



# Port of Skagit

RECEIVED

MAY 24 2022

SKAGIT COUNTY  
PDS

May 24, 2022

Skagit County Planning Commission  
1800 Continental Place  
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.

## 1. The Port requests removal of the "sunset date" for regional stormwater facilities.

We appreciate the County's efforts to manage stormwater and protect water quality, and we understand that some of the Amendments are required by the Phase II municipal general stormwater NPDES permit ("NPDES permit"). However, one of the proposed Amendments is not required by the NPDES Permit, and it will undermine the County's and the Port's shared interests in developing effective regional stormwater solutions.

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, allows developers to

maximize use of buildable lots by providing stormwater storage capacity outside the lot boundary, and provides the Port and developers certainty in the permitting process as new projects are proposed. For example, the regional 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.

The Amendments propose to add an automatic “sunset date” for regional stormwater facilities by adopting a new provision in Skagit County Code (SCC) 14.32.150(5) stating that:

*Regional Facilities shall have a sunset date of 20 years. The start date is the building permit application date for the regional facility. Regional facilities must be retrofitted to meet current stormwater requirements for new or replaced hard surfaces once the sunset date is met.*

This language is not required by the NPDES permit and, depending on how it is interpreted, suggests existing regional stormwater facilities will need to be updated comprehensively, regardless of what type or amount of new development might be proposed. Appendix 1 to the NPDES permit recognizes that local governments may use regional facilities as an alternative method of meeting the minimum requirements of the permit. There is no sunset provision in Appendix 1 or in any other component of the NPDES permit. Notably, it appears 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](#)).

A requirement to automatically retrofit regional facilities after 20 years is also contrary to the guidance on regional stormwater facilities in the 2019 Stormwater Management Manual for Western Washington (“SWMM”) adopted by the Department of Ecology (“Ecology”). In Appendix I-D to the SWMM, Ecology recognizes the many benefits of regional stormwater facilities, including reduced construction, operation; and maintenance costs; higher assurance of maintenance; maximum utilization of developable land; retrofit potential; and other benefits such as providing an educational, recreational, wildlife, and aesthetic amenity. Ecology also recognizes that the long-term nature of regional facilities requires more advance planning, but Ecology does not suggest an automatic “sunset” after a set period of time. Instead, the SWMM guidance states:

*If the regional facility is publicly owned, then the delta between the amount of Runoff Treatment and/or Flow Control provided by the existing facility designed to the outdated standards and the amount of Runoff Treatment and/or Flow Control that needs to be provided per the current (at time of development) standards needs to be made up. The project proponent can make up this difference by either retrofitting the existing regional facility, or by providing Runoff Treatment and/or Flow Control BMPs on the individual lot that is being developed.*

*If the regional facility is privately owned and specifies the ultimate construction of all of the areas it was designed to serve, it is all considered one project. That project is protected by the timing requirements of the jurisdiction.*

Thus, rather than recommending an automatic, one-size-fits all “sunset” after 20 years, Ecology non-mandatory guidance suggests a more nuanced and ongoing evaluation of whether regional facilities comply with current requirements. For regional facilities that are “publicly owned,” Ecology recommends evaluating any “delta” between the facility’s design and the current standards at the time of development. For “privately owned” facilities, Ecology states that those projects are “protected” by the local jurisdiction’s timing requirements.

Here, while the Port is a public entity, its mission is to drive private developments, and its regional stormwater facilities are more like privately owned facilities in this context. In recognition of the Port’s need for the same kind of long-term certainty that private developers need in planning regional stormwater facilities, we ask the County to remove the “sunset” provision altogether or clarify that it does not apply to the Port’s stormwater facilities.

For purposes of treatment of *publicly* owned facilities, the Port suggests the County revise the language in proposed SCC 14.32.150(5) to recognize that retrofits of entire stormwater facilities should never be automatically required, but instead retrofits should be required only to the extent necessary to compensate for the “delta” between facility design and current standards, and only as to the individual lot that is being developed, not the entire facility. The County should also follow Ecology’s practice of giving proponents the option of either retrofitting the regional facility or providing new facilities on the individual lot, rather than mandating a retrofit.

Finally, the Port asks the County to include language in proposed SCC 14.32.150(5) that provides at least the option of a Development Agreement pursuant to SCC Chapter 14.14 that authorizes project-specific provisions regarding a master drainage plan for the development, what stormwater design standards apply and for what duration, and under what circumstances, if any, during the duration of that development, future development might trigger a re-examination of stormwater design requirements and possible retro-fitting or upgrades. This would allow the County to tailor stormwater system update requirements on a project by project basis and based upon a project-specific stormwater evaluation.

## **2. The Port requests addition of a cross-reference to the Airport Environs Overlay.**

As part of the Airport Environs Overlay, the current version of SCC 14.16.210 (3)(c)(iii) provides that *“[s]tormwater management features, including stormwater detention or retention ponds, must be designed in accordance with the WSDOT Airport Stormwater Guidance Manual, except that mandatory provisions of Chapter 14.32 SCC control over conflicting provisions of the WSDOT manual.”*

To avoid potential confusion by staff and project proponents when evaluating stormwater requirements, we ask the Planning Commission to add a reference to SCC 14.16.210 (3)(c)(iii) in the proposed SCC 14.32.040, which adopts the 2019 SWMMM, several WSDOT standard specifications, and the WSDOT Highway Runoff Manual.

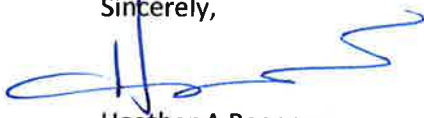
While the Commission is considering this change, the Port asks that you also consider revising the language in SCC 14.16.210 (3)(c)(iii) as follows, with underlining added to the proposed added language: *Stormwater management features, including stormwater detention or retention ponds and water quality features, must be designed in accordance with the WSDOT Airport Stormwater Guidance Manual.*

Mandatory provisions of Chapter 14.32 SCC control over conflicting provisions of the WSDOT manual, unless the WSDOT manual requirements are necessary to comply with federal airport operations safety requirements.

This revision recognizes that certain provisions in the WSDOT Airport Stormwater Guidance Manual, such as provisions requiring stormwater design to avoid hazardous wildlife attractants on or near public-use airports, are mandatory and would not be superseded by any provisions in Chapter 14.32 SCC.

Thank you for your consideration of these requests and comments. The Port would appreciate an opportunity to meet with staff to review the requests and assist with drafting language that will meet the Port 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