I write separately because, while agreeing with my colleagues on many aspects of the majority decision, I respectfully disagree with certain other of its fundamental conclusions. I concur with the majority to the extent it finds flaws with the Agreed Order in the following respects: the delayed effective date of Clark County’s mitigation program relative to the Phase I Permit’s deadline to begin implementing the more stringent flow control standard; inadequate protection in the Agreed Order against the shifting of existing projects and funding from the structural retrofit program into projects counted toward the County’s mitigation obligation; and the failure of the Agreed Order to clearly require the County to comply with the Phase I Permit’s Low Impact Development (LID) requirements imposed as a result of this Board’s prior decision.
I depart from my colleagues where they conclude the Agreed Order is inadequate because it does not utilize basin planning or require additional site-specific analysis in the selection and evaluation of individual flow control projects. I further disagree with their conclusions that the acreage metric is inadequate to serve the intended purposes of the program and that Clark County’s program gives inadequate attention to beneficial uses of receiving waters. Finally, I disagree that the Agreed Order’s approach to selecting mitigation sites amounts to impermissible self regulation.

When evaluating the equivalency question at issue in this appeal, the majority has elected not to afford what I believe is proper deference to Ecology’s technical expertise and professional judgments regarding the purpose and intent behind the default flow control requirement embodied in the Phase I Permit. In exercising its *de novo* review of an ambiguous permit condition, as this Board has previously found Condition S5.C.5.b to be, the agency charged with the administration and enforcement of that permit should be accorded great weight in determining the intent and meaning of the underlying permit condition. *Puget Soundkeeper Alliance et al. v. Ecology, et al.*, PCHB Nos. 07-021, 07-026 through 030, 07-037 (Phase I Municipal Stormwater Permit Order on Dispositive Motions, April 8, 2008) (where a permit condition is not specifically governed by statute or regulation, but instead represents an exercise of the agency’s discretion based on professional judgment, the Board gives due deference to the specialized knowledge and expertise of Ecology, while acknowledging that such deference does not extend to action that is “manifestly unreasonable or exercised on untenable grounds” or that is “willful and unreasoning actions in disregard of facts and circumstances.” citations omitted.)

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**The Phase I Permit and Default Flow Control Standard**

The Board has previously found that, unlike traditional NPDES permits, the Phase I Permit is a “programmatic permit,” meaning it requires municipal permitees to implement area-wide stormwater management programs rather than establishing benchmarks or other numeric or narrative effluent limits for stormwater discharges from individual outfalls. *Phase I Decision at FOF 6*. The Board further found that the programmatic approach provides the flexibility to address water quality issues within the context of a general permit and accounts for the numerous differing conditions faced by the many different Phase I permitees. *Puget Soundkeeper Alliance, et al. v. Ecology, & City of Seattle, et al.*, PCHB Nos. 07-021, -026 through -030, & -037 (Phase I) and PCHB Nos. 07-022, -023 (Phase II) (2008) ("Condition S4 Decision") at FOF 5. Ultimately, the Board concluded that Ecology’s Phase I Permit, as a programmatic permit with multiple elements to be implemented throughout the permit cycle, collectively represented

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the MEP and AKART standards. Despite finding and addressing particular deficiencies in
certain aspects of the permit, the Board affirmed Ecology’s programmatic approach, recognizing
that it was all of the stormwater management program elements, in the aggregate, that represent
MEP and AKART, even though it might be possible for a permittee to do more in a specific
program element or at a specific outfall if the individual permit requirements were evaluated in
isolation from the rest of the program requirements.

In developing the Phase I Permit, including the flow control requirements in Condition
S5.C.5.b.ii, Ecology recognized that these efforts alone could not prevent all stormwater impacts
or preserve natural resources and their associated beneficial uses. Ex. J-15 at 31-32. This is due,
in part, to the fact that the flow control standard is a blunt instrument designed to mitigate for
only the worst of the high flows, not to solve all the stream hydrology, habitat, or other
biological problems in a watershed. O’Brien Testimony.

In the Phase I Permit decision, the Board found that Ecology’s Stormwater Management
Manual (SWMM) itself recognizes the shortcomings of even the newer, more stringent flow
control standards, wherein it states:

[These techniques, of engineered stormwater conveyance, treatment and
detention] can reduce the impacts of development to water quality and hydrology.
But they cannot replicate the natural hydrologic functions of the natural watershed
that existed before development, nor can they remove sufficient pollutants to
replicate the water quality of pre-development conditions.

The Board further found that the primary focus of detention standards is on mitigating the
worst impacts of large storm events, which occur only a small percentage of the time (1%), and
that they provide only residual control to runoff the remainder of the time. *Phase I Merits Decision* at FOF 39.

Despite its limitations, the default flow control standard in the Phase I Permit encompasses multiple distinct components within the one standard: first and foremost, the transition from the previous “peak flow” to a “flow duration” approach; second, the thresholds that trigger the flow control requirement in the first instance; third, the application of flow control to address runoff caused by new and redevelopment relative to existing land cover conditions; and finally, the application of flow control to address runoff attributable to existing land cover conditions relative to historic land cover conditions. *O’Brien Testimony.*

During the Phase I Permit development process, Ecology considered a publicly funded approach to mitigating for this last component (historic impacts) as an alternative to requiring municipalities to impose the obligation only on those developers applying for new or redevelopment projects. *Schrieve Testimony, O’Brien Testimony.* Ecology considered this to be a reasonable approach as a matter of public policy since the harms being addressed were caused by historic development patterns and practices rather than the actions of the current developers.¹

In previous decisions related to the Phase I and Phase II Permits, the Board has analyzed various aspects of the default flow control standard, including the permits’ requirement to

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¹ In Clark County, for example, much of the currently developed and developing areas were deforested and put into agriculture by the late 1800’s and early 1900’s, which is much earlier than many other areas in Puget Sound. More recently, large areas within unincorporated Clark County converted from agricultural or pasture land cover to more urban development during the 1980’s and 1990’s. This was during a time period when the detention systems were designed to earlier standards that have been shown to be ineffective in controlling streambank erosion due to the increased duration of peak discharges. *Kraft Testimony.* As a result, the increase in erosive flows from existing land cover conditions relative to historic land cover conditions in Clark County occurred in many, if not most, cases ten to one hundred years ago. *Beyerlein Testimony.*
mitigate for pre-existing impacts that are not a direct result of the proposed new or
redevelopment project. The Board rejected summary judgment claims that such a requirement
was unlawful or unreasonable as a matter of law for several reasons. Notable in this context was
the reasoning that the permits “authorize” local governments to require developers to construct
the necessary stormwater controls to meet the flow control requirements but do not ‘require’
local governments to impose such requirements. Local governments have options and choices to
meet the permit’s flow control requirements.” Puget Soundkeeper Alliance, et al, v. Ecology, &
Washington Department of Transportation, PCHB Nos. 07-022, -023, Order on Summary
Judgment (Phase II Municipal Stormwater Permit), September 28, 2008 (“Phase II SJ Order”) at
10.

The Western Washington Stormwater Management Manual contemplates that treatment
and flow control requirements may be achieved through the construction of regional facilities.
Ex. J-19 at 2-11 through 2-13. Regarding the flow control standard, the Board also found that
municipal permittees have “considerable flexibility as to how they will regulate the development
or use of private property in order to comply with the federally required MEP and state-driven
AKART standards for controlling the discharge of pollutants to the waters of the state.” Phase II
SJ Order at 11. The Board accepted Ecology’s arguments that this flexibility included, for
example, that municipalities may choose to construct necessary regional stormwater control
facilities and allow developers to use those facilities to ensure discharges meet the flow control
requirements. Phase II SJ Order at 9.

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Within this larger context, which is embodied in the programmatic nature of the permits and which will involve tens of billions of dollars in various types of stormwater control investments over many years, Ecology has determined that the specific location of the "historic land conversion mitigation" is not the critical issue associated with the Phase I Permit's flow control requirements. *O'Brien Testimony.* Ecology was applying this fundamental assumption when it later determined that the relative benefits of Clark County's approach to implementing flow control are sufficiently comparable to the Phase I Permit in moving toward the overall goal of municipal stormwater control, particularly the landscape-scale goal of restoring from "existing" conditions to the more natural flows associated with "historic, pre-developed" conditions.

*The Agreed Order*

In the Agreed Order, Ecology identified the purpose of Condition S5.C.5.b.ii as being "to reduce negative impacts on water quality, fish, other aquatic life, and streams caused by increased runoff from new development and redevelopment and to reduce impacts from existing development." *Ex. J-1.* For the reasons stated above, Ecology never expected this permit condition, or the Agreed Order, to restore aquatic habitat or eliminate all harm from erosion at the specific development location. The goal was to make progress toward lessening the negative impacts of high flows. *O'Brien Testimony.* Because Ecology views a publicly funded approach to addressing stormwater impacts caused by historic land conversion activities as an equivalent way of achieving the same goals as the default flow control standard, it did not view Clark County's program as either a "pilot project" or an "exception/variance" from the standard, but
rather as an alternative means of achieving the same ends. Schrieve Testimony, O'Brien Testimony.

Appellants have identified nothing in the Phase I Permit, or the Clean Water Act, that requires this final “improvement” or “restoration” aspect of the flow control standard to be achieved at the same location as where the new or redevelopment is occurring. Clark County’s flow control program meets the Permit’s objectives because developers will be required to match post-development flows with pre-development flows at the development site. Where existing land cover at a site is the same as historic land cover, there is no absolutely difference between Clark County’s flow control program and the flow control requirement in the Phase I Permit.

Where the existing land cover is not the same as historic land cover, the developer will be required to match post-development flows with pre-development flows at the site, and Clark County will be required to implement additional flow control projects sufficient to control the difference between post-development flows and historic flows. These projects need not be located at the development site but must be located within the same Water Resource Inventory Area (WRIA). Ex. J-1, Attachment A, at p. 8.

Under either of these scenarios, the exact same thresholds apply in determining which
projects trigger flow control requirements, and the exact same flow duration standard applies in
determining how much flow control must be provided. In this regard, Clark County has not
altered the default flow control standard in the Phase I Permit. What Clark County has done is
elected to implement the same standard in a manner that is different from how other Phase I
Permittees have chosen to implement it, in order to achieve the same goals.

Clark County’s flow control program requires all project-related stormwater impacts to
be addressed on-site, thus accomplishing the flow control standard’s site-level objectives.
Additionally, legacy stormwater impacts related to historic land conversions (but unrelated to a
particular new or redevelopment project) are addressed at a WRIA level, thus accomplishing the
flow control standard’s landscape-level objectives. In the end, project-related impacts are
addressed in Clark County the same way as in other Phase I jurisdictions, and the same amount
of developed land area within a WRIA will be provided with flow control to the historic
conditions as would occur under the default approach to flow control contained in the Phase I
Permit.

Under both scenarios, flow control facilities are required for projects in which the total of effective impervious
surfaces is 10,000 square feet or more in a threshold discharge area; projects that convert ¼ acres or more of native
vegetation to lawn or landscape, or convert 2.5 acres or more of native vegetation to pasture in a threshold discharge
area, and from which there is a surface discharge in a natural or man-made conveyance system from the site; and
projects that through a combination of effective impervious surfaces and converted pervious surfaces cause a 0.1
cubic feet per second increase in the 100-year flow frequency from a threshold discharge area as estimated using the
Western Washington Hydrology Model or other approved model.

Discharges must match developed discharge durations to pre-developed durations for the range of pre-developed
discharge rates from 50% of the 2-year peak flow up to the full 50-year flow.
Clark County has not proposed to change the flow control standard. It is still obligated to control flows to same standard as the Phase I Permit requires. The County’s program is not implementing the standard in ways that were not previously contemplated by Ecology during the development and adoption of the flow control standard in the SWMM and the Phase I Permit. As a result, I am persuaded that Clark County’s approach accomplishes Ecology’s identified objectives for the flow control standard: ensuring that new or redevelopment does not make matters worse, and restoring flows to more natural conditions.

The majority holds Clark County’s program to higher standard than the Phase I Permit’s flow control standard itself. The Phase I Permit’s default flow control standard requires no analysis of existing beneficial uses or conditions at the location of the development; no statement of expected outcomes of the flow control facilities employed at the development site; and no monitoring of the flow control facilities implemented to meet the permit requirement.4

To the extent the Appellants, their experts, and the majority are demanding more from Clark County’s program, their concerns can be traced back to the limitations of the default flow control standard itself. This was apparent in the testimony of Dr. Booth, who in the previous appeal of the Phase I Permit specifically criticized the new flow control standard for its inability to meet the ultimate goals of protecting water quality, beneficial uses, and the streams and rivers of western Washington. Ex. R-94 (Booth Pre-Filed Direct Testimony in Phase I appeal): “The flow duration standard, which is the chief performance standard of the Permit related to

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4 Interestingly though, part of Clark County’s rationale for the alternative approach in the Agreed Order was its experience with the better success rate of public mitigation projects versus private mitigation projects. In Clark County, public sector projects tend to have better long-term success than private ones because of the typically better design, construction, and maintenance. Gray Testimony.
hydrology, does not sufficiently replicate natural hydrology and allows significant damage to the
physical, chemical and biological health of rivers and streams.")

This was also true of Mr. Rhodes' testimony, who conceded that in urbanized areas such
as much of Clark County, it is too late to avoid impacts from existing land cover conditions. As
such, even the default flow control standard in the Phase I Permit will not prevent harm to fish or
result in marked improvements in fish conditions within Clark County. Mr. Rhodes also
acknowledged that requiring new or redevelopment projects to control stormwater relative to
existing conditions will prevent any new or additional degradation attributable to the new or
redevelopment. Rhodes Testimony.

The inherent limitations of the flow control standard were also highlighted in the
conclusions and recommendations of the Independent Science Panel after its review of the flow
The panel wrote:

We identified areas for improvement, especially where stormwater issues intersect
with other mandates for beneficial uses of water and streams. For example: The
project area approach [to flow control] presented in the manual is a necessary first
step in dealing with potential downstream channel stability and water quality
problems at the source. Ultimately, however, a larger watershed-scale perspective
is also needed to assure that desired goals are met in concert with all of the other
land uses and downstream water issues, including salmon. Ex. R-77.

In short, it is a verity that the salmonid populations in the Lower Columbia basin will
continue to be in great peril whether or not any new or redevelopment takes place in Clark
County under any regulatory scheme. And they will continue to be in great peril under either the
Phase I Permit's or the Agreed Order's approach to flow control. Neither regulates the
considerable amount of stormwater discharges that enter directly into receiving waters without
flowing through Clark County’s municipal storm sewer system (MS4). Neither directly
regulates stormwater runoff from new or redevelopment projects that are below the thresholds in
the Phase I Permit, even if they discharge through the County’s MS4 system (although other
parts of the Phase I Permit address these discharges). Neither addresses the myriad other
contributing factors that also bear on the ultimate survival and recovery of Lower Columbia
salmonids. Both the Phase I Permit and the Agreed Order will allow conditions to continue that
can scour redds within stream channels, cause severe siltation of redds, increase temperature that
stresses and kills fish and their offspring, elevate sediment supply and suspended sediment,
degradate natal habitat by changing stream channels, and deplete the food web upon which
salmonids depend.

However, granting even minimal deference to Ecology’s expertise in this area, I would
hold that the Agreed Order’s approach to separately addressing project-related impacts versus
non-project, historic watershed impacts provides, on a programmatic basis, equal or similar
protection to receiving waters as the Phase I Permit does. The Agreed Order reflects a
reasonable exercise of Ecology’s discretion, and there is no legal or factual basis upon which to
conclude this approach is invalid. Accordingly, I respectfully dissent from those portions of the
majority that substitute Ecology’s technical determinations and professional judgments regarding
the intent and goals of the flow control standard with the opinions of experts who, while
certainly well qualified in their fields, offer limited value in determining the goals and intent of
the Phase I Permit’s flow control requirement within the context of municipal stormwater management programs.

The Acreage Metric

Like its concern about the lack of basin planning, the majority’s criticism of the acreage metric for tracking the County’s mitigation obligation again reflects primarily a concern with the limitations of the flow control standard itself.

In developing the Agreed Order, Ecology considered an approach similar to that advanced by Appellants, where the County would be required to “match” a development site and the mitigation site based on multiple factors such as soil conditions and slope, in addition to acreage of certain types of land cover. Ecology rejected such an approach based on a technical assessment of its usefulness, the economic burden it would place on developers and the County, and the complexity of such a regime. Ecology ultimately concluded that it would be too complex an undertaking for the limited additional potential benefits. O’Brien Testimony.

Douglas Beyerlein, the engineer and hydrologist who developed the Western Washington Hydrology Manual for Ecology, testified that the metric by which Clark County’s mitigation obligation and mitigation credits are measured under the Agreed Order is scientifically and technically sound. This is because the single most significant factor in determining the impacts

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5Douglas Beyerlein is a registered professional engineer and a certified professional hydrologist who led the contracting team that developed the Western Washington Hydrology Model (WWHM) for Ecology to accurately measure land development impacts and size stormwater facilities. More recently, he created a calibrated version of the Ecology WWHM for stormwater facility design in Clark County that Ecology has approved for use. The WWMM models hydrology that is site-specific in terms of calculating the amount of runoff generated by a particular property, but it does not dictate where or how that runoff must be controlled. Beyerlein Pre-Filed Testimony at Attachment 1.

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caused by historic development patterns is the nature of the historic land cover in relation to
existing land cover conditions. Land cover is also the single most important factor in controlling
erodible flows at both development project sites and at flow control mitigation project sites.
While it is true that both soil type and slope bear some relationship to the nature and extent of
stormwater impacts experienced at a particular location, they are not a significant factor in
quantifying the overall impact caused by historic land conversion activities on a broader scale.

_Beyerlein Pre-Filed Testimony_ at Attachment 4.

Mr. Beyerlein's opinion is supported by the following information, which was not
disputed by Appellants. Soil groups can be divided into two major categories: well draining soils
where full infiltration of stormwater runoff is usually required and poor draining soils where
surface discharges must be managed based on matching flow durations. _Beyerlein Testimony_.

Most of Clark County contains soils that either do not infiltrate or where infiltration is very slow.
_Golemo Testimony_. For purposes of Clark County's calibrated WWHM, which is used to
calculate the quantity of stormwater runoff from a particular site, all poor draining soils are
modeled with the same soil characteristics and runoff producing potential, which means it would
make little if any difference to analyze the soil type of sites subject to the provisions of the
Agreed Order. _Beyerlein Testimony_. For this reason, Ecology determined that while it would be
possible to add soil condition as another metric for calculating and tracking Clark County's
mitigation obligations, it would make the program more difficult to administer without providing
any meaningful amount of additional environmental benefit. _O'Brien Testimony_.

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Land slope, or topography, also influences the amount and timing of stormwater runoff, where steeper slopes produce more runoff faster than flatter slopes. Generally speaking, steeper slopes have less area available for flow control facilities than flatter slope areas. WWHM simulations have confirmed that, for poor-draining soils, steep slope sites can use smaller stormwater flow control mitigation facilities than flat slope sites, and can release more stormwater from the pond before erosive flows occur. This is because a steep slope site has higher pre-development peak flows than a flat slope site. Mr. Beyerlein assumes that, while private development projects will likely be built on a range of land slopes from flat to steep, the County will likely prefer to select its flow control mitigation projects on sites with relatively flatter areas, where the largest amount of stormwater storage is available. This flatter slope preference for flow control mitigation projects will result in more storage availability than the on-site flow control storage on moderate or steep slope sites. The result is that the County will end up with at least equal, if not greater, stormwater flow control storage under the Agreed Order’s approach to mitigation than it would if the County had to try and match mitigation sites based on finding a mitigation site with a slope similar to the original private development site.

* Beyerlein Pre-Filed Testimony at Attachment 4, pp. 7-8.

The end result of using WWHM’s flow duration matching methodology is that all stormwater flow control mitigation facilities designed using WWHM over-mitigate for erosive flows. This means that, under the Agreed Order, where the new or redevelopment site is not allowed to increase the occurrence of erosive flows above existing site runoff levels, the on-site
stormwater flow control facilities sized using WWHM will actually decrease erosive flows relative to existing land cover conditions. Beyerlein Pre-Filed Testimony at Attachment 4.

**Self Regulation**

Appellants’ challenge, and the majority opinion, appears to be based largely on mistrust of the County’s intentions or abilities to remain vigilant in meeting its on-going permit obligations. While this suspicion may not be entirely misplaced, given some of the unfortunate statements made by individual County representatives (Ex. R-I), I do not find it a compelling basis for invalidating the Agreed Order. To the extent this mistrust underlies the majority’s “self regulation” analysis, I do not agree that the facts support a conclusion that the Agreed Order results in impermissible self regulation.

Appellants are concerned that nothing in the Agreed Order prevents harm from occurring in the most ecologically valuable subwatersheds in exchange for cheaper/easier mitigation that is located in the least ecologically important areas. The possibility of this happening, they suggest, equates to an impermissible self regulatory scheme. What this argument overlooks, however, is that nothing in the Agreed Order prevents Clark County from maximizing mitigation benefits in the most ecologically valuable subwatersheds, even when the new or redevelopment is occurring in the least ecologically important areas (i.e., infill in the most degraded, highly developed, far downstream areas, etc). In fact, this is a primary advantage of this alternative approach—it allows for targeted improvements to the landscape-level impacts caused by historic land conversions rather than being limited to the more “random” site locations associated with new or redevelopment projects. It allows the County to combine and leverage its flow control projects,

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and place them higher or lower in a stream or watershed, where greater environmental benefits can be achieved than if all the permit’s required flow control were implemented at the site of the new or redevelopment. Gray Testimony; Wierenga Testimony; Kraft Testimony; O’Brien Testimony.

The Appellants’ criticism of the Agreed Order also undervalues both the County’s Stormwater Needs Assessment Program (SNAP) and its Stormwater Capital Improvement Project (SCIP) prioritization and selection process. Contrary to the assumption suggested by the majority that Clark County will select only the cheapest options for mitigation, without regard for beneficial uses or the environmental consequences of its choices, the Agreed Order requires the county to place mitigation according to selection criteria and the information developed through its SNAP. Ex. J-1 at 8. The Agreed Order recognizes that past and current work by SNAP includes: “hydrologic and hydraulic modeling of streams within urban growth area watersheds, assessing stream geomorphology and describing riparian conditions.” Id.; See Exs. R-27; R-40 through R-71. The goals of the SNAP assessments, in turn, are to:

- Analyze and recommend the best and most cost effective mix of improvement actions to protect existing beneficial uses, and to improve or allow for the improvement of lost or impaired beneficial uses consistent with NPDES objectives and improvement goals identified by the state GMA, ESA recovery plan implementation, TMDLs, WRIA planning, flood plain management, and other local or regional planning efforts. Ex. R-27, at 1-3m (emphasis added).

While these assessment reports do not purport to be basin plans, they are focused on beneficial uses of the receiving waters, and the information contained within them will provide the basis for selecting the most suitable areas for flow control mitigation projects. The Agreed Order directs that “Specific mitigation sites will be determined by priorities for flow control mitigation..."
established under a project selection process that considers existing information describing channel conditions, channel hydrology and subwatershed hydrology.” Ex. J-1 at 8. It is from this universe of suitable and targeted projects that the cost/benefit ratios, in terms of cost per unit of land cover mitigated, may be considered in prioritizing projects. Id.

The County will do this by utilizing its SCIP prioritization and selection process, which will then be incorporated into the County’s Stormwater Management Plan (SWMP). Ex. A-72, Wierenga Testimony. This SCIP process contains a detailed list of criteria, in addition to the potential amount of flow control, relating to such things as hydrological need, water quality, fish importance, and habitat enhancement, and will provide the weighting to be given to each, in objectively evaluating potential projects. Id. While the Board of County Commissioners (BOCC) provides overall budget authority for the County’s stormwater program, and approves individual contracts, the BOCC does not make the selection of the projects in the SWMP. Id. No evidence was provided that the County’s use of these processes will allow it to ignore these other considerations; rather the testimony was that this process, unlike the default in the Phase I Permit, allows the County to consider these other benefits in selecting where to locate the flow control relative to a development or redevelopment project that triggers the flow control requirement.

Taking these processes together with the Agreed Order’s required annual reporting requirements to Ecology (Ex. J-1 at Attachment A, p. 10), I would conclude that both Ecology and the public will have the information necessary to review Clark County’s implementation of the Agreed Order’s mitigation program and determine compliance with its requirements.
In sum, I concur with the majority that the Agreed Order is flawed with respect to its
effective date, and its inability to ensure an adequate maintenance of efforts and compliance with
the Phase I Permit’s LID requirements. I also dissent, however, and would sustain Ecology’s
decision to approve the Agreed Order’s fundamental approach to implementing flow control
mitigation for impacts associated with historic land conversions. I do not find the approach
manifestly unreasonable and cannot conclude that Ecology approved it in willful or unreasoning
disregard for the facts and circumstances attendant to this case.

DATED this 5th day of January 2011.

POLLUTION CONTROL HEARINGS BOARD

[Signature]

ANDREA MCNAMARA DOYLE, Presiding