



Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

JACK MOORE, CBCO *Building Official*

Memo

To: Board of County Commissioners
From: Dale Pernula, AICP, Director
Re: Stormwater Code 2015 Update
Date: August 20, 2015

Background

Skagit County is proposing an update to our stormwater code driven by the requirement in our NPDES Permit to amend our development codes to require and facilitate Low-Impact Development (LID) principles and Best Management Practices in our NPDES Permit Area. The [Department's June 11 staff report](#) provides complete background on the proposal and the statutory requirements. Although this update is driven largely by the County's updated NPDES permit, we also took the opportunity to improve the overall organization and structure of the drainage chapter.

Summary of Proposed Code Changes

The proposal completely rewrites the "Drainage" chapter of Title 14, which applies to the whole county, for clarity and improved organization. The [Department's June 11 staff report](#) and [proposed code amendments with annotations](#) includes a comprehensive description of the technical changes to the code text. The substantive effect of those changes is briefly summarized as follows:

1. Inside the County's NPDES (stormwater) permit boundary, development *must* use LID techniques when feasible.
2. Outside the County's NPDES permit boundary, development *may* use LID techniques if desired.
3. Both inside and outside the NPDES permit boundary, the technical basis for stormwater management requirements will be Ecology's 2012 Stormwater Management Manual for Western Washington, as amended in December 2014. The outdated technical details in the drainage chapter of our code will be deleted.
4. Inside the permit boundary, full compliance with the manual is required.
5. Outside the permit boundary, some of the requirements of the manual are backed off proportionally to the intensity of the development. For example, single-family residences on parcels greater than one acre (the vast majority of county development), are only required to comply with a portion of the manual. Existing thresholds are used for when an engineered stormwater plan is required. Bigger development will have to fully comply with the manual.

Planning Commission Recommendation

On July 21, the Planning Commission approved its [recorded motion](#) with its recommendation to adopt the proposed stormwater management code update. The Planning Commission recommended six changes to the proposal in its recorded motion:

1. Rewrite the definition of “effective impervious surface” to avoid using the word “ineffective,” or consider deleting “effective impervious surface” throughout the proposal and replacing it with “hard surface” or another term that makes more sense, consistent with the Stormwater Manual and the NPDES Permit.
2. Rewrite 14.16.830(2)(c) to make it clear that LID stormwater facilities can be used as credit for landscaping requirements where they would meet all or a portion of the landscaping requirements.
3. Add “(MR)” to the column header in table 14.32.040-1 for clarity.
4. Move the first sentence in 14.32.080(2)(b) to new 14.32.080(1)(d). Add “Runoff from development may not cause a significant adverse impact to downgradient properties.”
5. Strike 14.32.100(3)(a) requiring easements for access and inspection. Find other options for obtaining legal authority to inspect and enforce maintenance standards for private stormwater facilities. Explore what other jurisdictions are using.
6. Add a line to the stormwater code as a note for later development review (that does not require septic permits) to ensure sheet flows or infiltration is directed away from septic drain fields.

The Department agrees with each of the PC’s recommendations. Recommendation #5, however, requested that the County “find other options” for inspection and enforcement. The Planning Commission found that “Easements for access and inspection may be appropriate for larger developments (e.g. subdivisions, commercial developments) but raise issues of property rights, privacy, and unknown expectations and execution of inspections for single-family residences especially in the light of possible future expansion of the NPDES Permit Area.”

The Department’s additional research that requiring a dedication of an easement is the best and most legally defensible mechanism (short of purchasing the property in fee simple) for ensuring county access to stormwater facilities. Inside the NPDES permit area, the County is required to demonstrate legal authority to perform inspections of stormwater facilities. Outside the permit area, it’s still important that the County be able to inspect stormwater facilities, because failure to do so may mean that the stormwater facility stops functioning, causing stormwater impacts on neighboring properties or water quality impacts on water resources.

The Department proposes that the Board consider some combination of the following options:

1. Require easements for access and inspection of stormwater facilities but limit access to business hours and when inspectors provide advance notice.

2. Require easements (via plat dedication) for subdivisions and other larger-scale facilities; outside the NPDES permit area, do not require easements for smaller-scale stormwater facilities, such as for single-family dwellings.
3. Clearly define which types/levels of stormwater facilities require inspection, e.g., rain gardens and detention ponds and pervious pavement parking lots, but not pervious pavement driveways.

Additional Department-Recommended Changes

Since the Planning Commission's review, staff and our consultant have identified a few additional small changes we need to make to the code text:

1. Correct the date of the permit in the definition of "NPDES Permit Area" to January 16, 2015. The date is erroneous because Ecology listed the wrong date on the cover of the permit.
2. In proposed SCC 14.16.830(2)(c), change "cannot" to "may not."
3. In proposed SCC 14.32.010(2)(c), change "effective impervious surface" to "impervious surface," consistent with Planning Commission recommendation #1 and for better consistency with the NPDES permit.
4. In proposed SCC 14.32.040, add roads to the "Low" category in the Land Use Intensity table.
5. Retitle proposed SCC 14.32.080 from "Stormwater conveyance facilities" to "Stormwater conveyance" to better reflect subject of the section. Reword proposed SCC 14.32.080(1) for consistency.

Requested Action

The Department will summarize the project and this memo for the Board at its meeting on August 25 at 8:30am. The Department will ask the Board to provide direction for compilation of the ordinance text for final approval. After adoption, we suggest an effective date of January 1, 2016, to provide for sufficient time to train staff on implementation.