

Excerpted from:

**Snohomish County, WA, Amended Ordinance No. 98-055
Repealing Snohomish County Code Title 24 - Drainage
and Adopting New Title 24, 'Drainage'**

CHAPTER 24.40 MAINTENANCE OF DRAINAGE FACILITIES

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24.40.010 Maintenance responsibility for drainage facilities.

The owner shall be responsible for maintenance and operation of on-site drainage facilities, unless the county assumes this responsibility pursuant to section 24.40.020 SCC.

- (1) Drainage facilities shall be maintained at all times so that their water quantity and water quality control functions, and access are not impaired; and shall include keeping all drainage facilities and access areas free of accumulated debris or trash, and all impervious surfaces free from sediment.
- (2) Maintenance of all drainage facilities shall be conducted by the responsible party in compliance with an operation and maintenance plan for drainage facilities developed in accordance with the requirements of this title.
- (3) Any modification to detention facilities for maintenance which is not part of an approved maintenance schedule will require prior approval by the county. A revision to the approved plans, drainage computations or maintenance schedule shall require resubmittal to the county for approval prior to modification.

24.40.015 Interim maintenance responsibility after construction acceptance.

The applicant or owner of any drainage facility shall be responsible for maintenance of the drainage facilities, including that portion within the county road right-of-way, for a period of two years following construction acceptance by the county pursuant to section SCC 24.20.065, or through the release of any warranty security and maintenance security pursuant to chapter 24.50 SCC, whichever is later. The county may periodically inspect the drainage facilities for maintenance and may enforce the maintenance requirements pursuant to this title. The applicant or owner shall provide a warranty

security and maintenance security as may be required pursuant to chapter 24.50 SCC. Verification of maintenance and county approval shall be obtained in writing prior to release of any warranty or maintenance security. If inspection during this period identifies deficiencies in maintenance of the drainage system, the applicant or owner shall correct such deficiencies within the time specified by the director.

24.40.020 Release of applicant from maintenance responsibility for certain drainage facilities.

After release of the warranty, security and maintenance security, if the county's inspection verifies that the drainage system has been adequately maintained and is functioning in accordance with the design, the owner and applicant shall be released from responsibility for maintaining those elements of the drainage system that are within the county road right-of-way. Where the owner director of public works determines that drainage facilities located outside the county road right-of-way offers to dedicate the facilities to the county, if the director of public works determines that the drainage facilities should become a part of a county maintained regional system, the county may accept the an offer of tract dedication by the owner to the county, and the owner and applicant shall thereafter be released from maintenance responsibility for the dedicated tract.

24.40.025 Easements granted to the county.

- (1) To protect the public from flooding, water quality degradation, damage to aquatic habitat, and other drainage impacts, easements shall be granted to the county for the right to enter property, at the county's discretion, for the purpose of inspecting, maintaining, modifying, or replacing the following drainage facilities when such drainage facilities are constructed to serve a proposed development activity and are located on the site of the proposed development activity:
 - All detention facilities, retention facilities, and storm water treatment facilities;
 - Access routes constructed in accordance with the requirements of SCC 24.30.015(5);
 - Conveyance systems that conduct storm water from a public or private right-of-way to detention facilities, retention facilities, and storm water treatment facilities;
 - Closed-conduit conveyance systems that conduct water downstream of a public or private right-of-way;
 - Closed-conduit conveyance systems that conduct storm water from detention facilities, retention facilities, and storm water treatment facilities downstream to a public right-of-way;
 - Any other privately-owned drainage system, if the director determines that damage to a public right-of-way or county property, or a threat to public health, safety, and welfare may occur if the drainage system does not function properly; and
 - Any other drainage easements offered by the owner of the subject property which may be accepted by the director if the director determines the easement serves the public interest.
- (2) If the granting of easements required under subsection (1) would prevent an applicant or owner from making any economically viable use of the site, the applicant or owner

may apply for a reasonable use allowance from the director of planning and development services to modify the easement requirements. In granting a reasonable use allowance, the director of planning and development services shall make the minimum modification of the easement requirements necessary to allow an economically viable use of the site.

- (3) All easements granted to the county under subsection (1) shall grant access from an opened public right-of-way.
- (4) Easements granted to the county under subsection (1) shall be twenty (20) feet in width:
 - (a) The required width may be increased by the director of public works to the minimum extent necessary when the director of public works determines there are special circumstances applicable to the site or the intended use, for which a wider easement is necessary to allow adequate maintenance of the proposed drainage facility; or
 - (b) The required width may be reduced by the director of public works when the director of public works determines there are special circumstances applicable to the site or the intended use, including but not limited to, shape, topography, location, or surroundings, which do not generally occur on other sites and which render it infeasible to develop the property for uses allowed under zoning, or which impose undue hardship, provided that the director of public works also determines the proposed drainage facility can be adequately maintained with the reduced easement width.
- (5) The easement shall be documented and submitted to the department in a form specified by the director of planning and development services.
- (6) Prior to accepting the easement, the director of planning and development services may require the removal of all encumbrances which are inconsistent with the purposes for which the easement is being granted.
- (7) The owners with a record interest in the property shall sign the easement document, and execute and record a covenant which runs with the land and binds the property, requiring the owners of the property burdened by the easement to maintain the easement and their adjacent property.
- (8) No fill, structures, fences, walls, rip rap, buildings or other similar encumbrances to access or restrictions to the flow of water may be placed within the drainage easement without the written consent of the director of public works. Encumbrances placed within a drainage easement in violation of this restriction may be removed by the county at the sole expense of the owner. The county shall endeavor to provide the property owner reasonable advance notification of the need to remove the encumbrance and a reasonable opportunity for the property owner to remove the encumbrance. The property owner shall reimburse the county for the cost of removing encumbrances placed within an easement in violation of this code. Payments shall be made within ninety days of the day the county submits a bill for

costs. In the event of nonpayment, the county may bring suit to recover such costs, including its attorney's fees, and upon obtaining a judgment, such amount shall become a lien against the property of the owner as provided in RCW 4.56.190.

24.40.030 Drainage easements.

All drainage facilities specified in an approved drainage plan except for conveyance systems serving only one single family residential lot shall be contained within recorded easements granted exclusively for the purpose of conveying or storing storm water runoff. Such easements shall be established for the benefit of all real property for which such drainage facilities have been designed to convey or store storm water runoff. The easements shall be documented and submitted to the department in a form specified by the director prior to recordation.

24.40.035 Maintenance covenant.

- (1) The owners with a record interest in the private drainage facilities specified in section 24.40.030 shall sign and record a covenant which runs with the land and requires the owners of the property, and their heirs, successors and assigns to maintain the drainage facilities. The covenant shall be in a form specified by the director. The restrictions set forth in such covenant shall include, but not be limited to a description of the owner's maintenance responsibilities and obligations, the right of entry for inspection by the county, and provisions for notice to the persons holding title to the property of a county determination that maintenance and/or repairs are necessary to the facility and a reasonable time limit in which such work is to be completed.
- (2) If required maintenance has not been performed, the county may cause said maintenance to be done at the sole expense of the owner. The county shall endeavor to provide the property owner reasonable advance notification of the need to do the maintenance and a reasonable opportunity for the property owner to perform it. The property owner shall reimburse the county for the cost of performing maintenance which the owner has failed to perform in violation of this code. Payments shall be made within ninety days of the day the county submits a bill for costs. In the event of nonpayment, the county may bring suit to recover such costs, including its attorney's fees, and upon obtaining a judgment, such amount shall become a lien against the property of the owner as provided in RCW 4.56.190.

24.40.040 Separate tracts for detention facilities.

Except as provided herein, detention facilities, retention facilities, and storm water treatment facilities serving residential lots, and access roads serving these facilities, shall be placed in one or more separate tracts owned in common by the property owners served by the facility or owned by a homeowner's association, who shall be responsible for maintenance of such facilities unless dedicated to the county., unless allowed in easements and/or private roads pursuant to SCC 24.30.035(2) subject to a decision of the director of planning and development services. An applicant may request the installation of detention facilities in public rights-of-way pursuant to SCC 24.30.035(2) subject to a decision of the director of public works.

CHAPTER 24.50 SECURITY AND INSURANCE

Sections:

24.50.010 Purpose

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24.50.010 Purpose.

The purpose of this chapter is to ensure that all work or actions required by this title are satisfactorily performed and completed in accordance with the approved plans, specifications, permit or approval requirements or conditions, and all applicable federal, state or local laws, regulations and policies. It is also the purpose of this chapter to ensure that all work or actions not performing satisfactorily after construction shall be corrected in a timely manner, and to eliminate hazardous conditions, restore environmental damage or degradation, protect fish and wildlife habitat and to protect the public health, safety and welfare.

24.50.015 Performance Security--Requirements.

Prior to permit or approval. Prior to the issuance of any permit or approval for any development activity for which a full drainage plan is required pursuant to this title, the applicant shall furnish to the department a performance security in a form acceptable to the director in the amount of 150 percent of the estimated cost, as determined approved by the director, of installing and maintaining erosion and sediment control measures and abating potential adverse impacts from the project to public and private drainage facilities. from the failure to complete the project.

The performance security shall remain in effect until final inspection and construction acceptance by the county of all drainage facilities specified by the drainage plan, or until the director accepts a performance security pursuant to subsection (2).

If, during the period the performance security is in effect, the director determines the applicant has failed to install and maintain erosion and sediment control measures or has failed to abate potential adverse impacts from the project to public and private drainage facilities, the department shall notify the applicant and specify an appropriate time in which the applicant shall cure the unsatisfactory performance, or perform corrective work as required. If this work is not performed by the applicant either within the time specified or in a manner acceptable to the department, the applicant shall forfeit the performance security to the county. Where a surety bond is posted by the applicant, the surety company shall be required, at the option of the director, to either pay the security amount to the county upon demand or complete the work according to the county's terms and conditions. Forfeiture of the performance security hereunder shall be in addition to any other legal or equitable remedy available to the county.

Prior to recordation or certificate of occupancy. The applicant for any development activity for which a drainage plan is required who wishes to construct a portion of the required drainage facilities after recordation of the final plat or short plat or issuance of the certificate of occupancy, shall submit a performance security pursuant to this subsection in a form acceptable to the director prior to obtaining approval of final plat or final short plat, or a certificate of occupancy. The director may only accept the performance security for this purpose for drainage facilities for which delayed construction does not pose a threat of significant adverse drainage impacts, as determined by the director. In no case shall the director accept the performance security for delayed construction of retention facilities, detention facilities, storm water treatment facilities, and associated conveyance systems, or erosion and sedimentation control facilities.

The performance security required pursuant to this subsection shall be in the amount of 150 percent of the greater of either:

the estimated cost, as determined approved by the director, of constructing all drainage facilities as specified in the approved drainage plan, or

the estimated cost, as determined approved by the director, of monitoring drainage facility performance and designing and constructing any corrective work plus other mitigation measures which may be necessary to correct the effects on-site and off-site of inadequate or failed workmanship, materials or design.

The estimated costs shall also include related incidental and consequential costs, and the cost of inspection of the work by the department.

The performance security shall remain in effect until final inspection and construction acceptance by the county of all drainage facilities specified by the drainage plan, which may occur up to two (2) years after recordation of a final plat or short plat or issuance of a certificate of occupancy. The performance security shall not be released until a warranty security is accepted pursuant to SCC 24.50.020.

If the work required by this title is not satisfactorily completed by the applicant within two years after recordation or issuance of a certificate of occupancy, the applicant shall forfeit the performance security to the county. Where a surety bond is posted by the applicant, the surety company shall be required, at the option of the director, to either pay the security amount to the county upon demand or complete the work according to the county's terms and conditions. Forfeiture of the performance security hereunder shall be in addition to any other legal or equitable remedy available to the county.

24.50.020 Warranty Security--Requirements.

After final inspection and acceptance of all drainage facilities required by an approved full drainage plan and before recordation of a plat or short plat or issuance of a certificate of occupancy and before the release of any performance bond required pursuant to SCC 24.50.015(2), the applicant shall furnish the department a warranty security in a form acceptable to the director in the amount of 150 percent of the estimated cost, as determined approved by the director, of monitoring drainage facility performance and designing and constructing any corrective work plus other mitigation measures which may be necessary to correct the effects on-site and off-site of inadequate or failed workmanship or materials, or defective design. The estimated cost shall also include related incidental and consequential costs, and the cost of inspection of the work by the department.

The warranty security shall remain in effect for a period of two (2) years after final inspection and construction acceptance by the county of all drainage facilities specified by the drainage plan . Where a project is completed in phases, the warranty period shall begin to run after completion and acceptance by the county of the first phase of the work and shall remain in effect for a period of two (2) years after final inspection and construction acceptance of the final phase.

Release of the warranty security by the county shall constitute final approval of the drainage facilities of the development activity.

If, during the period the warranty security is in effect, the drainage facilities required by an approved full drainage plan do not perform or function satisfactorily or do not accomplish their intended purpose, the department shall notify the applicant and specify an appropriate time in which the applicant shall cure the unsatisfactory performance or perform corrective or restoration work as required. If this additional work is not performed by the applicant either within the time specified or in a manner acceptable to the department, the applicant shall forfeit the warranty security to the county. Where a surety bond is posted, the surety company shall be required, at the option of the director, to either pay the security amount to the county upon demand, or complete the additional work according to the county's terms and conditions. Forfeiture of the warranty security shall be in addition to any other legal or equitable remedy available to the county.

24.50.025 Maintenance Security-- Requirements.

Prior to the release of any warranty security required pursuant to SCC 24.50.020, the applicant shall furnish the department maintenance security in a form acceptable to the director in the amount of 10 percent of the warranty security required pursuant to SCC 24.50.020 or \$5,000, whichever is greater.

The maintenance security shall remain in effect for a period of one (1) year beginning from the date of release of the warranty security and final approval of the drainage facilities of the development activity, pursuant to SCC 24.50.020.

If, during the period the maintenance security is in effect, the applicant fails to regularly maintain the drainage facilities as required under this title, the department shall notify the applicant and specify an appropriate time in which the applicant shall cure the unsatisfactory performance or perform corrective or restoration work as required. If this additional work is not performed by the applicant either within the time specified or in a manner acceptable to the department, the applicant shall forfeit the maintenance security to the county. Where a surety bond is posted, the surety company shall be required, at the option of the director, to either pay the security amount to the county upon demand or complete the additional work according to the county's terms and conditions. Forfeiture of the maintenance security shall be in addition to any other legal or equitable remedy available to the county.

24.50.030 Extension of the Security Period -- Notice to Surety.

- (1) The director may extend the duration of any security required under this title if:
 - (a) Curative or restorative improvements have been made to the work and additional time is required to verify whether such improvements will function and operate as required;
 - (b) The applicant has failed to cure defective work or has failed to maintain the

improvements after notice from the county, and the department requires additional time to ensure that the work will be accomplished and the improvements will operate as required; or

- (c) At the request of the applicant. The director may extend the performance or warranty security to such date as he determines is in the best interests of the county.
- (2) When the security furnished under this title is in the form of a surety bond or held by a banking institution, the director shall promptly notify the surety company or banking institution of any such change in the terms or duration of the surety bond, and the surety company or banking institution shall issue a new surety bond or other instrument to the county reflecting such amended terms and conditions.

24.50.035 Administration of Securities.

Funds. Any cash deposit or other security device received from an applicant under this title shall be held by the county in a segregated, interest-bearing account as specified by the Finance Director. At the expiration of the specified period of the performance, warranty or maintenance security, the security less any sums forfeited to the department as described in this chapter, plus associated interest, shall be released to the applicant.

Nonconformance and forfeiture. If during the specified term of the performance, warranty or maintenance security, the director determines that conditions exist which do not conform with plans, specifications or permit requirements, the director may issue a stop work order pursuant to SCC 24.60.020, chapter 28.12 SCC and/or chapter 28.16 SCC, prohibiting any additional work until the condition is corrected. The director may revoke the performance, warranty or maintenance security, or a portion thereof, in order to correct conditions that are not in conformance with plans, specifications, or permit requirements. The applicant may not proceed with work until the required amount of the security has been re-established.

After the forfeiture of performance, warranty or maintenance security under this chapter, the director may spend such funds for any of the purposes and objectives of this title described in Section 24.50.010.

24.50.040 Exemption for Public Agencies.

In accordance with RCW 36.32.590, as now existing or hereafter amended, state agencies and units of local government are exempt from the requirements of this chapter where the state agency or unit of local government is engaged in a "building construction project" as defined by state law. However, nothing in this section shall be construed to limit the authority of the county to enforce the codes, regulations and laws applicable to said state agencies and units of local government during the course of such building construction project.

24.50.045 Insurance Requirements.

- (1) When Required. When drainage facilities are constructed within county rights-of-way, the director shall require an applicant subject to this title to obtain occurrence form commercial general liability insurance against personal injury and property damage or loss resulting from activities undertaken pursuant to a permit or approval,

or conditions caused by such activities under this title.

- (2) Coverage Amount and Terms. The policy shall be in an amount determined by the director of the department of budget and finance to be commensurate with the risk to the public involved, and shall be at a minimum amount of \$1,000,000.00 per each occurrence. The policy shall be maintained continuously for the duration of the work undertaken pursuant to the permit or approval, and for an additional three years after the county has given final approval or has accepted construction. The policy shall contain appropriate endorsements and amendments as are required by the director of the department of budget and finance, and shall name "Snohomish county, its officers, elected and appointed officials, employees and agents" as an additional insured.
- (3) Notice of Cancellation or Modification of Coverage. The policy shall provide that the director shall be notified by certified mail of any modification or cancellation of the policy at least 30 days prior to any such modification or cancellation. If the insurance is canceled and not replaced, or modified, the director may revoke the permit or approval.
- (4) Proof of Insurance. The applicant shall provide evidence of the existence and continuation of the insurance for the required period to the director of the department of budget and finance in accordance with the requirements of the director of budget and finance, which shall include one or more of the following:
 - (a) An original binder of insurance signed by an authorized broker of the insurance carrier reciting the above coverage, accompanied by a letter of clarification if requested;
 - (b) a copy of the "declarations" pages of the policy, reciting the above coverage; or
 - (c) a copy of the complete policy.
- (5) Approval by the director of the department of budget and finance. The insurance carrier must be authorized to transact business within the State of Washington. The insurance carrier and policy shall be subject to the approval of the director of the department of budget and finance.

CHAPTER 24.60 ENFORCEMENT

Sections:

24.60.010 Title 28 SCC .

24.60.015 Inspection and right of entry.

24.60.020 Stop-work order.

24.60.025 Withholding certificate of occupancy.

24.60.030 Hazards.

24.60.010 Title 28 SCC.

All violations of this title are subject to the provisions of title 28 SCC. Whenever the director determines that a condition exists in violation of this title, or in violation of any condition or requirement of a permit or approval imposed pursuant to this title, the director is authorized to take enforcement action under title 28 SCC.

24.60.015 Inspection and right of entry.

The department may inspect any development activity for which a permit is required and construction of drainage facilities for which plan approval is required to enforce the provisions of this title. By submitting a targeted or full drainage plan or an application for a grading permit, the applicant consents to entry upon the site by the county for the purpose of making reasonable inspections to verify information provided by the applicant and to verify that work is being performed in accordance with the approved plans, permits and the requirements of this title.

24.60.020 Stop-work order.

- (1) Whenever the director determines that work is being done in violation of a provision of this title, the director may order work at the site stopped if the director determines that is necessary in order to obtain compliance with a provision of this title.
- (2) The stop-work order shall contain a description of the violation, and an order that work be stopped until the violation has been corrected and the correction has been approved by the director.
- (3) The stop-work order shall be posted conspicuously on the premises or personally served on any person engaged in or causing such work to be done. Any person served with a stop-work order shall immediately stop all work or cause all work to be stopped, except work necessary to correct the violation, until authorized by the director to proceed.
- (4) A stop-work order that has been posted may not be removed, obscured, or mutilated.
- (5) The penalty for violation of a stop-work order shall be imposed pursuant to title 28 SCC.

24.60.025 Withholding of certificate of occupancy.

In addition to the issuance of any order for abatement and correction of a violation of a provision of this title pursuant to title 28 SCC, the director may withhold the issuance of a Certificate of Occupancy or other forms of occupancy approval until the violation has been corrected.

24.60.030 Hazards.

Whenever the director determines that a condition caused by a development activity regulated by this title creates a present or imminent hazard, or is likely to create a hazard to the public safety, health or welfare, the environment, or public or private property, the director may declare such condition a public nuisance and may direct the property owner or persons causing or contributing to the hazardous condition to abate the hazard within a specified period, or the director may take action to abate the hazard and recover all costs incurred from the responsible parties. Payments shall be made within ninety days of the day the county submits a bill for costs. In the event of nonpayment, the

county may bring suit to recover such costs, including its attorney's fees, and upon obtaining a judgment, such amount shall become a lien against the property of the owner as provided in RCW 4.56.190. A requirement or action to abate the hazard which is appealed pursuant to this or any other title of this code shall not be subject to a stay.