

Building Cities in the Rain
Working Group
December 11, 2014
Meeting Summary

Participants: Larry Schaffner, Thurston County; Erika Harris, Puget Sound Regional Council (PSRC); Kerry Ritland, City of Issaquah; Bruce Wulkan, Puget Sound Partnership; Bob Vadas, Washington Department of Fish and Wildlife (by phone); Andy Rheame, City of Redmond; Lorna Mauren, City of Tacoma; Dan Gariepy and Abbey Stockwell, Department of Ecology (Ecology); Heather Trim, Futurewise; John Palmer, EPA; and Heather Ballash and Anthony Boscolo, Department of Commerce.

Report on meeting with Earth Justice

After the last meeting of the work group, Heather Trim, John Palmer and Dan Gariepy met with Earth Justice attorneys Jan Hasselman and Jeanette Bremer to discuss concerns raised in an email to Heather T. about Building Cities in the Rain and the Ecology guidance. Heather reported that Jan and Jeanette are concerned about the guidance, but did not ask the group to stop working on it. They want to stay informed and engaged, and want the opportunity to provide comments on a draft of the guidance. Most of the discussion with Earth Justice focused on the Ecology guidance.

Earth Justice questions the foundation of the guidance given that the permit applies and should be applied everywhere. There is a concern that sending areas are degraded and that maintaining current conditions will continue to do harm. Their concern is based on the following finding in the Pollution Control Hearings Board decision in *Rosemere Neighborhood Association, et al. v. Washington Department of Ecology and Clark County*, PCHB No. 10-013, page 21¹:

The weight of expert testimony recognizes that streams, once degraded, can continue to degrade. —[T]he high flow durations from even a partially developed site will be highly disruptive to streams. *Booth Pre-Filed Testimony* at ¶24. —[D]amage to receiving waters from stormwater flow from developed areas is cumulative. Damage to a stream builds on itself each time it rains as the water flows faster, cuts stream banks and scours stream beds further, and the hydrograph becomes more extreme. In other words, a flow duration standard based on meeting only existing conditions (like Clark County's) [at new development sites] does not freeze the environmental conditions in place, but allows for ongoing cumulative degradation of the stream. Moreover, the status quo in Western Washington, including Clark County, is currently degraded ... with many streams unable to support beneficial uses and even basic ecological function due in large part to stormwater runoff from developed areas. *Booth Pre-Filed Testimony* at ¶26. Doug Beyerlein, Clark County's expert witness on hydrology, did not disagree with Dr. Booth's research and agreed that Clark County streams are not stabilized. *Beyerlein Testimony*. Ecology's expert, Ed O'Brien, also acknowledged that streams are still degrading, that there is nothing unique about Clark County that precludes use of Ecology's default flow control standard, and that no part of Clark County qualifies as a highly urbanized area for purposes of applying a lesser standard. *O'Brien Testimony*. The Board finds that the streams in Clark County are subject to further degradation.

¹ For the full text of the decision, go to

http://www.ecy.wa.gov/programs/wq/stormwater/municipal/appealspdfs/RosemereVecy_ClarkCoPCHBRulingJanuary52011.pdf.

They are also concerned that the guidance will not provide any guarantee of accountability regarding how many streams, for how long, and with what benefit. How will the public know if the guidance is met? What is the guarantee that fees paid in lieu will pay for the next stormwater facility? They believe that the outcome must be better than the currently expected redevelopment of 40% of the acreage over 40 years in the Puget Sound region.

Earth Justice is also concerned that this program would appear to function like a wetland mitigation bank, but it is not clear how it will improve things. Finally, they don't agree that the Ecology standards for flow control are hard to achieve in urban areas.

Ecology agrees that the standards are achievable. To make stormwater management easier for development is not the primary driver for this project. The primary driver of this project is to recover higher priority watersheds at a rate that is better than through the default approach. The transfer of flow control improvements to high priority watersheds will result in an accelerated net benefit. The default approach will implement stormwater controls opportunistically through development, rather than in a planned and targeted effort. The driver for Redmond's approach is to allow environmental need to drive where investments in stormwater controls are made, instead of development patterns. The WRIA 9 study showed that over 40 years, 40% of the acreage will be redeveloped. 40% will not recover a receiving water. Redmond's approach provides the opportunity to consolidate the improvement, retrofitting an entire watershed, which should recover in-stream health in priority streams much sooner than the default approach. Degradation could potentially continue to occur for the receiving water for the sending site until that watershed is prioritized for retrofit. Ecology is comfortable with this approach.

No one is interested in challenging or revisiting the Clark County case. There were real problems with Clark County's approach, and those problems have been intentionally addressed with Ecology's guidance, Redmond's Watershed Management Plan, and the efforts of this group. But there are opportunities with the Redmond program – there are elements of the Pollution Control Hearings Board decision that Ecology would argue differently now. For example, a one to one exchange could still provide a solid benefit.

John Palmer noted that permitted cities and counties have retrofit responsibilities in the Phase I permit. Phase II cities and counties do not at this time. Phase I retrofit requirement is to implement a structural control program that involves planning and implementing retrofit projects, but the extent of the program is unspecified. The intent is to improve the baseline condition over time. Earth Justice is concerned about letting go of certain areas. The work group will need to be very careful with the sending areas to make sure that they are carefully delineated and are not too broad. If they are too broad or if there are other problems, they may feel that they will have to sue.

Heather T. reiterated that they may also sue if there is not accountability, including monitoring and a public process. Redmond's approach of building retrofit facilities ahead of the redevelopment in sending areas is a strong guarantee versus just having a plan. They need some assurances. Need to require that facilities be built ahead of the redevelopment. The foundation needs to be the permit. Adding adequate accountability may make the program more costly.

In response to the question of what the energy is behind this, a number of the cities and PSRC's perspective is that it is difficult to meet flow control requirements in dense urban centers while achieving the desired densities.

It will be important to convey the Puget Sound Recovery targets and how we are trying to meet them. This project could be an implementation strategy.

It was noted that Earth Justice does not have a problem with WSDOT's program, but it is not completely clear. It would be good to know what elements, such as possibly accountability, that they think would be good to replicate. *[Note: The answer to this question was provided by Heather Trim upon review of the meeting summary as follows: "because it is a linear program and is very different from the Building Cities in the Rain and the Ecology guidelines efforts."]* They will be looking to see that investments in receiving areas are not a substitute for other municipal responsibilities. It is okay for them to be supplemental. The bar for other efforts is not a numerical standard. It is important to emphasize that it can be a challenge.

Phase I permittees are required to provide a list of planned projects scheduled to be implemented during the permit term to address impacts caused by stormwater discharges from existing development. As part of this effort, it was proposed that Phase II permittees could be required to submit a plan. The plan has been a challenge for Tacoma, as it is a list without budget amounts. The Redmond approach addresses this by building up front.

Are retrofits entirely the permittees' responsibility? No, it is tough to do public facilities on private land. The state doesn't want retrofits on private land with state funding. The state and federal governments have acknowledged a shared responsibility to fund these facilities.

We will need to keep Earth Justice involved and engaged to get their buy in and avoid a lawsuit. The Ecology guidance document will be put out as a draft for public comment.

It will also be important to link this effort up with salmon recovery. NOAA Fisheries has stated that more will have to be done with stormwater for salmon recovery. Locals are now looking at the 10-year update of their salmon recovery plans.

Andy Rheume stated that the energy behind a watershed approach was to recover streams, to support salmon recovery, and to prove we can actually engineer solutions that accommodate healthy aquatic ecosystems in urbanized watersheds. Supporting regional growth centers was an aspect that was identified for other jurisdictions, not Redmond, as a result of a PSRC growth management policy board meeting about regional growth centers and stormwater management. Redmond was invited by Ecology to present alternative options allowed by the existing permit, and to provide Redmond's experience exercising those options. Redmond has constructed over \$70,000,000 in stormwater facilities to support regional growth centers, prior to having a watershed management approach.

Andy Rheume also noted that, as a utility, they must have commitment and a plan to implement it with financing. Ratepayers have to pay for the full commitment with the existing rate structure. Speculative "buy in" by developers into the program is not acceptable to set utility rates in Washington State. Redmond will look at raising its utility rates next year. The fee-in-lieu will help things go faster to address the need to do something now rather than waiting for redevelopment to occur. One percent

redevelopment a year will take a long time to get to 100% flow control basin wide. Redmond is spending \$30 million to retrofit each stream.

Prioritization criteria – Discussion questions

The group reviewed the prioritization criteria in the draft elements of the guidance document and began answering the following questions:

1. What is the policy basis/goal for prioritization and where should the local government have it memorialized? Comprehensive land use plan?

The group agreed to recommend that broad policies to provide the basis for a stormwater control transfer program be adopted by the local legislative body (city council) in the comprehensive land use plan. See the Natural Environmental of the City of Redmond's [comprehensive plan](#). This process should be tying stormwater more closely to the comprehensive plan, rather than site-by-site. In the past local governments made the mistake of not planning for stormwater. Everyone built their own controls on site, creating an unplanned and inefficient system.

The policies should be high level, and do not need to identify specific programs. For example, Redmond adopted a policy to restore streams. The goals and policies of the stormwater control transfer program must be clearly linked with land use under the GMA. Regardless, the goals and policies for the program should be adopted by the legislative body in a public process with the ability to appeal.

Identification of sending and receiving areas should be in a basin plan that is also adopted. Provisions to implement the program should be included in the stormwater management plan or the drainage manual that go to Ecology for approval. They should also be tied to zoning regulations, e.g. low impact development performance standards.

Heather T. advocated that the public process be with the state rather than local government - an appealable action/decision by Ecology. The process would be similar to the shoreline master program process where a local government adopts the program subject to final approval by Ecology, which is an appealable action. There was not clear consensus on this issue. It will remain on the table for future consideration.

Ecology noted that Appendix 1 of both municipal stormwater permits requires Ecology approval of watershed and basin plans. The group agreed that the plan needs to be in one document for the public to review.

2. Are the categories listed [below] in the draft elements the right criteria for prioritization?
 - Watershed analysis tools, e.g., instream flows
 - Existing data
 - New data
 - Environmental and social justice/Equity (not necessarily most impacted “hammered” areas)
 - Multiple community benefits, including economic development
 - Analysis of restoration potential

These six bullets are not really criteria. The guidance should recommend that a jurisdiction identify where and why they want to designate a particular watershed as a priority. It should recommend: 1) A prioritization process; and 2) criteria to consider.

Cost should be a criterion.

Mapped critical areas should be a criterion.

Considerations for criteria from the current draft of the Ecology guidelines [with notes from the group] – give higher priority to watersheds:

- With low to moderate levels of impairment [Will need some clarity on the type of impairment because some could be overcome.]
- Where the municipality can exert greater influence [Some group members noted that a municipality will need to look at the full influence on the streams over which it may not have full control.]
- Where regional rehabilitation efforts are also focused. [Also, need to consider ecosystem recovery targets that will provide additional benefits.]
- And consult with federal, tribal and state natural resource agencies.

The Thurston region is interested in a regional approach that goes across jurisdictional boundaries. Where there are many jurisdictions in a high priority basin, there should be coordination.

The definition of “low to moderate impact” will vary based upon the jurisdiction. Redmond focused on what they could fix the soonest.

Critical policy question: Do we target the best of the worst impacted streams? For example, what about the Duwamish?

- This tool will not be used to address every scenario. For example, the Duwamish is the subject of a Superfund clean up. The Puget Sound Partnership and Salmon Recovery Council can help define those areas that would benefit from this program. It will be an additional piece of information.
- Use the program to hit areas at risk where there is not another driver.
- Regional Growth Centers are driving cities to make these stormwater investments. We need to make sure the stormwater investments are made in the right places.
- Low to moderate impact with high risk and high restoration potential.
- Don't eliminate already degraded areas that are worth restoring for other reasons. For some, the cost will be worth it.
- Start with the resource with the most potential, even though it may be a hard lift.
- Do we make criteria for a receiving site or do we leave it that just an environmental lift is all that is needed? I.e., the Benthic Index of Biotic Integrity (BIBI) is not the best criterion.
- Some cities are just trying to shift funds. Others such as Tacoma are concerned with incentivizing development.
- This policy question of what to restore will need further discussion.

3. Do we want local governments to start with watershed characterization data from Ecology, and then bring in local data for refinement of the prioritization?

The City of Redmond used the state watershed characterization tool and truthed it with city data. It is a good tool to rank basins, and then use local data to make adjustments. The WRIA data is too coarse.

Heather T. noted that there is very little data for water quality and toxins. The group was then reminded that the scope of work for this program is only for transfers of flow control.

The group agreed that they need to revisit the question whether the Building Cities in the Rain guidance should just address transfers of flow control, or should also address transfers of water quality treatment, etc.

The group will also continue with answering the following questions at the next meeting or meetings:

4. Are there other watershed frameworks that have been developed by local governments that can be used as an alternative to Ecology's watershed characterization? Note that some local governments within Puget Sound have done this type of watershed work for themselves, and local governments outside Puget Sound do not have access to watershed characterization data.
5. What are the minimum data sets that a local government will need?
6. How does restoration potential fit into the criteria, and how is restoration potential determined?
7. How does environmental justice/social equity fit into the prioritization process?
8. How do multiple community benefits, including economic development, fit into the prioritization process?

Next meetings:

- To be determined