

## Planning and Development Services Legislative Work Program - 2010

The following items (with the exception of Alternative Futures, CPA 2010 docket, and the Shoreline Master Program Update) will likely come before the Planning Commission in 2010.

Project	Description	Status
1. <b>Bayview Ridge Urban Growth Area (UGA) Implementation.</b> <i>Project Manager – Gary Christensen</i>	Develop Planned Unit Development (PUD) regulations and Low Impact Development (LID) techniques. In Phase 2, the County will review PUD and LID examples, and options and choices for developing a walkable, livable, sustainable community under the subarea plan goals and policies.	PUD and LID literature review and research conducted and final report issued (2/26/10), workshops held (service provider 3/3/10) and (community 4/21/10). Draft ordinance to be available in July, 2010.
2. <b>Guemes Island Subarea Plan.</b> <i>Project Manager – Carly Ruacho</i>	Review, respond, and process the Guemes Island Planning Advisory Committee (GIPAC) drafted island subarea plan.	Internal County review of GIPAC subarea plan, subsequent meeting with GIPAC, Planning Commission to hold public hearing on draft subarea plan, County Commissioners to consider recommendations and take action before the end of 2010.
3. <b>Master Plan Resort/RV Park Standards.</b> <i>Project Manager – Carly Ruacho</i>	Develop master plan resort and recreational vehicle park standards and guidelines.	Develop standards and guidelines, Planning Commission to hold public hearing, County Commissioners to consider recommendations and take action before the end of 2010.
4. <b>Alternative Futures.</b> <i>Project Manager – Kirk Johnson</i>	Development and evaluation of alternative development scenarios for Skagit Valley 2060 and selection of “preferred alternative” that maintains ecosystem, conservation lands/natural resource industries, and sustainable communities. Second EPA grant received; project once again moving forward at full scale.	Completion of initial model (four scenarios and indicators), and evaluation of modeling results, scheduled for July-August. From fall 2010 through spring 2011, Citizens Committee will review, evaluate and recommend preferred alternative; then provided to GMA Steering Committee and other policy bodies.
5. <b>Shoreline Master Program (SMP) Update.</b> <i>Project Manager – Betsy Stevenson</i>	Shoreline Master Programs must be updated to be consistent with the Department of Ecology guidelines. Local master programs regulate new development and use of shorelines along rivers and larger streams, lakes over 20 acres, and marine waters within their jurisdictions.	Develop program update scope of work and timeline by July and obtain Department of Ecology (DOE) approval and grant funds.

**Planning and Development Services  
Legislative Work Program - 2010**

<b>Project</b>	<b>Description</b>	<b>Status</b>
6. <b>Skagit County Capital Facilities Plan (CFP) Update.</b> <i>Project Manager – Carly Ruacho</i>	Update 6-year CFP inventory and projects.	Administration, Budget/Finance, and Planning & Development Services staff meeting on 4/29/10 to discuss next steps. Update CFP for school impact fees by July. Planning Commission public hearing on revised school impact fees, County Commissioners to consider recommendations and take action. Prepare 6-year CFP for update concurrent with 2011 County budget adoption (December).
7. <b>Annual Skagit County Code (SCC Amendments).</b> <i>Project Manager – Carly Ruacho</i>	Annual amendments to implementing regulations (SCC) clarify their intent and assure consistency with the comprehensive plan.	Batched code amendments in Fall; unless, expedited amendment is necessary. Public review and comment, Planning Commission public hearing, then deliberations and recommendations. County Commissioners to consider recommendations and take action.
8. <b>Comprehensive Plan Amendment (CPA) 2010 Docket Amendments.</b> <i>Project Manager – Carly Ruacho</i>	Comprehensive Plan amendments include policies, land use designations, and modifications to urban growth boundaries.	Petitions to be submitted by the last business day of July. Thereafter, Department makes recommendations, County Commissioners establish docket.
9. <b>FEMA Flood Insurance Rate (FIRM) Map &amp; Regulation.</b> <i>Project Manager – Tim DeVries</i>	Federal Emergency Management Agency (FEMA) issuance of updated FIRM and associated regulations under SCC 14. 34, Flood Damage Prevention.	Updated and revised FIRM expected to be released in 2010. Thereafter, public review and comment, potential appeals, Planning Commission public hearing, County Commissioners to consider recommendations and take action.
10. <b>FEMA &amp; NMFS Biological Opinion (BiOp).</b> <i>Project Manager – Tim DeVries</i>	National Marine Fisheries Service (NMFS) BiOp regarding the National Flood Insurance Program and necessary actions to protect certain Puget Sound species of salmon and Orca.	Tier 1 jurisdictions (Skagit County and cities/towns) must adopt regulatory scheme by 9/9/10, pursuant to BiOp and FEMA guidelines. FEMA response to NMFS BiOP workshop 5/4/10.
11. <b>NPDES Phase II Permit.</b> <i>Project Manager – Carly Ruacho</i>	Skagit County is required by state law to obtain Phase II National Pollution Discharge Elimination System (NPDES) permit.	Interim Ordinance (O2009008) adopted August, 2009. Planning Commission held public hearing on permanent regulations on 3/3/10, deliberations on 5/4/2010; thereafter, County Commissioners to consider recommendations and take action.



# Storm Water Phase II Final Rule

## Urbanized Areas: Definition and Description

### Storm Water Phase II Final Rule Fact Sheet Series

#### Overview

1.0 – Storm Water Phase II Final Rule: An Overview

#### Small MS4 Program

2.0 – Small MS4 Storm Water Program Overview

2.1 – Who's Covered? Designation and Waivers of Regulated Small MS4s

2.2 – Urbanized Areas: Definition and Description

#### Minimum Control Measures

2.3 – Public Education and Outreach

2.4 – Public Participation/Involvement

2.5 – Illicit Discharge Detection and Elimination

2.6 – Construction Site Runoff Control

2.7 – Post-Construction Runoff Control

2.8 – Pollution Prevention/Good Housekeeping

2.9 – Permitting and Reporting: The Process and Requirements

2.10 – Federal and State-Operated MS4s: Program Implementation

#### Construction Program

3.0 – Construction Program Overview

3.1 – Construction Rainfall Erosivity Waiver

#### Industrial "No Exposure"

4.0 – Conditional No Exposure Exclusion for Industrial Activity

As discussed in Fact Sheet 2.1, *Who's Covered? Designation and Waivers of Regulated Small MS4s*, the Phase II Final Rule covers all small municipal separate storm sewer systems (MS4s) located within an "urbanized area" (UA). Based on the 2000 Census, there are 464 UAs in the United States that cover approximately 2 percent of total U.S. land area and contain nearly 70 percent of the Nation's population. These numbers include Puerto Rico and the Commonwealth of the Northern Mariana Islands — the two U.S. Territories with UAs.

UAs constitute the largest and most dense areas of settlement. UA calculations delineate boundaries around these dense areas of settlement and, in doing so, identify the areas of concentrated development. UA designations are used for several purposes in both the public and private sectors. For example, the Federal Government has used UAs to calculate allocations for transportation funding, and some planning agencies and development firms use UA boundaries to help ascertain current, and predict future, growth areas.

### What Is an Urbanized Area (UA)?

The Bureau of the Census determines UAs by applying a detailed set of published UA criteria (see 55 *FR* 42592, October 22, 1990) to the latest decennial census data. Although the full UA definition is complex, the Bureau of the Census' general definition of a UA, based on population and population density, is provided below.

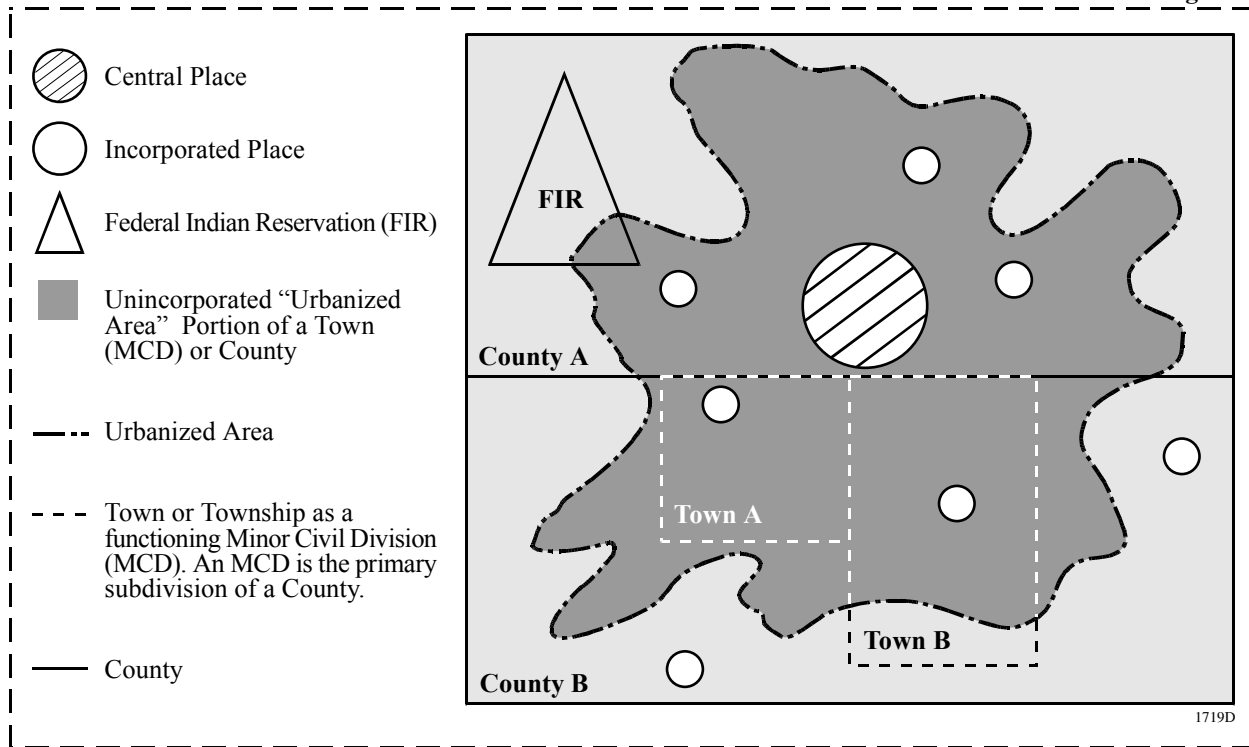
An **urbanized area** is a land area comprising one or more places — central place(s) — and the adjacent densely settled surrounding area — urban fringe — that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile.

The basic unit for delineating the UA boundary is the census block. Census blocks are based on visible physical boundaries, such as the city block, when possible, or on invisible political boundaries, when not. An urbanized area can comprise places, counties, Federal Indian Reservations, and minor civil divisions (MCDs - towns and townships).

### How Can Status as a Regulated Small MS4 Be Determined?

The drawing below (see Figure 1) is a simplified UA illustration that demonstrates the concept of UAs in relation to the Phase II Final Rule. The "urbanized area" includes within its boundaries incorporated places, a portion of a Federal Indian reservation, an entire MCD, a portion of another MCD, and portions of two counties. Any and all operators of small MS4s located within the boundaries of the UA are covered under the Phase II Final Rule, regardless of political boundaries. Operators of small MS4s located outside of the UA are subject to potential designation into the Phase II MS4 program by the NPDES permitting authority.

Figure 1



Operators of small MS4s can determine if they are located within a UA, and therefore covered by the Phase II storm water program, by contacting one or more of the institutions listed below for more detailed information on the location of the UA boundary. At this time, the States and EPA have compiled a list of municipalities to be covered under the Phase II Rule, but the urbanized area boundaries are important in some cases for determining the specific area within a municipality’s boundaries that is covered (e.g., a county included in Phase II might only be required to implement their program for the urbanized area of the county).

**The State or NPDES Permitting Authority (may be the State or the U.S. EPA Region)**

**Storm Water Coordinators:** The NPDES permitting authority may be the State or the U.S. EPA Region. The Storm Water Coordinators for each U.S. EPA Region are listed in the *For Additional Information* section in Fact Sheet 2.9. These regional contacts can assist with UA information and provide the names of State storm water contacts. Regional and State contact information can also be obtained from OWM.

**State Data Centers:** Each State’s Data Center receives listings of all entities that are located in UAs, as well as detailed maps and electronic files of UA boundaries. The Bureau of the Census web site includes a list of contact names and phone numbers for the data in each State at [www.census.gov/sdc/www](http://www.census.gov/sdc/www).

**State Planning/Economic/Transportation Agencies:** These agencies typically use UAs to assess current development and forecast future growth trends and, therefore, should have detailed UA information readily available to help determine the UA boundaries in any given area.

**County or Regional Planning Commissions/Boards**

As with State agencies, these entities are likely to have detailed UA data and maps to help determine UA boundaries.

**U.S. EPA**

**NPDES Web Site:** EPA has developed a set of digitized maps for each urbanized area as defined by the 2000 U.S. Census. These maps are organized by state and are available at <http://www.epa.gov/npdes/stormwater/urbanmaps>.

**Enviromapper Web Site:** EPA modified a Web-based geographic program called *Enviromapper*. This allows MS4 operators to enter a location and see a detailed map of the UA boundary (called “city boundaries”). *Enviromapper* can be accessed at <http://www.epa.gov/enviro/html/em/index.html>.

## ❑ The Bureau of the Census

*Urbanized Areas Staff:* 301-457-1099

**Web Site:** The site allows users to obtain free UA cartographic boundary files (Arc/Info export format) for Geographical Information System (GIS) use at <http://www.census.gov/geo/www/ua/uaucbndy.html>.

Also, detailed UA maps are available to download in PDF for printing in large format. Each map is intended to be printed on a 36- by 33-inch sheet. For a listing of UAs for download, visit <http://www.census.gov/geo/www/maps/ua2kmaps.htm>.

## How Will Subsequent Censuses Affect the Determination of Status as a Regulated Small MS4?

Any additional automatic designations of small MS4s based on subsequent census years is governed by the Bureau of the Census' definition of a UA in effect for that year and the UA boundaries determined as a result of the definition.

Once a small MS4 is designated into the Phase II storm water program based on the UA boundaries, it can not be waived from the program if in a subsequent UA calculation the small MS4 is no longer within the UA boundaries. An automatically designated small MS4 will remain regulated unless, or until, it meets the criteria for a waiver (see Fact Sheet 2.1 for more information on the regulated small MS4 waiver option).

### For Additional Information

#### Contacts

☞ U.S. EPA Office of Wastewater Management  
<http://www.epa.gov/npdes/stormwater>  
Phone: 202-564-9545

☞ Your NPDES Permitting Authority. Most States and Territories are authorized to administer the NPDES Program, except the following, for which EPA is the permitting authority:

Alaska	Guam
District of Columbia	Johnston Atoll
Idaho	Midway and Wake Islands
Massachusetts	Northern Mariana Islands
New Hampshire	Puerto Rico
New Mexico	Trust Territories
American Samoa	

☞ A list of names and telephone numbers for each EPA Region and State is located at <http://www.epa.gov/npdes/stormwater> (click on "Contacts").

#### Reference Documents

- ☞ EPA's Stormwater Web Site  
<http://www.epa.gov/npdes/stormwater>
- Stormwater Phase II Final Rule Fact Sheet Series
  - Stormwater Phase II Final Rule (64 FR 68722)
  - National Menu of Best Management Practices for Stormwater Phase II
  - Measurable Goals Guidance for Phase II Small MS4s
  - Stormwater Case Studies
  - EPA Urbanized Area Maps: <http://www.epa.gov/npdes/stormwater/urbanmaps>
- ☞ Census 2000 Urbanized Area Information
- General Information: <http://www.census.gov/geo/www/ua/uaucbndy.html>
  - Maps: <http://www.census.gov/geo/www/maps/ua2kmaps.htm>

## **Planning Commission Recorded Motion Regarding Updates to the County Drainage Code for Compliance with the County's NPDES Phase II Stormwater Permit**

WHEREAS the federal Clean Water Act requires urban areas that collect stormwater runoff in municipal separate storm sewers and discharge it to waters of the United States to have a National Pollution Discharge Elimination System (NPDES) permit;

WHEREAS the U.S. Environmental Protection Agency's NPDES permit program is divided into Phase I, which covers the largest cities and counties, and Phase II, which covers all small municipal separate storm sewer systems located within an "urbanized area";

WHEREAS the U.S. Bureau of the Census determines "Urbanized Areas" and generally defines them as a land area comprising one or more places that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile;

WHEREAS the State Department of Ecology is the agency that administers NPDES permits in Washington State;

WHEREAS Ecology has issued a Phase II permit for western Washington that covers the Census-defined "Mount Vernon Urbanized Area," that includes the cities of Mount Vernon, Burlington, Sedro-Woolley, and portions of Bayview Ridge, Big Lake, and several other surrounding unincorporated areas;

WHEREAS Skagit County is required to comply with the conditions of the NPDES Phase II Stormwater Permit for the areas under its jurisdiction within the Census-defined Mount Vernon Urbanized Area and any urban growth area (UGA) associated with a city inside the Urbanized Area and any adjoining UGA;

WHEREAS, on August 18, 2009, the Board of County Commissioners enacted interim ordinance O20090008 pursuant to RCW 36.70A.390 in order to amend Skagit County Code chapters 14.04, 14.32, and 14.44 to comply with the conditions of the NPDES Phase II permit by the August 16, 2009, deadline;

WHEREAS the interim ordinance is effective for one year, and will expire on August 18, 2010, without additional action to renew it or adopt a permanent ordinance;

WHEREAS, on October 20, 2009, the Board of County Commissioners held a public hearing to receive public testimony on the interim ordinance and accepted written comments until the close of business on October 20, 2009;

WHEREAS, on January 19, 2010, Public Works staff proposed permanent amendments to Skagit County Code and transmitted such amendments to the Washington State Department of Commerce in accordance with RCW 36.70A.106;

WHEREAS, on January 19, 2010, the Skagit County SEPA Administrative Official issued a State Environmental Policy Act ("SEPA") determination of non-significance for the proposed amendments and

circulated it to agencies with jurisdiction in accordance with WAC 197-11-340(2), and published it in the Skagit Valley Herald in accordance with SCC 14.12.160(2);

WHEREAS, on March 2, 2010, the Skagit County Planning Commission held a public hearing and received public testimony and comments through the end of the public hearing, and met to review the public comments, consider the Department's recommendation, and to deliberate on the proposed action;

[WHEREAS, on May 4, 2010, the Planning Commission met to review staff recommendations for changes to the proposal and deliberate further.]

**Now Therefore Be It Resolved:**

After duly considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendation to the Board of County Commissioners:

**Findings of Fact and Reasons for Action**

1. The protection of working natural resource lands, including agricultural and forest lands, is of paramount importance to Skagit County and its citizens.
2. The NPDES Phase II permit is intended to cover "urbanized areas." Lands zoned Ag-NRL that are actively farmed and low density clearly should not be considered "urbanized areas." These areas should be excluded from the new requirements.
3. Conflict exists between NRCS BMPs and the BMPs described in the proposed ordinance in relation to agricultural practices. Skagit County should seek to minimize conflicting regulations as applied to agricultural activities.
4. To improve clarity and readability and ease of implementation, we should include the definitions and acronyms listed in the NPDES Phase II Municipal Stormwater Permit in the main text of the ordinance.
5. The definition of BMP that June Kite proposed in her 3/2/2010 comment letter is simpler and easier to understand than the staff recommendation.

**Recommendation**

Based on the above findings, \_\_\_\_\_ moved and \_\_\_\_\_ seconded that the Skagit County Planning Commission recommends the Board of County Commissioners adopt the code amendments as proposed in Attachment A with the following modifications:

1. [The acronyms and definitions from the NPDES Phase II Municipal Stormwater Permit, including the definition of runoff, should be included in the main text of the ordinance, not just adopted by reference.]
2. [Planning & Development Services should distribute all of Appendix 1's acronyms and definitions with the relevant application forms.]

3. [Agricultural practices should be exempted.]
4. [Expand the proposed SCC 14.32.090(4)(b)(iv) to cover all agricultural activities that are compliant with the existing regulations found in the Ag-CAO , SCC 14.24.120. This would result in no new regulations for agricultural activities impacts on water quality and avoid the imposition of another set of BMPs. The new line would read: (iv) Discharges from agricultural activities that are compliant with SCC 14.24.120.]
5. [The definition for BMP should be removed and replaced with the BMP definition proposed by June Kite in her 3/2/2010 comment letter.]
6. [The definition for BMP should be removed.]
7. [Natural resource lands should be excluded from the NPDES permit boundaries.]
8. [The Planning Commission is concerned by the boundaries of the NPDES permit, in that many of the lands included within the census-defined urbanized areas are actively-farmed parcels within the natural resource lands designation. When natural resource lands are lumped in with urbanized areas for the convenience of mapping it implies that these lands are developable. Skagit County values its natural resource lands and does not want to give the impression that these areas should be considered developable land. The federal determination that these areas should be included as urbanized areas and subject to the NPDES permits is an administrative oversight that Skagit County should protest.]
9. [To be consistent with the requirements of the County's NPDES Phase II Stormwater Permit some very minor amendments to SCC 14.32.080 are necessary. The amendments would be consistent with SCC 14.08, in that they conform substantially to the proposal as originally initiated and made available for public comment, therefore, no further public comment is required. The proposed new language is underlined. The language to be deleted is struck through.]

Skagit County Code 14.32.080(3), Stormwater Quantity Control is proposed to be amended as follows:

(3) Stormwater Quantity Control.

(a) – (d)(i), and (ii) [No Change.]

~~(iii) The development site discharges to a receiving body of water (lake, wetland, etc.) where it can be demonstrated by the applicant to the satisfaction of the Administrative Official that Stormwater Quantity Control is not warranted.~~

Skagit County Code 14.32.080(9), Stormwater Conveyance Facilities, is proposed to be amended to add the following term:

(9) Stormwater Conveyance Facilities.

(a) [No Change.]



(b) Estimation of peak stormwater runoff rates used in the design of water conveyance facilities shall use either the Rational Method, Santa Barbara Urban Hydrograph Method, Western Washington Hydrology Model or another hydrograph method of analysis accepted by the Director of Public Works.]

10. [For clarification purposes of the Regulated activities section 14.32.040 we recommend the following change:

(1) The provisions of this Chapter shall apply whenever the following activities are proposed or performed:

~~(1)~~(a) New Development.

~~(a)~~(i) Land disturbing activities;

~~(b)~~(ii) Structural development, including construction, installation or expansion of a building or other structure;

~~(c)~~(iii) Creation of impervious surfaces;

~~(d)~~(iv) Class IV forest practices that are conversions from timber land to a development;

~~(e)~~(v) Subdivisions, short subdivisions and binding site plans, except the open space area associated with a CaRD application shall not be subject to the provisions of this Chapter until the time of development.

~~(2)~~(b) Redevelopment. On an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, land disturbing activity, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

(2) Reserved.

(3) No change.]

<b>Commission Vote</b>	Support	Oppose	Absent	Abstain
Jason Easton, Chair				
Mary J. McGoffin, Vice Chair				
Carol Ehlers				
Dave Hughes				
Jerry Jewett				
Kristen Ohlson-Kiehn				
Annie Lohman				
Matt Mahaffie				
Elinor Nakis				

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**SKAGIT COUNTY PLANNING COMMISSION  
SKAGIT COUNTY, WASHINGTON**

\_\_\_\_\_  
Jason Easton, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary R. Christensen, Secretary

\_\_\_\_\_  
Date



# SKAGIT COUNTY PUBLIC WORKS DEPARTMENT

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(360) 336-9400 FAX (360) 336-9478

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## MEMORANDUM

**To:** Skagit County Planning Commission and Interested Public  
**From:** Michael See, Stormwater Coordinator  
Lori Wight, Stormwater Specialist  
**Date:** April 26, 2010  
**Re:** Proposed Ordinance Changes to Skagit County Code 14.04, 14.32, 14.44

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Skagit County Public Works has released for public review and comment proposed code changes to Skagit County Code 14.04, 14.32, and 14.44 that are intended to allow Skagit County to maintain compliance with our National Pollutant Discharge Elimination System (NPDES) Phase II stormwater permit issued by Washington Department of Ecology. This staff report summarizes the proposed code changes.

Most of the elements of the proposed changes are in direct response to the specific requirements of Skagit County's NPDES Phase II Permit. In writing the proposed code amendments, staff and consultants emphasized meeting the minimum requirements of the permit to have the least impact on our vast array of local stakeholders.

The Skagit County Planning Commission is expected to continue deliberations on the proposed code changes on Tuesday, May 4, 2010.

### **I. BACKGROUND**

Skagit County holds a National Pollutant Discharge Elimination System (NPDES) Phase II permit from the Washington Department of Ecology (DOE) for the management of municipal surface water runoff and enhancement/protection of regional water quality. This permit is a requirement under the Federal Clean Water Act that DOE administers.

The Phase II permit mandates that Skagit County meet a number of requirements. The proposed code changes to 14.04, 14.32, and 14.44 address the requirements of sections S5.C.3.b.ii and S5.C.4.a of the permit that require Skagit County to develop and implement ordinances that prohibit illicit connections and discharges and address stormwater runoff from new development, redevelopment, and construction site projects. The deadlines to adopt the illicit discharge ordinance were August 16 2009, and February 16, 2010, for the runoff control ordinance.

In order to meet the NPDES Permit deadlines for ordinance adoption and to address the need for timely action to protect water quality in Skagit County, Public Works and Planning and Development Services staff developed an interim ordinance that addressed the need for water quality protection and continued to keep Skagit County compliant with our NPDES Phase II Permit. The interim ordinance O20090008 was adopted by the Skagit County Board of Commissioners on August 18, 2010. The interim ordinance included a work plan that illustrated staff intentions to engage in a public process through the Planning Commission and enact development regulations to permanently replace Skagit County Code Chapters 14.04, 14.32, 14.44 within one year of adoption. A public hearing on the interim ordinance was held on October 20, 2009, at 8:00 am before the Skagit County Board of Commissioners.

## **II. LAW**

The National Pollutant Discharge Elimination System stems from the 1972 federal Clean Water Act (CWA) administered by the federal Environmental Protection Agency (EPA). The Clean Water Act authorized EPA to require pollution controls for pollution generating activities and set water quality standards. In Washington State, the authority and responsibility to develop a NPDES permit system has been delegated to the Washington State Department of Ecology.

Originally the NPDES permit program focused on large known sources of pollution that included industry, sewer treatment plants, etc. In 1983 the Watershed Protection Act amended the CWA to include stormwater as a known source of pollution. As a result Ecology was directed to develop a municipal NPDES permit for stormwater. The first Phase I NPDES permits for stormwater were issued to large cities and counties in 1995. In 2007 Phase II permits were issued to medium sized cities and counties which included Skagit County.

Phase I Counties NPDES Permit boundary included the entire county. In the case of Phase II Counties, the Permit coverage included as a required minimum the identified Urban Growth Areas as well as the Census-Defined Urbanized Areas. Urbanized Areas are population centers with greater than 50,000 people and densities of at least 1,000 people per square mile, with surrounding areas having densities of at least 500 people per square mile. The Urbanized Areas in this permit are based on the 2000 census. For more information, see the attached EPA fact sheet.

Skagit County's Phase II NPDES permit is a 5-year permit that has numerous requirements that phase in over the permit period. The permit requirements range from public education and outreach, Public Involvement and Participation, Illicit Discharge and Elimination, Runoff Control from Development and Redevelopment, Pollution Prevention for Municipal Operations, and Stormwater Quality Monitoring. As a result, the permit has a vast number of requirements that impact numerous county departments and operations. The proposed code changes to 14.04, 14.32, and 14.44 address the requirement S5.C.3.b.ii and S5.C.4.a of the permit that requires Skagit County

to develop and implement ordinances that prohibit illicit connections and discharges and address stormwater runoff from new development, redevelopment, and construction site projects.

If Skagit County does not comply or fails to meet deadlines associated with the Permit, the Western Washington NPDES Phase II Municipal Stormwater Permit references sections of the Clean Water Act regarding noncompliance penalties: 40 CFR 122.41(a)(2) and (3), as well as other sections of the CWA for specific situations. These sections generally provide for civil penalties of up to \$25,000 per day, or in the case of negligent violations, criminal penalties of up to \$25,000 per day plus jail terms of up to 1 year for the first violation. Knowingly violating the CWA can result in penalties of up to \$50,000 per day and prison terms of up to 3 years for the first violation. The person subject to these penalties would be the signatory on the permit and annual reports, which in our case is County Administrator Tim Holloran. In addition, non-compliance with our NPDES Phase II permit is likely to result in third-party litigation for violation of the Clean Water Act.

### III. PROCESS

Skagit County Public Works retained the consulting assistance firm Otak in early 2009 to assist in evaluating our current drainage code (SCC 14.32) to determine what gaps existed and what changes would be needed to comply with our NPDES Phase II permit requirements for ordinance adoption that addresses Illicit Discharge Detection and Elimination as well as Runoff Control from Development and Redevelopment. Otak's expertise in the requirements of the Phase II permit and experience with other jurisdictions was critical in developing Interim Ordinance #O20090008 that was adopted by the BoCC on August 18, 2009.

The interim ordinance contained a work plan that staff have been closely following since the adoption. The work plan contained the following timeline.

<b>Timeline:</b>	<b>Date</b>	<b>Action</b>
	August 18 – Dec 18	Convene additional stakeholder group meetings Review surrounding jurisdiction regulations Develop and fine tune regulations
	Jan 4 (Monday)	Release draft proposal for internal review
	Jan 4-8	Internal review of proposal
	Jan 12 (Tuesday)	Finalize proposal Issue SEPA Threshold Determination Send Notice of Availability for publishing Forward to CTED
	Jan 14 (Thursday)	Notice/SEPA to be published in newspaper Proposal available for public review

Feb 4 (Thursday)	End of comment period (including SEPA)
March 2 (Tuesday)	Planning Commission public hearing and possible deliberations
April 6 (Tuesday)	Continued PC deliberations (if necessary)

***If no substantive PC changes:***

April (mid-late)	Draft PC recorded motion Draft adopting ordinance
May	Meet with BCC for final action

***If substantive PC changes:***

April (mid-late)	Amend proposal, re-notice, new comment period
May (early-mid)	Additional public hearing on revised proposal
May (late)	Draft PC recorded motion Draft adopting ordinance
June	Meet with BCC for final action

**Recommendations:** Adopt regulations prior to expiration of 1 year Interim Ordinance.

Starting before the adoption of the Interim Ordinance staff has been actively working with a group of interested stakeholders. Skagit County Public Works has conducted three Stakeholder Meetings to date. The Stakeholder group is composed of land owners within the Municipal NPDES Phase II areas, the Port of Skagit, Skagit Island County Builders Association (SICBA), and representatives from Drainage Districts 12, 14 & 19.

**IV. PROPOSED ORDINANCE**

The proposed ordinance changes would result in the following changes or impacts:

The water quality section of the proposed ordinance changes, section 14.32.090, expands on a previously existing section of Skagit County Code (S.C.C), 14.32.090 (2), that stated “Illicit discharges to stormwater drainage systems are prohibited.” This original section of code applied throughout the entire county. Therefore the proposed changes to this section of code build upon this countywide section to provide more detail to what is considered an illicit discharge as well as illustrating the specific exemptions allowed. Furthermore, the proposed changes to section 14.44 would strengthen and clarify the enforcement actions that could be take by referencing sections 14.44.050 and 14.44.065 of existing Skagit County Code.

The proposed code changes also address the issue of the operation and maintenance of private stormwater facilities by the land owner. As required in the Phase II Permit, owners and operators of stormwater facilities (detention ponds, etc.) will be required to operate and maintain these facilities to assure adequate performance. In many cases this maintenance responsibility will fall to residential homeowner associations.

Furthermore, the proposed code changes will specifically mandate the use of the Department of Ecology 2005 Stormwater Management Manual in the drainage development design of development and re-development projects as illustrated in Appendix I of the NPDES Phase II Municipal Stormwater Permit. This section of the proposed code changes only applies to the NPDES coverage area. In the past, development projects may not have been required to use the 2005 Stormwater Management Manual and may have used the 1992 Stormwater Manual to design projects. When comparing the 1992 & 2005 manuals, the 2005 Stormwater Management Manual puts more emphasis on water quality and generally results in larger more complex stormwater facilities.

#### **IV. PLANNING COMMISSION DISCUSSION**

In the Planning Commission's deliberation of March 2, 2010, members of the Commission raised the following concerns:

1. The acronyms and definitions from the NPDES Phase II Municipal Stormwater Permit, including the definition of runoff, should be included in the main text of the ordinance, not just adopted by reference.
2. Agricultural practices should be exempted.
3. The definition for BMP should be stricken and replaced with the BMP definition proposed by June Kite in her 3/2/2010 comment letter.
4. Natural resource lands should be excluded from the NPDES permit boundaries.

The Planning Commission tabled its motion regarding these items, leaving staff with no clear direction. Staff therefore have reviewed the concerns raised by the Planning Commission, and suggest the following changes to address Planning Commission members' concerns. Staff has included options in the draft Recorded Motion that address the concerns raised by the PC members while achieving compliance with the mandates of the NPDES permit.

Staff recommends the following changes to address each concern:

1. Legal counsel strongly recommends against incorporating definitions and acronyms directly within the text of the ordinance, and will supply a separate memo on that topic. In accordance with that advice, staff recommends instead that PDS provide Appendix 1 that

includes all the acronyms and definitions and could be distributed with the relevant application forms.

2. Staff understands the concern about agricultural practices needing to comply with multiple sets of Best Management Practices. Staff recommends that we expand the proposed SCC 14.32.090(4)(b)(iv) to cover all agricultural activities that are compliant with the existing regulations found in the Ag-CAO , SCC 14.24.120. This would result in no new regulations for agricultural activities impacts on water quality and avoid the imposition of another set of BMPs. The new line would read: (iv) Discharges from agricultural activities that are compliant with SCC 14.24.120.
3. After further review, staff recommends that the Planning Commission simply strike the definition of Best Management Practice. Each time the term is used in the proposed ordinance, the text specifically refers to the “best management practices described in the Stormwater Design Manual” or the “LID BMPs identified in 13 Chapter 7 of the Low Impact Development Technical Guidance Manual for Puget Sound.” Because each such reference is to a different document, we should rely on the definitions in those external documents, which are adopted by reference.
4. Staff has included a complete discussion of how the NPDES boundaries were determined on a national level in the recorded motion recitals, and describe how they inexactly apply to Skagit County. Staff do not recommend excluding any lands from the NPDES boundaries, as the NPDES boundaries are a non-negotiable requirement of the County’s NPDES permit. Instead, staff believes that the agricultural exemptions described above limit the impacts on agricultural activities. Staff recommends that the Planning Commission include a finding of fact in its recorded motion expressing its concerns about the boundaries, but not include any recommendation that result in a boundary change.

## V. HOUSEKEEPING

The need for one more minor edit came to our attention since the Planning Commission hearing on March 2, 2010. The minor change would be to section 14.32.040, Regulated activities. The edit would make clear that regulated activities occur for both New Development and Redevelopment. This section is confusing in that the first unnumbered sentence introduces a list, but then only the first two numbered paragraphs are actually items in that list. Therefore, for clarity we recommend the following change to the outlining, as follows:

*(1) The provisions of this Chapter shall apply whenever the following activities are proposed or performed:*

*~~(1)~~ (a) New Development.*

*~~(a)~~ (i) Land disturbing activities;*



~~(b)~~ (ii) *Structural development, including construction, installation or expansion of a building or other structure;*

~~(c)~~ (iii) *Creation of impervious surfaces;*

~~(d)~~ (iv) *Class IV forest practices that are conversions from timber land to a development;*

~~(e)~~ (v) *Subdivisions, short subdivisions and binding site plans, except the open space area associated with a CaRD application shall not be subject to the provisions of this Chapter until the time of development.*

~~(2)~~ (b) *Redevelopment. On an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, land disturbing activity, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.*

*(2) Reserved*

*(3) No site development activity....*

This minor edit along with the erroneous omission outlined in the January 23, 2010, memorandum are the only staff-initiated changes.

Additionally, at the request of the Planning Commission chair, we are prepared to edit the recorded motion on the computer at the continued deliberations on May 4, 2010. We have included the draft of the Recorded Motion for you at this time so that you will have an opportunity to review it prior to the meeting. The bracketed items are provided as pre-written options for the Planning Commission to choose from. However, as we will be performing a live edit there is certainly opportunity for changes to these pre-written options.