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August 26, 2010

From: Kitsap County DCD
To: Department of Ecology

Subject: LID Stormwater Standards August 2010 communication

The above-referenced information contains three sections, as follows:

- 1) DOE Proposed Requirements and Timelines to Update Development Codes to Incorporate LID
- 2) DOE Proposed Requirements for Basin-Scale Approach
- 3) DOE Proposal for LID Site and Subdivision Technical Requirements

We appreciate the opportunity to comment on the proposed updates to Low Impact Development Stormwater Standards.

In the first section of the DOE document, end note *ii* on page 2 of 2 indicates that “Ecology intends to provide efficiencies for concurrent review, amendment, and public process [of GMA updates and LID development codes]”. While we appreciate the Department’s consideration of combining the undertakings for the sake of efficiency, Kitsap County is concerned that adding LID code update requirements to the task list of already overburdened staff will result in hardship to the county and cities within the county. As Ecology is aware, the severe economic downturn has necessitated layoffs and reduction of work hours, as well as reduction of public services. All cities and counties in this state and across the nation are impacted by the state of the economy. It is neither feasible nor practical to mandate expenditures of time and money by agencies already strained to the utmost. “Efficiency” of timing of proposed LID update deadlines to GMA-mandated deliverables is only as efficient as the capability to perform all of the proposed requirements *in addition to* existing and established GMA updates.

We offer the following comments regarding the proposed requirements for the basin-scale approach to be imposed on local government:

As proposed, the basin-scale approach analysis requirements for UGA and density increases far exceed the ability of local governments to fulfill. Conversely, the Department of Ecology has principle resource expertise, oversight and existing studies and reports on basin-wide water management, and is the most appropriate entity to fulfill the substantial technical requirements of this proposed action. Reference is made to the following Department of Ecology studies and reports within the last five years:

[**Protecting Aquatic Ecosystems: A Guide for Puget Sound Planners to Understand Watershed Processes**](#)

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Draft Protecting Aquatic Resources Responses to Comments - Using Landscape Characterization: A Guide for Puget Sound Planner Puget Sound Characterization and Assessment Project (watershed characterization for all Puget Sound jurisdictions to include geologic, hydrologic, soil and water quality models, habitat indices)

These Ecology-led studies are recent, relevant and apply to the local watershed scale (additional reference is given also to "Applying Results in a Watershed Framework') and local governments will benefit by these efforts. These and no doubt other undertakings provide substantial data and information for the prescribed mitigation analyses. We strongly believe that Ecology should fulfill all or most of the technical requirements under basin-scale approaches and Ecology should be the reference in the basin-scale mitigation as proposed. Local governments do not maintain in-house capacity, technical expertise or the discretionary dollars to fund such efforts.

Consequently, Kitsap County does not support the implementation of mandatory watershed or basin analyses as a condition of UGA expansion or increased density, unless funding is provided by the State to conduct such analyses.

In addition, we recommend an indefinite delay in implementing mandatory LID requirements until such time as the economy can tolerate such an expensive and time-consuming mandate. That said, the county is supportive of low impact development practices and techniques, and, in fact, has adopted more stringent standards than required by the 2005 Stormwater Management Manual for Western Washington. In February 2010, the county adopted stormwater regulations that mandated compliance with the performance standard in both UGA and non-UGA properties. LID practices are strongly encouraged and implemented to the extent feasible. We are concerned, however, that the proposed additional LID requirements will place undue constraints on development in this county, which has unique topographical and watershed features perhaps not seen in some other regions. EXAMPLE: In Kitsap County, commercial developments below the one-acre threshold may apply for an exemption to the performance standard for flow control (MR #7) if engineering analysis demonstrates that underground detention is the only feasible method of stormwater management. In such cases, the methodology and predevelopment conditions from the 1992 DOE-equivalent manual (Kitsap County's 1997 stormwater code) may be used as the performance standard. We are concerned that adoption of the proposed LID requirements will eliminate this consideration, thereby making small commercial development or redevelopment cost-prohibitive.

Other questions/comments

- 1) Current DOE regulations exempt properties less than one acre from meeting the performance standard. Our understanding was that EPA regulations

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- allow this one acre exemption. Have the federal regulations been revised, or is the state implementing more stringent controls of its own accord?
- 2) If we have to perform small basin analyses, required when expanding the UGA or increasing density, this equates to a potentially big issue, because reduced UGA boundaries mean we will have to increase densities within these smaller defined boundaries (right?) That is, the impact of watershed planning is different than the impact of individual basin planning (i.e., if someone wants to develop within a drainage basin that drains to a creek, that is part of a larger watershed—is a basin analysis required beyond that currently required (downstream analysis/mitigation of impact?) In Appendix 1 of the Phase II permit, it says *Basin planning provides a mechanism by which the minimum requirements and implementing BMP's can be evaluated and refined based on an analysis of a basin or watershed*. Basin plans are may be used to develop control strategies to address impacts from future development and to correct specific problems whose sources are known or suspected. Basin plans can be effective at addressing both long-term cumulative impacts of pollutant loads and short-term acute impacts of pollutant concentrations, as well as hydrologic impacts to streams, wetlands, and ground water resources. [by the way, what is the difference between a basin and a watershed?]
 - 3) In the proposed new minimum requirement tables, the description for new development outside UGA does not match that within the UGA: Inside says ">10,000sf...but </= 5 ac disturbed. Outside says "parcels below 5 acres" and ">/= 5 acres and any project on parcels 5 acres or larger". Are we still talking about "disturbed" area?
 - 4) Is the only difference between requirements for development versus redevelopment the 50% increase in value/area thresholds?
 - 5) What does item B.1.d under *LID Requirements Table—Clarifications* mean? It says "Rain Gardens meeting a minimum size designation" (what is this size based on?)... and, "Rain Gardens should comprise at least 7.5% of residential developments and 4% of commercial developments". Does that wording mean the county does not have to require compliance with the 7.5/4.5%?
 - 6) Under item B.3, the proposed standard "requires meeting historic flow durations from 8% of the 2-year flow through 50% of the two-year flow" (or through the full 50-year flow if subject to flow control). In effect, this would mean zero discharge is allowed for virtually all developments, thereby mandating infiltration by some means. Is it intended that this performance standard be waived for projects that cannot infiltrate due to engineering feasibility (i.e. high groundwater or too steep of gradient or landslide hazard)? End note v says "If one or more LID techniques cannot be applied at a site, the performance standard does not have to be achieved...": Does this

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mean the previous (current) standard applies? If not, what exactly does this mean?

- 7) End note *iv* states “Ecology cannot quantify the relative benefits to the beneficial uses of this more stringent [8% of the 2-year] standard”, but “more closely matching the natural hydrology will reduce the impact of land development...” yet “Ecology considers [these standards] to be AKART”. We are concerned that this position will be unsupportable from a legal standpoint. Can we get clarification on this?