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Submitted electronically to: LID@ecy.wa.gov and hbea461@ecy.wa.gov.

Subject: Washington Public Ports Association Comments to the Low Impact Development Advisory Committees

Dear Harriet:

We would like to thank the State of Washington Department of Ecology ("Ecology") for the opportunity to participate in the Low Impact Development ("LID") Advisory Committee process. This letter provides general comments based on Ecology's apparent intent to mandate LID practices for new development and redevelopment projects.

The Washington Public Ports Association (the "Association") is a public agency trade association authorized in 1961 by the state Legislature as the coordinating organization for all Washington public port districts. Membership includes about 70 ports with interests including marine terminals, barge facilities, industrial development, marinas, airports, railroads, and other portions of the state and national trade infrastructure.

Instructed by statute to serve as a communications channel between ports and state government, the Association's comments represent the broad positions and concerns of the ports community at large rather than the specific interests of individual ports. In areas where our comments may diverge from specific comments provided by individual ports, we ask you to carefully consider the specific examples provided. Despite the broad diversity of our state's numerous port districts, one commonality among all ports as that they serve as powerful economic engines in the communities where they reside. Therefore, we ask you to carefully consider and respect the individual needs of local ports with the same weight you would provide the broad policy issues communicated herein.

Regarding LID and the advisory committee process, we offer three overarching concerns that will be repeated in sections of this letter identifying more specific areas of concern. Our three overarching concerns follow:

- Ports are committed to positive environmental outcomes: our comments are offered in the spirit of advancing workable solutions that will invest limited resources of time, intellectual capital and money in outcomes with the best possible opportunities for success. Ports engage in numerous environmental activities – from creating wetlands to reclaiming legacy-contaminated sites – with an eye on investing limited resources into activities that will create the best environmental outcomes.

- Flexibility is critical to the success of LID: in order to be successful, low-impact development techniques must be administered with great flexibility so that site managers can tailor solutions to the specific needs and concerns of discrete sites. This is true given our state's tremendous geographic and environmental diversity, and it is especially true at our state's ports, which reflect the tremendous diversity of our state's ecological and economic resources. One-size-fits-all solutions ignore this diversity and are, therefore, largely unworkable. Ecology must resist the urge to implement new regulation that would mandate specific low-impact development techniques.

- Begin by filling in the blanks: just as flexibility is critical to ensuring real-world success, it is also critical that Ecology's approach is specific from the start. Some have offered an implementation strategy that entails issuing a broad government mandate and then filling in details as that mandate takes effect. Such a "shoot-ready-aim" approach seems rife with uncertainty and destined to result in frustration, intense scrutiny and litigation that would only divert finite resources away from positive environmental outcomes.

IMPLEMENTATION CONCERNS

Washington's public ports strive to achieve sustainability in our practices and we seek opportunities to integrate low-impact stormwater management techniques whenever practical. In achieving this goal and promoting wide-scale acceptance of low-impact techniques, however, it is critical to maintain flexibility that allows for responsiveness to meet local needs and address individual concerns on a case-by-case basis.

Therefore, we are extremely concerned by proposals that would task Ecology with mandating LID on a vast scale, even as proper installation, maintenance and site characterization procedures are still being defined. This approach of issuing what is essentially a blank mandate where the specifics are filled in as implementation occurs seems very risky as it could easily result in improper and failed installations completed (and, perhaps, re-completed, repaired or replaced) at great expense.

Moreover, this approach would inevitably create enormous ambiguities that would result in considerable frustration at the very least and could even lead to costly and time-consuming litigation that would only detract from the higher goals of achieving economic and

environmental sustainability. Ultimately, such poor execution would inevitably serve as a setback that could permanently damage low-impact techniques in the eyes of developers, engineers and the general public. A more reasonable approach would be to encourage or incentivize LID as an alternative tool for stormwater management which seems a much less divisive solution than using the blunt regulatory instrument of a government-issued mandate ordering stringent performance standards that will either be unclear, impractical, or otherwise impossible for many facilities (including several ports) to achieve.

HYDROLOGICAL PERFORMANCE STANDARDS AND MANDATORY PRACTICES

We have additional concerns regarding the application of duration- and/or volume-based hydrologic performance standards and mandating specific Best Management Practices ("BMPs"). Waterfront port facilities in Washington commonly drain into the Puget Sound or Columbia River. Many new development and redevelopment projects at port facilities have traditionally been exempt from flow-control requirements based on the lack of hydrologic and erosive impact that waterfront projects have on the hydraulic function of large receiving waters.

Ecology stated during the initial stages of the advisory committee process that for this reason LID requirements would not apply in flow-control exempt areas. However, now it appears that the agency has modified this position by proposing two options: 1. either a hydrologic performance standard must be met; or, 2. mandatory best practices including widespread use of rain gardens, permeable pavement, or infiltration below the pavement must be implemented during the design phase of all development and redevelopment projects, whether or not they are in flow-control exempt areas.

Meeting the hydrologic performance standards provided in the latest Ecology framework will be all but impossible for many port redevelopment projects and would result in little (if any) additional protection of ecological resources. What's more, the structure of this approach could create a future situation where an increasingly unachievable performance standard triggers ever more rigorous mandatory best practices, making projects infinitely more expensive or impractical. If this occurs, then we're left with a situation that gives the appearance of options, but actually provides little more than very rigorous mandatory best practices. The result would be added costs, less predictability and uncertain environmental outcomes.

As for mandating best management practices, many port projects include redevelopment of historic waterfront industrial sites. These projects commonly occur in areas exhibiting site conditions that severely limit the opportunity for infiltration, including areas where shallow contaminated groundwater and/or contaminated soils (often consisting of fine graded dredged materials) exist. In addition, operational requirements for large flat surfaces capable of conveying loads well in excess of normal traffic rating will preclude the widespread use of permeable pavements at many facilities. Also, shallow groundwater conditions common at many port facilities coupled with the thick pavement sections required to meet operational needs would preclude the practice of infiltration beneath the pavement in most areas. It's also

important to understand opportunities to acquire new waterfront property are extremely limited. Therefore, the dedication of high-demand, limited waterfront parcels for use as rain gardens is impractical at many port facilities.

Ports must be afforded several alternatives for stormwater management and treatment solutions in order to meet the many diverse operational needs occurring within constrained site conditions, as described above. While a specified menu of LID techniques may be useful and informative in addressing specific challenges, these options must be encouraged and offered as tools in the stormwater management toolbox, rather than assigned as regulatory obligations.

Adopting new regulation that mandates specific techniques will likely result in future contention and proposals that divert resources away from more workable solutions and, ultimately, away from the many environmental improvements attainable through a more flexible approach. Rather than pursue regulatory mandates, Ecology should encourage the application of the most appropriate stormwater management technologies available with an eye on developing better site solutions.

"WHERE FEASIBLE"

Another very large concern that could result in the diversion of resources away from workable environmental solutions is the continuing ambiguity around the meaning of the phrase "where feasible" as used by the Pollution Control Hearings Board[1] (the "Board"). Ecology has not engaged in a full and complete discussion of this term, which raises serious questions of practicability and dedication of resources. Issues of cost and competing needs must be considered in the discussion of "feasibility" if the term is to have any real meaning.

In the context of ports (which serve as critical portals for international trade) this discussion becomes very tangible with the potential for tremendous unintended results if LID policy is implemented without a complete consideration of potential consequences. The issue of cost and competing needs must be considered in the feasibility discussion given the limited port resources available.

Consider the following: Washington is one of our nation's most trade dependent states. Industries (such as agriculture and aerospace) that are critical to our state economy benefit from the state's geographic position along a global trade route that connects distribution centers in the U.S. Mid-West with trading partners along the Pacific Rim. Benefits include reduced export rates, better access to markets, and good-paying jobs. Our ports must compete aggressively against other U.S. and Canadian ports in order to receive the benefits listed above.

As portals for international trade, our ports sit on confined parcels of land connecting oceanic shipping lanes with land-based infrastructure such as rail lines and roads. For the purpose of moving goods, they have tremendous value. They can only be relocated at tremendous

[1] See *Puget Soundkeeper Alliance, et al. v. State of Washington, Department of Ecology*, Pollution Control Hearings Board, August 7, 2008.

expense. Surrounding land values tend to be high. It is widely understood that the highest and best use of the properties where ports sit is economic development and international trade, and our state has advanced this policy for more than a hundred years. Opportunities to set aside additional land at port locations to serve non-commercial purposes are extremely limited and regulatory inflation that increases costs in order to meet unanticipated mandates represent a risk not only to our ports, but to the state economy as a whole.

CONCLUSIONS

Environmental restoration and protection are a top priority for ports. Throughout our state, ports are involved in numerous efforts to: protect and preserve aquatic resources, create new wetlands, restore abandoned sites containing legacy contaminants, and to generally leave future generations with an enhanced environmental heritage in the communities we serve. In addition to the many environmental stewardship activities in which ports are engaged, they also serve as centers of economic activity that are critical to local, state and regional economies.

For the reasons outlined in this letter, we urge Ecology to seek an LID policy that supports flexibility, avoids blank mandates and provides opportunities for the limited resources available at ports to be directed to workable solutions that will deliver the highest level of environmental benefit.

Please contact me if you would like to discuss any of these issues further. We hope to continue our partnership with Ecology and our local jurisdictions and communities to improve our environment while maintaining the economic stability of the region. Thank you again for the opportunity to participate in the process to evaluate how to integrate low-impact development techniques into Washington's municipal stormwater programs.

Sincerely,

Johan Hellman
Assistant Director