

**STORMWATER ORDINANCE UPDATE
STAKEHOLDER ADVISORY COMMITTEE (SAC)
Meeting #2: Tuesday, September 11, 2007
Public Works Operations Conference Room B-1
4700 NE 78th Street, Vancouver
6:00 - 8:00 p.m.**

REVISED N O T E S

The meeting was called to order at 6:05 p.m.

Introductions

Members Attending

Bob Blakemore, Dan Bodell, Tim Dean, John DiVittorio, Eric Golemo, James Howsley, Don Moe, Joel Rupley, Doug Stienbarger, Art Stubbs

Members Absent

James Madsen, Reg Martinson, Scott Wilson

Staff & Consultants

Traci Carick, Jim Gladson, Trista Kobluskie, Tim Kraft, Robin Krause, Earl Rowell, Sue Stepan

Audience

None

Facilitator

Francine Raften

Approvals

The August 14, 2007 meeting notes were approved as submitted.

The agenda was approved.

The charter was approved as amended.

Member Updates

Ms. Raften asked members to report on their communication with constituent groups.

Mr. Golemo presented a memo dated September 11, 2007, entitled "DEAB Public Workshop Session Issues for consideration by the SAC / Stormwater Code Update (DRAFT)" from the Development Engineering Advisory Board. Ms. Raften asked SAC members to review it and comment at the next meeting. Staff will review the document, as well.

A contact list for the Technical Advisory Committee (TAC) is included in the member packets. Mr. Golemo asked for a SAC contact list. This was approved at the last meeting, so staff will e-mail a list.

Recap of Process

Mr. Krause reviewed part of the protocol staff will use to present documents. TAC's working documents will be shared primarily amongst that committee. Those working documents are in very draft form and may be of little value outside the committee. When documents are a bit more complete, they will be shared with SAC and with the public via the Web site.

Mr. Krause reviewed TAC's progress. In three meetings, the committee has discussed Clark County Code 40.380 sections .020, Applicability (a.k.a. Thresholds); .030, Exceptions/Exemptions; and began to discuss .040, Stormwater Control. Staff has been researching Low Impact Development (LID).

Staff is organizing a workshop with Ecology to address some of the continuous modeling issues for the local area. The workshop will not be combined with the American Society of Civil Engineers (ASCE) modeling class.

The first work session with the Board of County Commissioners (BOCC) will occur after the next SAC meeting.

Ms. Raften asked SAC to be prepared to comment and reach consensus on tonight's material by the next meeting.

Mr. Stienbarger asked for materials in advance. Mr. Krause agreed that staff will attempt to get materials out sooner for the benefit of all. Also, some documents have already been provided in the binders and on the Web site; watch for e-mails from staff listing documents to review.

Mr. Krause briefly reviewed the Technical Memorandum from Otak dated August 13, 2007, entitled "Stormwater Ordinance Review for Clark County, WA." The memo summarizes other Washington jurisdictions' responses to the new NPDES permit.

The Minimum Requirements

Reference the PowerPoint presentation handout.

Mr. Krause described where to find the Minimum Requirements:

- In the 2007 Phase I Municipal Stormwater NPDES Permit, Appendix 1, starting on p. 12 (provided to members in the binders)
- In Ecology's *2005 Stormwater Management Manual for Western Washington* (hereafter *2005 Manual*), Volume 1, starting on p. 2

Mr. Krause briefly reviewed the gist of each Minimum Requirement and listed its counterpart in current Clark County code.

Minimum Requirement #1

Preparation of Stormwater Site Plans.

Is similar to CCC 40.380.060(B), (C), and (D)

Minimum Requirement #2

Construction Stormwater Pollution Prevention (SWPP) - erosion control

40.380.050 and .060(E)

Minimum Requirement #3

Source Control of Pollution

40.380.040(B)(6), and also some in 13.26a

Minimum Requirement #4

Preservation of Natural Drainage Systems and Outfalls - discharge water where it currently discharges

40.380.040(C)(1)

Minimum Requirement #5

On-site Stormwater Management - a preference for infiltration, where possible

40.380.040(C)(3)

Minimum Requirement #6

Runoff Treatment - water quality protection

40.380.040(B)

Minimum Requirement #7

Flow Control - primarily through detention

40.380.040(C)

Minimum Requirement #8

Wetlands Protection

The concept of using a hydroperiod for the wetland is new to Clark County; also current county code does not address stormwater discharges to wetlands.

40.450 is the Wetland Protection ordinance

Minimum Requirement #9

Basin/Watershed Planning - specific requirements for treatment or flow control created by the local jurisdiction for a basin. Must be approved by Ecology.

40.380.040(C)(5)(a)

40.380.040 (K) and (L)

Mr. Krause stated that there are no currently approved studies in Clark County.

Mr. Rupley urged SAC to consider basin planning as a possibility. King County has used them. The National Marine Fisheries Service (NMFS) is interested.

Mr. Howsley stated that developers on the north shore of Lacamas Lake would be interested. Ecology's work with Anderson Dairy along Lacamas Creek could tie in to a basin plan.

Mr. Rowell and Mr. Kraft discussed whether the county's previous drainage studies qualify as basin/watershed plans under Ecology's definition. Basin studies must specifically address flow control and treatment to meet minimum requirements. Clark County's previous drainage studies do not qualify.

Mr. Kraft: the benefit of basin planning is that instead of each development doing flow control, the study might allow a regional facility. Mr. Blakemore agreed: basin parameters might differ from site parameters. Mr. Krause stated that one stream may require more or less detention than another, based on conditions. Mr. Golemo recommended this topic for further discussion.

Minimum Requirement #10
Operation and Maintenance
40.380.040(H)

Optional Guidance #1
Financial Liability
40.380.040(I), (J)

Mr. Krause: this provides the county some protection against faulty stormwater facilities. Contractors pay a bond, which is released after the facility is deemed acceptable.

Mr. Dean asked how the county accounts for the maintenance burden of a facility not maintained for 10 years. Mr. Kraft: some other jurisdictions have made these optional items mandatory. Mr. Krause: the maintenance issue might be especially pertinent to LID.

Optional Guidance #2
Off Site Analysis and Mitigation
40.380.040(B)(2)

Exemptions and Exceptions

Reference the "Clark County Concept Code: Draft Rewrite of Clark County Code 40.380.030 - Exceptions/Exemptions" handout.

Mr. Krause stressed that the draft concept code is intended to portray the concepts recommended by TAC and SAC - not the exact wording of the eventual code updates.

TAC's review of the exemptions in current county code found that several exemptions simply repeat the thresholds from the other side of the coin. For example, if the Applicability section states that a project with more than 5,000 sq. ft. must meet certain Minimum Requirements, the Exemptions section might state that a project with less than 5,000 sq. ft. is exempt from Minimum Requirements. TAC proposes to delete repetitive exemptions from code.

3.1.(2)

This paragraph describes exemptions for agricultural practices. Mr. Krause pointed out that the language "the construction of impervious surfaces are not exempt," taken directly from the *2005 Manual*, would be a new concept on county code. Under current county code, that activity would be exempt (when associated with agricultural practices).

Mr. Golemo gave a hypothetical comparison. Under current code, a personal farm could add a barn and a gravel approach to it without triggering the stormwater code. Under proposed code, would the barn and gravel approach need a stormwater facility? Mr. Krause: maybe or maybe not. The proposed language means only that adding impervious surfaces on an agricultural parcel is not *automatically* exempt from the stormwater code; the particular activity or project (such as adding a barn and gravel drive) might not require a facility for other reasons, such as adding less impervious surface than the threshold that triggers flow control.

Mr. Howsley requested a definition for "commercial agriculture." In other contexts, the definition is in flux. The BOCC will review ag lands in the county next year.

Mr. Rupley stated that a new definition in Title 40 will carry throughout the title; it is a broad definition, including hobby, recreational, and horse-raising. State law defines a commercial operation, so the county cannot change it. It was passed as part of current use **habitat conservation ordinance**.

Mr. Golemo questioned the need to specify "commercial agriculture," preferring "agriculture." Mr. Rupley stated that Washington Administrative Code (WAC) does not provide a consistent definition for "agriculture." Mr. Howsley agreed that it is amorphous.

Mr. Bodell questioned the importance of discussing the detail. Mr. Krause replied that laws governing agriculture, in any regard, can have big repercussions in Clark County.

Mr. Blakemore asserted that land uses with an impact to water quality should be addressed in code. He referred to previous studies that demonstrated impacts to Lacamas Creek and Lacamas Lake from dairying. Should agriculture have a free pass?

Mr. Bodell: if somebody self-defines their property as a commercial agriculture operation in order to get the existing property tax break, then they're no longer exempt under the proposed code? Mr. Krause: no, the only thing *not* exempt is the addition of impervious surface; other agricultural practices are still exempt under proposed code. The proposed code does not address other potential water quality impacts from agriculture, such as the dairying practices that Mr. Blakemore mentioned (13.26A would apply to water quality issues associated with agriculture).

Mr. Krause explained that his purpose in mentioning the proposed language "the construction of impervious surfaces are not exempt" is to make it clear that the proposed code will decrease the existing exemption for agriculture.

Ecology defines "commercial agriculture," but specifies that "an activity ceases to be considered commercial agriculture when the area in which it is conducted is promoted to conversion for non-agricultural purposes or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program."

Mr. Golemo: having to meet a Minimum Requirement does not guarantee great expense or difficulty. The farm might be required just to install a flow spreader for its new impervious surface.

Mr. Rupley clarified that the proposed code affects new construction, new surfaces. Existing agriculture practices will not be impacted. Mr. Stubbs asked if building a new barn to replace a destroyed one would trigger the stormwater code.

Mr. Blakemore stated that building a road to a barn will have a totally different impact than a new road in a new subdivision. He suggested that impacts need to be assessed on a case-by-case basis, and evaluated on a performance basis. Mr. Krause: the proposed language will require impacts to be shown and addressed.

Mr. Rupley requested research on specific examples. Agriculture is a touchstone issue in the county, and SAC cannot make a call tonight without more information.

3.1.(8)

This paragraph is verbatim from existing county code and exempts the construction of a single-family home on an existing lot in the rural area from the stormwater code. It is struck out on recommendation from TAC, but requires discussion by SAC.

Mr. Krause explained his understanding of the reason for the existing exemption in code. A person who wants to build a home on a 5-acre lot in the country that he already owns should not have to engage in a \$10,000 engineering exercise to demonstrate that the new home will not impact storm drainage. However, ambiguity in the current code means that the exemption is being applied even to new residential plats in the rural area.

Mr. Krause gave a hypothetical example: a new 5,000 sq. ft. house with a 7,000 sq. ft. driveway and 15,000 sq. ft of landscaping on a newly platted 1-acre rural lot. Under current code, the project would be exempt from stormwater code. Under proposed code, the project would not automatically be exempt.

Mr. Kraft suggested that the main point of the example is that if they build a roadway that serves all these homes, the road would be subject to the current ordinance. If a flag lot serves all these homes, that would be different.

Mr. Rupley argued that zoning code does not allow newly platted 1-acre lots in the rural area. Mr. Krause had examples from 2007. Mr. Rupley: on new plats?

SAC discussed whether the new code would apply only to lots platted thenceforth or also to existing lots developed thenceforth.

The group discussed the meaning of "existing lot." Mr. Howsley argued that if the exemption is removed from the code, the updated code should not be retroactive to existing plats. The county could not enforce new code on approved plats. Mr. Krause and Mr. Golemo agreed. Mr. Dean: the county would be sued if it changed requirements for an approved plat.

Mr. Rupley: when they come in for a building permit, they might find out they have to do stormwater.

Mr. Bodell disagreed. When the electrical code is updated, for example, any updates to an existing building will be required to meet the new code. Why would stormwater differ? Mr. Golemo replied that platting laws are different than building code; the plat is vested under the existing law. Mr. Rupley: the plat would have been approved under then-current stormwater code. Even if there is a delay of several years, construction and location of house, roads, and stormwater must adhere to the approved site plan.

Mr. Bodell said that even though WSU's master plan was approved 15 years ago, they have to jump through hoops to avoid bringing all infrastructure up to current codes when building something new. Mr. Golemo questioned whether a master plan receives vesting status.

Mr. Blakemore questioned how to adhere to a site plan that is 10 years old. Likely, the building will be much larger than originally guessed. The group discussed whether a building permit granted 10 years later than the plat would trigger stormwater requirements contemporaneous with the plat or contemporaneous with the building permit. Mr. Blakemore: there is a dilemma in building a 10,000 sq. ft. house on a plat approved for a 3,000 sq. ft. house.

Mr. Howsley argued that the updated code should apply only to lots platted thenceforth. Retroactive applications of land use laws gave rise to Measure 37 in Oregon. Mr. Golemo agreed.

Mr. Stubbs argued that the county must consider two other factors:

- effects of runoff from these rural residences on neighboring parcels
- effects on clean water

Mr. Krause replied that if the exemption was created to avoid detention ponds on all these individual rural lots, then new LID techniques may make the exemption less important.

Mr. Howsley asked staff to find out the reason for the exemption.

Applicability of the Minimum Requirements

Reference the "Clark County Concept Code: Draft Rewrite of Clark County Code 40.380.020 - Applicability" handout. Generally, TAC recommends completely updating the language in 40.380.020 to match the applicability language in the NPDES Permit, Appendix 1, Section 3.

The concept of applicability (a.k.a. thresholds) is "if you're doing this, then you have to do that."

Mr. Krause: the general idea of this section is that projects with less impact are required to comply with Minimum Requirements 1-5, which are fairly easy to achieve, while projects with greater impact are required to comply with all Minimum Requirements.

Mr. Krause reviewed the threshold for new development that states "Creates or adds 2,000 square feet, or greater, of new, replaced, or new plus replaced impervious surface area" (lines 8-9). There is no equivalent threshold in current county code. Under proposed code, projects meeting this threshold would need to meet Minimum Requirements 1-5.

Mr. Krause reviewed the threshold for new development that states "has land disturbing activity of 7,000 square feet or greater" (line 11). Current code, up to 1 acre, without creating impervious surface is exempt. So, if you convert a pasture to a (very small!) golf course of less than 1 acre, without creating impervious surface, you're exempt under current code. Under proposed code, projects meeting this threshold would need to meet Minimum Requirement 1-5. Mr. Bodell said that the new threshold seems reasonable.

Mr. Golemo, Mr. Kraft, and Mr. Krause discussed how the NPDES construction general permit may interact with county requirements. Will building a new house trigger either a construction general permit or county requirements?

Mr. Kraft recommended that SAC read the definitions in the 2007 NPDES Permit Appendix 1, Section 2 "Definitions related to Minimum Requirements" in order to get a better feel for what Ecology means by terms such as "new development."

Mr. Bodell asserted that the requirement for erosion control is reasonable and is already in place in current code. Mr. Krause pointed out that the threshold for triggering it is lower than previous; also the threshold triggers not only erosion control (Minimum Requirement #2) but also Minimum Requirements 1, 3, 4, and 5.

Mr. Howsley asked if wetland mitigation sites that disturb land will trigger stormwater code. Mr. Krause: if it meets the threshold, it will have to address 1-5. Mr. Kraft: even if you're creating a new wetland, you don't want to dump sediment down the creek.

Mr. Howsley and Mr. Blakemore argued that a drainage project or a new wetland could by definition go against the grain of Minimum Requirement #4. Mr. Krause explained that #4 asks for preservation of natural drainage systems "where practical and feasible." Reasons can be documented; maybe the exemptions can address it instead. Mr. Howsley agreed: using wording like "where practical and feasible" is difficult to interpret and enforce legally, so specific wording in an exemption might serve better. He stated that the wetland code contains a preference for mitigation on-site; this might conflict.

Creating impervious surfaces

The group discussed the differences between current county code and the permit.

Mr. Krause: current code separates urban / rural and also has 1000 sq. ft. applicability for certain uses, like gas stations. Ecology just uses 5,000 sq. ft. applicability without

differentiating between urban and rural, or between specific uses. However, the source control section addresses some of the uses. Staff is still researching this issue.

Mr. Kraft explained that there are 13 activities/uses in current county code, such as fleet vehicle yards, log sorting, airfields and aircraft maintenance etc., which have special requirements for oil/water separators and source control BMPs. The question is can we leave those 13 specific activities out of the proposed code because the impacts are covered in other ways in the *2005 Manual*?

Mr. Stubbs indicated that the creation of only 1,000 sq. ft. for most of the specific uses mentioned seems unlikely. Mr. Krause added that sizing facilities to handle such small quantities of runoff may not even be feasible. Mr. Kraft: keep in mind that we may be talking about 2,000 sq. ft. of impervious on a 4,000 sq. ft. lot.

Mr. Golemo: the current code exempts roof areas and non-pollution generating surfaces. Raising the threshold may allow development of a 3-lot short plat without triggering stormwater code.

Mr. Krause explained that sometimes the calculation of impervious surface at the project level may differ from how it is calculated within a Minimum Requirement. In Minimum Requirements #6, for example, *effective* impervious surface can be reduced by dispersing or infiltrating roof runoff.

Mr. Stubbs requested the code to emphasize and encourage Low Impact Development techniques by listing it in the exemptions.

Mr. Krause noted that TAC recommends discarding the 2,000 sq. ft. urban threshold that exists in current code.

Mr. Golemo used a hypothetical example to compare the effects of current and proposed code: a short plat that is not proposing any homes at the time. It will be reviewed using estimated build-out of 3,000 sq. ft. of new driveway and 10,000 sq. ft. of new roofs. Under current code, this would not trigger the stormwater code because roof areas that infiltrate are exempt. Under proposed code, this would trigger the code. He asked if a detention pond would automatically be required. Mr. Krause: not necessarily. Within the Water Quality Minimum Requirement, treatment is not required for impervious surfaces less than 5,000 sq. ft., so you would have to demonstrate that you can actually infiltrate at least 7,000 sq. ft. of roof. Mr. Golemo proposed that the thresholds within thresholds approach will create confusion for review staff. Mr. Krause replied that work methods could solve that problem

Mr. Stubbs asked if the decisions from review staff will be arbitrary.

Mr. Krause tabled the topic until the next meeting when Minimum Requirement #6, Water Quality, is addressed in detail.

Mr. Golemo reiterated his concern that the proposed changes to Applicability will significantly impact the development review process.

Converting Pervious Surfaces

Mr. Krause: there is no equivalent language in the current code.

The *2005 Manual* requires the following to trigger Minimum Requirements 1-10:

- Convert $\frac{3}{4}$ acre or more of native vegetation to lawn or landscaped area
- Convert 2.5 acres of native vegetation to pasture

Mr. Golemo asked if a pipeline project for sewer through forested area would be exempt. Mr. Krause: utilities are exempt. Mr. Stubbs argued that it wouldn't count as a conversion anyway.

Mr. Kraft quoted from the *2005 Manual* "comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which could have reasonably been expected to naturally occur on the site."

Mr. Rupley emphasized that many plant communities are a mixture of native and non-native, invasives, or noxious weeds. What *percentage* has to be native to meet this threshold?

Redevelopment - Road-Related

Mr. Krause gave Ecology's definition of redevelopment as "a developed site (35% or more of the existing site is impervious already)."

Mr. Blakemore asked: if I am developing a parcel, and I've got a small frontage and I have to widen the road a couple of feet and put in a curb, and I am under 2,000 on the road now, but on my property I'm putting some more. The current understanding with development engineering, they consider both, even though the water can't be treated together.

Mr. Krause: if frontage is discharging to a different location, and the waters don't come together within a ¼ mile, they can be considered separate. Mr. Blakemore: it is a policy question. Currently, you get different answers from county staff.

Mr. Golemo stated that triggering the stormwater code will have a huge impact for these projects because you have to go back to forested condition, so you get no credit for existing impervious surface. Mr. Kraft: if the downstream watershed was 40% impervious for the past 22 years, then you only have to go back to that condition. Mr. Krause: we are working with GIS to identify areas in the county where this would apply.

Redevelopment - Non-Road-Related

Mr. Krause: the Applicability is very similar to those for road-related redevelopment. The big question is whether or not to use the assessed value language, or to use other options provided by Ecology.

Mr. Stubbs asked how LID interacts with this. Mr. Krause: if you use an LID, you reduce your *effective* impervious surface. Mr. Kraft reiterated that LID does not affect Applicability; you'll still be required to meet these Minimum Requirements. However, when you get into the details of Flow Control, where you are sizing your detention facility, you find that you get credit for the LID areas that you use as detention, so your pond will be smaller. Mr. Stubbs: a builder will be better off going to LID than sticking to existing methods.

Mr. Blakemore noted that the credit for LID is not 1:1 in the *2005 Manual*. 1,000 sq. ft. of LID equates to approximately 500 sq. ft. of credit. This is a good question for ClearCreek Solutions, which has to incorporate this into their model.

Mr. Howsley asked if other jurisdictions have deviated from Ecology's requirements for redevelopment. Sometimes it is economically difficult to redevelop sites. Mr. Kraft: that is why they put the dollar amount or percentage of improvements. The thought is that if you're doing a \$50,000 redevelopment, it is unfair to require \$75,000 of stormwater improvements. However, if you're doing a \$2 million redevelopment, it is more equitable to require \$75,000 of stormwater improvements. Other jurisdictions are not diverging much from Ecology's requirements.

Mr. Howsley argued that redevelopment is a tool for keeping growth boundaries tight, and the county should incentivize it. Mr. Krause argued that the new approach is much more simple than existing code for redevelopment.

Low Impact Development

Mr. Krause stated that the purpose tonight is to present how we would like to approach LID in this process.

First, limit the scope and keep it simple. Second, consider only changes to the stormwater code and refrain from considering changes to transportation or building code. Third, focus on a few popular, well-defined methods. Finally, address the maintenance and public outreach issues.

Mr. Rupley stated that LID is critically important for an outcome-driven process. He recommended taking advantage of existing guidance manuals. He suggested forming a subcommittee of SAC, TAC, and consultants to address LID.

Mr. Rupley contended that the code should incorporate as much LID as reasonably possible now, and it should allow for incorporation of changing transportation standards, in case those begin allowing LIDs.

Mr. Blakemore recommended getting Clark County soils maps into WWHM to help with the LID credits in the model.

Next Steps

E-mail or call Robin with questions on materials presented at the meeting.

The next meeting will cover Minimum Requirements #6, Water Quality, and #7, Flow Control in more detail.

SAC agreed to keep meeting times to two hours, unless needed on a case by case basis.

Adjourn

The meeting adjourned at 8:05 p.m.

The next meeting will be held on October 2, 2007 in the Clark County Elections conference room at 1408 Franklin Street, Vancouver, from 6:00 - 8:00 p.m. Please note the change of venue.

Respectfully Submitted,

Trista Kobluskie

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