

Frank Marescalco

Comments attached as PDF

Cumulative Impacts

Cumulative impacts should be clarified and updated comprehensively to reflect changing reality.

Intent

Some jurisdictions are misinterpreting cumulative impacts regulations to be grounds for forcing owners and developers to revisit previously permitted surfaces and mitigation and bring them up to current code.

If the project includes previously regulated, approved, permitted surfaces/impacts or mitigation, they should not be forced to go back and change that approved work as a condition of approval for future work. Language in the SWMM needs to be stronger on restricting the authority of jurisdictions to abuse this clause.

Implementation

I would even go so far as to say that if a project is “piece meal,” earlier parts of the project should not be forced to provide mitigation. For example, if a homeowner builds a shop that is 1,200 square feet of roof then in most jurisdictions that homeowner would not be required to mitigate the runoff. If that owner (or a subsequent owner) later makes another improvement that results in a *cumulative total* of over 2,000 square feet, the new surfaces should be regulated and mitigated according to the rules in effect at the time. But the existing shop surface should not be the subject of “retroactive” compliance.

This might sound like a really radical shift in paradigm but it really isn't. Consider this:

- We have existing, unmitigated surfaces pre-dating regulation all over the State
- The maximum total of unmitigated development allowed under any interpretation of the clause is 1,999 square feet.
- The maximum total of 'level 1' mitigation is 4,999 – 1,999 square feet = 3,000 square feet.
- Even in a situation where a savvy developer or owner took advantage of the “sliding scale” of impacts, it would be a drop in the bucket of a large project and a drop in the bucket for the real world.
- It still requires that projects comply with codes in effect at time of incurring the obligation to comply.

Even if this more reasonable view is too much of a departure from current thinking, revisiting the clause is still merited. The current cumulative impacts clause penalizes property owners in many cases where the “fault” is not their own. In a lot of cases, on-site mitigation is either not possible or seriously impractical because the previous improvement was not required to consider it or was done without permits, oftentimes with no ill intent or even knowledge that a permit was needed.

For example in the shop scenario, the shop could have been built close to a property line. Then there may be no way to re-fit the drainage system on that roof to infiltration or dispersion due to the placement of the shop. In this situation, cumulative impacts could be used as a tool to stop any development of any kind if abused by regulatory authority in a malicious manner *and this does happen*. The owner has no recourse if that surface cannot be mitigated.

Changing Future

Language in the cumulative impacts section of the Manual should also be more explicit about existing surfaces that were permitted and mitigated under previous codes. For example, if an existing surface was regulated and mitigated under a previous iteration of the code and the mitigation for that surface would be different today in some way, there should be an *objective* process for determining whether mitigation is really necessary for that surface.

This could involve some sort of thresholds analysis that is similar to those already in place for redevelopment scenarios or wetland mitigation. Examples of variables that could be part of that process could be the vintage of the original mitigation, substantive differences between the code now and then, whether the surface is on-site or off-site, percentage of the total project scope, or even a consideration of cost to improve vs. cost of development.

There should also be a clause somewhere in the language that states if an existing surface is being removed and replaced for a new development and that existing surface is already served by previously permitted, documented mitigation, and that previous mitigation would not be substantially changed under current codes, it should be exempt from further mitigation (i.e., duplicate mitigation). This would require some specific language to define what “substantially different” means with regard to engineering details.

These scenarios are going to become more common as more of our built environment is constructed with stormwater mitigation.

Revegetation/Replanting BMP

Reduce barriers to revegetation BMP. The requirements for revegetation are unrealistic. Specifically requirements for tree size, density, variety; shrub density, size, and variety; and requirements for mulching and irrigation. The requirements should be similar to those for reforesting a recently harvested piece of property. If it is good enough for forestry practice, it should be good enough for hydrological purposes.

I have worked with many clients who are perfectly willing to plant acres of saplings to make use of full dispersion. This is most frequently encountered on rural properties with poor soils that would benefit greatly from reforestation. People want to do the right thing. The requirements for revegetation are WAY too high. Let’s incentivize people to do the right thing.

Utility Cuts/Patches

At least one jurisdiction has chosen to interpret a street repair as being part of stormwater thresholds for mitigation purposes. That does not seem to be in line with the intent of the Ecology manual. Stronger language should be introduced in the manual to clarify the intent.

Street cuts for connections to water, sewer, etc. or extensions of existing utilities should not be subjected to stormwater regulations regardless of whether they are associated with/necessary for development. That is a shameful grab at private dollars to mitigate existing public surfaces. It increases costs of housing and general cost of living in our region.

A replaced street surface is *not* a new impact. Existing streets should be mitigated by the public through public works projects. Extensions of public utilities are a public benefit even when it is done for private developers. We should not be penalizing investments in public infrastructure.

Besides the policy aspect of it, actually doing the mitigation is really impractical. It requires investment in the public drainage system and streets that is vastly disproportionate to the area being regulated.

For clarification, this is different if a development is extending a street or making major improvements to a street through significant widening, etc. I am talking about things like a trench patch across the road.

Innovative Mitigation

There should be some way to exchange forms of sustainable development to make up for other forms. For example, flow control requirements frequently render medium-size projects and infill projects infeasible by reducing density of developments to where they become impractical, financially or in design.

Infill housing and densification of existing urban areas is beneficial from an environmental standpoint because it limits impacts of new housing to existing areas that are already impacted and which have better existing drainage infrastructure to support denser development.

If there were some means of proposing innovative solutions to these problems and exchanging different forms of sustainable development, it would open up options that would be a net benefit to all stakeholders. One example of this would be to exchange solar energy production with flow control. Say for example there's a difficult site with topography that is unfavorable to flow control and there is a mandate by local government to meet a minimum density on the property. If the developer had the option to provide on-site clean energy production in exchange for a reduction or elimination of flow control obligations, that would be an incentive to developers to provide an environmental benefit that is more achievable. The greater density could support an investment in clean energy and be a better use of the land.

Obviously this idea requires a lot more fleshing out and is probably a multi-agency coordination effort. It also would vary by local jurisdiction to some degree. If Ecology opened the door, maybe more jurisdictions would look at something like this.

Sheet Flow Dispersion for Sidewalks

Sheet flow BMP should be updated to reflect more realistic requirements for sidewalks specifically. The required flow path should not be 10 feet for something that is as narrow as a sidewalk. Maybe a more realistic rule would be 1:1 if the sidewalk is under 10 feet wide.

Also, the requirement for a “transition zone” should be revisited in the context of a sidewalk specifically. Gravel strips are not needed along a small sidewalk. Some jurisdictions are interpreting this way too literally.

For gravel driveways, a transition strip should not be required. That should be explicit in the BMP.

Discharges to Wetlands

There should be more explicit guidance about how far away a site is from a wetland before MR8 applies. Example, City of Tacoma has classified all of its flood control facilities as category 2 wetlands. They view *any* discharge to the City’s system as being subject to MR8 if the system leads to one of their protected areas. Sites can be miles away and still incur this requirement. This doesn’t seem to meet the intent of the code.