
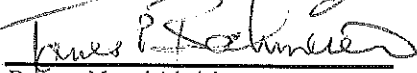

POLICY

Page:	1 of 4	Approved:	 Resource Stewardship Director
Number:	DECM.17.POL.805	Approved:	 Drainage Manual Administrator
Title:	Stormwater Vesting Under the Municipal Stormwater Permit	Date:	
Related:	None	Code:	2016 Drainage Design and Erosion Control Manual / TCC 15.05
Cancel:	New		

DECM.17.POL.805 STORMWATER REGULATIONS VESTING UNDER THE MUNICIPAL STORMWATER PERMIT

This policy establishes how Thurston County will apply the stormwater regulations vesting requirements of the 2013-2018 Municipal Stormwater Permit for private and public development and redevelopment projects.

Purpose:

The purpose of this policy is to establish how Thurston County will interpret and apply the vesting provisions of the 2013-2018 Washington State Department of Ecology-issued Municipal Stormwater Permit to new and existing projects submitted for drainage review under the County's Drainage Design and Erosion Control Manual (DDECM).

Background:

The DDECM establishes requirements and provides guidance for managing the quantity and quality of stormwater produced by development and redevelopment in Thurston County. Thurston County Code, Title 15.05.010 adopts the DDECM by reference as though set forth in full and TCC15.05.070 designates the Water Resources Program Manager or his/her designee as the Drainage Manual Administrator.

Washington's vesting laws allow developers to rely on zoning or other land use control ordinances in effect on the date of application (RCW 19.27.095 and RCW 58.17.033). A recent Washington State Supreme Court decision, *Snohomish v. PCHB*, determined that state vesting law does not apply to the State Department of Ecology's Municipal Stormwater Permit and any implementing local ordinance. Because such regulations are the result of state and federal mandates, they were deemed by the Court to be outside a municipality's discretion and beyond the purview of state vesting laws.

As a result, only the vesting (or grandfathering) language contained within the Municipal Stormwater Permit now applies to development needing to comply with the terms of the Permit. This would include those located within the geographic scope of the County's Municipal Stormwater Permit. Outside of the geographic scope of the Municipal Stormwater Permit boundary, vesting law is not changed for Stormwater Regulations.

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For Thurston County, the applicable vesting language in the Municipal Stormwater Permit requires Thurston County to administer a program and permitting process where:

1. Project applications were submitted on or after January 1, 2017, making them subject to the County's 2016 DDECM.
2. Project applications were submitted before January 1, 2017, but construction started after January 1, 2022, making them subject to the County's 2016 DDECM (or the then current DDECM if the 2016 DDECM has been superseded).
3. Project applications were submitted prior to January 1, 2017 and construction started prior to January 1, 2022, making them subject to the version of the DDECM in effect at the time of submittal of a complete application.

Policy:

1. **Post-2016 Applications:** All complete project applications submitted on or after December 31, 2016 must comply with the current stormwater regulations in effect. As of December 31, 2017, these are codified in TCC Title 15.05 and the 2016 DDECM.
2. **Complete Application:** The contents and requirements of a complete application must be as described in the applicable sections of Thurston County Code, State Law (where applicable), and any Thurston County-required application forms and checklists.
3. **Eligibility for Grandfathering:** The County will review and process eligible complete project applications submitted prior to December 31, 2016 and starting construction prior to January 1, 2022 in accordance with the stormwater regulations in effect at the time of the submission of a complete application.

3a. Eligible applications include only those types of project applications that provide for vesting in development regulations consistent with State Law or Thurston County Code (e.g. subdivision, short subdivision, binding site plan, building permit, and development agreement).

3b. *Start of construction* is defined as the totality of actions taken, equipment mobilized, earth moved, clearing of vegetation, and installation of sediment and erosion control features associated with and directly related to the improvements required by the underlying approved application type and consistent with a permit issued by Thurston County such as a construction permit or grading permit that implements the plan of development described in the underlying permit approval (e.g. preliminary plat or building permit approval). Work such as clearing under a forest practices permit, installation of franchise utilities, or land clearing not part of an approved grading permit or construction permit is not sufficient, in itself, to be considered *start of construction*.

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4. Individual Lots within a Subdivision: Individual lots within a subdivision, short subdivision, binding site plan, or large lot subdivision may or may not be covered by stormwater requirements specified in the original final plat. The following criteria apply:

4a. Lots within a subdivision where the management of stormwater runoff for the subject lot is adequately addressed (see 4.d below) in the final plat documents may rely on the plat conditions to meet stormwater management requirements at the time of building permit application.

4b. Lots within a subdivision where the management of stormwater runoff on each lot is not addressed, or is inadequately addressed (per County adopted policy), must meet stormwater management standards existing at the time of submission of a building permit for construction on the lot.

4c. If the final plat document does not address stormwater requirements on each lot, but a County accepted drainage plan or drainage report for the construction of the plat improvements describes stormwater management on each lot or indicates that centralized stormwater facilities serving the plat were designed to handle runoff from each lot, then the above provision (Item 4) applies to building on that lot.

4d. The minimum requirements for addressing stormwater management on each lot, established by Thurston County, may vary depending on the stormwater regulations under which the plat was developed.

- i. For 1994 DDECM and prior projects, plat language must include management of roof runoff and whether the centralized stormwater facilities are designed to handle runoff from individual lots.
- ii. For 2009 DDECM projects, language in the plat must address runoff from each lot including how the lots meet Minimum Requirement #5 of the 2009 DDECM and how each lot handles flow control and runoff treatment (may include a combination of downspout infiltration and runoff directed to the centralized facility). In general, compliance with Thurston County Drainage Manual Policy DECM.10.POL.802, "SUBDIVISION LAND AREA CALCULATION" is sufficient to meet these criteria.

5. Other Considerations:

5a. Where, and if, Thurston County code vests land use applications to stormwater regulations beyond what the Municipal Stormwater Permit allows within its boundaries, or otherwise conflicts with the ruling in *Snohomish v. PCHB*, the Permit and Supreme Court decision will be controlling.

5b. Except as noted above, if an underlying development-related permit expires under existing State law or County code, any vesting of stormwater regulations also expires with the permit.

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5c. In implementing this policy it is inevitable that unanticipated issues will arise. In those cases, use the following guidance to resolve those issues/conflicts:

- i. Evaluate issues and apply policy as required to meet the Municipal Permit provisions, but where options or interpretations are available and the Municipal Permit provisions do not address it, the County will look to State law or County code for guidance in our interpretation. This will minimize confusion for both the applicants and permit review staff.
- ii. Consider policy development in a way that provides the least negative impact to the applicant while protecting the environment and adjacent property and remain in compliance with the Municipal Stormwater Permit requirements.

5d. Applicants submitting for preliminary plat prior to December 31, 2016 where emergent issues require additional work (i.e., re-submittals) could find themselves coming up against the January 1, 2022 deadline to start construction. The County will notify all applicable applicants for projects in review of the need to get County acceptance and start construction prior to January 1, 2022 to avoid triggering redesign of stormwater facilities under the Municipal Stormwater Permit vesting rules.

6. **Appeals:** Any person may request an interpretation of this policy and any aggrieved person may appeal application of any part of this policy to a project or permit application in accordance with Section 2.9, *Interpretations and Appeals* of Volume I of the 2016 Drainage Design and Erosion Control Manual. The appeal procedure shall be per Thurston County zoning code, TCC Title 20.60.060