State of Washington
Joint Transportation Committee

Final Report for

EFFECTIVE COST RECOVERY STRUCTURE FOR WSDOT, JURISDICTIONS, AND EFFICIENCIES IN STORMWATER MANAGEMENT

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EXECUTIVE SUMMARY

Under state law (RCW 90.03.525), a local government may recover expenses for managing stormwater runoff from state highways within its boundaries by charging the Washington State Department of Transportation (WSDOT) a stormwater fee. WSDOT charges are set at a percentage of the fee that each jurisdiction charges other property owners. Before WSDOT pays the fee, the jurisdiction must submit an application identifying the cost of managing state highway stormwater runoff and showing how the fee revenue will be used to directly address state highway runoff. This study was initiated to "identify ways to improve the process by which cities are reimbursed by the Washington State Department of Transportation (WSDOT) for managing stormwater runoff from state highways within city boundaries, and to make stormwater management of these facilities more efficient."[1]

A. STUDY OVERVIEW

Revised Code of Washington (RCW) 90.03.525 authorizes the charging of state highways for the impacts of their stormwater runoff on local systems. Specifically, rates charged are limited to "thirty percent of the rate for comparable real property", with some exceptions, to acknowledge "the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights-of-way". The calculation basis for the thirty percent limitation is unknown. There is no similar statutory provision of other developed property.

Revenues from the state for highway impacts "must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities." Local jurisdictions must submit both a "plan for the expenditure of the charges for that calendar year" as well as a progress report "on the use of charges assessed for the prior year" in order for the state to pay the charges.

Please note that this document includes references to "cost recovery" and "cost reimbursement" from WSDOT as the authorization provided in RCW 90.03.525. The primary purpose of a rate must be to recover costs, and not instead to generate revenue – generally held to be a tax purpose. Consistent with common ratemaking practice, the "costs" incurred by local jurisdictions to manage the impacts of state highway runoff and recovered from WSDOT under RCW 90.03.525 are prospective.

The purposes of this study are to:

- Understand the stormwater relationship between WSDOT and local jurisdictions;

[1] May 24, 2011 Request for Proposals to Identify an Effective Cost Recovery Structure for Cities, and Efficiencies in Stormwater Management.

- Solicit feedback from jurisdictions on improvements in stormwater management and cost recovery;
- Develop options for efficiencies in cost recovery and stormwater management; and
- Understand the impacts of National Pollutant Discharge Elimination System (NPDES) permitting requirements on the stormwater relationship between WSDOT and local jurisdictions.

To meet these objectives, the study produced the following:

- A "Stormwater 101 Guide";
- An inventory of state highways subject to the federal Clean Water Act;
- A survey of jurisdictions that impose stormwater fees to WSDOT, or otherwise manage stormwater from state highways;
- Case studies of jurisdictions;
- Recommendations for efficiency improvements; and
- Implementation recommendations.

The 2011 Washington State Legislature directed the Joint Transportation Committee (JTC) to undertake this study in ESHB 1175. The consultants worked closely with a staff workgroup made up of representatives of the Association of Washington Cities, WSDOT, the Departments of Ecology and Commerce, JTC staff, House and Senate Transportation Committee staff, and other state agencies and stakeholders.

B. STORMWATER 101 GUIDE

The "Stormwater 101" guide is intended to provide (1) a basic definition of stormwater and its components, (2) a summary of the regulations impacting stormwater management, and (3) stormwater program funding options and common practices. The document is targeted for use as background for legislators, other public officials, and the general public.

B.1 Stormwater Background

Stormwater is runoff from precipitation (rain, snow) across the land surface, generally exacerbated by development. Impervious surfaces such as roofs, roads and highways, parking lots and sidewalks prevent water from soaking into the ground or being taken up by vegetation. Runoff contributes to flooding and erosion, picks up pollutants, and flows into pipes, ditches, streams, and other receiving water bodies.

B.2 Stormwater Regulatory Environment

Although many regulations affect the practice of stormwater management, the primary driver is the federal Clean Water Act (CWA). The purpose of the CWA is to "…restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The CWA uses the NPDES permit as the primary instrument to control urban stormwater.

The state of Washington was delegated authority by the U.S. Environmental Protection Agency (EPA) to implement the NPDES permit program. The state Department of Ecology combined CWA federal requirements with the requirements of the Washington State Waste Discharge Act and initiated the first stormwater NPDES permit program in 1995 for jurisdictions having populations greater than 100,000 and the Washington State Department of Transportation. In 2007, Ecology issued the Phase II permits to jurisdictions that owned or operated municipal separated storm sewer

systems (MS4s). Today there are more than one hundred MS4 permits issued statewide on a five year renewal cycle. The next issuance date of MS4s is in 2013.

The permits include requirements for inventorying stormwater facilities; inspecting and maintaining facilities; reducing pollutants at their sources; public education; reporting NPDES permit compliance, and applying protective design standards (development regulations) to the addition of new impervious surfaces.

B.3 Stormwater Funding

A need for funding has accompanied the need for stormwater management. Stormwater utilities, supported by ongoing rates, are the largest local funding source for stormwater control in Washington State. Other, secondary, funding sources include:

- Street / Road Fund
- General Fund
- Special Assessments / Local Improvement Districts
- Special Fees
- Capital Facilities Charges
- Conventional Debt Instruments
- Special Grants and Loans

Most stormwater utility rates are based on impervious surface area. Impervious surface area is widely accepted as an appropriate measure of a property's contribution of runoff, providing a clear relationship, or "rational nexus," to service received from a stormwater program. Some cities and counties in the state charge their own streets for stormwater service. The streets, while providing stormwater conveyance, are often large contributors of stormwater runoff that must be managed – requiring funding from the street / road fund or, in the absence of charges to that fund, other stormwater ratepayers. Statute (RCW 47.52.090) grants WSDOT the authority to "use all storm sewers that are adequate and available for the additional quantity of run-off" to be generated by limited access state highways.

C. INVENTORY OF STATE HIGHWAYS

The inventory of state highways provides a list of state highway segments that generate stormwater runoff that impacts local stormwater systems. A separate compilation that identifies the type of mitigation (best management practice) present by highway by jurisdiction was also developed.

Some of the information compiled is summarized below:

- Total state highways: 7,058 centerline miles;
- Limited access state highways: 2,220 centerline miles;
- Limited access state highways within cities: 440 centerline miles.

D. SURVEY OF JURISDICTIONS

The consultants conducted a survey of eligible jurisdictions to identify their successes and challenges in recovering the costs of stormwater runoff generated by state highways, and in coordination with

WSDOT to manage that stormwater runoff. Eighty-one jurisdictions were eligible to be part of the survey, based on the following criteria:

- Jurisdiction must have a stormwater utility;
- Jurisdiction must be subject to National Pollutant Discharge Elimination System (NPDES) Phase 1 or Phase 2 municipal stormwater permitting requirements; and
- Jurisdictions must have one or more limited access state highways within their jurisdiction.

These criteria were used to identify jurisdictions that met the requirements of RCW 90.03.525, and as a result either did charge or could charge WSDOT for the impacts of state highways in their respective jurisdictions.

D.1 Survey Results

A total of forty-five jurisdictions chose to participate in the survey, whose results are summarized below:

- Major challenges to managing stormwater from limited access highways: Stormwater system capacity, costs, water quality, and staff resources
- Major challenges to complying with RCW 90.03.525: Factors upon which the fee is based, definition of what is eligible for reimbursement, and limited staff resources
- Major reasons for not charging WSDOT: Not charging for city streets, burdensome work plan and reporting requirements, and not tracking costs of runoff from state highways
- Working with WSDOT: Could be improved especially in regard to communication (most of which referred to the issues above)

E. CASE STUDIES

The consultants also conducted in-depth case studies of eight survey respondents, in order to accomplish the following:

- To assess costs that jurisdictions incur to manage stormwater from state highways;
- To assess costs and challenges that jurisdictions experience to charge WSDOT for cost recovery;
- To assess barriers to jurisdictions charging WSDOT for cost recovery;
- To assess jurisdictions' satisfaction with current stormwater state framework; and
- To collect jurisdictions' ideas to improve the process.

Background on the case study participants is provided in **Table ES.1** following.

Table ES.1 – Case Study Background

Jurisdiction	Population	Rate Approach	Monthly Rate	Eligible Highway Area	Annual WSDOT Payment	Notes
City of Issaquah	30,434	ESU [2]	$14.08	50 acres	$0	Actual costs unknown
City of Puyallup	37,022	ESU [2]	$10.75	20 acres	$0	Actual costs unknown
City of Bellingham	80,885	Impervious Square Feet	$7.00	48 acres	$44,500	Costs estimated at $75,000/yr
Clark County	425,363	Impervious Square Feet	$2.75	Unknown	$81,489	Costs estimated at $125,000/yr
City of Tukwila	19,107	Development Density	$7.75	92 acres	$62,897	Costs estimated at $134,000/yr
City of Olympia	46,478	Impervious Square Feet	$10.58	49 acres	$33,554	Costs typically exceed charges
City of Richland	48,058	ERU [2]	$3.85	113 acres	$0	City reports no WSDOT impact
City of Spokane Valley	89,765	ERU [2]	$1.75	82 acres	$0	City reports no WSDOT impact

Each of the case study participants was asked about suggested improvements to cost recovery under RCW 90.03.525. These results, a key outcome of the case studies, are summarized in **Table ES.2** following.

[2] The equivalent service unit (ESU) and equivalent residential unit (ERU) rate approaches are identical. They each charge impervious surface based on the average amount of impervious surface area on single family residences in the service area, defined to be one ESU or one ERU.

Table ES.2 – Case Study Results Regarding Cost Recovery under RCW 90.03.525

Suggested Improvements	City of Issaquah	City of Puyallup	City of Bellingham	Clark County	City of Tukwila	City of Olympia	City of Richland	City of Spokane Valley
Eliminate required link between WSDOT payments & spending	●	●	●	●	●	●		
Allow jurisdictions to charge non-limited access highways	●	●	●		●	●		●
Develop standard rate methodology for charging WSDOT	●	●	●	●	●	●		
Eliminate requirement that cities charge their own streets	●	●			●	●		
Develop standard application approach for charging WSDOT	●	●		●				
Increase flexibility in determining project / activity eligibility			●	●		●		
Charge full cost (not 30% of rate) to state highways			●			●		
Increase outreach to those not recovering costs	●							

Each of the case study participants was also asked about ways to improve collaboration between WSDOT and the local jurisdiction with regard to the management of stormwater runoff generated by state highways. Case study participants made the following suggestions.

- Collaboration with WSDOT on projects should be faster and more straightforward;
- WSDOT responsiveness to local maintenance needs should be improved;
- Information such as system mapping should be better shared;
- WSDOT should participate in watershed planning; and
- Retrofitting of existing WSDOT facilities should remain a priority.

F. EFFICIENCY IMPROVEMENTS

This assessment of the RCW 90.03.525 cost recovery process was conducted to determine opportunities for increased efficiencies in the administration of this state law as well as in the overall stormwater management practices between WSDOT and local jurisdictions.

F.1 Current Potential Inefficiencies

Potential inefficiencies, including perceived and actual barriers and difficulties within the cost recovery process, were first identified and segregated into the following categories, which are further discussed below:

- RCW 90.03.525 requirements versus jurisdictional realities;
- Physical limitations on drainage systems;
- Differences in NPDES permits; and

- Funding limitations between WSDOT and local jurisdictions.

F.1.a RCW 90.03.525 Requirements vs. Jurisdictional Realities

Differences between statutory requirements and current local realities create inefficiencies within the cost recovery process. RCW 90.03.525 was created long before it was necessary to reflect NPDES Phase I or II permit requirements, or how stormwater has been managed over the past decade. This contrast has created some barriers, or at a minimum, difficulties in both cost recovery and collaborative stormwater management.

Table ES.3 – Statutory Requirements vs. Jurisdictional Perspectives

RCW Requirement	Jurisdictional Perspective
Must have storm water utility.	Non-limiting as most have a utility.
Only applies to limited access rights of way.	Feel this should be applicable to non-limited access rights of way.
Spending WSDOT payments limited to "storm water control facilities" and associated best management practices (BMPs). BMPs are undefined.	Definition limits cost recovery to physical structures. Allows for discretion on part of WSDOT in approval of annual reports and cost recovery.
Cities and counties must charge their own streets/roads if they seek to charge WSDOT.	Rationale is not understood. Local roadways are maintained, source of funding should not be limiting factor. Seventeen cities and counties currently charge themselves. Of eligible cities, remaining 51 do not.
Cost recovery limited by 70 percent credit.	No justification for this credit could be identified. Desire 100 percent recovery.
Charges paid by WSDOT are limited to being used "solely" mitigation for WSDOT runoff.	Difficult to identify project or management costs for "solely" managing impacts from WSDOT.
Must submit annual plan.	No value and is costly to develop and produce
Provides mechanism for greater cost recovery, up to 100 percent.	Process is uncertain and potentially costly. Limited application.
Provides for collaboration with local cities and counties.	Highway Runoff Manual directs designers to separate flows – no joint facilities.
RCW states that appropriations made by the legislature to WSDOT are to enable WSDOT to meet its NPDES obligations for all state owned rights of way.	Based on the limited definition of "state right of way" in RCW 90.03.520, this provision does not allow for full funding of all state rights of way (non-limited access) and therefore requires local cities and counties to bear the burden of stormwater management for WSDOT's non-limited access highways as operators of the stormwater infrastructure.
RCW is not intended to limit collaboration between cities, counties, and the state.	Does not recognize the third party lawsuit provision of the Clean Water Act which is limiting collaboration on joint facilities.

F.1.b Physical Limitations on Drainage Systems

A number of factors associated with the physical characteristics of a possible site for cross collaboration can create inefficiencies. Opportunities for cross collaboration on design, construction, operation, and maintenance of stormwater control facilities exist throughout the state, both within and adjacent to limited access rights-of-way depending on individual site constraints. However, efforts for cross collaboration can be constrained by the physical settings of the state's limited access rights-of-way within a drainage basin. Land availability, the cost of adjacent land, contributing

drainage basin sizes, and the physical size requirements of resulting treatment facilities can all impact the feasibility of cross collaboration.

F.1.c Differences in NPDES Permits

Sometimes seen as a potential inefficiency, differences between the WSDOT permit and the Phase I and II permits (both eastern and western Washington) will in fact have little impact on the design parameters of new facilities or on the operations and maintenance of such facilities since the state Stormwater Manual sets the baseline for all NPDES permits.

F.1.d Funding Limitations between WSDOT and Local Jurisdictions

The fact that local rate-setting and capital budgeting do not always coincide with the timing of WSDOT planning creates potential inefficiencies. Aligning WSDOT's stormwater retrofit facility needs with city and county capital facility planning and utility rate analysis processes would benefit both WSDOT and the local governments by identifying collaborative projects with mutual benefit and funding.

F.2 Recommendations for Consideration

Consultant recommendations are provided below for improving cost recovery and for improving collaboration between WSDOT and local jurisdictions on the management of stormwater runoff from state limited access highways.

F.2.a Cost Recovery Recommendations

Based in large part on the input of the surveys, the case studies, and the consultant team, the following cost recovery improvements are recommended.

1. Retain requirement that to charge WSDOT, a jurisdiction must have a stormwater utility;
2. Eliminate the requirement that jurisdictions must charge their own roads;
3. Streamline application and reporting processes;
4. Provide written guidance and training on what is eligible for cost recovery;
5. Calculate, justify and document an updated credit (or credits) for WSDOT; and
6. Create at least two uniform WSDOT stormwater utility rates, one for eastern Washington and one for western Washington.

There is a process underway to update the agreement interpreting RCW 47.24, in which cities accept certain highway responsibilities from the state. This process is expected to resolve concerns regarding stormwater responsibilities for non-limited access highways.

Upon careful consideration of the draft recommendations, two alternative courses of action emerged. The consultants propose two options for consideration, which are outlined below. Both options accomplish efficiencies and address many of the challenges identified by the local jurisdictions; Option A does so with modifications to the existing statues, while Option B would require a new statutory framework. [✍ = statutory changes required; 👍 = no changes necessary; 📄 = additional study required]

Cost Recovery Option A: Modify Existing Statutory Framework

- Retain requirement that to charge WSDOT a jurisdiction must have a stormwater utility. 👍
- Eliminate the requirement that jurisdictions must charge their own streets. ✍
- Streamline application and reporting processes. 👍

- Provide written guidance on what is eligible for cost recovery.
- Conduct a study to calculate, justify and document an updated credit(s) for WSDOT.

Cost Recovery Option B: Create New Statutory Framework

- Retain requirement that to charge WSDOT a jurisdiction must have a stormwater utility.
- Eliminate the requirement that jurisdictions must charge their own streets.
- Conduct a study to establish a new, special uniform rate for limited access highways for inclusion in all stormwater utility rate structures statewide (minimum: one for eastern Washington and one for western Washington; more may be necessary to improve equity).
- Eliminate application and reporting requirements.

The table below includes a comparison of the two options, with an estimate of the relative cost impacts.

Table ES.4 – Cost Recovery Options Comparison

	One-Time Cost to Implement	Ongoing Savings	RCW Change	Ordinance Change	Time to Implement	Impact on WSDOT
Option A	$$	$$	Yes	Yes	≅ 1 yr	Depends on analysis
Option B	$$	$$$	Yes	Yes	≅ 2 yrs	Depends on analysis

The "one-time cost to implement" column in the above table provides an estimate of the relative cost to WSDOT of implementing each option. The "ongoing savings" column provides an estimate of the relative savings to both WSDOT and local jurisdictions resulting from more streamlined or simplified administrative requirements. The "RCW change" and "ordinance change" columns indicate whether statute or local code modifications will be required to implement each option. The "time to implement" column provides an estimate of the time it will take to make necessary changes to authorizing statute, perform supporting analyses, etc., and implement either option. The "impact on WSDOT" column reports on the potential cost impact, on WSDOT, of cost recovery requests under each option – both depend on the results of the supporting analyses.

F.2.b Opportunities for Further Study

In the course of the study, the consultants have identified a number of issues that, if addressed, would likely lower overall costs for stormwater management. These include the following issues:

- Cost and liability concerns create barriers to cooperation on capital and M&O between WSDOT and jurisdictions.
- Uneven funding cycles between WSDOT and jurisdictions impede collaboration.
- Inconsistent relationships and implementation exists among WSDOT regions and jurisdictions.
- Inadequate joint planning between jurisdictions and WSDOT reduces collaboration and/or produces inefficiencies.
- Overlap in NPDES permits for non-limited access highways creates shared responsibilities; some highways are addressed in both WSDOT and jurisdiction permits.

G. IMPLEMENTATION

The consultants have provided a set of proposed changes to existing Washington State statute, as well as a model ordinance for jurisdictions to use in complying with proposed changes to statute.

SECTION I: STUDY OVERVIEW

In July 2011, the State of Washington Joint Transportation Committee contracted with FCS GROUP to perform a study that would "identify ways to improve the process by which cities are reimbursed by the Washington State Department of Transportation (WSDOT) for managing stormwater runoff from state highways within city boundaries, and to make stormwater management of these facilities more efficient."[3]

A. BACKGROUND

Revised Code of Washington (RCW) 90.03.525, provided in its entirety as **Appendix A** to this report, authorizes local governments to charge WSDOT for the impacts of stormwater runoff from state highways on local stormwater systems. Rates charged are limited to "thirty percent of the (local) rate for comparable real property", with some exceptions, to acknowledge "the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights-of-way". The calculation basis for the thirty percent limitation is unknown. There is no similar statutory provision for other developed property, including state property.

In fact, RCW 90.03.500 provides that local stormwater rates "may be imposed on any publicly-owned, including state-owned, real property that causes such damage" from runoff – except as provided in RCW 90.03.525. In contrast, we currently know of no other states in which local jurisdictions charge any stormwater rates to state highways. Department of transportation representatives in 21 states (out of 49 contacted) responded that they are not charged and/or do not pay for state highway stormwater impacts on local jurisdictions.

Payments from WSDOT for highway impacts "must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities." Local jurisdictions must submit both a "plan for the expenditure of the charges for that calendar year" as well as a progress report "on the use of charges assessed for the prior year" in order for the state to pay the charges.

The most recent agreement between the Washington State Department of Transportation (WSDOT) and state municipalities clarified responsibility for state highways in local jurisdictions to those jurisdictions – retaining WSDOT responsibility only for limited access state highways. The effect of that agreement, currently being re-visited by WSDOT and the Association of Washington Cities, has

[3] May 24, 2011 Request for Proposals to Identify an Effective Cost Recovery Structure for Cities, and Efficiencies in Stormwater Management.

further limited cost recovery by local jurisdictions to impacts from limited access state highways. Local jurisdictions and WSDOT share the responsibility of managing stormwater runoff from some state facilities.

Please note that this document includes references to "cost recovery" and "cost reimbursement" from WSDOT as the authorization provided in RCW 90.03.525. The primary purpose of a rate must be to recover costs, and not instead to generate revenue – generally held to be a tax purpose. Consistent with common ratemaking practice, the "costs" incurred by local jurisdictions to manage the impacts of state highway runoff and recovered from WSDOT under RCW 90.03.525 are prospective.

B. STUDY PURPOSE

The purposes of the study are to:

- Understand the stormwater relationship between WSDOT and local jurisdictions;
- Solicit feedback from jurisdictions on improvements in stormwater management and cost recovery;
- Develop options for efficiencies in cost recovery and stormwater management; and
- Understand the impacts of National Pollutant Discharge Elimination System (NPDES) permitting requirements on the stormwater relationship between WSDOT and local jurisdictions.

The consultant team, which included Parametrix, PRR, and Foster Pepper, worked closely with a staff workgroup made up of representatives of the Association of Washington Cities, WSDOT, the Departments of Ecology and Commerce, JTC staff, House and Senate Transportation Committee staff, and other state agencies and stakeholders.

C. STUDY DELIVERABLES

Deliverables of the study include the following products:

- A "Stormwater 101 Guide". The "Stormwater 101" guide provides background information for legislators and others to better understand the current stormwater regulatory and fee environment.
- An inventory of state highways subject to the federal Clean Water Act. This inventory includes a list of state highways subject to compliance with the Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits at the local agency and state level. (**Appendix B**)
- A survey of jurisdictions that impose stormwater fees to WSDOT, or otherwise manage stormwater from state highways. The survey will identify those jurisdictions that charge stormwater fees to WSDOT, the amounts charged, and the revenue received for the past five biennia (ten years). The survey will also identify those jurisdictions that manage stormwater from state highways and their associated costs. Key characteristics of jurisdictions surveyed will be provided. The surveys will also identify challenges faced by the jurisdictions regarding their relationships with WSDOT on the stormwater issue, and proposed improvements. (**Appendix C**)
- Case studies of jurisdictions (**Appendix D**). The case studies are to address at least the following issues, among eight survey respondents, in some depth:
  - The costs jurisdictions incur to manage stormwater runoff from state highways.
  - The costs that jurisdictions incur in order to impose stormwater fees upon WSDOT.
  - General challenges experienced by jurisdictions in imposing stormwater fees.

- Barriers and challenges to jurisdictions' imposing stormwater fees on WSDOT.
- The jurisdictions' level of satisfaction or dissatisfaction pertaining to existing state law and the WSDOT application process to recover stormwater costs.
- Specific examples of potential improvements where WSDOT and jurisdictions may find efficiencies in the cost and management of stormwater facilities.

- Recommendations for efficiency improvements. These recommendations are to address opportunities for increased efficiencies in both the cost recovery process under RCW 90.03.525 and the overall stormwater management practices between the Washington State Department of Transportation (WSDOT) and local jurisdictions. (**Appendix E**)
- Implementation recommendations. Implementation recommendations include proposed changes to RCW 90.03.525 and other sections of statute, as well as a model ordinance for jurisdictions to use in complying with the proposed changes to statute.

SECTION II: STORMWATER 101 GUIDE

The "Stormwater 101" guide is intended to provide (1) an overview of stormwater management, including a basic definition of stormwater and its components and a summary of the regulations impacting stormwater management, and (2) stormwater program funding options and common practices. The document is targeted for use as background for legislators, other public officials, and the general public.

A. STORMWATER OVERVIEW

A.1 Stormwater Background

Stormwater is now the primary cause of water pollution in the United States, resulting in numerous federal, state and local regulations. Stormwater is runoff from precipitation (rain, snow) across the land surface, generally exacerbated by development. That runoff contributes to flooding and erosion, picks up pollutants, and flows into pipes, ditches, streams, and other receiving water bodies. Conversion of natural areas to urbanized or developed areas increases flows and water pollution, and threatens properties with flooding. Impervious surfaces such as roofs, roads and highways, parking lots and sidewalks prevent water from potentially soaking into the ground or being utilized by vegetation.

According to the Puget Sound Partnership Action Agenda (2010), stormwater runoff poses a high risk to the health of receiving waters in the state, including Puget Sound, by causing two major problems.

- First, stormwater transports a mixture of pollutants such as petroleum products, heavy metals, animal waste and sediments from construction sites, roads, highways, parking lots, lawns and other developed lands, with the following results:
  - Stormwater pollution has harmed virtually all urban creeks, streams and rivers in Washington State.
  - Stormwater is the leading contributor to water quality pollution of urban waterways in the state.

- Two species of salmon and bull trout are threatened with extinction under the federal Endangered Species Act. Loss of habitat due to stormwater and development is one of the causes.
- Shellfish harvest at many beaches is restricted or prohibited due to pollution. Stormwater runoff is often one of the causes.
- Stormwater likely contributes to the killing of high percentages of healthy coho salmon in some urban creeks within hours of the fish entering the creeks, before they are able to spawn.
- English sole in Puget Sound are more likely to develop cancerous lesions on their livers in more urban areas. Stormwater likely plays a role.

- Second, during the wet, winter months, high stormwater flows, especially long-lasting high flows, can:
  - Cause flooding.
  - Damage property.
  - Harm and render unusable fish and wildlife habitat by eroding stream banks, widening stream channels, depositing excessive sediment and altering natural streams and wetlands.

In addition, more impervious surface area means less water soaks into the ground. As a result, drinking water supplies are not replenished and streams and wetlands are not recharged. This can lead to water shortages for people and inadequate stream flows and wetland water levels for fish and other wildlife.

A.2. Stormwater Regulatory Environment

Although many regulations affect the practice of stormwater management, the primary driver is the federal Clean Water Act (CWA), first adopted in 1972, which sets the policy and regulatory framework for stormwater pollution control in the nation. The purpose of the CWA is to "…restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The CWA uses the National Pollutant Discharge Eliminate System (NPDES) permit as the primary instrument to control urban stormwater.

The state of Washington was delegated authority by the U.S. Environmental Protection Agency (EPA) to implement the NPDES permit program. The Washington State Waste Discharge Act contains state regulations regarding stormwater. The state Department of Ecology combined the federal requirements of the CWA with the state requirements of the state Waste Discharge Act and initiated the first stormwater NPDES permit program in 1995 for jurisdictions having population greater than 100,000. King, Pierce, Clark, and Snohomish Counties, as well as the Cities of Tacoma and Seattle, became the first Phase I permittees along with the Washington State Department of Transportation. In 2007, Ecology issued the Phase II permits to smaller jurisdictions that owned or operated municipal separate storm sewer systems (MS4s). Today there are more than one hundred MS4 permits issued statewide. These permits are on a five year renewal cycle. The state legislature acted in the 2011 session to set the next issuance date of MS4s in 2013. The WSDOT MS4 permit is scheduled to be re-issued in 2014.

The permits include requirements for inventorying stormwater facilities; inspecting and maintaining facilities; reducing pollutants at their sources; public education; reporting NPDES permit compliance, and applying protective design standards to new development of impervious surfaces. The protective design standards are found in the state Stormwater Manual, first adopted in 1992 and updated in 2005 for western and eastern Washington. Phase I permits contain additional requirements for water quality monitoring and retrofits.

The Stormwater NPDES permit (Sections S4 and S5) states:

- The NPDES permit "…does not authorize a violation of Washington State surface water quality standards…ground water quality standards…sediment management standards…"
- Requires that the permittee "…shall reduce the discharge of pollutants to the maximum extent practicable (MEP)."
- Requires "all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent and control pollution of waters of the State of Washington."
- Additional requirements may exist in areas that have an established Total maximum Daily Load (TMDL).

Best Management Practices (BMPs) are considered minimum requirements to meet MEP and AKART. Examples of BMPs include:

- Educating the public on the impacts of their individual behaviors on stormwater pollution;
- Preventing and eliminating illicit discharges through education, training and enforcement; and
- Implementing erosion and sediment control on construction sites.

The NPDES permits require adoption of the state Stormwater Manual, which is presumed to meet AKART. According to the Manual, these presumptive practices do not guarantee that stormwater discharges will meet receiving water quality standards. The combining of the CWA and state Waste Discharge Act requirements in a single permit provide the opportunity for third parties to sue dischargers if water quality standards are violated.

Other state laws affecting stormwater management include the Growth Management Act and its requirements for land management such as Shoreline (Shoreline Management Act) and Critical Areas requirements. At the federal level additional laws impacting stormwater management are the Comprehensive Environmental Recovery and Compliance Act (CERCLA) and the Endangered Species Act (ESA). Finally the federally recognized tribes are co-managers of the water resources in Washington State (Boldt decision, 1974).

B. STORMWATER FUNDING

A need for funding has accompanied the need for stormwater management. Stormwater utilities, supported by ongoing rates, are the largest local funding source for stormwater control in Washington State.

B.1 The Utility Concept

A stormwater utility is a stand-alone entity, usually set up as an enterprise fund, within the governmental structure. It is defined as being financially and organizationally self-sufficient, and can be designed to furnish a limited or comprehensive set of services related to stormwater quantity and quality management. A city utility operates under the purview of the city legislative authority. A county utility operates under the purview of the county legislative authority.

The following is a summary of the utility concept:

> "A stormwater utility provides a reliable, dedicated source of revenue and an organizational structure that is dedicated to stormwater concerns. As a utility, a stormwater management program can be carried out as a "stand alone" operation, with its own budget, implementation plan, and employees dedicated solely to stormwater system operation, maintenance, administration, and education. Also, creating a utility is often more acceptable politically, as many communities tend to resist the creation of new programs using special districts. Creating a utility has the added benefit of freeing up tax dollars from the local government's

general fund that would normally be used for stormwater concerns, and this "extra" money can be applied toward other needs."[4]

B.1.a Legal Authorization

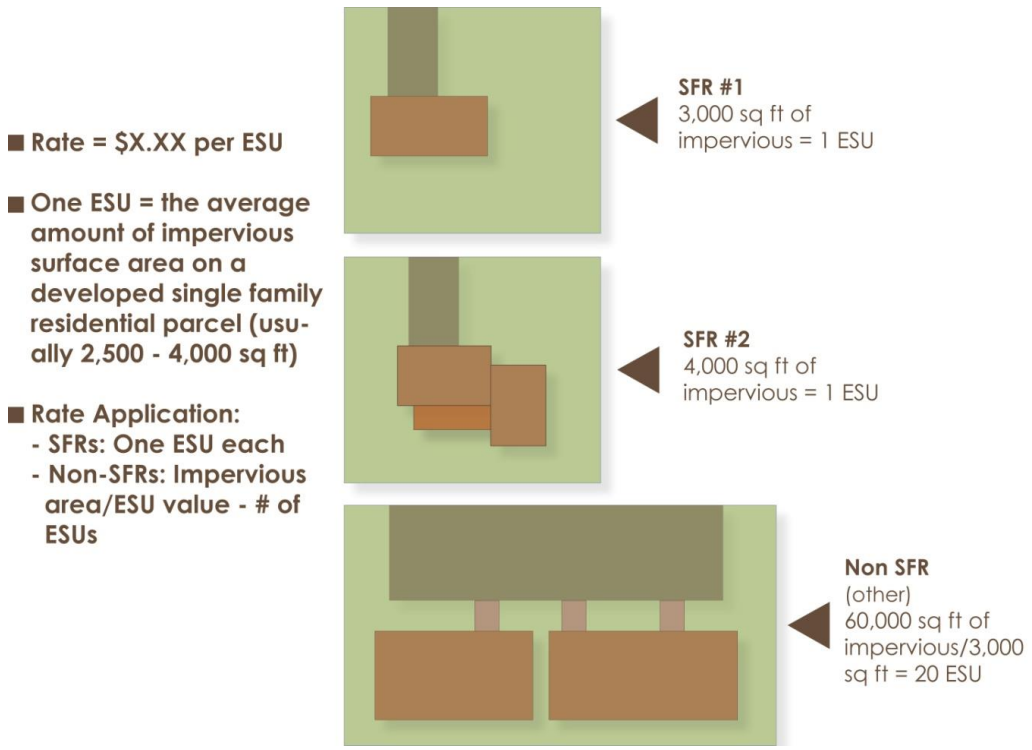
Revised Code of Washington (RCW) section 35.67.020 authorizes cities "to fix, alter, regulate, and control the rates and charges for their" systems of sewerage, defined in RCW 35.67.010 to include stormwater management. Similar authorization is provided for county programs in RCW Chapters 36.89, 36.94, and 86.15.

Other important RCW sections include 35.67.025, which specifies that all public property "shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges," and 90.03.525, which limits the imposition of stormwater rates and charges on state highways.

B.1.b Stormwater Utility Rates

Most stormwater utility rates are based on impervious surface area. Impervious surface area is widely accepted as an appropriate measure of a property's contribution of runoff, providing a clear relationship, or "rational nexus," to service received from a stormwater program. As a method, it has also been tested in Washington State courts.

As illustrated below, under such a structure, single family residences are charged for one ESU, and other developed property is charged for its measured impervious surface area – expressed as the number of ESUs.



[4] Stormwater Program Guidance Manual for the Puget Sound Basin.

Stormwater rates, in combination with other funding sources, pay for capital construction of stormwater systems and controls to prevent flooding and improve quality; maintenance and operations; and implementation of NPDES permit programs.

Alternative approaches to stormwater rates include density of development, usually distinguished by rates for different percentages of impervious coverage applied to the lot size. Both King County and the City of Bellevue utilize forms of the density of development approach.

B.1.c Charging for Streets

Some cities and counties in the state charge their own streets for stormwater service. The streets, while providing stormwater conveyance, are often large contributors of stormwater runoff. At the state level, the Washington State Department of Transportation seeks state appropriations to pay for the management of stormwater runoff generated by its 40,000 acres of paved surfaces. Statute (RCW 47.52.090) grants WSDOT the authority to "use all storm sewers that are adequate and available for the additional quantity of run-off" to be generated by limited access state highways.

The state of Washington authorizes (in RCW 90.03.525) the charging of state highways for their impacts on local systems. Rates charged are limited to "thirty percent of the rate for comparable real property", with some exceptions. Revenues from the state for highway impacts "must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities." Local jurisdictions must submit both a "plan for the expenditure of the charges for that calendar year" as well as a progress report "on the use of charges assessed for the prior year" in order for the state to pay the charges.

It is important to note that the most recent agreement between the Washington State Department of Transportation (WSDOT) and state municipalities clarified responsibility for state highways in local jurisdictions to those jurisdictions – retaining WSDOT responsibility only for limited access state highways. The effect of that agreement, currently being re-visited by WSDOT and the Association of Washington Cities, has further limited cost recovery by local jurisdictions to the impact of limited access state highways. Local jurisdictions and WSDOT share the responsibility of managing stormwater runoff from some state facilities.

As part of WSDOT's highway construction program during the 2009-11 biennium, it is estimated that at least $86 million out of a $3.43 billion 2009-11 capital program was spent on stormwater. An additional $38.5 million will be spent statewide by WSDOT for stormwater-related maintenance activities in the 2011-13 biennium. WSDOT payments to local governments in stormwater assessments have steadily increased over time, going from $1.2 million paid out in the 1995-97 biennium to $3.8 million paid out in the 2009-11 biennium. Historical increases in WSDOT biennial payments to local governments, paid out of the maintenance budget, are shown below:

Table II.1 – WSDOT Payments to Cities and Counties under RCW 90.03.525

	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	2007-09	2009-11
$ Total	$1,232,098	$1,192,246	$2,891,317	$2,856,583	$2,779,862	$3,173,498	$3,458,733	$3,812,911
# Jurisdictions	17	13	20	19	17	16	15	17

B.2 Other Funding Sources

The vast majority of stormwater programs subject to NPDES permitting requirements recover their costs through stormwater utility rates. There are other, secondary, funding sources available, with varying degrees of applicability, for stormwater management.

- **The street / road fund**. In the absence of stormwater utilities, city street funds and county road funds have historically provided sources of funding for stormwater management. The use of these funds for stormwater purposes has been justified on the basis that portions of many drainage systems have been built by street and road departments and maintenance in the right of way may be provided by the department, as well.
- **The general fund**. Property tax revenues have been the primary source of general fund resources in Washington cities and counties. Use of general fund money is usually unrestricted, and thus has been used historically to fund stormwater management, usually in the absence of a stormwater utility. General fund resources are subject to many competing demands, and cannot usually be considered a reliable source for ongoing funding.
- **Special assessments / local improvement districts**. Most commonly structured as local improvement districts (LIDs), these funding mechanisms assess individual properties benefited or served by a specific capital improvement for a share of the cost of that facility. Special benefit must be demonstrated by an increase in assessed valuation due to the improvement, often a difficult linkage to demonstrate for stormwater improvements.
- **Special fees**. Direct charges / fees may be used to recover the direct costs for services performed for a customer or class of customers not generally related to the overall service charge – such as development inspections.
- **Capital facilities charges**. Capital, or general, facilities charges are authorized for cities under RCW 35.92.025. Authorization is less straightforward for county stormwater utilities authorized under either RCW 36.89 or 36.94. Capital facilities charges are one-time charges imposed as a condition of development, and are designed to recover from growth an equitable share of the cost of capital investment incurred by the utility. Revenues from such charges are dependent on growth and are available for capital purposes only.
- **Conventional debt instruments**. The most commonly used long-term debt instruments are revenue and general obligation bonds. Bond anticipation notes are available for short-term "interim" capital financing. These sources are available for capital funding only, not operations.
  - Revenue bonds are the most common source of funds for construction of major utility improvements. There are no statutory limitations on the amount of revenue bonds a utility can issue; however, utilities are required to meet yearly net operating income coverage requirements, commonly 1.25 times the annual debt service. In fact, to issue new debt, it may be necessary to demonstrate coverage in excess of this level based on a market-driven target, possibly in the range of 1.5 to 2.0.

    Revenue bond debt service is paid out of rate revenues. The terms on revenue bonds are not as favorable as general obligation bonds, but carry the advantage of leaving the jurisdiction's debt capacity undisturbed. Interest rates vary depending on market conditions.
  - General obligation bonds are secured by the taxing power of the jurisdiction, are typically paid through property tax revenues, and may be subject to a public vote. Cities and counties often choose to repay the debt from other (rate) revenues, and increase property taxes only if the rates fail to meet debt obligation.

The financing costs of general obligation bonds are lower than revenue bonds due to (1) lower interest rates available, (2) no coverage requirements, and (3) no reserve requirements.

- Short-term "interim" financing mechanisms are also available for capital costs. Bond anticipation notes can provide interim financing during construction, while allowing flexibility in the choice of long-term financing instruments. Typically, bond anticipation notes have lower interest rates than bonds, but add to issuance costs.

- **Special grants and loans**. Some state and federally administered grant and loan opportunities are available for capital funding only.

  - Department of Ecology Grants and Loans - The Washington Department of Ecology (Ecology) administers an integrated funding program for three state and federal financial assistance programs to improve and protect water quality. Each funding cycle begins in the fall when Ecology accepts project applications. Ecology rates and ranks applications based on the highest-priority needs: Projects include stormwater control and treatment, nonpoint pollution abatement and stream restoration activities, and water quality education and outreach. The amount of available grant and loan funding varies from year to year based on the state's biennial budget appropriation process and the annual congressional federal budget. The three sources of funding for water quality projects are

    - Centennial Clean Water Fund Grant Program,
    - Federal Clean Water Act Section 319 Nonpoint-Source Grant Program, and
    - Washington State Water Pollution Control Revolving Fund Loan Program.

  - Public Works Trust Fund – Cities, towns, counties and special purpose districts are eligible to receive loans. Water, sewer, storm, roads, bridges and solid waste/recycling are eligible and funds may be used for repair, replacement, rehabilitation, reconstruction and improvements including reasonable growth (generally the 20-year growth projection in the comprehensive plan).

    PWTF loans are available at interest rates of 0.5%, 1% and 2% with the lower interest rates given to applicants who pay a larger share of the total project costs. The loan applicant must provide a minimum local match of funds of 5% towards the project cost to qualify for a 2% loan, 10% for a 1% loan, and 15% for a 0.5% loan. The useful life of the project determines the loan term up to a maximum of 20 years.

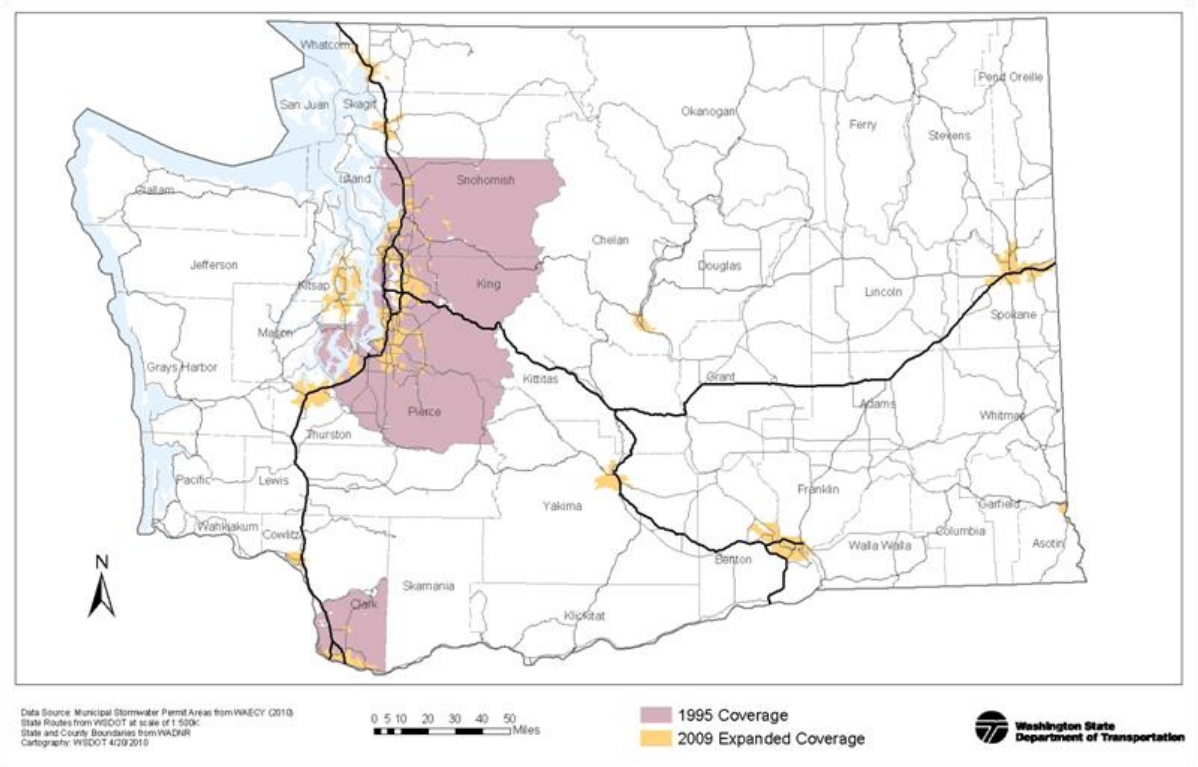
SECTION III: INVENTORY OF STATE HIGHWAYS

A comprehensive inventory of applicable state highways is provided as **Appendix B** to this document. The inventory is a list of state highway segments that generate stormwater runoff that impacts local stormwater systems. A separate compilation that identifies the type of mitigation (best management practice) present by highway by jurisdiction is also included. Finally, detailed maps are included, illustrating applicable highway segments by location.

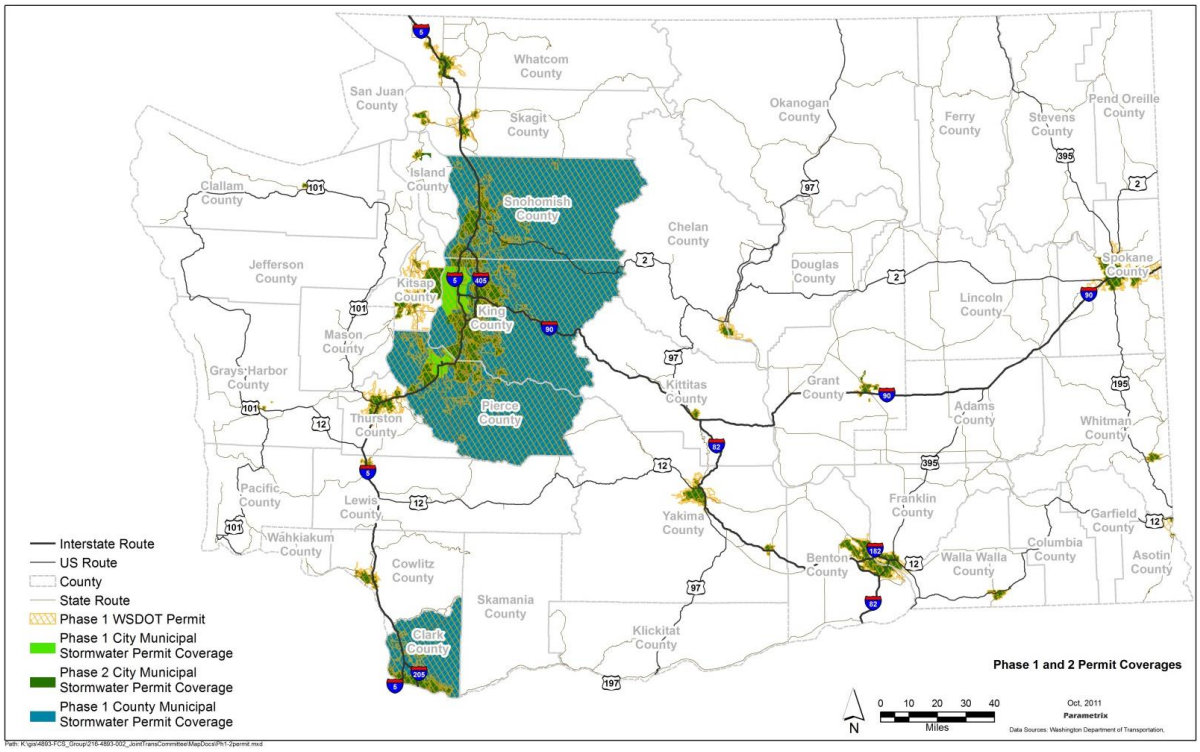
Some of the information compiled is summarized below:

- Total state highways: 7,058 centerline miles; 20,587 lane miles;
- Limited access state highways: 2,220 centerline miles; 9,576 lane miles;
- Limited access state highways within Cities: 440 centerline miles.

NPDES permitting requirements apply to many jurisdictions in the state of Washington. In addition, WSDOT, which operates its transportation system across the state, is required to meet its permit requirements within specific geographic boundaries. The map below shows the geographic nature of the WSDOT NPDES permit.



Statewide permit coverage was established by Ecology based on concentrations of population centers in accordance with the CWA requirements. A map showing NPDES permit coverage for local jurisdictions is provided below.



SECTION IV: SURVEY OF JURISDICTIONS

The survey of jurisdictions is included in its entirety as **Appendix C** to this report. The consultants conducted a survey of eligible jurisdictions to identify their successes and challenges in recovering the costs of stormwater runoff generated by state highways, and in coordinating with WSDOT to manage that stormwater runoff. The survey purpose is further described below, followed by summaries of the survey methodology and survey results.

A. SURVEY PURPOSE

The survey was designed to gather information from jurisdictions that:

- Have a stormwater utility,
- Are subject to National Pollutant Discharge Elimination System (NPDES) Phase 1 or Phase 2 municipal stormwater permitting requirements, and
- Have one or more limited access state highways within their jurisdiction.

Furthermore, the survey was intended for those jurisdictions that impose stormwater fees to the Washington State Department of Transportation (WSDOT), or otherwise manage stormwater from limited access state highways. It also surveyed jurisdictions that currently do not manage stormwater from limited access highways, but which plan to do so in the future.

In particular, the survey questions were designed to identify successes experienced and challenges faced by the jurisdictions in:

- Working with WSDOT to manage stormwater,
- Complying with RCW 90.03.525, and
- Preparing documentation for recovery of costs associated with managing stormwater from limited access highways.

Results of the survey were used to help identify ways to improve the process by which jurisdictions charge the Washington State Department of Transportation for managing stormwater runoff from state limited access highways within jurisdiction boundaries, and to make stormwater management of these facilities more efficient.

B. SURVEY METHODOLOGY

The survey questions were administered through an online survey process. A total of eighty-one qualified jurisdictions were invited to participate. Forty-five completed the survey, for a response rate of 56%. (**Appendix C** includes a detailed discussion of the survey methodology.)

C. SUMMARY OF KEY FINDINGS

Based on the responses received, it is reasonable to conclude the following.

Stormwater system capacity, costs, water quality, and staff resources are the major challenges to managing stormwater from limited access highways.

Three-fourths of those jurisdictions that manage stormwater from limited access highways indicated challenges in doing so. The challenges included stormwater system capacity, costs, water quality, and staff resources. It was also found that those in the Puget Sound region were more likely to report challenges in managing stormwater than those in the western Washington or eastern Washington regions. Those with conveyance facilities were somewhat less likely to report challenges in stormwater management than those with other stormwater management systems.

Factors upon which the fee is based, definition of what is eligible for reimbursement, and limited staff resources are the major challenges to complying with RCW 90.03.525.

More than half of those that manage stormwater reported facing challenges complying with RCW 90.03.525. The challenges included factors upon which the fee is based, definition of what is eligible for reimbursement, limited staff resources, and working with WSDOT. Facing challenges complying with the RCW did not differ significantly between those that charge WSDOT and those that don't. Those with retention facilities were somewhat less likely to report problems in complying with RCW 90.03.525 than those with other stormwater management systems.

Not charging for city streets, burdensome work plan and reporting requirements, and not tracking costs of runoff from state highways are the major reasons for not charging WSDOT.

When those who did not charge WSDOT were asked why not, their reasons included not charging for city streets, burdensome work plan and reporting requirements, not tracking costs of runoff from state highways, and having not charged WSDOT in the past. Of those that did charge WSDOT, most reported spending $500 to $1,000 annually to gather the necessary reporting data and file a request. When it came to how long it takes to gather the necessary reporting documentation, many reported spending either 1-2 days or more than 4 days. The length of time it takes to gather the reporting documentation did not differ significantly by the number of lane miles of limited access highway in the jurisdiction.

These jurisdictions reported that the following would motivate them to start charging WSDOT: if the amount of reimbursement was increased, if the city street charge requirement was eliminated, if the planning and reporting was less burdensome, if the options and process were better understood, and if the limited access highway(s) in their jurisdiction had additional negative impact.

Working with WSDOT is OK, but could be improved.

Most reported the process of working with WSDOT on stormwater management to be either somewhat efficient or neutral. The level of efficiency of working with WSDOT to manage stormwater did not differ significantly between those that charged and those that did not charge WSDOT. Those with retention facilities were more likely to report that the process between them and WSDOT for managing stormwater runoff was inefficient than those with other types of stormwater management systems. Among the jurisdictions who reported inefficiencies, the inefficiencies tended to focus on communication challenges, the regulatory process itself, documentation, and insufficient monetary incentives. In regard to the charging process specifically, the difficulties included the method used to determine charges, justifying how the reimbursed fee is used, and documentation issues.

SECTION V: CASE STUDIES

Case studies are included in their entirety as **Appendix D** to this report. As part of the study, the project team conducted eight in-depth case studies from a representative cross-section of survey respondents. The case studies were intended to flesh out the views expressed by survey respondents and elicit recommended improvements to both stormwater cost recovery and coordination with WSDOT. The purpose of the case studies is further described below, followed by a description of the subject selection and a summary of the results.

A. CASE STUDY PURPOSE

The case studies were designed to address the following issues:

- The costs jurisdictions incur to manage stormwater runoff from state highways
- The costs that jurisdictions incur in order to impose stormwater fees upon WSDOT
- General challenges experienced by jurisdictions in imposing stormwater fees
- Barriers and challenges to jurisdictions' imposing stormwater fees on WSDOT
- The jurisdictions' level of satisfaction or dissatisfaction pertaining to existing state law and the WSDOT application process to recover stormwater costs
- Specific examples of potential improvements where WSDOT and jurisdictions may find efficiencies in the cost and management of stormwater facilities

B. CASE STUDY SELECTION

The following criteria were used to select case study participants:

- Is the selection eligible to charge WSDOT stormwater rates under RCW 90.03.525?
- Does the selection create / improve appropriate representation among subjects that (1) now charge WSDOT, (2) did charge WSDOT but no longer do, (3) never have charged WSDOT, and (4) have not but are now considering charging WSDOT?
- Does the selection create / improve appropriate representation between NPDES Phase I and Phase II communities?
- Does the selection create / improve appropriate representation between eastern and western Washington subjects?
- At least two respondents should be from eastern Washington.
- At least one respondent should be a county.

- At least one respondent should be an NPDES Phase I permittee.

There were 45 survey respondents. Of these respondents,

- Twelve (Bellevue, Bellingham, Clark County, Douglas County, King County, Kitsap County, Olympia, Pierce County, Renton, Skagit County, Tukwila, and Vancouver) currently charge the state of Washington under RCW 90.03.525.
- Two (Issaquah and Puyallup) appear to have charged the state in the past but no longer do.
- The remaining thirty-three respondents have never charged the state under RCW 90.03.525.
- Of the 45 respondents, three (King County, Pierce County, and Clark County) are NPDES Phase I permittees.
- Seven (Chelan County, Douglas County, Kennewick, Richland, Spokane County, Spokane Valley, and Walla Walla County) are located in eastern Washington.

Applying the above criteria to the survey respondents, the following eight jurisdictions were selected for case studies:

Table V.1 – Case Study Selection

Jurisdiction	Reasons Selected
City of Issaquah	Used to charge state, no longer does; NPDES Phase II
City of Puyallup	Used to charge state, no longer does; NPDES Phase II
City of Bellingham	Currently charges state; NDPES Phase II; geographic balance
Clark County	Currently charges state; NPDES Phase I; geographic balance
City of Tukwila	Currently charges state; NPDES Phase II
City of Olympia	Currently charges state; NPDES Phase II
City of Richland	Has never charged state; NPDES Phase II; eastern Washington
City of Spokane Valley	Has never charged state; NPDES Phase II; eastern Washington

C. CASE STUDY RESULTS

Selected background information on each of the case study selections is provided in **Table V.2** following.

Table V.2 – Case Study Background

Jurisdiction	Population	Rate Approach	Monthly Rate	Eligible Highway Area	Annual WSDOT Payment	Notes
City of Issaquah	30,434	ESU [5]	$14.08	50 acres	$0	Actual costs unknown
City of Puyallup	37,022	ESU [4]	$10.75	20 acres	$0	Actual costs unknown
City of Bellingham	80,885	Impervious Square Feet	$7.00	48 acres	$44,500	Costs estimated at $75,000/yr
Clark County	425,363	Impervious Square Feet	$2.75	Unknown	$81,489	Costs estimated at $125,000/yr
City of Tukwila	19,107	Development Density	$7.75	92 acres	$62,897	Costs estimated at $134,000/yr
City of Olympia	46,478	Impervious Square Feet	$10.58	49 acres	$33,554	Costs typically exceed charges
City of Richland	48,058	ERU [4]	$3.85	113 acres	$0	City reports no WSDOT impact
City of Spokane Valley	89,765	ERU [4]	$1.75	82 acres	$0	City reports no WSDOT impact

Improvements to cost recovery system. Each of the case study participants was asked about suggested improvements to cost recovery under RCW 90.03.525. A number of consistent themes emerged from those responses. Six of the eight case study participants agreed with the following three suggested improvements:

- Eliminate required link between WSDOT payments and spending. Case study participants who made this suggestion indicated that the requirement that WSDOT payments be spent "solely" on the mitigation of WSDOT runoff is burdensome and unnecessarily restrictive. Required reporting is seen as imprecise and unnecessary.
- Allow jurisdictions to charge non-limited access highways. Case study participants who made this suggestion noted that the cost of managing runoff from non-limited access state highways is significant and unrecoverable except from their own local stormwater utility customers.
- Develop standard rate methodology for charging WSDOT. Case study participants who made this suggestion indicated that a separately calculated rate for eligible WSDOT facilities is preferable to the current system in which charges to WSDOT are linked to each local rate.

These and other case study results, a key outcome of the case studies, are summarized in **Table V.3** following.

[5] The equivalent service unit (ESU) and equivalent residential unit (ERU) rate approaches are identical. They each charge impervious surface based on the average amount of impervious surface area on single family residences in the service area, defined to be one ESU or one ERU.

Table V.3 – Case Study Results Regarding Cost Recovery under RCW 90.03.525

Suggested Improvements	City of Issaquah	City of Puyallup	City of Bellingham	Clark County	City of Tukwila	City of Olympia	City of Richland	City of Spokane Valley
Eliminate required link between WSDOT payments & spending	●	●	●	●	●	●		
Allow jurisdictions to charge non-limited access highways	●	●	●		●	●		●
Develop standard rate methodology for charging WSDOT	●	●	●	●	●	●		
Eliminate requirement that cities charge their own streets	●	●			●	●		
Develop standard application approach for charging WSDOT	●	●		●				
Increase flexibility in determining project / activity eligibility			●	●		●		
Charge full cost (not 30% of rate) to state highways			●			●		
Increase outreach to those not recovering costs	●							

Opportunities for collaboration. Each of the case study participants was also asked about ways to improve collaboration between WSDOT and the local jurisdiction with regard to the management of stormwater runoff generated by state highways. Case study participants made the following suggestions:

- Collaboration with WSDOT on projects should be faster and more straightforward;
- Improve WSDOT responsiveness to local maintenance needs;
- Information such as system mapping should be better shared;
- WSDOT should participate in watershed planning; and
- Retrofitting of existing WSDOT facilities should remain a priority.

SECTION VI: EFFICIENCY IMPROVEMENTS

A technical memorandum addressing recommendations for efficiency improvements is included in its entirety as **Appendix E** to this report. The recommendations generally address efficiencies in both the cost and management of state limited access highway runoff within jurisdictional boundaries. The purpose of the effort is summarized below, followed by a summary of inefficiencies identified and recommended efficiency improvements.

A. PURPOSE

RCW 90.03.525 governs how cities and counties can recover stormwater costs on state highways that are within their respective jurisdictions. This assessment of the RCW 90.03.525 cost recovery process is conducted to determine opportunities for increased efficiencies in the administration of this state law as well as in the overall stormwater management practices between WSDOT and local jurisdictions. The analysis includes specific areas for consideration for improvements to the state law, as well as the management practices for implementation of its requirements. Changes are suggested for increasing efficiencies for stormwater management activities between WSDOT and local stormwater utilities.

B. CURRENT POTENTIAL INEFFICIENCIES

With a basic understanding of the regulatory drivers and limitations on both WSDOT and jurisdictions, the consultants identified potential inefficiencies in managing stormwater between local jurisdictions and WSDOT. These potential inefficiencies, including perceived and actual barriers and difficulties within the cost recovery process, are segregated into the following categories:

- RCW 90.03.525 requirements versus jurisdictional realities.
- Physical limitations on drainage systems.
- Differences in NPDES permits.
- Funding limitations between WSDOT and local jurisdictions.

B.1 RCW 90.03.525 Requirements vs. Jurisdictional Realities

Differences between statutory requirements and current local realities create inefficiencies within the cost recovery process. RCW 90.03.525 was created in response to actions taken by western Washington drainage utilities in the 1970s and 1980s to charge WSDOT for its stormwater runoff. It has not been modified or updated to reflect NPDES Phase I or II permit requirements, nor how stormwater has been managed over the past decade. This contrast has created some barriers, or at a minimum, difficulties in both cost recovery and collaborative stormwater management.

Table VI.1 – Statutory Requirements vs. Jurisdictional Perspectives

RCW Requirement	Jurisdictional Perspective
Must have storm water utility	Non-limiting as most have a utility
Only applies to limited access rights of way	Feel this should be applicable to non-limited access rights of way.
Spending WSDOT payments limited to "storm water control facilities" and associated best management practices (BMPs). BMPs are undefined.	Definition limits cost recovery to physical structures. Allows for discretion on part of WSDOT in approval of annual reports and cost recovery
Must charge own streets/roads	Rationale is not understood. Local roadways are maintained, source of funding should not be limiting factor. Seventeen cities and counties currently charge themselves. Of eligible cities, remaining 51 do not.
Cost recovery limited by 70 percent credit	No justification. Desire 100 percent recovery.
Recovery limited to "solely" mitigation for WSDOT runoff	Difficult to identify project or management costs for "solely" managing impacts from WSDOT
Must submit annual plan	No value and is costly to develop and produce
Provides mechanism for greater cost recovery, up to 100 percent.	Process is uncertain and potentially costly. Limited application.
Provides for collaboration with local cities and counties	Highway Runoff Manual directs designers to separate flows – no joint facilities
RCW states that appropriations made by the legislature to WSDOT are to enable WSDOT to meet its NPDES obligations for all state owned rights of way.	Based on the limited definition of "state right of way" in RCW 90.03.520, this provision does not allow for full funding of all state rights of way (non-limited access) and therefore requires local cities and counties to bear the burden of stormwater management for WSDOT's non-limited access highways as operators of the stormwater infrastructure.
RCW is not intended to limit collaboration between cities, counties, and the state.	Does not recognize the third party lawsuit provision of the Clean Water Act which is limiting collaboration on joint facilities.

B.2 Physical Limitations on Drainage Systems

A number of factors associated with the physical characteristics of a possible site for cross collaboration can create inefficiencies. Opportunities for cross collaboration on design, construction, operation, and maintenance of stormwater control facilities exist throughout the state, both within and adjacent to limited access rights-of-way depending on individual site constraints. RCW 90.03.540 directs WSDOT to coordinate with adjacent local governments, ports, and other public and private organizations to determine opportunities for cost-effective joint stormwater treatment facilities for both new and existing impervious surfaces.

Efforts for cross collaboration can be constrained by the physical settings of the state's limited access rights-of-way within a drainage basin. Land availability both within and outside of the right-of-way can limit the size of facilities either by limited acreage or by extensive adjacent improvements that would cost too much to remove (i.e., downtown Seattle). Further physical constraints to WSDOT participation may well lie in the contributing drainage basin sizes and physical size of the resulting treatment facility. With limited land available, WSDOT may be constrained on the size of the facility that can be constructed. Further, long-term maintenance and operation of the facility may be significant with insufficient assurances from the jurisdiction on cost sharing.

B.3 Differences in NPDES Permits

Sometimes seen as a potential inefficiency, differences between the WSDOT permit and the Phase I and II permits (both eastern and western Washington) will have little impact on the design parameters of new facilities or on the operations and maintenance of such facilities. Both Phase I and Phase II permittees are required to adopt either the 2005 *Ecology Stormwater Design Manual* or an equivalent Ecology-approved manual. The design requirements for both water quality treatment facilities, as well as flow attenuation (detention and retention) facilities, are equivalent across all design manuals. Maintenance and operations requirements are also similar and do not differ based on facility ownership. The NPDES permits will not be an impediment to co-development or co-location of facilities excluding the issue of third-party liability. The WSDOT Highway Runoff Manual (HRM) is somewhat different than the 2005 Ecology manual because the HRM is tailored to highways and other transportation facilities and contains a slightly different set of BMPs than the Ecology manuals, due to the nature of the linear transportation system.

B.4 Funding Limitations between WSDOT and Local Jurisdictions

The fact that local rate-setting and capital budgeting do not always coincide with the timing of WSDOT planning creates potential inefficiencies. Aligning WSDOT's stormwater retrofit facility needs with city and county capital facility planning and utility rate analysis processes would benefit both WSDOT and the local governments by identifying collaborative projects with mutual benefit and funding. WSDOT has a funding category which in part funds stormwater retrofits called the I4 subprogram. A concerted effort to coordinate the WSDOT I4 retrofit subprogram needs with jurisdictions would further enhance the ability of WSDOT to address stormwater problems in areas with the greatest environmental benefits.

C. RECOMMENDATIONS FOR CONSIDERATION

Consultant recommendations are provided below for improving cost recovery and for improving collaboration between WSDOT and local jurisdictions on the management of stormwater runoff from state limited access highways.

C.1 Cost Recovery Recommendations

In addition to the observations reported in the surveys and the case studies, the consultant team offers the following observations:

- Most jurisdictions exempt their own roads from stormwater rates.
- Many jurisdictions don't provide stormwater rate credits.
- Among those who do, credits of as much as 70% are unusual.
- RCW 90.03.525 may not be compatible with the methods that jurisdictions use to calculate and bill stormwater utility rates.
- RCW 90.03.500 provides that local stormwater rates "may be imposed on any publicly-owned, including state-owned, real property that causes such damage" from runoff – except as provided in RCW 90.03.525.
- We currently know of no other states in which local jurisdictions charge stormwater rates to state highways. Department of transportation representatives in 21 states (out of 49 contacted) responded that they are not charged and/or do not pay for state highway stormwater impacts.

Based in large part on the input of the surveys, the case studies, and the consultant team, the following cost recovery improvements are recommended. Each recommendation is followed by an analysis of the rationale and implications for local jurisdictions and for WSDOT.

1. **Retain requirement that to charge WSDOT a jurisdiction must have a Stormwater Utility**

   Rationale and Implications for Jurisdictions:

   - The legal requirements for fund accounting on utilities provide accountability for use of funds.
   - Requirement for a stormwater utility not a burden; most stormwater programs, including those with NPDES permits, already have stormwater utilities or will in future.

   Rationale and Implications for WSDOT:

   - Provides accountability for expenditure of payments from WSDOT without additional process.

2. **Eliminate the requirement that jurisdictions must charge their own roads**

   Rationale and Implications for Jurisdictions:

   - Jurisdictions manage stormwater from their own roads using a mix of funds [e.g., road funds, general funds, stormwater fees]; source of funds should be irrelevant for WSDOT cost recovery.
   - Treats charging for local and non-limited access roads the same. Neither must be charged to charge limited access highways.
   - Removal of this barrier may allow up to 50 jurisdictions to seek cost recovery.

   Rationale and Implications for WSDOT:

   - Removal of barrier likely to increase costs to WSDOT (up to $2 million annual increase, or up to twice their current cost).6

3. **Streamline application and reporting processes**

   Rationale and Implications for Jurisdictions:

   - Will reduce processing costs for each jurisdiction (estimated annual savings $1,500 / jurisdiction that currently charges WSDOT).
   - Will remove a barrier to cost recovery.

   Rationale and Implications for WSDOT:

   - Will reduce time for preparation and review (estimated annual savings ~$5,000).
   - Negligible upfront cost to develop templates for applications and reporting.

4. **Provide written guidance and training on what is eligible for cost recovery**

   Rationale and Implications for Jurisdictions:

   - Will reduce application and reporting costs (included in savings for issue 3).

   Rationale and Implications for WSDOT:

[6] Analysis used to support the estimate of $2 million provided as **Appendix F** to this report.

- Cost for WSDOT to develop outreach training and update each NPDES permit cycle if necessary (Estimate $2,500 initially, minor costs every 5 years for update).
- Will subsequently save processing costs (included in savings for issue 3).

5. Calculate, justify and document an updated credit (or credits) for WSDOT

Rationale and Implications for Jurisdictions:

- Resolution of a long standing jurisdictional concern about equity.
- Potential increase or decrease in cost recovery for jurisdictions based on technical rationale.

Rationale and Implications for WSDOT:

- Cost associated with determining an updated credit.
- If the technical rationale results in a credit less than or greater than 70%, WSDOT costs would need to adjust accordingly. [For example, if the credit were reduced to 50%, WSDOT costs would increase by $1.267 million over current costs of approximately $1.9 million (annual).]

6. Create at least two uniform WSDOT stormwater utility rates, one for eastern and one for western Washington

Rationale and Implications for Jurisdictions:

- Would resolve issue of lack of documentation of current credit by generating new average uniform rates [issue 5];
- Removes process barriers (issues 3 and 4);
- Recognizes geographic differences;
- Cost recovery might increase/decrease for some jurisdictions that currently charge WSDOT;
- Supported by most case studied jurisdictions;
- Potential incompatibility with local rate methodologies; requires ordinance amendment.

Rationale and Implications for WSDOT:

- Cost to develop new rates;
- Risk of increased WSDOT costs if new rates higher than current;
- More jurisdictions may apply for cost recovery;
- Rate updates may be needed periodically to account for new costs;
- Provides documentation of new rates;
- Eliminates need for application and reporting processes for WSDOT to manage.

C.2 Optional Courses of Action

Upon careful consideration of the draft recommendations, two alternative courses of action emerged. The consultants propose two options for consideration, which are outlined below. Both options accomplish efficiencies and address many of the challenges identified by the local jurisdictions; Option A does so with modifications to the existing statues, while Option B would require a new

statutory framework. [✍ = statutory changes required; 👍 = no changes necessary; 📄 = additional study required]

Cost Recovery Option A: Modify Existing Statutory Framework

1. Retain requirement that to charge WSDOT a jurisdiction must have a stormwater utility. 👍
2. Eliminate the requirement that jurisdictions must charge their own streets. ✍
3. Streamline application and reporting processes. 👍
4. Provide written guidance on what is eligible for cost recovery. 👍
5. Conduct a study to calculate, justify and document an updated credit(s) for WSDOT. 📄✍

Cost Recovery Option B: Create New Statutory Framework

1. Retain requirement that to charge WSDOT a jurisdiction must have a stormwater utility. 👍
2. Eliminate the requirement that jurisdictions must charge their own streets. ✍
3. Conduct a study to establish a new, special uniform rate for limited access highways for inclusion in all stormwater utility rate structures statewide (minimum: one for eastern Washington and one for western Washington; more may be necessary to improve equity). 📄✍
4. Eliminate application and reporting requirements. ✍

The table below includes a comparison of the two options, with an estimate of the relative cost impacts.

Table VI.2 – Cost Recovery Options Comparison

	One-Time Cost to Implement	Ongoing Savings	RCW Change	Ordinance Change	Time to Implement	Impact on WSDOT
Option A	$$	$$	Yes	Yes	≅ 1 yr	Depends on analysis
Option B	$$	$$$	Yes	Yes	≅ 2 yrs	Depends on analysis

The "one-time cost to implement" column in the above table provides an estimate of the relative cost to WSDOT of implementing each option. The "ongoing savings" column provides an estimate of the relative savings to both WSDOT and local jurisdictions resulting from more streamlined or simplified administrative requirements. The "RCW change" and "ordinance change" columns indicate whether statute or local code modifications will be required to implement each option. The "time to implement" column provides an estimate of the time it will take to make necessary changes to authorizing statute, perform supporting analyses, etc., and implement either option. The "impact on WSDOT" column reports on the potential cost impact, on WSDOT, of cost recovery requests under each option – both depend on the results of the supporting analyses.

C.3 Opportunities for Further Study

In addition to the observations reported in the surveys and the case studies, addressing the following issues would likely result in lowering overall public costs:

- Cost and liability concerns create barriers to cooperation on capital and M&O between WSDOT and jurisdictions.
- Uneven funding cycles between WSDOT and jurisdictions impede collaboration.
- Inconsistent relationships and implementation exists among WSDOT regions and jurisdictions.

- Inadequate joint planning between jurisdictions and WSDOT reduces collaboration/produces inefficiencies.
- Overlap in NPDES permits for non-limited access highways creates shared responsibilities; covered in both WSDOT and jurisdiction permits.

SECTION VII: IMPLEMENTATION

In order to implement either of the optional courses of action described in Section VI, it will be necessary to modify RCW 90.03.525 and related RCW chapters. Subsequently, many local governments will require code changes to remain consistent with the RCW. The consultants have provided the following proposed changes to existing Washington State statute and model ordinances for jurisdictions to use in complying with proposed changes to statute.

Proposed RCW Amendments:

- Cost Recovery Option A: Modify Existing Statutory Framework; and
- Cost Recovery Option B: Create New Statutory Framework.

Model (Local) Ordinances:

- Cost Recovery Option A: Existing Utility; Modified Existing RCW Framework;
- Cost Recovery Option B: Existing Utility; New RCW Framework;
- Cost Recovery Option A: New Utility; Modified Existing RCW Framework; and
- Cost Recovery Option B: New Utility; New RCW Framework.

A. PROPOSED RCW AMENDMENTS

Proposed RCW amendments for both cost recovery options are provided below. Numerical notes in the right column indicate which numbered feature of the cost recovery option (from report section VI) is being addressed by the proposed change.

A.1. Cost Recovery Option A: Modify Existing Statutory Framework

Sec. ___. RCW 47.52.090, and laws of 1984, ch. 7, §241, are each amended to read as follows:

Cooperative agreements — Urban public transportation systems — Title to highway — Traffic regulations — Underground utilities and overcrossings — Passenger transportation — Storm sewers — City street crossings.

The highway authorities of the state, counties, incorporated cities and towns, and municipal corporations owning or operating an urban public transportation system are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to

facilitate the purposes of this chapter. Any such agreement may provide for the exclusive or nonexclusive use of a portion of the facility by streetcars, trains, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers. Within incorporated cities and towns the title to every state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over the highway from the time it is declared to be operational as a limited access facility by the department, subject to the following provisions:

(1) Cities and towns shall regulate all traffic restrictions on such facilities except as provided in RCW 46.61.430, and all regulations adopted are subject to approval of the department before becoming effective. Nothing herein precludes the state patrol or any county, city, or town from enforcing any traffic regulations and restrictions prescribed by state law, county resolution, or municipal ordinance.

(2) The city, town, or franchise holder shall at its own expense maintain its underground facilities beneath the surface across the highway and has the right to construct additional facilities underground or beneath the surface of the facility or necessary overcrossings of power lines and other utilities as may be necessary insofar as the facilities do not interfere with the use of the right-of-way for limited access highway purposes. The city or town has the right to maintain any municipal utility and the right to open the surface of the highway. The construction, maintenance until permanent repair is made, and permanent repair of these facilities shall be done in a time and manner authorized by permit to be issued by the department or its authorized representative, except to meet emergency conditions for which no permit will be required, but any damage occasioned thereby shall promptly be repaired by the city or town itself, or at its direction. Where a city or town is required to relocate overhead facilities within the corporate limits of a city or town as a result of the construction of a limited access facility, the cost of the relocation shall be paid by the state.

(3) Cities and towns have the right to grant utility franchises crossing the facility underground and beneath its surface insofar as the franchises are not inconsistent with the use of the right-of-way for limited access facility purposes and the franchises are not in conflict with state laws. The department is authorized to enforce, in an action brought in the name of the state, any condition of any franchise that a city or town has granted. No franchise for transportation of passengers in motor vehicles may be granted on such highways without the approval of the department, except cities and towns are not required to obtain a franchise for the operation of municipal vehicles or vehicles operating under franchises from the city or town operating within the corporate limits of a city or town and within a radius not exceeding eight miles outside the corporate limits for public transportation on such facilities, but these vehicles may not stop on the limited access portion of the facility to receive or to discharge passengers unless appropriate special lanes or deceleration, stopping, and acceleration space is provided for the vehicles.

Every franchise or permit granted any person by a city or town for use of any portion of a limited access facility shall require the grantee or permittee to restore, permanently repair, and replace to its original condition any portion of the highway damaged or injured by it. Except to meet emergency conditions, the construction and permanent repair of any limited access facility by the grantee of a franchise shall be in a time and manner authorized by a permit to be issued by the department or its authorized representative.

(4) The department has the right to use all storm sewers that are adequate and available for the additional quantity of run-off proposed to be passed through such storm sewers consistent with RCW 90.03.525, as applicable.

(5) The construction and maintenance of city streets over and under crossings and surface intersections of the limited access facility shall be in accordance with the governing policy entered into between the department and the association of Washington cities on June 21, 1956, or as such policy may be amended by agreement between the department and the association of Washington cities.

Note [7]

[7] This change is included for clarity and convenience to remind the reader that while the department has the right to use local storm sewers, the department is still responsible for paying applicable rates and charges subject to RCW 90.03.525.

Sec. ___. RCW 90.03.525 and laws of 2005, ch. 319, §140, are each amended to read as follows:

Storm water control facilities -- Imposition of rates and charges with respect to state and local highway rights-of-way -- Annual plan for expenditure of charges.

(1)

(a) The rate charged by a local government utility to the department of transportation with respect to state highway right-of-way or any section of state highway right-of-way for the construction, operation, and maintenance of storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be _____ ~~thirty~~ percent of the rate for comparable real property, except as otherwise provided in this section. ~~The rate charged to the department with respect to state highway right-of-way or any section of state highway right-of-way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction.~~

[A-5]

[A-2]

(b) The rate charged by a local government utility to its own or to another local government's streets or roads for the construction, operation, and maintenance of storm water control facilities may be the same maximum rate as may be charged by the local government to the state department of transportation under RCW 90.03.525(1)(a); or such other rate, or no rate, as may be determined by the legislative authority of that local government utility in consideration of the continuing expenditures of the local government for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from local streets or roads.

[A-2]

(c) The legislature finds that the aforesaid rates applicable to the state, and rate determinations by the legislative authority of a local government utility for local highway rights-of-way are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation, cities and counties for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state and local highway rights-of-way.

(2) Charges paid under subsection (1)(a) of this section by the department of transportation must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities. By January 1st of each year, beginning with calendar year 1997, the local government utility, in coordination with the department, shall develop a plan for the expenditure of the charges for that calendar year. ~~The plan must be consistent with the objectives identified in RCW 90.78.010.~~ In addition, beginning with the submittal for 1998, the utility shall provide a progress report on the use of charges assessed for the prior year. No charges may be paid until the plan and report have been submitted to the department.

Note [8]

(3) The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific storm water control facilities based upon the annual plan prescribed in subsection (2) of this section. If, after mediation, the local government utility and the department of transportation cannot agree upon the proper rate, either may commence an action in the superior court for the county in which the state highway right-of-way is located to establish the proper rate. The court in establishing the proper rate shall

[8] Deletes obsolete reference.

take into account the extent and adequacy of storm water control facilities constructed by the department and the actual benefits to the sections of state highway rights-of-way from storm water control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and storm water runoff from state highway rights-of-way shall be deemed an actual benefit to the state highway rights-of-way. The rate for sections of state highway right-of-way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property.~~, but shall in no event exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction.~~ **[A-2]**

(4) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of storm water runoff from state highway rights-of-way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of storm water control facilities are intended to address applicable federal and state mandates related to storm water control and treatment. This section is not intended to limit opportunities for sharing the costs of storm water improvements between cities, counties, and the state.

Sec.___. [To add retroactivity clause]

A.2. Cost Recovery Option B: Create New Statutory Framework

Sec. ___. RCW 47.52.090, and laws of 1984, ch. 7, §241, are each amended to read as follows:

Cooperative agreements — Urban public transportation systems — Title to highway — Traffic regulations — Underground utilities and overcrossings — Passenger transportation — Storm sewers — City street crossings.

The highway authorities of the state, counties, incorporated cities and towns, and municipal corporations owning or operating an urban public transportation system are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to facilitate the purposes of this chapter. Any such agreement may provide for the exclusive or nonexclusive use of a portion of the facility by streetcars, trains, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers. Within incorporated cities and towns the title to every state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over the highway from the time it is declared to be operational as a limited access facility by the department, subject to the following provisions:

(1) Cities and towns shall regulate all traffic restrictions on such facilities except as provided in RCW 46.61.430, and all regulations adopted are subject to approval of the department before becoming effective. Nothing herein precludes the state patrol or any county, city, or town from enforcing any traffic regulations and restrictions prescribed by state law, county resolution, or municipal ordinance.

(2) The city, town, or franchise holder shall at its own expense maintain its underground facilities beneath the surface across the highway and has the right to construct additional facilities underground or beneath the surface of the facility or necessary overcrossings of power lines and other utilities as may be necessary insofar as the facilities do not interfere with the use of the right-of-way for limited access highway purposes. The city or town has the right to maintain any municipal utility and the right to open the surface of the highway. The construction, maintenance until permanent repair is made, and permanent repair of these facilities shall be done in a time and manner authorized by permit to be issued by the department or its authorized representative, except to meet emergency conditions for which no permit will be required, but any damage occasioned thereby shall promptly be repaired by the city or town itself, or at its direction. Where a city or town is required to relocate overhead facilities within the corporate limits of a city or town as a result of the construction of a limited access facility, the cost of the relocation shall be paid by the state.

(3) Cities and towns have the right to grant utility franchises crossing the facility underground and beneath its surface insofar as the franchises are not inconsistent with the use of the right-of-way for limited access facility purposes and the franchises are not in conflict with state laws. The department is authorized to enforce, in an action brought in the name of the state, any condition of any franchise that a city or town has granted. No franchise for transportation of passengers in motor vehicles may be granted on such highways without the approval of the department, except cities and towns are not required to obtain a franchise for the operation of municipal vehicles or vehicles operating under franchises from the city or town operating within the corporate limits of a city or town and

within a radius not exceeding eight miles outside the corporate limits for public transportation on such facilities, but these vehicles may not stop on the limited access portion of the facility to receive or to discharge passengers unless appropriate special lanes or deceleration, stopping, and acceleration space is provided for the vehicles.

Every franchise or permit granted any person by a city or town for use of any portion of a limited access facility shall require the grantee or permittee to restore, permanently repair, and replace to its original condition any portion of the highway damaged or injured by it. Except to meet emergency conditions, the construction and permanent repair of any limited access facility by the grantee of a franchise shall be in a time and manner authorized by a permit to be issued by the department or its authorized representative.

(4) The department has the right to use all storm sewers that are adequate and available for the additional quantity of run-off proposed to be passed through such storm sewers consistent with RCW 90.03.525, as applicable.

(5) The construction and maintenance of city streets over and under crossings and surface intersections of the limited access facility shall be in accordance with the governing policy entered into between the department and the association of Washington cities on June 21, 1956, or as such policy may be amended by agreement between the department and the association of Washington cities.

Note [9]

[9] This change is included for clarity and convenience to remind the reader that while the department has the right to use local storm sewers, the department is still responsible for paying applicable rates and charges subject to RCW 90.03.525.

Sec. ___. RCW 90.03.525 and laws of 2005, ch. 319, §140, are each amended to read as follows:

Storm water control facilities -- Imposition of rates and charges with respect to state and local highway rights-of-way -- Annual plan for expenditure of charges.

(1) The rates charged by a local government utility to the department of transportation with respect to state highway right-of-way or any section of state highway right-of-way for ~~the construction, operation, and maintenance of storm water control facilities~~ managing runoff under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be applied initially to state highway right-of-way as follows:

Description of state highway right-of-way	Monthly rate per impervious acre
Fully mitigating flows to predeveloped conditions– no impact on local government utility	$0.00
Fully treating all runoff in accordance with WSDOT NPDES Permit requirements	$0.00
Not mitigating flows to predeveloped conditions	$X.XX
Not treating runoff in accordance with WSDOT NPDES Permit requirements	$Y.YY
Base charge for conveyance	$Z.ZZ

[B-3]

Rates shall be adjusted annually by applying one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:

(A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three; and

(B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the rate methodology.

~~thirty percent of the rate for comparable real property, except as otherwise provided in this section. The rate charged to the department with respect to state highway right-of-way or any section of state highway right-of-way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction.~~

[B-2]

(2) The rate charged by a local government utility to its own or to another local government's streets or roads for the construction, operation, and maintenance of storm water control facilities may be the same maximum rate as may be charged by the local government to the state department of transportation under RCW 90.03.525(1); or such other rate, or no rate, as may be determined by the legislative authority of that local government utility in consideration of the continuing expenditures of the local government for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from local streets or roads.

[B-2]

(3) The legislature finds that the aforesaid rates applicable to the state, and rate determinations by the legislative authority of a local government utility for local highway rights-of-way are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation, cities and counties for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state and local highway rights-of-way.

~~(2) Charges paid under subsection (1)(a) of this section by the department of~~

~~transportation must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities. By January 1st of each year, beginning with calendar year 1997, the local government utility, in coordination with the department, shall develop a plan for the expenditure of the charges for that calendar year. The plan must be consistent with the objectives identified in RCW 90.78.010. In addition, beginning with the submittal for 1998, the utility shall provide a progress report on the use of charges assessed for the prior year. No charges may be paid until the plan and report have been submitted to the department.~~ **[B-3]** **[B-4]**

(4~~3~~) The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific storm water control facilities based upon the annual plan prescribed in subsection (2) of this section. If, after mediation, the local government utility and the department of transportation cannot agree upon the proper rate, either may commence an action in the superior court for the county in which the state highway right-of-way is located to establish the proper rate. The court in establishing the proper rate shall take into account the extent and adequacy of storm water control facilities constructed by the department and the actual benefits to the sections of state highway rights-of-way from storm water control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and storm water runoff from state highway rights-of-way shall be deemed an actual benefit to the state highway rights-of-way. The rate for sections of state highway right-of-way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property~~, but shall in no event exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction.~~ **[B-2]**

(5~~4~~) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of storm water runoff from state highway rights-of-way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of storm water control facilities are intended to address applicable federal and state mandates related to storm water control and treatment. This section is not intended to limit opportunities for sharing the costs of storm water improvements between cities, counties, and the state.

Sec.___. [To add retroactivity clause]

B. MODEL (LOCAL) ORDINANCES

Model ordinances for both cost recovery options, with and without existing utilities, are provided below.

B.1. Cost Recovery Option A: Existing Utility; Modify Existing RCW Framework

[**AN ORDINANCE** of the City of_____, Washington, relating to the City's Storm and Surface Water Utility, and amending Section _____ of the _____Municipal Code.

WHEREAS, The legislature provided at RCW 90. 03.525 that the rate charged by a local government utility, such as the City Storm and Surface Water Utility, to the state department of transportation with respect to state highway right-of-way for storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be _____ percent of the City rate for comparable real property; and, that the _____ percent rate is presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights-of-way; and

WHEREAS, the City has established and maintained the Storm and Surface Water Utility rate; and

WHEREAS, [add additional references and recitals]

THE CITY COUNCIL OF THE CITY OF _____, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter _____ of the _____Municipal Code, is amended to read as follows:

__.__.___ Streets and roads charge.

The monthly fee for city-owned right-of-way shall be [__] percent of the fee provided in _____

__.__.___ State highway charge.

The monthly fee for state highway right-of-way, as defined in RCW 90.03.520, shall be established pursuant to RCW 90.03.525, unless the city and state agree to a different rate.

__.__.___ Private streets and roads charge.

The monthly fee for and for privately-owned roads constructed and maintained in accordance with City road standards, including required drainage infrastructure, shall be [__] percent of the fee provided in _____.

Section 2. This ordinance shall take effect and be in force five (5) days from its passage, approval, and publication as required by law.

PASSED by the City Council this _____ day of _____, 2012.

APPROVED by the Mayor this _____ day of _____, 2012.

B.2. Cost Recovery Option A: New Utility; Modify Existing RCW Framework

ORDINANCE NO. _____

An Ordinance Establishing a Stormwater Utility Fee

THE PEOPLE OF THE CITY OF _____, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter, XX.YY, is hereby added to Title XX of the _____ Municipal Code, to read as follows:

Chapter XX.YY

STORMWATER UTILITY FEES

Sections:

XX.YY.010 Purpose. It is the purpose of this Chapter to provide revenue for a Stormwater Program to plan, manage, construct, maintain, use, and carry out activities related thereto, and to provide revenues by fixing rates and charges. There is hereby created an enterprise fund known as the "City of _____ Stormwater Fund". All fees and charges imposed herein shall be placed in said fund for the purpose of paying any and all expenses related to the acquisition, installation, addition, improvement, replacement, repair, maintenance, operation, or administration of Stormwater Program facilities and activities.

XX.YY.020 Applicability. The requirements of this Chapter shall apply to all parcels of real property in the City of _____, including publicly and privately owned property.

XX.YY.030 Definitions. Biofiltration means the use of vegetation, including grasses and wetland plants, to filter and treat stormwater runoff as it is conveyed through an open channel or swale.

City means the City of _____, Washington, or as indicated by the context, may mean any official, officer, employee or agency representing the City in the discharge of his or her duties.

City Roads means all roads, public and private, excluding State and County roads, in the City of _____.

Developed Parcel means a parcel of real property which has been altered by development coverage.

Drainage Facilities means the drainage systems comprised of stormwater control facilities and any other natural features which store, control, treat and / or convey storm and surface water. Storm drainage facilities shall include all natural and man-made elements used to convey storm water from the first point of impact with the surface of the earth to a suitable receiving body of water or location internal or external to the boundaries of the City. They include all pipes, appurtenant features, culvers, streets, curbs, gutters, pumping stations, channels, streams, ditches, wetlands, detention / retention basins, ponds, and other stormwater conveyance and treatment facilities whether or not the City shall have recorded rights-of-way or easements; it is presumed that the City has a prescriptive right of access to all storm drainage facilities for operation, maintenance, rehabilitation, or replacement.

Equivalent Service Unit (ESU) means a configuration of impervious surface estimated to contribute an amount of runoff to the City's stormwater management system which is approximately equal to that created by the average single family residential developed parcel in _____.

Impervious Surfaces means hard surfaced areas that prevent or hinder the entry of water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow than under natural conditions. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt roads, sidewalks and paving, walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed dirt, oiled or other surfaces which similarly impede the natural infiltration of stormwater, or runoff patterns existent prior to development.

Manager means the Director of Public Works or designee.

Parcel means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

Service Charges means the stormwater utility fee in an amount to be determined by applying the appropriate rate to a particular parcel of real property based upon factors established by this Chapter.

Single Family Residence means a residential structure accommodating one dwelling unit, including duplex units and mobile homes, as defined by the City of _____ land use codes.

Stormwater Control Facilities means all man-made structures or natural water course facility improvements, developments, properties or interest therein, made, constructed or acquired for the conveyance of storm or surface water runoff for the purpose of improving the quality of, controlling, or protecting life or property from any storm, flood or surplus waters.

Stormwater Program means the _____ Stormwater Utility as defined in this chapter.

Undeveloped Land means unimproved land and open space as defined by the City of _____ land use codes.

Undeveloped Parcel means any parcel of real property which has not been altered by construction of any improvement or other impervious surface area which affects the hydraulic properties of the parcel.

Unit Rate means the dollar amount charged per ESU.

XX.YY.040 Rate Structure. A. Service charges for the Stormwater Utility Fee are hereby authorized and imposed, in amounts and on terms consistent with this Chapter.

B. The rates and service charges shall be based on the service provided and the relative contribution of stormwater runoff from a given parcel to the stormwater control facilities. The

estimated or measured impervious surface area will be used to determine the relative contribution of stormwater runoff from the parcel.

Service charges shall be determined as follows:

1. Undeveloped Parcels – Undeveloped parcels shall not be charged.
2. **City Streets – City streets shall be charged in the same manner as other developed parcels OR City streets shall not be charged.**
3. **State Highways – State highways, as defined in RCW 90.03.520, shall be charged in the same manner as other developed parcels, but as provided in RCW 90.03.525 state highways shall be charged XX-percent of the unit rate.**
4. **Private Roads and Right of Way – [Private roads and right of way shall be charged in the same manner as City streets]**
5. Single Family Residences – The monthly service charge for each single family residence shall be the unit rate for one equivalent service unit.
6. Other Developed Parcels – The monthly service charge for all other developed parcels, including publicly-owned properties, shall be computed by multiplying the unit rate times the number of equivalent service units applicable to the parcel minus any approved rate adjustment for the parcel as determined under Section XX.YY.070.
7. Minimum Charge – There shall be a minimum monthly service charge for all developed properties equal to the unit rate.

XX.YY.050 Equivalent Service Unit. One equivalent service unit is established at X,XXX square feet of impervious surface area. For the purpose of computation of service charges, the number of equivalent service units shall be rounded to the nearest tenth (0.10).

XX.YY.060 Unit Rate Established. The unit rate per equivalent service unit shall be established by resolution of the City Council.

XX.YY.070 Service Charge Adjustments and Appeals. A. Any person billed for service charges may file a "Request for Service Charge Adjustment" with the Manager within thirty (30) days of the date of the bill. However, submittal of such a request does not extend the period of payment for the charge.

B. A request for service charge adjustment may be granted or approved by the Manager only when one or more of the following conditions exist:

1. The amount charged is in error; however, no adjustment will be made unless the parcel is non-residential and the City's calculation of the impervious surface area on the parcel is shown to be in error by at least ten percent (10%), as demonstrated by a licensed surveyor or engineer;
2. The parcel exists in its natural unimproved condition and will remain in its natural unimproved condition with no allowable human activities or manmade improvements that adversely affect water quantity or quality; or
3. The parcel includes a constructed or natural on-site stormwater mitigation facility that meets all of the following conditions:
   a. the constructed or natural facility provides storm or stormwater detention, retention, water quality treatment, and/or conveyance, ; and,
   b. the Manager has determined that the property owner is capable of maintaining and operating the facility; and,
   c. the facility is maintained by the property owner to the City's design specifications; and,

d. the facility is available for inspection by the City; and,

e. excess capacity, if not used by the property owner, is accessible and available for other related public purposes; and

f. the credit is revocable under conditions where the facility no longer operates at the design level established during the drainage plan review / approval process.

C. Credit Calculation. The amount to be credited shall be a fixed percentage reduction, based on the percentage of program costs directly related to managing surface water volumes. For water quantity migration, the formula is expressed mathematically as follows:

A= F X __%

Where
A= the credit amount to be subtracted from the monthly fee;
F= the total monthly charge without credit;

For qualifying biofiltration, the formula is expressed mathematically as follows:

A= F X __%

Where
A= The credit amount to be subtracted from the monthly fee; and
F= The total monthly charge without credit.

D. The following information may be required by the Manager to determine eligibility for a service charge credit:

1. approved drainage plan certified by a licensed and qualified professional;
2. calculation of the credit amount;
3. signature of the person responsible for the accuracy of the credit application material; and
4. other information, as required by the Manager, to determine that the property owner is willing and has the capacity to maintain the facility.

E. Service charge adjustments will only apply to the bill then due and payable, and bills subsequently issued. The property owner shall have the burden of proving that the service charge adjustment should be granted.

F. Decisions on requests for service charge adjustment shall be made by the Manager based on information submitted by the applicant and by the City within thirty (30) days of the adjustment request, except when additional information is needed. The applicant shall be notified in writing of the Manager's decision.

G. Decisions of the Manager on requests for service charge adjustments shall be final unless appealed to City Council within thirty (30) days of the date the decision.

XX.YY.080 Use of Funds. Service charges collected under this Chapter shall be deposited into the City of _____ Stormwater Utility Fund or funds to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing, maintaining and improving the Stormwater Program and drainage facilities.

XX.YY.090 Commencement of Charges. For new construction, service charges will commence with the issuance of a building permit, creation of an impervious surface area, or installation of a water meter, whichever comes first. For existing structures, service charges will commence on the effective date of the ordinance establishing this Chapter.

XX.YY.100 Delinquent Charges. Delinquent accounts shall be treated in the same manner as delinquent water service accounts under City Code Section _____.

Section 2. Effective Date. This ordinance shall become effective immediately.

Section 3. Severability. If any provision of this ordinance, or its application to any person or circumstances is held to be unconstitutional or invalid for any reason, the remainder of this ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Passed by the Council this _____ day of _____, 20XX.

_____
City Official

ATTEST:

_____
Recorder

APPROVED AS TO FORM:

_____
Attorney

APPROVED AS TO CONTENT:

_____
City Official

B.3. Cost Recovery Option B: Existing Utility; Create New Statutory Framework

[**AN ORDINANCE** of the City of_____, Washington, relating to the City's Storm and Surface Water Utility, and amending Section _____ of the _____Municipal Code.

WHEREAS, The legislature provided at RCW 90. 03.525 that the rate charged by a local government utility, such as the City Storm and Surface Water Utility, to the state department of transportation with respect to state highway right-of-way for storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, and, that the rate is presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights-of-way; and

WHEREAS, the City has established and maintained the Storm and Surface Water Utility rate; and

WHEREAS, [add additional references and recitals]

THE CITY COUNCIL OF THE CITY OF _____, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter _____ of the _____Municipal Code, is amended to read as follows:

__.__.___ Streets and roads charge.

The monthly fee for city-owned right-of-way shall be [__] percent of the fee provided in _____

__.__.___ State highway charge.

The monthly fee for state highway right-of-way shall be established pursuant to RCW 90.03.525, unless the city and state agree to a different rate.

__.__.___ Private streets and roads charge.

The monthly fee for and for privately-owned roads constructed and maintained in accordance with City road standards, including required drainage infrastructure, shall be [__] percent of the fee provided in _____.

Section 2. This ordinance shall take effect and be in force five (5) days from its passage, approval, and publication as required by law.

PASSED by the City Council this _____ day of _____, 2012.

APPROVED by the Mayor this _____ day of _____, 2012.

B.4. Cost Recovery Option B: New Utility; Create New Statutory Framework

ORDINANCE NO. _____

An Ordinance Establishing a Stormwater Utility Fee

THE PEOPLE OF THE CITY OF _____, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter, XX.YY, is hereby added to Title XX of the _____ Municipal Code, to read as follows:

Chapter XX.YY

STORMWATER UTILITY FEES

Sections:

XX.YY.010 Purpose. It is the purpose of this Chapter to provide revenue for a Stormwater Program to plan, manage, construct, maintain, use, and carry out activities related thereto, and to provide revenues by fixing rates and charges. There is hereby created an enterprise fund known as the "City of _____ Stormwater Fund". All fees and charges imposed herein shall be placed in said fund for the purpose of paying any and all expenses related to the acquisition, installation, addition, improvement, replacement, repair, maintenance, operation, or administration of Stormwater Program facilities and activities.

XX.YY.020 Applicability. The requirements of this Chapter shall apply to all parcels of real property in the City of _____, including publicly and privately owned property.

XX.YY.030 Definitions. Biofiltration means the use of vegetation, including grasses and wetland plants, to filter and treat stormwater runoff as it is conveyed through an open channel or swale.

City means the City of _____, Washington, or as indicated by the context, may mean any official, officer, employee or agency representing the City in the discharge of his or her duties.

City Roads means all roads, public and private, excluding State and County roads, in the City of _____.

Developed Parcel means a parcel of real property which has been altered by development coverage.

Drainage Facilities means the drainage systems comprised of stormwater control facilities and any other natural features which store, control, treat and / or convey storm and surface water. Storm drainage facilities shall include all natural and man-made elements used to convey storm water from the first point of impact with the surface of the earth to a suitable receiving body of water or location internal or external to the boundaries of the City. They include all pipes, appurtenant features, culvers, streets, curbs, gutters, pumping stations, channels, streams, ditches, wetlands, detention / retention basins, ponds, and other stormwater conveyance and treatment facilities whether or not the City shall have recorded rights-of-way or easements; it is presumed that the City has a prescriptive right of access to all storm drainage facilities for operation, maintenance, rehabilitation, or replacement.

Equivalent Service Unit (ESU) means a configuration of impervious surface estimated to contribute an amount of runoff to the City's stormwater management system which is approximately equal to that created by the average single family residential developed parcel in _____.

Impervious Surfaces means hard surfaced areas that prevent or hinder the entry of water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow than under natural conditions. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt roads, sidewalks and paving, walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed dirt, oiled or other surfaces which similarly impede the natural infiltration of stormwater, or runoff patterns existent prior to development.

Manager means the Director of Public Works or designee.

Parcel means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

Service Charges means the stormwater utility fee in an amount to be determined by applying the appropriate rate to a particular parcel of real property based upon factors established by this Chapter.

Single Family Residence means a residential structure accommodating one dwelling unit, including duplex units and mobile homes, as defined by the City of _____ land use codes.

Stormwater Control Facilities means all man-made structures or natural water course facility improvements, developments, properties or interest therein, made, constructed or acquired for the conveyance of storm or surface water runoff for the purpose of improving the quality of, controlling, or protecting life or property from any storm, flood or surplus waters.

Stormwater Program means the _____ Stormwater Utility as defined in this chapter.

Undeveloped Land means unimproved land and open space as defined by the City of _____ land use codes.

Undeveloped Parcel means any parcel of real property which has not been altered by construction of any improvement or other impervious surface area which affects the hydraulic properties of the parcel.

Unit Rate means the dollar amount charged per ESU.

XX.YY.040 Rate Structure. A. Service charges for the Stormwater Utility Fee are hereby authorized and imposed, in amounts and on terms consistent with this Chapter.

B. The rates and service charges shall be based on the service provided and the relative contribution of stormwater runoff from a given parcel to the stormwater control facilities. The

estimated or measured impervious surface area will be used to determine the relative contribution of stormwater runoff from the parcel.

Service charges shall be determined as follows:

1. Undeveloped Parcels – Undeveloped parcels shall not be charged.
2. **City Streets – City streets shall be charged in the same manner as other developed parcels OR City streets shall not be charged.**
3. **State Highways – State highways shall be charged as provided in RCW 90.03.525.**
4. **Private Roads and Right of Way – [Private roads and right of way shall be charged in the same manner as City streets]**
5. Single Family Residences – The monthly service charge for each single family residence shall be the unit rate for one equivalent service unit.
6. Other Developed Parcels – The monthly service charge for all other developed parcels, including publicly-owned properties, shall be computed by multiplying the unit rate times the number of equivalent service units applicable to the parcel minus any approved rate adjustment for the parcel as determined under Section XX.YY.070.
7. Minimum Charge – There shall be a minimum monthly service charge for all developed properties equal to the unit rate.

XX.YY.050 Equivalent Service Unit. One equivalent service unit is established at X,XXX square feet of impervious surface area. For the purpose of computation of service charges, the number of equivalent service units shall be rounded to the nearest tenth (0.10).

XX.YY.060 Unit Rate Established. The unit rate per equivalent service unit shall be established by resolution of the City Council.

XX.YY.070 Service Charge Adjustments and Appeals. A. Any person billed for service charges may file a "Request for Service Charge Adjustment" with the Manager within thirty (30) days of the date of the bill. However, submittal of such a request does not extend the period of payment for the charge.

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2. The parcel exists in its natural unimproved condition and will remain in its natural unimproved condition with no allowable human activities or manmade improvements that adversely affect water quantity or quality; or
3. The parcel includes a constructed or natural on-site stormwater mitigation facility that meets all of the following conditions:
   a. the constructed or natural facility provides storm or stormwater detention, retention, water quality treatment, and/or conveyance, ; and,
   b. the Manager has determined that the property owner is capable of maintaining and operating the facility; and,
   c. the facility is maintained by the property owner to the City's design specifications; and,
   d. the facility is available for inspection by the City; and,

e. excess capacity, if not used by the property owner, is accessible and available for other related public purposes; and

f. the credit is revocable under conditions where the facility no longer operates at the design level established during the drainage plan review / approval process.

C. Credit Calculation. The amount to be credited shall be a fixed percentage reduction, based on the percentage of program costs directly related to managing surface water volumes. For water quantity migration, the formula is expressed mathematically as follows:

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Where
A= the credit amount to be subtracted from the monthly fee;
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For qualifying biofiltration, the formula is expressed mathematically as follows:

A= F X __%

Where
A= The credit amount to be subtracted from the monthly fee; and
F= The total monthly charge without credit.

D. The following information may be required by the Manager to determine eligibility for a service charge credit:

1. approved drainage plan certified by a licensed and qualified professional;
2. calculation of the credit amount;
3. signature of the person responsible for the accuracy of the credit application material; and
4. other information, as required by the Manager, to determine that the property owner is willing and has the capacity to maintain the facility.

E. Service charge adjustments will only apply to the bill then due and payable, and bills subsequently issued. The property owner shall have the burden of proving that the service charge adjustment should be granted.

F. Decisions on requests for service charge adjustment shall be made by the Manager based on information submitted by the applicant and by the City within thirty (30) days of the adjustment request, except when additional information is needed. The applicant shall be notified in writing of the Manager's decision.

G. Decisions of the Manager on requests for service charge adjustments shall be final unless appealed to City Council within thirty (30) days of the date the decision.

XX.YY.080 Use of Funds. Service charges collected under this Chapter shall be deposited into the City of _____ Stormwater Utility Fund or funds to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing, maintaining and improving the Stormwater Program and drainage facilities.

XX.YY.090 Commencement of Charges. For new construction, service charges will commence with the issuance of a building permit, creation of an impervious surface area, or

installation of a water meter, whichever comes first. For existing structures, service charges will commence on the effective date of the ordinance establishing this Chapter.

XX.YY.100 Delinquent Charges. Delinquent accounts shall be treated in the same manner as delinquent water service accounts under City Code Section _____.

Section 2. Effective Date. This ordinance shall become effective immediately.

Section 3. Severability. If any provision of this ordinance, or its application to any person or circumstances is held to be unconstitutional or invalid for any reason, the remainder of this ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Passed by the Council this _____ day of _____, 20XX.

_____
City Official

ATTEST:

_____
Recorder

APPROVED AS TO FORM:

_____
Attorney

APPROVED AS TO CONTENT:

_____
City Official