

Attachment D

City of Bellevue February 3, 2012 Comment Letter for the
Draft NPDES (2013-2018) Western Washington Phase II Municipal Stormwater Permit

Comments and Recommendations on the LID Principles Land Use Regulations Requirement

These comments and recommendations address proposed Condition S5.C.4.g. Attachment E contains additional comments and recommendations on S5.C.4.

LID Principles. Bellevue supports the use of LID principles which emphasize conservation, use of on-site natural features, and site planning techniques to minimize impervious surfaces, native vegetation loss, and stormwater runoff. The Low Impact Development and Green Buildings subsection of the Environmental Stewardship section of the Environmental Element in Bellevue's Comprehensive Plan already promotes such techniques. Policy EN-1 specifically calls out these principles in the context of the City's commitment to developing a compact Urban Center in a sustainable environment.

Bellevue, however, does not support regulating land use planning through the state and federal clean water acts to control stormwater runoff. The LID principles proposed by Ecology are land use management techniques, unlike LID BMPs which are engineered treatment measures developed to specifically address stormwater runoff and that are appropriate components of a water quality permit. Regulating land use through the permit places jurisdictions in the untenable position of being liable to third parties for land use actions under statutes adopted to regulate and protect water quality. This is unnecessary when the Legislature has already provided a proven tool for land use planning through the Growth Management Act, Ch. 36.70A RCW.

The Legislature placed land use planning within the purview of local jurisdictions. The Legislature further recognized that such local jurisdictions are best situated to implement development regulations that fulfill community vision and values while also ensuring consistency with GMA requirements. Cities and counties planning under the GMA are required to balance the 13 planning goals set forth in RCW 36.70A.020 which include protecting the environment and enhancing water quality (Goal 10).

The LID principles proposed by Ecology appear to be appropriate in undeveloped or rural areas; it is unclear how the principles will apply in highly urbanized areas such as Downtown Bellevue, the City's designated Urban Center. It is clear that all of the GMA planning goals, including encouraging development in urban areas (Goal 1), reducing sprawl (Goal 2), providing affordable housing and housing at differing densities (Goal 4), must balance protecting the environment (Goal 10) with these other goals. As proposed by Ecology, it is unclear if implementing LID principles in the Phase II permit will allow the policy balancing required under the GMA.

As a city in a county planning under the GMA, Bellevue must also accommodate the state's Office of Financial Management 20-year population forecast as allocated through a countywide planning process for household and employment comprehensive planning targets. Stormwater statutes must thus be reconciled with these population and growth statutes to ensure that they are consistent with managing growth and development mandated under the GMA. Continuing to do this through the local comprehensive planning process under GMA will harmonize the two statutes, allow

permittees to comply with mandates under the GMA related to growth and development, and allow the policy balancing required under the GMA.

Bellevue encourages Ecology to work with the Department of Commerce to use the GMA's framework to develop and implement the use of LID principles. This would harmonize the state Clean Water Act and the GMA, allow permittees to appropriately balance GMA goals, and support the Legislature's intent for land use planning in Washington. At a minimum, Ecology must add compliance with the mandates of the GMA as one of the competing needs in Section 8 of Appendix 1.

Draft Condition S5.C4.g, page 34.

Draft condition S5.C4.g is subject to numerous interpretations, which may divert limited municipal resources away from efforts and programs to improve water quality towards costly litigation. The condition also imposes unrealistic deadlines given the realistic conditions of competing state mandates, the ongoing economic downturn and reduction of municipal staffs. As discussed above, Bellevue is also concerned about the proposed requirement to conduct land use planning through the Phase II General Stormwater permit. We have provided suggested amendments to Condition S5.C4.g for Ecology's consideration at the end of this discussion.

Deadlines. To satisfy draft condition S5.C4.g will require the review and revision of numerous provisions of the Bellevue City Code and engineering, traffic, and development standards. The deadlines proposed in the draft permit and the Puget Sound Partnership's LID guidebook are optimistic and challenging and appear to be based on a premise of adequate staffing, resources, and no public opposition, challenges, or other legal actions that will impact the ability of permittees to meet these deadlines. But the reality is that the state and local jurisdiction, regardless of size, are faced with severe economic challenges and staff layoffs. Finally, the review and revision process will require a multi-departmental effort and most importantly, an extensive and robust public process, which includes all stakeholders. This process also includes review and consideration of corresponding code amendments by the City's commissions, community council, and the City Council.

Staff who must conduct the required review and revisions in Bellevue are typically the same staff who must also comply with other state requirements, such as the requirement to review and issue development applications under the timelines of the Local Project Review Act, Chapter 36.70B RCW. Also, other state statutes require staff resources to update and revise codes and planning documents. Bellevue is currently in the process of updating the City's Shoreline Master Program, as required by the Shoreline Management Act, Ch. 90.58 RCW. This state-required provision requires review and amendment to the City's Comprehensive Plan and numerous land code provisions that implement the City's shoreline master program. This process has been underway since 2008 and has included robust community involvement. Staff anticipates concluding this work in late 2012 to early 2013. Staff from Bellevue's building and fire divisions are required to update the City's building and fire codes beginning in 2013, consistent with requirements under the State Building Code, Ch. 19.27 RCW. The City must also undertake a major update of its comprehensive plan, with the work occurring during 2013 – 14, with adoption required by June 2015.

One option to address staffing and resource issues and move LID forward, is to bifurcate the review and revision process between permit cycles. For example, Phase II permittees could conduct the required review, perform a gap analysis, and provide a status report in the fourth year of the permit cycle. The Phase II permittees could then finalize and adopt their codes and standards early in the next permit cycle. This process would be consistent with the PCHB's recognition that Ecology may use flexible schedules for Phase II jurisdictions to implement non-structural and LID techniques in their jurisdictions. *Puget Soundkeeper Alliance v. Ecology*, PCHB Nos. 07-022, 07-023, Findings of Fact, Conclusions of Law, and Order (Phase II Municipal Stormwater Permit) (Feb. 2, 2009), pp. 46-47 (Conclusions of Law 4-6).

Bellevue also supports strengthening Condition S5.C4.g to recognize the implementation of LID not only where feasible but also in keeping with local conditions and the community vision articulated in the Comprehensive plan. We believe the recommended amendments that Bellevue provided to Section 8 of Appendix 1 may also address this issue. Finally, Ecology's intent regarding the revision will be realized through the required revision and review process, so it is unnecessary to repeat the intent in the proposed provision

Based on Bellevue's comments related to compliance with the PCHB decision and concerns regarding deadlines, consider revising S5.C4.g to read as follows:

No later than December 31, 2016, Permittees shall review ~~and revise~~ their local development-related codes, rules, standards, or other enforceable documents in preparation to incorporate and require where feasible LID principles and LID Best Management Practices (BMPs) Low Impact Development (LID) by no later than December 31, 2019. ~~The intent of the revisions shall be to make LID the preferred and commonly used approach to site development.~~ In reviewing the local codes, rules, standards, and other enforceable documents, the Permittees shall identify opportunities to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations that are appropriate for local conditions and are consistent with the community vision set forth in the Permittees Comprehensive Plans. Permittees shall conduct a review ~~and revision~~ process similar to the steps and the range of issues outlined in the following guidance document: *Integrating LID into Local Codes: A Guidebook for Local Governments* (Puget Sound Partnership, 2011).

Police Powers Fact Sheet Comments [This goes with Appendix 1, Section 8: Competing Needs]

Bellevue supports LID and looks forward to working with Ecology and its partners to move use of LID forward throughout the region in a considered manner. Bellevue, however, opposes any attempts by Ecology to limit the City's exercise of its constitutionally-granted police powers to protect the public health and safety. The Fact Sheet at page 91 states that road widths are not by default a competing need: "Safety issues related to specific road width recommendations from the American Association of State Highway and Transportation Officials (AASHTO) and the Institute of Transportation Engineers (ITE) do not qualify as competing needs as default." This statement ignores the City's responsibility to ensure that transportation projects are designed to a known engineering standard to protect the public, such as pedestrians, drivers, bicyclists, and transit users from hazards related to transportation. What is required for public safety should be left to the jurisdiction, which is in the best position to assess local conditions and exercise its police powers

to protect the public safety. Consequently, Ecology should revise paragraph 3 to prevent any infringement on Bellevue's ability to exercise its police powers:

Public health and safety – Most health-related issues are already addressed under the criteria of site/engineering-based conditions, such as distance from drinking water wells and onsite septic systems. ~~The public safety criteria listed here refers to regulations to address items such as multiple pedestrian or vehicle access points, or others that may arise and are determined to be necessary to public health and safety. Safety issues related to specific road width recommendations from the American Association of State Highway and Transportation Officials (AASHTO) and the Institute of Transportation Engineers (ITE) do not qualify as competing needs as default. Road widths may be significantly reduced by determining specific traffic, parking, and emergency vehicle access needs, and designing for the narrowest width capable of meeting those requirements, consistent with public safety needs. The public safety criterion includes those regulations necessary for the Permittees to protect the public safety consistent with their constitutionally-granted police powers.~~

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Comment No.	Section	Page	Line No.	COMMENT	Alternative Language or Solution
1	S5.C4.g	34	20-32	<p>Bellevue supports the use of Low Impact Development (LID) to control runoff from new development and redevelopment. We are concerned, however, that the permit does not reflect the Pollution Control Hearings Board's conclusions about LID, and goes beyond the PCHB's holding regarding Phase II Permittees to require LID. To correct this issue, Ecology should amend the provision to state that LID is required where feasible. Also, Bellevue supports LID principles, but does not support regulating LID principles through the Phase II permit (see discussion in Bellevue's comment letter). Consequently, we request Ecology revise the provision to eliminate the distinction between LID BMPs and principles, and instead uses the general LID definition. We also support strengthening the provision to recognize the implementation of LID not only where feasible but also in keeping with local conditions and the community vision articulated in the Comprehensive plan. We believe the recommended amendments that Bellevue provided to Section 8 of Appendix 1 may address this issue also. Finally, Ecology's intent regarding the revision will be realized through the required revision and review process, so it is unnecessary to repeat the intent in the proposed provision.</p>	<p>Consider revising S5.C4.g to read as follows:</p> <p>No later than December 31, 2016, Permittees shall review and revise their local development-related codes, rules, standards, or other enforceable documents in <u>preparation to incorporate and require where feasible LID principles and LID Best Management Practices (BMPs) Low Impact Development (LID)</u> by no later than December 31, 2019. The intent of the revisions shall be to make LID the preferred and commonly used approach to site development. In reviewing the local codes, rules, standards, and other enforceable documents, the Permittees shall identify opportunities to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations <u>that are appropriate for local conditions and are consistent with the community vision set forth in the Permittees Comprehensive Plans.</u> Permittees shall conduct a review and revision process similar to the steps and the range of issues outlined in the following guidance document: Integrating LID into Local Codes: A Guidebook for Local Governments (Puget Sound Partnership, 2011).</p>

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2		29, 34	Footnotes 19, 20, and 26	Bellevue appreciates Ecology's efforts to improve the readability of the draft permit by placing provisions applicable to new permittees in footnotes. Substantive provisions, however, that apply to all permittees should not be included in the footnotes; rather these provisions should be elevated to the main text. Placing these provisions in footnotes creates the opportunity for readers to miss provisions applicable to all permittees on the mistaken belief that the footnotes apply only to new permittees. Elevate substantive language into body of the permit.	Elevate substantive language into body of the permit.