

Date: February 15, 2023
To: Snohomish County Council Via:
Debbie Eco, Clerk of the Council
Elena Lao, Assistant Clerk of the Council
From: Tom Teigen, Director, Conservation and Natural Resources
Subject: NOTICE TO COUNCIL OF PROPOSED RULE ADOPTION
CNR RULE 2023-01 - COMPLIANCE WITH DRAINAGE
AND LDA CODES FOR SWM PROJECTS

In accordance with Snohomish County Code Chapter 30.82 – Rulemaking, section 30.82.030, and as authorized by Chapter 30.63 SCC – Drainage, section 30.63A.040 and Chapter 30.63B – Land Disturbing Activity (LDA), section 30.63B.100, the director of the Department of Conservation and Natural Resources (CNR) hereby notifies the Snohomish County Council of proposed CNR Departmental Rule 2023-01, related to compliance with drainage and LDA codes for SWM Projects.

Summary of proposed rule

SCC 30.63B.100 authorizes the CNR Director to adopt a rule, applicable to CNR Surface Water Management Division (SWM) projects that require a land disturbing activity (LDA) permit, that establishes administrative procedures and tools for SWM to ensure these projects:

- achieve and document compliance with the substantive requirements of Chapters 30.63A, 30.63B, and other applicable provisions of SCC Title 30 during project stormwater site planning, design, environmental review and throughout construction administration and acceptance;
- require identical or functional equivalents of plans and reports required by the chapters of SCC referenced above; and
- implement the modifications and waivers provisions of SCC 30.63A.830 through 30.63A.842 without amendment.

The proposed rule meets these requirements and contains the following sections.

1. *Rule Name.* Procedures for Ensuring Compliance with Chapters 30.63A (Drainage), and 30.63B (Land Disturbing Activity) SCC and other applicable chapters of Title 30 SCC for Projects Performed By the Surface Water Management Division of the Department of Conservation and Natural Resources Pursuant to SCC 30.63A.040 and SCC 30.63B.100. These projects are hereinafter referred to as “SWM Projects”.

2. *Authority.* The rule is proposed pursuant to SCC 30.63A.040, SCC 30.63B.100, and SCC 30.82.010.

3. *Purpose.* The rule establishes administrative procedures and tools for SWM Projects that require an LDA Permit to achieve and document compliance with

substantive requirements of Chapters 30.63A and 30.63B SCC, critical area regulations set forth in Chapters 30.62A, 30.62B, and 30.62C SCC, and other applicable provisions of Title 30 SCC.

4. Applicability. The rule applies to SWM projects that the SWM Director elects to self-administer and ensure compliance with the substantive requirements of the Drainage and LDA chapters and other applicable provisions of Title 30 SCC, pursuant to SCC 30.63B.100. SWM Projects include but are not limited to projects designed and/or constructed by SWM staff as well as other County staff, consultants, contractors, or people under the control of the SWM Director via contract, interlocal agreement, or similar means. The rule also applies to SWM projects for which SWM determines an LDA permit is not required, thus the rule includes documentation of that decision.

5. Assignment of Authority. The rule assigns concurrent authority to the SWM Director and the SWM Engineering Manager to implement the rule. The SWM Director may also assign responsibilities to appropriately trained or licensed SWM staff.

6. Procedures. The rule contains procedures for all phases of a SWM project, including preparation of a Design Report or Memorandum, determination of compliance with or exemption from LDA permit, compliance with other regulations such as SEPA, project design including preparation of all required reports, permitting and public notice, construction inspection and administration, and consultation with PDS if needed.

7. Use of Existing Documents and Construction Practices. Pursuant to SCC 30.63B.100(1)(b), the rule allows identical or functional equivalents of required plans and reports including, but not limited to design reports and memoranda, stormwater site plans, special topic reports, site plans, construction drawings, specifications, contracts, inspection reports, as-built surveys, final approved drawings, policies, procedures, and project management handbooks.

8. Planning and Development Services (PDS) Consultation. Pursuant to SCC 30.63B.100(3), the rule allows the SWM Director or other SWM staff to consult with PDS staff by following the preapplication process in SCC 30.70.020 to discuss project compliance issues.

Public notice for proposed rule

Public notice of the proposed rule will be made by:

- Posting a copy of the rule at the PDS 2nd floor front counter (CNR SWM is in the process of moving and does not have a public front counter at this time)
- Posting the proposed rule on the [Surface Water Management website](#)
- Distributing notice of the proposed rule to an email distribution list used for Department of Public Works capital project notifications
- Advertising in the Everett Herald Legal Notices section

Comment on proposed rule

Written comments may be submitted by email to Jim.Blankenbeckler@snoco.org, or mailed in hard copy to Jim Blankenbeckler, SWM Engineering Manager, Surface Water Management, 3000 Rockefeller Ave. MS 303, Everett WA 98201-4044. Comments will be accepted from Friday February 17 to 5:00 PM Friday March 17, 2023.

For further information, please contact Jim Blankenbeckler, SWM Engineering Manager, at 425-262-2606, or Jim.Blankenbeckler@snoco.org.

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1. Rule Name

Procedures for Ensuring Compliance with Chapters 30.63A (Drainage), and 30.63B (Land Disturbing Activity) SCC and other applicable chapters of Title 30 SCC for Projects Performed By the Surface Water Management Division of the Department of Conservation and Natural Resources Pursuant to SCC 30.63A.040 and SCC 30.63B.100. These projects are hereinafter referred to as “SWM Projects”.

2. Authority

This rule is adopted pursuant to SCC 30.63A.040, SCC 30.63B.100, and SCC 30.82.010.

3. Purpose

The purpose of this rule is to establish administrative procedures and tools for SWM Projects that require an LDA Permit in order to achieve and document compliance with the substantive requirements of Chapters 30.63A SCC and 30.63B SCC, together with those critical area regulations (CARs) set forth in Chapters 30.62A SCC (Wetlands and Fish & Wildlife Habitat Conservations Areas), 30.62B SCC (Geologically Hazardous Areas) and 30.62C SCC (Critical Aquifer Recharge Areas), and other applicable provisions of Title 30 SCC.

4. Applicability

This rule applies to all SWM Projects that require an LDA Permit and that the SWM Director elects to self-administer and ensure compliance with the substantive requirements of the Drainage and LDA chapters and other applicable provisions of Title 30 SCC, pursuant to SCC 30.63B.100. SWM Projects shall include, but not be limited to, projects designed and/or constructed by SWM staff, consultants, contractors, Department of Public Works Road Maintenance Division or any other person under the control of the

SWM Director via contract, interlocal agreement, or similar means. This rule shall apply during project stormwater site planning, design, environmental review and construction administration and acceptance.

5. Assignment of Authority

The SWM Director and the SWM Engineering Manager shall have concurrent authority to implement this rule and certify compliance with the substantive requirements of the Drainage and LDA chapters and other applicable provisions of Title 30 SCC. For all compliance elements other than those described in Section 6.1 below, the SWM Director may in turn assign this responsibility to appropriately trained or licensed SWM staff. A written list of names and/or job titles of all such SWM staff to whom such authority has been assigned shall be kept on file with the SWM Director.

6. Procedures

6.1 LDA Application, Vesting and Public Notice of LDA Application

The SWM Engineering Manager shall have the sole authority to approve all Design Reports or Memoranda. SWM Projects shall vest as of the date the SWM Engineering Manager approves a Design Report or Memorandum as set forth in SCC 30.70.300. The Design Report or Memorandum shall be deemed to be functionally equivalent to the Date of LDA Application and shall be subject to Public Notice per SCC 30.70.050(1). The Design Report or Memorandum shall set forth in sufficient detail the proposed design of the SWM Project, which shall include, at a minimum, the project description, location, known design criteria, anticipated permits, technical reports, deviations, modifications or waivers required, and estimated schedule and costs. A signed and completed SEPA Checklist per SCC 30.61.057(1)(a) will also be prepared. To the extent any exemptions from the substantive requirements of the Drainage and LDA chapters and other chapters in Title 30 SCC are deemed applicable to the SWM Project, the Design Report or Memorandum shall set forth the basis for all such exemptions.

6.2 Environmental Review (SEPA) and Public Notice of SEPA Decision

A SEPA threshold determination shall be issued for all SWM Projects subject to this rule prior to issuance of LDA Decision unless the project is determined by the SWM Director, or their designee, to be exempt from SEPA or for which a SEPA programmatic determination has been made.

Pursuant to SCC 30.61.045, SWM is the “lead department” for purposes of SEPA review for SWM Projects. In accordance with SCC 30.61.055, the SWM Director or their designee is recognized as the “Responsible Official” authorized to take those actions set forth in SCC 30.61.055 for those projects under which SWM is the lead department including SEPA exemption determinations and SEPA threshold determinations.

SEPA Public Notices shall be issued per SCC 30.61.110 or defer issuance by combining with the Notice of LDA Decision per Section 6.5 below.

6.3 Determination of Compliance with Chapter 30.62A SCC – Design Stage

Where available mapping, records or site inspection indicate the presence of critical areas within and/or near the SWM Project site, qualified personnel or consultants capable of performing such delineation of critical area boundaries and buffers may prepare the delineation together with all other plans, reports and studies required by Chapter 30.62A SCC.

6.4 Determination of LDA, Drainage and Other SCC Compliance – Design Stage

The SWM Director shall adopt a checklist/tool which ensures and documents compliance with the Drainage and LDA chapters and other applicable provisions of Title 30 SCC, such as Chapters 30.62B and 30.62C SCC. The checklist or tool shall demonstrate the manner in which compliance is determined and shall be maintained on file with SWM. The checklist shall include a mechanism for documenting modifications and waivers in accordance with SCC 30.63B.100(1)(c).

The Project Manager or assigned SWM staff shall ensure completion of all the SWM Project's plans and reports required by the Drainage and LDA chapters for purposes of evaluating compliance with the substantive requirements of such chapters deemed applicable to the SWM Project (including stormwater site planning, design, and environmental review and other applicable provisions of Title 30 SCC), together with the basis for any waivers or modifications proposed, in accordance with the SWM checklist/tool, which shall be included in the permanent SWM Project file. Compliance with the substantive requirements of the Drainage and LDA chapters and other applicable provisions of Title 30 SCC shall be determined by those in authority described in Section 5, using the checklists/tools on file for the SWM Project under review. The Date of Decision of compliance shall be documented, included in the permanent SWM Project file, and shall be subject to Public Notice per Section 6.5 below.

6.5 Public Notice of LDA Decision to Parties of Record

If a SWM Project is deemed compliant with the substantive requirements of the Drainage and LDA chapters and other applicable provisions of Title 30 SCC, in accordance with Section 6.4 above, a Public Notice of LDA Decision shall be issued to parties of record by the SWM Director or SWM Engineering Manager. The Notice of LDA Decision shall be given in accordance with Chapter 30.71 SCC in such form as approved by the SWM Director and shall be subject to the same appeal procedures set forth therein applicable to Type 1 administrative decisions.

If Public Notice for SEPA Threshold Determination has not been previously given, Notice of LDA Decision and SEPA Threshold Determination may be combined, per SCC 30.70.080.

6.6 LDA Permit Issuance

If the LDA Decision approves the application, those in authority described in Section 5 above shall issue an LDA Permit for the SWM Project in accordance with the terms and conditions set forth in Section 6.4 upon expiration of the appeal period following issuance of the Notice of Decision set forth in Section 6.5 above. If an appeal is timely filed, such appeal shall stay the effect of the permit in accordance with SCC 30.71.055.

6.7 LDA Permit Revisions and Compliance – Construction Stage

The Project Manager, assigned SWM staff or staff under agreement or contract with SWM shall ensure that all construction is done per the approved LDA Permit which is included in the SWM Project's specifications and kept on the construction site at all times along with copies of all other relevant permits. A schedule of inspections shall be established meeting the minimum requirements set forth in SCC 30.63B.310 through SCC 30.63B.350. Where applicable, compliance with the requirements in SCC 30.63B.360 will be documented in the project file.

Field adjustments recommended for design or engineering purposes to address field conditions which do not materially alter the size, shape, configuration, location, or function of the project as set forth in the approved LDA Permit are deemed to be contemplated by the approved LDA Permit and may be approved by the Project Manager or assigned SWM staff in the field. All other revisions to the approved LDA Permit shall be processed in accordance with Chapter 30.70 SCC. Any minor revision to an approved LDA permit meeting the requirements of SCC 30.70.210 may be administratively approved by the SWM Director or SWM staff to whom such authority has been assigned.

7. Use of Existing Documents and Construction Practices

Pursuant to SCC 30.63B.100(1)(b), identical or functional equivalents of required plans and reports necessary to comply with the substantive requirements of the Drainage and LDA chapters and other applicable provisions of Title 30 SCC may be used for SWM Projects described in Section 4 of this Rule. These required plans and reports include, but are not limited to: Design Memoranda, Design Report, stormwater site plans, special topic reports (geotechnical reports, zero rise analyses, etc.), site plans, construction drawings, specifications, contracts, inspection reports, as-built surveys, final approved drawings, policies, procedures, project management handbooks, or other documents determined by SWM to be the functional equivalent of the substantive requirements of Title 30 SCC. The use of any functional equivalent document and its description shall be identified in the compliance documentation described in Section 6 of this Rule.

8. Planning and Development Services (PDS) Consultation

Pursuant to SCC 30.63B.100(3), the SWM Director, the SWM Engineering Manager or the SWM staff with assigned responsibilities may schedule a consultation with PDS staff by following the preapplication process in SCC 30.70.020 to discuss project compliance issues and to obtain assistance understanding Title 30 SCC requirements. The appropriate consultation fee under SCC 30.86.510(2) shall be paid by SWM.