**Snohomish County Comments**
**Draft Phase I NPDES Municipal Stormwater Permit 2013-18 (5-Year)**

| Document at Issue | Section, Page# and/or Paragraph# | Existing Language | Comment | Proposed Language |
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| Phase I Permit<br>2013-18 | General Comment | Entire Fact Sheet. | The County notes that the Fact Sheet is a separate document from the Permit. Statements made in the Fact Sheet do not constitute Permit requirements, nor do such statements alter or amend the language contained in the Permit. To the extent Ecology would like one or more statements contained in the Fact Sheet to constitute legally binding Permit requirements, Ecology should move such statements into the body of the Permit. | |
| Phase I Permit<br>2013-18 | General Comment | Entire Permit. | The more stringent requirements proposed by the draft Permit will significantly increase compliance costs, both for the Permittees themselves and for actors in the private sector. On the governmental side, as Permittees allocate additional funds for meeting expanded Permit requirements, the funds available for other governmental services will of necessity decrease. Within the private sector, the increased cost of developing or re-developing real property under the terms of the draft Permit will be felt not only directly by property owners, but also by commercial and residential tenants in the form of higher rents. Businesses will pass higher rents through to their customers in the form of higher prices. Finally, the construction industry is likely to be negatively impacted, as increased development costs will result in less development occurring. In this time of economic distress, the County is concerned about the adverse fiscal impacts compliance with the draft Permit will have on the County's citizens. Ecology may wish to consider whether this draft Permit appropriately balances the needs of the environment with the needs of Washington's citizens. | |
| Phase I Permit<br>2013-18 | General Comment | All deadlines contained in the Permit. | In Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, Findings of Fact, Conclusions of Law and Order (January 5, 2011) at 54-56, 2011 WL 62921 at *25-26, the PCHB held that an Agreed Order approved by Ecology cannot authorize the delay of a deadline specified in the Permit without requiring the Permittee to mitigate for the period of delay.<br><br>Pursuant to the Rosemere decision, it is no longer possible for Ecology to authorize, pursuant to an Agreed Order, a Permittee who is working in good faith and using its best efforts to achieve compliance with the requirements of the Permit, to have a reasonable amount of additional time in which to meet any of the deadlines contained in the Permit without incurring a corresponding mitigation penalty. | "All deadlines specified in this Permit are aspirational rather than mandatory. So long as a Permittee is using good faith efforts to diligently achieve compliance with a particular component or requirement of this Permit, the failure of the Permittee to meet a specified deadline regarding that Permit component or requirement is not a violation of this Permit."<br><br>or<br><br>"All deadlines specified in this Permit are aspirational rather than mandatory. So long as a Permittee is using good faith efforts to diligently achieve compliance with a particular |

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| | | | Because it is no longer possible for a Permittee to obtain a reasonable extension of any Permit deadline, even for legitimate reasons beyond the control of the Permittee, the County recommends all deadlines specified in the Permit be (1) extended, and (2) be expressly made flexible. | component or requirement of this Permit, Ecology shall provide the Permittee with a reasonable amount of additional time in which to complete the Permit component or requirement at issue." |
| Phase I Permit<br>2013-18 | S2.A; pg. 7; lines 9-10<br><br>S2.A.1; pg. 7; lines 13-15<br><br>S2.A.2; pg. 7; lines 16-18 | "This permit authorizes the discharge of stormwater to surface waters and ground *waters of the state* from municipal separate storm sewers owned or operated by each Permittee covered under this permit in the geographic area covered by this permit pursuant to S1.A. subject to the following limitations:"<br>"Discharges to ground waters of the state through facilities regulated under the Underground Injection Control (UIC) program, chapter 173-218 WAC, are not authorized under this permit."<br>"Discharges to ground waters not subject to regulation under the *Clean Water Act* are authorized in this permit only under state authorities, Chapter 90.48 *RCW*, the Water Pollution Control Act." | The NPDES permit program only regulates discharges to surface waters. The inclusion of "ground water" as a receiving water for purposes of the Permit may be problematic. Ecology should consider whether it is prudent to combine a WA State permit issued pursuant to chapter 90.48 RCW with an NPDES permit issued pursuant to the CWA, or whether it might be more appropriate to issue separate permits for each regulatory scheme. | "This Permit authorizes the discharge of stormwater to surface waters of the state from municipal separate storm sewers owned or operated by each Permittee covered under this Permit in the geographic area covered by this Permit pursuant to S1.A."<br><br>[DELETE]<br><br>[DELETE] |
| Phase I Permit<br>2013-18 | S2.B; pg. 7; lines 19-22<br><br>S2.B; pg. 7; line 29 | "This permit authorizes discharges of non-stormwater flows to surface waters and ground waters of the state from municipal separate storm sewers owned or operated by each Permittee covered under this permit, in the geographic area covered pursuant to S1.A, only under any of the following conditions:"<br>"These discharges are also subject to the limitations in S2.A.1. and S2.A.2. above." | The NPDES permit program only regulates discharges to surface waters. The inclusion of "ground water" as a receiving water for purposes of the Permit may be problematic. Ecology should consider whether it is prudent to combine a WA State permit issued pursuant to chapter 90.48 RCW with an NPDES permit issued pursuant to the CWA, or whether it might be more appropriate to issue separate permits for each regulatory scheme. | "This Permit authorizes discharges of non-stormwater flows to surface waters of the state from municipal separate storm sewers owned or operated by each Permittee covered under this permit, in the geographic area covered pursuant to S1.A, only under any of the following conditions:"<br><br>[DELETE] |
| Phase I Permit<br>2013-18 | S3.A; pg. 8; lines 5-7 | "Each Permittee, Co-Permittee and Secondary Permittee is responsible for complying with the terms of this permit for the municipal separate storm sewers it owns or operates." | Clarify that it is possible for an MS4 not to be subject to the permit, by adding the words "that are covered by this Permit" to the end of the sentence. | "Each Permittee, Co-Permittee and Secondary Permittee is responsible for complying with the terms of this Permit for the municipal separate storm sewers it owns or operates that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S3.D; pg. 9 | [INSERT NEW SUBSECTION S3.D] | Litigation regarding this Permit is practically certain. It is neither reasonable nor practicable (and in some instances not even possible) for Permittees to begin expending resources to achieve compliance with Permit conditions that are being actively contested. The Permit should include provisions expressly addressing this issue.<br>Additionally, the PCHB held in Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, Findings of Fact, Conclusions of Law and Order (January 5, 2011) | "Ecology recognizes the likelihood that, upon Ecology's issuance of this Permit, one or more provisions of this Permit will be challenged, either administratively, judicially or both. Should such litigation occur, Ecology recognizes that, depending on which provisions of the Permit are challenged and the extent of those challenges, it may be difficult, impractical or even impossible for a Permittee to commence efforts to comply or to make significant progress towards compliance with one or more of the challenged Permit |

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| | | | at 54-56; 2011 WL 62921 at *25-26, that an Agreed Order cannot authorize the delay of a deadline specified in the Permit without imposing compensatory mitigation obligations on the Permittee. Thus, it is doubtful Ecology has the authority to grant a written extension to a Permittee without imposing some type of penalty on the Permittee.<br><br>For these reasons, the County recommends including a provision directly addressing how a Permittee's compliance with the various deadlines set forth in the Permit will be handled in the event of litigation. | provisions until litigation regarding such Permit provisions is finally determined. Accordingly, so long as any provision of this Permit is under appeal, Ecology shall have the authority and discretion to unilaterally extend any compliance deadline respecting any one or more of the challenged Permit provisions for a reasonable period of time, not to exceed the temporal period of the litigation (e.g. if litigation regarding a particular Permit provision lasts 18 months, Ecology may extend the applicable deadline by up to 18 months). Any Permittee may request that Ecology extend one or more Permit deadlines pursuant to this Section S3.D, and Ecology shall not unreasonably deny such requests. No Permittee shall be penalized, nor shall any type of compensatory mitigation be required due to an extension issued pursuant to this Section S3.D." |
| Phase I Permit<br><br>2013-18 | S4.F.3.a; pg. 10; lines 13-15<br><br>S4.F.3.b; pg. 10; lines 32-24 | "Within 60 days of receiving a notification under S4.F.2., or by an alternative date established by Ecology, the Permittee shall review its Stormwater Management Program and submit a report to Ecology."<br><br>"Ecology will, in writing, acknowledge receipt of the report within a reasonable time and notify the Permittee when it expects to complete its review of the report." | The timeline applicable to the Permittee under S4.F.3.a should match the timeline applicable to Ecology under S4.F.3.b. | "Within a reasonable time of receiving a notification under S4.F.2, the Permittee shall review its Stormwater Management Program and submit a report to Ecology."<br><br>[NO CHANGE] |
| Phase I Permit<br><br>2013-18 | S4.G; pg. 11; lines 23-29 | "Ecology may modify or revoke and reissue this General Permit in accordance with G14 General Permit Modification and Revocation if Ecology becomes aware of additional control measures, management practices or other actions beyond what is required in this permit, that are necessary to:<br><br>1. Reduce the discharge of pollutants to the MEP;<br><br>2. Comply with the state AKART requirements; or<br><br>3. Control the discharge of toxicants to the waters of the State of Washington." | Section S4.G contains no independent substance and is only a cross-reference to Section G14. Section S4.G should be deleted for purposes of clarity. | [DELETE] |
| Phase I Permit<br><br>2013-18 | S5.A; pg. 11; lines 31-35<br><br>Definitions; pg. 87; lines 20-24 | "Each Permittee listed in S1.B shall implement a Stormwater Management Program (SWMP) during the term of this permit."<br><br>"'<u>Stormwater Management Program (SWMP)</u>' means a set of actions and activities designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable and to protect water quality, and | As written, the definition of "SWMP" is vague, ambiguous and circular. The County needs to know exactly what the required elements of its SWMP are. Please revise for clarity. | [NO CHANGE]<br><br>"'<u>Stormwater Management Program (SWMP)</u>' means a set of actions and activities designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality. A Permittee's SWMP shall be comprised of the components listed in S5 or S6 of this |

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| | | comprising the components listed in S5 or S6 of this Permit and any additional actions necessary to meet the requirements of this Permit." | | Permit, as applicable." |
| Phase I Permit<br>2013-18 | S5.B; pg. 12; lines 21-22<br><br>S4.C; pg. 9; lines 20-21<br><br>S4.D; pg. 9; lines 22-24 | "The SWMP shall be designed to reduce the discharge of pollutants from MS4s to the maximum extent practicable (MEP), meet state AKART requirements, and protect water quality."<br><br>"The Permittee shall reduce the discharge of pollutants to the *maximum extent practicable* (MEP)."<br><br>"The Permittee shall use *all known, available, and reasonable methods of prevention, control and treatment* (AKART) to prevent and control pollution of waters of the State of Washington." | The first sentence of S5.B, regarding MEP and AKART, is duplicative of S4.C and S4.D, which already state the Permittee must meet MEP and AKART. Additionally, the definition of SWMP includes the reduction of pollutants to the MEP. The first sentence of S5.B should be deleted for clarity. | [DELETE]<br><br>[NO CHANGE]<br><br>[NO CHANGE] |
| Phase I Permit<br>2013-18 | S5.B; pg. 12; lines 26-28 | "Permittees that are already implementing some or all of the SWMP components in this section shall continue implementation of those components of their SWMP." | This sentence is tautological and confusing. This sentence should either be deleted or edited to clearly state what action the Permittee is required to take. | [DELETE]<br><br>or<br><br>"On the effective date of this Permit, each Permittee will already have in place a SWMP approved by Ecology pursuant to a prior NPDES municipal stormwater permit. Each Permittee shall continue implementing the provisions of the Permittee's pre-existing SWMP until such provisions are replaced by newly updated SWMP provisions developed by the Permittee and (where required) approved by Ecology pursuant to the requirements and timelines specified in this Permit." |
| Phase I Permit<br>2013-18 | S5.B; pg. 12; lines 26-28 | "Permittees shall not repeal existing local requirements to control stormwater that go beyond the requirements of this permit for prohibiting non-stormwater discharges and for new development and redevelopment sites." | This sentence is illogical, overbroad and ultra vires. It should be deleted. If a provision of the Snohomish County Code is not mandated by the Permit, then the County is free to amend or repeal the provision without being in violation of the Permit.<br><br>To the extent this language may have been intended to implement the "anti-backsliding" provisions of the CWA, the County's local land development codes are not a subject matter governed by the CWA's "anti-backsliding" provisions. 33 USC § 1342(o) and 40 CFR § 122.44(l)(1) generally prohibit a newly issued NPDES permit from containing water quality based effluent limitations ("WQBELs") that are less stringent than the comparable WQBELs in a previous NPDES permit. However, the Phase I Municipal | [DELETE] |

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| | | | Stormwater Permit is a programmatic permit; there are no WQBELs in either the current Permit or the new draft Permit. Thus, the plain language of the "anti-backsliding" statute and regulations does not apply to the Permit. | |
| Phase I Permit<br>2013-18 | S5.C; pg. 12; lines 29-31 | "The SWMP shall include the components listed below." | Ecology proposes to delete language clarifying the geographic area to which the SWMP applies. The County recommends inserting a revised version of the former language for purposes of clarity. | "The SWMP shall include the components listed below. The requirements of the SWMP apply to the geographic area of Permit coverage described in Section S1.A." |
| Phase I Permit<br>2013-18 | S5.C.1.a; pg. 12; lines 35-38 | "Each Permittee shall be able to demonstrate that they can operate pursuant to legal authority which authorizes or enables the Permittee to control discharges to and from municipal separate storm sewers owned or operated by the Permittee." | This sentence is unnecessarily complex. It should not be necessary for a Permittee to "demonstrate" that it has authority to control discharges to its MS4. What should be necessary is for the Permittee to have that authority. Additionally, the requirement should be limited to MS4s covered by the Permit. | "Each Permittee shall have legal authority to control discharges to and from municipal separate storm sewers owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.1.b.i; pg. 13; lines 4-8 | "Control through ordinance, order, or similar means, the contribution of pollutants to municipal separate storm sewers owned or operated by the Permittee from stormwater discharges associated with industrial activity, and control the quality of stormwater discharged from sites of industrial activity;" | This sentence should be amended to clarify that it applies only to municipal separate storm sewers covered by the Permit. | "Control through ordinance, order, or similar means, the contribution of pollutants to municipal separate storm sewers owned or operated by the Permittee and covered by this Permit from stormwater discharges associated with industrial activity, and control the quality of stormwater discharged from sites of industrial activity;" |
| Phase I Permit<br>2013-18 | S5.C.1.b.ii; pg. 13; lines 9-11 | "Prohibit through ordinance, order, or similar means, illicit discharges to the municipal separate sewer owned or operated by the Permittee;" | This sentence should be amended to clarify that it applies only to municipal separate storm sewers covered by the Permit. | "Prohibit through ordinance, order, or similar means, illicit discharges to the municipal separate sewer owned or operated by the Permittee and covered by this Permit;" |
| Phase I Permit<br>2013-18 | S5.C.1.b.iii; pg. 3; lines 12-15 | "Control through ordinance, order, or similar means, the discharge of spills and disposal of materials other than stormwater into the municipal separate storm sewers owned or operated by the Permittee;" | This sentence should be amended to clarify that it applies only to municipal separate storm sewers covered by the Permit. | "Control through ordinance, order, or similar means, the discharge of spills and disposal of materials other than stormwater into the municipal separate storm sewers owned or operated by the Permittee that are covered by this Permit;" |
| Phase I Permit<br>2013-18 | S5.C.1.b.iv; pg. 13; lines 16-19 | "Control through interagency agreements, the contribution of pollutants from one portion of the municipal separate storm sewer system to another portion of the municipal separate storm sewer system;" | As written, this requirement is unfair and unworkable. This subsection should be deleted. The County cannot force any other agency to contract with the County. This requirement compromises the County's ability to comply with the Permit by placing mandatory Permit components in the hands of third parties. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.1.b.v; pg. 13; lines 20-21 | "Require compliance with conditions in ordinances, permits, contracts, or orders;" | This requirement is overbroad. As written, this requirement applies to any and all ordinances, permits, contracts or orders, regardless of the subject matter of said document and regardless of whether or not the document was enacted by Snohomish County. Limiting language is needed. | "Require compliance with conditions relating to water quality or water pollution control measures required by this Permit that are included in ordinances, permits, contracts, or orders enacted or executed by the Permittee;" |
| Phase I Permit | S5.C.1.b.vi; pg. 13; lines 22-26 | "Within the limitations of state law, carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and non- | This sentence is unnecessarily convoluted and confusing. The language should be simplified to clarify the actions required. Additionally, the language should be revised to acknowledge that | "Within the limitations of state and federal law, carry out the inspection, surveillance, and monitoring activities the Permittee is required to perform by this Permit." |

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| 2013-18 | | compliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer and compliance with local ordinances." | Permittees must comply with federal as well as state laws. | |
| Phase I Permit<br>2013-18 | S5.C.2; pg. 13; lines 28-29 | "The SWMP shall include an ongoing program for mapping and documenting the MS4." | This sentence is ambiguous and confusing. What is an "ongoing program"? What does it mean to "document" an MS4? How is "mapping" an MS4 different from "documenting" the MS4? Please revise to clarify exactly what activities are required. | "As a part of a Permittee's SWMP, the Permittee shall use reasonable efforts to map and document significant structural components of the MS4s owned and operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.2; pg. 13; lines 30-31 | "Minimum performance measure information and its form of retention shall include:" | This sentence is unnecessarily verbose. Please revise for clarity. Additionally, it should be combined with the preceding paragraph (lines 28-29). | "The Permittee's MS4 mapping and documentation program shall include the elements listed in this Section S5.C.2." |
| Phase I Permit<br>2013-18 | S5.C.2.c; pg. 15; lines 28-30 | "The required format for mapping is electronic with fully described mapping standards. An example description is available on Ecology's website." | For clarity, these two sentences should be moved to the beginning of Section S5.C.2, as they contain requirements applicable to the entire Section. Recommend inserting this provision directly following the existing provisions of S5.C.2. | "As a part of a Permittee's SWMP, the Permittee shall use reasonable efforts to map and document significant structural components of the municipal separate storm sewer systems owned and operated by the Permittee that are covered by this Permit. The Permittee's MS4 mapping and documentation program shall include the elements listed in this Section S5.C.2. The required format for mapping is electronic with fully described mapping standards. An example description is available on Ecology's website." |
| Phase I Permit<br>2013-18 | S5.C.2.a; pg. 13; lines 32-33 | "Ongoing Mapping: Each Permittee shall continue mapping the features listed below on an ongoing basis." | This language is confusing. What does it mean to "continue mapping"? What is meant by the words "ongoing basis"? Please revise to clarify exactly what actions are required. | "Ongoing Mapping: The types of features listed below were also required to be mapped by the 2007-12 and the 2012-13 NPDES municipal stormwater permits. During the term of this Permit, each Permittee shall continue its efforts to map these types of features so as to enhance the accuracy, detail and thoroughness of the Permittee's pre-existing MS4 maps." |
| Phase I Permit<br>2013-18 | S5.C.2.a; pg. 13; lines 33-34 | "All updates shall be completed within six months of additional features being found, modified, or constructed." | This language is ambiguous and confusing. Please revise for clarity.<br>Additionally, the six month time frame is too short. There is typically a time lag between when construction of a development or road project is completed, when the final inspection is performed, and when such information is transmitted to the County's MS4 mapping division. After that, GPS and/or GIS work may need to be scheduled and performed. Seasons and weather conditions can cause delay. Thus, the County recommends revising this provision to provide an achievable deadline, particularly as there is no inherent urgency to this Permit requirement. | "The Permittee shall update the maps of its MS4s to show additional or modified components or features of the MS4 within 18 months of those additional components or features being identified, modified or constructed." |
| Phase I Permit<br>2013-18 | S5.C.2.a.ii; pg. 13; line 38 | "Receiving waters." | Including "receiving waters" in a list of MS4 "features" is inaccurate and confusing. This language should be deleted. Receiving waters are not a "feature" of an MS4. An MS4 is defined by the draft Permit to mean "a conveyance system" owned and | [DELETE] |

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| | | | operated by a Permittee. Receiving waters are not owned or operated by Permittees and thus are not a component of an MS4. | |
| Phase I Permit<br>2013-18 | S5.C.2.a.iii; pg. 14; lines 1-2 | "Stormwater treatment and flow control BMPs/facilities owned, operated, or maintained by the Permittee." | The words "or maintained by" are ambiguous and should be deleted. The Permit divides BMPs into two categories: (1) BMPs "owned or operated" by the Permittee; and (2) BMPs "regulated by" the Permittee. The Permit does not define the term BMPs "maintained by" the Permittee.<br>Additionally, the term "MS4" is defined as conveyance systems "owned or operated" by a Permittee. Thus, the structural components of an MS4 that must be mapped by a Permittee should be limited to those structural components "owned or operated" by the Permittee. | "Stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee." |
| Phase I Permit<br>2013-18 | S5.C.2.a.iii; pg. 14; lines 2-5 | "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." | This language implies that Permittees may not rely on permanent stormwater control plans for mapping non-LID BMPs. The provision should be revised to clarify that Permittees may use any reliable source of data in mapping their MS4s.<br>The County obtains its GIS inventory data from a variety of sources. Much of that information comes from GPS field survey work, but other portions come from sources such as as-built plans. There is no reason for Ecology to mandate the method by which the County collects data used in mapping its MS4. Additionally, there is no reason to treat data regarding LID BMPs differently from data regarding non-LID BMPs. Please revise accordingly. | "For purposes of identifying, describing and including BMPs on maps of MS4s, Permittees may rely on the accuracy of permanent stormwater control plans that depict BMPs so long as those permanent stormwater control plans contain sufficient data to enable the Permittee to locate the position of the BMPs relative to other components of the MS4." |
| Phase I Permit<br>2013-18 | S5.C.2.a.iv; pg. 14; lines 8-9 | "Geographic areas served by the Permittee's MS4 that do not discharge stormwater to surface water." | This provision should be deleted. Geographic areas that do not discharge stormwater to surface waters of the United States are not regulated by the CWA's NPDES permit program. Accordingly, a Permittee's compliance with the CWA should not depend on satisfaction of this requirement. If Ecology wants to regulate discharges to ground water under chapter 90.48 RCW, Ecology should do so pursuant to a separate permit. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.2.a.v; pg. 14; lines 10-12 | "Tributary conveyances to all known outfalls with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems." | This language is both ambiguous and unduly onerous. It should be revised for clarity and proper prioritization of tasks. First, the words "owned or operated by the Permittee" should be inserted to clarify that any upstream conveyances that are not owned or operated by the Permittee are not required to be included in the Permittee's maps of its MS4.<br>Additionally, the word "known" should be deleted for clarity, as it is logically impossible for a Permittee to map "unknown" connections.<br>Also, the words "or an equivalent cross-sectional area for non-pipe systems" should be deleted to properly focus mapping efforts on higher volume portions of the MS4. As presently written, the | "Tributary conveyances owned or operated by the Permittee that flow either to piped system outfalls having a 24-inch nominal diameter or larger, or to open channel outfalls for which the tributary conveyance includes a piped system with minimum nominal diameter of 24 inches; provided, however, that tributary conveyances having a larger diameter solely to enable fish passage and not for purposes of handling a large volume of stormwater need not be mapped pursuant to this provision." |

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| | | | language places a high priority on mapping rural road drainage systems, which should instead be a low priority. While the County agrees that higher volume portions of an MS4 are portions of the MS4 that merit priority attention for pollution control, and that the cross-sectional area for a pipe conveyance system is a good indicator of the volume of stormwater likely conveyed through that pipe, the County does not agree that the cross-sectional area of a ditch conveyance system is a good indicator of the volume of stormwater likely conveyed through that ditch. The cost of installing a pipe conveyance system dictates, from a practical standpoint, that the smallest size pipe that meets the design flow needs of a project be used. That is not true of ditch conveyance systems. Instead, the cross-sectional area of road ditches is often determined by factors having nothing to do with design flow. Thus, using the cross-sectional area of a ditch conveyance system to determine which portions of that system merit priority attention is a flawed concept.<br><br>Finally, the provision should be amended to clarify that tributary systems that have been enlarged solely to allow fish passage (rather than to handle a large volume of stormwater) are not covered by this provision. | |
| Phase I Permit<br><br>2013-18 | S5.C.2.a.v.(3); pg. 14; line 17 | "Land uses" | Including "Land uses" in a list of MS4 "attributes" is inaccurate and confusing. This language should be deleted. Land uses are not an "attribute" of an MS4. An MS4 is defined by the draft Permit to mean "a conveyance system" owned and operated by a Permittee. "Land uses" are not physical components of a "conveyance system" and thus are not a proper subject for mapping. | [DELETE] |
| Phase I Permit<br><br>2013-18 | S5.C.2.a.vii; pg. 14; lines 22-23 | "Existing, known connections over 8 inches in nominal diameter to tributary connections mapped in accordance with S5.C.2.a.v." | This sentence is confusing. It is logically impossible for a Permittee to show an "unknown" or "non-existent" connection in its MS4 map. Accordingly, the words "existing" and "known" are unnecessary and should be deleted for purposes of clarity. | "Connections over 8 inches in nominal diameter to tributary connections mapped in accordance with S5.C.2.a.v." |
| Phase I Permit<br><br>2013-18 | S5.C.2.a.vii; pg. 14; lines 23-25 | "For Counties, this requirement applies to one-half the area of the county within urban/higher density rural sub-basins." | This language is ambiguous. Is the requirement intended to apply to 50% of the total geographic area of the county, with priority given to areas that meet the definition of "urban/higher density rural sub-basins"? Or is the requirement intended to apply to 50% of the area of the county that meets the definition of "urban/higher density rural sub-basins"? Please revise the language to clarify the exact requirements. | "For counties, this requirement applies to one-half of the land within the county that meets the definition of urban/high density rural sub-basins. This requirement does not apply outside of urban/high density rural sub-basins." |
| Phase I Permit<br><br>2013-18 | S5.C.2.b; pg. 15; lines 1-2 | "New Mapping: Each Permittee shall complete the following mapping updates by August 1, 2017." | This sentence is confusing. It is not clear what is meant by "updates" or how this "New Mapping" subsection differs from the "Ongoing Mapping" subsection. | "New Map Elements: By August 1, 2017, each Permittee shall have added the following new features and elements to the maps of the Permittee's MS4s:" |

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| Phase I Permit<br>2013-18 | S5.C.2.b.i; pg. 15; lines 11-13 | "Counties shall map existing, known connections greater than 8 inches in nominal diameter to tributary conveyances mapped in accordance with S5.C.2.a.v." | This requirement is duplicative of the requirement contained in S5.C.2.a.viii. Either delete this duplicative requirement or edit the language to clarify how it differs from S5.C.2.a.viii.<br>If this requirement is retained in amended form, the words "existing" and "known" should be deleted for clarity, as it is logically impossible for a Permittee to map "non-existent" or "unknown" connections. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.2.b.ii; pg. 15; lines 14-16 | "Each Permittee shall map existing, known connections equal to 8 inches in nominal diameter to tributary conveyances mapped in accordance with S5.C.2.a.v." | The words "existing" and "known" should be deleted for clarity, as it is logically impossible for a Permittee to map "non-existent" or "unknown" connections. | "Each Permittee shall map connections equal to 8 inches in nominal diameter to tributary conveyances mapped in accordance with S5.C.2.a.v." |
| Phase I Permit<br>2013-18 | S5.C.2.b.iii; pg. 15; lines 17-20 | "Each Permittee shall map connections between stormwater treatment and flow control BMPs / facilities owned, operated, or maintained by the Permittee mapped in accordance with S5.C.2.a.iii and tributary conveyances mapped in accordance with S5.C.2.a.v." | The words "or maintained by" are ambiguous and should be deleted for clarity. The Permit divides BMPs into two categories: (1) BMPs "owned or operated" by the Permittee; and (2) BMPs "regulated by" the Permittee. The Permit does not define the term BMPs "maintained by" the Permittee.<br>Additionally, the term "MS4" is defined as conveyance systems "owned or operated" by a Permittee. Thus, the structural components of an MS4 that must be mapped by a Permittee should be limited to those structural components "owned or operated" by the Permittee. | "Each Permittee shall map connections between stormwater treatment and flow control BMPs / facilities owned or operated by the Permittee that have been mapped in accordance with S5.C.2.a.iii and tributary conveyances that have been mapped in accordance with S5.C.2.a.v." |
| Phase I Permit<br>2013-18 | S5.C.2.c; pg. 15; lines 25-27 | "To the extent consistent with national security laws and directives, each Permittee shall make available to Ecology, upon request, available maps depicting the information required in S5.C.2.a and b, above." | This language is imprecise. Please revise for clarity. | "To the extent consistent with national security laws and directives, each Permittee shall make available to Ecology, upon request, current versions of the maps the Permittee has created and is maintaining in accordance with S5.C.2.a and S5.C.2.b above." |
| Phase I Permit<br>2013-18 | S5.C.2.c; pg. 15; lines 28-30 | "The required format for mapping is electronic with fully described mapping standards. An example description is available on Ecology's website." | For clarity, these two sentences should be moved to the beginning of Section S5.C.2, as they contain requirements applicable to the entire Section. Recommend inserting this provision directly following the existing provisions of S5.C.2. | "As a part of a Permittee's SWMP, the Permittee shall use reasonable efforts to map and document significant structural components of the municipal separate storm sewer systems owned and operated by the Permittee that are covered by this Permit. The Permittee's MS4 mapping and documentation program shall include the elements listed in this Section S5.C.2. The required format for mapping is electronic with fully described mapping standards. An example description is available on Ecology's website." |
| Phase I Permit<br>2013-18 | S5.C.2.d; pg. 15; lines 32-37 | "Upon request, and to the extent appropriate, Permittees shall provide mapping information to federally recognized Indian Tribes, other municipalities, Co-Permittees and Secondary Permittees. This permit does not preclude Permittees from recovering reasonable costs associated with | This provision is unnecessary and should be deleted. As public agencies, all of the Permittees are already subject to public disclosure laws. There is no need to subject Permittees to potential liability under the CWA when WA public disclosure laws already require this information to be shared.<br>If Ecology decides to retain this requirement, please clarify whether | [DELETE]<br><br>or |

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| | | fulfilling mapping information requests by federally recognized Indian Tribes, other municipalities, Co-Permittees and Secondary Permittees." | the phrase "to the extent appropriate" is intended to have the same meaning as "to the extent consistent with national security laws and directives" contained in S5.C.2.c above. If the two phrases are intended to have the same meaning, they should be revised to contain identical language. If the two phrases are not intended to have the same meaning, please clarify what "to the extent appropriate" is intended to mean. | "To the extent consistent with national security laws and directives, Permittees shall, upon request, provide mapping information to federally recognized Indian Tribes, other municipalities, Co-Permittees and Secondary Permittees. This permit does not preclude Permittees from recovering reasonable costs associated with fulfilling mapping information requests by federally recognized Indian Tribes, other municipalities, Co-Permittees and Secondary Permittees." |
| Phase I Permit<br>2013-18 | S5.C.3; pg. 16; lines 2-4 | "The SWMP shall include coordination mechanisms among departments within each jurisdiction to eliminate barriers to compliance with the terms of this permit." | This provision is both ambiguous and unnecessarily intrusive. It should be deleted. What is meant by the term "coordination mechanisms"? What is meant by the term "barriers to compliance"? Ecology does not need to regulate the internal operations of the County in order to fulfill Ecology's mandate to implement the NPDES permit program in WA. There is no reason the County's compliance with the CWA should depend on how the internal affairs of the County are organized so long as the County meets the substantive requirements of MEP and AKART. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.3; pg. 16; lines 5-7 | "The SWMP shall also include coordination mechanisms among entities covered under a municipal stormwater NPDES permit to encourage coordinated stormwater-related policies, programs and projects within a watershed." | This language is confusing and ambiguous. To the extent it requires the County to engage in activities with other entities outside of the County's control, the provision should be deleted. The County's ability to comply with the CWA should not depend on the willingness (or lack thereof) of other entities to "coordinate" with the County on "policies, programs and projects." | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.3.a; pg. 16; lines 9-16 | "Implement intra-governmental (internal) coordination agreement(s) or Executive Directive(s) to facilitate compliance with the terms of this permit. Permittees shall include information in the first year annual report to identify all departments within the Permittee's jurisdiction that conduct stormwater-related activities and their roles and responsibilities under this permit, and a current organizational chart specifying these departments' key personnel." | This requirement is unnecessary and intrusive. It should be deleted. Ecology does not need to dictate the County's internal operations in order to fulfill Ecology's directive of implementing the NPDES permit program in WA. All Ecology needs to know is what substantive actions the County is taking to comply with the CWA by improving water quality and pollution control. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.3.b; pg. 16; lines 17-26 | "Implement; and within 2 years following the addition of a new Secondary Permittee, establish and implement:<br>i. Coordination mechanisms clarifying roles and responsibilities for the control of pollutants between *physically interconnected* MS4s of the Permittee and any other Permittee covered by a municipal stormwater permit.<br>ii. Coordinating stormwater management activities for | This provision should be revised to clarify that good faith efforts by the County to coordinate and cooperate with other entities constitutes compliance with the Permit and the CWA. The County's ability to comply with the Permit and the CWA should not be dependent on the actions of other entities.<br>Additionally, "refuse to cooperate" is too high a standard. It is entirely possible for multiple jurisdictions to be willing to cooperate, yet prove unable to reach agreement. Or to have reached agreement, but prove unable to effectively implement that agreement. | "Throughout the term of this Permit, the Permittee shall use good faith efforts to cooperate, communicate, coordinate and negotiate with other Permittees covered by an NPDES municipal stormwater permit (whether Phase I or Phase II) whose geographic area of permit coverage is adjacent to the Permittee's geographic area of Permit coverage pursuant to S1.A above to advance or accomplish the objectives described in S5.C.3.b.i. and S5.C.3.b.ii. below. Notwithstanding the preceding sentence, should any New Secondary Permittee whose geographic area of permit |

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| | | *shared waterbodies*, among Permittees and Secondary Permittees, as necessary to avoid conflicting plans, policies and regulations.<br><br>Permittees shall document their efforts to establish the required coordination mechanisms. Failure to effectively coordinate is not a permit violation provided other entities, whose actions the Permittee has no or limited control over, refuse to cooperate." | Additionally, Section S1.D states that the term "Permittee" refers to "Permittees," "Co-Permittees," "Secondary Permittees," and "New Secondary Permittees." Thus, the term "Secondary Permittee" should be deleted from S5.C.3.b.ii. | coverage is adjacent to the Permittee's geographic area of Permit coverage obtain coverage under an NPDES municipal stormwater permit during the term of this Permit but after the effective date of this Permit, this Section shall not apply with respect to that New Secondary Permittee until 18 months after the effective date of the New Secondary Permittee's NPDES municipal stormwater permit coverage.<br><br>i. Coordination Regarding Interconnected MS4s: If any MS4 owned and operated by the Permittee and covered by this Permit is interconnected with one or more MS4s owned and operated by another Permittee, the Permittees shall use good faith efforts to work together to discuss, develop and implement agreements, plans, procedures, processes, or other mechanisms that (1) facilitate cooperation and coordination between the two Permittees with respect to the interconnected MS4s, and (2) clarify the respective roles and responsibilities for the control of pollutants between the interconnected MS4s.<br><br>ii. Coordination Regarding Shared Waterbodies: If any of the waterbodies into which an MS4 owned and operated by the Permittee and covered by this Permit discharges also receives discharges from one or more MS4s owned and operated by other Permittees, the pertinent Permittees shall use good faith efforts to communicate with one another and work together cooperatively to coordinate their respective stormwater management activities, plans, policies and regulations with respect to the shared waterbody in an effort to maximize benefits to the shared waterbody and avoid incompatible actions.<br><br>Permittees shall document their efforts to cooperate, communicate, coordinate and negotiate as required by this Section." |
| Phase I Permit<br><br>2013-18 | S5.C.4; pg. 16; lines 32-33 | "The SWMP shall provide ongoing opportunities for public involvement in the Permittee's stormwater management program and implementation priorities." | Meaningful public involvement requires (1) significant time, and (2) a meaningful range of permissible outcomes. Neither of these elements is present in the draft Permit. Instead, the timelines mandated for the adoption of SWMP elements and revisions to local codes are tight, and the contents of the County's SWMP and required new local code provisions are specific, prescriptive and narrowly drawn.<br><br>If public involvement is truly important to Ecology, Ecology needs to provide local jurisdictions with sufficient time to educate their citizens about the largely technical aspects of the draft Permit, and then solicit input from those newly educated citizens. Additionally, because public input is meaningless if the jurisdiction has no | [CONCEPTUAL REVISION NEEDED] |

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| | | | discretion to act on that input, the Permit needs to allow more flexibility for jurisdictions to devise and implement local solutions. | |
| Phase I Permit<br>2013-18 | S5.C.4.a; pg. 16; lines 37-38;<br>pg. 17; line 1 | "Permittees shall create opportunities for the public to participate in the decision-making processes involving the development, implementation and update of the Permittee's SWMP." | This requirement is confusing. Only elected officials are authorized to make decisions for the County, and the procedures for making those decisions are already contained in the County Code and County Charter. What "opportunities" for "public participation" in which "decision-making processes" does Ecology envision? Please clarify. | "Each Permittee shall create opportunities for public engagement, participation and input when developing, implementing and updating the Permittee's SWMP." |
| Phase I Permit<br>2013-18 | S5.C.4.b; pg. 17; lines 4-7 | "Each Permittee shall post on their website their SWMPR, and the annual report required under S9.A. required by this Permit no later than May 31 each year." | This sentence is grammatically flawed and confusing. Please revise for clarity. | "No later than May 31 each year during the term of this Permit, the Permittee shall make available on its website (1) the Permittee's current SWMPR, and (2) the most recent annual report the Permittee filed with Ecology pursuant to Section S9.A of this Permit." |
| Phase I Permit<br>2013-18 | S5.C.4.b; pg. 17; lines 11-12 | "All other submittals should be available to the public on request." | This sentence is unnecessary and should be deleted. As public agencies, all of the Permittees are already subject to public disclosure laws. There is no need to subject Permittees to potential liability under the CWA when WA public disclosure laws already require this information to be shared.<br>If Ecology decides to retain this sentence, please clarify what is meant by the term "other submittals." | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.5; pg. 17; lines 15-16 | "The SWMP shall include a program to prevent and control the impacts of runoff from new development, redevelopment, and construction activities." | This sentence should be revised to clarify that the required program only applies to property that drains to an MS4 owned or operated by a Permittee and covered by the Permit. | "Each Permittee's SWMP shall include a program to prevent and control the impacts of runoff from new development, redevelopment, and construction activities that drain to an MS4 owned or operated by the Permittee that is covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.5.a.ii;<br>pg. 18; lines 1-5<br>&<br>Appendix 10 | "Permittees who choose to use the site planning process, and BMP selection and design criteria in the 2012 *Stormwater Manual for Western Washington*, or an equivalent manual approved by Ecology, may cite this choice as their sole documentation to meet this requirement." | As written, the Permit is ambiguous regarding whether or for how long continued use of the various documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* will be considered compliant with this Permit. The County suspects this ambiguity was not Ecology's intent. The County asks Ecology to please revise the Permit to expressly address this issue. | "Permittees who choose to use the site planning process, and BMP selection and design criteria in the 2012 *Stormwater Manual for Western Washington*, or an equivalent manual approved by Ecology, may cite this choice as their sole documentation to meet this requirement. However, use of the site planning processes and BMP selection and design criteria contained in documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* shall continue to meet the requirements of this Permit until the deadline by which Permittees are required to have updated their local ordinances and other enforceable documents to meet the new requirements of the 2012 *Stormwater Management Manual for Western Washington*." |
| Phase I | S5.C.5.a.ii; | "Permittees who choose to use the site planning process, and BMP selection and design criteria in the | The 2012 *Stormwater Management Manual for Western Washington* (the "*Stormwater Manual*") is incorporated into the Permit by | [DELETE FROM THE 2012 *STORMWATER MANAGEMENT MANUAL FOR WESTERN WASHINGTON* |

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| Permit<br>2013-18 | pg. 18; lines 1-5<br><br>S5.C.5.a.ii; pg. 18; line 3, fn. 1<br><br>LID Technical Guidance Manual for Puget Sound | 2012 *Stormwater Management Manual for Western Washington*, or an equivalent manual approved by Ecology, may cite this choice as their sole documentation to meet this requirement."<br><br>"Ecology's *Stormwater Management Manual for Western Washington* is currently under public review and comment for selected edits. Ecology will publish the revised manual in the spring of 2012."<br><br>Entire *LID Technical Guidance Manual for Puget Sound*. | reference by this provision, among others. While the County does not object to Ecology making the *Stormwater Manual* a part of the Permit, the County does object to the incorporation by reference into the *Stormwater Manual* (and thereby into the Permit) of a 260+ page document authored by third parties; Namely, the *LID Technical Guidance Manual for Puget Sound* (the "*LID Technical Guidance Manual*") that was released in draft form by WSU Extension and Puget Sound Partnership on January 9, 2012.<br><br>It is not appropriate to incorporate the entirety of a 260+ page document authored by third parties into a regulatory permit issued pursuant to the Clean Water Act. If Ecology believes there are specific portions of the *LID Technical Guidance Manual* that should be made mandatory for Permittees, those specific portions of the document should be inserted directly into the body of the Permit or the body of the *Stormwater Manual*.<br><br>Further, because the draft *LID Technical Guidance Manual* was not released until January 9, 2012, and the authors are only accepting public comments on the document until February 9, 2012, Ecology's statement in fn. 1 to Section S5.C.5.a.ii, that the draft *Stormwater Manual* is currently available for public review and comment is inaccurate and misleading. The *LID Technical Guidance Manual* was not available for public review and comment when the draft *Stormwater Manual* was released. Instead, the draft *LID Technical Guidance Manual* was not released for public review until 3 weeks prior to the expiration date for public comments on the draft Permit and the draft *Stormwater Manual*.<br><br>The County recommends that all references to the *LID Technical Guidance Manual* be deleted from the *Stormwater Manual*. Alternatively, if Ecology chooses to retain the *LID Technical Guidance Manual* as a part of the *Stormwater Manual* (and thus, a part of the Permit), the *LID Technical Guidance Manual* must undergo the same type of public review and comment process as did the *Stormwater Manual* and the Permit. | ALL REFERENCES TO THE *LID TECHNICAL GUIDANCE MAUAL FOR PUGET SOUND*] |
| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 18; lines 17-20 | "No later than December 31, 2014, each Permittee shall adopt and make effective a local program that meets the requirements in S5.C.5.a.i through ii., above." | The deadline for adopting and implementing code changes is unrealistic. It should be extended. Additionally, all deadlines in the Permit should be made flexible for the reasons set forth below.<br><br>Pursuant to Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, Findings of Fact, Conclusions of Law and Order (January 5, 2011) at 54-56; 2011 WL 62921 at *25-26, it is no longer possible for a Permittee to obtain from Ecology a reasonable extension of any Permit deadline, even for legitimate reasons beyond the control of the Permittee. Accordingly, the County recommends all deadlines specified in the Permit be (1) significantly extended, and (2) be expressly made | "No later than December 31, 2016, each Permittee shall adopt a local program that meets the requirements in S5.C.5.a.i. and S5.C.5.a.ii. above. Permittees shall have until June 30, 2017, to begin implementing the new local program." |

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| | | | flexible rather than mandatory. | |
| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 18; lines 20-24 | "The local program adopted to meet the requirements of S5.C.5.b.i through ii, above, shall apply to all applications submitted after January 1, 2015 and shall apply to projects approved prior to January 1, 2015, which have not started construction by January 1, 2018." | This requirement conflicts with established WA property law commonly known as the "vested rights doctrine." This sentence should be deleted.<br>Washington's vested rights doctrine entitles a property owner to have most types of land development applications processed and determined under the zoning and land use regulations in effect on the date the complete application is submitted, regardless of subsequent changes to those regulations. The doctrine is based upon constitutional principles of fairness and due process, and acknowledges that development rights are valuable and protected property interests. The doctrine determines and fixes the rules that will apply to any particular land development project, so that property owners can plan their development projects with a measure of certainty. Washington courts have expressly held that critical areas regulations and stormwater drainage regulations are "land use regulations" to which the vested rights doctrine applies. For these reasons, neither the County nor any other Permittee can legally implement this proposed Permit requirement.<br>See, RCW 19.27.095(1) (building permit applications); RCW 58.17.033(1) (subdivision and short subdivision applications); Noble Manor Co. v. Pierce County, 133 Wn.2d 269, 943 P.2d 1378 (1997) (generally discussing Washington's vested rights doctrine); West Main Associates v. City of Bellevue, 106 Wn.2d 47, 720 P.2d 782 (1986) (emphasizing the need for certainty in land development); Beach v. Bd. of Adjustment of Snohomish County, 73 Wn.2d 343, 438 P.2d 617 (1968) (conditional use permit applications); East County Reclamation Company v. Bjornsen, 125 Wn. App. 432, 437, 105 P.3d 94 (2005) ("purpose of vesting is to determine and fix the rules that will apply to land development"); Westside Business Park, LLC v. Pierce County, 100 Wn. App. 599, 607, 5 P.3d 713 (2000) ("[s]torm water drainage ordinances are land use control ordinances"); Weyerhaeuser v. Pierce County, 95 Wn. App. 883, 894-95, 976 P.2d 1279 (1999) ("wetland regulations" are land use regulations for purposes of vesting); Ford v. Bellingham-Whatcom County Dist. Bd. of Health, 16 Wn. App. 709, 558 P.2d 821 (1977) (septic tank permit applications); Talbot v. Gray, 11 Wn. App. 807, 525 P.2d 801 (1974) (shoreline substantial development permit applications); Juanita Bay Valley Community Ass'n. v. Kirkland, 9 Wn. App. 59, 510 P.2d 1140 (1973) (grading permit applications). | [DELETE] |
| Phase I Permit | S5.C.5.a.iii. fn 3; pg. 18; line 21 | "In this context, application means, at a minimum a complete; project description, site plan, and, if | This footnote conflicts with WA statutes. It should be deleted. The WA legislature has decreed that local jurisdictions (not the Department of Ecology) are the entities that must establish by | [DELETE] |

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| 2013-18 | and footer | applicable, SEPA checklist." | ordinance the requirements for a fully completed development application.<br>See RCW 19.27.095(2); RCW 58.17.033(2); Abbey Road Group, LLC v. City of Bonney Lake, 167 Wn.2d 242, 258, 218 P.3d 180 (2009) ("[t]he statute leaves to the local authority the determination of when a building permit application is 'fully complete'"); Friends of the Law v. King County, 123 Wn.2d 518, 523-26, 869 P.2d 1056 (1994). | |
| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 18; lines 25-26 | "Ecology review and approval of the local manual and ordinances is required." | The words "local manual and ordinances" in this sentence conflicts with language in S5.C.5.a.i, which states that Permittees may use "ordinances or other enforceable documents" to attain the objectives of Section S5.C.5. Please revise for consistency and to clarify what documents are required. | "Ecology review and approval of the ordinances or other enforceable documents the Permittee develops to comply with S5.C.5.a.i and S5.C.5.a.ii is required prior to adoption." |
| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 18; lines 26-27 | "Approved manuals and ordinances are listed in Appendix 10." | This sentence is confusing. The manuals and ordinances listed in Appendix 10 are documents approved under the previous Phase I Permit. Those manuals and ordinances have not been approved as meeting the requirements of this draft 2013-18 Phase I Permit. Please revise the language to clarify this issue. | "As of the effective date of this Permit, the manuals and ordinances approved by Ecology as meeting the requirements of the 2007-12 Phase I NPDES municipal stormwater permit are listed in Appendix 10. As ordinances or other enforceable documents meeting the requirements of this Permit are approved by Ecology, Ecology shall add those ordinances and other enforceable documents to Appendix 10 through the Permit modification process." |
| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 19; lines 1-3 | "The Permittee shall submit draft enforceable requirements, technical standards and manual to Ecology no later than December 31, 2013." | The deadline for adopting and implementing code changes is unrealistic. It should be extended and made flexible.<br>Additionally, the words "enforceable requirements, technical standards and manual" in this sentence conflict with language in S5.C.5.a.i, which states that Permittees may use "ordinances or other enforceable documents" to attain the objectives of Section S5.C.5. Please revise for consistency and to clarify what documents are required. | "No later than December 31, 2015, the Permittee shall submit to Ecology, for Ecology's review and comment, drafts of the ordinances or other enforceable documents the Permittee intends to adopt to comply with S5.C.5.a.i and S5.C.5.a.ii." |
| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 19; lines 4-8 | "Ecology will review and provide written response to the Permittee. If Ecology takes longer than 90 days to provide a written response, the required deadline for adoption and order effective date will be automatically extended by the number of calendar days that Ecology exceeds a 90 day period for written response." | While the County appreciates the intent of this provision, the proposed language does not go far enough. The County's ability to comply with the Permit should not be dependent the actions of other entities, not even Ecology. Instead, any delay in the County's adoption of the required standards that is due to no fault of the County must not penalize the County. Please revise accordingly. | "Ecology will review and provide written response to the Permittee. The deadline for the Permittee's adoption of the enforceable requirements, technical standards and manual shall be automatically extended by the number of days the Permittee's draft enforceable requirements, technical standards and/or manual are under review by Ecology. Should Ecology require the Permittee to revise and re-submit one or more of the draft documents for additional review by Ecology, that additional period of Ecology review shall also serve to automatically extend the deadline by which the Permittee must adopt the enforceable requirements, technical standards and manual." |

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| Phase I Permit<br>2013-18 | S5.C.5.a.iii; pg. 19; lines 9-12 | "In the case of circumstances beyond the Permittee's control, such as litigation or administrative appeals that may result in noncompliance with the minimum requirements of this section, the Permittee shall promptly notify Ecology and submit a written request for an extension." | The County appreciates the intent behind this provision. However, as written, this provision is not sufficient to abate the compliance problems that will be caused by litigation.<br>The PCHB held in Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, Findings of Fact, Conclusions of Law and Order (January 5, 2011) at 54-56; 2011 WL 62921 at *25-26, that an Agreed Order cannot authorize the delay of a deadline specified in the Permit without imposing compensatory mitigation obligations on the Permittee. Thus, it is doubtful Ecology has the authority to grant a written extension to a Permittee without imposing some type of penalty on the Permittee.<br>Next, litigation regarding this Permit is practically certain. It is neither reasonable nor practicable (and in some instances not even possible) for Permittees to begin expending resources to achieve compliance with Permit conditions that are being actively contested. The Permit should include provisions expressly addressing this issue. | "Ecology recognizes the likelihood that, upon Ecology's issuance of this Permit, one or more provisions of this Permit will be challenged, either administratively, judicially or both. Should such litigation occur, Ecology recognizes that, depending on which provisions of the Permit are challenged and the extent of those challenges, it may be difficult, impractical or even impossible for a Permittee to commence efforts to comply or to make significant progress towards compliance with one or more of the challenged Permit provisions until litigation regarding such Permit provisions is finally determined. Accordingly, so long as any provision of this Permit is under appeal, Ecology shall have the authority and discretion to unilaterally extend any compliance deadline respecting any one or more of the challenged Permit provisions for a reasonable period of time, not to exceed the temporal period of the litigation (e.g. if litigation regarding a particular Permit provision lasts 18 months, Ecology may extend the applicable deadline by up to 18 months). Any Permittee may request that Ecology extend one or more Permit deadlines pursuant to this Section, and Ecology shall not unreasonably deny such requests. No Permittee shall be penalized, nor shall any type of compensatory mitigation be required due to an extension issued pursuant to this Section." |
| Phase I Permit<br>2013-18 | S5.C.5.b; pgs. 20-21<br>&<br>Appendix 1 | Entirety of S5.C.5.b and Appendix 1 | Land use development proposals frequently generate significant controversy. The County is concerned about the potential for endless dispute and litigation regarding whether or not it is "feasible" to use LID techniques on any particular site. The County asks Ecology to revise Section S5.C.5.b and/or Appendix 1 to clarify which party is entitled / required to make the determination regarding the "feasibility" of LID on any particular site and what standard of deference must be afforded to that decision-maker's determination by administrative and/or judicial tribunals if and when the proposed project is appealed.<br>As Section S5.C.5.b and Appendix 1 are currently written, the entire design of any particular land development project will depend on a threshold determination regarding whether or not (or to what extent) it is "feasible" to use LID techniques to manage stormwater on the site. If it is feasible to use LID BMPs, then the project must use LID BMPs. If it is not feasible to use LID BMPs, then the project can not be allowed to use LID BMPs. Thus, the entire design of any particular development project will hinge on this determination.<br>(Accordingly, if a project proponent is initially told by a planning department that LID BMPs are not feasible for the project site, the project proponent will design the project using conventional BMPs | [REVISE LANGUAGE TO EXPRESSLY STATE WHICH PARTY MAKES THE DECISION REGARDING WHETHER OR NOT LID IS FEASIBLE FOR A PARTICULAR PROJECT SITE. EXPRESSLY ESTABLISH THE LEVEL OF DEFERENCE TO WHICH THAT DECISION IS ENTITLED. MAKE OTHER REVISIONS TO REDUCE THE LIKELIHOOD OF LITIGATION REGARDING THIS ISSUE.] |

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| | | | instead. If, months later at the public hearing on the project, the Hearing Examiner determines LID BMPs are feasible for the site, the project proponent will have to re-design the entire project in order to proceed.)<br><br>However, while the LID feasibility determination will be critical to the site design, the County anticipates there will frequently be no clear right or wrong answer to the question of whether or not LID is "feasible" on a particular site. Unlike most traditional land use permitting criteria, which involve straight forward calculations and metrics that are easily quantified and capable of being accurately and consistently measured by trained personnel, determinations regarding the "feasibility" of LID are not as amenable to definite, clear-cut, unambiguous computations. Instead, such determinations will often be made largely based on an engineer's professional judgment.<br><br>When professional judgment (rather than a measurable metric) is the primary basis for an important decision, that decision is apt to be disputed. As is the case with many types of decisions involving professional judgment (e.g., real estate appraisals, legal opinions, medical treatment), it is entirely possible that two equally well-trained and well-qualified engineers will reach different but equally legitimate and defensible conclusions about the "feasibility" or "infeasibility" of using LID on a particular site. If different engineers/scientists can reasonably disagree about whether or not LID BMPs are feasible on a particular site, then there will typically be multiple experts available to substantiate either view. Under these circumstances, litigation will proliferate.<br><br>Increased litigation is undesirable as it increases transaction costs and frustrates Washington's public policy favoring clarity and finality in the process of developing land. Ecology should take proactive steps to minimize litigation regarding LID "feasibility." By way of example, Ecology should clearly assign to a particular party the responsibility for making determinations regarding the feasibility of using LID BMPs on a particular site. Ecology should clearly specify the amount or type of deference that administrative and judicial tribunals reviewing the proposed project must accord that party's decision (i.e. the applicable standard of review).<br><br>A somewhat analogous situation occurs when a threshold determination is made pursuant to the State Environmental Policy Act, chapter 43.21C RCW ("SEPA"). If the SEPA responsible official issues a determination of significance, the time and expense involved in creating an environmental impact statement is so substantial that Washington courts allow property owners to directly and immediately challenge a SEPA threshold determination of significance by constitutional writ to Superior court. However, at | |

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| | | | the same time, the standard of review the Superior court applies to the SEPA responsible official's threshold determination is a very deferential standard; the threshold determination will only be reversed if it was arbitrary or capricious. The County suggests Ecology consider the SEPA analogy and develop and implement a mechanism to efficiently resolve disputes regarding the "feasibility" of using LID BMPs on any particular project site. | |
| Phase I Permit<br>2013-18 | S5.C.5.b.i; pg. 20; lines 36-40 | "No later than December 31, 2014, Permittees shall review and revise their local development-related codes, rules, standards, or other enforceable documents to incorporate and require Low Impact Development (LID) Principles and LID Best Management Practices (BMPs)." | The deadline for adopting and implementing LID related code changes is unrealistic. It should be extended and made flexible. Also, inclusion of the word "review" in this sentence is confusing. The County believes Ecology intends for revisions to be made by this date, not for "review" to be completed by this date. Recommend deleting "review." | "No later than February 15, 2016, Permittees shall revise their local development-related codes, rules, standards, or other enforceable documents to incorporate and require Low Impact Development (LID) Principles and LID Best Management Practices (BMPs). Permittees shall have until June 30, 2016, to begin implementing the new local program." |
| Phase I Permit<br>2013-18 | S5.C.5.b.i; pg. 21; lines 3-7 | "Permittees shall conduct a review and revision process similar to the steps and range of issues outlined in the following document: *Integrating LID into Local Codes: A Guidebook for Local Governments* (Puget Sound Partnership, 2011)." | This language is unnecessary and inappropriate. It should be deleted. As municipal entities, Permittees already have processes in place for performing revisions and updates to their local codes. For the County, portions of these legislative processes are mandated by chapter 36.70A RCW (the Growth Management Act), chapter 36.70B RCW (the Local Project Review Act), the Snohomish County Charter, and pre-existing provisions of the Snohomish County Code. It is both unnecessary and inappropriate for Ecology to mandate that Permittees follow a particular process in order to reach the result required by the Permit. So long as a Permittee reaches the required result in a legal manner, it should not matter what exact steps that Permittee took to get there.<br><br>Additionally, it is neither necessary nor appropriate to incorporate a 140+ page long document authored by a non-governmental entity into the Permit by reference. If there are particular provisions from Puget Sound Partnership's LID Guidebook that Ecology believes should be mandatory, those provisions should be inserted directly into the body of the Permit. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.5.b.i; pg. 21; line 7 | [INSERT LANGUAGE] | It is not clear from the text of S5.C.5.b whether or not Permittees must submit draft amendments to their development-related codes, rules, standards, or other enforceable documents to Ecology for review and approval, as Permittees must do with the enforceable documents, technical standards and manual described in S5.C.5.a.iii. Please add language to clarify whether or not Ecology review and approval will be required. | "Ecology review and approval of the Permittee's amendments to its local development-related codes, rules, standards, or other enforceable documents is required. No later than May 31, 2015, the Permittee will provide Ecology with draft amendments to its local development-related codes, rules, standards, or other enforceable documents for Ecology to review. Ecology will review and provide written response to the Permittee. The deadline for the Permittee's adoption of the amendments to its local development-related codes, rules, standards, or other enforceable documents shall be automatically extended by the number of days the |

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| | | | | Permittee's draft amendments to its local development-related codes, rules, standards, or other enforceable documents are under review by Ecology. Should Ecology require the Permittee to revise and re-submit one or more of the draft documents for additional review by Ecology, that additional period of Ecology review shall also serve to automatically extend the deadline by which the Permittee must adopt the amendments to its local development-related codes, rules, standards, or other enforceable documents."<br><br>or<br><br>"Ecology review and approval of the Permittee's amendments to its local development-related codes, rules, standards, or other enforceable documents under this Section S5.C.5.b shall not be required." |
| Phase I Permit<br><br>2013-18 | S5.C.5.b.ii; pg. 21; lines 8-10 | "Each Permittee shall submit a summary of the results of the review and revision process in i above with the Second Year Annual Report (due no later than March 31, 2015)." | This reporting requirement is unnecessary and redundant. It should be deleted. Ecology will already be working with the County to review preliminary drafts of the necessary revisions to the County Code. The submission of significant quantities of additional paperwork is unwarranted.<br><br>Should Ecology decide to retain this reporting requirement, the provision should be revised to reflect a more realistic timeline for the LID code revision process. Recommend changing the requirement to require a summary of <u>the status of</u> the Permittee's code review and revision process with the Second Year Annual Report, rather than <u>the results of</u> the review and revision process. | [DELETE]<br><br>or<br><br>"Each Permittee shall submit a summary describing the status of the Permittee's LID related code review and revision process with the Second Year Annual Report." |
| Phase I Permit<br><br>2013-18 | S5.C.5.b.ii; pg. 21; lines 10-13 | "This summary shall include, at a minimum, a list of the participants, the codes, rules, standards, and other enforceable documents reviewed, and the amendments made to those documents which incorporate and require LID Principles and LID BMPs." | As mentioned above, this reporting requirement is unnecessary and redundant. It should be deleted.<br><br>Should Ecology decide to retain this reporting requirement, the provision should be revised to reflect that the summary will be describing the status of an ongoing (rather than a completed) process. Additionally, the requirement to list "participants" is unnecessary and intrusive. Ecology does not need visibility into the County's internal operations in order to fulfill Ecology's directive of implementing the NPDES permit program in WA. The words "the participants" should be deleted. | [DELETE]<br><br>or<br><br>"This summary shall include, at a minimum, a list of the codes, rules, standards, and other enforceable documents that have been reviewed, and a description of any amendments or changes to those enforceable documents that the Permittee is considering making in order to comply with S5.C.5.b.i." |
| Phase I Permit<br><br>2013-18 | S5.C.5.c; pgs. 21-23 | Entirety of Section S5.C.5.c. | Land use planning activities are not an appropriate subject matter for this Permit. The basin planning requirements of this draft Permit are ultra vires and should be deleted. | [DELETE BASIIN PLANNING REQUIREMENTS] |

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| | | | Neither the CWA nor chapter 90.48 RCW regulates local land use planning. Instead, Washington's regulatory structure for land use and development is contained primarily in chapter 36.70A RCW, the Growth Management Act, and chapter 37.70B RCW, the Local Project Review Act. By attempting in this draft Permit to mandate that Permittees conduct a particular type of land use planning, Ecology is effectively attempting to amend chapters 36.70A and 36.70B RCW. Ecology lacks authority to supersede established state legislation.<br><br>Additionally, the Growth Management Act establishes 13 public policy "Goals" that counties and cities are required to consider and balance when establishing local land use policy. Only one of those 13 Goals involves environmental protection. See RCW 36.70A.020(10). Ecology's proposed basin planning would require Permittees to elevate that single goal - Goal 10 - over the other 12 policy goals described in the statute. Requiring Permittees to put special emphasis on Goal 10 is contrary to Washington caselaw, which holds that all of the policy goals described in the Growth Management Act are of equal importance.<br><br>Further, pursuant to the Growth Management Act, it is counties and cities, not State agencies, that have paramount responsibility and authority for land use planning. RCW 36.70A.3201 reads, in part, as follows:<br><br>"Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community."<br><br>Thus, pursuant to state statute, it is the County, and not Ecology, that has both the discretion and the obligation to make policy decisions regarding land use planning within unincorporated Snohomish County.<br><br>Ecology's basin planning requirement usurps the role of the legislature and infringes on the discretion and authority granted to Permittees by the Growth Management Act and its interpreting caselaw. The basin planning requirement should be abandoned.<br><br>See, generally, chapter 36.70A RCW; chapter 36.70B RCW; Feil v. Eastern Washington Growth Management Hearings Bd., 172 Wn.2d 367, 259 P.3d 227 (2011); Kittitas County v. Eastern Washington Growth Management Hearings Bd., 172 Wn.2d 144, 256 P.3d 1193 | |

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| | | | (2011); City of Arlington v. Central Puget Sound Growth Mgmt. Hearings Bd., 164 Wn.2d 768, 193 P.3d 1077 (2008); Thurston County v. Western Washington Growth Mgmt. Hearings Bd., 164 Wn.2d 329, 190 P.3d 38 (2008); Woods v. Kittitas County, 162 Wn.2d 597, 174 P.3d 25 (2007); Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Bd., 161 Wn.2d 415, 166 P.3d 1198 (2007); Lewis County v. Western Washington Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 139 P.3d 1096 (2006); Viking Properties, Inc. v. Holm, 155 Wn.2d 112, 118 P.3d 322 (2005); Quadrant Corporation v. State Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 110 P.3d 1132 (2005); King County v. Central Puget Sound Growth Management Hearings Bd., 142 Wn.2d 543, 14 P.3d 133 (2000); City of Redmond v. Central Puget Sound Growth Management Hearings Bd., 136 Wn.2d 38, 959 P.2d 1091 (1998). | |
| Phase I Permit<br>2013-18 | S5.C.5.c | Entirety of Section S5.C.5.c | As written, the basin planning requirement is overbroad and ultra vires. Section S5.C.5.c does not limit basin planning activities to geographic areas that drain to MS4s owned or operated by the Permittee that are covered by the Permit. If Ecology elects to retain the basin planning requirement, it must be revised to accurately reflect the limits of Ecology's regulatory authority.<br><br>The NPDES municipal stormwater permit program only regulates discharges to or from MS4s owned or operated by the Permittee that discharge to surface waters of the United States. In Snohomish County, significant geographic areas are not served by and do not drain to the County's MS4. For instance, significant portions of both the Quilcida watershed and the Little Bear watershed do not drain to the County's MS4. Those geographic areas are not a proper subject for regulation by this Permit. There is no causal nexus between activities performed on such property and discharges from the County's MS4. Any attempt by Ecology to require the County to undertake activities, including basin planning activities, in geographic areas not subject to the NPDES municipal stormwater permit program is ultra vires.<br><br>If Ecology wants to create computer models of watersheds, it should either perform such analysis itself or find a legitimate legal basis for requiring local jurisdictions to perform same. Neither the NPDES municipal stormwater permit program nor chapter 90.48 RCW provides Ecology with authority to require local jurisdictions to perform the expansive basin analysis and planning Ecology purports to require in the draft Permit.<br><br>Ecology should either delete Section S5.C.5.c entirely, or revise it to clearly apply only to geographic areas that drain to portions of the Permittee's MS4 that are covered by the Permit. | [DELETE]<br><br>or<br><br>[REVISE TO REQUIRE BASIN PLANNING ONLY IN GEOGRAPHIC AREAS THAT DRAIN TO PORTIONS OF THE PERMITTEE'S MS4 THAT ARE COVERED BY THE PERMIT] |

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| Phase I Permit<br>2013-18 | S5.C.5.c; pgs. 21-23 | Entirety of Section S5.C.5.c | Should Ecology elect to retain the basin planning requirement over the County's objection, the County comments as follows:<br>As written, Section S5.C.5.c makes no effort to address the reality that most watersheds (i) cross jurisdictional/political boundaries, and (ii) are primarily comprised of real property not owned by the Permittee. Ecology should develop practical, realistic expectations and guidance for Permittees regarding how to handle the numerous issues raised by cross-jurisdictional watersheds in which the majority of the land is not owned by the Permittee, and revise Section S5.C.5.c to address same.<br>Additionally, because watersheds typically do cross local jurisdictional/political boundary lines, the County questions whether it is appropriate for local governments to be performing basin-wide analyses. It would seem more logical and feasible for a state agency, such as Ecology, whose authority does not cease at municipal borders, to perform larger scale analyses such as the basin planning requirements of Section S5.C.5.c.<br>It is likely that any watershed selected by a particular Permittee will be located partly outside of that Permittee's jurisdictional boundaries. It may be difficult or impossible for a Permittee to obtain necessary data from territory located outside its boundaries. Additionally, even if a Permittee obtains cooperation from a municipality whose territory includes a portion of the selected watershed, a Permittee may have legitimate legal and/or political concerns about spending resources collected from the Permittee's tax/fee base on performing projects and activities outside its territorial borders. Citizens generally expect to see their local government tax and fee dollars spent on local projects, not on projects located partly within another municipality's territory. For these reasons, no Permittee should be required to conduct basin planning activities or analyses in areas located outside of the Permittee's jurisdictional boundaries.<br>Additionally, even within a Permittee's jurisdictional boundaries, the majority of the land in most watersheds is owned by private parties. A Permittee typically has no right to enter onto privately owned property to collect data, regardless of the potential environmental benefit of such data. Accordingly, no Permittee should be required by this Permit to collect basin planning data from privately owned property. | [REVISE TO EXPRESSLY ADDRESS ISSUES ARISING WHEN WATERSHEDS CROSS JURISDICTIONAL / POLITICAL BOUNDARIES AND HOW THE COLLECTION OF DATA FROM PRIVATELY OWNED PROPERTY SHOULD BE HANDLED] |
| Phase I Permit<br>2013-18 | S5.C.5.c.i; pg. 21; lines 21-28 | "No later than December 31, 2013, each County Permittee listed below shall select one watershed from the following list in which to conduct detailed stormwater basin planning: | If Ecology elects to retain the basin planning requirement, the County believes it is inappropriate for Ecology to dictate to Permittees which watersheds may be selected for such planning. Instead, the choice of which watersheds to analyze should be left to | "Each County Permittee listed below shall select one watershed or sub-basin of a watershed in which to conduct detailed stormwater basin planning. The watershed or sub-basin selected must have a majority of its geographic area |

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| | | • Clark County: Whipple, Salmon<br>• King County: Bear, Covingtong, Evans, Issaquah, Jenkins, May, Soos<br>• Pierce County: Clover, Mashel<br>• Snohomish County: Quilceda, Little Bear, Portage" | Permittees. The Permit should allow Permittees the flexibility to determine local priorities and decide where limited governmental resources are best spent.<br>Additionally, if Ecology elects to retain the basin planning requirement, Permittees should be allowed to select a sub-basin within a large watershed rather than being required to analyze an entire watershed, regardless of its geographic size or complexity. For instance, the Quilceda Creek watershed is vast, is located in at least four jurisdictions, and each of its three tributaries (i.e., sub-basins) is distinct in its geography, hydrology, hydraulics and other relevant characteristics. Thus, a sub-basin of the Quilceda Creek watershed would be an appropriate subject for analysis and planning in and of itself. The Permit language should be revised so that analysis of such a sub-basin will satisfy the basin planning requirement. If Ecology requires Permittees to analyze only entire watersheds, Ecology will be establishing a disincentive for any Permittee to select a large, complex watershed for analysis.<br>Also, if Ecology elects to retain the basin planning requirement and also elects to retain the list of permissible watersheds for each Permittee, "Church Creek" should be added to the list of watersheds in which Snohomish County may elect to conduct stormwater basin planning. Church Creek meets the criteria (set forth on page 38 of the Fact Sheet) used by Ecology to select the permissible watersheds.<br>Finally, the County does not understand the purpose of specifying a date by which each Permittee must "select" a watershed for basin planning purposes. This deadline appears to serve no function. Recommend deleting same. | located within the Permittee's jurisdictional borders."<br>or<br>"Each County Permittee listed below shall select one watershed from the following list in which to conduct detailed stormwater basin planning:<br>• Clark County: Whipple, Salmon<br>• King County: Bear, Covingtong, Evans, Issaquah, Jenkins, May, Soos<br>• Pierce County: Clover, Mashel<br>• Snohomish County: Quilceda, Little Bear, Portage, Church" |
| Phase I Permit<br>2013-18 | S5.C.5.c.ii; pg. 21; lines 29-32 | "Each County Permittee shall convene and lead a process involving other Permittees subject to a municipal stormwater permit as well as other cities and counties with areas of their jurisdiction in the watershed selected in i., above." | As written, this requirement is unfair and unworkable. The County cannot force any other entity to participate in a stormwater basin planning process. This requirement compromises the County's ability to comply with the Permit by placing mandatory Permit components in the hands of third parties. Recommend revising this provision to require only that the County "invite and encourage" other entities to participate in the process. | "Each county Permittee shall develop and implement a stormwater basin planning process for the watershed selected pursuant to S5.C.5.c.i above. The county Permittee responsible for developing and implementing a particular basin planning process shall invite and encourage other municipal entities located within the selected watershed to participate in the county's stormwater basin planning process." |
| Phase I Permit<br>2013-18 | S5.C.5.c.ii; pg. 21; lines 32-36 | "This process shall begin no later than February 2, 2014. The process shall develop a watershed scale stormwater basin plan for the watershed identified in i. above that has the goal of accommodating growth and maintaining beneficial uses." | This requirement is vague, ambiguous and technically unachievable. It should be deleted.<br>What is meant by a "watershed scale stormwater basin plan"? How does one determine whether such a plan successfully "accommodates growth and maintains beneficial uses"?<br>Additionally, it is the County's understanding that the modeling | [DELETE]<br>or<br>"The process shall develop a watershed scale stormwater basin plan for the watershed identified in S5.C.5.c.i above. |

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| | | | software necessary to perform this basin planning task has not yet proven effective outside of development trials. The County objects to the inclusion in the SWMP of mandatory requirements in the SWMP that are vague and that may, through no fault of the County, prove impossible to perform by the specified deadlines.<br><br>Should Ecology elect to retain this requirement, the language should be revised to provide Permittees with precise guidance regarding what technical methodology Ecology believes can accomplish the stated tasks. The language should provide that if said technical methodology does not function as expected, Permittees shall remain in compliance with this Section of the Permit notwithstanding any failure of the technical methodology. A Permittee's ability to comply with the Permit must not depend on events out of the Permittee's control. | The goal of the watershed scale stormwater basin plan shall be to accommodate growth while maintaining beneficial uses. As used in this section, the term "watershed scale stormwater basin plan" means [INSERT DEFINITION] created using the [NAME OF SOFTWARE] program currently being developed by [NAME OF SOFTWARE COMPANY]. The Permittee shall attempt to begin the process described above no later than February 2, 2014; however, Ecology recognizes that the requisite modeling software, [NAME OF SOFTWARE], is not yet fully functional and that the creation of a watershed scale basin plan is a new type of undertaking. Accordingly, delays in the development of the watershed scale stormwater basin plan required by this Section shall not cause the Permittee to be out of compliance with this Permit so long as those delays are not primarily due to the fault of the Permittee." |
| Phase I Permit<br><br>2013-18 | S5.C.5.c.ii(1); pg. 22; lines 1-3 | "An assessment of baseline conditions of water bodies, including but not limited to biota, habitat, beneficial uses, water quality conditions, and hydrologic conditions." | This requirement is ambiguous and overbroad. As written, this sentence does not clearly define the type and scope of baseline data that must be collected. Instead, the term "including but not limited to" makes this requirement unlimited in scope. Please revise to clarify precisely what baseline data is required.<br><br>Additionally, the County questions the value in collecting baseline data for such a broad range of conditions, particularly when it is not clear what use that baseline data will serve. The collection of baseline data is costly. Basin modeling only attempts to predict change for hydrologic conditions, not the other types of factors specified in this provision. Recommend revising to reflect a more reasoned cost/benefit analysis. | "An assessment of the following baseline conditions of water bodies: (a) [PERTINENT DATA TYPE#1]; (b) [PERTINENT DATA TYPE#2]; and (c) [PERTINENT DATA TYPE#3]." |
| Phase I Permit<br><br>2013-18 | S5.C.5.c.ii(3); pg. 22; lines 7-9 | "An analysis of flows and water quality conducted at the appropriate scale. The analysis shall quantify estimated changes using computer modeling and best available science." | This requirement is ambiguous. What is meant by the term "appropriate scale"? Who is to determine what scale is appropriate? What is meant by the term "estimated changes"? Estimated changes to what? Over what period of time? Based on what assumptions?<br><br>Additionally, is a specific "computer modeling" technique required to be used, or may Permittees select any computer modeling methodology they desire? Similarly, are Permittees allowed to determine what "best available science" means for purposes of this provision? Or does Ecology have particular techniques in mind? If Ecology wants Permittees to use particular techniques or methods, Ecology should expressly state those techniques and methods in the Permit. If Ecology wants to leave some room for new techniques and methods to be developed, Ecology could phrase the requirement as "Permittees shall use [TECHNIQUES X AND Y], or such other techniques and methodologies as may come to represent best available science during the term of the Permit, as reasonably | [REVISE FOR CLARITY] |

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| Phase I Permit 2013-18 | S5.C.5.c.ii(4); pg. 22; lines 10-12 | "Identification of impacts to beneficial uses from existing development, and predicated impacts from future development at full build-out under existing or proposed comprehensive land use management plans." | The County again objects to the inclusion of "land use management" as a subject matter of this Permit. Comprehensive land use planning is the subject of the Growth Management Act, not the Clean Water Act.<br>Notwithstanding the above objection, this requirement appears impossible to meet. There are too many unknown variables. From a technical standpoint, the County has no idea how to perform the required analysis. Ecology must either delete this provision or provide direction to Permittees on how to perform same. | [DELETE] |
| Phase I Permit 2013-18 | S5.C.5.c.ii(5); pg. 22; lines 14-17 | "Identification of changes to codes, rules, standards, and plans to address harmful impacts to beneficial uses and comply with antidegredation provisions of state and federal statutes and rules." | This requirement is duplicative of the requirements in Section S5.C.5.a and Section S5.C.5.b. It should be deleted for clarity and consistency. | [DELETE] |
| Phase I Permit 2013-18 | S5.C.5.c.ii(6); pg. 22; lines 18-19 | "Identification of structural retrofit actions to address harmful impacts to designated beneficial uses." | This requirement is vague and ambiguous. As written, it is unclear what actions this provision requires a Permittee to take. Please revise for clarity. | [REVISE FOR CLARITY] |
| Phase I Permit 2013-18 | S5.C.5.c.ii(7); pg. 22; lines 20-22 | "Identification of other actions such as non-regulatory actions including, but not limited to, land acquisition or restoration actions to address harmful impacts to beneficial uses." | This requirement is vague and ambiguous. As written, it is unclear what actions this provision requires a Permittee to take. Please revise for clarity. | [REVISE FOR CLARITY] |
| Phase I Permit 2013-18 | S5.C.5.c.ii(8); pg. 22; lines 23-24 | "An implementation plan that identifies a schedule of actions, responsible parties, estimated costs, and funding strategies." | This requirement is vague and ambiguous. As written, the creation of an "implementation plan" to reduce vandalism, create a food bank, or build a new library would all satisfy this provision. | [REVISE FOR CLARITY] |
| Phase I Permit 2013-18 | S5.C.6; pg. 23; lines 10-12 | "Each Permittee shall implement a structural stormwater controls program to prevent or reduce impacts to waters of the state caused by discharges from the MS4." | This sentence should be amended to clarify that it applies only to MS4s owned or operated by the Permittee and covered by the Permit. | "Each Permittee shall implement a structural stormwater controls program to prevent or reduce impacts to waters of the state caused by discharges from MS4s owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit 2013-18 | S5.C.6.a.i(6); pg. 23; line 31 | "(6) Maintenance with capital construction costs ≥ $25,000." | This language is ambiguous and should be revised for clarity. First, the term "capital costs" has specific meaning in accounting and tax rules. The County does not believe Ecology intended to distinguish between "capital" projects and "maintenance" projects for purposes of this criterion. Recommend revising the language to clarify intent.<br>Additionally, as written, the word "maintenance" is unmodified such that maintenance to a public hearing room or an HVAC system or a playground structure could qualify. Recommend clarifying the types of maintenance intended to be included under this criterion. | "(6) Maintenance of a stormwater facility performed pursuant to Section S5.C.9 of this Permit having a total cost of ≥ $25,000." |

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| Phase I Permit<br>2013-18 | S5.C.6.a.i(7); pg. 23; line 31 | [ADD NEW SUBSECTION] | The County recommends adding an additional subsection to the list of qualifying projects that would allow a Permittee to obtain credit for significant additional maintenance activities that benefit water quality. | "(7) Maintenance of one or more stormwater facilities owned or operated by the Permittee that exceeds the maintenance requirements of this Permit and yields additional water quality benefits." |
| Phase I Permit<br>2013-18 | S5.C.6.a.ii.3; pg. 24; lines 7-8 | "Other projects to address stormwater runoff into or from the MS4 not otherwise required in S5.C." | This sentence should be amended to clarify that it applies only to MS4s owned or operated by the Permittee and covered by the Permit. | "Other projects to address stormwater runoff into or from an MS4 owned or operated by the Permittee and covered by this Permit that is not otherwise required in S5.C." |
| Phase I Permit<br>2013-18 | S5.C.6.a.iii; pg. 24; lines 9-10 | "Permittees may not use in-stream culvert replacement or channel restoration projects for compliance with this requirement." | This prohibition is overbroad. Recommend revising to allow credit for in-stream culvert replacement or channel restoration projects that are undertaken in response to a documented or anticipated water quality problem to which the MS4 is (or would likely be in the future) a significant contributor. In such cases, the project would be akin to the construction of new stormwater treatment or flow control facilities.<br>Additionally, correct the sub-numbering for this provision so that it is correctly shown as "iii" rather than "i." | "Permittees generally may not use in-stream culvert replacement or channel restoration projects for compliance with the requirements of this Section S5.C.6; however, such projects shall be counted towards compliance when the project is undertaken in response to a documented or anticipated water quality problem caused in whole or in part by discharges from the MS4 and completion of the project significantly alleviates or mitigates the problem." |
| Phase I Permit<br>2013-18 | S5.C.6.c; pg. 25; lines 15-18 | "Each Permittee's annual report must provide an annually updated or revised list of planned, individual projects scheduled for implementation during this permit term. This list must include at a minimum the information and formatting specified in Appendix 11." | Appendix 11 is superfluous as the calculations resulting from Appendix 11 are not used anywhere else in the Permit. Additionally, even if that data were to be used for some legitimate and useful purpose, the quantitative methodology Appendix 11 employs will not generate accurate data. While a more rigorous (and much more costly) methodology such as the Western Washington Hydrology Model might provide somewhat more reliable data, the County does not recommend substituting such software modeling for the rough calculations that would be generated pursuant to Appendix 11. The County believes the marginal increase in the reliability of the data that would be generated by a more rigorous methodology, such as the WWHM, is not justified given the substantial cost of such modeling, the inherent limitations of the software and the superfluous nature of any data that would be generated. Instead, Appendix 11 and all references to it should simply be deleted. | "Each Permittee's annual report must provide an annually updated or revised list of planned, individual projects scheduled for implementation during this permit term." |
| Phase I Permit<br>2013-18 | S5.C.7.a; pg. 25; lines 22-24 | "The Permittee shall implement a program to reduce pollutants in runoff from areas that discharge to municipal separate storm sewers owned or operated by the Permittee." | This sentence should be amended to clarify that it applies only to municipal separate storm sewers covered by the Permit. | "The Permittee shall implement a program to reduce pollutants in runoff from areas that discharge to municipal separate storm sewers owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.7.a.ii; pg. 25; lines 29-32 | "Inspections of pollutant generating sources at commercial, industrial and multifamily properties to enforce implementation of required BMPs to control pollution discharging into municipal storm sewers | This sentence should be amended to clarify that it applies only to municipal separate storm sewers covered by the Permit. | "Inspections of pollutant generating sources at commercial, industrial and multifamily properties to enforce implementation of required BMPs to control pollution discharging into municipal storm sewers owned or operated |

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| | | owned or operated by the Permittee." | | by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.7.a.iii; pg. 25; lines 33-36 | "Application and enforcement of local ordinances at applicable sites, including sites with discharges authorized by a separate National Discharge Elimination System or State Waste Discharge permit." | As written, this provision is ambiguous and untenable. First, it is unclear what is meant by the term "applicable sites." Next, the second half of the sentence implies that Permittees have an obligation to force third parties to comply with the terms of NPDES or State Waste Discharge permits issued to such third parties by Ecology. This provision should be amended to (1) clarify what is meant by "applicable sites," and (2) clarify that Permittees have no obligation to enforce third party compliance with NPDES and State Waste Discharge permits, as such enforcement is properly the province of Ecology. | "Enforcement of local ordinances regarding the reduction of stormwater pollution at commercial, industrial and multifamily properties identified as pollution generating sources pursuant to the inspection process described in S5.C.7.a.ii." |
| Phase I Permit<br>2013-18 | S5.C.7.a.iv; pg. 26; lines 4-6 | "Reduction of pollutants associated with the application of pesticides, herbicides, and fertilizer discharging into municipal separate storm sewers owned or operated by the Permittee." | This sentence should be amended to clarify that it applies only to municipal separate storm sewers covered by the Permit. | "Reduction of pollutants associated with the application of pesticides, herbicides, and fertilizer discharging into municipal separate storm sewers owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.7.b.i; pg. 26; lines 9-12 | "Permittees shall enforce ordinance(s), or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities." | This provision should be revised to clarify that the requirement applies only to sites that discharge into a municipal separate storm sewer owned or operated by the Permittee that is covered by the Permit. | "Each Permittee shall enforce ordinance(s), or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities at sites that discharge into a municipal separate storm sewer owned or operated by the Permittee that is covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.7.b.i; pg. 26; lines 14-16 | "Permittees shall update the ordinance(s), or other enforceable documents, as necessary to meet the requirements of this section no later than February 2, 2018." | This sentence is ambiguous. To which "section" of the Permit does this requirement refer? What are the referenced "requirements"? Please revise to clarify. | "No later than February 2, 2018, Permittees shall update their ordinance(s) or other enforceable documents as necessary to meet the requirements of S5.C.7.b.i." |
| Phase I Permit<br>2013-18 | S5.C.7.b.i; pg. 26; line 16 | [INSERT LANGUAGE] | It is not clear from the text of S5.C.7.b.i whether or not Permittees must submit draft amendments to their ordinances or other enforceable documents to Ecology for review and approval, as Permittees must do with the enforceable documents, technical standards and manual described in S5.C.5.a.iii. Please add language to clarify whether or not Ecology review and approval will be required. | "Ecology review and approval of the Permittee's amendments to its ordinances or other enforceable documents is required. Prior to adopting same, each Permittee will provide Ecology with draft amendments to its local ordinances or other enforceable documents for Ecology to review. Ecology will review and provide written response to the Permittee. The deadline for the Permittee's adoption of the amendments to its local ordinances or other enforceable documents shall be automatically extended by the number of days the Permittee's draft amendments to its local ordinances or other enforceable documents are under review by Ecology. Should Ecology require the Permittee to revise and re-submit one or more of the draft documents for additional review by Ecology, that additional period of Ecology review shall also serve to automatically extend the deadline by which the Permittee must adopt the amendments |

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| | | | | to its local ordinances or other enforceable documents."<br>or<br>"Ecology review and approval of the Permittee's amendments to its local ordinances or other enforceable documents under this Section S5.C.7.b.i shall not be required." |
| Phase I Permit<br>2013-18 | S5.C.7.b.i; pg. 26; lines 17-20 | "The requirements of this subsection are met by using the source control BMPs in Volume IV of the 2012 *Stormwater Management Manual for Western Washington*, or a functionally equivalent manual approved by Ecology." | As written, the Permit is ambiguous regarding whether or for how long continued use of the various documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* will be considered compliant with this Permit. The County suspects this ambiguity was not Ecology's intent. The County asks Ecology to please revise the Permit to expressly address this issue. | "The requirements of this subsection are met by using the source control BMPs in Volume IV of the 2012 *Stormwater Management Manual for Western Washington*, or a functionally equivalent manual approved by Ecology. However, use of the source control BMPs set forth in the documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* shall continue to meet the requirements of this Permit until the deadline by which Permittees are required to have updated their local ordinances and other enforceable documents to meet the new requirements of the 2012 *Stormwater Management Manual for Western Washington*." |
| Phase I Permit<br>2013-18 | S5.C.7.b.i; pg. 26; lines 29-33 | "Structural source control BMPs shall be required for pollutant generating sources if operational source control BMPs do not prevent illicit discharges or violations of surface water, ground water, or sediment management standards because of inadequate stormwater controls." | The NPDES permit program only regulates discharges to surface waters. The inclusion of "ground water" as a receiving water for purposes of the Permit may be problematic. Ecology should consider whether it is prudent to combine a WA State permit issued pursuant to chapter 90.48 RCW with an NPDES permit issued pursuant to the CWA, or whether it might be simpler to issue separate permits for each regulatory scheme. | "Structural source control BMPs shall be required for pollutant generating sources if operational source control BMPs do not prevent illicit discharges or violations of surface water or sediment management standards because of inadequate stormwater controls." |
| Phase I Permit<br>2013-18 | S5.C.7.b.iii(2); pg. 27; lines 20-30 | "The Permittee shall inspect 20% of the listed sites annually to assure BMP effectiveness and compliance with source control requirements. The Permittee may select which sites to inspect each year and is not required to inspect 100% of sites over a 5-year period. Sites may be prioritized for inspection based on their land use category, potential for pollution generation, proximity to receiving waters, or to address and identified pollution problem within a specific geographic area or sub-basin. The Permittee may count up to two follow up compliance inspections at the same site toward the 20% inspection rate." | Limiting the number of follow-up compliance inspections that may be counted towards the Permittee's total inspections is inadvisable. That limitation should be removed. In the County's experience, many sites or businesses with problems require more than two follow-up inspections to educate the site manager or business owner regarding the need for proper maintenance of BMPs, achieve compliance, and foster a long-term understanding regarding proper maintenance practices. The County does not perform follow-up site inspections unless there is a good reason to do so, and each inspection should be credited. Ultimately, it is more beneficial and cost effective to invest additional time and effort to achieving a long-term improvement at one site than it would be to inspect a higher number of sites but achieve little or only temporary improvement at those additional sites. | "The Permittee shall inspect 20% of the listed sites annually to assure BMP effectiveness and compliance with source control requirements. The Permittee may select which sites to inspect each year and is not required to inspect 100% of sites over a 5-year period. Sites may be prioritized for inspection based on their land use category, potential for pollution generation, proximity to receiving waters, or to address and identified pollution problem within a specific geographic area or sub-basin. The Permittee may count all reasonably necessary follow up compliance inspections at a particular site toward the 20% inspection rate." |
| Phase I Permit | S5.C.7.b.v; pg. 28; lines 20- | "Permittees shall develop and implement a regular training program that ensures all staff, whose primary job duties are implementing the source control | This provision is unnecessarily intrusive and should be deleted. Ecology does not need to micro-manage the County's internal processes and procedures for training and evaluating County | [DELETE] |

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| 2013-18 | 30 | program, are qualified and trained to conduct these activities.<br>(1) Staff shall be trained at least annually with topics covering the legal authority for source control, source control BMPs and their proper application, inspection protocols, lessons learned, typical cases, and enforcement procedures.<br>(2) Staff shall be evaluated annually on topics taught during the annual training.<br>(3) Records of attendance and evaluation results shall be kept." | personnel in order to fulfill Ecology's directive of implementing the NPDES permit program in WA. The County's compliance with the CWA should not depend on the contents of the County's internal training programs or on whether training evaluation records are retained in the manner preferred by Ecology – it should depend on the substantive actions the County takes to improve water quality and control pollution. | |
| Phase I Permit<br>2013-18 | S5.C.8; pg. 29; lines 1-3 | "The SWMP shall include an ongoing program to identify, detect, remove and prevent illicit connections and illicit discharges, into the MS4." | This sentence should be revised to clarify that the requirement only applies to MS4s owned or operated by the Permittee that are covered by this Permit. | "A Permittee's SWMP shall include an ongoing program to identify, detect, remove and prevent illicit connections and illicit discharges into MS4s owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.8.b; pg. 29; lines 18-22 | "No later than February 2, 2018, each Permittee shall evaluate, and if necessary update, existing ordinances or other regulatory mechanisms to effectively prohibit non-stormwater, illicit discharges, including spills, into the Permittee's municipal separate storm sewer system." | As written, it is impossible for a Permittee to comply with this requirement. No Permittee can "effectively prohibit" all "illicit discharges" to an MS4. MS4s are geographically immense. It is not possible to police the entire land area that discharges into an MS4 at all times, particularly as the majority of that land area is privately owned. A Permittee's compliance with the Permit should not depend on whether or not third parties knowingly or negligently discharge illicit substances into the Permittee's MS4. This provision must be revised to clarify that a Permittee's compliance with this portion of the Permit is not dependent on the actions of third parties. This provision should also be revised to clarify that the provision only applies to MS4s owned or operated by the Permittee that are covered by this Permit. Additionally, as the term "illicit discharge" is defined to include "spills," the words "including spills" should be deleted for clarity. | "No later than February 2, 2018, each Permittee shall evaluate, and, if necessary, update existing ordinances or other enforceable documents to prohibit non-stormwater illicit discharges into MS4s owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.8.b.i.(13); pg. 30; lines 4-5 | "Discharges that occur during emergency firefighting activities." | Revise to include discharges that occur during training activities for emergency firefighting. | "Discharges that occur during emergency firefighting activities or emergency firefighting training activities." |
| Phase I Permit<br>2013-18 | S5.C.8.b.ii.4; pg. 30; lines 33-35 | "To avoid washing pollutants into the MS4, Permittees shall minimize the amount of street wash and dust control water used." | This sentence is ambiguous. Is this provision intended to apply only to street washing and dust control activities performed by the Permittee? Or is the intent that the Permittee should adopt local regulations requiring anyone performing these activities to minimize the amount of water used? This provision should be revised to clarify Ecology's intent. | "To reduce the washing of pollutants into an MS4 owned or operated by the Permittee and covered by this Permit, the regulations adopted by the Permittee shall require persons performing these activities to minimize the amount of water used." |
| Phase I | S5.C.8.c; pg. 31; | "Each Permittee shall implement an ongoing program | This provision should be revised to reflect the fact that a Permittee | "Each Permittee shall implement an ongoing program to |

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| Permit 2013-18 | lines 9-11 | to identify and detect non-stormwater discharges and illicit connections into the Permittee's MS4." | may own or operate more than one MS4. Additionally, this provision should be revised to clarify that this requirement applies only to MS4s covered by this Permit. | identify and detect non-stormwater discharges into and illicit connections to MS4s owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit 2013-18 | S5.C.8.c.i; pg. 31; lines 12-13 | "Procedures for conducting investigations of the Permittees MS4 for the purpose of detecting illicit discharges and illicit connections." | The language of this provision should be revised to clarify that the only structural components of a Permittee's MS4 that the Permittee must inspect pursuant to this requirement are those components owned or operated by the Permittee. | "Procedures for conducting investigations of the structural components of the Permittee's MS4s that are owned or operated by the Permittee for the purpose of detecting illicit discharges and illicit connections. Stormwater facilities owned or operated by third parties are excluded from this inspection program." |
| Phase I Permit 2013-18 | S5.C.8.c.i.2; pg. 31; lines 39-42 & pg. 32; lines 1-2 | "Each County covered under this permit shall prioritize outfalls and conveyances in urban/higher density rural sub-basins for screening and shall complete field screening for at least the remaining half of the conveyance systems in these areas no later than 4 years from the effective date of this permit." | This sentence is confusing and the assumption underlying the requirement is flawed.<br>What is meant by "the remaining half of the conveyance systems in these areas"? Is Ecology referring to the fact that one half of the conveyance systems in urban/higher density rural sub-basins were required to be field screened by prior NPDES Municipal Stormwater Permits? Additionally, is it only "conveyance systems" that need to be field screened, or do "outfalls" also need to be field screened? Please revise to clarify precisely what activities are required.<br>Next, the requirement appears to be based on the assumption that more illicit discharges occur in urban/higher density rural sub-basins than in other portions of a Permittee's MS4. In the County's experience, this assumption is incorrect. The County found only 4 illicit discharges within the "urban/higher density rural sub-basins" during outfall screening under the 2007-2011 permit. Ecology should allow Permittees discretion to determine where to focus their illicit discharge detection efforts so that problem areas can be addressed first. | "Pursuant to the 2007-12 and the 2012-13 NPDES municipal stormwater permits, each county Permittee was required to complete field screening activities for the MS4 outfalls and conveyance systems located in approximately 50% of the Permittee's urban/higher density rural sub-basins. Under this Permit, each county Permittee shall determine the approximate number of outfalls present in the remaining portions of its urban/higher density rural sub-basins (i.e., those portions of the county's urban/higher density rural sub-basins that were not field screened by the Permittee pursuant to the 2007-12 or the 2012-13 NPDES municipal stormwater permits). Within 4 years from the effective date of this Permit, the Permittee shall complete field screening activities for at least that number of outfalls and conveyance systems, located in priority areas within the Permittee's jurisdiction. The Permittee shall determine priority areas based on the Permittee's knowledge and information regarding existing or likely stormwater pollution problems and sources." |
| Phase I Permit 2013-18 | S5.C.8.c.i.2; pg. 32; lines 2-4 | "In addition, Counties shall complete field screening in at least 1 additional rural sub-basin no later than August 1, 2017." | Because this Permit will not become effective until August 1, 2013, the deadline specified in this sentence is identical to the deadline specified in the immediately preceding sentence. However, the language used implies the two deadlines ought to be different. Please revise to clarify. | "In addition, county Permittees shall complete field screening in at least 1 additional rural sub-basin no later than July 31, 2018." |
| Phase I Permit 2013-18 | S5.C.8.c.i.2; pg. 32; lines 5-9 | "Beginning August 1, 2017, County Permittees shall implement an ongoing field screening program that results in routine annual field screening of approximately 20% of the Permittee's urban/higher density rural sub-basins's MS4 infrastructure and at least 1 rural sub-basin's MS4 infrastructure." | The language and structure of S5.C.8.C.i.2 suggests Ecology intended for the deadline specified in this provision to be later than the deadline for the Permittee's initial completion of field screening in urban/higher density rural sub-basins. Please revise to clarify which activities must be performed by which dates.<br>Additionally, for purposes of clarity and consistency, the term "MS4 infrastructure," used in this sentence, should be replaced with the term "outfalls," which is the term used in the preceding paragraph. | "By July 31, 2018, county Permittees shall have developed, and be prepared to begin implementing, an ongoing field screening program that will result in routine annual field screening of approximately 20% of the MS4 outfalls located in the Permittee's urban/higher density rural sub-basins, as well as the MS4 outfalls in at least 1 rural sub-basin." |

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| Phase I Permit<br>2013-18 | S5.C.8.c.iii; pg. 32; lines 27-37 | "An ongoing training program for all municipal field staff, which, as part of their normal job responsibilities might come into contact with or otherwise observe an illicit discharge or illicit connection to the MS4, on the identification of an illicit discharge and/or connection, and on the proper procedures for reporting and responding, as appropriate, to the illicit discharge and/or connection. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staffing. Permittees shall document and maintain records of the trainings provided and the staff trained." | This requirement is vague, overbroad, unnecessary, unduly burdensome, unlikely to be effective and intrusive. MS4s are geographically immense. The County employs many field staff, with vastly differing job responsibilities. Anyone walking or driving on County roads "might come into contact with or otherwise observe an illicit discharge" into the County's MS4. Thus, this proposed language would mandate water pollution control training for every County employee who ever works in the field. Such a requirement is unnecessary, burdensome, intrusive and unlikely to significantly increase the effectiveness of the County's illicit discharge inspection program. A more targeted approach to training would be more productive.<br><br>Additionally, Ecology does not need to control the content and frequency of the County's internal training procedures in order for Ecology to implement the NPDES permit program in WA. The County is capable of determining how best to train its employees. There is no reason the County's compliance with the CWA should depend on minutiae such as whether or not training sessions are documented in the manner preferred by Ecology, so long as the County meets the substantive requirements of MEP and AKART. | [DELETE]<br><br>or<br><br>"An ongoing training program for the Permittee's field staff whose normal job responsibilities include the detection or identification of illicit discharges into or illicit connections to MS4s owned or operated by the Permittee that are covered by this Permit. Such training program shall include topics such as the identification of an illicit discharge and/or connection, and the proper procedures for reporting and responding to illicit discharges and/or connections." |
| Phase I Permit<br>2013-18 | S5.C.8.d; pg. 33; lines 26-28 | "Each Permittee shall implement an ongoing program to address illicit discharges, including spills, and illicit connections into the Permittee's MS4." | This provision should be revised to reflect the fact that a Permittee may own or operate more than one MS4. Also, this provision should be revised to clarify that this requirement applies only to MS4s covered by this Permit. Additionally, as the term "illicit discharge" is defined to include "spills," the words "including spills" should be deleted for clarity. | "Each Permittee shall implement an ongoing program to address illicit discharges and illicit connections to MS4s owned or operated by the Permittee that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.8.d; pgs 33-34 | Subsection numbering error. | Section S5.C.8.d has 2 subsections labeled "i" and 2 subsections labeled "ii." Please fix to read "d.i," "d.ii," "d.iii," and "d.iv," respectively. | [CORRECT SUBNUMBERING] |
| Phase I Permit<br>2013-18 | S5.C.8.d; pgs 33-34 | [INSERT NEW SUBSECTION] | Ecology proposes to define the term "illicit discharge" to include both "spills" and "illicit connections" (see pg. 83 of the draft Permit). While the County has no general objection to this definition, the County does believe that "spills" are a qualitatively different problem from "illicit connections" and other types of illicit discharges to the MS4. Thus, the procedures for responding to "spills" should be different from the procedures for responding to other types of illicit discharges. The Permit should be revised to treat "spills" differently from other types of "illicit discharges."<br><br>"Spills" tend to be emergency issues. Most "spills" are reported through 911. Thus, an emergency response team - typically a fire department - is usually the first responder on site. Emergency first response personnel are trained to evaluate issues such as the nature | "i. Procedures for characterizing the nature of or environmental threat posed by any spills occurring on property that drains to a portion of the Permittee's MS4 that is covered by this Permit, that are found by or reported to the Permittee. Procedures shall include detailed instructions for evaluating whether the spill must be immediately contained, whether other agencies should be notified, and steps to be taken for containment of the spill.<br><br>ii. Procedures for characterizing the nature of or environmental threat posed by illicit discharges (other than spills) to portions of the Permittee's MS4 that are covered by this Permit, that are found by or reported to the Permittee. Procedures shall include detailed instructions for evaluating |

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| | | | of the spilled substance and how best to contain and remediate same. Emergency first response personnel are trained to make determinations regarding whether or to what extent the substance poses a threat to public health and safety.<br><br>Illicit connections to the MS4 are typically not emergencies. Typically, illicit connections have been occurring for some time before they are discovered. While illicit connections may pose a threat to public health and safety, that threat is usually not immediate. Most illicit connections are not reported through 911, but are instead reported directly to the County. The County responds through its regular code enforcement process.<br><br>For these reasons, the County asks Ecology to revise S5.C.8.d to treat "spills" separately from other types of "illicit discharges."<br><br>Additionally, Ecology should revise the language to clarify that the requirement only applies to "spills" or other "illicit discharges" that occur on property that drains to the County's MS4 and is covered by this Permit. | whether the illicit discharge must be immediately contained and steps to be taken for containment of the discharge." |
| Phase I Permit<br><br>2013-18 | S5.C.8.d.ii; pg. 34; lines 1-2 | "Compliance with the provisions in (i), (ii), and (iii), above, shall be achieved by meeting the following timelines:" | As written, this sentence is confusing. Please revise for clarity. | "The Permittee shall perform the requirements described in S5.C.8.d.i through S5.C.8.d.iii above according to the following timelines:" |
| Phase I Permit<br><br>2013-18 | S5.C.8.d.ii.1; pg. 34; lines 3-6 | "Immediately respond to all illicit discharges, including spills, which are determined to constitute a threat to human health, welfare, or the environment in accordance with General Condition G3, or are otherwise judged to be urgent." | This provision is ambiguous regarding which party will make the determination as to whether or not a particular illicit discharge constitutes "a threat to human health, welfare or the environment" or is otherwise "urgent." Additionally, the phrase "are determined to constitute" conflicts with the language in G3, as G3 reads "could constitute." Please revise to clarify both who is making these determinations, and the level of certainty required. Also, as the term "illicit discharge" is defined to include "spills," the words "including spills" should be deleted for clarity. | "Immediately respond to all illicit discharges which the Permittee, in its good faith, reasonable business judgment, determines constitute an immediate, bona fide threat to human health, welfare, or the environment or are otherwise urgent." |
| Phase I Permit<br><br>2013-18 | S5.C.8.d.ii; pg. 34; lines 3-19 | [INSERT NEW SUBSECTION] | Ecology proposes to define the term "illicit discharge" to include both "spills" and "illicit connections" (see pg. 83 of the draft Permit). While the County has no general objection to this definition, the County does believe that "spills" are a qualitatively different problem from "illicit connections" and other types of illicit discharges to the MS4. Spills should be handled differently from other types of illicit discharges. The Permit should be revised to treat "spills" differently from other types of "illicit discharges."<br><br>"Spills" tend to be emergency issues. Most "spills" are reported through 911. Thus, an emergency response team - typically a fire department - is usually the first responder on site. Emergency first response personnel are trained to evaluate issues such as the nature | "(1) Immediately respond to all spills which the Permittee, in its good faith, reasonable business judgment, determines constitute an immediate, bona fide threat to human health, welfare, or the environment or are otherwise urgent.<br><br>(2) Respond as soon as reasonably possible to all illicit discharges (other than spills) which the Permittee, in its good faith, reasonable business judgment, determines constitute a bona fide threat to human health, welfare, or the environment or are otherwise urgent." |

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| | | | of the spilled substance and how best to contain and remediate same. Emergency first response personnel are trained to make determinations regarding whether or to what extent the substance poses a threat to public health and safety.<br><br>Illicit connections to the MS4 are typically not emergencies. Typically, illicit connections have been occurring for some time before they are discovered. While illicit connections may pose a threat to public health and safety, that threat is usually not immediate. Most illicit connections are not reported through 911, but are instead reported directly to the County. The County responds through its regular code enforcement process.<br><br>For these reasons, the County asks Ecology to revise S5.C.8.d to treat "spills" separately from other types of "illicit discharges." | |
| Phase I Permit<br><br>2013-18 | S5.C.8.d.ii.2; pg. 34; lines 7-10 | "Investigate (or refer to the appropriate agency with authority to act) within 7 days, on average, any complaints, reports or monitoring information that indicates a potential illicit discharge." | The proposed language does not allow for prioritization of response times based on the potential severity of the problem or the likely reliability of the information received by the Permittee. Recommend revising the language to allow Permittees the flexibility to evaluate those factors and respond appropriately. | "Investigate (or refer to the appropriate agency with authority to investigate) complaints, reports or monitoring information that indicate a potential illicit discharge within a reasonable period of time after receiving said information, taking into account the potential severity of the problem and the reliability of the information received. In general, an average response time of 7 business days shall be deemed reasonable." |
| Phase I Permit<br><br>2013-18 | S5.C.8.d.ii.3; pg. 34; lines 11-15 | "For all illicit connections, initiate an investigation within 21 days of any report or discovery of a suspected illicit connection to determine the source of the connection, the nature and volume of discharge through the connection, and the party responsible for the connection." | This proposed language assumes an illicit connection exists. Recommend revising the language to clarify that the determination of whether or not an illicit connection exists is a part of the investigation the Permittee must conduct. | "For all potential illicit connections, initiate an investigation within 21 business days of any report or discovery of a suspected illicit connection to determine whether an illicit connection actually exists, and, if so, the source of the connection, the nature and volume of discharge through the connection, and the party responsible for the connection." |
| Phase I Permit<br><br>2013-18 | S5.C.8.d.ii.4; pg. 34; lines 16-19 | "Upon confirmation of an illicit connection, use enforcement authority in a documented effort to eliminate the illicit connection within 6 months. All illicit connections to the MS4 shall be eliminated." | As written, the deadline specified by this provision is ambiguous. Is a Permittee in compliance with this provision if the Permittee begins enforcement efforts within 6 months after confirming the existence of the illicit connection? Or does the Permittee need to begin enforcement efforts earlier, with the goal of eliminating the illicit connection within 6 months after confirming its existence? Or does the Permittee have to actually succeed in eliminating the illicit discharge within 6 months after confirming its existence? Please revise to clarify Ecology's intent.<br><br>Additionally, if Ecology's intent is that Permittees must actually succeed in eliminating all illicit connections within 6 months of discovery, then the requirement is impossible to meet and should be amended. If a Permittee has to invoke judicial assistance to eliminate an illicit connection, litigation could take years. The provision should be revised to clarify that a Permittee is in | "Upon confirmation of an illicit connection, the Permittee shall work with relevant property owners, using its formal enforcement authority if necessary, in a good faith, documented effort to eliminate the illicit connection within 6 months after the date on which its existence was confirmed. However, even if the Permittee is not successful in eliminating the illicit connection within that 6 month time period, the Permittee shall remain in compliance with this condition of this Permit so long as the Permittee continues making good faith efforts to eliminate the illicit connection." |

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| | | | compliance with this Permit requirement as long as the Permittee is making good faith efforts to eliminate the illicit connection.<br><br>Additionally, the provision should be revised to clarify that Permittees may choose to use informal mechanisms to obtain property owner compliance before using formal enforcement mechanisms. In the County's experience, friendly discussions with property owners regarding the existence of a problem and how to go about fixing that problem can often be more effective in obtaining compliance than formal enforcement mechanisms.<br><br>Finally, the last sentence should be revised to clarify that only known illicit connections must be eliminated, as it is impossible for a Permittee to eliminate an illicit connection the Permittee does not know about. | |
| Phase I Permit<br><br>2013-18 | S5.C.8.e; pg. 34; lines 36-40; pg. 35; lines 1-2 | "Permittees shall train staff who are responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills, and illicit connections, to conduct these activities. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staff. Permittees shall document and maintain records of the training provided and the staff trained." | This requirement is duplicative of the training requirement contained in S5.C.8.c.iii. If Ecology chooses not to delete S5.C.8.c.iii, then this Section S5.C.8.e should be deleted.<br><br>If Ecology chooses to delete S5.C.8.c.iii, as recommended by the County, then this section should be revised to be less intrusive on the County's internal operations. As stated previously, Ecology does not need to control the content and frequency of the County's internal training procedures in order for Ecology to implement the NPDES permit program in WA. The County is perfectly capable of determining how best to train its employees. There is no reason the County's compliance with the CWA should depend on minutiae such as whether or not training sessions are documented in the manner preferred by Ecology, so long as the County meets the substantive requirements of MEP and AKART. Also, as the term "illicit discharge" is defined to include "spills," the words "including spills" should be deleted for clarity. | [DELETE]<br><br>or<br><br>"Each Permittee shall ensure its personnel who are responsible for the identification, reporting, investigation, termination and/or cleanup of illicit discharges and illicit connections are appropriately trained to conduct such activities." |
| Phase I Permit<br><br>2013-18 | S5.C.8.f; pg. 35; lines 3-7 | "Each Permittee shall either participate in a regional emergency response program, or develop and implement procedures to investigate and respond to spills and improper disposal into municipal separate storm sewers owned or operated by the Permittee." | This requirement appears to be duplicative of and in conflict with the requirement contained in S5.8.d.ii.1 (pg. 34, lines 3-6), which also requires Permittees to immediately respond to illicit discharges such as spills. Please either delete this language or revise it to clarify how this requirement differs from S5.8.d.ii.1.<br><br>Additionally, if this provision is retained, it should be amended to clarify that it applies only to municipal separate storm sewers owned and operated by the Permittee that are covered by this Permit. | [DELETE] |
| Phase I Permit<br><br>2013-18 | S5.C.9; pg. 35; lines 19-21 | "Each Permittee shall implement a program to regulate maintenance activities and to conduct maintenance activities by the Permittee to prevent or reduce stormwater impacts." | This language is confusing. It should be revised to clarify precisely what type of program must be implemented by the Permittee. | "Each Permittee shall implement a program requiring the proper operation and maintenance of those stormwater facilities that comprise a portion of or that discharge into an MS4 that is owned or operated by the Permittee and covered by this Permit. The operation and maintenance program |

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| | | | | shall apply both to stormwater facilities that are owned or operated by the Permittee and to stormwater facilities that are regulated by the Permittee. The objective of the operation and maintenance program shall be to prevent or reduce negative stormwater impacts." |
| Phase I Permit<br>2013-18 | S5.C.9.a; pg. 35; lines 34-37 | "Each Permittee shall implement maintenance standards that are as protective, or more protective, of facility function than those specified in Chapter 4 of Volume V of the 2012 *Stormwater Management Manual for Western Washington*." | As written, the Permit is ambiguous regarding whether or for how long continued use of the various documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* will be considered compliant with this Permit. The County suspects this ambiguity was not Ecology's intent. The County asks Ecology to please revise the Permit to expressly address this issue. | "Each Permittee shall implement maintenance standards that are as protective, or more protective, of facility function than those specified in Chapter 4 of Volume V of the 2012 *Stormwater Management Manual for Western Washington*. However, implementation of the maintenance standards specified in one or more of the documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* shall continue to meet the requirements of this Permit until the deadline by which Permittees are required to have updated their local ordinances and other enforceable documents to meet the new requirements of the 2012 *Stormwater Management Manual for Western Washington*." |
| Phase I Permit<br>2013-18 | S5.C.9.a; pg. 35; line 39; pg. 36; lines 1-2 | "No later than December 31, 2014, each Permittee shall update their maintenance standards as necessary to meet the requirements of this section." | The deadline for adopting code changes is unrealistic, particularly if meaningful public participation is desired. The deadline should be extended. Additionally, all deadlines in the Permit should be made flexible for the reasons set forth below.<br><br>Pursuant to Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, Findings of Fact, Conclusions of Law and Order (January 5, 2011) at 54-56; 2011 WL 62921 at *25-26, it is no longer possible for a Permittee to obtain from Ecology a reasonable extension of any Permit deadline, even for legitimate reasons beyond the control of the Permittee. Accordingly, the County recommends all deadlines specified in the Permit be (1) significantly extended, and (2) be expressly made flexible rather than mandatory. | "No later than June 30, 2016, each Permittee shall update its maintenance standards as necessary to meet the requirements of this section." |
| Phase I Permit<br>2013-18 | S5.C.9.a; pg. 36; line 2 | [INSERT LANGUAGE] | It is not clear from the text of S5.C.9.a whether or not Permittees must submit draft amendments to their maintenance standards to Ecology for review and approval, as Permittees must do with the enforceable documents, technical standards and manual described in S5.C.5.a.iii. Please add language to clarify whether or not Ecology review and approval will be required. | "Ecology review and approval of the Permittee's amendments to its maintenance standards is required. Prior to adopting same, each Permittee will provide Ecology with draft amendments to its maintenance standards for Ecology to review. Ecology will review and provide written response to the Permittee. The deadline for the Permittee's adoption of the amendments to its maintenance standards shall be automatically extended by the number of days the Permittee's draft amendments to its maintenance standards are under review by Ecology. Should Ecology require the Permittee to revise and re-submit one or more of the draft documents for additional review by Ecology, that additional |

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| | | | | period of Ecology review shall also serve to automatically extend the deadline by which the Permittee must adopt the amendments to its maintenance standards."<br>or<br>"Ecology review and approval of the Permittee's amendments to its maintenance standards under this Section S5.C.9.a shall not be required." |
| Phase I Permit<br>2013-18 | S5.C.9.a.ii; pg. 36; lines 8-15 | "Unless there are circumstances beyond the Permittee's control, when an inspection identifies an exceedence of the maintenance standard, maintenance shall be performed:<br>(1) Within 1 year for typical maintenance of facilities, except catch basins.<br>(2) Within 6 months for catch basins.<br>(3) Within 2 years for maintenance that requires capital construction costs of less than $25,000." | The timelines mandated by this provision are technical standards that should be moved from the body of the Permit to the Stormwater Manual for Western Washington, Volume V, Chapter 4.6 – Maintenance Standards for Drainage Facilities, where other technical standards related to maintenance are contained. A Permittee may have a reason to propose an alternative to the standards listed here. Moving these technical standards to the Stormwater Manual for Western Washington would clarify that Ecology may approve alternatives to these standards by means of the Permit modification process used for technical equivalence of municipal drainage manuals. | "Unless there are circumstances beyond the Permittee's control, when an inspection identifies an exceedence of the maintenance standard, maintenance shall be performed according to the schedule set forth in Chapter 4 of Volume 5 of the Stormwater Manual for Western Washington, or an equivalent manual." |
| Phase I Permit<br>2013-18 | S5.C.9.b.ii; pg. 37; lines 1-5 | "Each Permittee shall implement an on-going inspection program to annually inspect all stormwater treatment and flow control BMPs/facilities regulated by the Permittee." | This provision should be revised to clarify the purpose and scope of the required inspections and reduce the requisite frequency of such inspections. First, the term "stormwater treatment and flow control BMPs/facilities regulated by the Permittee" is not defined, while the term "stormwater facilities regulated by the Permittee" is defined. For clarity the defined term should be used. Next, the phrase "to enforce compliance with adopted maintenance standards" should be inserted to clarify both the purpose and scope of the inspections.<br>Finally, the frequency of the required inspections should be reduced due to cost considerations. Performing annual inspections would drastically increase the cost of the County's inspection program. In the current economic climate, it is more reasonable to keep the required inspection frequency to once within the term of the Permit. | "Each Permittee shall implement an on-going inspection program to enforce compliance with adopted maintenance standards, pursuant to which all stormwater facilities regulated by the Permittee shall be inspected at least once during the term of this Permit." |
| Phase I Permit<br>2013-18 | S5.C.9.b.iii; pg. 37; lines 10-12 | "Permittees may reduce the inspection frequency based on maintenance records of double the length of time of the proposed inspection frequency." | This language is unclear. Recommend inserting an example of what is meant by the term "maintenance records of double the length of time of the proposed inspection frequency." | "Permittees may reduce the inspection frequency based on maintenance records of double the length of time of the proposed inspection frequency. For example, if the Permittee proposes a 5 year inspection schedule for a particular facility, the Permittee must have 10 years of maintenance records regarding that facility." |
| Phase I Permit<br>2013-18 | S5.C.9.b.iv; pg. 37; lines 18-24 | "Each Permittee shall manage maintenance activities to inspect all permanent stormwater treatment and flow control BMPs/facilities, and catch basins, in new residential developments every 6 months, until 90% of | This language is unnecessarily complex, convoluted and confusing. Recommend revising for clarity, readability and proper grammar.<br>Additionally, recommend reducing the frequency of inspections and establishing an alternative end point to the 90% construction | "Each Permittee shall inspect all stormwater facilities regulated by the Permittee that are located in new residential developments no less frequently than every 12 months during active development and construction to identify the need for |

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| | | the lots are constructed, to identify maintenance needs and enforce compliance with maintenance standards as needed." | criterion. In this economic climate, many subdivisions have been abandoned part way through construction, as banks have foreclosed on the properties or developers wait for a more favorable housing market to recommence construction. | and enforce performance of any necessary maintenance. For purposes of this subsection, active development and construction shall be deemed to cease either when homes have been constructed on at least 90% of the residential lots within the development, or when the developer's maintenance security device for the drainage facilities expires, whichever occurs first." |
| Phase I Permit<br>2013-18 | S5.C.9.b.vi; pg. 37; lines 29-37 | "The Permittee shall require cleaning of catch basins regulated by the Permittee if they are found to be out of compliance with established maintenance standards in the course of inspections conducted at facilities under the requirements of S5.C.7. (Source Control Program), and S5.C.8. (Illicit Connections and Illicit Discharges Detection and Elimination), or if the catch basins are part of the stormwater facilities inspected under the requirements of S5.C.9. (Operation and Maintenance Program)." | This subsection is confusing. Either delete or revise to clarify Ecology's intent.<br>First, the term "catch basins regulated by the Permittee" is not defined by this Permit.<br>Next, why does this subsection contain cross references to S5.C.7 and S5.C.8? If Ecology desires to require maintenance of catch basins as a part of the Source Control Program (S5.C.7) and/or the Illicit Connections and Illicit Discharges Detection and Elimination Program (S5.C.8), Ecology should edit those sections of the Permit to require the desired maintenance activities. | [DELETE]<br>or<br>"If any inspections performed pursuant to this Section S5.C.9.b. reveal that one or more catch basins regulated by the Permittee are out of compliance with established maintenance standards, the Permittee shall use reasonable efforts to require the owner(s) of the stormwater facilities at issue to perform the necessary maintenance activities." |
| Phase I Permit<br>2013-18 | S5.C.9.c; pg. 37; lines 39-42 | "Each Permittee shall implement a program to annually inspect all permanent stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee." | This language should be revised to clarify that the requirement only applies to stormwater treatment and flow control BMPs/facilities that discharge into portions of the Permittee's MS4 that are covered by the Permit. | "Each Permittee shall implement a program to annually inspect all permanent stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee that discharge into portions of the Permittee's MS4 that are covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.9.c.ii; pg. 38; lines 12-18 | "Each Permittee shall implement a program to conduct spot checks of potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events. If spot checks indicate widespread damage/maintenance needs, inspect all stormwater treatment and flow control facilities that may be affected." | As written, these two sentences are confusing. What is a "major storm event"? How should a Permittee determine which stormwater facilities "may be affected"? Recommend revising to include a definition of the term "major storm event," to clarify that the requirement applies only to facilities owned or operated by the Permittee, and to clarify that the Permittees has discretion to determine which facilities to inspect. Alternatively, revise to clarify precisely what actions the Permittee is required to perform and the circumstances under which the Permittee is to perform same. | "Each Permittee shall implement a program to conduct spot checks after major storm events of permanent stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee that, in the reasonable judgment of the Permittee, may potentially have been damaged during the storm event at issue. If such spot checks indicate widespread damage may have occurred, the Permittee shall conduct such additional inspections of other stormwater treatment and flow control facilities owned or operated by the Permittee that may have been negatively affected by the storm event at issue, as the Permittee deems reasonably necessary or prudent. For purposes of this subsection, the term 'major storm event' means a 24 hour storm event with a recurrence interval of 10 years or greater." |
| Phase I Permit<br>2013-18 | S5.C.9.d.i; pg. 38; lines 29-32 | "Each Permittee shall continue to annually inspect catch basins and inlets owned or operated by the Permittee, except as provided below." | This language should be revised to clarify that the requirement only applies to catch basins and inlets that comprise portions of the Permittee's MS4 that are covered by the Permit. | "Each Permittee shall continue to annually inspect catch basins and inlets owned or operated by the Permittee that constitute a portion of the Permittee's MS4 that is covered by this Permit, except as provided below." |

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| Phase I Permit<br>2013-18 | S5.C.9.d.i(2); pg. 39; lines 23-25 | "The Permittee may clean the entire MS4 within a circuit, including all conveyances and catch basins, once during the permit term." | As written, and based on the definition of "MS4" in the draft Permit, this sentence would require a Permittee to clean ditches, culverts, and other man-made channel components of an MS4. The County suspects this was not Ecology's intent because cleaning those components of an MS4 would require significant work while providing no corresponding benefit to water quality.<br>Recommend revising to clarify that this option is for a Permittee to clean all catch basins within a circuit and the network of underground, enclosed pipes connecting such catch-basins. | "The Permittee may clean all catch basins within any circuit of the MS4 and the network of underground, enclosed pipes connecting such catch-basins once during the term of this Permit." |
| Phase I Permit<br>2013-18 | S5.C.9.e; pg. 39; lines 36-40 | "Each Permittee shall implement practices, policies, and procedures to reduce stormwater impacts associated with runoff from all lands owned or maintained by the Permittee, and road maintenance activities under the functional control of the Permittee." | This provision is both overbroad and duplicative of other Permit requirements. There is no causal nexus between the discharges authorized by this Permit and real property owned by a Permittee that does not discharge into an MS4 covered by this Permit. This provision should be deleted.<br>If Ecology chooses to retain this provision, it should be revised to clarify that the requirement only applies to real property that discharges to an MS4 that is owned or operated by the Permittee and is covered by this Permit. Additionally, the word "maintained" should be replaced with the word "operated." The Permit generally divides tangible property into two categories: (1) property "owned or operated" by the Permittee; and (2) property "regulated by" the Permittee. The term "maintained by" the Permittee is not a category defined by the Permit. | [DELETE]<br>or<br>"Each Permittee shall implement practices, policies, and procedures to reduce stormwater impacts associated with runoff from real property owned or operated by the Permittee that discharges to an MS4 that is owned or operated by the Permittee and is covered by this Permit." |
| Phase I Permit<br>2013-18 | S5.C.9.e; pg. 39; lines 40-41;<br>pg. 40; lines 1-2 | "Lands owned or maintained by the Permittee include, but are not limited to: parking lots, streets, roads, highways, buildings, parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control BMPs/facilities." | This sentence is inappropriate, confusing, overbroad and ultra vires. It should be deleted. Ecology has no authority to dictate what land constitutes real property "owned" by the County. Washington real property law governs questions of land ownership. Additionally, the term "maintained by" the Permittee is not a category defined by the Permit. Instead, the Permit generally divides property into two categories: (1) property "owned or operated" by the Permittee; and (2) property "regulated by" the Permittee. The use of the term "maintained by" is therefore confusing. Finally, there is no causal nexus between the discharges authorized by this Permit and real property owned by a Permittee that does not discharge into an MS4 covered by this Permit. Thus, this language is overbroad. This sentence should be deleted. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.9.e; pg. 39; lines 36-41;<br>pg. 40; lines 1-24 | "e. Each Permittee shall implement practices, policies, and procedures to reduce stormwater impacts associated with runoff from all lands owned or maintained by the Permittee, and road maintenance activities under the functional control of the Permittee. Lands owned or maintained by the Permittee include, | Recommend combining the text of S5.C.9.g with the text of S5.C.9.e and giving the resulting section a heading of "Operation and Maintenance of Properties Owned or Operated by the Permittee." This reorganization would consolidate two subsections that deal with substantially the same subject matter and provide a heading for ease of reference. | "e. Operation and Maintenance of Properties Owned or Operated by the Permittee<br>i. Each Permittee shall implement practices, policies, and procedures to reduce stormwater impacts associated with runoff from real property owned or operated by the Permittee that discharges to an MS4 that is owned or operated by the |

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| | | but are not limited to: parking lots, streets, roads, highways, buildings, parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control BMPs/facilities.<br>The following activities shall be addressed:<br>i. Pipe cleaning<br>ii. Cleaning of culverts that convey stormwater in ditch systems<br>iii. Ditch maintenance<br>iv. Street cleaning<br>v. Road repair and resurfacing, including pavement grinding<br>vi. Snow and ice control and disposal<br>vii. Utility installation<br>viii. Maintaining roadside areas, including vegetation management.<br>ix. Dust control<br>x. Pavement striping maintenance<br>xi. Appropriate application of fertilizers, pesticides, and herbicides including reducing nutrients and pesticides using environmentally-friendly alternatives<br>xii. Sediment and erosion control<br>xiii. Landscape maintenance and vegetation disposal<br>xiv. Trash and pet waste management<br>xv. Building exterior cleaning and maintenance” | The recommended language assumes Ecology will not elect to delete the S5.C.9.e in its entirety, and will instead revise the first sentence of S5.C.9.e to replace the term “maintained by” with the term “operated by.” The recommended language also assumes Ecology will elect to delete the second sentence of S5.C.9.e. | Permittee and is covered by this Permit. The following activities shall be addressed:<br>(1) Pipe cleaning<br>(2) Cleaning of culverts that convey stormwater in ditch systems<br>(3) Ditch maintenance<br>(4) Street cleaning<br>(5) Road repair and resurfacing, including pavement grinding<br>(6) Snow and ice control and disposal<br>(7) Utility installation<br>(8) Maintaining roadside areas, including vegetation management<br>(9) Dust control<br>(10) Pavement striping maintenance<br>(11) Appropriate application of fertilizers, pesticides, and herbicides including reducing nutrients and pesticides using environmentally-friendly alternatives<br>(12) Sediment and erosion control<br>(13) Landscape maintenance and vegetation disposal<br>(14) Trash and pet waste management<br>(15) Building exterior cleaning and maintenance<br>ii. In addition to complying with the requirements of S5.C.9.e.i above, for all heavy equipment maintenance or storage yards and/or material storage facilities owned or operated by the Permittee that discharge to an MS4 owned or operated by the Permittee and that are not required to have coverage under the *General NPDES Permit for Stormwater Discharges Associated with Industrial Activities* or another NPDES permit that covers stormwater discharges associated with the activity, the Permittee must implement a Stormwater Pollution Prevention Plan (SWPPP) covering the site. A schedule for implementation of structural BMPs shall be included in the SWPPP. Generic SWPPPs that can be applied at multiple sites may be used to comply with this requirement. The SWPPP shall include periodic visual observation of discharges from the facility to evaluate the effectiveness of the BMPs.” |
| | S5.C.9.g; pg. 41; lines 16-30 | “g. Implement a Stormwater Pollution Prevention Plan (SWPPP) for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the Permittee in areas subject to this permit that are not required to have coverage under the *General NPDES Permit for Stormwater Discharges Associated with Industrial Activities* or another NPDES permit that covers stormwater discharges associated with the activity. A schedule for implementation of structural BMPs shall be included in the SWPPP. Generic SWPPPs that can be applied at multiple sites may be used to comply with this requirement. The SWPPP shall include periodic visual observation of | | |

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| | | discharges from the facility to evaluate the effectiveness of the BMPs." | | |
| Phase I Permit<br>2013-18 | S5.C.9.e.vi; pg. 40; line 13 | "Snow and ice control and disposal" | This language is ambiguous. Please clarify what is meant by "disposal" and how that term differs from "control." | [REVISE TO CLARIFY INTENT] |
| Phase I Permit<br>2013-18 | S5.C.9.f; pg. 41; lines 6-15 | "Implement an ongoing training program for employees of the Permittee who have construction, operations or maintenance job functions that could impact stormwater quality. The training program shall address the importance of protecting water quality, operation and maintenance standards, inspection procedures, selecting appropriate BMPs, ways to perform their job activities to prevent or minimize impacts to water quality, and procedures for reporting water quality concerns. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staffing. Permittees shall document and maintain records of the training provided and the staff trained." | This requirement is overbroad, unnecessary, unduly burdensome and intrusive. First the word "could" is unbounded. Next, the proposed training topics would not be relevant to the full spectrum of job functions identified. For instance, there is no need for personnel who operate mowers in County parks, who maintain the County's public records archives, who wash the windows of County buildings, or who maintain the County's computer systems, to learn about selecting appropriate BMPs. A more targeted approach to training would be more efficient and effective.<br><br>Additionally, Ecology does not need to control the content and frequency of the County's internal training procedures in order for Ecology to implement the NPDES permit program in WA. The County is capable of determining how best to train its employees. There is no reason the County's compliance with the CWA should depend on minutiae such as whether or not training sessions are documented in the manner preferred by Ecology, so long as the County meets the substantive requirements of MEP and AKART. | [DELETE] |
| Phase I Permit<br>2013-18 | S5.C.10; pg. 41; lines 38-39 | "An education program may be developed and implemented locally or regionally." | This language is too narrowly written. As written, the language could be read to exclude actions the County suspects that Ecology intended to include. Revise for clarity. | "A Permittee's public education and outreach program may consist of a combination of diverse types of activities, events, workshops or forums, some of which may be purely local in scope, some of which may be regional in scope, and some of which may be part of a national effort. The Permittee may create and sponsor some events itself, may coordinate and cooperate with other entities or organizations to sponsor or implement some events, and may help promote and encourage participation in events that are sponsored and implemented by others. All of the foregoing types of public education and outreach efforts by a Permittee shall count towards compliance with the requirements of this Section." |
| Phase I Permit<br>2013-18 | S5.C.10.b; pg. 42; lines 9-12 | "Create stewardship opportunities and/or build on existing organizations to encourage residents to participate in activities such as stream teams, storm drain stenciling, volunteer monitoring, riparian plantings and education activities)." | This language is confusing. As written, the language could be read to exclude actions the County suspects that Ecology intended to be included in this requirement. Revise for clarity. | "Implement, create, sponsor, promote or otherwise encourage residents to participate in water quality stewardship programs, activities or events, such as stream teams, storm drain stenciling, volunteer monitoring, riparian plantings and education activities. The Permittee may satisfy this requirement by organizing or hosting stewardship events itself, by partnering with other governmental and/or non-governmental organizations (either locally or regionally) to |

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| | | | | jointly or cooperatively sponsor such events, or by encouraging or promoting involvement in stewardship events organized or sponsored by other local, regional or national organizations or entities." |
| Phase I Permit<br>2013-18 | S5.C.10.c; pg. 42; lines 13-24 | "Education and outreach efforts shall target the following audiences and subject areas:" | This provision should be amended to provide Permittees with flexibility to determine what subject areas and target audiences are a priority for public outreach programs within the Permittee's jurisdictional boundaries. | "Each Permittee shall prioritize its public outreach program to address the subject areas and target audiences of greatest local importance, as reasonably determined by the Permittee. Education and public outreach efforts may be directed towards the following types of audiences and may address the following, or similar, types of topics:" |
| Phase I Permit<br>2013-18 | S5.C.10.c.iii(6); pg. 43; line 1 | "Dumpster maintenance for property owners." | Insert the term "BMPs" for accuracy and consistency with the other topics listed. | "Dumpster maintenance BMPs for property owners." |
| Phase I Permit<br>2013-18 | S5.C.10.d; pg. 43; lines 14-17 | "No later than February 2, 2015, each Permittee shall begin measuring the understanding and adoption of the targeted behaviors for at least one new targeted audience in at least one new subject area." | This language is ambiguous and should be revised for clarity. The phrases "new target audience" and "new subject area" are confusing, as the majority of the target audiences and subject areas contained in Section S5.C.10.c of this draft Permit were also contained in the 2007-2011 permit. Recommend replacing with the word "priority" which also clarifies that Permittees have discretion to prioritize the subject areas and target audiences to which they direct their public outreach efforts.<br>Additionally, if the Permittee has participated in regional public education and outreach programs, metrics evaluating the success of those regional programs should qualify for satisfaction of this requirement. | "No later than February 2, 2015, each Permittee shall begin measuring the understanding and adoption of the targeted behaviors for at least one priority targeted audience in at least one priority subject area. If a Permittee has participated in cooperative or regional public education or outreach programs, participation in cooperative or regional efforts to measure the success of such program(s) shall satisfy this requirement." |
| Phase I Permit<br>2013-18 | S5.C.10.d; pg. 43; lines 17-20 | "No later than February 2, 2016 the resulting measurements shall be used to direct education and outreach resources most effectively as well as to evaluate changes in adoption of the targeted behaviors." | This sentence is confusing. Please revise to clarify what actions are required.<br>Additionally, if the Permittee has participated in cooperative or regional public education and outreach programs, the Permittee's participation in cooperative or regional efforts to increase the effectiveness of such programs should qualify for satisfaction of this requirement. | "No later than February 2, 2016, the Permittee shall begin evaluating and using the resulting data to improve its public outreach program for increased effectiveness. If a Permittee has participated in cooperative or regional public education or outreach programs, participation in cooperative or regional efforts to increase the effectiveness of such program(s) shall satisfy this requirement." |
| Phase I Permit<br>2013-18 | S7; pg. 62; lines 10-12 | "Applicable TMDLs are TMDLs which have been approved by EPA on or before the issuance date of this permit, or priority to the date that Ecology issues coverage under this permit, whichever is later." | This provision is legally and procedurally inaccurate and must be revised. The "applicable TMDLs" under this Permit are the TMDLs listed in Appendix 2 of the Permit. Appendix 2 of the Permit cannot be automatically amended to include additional TMDLs simply by virtue of the EPA approving same. Instead, amendments or additions to this Permit must be made through the prescribed Permit modification process. Please revise this provision for legal accuracy. | "Applicable TMDLs are the TMDLs listed in Appendix 2. If, after the issuance date of this Permit, the EPA approves new TMDLs that apply within the geographic area covered by this Permit, Ecology may modify this Permit to include the new TMDLs. Any such modification will be performed pursuant to the established Permit modification process." |

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| Phase I Permit<br>2013-18 | S8 & Appendix 9 | General comments regarding QAPPs. | It is unclear whether a Permittee is required to prepare a "Quality Assurance Project Plan (QAPP)" in accordance with Appendix 9 if the Permittee elects to participate in one or more of the regional stormwater management program monitoring options. Please clarify whether a QAPP is required under those circumstances. | |
| Phase I Permit<br>2013-18 | S8.A; pg. 63; lines 3-5 | "All Permittees including Secondary Permittees are only required to conduct water sampling or other testing during the effective term of this permit under the following conditions:" | As written, this sentence is confusing. This Section S8.A is not a list of conditions precedent. It is instead a list of required actions. Recommend revising to clarify same. | "Each Permittee, including Secondary Permittees, shall conduct the following water sampling and testing activities during the effective term of this Permit:" |
| Phase I Permit<br>2013-18 | S8.A.3; pg. 63; lines 11-13<br><br>S8.A.4; pg 63; line 14 | "3. If a Permittee chooses not to participate in any component of the regional stormwater monitoring program (RSMP), monitoring requirements specified in S8.C.1.b, S8.D.2, or S8.D.3 of this permit.<br>4. Clark County shall conduct monitoring pursuant to S8.C.2 below." | As written, these provisions are ambiguous and confusing. Recommend breaking down the requirements by type of monitoring activity to more clearly identify the actions Permittees must take. | "3. Status and Trends Monitoring: Pursuant to S8.C, each Permittee other than Clark County shall perform either (1) status and trends monitoring Option#1, described in S8.C.1.a, or (2) status and trends monitoring Option#2, described in S8.C.1.b. Clark County shall perform the status and trends monitoring described in S8.C.2.<br>4. Effectiveness Studies: Pursuant to S8.D, each Permittee shall perform one of the following (1) effectiveness studies Option#1, described in S8.D.1, (2) effectiveness studies Option#2, described in S8.D.2, or (3) effectiveness studies Option#3, described in S8.D.3.<br>5. Source Identification and Diagnostic Monitoring: Pursuant to S8.E, each Permittee shall perform either (1) source identification and diagnostic monitoring Option#1, described in S8.E.1, or (2) source identification and diagnostic monitoring Option#2, described in S8.E.2." |
| Phase I Permit<br>2013-18 | S8.B; pg. 63; lines 15-22 | "All Permittees including Secondary Permittees shall provide, in each annual report a description of any stormwater monitoring or stormwater-related studies conducted by the Permittee during the reporting period. If other stormwater monitoring or stormwater related studies were conducted on behalf of the Permittee, or if stormwater-related investigations conducted by other entities were reported to the Permittee, a brief description of the type of information gathered or received shall be included in the annual report(s) covering the time period(s) during which the information was received." | This requirement is overbroad and inappropriate. Annual reports submitted by a Permittee to Ecology pursuant to the Permit should be limited to actions the Permittee has taken to comply with the Permit. Thus, activities not required by the Permit are not an appropriate subject for inclusion in an annual report. Even less appropriate for inclusion in an annual report are activities not required by the Permit that were performed by third parties. The County's compliance with the CWA should not depend on whether or not the County accidentally omits from an annual report information regarding a stormwater-related investigation conducted by a third party. If Ecology desires information regarding stormwater monitoring activities not required by the Permit, Ecology may request those materials from the County pursuant to WA's public records act. | [DELETE] |
| Phase I Permit | S8.C.1; pg. 64; lines 6-7 | "Each Permittee shall select a single option for the duration of this permit term." | If Ecology requires Permittees to decide, at the beginning of the Permit term, whether or not to participate in the regional monitoring | [NO CHANGE] |

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| 2013-18 | | | program for the entire 5 years of the Permit's duration, Ecology must not later modify this section of the Permit to alter the payment schedule or increase the amount of payments required under Option#1. | |
| Phase I Permit<br>2013-18 | S8.C.1; pg. 64; lines 7-8 | "Each Permittee shall either:" | This clause is unnecessary and redundant. It should be deleted for clarity. | [DELETE] |
| Phase I Permit<br>2013-18 | S8.C.1.a; pg. 64; lines 9-16 | "Pay into a collective fund and enter into an agreement with Ecology to implement the Puget Sound marine nearshore and small streams status and trends components of a RSMP. Each agreement shall be substantially in the form of Appendix 12. Ecology will administer the collective fund and implement the monitoring program in accordance with the arrangements between Ecology and each Permittee. The agreement will specify the tasks and deliverables of the RSMP." | There are multiple problems with this provision. First, the term "Regional Stormwater Monitoring Program (RSMP)" is not defined by the Permit. Thus, it is unclear what is meant by the phrase "to implement the Puget Sound marine nearshore and small streams status and trends components of a RSMP."<br>Next, it is not appropriate for the Permit to require a Permittee to enter into a contract. All Permit requirements should be contained within the body of the Permit itself. Attempting to mix Permit requirements with contractual obligations will create ambiguity. For instance, WA contract law would govern the parties' respective performance under a contract. If Ecology were to default on a contract obligation, would the County no longer be in compliance with the Permit? Would the County be required to agree to any contract amendments proposed by Ecology, else be in violation of the Permit? The County recommends Ecology abandon the contract model.<br>Additionally, while the County supports the concept of a regional monitoring program and the potential efficiencies to be gained by implementing same, in order for such a program to serve as a viable option for the County, the County must have both certainty regarding and control over the actions the County must perform to comply with the Permit condition at issue. Thus, if the County's performance under S8.C will consist of paying a specified amount of money to Ecology, the Permit must clearly state that by making said payment, the County has achieved compliance. The County's compliance cannot be dependent on actions of third parties, whether those third parties are other Permittees, Ecology's contractors or Ecology itself. Nor can the County be responsible for performing additional, unspecified "tasks and deliverables" in addition to paying into the regional monitoring program. | "Each year during the term of this Permit, pay to Ecology, on or before the dates specified in this Section S8.C.1.a, the amount specified below, which Ecology shall use to implement the marine nearshore and small streams status and trends components of a regional stormwater monitoring program for Puget Sound. By timely making such payment to Ecology, the Permittee shall have satisfied the requirements of this Section S8.C for the calendar year at issue." |
| Phase I Permit<br>2013-18 | S8.C.1.a.i; pg. 64; lines 17-18 | "Each Permittee shall pay the amounts prescribed in this section, according to the following schedule:" | As written, this provision is ambiguous. Revise to clarify to whom payments must be made. | "Each Permittee electing this Option#1 shall pay to Ecology the amounts prescribed in this section, according to the following schedule:" |
| Phase I | S8.C.1.b.i; pg. 64; | "City and County Permittees shall conduct wadeable | As written, this sentence is ambiguous and impossible to comply | [INCLUDE THE ECOLOGY-APPROVED QAPP FOR |

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| Permit<br>2013-18 | lines 25-28 | stream water quality, benthos, habitat, and sediment chemistry monitoring according to the Ecology-approved QAPP for the Small Streams Status and Trends component of the RSMP." | with. The phrase "the Ecology-approved QAPP for the Small Streams Status and Trends component of the RSMP" is not defined. It is therefore unclear what actions a Permittee is required to perform pursuant to this provision. Please revise for clarity. | SMALL STREAM STATUS AND TRENDS COMPONENT OF THE RSMP AS AN APPENDIX] |
| Phase I Permit<br>2013-18 | S8.C.1.b.ii; pg. 65; lines 5-8 | "City and County Permittees and the Ports of Seattle and Tacoma shall conduct sediment chemistry, bacteria, and mussel monitoring according to the Ecology-approved QAPP for the Marine Nearshore Status and Trends Component of the RSMP." | As written, this sentence is ambiguous and impossible to comply with. The phrase "the Ecology-approved QAPP for the Marine Nearshore Status and Trends component of the RSMP" is not defined. It is therefore unclear what actions a Permittee is required to perform pursuant to this provision. Please revise for clarity. | [INCLUDE THE ECOLOGY-APPROVED QAPP FOR MARINE NEARSHORE STATUS AND TRENDS COMPONENT OF THE RSMP AS AN APPENDIX] |
| Phase I Permit<br>2013-18 | S8.D; pg. 65; line 38 | "Each Permittee shall select a single option for the duration of this permit term." | If Ecology requires Permittees to decide, at the beginning of the Permit term, whether or not to participate in the regional monitoring program the entire 5 years of the Permit's duration, Ecology must not later modify this section of the Permit to alter the payment schedule or increase the amount of payments required under Option#1 or Option#3. | [NO CHANGE] |
| Phase I Permit<br>2013-18 | S8.D; pg. 65; lines 38-39 | "Each Permittee shall either:" | This clause is unnecessary and redundant. It should be deleted for clarity. | [DELETE] |
| Phase I Permit<br>2013-18 | S8.D.1; pg. 65; lines 40-41; pg. 66; lines 1-2 | "Pay into a collective fund and enter into an agreement with Ecology to implement the effectiveness studies component of the RSMP. Each agreement shall be substantially in the form of Appendix 12. The agreement will specify the tasks and deliverables of the RSMP." | There are multiple problems with this provision. First, the term "Regional Stormwater Monitoring Program (RSMP)" is not defined by the Permit. Thus, it is unclear what is meant by the phrase "to implement the effectiveness studies component of the RSMP."<br><br>Next, it is not appropriate for the Permit to require a Permittee to enter into a contract. All Permit requirements should be contained within the body of the Permit itself. Attempting to mix Permit requirements with contractual obligations will create ambiguity. For instance, WA contract law would govern the parties' respective performance under a contract. If Ecology were to default on a contract obligation, would the County no longer be in compliance with the Permit? Would the County be required to agree to any contract amendments proposed by Ecology, else be in violation of the Permit? The County recommends Ecology abandon the contract model.<br><br>Additionally, while the County supports the concept of a regional monitoring program and the potential efficiencies to be gained by implementing same, in order for such a program to serve as a viable option for the County, the County must have both certainty regarding and control over the actions the County must perform to comply with the Permit condition at issue. Thus, if the County's performance under S8.D will consist of paying a specified amount of money to Ecology, the Permit must clearly state that by making | "Each year during the term of this Permit, pay to Ecology, on or before the dates specified in this Section S8.D.1.a, the amount specified below, which Ecology shall use to implement the effectiveness studies component of a regional stormwater monitoring program for Puget Sound. By timely making such payment to Ecology, the Permittee shall have satisfied the requirements of this Section S8.D for the calendar year at issue." |

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| | | | said payment, the County has achieved compliance. The County's compliance cannot be dependent on actions of third parties, whether those third parties are other Permittees, Ecology's contractors or Ecology itself. Nor can the County be responsible for performing additional, unspecified "tasks and deliverables" in addition to paying into the regional monitoring program. | |
| Phase I Permit<br>2013-18 | S8.D.1.a; pg. 66; lines 3-4 | "Each Permittee shall pay the amount prescribed in this section, according to the following schedule:" | As written, this provision is ambiguous. Revise to clarify to whom payments must be made. | "Each Permittee electing this Option#1 shall pay to Ecology the amounts prescribed in this section, according to the following schedule:" |
| Phase I Permit<br>2013-18 | S8.D.3.a; pg 67; lines 13-14 | "Pay the amount prescribed in this section, according to the following schedule:" | As written, this provision is ambiguous. Revise to clarify to whom payments must be made. | "Each Permittee electing this Option#3 shall pay to Ecology the amounts prescribed in this section, according to the following schedule:" |
| Phase I Permit<br>2013-18 | S8.D.3.b; pg. 67; lines 18-20 | "In accordance with the requirements below, independently conduct an effectiveness study that is not expected to be undertaken as part of the RSMP." | This provision is ambiguous. How is a Permittee to know whether or not a particular effectiveness study is "expected to be undertaken as part of the RSMP"? Without such knowledge, a Permittee cannot make an informed choice regarding whether to pursue Effectiveness Studies Option#3. Please clarify. | [INCLUDE AS AN APPENDIX A LIST OF THE EFFECTIVENESS STUDIES THAT ARE EXPECTED TO BE UNDERTAKEN AS PART OF THE RSMP] |
| Phase I Permit<br>2013-18 | S8.E; pg. 68; lines 23-24 | "Each Permittee shall select a single option for the duration of this permit term." | If Ecology requires Permittees to decide, at the beginning of the Permit term, whether or not to participate in the regional monitoring program the entire 5 years of the Permit's duration, Ecology must not later modify this section of the Permit to alter the payment schedule or increase the amount of payments required under Option#1. | [NO CHANGE] |
| Phase I Permit<br>2013-18 | S8.E; pg. 68; line 24 | "Each Permittee shall either:" | This clause is unnecessary and redundant. It should be deleted for clarity. | [DELETE] |
| Phase I Permit<br>2013-18 | S8.E.1; pg. 68; lines 26-29 | "Pay into a collective fund and enter into an agreement with Ecology to implement the source identification and diagnostic monitoring information repository component of the RSMP. Each agreement shall be substantially in the form of Appendix 12." | There are multiple problems with this provision. First, the term "Regional Stormwater Monitoring Program (RSMP)" is not defined by the Permit. Thus, it is unclear what is meant by the phrase "to implement the source identification and diagnostic monitoring information repository component of the RSMP."<br><br>Next, it is not appropriate for the Permit to require a Permittee to enter into a contract. All Permit requirements should be contained within the body of the Permit itself. Attempting to mix Permit requirements with contractual obligations will create ambiguity. For instance, WA contract law would govern the parties' respective performance under a contract. If Ecology were to default on a contract obligation, would the County no longer be in compliance with the Permit? Would the County be required to agree to any | "Each year during the term of this Permit, pay to Ecology, on or before the dates specified in this Section S8.E.1.a, the amount specified below, which Ecology shall use to implement the source identification and diagnostic monitoring information repository component of a regional stormwater monitoring program for Puget Sound. By timely making such payment to Ecology, the Permittee shall have satisfied the requirements of this Section S8.E for the calendar year at issue." |

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| | | | contract amendments proposed by Ecology, else be in violation of the Permit? The County recommends Ecology abandon the contract model.<br><br>Additionally, while the County supports the concept of a regional monitoring program and the potential efficiencies to be gained by implementing same, in order for such a program to serve as a viable option for the County, the County must have both certainty regarding and control over the actions the County must perform to comply with the Permit condition at issue. Thus, if the County's performance under S8.E will consist of paying a specified amount of money to Ecology, the Permit must clearly state that by making said payment, the County has achieved compliance. The County's compliance cannot be dependent on actions of third parties, whether those third parties are other Permittees, Ecology's contractors or Ecology itself. | |
| Phase I Permit<br><br>2013-18 | S8.E.1.a; pg. 68; lines 30-31 | "Each Permittee shall pay the amount prescribed in this section, according to the following schedule:" | As written, this provision is ambiguous. Revise to clarify to whom payments must be made. | "Each Permittee electing this Option#1 shall pay to Ecology the amounts prescribed in this section, according to the following schedule:" |
| Phase I Permit<br><br>2013-18 | S8.E.1.a.ii; pgs. 68-69; (no line numbers) | "The payment amounts are:<br><br><u>Permittee</u> <u>Payment Amount</u><br>Clark County $8,033<br>King County $11,518<br>Pierce County $14,339<br>Port of Seattle $641<br>Port of Tacoma $641<br>City of Seattle $23,091<br>Snohomish County $11,350<br>City of Tacoma $7,704" | These payment amounts are inequitable. Ecology should revise its method of allocation. The payment amounts for the Source Identification and Diagnostic Monitoring Information Repository portion of the RSMP should be determined based on the number of illicit discharges typically found during a permit cycle in each of the different jurisdictions. Experience has shown that cities tend to have more illicit discharges than counties. This fact is not appropriately reflected in the division of costs set forth in this Section. As a result, the proposed cost allocation is inequitable and may lead Permittees with a higher proportion of rural areas to choose not to participate in this portion of the RSMP. | [RE-EVALUATE THE COST ALLOCATION METHOD USED TO GENERATE THESE NUMBERS] |
| Phase I Permit<br><br>2013-18 | S9.D; pg. 70; lines 11-18 | "Each Permittee shall make all records related to this permit and the Permittee's SWMP available to the public at reasonable times during business hours. The Permittee will provide a copy of the most recent annual report to any individual or entity, upon request.<br><br>1. A reasonable charge may be assessed by the Permittee for making photocopies of records.<br><br>2. The Permittee may require reasonable advance notice of intent to review records related to this permit." | This provision is unnecessary and should be deleted. As public agencies, all of the Permittees are already subject to public disclosure laws. There is no need to subject Permittees to potential liability under the CWA when WA public disclosure laws already require this information to be shared. | [DELETE] |

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| Phase I Permit<br>2013-18 | G3; pg. 74; lines 11-13 | "If a Permittee has knowledge of a discharge, including spill(s), into or from a MS4, which could constitute a threat to human health, welfare, or the environment, the Permittee, shall:" | This provision is overbroad. It should be revised to clarify that the requirement only applies to MS4s owned or operated by the Permittee that are covered by this Permit. Additionally, because the term "discharge" is defined to include "spills," the phrase "including spill(s)" should be deleted for clarity. | "If a Permittee has knowledge of a discharge into or from an MS4 owned or operated by the Permittee that is covered by this Permit, and said discharge could constitute a threat to human health or welfare, or the environment, the Permittee shall:" |
| Phase I Permit<br>2013-18 | G10; pg. 76; lines 41-42<br><br>Appendix 6; pg. 2; lines 29-31 | "Solids resulting from cleaning stormwater facilities may be reused or delivered to a solid waste disposal site qualified to receive the material (see Appendix 6)."<br><br>"Contaminated soils are considered solid waste and are regulated by local health departments/districts and laws/regulations governing the disposal of solid waste and hazardous waste." | This language implies that solids resulting from the cleaning of stormwater facilities are presumed contaminated unless proven otherwise. That is not the appropriate default position for the Permit to take. The default position should be that solids resulting from cleaning activities are not contaminated and may be freely re-used unless there is reason to believe the solids are contaminated. Recommend revising both the language in G10 and in Appendix 6 to clarify this issue. | "Solids resulting from or accumulated during the maintenance or cleaning of stormwater facilities may be reclaimed, recycled or reused. However, solids that are identified as contaminated pursuant to chapter 173-350 of the Washington Administrative Code shall be disposed of at a qualified solid waste disposal facility." |
| Phase I Permit<br>2013-18 | Definitions; General Comment | All terms already defined by 33 USC § 1362 or 40 CFR § 122.2, including "best management practices," "BMP," "bypass," "CWA," "hazardous substance," "municipal separate storm sewer system," "national pollutant discharge elimination system," "NPDES," "stormwater," and "stormwater associated with industrial activity." | Several of the terms defined in this Permit are already defined by the CFRs that implement the NPDES permit program. Ecology may wish to consider whether it is sensible for this Permit to define terms that are already defined by the CFRs or whether it might be more appropriate for this Permit to simply reference (or copy) the federal definitions. | |
| Phase I Permit<br>2013-18 | Definitions; pg. 83; lines 5-8<br>Appendix 7 | "'<u>Hydraulically Near</u>' means runoff from the site discharges to the sensitive feature without significant natural attenuation of flows that allows for suspended solids removal. See Appendix 7 Determining Construction Site Sediment Damage Potential for a more detailed definition." | This definition of the term "hydraulically near" is vague. The additional description provided in Appendix 7 does not add sufficient clarity. Please revise to provide clear criteria for determining hydraulic nearness. | [REVISE TO INCLUDE CLEAR CRITERIA] |
| Phase I Permit<br>2013-18 | Definitions; pg. 84; lines 7-8 | "'<u>Low Density Residential Land Use</u>' means, for the purpose of permit section S8, one dwelling unit per 1-5 acres." | The term "Low Density Residential Land Use" is not used in Section S8. This definition is therefore unnecessary and should be deleted. | [DELETE] |
| Phase I Permit<br>2013-18 | Definitions; pg. 85; lines 23-37 | "'<u>Municipal separate storm sewer system (MS4)</u>' means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):<br>(i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over the disposal of wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or | There are two significant problems with this definition, both of which should be corrected.<br>First, this definition is ambiguous regarding whether or not detention and treatment facilities that convey stormwater constitute part of an "MS4." This ambiguity arises because Ecology has inserted the new defined term, "Stormwater Treatment and Flow Control BMPs/Facilities," into the draft Permit. This new defined term expressly includes certain types of facilities that convey stormwater, such as detention facilities. However, Ecology has not included such facilities in the definition of "MS4." Please revise the definition of MS4 to clarify whether or not Ecology intends for there | "'<u>Municipal separate storm sewer system (MS4)</u>' means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, and any Stormwater Treatment and Flow Control BMPs/Facilities that convey stormwater), that meets the following criteria:<br>(i) is owned or operated by a state, city, town, borough, county, parish, district, association, special district, or other public body created by or pursuant to state law;<br>(ii) is designed or used for collecting or conveying and |

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| | | drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the Washington State.<br>(ii) Designed or used for collecting or conveying stormwater.<br>(iii) Which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2." | to be any overlap between the defined term "Stormwater Treatment and Flow Control BMPs/Facilities" and the defined term "MS4," and, if there some overlap is intended, please clarify the extent of that overlap.<br>Next, this definition references property owned by "Indian tribes" notwithstanding the fact that, pursuant to Section XIV of that certain Memorandum of Agreement Between the Washington Department of Ecology and the United States Environmental Protection Agency Region 10, dated for reference purposes as of August 15, 1989, and fully executed on January 9, 1990, the EPA reserved to itself all authority to implement the NPDES permit program with respect to Indian lands in WA. As Ecology has no authority under the CWA to regulate MS4s owned or operated by "an Indian tribe or an authorized Indian tribal organization," those words should be deleted from the definition of "MS4."<br>Additionally, this definition is riddled with typographical and grammatical errors. Please revise for readability and clarity. | discharging stormwater;<br>(iii) is not a combined sewer; and<br>(iv) is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2." |
| Phase I Permit<br>2013-18 | Definitions; pg. 86; lines 10-14 | "'Outfall' means point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to surface or ground waters of the State. Outfall does not include pipes, tunnels, or other conveyances which connect segments of the same stream or other surface waters and are used to convey primarily surface waters." | This definition is overbroad and confusing. It should be revised for clarity.<br>The words "or ground" should be deleted from the definition. The NPDES permit program only regulates discharges to surface waters. The inclusion of "ground water" as a receiving water for purposes of the Permit causes ambiguity and confusion. The regulatory system applicable to ground water should be implemented separately from the NPDES Permit.<br>Also, the words "discharges from" should be inserted in the second sentence for clarity and proper grammar. | "'Outfall' means point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to surface waters of the State. Outfall does not include discharges from pipes, tunnels, or other conveyances which connect segments of the same stream or other surface waters and are used to convey primarily surface waters." |
| Phase I Permit<br>2013-18 | Definitions; pg. 87; lines 1-4 | "'Sediment/Erosion-Sensitive Feature' means an area subject to significant degradation due to the effect of construction runoff or areas requiring special protection to prevent erosion. See Appendix 6 Determining Construction Site Sediment Transport Potential for a more detailed definition." | This definition is confusing and unhelpful. What is meant by the term "significant degradation"? Appendix 6 does not contain the term "Sediment/Erosion-Sensitive Feature. Instead, Appendix 6 involves "Street Waste Disposal." Please revise to clarify. | [REVISE TO CLARIFY MEANING] |
| Phase I Permit<br>2013-18 | Definitions; pg. 87; lines 12-15 | "'Stormwater facilities regulated by the Permittee' means permanent stormwater treatment and flow control BMPs/facilities and catch basins located in the geographic area covered by the permit and which are not owned by the Permittee, and are known by the permittee to discharge into municipal separate storm sewers owned or operated by the Permittee." | Ecology's proposed inclusion of the words "and catch basins" in this definition is inappropriate and confusing. Those words should be deleted.<br>There is no logical basis for including catch basins in this definition. The draft Permit generally recognizes catch basins as a category of things separate and apart from Stormwater Treatment and Flow Control BMPs/Facilities. For example, the new definition for "Stormwater Treatment and Flow Control BMPs/Facilities" does not | "'Stormwater facilities regulated by the Permittee' means permanent Stormwater Treatment and Flow Control BMPs/Facilities located in the geographic area covered by the Permit and which are not owned or operated by the Permittee, and are known by the Permittee to discharge into MS4s that are owned or operated by the Permittee and covered by this Permit." |

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| | | | include catch basins within its scope. Additionally, Section S5.C.9 of the draft Permit treats "stormwater facilities owned or operated by the Permittee" (addressed by Section S5.C.9.c) separately from "catch basins owned or operated by the Permittee" (addressed by Section S5.C.9.d). It is confusing to have catch basins treated the same as Stormwater Treatment and Flow Control BMPs/Facilities for some purposes but not for others.<br><br>Additionally, imposing the same inspection and maintenance requirements on privately owned catch basins as are imposed on privately owned Stormwater Treatment and Flow Control BMPs/Facilities would be unduly burdensome, particularly considering that the potential benefits to water quality are questionable. Unlike Permittee owned catch basins, which are often associated with high-traffic roads and in which significant amounts of sediment and pollutants can accumulate, privately owned catch basins do not typically collect a significant amount of polluted sediment. Thus, maintenance of privately owned catch basins should not be a priority activity.<br><br>To date, the County has not located, mapped or made any inventory of privately owned catch basins. If catch basins are included in the definition of "stormwater facilities regulated by the Permittee," the County would need to expend considerable time and effort just to locate and inventory privately owned catch basins. Performing inspections of privately owned catch basins and enforcing maintenance standards would require additional resources. From a cost/benefit standpoint, such activities would not constitute a prudent or efficient use of limited County resources. The definition should be revised to delete the words "and catch basins."<br><br>Additionally, there are numerous typographical errors in this definition that should be corrected. | |
| Phase I Permit<br><br>2013-18 | Definitions; pg. 87; lines 16-19 | "'Stormwater Management Manual for Western Washington' means the 5-volume technical manual (Publication Nos. 05-10-029 through 05-10-033 for the 2005 version) published by Ecology. A proposed version is currently under public review and comment." | As written, the Permit is ambiguous regarding whether or for how long continued use of the various documents listed in Appendix 10 as being equivalent to the 2005 *Stormwater Management Manual for Western Washington* will be considered compliant with this Permit. The County suspects this ambiguity was not Ecology's intent. The County asks Ecology to please revise the Permit to expressly address this issue. | "'Stormwater Management Manual for Western Washington' means the 5-volume technical manual (Publication Nos. 05-10-029 through 05-10-033 for the 2005 version) published by Ecology. A proposed 2012 version is currently under public review and comment. However, notwithstanding the upcoming release of the new 2012 version, documents listed in Appendix 10 as being equivalent to the 2005 version of the Stormwater Management Manual of Western Washington shall remain valid and compliant with this Permit until the deadlines by which Permittees are required to update their local ordinances and codes to meet the new criteria of the 2012 version of the Stormwater Management Manual of Western Washington." |

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| Phase I Permit<br>2013-18 | Definitions; pg. 87; lines 20-24 | "'Stormwater Management Program (SWMP)' means a set of actions and activities designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable and to protect water quality, and comprising the components listed in S5 or S6 of this Permit and any additional actions necessary to meet the requirements of this Permit." | As written, the definition of "SWMP" is vague, ambiguous and circular. The County needs to know exactly what the required elements of its SWMP are. Please revise for clarity. | "'Stormwater Management Program (SWMP)' means a set of actions and activities designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality. A Permittee's SWMP shall be comprised of the components listed in S5 or S6 of this Permit, as applicable." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 1; pg. 1 | Section 1: Exemptions | The scope and applicability of the "exemptions" listed in Section 1 is unclear. Recommend adding a short introduction to the beginning of this Section clarifying same. | "Section 1: Exemptions<br>Unless otherwise specified in this Section 1, all items listed below are exempt from all Minimum Requirements, even if such items otherwise meet the definition of new development or redevelopment." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 1; pg. 1 | [ADD AN EXEMPTION] | The County requests that a new type of exemption be added to Section 1 of Appendix 1. This exemption should apply to public road projects (whether maintenance, new construction or re-development) when undertaking the project in accordance with the Minimum Requirements normally applicable to the type of project at issue could require the Permittee to acquire and/or condemn new right-of-way to accommodate LID BMPs.<br>This proposed exemption is grounded in public policy and equity concerns. The County believes public roads constitute necessary public infrastructure. The County believes the safety of public roads is of paramount importance to the community. Thus, from a public policy perspective, projects that upgrade public roads are critical to the public health, safety and welfare.<br>The County does not believe it is fair to require citizens whose private property is located adjacent to existing public right-of-way to have to potentially relocate their residences or businesses so that new LID BMPs can be installed as a component of a road improvement project. Acquiring and/or condemning additional right-of-way is time consuming and expensive. In addition to displacing property owners whose land is condemned, obtaining additional right-of-way also increases the cost of road projects, which burdens the County's entire tax base, and ultimately reduces the number of road improvement projects the County is able to perform.<br>For these reasons, the County asks Ecology to include an exemption in Section 1 of Appendix 1 that would exempt public road projects from having to meet Minimum Requirement #5 whenever meeting that requirement would entail the acquisition of additional right-of-way. | "Public Road Projects:<br>Projects that maintain, replace, redevelop, construct, widen, re-align, re-shape, re-grade or otherwise improve public roads and that would normally be subject to Minimum Requirement #5 shall be exempt from Minimum Requirement #5 if complying with Minimum Requirement #5 would necessitate the acquisition of additional right-of-way. When this exemption applies to a project, the project shall nonetheless meet Minimum Requirement #5 to the extent reasonably feasible (i) within the existing right-of-way, and (ii) without compromising public safety." |

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| Phase I Permit<br>2013-18 | Appendix 1; Section 1; pg. 2 | [ADD AN EXEMPTION] | A new category of exemption for recreational trail maintenance should be added to Section 1 of Appendix 1. Trail maintenance activities are similar to road maintenance activities. Without an exemption for trail maintenance, the County could be required to implement minimum requirements that are out of scale and unrealistic for trail maintenance projects located on sites with significant acreage and surrounded by forest and/or native vegetation. Trail maintenance typically consists of grooming or replacing lost material, addressing localized drainage issues, and vegetation management. | "Recreational Trail Maintenance:<br>The following recreational trail maintenance practices are exempt: grooming, filling depressions, re-surfacing with in-kind materials without expanding the trail footprint, reshaping/regrading drainage systems, removing rubbish and vegetation maintenance.<br>The following recreational trail maintenance activities are considered new or redevelopment, and therefore are not categorically exempt:<br>(i) Removing and replacing a paved surface to base course or lower.<br>(ii) Resurfacing by upgrading from dirt to gravel, asphalt or concrete; or from gravel to asphalt, or concrete. These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for new or redevelopment projects are met.<br>(iii) Resurfacing from dirt, gravel or impervious surface with porous asphalt or pervious concrete." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 1; pg. 2 | [ADD AN EXEMPTION] | A new category of exemption for recreational trail construction should be added to Section 1 of Appendix 1. Without an exemption for trail construction, the County could be required to implement minimum requirements that are out of scale and unrealistic for earthen trail construction projects located on sites with significant acreage and surrounded by forest and/or native vegetation. Trail construction typically consists of vegetation removal within a narrow corridor, removal of forest duff to consolidated soil layer within the trail footprint and installation of drainage facilities as warranted by site conditions. Typically, any collected stormwater is fully dispersed through on-site natural vegetation. The United States Forest Service Trail Design Specification outlines best management practices specifically for this application. | "Recreational Trail Construction:<br>The construction of earthen, unpaved recreational trails located outside of critical areas shall be subject only to Minimum Requirement 2, so long as the trails at issue are designed and constructed in accordance with the United States Forest Service Trail Design Specifications." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 1; pg. 2 | [ADD AN EXEMPTION] | A new category of exemption for campsite establishment activities should be added to Section 1 of Appendix 1. Without an exemption for campsite establishment, the County could be required to implement minimum requirements that are out of scale and unrealistic for development of campsites located on sites with significant acreage and surrounded by forest and/or native vegetation. Campground establishment typically consists of vegetation removal and grooming the soils to establish a 400 square foot to 600 square foot level pad. Tree canopies over the area are left in-tact, where practical. | "Campsite Establishment:<br>Establishment of temporary or permanent campsites that comprise less than one percent of the cumulative acreage within a park boundary is only subject to Minimum Requirement 2. Installation of any impervious surface is not exempt and is subject to applicable minimum requirements according to exceeded thresholds." |

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| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 2 | "***Arterial*** – A road or street primarily for through traffic. The term generally includes roads or streets considered collectors. It does not include local access roads which are generally limited to providing access to abutting property. See also RCW 35.78.010 and RCW 47.05.021." | This definition should directly reference the federal functional classification system, as RCW 36.86.070 requires the County to use that system when classifying County roads. | "***Arterial*** – A road or street primarily for through traffic, as classified according to the federal functional classification system. The term generally includes roads or streets considered collectors. It does not include local access roads which are generally limited to providing access to abutting property. See also RCW 35.78.010, RCW 36.86.070 and RCW 47.05.021." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 2 | "***Certified Erosion and Sediment Control Lead (CESCL)*** – means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington Department of Ecology (Ecology) (see BMP C160 in the *Stormwater Management Manual for Western Washington* (2012)). A CESCL is knowledgeable in the principles and practices of erosion sediment control. The CESCL must have the skills to assess site conditions and construction activities that could impact the quality of stormwater and, the effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges. Certification is obtained through an Ecology approved erosion and sediment control course. Course listings are provided online at Ecology's web site." | The County requests clarification regarding the duties and liabilities associated with being the designated CESCL for multiple sites or projects. Does Ecology anticipate a CESCL will designate certain duties to other personnel who are not CESCL certified? Does Ecology anticipate that a single CESCL may be validly assigned to multiple sites and/or projects? Or does Ecology anticipate that each site or project will have its own CESCL assigned to it? | [PLEASE CLARIFY] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 2 | "***Converted Pervious Surface*** – The surfaces on a project site where native vegetation is converted to lawn or landscaped areas, or where native vegetation is converted to pasture." | This definition is flawed. It should be deleted or revised.<br>It is not the case that conversion of any type of native vegetation to pasture or lawn will negatively affect the hydrologic cycle in the same manner. For example, the conversion of forest to lawn impacts the hydrologic cycle far more than a conversion from pasture to lawn. In fact, a conversion from pasture to lawn could actually improve infiltration and reduce runoff by amending soil formerly compacted by grazing. Thus, the important metric to focus on when vegetated land is converted is whether or not that conversion has a negative impact on on-site infiltration.<br>Please either delete this definition or revise it to more appropriately focus the inquiry on whether and to what extent the conversion of vegetated areas has a negative impact on the hydrology of the site. | [DELETE]<br>or<br>[REVISE TO FOCUS THE INQUIRY ON WHETHER CONVERSION OF VEGETATED AREAS HAS A NEGATIVE IMPACT ON SITE HYDROLOGY] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 3 | "***Effective Impervious Surface*** – Those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system. Impervious surfaces are considered ineffective if: 1) the runoff is dispersed through at least one hundred feet of native vegetation | This definition raises several concerns.<br>First, the words "to a drainage system" should be replaced with "to an MS4 owned or operated by the Permittee and covered by this Permit." | "***Effective Impervious Surface*** – Those impervious surfaces that are connected via sheet flow or discrete conveyance to an MS4 owned or operated by the Permittee and covered by this Permit. Impervious surfaces are considered ineffective if: (1) the runoff is dispersed through at least one hundred |

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| | | in accordance with BMP T5.30 – 'Full Dispersion' as described in Chapter 5 of Volume V of the *Stormwater Management Manual for Western Washington* (2012); 2) residential roof runoff is infiltrated in accordance with Downspout Infiltration Systems in Volume III; or 3) approved continuous runoff modeling methods indicate that the entire runoff file is infiltrated." | Next, as written, this definition excludes from its scope commercial project related impervious surfaces as well as residential sidewalks, patios, driveways, etc. If infiltrated fully, these types of surfaces would not be considered effective impervious.<br><br>Finally, stormwater modeling under (3) is not something an average homeowner or architect would be able to do. | feet of native vegetation in accordance with BMP T5.30 – 'Full Dispersion' as described in Chapter 5 of Volume V of the *Stormwater Management Manual for Western Washington* (2012); (2) residential roof runoff is infiltrated in accordance with Downspout Infiltration Systems in Volume III; (3) residential and/or commercial surfaces that infiltrate on-site pursuant to Volume III; or (4) approved continuous runoff modeling methods indicate that all runoff will be infiltrated." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 2; pg. 3 | "***Erodible or leachable materials*** – Wastes, or chemicals that measurably alter the physical or chemical characteristics of runoff when exposed to rainfall. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage." | As written, this definition limits the defined term to meaning only "wastes" and "chemicals." Other types of substances should be included in the defined term as well. Recommend using the broader term "materials" instead. | "***Erodible or leachable materials*** – Materials that measurably alter the physical or chemical characteristics of runoff when exposed to rainfall. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 2; pg. 3 | "***Hard Surface*** – An impervious surface, a permeable pavement, or a green roof." | The County recommends abandoning use of this defined term. If Ecology chooses to retain the term, the County recommends removing "permeable pavement" from the definition of the term.<br><br>It does not make sense to include impervious surfaces and permeable pavement in the same category. Impervious surfaces and permeable pavement do not have similar hydrological characteristics. It is precisely because permeable pavement has different hydrological characteristics than impervious surfaces that Ecology is including permeable pavement in the Mandatory Lists of LID BMPs. Because the two types of surfaces do not handle stormwater runoff in the same manner, they should not be treated the same for purposes of triggering Minimum Requirements.<br><br>Additionally, treating permeable pavement the same as impervious surfaces removes an incentive for a project proponent to use permeable pavement. The County recommends Ecology continue providing incentives to project proponents that encourage the use of permeable pavement by providing clear, measurable benefits that reward the use of permeable pavement. | [DELETE]<br><br>or<br><br>"***Hard Surface*** – An impervious surface or a green roof." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 2; pg. 3 | "***Land disturbing activity*** – Any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered | Recommend adding additional exemptions to the definition of "land disturbing activity" and breaking those out in an easier to read format. | "***Land disturbing activity*** – Any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Notwithstanding the foregoing, none of the following types of activities shall be considered land |

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| | | land-disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures." | | disturbing activities:<br>• Vegetation maintenance practices;<br>• Stormwater facility maintenance conducted according to established standards and procedures;<br>• Storage or movement of rock, soil, compost, sediment, or similar materials at a property owned or operated by a municipal stormwater permittee if the materials are used for municipal operations and the activity is regulated by Section S5.C.9 of this Permit; or<br>• Storage or movement of rock, soil, compost, sediment, or similar materials at a commercial property if the materials are offered for sale." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 4 | "***LID Principles*** – Land use management strategies that emphasize conservation, use of in-site natural features, and site planning to minimize impervious surfaces, native vegetation loss, and stormwater runoff." | This same term is defined in the main body of the Permit. It should not be re-defined in Appendix 1. Recommend deletion. | [DELETE] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 4<br><br>Appendix 1; Section 3.2; pg. 11<br><br>Appendix 1; Section 3.2; pg. 11 | "***New development*** – Land disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development."<br><br>"The following new development shall comply with Minimum Requirements #1 through #5 for the new and replaced hard surfaces and the land disturbed:"<br><br>"The following new development shall comply with Minimum Requirements #1 through #9 for the new and replaced hard surfaces and the converted pervious surfaces:" | The definition of "new development" limits the term to the "construction," "installation" or "creation" of "impervious surfaces."<br>However, Section 3.2 discusses "new development" as though the term includes "replaced hard surfaces" and "converted pervious surfaces."<br>Please revise Section 3.2 for consistency with the definition of "new development." | [NO CHANGE]<br><br>"The following new development shall comply with Minimum Requirements #1 through #5 for the new impervious surfaces and the land disturbed:"<br><br>"The following new development shall comply with Minimum Requirements #1 through #9 for the new impervious surfaces and land permanently disturbed in a manner that negatively affects on-site infiltration:" |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 5 | "***Pollution-generating pervious surfaces (PGPS)*** - Any non-impervious surface subject to vehicular use, industrial activities (as further defined in the glossary of the *Stormwater Management Manual for Western* | The use of the term "blow-in rainfall" is not easily modeled or quantified. Recommend changing this definition to focus on whether the subject pollutant is transported via surface flow. | "***Pollution-generating pervious surfaces (PGPS)*** - Any non-impervious surface subject to vehicular use, industrial activities (as further defined in the glossary of the *Stormwater Management Manual for Western Washington* |

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| | | *Washington* (2012)); or storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or run-on or blow-in of rainfall, use of pesticides and fertilizers, or loss of soil. Typical PGPS include permeable paved roads, driveways and parking lots, lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields." | | (2012)); or storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or run-on or surface flow, use of pesticides and fertilizers, or loss of soil. Typical PGPS include permeable paved roads, driveways and parking lots, lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 5 | "***Project site*** – That portion of a property, properties, or right of way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces." | Recommend adding a reference to the site plan developed pursuant to Minimum Requirement #1 for clarity and consistency. | "***Project site*** – That portion of a property, properties, or right of way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces, as described, delineated and/or depicted in the Stormwater Site Plan prepared for the project pursuant to Minimum Requirement #1." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 5 | "***Rain Garden*** – A non-engineered shallow landscaped depression, with compost-amended native soils and adapted plants. The depression ponds and temporarily stores stormwater runoff from adjacent areas. Designed to allow stormwater to pass through the amended soil profile. Stormwater that exceeds the storage capacity is designed to overflow to an adjacent drainage system. Refer to the Rain Garden Handbook for Western Washington Homeowners (WSU 2007 or as revised) for rain garden specifications and construction guidance." | This language used in this definition is problematic and should be revised. Within the engineering community, the term "non-engineered" is generally understood to mean there is no guaranty/likelihood that the system at issue will function appropriately. Thus, from a technical standpoint, anything that is "non-engineered" should not be used in land development or for managing stormwater runoff because anything that is "non-engineered" is likely to fail. The County recommends Ecology revise this definition to remove the term "non-engineered."<br><br>Also, as it is entirely possible to design and build a functional rain garden without reference to the Rain Garden Handbook for Western Washington Homeowners, the County recommends removing reference to that document from this definition.<br><br>Further, it is neither necessary nor appropriate to incorporate a 40+ page document authored by a third party into the Permit by reference. If there are particular provisions from the Rain Garden Handbook for Western Washington Homeowners that Ecology believes should be mandatory, those provisions should be inserted directly into the main body of the Permit and/or its Appendices. The County recommends deleting from Appendix 1 all references to the Rain Garden Handbook for Western Washington Homeowners.<br><br>Additionally, with respect to rain gardens, generally, the Washington State Board of Registration for Engineers has in the past considered this type of design to be an engineering function that needs to be prepared, stamped and sealed by a licensed engineer. Has Ecology contacted the Board of Registration regarding this issue?<br><br>It is unclear to the County whether the County has authority to accept a rain garden plan designed by a homeowner instead of a | "***Rain Garden*** – A shallow, landscaped depression, with compost-amended native soils and adapted plants, which can be used to meet Minimum Requirement 5 – On-site Stormwater Management."<br><br>and<br><br>[DELETE FROM APPENDIX 1 ALL REFERENCES TO THE RAIN GARDEN HANDBOOK FOR WESTERN WASHINGTON HOMEOWNERS]<br><br>and<br><br>[REVISE TO ADDRESS THE NEED FOR DESIGN BY A LICENSED ENGINEER] |

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| | | | licensed professional. | |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 5 | "***Receiving waters*** - Bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. Ground water to which surface runoff is directed by infiltration." | This language is vague. It should be revised for clarity.<br>Additionally, as the NPDES permit program does not regulate ground water, ground water should be omitted from the definition. | "***Receiving waters*** - Bodies of water or into which surface runoff is discharged via a point source of stormwater or via sheet flow (e.g., streams, rivers, lakes, wetlands, salt water, or tributaries to any of the foregoing)." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 5<br><br>Appendix 1; Section 3.3; pg. 11<br><br>Appendix 1; Section 3.3; pg. 11 | "***Redevelopment*** – On a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of any impervious surface that is not part of a routine maintenance activity; and land disturbing activities."<br><br>"The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced hard surfaces and the land disturbed:"<br><br>"The following redevelopment shall comply with Minimum Requirements #1 through #9 for the new hard surfaces and converted pervious areas:" | The definition of "redevelopment" uses the words "the creation or addition of impervious surfaces" and the "replacement of any impervious surface that is not part of a routine maintenance activity." However, Section 3.3 discusses "redevelopment" as though the term includes "new and replaced hard surfaces" and "converted pervious areas."<br>Please revise Section 3.3 for consistency with the definition of "redevelopment." | [NO CHANGE]<br><br>"The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:"<br><br>"The following redevelopment shall comply with Minimum Requirements #1 through #9 for the new impervious surfaces and the land permanently disturbed in a manner that negatively affects on-site infiltration:" |
| Phase I Permit<br>2013-18 | Appendix 1; Section 2; pg. 5 | "***Replaced impervious surface*** – For structures, the removal and replacement of impervious surfaces down to the foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement." | There are a couple of problems with this definition as applied to "other impervious surfaces." First, base course is not easily identified in the field. Next, it is advisable to allow municipalities more flexibility in replacement of in-kind pavement for maintenance purposes. Finally, there are some projects where the repair of subgrade is done alongside installation of new roadway expansion, but the subgrade work is really a maintenance function. Recommend revising the second sentence for increased flexibility and ease of administration. | "***Replaced impervious surface*** – For structures, the removal and replacement of impervious surfaces down to the foundation. For other impervious surfaces, such surfaces are considered replaced impervious surfaces if the removal down to bare soil or base course results in grade changes of more than 0.25 feet; otherwise the work is considered maintenance rather than replacement. " |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3; pg. 9 | Figure 3.2: Flow Chart for Determining Requirements for New Development | Consistent with the County's request, above, to either (i) abandon use of the term "hard surfaces" entirely, or (ii) revise the definition of "hard surfaces" to exclude permeable pavement, the County requests that Ecology revise Figure 3.2 to replace all instances of the term "hard surfaces" with the term "impervious surfaces." | [REVISE THE FLOW CHART TO REPLACE ALL INSTANCE OF THE TERM "HARD SURFACES" WITH THE TERM "IMPERVIOUS SURFACES"] |
| Phase I Permit | Appendix 1; Section 3; pg. 10 | Figure 3.3: Flow Chart for Determining Requirements for Redevelopment | This chart implies that an interior remodel of an existing building or a re-roofing of an existing structure would be required to meet | [REVISE TO CLARIFY] |

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| 2013-18 | | | Minimum Requirement 2. The County questions whether such was Ecology's intent. The County thought such projects would be exempt from MR 2 unless the ground is being disturbed. Please clarify. | |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3; pg. 10 | Figure 3.3: Flow Chart for Determining Requirements for Redevelopment | Consistent with the County's request, above, to either (i) abandon use of the term "hard surfaces" entirely, or (ii) revise the definition of "hard surfaces" to exclude permeable pavement, the County requests that Ecology revise Figure 3.3 to replace all instances of the term "hard surfaces" with the term "impervious surfaces." | [REVISE THE FLOW CHART TO REPLACE ALL INSTANCE OF THE TERM "HARD SURFACES" WITH THE TERM "IMPERVIOUS SURFACES"] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3.2; pg. 11 | "The following new development shall comply with Minimum Requirements #1 through #5 for the new and replaced hard surfaces and the land disturbed:<br>• Results in 2,000 square feet, or greater, of new plus replaced hard surface area, or<br>• Has land disturbing activity of 7,000 square feet or greater." | This provision is confusing. Based on this proposed language, together with the definition of "new development," and the definition of "hard surfaces," it appears that replacing 2,500 square feet of permeable pavement with 2,000 square feet of new permeable pavement (e.g. 500 sq. ft. less) meets the definition of "new development" and will trigger MR #1-#5. That does not sound appropriate. Is that in fact Ecology's intent? Please revise for clarity.<br>Additionally, the definition of the term "new development" limits the term to the "construction," "installation" or "creation" of "impervious surfaces." However, Section 3.2 discusses "new development" as though the term includes "replaced hard surfaces" and "converted pervious surfaces." Please revise this language in Section 3.2 for consistency with the definition of "new development." | "The following new development shall comply with Minimum Requirements #1 through #5 for the new impervious surfaces and the land disturbed:<br>• Results in 2,000 square feet, or greater, of new impervious surface area, or<br>• Has land disturbing activity of 7,000 square feet or greater." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3.2; pg. 11 | "The following new development shall comply with Minimum Requirements #1 through #9 for the new and replaced hard surfaces and the converted pervious surfaces:<br>• Results in 5,000 square feet, or greater, of new plus replaced hard surface area, or<br>• Converts ¾ acres, or more, of vegetation to lawn or landscaped areas, or<br>• Converts 2.5 acres, or more, of vegetation to pasture." | This provision is confusing and unreasonable.<br>Based on this proposed language, the definition of "new development," and the definition of "hard surfaces," it appears that replacing 5,500 square feet of permeable pavement with 5,000 square feet of new permeable pavement (e.g. 500 sq. ft. less) meets the definition of "new development" and will trigger MR #1-#9. That does not sound appropriate. Is that in fact Ecology's intent? Please revise for clarity.<br>Additionally, the definition of the term "new development" limits the term to the "construction," "installation" or "creation" of "impervious surfaces." However, Section 3.2 discusses "new development" as though the term includes "replaced hard surfaces" and "converted pervious surfaces." Please revise this language in Section 3.2 for consistency with the definition of "new development."<br>Finally, it is not the case that conversion of any type of vegetation to pasture or lawn will negatively affect the hydrologic cycle in the same manner. For example, the conversion of forest to lawn | "The following new development shall comply with Minimum Requirements #1 through #9 for the new impervious surfaces and the land permanently disturbed in a manner that negatively affects on-site infiltration:<br>• Results in 5,000 square feet, or greater, of new impervious surface area, or<br>• Converts ¾ acres, or more, of vegetation to lawn or landscaped areas, when such conversion negatively affects on-site infiltration, or<br>• Converts 2.5 acres, or more, of vegetation to pasture, when such conversion negatively affects on-site infiltration." |

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| | | | impacts the hydrologic cycle far more than a conversion from pasture to lawn. In fact, a conversion from pasture to lawn could actually improve infiltration and reduce runoff by amending soil formerly compacted by grazing. Please revise to clarify that conversion of vegetation is only a trigger if the conversion negatively affects on-site infiltration. | |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3.3; pg. 11 | "The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced hard surfaces and the land disturbed:<br>• Results in 2,000 square feet, or more, of new plus replaced hard surface area, or<br>• Has land disturbing activity of 7,000 square feet or greater." | This provision is confusing. Based on this proposed language, together with the definition of "redevelopment," and the definition of "hard surfaces," it appears that replacing 2,500 square feet of permeable pavement with 2,000 square feet of new permeable pavement (e.g. 500 sq. ft. less) meets the definition of "new development" and will trigger MR #1-#5. That does not sound appropriate. Is that in fact Ecology's intent? Please revise for clarity.<br>Additionally, the definition of "redevelopment" uses the words "the creation or addition of impervious surfaces" and the "replacement of any impervious surface that is not part of a routine maintenance activity." However, this language in Section 3.3 discusses "redevelopment" as though the term includes "new and replaced hard surfaces." Please revise this language in Section 3.3 for consistency with the definition of "redevelopment." | "The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:<br>• Results in 2,000 square feet, or more, of new plus replaced impervious surface area, or<br>• Has land disturbing activity of 7,000 square feet or greater." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3.3; pg. 11 | "The following redevelopment shall comply with Minimum Requirements #1 through #9 for the new surfaces and converted pervious areas:<br>• Adds 5,000 square feet or more of *new* hard surfaces or,<br>• Converts ¾ acres, or more, of vegetation to lawn or landscaped areas, or<br>• Converts 2.5 acres, or more, of vegetation to pasture." | This provision is confusing and unreasonable.<br>The definition of the term "redevelopment" uses the words "the creation or addition of impervious surfaces" and the "replacement of any impervious surface that is not part of a routine maintenance activity." However, this language in Section 3.3 discusses "redevelopment" as though the term includes "new and replaced hard surfaces" and "converted pervious areas." Please revise for consistency with the definition of "redevelopment."<br>Additionally, it is not the case that conversion of any type of vegetation to pasture or lawn will negatively affect the hydrologic cycle in the same manner. For example, the conversion of forest to lawn impacts the hydrologic cycle far more than a conversion from pasture to lawn. In fact, a conversion from pasture to lawn could actually improve infiltration and reduce runoff by amending soil formerly compacted by grazing. Please revise to clarify that conversion of vegetation is only a trigger if the conversion negatively affects on-site infiltration. | "The following redevelopment shall comply with Minimum Requirements #1 through #9 for the new impervious surfaces and the land permanently disturbed in a manner that negatively affects on-site infiltration:<br>• Adds 5,000 square feet, or more, of *new* impervious surfaces, or<br>• Converts ¾ acres, or more, of vegetation to lawn or landscaped areas, when such conversion negatively affects on-site infiltration, or<br>• Converts 2.5 acres, or more, of vegetation to pasture, when such conversion negatively affects on-site infiltration." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 3.3; pg. 11 | "If the runoff from the new hard surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the stormwater treatment facilities must be sized for the | It is not clear whether this provision is intended to apply only to redevelopment projects that are required to meet all Minimum Requirements #1 through #9, or if the provision is also intended to apply to redevelopment projects that are only required to meet | "For redevelopment projects required to meet Minimum Requirements #1 through #9, if the runoff from the new impervious surfaces and the land permanently disturbed in a manner that negatively affects on-site infiltration is not |

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| | | entire flow that is directed to them." | Minimum Requirements #1 through #5. Please clarify.<br><br>Additionally, revise the language used for consistency with the definition of "redevelopment," discussed above. | separated from runoff from other surfaces on the project site, the stormwater treatment facilities must be sized for the entire flow that is directed to them." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 3.4; pg. 12 | "For road-related projects, runoff from the replaced and new hard surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the Minimum Requirements if the new hard surfaces total 5,000 square feet or more and total 50% or more of the existing hard surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way." | As written, this provision is confusingly duplicative of the provision regarding redevelopment contained in Section 3.3, page 11. Please revise to clarify how the requirements of this paragraph differ from the language on the preceding page.<br><br>Additionally, all instances of "hard surfaces" in this provision should be changed to "impervious surfaces" for the reasons discussed previously (i.e. the hydrologic properties of permeable pavement are not similar to the hydrologic properties of impervious surfaces). | "Projects meeting all of the criteria specified below must apply Minimum Requirements #1 through #9 to both replaced and new impervious surfaces:<br><br>• The project is road-related;<br><br>• The new impervious surface totals 5,000 square feet or more; and<br><br>• The new impervious surface totals 50% or more of the total impervious surface area within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 3.4; pg. 12 | "Other types of redevelopment projects shall comply with Minimum Requirements #1 through #9 for the new and replaced hard surfaces if the total of new plus replaced hard surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing improvements." | As written, this provision is confusingly duplicative of the provision regarding redevelopment contained in Section 3.3, page 11. Please revise to clarify how the requirements of this paragraph differ from the language on the preceding page.<br><br>Additionally, all instances of "hard surfaces" in this provision should be changed to "impervious surfaces" for the reasons discussed previously (i.e. the hydrologic properties of permeable pavement are not similar to the hydrologic properties of impervious surfaces). | "Projects meeting all of the criteria specified below must apply Minimum Requirements #1 through #9 to both replaced and new impervious surfaces:<br><br>• The project is not road-related;<br><br>• The new impervious surface plus the replaced impervious surface totals 5,000 square feet or more of impervious surface; and<br><br>• The total valuation of the proposed improvements to be made to the property as a part of the project – including interior improvements – totals 50% or more of the assessed value of the pre-existing improvements." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 4.1; pg. 13 | "Stormwater Site Plans shall use site-appropriate development principles to retain native vegetation and minimize impervious surfaces to the extent feasible." | This requirement is ambiguous and confusing. A plain reading of the language suggests that no development whatsoever should occur. Please provide guidance regarding what levels of clearing and impervious surfaces constitute acceptable levels for various categories of developments (e.g. for a single family residence on 5 acre lot, for a 10 lot subdivision on a 5 acre lot, for a commercial development on a 5 acre lot, etc).<br><br>Additionally, the County would like to note potential difficulties with code enforcement here. For instance, if a property owner chooses to clear 100% of his or her property without a permit, what type of remediation should the County require to bring the site back into compliance? | [PROVIDE ADDITIONAL GUIDANCE] |
| Phase I Permit | Appendix 1; Section 4.2; pg. 13 | "The Permittee may develop an abbreviated SWPPP format to meet the SWPPP requirement under this permit for sites that are less than 1 acre." | This language is ambiguous. Is the term "sites that are less than 1 acre" intended to mean (1) the legal lot on which the development project is being conducts is less than 1 acre in size, or | "The Permittee may develop an abbreviated SWPPP format to meet the SWPPP requirement under this permit for development projects that will disturb less than 1 acre of |

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| 2013-18 | | | (2) development projects that disturb less than 1 acre of land, regardless of the size of the lot on which the project is located? Please revise to clarify. | land." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 4.2; pg. 14 | "Seasonal Work Limitations – From October 1 through April 30, clearing, grading, and other soil disturbing activities may only be authorized by the Permittee if silt-laden runoff will be prevented from leaving the site through a combination of the following:<br>1. Site conditions including existing vegetative coverage, slope, soil type and proximity to receiving waters; and<br>2. Limitations on activities and the extent of disturbed areas; and<br>3. Proposed erosion control measures." | This provision is confusing and the date criteria are inappropriate. Please revise.<br>As weather patterns are largely unpredictable in this region, these long-standing limitations should be determined by rainfall amounts, not by the calendar.<br>Additionally, as written, it is ambiguous whether the prevention of silt-laden runoff leaving the site must include all three types of the listed measures, or whether there is discretion to determine that, say, two out of the three listed measures will suffice. Please revise to clarify. | |
| Phase I Permit<br>2013-18 | Appendix 1; Section 4.2; pg. 14 | "Based on the information provided and/or local weather conditions, the Permittee may expand or restrict the seasonal limitation on site disturbance. The following activities are exempt from the seasonal clearing and grading limitations:<br>1. Routine maintenance and necessary repair of erosion and sediment control BMPs,<br>2. Routine maintenance of public facilities or existing utility structures that do not expose the soil or result in the removal of the vegetative cover to soil, and<br>3. Activities where there is one hundred percent infiltration of surface water runoff within the site in approved and installed erosion and sediment control facilities." | Exemptions for when a project has 100% infiltration of surface water runoff should include a requirement that this infiltration is demonstrated by approved hydrologic models.<br>Also, add an additional exemption for emergency work needed to protect public health, safety or welfare. | "Based on the information provided and/or local weather conditions, the Permittee may expand or restrict the seasonal limitation on site disturbance. The following activities are exempt from the seasonal clearing and grading limitations:<br>1. Routine maintenance and necessary repair of erosion and sediment control BMPs,<br>2. Routine maintenance of public facilities or existing utility structures that do not expose the soil or result in the removal of the vegetative cover to soil,<br>3. Activities where there is one hundred percent infiltration of surface water runoff within the site in approved and installed erosion and sediment control facilities, as demonstrated by approved hydrologic models, and<br>4. Emergency or other urgent non-routine work required to protect public health, safety or welfare, or to protect water resources." |
| Phase I Permit<br>2013-18 | Appendix 1; Section 4.2(12); pg. 21 | SWMPP Element 12: Managing the Project (general comment) | What type of project management documentation is the CESCL (or, for projects less than 1 acre in size, the inspector) required to maintain? | [PROVIDE ADDITIONAL GUIDANCE] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 4.2(13); pg. 22 | "Protect Low Impact Development BMPs<br>a. Protect all Bioretention and Rain Garden BMPs from sedimentation through installation and maintenance of erosion and sediment control BMPs on portions of the site that drain into the Bioretention and/or Rain Garden BMPs. Restore the BMPs to their fully functioning | The protections that are listed in this requirement are just as important for "conventional" infiltration facilities as for these LID BMPs. | [INSERT SIMILAR PROTECTION REQUIREMENTS FOR CONVENTIONAL BMPS INTO VOLUME III, CHAPTER 3.3.9 OF THE DRAFT 2012 *STORMWATER MANUAL FOR WESTERN WASHINGTON*] |

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| | | condition if they accumulate sediment during construction. Restoring the BMP must include removal of sediment and any sediment-laden Bioretention/rain garden soils, and replacing the removed soils with soils meeting the design specification.<br>b. Prevent compacting Bioretention and rain garden BMPs by excluding construction equipment and foot traffic. Protect completed lawn and landscaped areas from compaction due to construction equipment.<br>c. Control erosion and avoid introducing sediment from surrounding land uses onto permeable pavements. Do not allow muddy construction equipment on the base material or pavement. Do not allow sediment-laden runoff onto permeable pavements or base materials.<br>d. Keep all heavy equipment off existing soils under LID facilities that have been excavated to final grade to retain the infiltration rate of the soils." | | |
| Phase I Permit<br>2013-18 | Appendix 1; Section 4.3; pg 22<br><br>Appendix 1; Section 4.9; pg. 33 | "All known, available and reasonable source control BMPs must be required for to all projects approved by the Permittee. Source control BMPs must be selected, designed, and maintained in accordance with Volume IV of the Stormwater Manual for Western Washington (2012) or an approved equivalent manual approved by Ecology."<br><br>"Permittees must require an operation and maintenance manual that is consistent with the provisions in Volume V of the Stormwater Management Manual for Western Washington (2012) for proposed stormwater facilities and BMPs. The party (or parties) responsible for maintenance and operation shall be identified in the operation and maintenance manual. For private facilities approved by the Permittee, a copy of the operation and maintenance manual shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to the new owner. For public facilities, a copy of the operation and maintenance manual shall be retained in the appropriate department. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the local government." | The requirement currently contained in Appendix 1, Section 4.9, MR #9, to keep and maintain an operation and maintenance manual for newly constructed stormwater facilities should apply to all newly constructed stormwater facilities. Recommend moving that provision to become a part of Appendix 1, Section 4.3, MR #3. | "All known, available and reasonable source control BMPs must be required for to all projects approved by the Permittee. Source control BMPs must be selected, designed, and maintained in accordance with Volume IV of the Stormwater Manual for Western Washington (2012) or an approved equivalent manual approved by Ecology."<br>"Permittees must require an operation and maintenance manual that is consistent with the provisions in Volume V of the Stormwater Management Manual for Western Washington (2012) for proposed stormwater facilities and BMPs. The party (or parties) responsible for maintenance and operation shall be identified in the operation and maintenance manual. For private facilities approved by the Permittee, a copy of the operation and maintenance manual shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to the new owner. For public facilities, a copy of the operation and maintenance manual shall be retained in the appropriate department. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the local government." |
| Phase I | Appendix 1; | General Comments re: MR #5 | It should be made more clear that there are no follow-up actions to | |

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| Permit<br>2013-18 | Section 4.5;<br>pgs 23-25 | | be taken if the "Mandatory" BMPs are deemed infeasible.<br>Additionally, Minimum Requirement #5 raises public policy questions regarding the appropriate balance between social justice and environmental justice. In particular, the costs associated with the requirements listed in Mandatory List #1 are likely to be substantial. Imposing this level of cost on individual homeowners may be inappropriate for low-income populations. | |
| Phase I Permit<br>2013-18 | Appendix 1;<br>Section 4.5;<br>pg. 23 | "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.<br>Projects triggering only Minimum Requirements #1 through #5 may choose to demonstrate compliance with the LID Performance Standard in lieu of using Mandatory List #1. Projects selecting that option cannot use Rain Gardens. They can choose to use Bioretention options as described in the Stormwater Management Manual for Western Washington (2012) to achieve the LID Performance Standard.<br>Projects triggering Minimum Requirements #1 through #9, must apply On-site Stormwater Management in accordance with the table below." | This language is confusing. Please revise for clarity. | "For projects triggering only Minimum Requirements #1 through #5, the project proponent may choose to construct the project by using either of the following approaches to stormwater management: (1) using the On-site Stormwater Management BMP's from Mandatory List #1 for all surfaces within each type of surface listed below; or<br>(2) demonstrating compliance with the LID Performance Standard. If the project applicant/proponent elects to demonstrate compliance with the LID Performance standard, the project may not use Rain Gardens; however, the project may use Bioretention options as described in the Stormwater Management Manual for Western Washington (2012).<br>Projects triggering Minimum Requirements #1 through #9, must apply On-site Stormwater Management in accordance with the table below." |
| Phase I Permit<br>2013-18 | Appendix 1;<br>Section 4.5;<br>pgs. 24-25 | Entirety of Mandatory List #1 and Mandatory List #2 | As written, both Mandatory List #1 and Mandatory List #2 appear to prevent any project from using a combination of LID BMPs to address stormwater draining from "Roofs" or stormwater draining from "Other Hard Surfaces." Instead, as written, both Mandatory List #1 and Mandatory List #2 appear to require every project to use a single type of LID BMP to handle stormwater runoff from Roofs, and a single type of LID BMP to handle stormwater runoff from "Other Hard Surfaces." Namely, the first "feasible" type of LID BMP contained on the applicable Mandatory List. This restriction is illogical and unsound. The County can conceive of no legitimate reason to prohibit the use of additional types of LID BMPs on a site if such LID BMPs are appropriate and the project proponent desires to use them. Additionally, in many (if not most) circumstances, using a combination of multiple LID BMPs will provide a more stable and functional stormwater drainage/infiltration system than reliance on only one type of LID BMP.<br>To illustrate the problem with the current language, look at Mandatory List #2. Suppose a project proponent wanted to address stormwater runoff from the roof of a proposed structure by using a "Downspout Infiltration System," two "Bioretention BMPs" and a "vegetated roof." Those three types of LID BMPs constitute | [REVISE AND/OR RESTRUCTURE SECTION 4.5 AND BOTH MANDATORY LISTS TO ENABLE PROJECTS TO USE MULTIPLE TYPES OF LID BMPS] |

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| | | | Numbers 2, 3 and 5 on Mandatory List #2. Now suppose that, in this instance, the regulatory jurisdiction believed "Full Dispersion," which is LID BMP Number 1 on Mandatory List #2, would be a feasible method of handling the stormwater runoff from the hypothetical roof. Based on the existing language of Section 4.5 of Appendix 1, the project proponent would not be allowed to use any LID BMP other than "Full Dispersion" to handle stormwater runoff from the roof if the regulatory jurisdiction determined "Full Dispersion" was feasible. That is not a result the County supports, and the County suspects it is not the result Ecology intended.<br><br>Additionally, under the current language, some scenarios would result in contradictory requirements with which it would be impossible to comply. For example, looking at Mandatory List #1, suppose a project proponent wanted to construct a driveway and a patio on the project site. The project proponent proposes to use "Sheet Flow Dispersion" to handle stormwater runoff from the driveway and "Permeable pavement" to handle stormwater runoff from the patio. Those types of LID BMPs constitute Numbers 4 and 2 on Mandatory List #1. Now suppose that, in this instance, the regulatory jurisdiction believed "Full Dispersion," which is LID BMP Number 1 on Mandatory List #1, would be a feasible method of handling the stormwater runoff from all three of these "Other Hard Surfaces." Based on the existing language of Section 4.5 of Appendix 1, the project proponent would not be allowed to use any LID BMP other than "Full Dispersion" to handle stormwater runoff from the "Other Hard Surfaces" if the regulatory jurisdiction determined "Full Dispersion" was feasible. Thus, the project proponent would not be allowed to use "Permeable pavement," which is Number 2 on Mandatory List #1, for any of the "Other Hard Surfaces" on the site. However, according to footnote 2 to Mandatory List #1, if any pavement at all is used on a site, that pavement must be permeable to the extent feasible. The current language provides that if "Full Dispersion" is the feasible LID BMP for the site, then none of the other listed LID BMPs - of which "Permeable pavement" is one - can be used. So, what type of driveway and patio can the project proponent install? Must the driveway and patio be limited to dirt or gravel? May the driveway and patio be impervious because the ordering of the LID BMPs on Mandatory List #1 has prohibited "Permeable pavement" from being used on the site (thus making it "infeasible")?<br><br>Please re-evaluate the way this section is structured and revise the language to avoid unfortunate and unintended results. | |
| Phase I Permit | Appendix 1; Section 4.5; | Mandatory List #1 –Other Hard Surfaces, BMP 2 = "Permeable pavement in accordance with design | The County asks Ecology to revisit its proposed approach to increasing the use of permeable pavement. Specifically, the County recommends that Ecology develop mechanisms to encourage the use | [REVISE MANDATORY LIST #1 AND MANDATORY LIST #2 TO MAKE PERMEABLE PAVEMENT OPTIONAL AND ENCOURAGED RATHER THAN |

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| 2013-18 | pgs. 24-25 | criteria in Appendix III-C of the SMMWW"<br><br>Mandatory List #2 –Other Hard Surfaces, BMP 2 = "Permeable pavement in accordance with design criteria in Appendix III-C of the SMMWW" | of permeable pavement, rather than mandating the use of permeable pavement.<br><br>There are too many variables involved in determining the viability of successfully using permeable pavement in any particular situation to include the use of permeable pavement on any "mandatory list." The technical difficulty involved in making such a determination is illustrated by the lengthy list of situations described in Section 8.A.1, under which Ecology deems it "infeasible" to use permeable pavement.<br><br>However, while the County appreciates Ecology's attempt to include a broad variety of situations on that "infeasibility" list, the County does not believe the list is comprehensive. In fact, the County does not believe it is possible to create a truly comprehensive list that captures all of the myriad potential situations under which it will be "infeasible" to use permeable pavement.<br><br>The potential consequences of a structural failure of any given installation of pervious pavement are substantial. Not only is the cost (and environmental impact) of repairing or replacing the permeable pavement an issue, but there is also a significant likelihood that persons or property will be harmed due to such failure. Additionally, permeable pavement carries a potential for seepage/exfiltration failure (onto walking or driving surfaces) which poses risks to public health and safety, especially in freezing temperatures.<br><br>The County believes the potential risks inherent in mandating the installation of permeable pavement outweigh the potential gains of such a mandate. The County therefore recommends that Ecology re-evaluate its approach to permeable pavement and return to an incentive system rather than a mandatory system. | MANDATORY.] |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 4.5; pgs. 24-25 | Mandatory List #1 – Roofs, BMP #3; Other Hard Surfaces, BMP# 3 = "Rain gardens in accordance with design procedures in accordance with the 'Rain Garden Handbook for Western Washington.'" | The County is concerned about potential failure of rain gardens sited and constructed by non-engineers attempting to follow the instructions in the "Rain Garden Handbook for Western Washington." In particular, the County is concerned about flooding due to such failure, both on the subject property and on adjacent or nearby properties. The County recommends deleting all references to the Rain Garden Handbook for Western Washington.<br><br>As a whole, the Rain Garden Handbook for Western Washington is problematic because it attempts to simplify tasks that will usually require the knowledge, expertise and discretion of a professional engineer into mandatory abridged steps that homeowners are encouraged to blindly follow.<br><br>The Rain Garden Handbook assumes the average homeowner with no special knowledge or training and no special equipment will be | [DELETE ALL REFERENCES TO RAIN GARDEN HANDBOOK FOR WESTERN WASHINGTON] |

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| | | | capable of correctly following complicated instructions, and accurately performing complex engineering measurements and calculations. The County believes this is an unrealistic and incorrect assumption.<br><br>Additionally, several of the tests and processes described in the Rain Garden Handbook are overly simplistic and unlikely to provide accurate data even if conducted correctly, pursuant to the instructions. | |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 4.5; pg. 25 | Mandatory List #2 – Roofs BMP#5 = "For a commercial building, a vegetated roof or an impervious roof with runoff routed below permeable pavement. If the latter option is not used, a cost analysis is necessary to claim infeasibility of a vegetated roof." | This language is confusing. Please revise for clarity.<br><br>With respect to the first sentence, the County is concerned about the mandate to route roof runoff below permeable pavement. This increases the amount of soil necessary to meet vertical separation requirements and makes monitoring individual performance impossible. (Snohomish County is 60 to 70 percent Alderwood and Tokul Series soils with hardpan at 20 to 40 inches.) As written, this requirement will increase the likelihood that the permeable pavement will fail.<br><br>With respect to the second sentence, the County suspects Ecology's intent is not proper implemented by the current wording. Revise for clarity.<br><br>Finally, please clarify the criteria that must be included in the cost analysis necessary to demonstrate the infeasibility of a vegetated roof. | "For a commercial building, a vegetated roof or an impervious roof with runoff infiltrated in accordance with Volume III. If a vegetated roof is not used, a cost analysis [INSERT LANGUAGE CLARIFYING TYPE OF COST ANALYSIS OR CRITERIA TO BE INCLUDED IN SAME] is necessary to justify infeasibility of a vegetated roof." |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 4.7; pg. 32 | "The map in Appendix I-G of the 2012 Stormwater Management Manual for Western Washington depicts those areas which meet this criterion." | There is no Appendix I-G in the draft 2012 Stormwater Management Manual for Western Washington. Please either add the Appendix or delete this sentence. | [ADD APPENDIX OR DELETE SENTENCE.] |
| Phase I Permit<br><br>2013-18 | Appendix 1; Section 4.8; pg. 32<br><br>Appendix 1; Section 4.8; pg. 33 | "The requirements below apply only to projects whose stormwater discharges into a wetland, either directly or indirectly through a conveyance system."<br><br>"Projects within the drainage area of a wetland shall comply with Guide Sheets #1 through #3 in Appendix I-D of the *Stormwater Management Manual for Western Washington* (2012)." | These two provisions are inconsistent and mutually exclusive. The criterion "discharges into a wetland" is different from the criterion "within the drainage area of a wetland." Please revise the language on page 33 for consistency with the language on page 32.<br><br>Almost all projects would be "within the drainage area of a wetland." That proposed language would not only require intensive field work offsite to include location and categorization on private property, but would also significantly increases the cost to the applicant of modeling and documentation requirements for compliance with MR-8. Also, the proposed requirement is not synchronized with the length of the downstream analysis required. | [NO CHANGE]<br><br>"Projects for which stormwater discharges to a wetland shall comply with Guide Sheets #1 through #3 in Appendix I-D of the *Stormwater Management Manual for Western Washington* (2012)." |
| Phase I Permit | Appendix 1; Section 4.9; pg. 33 | "Permittees must require an operation and maintenance manual that is consistent with the provisions in Volume V of the Stormwater Management Manual for | This requirement should apply to all newly constructed stormwater facilities. Recommend moving this provision to become a part of MR #3. | [MOVE TO APPENDIX 1, SECTION 4.3, MR #3, pg. 22] |

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| 2013-18 | | Western Washington (2012) for proposed stormwater facilities and BMPs. The party (or parties) responsible for maintenance and operation shall be identified in the operation and maintenance manual. For private facilities approved by the Permittee, a copy of the operation and maintenance manual shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to the new owner. For public facilities, a copy of the operation and maintenance manual shall be retained in the appropriate department. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the local government." | By placing this provision in MR #9, only projects that are required to comply with MRs #1-#9 will be required to keep and maintain an operation and maintenance manual for the stormwater facilities in the project. Projects that only need to comply with MRs #1-#5 will not be required to keep an operation and maintenance manual for their stormwater facilities. There does not appear to be any reasoned basis for imposing this requirement on some projects but not others. The County recommends moving this requirement to be a part of one of the first five MRs, so that all projects constructing new stormwater facilities will be required to keep and maintain an operation and maintenance manual. | |
| Phase I Permit<br>2013-18 | Appendix 1; Section 7; pg. 35 | General Comment re: Section 7 – Basin/Watershed Planning | As the County commented with respect to Section S5.C.5.c of the Permit, land use planning activities are not an appropriate subject matter for this Permit. The basin planning requirements of this draft Permit are ultra vires and should be deleted.<br>Additionally, the SUSTAIN model referenced in Section 7 of Appendix 1 is still in the development stage. Neither the County nor any other Permittee should be required to perform an action using software that has not yet been proven functional. | [DELETE ENTIRETY OF SECTION 7] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 8.1.A; pg. 36 | "Where the site cannot be reasonably designed to locate bioretention facilities on slopes less than 15%, . or if bioretention is within the road right-of-way and the right-of-way cannot be feasibly designed to locate bioretention facilities on less than 8%" | This sentence is ambiguous. Ecology should revise to clarify what is meant by the term "reasonably designed." Permittees and project proponents all need have a clear methodology for determining whether or not this condition is met. | [REVISE TO CLARIFY CRITERIA FOR "REASONABLY DESIGNED"] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 8.1.A; pg. 36 | "Where the drainage area is less than 5,000 sq. ft. of pollution-generating impervious surface, or less than 10,000 sq. ft. of impervious surface; or less than ¾ acres of pervious surface, and the minimum vertical separation of 1 foot to the seasonal high water table, bedrock, or other impervious layer is not achieved." | This provision is confusing. Please revise to clarify the criteria. | "Where both of the following are true: (1) the drainage area is less than one of the following (a) 5,000 sq. ft. of pollution-generating impervious surface, (b) 10,000 sq. ft. of impervious surface, or (c) ¾ of an acre of pervious surface; and (2) the minimum vertical separation of 1 foot to the seasonal high water table, bedrock, or other impervious layer is not achieved. |
| Phase I Permit<br>2013-18 | Appendix 1; Section 8.1.A; pg. 36 | "Where the drainage area is more than any of the above amounts, and cannot reasonably be broken down into amounts smaller than those designated above, and the minimum vertical separation of 3 feet to seasonal high water table, bedrock, or other impervious layer is not achieved." | This phrase "any of the above" is ambiguous. Please revise for clarity.<br>Additionally, it is not clear whether Ecology intends that the vertical separation measurement occur from the bottom of an infiltration trench or from the top of the foot of amended soils added to the site? Please clarify. | "Where the drainage area is (1) any of the following sizes: (a) more than 5,000 sq. ft. of pollution-generating impervious surface; (b) more than 10,000 sq. ft. of impervious surface; or (c) more than ¾ acres of pervious surface, and (2) the drainage area cannot reasonably be broken down into amounts smaller than those designated above, and (3) the minimum vertical separation of 3 feet to seasonal high water table, bedrock, or other impervious layer is not achieved." |

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| Phase I Permit 2013-18 | Appendix 1; Section 8.1.A; pg. 37 | "Where the field testing indicates potential bioretention/rain garden sites have a short term (a.k.a., initial) native soil saturated hydraulic conductivity less than 0.30 inches per hour. In these instances bioretention/rain gardens serving pollutant-generating surfaces can be built with an underdrain, preferably elevated within the underlaying gravel layer, unless other feasibility restrictions apply." | Soils testing is potentially an undue hardship to the small home owner and often not accurate or reliable. While the intent of this feasibility measure seems to be to provide some size limitations in poorly-draining soils, the reality of this is going to be difficult to manage. | |
| Phase I Permit 2013-18 | Appendix 1; Section 8.1.A; pg. 37 | "Where the only area available for siting would threaten the safety or reliability of pre-existing underground utilities, pre-existing underground storage tanks, or pre-existing structures." | This provision should be revised to expressly include pre-existing road and similar surfaces.<br>Additionally, within an existing road right-of-way, one could argue that any bioretention system or rain garden might "threaten the safety or reliability" of "pre-existing structures." Ecology should be more clear regarding how a Permittee should make this determination. | "Where the only area available for siting would threaten the safety or reliability of pre-existing underground utilities, pre-existing underground storage tanks, pre-existing structures, or pre-existing road or other similar surfaces."<br>and<br>[REVISE TO CLARIFY CRITERIA] |
| Phase I Permit 2013-18 | Appendix 1; Section 8.1.A; pg. 37 | "Where there is a lack of usable space for rain garden/bioretention facilities at re-development sites." | Ecology should clarify how a Permittee will determine whether there is a lack of usable space. The criteria should include consideration of the often acute space constraints experienced by public road projects. | [REVISE TO CLARIFY CRITERIA] |
| Phase I Permit 2013-18 | Appendix 1; Section 8.1.B; pg. 37 | General comment re: Section 8.1.B – Permeable Pavements are considered infeasible: | This section should include consideration of potential weight restrictions, subgrade integrity, ability to maintain, and potential for exfiltration. | [ADD ADDITIONAL SUBSECTIONS ADDRESSING THESE ISSUES] |
| Phase I Permit 2013-18 | Appendix 1; Section 8.1.B; pg. 37 | "In the drive aisles of parking lots as long as runoff is directed to pervious pavement parking spaces." | Why is permeable pavement considered "infeasible" for the drive aisles of parking lots as long is runoff is directed to permeable parking spaces? That sounds like a design option for the engineer and not a feasibility criterion. Further explanation should be provided. | [REVISE TO CLARIFY] |
| Phase I Permit 2013-18 | Appendix 1; Section 8.1.B; pg. 38 | "Where the native soils below a road or parking lot do not meet the soil suitability criteria for providing treatment. Note: In these instances, the local government has the option of requiring a six-inch layer of media meeting the soil suitability criteria or the sand filter specification as a condition of construction." | As written, the actual feasibility criterion pertains to feasibility of placing a six-inch layer of a suitable filter medium under the pavement. If this is what Ecology intended, please rewrite to specify the criterion. | [REVISE TO CLARIFY] |
| Phase I Permit 2013-18 | Appendix 1; Section 8.1.B; pg. 38 | "Where regular, heavy applications of sand occur to maintain traction during winter." | All Snohomish County roads are subject to winter sanding for safety, regardless of pavement type, and the degree of application is dictated by weather. Ecology must set forth express criteria for "regular, heavy applications of sand." | [REVISE TO CLARITY] |
| Phase I | Appendix 1; Section 8.1.B; | "Where the installation of permeable pavement would threaten the safety or reliability of pre-existing | This provision should be revised to expressly include pre-existing | "Where the installation of permeable pavement would threaten the safety or reliability of pre-existing underground |

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| Permit<br>2013-18 | pg. 38 | underground utilities or pre-existing underground storage tanks." | road and similar surfaces.<br>Additionally, one could argue that the installation of permeable pavement might "threaten the safety or reliability" of any "pre-existing underground structures" and/or "pre-existing underground storage tanks." Ecology should be more clear regarding how a Permittee should make this determination. | utilities, pre-existing underground storage tanks or pre-existing road or other similar surfaces."<br>[REVISE FOR CLARITY] |
| Phase I Permit<br>2013-18 | Appendix 1; Section 8.1.B; pg. 39 | "Where appropriate field testing indicates soils have a short-term (a.k.a., initial) native soil saturated hydraulic conductivity less than 0.3 inches per hour. In these instances, roads and parking lots can be built with an underdrain, preferably elevated within the base course, unless other feasibility restrictions apply." | Soils testing is potentially an undue hardship to the small home owner and often not accurate or reliable. While the intent of this feasibility measure seems to be to provide some size limitations in poorly-draining soils, the reality of this is going to be difficult to manage. | |
| Phase I Permit<br>2013-18 | Appendix 2; Stillaguamish River; pgs. 5-6<br>Appendix 2; Snohomish River Tributaries; pgs. 6-8<br>Appendix 2; North Creek; pgs. 9-10<br>Appendix 2; Swamp Creek; pgs. 11-12<br>Appendix 2; Little Bear Creek; pgs. 15-16 | | The goal of TMDL requirements is to implement actions to reduce discharges of pollutants such that waterbodies meet water quality standards. Permittees must have assurance that they are analyzing water quality data to support either continued resource allocation in impaired areas or reduction of monitoring and other resources in the event that pollutant levels are meeting water quality standards. Ecology must clarify procedures in Water Quality Policy 1-11 to support a change of category when data support such a change. Permittees must be assured that Ecology will review water quality data on a timely basis to allow adaptive management of scarce resources in waterbodies that are actually impaired.<br>Ecology should have EPA approval of the 2012 freshwater assessment for impaired waters by winter of 2013. Snohomish County expects that a few sampling locations/segments currently identified as impaired for bacteria will have their category changed to not impaired. This may change the locations of original 303d listings and areas where Permit requirements apply. Ecology Permit coordinators are encouraged to discuss results of the 2012 freshwater assessment with the Environmental Assessment Program and modify the Permit as necessary.<br>Snohomish County has responsibility for five TMDLs in the Permit: Stillaguamish River (p. 5), Snohomish River Tributaries (p.6), North Creek (p. 9), Swamp Creek (p.11), and Little Bear Creek (p. 15). These TMDLs include most of the area covered by Snohomish County's Permit and all these TMDLs have required actions for reducing fecal coliform loading in surface waters. Therefore Snohomish County must have consistent programs and timelines across the County to identify and prioritize sources of fecal coliform pollution and to address the problem areas effectively and efficiently.<br><u>Public Education & Outreach and Operations & Maintenance:</u> We | |

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| | | | appreciate Ecology's consistent language across the TMDLs for Business Inspections. The language for Public Outreach and Education and Operations and Maintenance is consistent in four of the TMDLs and absent in the Little Bear Creek TMDL. We encourage addition of these sections to the Little Bear Creek TMDL to increase consistency of our programs and efficiency of reporting.<br><br><u>Surface Water Monitoring</u>: The language for Surface Water Monitoring is consistent in four of the TMDLs and is different in the Little Bear Creek TMDL. We recommend that Ecology use the same language for monitoring in Little Bear Creek as in the other TMDLs for Snohomish County. We have been monitoring Little Bear Creek for fecal coliform bacteria since 1993 and have included Little Bear Creek in the County's Microbial Water Quality Assessment since 2010. Given our previous data and knowledge of the watershed, we see no advantage or reason for establishing a different program in that watershed. Submitting a different QAPP for that watershed on a different timeline from the other TMDL watersheds in the County will only lead to a fragmented and less efficient program.<br><br><u>Targeted Source Identification & Elimination:</u> It is recognized that the Stillaguamish and Little Bear Creek do not include source identification and elimination requirements because the 2007-2012 NPDES permit did not require monitoring to inform prioritization for these efforts. However, Snohomish County included the Stillaguamish and Little Bear in its current source identification program. In fact, data analysis triggered source identification and elimination efforts in both basins during 2011. We recommend Ecology use the same language for targeted source identification and elimination for the Stillaguamish and Little Bear as in the other TMDLs for Snohomish County.<br><br><u>IDDE Field Screening</u>: Revise language as recommended in comment below, and incorporate this language into all TMDLs applicable to Snohomish County.<br><br>For the Snohomish River Tributaries, North and Swamp Creek subbasins, Permittees are required to provide written documentation of the data review used to inform prioritization of high priority areas. We ask Ecology to specify the submittal date for the report. | |
| Phase I Permit<br><br>2013-18 | Appendix 2; Stillaguamish River; pgs. 5-6 | "IDDE Field Screening: Each Permittee shall conduct illicit discharge detection and elimination (IDDE) field screening for bacteria sources in MS4 basins which discharge to surface waters in the area where these TMDL requirements apply. Phase II cities shall screen 100% of these MS4 basins by the expiration date of the permit. Snohomish County shall screen 50% of rural | Revise language as recommended. | "<u>IDDE Field Screening</u>: Each Permittee shall conduct illicit discharge detection and elimination (IDDE) field screening for bacteria sources in outfalls and associated conveyances that discharge to surface waters in the area where these TMDL requirements apply. Phase II cities shall screen 100% of these outfalls and associated conveyances by the expiration date of the permit. Snohomish County shall |

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| | | MS4 basins in the TMDL area by the expiration date of the permit. Permittees shall implement the schedules and activities identified in S5.C.8 of the Phase I permit or S5.C.3 of the Western Washington Phase II permit in response to any illicit discharges found." | | screen outfalls and conveyances in 50% of the unincorporated area within the TMDL area by the expiration date of the Permit. Permittees shall implement the schedules and activities identified in S5.C.8 of the Phase I permit or S5.C.3 of the Western Washington Phase II permit in response to any illicit discharges found." |
| Phase I Permit<br>2013-18 | Appendix 6; pg. 2; lines 29-31<br><br>G10; pg. 76; lines 41-42 | "Contaminated soils are considered solid waste and are regulated by local health departments/districts and laws/regulations governing the disposal of solid waste and hazardous waste."<br><br>"Solids resulting from cleaning stormwater facilities may be reused or delivered to a solid waste disposal site qualified to receive the material (see Appendix 6)." | See Snohomish County's comment regarding G10 above, which cross-references Appendix 6. The existing draft language implies that solids resulting from the cleaning of stormwater facilities are presumed contaminated unless proven otherwise. That is not the appropriate default position for the Permit to take. The default position should be that solids resulting from cleaning activities are not contaminated and may be freely re-used unless there is reason to believe the solids are contaminated. Recommend revising both the language in G10 and in Appendix 6 to clarify this issue. | "Solids resulting from or accumulated during the maintenance or cleaning of stormwater facilities may be reclaimed, recycled or reused. However, solids that are identified as contaminated pursuant to chapter 173-350 of the Washington Administrative Code shall be disposed of at a qualified solid waste disposal facility. |
| Phase I Permit<br>2013-18 | Appendix 11 | Entirety of Appendix 11. | See comment on Section S5.C.6.c above, which cross-references Appendix 11.<br>Appendix 11 is superfluous as the calculations resulting from Appendix 11 are not used anywhere else in the Permit. Additionally, even if that data were to be used for some legitimate and useful purpose, the quantitative methodology Appendix 11 employs will not generate accurate data. While a more rigorous (and much more costly) methodology such as the Western Washington Hydrology Model might provide somewhat more reliable data, the County does not recommend substituting such software modeling for the rough calculations that would be generated pursuant to Appendix 11. The County believes the marginal increase in the reliability of the data that would be generated by a more rigorous methodology, such as the WWHM, is not justified given the substantial cost of such modeling, the inherent limitations of the software and the superfluous nature of any data that would be generated. Instead, Appendix 11 and all references to it should simply be deleted. | [DELETE] |
| Phase I Permit<br>2013-18 | Appendix 12<br>General Comment | Entirety of Appendix 12. | As mentioned in connection with Section S8 above, it is not appropriate for the Permit to require a Permittee to enter into a contract. All Permit requirements should be contained within the body of the Permit itself. Attempting to mix Permit requirements with contractual obligations will create ambiguity. For instance, WA contract law would govern the parties' respective performance under a contract. If Ecology were to default on a contract obligation, would the County no longer be in compliance with the Permit? Would the County be required to agree to any contract | [DELETE] |

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| | | | amendments proposed by Ecology, else be in violation of the Permit? The County recommends Ecology abandon the contract model.<br><br>Should Ecology elect to proceed with the contract model, notwithstanding the County's objections, comments regarding specific provisions of Appendix 12 are contained below. | |
| Phase I Permit<br><br>2013-18 | Appendix 12; pg. 1, lines 11-15 | "Ecology is re-issuing Phase I and western Washington Phase II Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) Permits with new monitoring requirements. The Stormwater Work Group, a formal stakeholder committee, recommended that Ecology require Permittees to equitably contribute funds to implement a regional stormwater monitoring program (RSMP). Furthermore, the Stormwater Work Group recommended that Ecology serve as the administrative entity to manage the pooled funds, that Ecology enter into contractual arrangements with each Permittee, and that this agreement ensure that the funds will be spent on RSMP activities in accordance with Stormwater Work Group recommendations." | The recommendations of the Stormwater Work Group are irrelevant. What is relevant are the decisions Ecology has made based on those recommendations. Recommend revising to make the "Background" language more appropriate. | "In connection with the re-issuance of the National Pollutant Discharge Elimination System (NPDES) general municipal stormwater permits for Phase I and Western Washington Phase II jurisdictions, Ecology is implementing a new option for monitoring. At the recommendation of the Stormwater Work Group, a formal stakeholder committee, Ecology is allowing all Phase I and Western Washington Phase II permittees the option of contributing funds to a regional stormwater monitoring program (RSMP) for the Puget Sound region in lieu of each permittee performing its own independent monitoring activities within its jurisdictional boundaries. Ecology expects that combining the economic resources of multiple permittees to implement a strategically planned RSMP will result in a more efficient monitoring program that produces better and more accurate data for use across the region." |
| Phase I Permit<br><br>2013-18 | Appendix 12; pg. 1; lines 17-22 | "The project is being jointly funded by all of the Phase I and western Washington Phase II Municipal Stormwater NPDES Permittees (approximately 91 local jurisdictions and two ports) who choose to participate in the RSMP. Dates that permittees' funding shares are due to Ecology and the amount of each permittee's share during each year of the five-year permit are defined in permit conditions S8.C.1, S8.D.1, S8.D.3, and S8.E.1. All funding partners will be formally acknowledged in reports and other publications resulting from the project." | This language is inaccurate, unnecessary and should be deleted. First, a project is "jointly funded" when two parties participate. When more than two parties participate, a project is "collectively funded." Next, the contract should not incorporate important data such as payment amounts by reference. Instead, those amounts and the dates on which the funds are due to Ecology should be specified in the contract. However, only the funds due from the specific Permittee who is executing the specific contract should be included in the contract terms. Payments due to Ecology from other Permittees are irrelevant and should not be mentioned. | [DELETE] |
| Phase I Permit<br><br>2013-18 | Appendix 12; pg. 1; lines 27-28 | "The purpose of this Agreement is to provide a share of the funding required to conduct a regional stormwater monitoring program." | The purpose statement needs to include that payments made under the contract constitute compliance by the Permittee with Section S8 of the Permit. | "The purpose of this Agreement is to provide a share of the funding required to conduct a regional stormwater monitoring program for the Puget Sound region. Making the annual payments specified in this Agreement, constitutes full and complete compliance with the requirements of Section S8.C, S8.D and S8.E of the Permit, as applicable." |
| Phase I Permit<br><br>2013-18 | Appendix 12; pg. 1; lines 32-24 | "Work covered by this agreement will be completed by [end of state fiscal year following expiration date of permit], unless terminated sooner as provided herein. | No work should be required by the contract. The only thing required by the contract should be the Permittee's making of annual payments to Ecology. The reason for this brevity is that having fewer requirements in the contract will result in fewer opportunities | [DELETE] |

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| | | Ecology agrees to manage the funds, participate in an oversight committee, solicit requests for proposals, conduct an open and transparent process to rank applications, and enter into contracts with other entities to perform the activities described in Attachment A – Scope of Work, attached hereto by reference." | for a breach to occur. It is in neither the Permittee's nor Ecology's interest to increase the potential for a material breach to occur.<br>Additionally, as the scope of the RSMP cannot be determined until the number and identity of contributing Permittees is known, it seems inadvisable to attempt to describe the likely scope the RSMP with any level of detail. | |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 1; lines 42-43 | "[Jurisdiction] agrees to pay Ecology the total sum of _____ dollars as its share for accomplishing the work required by this agreement. This sum shall be paid in annual installments of ____ dollars." | This statement must be re-worded to reflect that the contract will not specify what tasks will be accomplished using the funds paid. Also, the payment amounts and dates should be individually specified for clarity. | "[Jurisdiction] agrees to pay to Ecology the amounts specified below on or before the dates specified below, in satisfaction of [Jurisdiction's] obligations under Section S8 of the Permit." |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 1; line 44 | [CURRENTLY BLANK] | If Ecology proceeds with a contract concept for funding the RSMP, the contract the County is required to execute must contain language acknowledging that the current County Council cannot bind future County Councils with respect to the payment of funds specified in the contract. The usual language the County uses in multi-year contracts is set forth in the adjacent column. | "Notwithstanding anything to the contrary contained elsewhere in this Agreement, all obligations of the County after the calendar year in which this Agreement is executed are contingent upon local legislative appropriation of the necessary funds for this specific purpose in accordance with the Snohomish County Charter and applicable law." |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 2; lines 1-4 | "This includes the sum of _____ dollars annually as [Jurisdiction's] share for status and trends monitoring in Puget Sound receiving waters; _____ dollars annually as [Jurisdiction's] share for regional effectiveness studies; and _____ dollars annually as [Jurisdiction's] share for the Western Washington source identification and diagnostic monitoring information repository." | For clarity, these amounts should be broken down by year, task and due date, just as they are in the body of the Permit. | Status Trends and Monitoring (Permit Section S8.C.1):<br>Year 1 Payment = $_____ Due by [DATE]<br>Year 2 Payment = $_____ Due by [DATE]<br>Year 3 Payment = $_____ Due by [DATE]<br>Year 4 Payment = $_____ Due by [DATE]<br>Year 5 Payment = $_____ Due by [DATE]<br>Effectiveness Studies (Permit Section S8.D.1 or S8.D.3):<br>Year 1 Payment = $_____ Due by [DATE]<br>Year 2 Payment = $_____ Due by [DATE]<br>Year 3 Payment = $_____ Due by [DATE]<br>Year 4 Payment = $_____ Due by [DATE]<br>Year 5 Payment = $_____ Due by [DATE]<br>Source Identification and Diagnostic Monitoring (Permit Section S8.E.1):<br>Year 1 Payment = $_____ Due by [DATE]<br>Year 2 Payment = $_____ Due by [DATE]<br>Year 3 Payment = $_____ Due by [DATE]<br>Year 4 Payment = $_____ Due by [DATE]<br>Year 5 Payment = $_____ Due by [DATE] |

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| Phase I Permit<br>2013-18 | Appendix 12; pg. 2; lines 22-24 | "Ecology and [Jurisdiction] may mutually amend this Agreement. The terms of this Agreement shall not be waived, altered, modified, or amended, in any manner whatsoever, except by written instrument signed by both parties." | The County questions the accuracy of this statement. Wouldn't the form of contract contained in Appendix 12 be a part of the Permit? If so, would a purported amendment be valid without a corresponding Permit modification? Would an attempt to amend the contract without a corresponding Permit modification be a violation of the Permit? This is yet another reason the County recommends abandoning the contract model for the RSMP. | |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 2; lines 27-30 | "All records supporting every request for payment shall be maintained by Ecology in a manner which will provide an audit trail to the expenditures for which state support is provided. Original source documents shall be maintained by Ecology and made available to [Jurisdiction] or a duly authorized representative upon request." | This language is unnecessary and should be deleted for clarity. No documentation is needed to support a request for payment. | [DELETE] |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 2; lines 33-34 | "Ecology will not be responsible for cost overruns. The total project cost estimate for which [Jurisdiction]'s share has been determined includes a 10% contingency." | This language is unacceptable and must be deleted. In order for participation in the RSMP to be a viable option for Permittees, Permittees must have certainty regarding the amount of payments required to be made under S8 for the duration of the Permit term. As Permittees will have no control over how Ecology spends the funds contributed to the RSMP, it is unfair and unreasonable to expect Permittees to bear cost overruns. | [DELETE] |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 2; lines 37-39 | "If after the completion date of this project, excess funds remain in Ecology's project account, Ecology will refund a pro-rated refunded amount to [Jurisdiction] no later than six months following the completion date of the project." | This language is inconsistent with the concept that the Permittee's compliance with S8 under the RSMP option consists entirely and exclusively of paying a particular sum to Ecology. Instead, this language suggests the Permittee may have some interest in how the funds are managed and spent. Recommend deletion of this language to remove any potential confusion on that point. | [DELETE] |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 2; lines 42-44; pg. 3; lines 1-2 | "This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement." | This provision is inaccurate. The contract is an extension of the Permit and would not be entered into absent the existence of the Permit and the regulatory framework in which the Permit exists. Recommend deletion to avoid confusion. | [DELETE] |
| Phase I Permit<br>2013-18 | Appendix 12; pg. 3; lines 6-14 | Project officer information. | The term "Project officer" suggests that Ecology and the Permittee are agreeing to perform a joint "project." That is not the case. This language should be deleted to avoid confusion. | [DELETE] |

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| Phase I Permit<br>2013-18 | Appendix 12; pgs. 4-16 | All language on all pages. | These provisions are not necessary and their inclusion in the contract increases the potential for a breach, whether technical or material. Recommend deleting all of these pages. If Ecology desires to include with the Permit a preliminary concept document describing potential components of the RSMP, perhaps that draft document could be included as an additional Appendix. Ecology should consider, though, the implications of including any draft RSMP document as a part of the Permit. Later changes to any such draft could require a Permit modification process. | [DELETE] |
| Phase I Permit<br>2013-18 | Annual Report Form<br>General Comment | All portions of the Annual Report Form. | The language appearing in the Annual Report Form will need to be revised to reflect any changes made to the language in the body of the Permit prior to final Permit issuance. | |