Comments to Ecology on the
Preliminary Draft Language for 2012 Reissuance of the
Western Washington Phase II Municipal Stormwater General Permit

Thank you for the opportunity to comment on the preliminary draft language for the reissuance of the Phase II Permit. In Lacey, we have allowed and even encouraged low impact development (LID) techniques for many years, and realize we need to advance stormwater management effectiveness to have any chance of reducing the degradation of Puget Sound and related water resources. At the same time, the new requirements need to be effective, practical, and economically viable to be widely accepted and successful. With these objectives in mind, we offer the following compilation of comments and suggestions.

PART A: GENERAL COMMENTS

A1. Allow Flexibility in LID Implementation

Comment: Different locations have different conditions, and different proposals have different objectives. As the permitted jurisdictions, we need the flexibility to help development projects meet their goals while satisfying our requirements and meeting the greater public's expectations.

Requiring the use of LID techniques at all project sites is restrictive and limiting, and such requirements will likely foster resentment from the development community and an emphasis on finding exemptions within the proposed feasibility criteria. Forcing development to incorporate LID does not really make it the "preferred" approach, whereas making LID the best choice among various other options would.

Suggestion: Provide flexibility to local governments in implementing LID and accomplishing the desired results without each site having to do it all. For example, permeable pavement should not be strictly required on a project site if there are enough bioretention areas to treat and infiltrate effectively.

LID should be incentivized and made a reasonable, viable option to choose rather than being strictly required, especially for smaller projects. The LID code updates should be focused on encouraging the use of LID by emphasizing potential benefits and providing incentives for their use.

A2. Financial Viability of LID Requirements

Comment: Strict mandating of LID techniques, particularly permeable pavements and green roofs, will be financially burdensome, particularly for small developments and small public projects, given the additional costs of site assessment, analysis and construction methods. Further, on small sites, these additional costs will result in little to no net benefit. Also, the additional LID requirements will increase the workload for jurisdiction staff, particularly in terms of plan review and additional inspection needs, at a time when staffing levels are holding firm or being reduced, not growing. The cost of implementing such broad changes is a factor that must be addressed.

Suggestion: Provide an analysis of the financial viability of LID implementation, and cost-effectiveness compared to conventional site development and stormwater management techniques. Cite positive examples of successful LID projects across our region, so anyone concerned can go see how integrating LID into a site can yield positive results.

A3. Review Process for Draft Permit Language and Updated Technical Manuals

Comment: Phase II permittees are being hit with an almost overwhelming amount of new information and requirements this year, with the draft Permit language and the technical manuals referenced within it (i.e. the 2012 Stormwater Management Manual for Western WA, the updated LID Technical Guidance Manual for Puget Sound, PSP's new guidebook for Integrating LID into local codes, and the latest revisions to the Western Washington Hydrology Model). This is a tremendous amount of complex technical information to read, absorb, present and discuss internally, and comment on, followed by the extensive process of revising our local codes and regulations, doing outreach, internal training, etc.

Suggestion: The public review periods for the draft permit language and the technical manuals should be consecutive rather than concurrent. Ecology could assist permittees by providing concise summaries of the proposed changes to each of the technical references, and conducting timely workshops to present the changes and facilitate questions/answers and discussion with affected permittees. Make copies of workshop presentations available to permittees to assist with internal presentation of new requirements and related information.

A4. Technical/Guidance Manuals Adopted by Reference in Permit

Comment: The revised technical/guidance manuals for stormwater and LID facilities that are referenced in the permit are not available for review. When they become available, they must contain clear criteria and standards for design, inspection and maintenance to be useful and effective. If it is Ecology's position that LID facilities are proven as effective stormwater facilities, then evidence of such should be presented, and clear standards for design, inspection and maintenance of said facilities should be included in the technical documents adopted by reference within the permit.

Further, the economic impacts of these manuals should be thoroughly evaluated before they are adopted to fully understand the economic viability of the requirements and the financial impact to both the public and private sectors.

Suggestion: Include clear criteria and standards for analysis, design, inspection and maintenance in the updated technical manuals, and evaluate them for economic impacts.

PART B: SPECIFIC COMMENTS ON LID REQUIREMENTS

B1. Watershed-scale Stormwater Planning, in general

Location: Section 4.g of the Preliminary Draft Permit Language, pgs. 8-10

Comment: Watershed-scale planning requirements are land-use and long-range planning requirements, which should be addressed through zoning and comprehensive planning updates, not in the stormwater general permits.

Suggestion: Watershed-scale planning requirements should be eliminated from the stormwater general permit and addressed through planning updates such as GMA comprehensive plan updates.

B2. Watershed-scale Stormwater Planning for Cities

Location: Section 4.g.i.b of the Preliminary Draft Permit Language, pg. 9

Comments and Suggestions:
Part (1). Watershed-scale stormwater planning for cities. This section should include some appropriate exceptions/exemptions, such as for annexing >80 acres that would not result in a 0.5% change in impervious surface. For example, there are unincorporated areas that could be annexed into Lacey that are already developed. The annexations of several potential areas are not likely to result in much increase in impervious surface, so it seems like overkill to require the full-blown modeling and analysis for these areas.

Part (2). Add footnote number 4 to "a planned land use action."

B3. Regional Stormwater Monitoring Program (RSMP)

Location: Section S.8 of the Preliminary Draft Permit Language, pg. 11

Comments and Suggestions:
We are very supportive of strengthening stormwater regulations that result in measurable outcomes. However, local governments are being hit with higher fees and unfunded mandates for a number of state programs, this being just one of several, where the costs have to be passed along to fee-weary residents and businesses. We would like Ecology to take a closer look at the projected schedule, budget and fee schedule for the RSMP. Please consider whether the regional monitoring program really needs to start before the economy has started to recover, and if so, to consider keeping the budget within the first and second payment levels. Beyond the first and second payment levels, the program eats into money that could be spent on local stormwater solutions.

In the south Puget Sound region, we've been conducting a collaborative monitoring program for many years. It works for us, and it provides useful localized data. We should be allowed to continue our local monitoring rather than having to pay into a regional program that could well prove to be less beneficial to us.

B4. Definition of Receiving Waters

Location: Appendix 1, Pg. 6 of 38

Comment: The revised definition of "Receiving Waters" has been expanded to include "groundwater into which surface runoff is directed by infiltration," but there is no qualifier for depth, proximity or extent. A minor, localized occurrence of seasonal groundwater perched on hardpan would presumably fit this definition, as would the groundwater created by the stormwater we are infiltrating. In essence, this definition is saying that soils that can infiltrate are receiving waters.

Suggestion: Revise the new language added to this definition, to include more specific criteria for groundwater as a receiving water (e.g. within wellhead protection areas or within a specified depth to the water table of a permanent aquifer).

B5. Permeable Pavement Effectiveness and Longevity

Location: Appendix 1 Revisions, Section 4.5, pgs. 22-24 of 38

Comment: Permeable pavements are being required at all projects to the maximum extent feasible. In the Key Recommendations portion of their "Stormwater Monitoring and Assessment Strategy" (April 30, 2010), the Stormwater Work Group recommended that the regional monitoring program should include testing the effectiveness of LID techniques. This begs two questions: 1) is the state requiring the use of any unproven LID techniques and/or applications, and 2) which of the required LID techniques and applications in the proposed permit language have not already been studied enough to demonstrate their effectiveness?

Also, many developers and engineers are averse to permeable pavements due to negative experiences with previous installations, some with ongoing problems, and the added costs involved with them. Ecology needs to demonstrate via solid documentation that permeable pavements work well, are cost effective, and have strength, longevity and maintenance needs that are similar to regular impervious pavements, particularly in areas with high traffic/loading. This effectiveness and longevity evidence should probably be provided for other LID techniques as well.

B6. Feasibility Criteria for Permeable Pavements

Location: Appendix 1 Revisions, Section 8.B, pg. 36 of 38

Comment: Permeable paving techniques are generally considered feasible in residential areas, parking areas outside of travel paths, sidewalks, and separated bike lanes. But there are still many concerns and unanswered questions related to the broad use of permeable paving techniques in public roads and high travel areas, including: 1) Long- term durability, especially at intersections; 2) Spill containment and clean up, and resulting traffic impacts; 3) Maintenance, repair, patching and overlays; 4) Durability, maintenance and impacts when subjected to snow and ice treatments (sand, salt brine, etc.).

Suggestion: Provide permittees the flexibility they need to limit the use of permeable pavement.

Permeable pavement should be considered infeasible in the certain situations until regional studies and real-world testing have resolved questions of durability, maintenance, spill containment and cleanup.

Suggested locations and conditions include:

- within the primary travel lanes of arterials and collectors;
- within intersections and their approaches;
- within locations with high potential for spills, or documented history of recurring spills;
- within locations where attaining structural load requirements would be cost-prohibitive;

PART C: RESPONSES TO THE "NOTES TO REVIEWERS"

C1. Regarding Reduction of the One-Acre Threshold

Location: Section S.4, pg. 2 of Preliminary Draft Permit language, and Appendix 1, Section 3, pg. 8 of 38

Comment: Reduction or elimination of the one-acre threshold will place a tremendous financial burden on "small projects," such as single-family home construction and small road projects (those which are only subject to Minimum Requirements 1 through 5 in Appendix 1), while providing little or no environmental benefits. Existing BMPs, such as soil amendments, full dispersion and infiltration, already meet the goals of LID without specifically requiring bioretention or permeable paving.

Suggestion: Ease the LID requirements as applied to small projects. Retain the one-acre threshold within the Phase II Permit, or at least allow greater flexibility for small projects (projects only subject to Minimum Requirements 1-5).

C2. Regarding Monitoring and Payments

Location: Section S8 of the Preliminary Draft Permit Language

Comments: There should be an option to opt out of the status and trends monitoring program as long as a comparable local program is implemented. For over 10 years now, the city of Lacey has been a financial partner in Thurston County's status and trend monitoring relating to stormwater impacts. Also, we already have a TMDL that identifies the specific stormwater load reductions needed to meet water quality standards. We see more local value in continuing the county's program and consider participation in the regional status and trends program to be a duplication of effort. In this economy, we cannot afford both programs so mandatory participation in the RSMP status and trends monitoring (especially at the third+ payment levels) could potentially kill a long-term local monitoring program.

Governments should also be allowed to opt out of the effectiveness monitoring program as long as a comparable local program is implemented. The current permit recognizes that local monitoring data is needed to establish priorities for needed stormwater improvements and other adaptive management approaches, so although the regional program replaces required monitoring, it would not replace the need for operational/management data. The idea that the regional program will save staff time and money may not prove to be true and may instead eat into stormwater budgets that would be more effectively spent on local stormwater solutions.

If participation in the RSMP status and trends monitoring is mandatory, then to incorporate this into our budgets (first payment by August 2013) it would be best to know the amount by the time we start our annual budgeting process in May 2012, and no later than July 2012. As noted above, if participation is mandatory then fees for this permit cycle should stay within the recommended first and second payments levels.

We close out our annual budgets by the end of the calendar year, so the payment for 2013 should be made no later than November.