



STORMWATER ORDINANCE UPDATE
STAKEHOLDER WORK GROUP
MEETING #2 - APRIL 15, 2009

Water Resources Education Center
4600 SE Columbia Way
Vancouver, Washington
4:30-6:30 p.m.

The meeting was called to order at 4:30 p.m.

Members Attending

Bill Custis, Eric Golemo, Tim Kraft, Steve Madsen, Chad McMurry, Stephen Murphy, Greg Winters, Annette Griffy, Brian Carlson and Al Schauer, facilitator

Staff

Kris Olinger, Mark Hazuka, Rhonda Morgan, Loretta Callahan

Public

Sean Darcy, Darin Crow

Mr. Schauer began the meeting asking if anyone had any changes or corrections to last week's meeting notes.

Mr. McMurry referred to page 3 of notes and said that he intended broader comments. There were no other changes requested by Work Group members.

Mr. Schauer accepted the meeting notes and asked if everyone had reviewed the agenda.

Mr. Schauer reminded the Work Group that the previous meeting had ended with the discussion on Applicability, and he suggested this meeting start with either voting or discussing Applicability.

Mr. Murphy had a question in the purpose section regarding what is meant by "City lands."

Mr. Carlson replied the reference was to all lands within the city's boundaries, not just city owned.

Mr. Schauer asked if there were any comments and reminded everyone that the last three meetings will be saved to review changes.

Mr. Golemo asked how requests for changes are being dealt with and how the Work Group would know what had been changed.

Mr. Schauer reiterated that the last three meeting will be saved for changes and reminded everyone to track their changes and comments.

Ms. Griffy said she has been making notes of changes but informed the Work Group that the Erosion section has not really been touched. She also brought to the Work Group's attention that there are three sections in all three proposed ordinance changes that are important to understand: Applicability, Adoption of Manuals, and Exceptions and Adjustments. She said these are critical agenda items to understand.

Ms. Griffy asked if exceptions were part of the Clark County's Phase 1 process with discussions by the County's Technical Advisory Committee. In a Work Group discussion that followed, it was agreed that Exceptions were added to the County's ordinances after Ecology's first review of it. Ms. Griffy asked what the Work Group members' experience has been with Exceptions from the NPDES permits.

Mr. Carlson spoke about the process and said that each section would be covered, but given the time restraints, not word for word. He asked that the Work Group focus on the key issues and concerns. He said staff will consider suggestions, modify where appropriate and then bring the changes back to the last three meetings to be looked at as a whole. He described it as an iterative process.

Mr. Schauer told the Work Group that if the ordinance revisions are complete prior to the last three meetings, then they can be brought forward earlier to the Work Group.

Mr. McMurry asked about requested changes by the Work Group, where those go and when there might be a response from staff. He felt that procedures outlined last week were not reflected.

Ms. Griffy said that requests for changes have been noted and that they are being considered for integration into each ordinance. She said it is important to understand the structure of the ordinances and how they are applied to see how the changes requested to one ordinance might impact another.

Mr. Madsen said that he believed there are two different ways to approach the effort, item by item or all at one time. But he said if the City was unable to provide feedback on requested changes until all draft ordinances had been discussed, the Work Group is not going to reach consensus until at the end. Mr. Madsen also expressed concern that the Stakeholder Work Group could show up at a public hearing and hear that Group members are all in consensus without having fully discussed the final product. He said he wanted all understood that there is unlikely to be agreement from everyone on everything.

Mr. Carlson agreed with Mr. Madsen and said he believed that at the end of the process all might not agree 100 percent, but there would be large agreement on the vast majority, and that all would clearly understand the differences that might exist.

Ms. Griffy said staff was reviewing changes that were discussed at last week's meeting and would be getting responses and changes to the Stakeholders by e-mail. She said that the City also needs to look at how the sections relate to the Permit and the legal ramifications.

Mr. Schauer asked if this will be done for every meeting.

Mr. Schauer clarified that he believes Council would like the Work Group to identify the real issues and where there are differences, so there is some clarity.

Mr. Madsen gave an update on an amendment suggested by the Building Industry Association to a bill moving through state Legislature that was supported by legislators with different points of view, including Senator Pridemore and others, to provide an exemption from pre-European forested conditions. However, he said, it was ruled outside the scope of the bill it was amending.

14.24.030 Applicability

Mr. McMurry said one pervading issue with the Applicability section is that it doesn't tell him, as someone who would be working on development projects, whether this code applies to my project and it doesn't say where to go to find out.

Mr. Carlson asked Mr. McMurry if he could suggest a specific phrase that would make it clear.

Mr. Schauer agreed that providing these suggestions to staff in writing would be helpful. He asked all to e-mail written comments and suggestions to surfacewater@ci.vancouver.wa.us to make sure they get covered.

Ms. Griffy discussed and clarified Applicability, describing the difference between Phase I and Phase II, including the 1-acre threshold. She said at the previous meeting there was a misunderstanding that all projects have to do a SWPPP (Stormwater Pollution Prevention Plan). In reviewing this, she said, under Figure 3.1 of the Phase II permit, in Appendix 1 page 8, only those projects over the 1-acre threshold meet the applicability of the Phase II permit. She added that there is an "OR" within the Figure that says for Phase II, the NPDES Permittee (the City) can apply either the Manual or its equivalent, or existing and current requirements. She said City staff would like to that in writing from Ecology and some clarity regarding the tables.

Mr. McMurry asked if there could be in the meantime a modification to existing ordinances for something in between.

Ms. Griffy said the permit requires the City to meet current regulations and while the City may be allowed to bringing clarity to what that means, it cannot have less than the current requirements or it will be considered backsliding under the permit. She state that this understanding was confirmed by Ecology in a voicemail message.

Mr. McMurry likes the chart in the County Manual.

Ms. Griffy said that we will include something similar in the General Requirements, with Appendix 1 maybe a pointer in the code.

Mr. Golemo added it is important for the non-engineers in the Work Group to understand what the Minimum Requirements are.

Mr. McMurry said he has used little piece of paper to help him remember which Minimum Requirements are which.

Ms. Griffy stated that the City can have no backsliding under the Permit.

Mr. Kraft asked if it is up to the City to determine this Applicability.

Ms. Griffy said yes, the City of Vancouver is the Permittee and there is latitude within the permit. The Erosion Prevention ordinance is fairly straight forward and Applicability can be clarified in the General Requirements.

Mr. Kraft asked if the issue was backsliding.

Ms. Griffy said yes.

Mr. McMurry asked if City staff would be making changes to the boxes in Figure 3.1.

Ms. Griffy said changes as needed but the City will need to keep it very defined and simple.

Mr. Kraft stated that if items are not clarified this will create a lot of questions.

Mr. Schauer commented that the first few sections of the binder are moving slowly but it is important as it affects the other ordinances. He said the Work Group should be able to move through the Erosion portion during this meeting and the goal is to keep moving to accomplish that. He asked if there were any additional issues.

Mr. Carlson said that, based on the discussion, it sounded as if things are on the right path forward.

Mr. McMurry said hierarchy questions get even more significant in 14.25. There's an issue with shall, may, should and what controls and what can be brought in later. How does the development applicant or engineer know whether the Manual or the Permit applies?

Ms. Griffy said she was not sure if she understood Mr. McMurry and asked that e-mails be sent on working issues. However, she added that the more strict requirement applies.

Mr. McMurry said that concerns him the most, report requirements, for example. He said he did not believe the strictest limit or most restrictive standards is the best to address three documents because it is going to be impacted by local conditions.

For clarification, Mr. Carlson asked Mr. McMurry if his concern was this: If one thing says you shall do this, the most stringent requirement is going to apply, but if another thing says may and you opt not to do that, it may still be that the most stringent ends up applying. Mr. McMurry agreed it was an accurate interpretation of his concern.

Mr. Schauer asked if the Work Group was ready to move on to Adoption of Manuals.

14.24.035 Adoption of Manuals

Mr. Kraft asked should it really be called the Stormwater Manual in the Erosion ordinance or should it be called something different in the Erosion ordinance.

Ms. Griffy stated that the 2005 Stormwater Manual is better defined in the Definitions section.

Mr. Golemo said he thinks it good to be consistent. He asked if the City has considered adopting the Clark County Manual. He said this would save the City a lot of time.

Ms. Griffy said the City had considered adopting the County Manual at first, but there are currently legal reasons why the City cannot, which was explained in the Council Workshops, and there are a number of differences between Phase I and Phase II NPDES permit requirements. She explained that the County as a Phase I has more stringent requirements compared to Phase II, for example, the 1-acre threshold discussed earlier. If the City were to adopt the County Manual, it would still need to have a method/manual for taking out of the County Manual those items that don't currently meet Ecology requirements. The City would also need a method/manual for providing the less than 1-acre criteria as allowed under the Phase II Permit.

Ms. Griffy said if the City adopts the State manual, then there's a direct link to the source of the requirements. Then by adopting the City's General Requirements, modifications can be made

administratively for local conditions as allowed under the permit. She said a lot of good work was done by the County on Low Impact Development (LID), Best Management Practices (BMPs), and the City would like to take advantage of some of that work. Ms. Griffy said the City can take what applies from the County manual like the model calibration, LID, and the infiltration white paper and incorporate it into the City's General Requirements. However, she said if the City did adopt the County manual, it would have a derivative of a derivative, and if more changes were made by the County, the City would have to go back and make changes. She said the City would also like to have administrative ability to amend, which would be much easier, for things local to Vancouver, not necessarily to Clark County.

Ms. Griffy said the state recognized years ago the Western and Eastern Washington needed to be separate manuals, because the regions of the state couldn't be more different. When looking at the 2001 state manual it became clear that Southwest Washington couldn't be more different within itself. In terms of geographic conditions, she described Vancouver as a gravel pit, Camas as a rock and Longview as a sump, adding that it is hard to incorporate all different things manual. She said the City does not want to necessarily regulate more than required, but can't backslide and does want to take advantage of the work done with the County process.

Mr. Madsen asked what the differences are between Phase I and Phase II.

Ms. Griffy responded that Ecology may have an analysis that shows the differences.

Mr. Kraft said he did not believe the City should adopt the Clark County manual. He said the County Manual doesn't fit Vancouver, adding that there are sections of the County Manual such as Financial Guarantees, and Covenants, etc., which don't apply to the City.

Ms. Griffy said that it would, no doubt, be easier for developers to have one regional manual and a consistent format will help.

Mr. Carlson stated the goal was to be consistent where it was possible.

Mr. Golemo agreed with Mr. Kraft and thought good points were brought out.

Ms. Griffy then handed out to the Work Group the Surface Water sections of the existing General Requirements and Standard Details and a list of proposed items being included in the City's General Requirements and Standard Details to address ordinance revisions and permit compliance.

Ms. Griffy went over the handout on the proposed General Requirement list and let the Work Group know that the current Standard Details are available online, but the narrative design portion is not. She said this was for the Work Group review and later discussion.

Mr. Murphy asked if revisions are currently included in the General Requirements handout.

Ms. Griffy said no.

Mr. Schauer General Requirements are not up for discussion at this time and the Work Group should move to the next item on the agenda.

Mr. Murphy asked if City could move the Definitions section prior to the Adoption of Manual section. He said it is difficult to understand what is being read when you don't have easy access to definitions, adding that the definitions are needed to explain many of the questions the Work Group members have had.

Ms. Griffy stated that the location of the Definitions section is based on the City's existing legal framework for ordinances.

Mr. Murphy asked staff to clarify "the office of the Director."

Ms. Griffy advised that meant the Public Works director.

Mr. McMurry stated that his earlier comment regarding hierarchy applies to Section D Adoption of the Manual in 14.24.035.

Mr. Winters arrived to the meeting due to having an earlier meeting conflict.

Mr. Schauer asked if there was anything else in 14.24.035 to discuss and if not, the Work Group would move forward.

14.24.036 Cross References

Ms. Griffy explained the "why" of the Cross References section, which allows for inclusion of the Manual in other areas where it's referenced so it doesn't have to be sought out and changed in every other City ordinance where it's applicable, such as transportation codes.

14.24.040 Definitions

Mr. Schauer moved the group on to the Definitions Section.

Mr. McMurry asked about the definition for Minimum Requirements and whether there was a need to them here.

Ms. Griffy replied that it is required to be there for the Exceptions section.

Mr. Golemo asked about NPDES Permit and wanted to know which one it applied to. If there's a reference to the Permit, does the City need to define Permit?

Mr. Kraft asked where the definitions came from.

Staff member Ms. Olinger clarified the definitions are terms used in the ordinance and are the same as those in the Stormwater Manual.

Mr. Madsen left at 5:30 p.m. for another meeting commitment. He said he did not have additional comments or concerns.

Mr. McMurry suggested that the Stormwater Manual definitions or wording be used in the General Requirements need to include the General Requirements, etc. and asked about possible amendments to the state manual. He asked for an update when changes occur. He also asked how possible amendments to the state Manual will affect changes in the ordinance.

Ms. Griffy said the City's ordinances are intended to take advantage of legislative changes, but she added she will to verify with the City's Legal staff.

Mr. Murphy asked if spelling errors in the ordinances are also going to be corrected.

Mr. Schauer asked if there were any additional questions regarding Definitions.

Break 5:35 p.m.

14.24.050 Persons responsible for compliance

Mr. McMurry commented that meeting the requirements of the permit was not the requirement of individuals with the development, but is rather the responsibility of the City. He asked if the City was transferring responsibility to property owners for compliance of the permit.

Ms. Griffy said that is not the intention of the language and, she would need to ask City Legal staff to address it.

Mr. Golemo asked if this was a legal question or meeting a requirement.

Ms. Griffy says it was written by the City's Legal staff.

Mr. Golemo said the phrase "persons responsible" was just interesting language.

Hearing no further discussion, Mr. Schauer continued through the agenda and moved to the Specific Compliance Requirements section.

14.24.060 Specific Compliance Requirements

B-Delineation of Clearing and Easement Limits

Mr. McMurry asked what the purpose was of requiring that easements be marked on the ground if it doesn't involve areas required to be cleared..

Mr. Schauer asked how one can mark a drainage course, and said it should be delineated on a map.

Mr. McMurry referred to language in the Tree Protection Ordinance that is intended to identify the approximate root zone, but it is not required to be marked on the ground. He said contractors can put a fence around it, but don't also have to mark it on the ground. He said the City should consider using language similar to that used in the Tree Protection Ordinance for root zones.

Mr. Schauer said there's a need to mark it so contractors know where the fencing should go.

Mr. McMurry said contractors can figure it out.

Mr. Murphy disagreed and said he has had experience dealing with that problem many times on projects in his neighborhood and has found it frustrating.

Mr. McMurry had concerns about when surveying needs to be done. He said this section was a little bit redundant and asked why not use Manual requirements.

Staff member Ms. Olinger said this section provides direction for those times when a project falls under the 1-acre threshold for Applicability.

Ms. Griffy said the items called out in the Specific Requirements are repeated ones that tend to be repeated problems in the field. By calling these out in the code, it better allows inspectors to enforce and the Hearing Examiners to reference when there are violations.

Mr. McMurry asked why, if he is building in the middle of a parking lot, does he have to mark an easement that isn't even close to his project.

C-Construction Access Route

Mr. McMurry why it says the construction vehicle access shall be limited to one route but then it says the director can approve an additional route. He asked that this section should be reworded.

Ms. Griffy said yes, it's correct that the Director can change that limit and she will look into rewording that item.

D-Sediment Removal from Paved Surfaces and Roadways

Mr. Murphy asked what the difference was between a hard surface and paved surface as mentioned in this section.

Mr. Schauer replied that paved surfaces are hard surfaces but not all hard surfaces are paved.

Mr. McMurry asked where pavers fall into this area.

Ms. Griffy said pavers will need protection because it's a water quality facility and infiltrates.

F -Protection of Water Bodies and G- Sediment Traps or Ponds

Mr. McMurry stated the language is not clear about sediment protection from leaving the site. He said it doesn't allow anyone to use something different that fits the site.

Ms. Griffy asked Mr. McMurry if he could clarify or have any suggestions.

Mr. McMurry said the City should strike G in its entirety because projects would be dealing with the Manual on these items.

Mr. Schauer suggested the issue might be best covered by submitting changes through an e-mail to staff at the surfacewater@ci.vancouver.wa.us address.

D-Sediment Removal from Paved Surfaces and Roadways

Mr. Murphy asked about the controlled sediment disposal area and who does this.

Mr. McMurry said that was done by Certified Erosion and Sediment Control Lead (CESCL).

E-Stabilization of Denuded Areas

Mr. Murphy said he was curious as to why it specifies October to April.

Mr. McMurry replied that the dates are wet and dry weather periods and are set by the Department of Ecology.

I-Stormwater Facility Protection

Mr. Golemo said this section should be reworded to include temporary ponds. Some facilities do both erosion control at the start of a project and are later made permanent as stormwater facilities.

Ms. Griffy stated that she doesn't think there will be a problem with rewording this section.

J-Maintenance and K-Maintenance Log

Mr. Murphy asked who is responsible for the inspections..

Ms. Griffy said it is the responsibility of the contractor to inspect and maintain a daily log and City can enforce for lack of maintenance.

M-Contractor Certification

Mr. McMurry inquired about the maintenance log and the training program and asked why the only approved program isn't called out.

Mr. Schauer under that scenario, if Ecology were to approve another course, the City would need to amend the ordinance.

L-Removal of Temporary BMPs

Mr. Golemo was concerned that many times BMPs are put in place and left until all homes have been constructed. He said it would be good to keep those in place while the homes are being built.

Ms. Griffy added that the Stormwater Pollution Prevention Plans (SWPPP) need to transfer to the builders.

Mr. McMurry said that the Stormwater Pollution Prevention Plan (SWPPP) doesn't expire until all the homes are built.

The Work Group noted the reference to the professional who is supposed to do the inspection.

Mr. Kraft asked about the 30 days, then asked if these items are repeated intentionally.

Ms. Griffy said yes, these are the most problematic and being in the code provides easy reference for the Hearing Examiner.

O-Financial Liability

Mr. Golemo asked what kind of bonding is needed. This may need to be reworded or is it in the General Requirements.

Ms. Griffy answered this is existing ordinance.

P-Construction Stormwater Pollution Prevention

Mr. McMurry said the language doesn't say what happens if it's not covered.

Ms. Griffy said projects are going to have to follow the General Requirements.

14.24.070 Erosion Prevention Plans

Mr. Golemo said this title should be changed to Stormwater Pollution Prevention Plan (SWPPP), the same as what the Manual calls it so it is consistent.

Ms. Griffy asked Mr. Golemo if he would want to do a Stormwater Pollution Prevention Plan (SWPPP) for every project that is less than 1 acre.

Mr. Kraft suggested maybe to add to Definitions “Erosion Prevention Plan.”

Mr. McMurry wants to have clarified what is required for under an acre.

Ms. Griffy said it is in the General Requirements.

Mr. Schauer asked if the City is going to be changing the title to Erosion Prevention and Sediment Control.

Ms. Griffy said, yes, if the title changes, the City may need to change it in this section to be consistent.

Mr. Golemo said references are needed for the 1-acre threshold.

Ms. Griffy agreed.

From the audience, Mr. Darcy asked if No. 4 refers to the Stormwater Manual or the General Requirements.

Ms. Griffy said that refers to Applicability and City staff will look at rewording.

Mr. Golemo said it would be helpful if the City were to add specific sections of the Stormwater Manual for reference.

Mr. Kraft the Stormwater Manual should work.

Ms. Griffy said it is defined in the beginning.

B-

Mr. McMurry said he was curious about the mechanics of plan submittal as relates to other qualified professionals who are not engineers. When is it going to have to be engineered? He said if it doesn't have to be an engineered erosion control plan, just needs to get the plan to the City with a package that's not part of the engineering, what is the process of that review? Or will be put off until a pre-construction meeting?

Staff member Ms. Olinger said the reason for that language is that it is intended for homeowners who may, for example, be putting in pools or digging in oversized yards, not a development activity, but where erosion control is needed. In many cases, they may not know about erosion control requirements.

Mr. McMurry said there may need to be clarification in the ordinance or in the General Requirements for when and what will be required in that case.

Staff member Ms. Olinger said it is City's intention to have it clarified in the General Requirements.

Mr. McMurry said he believes in needs to be in both places.

14.24.075 Exceptions

Mr. Golemo asked if Exceptions are in all of the other ordinances.

Ms. Griffy said the City is legally obligated to include Exceptions and Adjustments as they are required by the Permit.

Mr. Golemo reiterated his question about whether it was needed in all of the ordinances.

Ms. Griffy said it will be in Stormwater Control.

Mr. McMurry asked what are the criteria in the section and why would we have one for this area.

Ms. Griffy said it will be a hard Exception to get.

Mr. McMurry said he could not envision a client asking for an Exception to Erosion Control if this was the process they would have to go through.

Mr. Kraft said it needs to be reworded using the legal language of the Permit.

Ms. Griffy agreed it was her understanding that this was legal language from the Permit.

Mr. Golemo and Mr. McMurry said they did not discuss variances in the Clark County stormwater ordinance update process.

Ms. Griffy asked how much time was spent on the Exceptions in the County process.

Mr. Golemo asked if there will ever be Erosion Control Exceptions.

Ms. Griffy said no but this inclusion is a legal requirement.

Mr. Schauer asked if the work group was ready to move on to Adjustments.

14.24.076 Adjustments

Mr. McMurry asked how to know when one or the other applies.

Ms. Griffy and Mr. McMurry went into a discussion about thresholds and how will affect projects. Ms. Griffy suggested they discuss it more at with stormwater control.

Mr. McMurry and Mr. Golemo discussed the County process.

Mr. McMurry agreed with Ms. Griffy that adjustments may never come up but what qualifies for an Adjustment and the threshold needs to be clarified and asked what it will apply to new BMPs. Mr. McMurry asked if some lesser change or some new BMP was not going to require an adjustment.

Ms. Griffy said this is a different way of looking at Adjustments than was intended and one that staff had not considered..

Ms. Olinger said it would not be an adjustment to the minimum requirements, but rather just a request to use another BMP. She explained further by saying a person wouldn't be asking for an adjustment to what type of BMP, but an adjustment to erosion prevention.

Mr. Golemo asked if the City has reviewed the Clark County Manual to the City's Manual in regards to adjustments and asked, for an example, about the slope of a pond.

Mr. McMurry said he still thought the language in the first paragraph for adjustments should be reviewed further. He said he could see something as simple as a BMP being forced through an adjustment process when it should be a technical question.

Ms. Griffy said Mr. McMurry has brought to light a good question and the City would want to make sure that was clarified.

Mr. Schauer then moved the Work Group's attention to the last two sections.

14.24.080 Enforcement and 14.24.090 Liability

Ms. Griffy said these sections are from the original code.

There was no further discussion or questions on these sections by the Work Group.

14.24.095 Abatement of Immediate Hazard

Mr. Golemo asked why the hazard section was eliminated from the enforcement section.

Ms. Griffy said she was not sure why it was marked out.

Staff member Ms. Morgan informed the work group that this is now covered in the Enforcement Code at VMC 22.

Public Comments

There were no additional comments by the public in attendance.

Work Group Comments

Mr. Carlson said he was happy with the dialogue in this meeting and explained this was the very reason that the Work Group was here.

Ms. Griffy suggested sending an email to inform the Work Group where staff is at with the proposed language changes for 14.24.

Mr. Schauer asked if there were any other comments pertaining to VMC 14.24.

The next Work Group meeting will be April 22.

Adjourn 6:30 p.m.