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January 30, 2012

Harriet Beale  
WA Department of Ecology  
Water Quality Program  
PO Box 47696  
Olympia, WA 98504-7696

RE: Comments of the Draft Phase II Municipal Stormwater Permits

Dear Ms. Beale:

The City of SeaTac would like to thank you for the opportunity to comment on the draft municipal stormwater permits. The City is committed to providing effective and efficient stormwater management services to its residents, while protecting our natural resources and waterways. The City has reviewed the Draft 2012 – 2013, and the Draft 2013 – 2018 Western Washington Phase II Municipal Stormwater Permits and has the following comments:

**Draft 2012 – 2013 Western Washington Phase II Municipal Stormwater**

Page	Lines	Reference	Text
29	32 - 37	S5.C.5.d	Inspection of all catch basins and inlets owned or operated by the Permittee at least once before the end of the permit term. Clean catch basins if the inspection indicates cleaning is needed to comply with maintenance standards established in the 2005 <i>Stormwater Management Manual for Western Washington</i> .
30	6 – 10	S5.C.5.e	Compliance with the inspection requirements in b, c and d above shall be determined by the presence of an established inspection program designed to inspect all sites. Compliance during this permit term shall be determined by achieving an annual rate of at least 95% of inspections no later than 180 days prior to the expiration date of this permit.

*Comment* – Deadlines for compliance within the one year permit need to be addressed so it is clear that the permit is a continuation or extension of the previous permit and none of the deadlines, except the annual report requirements, are in effect.

## Draft 2013 – 2018 Western Washington Phase II Municipal Stormwater Permit

### General Comments

#### **Review Process**

Many cities, including SeaTac, have expressed concern over the concurrent review process for the combined review of the draft permit language and the supporting technical documents (i.e. the 2012 Stormwater Management Manual for Western Washington and the LID Guidance Manuals). They have also identified concerns over the limited availability of these documents, especially the LID documents. As these documents are interrelated and changes to one will affect the other, the existing comment period does not allow adequate time for review of all of these regulatory and technical documents. We request that the permit issuance be delayed to allow for sequential review of these documents, beginning with the technical documents.

#### **Expansion of the Scope Beyond EPA Requirements**

Sections of this draft permit go well beyond the minimum requirements of the EPA and the Clean Water Act, and will create significant financial burdens on municipalities during a time when cities can ill afford additional costs. Examples of these expansions include Low Impact Development (LID) and Monitoring requirements. We request that these sections be removed from the permit and be reassessed in future permits.

#### **Economic Impacts**

Compliance with 19.85 RCW Regulatory Fairness Act - The Act defines “small business” as “. . . any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.” The Act finds that uniform regulatory requirements can impose a disproportionate burden on small businesses (19.85.011 Findings – 2007 c 239 (5)). Further, Section 19.85.030 (1)(a) of the Act requires agencies to prepare a small business economic impact statement if a proposed rule will impose more than minor costs on businesses in an industry. The City of SeaTac is concerned that the proposed LID requirements will have significant economic impacts on small businesses and developers and this will in turn result in an adverse economic impact to the city. In addition, it is the City’s opinion that prior to instituting this permit, a small business economic impact statement is required.

### Detailed Comments

Page	Lines	Reference	Text
14	17-31	S4.F	A Permittee remains in compliance.....

*Comment* – Please clarify the difference between S4.F notification and G20 notification and how they should be used.

Page	Lines	Reference	Text
19	31	S5.C.1.a.iii	Dumpster maintenance for property owners.

*Comment* – Please delete “for property owners”. This language is too limiting.

20	15	S5.C.1.c	<u>new</u> targeted audience in at least one <u>new</u> subject area
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*Comment* – Please remove the word “new” in the two places it appears in this sentence. Cities need to be allowed the flexibility to effectively manage their education and outreach programs, by making decisions on whether to reevaluate and update an existing program or evaluate a new program.

21	10	S5.C.2.b	SWMP
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*Comment* – Please correct this typo. Text should read SWMPR.

21	13 - 14	S5.C.3	The SWMP shall include an ongoing program to identify, detect, and remove and <u>prevent</u> illicit connections and illicit discharges into the MS4
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*Comment* – Please remove word “prevent” as prevention is not possible in all cases. Revised text should read: The SWMP shall include an ongoing program to detect, identify and remove illicit connections and illicit discharges into the MS4. The use of the term “prevent” opens permittees up to increased liability and non-compliance challenges.

21	31 - 34	S5.C.3.a.iii	Permittees may rely on permanent stormwater control plans for mapping LID BMPs provided they are spatially referenced to the MS4 map and maintained on an ongoing basis.
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*Comment* – Please clarify this statement or define “permanent stormwater control plans” so the reader doesn’t need to rely on the fact sheet to interpret.

24 & 25	37-41 1-2	S5.C.3.b.v	The compliance strategy should address the maintenance of permanent stormwater treatment, flow control facilities and catch basin which discharge to the Permittee’s MS4...
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*Comment* – This section duplicates requirements within section S5.C.4.c.i of this draft permit. Please remove this section from the IDDE portion of the permit.

26	3-6	S5.C.3.c.i	Permittees shall prioritize conveyances and outfalls and complete field screening for at least 40% of the MS4 within the Permittee’s coverage
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			area no later than February 2, 2016 and 20% each year after..
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*Comment* – Please remove this language from the permit. As we and several other jurisdictions commented on during the public workshops, outfall screening is not an effective tool for identifying illicit discharges due to the intermittent nature of illicit discharges. Adding conveyances onto this screening process will not change that fact, it will only take additional time away from the more effective tools of IDDE detection, such as business inspection and education programs.

Page	Lines	Reference	Text
27	36	S5.C.3.d.iv	All illicit connections to the MS4 shall be eliminated.

*Comment* - Add the word *known* to read “All known illicit connections to the MS4 shall be eliminated”. The existing language exposes permittees to too much liability.

29	15 – 27	S5.C.4.a	The program shall implement an ordinance or other enforceable mechanism that addresses runoff from new development, redevelopment, and construction site projects. Pursuant to S5.A.4., existing local requirements to apply stormwater controls at smaller sites, or at lower thresholds than required pursuant to S5.C.4., shall be retained. The ordinance or other enforceable mechanism to implement (i) through (iii), below, shall be adopted and effective no later than December 31, 2015.
34	21 – 32	S5.C.4.g.i	No later than December 31, 2016, Permittees shall review and revise their local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID principles and LID Best Management Practices (BMPs). 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. Permittees shall conduct a review and revision process similar to the steps and range of issues

			outlined in the following document: <i>Integrating LID into Local Codes: A Guidebook for Local Governments (Puget Sound Partnership, 2011).</i>
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*Comment* – All ordinance, procedure, standard, technical manual revisions related to development should be scheduled to occur at the same time. These tasks will represent a tremendous undertaking across multiple municipal departments. Therefore please move the due date to December 31, 2017.

Page	Lines	Reference	Text
29	23-26	S5.C.4.a	Local program adopted to the requirements of S5.C5.a(i) through (iii), below shall apply to all applications submitted after January 1, 2016 and shall apply to projects approved prior to January 1, 2016 and shall apply to projects approved prior to January 1, 2016 which have not started construction by January 1, 2021.

*Comment* – This vesting language is clear in regards to projects approved prior to January 1, 2016. However, it does not address vesting for projects whose applications are under review and accepted as complete prior to January 1, 2016. Please provide clear vesting language to address projects under review and accepted as complete prior to the deadline. Said vesting language should be consistent with state law and legal precedent.

32	19-21	S5.C.4.c	Inspection of all new stormwater treatment and flow control BMPs/facilities and catch basins for permanent residential developments every 6 months until 90% of the lots are constructed to identify...
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*Comment* – A 90 percent construction threshold is too high of a standard. In the case of a five lot subdivision, the last lot may remain unconstructed/vacant for many years or even decades, during which time there would likely be no environmental benefit from bi-annual inspections. Please change this language back to match the 2007 Phase II permit “every 6 months during the period of heaviest house construction (i.e. 1 to 2 years following subdivision approval)...”

34	21 – 32	S5.C.4.g.i	No later than December 31, 2016, Permittees shall review and revise their local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID principles and LID Best Management Practices (BMPs).
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			<p>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. Permittees shall conduct a review and revision process similar to the steps and range of issues outlined in the following document: <i>Integrating LID into Local Codes: A Guidebook for Local Governments (Puget Sound Partnership, 2011)</i>.</p>
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*Comments:*

Timeframe – Revisions to the codes, standards, and regulations in multiple land use documents is labor intensive. SeaTac, like most other cities, has limited resources and is already committed to completion of other substantial planning projects including a mandatory Comprehensive Plan Update. We request that the timeframe be revised to December 31, 2017 or later rather than imposing December 31, 2016 as the deadline.

Requirement to incorporated LID principles and BMPs into enforceable documents – The City of SeaTac remains committed to reducing the impacts of development on drainage systems and natural habitats. The City’s current Comprehensive Plan and Zoning Code include policies and regulations to protect and enhance water quality and drainage. However, the City objects to the imposition of mandatory requirements of LID and BMPs standards. The City has previously opined that: *“It is the opinion of the City that LID techniques should be encouraged rather than required. Public Education and incentives should be used to raise public acceptance of these techniques rather than mandating their use where feasible. Once the public accepts the use and potential benefits of LID, demand for and use of these techniques will increase without the need of a mandate.”* (City of SeaTac Low Impact Development (LID) Report for the March 31, 2011 NPDES Annual Report, Appendix B, page 13). In updating the City’s Comprehensive Plan and Zoning Code, the City plans to allow and encourage the use of LID principles and BMPs.

Integrating LID in to Land Use Codes and Documents

The proposed guidance document referenced in this section cites the need for updating comprehensive land use planning documents. Changes to comprehensive planning documents such as growth management plans and shoreline master plans are not appropriate for a stormwater permit. Changes to these documents should be mandated through revisions to the Shoreline Management Act and the Growth Management Act, not circumvented through a stormwater permit. Please add clarifying language to the

permit indicating that updating of growth management planning and shoreline management plan documents is not mandated under this requirement.

Page	Lines	Reference	Text
34	33-34	S5.C.4.g.ii	Each Permittee shall submit a summary of the results of the review and revision process in (i) above with the Fourth Year Annual Report...

*Comments* – Please remove this requirement. Reporting requirements are already burdensome enough. This item should be addressed through a check box on the annual report.

37	1-2	S5.C.5.d	Inspections of all catch basins and inlets owned or operated by the Permittees at least once every two years.
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*Comment* – Please change the inspection frequency back to five years. A two year inspection standard of all CB and inlets is unattainable for many Phase II’s, especially given these economic times.

37	17-23	S5.C5.d.i	Inspections <u>at least once every two years</u> may be conducted on a “circuit basis” whereby a sampling of catch basins and inlets within each circuit is inspected to identify maintenance needs. <u>Include in the sampling an inspection of the catch basin immediately upstream of any system outfall.</u> Clean all catch basins within a given circuit for which the inspection indicates cleaning is needed to comply with maintenance standards established under S5.C4.a., above.
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*Comments*

- Please change the inspection frequency back to five years. A two year inspections standard of all CB and inlets is unattainable for most Phase II’s, especially given these economic times.
- Please change the second sentence to read “Include in the sampling an inspection of the catch basin immediately upstream of any system outfall, if applicable. CB inspection circuits are often based on land use or traffic areas and do not necessarily include system outfalls. This change will clearly give permittees the flexibility needed to effectively and efficiently manage these assets.

37	25-26	S5.C5.d.ii	The Permittee may clean the entire MS4 within a circuit, including all conveyances and catch basins, once during the permit.
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*Comments* – Please define “conveyances” in the Definitions and Acronyms section.

Page	Lines	Reference	Text
49	17	S7	...issuance of the permit <u>oro</u> <u>priot</u> to the date...”

*Comments* – Please fix typos.

51-63	All	S8.C, D & E	Monitoring Requirements
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*Comments* – Please remove these new sections from the draft permit. The expansion of monitoring requirements will provide little resource management insight into the stormwater quality issues of our region and will create an additional burden on permittee’s already scarce financial resources.

74	18-19	Definitions Common plan of development or sale	...and 4) linear projects such as roads pipelines, or utilities.
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*Comments* – Please remove the above identified language from the definition of Common plan of development or sale exempt municipal projects. Permittees are already conducting inspections of municipally owned or operated flow control facilities and catch basins, pursuant to S5.C.5.b and S5.C.5.d, respectively.

74	31-34	Definitions	Circuit means a portion of the municipal separate storm sewer system (MS4) discharging to a single point and serving a discrete area determined by both topography and the configuration of the MS4....
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*Comments* – Please revise the above language to read as follows: “Circuit means a portion of the municipal separate storm sewer system (MS4) discharging to a single point ~~and~~ or serving a discrete area determined by ~~both~~ traffic volumes, land use type, topography ~~and~~ or the configuration of the MS4”. CB inspection circuits may need to be based on land use or traffic areas and do not necessarily include system outfalls or single discharge points. These changes will allow permittees the flexibility we need to effectively and efficiently manage these assets.

75	35-39	Definitions	Illicit Discharge means any discharge into <u>or</u> <u>from</u> municipal separate storm sewer that is not composed entirely of stormwater or which is not an allowed discharge as specified in this permit. Illicit discharges include, but are not limited to, spills, discharges associated with illicit connections, <u>and infiltration/exfiltration of non-stormwater that takes place in pipe bedding.</u>
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*Comments*

- Please remove the words “or from” from the first sentence. This additional language opens permittees up to too much liability potential from non-compliance and third party lawsuits, as we cannot control non-point source discharges into the MS4 and the resulting cumulative impacts to the MS4 discharge.
- Please remove the words “and infiltration/exfiltration of non-stormwater that takes place in pipe bedding” from the last sentence. This additional language also sets permittees up for non-compliance as we have no control over infiltration/exfiltration of stormwater into pipe bedding. Further, we do not have the ability to effectively trace and remove discharges into from groundwater or pipe bedding.

Page	Lines	Reference	Text
79	14	Definitions Sediment/Erosion –Sensitive Feature	...Appendix 7 Determining Construction Site Sediment Transport Potential...

*Comment* – Incorrect reference. Please change to Appendix 6.

79	35-36	Definitions	Stormwater means runoff during and following precipitation and snowmelt events, including surface run-off, drainage or interflow.
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*Comment* – Please define “interflow” in the definitions section.

Appendix 1 pg 5	31-33	Definitions	Receiving waters – Bodies of water or surface water systems to which surface water runoff is discharged via point source of stormwater or via sheet flow. <u>Ground water to which surface water is directed by infiltration.</u>
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*Comment* – Please remove the last sentence from this definition and return it to its original form. Adding ground water to this definition opens permittees up to a new world of liability. Further, this broadened definition would result in conflicts with the intent and benefits of LID – filtration and infiltration, as well as its implementation. This would also create conflicts with state water standards: For example: Based on this definition, sediment ponds that infiltrate would meet the definition of receiving waters, and by definition violate state water quality standards when turbid water is discharged to them.

Page	Lines	Reference	Text
Appendix 1 pg 11	2-3		All new development, regardless of size, shall be required to comply with Minimum Requirement #2.

*Comment* – Please remove the new language “regardless of size”. This requirement is too burdensome on smaller developments, which generally create minimal off-site impacts.

Appendix 1 pg 23	22	Minimum Requirement # 3	All known, available and reasonable source control BMPs must be required <u>for to all</u> projects approved by the Permittee.
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*Comment* – Please correct typo. Text should read “for all”.

Appendix 1 pg 24	10-12	Minimum Requirement # 5	Projects triggering only Minimum Requirements #1 through #5 shall use On-site Stormwater Management BMP’s from Mandatory List #1 for all surfaces within each type of surface listed below
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*Comment* - ...for all surfaces within each type of surface listed below. What does that mean? What surfaces listed below? The next thing below is a table that applies to projects that trigger Minimum requirements 1 – 9. Please provide clarifying language.

Appendix 1 pgs 25	6-7	Minimum Requirement # 5 – LID Performance Standard	...Project sites that must also meet minimum requirement # 7 – flow control – must match flow durations between 8% of the 2-year flow through the full 50-year flow.
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*Comment* – This standard has not been tested on a regional scale, only modeled. The City is concerned that this increased flow standard is too burdensome and may be unattainable. As a result this increased standard may result in hindering the use of LID practices. Please remove this language.

Appendix 1 pg 26	1-40	Minimum Requirement # 5	Mandatory List # 2
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*Comment* – Performance standards clearly indicate when Mandatory List 1 is used, but is silent in regards to Mandatory List #2. Please clarify when Mandatory List #2 is to be used.

Appendix 1 pg 31	3-6	Minimum Requirement #	Except as provided below, the Permittee must require all projects provide flow control to
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		7	reduce the impacts of stormwater runoff from <u>impervious surfaces</u> and land cover conversions. The requirement below applies to projects that discharge stormwater directly or indirectly through a conveyance system, into a fresh water.
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*Comment* – The words “hard surfaces” has replaced the words “impervious surfaces” in most other instances. Should this read impervious surface or hard surface?

Page	Lines	Reference	Text
Appendix 1 pg 32	8-9	Thresholds	Projects in which the total of effective <u>impervious</u> surfaces is 10,000 square feet or more in a threshold discharge area, or

*Comment* – The words “hard surfaces” has replaced the words “impervious surfaces” in most other instances. Should this read impervious surfaces or hard surfaces? Please note however, the term effective hard surface is not listed in the definitions.

Appendix 1 pg 32	10-13	Thresholds	Projects that convert $\frac{3}{4}$ acres or more of <u>native</u> vegetation to lawn or landscape, or convert 2.5 acres or more of <u>native</u> vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or man-made conveyance system from the site, or
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*Comment* – The word native was removed from flow charts Figure 3.2 and 3.3. Should it remain in this list of triggers for flow control?

Appendix 1 pg 37	35	Section 8. Feasibility Criteria	Where the drainage area is less that 5000 sq. ft.....
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*Comment* – Please revise language to read “Where the project drainage area...” to clarify the limits of the drainage area. Also please include a definition of what is considered the drainage area. For example: Is it the disturbed area or the entire parcel?

Appendix 1 pg 38	33	Section 8. Feasibility Criteria – Permeable Pavements	Within an area designated as a Landslide Hazard Area.
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*Comment* – Please revise language to read “Within or draining to an area designated as a Landslide Hazard Area.” Projects that would increase drainage (surface or groundwater flows) to landslide hazard area are also hazardous and should be classified as infeasible.

Page	Lines	Reference	Text
Appendix 1 pg 39	1-5	Section 8. Feasibility Criteria – Permeable Pavements	Where a site cannot reasonably be designed to have porous asphalt surface at less than 5 percent slope, or pervious concrete at less than 6 percent slope, or a pervious paver surface (where appropriate) at less than 10 percent slope...

*Comment* – Any type of pervious paving, should be considered infeasible at greater than 5 percent slope, otherwise drainage from upgradient base courses become problematic and costly to prevent from resurfacing in down gradient areas.

Appendix 1 pg 39	12	Section 8. Feasibility Criteria – Permeable Pavements	Where native soils below a road or parking lot do not meet the soil suitability criteria...
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*Comment* – Please provide clarifying language indicating where the “soil suitability criteria” can be found.

Appendix 6 pg 1	24		Discharge to a <del>municipal sanitary sewer</del> MS4 requires approval of the sewer authority.
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*Comment* – Please return language to its previous form. Municipal sanitary sewer providers do not have regulatory authority over discharges to MS4s.

Appendix 7 pg 1	37		The feature or a buffer to protect the feature is within 200 <u>feed</u> downstream of the site.
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*Comment* – Please correct typo, “feed” to read “feet”.

Appendix 10 pg 7	38-42	Source Identification and Diagnostic Monitoring Information Repository	Develop an Illicit Discharge Detection and Elimination (IDDE) Manual for Western Washington...
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*Comment* – Please remove this section from Appendix 10. Permittees have already developed individual IDDE manuals based on EPA accepted guidance. It is

inappropriate to turn around and develop new standards, when existing EPA guidance is already being met.

If you have any questions on our comments, please feel free to contact me.

Sincerely,

*Donald G. Robinett*

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