

From: Karen Walter [<mailto:KWalter@muckleshoot.nsn.us>]

Sent: Thursday, June 23, 2011 10:21 AM

To: Beale, Harriet (ECY)

Subject: RE: Ecology taking informal comments on Municipal Stormwater Permit Preliminary Draft Language

Harriet,

Thank you for the chance to discuss the draft language for the LID changes to the Phase I and II Municipal Stormwater permits. I apologize for not getting back to you sooner. The Muckleshoot Indian Tribe Fisheries Division has reviewed the draft language and have some initial questions and comments as noted below:

1. In general, the draft permit language changes and the modifications to Appendix 1 for both permits are a good first start and steps in the right direction.
2. Is it appropriate to exempt forest practices, except Class IV permits, within Appendix 1 in light of the US Court of Appeals decision in Northwest Environmental Defense Center vs. Brown? What does EPA say about this?
3. In the Phase I municipal permit, is the watershed scale stormwater planning section on pages 7-8 mandatory? Is the purpose for analysis of cumulative impacts from stormwater or is it to be used as the deviation from stormwater standards as implied in Appendix 1 on pages 32 -33 in Section 7?
This question would also apply to the Phase II permit since the language is the same.
4. How are separate road projects to be handled with these changes, particularly the watershed scale stormwater planning elements? Road widening projects can add several acres of impervious surfaces within and/or across subbasins, as well as, clear several acres of existing trees and compact native soils. They are also usually separate from subdivisions, plats and short plats.
5. How do the changes sync up with approved and pending TMDLs for the waters listed that receive stormwater in a listed waterbody, particularly for pollutants that can be generated by stormwater, including warm water in temperature listed waterbodies?
6. We agree that the stormwater minimum discharge duration standard needs to be changed to better protect aquatic life, in particular juvenile salmon, as many streams receiving stormwater are significantly simplified from historical conditions. What is the biological basis for the language changes on page 22 of Appendix 1? How will the new duration standard protect juvenile salmon in simplified streams and ditches from stormwater discharges?
7. What is the technical rationale for allowing basic treatment in salmon habitat streams, rivers, and lakes, especially if the ESA conditions for federally funded and permitted projects require enhanced treatment standards to reduce metal loading?
8. The feasibility criterion on page 33 (section 8) of Appendix 1 should not automatically include local setbacks from structures as they can generally be modified via a variance process with local governments and could result in LID best management practices in more areas.
9. The criterion on page 34 regarding the safety or reliability of pre-existing underground utilities should be further conditioned on the physical inability to relocate the underground utilities. Utilities get moved or relocated for other capital improvement projects such as road widening projects and should not be automatically eliminated from consideration from the LID best management practices opportunities.

10. The criterion on page 34 regarding the lack of usable space should be further conditioned that the site cannot be redesigned to create such space by going vertical on the site versus horizontal, reducing in road and driveway widths, etc.
11. The criterion on page 36, item 1.b. is too broad and could preclude the use of on-site stormwater management BMPs because of aesthetics. Who would decide this? The applicant? The neighbors?

Thank you again for the opportunity to review these language changes in their draft format. Please let me know if you have any questions.

Karen Walter
Watersheds and Land Use Team Leader

Muckleshoot Indian Tribe Fisheries Division
39015 172nd Ave SE
Auburn, WA 98092
253-876-3116