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Municipal Permit Comments
Washington State Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

To Whom It May Concern:

On behalf of the 3,000 member companies of the Master Builders Association of King and Snohomish Counties ("MBA"), I am writing to provide comments on the draft municipal stormwater permits. Thank you for this opportunity to provide our input.

The MBA has reviewed the permits, and we remain firmly opposed to required low impact development ("LID"). As we have long stated, we believe LID should be promoted as a voluntary tool for managing stormwater. While our members recognize the many benefits of LID, the ability to implement it successfully, greatly depends on the individual site characteristics, such as soil and adjoining uses. Ultimately, builders and design professionals need maximum flexibility to effectively use LID and realize these benefits.

Overall, we are concerned that a prescriptive approach to LID will result in unintended consequences in the form of system failures and a loss of support by the engineering community, local governments, developers and the public. We believe that instead of taking a top-down approach of requiring LID through the permits, the Department of Ecology and others should focus on advancing the needed technical education around LID and explore incentive-based solutions to promote LID. Therefore, we believe that training public and private sector professionals is a critical first step, not only to gain confidence in LID techniques, but also to help lay the groundwork for successful implementation. MBA also maintains that more emphasis should be placed on encouraging local governments to remove regulatory barriers to LID. All of these steps should be taken, where appropriate, as voluntary tools to promote LID.

Impacts on Affordable Housing and Growth Management

A major concern for our members with regard to the permits (and the corresponding LID BMPs in the 2012 Draft Stormwater Management Manual for Western Washington) is the cost of mandated LID. Ultimately, MBA is concerned that the LID requirements will drive up the cost of building a home, due to an increase in permit and inspection fees, and the cost of required infiltration testing and geotechnical evaluations on the front end of the development process. All of these things have the potential to impact site development costs, particularly the cost of the drainage components.

Additionally, we are concerned about the potential for LID requirements to reduce the number of developable lots on a given site, compared to sites using standard drainage design. Specifically, we're concerned that the space required for implementing LID BMPs on some sites could negatively impact the lot yield for residential development.

Reducing the number of housing units would hurt our ability to achieve the housing density envisioned by the Washington State Growth Management Act. Furthermore, it could mean the difference between whether or not a project "pencils out." Ultimately, it is another factor driving the cost of housing higher and limiting our ability to accommodate growth, which we view to be very serious – even if unintended – consequences.

If LID is to be a required element of the permits, then we believe economic considerations must be added to the list of competing needs that would allow applicants to forego use of an on-site stormwater management BMP. We would be happy to work with Ecology on developing a method by which cost feasibility could be determined.

Also, as we stated in our preliminary comments last June, we urge Ecology to create a user-friendly waiver or exception process that would allow project applicants to justify why LID is not practical or feasible on a given site. Project proponents must have the ability to address economic considerations and other site-specific concerns.

Infiltration Rate for Selected LID BMPs

In the section on feasibility criteria for selected LID BMPs (Section 8), we note that bioretention BMP's and rain gardens are considered infeasible on sites that have an initial native soil saturated hydraulic conductivity less than 0.3 inches per hour. While that is a move in the right direction from the rate of 0.15 inches per hour contained in the preliminary draft language, we continue to be very concerned about those sites where this rate would not be appropriate. The proposed rate of 0.3 inches per hour is still too low because the potential for facility failures remains. We view this as a very serious concern requiring further examination. Our specific concerns are spelled out in greater detail in our comment letter to Ecology dated June 17, 2011.

Vesting

The vesting language in the permits, whereby projects in the pipeline are given a five-year time limit for development, appears to be in conflict with State Vesting laws. We urge Ecology to remove this five-year vesting provision.

One-acre threshold

As we stated in our preliminary comments, we are very concerned with the removal of the one-acre threshold for applying the minimum requirements in the Phase II permit. Forcing LID requirements on small sites will dramatically increase engineering costs and require local jurisdictions to review the engineering design, implementation and maintenance.

Long-Term Maintenance

We are concerned about the requirements for verification of adequate operations and maintenance of post-construction stormwater treatment and flow-control measures, and the annual and twice-annual inspection requirements. The permits do not define who is responsible for record-keeping, which we view as being very problematic. Furthermore, it is not clear to us that cities have the capacity to meet the added inspections required by the permits, or that enforcement would be equally applied.

Thank you for your consideration of these comments. We also greatly appreciate the willingness of Ecology staff to meet with our members last month and explain the proposed changes in the permits in greater detail. Please do not hesitate to contact Allison Butcher on my staff with any questions at (425) 460-8223 or abutcher@mbaks.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel L. Anderson", with a long, sweeping horizontal stroke extending to the right.

Samuel L. Anderson
Executive Officer