



Planning & Development Services

1800 Continental Place ▪ Mount Vernon, Washington 98273
office 360-416-1320 ▪ pds@co.skagit.wa.us ▪ www.skagitcounty.net/planning

Supplemental Staff Report

2022 Stormwater Code Amendments

To: Skagit Board of County Commissioners

From: Jenn Rogers, Assistant Long Range Planner and Andy Wargo, Stormwater Review Technician

Date: June 27, 2022

Re: Amendments to Stormwater Management Standards, Skagit County Code 14.04, 14.18, 14.22, and 14.32

Summary

Planning and Development Services (PDS) is providing this supplementary staff report in advance of the June 28, 2022, Board of County Commissioners (BoCC) meeting to deliberate on the stormwater code amendments. This report supplements the May 3, 2022, staff report and June 7, 2022, supplementary staff report by providing responses from PDS staff to written comments received from the Port of Skagit on June 24, 2022.

Stormwater Code Deliberation

On June 27, 2022, the BoCC held a work session with staff from PDS and Public Works to discuss the proposed stormwater code updates and the Planning Commission recorded motion. The Port of Skagit submitted written comments to the Department on June 24, 2022. The BoCC requested additional staff response to the Port of Skagit letter prior to BoCC deliberations on June 28, 2022. This report will address those comments and provide the Board a recommendation on appropriate action.

Port of Skagit June 24th Submitted Comments

Issue 1. The Port requests removal of the “sunset date” for regional stormwater facilities

Summary:

In the May 24, 2022, letter the Port of Skagit explained how the Port uses planned regional stormwater facilities to serve future developments on Port property. These regional facilities are vital to attracting new development to the Port as they are able to advertise the parcels as “shovel ready.” Regional facilities also more cost effective than standalone systems and allows developers to maximize use of buildable lots. The sunset date for regional facilities would require regional facilities to be retrofitted to meet current stormwater requirements for new or replaced hard surfaces once the sunset date of 20 years is met. The language is not required by

the NPDES permit and is contrary to the guidance on regional stormwater facilities in the 2019 Stormwater Management Manual for Western Washington adopted by the Department of Ecology.

In the June 24, 2022, letter the Port reiterates that the sunset date should be removed to ensure the Port can continue to attract new development. The Port invested approximately \$2 million from 1998-1999 in regional stormwater facilities to provide infrastructure to support new projects. There are businesses at the Port currently interested in expanding, but the projects are relying on existing stormwater capacity and implementing a sunset date could hinder the progress of new expansions or enterprises. If the BoCC decides to keep the sunset date in place, the Port would request extending the date of review for regional facilities constructed prior to June 30, 2022, from June 30, 2027, to June 30, 2035.

Staff Response:

The following code is the proposed “sunset” provision language:

SCC 14.32.150(4)(c)

(c) An existing regional facility proposed to be used to meet stormwater requirements for a development application will be reviewed for compliance with the stormwater requirements and standards applicable to the development application as set forth in the Permit and the Skagit County Code.

(i) Regional facilities are subject to review 20 years after the permit issued for construction of the facility, except regional facilities constructed prior to June 30, 2022, are not subject to review prior to June 30, 2027.

(ii) Such review is limited to the impact on the regional facility by the proposed use set forth in the development application, including an analysis of whether the regional facility has remaining capacity to receive stormwater discharges from the proposed project.

(iii) If a regional facility does not have the capacity to meet current stormwater requirements for a development application the deficiencies may be addressed by retrofitting the existing facility or constructing new facilities, or both.

SCC 14.32.150(4)(c)(i-iii) pertains to the “sunset” provision for regional facilities. The intent is to ensure that runoff from new development meets current standards for treatment (water quality) and flow control. Facilities that were designed using single-event hydrology models (pre 2012 Manual) may not have the capacity to detain runoff from multiple consecutive storms, which could cause greater downstream flows than from facilities designed continuous-flow models (beginning with 2012 Manual).

The following options would still comply with the NPDES Permit Conditions:

- 1) Strike SCC 14.32.150(4)(c)(i-iii) from the proposed code amendment as requested by the Port of Skagit. The Stormwater Management Manual provides guidance for requiring re-analysis of stormwater capacity when a new development is proposed to discharge to an existing facility. This option could potentially allow stormwater discharges at higher intensities that have the potential to cause downstream adverse impacts.
- 2) Keep SCC 14.32.150(4)(c)(i-iii) in the proposed code amendments with adjustments such as:
 - a. Extend the requirement for existing facilities to a later date; the Port suggested 2035 as a backup request.
 - b. Lengthen the period before the ‘sunset’ applies from 20 years to a longer period.
 - c. Exempt single-family residences on lots that drain to regional facilities from sunset requirements.
- 3) Keep SCC 14.32.150(4)(c)(i-iii) in the code amendment as proposed.

For any of the above options, provisions for re-review of stormwater requirements could be established through a Development Agreement pursuant to SCC Chapter 14.14, provided compliance with the NPDES Permit is ensured.

Issue 2. The Port requests changes to the “General stormwater management standards” in SCC 14.32.120 (1)

Summary:

The Port of Skagit requests the County remove the general stormwater management standards included in SCC 14.32.120(1). This request was not included in the May 24, 2022, letter submitted during the Planning Commission public comment period. This section pertains to stormwater management requirements which aim to reduce impacts of new stormwater flows on adjacent properties. The Port is concerned that the proposed language in this section is duplicative and could allow for project opponents to request additional mitigation even when projects meet all standards required in the NPDES permit and the Department of Ecology’s Stormwater Management Manual.

14.32.120 General stormwater management standards.

(1) All development must meet the following performance standards so that adjacent properties are not unreasonably burdened with surface waters resulting from such development.

(a) Runoff may not discharge directly onto the surface of a public or private road. (Currently 114.32.080(1)(c))

(b) Runoff may not discharge into a private road’s ditch system except when the lot is within a recorded subdivision with an approved stormwater facility and the runoff is directed into that facility and will not exceed the capacity of the facility.

(c) Runoff may not discharge into a County right-of-way, except with the authorization of the Public Works Director or when the lot is within a recorded subdivision with an approved stormwater facility, the runoff is directed into that facility, and will not exceed the capacity of the facility.

(d) Runoff may not discharge into a Drainage District’s system without prior written authorization from the applicable Drainage District.

(e) Runoff may not discharge directly into a manure lagoon or vault unless the lagoon or vault has been converted to only support stormwater.

(f) Runoff and infiltration must be directed away from septic drain fields. (Currently 114.32.080(1)(d))

(g) Runoff from impervious surfaces, roof drains, and yard drains must be directed so as not to adversely affect adjacent properties, public properties and facilities, well protection zones, unstable slopes, basement crawl spaces, and footing drains. (Currently 114.32.080(1)(e) with more clarification)

(h) Runoff from development may not cause a significant adverse impact to down-gradient properties. (Currently 114.32.080(1)(f))

The Port secondarily requests that if the County chooses not to remove all general stormwater management standards in SCC 14.32.120(1):

- 1) SCC 14.32.120(1) be changed to: *All development subject to review under this chapter must meet the following performance standards so that adjacent properties are not unreasonably burdened with surface waters resulting from such development.*
- 2) SCC 14.32.120(1)(d) be changed to: require consultation the applicable drainage district rather than written permission and to clarify that the requirement only applies to new development.
- 3) Remove SCC 14.32.120(1)(h) because it is duplicative.

Staff Response:

Staff do not support removing general stormwater management standards - SCC 14.32.120(1). Several of the provisions (14.32.120(1)(a),(f),(g),&(h), which prevent runoff from be directed to or adversely affecting public road, septic systems, adjacent and down-gradient properties, already exist in the current code and their removal could be considered backsliding against achieving water quality and flow control. The other provisions were drafted to clarify requirements that support compliance with the NPDES Permit and are generally intended to protect downstream properties and natural resources.

Staff do not support adding subject to review under this chapter to SCC 14.32.120(1) since the entire chapter applies to new development and redevelopment making the language redundant.

Staff do not support changing SCC 14.32.120(1)(d) to require consultation rather than permission. Written documentation would be required to support a decision by PDS to accept a proposed new connection to any other drainage system, such as the County drainage system, a drainage district's system, or a private drainage system. Since this chapter applies to development and redevelopment only new connections would be subject to provision.

Staff do not support removing SCC 14.32.120(1)(h), which prevents runoff from development from causing a significant adverse impact to down-gradient properties. It exists in the current

code and removal could be considered backsliding. SCC 14.32.120(1)(h) could be combined with SCC 14.32.120(1)(g) making the protective provisions of SCC 14.32.120(1)(g) apply to both adjacent and downgradient properties: *(g) Runoff from impervious surfaces, roof drains, and yard drains must be directed so as not to adversely affect adjacent or down-gradient properties, public properties and facilities, well protection zones, unstable slopes, basement crawl spaces, and footing drains.* (Currently 114.32.080(1)(e) with more clarification)

Attached:

- June 24, 2022 Port of Skagit Stormwater Comments



Port of Skagit

June 24, 2022

Skagit County Board of County Commissioners
1800 Continental Place, Suite 100
Mount Vernon, WA 98273

Re: Amendments to Stormwater Management Standards, Skagit County Code 14.04, 14.18, 14.22, and 14.32

Dear Commissioners:

I am writing on behalf of the Port of Skagit (“Port”) to share the Port’s comments on the above-referenced proposed amendments to the County’s stormwater management standards (the “Amendments”).

The Port currently operates Bayview Business Park and Skagit Regional Airport on Bayview Ridge within the Skagit County NPDES coverage area. These enterprises are home to 75 businesses that provide good paying jobs for 1,155 people. The Port is also in the process of planning for future development of Port owned property called Watershed Business Park located adjacent to Peterson Road also within the NPDES coverage area.

We submitted comments on the Amendments to staff and the Planning Commission, and we appreciate the work they did to improve draft language affecting regional stormwater facilities. We ask the Commission to build on that work by making the following additional improvements.

1. The Port requests removal of the “sunset date” for regional stormwater facilities.

In the initial draft Amendments, Staff proposed adding a “sunset date” that would require applicants seeking to use regional facilities to re-evaluate the facilities for compliance with stormwater standards in the most recent NPDES permit. After discussions with the Port, Staff and the Planning Commission agreed to revise language affecting regional stormwater facilities, but declined the Port’s request to remove the “sunset date” for regional facilities.

As explained in the Port’s comment letter to the Planning Commission, the proposed “sunset date” is not required by the NPDES permit. In the Supplemental Staff Report dated June 7, 2022, staff confirmed that “the intent of the proposed sunset language is in alignment with the delta process recommended in the 2019 Stormwater Management Manual for Western Washington,” rather than to comply with any requirement in the NPDES Permit. Our research indicates that no similar “sunset” requirement for regional facilities has been adopted in other Phase II jurisdictions, including Mount Vernon (see [Ordinance 3824 \(2020\)](#)), Kitsap County (see [Ordinance No. 599-2021](#)), and Whatcom County (see [Ord. 2020-045](#)). Because the “sunset date” is not required by the NPDES Permit, we ask the Commission to remove it from the Amendments.

If the County chooses to voluntarily impose a “sunset” requirement on regional facilities, that decision will undermine the County’s and the Port’s shared interests in developing effective regional stormwater solutions. As also explained in the Port’s previous comment letter, the Port relies heavily on the use of planned regional stormwater facilities to serve future developments on Port property. As a result, regional facilities are especially important in pursuing the Port of Skagit’s mission: Good Jobs for the Skagit Valley. Between 1998 and 1999, the Port invested approximately \$2M to construct regional stormwater facilities to serve Bayview Business Park and Skagit Regional Airport.

Designing, receiving approval and constructing regional stormwater facilities in advance, rather than parcel by parcel, helps the Port better position its real estate development assets as “shovel-ready” and thus achieve the Port’s near and long-term economic development objectives. The regional systems at the Port have allowed the Port to maximize infrastructure investment because construction of regional facilities is more cost effective than standalone systems, allowing developers to maximize use of buildable lots by providing stormwater storage capacity outside the lot boundary, and providing the Port and developers certainty in the permitting process as new projects are proposed.

For example, the facility located along Higgins Airport Way has capacity remaining to serve approximately 6.5 acres new impervious area. At least three Port tenants are planning expansion projects for construction in the next year. Combined, these projects are expected to bring up to 20 new jobs and over \$30M in private investment. These projects rely on the ability to utilize existing stormwater capacity.

Alternatively, if the Commission decides to voluntarily impose a “sunset” requirement on regional facilities, we ask the Commission to allow more time for existing regional facilities to comply. The Planning Commission approved language stating that “regional facilities constructed prior to June 30, 2022, are not subject to review prior to June 30, 2027,” and we appreciate the effort to accommodate regional facilities, but the 2027 date might not protect all of the Port’s existing facilities, which were built based on the understanding that they could be used for future development regardless of changes in NPDES permit standards. There is currently much uncertainty regarding the economy; an economic decline has the potential to slow private development proposals resulting in a longer timeline for build out of Port properties served by the existing regional facilities. Accordingly, we ask the Commission to extend the 2027 date to 2035, as follows: “regional facilities constructed prior to June 30, 2022, are not subject to review prior to June 30, 2035.”

2. The Port requests changes to the “General stormwater management standards” in SCC 14.32.120(1).

SCC 14.32.120(1) states that “[a]ll development must meet the following performance standards so that adjacent properties are not unreasonably burdened with surface waters resulting from such development” and lists specific standards in subsections (a) through (h).

The Port is concerned that some of the standards in SCC 14.32.120(1) are duplicative and could be used by project opponents to attempt a “second bite at the apple” for projects that meet all standards in the NPDES permit and the Department of Ecology’s stormwater manual, or even a “third bite at the apple” for projects that have also completed SEPA review. For example, SCC 14.32.120(1)(h) states that “[r]unoff from development may not cause a significant adverse impact to down-gradient properties.” If a project complies with all established requirements in the NPDES permit and the Ecology manual requirements, there should not be runoff that causes negative impacts to downstream properties.

June 24, 2022

We recommend the County remove this entire subsection 14.32.120(1) from the code language and adopt similar language in the findings that explain the intent behind the adopting ordinance. Alternatively, the County could add language to the code clarifying that these provisions are deemed to be met if a project complies with the adopted stormwater regulations and, if required, has been reviewed through SEPA with no significant adverse impacts identified.

Alternatively, if the Commission decides to retain subsection 14.32.120(1), the Port requests the following changes:

- Revise SCC 14.32.120(1) to state that “all development subject to review under this chapter must meet the following performance standards...” (added language underlined).
- Revise SCC 14.32.120(1)(d) to require consultation with the Drainage District rather than written authorization, and to clarify that the consultation requirement applies only to new proposed discharges into a Drainage District's system, not existing discharges.
- Remove SCC 14.32.120(1)(h) because it is duplicative and unnecessary in light of the standards in the NPDES permit and the Ecology manual, or at least revised to specify what it means to have a "significant adverse impact (e.g., to require some kind of quantifiable determination of negative impacts).

Thank you for your consideration of these requests and comments. The Port would welcome an opportunity to meet again with staff and assist with drafting language that will meet the Port's and County's shared goals of managing stormwater and protecting water quality while also supporting business development and economic opportunities for Skagit County.

Sincerely,



Heather A. Rogerson
Director of Planning and Development