BRIEFING PAPER FOR
Signing Ecology-WSDOT Implementing Agreement
Addressing Stormwater

MEETING/EVENT DATE: N/A

MEETING/EVENT TITLE: N/A

PURPOSE: Background information related to signing attached agreement between WSDOT and Dept of Ecology.

HOW WILL THIS IMPACT THE DEPARTMENT?

In 2009, Ecology issued a five-year stormwater permit (Permit) to WSDOT. Under this Permit, WSDOT must apply the technical standards from our *Highway Runoff Manual* for the design, operation and maintenance of stormwater facilities within the permit coverage area (see attached map).

During the course of the 2009 permit's development, Ecology raised concerns about addressing WSDOT's facilities located outside the geographic scope of the permit. To respond to those questions, Ecology and WSDOT executed an Implementing Agreement in 2009 which requires WSDOT to apply the Highway Runoff Manual statewide.

Ecology plans to reissue the Permit on March 6, 2014. The revised permit has requirements similar to the 2009 permit. As part of developing the new Permit, WSDOT updated its Highway Runoff Manual.

The HRM was revised to include the low impact development requirements in the Permit, increase clarity to make the manual more useful to designers, and include new options for addressing stormwater.

We also updated the attached Implementing Agreement to reflect the 2014 Permit, refer to the revised Highway Runoff Manual, and update the implementation timeframe for applying the revised manual on projects. No significant changes have been made in the updated Implementing Agreement.

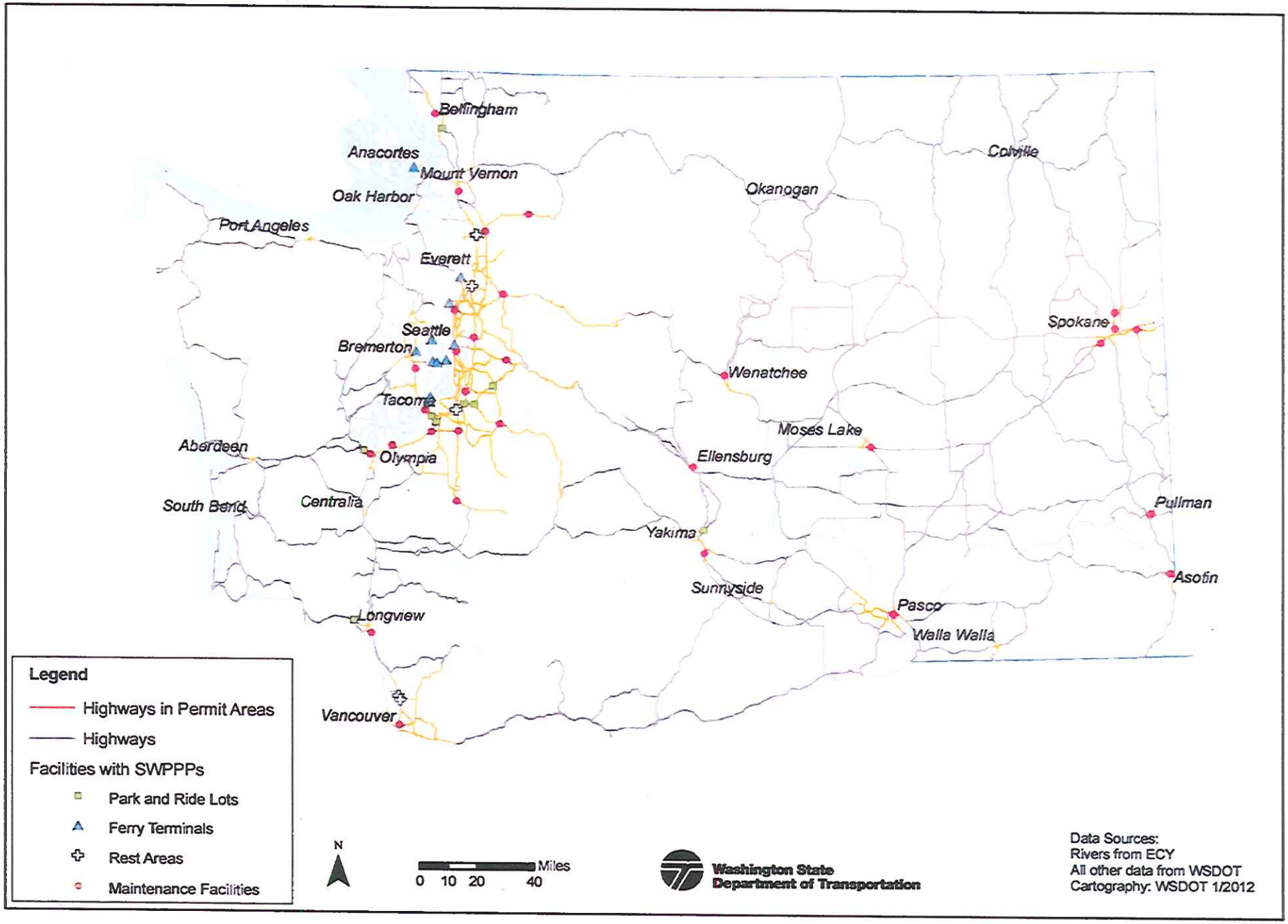
WHAT ARE THE TRADEOFFS? The alternative to this agreement is for Ecology to require state-wide permit coverage. That would increase WSDOT's stormwater obligations outside the existing permit coverage area and increase WSDOT's exposure to Clean Water Act citizen suits.

RECOMMENDATION: Sign agreement – we can provide a briefing as requested.

For further information, contact: (name, title and phone number).

Prepared by: Megan White
Date Submitted: 2/14/2013
Reviewed by:
Approved by:

Figure 1 **WSDOT Facilities Located Within Phase I and Phase II Municipal Stormwater Permit Areas**



IMPLEMENTING AGREEMENT

BETWEEN

WASHINGTON STATE DEPARTMENT OF ECOLOGY

And

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

REGARDING APPLICATION OF THE HIGHWAY RUNOFF MANUAL

This implementing agreement is being adopted in accordance with the *Memorandum of Understanding between the Washington State Departments of Ecology and Transportation Regarding Environmental Issues under Department of Ecology Jurisdiction*, executed August 4, 1988. This MOU states in part "Authority is hereby granted...to develop and execute program specific implementing agreements".

I. Purpose and Scope

The Department of Ecology developed separate Stormwater Management Manuals for Western Washington and Eastern Washington. The objective of the manuals is to provide guidance on the measures necessary to control the quantity and quality of stormwater produced by new development and redevelopment. The manuals are the required technical guidance documents for the NPDES municipal stormwater Phase I and Phase II permits.

The manuals provide guidance on how to prepare and implement stormwater site plans. These requirements are, in turn, satisfied by the application of Best Management Practices (BMPs). Projects that follow this approach will apply reasonable, technology-based BMPs and water quality-based BMPs to reduce the adverse impacts of stormwater. The manuals apply to all types of land development – including residential, commercial, industrial, and roads.

Manuals with a more-specific focus, such as WSDOT's Highway Runoff Manual (HRM), that have been determined to be equivalent to Ecology's manuals, may provide more focused guidance to specific types of development. WSDOT first adopted the HRM in 1995 in response to Chapter 173-270 WAC (Puget Sound highway runoff program), and since then the manual has expanded to statewide use as a result of various regulatory drivers.

Under WSDOT's municipal stormwater permit, WSDOT must apply the technical standards from its most recent Ecology approved Highway Runoff Manual (HRM) for the planning, design, and operation and maintenance of stormwater facilities in Phase I and Phase II permitted areas as well as TMDL areas specifying actions for WSDOT stormwater discharges. This Implementing Agreement addresses

the technical standards for stormwater discharges from WSDOT's stormwater conveyance and treatment systems for new and redeveloped facilities located outside of Phase I, Phase II, and TMDL areas specifying actions for WSDOT stormwater discharges.

II. Commitments

A. Washington State Department of Transportation

WSDOT has the responsibility to construct and operate safe transportation facilities that comply with federal and state laws, regulations, and policies. To manage its stormwater discharges to protect water quality, beneficial uses of the state's waters and the aquatic environment in general, WSDOT shall apply the 2014 version of the HRM (or later versions of the Ecology-approved HRM) throughout Washington State to direct the planning, design, construction and maintenance of stormwater management facilities for new and redeveloped Washington State highways, rest areas, park-and-ride lots, ferry terminals, and highway maintenance facilities. Projects going to AD shall comply with the 2014 HRM by March 6, 2015 except as follows:

i. Projects requiring an individual Section 401 Water Quality Certification may be subject to additional stormwater requirements if, based on site specific information, the use of the 2014 HRM will not result in compliance with State Water Quality Standards.
ii. Projects receiving Design Approval before July 1, 2014 may use the 2011 HRM on the condition that the projects go to AD by June 30, 2017.

Through its HRM, WSDOT establishes minimum requirements and provides uniform technical guidance for avoiding and mitigating impacts to water quality associated with the development of state-owned and -operated transportation infrastructure and for reducing and minimizing water quality impacts associated with the redevelopment of those facilities.

As required by the HRM, WSDOT will provide Ecology site-specific stormwater management proposals for review and approval via the *demonstrative approach* compliance pathway for any requested deviation from the HRM.

Each year, coinciding with the due date of the annual NPDES permit progress report, WSDOT will submit the annual statewide list of stormwater management facilities built between July 1 and June 30 to Ecology.

WSDOT will ensure that Ecology has current points of contact for design issues, operations and maintenance, TMDL development, and general stormwater management concerns.

B. Washington State Department of Ecology

Ecology has the responsibility to protect water quality through the implementation of Chapter 90.48 RCW, and Chapters 173-200, 173-201A, and 173-204 WAC. In addition, Ecology has been delegated

by the Environmental Protection Agency the authority to issue NPDES permits. To assure water quality protection through the permit process, Ecology will:

1. Administer a stormwater program consistent with federal and state water quality laws and regulations;
2. Establish minimum requirements for the development and redevelopment of projects of all sizes;
3. Provide guidance on preparing and implementing stormwater site plans;
4. As staffing and funding allow, the Water Quality Program will review WSDOT plans for 401 certification projects under the demonstrative approach and recommend approval or denial;
5. As staffing and funding allow, the Water Quality Program will participate in a cooperative review of WSDOT site designs for projects that request a variance or exception to the HRM and recommend approval or denial; and
6. Review changes to the HRM for approval, denial, or conditional approval in a timely manner.

C. Washington State Department of Transportation and Washington State Department of Ecology Cooperate

Both agencies have roles and responsibilities to control stormwater runoff: Ecology administers and enforces water quality laws, regulations, and policies; WSDOT implements transportation projects. The two agencies agree to:

1. Appreciate the role each agency serves to the benefit of Washington State citizens;
2. Communicate as colleagues;
3. Collaborate to resolve issues;
4. Submit and review design and modeling tool adjustments in a timely manner.

III. Duration of Agreement

This agreement will remain in effect for five years beginning at the date of issuance of WSDOT's NPDES municipal stormwater permit. Either party may terminate this Agreement upon 30-day written notice to the other. Written notice of termination shall include the reasons for the termination. Should WSDOT elect to terminate this agreement to implement the HRM statewide, Ecology will initiate a modification to the permit to include this requirement.

IV. Revision to the Agreement

From time-to-time changes to the HRM may be necessary to reflect an adaptive management approach for the use of the HRM. Revisions to the HRM minimum requirements, design criteria and tools, and BMP maintenance standards require Ecology approval prior to implementation. If those revisions necessitate changes to this Agreement, changes may be initiated by either party and will become final only after both parties are in agreement and appropriate signatures are attached.

V. Dispute Resolution

In the event of a dispute regarding implementation of this agreement, the parties shall make all reasonable efforts to resolve the dispute at the staff level. The parties may request the assistance of a mutually agreed upon facilitator at any time. If the parties engage a facilitator, the timelines will be adjusted according to a mutually agreed upon schedule. Unresolved disputes will be settled in the following hierarchical process:

Step 1: If disputes cannot be resolved between the immediate staff, staff will document the issue, its nature, timing, background, attempts at resolution, and any other relevant facts. Staff will present a request for resolution to their immediate supervisors.

Step 2: If the dispute cannot be resolved at the immediate supervisors' level within 20 days, supervisors will document this step and send the entire packet on to the Ecology Water Quality Program Manager and the WSDOT Director of Environmental Services.

Step 3: If the Program Manager and the WSDOT Director of Environmental Services cannot resolve the dispute within 20 days, they will document their efforts and send the entire packet sent on to each agency's director.

Step 4: If Directors cannot resolve the dispute within 30 days they will elevate the issue to the Governor's Office.

VI. Consistency with Applicable Statutes

Nothing in this Implementing Agreement shall be interpreted as restricting or impairing Ecology's ability to initiate compliance and enforcement actions under the procedures established in Chapter 90.48 RCW, nor shall it be interpreted as restricting or impairing WSDOT's legal rights under 90.48 RCW, nor its authorities or responsibilities under Title 47 RCW.

VII. Execution

The undersigned hereby acknowledge and agree that the policies, procedures, and activities identified in this document will guide the parties in an effort of mutual support and cooperation, in order that WSDOT and Ecology may achieve full compliance with this agreement, and initiate innovative strategies to protect and manage the quality of Washington State's waters.

The terms of this agreement are applicable subject to the availability of legislative appropriations or other funding sources.

Washington State
Department of Ecology

Maia D. Bellon
Director

Date 3/3/14

Washington State
Department of Transportation

Lynn Peterson
Secretary of Transportation

Date 2/19/14