



Surface Water Ground Water Protections

Stormwater Workshop
Vancouver City Council ▪ Nov. 24, 2008



Stormwater Ordinance

City Council Workshop ▪ Nov. 24, 2008

- Today's Workshop
 - Background: Coalition Litigation
 - Stormwater Ordinance Revisions
 - Municipal Code
 - Issues
 - Impacts
 - Rosemere Neighborhood Association Agreement
 - Council Q & A



Stormwater Ordinance

Introduction to Proposed Revisions

- Stormwater Ordinance Revisions and Timing
 - Changes are required to meet the Phase II Municipal Stormwater Permit for Western Washington, issued by the Washington Department of Ecology in early 2007.
 - Phase II Permit ultimately mandates an August 2009 adoption deadline for state and federal compliance.
 - Earlier adoption is in accord with a settlement agreement by City, Clark County Natural Resources Council (CCNRC) and Rosemere Neighborhood Association (RNA), approved by Council in May 2006.



Background

Coalition Litigation vs. Ecology

- City and 33 other local governments appealed several provisions of the state's NPDES Phase II Stormwater Discharge Permit
 - Appeal included the provision for flow control standards, which had raised objections from both the cities and the development community.
 - Major successes of the appeal:
 - Cities will not be liable for water quality violation claims made by citizens.
 - **IMPORTANT:** Discharges into urban and large rivers are exempt from increased detention requirements of permit – Large Water Bodies Exemption.

Surface Water
Ground Water



Background

Coalition Litigation vs. Ecology

- Pollution Control Hearing Board Order on Summary Judgment issued Sept. 29, 2008, removed barriers to manual adoption.
 - Constitutional objections to **flow control** requirement must be decided by Courts, not by the Pollution Control Hearings Board.
 - **Public comment procedures were utilized** appropriately by Ecology in 2006, following its WAC, in determining the Manual must be adopted.
 - **No economic impact analysis was required.**



Background

Coalition Litigation vs. Ecology

- Results:
 - Full outcome of this litigation will not be known for some years.
 - In the meantime, all Western Washington Phase II municipalities must adopt the 2005 Western Washington Stormwater Manual or equivalent by August 2009.



Background

Other Legal Issues and Questions

- **Growth Management Act** procedures do not apply. Manual and ordinance do not amend plan or zones.
- **SEPA** does not apply: RCW 43.21C.0383
- **Vesting**: These are pollution controls imposed by the federal and state government, not local land development regulations.
- **Takings**: Permit has hardship/variance exception that should prevent such over-regulation.
- **Clark County**: Adopting Phase I approach not approved by Ecology, potentially subject to penalties under state and federal law, and possible lawsuits.



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Proposed Revisions and Impacts

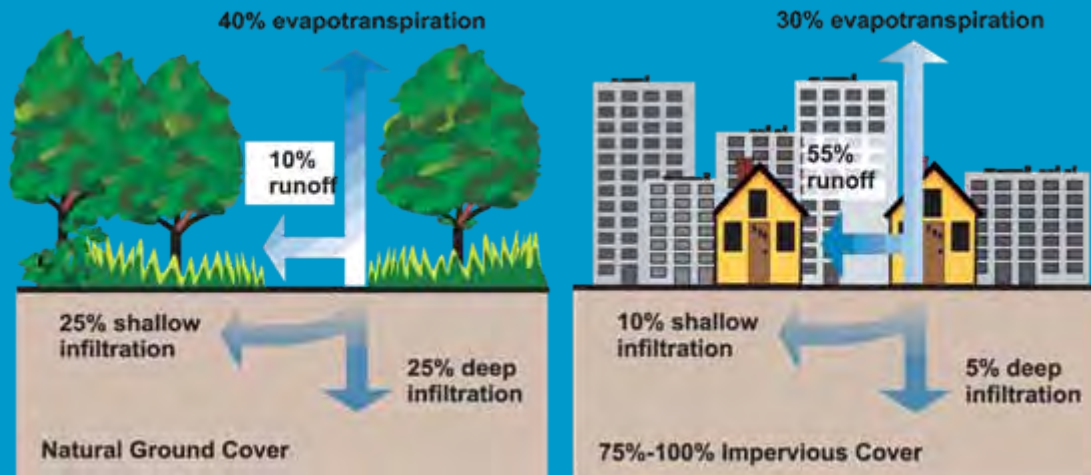
- Three Sections of Vancouver Municipal Code
 - **VMC 14.24 – Erosion Prevention**
 - Minor changes, primarily to codify current policy.
 - **VMC 14.25 – Stormwater Control**
 - Change to reference the 2005 Western Washington Stormwater Manual. Flow Control is a major issue.
 - **VMC 14.26 – Water Resources Protection**
 - Minor changes, primarily to provide enforcement measures already used in erosion prevention and to provide guidance on discharges as needed to meet permit requirements.



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The Major Issue: Flow Control

- What Flow Control Is:
 - Pre-development natural conditions allow rain to soak into the ground, reducing stormwater runoff quantity.
 - Post-development surfaces – roofs, pavement, etc. – cause more runoff, resulting in potential impacts.



Source: U.S. EPA



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The Major Issue: Flow Control

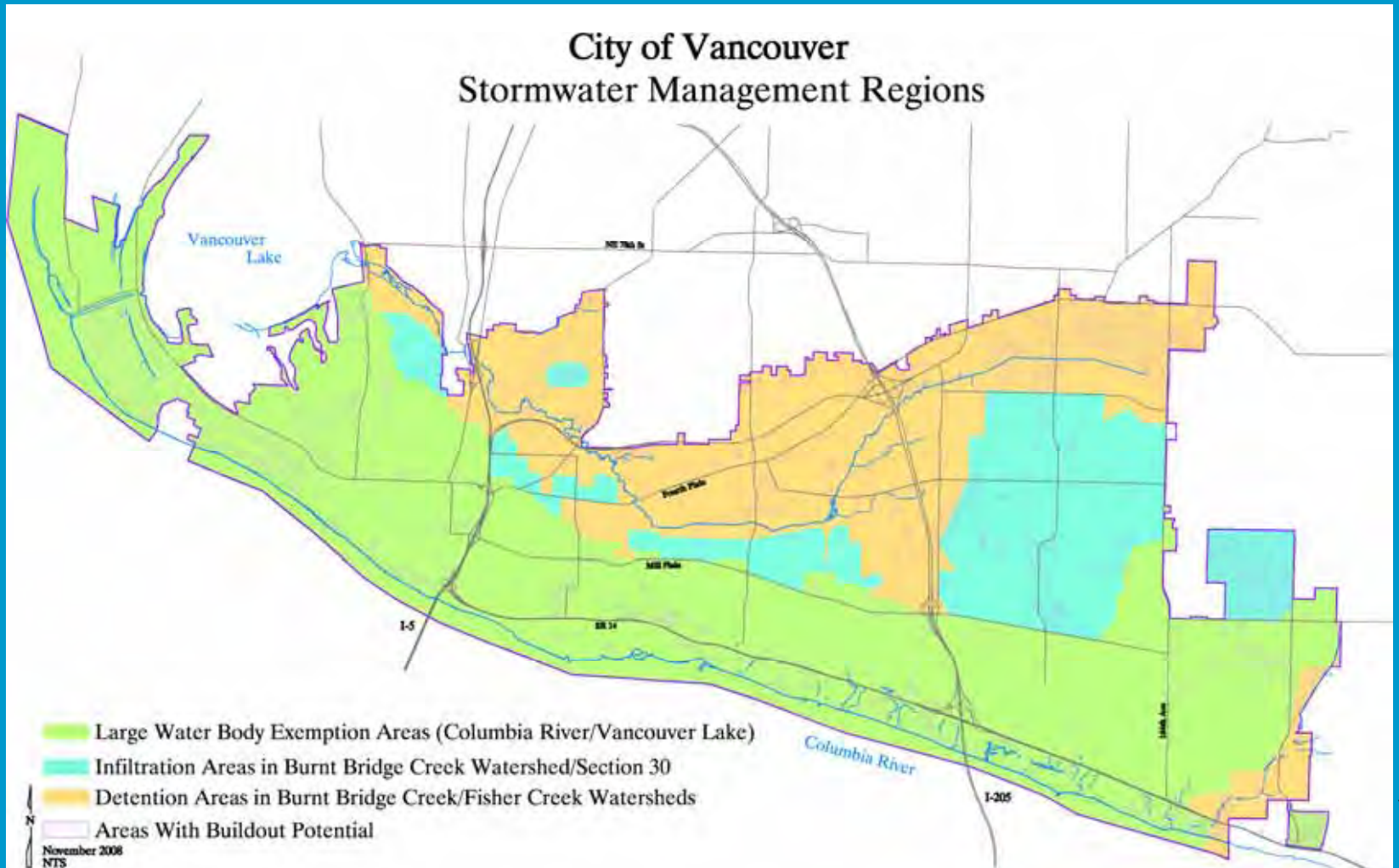
- What Flow Control Means in the Manual
 - Ecology manual treats developed/developing areas as if they were natural and unaltered, dating back to pre-European settlement times.
 - Manual requires flows be controlled to levels that would have occurred naturally then.





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Vancouver Watersheds and Manual Issues





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Vancouver Watersheds and Manual Issues

- South and Southwest portion of the City that drain to the Columbia River and Vancouver Lake:
 - Primarily exempt from increased detention.
 - Includes a few areas of smaller water courses or natural springs that may require detention.



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Vancouver Watersheds and Manual Issues

- Northern part of the City that drains to Burnt Bridge Creek:
 - Some portions drain directly to Burnt Bridge Creek or have soils or groundwater elevations that will require additional detention and release.
 - Examples: Andresen and Sifton Basin; Semiahmoo muck soils
 - Some portions have soils that infiltrate directly to the ground, suitable for dry wells.
 - Example: Burton Sink



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Vancouver Watersheds and Manual Issues

- Vancouver Area by Potential Impact:
 - Total area within the City: 48.8 Square Miles
 - Large Water Bodies Exemption: 56 percent
 - Remainder:
 - Identified infiltration areas: 16 percent
 - Identified increased detention areas: 28 percent



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Vancouver Watersheds and Manual Issues

- Examples of options for meeting added detention and release requirements:
 - Low Impact Development such as permeable pavement, rain gardens, etc.
 - Larger ponds and underground detention
 - Regional facilities
 - Basin plans



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2005 Western Washington Stormwater Manual

- Manual Issues Raised by the Development Community:
 - May increase percentage of land to be designated for stormwater detention in some areas where infiltration and water body exemptions do not apply.
 - May decrease achievable land-use density and require adjustments to those City requirements.
 - May increase development costs and time where additional stormwater detention and release needed.
 - Potential increase in maintenance of detention areas.



Stormwater Manual

Factors Minimizing Potential Impacts

- City has already adopted and is using large portions of the 2005 Western Washington manual.
- Low Impact Development elements have already been used by many City projects.
- Flow Control is less of an issue in the City due to 1) many areas with soils suitable for infiltration and 2) large area within exemption for large water bodies.
- Proposed ordinance will allow for automatic updates that result from potential legislative changes.



Background

Legal Issues and Requirements

- Rosemere Neighborhood Association (RNA) Litigation
 - Clean Water Act lawsuit filed against the City of Vancouver on Oct. 6, 2004.
 - District Court ruled in City's favor in October and November 2005.
 - RNA appealed to Ninth Circuit Court of Appeals.



Background

RNA Agreement

- Agreement Settlement:
 - Settlement authorized by Council in open public session on May 8, 2006.
 - Halted continuing appeals and costs, and supported City's protection of water resources.
 - Says City must take specific actions, many also required by National Pollution Discharge Elimination (NPDES) permit.



Background

RNA Agreement

- Agreement Settlement
 - Of the 9 items listed in the agreement, 8 have already been completed.
 - One remains: Adoption of provisions of 2005 Western Washington Stormwater Manual.



Background

RNA Agreement

- Agreement Requirements:
 - City must adopt provisions of 2005 Western Washington Stormwater Manual within 18 months of issuance date of NPDES Phase II Stormwater Discharge Permit.
 - Permit issued Jan. 17, 2007.
 - Performance due by July 17, 2008.
 - Action delayed pending outcome of litigation against Ecology and appeals.



Background

RNA Agreement

- Agreement Consequences:
 - City of Vancouver is potentially liable for RNA attorney fees if it fails to adhere to agreement.
 - Agreement is legally valid and enforceable.
Gruen v. State Tax Commission, 35 W.2d 1, 54 (1949), cited with approval in *Washington State Farm Bureau v. Gregoire*, 162 W.2d 284, 290 fn. 5, 301 (2007).



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Timeline for Revisions

- Next Steps:
 - DRAFT ordinance revisions have been posted on the *Water All Around Us – Surface Water* page on the City's Web site
 - Communications with stakeholders
 - Proposed First Reading: Dec. 8, 2008
 - Proposed Second Reading and Public Hearing: Dec. 15, 2008



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- Questions and Answers