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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

COALITION OF GOVERNMENTAL ENTITIES: CITY OF AUBURN, CITY OF BAINBRIDGE ISLAND, CITY OF BELLEVUE, CITY OF BURLINGTON, CITY OF DES MOINES, CITY OF EVERETT, CITY OF KENT, CITY OF ISSAQUAH, CITY OF MOUNT VERNON, CITY OF RENTON, CITY OF SEATAC, CITY OF SNOQUALMIE, CITY OF SUMNER, all of which are municipal corporations of the State of Washington, COWLITZ COUNTY, a political subdivision of the State of Washington; and KING COUNTY, a political subdivision of the State of Washington,

Appellants,

and

CITIES OF KIRKLAND, KELSO, SAMMAMISH, CAMAS, LONGVIEW, LYNNWOOD, POULSBO, BREMERTON, BOTHELL AND FERNDALE, and THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Appellant-Intervenors,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Respondent,

No. 12-097c

STIPULATION AND AGREED ORDER OF DISMISSAL OF PHASE II NON-CONSOLIDATED LEGAL ISSUES No. 1, 4, 6, 7, 8, 10, 11, 12, 13, 14, and 15

1 and

2 PUGET SOUNDKEEPER ALLIANCE,
3 WASHINGTON ENVIRONMENTAL
4 COUNCIL, ROSEMERE NEIGHBORHOOD
ASSOCIATION,

5 Respondent-Intervenors.

6 Appellants, Appellant-Intervenors, Respondent, and Respondent-Intervenors, through
7 their respective counsel, hereby stipulate as follows:

8 **I. STIPULATION**

9 **IT IS HEREBY STIPULATED AND AGREED** as follows:

10 A. The parties agree to dismiss Phase II non-consolidated Legal Issues No. 1, 4, 6, 7,
11 8, 10, 11, 12, 13, 14, and 15, with each party paying their own attorneys' fees and costs, on the
12 terms and conditions set forth below:

13 1. Within 180 days following the expiration of all appeals in the consolidated
14 Phase I and II municipal stormwater permit appeals (PCHB Nos. 12-093c and -097c), the
15 Washington State Department of Ecology ("Ecology") shall modify the 2013 Phase II Municipal
16 Stormwater General Permit for Western Washington ("the Permit") as set forth in Exhibit "A"
17 attached.

18 2. Within six (6) months from the date of execution of this Stipulation,
19 Ecology shall issue guidance in substantially the following form regarding the following revised
20 Permit definitions:

21 a. "Outfall" definition guidance:

- 22
- 23 • "a point source as defined by 40 CFR 122.2" = limits outfalls as "discernible,
confined and discrete conveyances"
 - 24 • "at the point where" = further modifies "discernible, confined and discrete
25 conveyances" to a discernible, confined and discrete point; excludes stormwater
conveyances that have no outlet, such as dispersion BMPs
- 26

- 1 • “a discharge” = applies not only to stormwater but also to illicit discharges
- 2 • “leaves the permittee’s MS4” = intentionally possessive to a single MS4 permittee,
- 3 not a group of MS4 permittees; excludes private and unregulated public stormwater
- 4 systems for the purposes of its use in this permit. It is likely that municipalities will
- 5 want to identify private or unregulated public outfalls in order to have a
- 6 comprehensive understanding of drainage within their jurisdiction.
- 7 • “and enters a receiving waterbody or receiving waters.” = see definition of receiving
- 8 waterbody and receiving waters (e.g., surface water and groundwater)
- 9 • “Outfall also includes the permittee’s MS4” = intentionally possessive to a single
- 10 MS4 permittee, not a group of MS4 permittees; excludes private and unregulated
- 11 public stormwater systems for the purposes of its use in this permit. It is likely that
- 12 municipalities will want to identify private or unregulated public outfalls in order to
- 13 have a comprehensive understanding of drainage within their jurisdiction.
- 14 • “facilities/BMPs” = broad use of the term “facilities/BMPs” to accommodate a wide
- 15 range of infiltration facilities including any pre-existing facilities and retrofit
- 16 facilities; not limited to “stormwater treatment and flow control BMPs/facilities” as
- 17 defined in the permits.
- 18 • “designed to infiltrate stormwater.” = limits applicable infiltration facilities/BMPs to
- 19 those that are designed to infiltrate; excludes facilities/BMPs that inadvertently
- 20 infiltrate, such as ditches and swales. For the purposes of this permit, UIC facilities
- 21 are categorically excluded; however it is likely that municipalities will want to
- 22 identify UIC facilities as a form of an outfall in order to have a comprehensive
- 23 understanding of drainage within their jurisdiction.
- 24 • Outfall does not include [the points where] pipes, tunnels, or other constructed
- 25 conveyances which connect segments of the same receiving waters and are primarily
- 26 used to convey receiving waters (for example: stream culverts). = excludes in-stream
- culverts that convey the stream under roadways; excludes the outlets of streams that
- have been piped under development areas.

b. “Receiving waterbody” or “receiving waters” definition guidance:

- A receiving water body is not defined by the type of discharge it receives. For example, an illicit discharge of non-stormwater can occur to receiving water. Thus, the definition does not specify what is discharged.
- It is acceptable to retain the last use of “stormwater” because it is referring to what the facilities/BMPs were designed to do.
- This definition does not refer to MS4 either, because a receiving waterbody is not defined by who discharges to it.

- 1 • The definition does not indicate that the discharge must be intentional (i.e., to which a
2 discharge is directed) because a receiving waterbody is not defined by an intention to
3 discharge.

4 c. “Discharge point” definition guidance:

- 5 • “the location” = avoids circular use of “point” in the term and the definition; avoids
6 confusion with 40 CFR 122.2 point source
- 7 • “where a discharge” = applies not only to stormwater but also to illicit discharges
- 8 • “leaves” = the use of discharge point in the permit is always referring to a permittee’s
9 discharge from their MS4 to something else.
- 10 • “the permittee’s MS4” = intentionally possessive to a single MS4 permittee, not a
11 group MS4 of permittees
- 12 • “to” = the use of discharge point in the permit is always referring to a permittee’s
13 discharge from their MS4 to something else.
- 14 • “another permittee’s MS4” = applies to permitted regulated MS4s
- 15 • “or a private” = applies to private stormwater infrastructure
- 16 • “or public” = applies to non-permitted and/or non-regulated publicly owned or
17 operated stormwater infrastructure
- 18 • “stormwater conveyance” = broadly used to indicate stormwater infrastructure
- 19 • “and discharges to ground,” = the discharge need not reach groundwater to be
20 considered a discharge to ground
- 21 • “except where such discharge occurs via an outfall.” = ties back to revised outfall
22 definition to prevent a situation where something is both an outfall and a discharge
23 point; does not limit discharge points to ground to infiltration facilities/BMPs that are
24 designed to infiltrate; includes facilities/BMPs that inadvertently infiltrate, such as
25 ditches and swales; includes stormwater conveyances that have no outlet, such as
26 dispersion BMPs.
- The permit does not need to define “connection point” as it uses the word
“connections” in a basic dictionary use.

3. Ecology agrees to continue to work with Phase II Coalition members, other
permittees, and the Washington State Department of Commerce to explore options for meeting

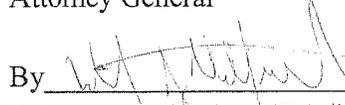
1 stormwater development/flow control standards on small, redevelopment sites in urban growth
2 centers.

3 DATED this 27 day of March, 2014.

4
5 FOSTER PEPPER PLLC

ROBERT W. FERGUSON
Attorney General

6
7 By 
8 Lori Terry Gregory, WSBA # 22006
9 John Ray Nelson, WSBA # 16393
10 Attorneys for Appellants and
11 Appellant-Intervenors Collectively
12 Identified as Coalition of
13 Governmental Entities

By 
14 Robert J. Hatfield, WSBA # 39905
15 Assistant Attorney General
16 Attorneys for Appellant-Intervenor
17 State of Washington
18 Department of Transportation

13 DANIEL T. SATTERBERG
14 King County Prosecuting Attorney

ROBERT W. FERGUSON
Attorney General

15 By _____
16 Joseph B. Rochelle, WSBA # 26978
17 Senior Deputy Prosecuting Attorney
18 Attorneys for Appellant King County

By _____
19 Ronald L. Lavigne, WSBA # 18550
20 Senior Counsel
21 Phyllis J. Barney, WSBA # 40678
22 Attorneys for Respondent
23 State of Washington
24 Department of Ecology

21 **ORDER**

23 Upon reviewing the foregoing Stipulation and good cause appearing therefor;

24 **IT IS HEREBY ORDERED**, in accordance with the terms and conditions set forth in
25 the foregoing Stipulation, non-consolidated Phase II Legal Issues No. 1, 4, 6, 7, 8, 10, 11, 12, 13,
26

STIPULATION AND AGREED ORDER OF DISMISSAL OF PHASE II NON-
CONSOLIDATED LEGAL ISSUES NO. 1, 4, 6, 7, 8, 10, 11, 12, 13, 14, AND 15 - 5

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 stormwater development/flow control standards on small, redevelopment sites in urban growth
2 centers.

3 DATED this ____ day of _____, 2014.

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5 FOSTER PEPPER PLLC

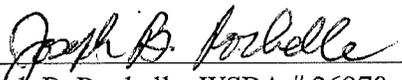
ROBERT W. FERGUSON
Attorney General

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9 John Ray Nelson, WSBA # 16393
10 Attorneys for Appellants and
11 Appellant-Intervenors Collectively
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13 Governmental Entities

By _____
Robert J. Hatfield, WSBA #
Assistant Attorney General
Attorneys for Appellant-Intervenor
State of Washington
Department of Transportation

13 DANIEL T. SATTERBERG
14 King County Prosecuting Attorney

ROBERT W. FERGUSON
Attorney General

15 By 
16 Joseph B. Rochelle, WSBA # 26978
17 Senior Deputy Prosecuting Attorney
18 Attorneys for Appellant King County

By _____
Ronald L. Lavigne, WSBA # 18550
Senior Counsel
Phyllis J. Barney, WSBA # 40678
Attorneys for Respondent
State of Washington
Department of Ecology

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1 stormwater development/flow control standards on small, redevelopment sites in urban growth
2 centers.

3 DATED this ____ day of _____, 2014.

4
5 FOSTER PEPPER PLLC

ROBERT W. FERGUSON
Attorney General

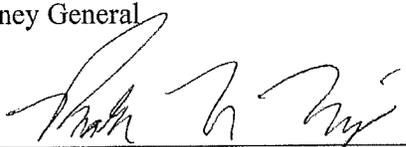
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By _____
Robert J. Hatfield, WSBA #
Assistant Attorney General
Attorneys for Appellant-Intervenor
State of Washington
Department of Transportation

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King County Prosecuting Attorney

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Attorney General

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18 Attorneys for Appellant King County

By  _____
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Phyllis J. Barney, WSBA # 40678
Attorneys for Respondent
State of Washington
Department of Ecology

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1 14, and 15 are dismissed, and the appeal of all non-consolidated issues is hereby dismissed, with
2 each party paying their own attorneys' fees and costs. This Dismissal does not dismiss or affect
3 in any way the appeal of Phase II issues that were consolidated with the Phase I Permit appeal,
4 which Phase II consolidated issues and appeal are addressed in the Board's Finding of Fact,
5 Conclusions of Law and Order dated March 21, 2014.

6 DATED this ___ day of _____, 2014.
7

8
9 POLLUTION CONTROL HEARINGS BOARD

10 _____
11 Joan M. Marchioro, Presiding

12 _____
13 Tom McDonald, Member

14 _____
15 Kathleen D. Mix, Chair
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