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## **Comments on Draft 2013-2018 Western Washington Phase II Municipal Stormwater Permit**

Thank you for the opportunity to provide comments on the draft NPDES Phase II Permit. The City of Clyde Hill has made significant investments and efforts to provide for clean water regionally and within our community and will continue to do so. The City is entirely built-out and development activity consists of rebuilding existing homes and buildings. Clyde Hill has a number of concerns and has prepared the following list of comments. The City looks forward to these issues being addressed in the final permit.

As an interim measure, the City believes that Ecology should reissue the current permit for a longer period of time and modify the effective date of the new Permit to early 2015. This is consistent with the approach that was taken with the initial Phase I permits, where the first permit was in effect for 12 years while Ecology worked with stakeholders to develop the second permit. The reason for this request is due to the following concerns:

- Process: The concurrent public review process for the draft Permit and the draft Manual potentially conflicts with the state's Administrative Procedures Act for rulemaking. The draft Manual contains stormwater development standards that will become requirements in the new Permit. Typically, Ecology would have completed a separate public review process on the draft Manual before imbedding standards in the draft Permit as proposed requirements. In addition, the draft Manual is incomplete, references documents not yet available and Ecology has not conducted a cost-benefit analysis of the draft Manual or draft Permit.
- One-acre Threshold: For our city especially, the expansion of Permit responsibilities to below one acre is a major problem. We have codified our own regulations for parcels one acre and under and adopted the Ecology Manual for parcels greater than one acre. For parcels less than one acre our regulations require detention for impervious additions greater than 750 square feet. We require BMP's for all grading within the city. Our regulations have worked well for over a decade, are easy to implement and understand. In Clyde Hill there are only eleven building sites greater than one acre and buildings on those sites require consultants to design stormwater improvements at great cost to the

applicants. It would be very costly and time consuming to require the use of the Ecology Manual on sites less than one acre in size.

- Low Impact Development Best Management Practices (LID BMPs): LID BMPs have the potential to improve water quality and flow control. In Clyde Hill however they are not effective due to extremely poor soil conditions underlying the majority of the city. Currently to use LID we require a licensed civil engineer to certify the adequacy of the design and on-site soils. No permit has been approved using LID to date. LID BMPs should be implemented in phases so that barriers can be addressed and unintended consequences minimized.
- Low Impact Development Principles: The mandatory requirement to amend local land use and other municipal regulations to incorporate LID Principles is imposed without consideration of consistency with other mandates and state laws that the City is required to comply with, such as the Growth Management Act. It would erode local government authority over land use decisions and increase the risk of potential litigation from 3<sup>rd</sup> party lawsuits.
- Permit Timelines: The timelines in the Permit are too aggressive, increasing the potential for noncompliance and risk of litigation. In many instances, the same staff will be overseeing the necessary code changes to implement the LID BMPs as well as the broader scale code review for LID Principles. This is on top of other mandated code reviews and updates – all at a time when staff resources have been reduced by the bad economy.
- New requirements for municipal operation and maintenance and illicit discharge programs: It is only recently that full implementation of the current Permit's phased requirements has been completed. It will be a significant challenge for cities to maintain these current stormwater investments given the declining economic capacity of both local and state government. Significant new investments will be necessary, and Ecology has not provided an analysis of the expected benefits from the increased investments over the current Permit requirements.
- Monitoring: We continue to have concerns regarding the expense of future monitoring. The opt-out option that has been provided is likely not workable for many cities that have made investments in their own monitoring programs. Given the economic situation facing cities, the assumption that cities can pay for enhanced monitoring absent state financial assistance is not one we're willing to support.

- Vesting: The vesting language in the permit is problematic in that in certain areas it conflicts with state vesting laws. It is recommended that Ecology make consistency improvements to eliminate conflicts.