

Enforcement of Pierce County Codes for Protecting Wetlands, Streams and Buffers

OVERVIEW – 15 March 2007

Purpose

Members of the Chambers Clover Creek Watershed Council observed the filling of wetlands, re-routing of streams and removal of buffers in their watershed. As a result, the watershed council agreed to make it a priority in the five year action plan to determine if Pierce County was properly enforcing County codes established to protect these critical resources.

The Pierce County Executive agreed to this review and stated the information would be useful for him, especially to support his budget requests to the County Council.

Scope of Review

This review only examined operations in the Resource Management Section in the Department of Planning and Land Services. This section is responsible for enforcing the regulations for wetlands, fish and wildlife and forest practices. Ione Clagett and Al Schmauder conducted this review during the period August through December 2006.

Results and Recommendations

Enforcement processes were not effective in stopping and resolving code violations. We made 11 recommendations for the Director of Planning and Land Services and four recommendations for the Pierce County Council.

Response by Management

The Director of Planning and Land Services agreed that improvements could be implemented. His comments to the recommendations will be included with this report when received.

Supervisors and employees in the Department of Planning and Land Services were helpful and candid. They provided comments to improve this report and assured the facts were accurate. We thank them for their support, cooperation and suggestions.

Prepared by: Al Schmauder &
Ione Clagett

Enforcement of Pierce County Codes for Protecting Wetlands, Streams and Buffers

RESULTS OF REVIEW

Pierce County was not effectively enforcing regulations designed to protect critical natural resources, like wetlands, streams, and associated buffers. These resources protect drinking water, minimize flooding and shelter wildlife.

As a result, there was no assurance that individuals who filled wetlands, altered streams, cut protected trees or destroyed required buffers would be promptly stopped. Illegally placed fill was seldom removed. Violators were not fined and few were prosecuted. The County had no program to make restoration and place a lien on the property. The names of violators were not made public and there was little feedback to the public on enforcement actions. Some violations were unresolved for years and the benefits from the affected natural resources were lost.



This condition was caused by a low priority placed on enforcement work by the County Council, the County Executive and the Department of Planning and Land Services. Clients who paid fees were given top priority for processing their applications.

Also no employees were dedicated to performing enforcement duties. Instead, the work was done only when biologists in the Resource Management Section had time available from processing fee-paid applications. There was no performance measure for the time between receipt of a complaint and an inspection visit. Managers did not have a periodic report showing the number of open complaints or the status of violations.

RECOMMENDATIONS

For the Director of Planning and Land Services:

1. Consolidate enforcement work in the Code Enforcement Section. The enforcement staff should confirm violations and follow each case to the point that the landowner makes applications to the Resource Management Section. They would issue citations and refer cases to the Prosecuting Attorney.

Draft Reply*: Concur. A consolidated staff would be good. The staff could use common policies and enforcement tools.

2. Move one of the three unfilled positions from Resource Management Section to the Code Enforcement Section. (Zucker estimated 1.5 staff positions should be allocated to Code Enforcement)

Draft Reply: Non-concur: The three unfilled positions are funded by fees from clients requesting application reviews. Enforcement staff should be supported by the general fund.

3. Request funding in the 2008 Budget for two new staff positions to perform enforcement work in the Code Enforcement Section.

Draft Reply: Concur: I will make the request in my budget submission for 2008.

4. Inspect complaints promptly. Establish a performance measure for the length of time from receipt of a complaint to the date of inspection. The intent is to quickly inform landowners about unauthorized activities and to stop further damage. A three to five day standard appears reasonable.

Draft Reply: Concur in part: Accomplishment of the performance measure will have to be phased in as the staff is added.

5. Assign a priority to confirmed violations based on the severity and potential impact of the violation. Use this priority to direct enforcement efforts.

Draft Reply: Concur: I will direct the supervisor of Code Enforcement to develop a priority system to guide the intensity and speed of enforcement actions.

6. Use the Service Request System (SRS) to track the status of complaints, prepare reports and respond to inquiries about complaints. Data could eventually be available to the public, similar to permit data

Draft Reply: Concur: Enforcement staff will be instructed to input results of their actions in the SRS and keep the system current so it can be the single source for complaint tracking and reporting. This should eliminate administrative time used for recording data in multiple data bases and improve the accuracy of data in SRS.

7. Request from either the county computer support staff or the software developer of SRS, the development of a report that shows the status of all complaints, violations, and enforcement actions. Use this report to make periodic reports to management and the public.

Draft Reply: Concur: The report would be valuable to management.

8. Issue civil citations to violators. Collect the money into an abatement fund. Inform County Councilmember of citations issued in their districts. List violators on the County's public website.

Draft Reply: Concur in part. Issuing citations could work as a deterrent to other potential violators. However, legal issues to defend the citations could cost more than the benefits derived. Inspectors will be trained on issuing citations and use them when appropriate.

9. Assure that land owners remove fill illegally placed in regulated wetlands or streams. Hire contractors to remove illegal fill when landowners are uncooperative. Place a lien on the property for the costs and enforce the lien within three years.

Draft Reply: Concur: This action depends if code changes are approved by the County Council.

10. Initiate a public education program targeted at landowners and the building community. The goal is to encourage people to want to protect drinking water, reduce flooding and shelter wildlife by protecting wetlands, streams and buffers during development.

Draft Reply: Concur: Code Enforcement Section has done some education in the past. Their efforts will be increased.

11. Publicize positive and effective actions taken by enlightened builders and landowners to protect critical natural resources.

Draft Reply: Concur: We will watch for responsible developers and explore a way to recognize them and encourage others to also be protective of critical resources.

*Note: Draft Replies are based on discussions with the Director of PALS. They are not official and will be replaced with the actual replies, when received.

Recommendations, continued,

For the County Council

1. Approve the budget request for two staff positions for the Code Enforcement Section.
2. Establish an abatement fund to collect fees from civil infractions and other sources. Use this fund to pay for remedial actions and public education designed to reduce code violations.
3. Authorize the County Executive to undertake restoration work when land owners refuse to comply with County codes.
4. Establish a code section to permit the recording of liens on property for the cost of restoration conducted by the County Executive. King and Snohomish County codes could be used as examples.
5. Add language to County codes that will enable staff to enforce State Laws.

DETAILS OF REVIEW

A. How Are Complaints and Violations Processed?

1. Planning and Land Services Department (PALS) is responsible for enforcing the provisions of Pierce County Development Regulations, Title 18. The Code Enforcement Section in PALS receives all complaints either by phone calls, e-mails, walk-ins, or from County employees. An individual in Code Enforcement enters each complaint into a computer system called SRS, (Service Request System).

2. Code Enforcement is responsible for investigating all complaints relative to potential violations of Shoreline Regulations, Sign Codes (private properties only) and the Zoning Code. For all other complaints, the individual in Code Enforcement forwards the original service request, parcel data, and permits that pertain to each complaint directly to the assigned staff in other PALS sections.

3. Resource Management Section is responsible for evaluating and resolving complaints pertaining to forest practices, wetlands and Fish and Wildlife areas. This section consists of a supervisor, 10 biologists, 2 planners and 4 office assistants. Five biologists are responsible for work in a specific section of the County. Code Enforcement assigns complaints thru SRS to each biologist based on the location of the complaint. Biologists can view their computer file (in SRS) and see what complaints they have in their "To Do" list.

4. According to the Director of PALS and the supervisor of Resource Management Section, the first priority for work is to process applications for wetland and fish and wildlife review. As time permits, biologists work on complaints assigned to them. All complaints have the same priority (low) unless they are initiated by an elected official, the County Executive, the Department Director, or supervisor. Performance measures and management reports are used to track work on wetland reviews. However, performance measures or management reports were not used to track the status of work on complaints or violations.

B. How Many Complaints or Violations are We Talking About?

1. As of 3 January 2007, the official system (SRS) showed 321 active problems (complaints or violations). However, a 44 page Excel spread sheet maintained by the supervisor of Resource Management reportedly showed 204 active problems. The supervisor said her data was more correct and the difference of 117 cases was due to poor data entry by staff. She noted that the staff has many places they are expected to record their findings and data.

2. We counted the open cases in the spreadsheet provided on 17 Feb 07 by the supervisor and found only 90 cases were still shown open. A comparison of the data in the official data base (SRS) and the Excel spreadsheet from Resource Management is shown below.

<u>Name of Biologist</u>	<u>Number of Active Problems</u>		
	<u>SRS</u>	<u>Excel Spreadsheet</u>	
		<u>Supervisor</u>	<u>Our Count</u>
Sherri Lampman	1	3	3
John Meriwether	5	0	0
Lisa Spurrier	10	8	1
Carla Vincent	52	36	25
Sheila Wynn	53	33	13
Sheila Englehardt	40	0	0
Scott Sissons	28	16	14
David Risvold	46	29	22
Diane Ryba	31	28	10
Teresa Lewis	27	32	0
Nikolina Yonkow	<u>28</u>	<u>19</u>	<u>2</u>
	321	204	90

3. The official data base, SRS, showed the Resource Management Section closed an average of 136 cases per year during the period 2003 thru 2006. Resource Management stated they closed an average of 106 problems.

Year:	<u>Data from SRS</u>				<u>Average Cases Closed per year</u>	
	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>Per SRS</u>	<u>Per Res. Mgt.</u>
Problems Closed:	153	119	135	135	136	106

C. Availability of Reports and Reliability of Records.

1. We found that PALS did not have a standard report from the official system (SRS) that showed the total number of complaints received or violations in process. To determine the number of open violations we had to use reports for each biologist in Resource Management and consolidate the results. We believe the absence of a summary report makes it very difficult for senior management to track the workload and timeliness of enforcement actions. The Director should request his information technology section develop a report that shows the status of all enforcement cases.

2. We found there were two separate and unreconciled systems used to record complaints and track actions on violations. Code Enforcement Section used the official system (SRS) to enter complaint data. However Resource Management Section did not use the official system and instead maintained a 44 page Excel spreadsheet. There was a significant difference between the two systems. For instance, on 14 February 2007 the spreadsheet showed only 11 enforcement cases received during 2006. However, Code Enforcement reported that they passed 90 complaints to Resource Management during the first six months of 2006. Also the spread sheet showed 13 violations were still assigned to a biologist who had left the section in October 2006.

3. We are recommending that all employees use the official system (SRS) to record data about complaints and to track actions on violations. This would decrease the recording work for biologist in Resource Management and improve the accuracy of the data base.

D. Review of a Sample of Complaints and Violations.

1. In November 2006 we reviewed complaints received by Resource Management Section during the 90 day period 1 July thru 30 September 2005. Out of the 41 complaints received, the staff confirmed 23 were violations, 10 were not violations and 8 had no action recorded in the automated system. Out of the 23 complaints confirmed to be violations we selected 16 cases to review.

2. Timeliness of processing complaints.

a. Out of the 16 complaints confirmed to be violations, 9 were inspected in less than 14 days and 7 took over 37 days to make the first inspection after the complaint was received by Code Enforcement. The times are summarized below.

6 complaints inspected in 7 or less days	3 stop works issued
3 complaints inspected in 8-13 days	1 stop work issued
3 complaints inspected in 37-40 days	1 stop work issued
3 complaints inspected in 141-179 days	2 stop work issued
1 complaint had insufficient information	

b. Out of the 8 complaints with no action recorded in the official system (SRS), the supervisor provided the following data:

3 have had no action taken after a year and five or six months since they were reported.
3 have had activity.
2 were closed.

c. In 7 out of the 15 complaints, the violations were significant enough to cause the inspector to issue a "stop work order" to the landowner. Unfortunately, during the delay time for the first inspection, violators can continue to damage the resources. In cases where complaints are not inspected for over a year, the damage areas could be overgrown and no longer be evident or properties could be sold. In these cases, we believe the enforcement job for County inspectors would be compromised. Their ability to access the damage and seek restitution may be nearly impossible.

3. Reason for delayed inspections.

a. The supervisor told us that the delays in conducting inspections were due to the low priority placed upon enforcing reported violations. The first priority for work by the Resource Management Section was to process wetland applications. When biologists had time they could use it to work on complaints and violations.

b. Resource Management Section had not established a performance standard to conduct inspections of complaints. Thurston County had a standard of 24 hours to make the initial inspection of complaints. King County had the following standards in their code:

- High risk investigations – 24 hours to 1 week
- Moderate risk investigations – 72 hours to 10 days
- Low risk investigations – 2 to 4 weeks.

c. The supervisor of Resource Management noted that for many years they maintained a two week goal for violation review. Since 2005 when the County Council directed that staff must eliminate the backlog of applications and maintain it at a very low level, enforcement review has suffered. Resource Management recently adopted a policy intended to provide faster response times for complaints. The policy proposes a 30 day period to review a violation file and if appropriate send out a letter to the property owner.

d. We believe this is an unacceptable standard and does not state when if or when a physical inspection will be conducted.

E. Timeliness of Resolving Violations after Inspections.

1. The official system (SRS) showed about 50 percent of the 321 open violations as of 3 January 2007 had been in-process for over two years. Seventy-three violations are over five years with no resolution.

<u>Year</u> <u>complaint received</u>	<u>Number of open violations</u>		<u>Years</u> <u>in-Process</u>
	<u>per SRS</u>	<u>per Res Mgt</u>	
1998	8	0	8
1999	21	8	7
2000	19	5	6
2001	25	5	5
2002	25	13	4
2003	21	20	3
2004	40	25	2
2005	59	44	1
2006	<u>103</u>	<u>107</u>	-
	321	227	

2. The supervisor of Resource Management said her data did not agree with the official data base, but confirmed 31 cases had been unresolved for over 4 years.

F. Why Does Resolution Take So Long?

1. Since complaints are not inspected quickly, minor violations may become major, thus lengthening the time to reach a resolution and at more cost to the landowner. Nevertheless, there are about five reasons that contribute to a lengthy resolution process.

- a. Mail time. Most violations are notified by certified mail. Some landowners don't acknowledge receipt, so second or third notices are sometimes required.
- b. Landowners fail to respond to requests to meet with staff or to hire a consultant.
- c. Tools to encourage compliance like issuing civil infractions or referral to the prosecuting attorneys are seldom used.
- d. Landowners agree to take corrective action but do not carry it out.
- e. County staff do not have time to follow up timely. Since there is no staff dedicated to resolving violations, it is done as time permits.

2. There are some cases where landowners refuse to cooperate and will do nothing to comply with County codes. Legal action seems appropriate in these cases. We were told that the legal process to force compliance is difficult, costly and slow. Thus it is used as a last resort or not at all. We did not review the process for issuing civil penalties or the use of the courts. This area should be another topic for future review.

G. How are Violations Resolved?

1. The desired resolution on resource violations is to have the violator hire a consultant to develop a restoration plan and process it through Resource Management Section for review and approval and a fee. We did not review how county biologists reviewed these plans or the effectiveness of the monitoring to ensure the approved plans were followed. We learned that the county uses a contractor to monitor approved plans. This is another topic for future review.

2. The County is authorized to require the property owner to remove or replace illegal earthwork and recover any illegally graded parcel (Code section 18.140.040D.1.). However, we did not find any instances where the landowner was required to remove fill placed in a wetland or stream. The Resource Management supervisor stated that when it is found that someone has placed fill in a regulated wetland or stream, unless that action is found to be exempt from code or compensatory mitigation is approved, staff will always require that the fill be removed. Grading and filling violations are enforced by the Development Engineering Section. The success of this requirement could be a topic for future review.

3. In those cases where recalcitrant landowners refuse to comply with County codes, the County is authorized by code to remove, correct, or replace any illegal or improperly placed earthwork and bill the property owner. Unfortunately, applicants must agree to this provision as a condition of issuance of any permit authorized by the Development Regulations. It appears that if a landowner doesn't apply for any permits, he can avoid agreeing to this provision, and the County wouldn't be able to conduct restoration work.

4. In King County a director may order any person responsible for code compliance to abate the violation and to complete the work at such time and under such conditions as a director determines reasonable under the circumstances. If corrective work is not completed, a director may proceed to abate the violation (Code 23.24.120).

H. Restoration Using an Abatement Fund.

1. King County authorized an Abatement Fund in its code (23.24.140). All moneys collected from the assessment of civil penalties and from cost recoveries of pursuing code compliance are allocated to this fund. The Director keeps an itemized account of costs incurred by the county in the abatement of any violation including legal fees and interest. This fund is used to pay for abatement costs and code enforcement costs to include personnel.

2. In King County a director may record a lien against the property of a person responsible for code compliance within 90 days from the date of any civil penalty or abatement cost. Action to enforce the lien must commence within three years after recording.

3. Snohomish County has enforcement codes that also authorize the director to abate any condition that constitutes or will constitute a violation of the county code. The reasonable costs of such abatement shall be charged as a lien against the property (Code 30.85.320).

4. Pierce County enforcement is silent on placing liens on property. It does authorize a Notice of Non-Compliance to be recorded on the title to notify any interested parties or lenders that a violation exists. Removal of the notice is subject to dismissal of the violation or payment of any monetary penalty assessed for the violation (Code 18.140.040D.3.)

5. We recommend that Pierce County hire contractors to perform abatement work to restore damaged critical areas. Track the costs and place a lien on the property for payment. The Pierce County Council should also authorize the creation of an Abatement Fund to deposit all fees from civil penalties and recovery of abatement costs. This fund can also be used to pay for enforcement costs.

I. Need for Staff Dedicated to Code Enforcement.

1. The Code Enforcement Section has a staff dedicated to enforcement activities only. They have performance measures for the time to record complaints, time to make first inspections and time to close or resolve cases. The supervisor prepares a monthly report showing cases processed and how well the section performed. They have no conflicting tasks.

2. The Resource Management Section is focused on processing applications for wetland review and other fee based actions. This is their priority especially since it is fee producing. However, they are “saddled” with enforcement work in their “spare” time, of which there is very little. The stress of completing the fee work and performing enforcement work is “beyond stressful” according to a former employee.

3. During the period 1 July 2005 thru 21 July 2006, the official time reporting system (PALS) reported the biologists in Resource Management Section recorded 598 hours for performing enforcement work. This equals 75 work days or about 1/3 of a work-year. The supervisor of Resource Management stated that 106 work days or about 1/2 of a work year was devoted to enforcement in 2006. We believe this is not enough time to conduct timely and effective enforcement work.

4. The supervisor of the Resource Management Section said she has three unfilled positions. We recommend these three positions be moved to the Code Enforcement Section and all the enforcement work be consolidated in Code Enforcement Section with technical support from Resource Management as needed. Enforcement work would cease on a case when the land owner made the proper applications to Resource Management.

I. Is Enforcement of Codes Applied Equally?

1. Each section of the county has a different biologist assigned to perform enforcement work. To assure that enforcement actions will be applied consistently throughout the County, training and standard procedures should be available. We found neither were available.

2. For guidance on enforcement work, the area biologists have available a Wetland and Critical Area Violation Procedures Handbook, dated April 2002, that was prepared by a former employee. This handbook contains:

- handwritten notes
- examples of input to the automated system (SRS)
- examples of letters, infraction forms and notes on tickets
- examples of how to refer cases to the prosecuting attorney (Mar 8, 1999)
- County code on compliance without updates since 2002
- County code on civil infractions as of 2002, and
- Title 7 RCW, on Civil Infractions (1998 edition).

The lead biologist stated this guide is a “work in progress”.

3. A senior biologist provided a four page policy letter titled Violation Evaluation, RM POL 4011-06, Effective Date: January 30, 2006. The policy details how complaints are to be processed. According to this document: It is the goal of Resource Management to send a standard letter to the land owner within 30 days of Resource Management's receipt of the complaint. Within three months of contacting the property owner, the complaint should be resolved to the satisfaction of the Area Biologist. If not, the Area Biologist is to refer the matter to the Prosecuting Attorney's Office and record a Notice of Non-Compliance upon the title of the subject parcel.

J. Efforts to Reduce Violations of County Codes

1. Violations are costly to process and seldom produce any fees. But worse they cause damage to natural resources vital to protect the public's water, private property, and wildlife. A program should be initiated to reduce the number of violations and improve landowner care of their property.

2. The County's wetland maps need to be updated promptly when wetland studies are completed on applications. This will allow personnel in Planning and Land Services to inform landowners and builders early in the planning and permitting process that wetland issues will need to be addressed. This could head off surprises later and reduce violations due to lack of knowledge. However, Resource Management staff believe that most violations occur with people who did not come into the County for information.

3. Many landowners may not realize the value of wetlands and buffers in cleaning water, and reducing flood events. They may also not know that there are strict County codes established to protect these resources. This lack of knowledge may lead to an uncaring attitude on the part of the landowner. Consequently they may fill or grade around the wetlands causing damage.

4. The Director of Public Works and Utilities reported to the County Council in response to a budget proviso, "Unreported or undiscovered violations are expected to be many times those numbers". He referred to the 150 wetland, flood hazard, and fish and wildlife violations reported per year. He also noted, "Enforcement occurs only if violations are reported or discovered the majority of which are not."

5. If all resource violations were reported, the County staff would likely be vastly overwhelmed and unable to enforce the codes. For these reasons, we believe an education program should be initiated to keep landowners and the building community informed about why wetlands, streams and buffers are needed to protect drinking water, reduce flooding and provide shelter to wildlife. The program should encourage and promote code compliance. Similar education is routinely performed by PALS Code Enforcement staff, according to the supervisor.

K. What did the Zucker Report recommend?

1. Pierce County hired Zucker Systems to conduct a performance review of Planning and Land Services to improve the processes for permit applications. The final report issued 2 December 2004 did not include an analysis of the County's code enforcement program. However, the team noted, "there could be considerable efficiency in centralizing all the code enforcement activities in the Code Enforcement Section."

2. Zucker also reported: "Over 45% of the wetland applications are Single Family Certifications. They are documents signed by the applicant stating that there are no wetlands on the property. This process was established to speed up the processing of single-family homes and can be done over the counter at the Development Center. Resource Management staff spot checks a small percentage of these certifications, but does not review most of them. Unfortunately, many of these certifications are later identified as a violation for encroachment into wetlands."

3. The report also stated: "Although the biologist can identify a violation, they are not trained to pursue the violator. This type of work is more appropriately and efficiently done by code enforcement. Code Enforcement with the help of Resource Management could establish standard protocol for enforcement actions, (i.e. when to issue cease and desist or correction notices, when to issue tickets, and when to involve legal counsel). A procedure to put liens on parcels for wetland/critical area violators who do not or will not come into compliance should be created." "We are recommending that the enforcement of wetland regulations be assigned to Code Enforcement with Resource Management's assistance."

4. In October 2006 Zucker Systems issued a follow up study on Evaluation of Development Permitting Process. They wrote in the report: "We particularly support assigning the enforcement of wetland regulations to Code Enforcement."(pg 52). In another section they stated, "...Code Enforcement should handle much of the enforcement responsibilities for wetland violations. If this were to occur, approximately 1.5 staff positions in Resource Management should be allocated to Code Enforcement." (pg 21).