

ORDINANCE NO. _____ – 2008

**AN ORDINANCE ESTABLISHING THE CITIZENS’
STORM WATER ADVISORY COMMITTEE, AMENDING SECTION 13.04
OF THE SAN JUAN COUNTY CODE REGARDING THE DEFINITIONS AND
PROVIDING FOR THE ESTABLISHMENT, EXEMPTION, ADMINISTRATION AND
APPEALS OF STORM WATER SERVICE CHARGES**

LEGISLATIVE FINDINGS

Background

1. Population growth in San Juan County has resulted in the construction of roads, driveways and buildings, all of which are impervious surfaces.

2. Large areas of land that were once covered with vegetation which served a purpose of filtering, slowing and allowing for the gradual infiltration of storm water and recharge of the groundwater supply, now have impervious surfaces that allow the storm water to run and gather on lands or flow to the near shore marine environment at places that are sometimes far from the source of run off.

3. Water running off roads, driveways, and parking lots may pick up contaminants including oil and heavy metals.

4. Unlike other western Washington counties which receive water from snow melt in reservoirs, most of San Juan County’s drinking water comes from underground or from lakes and reservoirs.

Statement of the Problem

5. Uncontrolled storm water will jeopardize the quality of the ground water and surface water and may damage the marine environment, which is the most pristine in the state of Washington.

6. Uncontrolled storm water has overwhelmed ditches, undermined road beds, damaged roadways and has caused localized flooding problems.

7. Current County building regulations require new construction to control the rate of water run off, and thereby improve quality of storm water run off, often at considerable expense to the owner. Even using all known best construction practices and technology, the aggregate amount of storm water run off becomes more contaminated as growth continues.

Growth Management Act Requirements

8. Planning for capital facilities to control storm water run off is required for all urban growth areas of the County including the unincorporated urban growth areas in Eastsound, Lopez Village and Friday Harbor.

9. The Western Washington Growth Management Hearings Board (the "Growth Board") has found in an Order dated June 20, 2006 that San Juan County is not in compliance with the Growth Management Act, specifically, RCW 36.70A.070(3)(d) for its failure to develop a capital facilities financing plan to assure that all capital facilities required to address storm water for the area of Eastsound within the planning period.

10. To demonstrate that the County is properly addressing storm water capital facilities in Eastsound on Orcas Island, the County submitted to the Western Washington Growth Management Hearings Board the "Rasmussen Plan" and the County council adopted a 6-year capital facilities financing plan which provides for inter-fund loans to pay for storm water facilities in Eastsound.

Objectives

11. The County Council finds that for the health, safety, and public welfare of the residents of San Juan County, the County Council should address storm water run off in a comprehensive way that is as fair as possible to all residents of the County and, in doing so, will provide a general benefit to all of the residents of the County.

12. The County Council finds that the construction of storm water drainage facilities, in a manner consistent with the capital facilities element of the comprehensive plan, will protect the quality of drinking water, protect the marine habitat, minimize unexpected damage to private property and public roadways and, in so doing, improve the prosperity, interests and welfare of all residents of the County and is in the public interest of this and future generations.

Procedure

13. In 2005 the San Juan County Council adopted Ordinance 14-2005 (codified at SJCC 13.04) and thereby established a storm water utility under the authority of Chapter 36.89 RCW.

14. At the time the storm water utility was established, the utility was unfunded.

15. During 2006 a citizen's steering committee composed of diverse interests guided the San Juan County Public Works Department and the County Council on identifying the problem of storm water in San Juan County in rural lands, urban lands, and activity centers, made recommendations on the implementation of the storm water utility and ways to pay for the expenses of such a utility.

16. In December 2006 after receiving the recommendation of the storm water steering committee, the San Juan County Council adopted Ordinance 20-2006, which amended Ordinance 14-2005 to re-write the purposes section and add definitions and provide for a service charge of \$46.20 for single-family residences; a graduated service charge for commercial, industrial, and multifamily properties; a service charge to be assessed of the County Road Fund, but no service charge for undeveloped land.

17. The service charge established in Ordinance 20-2006 was charged and collected in 2007 according to its terms, and thereby provided the monies that were used to fund the storm water program including the maintenance of storm water facilities, project planning and administration.

18. Ordinance 20-2006 was the subject of the first local referendum in San Juan County and, at the 2007 General Election, Ordinance 20-2006 was rejected by the citizens of San Juan County.

19. After the referendum on Ordinance 20-2006, the San Juan County Council established a subcommittee of Council members to meet, hear and consider the concerns of citizens and propose a new ordinance, which subcommittee conducted work sessions on San Juan Island on November 12, 2007, on Orcas Island November 17, 2007, and another round of hearings on San Juan, Orcas and Lopez Island October 7, 8 and 9, 2008.

20. The County Council desires that this ordinance be adopted to provide a mechanism for continued funding of storm water capital facilities and to repay interfund loan obligations that may arise in the future as required by state law.

21. The San Juan County Council held a duly-noticed public hearing on November 4, 2008.

Authorities

22. This ordinance is adopted pursuant to the power and authority granted to the San Juan County Council specifically, as the "county legislative authority," in the Growth Management Act, RCW 36.70A.040 *et seq*, and also in RCW 36.89.080.

23. The San Juan County Council has the authority to establish and manage funds pursuant to RCW 36.20.120.

NOW, THEREFORE, it is hereby ordained by the San Juan County Council as follows:

Section 1. SJCC 13.04.040 and Ordinance 14-2005 Section 4 are hereby amended to read as follows:

13.04.040 Definitions.

For the purposes of this chapter, the words or phrases below shall have the following meanings:

A. "County" means San Juan County, Washington.

B. "County Road" means public rights-of-way shown on the Official County Road Log maintained by the County Engineer and adopted into the County Road System by the County council.

C. "Director" means the Director of the San Juan County Department of Public Works or his or her designee.

~~B-D:~~ "Low impact development (LID)" is a decentralized storm_water management strategy that uses natural processes, such as the interception and uptake by storm_water vegetation, infiltration devices, and detention to simulate pre-development water balance and hydrology.

E. "Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which is documented for real property purposes, and a tax lot number assigned by the San Juan County Assessor.

F. "Service Charge" means the basic service charge which is the amount owed after applying the appropriate rate to a particular parcel of real property based upon factors established by this ordinance.

G. "Single-family residence" means a dwelling unit designed for and occupied by no more than one family, as defined in Title 18 of the Unified Development Code for San Juan County.

~~A-H.~~ "Storm_water facilities" shall mean any facility, improvement, development, property or interest thereon, made, constructed or acquired for the purpose of controlling, or protecting life or property from any runoff, storm, waste, flood or surplus waters wherever located within the County, and shall include but not be limited to the improvements and authority described in Chapter 86.12 RCW et seq. and Chapter 86.15 RCW et seq.

NEW SECTION. Section 2. A new section shall be added to the San Juan County Code Chapter 13.04 to read as follows:

Citizens' Storm Water Advisory Committee.

A. Establishment. There is hereby created a citizens' storm water advisory committee the members of which shall be appointed by the County council.

B. Purpose. The purpose of the storm water advisory committee is to provide advice to the County council and make recommendations on matters pertaining to storm water including capital facilities, projects, priorities of projects, and other policy matters as referred by the County council related to the operation of an effective storm water utility. The recommendations of the committee should be received by July 1 of each year to allow the County council sufficient time to consider the recommendations prior to the adoption of the capital facilities plans.

C. Membership. The storm water advisory committee shall be composed of seven members, one from each council member district and one member at large. Each member shall be appointed for a term of four years, the dates of which shall coincide with the full term of the respective council member district. The term of the at large member shall coincide with the term of the council member in District 1.

D. Rules. In conducting its business, the citizens' storm water advisory committee shall follow the Uniform Business Rules, including the Rules of Procedure, unless other rules have been duly adopted by the County council.

NEW SECTION. Section 3. A new section shall be added to the San Juan County Code to read as follows:

Guidelines for Storm Water Service Charges.

A. After the adoption of this ordinance, all new or modified storm water service charges for the storm water utility shall be established by the County council by ordinance after first considering the written recommendations of the citizens' storm water advisory committee and testimony from the public at a public hearing.

B. The service charge structure may have one or more components, shall consider the factors and constraints set out in RCW 36.89 and may include shall include the following considerations:

1. A basic, county-wide service charge, which recognizes the benefit to every property owner from protection against flooding on county roads, protecting the quality of groundwater recharge, protection of the near shore marine environment, water quality monitoring, basin studies, administration of the storm water utility, and education and compliance with state law.
2. A district-wide service charge to be assessed to property owners within a geographical district which service charge is assessed to reflect a portion of the costs of projects within that district;
3. The services furnished or to be furnished;
4. The benefits received or to be received;
5. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by counties pursuant to RCW 36.89.080.
6. Mandatory exemption from service charges--all service charges shall be reduced or exempted after considering the following information to be provided by the property owner:
 - a. An exemption for parcels taxed as forest land under Chapter 84.33 RCW or as timber land under Chapter 84.34 RCW;
 - b. In accordance with RCW 36.89.080, the rate to be imposed shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system that is properly sized to utilize the available roof surface of the building. The service charge structure shall consider rate reductions in excess of ten percent depending upon the amount of rainwater harvested.
7. Optional exemption from service charges--service charges may be reduced based upon the non-profit public benefit status of the property owner and/or income level of persons including senior citizens and disabled persons.

NEW SECTION. Section 4. A new section shall be added to SJCC Chapter 13.04 to read as follows:

Storm Water Service Charges.

A. Basic Service charge. Each parcel in San Juan County, except for parcels taxed as forest land under chapter 84.33 RCW or as timber land under chapter 84.34 RCW which exist on December 31 of each year, shall be assessed annually, and the owner of each parcel shall pay a storm water service charge, known as the “Basic Storm Water Service charge.” The Basic Storm Water Service Charge is to be calculated based upon estimates of the next year’s costs of those parts of the service charge which benefit the citizens throughout the County equally, administration and overhead, drainage basin planning, water quality monitoring, public outreach and technical assistance, billing and collection, engineering and plan review and maintenance of county storm water facilities.

B. Capital service charge. Each parcel in San Juan County, except for parcels taxed as forest land under chapter 84.33 RCW or as timber land under chapter 84.34 RCW which exist on December 31 of each year, shall be assessed annually a Capital Storm Water Service charge and the owner of each parcel shall pay the Capital Storm Water Service charge. The Capital Storm Water Service charge is to be calculated based upon a 5-year forward rolling average of the estimated annual capital expenses of storm water improvements as itemized in the six year storm water capital improvement plan, with one-half of the capital service charge assessed equally on all parcels in the county, and one-half of the capital service charge assessed equally on parcels within the district.

C. The Storm Water service charges shall exclude from the calculation any expenses that are projected to be paid for by the Road Fund.

NEW SECTION. Section 5. A new section shall be added to the San Juan County Code Chapter 13.04 to read as follows:

Amount of Storm Water Service Charge

A. Beginning January 1, 2009, and on the first day of each year thereafter, a storm water service charge shall be assessed at the following rate:

District	Basic Service Charge	Capital Service Charge	Total
San Juan Island	\$22.97	\$32.99	\$55.96
Orcas Island	\$22.97	\$61.47	\$84.44
Lopez Island	\$22.97	\$40.79	\$63.76
Shaw Island	\$22.97	\$32.73	\$55.70
All other islands	\$22.97	\$21.18	\$44.15

B. The rate the county may charge under this section for storm water control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The property owner may submit a request for reduction at any time, and such request must be acted upon within 90 days, and such reduction will be effective in the next billing cycle after approval.

NEW SECTION. Section 6. A new section shall be added to SJCC Chapter 13.04 to read as follows:

Administration.

A. Storm water service charges shall be assessed annually and included in the first half of the San Juan County property tax statements. Property owners who do not receive a property tax statement will receive a separate billing statement.

B. Service charges are due and payable on or before the 30th day of April, and shall be delinquent after that date. However, if one-half of such service charges are paid on or before the said 30th day of April, the remainder shall be due and payable on or before the 31st day of October and shall be delinquent after that date, in the same manner as regular property taxes. Any delinquent amount shall be charged interest at the rate of 12 percent per annum and shall be a lien on the property, which lien may be foreclosed after three years from the date the storm water service charge becomes delinquent in the same manner as the foreclosure of the regular property tax levy.

NEW SECTION. Section 7. A new section shall be added to SJCC Chapter 13.04 regarding Service Charge Adjustments and Appeals to read as follows:

Adjustment and Appeals of Charges.

A. Any person billed for storm water service charges may file a "Request for Service Charge Adjustment" with the County auditor within thirty (30) days of the date of the bill. Submittal of such a request does not extend the date the service charge becomes due and payable.

B. A request for service charge adjustment may be granted by the County auditor only when the County auditor finds that the service charge has been applied in a manner inconsistent with the ordinance establishing the service charge.

C. Service charge adjustments will only apply to the bill then due and payable, and bills subsequently issued.

D. The property owner shall have the burden of proving that the service charge adjustment should be granted.

E. Decisions on requests for service charge adjustment shall be made by the County auditor based on information submitted by the applicant and by the public works department within thirty (30) days of the adjustment request, except when additional information is needed. The applicant shall be notified in writing of the County auditor's decision. If an adjustment is granted which reduces the service charge for the current year, the applicant shall be refunded the amount overpaid in the current year together with interest thereon at 12 percent per annum on the amount overpaid from the date of payment to the date of refund.

NEW SECTION. **Section 8.** A new section shall be added to the San Juan County Code Chapter 13.04 to read as follows:

Storm Water Fund Appropriation.

A. The service charges collected from the assessment of the storm water service charges shall be deposited in a fund or funds called the “Storm Water Fund” in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities or any part of the cost or expense planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities and may not be transferred to any other fund or used for any purpose not previously approved by the County council. Separate funds shall be established for the basic service charge and for the service charge for capital expenses in each district.

B. The fund with the basic service charges may be used for watershed basin planning, water quality monitoring, gathering data and measuring impermeable surface area for commercial, institutional and industrial properties, education and technical assistance to property owners or groups of property owners, payment of principal and interest on loans made to pay for storm water facilities, administrative expenses including staff time, maintenance and overhead.

C. The funds with capital service charges shall be used for capital facilities, maintenance of storm water facilities on the district for which such fund is established.

Section 9. Severability.

If any provision of this ordinance or its application to any person is held invalid, the remainder of the ordinance or the application to other persons or circumstances will not be affected.

Section 10. Effective Date.

This ordinance will become effective on the 10th working day after adoption.

Section 11. Expiration.

On December 31, 2014, the amount of the Basic Storm Water Service charge and the Capital Storm Water Service charge (except for unpaid or delinquent service charges and interest thereon) shall expire unless action is taken to renew or readopt said service charges, provided however, that if the service charge has been pledged or otherwise relied upon to pay for revenue bonds, the service charge shall continue until such bonds are paid in full.

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Adopted this _____ day of _____ 2008.

**COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON**

ATTEST: Clerk of the Council

Howard Rosenfeld, Chair
District 3, Friday Harbor

By: _____
Ann Larson - Clerk
Date:

Gene Knapp, Vice-Chair
District 5, Orcas East

REVIEWED BY COUNTY
ADMINISTRATOR

Kevin M. M. Ranker, Member
District 1, San Juan South

Pete Rose Date:

APPROVED AS TO FORM ONLY
RANDALL K. GAYLORD

Rich Peterson, Member
District 2, San Juan North

By: _____
Date

Alan Lichter, Member
District 4, Orcas West/Waldron

Bob Myhr, Member
District 6, Lopez/Shaw

EXISTING SECTIONS OF CHAPTER 13.04 SJCC

REMOVE THIS SECTION UPON APPROVAL FOR PUBLICATION

DO NOT PUBLISH

Sections:

[13.04.010](#) Establishment of stormwater utility.

[13.04.020](#) Purpose.

[13.04.030](#) Stormwater utility fund.

[13.04.040](#) Definitions.

13.04.010 Establishment of stormwater utility.

Pursuant to Chapter 36.89 RCW et seq., a utility to be known as the San Juan County stormwater utility is established under the direction of the board of County commissioners, to be administered and operated by the department of public works. The utility is authorized to exercise all lawful powers necessary and appropriate to planning, designing, establishing, acquiring, developing, financing, constructing, operating, managing, improving, maintaining, controlling and requesting stormwater facilities including, without limitation, all lawful powers to fix, alter, regulate and control the rates and charges and conditions for the use thereof and full power to enter into agreements with other governmental entities for such purposes. (Ord. 14-2005 § 1)

13.04.020 Purpose.

The San Juan County stormwater utility is established to minimize property damage, promote and protect the public health, safety and welfare, minimize water quality degradation by preventing siltation, flooding, contamination and erosion of the County's waterways and drainages, protect aquifers, ensure the safety of County roads and rights-of-way, increase educational and recreational opportunities, restore fisheries, encourage the retention of open space, and foster other beneficial public uses including the use of low impact development strategies and technologies to the extent practicable. (Ord. 14-2005 § 2)

13.04.030 Stormwater utility fund.

A fund is hereby created, to be known as the stormwater utility fund. All taxes, fees, charges, or other revenues from any source, if any, imposed herein or hereafter under the authority of this section, shall be placed in the stormwater utility fund for the purpose of paying all or any part of the cost of all proper expenses of the San Juan County stormwater utility. (Ord. 14-2005 § 3)

13.04.040 Definitions.

For the purposes of this chapter, the words or phrases below shall have the following meanings:

A. "Stormwater facilities" shall mean any facility, improvement, development, property or interest thereon, made, constructed or acquired for the purpose of controlling, or protecting life or property from any runoff, storm, waste, flood or surplus waters wherever located within the County, and shall include but not be limited to the improvements and authority described in Chapter 86.12 RCW et seq. and Chapter 86.15 RCW et seq.

B. "Low impact development (LID)" is a decentralized stormwater management strategy that uses natural processes, such as the interception and uptake by stormwater vegetation, infiltration devices, and detention to simulate pre-development water balance and hydrology. (Ord. 14-2005 § 4)