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CLARK COUNTY
WASHINGTON

BOARD OF CLARK COUNTY COMMISSIONERS

Tom Mielke • Marc Boldt • Steve Stuart

January 31, 2012

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

Dear Sir or Madam:

RE: Phase I Municipal Stormwater Permit

Thank you for the opportunity to comment on the draft Phase I Municipal Stormwater Permit recently published by the Washington Department of Ecology (DOE).

Clark County is committed to responsible stormwater management to keep our waterways clean for people, fish and wildlife. Our stormwater program and compliance with the current Permit demonstrate this commitment. Since 2007 we've spent \$7 million to build 15 projects that meet the Structural Controls requirement and \$1 million to monitor stormwater quality to meet the Monitoring requirement. To meet the Maintenance requirement we routinely inspect and maintain more than 900 public stormwater facilities.

We think a properly administered Municipal Stormwater Permit is critical to achieve our stormwater program's goals. We think DOE should set program parameters and establish clear, achievable requirements that encourage permittees to use limited resources to address known problems using proven solutions. We think the Municipal Stormwater Permit should establish a basic framework that encourages innovation where appropriate and investment where most beneficial. We think the framework should promote adaptive management to shift resources to where they are most needed. We also think requirements of the Municipal Stormwater Permit must fit within the broader context of our Comprehensive Plan and support state and local service delivery priorities.

Unfortunately, the draft Phase I Municipal Stormwater Permit fails to meet those expectations. As a result, we strongly recommend reissuing the current Phase I Permit with minimal changes until DOE addresses concerns regarding effectiveness, scope and

expense, and sets realistic timelines for meeting complex technical and public policy challenges.

Below is a summary of our broad concerns. We also have attached detailed comments that address specific language and issues.

The draft Permit does not rely on proven solutions. The Permit mandates the use of technical and policy guidance manuals that are currently drafts and haven't been reviewed or used by local governments. Mandating extensive use of unproven development practices, such as permeable pavement, to meet specific Permit requirements is a major concern. This is an experiment at the public's expense, testing the feasibility of approaches only beginning to be used and developed in our region. As currently proposed and mandated, we anticipate many LID failures in planning, construction and long-term operation. Widespread failures will hurt the credibility of LID and require local agencies to use scarce financial resources for repairs.

The draft Permit requires land use planning beyond the scope of the Clean Water Act. As written, it appears this Permit will require watershed plans that recommend changes to land use planning be submitted to DOE. This requirement clearly is beyond the scope of managing a municipal storm sewer system and fails to recognize that many land use activities, including agriculture and forestry, influence water quality. If the state wants this type of watershed-based regional growth planning, it should take the lead and pay for programs as it did with Shoreline Master Plans, WRIA planning and salmon recovery planning.

The draft Permit unfairly shifts burdens from the state to local government. Monitoring requirements ask permittees to either fund or conduct expensive projects to test whether Permit requirements are effective. Ideally, the Permit should only mandate actions that are already proven effective. The underlying assumption that permeable pavement, green roofs and water harvesting are known and common technologies or practices *in our region* is wrong. Local governments will need to dedicate significant staff and financial resources to educating landowners and applicants to avoid widespread failure of LID practices. Indeed, if DOE considers these management techniques to meet the test of "all known, available and reasonable methods of prevention, control and treatment" (AKART), then local governments should not be required to pay to test their effectiveness.

The draft Permit does not establish clear, achievable guidelines. The Permit includes a watershed-scale stormwater planning requirement but lacks clear guidance on how to complete this expensive, technically complex, public policy process. In addition, the Permit is unclear about what the proposed plans will be used for, other than being submitted to DOE. The requirement to review and revise all development codes to

incorporate LID principles and practices is a tremendous undertaking with no defined endpoint, putting local governments at risk of many interpretations of compliance. The Permit needs clear, achievable endpoints that provide permittees regulatory certainty and allow proper planning and budgeting.

The draft Permit timelines are unrealistic and unreasonable. The proposed timelines for stormwater and land use code review and update are too short considering their complexity, breadth and unfamiliarity to the community. DOE expects permittees to begin implementing the requirements long before the permit is effective. Local governments updated their stormwater codes and manuals during the current permit term, spending considerable time with stakeholder groups, advisory commissions and elected officials. The cost associated with the process was hundreds of thousands of dollars. Being required less than four years later to go through an even more extensive policy process in a short time is unrealistic and unreasonable.

The draft Permit discourages innovation and investment beyond meeting minimum Permit requirements. The prescriptive Permit does not allow for reduction in Permit programs, even if it could result in a better environmental outcome by shifting resources to more effective measures. It discourages innovation at the local level and impedes adaptive management. The Permit takes the backsliding provisions of the Clean Water Act to extremes that will discourage permittees from ever exceeding a requirement in any specific program area. Furthermore, permittees are not held to equivalent standards; rather, each permittee is measured against its own levels of effort to meet requirements in a previous Permit. This nearly eliminates local government efforts to tailor stormwater management programs to local needs.

The draft Permit is too expensive. The State of Washington implements one of the strictest Phase I Municipal Stormwater Permits in the country. The more stringent requirements proposed by the draft Permit will significantly increase compliance costs, for both Permittees and the private sector, resulting in limited improvement to local government programs. For example, the watershed-scale stormwater planning adds great amounts of work with uncertain outcomes or benefits. Mandating LID, for example, involves considerable investment and substantial financial risk to our citizens. We estimate compliance with the draft Permit will require an additional \$1.3 million annually. Local governments are struggling to fund existing programs that reflect new requirements in the current permit. Now is not the time to add more requirements that provide limited, at best, improvement to stormwater management programs.

In summary, the draft Permit has several major flaws. It is too complicated. Thousands of pages of manuals are adopted into the Permit by reference, although many manuals are in draft format or unavailable for full review. The draft Permit is too prescriptive, using minimum performance measures in place of asking permittees to measure and prioritize

local needs. The draft Permit is too expansive in its reach beyond management of municipal storm sewer systems. It shifts state responsibilities such as monitoring and LID education to local governments. The draft Permit has too many requirements that make compliance uncertain. Timelines are unrealistically short for vague, complex or incomplete requirements. Finally, the draft Permit is too expensive. It requires numerous changes that would use scarce resources better invested in addressing known problems with proven solutions.

Again, we strongly recommend reissuing the current Phase I Permit with minimal changes until DOE addresses concerns regarding effectiveness, scope and expense, and sets realistic timelines for meeting complex technical and public policy challenges.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Boldt". The signature is fluid and cursive, with the first name "Marc" being larger and more prominent than the last name "Boldt".

Marc Boldt, Chair

rds/rew/kjg/hg/tmk

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