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Harriet Beale
Municipal Stormwater Planner
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Beale,

On behalf of the 3,450 member companies of the Master Builders Association of King and Snohomish Counties (“MBA”), I am writing to provide comments on the Department of Ecology’s (“Ecology”) proposed requirements to implement low impact development (“LID”).

The MBA has long supported LID – through our Built Green program and our educational offerings to association members – as a voluntary tool for managing stormwater and protecting water resources. It has been our view that the best way to promote LID more broadly is to focus first on allowing LID in those jurisdictions where currently it is not. In light of the Pollution Control Hearings Board’s rulings requiring LID throughout Western Washington, we urge Ecology to exercise caution in developing new NPDES permit language, in order to ensure successful implementation.

Given the fact that conditions can vary widely from site to site and the fact that the LID techniques continue to evolve over time, we believe that builders and developers should have the flexibility needed to successfully incorporate LID into their projects. This can and should be done in a way that allows designers to meet real-world conditions while still meeting aquatic resource protection goals.

As such, we are pleased to note that Ecology’s current proposal includes the option of meeting a performance standard, which we anticipate would allow for this flexibility. We believe that maintaining design flexibility as much as possible is the key to successful LID implementation. In some cases, on some sites, traditional systems will provide better protections, and the revised requirements should recognize that. Not having this flexibility could result in adverse impacts due to application of mandated LID features.

Checklist approach/ Unintended adverse impacts

With regard to the checklist approach that has been proposed, we believe much more attention must be given to the unintended adverse impacts that could result in following this approach. This is especially true of rain gardens and the requirement to infiltrate below pavement. The concern is that if water flows horizontally, we could create a geologic hazard, which could become a significant public safety issue.

On sites where there is a low saturated hydraulic conductivity, and the downstream flow path has identified potential for flooding or erosion problems, then infiltration techniques would not be appropriate. In such a situation, LID may be able to accomplish water quality treatment, but traditional detention systems may still be necessary for flow control.

The fate of the infiltrated water must be understood to avoid unintended adverse impacts from stormwater infiltration using LID methods. Many sites have very low permeability soils at relatively shallow depths. In these settings, most of the infiltrated stormwater would flow horizontally, potentially daylighting on slopes, in crawl spaces, basements, utility lines or other features. Slope failure, erosion or localized flooding could result from following the list of mandated LID features.

Another limitation with checklists is that they would do nothing to increase our level of understanding of how these systems will perform.

Need more flexibility for variance process/competing needs

In our view, much more flexibility is needed to resolve competing needs that arise in local jurisdictions. Use of the variance process, as has been suggested in the current proposal, is very expensive and time-consuming. The interpretation and application of the proposed feasibility criteria will vary widely by jurisdiction and will result in the need for engineering studies on all projects and protracted plan reviews.

We urge Ecology to create a user-friendly, equivalent process that allows project applicants to justify why LID is not practical or feasible on a given site. Project proponents must have the ability to address site-specific concerns.

Furthermore, we believe that economic and local conflict feasibility considerations must be included in the LID feasibility evaluation process. Any significant increase in cost due to LID requirements can mean the difference between whether a project moves forward or not and should be taken into consideration.

More education and experience needed

Beyond the specific need for more guidance on measuring infiltration rates, we are very concerned that local governments and the engineering community do not yet possess adequate experience and knowledge needed to implement LID on a broad scale. We believe that mandating LID broadly at this time would inevitably result in improper implementation, failed

systems and reduced confidence in LID techniques by the engineering community, developers and the public.

On that note, we are pleased to see that the current proposal would allow more time to implement LID than previous versions discussed during the stakeholder process; we believe the change is a move in the right direction. However, Ecology may wish to consider an even longer implementation period for Phase II jurisdictions in particular, which have limited resources and experience with LID.

As LID is implemented, local governments will need support to educate inspectors and planning departments that will be expected to carry out review and inspections, about what LID is and how it's used. We believe that phasing in LID over a longer time and focusing on local government education and acceptance will lead to a more successful outcome. With appropriate technical training, local government staff and elected officials should be empowered to determine how to utilize LID within their jurisdictions.

Adequate resources for training and a reasonable, phased approach to LID implementation are absolutely critical if we are to be successful advancing LID.

Cost issue for small projects

We are also concerned that the current proposed minimum requirements are very expensive, requiring engineering on almost all projects. Specifically, expanding Minimum Requirement #5 (on-site stormwater BMPs) to include infiltration below pavement will place an added burden on small sites seeking to demonstrate engineering infeasibility.

Requiring small sites to implement LID will dramatically increase engineering costs and require local jurisdictions to review the engineering design, implementation and maintenance on an even greater number of projects.

Basin planning

We are concerned that the basin-planning requirement contained in Ecology's current proposal would be a very costly burden to place on locals. In particular, the minimum requirements that would be imposed on locals to implement water quality and mitigation analyses of the basin scale approach would be very costly to implement. Additionally, the proposal to use an 80-acre UGA expansion as a trigger for basin planning is arbitrary.

We do not believe a basin planning requirement should be part of any new LID standards. The result of such a requirement would be to create another regulatory overlay that conflicts with key Growth Management Act ("GMA") and other land use requirements, creating confusion and thwarting our state and regional efforts to manage and plan for growth in a responsible manner.

If a basin planning effort does remain in the Ecology proposal, then we recommend further study to determine a more reasonable size to trigger the plan.

GMA concerns

One of the major challenges with implementing LID is that certain LID techniques are in conflict with the GMA. It is difficult to comprehend how we can develop rain gardens, build infiltration systems and provide the larger lots required to accommodate these and other LID features without violating the urban density mandates, which are the fundamental cornerstone of the GMA. Since LID is frequently used as a mechanism to indirectly advocate for reducing the density of proposed developments, we believe Ecology must provide a mechanism for local governments to try to comply with these two conflicting requirements – increase density in the urban growth areas to prevent sprawl and decrease density and increase vegetative cover to prevent water pollution.

As such, we believe it is critical that any LID requirements that are adopted should be density neutral. This could be accomplished by allowing density bonuses, whereby anytime a LID requirement reduces the density of a planned project in a designated urban growth area, the reduction must be offset by allowing greater density elsewhere in the urban area.

Implementation Considerations

It is very important that key maintenance questions raised during the current stakeholder process are adequately addressed. As a practical matter, homeowner associations are not well suited to address long-term maintenance of LID features or to police residents on their maintenance techniques. We believe that in some cases, it would be far more appropriate for local government to assume this role. This also argues for a longer phase-in period for LID requirements, so that municipalities have time to develop appropriate maintenance protocols. As stated above, we believe Ecology should consider a longer implementation period for Phase II jurisdictions.

Also, we would urge that any new standards should not add unnecessary time to projects due to additional plan review and inspections. This would only increase uncertainty in the building process and drive up the cost of housing.

Thank you for your consideration of our comments on this important issue. We appreciate the opportunity to provide feedback on LID. Please do not hesitate to contact Allison Butcher at (425) 460-8223 or abutcher@mbaks.com, or Jennifer Jerabek at (425) 460-8240 or jjerabek@mbaks.com, should you have any questions.

Sincerely,



Samuel L. Anderson
Executive Officer