissued in December 2014, gradually rolls out requirements that we must comply with.

Requirement for Low-Impact Development

The current code update process is driven by the **requirement**, found in section 5.C4 of the permit, and especially paragraph (f), to amend our development codes to **require** Low-Impact Development principles and Best Management Practices in the Permit Area.

S.5. STORMWATER MANAGEMENT PROGRAM FOR CITIES, TOWNS AND COUNTIES

C.4. Controlling Runoff from New Development, Redevelopment and Construction Sites

Each Permittee shall implement and enforce a program to reduce pollutants in stormwater runoff to a regulated small MS4 from new development, redevelopment and construction site activities. The program shall apply to private and public development, including roads. The minimum performance measures are:

- a. Implement an ordinance or other enforceable mechanism that addresses runoff from new development, redevelopment, and construction site projects..."*
- b. ... e. ...*
- f. Low impact development code-related requirements.*
 - i. No later than December 31, 2016, Permittees shall review, revise, and make effective their local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID principles and LID BMPs....*

The intent of the revisions shall be to make LID the preferred and commonly-used approach to site development. The revisions shall be designed to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations. Permittees shall conduct a similar review and revision process, and consider the range of issues, outlined in the following document: "Integrating LID into

Local Codes: A Guidebook for Local Governments (Puget Sound Partnership, 2012)”.

The permit requires the code updates by December 31, 2016. Because the Planning Department will be preoccupied with the Comprehensive Plan update and other significant projects during the latter half of 2015 and most of 2016, the Department and Board of Commissioners intend to complete this code update as early as possible in 2015.

Ecology added this requirement to the new permits as a result of decisions by the Pollution Control Hearings Board that the prior permit did not do enough to manage stormwater. This is not a negotiable requirement, and the Department’s proposed code amendments **must** include requirements to use LID principles and BMPs. The Clean Water Act carries significant civil and criminal penalties, including imprisonment, for permit violations. See permit sections G17 and G19.

Geographic Scope of the Permit Requirement

It’s important to keep in mind that the requirements of the permit apply only to the NPDES permit area (see **the map** on the proposal webpage). As Ecology developed our current permit, Public Works staff successfully worked with Ecology to exclude several major areas of farmland that didn’t logically fit within the permit area and the industrial area at March’s Point that is covered by separate NPDES permits. At this stage, however, the permit area map is now set, and the County must apply the requirements within that area.

What is Low-Impact Development?

The permit defines LID as a “stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.” Examples of LID techniques include rain gardens, retention of native vegetation, permeable pavement, and water re-use.

The 2012 Stormwater Manual

In addition to the stormwater *permits*, Ecology issued a new 2012 Stormwater Management Manual for Western Washington. It is a design manual for stormwater management for development projects and directs the use of LID techniques as the preferred approach. It does not require LID where soils or other conditions indicate those techniques will not work.

Adopting the 2012 Stormwater Manual will fulfill the NPDES permit requirement. The second paragraph of Chapter 1- Introduction, part 1.1 Objective, states:

“This manual identifies minimum requirements for development and redevelopment projects of all sizes and provides guidance concerning how to prepare and implement stormwater site plans. These requirements are, in turn, satisfied by the application of BMPs from Volumes II through V. Projects that follow this approach will apply reasonable, technology-based BMPs and water quality-based BMPs to reduce the adverse impacts of stormwater. This manual is applicable to all types of land development including residential, commercial, industrial, and roads. Manuals with a more-specific focus, such as a Highway

Runoff Manual, that have been determined to be equivalent to this manual, may provide more appropriate guidance to the intended audience....”

What about when Low-Impact Development won't work?

The Stormwater Management Manual requires that new development *evaluate* the application of Low-Impact Development techniques, but does not require their use where they wouldn't work. Low-Impact Development techniques may not function, or they may be counterproductive because of soil types and other geologic features of some areas. For example, they may introduce additional water into a thin soil layer above bedrock.

Proposed Approach

After review of the Stormwater Permit requirements and our current code, the Department proposes the following approach to drafting the code proposal.

- Modify or add new definitions required by the permit (e.g. hard surface, development, LID) to SCC 14.04.020, Definitions
- Modify SCC 14.16.800, Parking, to reduce the minimum requirements to provide parking
- Modify SCC 14.16.830, Landscaping, to add a new LID Landscaping section that would require retention of native vegetation and would be required inside the NPDES permit area
- Modify SCC 14.32, Drainage to:
 - Rename the chapter to Stormwater Management
 - Significant reorganization of the chapter to clarify when the chapter is applicable. The current code has a non-standard method of describing how to apply the chapter. Exemptions need to be slightly modified to match the permit text.
 - Set maximum impervious or hard surface area
- Remove existing language that is inconsistent with the current stormwater manual

Preliminary Adoption Schedule

As a modification to the development code, the code proposal will go through the normal process for adoption of development regulations described in SCC Chapter 14.08.

Date	Item
✓ September 9, 2014	Stormwater and LID: study session with Planning Commission
✓ January 6, 2015	Planning Commission work session on NPDES Permit requirements
▶ February 3, 2015	Planning Commission work session on NPDES Permit requirements
End of March	Proposal release and public comment period opens
April 21, 2015	Planning Commission public hearing at 6pm
April 23, 2015	Written comment period ends
May 5, 2015	Planning Commission deliberations
June-July 2015	Board adopts proposed changes

For More Information

Please visit the Department website at www.skagitcounty.net/planning and click on “Stormwater Permit 2015 Code Update.”