



## *Snohomish County Drainage Manual*

### Purpose

Bring Snohomish County Code into compliance with its Municipal NPDES Permit and best management practices.

### Best Management Practices

PDS allows the use of multiple stormwater manuals and multiple versions of stormwater manuals that do not provide the same levels of environmental protection. Snohomish County's Municipal Stormwater permit and Stormwater Management Program Plan requires it to adopt only one stormwater manual for exclusive use in designing stormwater controls.

“Permittees who choose to use the requirements, limitations, and criteria in the *Stormwater Management Manual for Western Washington (SWMMWW)*, or an equivalent manual approved by Ecology, may cite this choice as their sole documentation to meet this requirement.”<sup>1</sup>

Snohomish County spent tens of thousands of dollars writing its own stormwater manual; and in turn the Department of Ecology spends thousands of dollars reviewing multiple iterations of Snohomish County's stormwater manual. PDS then allows applicants to choose between Ecology's SWMMWW, WSDOT's *Highway Runoff Manual (HRM)*, or the County's adopted *Drainage Manual*. This violates the County's Municipal Stormwater Permit.

Additionally, Snohomish County is required to eliminate all stormwater manual vesting for projects that were permitted years ago under now outdated stormwater manuals, but have not “started construction” as of June 30, 2020.<sup>2</sup>

In this context, “started construction” means at a minimum that site work associated with and directly related to the approved project has begun. For example: grading the project site must be graded to final grade and utility installation underway. Simply clearing the project site does not constitute the start of construction. Permittees such as Snohomish County may establish additional requirements related to the start of construction under its permit.

Stormwater codes do not vest like other development codes, which has been upheld by the Washington State Supreme Court ruling in *Snohomish County v. Pollution Control Hearings*

<sup>1</sup> Reference SNOCO's August 19, 2016 Phase 1 Municipal Stormwater Permit, S5.C.5.ii

<sup>2</sup> Reference SNOCO's August 19, 2016 Phase 1 Municipal Stormwater Permit, S5.C.5.iii: “In this context, “started construction” means, at a minimum, the site work associated with and directly related to the approved project has begun. For example: grading the project site to final grade or utility installation. Simply clearing the project site does not constitute the start of construction. Permittees may establish additional requirements related to the start of construction.

Board, Case No. 92805-3, December 29, 2016. PDS currently lacks guidance under the code as to how to administer this new permit requirement. The proposed code revision will bring Snohomish County into compliance with its Municipal Stormwater permit.

### Proposed Code Revision

#### 30.63A.110 Snohomish County Drainage Manual.

The director of the department of public works is required to adopt by rule, pursuant to chapter 30.82 SCC, a Snohomish County Drainage Manual, to be known as the "Drainage Manual." The Drainage Manual shall provide detail and specificity regarding the requirements of chapters 30.63A and 30.63B SCC. When BMPs are required by this chapter, they shall comply with the Drainage Manual.

The the most current version of the Drainage Manual shall be used as an applicant's sole documentation to meet the code requirements of this section for all projects, including projects vested under older stormwater manuals that have not started construction by June 30, 2020. Effective July 1, 2020.

#### ~~30.63A.140 Washington State Department of Transportation Highway Runoff Manual.~~

~~The Washington State Department of Transportation Highway Runoff Manual, as determined by the Washington State Department of Ecology to be equivalent to the 2014 Department of Ecology Stormwater Management Manual for Western Washington, may be used to meet the requirements of chapters 30.63A and 30.63B SCC for public road construction projects, subject to approval by the applicable director.~~

#### 30.91S.575 Start of construction

Start of construction for projects requiring stormwater review shall be defined as commencement of work such that the entire site has been graded to finish grade and installation of utilities has commenced. Simply clearing the project site does not constitute the start of construction. *This definition applies only to regulations in chapter 30.43F and 30.63A SCC.*



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*Sno-King Watershed Council White Paper No. 2*

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*Cherry Picking Codes*

## Purpose

To prevent vested projects from selecting newer codes that are to its financial benefit without implementing newer environmental codes.

## Best Practices

Since 2010, PDS has had a policy<sup>1</sup> preventing “Cherry Picking” of codes, but has been haphazard in implementing this policy. PDS often allows applicants to select newer code regulations that the applicant or permittee sees as being in their financial benefit, while not implementing newer environmental regulations that are seen as not being in their financial benefit. Such was the case on the Frogal Estates project where PDS allowed increase building heights and eliminated the 2-foot setback requirement, but did not require the developer to upgrade to current stormwater codes to provide better environmental protection.

There is significant case law that prohibits the practice of code Cherry Picking, as PDS currently allows. The Appellate Court in its Jan. 2005, *East County Reclamation Co. v. Bjornsen*, 433 125 Wn. App. 432 decision found:

“[4] Building Regulations - Land Use Regulations - Vested Rights - Waiver - Selective Waiver - Validity. The vested rights doctrine does not allow a developer who has filed an application for an impermissible use to selectively waive its vested rights so as to benefit from some regulations under a newly-enacted system that allows the use while avoiding compliance with others. Vesting fixes the rules that apply to a land development as of the date that an application is made for a development permit. The vested rights doctrine ensures that a court need not search through the regulations enacted since the application date so as to determine whether the applicant has waived its “vested rights” and chosen to have its application evaluated under some of the new regulations but not others. If an applicant wishes to take advantage of a change in the law allowing a previously prohibited use, it may do so by withdrawing its original application and submitting another, but it may not select which laws will govern its application.” (Emphasis Added)

Unfortunately, PDS has at times chosen not to enforce this policy allowing applicants and permittees to selectively choose which regulations it will follow after vesting. Hence this policy needs to be codified to require equal protection for environmental projects.

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<sup>1</sup> Reference PDS Policy September 30, 2010, Stormwater Regulation Vesting

## Proposed Code Revision

### 30.10.045 Code cherry picking not allowed.

If an applicant wishes to take advantage of a change in Snohomish County Code allowing a previously prohibited use or practice, it may do so by withdrawing its original application and submitting another new application, vesting under all current codes in effect at the time of the new application. An applicant may not cherry pick which codes will govern after its application is deemed complete.



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*Sno-King Watershed Council White Paper No. 3*

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*Early Clearing of Urban Forests*

## Purpose

To prevent early clearing forested areas within the Urban Growth Area (UGA) with significant trees, prior to the issuance of all permits necessary to commence construction.

## Best Practices

Urban forests are a valuable resource with the Urban Growth Areas that must be preserved to help maintain wildlife habitat, slope stability, and help reduce stormwater runoff. In several hearings before the Hearing Examiner such as Sno-King Watershed Council v. Frognal Estates and Puget Park Residents v. SLA Properties, the Hearing Examiner has ruled that early clearing may be permitted well in advance of the start of construction. This results in a neighborhood eyesore and increased stormwater runoff that degrades water quality; and in the case of Frognal Estates, early clearing increases the risk of landslide, endangering downslope water quality, wetlands, homes, and resident's safety.

Specifically, with Frognal Estates, the Alderwood Water and Wastewater District (AWWD) has found that the sewer design approved by PDS is not constructible, but still allowed clearing of the trees with a Class IV Forest Practices Permit, without requiring prompt reforestation. Tree roots that help stabilize steep slopes will gradually rot and decay, increasing the risk of landslides and sediment delivery to wetlands and streams.

This change will codify the requirement to limit clearing and removal of significant trees until all permits are obtained and that grading to final grade commence not later than 6-months after clearing, or mandate prompt reforestation of any areas cleared under a LDA permit within the UGA.

## Proposed Code Revision

### 30.43F.120 Prompt Start of Construction Required

When an applicant commences removal of more than 5,000 board feet of significant trees under an approved Class IV Forest Practices permit, the site must be promptly graded to finish grade and utility installation commenced under an approved Land Disturbing Activity permit within 6-months of tree removal. Failure to meet this requirement will result in a 6-year moratorium as described under SCC 30.43F.220, resulting in the Class IV permit being converted to a Class I, II, or III permit as appropriate and the site must be promptly reforested.



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*Sno-King Watershed Council White Paper No. 4*

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*Large Lots Redevelopment Stormwater Retrofits Required*

## Purpose

To require large lot redevelopment projects to comply with the requirements of the *Drainage Manual*.

## Best Practices

SCC 30.63A.310(6)(b) sets an unreasonably high threshold for redevelopment projects to comply with flow control and water quality treatment. Under the current code, the value of proposed improvements including interior improvements must exceed fifty percent (50%) of the assessed value of the existing site improvements. And under SCC30.91S.351, "Site" means the area defined by the legal boundaries of a parcel or parcels of land that are subject to new development or redevelopment, not the disturbed project area.

This code was used by PDS to dismiss Sno-King Watershed Council's appeal to require flow control and water quality treatment at Paul Allen's Flying Heritage Museum, Building C, a redevelopment of approximately 1-acre at Paine Field. It should be noted that stormwater runoff from Building C discharges to Big Gulch Creek, an important stream for threatened juvenile Chinook salmon rearing. Big Gulch Creek has been subjected to excessive flows due to undetained or improperly detained stormwater runoff from Paine Field Airport and other locations.

The Paul Allen Building C is located on a 153-acre lot with approximately 12 other tenants, with leases and building improvements unrelated to the Flying Heritage Museum. The total of other tenant improvements at this "site" exceeded \$35-million, while Building C was estimated at \$5-million. Because Building C was less than 50-percent threshold for other unrelated improvements at 153-acre site, Building C was constructed without any flow control.

In 2018, Sno-King Watershed Council lobbied the Department of Ecology to eliminate the Paul Allen loophole. Ecology agreed with Sno-King Watershed Council stating in its response to commenters:

"The threshold has been updated so that for commercial or industrial projects, the valuation of the proposed improvements, including interior improvements, is compared against 50% of the assessed value of the existing Project Site improvements, rather than the Site improvements, as was previously used. This change captures the original intent of the threshold, which is to require stormwater controls for replaced surfaces for redevelopment projects that propose a significant upgrade to the existing property."

Per SCC 30.91P.354, "Project site" means that portion of a property, properties, or right-of-way subject to land disturbing activities, new hard surfaces or replaced hard surfaces. *This definition applies only to chapters 30.63A and 30.63B SCC.*

A code revision is now required to bring the *Drainage Manual* into compliance with 2019 edition of the *Stormwater Management Manual for Western Washington*, Volume I, Chapter 3, *Redevelopment Project Thresholds*.

### Proposed Code Revision

30.63A.310 Minimum drainage review thresholds and requirements for redevelopment.

- (6) ~~(b) The value of proposed improvements including interior improvements exceeds 50 percent of the assessed value of the existing site improvements.~~

(b) For commercial or industrial projects: the valuation of the proposed improvements, including interior improvements, exceeds 50% of the assessed value of the existing Project Site improvements. Project site means as defined in 30.91P.354.



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*Sno-King Watershed Council White Paper No. 5*

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*Significant Redevelopment of Existing Flow Control & Water Quality Treatment Facilities*

### Purpose

To require existing flow control and water quality structures to be upgraded to current code requirements, when significant (>50%) redevelopment or retrofitting is proposed. It is critical to restoring streams that have been degraded by past development using outdated flow control methods, to require retrofitted flow control (detention) facilities to be upgraded to current code requirements, when redevelopment occurs.

### Best Practices

Currently under SCC 30.63A.310, drainage review thresholds and requirements for redevelopment are based solely on a square foot basis. A project must comply with Minimum Requirements 1 through 9 if the new hard surfaces exceed 5,000 square feet. However, if a project proposes to completely remove and replace a flow control facility, it is not required to completely upgrade its flow control (e.g. stormwater detention) to current code requirements. The code only requires that the disturbed area, (e.g. detention pond footprint) be upgraded to current flow control requirements.

This was the case with the B/E Aerospace project that was appealed by the Sno-King Watershed Council and the Pilchuck Audubon Society in 2017. B/E Aerospace proposed to replace its open stormwater detention pond with a closed underground vault to increase parking; however, B/E Aerospace only designed a small portion of its new detention vault to detain stormwater using current design standards (peak flow and duration matching), while designing the majority of the replaced detention vault for the 15-acre impervious site using outdated, non-code compliant methods, matching just peak flows and not matching duration flows needed to help prevent downstream erosion.

It should be noted that stormwater runoff from the B/E Aerospace site discharges to Big Gulch Creek, an important stream for threatened juvenile Chinook salmon rearing. Big Gulch Creek has been subjected to excessive flows due to undetained or improperly detained stormwater runoff.

It was also brought out at the hearing that PDS had incorrectly approved the original stormwater detention pond permit using incorrect, outdated design methods several years earlier; but again, PDS was unwilling or unable to correct its earlier mistake.

This code revision would require that in the event a flow control or detention facility is extensively redeveloped, that the entire flow control facility must be upgraded to meet current code requirements regardless of the disturbed footprint at the project site.



## Proposed Code Revision

30.63A.310 Minimum drainage review thresholds and requirements for redevelopment.

- (7) If an applicant proposes to retrofit or redevelop more than 50% of an existing flow control or water quality treatment structure, then the entire flow control/water quality structure must be redeveloped to meet the requirements of the current *Drainage Manual*, regardless of the amount of disturbed project area.



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*Sno-King Watershed Council White Paper No. 6*

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*Sealing of Engineered Permit Application Documents Required*

## Purpose

Bring Snohomish County permit application procedures that require an engineer's seal into compliance with State law, WAC 196-23-020.

## Best Practices

State law, WAC 196-23-020 states in part:

"(1) Final documents are those documents that are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by clients. Any final document must contain the seal/stamp, signature and date of signature of the licensee who prepared or directly supervised the work. For the purpose of this section "document" is defined as plans, specifications, plats, surveys, as-built documents prepared by the licensee, and reports."  
(Emphasis Added)

Permit application drawings, reports, and other documents are "final documents" that, "are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by clients". These documents require professional engineering expertise to prepare and must signed and sealed (stamped) by the engineer of record. Without the signature of the engineer of record on their seal, it cannot be ascertained that the engineered document being reviewed was actually prepared under the direct supervision of the responsible for the document.

Unsigned drawings are then made available for public review, review by other agencies, and internal review by other County departments. Engineered documents submitted for permit issuance are final in the opinion of the engineer preparing them; PDS, the public, and other agencies should not waste its time reviewing draft or preliminary unsigned/unsealed documents that may or may not have been prepared by the engineer of record in accordance with State law WAC 196-23-020(1).

Any review comments made as a part of the permit review process may be made by incorporated into the design as a part of the approved revision process.

## Proposed Legislation

30.63B.200 Land disturbing activities and projects requiring engineered construction plans.

(1) The following land disturbing activities require the submittal of all permit application construction plans, reports, and other documents requiring engineering expertise shall be a-prepared by, signed, and stamped by an engineer licensed in the State of Washington: