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January 26, 2012

Municipal Stormwater Permits
Washington Department of Ecology
Water Quality Program
PO Box 47696
Olympia, Washington 98504

RE: Comments to the Eastern Washington Phase II Municipal Stormwater Permit

Dear Sir or Madam:

These comments are submitted on behalf of the Environmental Clinic at Gonzaga University School of Law, the Spokane Riverkeeper and The Lands Council (collectively referred to as "Conservation Groups"). The Environmental Law Clinic provides legal representation to not-for-profit environmental programs in the Inland Northwest, and strives to protect and restore the quality and integrity of the region's waters through advocacy and public interest litigation.

The Spokane Riverkeeper ("Riverkeeper") is a program of the Center for Justice ("CFJ"). CFJ is a not-for-profit legal organization which provides legal services to individuals and public interest organizations in the Inland Northwest. Riverkeeper conducts surveillance of the Spokane River and its tributaries and reaches out to river users who share its commitment to a river that is swimmable, fishable, and properly regulated. To further these goals, Riverkeeper actively seeks Federal and State agency implementation of the Clean Water Act and, when necessary, directly initiates enforcement actions on behalf of itself and the public.

The Lands Council is a not-for-profit conservation group dedicated to protecting the quality of life and the environment in the Inland Northwest. The Lands Council is concerned about the environment's effect on people's health and works to protect thousands of acres of public land in order to maintain a clean and healthy environment. These lands include forests, water, and wildlife, including but not limited to the Spokane River Watershed. The Lands Council collaborates with a broad range of interested parties including communities, businesses, recreational groups, government agencies, and elected officials to seek smart and mutually respectful solutions to environmental issues. When necessary, the Lands Council uses litigation to protect forests and waters on behalf of its members and the public. The Lands Council seeks to enforce environmental rules necessary to ensure a clean and healthy environment.

The Conservation Groups support the inclusion of Low Impact Development (LID) requirements and the inclusion of important effectiveness monitoring in the Eastern Washington

Phase II Municipal Stormwater General Permit¹. Given the unique geographical, hydrological and meteorological features of Eastern Washington, LID requirements are essential in limiting the amount of pollution that is carried by stormwater into our lakes and rivers. The Conservation Groups support the use of Best Management Practices (BMP) to meet the LID goals of the Phase II Permit. Such BMPs include but are not limited to: soil amendment, trees, dispersion, rain gardens, permeable pavement, green roofs, rainwater harvesting, and low impact foundations. LID requirements are critical today and will remain critical in the future as global climate change alters the character and availability of our water resources. The resiliency of our water systems will be compromised by climate change, so preparing now for that eventuality is both economically and ecologically sound. Now, more than ever, we have an incentive to look forward in preparing this permit to meet beneficial goals in reducing pollution rather than allowing the bare minimum standard to carry forward into the future. This permit will affect the future of water pollution control and reduction in Eastern Washington, thus we urge the permit writers to review and take in to consideration the following comments.

SPECIFIC COMMENTS

- A. Permits should create incentives for permittees to contribute funding or staff time to identify other methods to help ensure that several LID projects are completed within the permit term.**

The LID projects that are undertaken by construction and reconstruction need to be completed in the time allowed by the permits, and as a way to ensure that these projects will be completed on time incentives should be used to reward the permittees for completing LID projects in specified time limits. Due to their inherent value, LID projects should not be subject to ephemeral timelines that do nothing to encourage the actual construction and implementation of LID projects.

- B. It should be clearly stated in the permit that BMPs for a specific area may include LID projects.**

Although the permit requires that sites which have been found to contribute to the pollution of a water body implement BMPs to reduce the amount of pollution entering the water body, these BMP requirements do not explicitly include LID projects. It should be mentioned in S4 of the permit, where BMP requirements are first mentioned, that BMPs should include LID projects wherever possible and practicable. Wherever BMPs are mentioned in the permit, it should be emphasized the LID techniques are the preferred strategy to meet BMP requirements.

- C. The individual permittees' SWMPs and O& M Plans should include LID projects.**

The individual Stormwater Management Programs (SWMPs) submitted by individual permittees should include explicit LID projects and timelines for completing these projects as

¹ Phase II Permit

part of the requirement that SWMPs meet the All Known, Available, and Reasonable methods of prevention, control, and Treatment (AKART) standard. LID has been shown in local, statewide, and national projects to be a reasonable method of prevention, control and treatment of stormwater. Indeed, LID may be the best available method to meet the AKART standard. As such, emphasis should be placed on the use of LID projects wherever possible. Similarly, the Operation and Maintenance activities plan (O & M Plan) developed by permittees to ensure ongoing prevention and reduction of pollutant runoff should explicitly include the construction and maintenance of LID projects. LID projects can play a valuable role in reducing pollutant runoff in the development of new municipal properties and in the ongoing maintenance of established properties. LID projects can be retrofitted to existing facilities with minimal cost and provision for maintenance. LID projects can reduce the impact of expansion, but they are equally valuable in reducing the impact of presently developed properties.

D. Public education and outreach should include material about LID, not just for developers, but for the general public and businesses.

Education about LID strategies should be available to all interested persons. LID should be included in the education and outreach programs for the general public, businesses as well as developers. LID is a valuable alternative for any person wishing to reduce their impact on the environment, and educational materials including information on LID could be a valuable way to reduce the sources of stormwater pollution and encourage private citizens to take steps to reduce the overall stormwater burden on the permittees.

E. Sites need to use the BMP that is the most applicable given the characteristics of the site in order to meet the LID goals.

There needs to be flexibility in meeting the LID goals. It is perfectly understandable that not all sites lend themselves to all BMPs. However, this is not a viable excuse for not employing any LID tactics. Each site should use the BMP that is most appropriate given the circumstances.

F. Developers need to be in the process of development and implementation of LID strategies.

It is essential that developers are involved in the processes that lead to the development and implementation of LID strategies. Developers are the ones who have to construct the BMPs to meet the LID goals, so it is important that they not only be required to use BMPs incorporating LID strategies, but that they are involved in the process of creating BMPS incorporating LID strategies so as to broaden their understanding of the need for LID.

G. Removing barriers to LID and merely encouraging LID is not enough, the permit should require LID for all construction and reconstruction and establish the appropriate LID standards to be incorporated into the permittees programs.

The requirement of LID is essential to keeping our waters safe and clean. LID should be a requirement for developers in all construction and reconstruction projects, not a mere

suggestion. The serious concerns of reducing the development envelope, reducing impervious surfaces, protecting and restoring native soils and vegetation, and minimizing disturbances requires us to make LID mandatory. Each site should use the BMP that allows them to meet the LID standard.

H. Emphasis should be placed on maintaining native soils and vegetation as best as possible.

Native vegetation and soil should be as kept intact as possible wherever possible. This is an effective strategy to meet the LID standards. Developers should work to preserve existing vegetation and soil, restore vegetation and soil that has been disrupted during construction, and re-create any lost habitat due to construction. The main goal of LID is to conserve and protect water resources by decreasing the amount of stormwater runoff and protecting the natural soils and vegetation is a highly effective strategy toward accomplishing this goal.

I. Monitoring System

We support the use of effectiveness monitoring. It is clear that there is some disagreement over developing an expansive monitoring system that would encompass all of eastern Washington. We support a more localized monitoring system that would allow municipalities to monitor themselves. Counties will be allowed to keep their funding for monitoring within their own counties if the monitoring system is more localized. As long as it is an effective monitoring system, it can be a regional focus. What is important is that we have an effective monitoring system. An effective monitoring system would include a mechanism to demonstrate that the permit system is actually reducing and preventing polluted discharges to local water bodies. This is the only viable mechanism for permittees to demonstrate that to Ecology and the public that they are complying with the terms of the Clean Water Act. Further, stringent monitoring requirements will provide interested persons and organizations with important data regarding the impact of stormwater on water bodies.

J. Greater emphasis should be placed on source reduction approaches.

We support the requirement to allow source reduction approaches. This minimizes the disturbance of soils and preserves the natural vegetation and hydrology of the development sites. Source reduction aides in managing stormwater runoff more effectively and there should be a special emphasis on maintain and protect the natural features of the site.

K. LID standard proposed by Ecology.

We support the 95% stormwater retention rate. Without an LID standard, we are asking for unnecessary trouble in any stormwater pollution control system. There needs to be an effective LID standard and standard definition that is prepared by Ecology for all municipalities. Emphasis should be placed on the use of LID as an alternative to traditional construction techniques and traditional maintenance of established properties. LID projects and technologies need not be seen as a high-cost alternative to their environmentally harmful counterparts in traditional construction. It should be emphasized that resources are available to developers and the general public to find affordable and practicable LID alternatives. Also, where LID projects

are deemed infeasible, the standard for what constitutes infeasibility should be as narrowly construed as possible. Overly broad feasibility exemptions would allow developers to make unfounded claims regarding LID implementation problems; Ecology must draft language that makes it clear that infeasibility is a rare exception to the normal practice of including LID.

The Conservation Groups appreciate Ecology's efforts in regard to the revision of the Phase II Permit and welcomes the opportunity to work with Ecology and the permittees to address concerns regarding implementation and to develop a path forward toward addressing stormwater pollution in Eastern Washington.

Sincerely,

Angelina Frazey
Environmental Law Clinic
Gonzaga University Legal Assistance