Response to Comments
Naval Base Kitsap Municipal Separate Storm Sewer System (MS4) Permit (WAS026646)

Introduction

On September 30, 2019, the U.S. Environmental Protection Agency Region 10 (EPA) issued a public notice for the proposed issuance of the National Pollutant Discharge Elimination System (NPDES) Permit for the Naval Base Kitsap MS4 in Washington. The public comment period closed November 14, 2019.

During the public comment period, EPA received comments from the following:

J. Carter	Port Gamble S'Klallam Tribe	Comments #1 - #6
M. Coughlin	Environmental Review, Inc.	Comments #7 - #10
A. O'Sullivan	The Suquamish Tribe	Comments #11 - #18
K. Kinn	Puget Soundkeeper Alliance	Comments #19 - #41
R. G. Rhinehart	U.S. Navy	Comments #42 - 91

This document presents the comments received and provides corresponding responses to those comments. Where comments resulted in changes to permit language, those are so noted.

The Washington Department of Ecology (Ecology) transmitted its final CWA §401 certification to EPA on June 20, 2019. The certification is included in the Administrative Record for this permit.

On October 23, 2019, EPA submitted its Biological Evaluation for Endangered Species Act Section 7 Consultation on National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permits for Naval Station Everett, Naval Base Kitsap, Naval Air Station Whidbey Island and the Tulalip Tribes to the U.S. Fish and Wildlife Service, and on October 31, 2019 to the National Marine Fisheries Service (collectively, the Services). EPA concluded that discharges from the Naval Base Kitsap MS4 are likely to adversely affect chinook, chum, steelhead, bocaccio rockfish, yelloweye rockfish, humpback whale, killer whale, and marbled murrelet. EPA continues to consult with the Services. See: EPA Region 10 Memorandum, *Subject: Endangered Species Act Section 7(d) Determination with Respect to Issuance of the Naval Base Kitsap Municipal Separate Storm Sewer System Permit in the State of Washington.* If new information becomes available in the future on pollutants impacting endangered species that warrant changes to the permit, or should the Services provide a Biological Opinion indicating the need for additional permit requirements, EPA will modify the permit. EPA has included a reopener provision in the permit (Part 6.3) to this effect.

Note: EPA has reproduced comments as accurately as possible in this document. Formatting has been modified in order to fit a single response to comment document format, including removal of footnotes. In converting from pdf formats to incorporate comments into this document, minor errors may have occurred. The original comment letters are included in the Administrative Record for the Final Permit.

Response to Comments

Comment #1 (J. Carter, Port Gamble S'Klallam Tribe)
The Port Gamble S'Klallam Tribe has utilized the area in and around Naval Base Kitsap – Bangor for many generations, collecting shellfish from its intertidal and shoreline and finfish from its waters, and the proposed NDPES permit threatens these traditional harvesting activities. Of particular note is the region

known as “Devil’s Hole,” directly north of Bangor Lake, which has already been unacceptably compromised by the naval base, and which the proposed activities in the permit threaten to pollute even further. Members of the Port Gamble S'Klallam Tribe actively harvest shellfish on Devil's Hole beach. We request that the Department of the Navy withdraw its permit application for the proposed activities until such time as it can prove it is able to maintain a sewage system without releasing untreated human waste into surrounding water bodies.

> **EPA Response:** This permit authorizes existing stormwater discharges from the Naval Base Kitsap municipal separate storm sewer system (MS4) that have not been previously covered under an NPDES MS4 permit. Permit authorization of discharges from any sanitary sewer systems is outside the scope of this permitting action , thus, this permit does not authorize discharges from a sanitary sewer system. Part 1.3.4 of this permit prohibits most non-stormwater discharges through the MS4 system which would include any sanitary discharges containing human waste. Part 2.3 of the permit specifically requires the implementation of a systematic mapping and evaluation of all discharges through the MS4 system, and the elimination of all illicit discharges through the MS4 system, including sanitary sewer cross-connections. This permit will require the implementation of new pollution controls on existing MS4 discharges and will therefore improve water quality. To address the Tribe’s concern regarding potential contamination of downstream shellfish harvesting, Part 2.3.4.4.1 of the Final Permit now requires the Permittee to notify the Tribe of any spill or other non-stormwater discharge via the MS4 that may impact shellfish beds and harvest, and per Part 2.3.4.4.2, the Permittee must keep the Tribe informed of the status of illicit discharge elimination activities and provide other information and data, as appropriate, on potential impacts. In addition, Part 2.2.2 of the Final Permit now requires Naval Base Kitsap to engage neighbors who are affected by stormwater management activities in the establishment of stormwater program implementation priorities.

Comment #2 (J. Carter, Port Gamble S’Klallam Tribe)
We also request that if the permit is not withdrawn, the naval base engage in tissue monitoring for shellfish to ensure that Tribal members are not sickened when harvesting food and that the permit reflect the full scope of contaminants adjacent waters are listed as impaired on the 303(d) for.

> **EPA Response:** See response to comment #1. EPA notes that the permit includes a comprehensive set of pollutants of concern (see Tables 2.4.4 and 3.3.5) for which water quality monitoring must be undertaken. EPA is not including shellfish tissue monitoring in the permit at this time as most of the existing evidence suggests that fecal coliform impairments are attributable to sanitary sewage discharges which are outside the scope of this permitting action.

Comment #3 (J. Carter, Port Gamble S’Klallam Tribe) – footnotes removed
The NDPES permit application fact sheet notes that “areas of Hood Canal near the base have also been listed as Category 2, waters of concern, for isolated exceedances of bacteria (fecal coliform) and pH.” Fecal coliform bacteria pose a direct health threat to Tribal members, and as Bangor base contains housing, utilities operations, and messing operations, this increases the risk of additional releases of coliform bacteria into the canal. As Naval Base Kitsap has been plagued by sewage discharge problems recently, including an 84,000 gallon sewage spill originating from Bangor Base in January of 2018, several more in other areas of Naval Base Kitsap that same year, and a leak that remained undetected for two years until 2018. These spills, totaling 11 since 2016, have resulted in public beach closures and the recall of shellfish that had already been harvested for Tribal use and has resulted in a lawsuit from

the Suquamish Tribe and a local nonprofit. The public and environmental health effects of any spill can be heightened by the ability of stormwater runoff to mobilize the pollutants found in a sewage spill, and given the base's record, we believe it likely that future spills will occur.

EPA Response: See response to comment #1

Comment #4 (J. Carter, Port Gamble S'Klallam Tribe) – footnote removed
The NDPES permit application notes that Hood Canal has naturally low levels of dissolved oxygen (DO) in deeper waters. Areas immediately south and 0.5 miles north of the project site are on the 303(d) list for low DO. Inputs of nutrients, particularly nitrogen, can lead to eutrophication events that reduce dissolved oxygen levels in the water column by promoting rapid growth—and subsequent die-off—of algal masses. Waste from base residents such as detergents, sewage, pet waste, food waste, and fertilizers (all of which are present in Naval Base Kitsap – Bangor) may all contribute to eutrophication events if released into the water column.

Furthermore, and perhaps more concerningly, the permit application makes no mention that some of the above waters are considered impaired for more than just DO. They are also impaired for 1,4-Dichlorobenzene, arsenic, cadmium, copper, fluoranthene, indeno(1,2,3-c,d)pyrene, lead, mercury, High Molecular Weight Polycyclic Aromatic Hydrocarbons (HPAH), pyrene, silver, zinc, benzo(a)anthracene, Low Molecular Weight Polycyclic Aromatic Hydrocarbons (LPAH), 2-methylnaphthalene, and phenanthrene.

EPA Response: EPA has included nearly all of these pollutants of concern (Table 2.4.4) in the permit as priority targets for both Early Action Plans and for Stormwater Infrastructure Investment Plans (Part 2.4.4). No change was made to the permit as a result of this comment.

Comment #5 (J. Carter, Port Gamble S'Klallam Tribe) – footnote removed
Finally, given the large volume of vehicular traffic at Bangor Base, runoff from roadways will introduce unacceptable amounts of copper, lead, zinc, polycyclic aromatic hydrocarbons, dioxins and furans, and uncombusted petroleum products into Hood Canal.

EPA Response: See response to comment #4. In addition, most of the pollutant controls in the permit apply to stormwater discharges from transportation-related activities, e.g., new development, redevelopment and construction site runoff controls, operation and maintenance. No change was made to the permit as a result of this comment.

Comment #6 (J. Carter, Port Gamble S'Klallam Tribe)
While these risks may only be abstract concepts for the Navy, they are very real and tangible threats to the people of the Port Gamble S'Klallam Tribe. We urge Naval Base Kitsap – Bangor to focus on fixing its sewage system and safeguarding the shores directly north and south of the base rather than planning an expansion that is likely to further damage the environment in and around the base. Failing this, we could like the Navy to implement a stringent tissue monitoring program for shellfish to ensure that the resources Tribal members depend upon don't result in the ingestion of toxic materials, and we would like to see the permit include the additional contaminants on the 303(d) listed and Department of the Navy's plans for preventing further contamination of these impaired waters.

EPA Response: See responses to comments #1-5. No change has been made to the permit as a result of this comment.

Comment #7 (M. Coughlin, Environmental Review, Inc.)
One of the federal requirements of the Clean Water Act is to require controls necessary to reduce pollutants in municipal stormwater discharges. Effective management practices would be: 1) bioswales and bioretention ponds placed downhill from large impervious areas and roadways and 2) rain gardens constructed adjacent residential areas. The construction of community rain gardens could be a particularly effective way to garner community/volunteer engagement. Could these management practices be considered Early Action Projects (EAPs) referenced on the permit fact sheet?

> **EPA Response:** These types of projects may be considered Early Action Projects. No change has been made to the permit as a result of this comment.

Comment #8 (M. Coughlin, Environmental Review, Inc.)
Page 2 the schedule of submissions include specific project plans and testing plans. Since the specific details will be submitted at a later date, this prevents the public from commenting on specific details. That appears to defeat the public noticing and commenting process and appears to be a piecemealing approach. Please explain how the public noticing requirements are being met with that approach. Shouldn't the final plans also be presented for public review and commenting? Alternatively, can you provide notice and solicit comments to a list of stakeholders who might have input into the final plans?

> **EPA Response:** EPA has included most of the relevant details for these plans, e.g., monitoring, in the permit so that the public has the opportunity to review and comment on those requirements. Should the Navy submit a monitoring strategy that EPA finds acceptable, but that differs notably from the provisions in the permit, EPA will public notice its intent to modify those provisions of the permit and take public notice on those proposed modifications. The elements of the Stormwater Infrastructure Investment Plan, which the Navy will develop during this permit term, will be included in the draft permit for the next permit term, and will be available for public comment at that time.

Comment #9 (M. Coughlin, Environmental Review, Inc.)
Page 6 section 1.3.1 first sentence states that "it is presumed that the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards." That is a presumption that should not be made without a baseline study. For example, since the presumption covers groundwater in addition to stormwater, how can the presumption be made that all groundwater quality criteria have been met when such things as spills, underground storage tanks, areas of concern are included in the presumption? Therefore, please require a baseline study to be prepared which adequately supports the stated presumption.

> **EPA Response:** See response to comment #19.

Comment #10 (M. Coughlin, Environmental Review, Inc.)
On page 29 of the fact sheet, it is stated that the Navy has not yet chosen which of two compliance monitoring strategy options it would use for monitoring stormwater. EPA suggests option 2 (in negotiable terms), Stormwater Action Management (SAM) largely because it is the approach used throughout the Puget Sound region so it would be the more consistent option. The Navy has addressed uncertainty regarding funding needed to commit to this option so the other approach would be that they determine their own method of compliance monitoring. It is advisable that if the Navy is unable to commit to SAM, then perhaps they would do well to use the framework of SAM as

a reference for compliance monitoring, so as to remain as consistent as possible with monitoring practices throughout the region.

> **EPA Response:** The Option 1 Monitoring Option follows the monitoring scheme for all MS4 monitoring programs in Western Washington that do not opt to participate in SAM. No changes have been made to the permit as a result of this comment.

Comment #11 (A. O'Sullivan, The Suquamish Tribe)
Three of the NBK permit areas listed in the draft permits are associated with active Comprehensive Environmental Response, Compensation and Liability (CERCLA) sites. The descriptions of the facilities do not adequately reflect the status or condition of the sites. At least two of the three sites, JPHC/NHB and Keyport, are confirmed to have uncontrolled discharge of contaminants to receiving waters via groundwater.

For example, in the draft permits the JPHC description states that the areas of concern were remediated and imply that there are no continuing problems. However, in the last five-year CERCLA review, which was subject to EPA oversight, the OU 1 remedy was found not to be protective over the long-term due to the presence of contamination in areas that were previously assumed not to require remediation. Because of those samples and discoveries, the Navy is proposing to look into a known onsite disposal area as the potential source of the newly discovered contamination. In addition, OU 1 includes a contaminated groundwater plume that discharges to Ostrich Bay and is currently being remediated. While the source area has been treated, the near shore remedy has not yet been implemented. There are also no RODs or in place remedies for OU 2 (the marine environment and ecological risks) or OU 3 M (underwater munitions in the marine environment).

At the Keyport site, OU 1 (the landfill) is being re-characterized because discharge of contaminants to the adjacent stream and marsh have not declined since the remedy (phytoremediation) was implemented. At OU 2 (the plating shop), the project team is currently evaluating what additional action, if any, needs to be taken in response to bioassay results that indicate the discharge of contaminated groundwater to the marine environment may pose risks to environmental receptors.

The Tribe requests The Tribe requests that the MS4 permits consider the history and status of the JPHC/NHB, Keyport, and Bangor federal facility CERCLA sites. In addition to pollutants of concern listed in 3.3.5 of the draft permits, monitoring requirements for each site should consider the specific list of contaminants of concern identified in the Record of Decision or included in site-specific long term-monitoring programs. Sampling locations should be chosen to effectively monitor water quality in receiving waters proximate to ground water discharge areas.

> **EPA Response:** The regulatory scope of authority for the MS4 permit does not encompass all of these issues, e.g., contaminated groundwater, landfill. However, for any pollutants that are discharged through the MS4, including those associated with the activities noted by the commenter, the provisions of the Final Permit apply. Clarifications have been included in Part 2.3 (*Illicit Discharge Detection and Elimination*) of the Final Permit to underscore the importance of addressing all pollutants that are discharged through the MS4.

Comment #12 (A. O'Sullivan, The Suquamish Tribe)
The Tribe is also concerned that the continued discharge of sewage into Puget Sound and

surrounding waters from NBK is leading to higher levels of fecal coliform concentrations affecting both human health and natural resources in those areas. Portions of Liberty Bay are listed on the Washington State Water Quality Assessment because of non-attainment of the state fecal coliform bacteria standards. Fecal coliform is listed as a pollutant of concern under Section 3.3.5 but the permits allow for pollutants of concern to be dropped from longer term monitoring if not initially detected upon screening. Because of the previous unauthorized sewage releases through the stormwater system at NBK, fecal coliform must be included in the development of the monitoring plan and assessment strategy and should not be dropped if not detected in the initial screening.

> **EPA Response:** EPA concurs that fecal pathogens, as indicated by fecal coliform bacteria, are a pollutant of concern in the MS4 discharges at Naval Base Kitsap. As long as they continue to be detected in MS4 discharges, they shall continue to be required analytes in the MS4 monitoring program, under Option 1 (Part 3.3) of the Final Permit. However, as EPA explained in response to comment #1, the permit does not authorize the discharge of sanitary sewage from the MS4.

Comment #13 (A. O'Sullivan, The Suquamish Tribe)
Under Section 2.3.4 of the draft permits, the Tribe requests a notification requirement to the Tribe because of the impact of illicit discharges on shellfish beds and harvest. Early detection and notification is critical to protect human health.

> **EPA Response:** Part 2.3.4.4 of the Final Permit requires the Permittee to notify the Suquamish Tribe of any spill or other non-stormwater discharge that may impact shellfish beds and harvest. See response to comment #1.

Comment #14 (A. O'Sullivan, The Suquamish Tribe)
The Tribe requests that the statement in Section 1.3.1 that "If the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards" be struck and not included in the permits issued. It is not legally defensible and is overly broad because while the draft permits are based on the implementation of stormwater management programs and best management practices, these do not ensure that stormwater or other discharges from the facilities will not contribute to violations of Washington's water quality standards. This is because MS4s tend to be highly contaminated due to urbanization and development with a wide variety of pollutants and can cause or contribute to violations of water quality standards. At NBK, the waters receiving discharges from the three Naval MS4s already suffer impairments or contamination issues for pollutants common to MS4 discharges including sediment, dissolved oxygen, bacteria, temperature and nutrients. Under Washington law, WAC l 73-201A-510(3)(b) there is no presumption of compliance when permit terms are followed or best management practices are implemented.

> **EPA Response:** See response to comment #19.

Comment #15 (A. O'Sullivan, The Suquamish Tribe) – footnote removed
The draft permits must contain a deadline for implementation of control measures that at a minimum must meet the criteria under 33 U.S.C. § 1342(p)(4) (A) requiring control measures be provided for "as expeditiously as practicable, but in no event later than 3 years after the issuance" of the MS4 permits. Likewise, in Section 1.5.1.2, the implementation schedule for equivalent control measures extends to the permit expiration date, which is five year from issuance but should be changed to three years.

EPA Response: 40 CFR §122.34(a)(1) states that *"For permits providing coverage to any small MS4s for the first time, the NPDES permitting authority may specify a time period of up to 5 years from the date of permit issuance for the Permittee to fully comply with the conditions of the permit and to implement any necessary BMPs."* Consistent with this regulation, EPA is allowing the permittee additional time to implement control measures when/if the Permittee adds additional MS4 areas. No change was made to the permit as a result of this comment.

Comment #16 (A. O'Sullivan, The Suquamish Tribe)
Section 2.5.10.1 of the draft permits, requires Permittee to document in annual reports circumstances beyond their control that prevent required maintenance activities from occurring which "may include but are not limited to denial or delay of necessary funding approvals, and unexpected reallocations of maintenance staff or resources to perform emergency work." The Clean Water Act does not provide that meeting the mandate for all known, available and reasonable (AKART) or Maximum Extent Practicable (MEP) is dependent on federal funding resources.

EPA Response: 40 CFR §122.34(c)(3)(i) requires annual reports to describe the status of compliance with permit terms and conditions. Part 2.5.10.1 of the permit is simply specifying the types of details that should be included to meet this requirement. This provision is not providing the Permittee enforcement relief. Part 5.1 of the permit makes it very clear that "…any permit noncompliance constitutes a violation of the CWA…" See also response to comment #22.

Comment #17 (A. O'Sullivan, The Suquamish Tribe) – footnote removed
The Fact Sheet states that the streams onsite are not fish bearing. This has not been confirmed by Washington State Department of Fish and Wildlife or the Tribe. Because a stream may have an existing artificial barrier does not make the stream non-fish bearing. The Tribe requests that the Navy have WDFW and the Tribe verify stream typing on all of the sites included in any of the permits listed above.

EPA Response: State and Tribal stream typing activities are outside the scope of this permitting action. The Washington State water quality standards designate all of these waters as protected for the aquatic life designated use, including salmonid habitat. The permit has been developed to protect all relevant designated uses affected by MS4 discharges, including the aquatic life designated use. No change has been made to this permit as a result of this comment.

Comment #18 (A. O'Sullivan, The Suquamish Tribe)
The permit and associated Fact Sheet do not discuss potential retrofitting of current stormwater facilities that are outdated and do not meet the criteria of the current stormwater manual. The Tribe would prefer that the Navy meet the Department of Ecology's technical stormwater standards versus what they claim is "technically consistent" with Ecology's standards.

EPA Response: Part 2.4 of the permit stipulates all standards for new development, redevelopment and construction activities, including the design and construction of stormwater facilities. Per Part 2.4.2.1 all standards stipulated in Ecology's Western Washington stormwater permits and the 2019 Stormwater Management Manual for Western Washington must be met. No change has been made to the permit as a result of this comment.

Comment #19 (K. Kinn, Puget Soundkeeper Alliance)
Section 1.3.1 of the three permits begins with a statement concerning a presumption that discharges do not violate water quality standards so long as all permit conditions are abided. This statement is "If the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards." Soundkeeper objects to this statement as lacking foundation in fact and law.

It is generally acknowledged that discharges from MS4s tend to be highly contaminated with a variety of pollutants at levels likely to cause or contribute to in-stream violations of water quality standards. As described by the draft fact sheets, waters receiving discharges from the three Naval MS4s at issue suffer impairment or contamination issues for pollutants likely to be contained in or affected by MS4 discharges, including sediment, dissolved oxygen, bacteria, temperature, nutrients. It is likely that discharges from the MS4s will contribute to these impairments and water quality issues. The draft permits are based on the implementation of stormwater management programs and best management practices. Soundkeeper is unaware of any information indicating that these controls are likely to maintain a discharge quality ensured not to cause or contribute to violations of Washington State's water quality standards. What factual technical analyses support the presumption asserted by Sections 1.3.1 of the draft permits?

As a legal matter, WAC 173-201A-510(3) addresses implementation of Washington's water quality standards to stormwater pollution. It contains no presumption of compliance with water quality standards when permit terms are abided or when best management practices are implemented. Rather, it specifies that additional best management practices must be applied when a violation of water quality standards occurs despite the implementation of measures required by permit. WAC 173-201A-510(3)(b). Further, best management practices established in permits are to be reviewed and modified to achieve compliance with water quality standards when necessary.

Nothing else in Washington's regulations or statutes authorizes or indicates the propriety of the asserted assumption. Former RCW 90.48.555 did contain a section about a presumption of compliance with water quality standards for industrial stormwater discharges, which may be the original source of the presumption concept, but that statute expired in 2015 and never applied to MS4 discharges. What is the legal basis for the presumption of compliance with water quality standards language?

> **EPA Response:** Clean Water Act Section 402(p) requires that MS4 discharges implement controls necessary to reduce pollutants in the discharge to the MEP. In addition, to ensure that the discharge meets water quality standards, the permitting authority may include water quality based provisions (Defenders of Wildlife v Browner, U.S. Court of Appeals, 9th Circuit, 1999). As explained in the Fact Sheet, EPA has concluded that the permit as a whole meets the MEP standard and WQS. Section 1.3.1 provides that if the Permittee conducts monitoring/sampling and finds that there is an exceedance of WQS, the Permittee must take corrective action (Part 4 of the Final Permit). Ecology has certified that the permit meets Washington water quality standards as well as relevant state law pursuant to Section 401 of the CWA. Further, 40 CFR §122.5(a) stipulates that "…compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405(a)-(b) of CWA." EPA notes that this statement and the one in Part 1.3.1 of the permit, are the starting points for compliance determinations, but do not excuse the Permittee from taking all necessary corrective actions should exceedances of applicable water quality standards be identified, not does it provide enforcement relief.

Comment #20 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits couch prohibitions in vague and unenforceable language. Permit sections 1.3.1, 1.3.2, 1.3.3, and 1.3.4 state that certain discharges "are not authorized" by the permit. Soundkeeper suggests that this language be changed to actually "prohibit" such discharges. The effect of this language would be to enhance the effectiveness of the permits by making the "unauthorized" discharges instead violations of the permit, enforceable under 33 U.S.C. § 1365. As written, unauthorized discharges do not constitute permit violations, but are merely "not authorized" by the permits.

33 U.S.C. § 1342(p)(3)(B)(ii) requires that these permits "include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." The draft language fails to satisfy this requirement.

> **EPA Response:** Discharges not authorized by an NPDES permit are violations of Clean Water Act Section 301. The MS4 permit uses the context of "authorized" and "unauthorized" because there may be some discharges authorized under another NPDES permit, e.g., the Construction General Permit or the Multi-Sector General Permit, which, while not authorized under the MS4 permit are authorized by another permit; therefore, they are not prohibited discharges. Permit Section 1.3.4 identifies specific non-stormwater discharges that may be discharged through the MS4 as long as certain conditions are met. See 40 CFR §122.34(b)(3)(iii). See also response to comment #19 regarding Permit Section 1.3.1.

Comment #21 (K. Kinn, Puget Soundkeeper Alliance) – footnote removed
The draft permits' provision for implementation of control measures to be developed or implemented during the permit term, section 1.4.3, requires the Permittee's SWMP documentation to "describe interim schedules for implementation" of such measures. No deadline for implementation of control measures is specified, meaning that the Permittee's implementation schedule can be of any length. This is inadequate regulation and fails to meet the requirement of 33 U.S.C. § 1342(p)(4) that compliance with requirements, including those necessary to implement both the "maximum extent practicable" and AKART technology standards, must be "provided for" "as expeditiously as practicable, but in no event later than 3 years after the issuance" of the MS4 permit, as well as 40 C.F.R. § 122.42(d).

> **EPA Response:** Implementation deadlines that occur during the relevant permit term are specified in the permit, and are therefore necessarily part of the SWMP documentation. Also, see response to comment #15.

Comment #22 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 1.4.5 qualifies the requirement that the Permittee provide adequate finances, staff, equipment and other support capabilities to implement permit requirements on non-violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Soundkeeper is unaware of any Clean Water Act provision allowing exception to compliance with NPDES permit requirements when a Permittee has not been allocated or is unable to obtain or deploy necessary resources. Please explain the legal basis for this provision and its consistency with the Clean Water Act.

> **EPA Response:** EPA received several comments regarding funding obligations and the Anti-deficiency Act (see also comment #66). EPA clarifies: 1) that the permit cannot supersede the Anti-Deficiency Act, nor can it create a recordable financial obligation for the Permittee; as such, there's no need to cite to it in the permit, and 2) that the requirement for a Permittee to demonstrate adequate funding is an application requirement for large and medium MS4s [see

40 CFR §122.26(d)(2)(vi)], but is not a requirement for small MS4s. Therefore, in response to these comments EPA is simplifying the permit by: removing Part 1.4.5; removing the examples of "circumstances beyond the Permittee's control", which includes inadequate funding, from Parts 2.5.1.2 and 2.5.10.1; removing the requirement to certify adequate funding in the annual report from Part 3.8.2.2.4; and by removing the corresponding reporting element 7 in the Annual Report Template.

Comment #23 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 1.4.6 requires Permittees to implement required control measures of the permit in all areas newly added or transferred to the MS4 as expeditiously as possible but not later than one year from the addition. This is an appropriate requirement. However, the section continues to authorize phased implementation to allow additional time for controls that cannot be implemented immediately. To ensure the prompt implementation of such controls and compliance with the 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d) three year limit on time for compliance, this provision should limit the time available for such phased implementation to three years or less.

EPA Response: See response to comment #15. No change was made to the permit as a result of this comment.

Comment #24 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 1.5.1.2 allows an implementation schedule for equivalent control measures that extends to the permit expiration date, which is five years from permit issuance. To ensure the prompt implementation of such controls and compliance with the 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d) three year limit on time for compliance, this provision should limit the time available for implementation to three years or less.

EPA Response: See response to comment #15. No change was made to the permit as a result of this comment.

Comment #25 (K. Kinn, Puget Soundkeeper Alliance)
Soundkeeper supports the draft permits' section 1.5.2 language that specifically does not stay permit conditions while agencies consider a Permittee's request for approval of equivalent documents, plans, or programs. This provision is important to fill the mandate of 33 U.S.C. § 1342(p)(4).

EPA Response: EPA acknowledges the comment. No change has been made to the permit as a result of this comment.

Comment #26 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' condition 2.3.2.1, listing allowable discharges, should specify that "discharges from emergency firefighting activities" are allowable only during actual emergency firefighting activities, not during cleanup of such activities.

EPA Response: EPA agrees and has made this change to the Permit. This specification has been added to Part 2.3.2.1 of the Final Permit.

Comment #27 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' condition 2.3.2.2 identifies categories of non-stormwater discharges that the Permittee's illicit discharge detection and elimination program may conditionally allow. Draft condition

2.3.2.2.6 provides that "other non-stormwater discharges," presumably including any non-stormwater discharges, may be conditionally allowed by the Permittee into the MS4 so long as such discharges are "in compliance with the requirements of a pollution prevention plan reviewed by the Permittee which addresses control of such discharges." Soundkeeper objects to the breadth of this provision as it implies that the Permittee can authorize a point source discharge of pollutants to navigable waters via the Permittee's MS4 in violation of the 33 U.S.C. § 1311(a) prohibition. Non-stormwater point source pollutant discharges violate the Clean Water Act unless authorized by an NPDES permit. The draft permits should be wholly consistent with this foundational requirement of the Clean Water Act.

> **EPA Response:** EPA agrees with this comment and has removed the original Part 2.3.2.2.6 from the Final Permit. The Navy has already identified the "other" non-stormwater discharges they would like included in this section, i.e., utility vaults (Part 2.3.2.2.5) and secondary containment structures (New Part 2.3.2.2.6). Should the Navy identify other categories of discharges for which they would like conditionally allowable discharge authorization, they can request that EPA modify the permit.

Comment #28 (K. Kinn, Puget Soundkeeper Alliance) – footnote removed
The draft permits' conditions 2.3.3.2.1 and 2.3.3.2.2 concern timing for non- stormwater discharges from stormwater outfalls during dry weather. Screening is required to begin two years from the effective permit date and at least 75% of MS4 outfalls must be screened no later than 180 days before the permit expiration. Soundkeeper urges that these requirements be tightened. Screening should begin within a year of permit issuance and 90% of outfalls should be screened by the end of the permit term.

> **EPA Response:** The commenter does not provide a reason for why the schedule should be accelerated. This requirement is consistent with a similar requirement in all Western Washington MS4 permits, including the Joint Base Lewis McChord MS4 permit, which establishes a Maximum Extent Practicable (MEP) baseline for a military installation Illicit Discharge Detection and Elimination Programs at this point in time. No change has been made to the permit as a result of this comment.

Comment #29 (K. Kinn, Puget Soundkeeper Alliance) – footnote removed
The draft permits' condition 2.3.3.3 requires characterization of the nature of, and any potential public or environmental threat posed by, illicit discharges. For this, "procedures must address the evaluation of whether the discharge must be immediately contained…" What is the standard to be applied by these procedures and evaluation?

> **EPA Response:** Note: This is Part 2.3.4.3 in the Naval Base Kitsap MS4 Permit. EPA agrees with this comment and has made relevant changes to the Final Permit. Specifically, EPA has added language to specify that investigations should include identification of pollutant volumes/loads and potential impacts, as well as immediately containing spills or other illicit discharges and implementing clean-up measures.

Comment #30 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' condition 2.4.4 requires Permittees to identify Early Action Projects within one year of the permit's effective date, but imposes no reporting deadline before that for the fourth annual report. Why is there no requirement for Permittees to report their Early Action Project identifications shortly after the one-year deadline?

EPA Response: The Final Permit has been revised to clarify that the annual report must include a summary of all Early Action Projects planned and implemented and the status of the Stormwater Infrastructure investment Plan.

Comment #31 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.2.1 allows a Permittee to reduce the frequency of otherwise annual inspections of all Permittee owned or operated permanent stormwater facilities used for flow control and treatment, other than catch basins "if maintenance and inspection records support such action." What does this mean? What is the standard that the records must show it met to allow a reduction in inspection frequency?

EPA Response: The Permittee has been accorded some discretion to make these determinations, which should be very straightforward for a stormwater manager who can readily assess whether a stormwater facility is in need of maintenance.

Comment #32 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.1.2 requires a Permittee to perform maintenance when indicated by adopted maintenance standards "within 2 years for maintenance that requires capital construction of less than $25,000." This implies that there is no time limit for performance of maintenance involving greater capital construction costs. What is the basis for the $25,000 capital construction cap? How does this lack of a requirement to implement larger projects needed to meet maintenance standards comport with the 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d) mandate that standards be met within three years of permit issuance? The draft fact sheets' section discussing this condition state that "[t]he EPA does expect the Permittee to undertake maintenance as expeditiously (sic) in all cases." EPA's "expectation" is not enforceable and does not satisfy the mandates of NPDES permitting.

EPA Response: The maintenance schedule categories are consistent with the maintenance requirements in all Western Washington MS4 permits, including the Joint Base Lewis McChord MS4 permit, which establishes a MEP baseline for military installation Illicit Discharge Detection and Elimination Programs at this point in time. A schedule reporting requirement has been added to the Final Permit for maintenance projects requiring capital construction of $25,000 or more.

Comment #33 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.3 concerning spot check inspection of permanent stormwater facilities should include a maximum time allowable for the Permittee's repair or other appropriate maintenance action to address problems identified by inspection.

EPA Response: As discussed in the previous comment, these schedules are specified in Part 2.5.1.2 of the permit. See response to comment #32.

Comment #34 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.4 requires the Permittee to "clean catch basins if inspection indicates cleaning is needed." What is the standard for whether inspection "indicates cleaning is needed"?

EPA Response: Catch basin cleaning is required when solids and liquids have accumulated to a level that requires removal. The Permittee will determine specific capacity thresholds based on how frequently they plan to undertake catch basin clean-outs.

Comment #35 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.9 requires Permittees to develop and implement stormwater pollution prevention plans ("SWPPPs") for areas of industrial activities they own, which are not already regulated under the MSGP, within two years of the permit effective date. This is too lengthy a timeline for this important requirement.

While, at least, this condition requires implementation of non-structural BMPs immediately after SWPPP development, it requires merely a schedule for installation of any necessary structural BMPs to be included in the SWPPP. The permit should include a requirement that structural BMPs needed for implementation of AKART or MEP be implemented within three years of permit issuance to adhere to the three-year compliance deadline of 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d).

> **EPA Response:** Note: This is Part 2.5.10 of the Final Permit. The commenter does not provide a reason for why two years is too lengthy a time line for development of SWPPPs. See also response to Comment #8. No change has been made to the Permit as a result of this comment.

Comment #36 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.10.1 requires Permittees to document in annual reports circumstances beyond their control that prevent required maintenance activities from occurring. This condition further states that circumstances beyond the Permittees' control "may include but are not limited to denial or delay of necessary funding approvals, and unexpected reallocations of maintenance staff or resources to perform emergency work." This is unacceptable, as the Clean Water Act provides no exception to the mandates for timely implementation of AKART and MEP due to funding shortfalls. This provision is particularly inappropriate in these draft permits because the Navy is the true Permittee in each instance and, by this provision, can call its own decisions to deny funding or resources for permit compliance activities "circumstances beyond the Permittee's control." This is legally unsupportable and unworkable as a practical matter.

> **EPA Response:** Note: this is Part 2.5.11.1 in the Final Permit. EPA agrees with this comment for reasons explained in response to Comment #22. The Final Permit does not retain examples of "circumstances beyond the Permittee's control", but leaves it to the Permittee to provide the necessary explanation, should a relevant circumstance occur.

Comment #37 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 2.5.10.2 appears to contain a typographical error ("document summarize").

> **EPA Response:** Note: this is Part 2.5.11.2 in the Final Permit. This error is corrected in the Final Permit with removal of the word "document".

Comment #38 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 3.1 requires a Permittee to at least once per year "evaluate its compliance with these Permit conditions and report on progress toward achieving the control measures." "Evaluate its compliance with these Permit conditions" is vague in that it is unclear what "evaluate" means and it is unclear which permit conditions are referenced.

> **EPA Response:** The permit specifies numerous monitoring, record-keeping and reporting requirements, which collectively should provide a reasonably clear picture of compliance.

Section 3.1 of the Final Permit requires the Permittee to review the actions it is taking to meet the permit conditions and provide a summary of those actions to meet the schedule set forth in the permit for compliance with various components of the stormwater management program. For clarity, the Final Permit uses the word "all" rather than "these" to refer to Permit conditions.

Comment #39 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 3.3.5 describes monitoring option 1 requirements for monitoring pollutants of concern. It is unclear what it means that the Permittee "shall consider the pollutants of concern" identified in Table 3.3.5. Also, this condition appears to allow cessation of monitoring for a particular pollutant of concern if it is not detected in an unspecified number of monitoring events. Cessation of monitoring should not be allowed until a statistical analysis contemplating anticipated variations in monitoring results supports a conclusion that the pollution is unlikely to be present in detectable concentrations.

EPA Response: Part 3.3.5 of the permit is clear that the Permittee must screen for pollutants of concern and that those pollutants of concern may be dropped from additional monitoring efforts if they are not detected in MS4 discharges. The Permittee must describe the details of the monitoring in a Plan that will be submitted to EPA for approval, per Part 3.3.1 of the Final Permit. EPA will require modifications to any element of the monitoring Plan found to be inadequate, including screening methods.

Comment #40 (K. Kinn, Puget Soundkeeper Alliance)
The draft permits' section 4.4.4 concerns annual reporting requirements associated with EPA action on additional BMP requirements in response to notice of violations of water quality standards. It provides that EPA may determine that modification of BMPs or a specific implementation schedule is necessary. However, this section and the following section 4.4.4.1 seem to contemplate modification of permit terms to effect these changes in requirements. It is unclear why EPA's determination that BMPs should be modified or implemented on a specific schedule would require modification of permit terms. Indeed, it would appear that EPA could impose these requirements either on the basis of the permit as written (which provides for EPA to impose additional requirements in response to violation notices) or in an administrative order. The suggestion that permit modification is necessary to allow EPA to make these specifications is confusing.

EPA Response: Decisions about whether a change in a permit condition qualifies as a corrective action already consistent with existing permit provisions, or constitutes a formal permit modification will be made on a case-by-case basis. The language in Part 4.4.4 is simply noting that either situation may arise and EPA will act accordingly.

Comment #41 (K. Kinn, Puget Soundkeeper Alliance)
The 2013 Liberty Bay Watershed Fecal Coliform Bacterial Total Maximum Daily Load provides no wasteload allocation for MS4 discharges from Naval Base Kitsap. It does provide a WLA for facility discharges authorized under the MSGP and the draft permit seems to contemplate that this WLA extends to MS4 discharges. This is inappropriate as these discharges are distinct. Since the TMDL includes no WLA for the Naval Base Kitsap fecal coliform discharges to the Liberty Bay Watershed, the permit must prohibit such discharges. All NPDES permits must be consistent with the terms of an approved TMDL. *Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517, 1520 (9th Cir. 1995); 40 C.F.R. § 122.44(d). "WLAs constitute a type of water quality-based effluent limitation." 40 C.F.R. § 130.2(h).

The draft fact sheet (p. 12) erroneously asserts that this TMDL assigns WLAs to “Keyport”. While Tables 26 and 27 of the TMDL designate WLAs for “NPDES stormwater Permittees” by water body and site location, this cannot include WLA’s for the Naval Base Kitsap because the TMDL nowhere mentions or contemplates this particular discharger or NPDES permit.

EPA Response: At the time the Liberty Bay Fecal Coliform TMDL was published, the Multi-Sector General Permit was the only stormwater permit under which Naval Base Kitsap had coverage; the TMDL identified that permit coverage. The TMDL assigned WLAs to “NPDES stormwater Permittees.” The TMDL did not make a distinction between municipal and industrial stormwater, and noted further that:

> *There may be some existing stormwater sources of bacteria in the watershed that are not currently under NPDES permit. The allocations for such sources are expressed in the TMDL as the “load allocation” contingent on the source remaining unpermitted. However, this part of the load allocation could at some future time be deemed a “wasteload allocation” if the stormwater discharge from the source is required to obtain NPDES permit coverage.*[1]

The TMDL did not assign these discharges an allocation (either load or wasteload) of zero.

EPA has included in the Final Permit all reduction mechanisms included in the TMDL Reasonable Assurance assessments and Implementation Plan, for both nonpoint sources and point sources, that are applicable to MS4 discharges at Naval Base Kitsap. These include: public education and involvement, controls on pet waste, illicit discharge detection and elimination, and emphasis on low impact development measures for new, redevelopment and retrofits. EPA also notes that the Washington Department of Ecology has provided a water quality certification for the Final Permit that states that the permit meets state water quality standards and requirements which would include TMDL WLAs.

Comment #42 (R. G. Rhinehart, U.S. Navy)
Front page. Please remove "including groundwater". The Clean Water Act does not extend to discharges to groundwater (per 40 CFR 122.2).

EPA Response: This provision is included in Washington Department of Ecology’s Water Quality Certification Statement, and is therefore incorporated into the permit pursuant to CWA Section 401(d) which allows the State to include conditions in a 401 certification that are necessary to ensure compliance with other appropriate requirements of state law.

Comment #43 (R. G. Rhinehart, U.S. Navy)
1.2. Please remove "and to groundwater of the State of Washington ".

EPA Response: See response to comment #42.

Comment #44 (R. G. Rhinehart, U.S. Navy)

[1] *Liberty Bay Watershed Fecal Coliform Bacteria Total Maximum Daily Load, TMDL and Water Quality Implementation Plan*, Washington Department of Ecology, May 2013. Pub. No. 13-10-014.

1.3.1. Please remove "groundwater standards {Chapter 173-200 WAC), sediment quality standards (Chapter 173-204 WAC)." The CWA does not extend to discharges to groundwater. Likewise, the CWA does not address sediment in the context included in the draft permit.

EPA Response: See response to comment #42.

Comment #45 (R. G. Rhinehart, U.S. Navy)
1.3.1. Please delete "and other appropriate requirements of State law." The scope of the statement is ambiguously broad. Nor do we see this requirement in the 401 Certification.

EPA Response: See response to comment #42.

Comment #46 (R. G. Rhinehart, U.S. Navy)
1.3.1. Please change this section to: "If the Permittee complies with the terms and conditions of this Permit, the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards. If the Permittee finds that there has been a discharge that clearly has degraded water quality, the required response by the Permittee is set forth in Part 4 (Required Response to Violation of Water Quality Standards.)" Water quality standards apply to the whole of a water body. "Connecting" water quality standards to a sole Permittee/discharge is an unreasonably large burden for the Permittee. The role of the permit is to link the broader water quality standards to specific point
source discharge.

EPA Response: See response to comment #19. There is nothing in the permit that holds the Permittee responsible for pollutant contributions from other sources.

Comment #47 (R. G. Rhinehart, U.S. Navy)
1.3.3. Please delete this section. It holds equally true if included in the permit or not. There is no functional reason to include.

EPA Response: Part 1.3.3 establishes a discharge prohibition of industrial and/or construction stormwater through the MS4 unless it is permitted by another NPDES permit. No change has been made to this permit as a result of this comment.

Comment #48 (R. G. Rhinehart, U.S. Navy)
1.3.4.2 Please edit to read "not after the emergency has ceased as determined by the Fire Chief or On-scene leader''. The Fire Chief or On-scene leader manages emergencies and has the knowledge to determine when the emergency has ceased.

EPA Response: EPA has clarified in Part 1.3.4.2 of the Final Permit that cessation of emergency firefighting activities is a determination of the emergency on-scene coordinator.

Comment #49 (R. G. Rhinehart, U.S. Navy)
1.5.1.4 This section requires Ecology approval of equivalent documents. Please delete the Ecology approval requirement. Approval is a function of NPDES program primacy, which Ecology does not have.

EPA Response: This provision is included in the Washington Department of Ecology's Water Quality Certification Statement, and is therefore incorporated into the permit pursuant to Clean

Water Act Section 401(d). EPA agrees that Ecology does not have NPDES program primacy; however, pursuant to Ecology's Water Quality Certification Statement, EPA will consult with Ecology in determining whether a document/plan/program is functionally equivalent to a condition in the permit.

Comment #50 (R. G. Rhinehart, U.S. Navy)
1.5.2. Please remove this section. Covered under Section 6.13, Re-Opener clause.

EPA Response: EPA disagrees that these 2 provisions are redundant. The Re-opener Clause in Part 6.13 is the general re-opener provision. Part 1.5.2 is a specific step in the process stipulated in Part 1.5 concerning the proposal, review, approval and incorporation of equivalent documents, plans and programs. No change has been made to the permit as a result of this comment.

Comment #51 (R. G. Rhinehart, U.S. Navy)
1.5.3. Please remove this section. Covered under Section 6.13, Re-Opener clause.

EPA Response: See response to comment #50.

Comment #52 (R. G. Rhinehart, U.S. Navy)
2.1.2 Please change "ongoing" to "annual" in the two instances it occurs in this section. "Ongoing" can imply a steady level of involvement throughout the year. "Annual" is more in-keeping with the effort the Navy envisions.

EPA Response: This program is not intended to be an occasional, recurring event, but a program that matures over time with the eventual identification of specific implementable solutions. As such, the word "ongoing" is more appropriate and provides the Permittee with adequate flexibility for determining specific timeframes. No change has been made to the permit as a result of this comment.

Comment #53 (R. G. Rhinehart, U.S. Navy)
2.1.2 Please change the sentences starting with "The program should..." Please remove "3) identify and facilitate robust and implementable solutions." This statement does not track with an outreach and education effort. Additionally, it is premature since the Biological Opinion is not complete.

EPA Response: Part 2.1.2 of the Permit requires the Permittee to develop and implement an educational program that focuses on the impacts of stormwater discharges to the Southern Resident Killer Whale. This provision provides a list of items that the Permittee should consider when developing this program. One of the items that should be considered are implementable solutions. The Permittee should consider that measures identified as part of this effort may qualify as Early Action Projects and/or Stormwater Infrastructures Investment Plan activities or controls, per Part 2.4.4 of the Final Permit. No change has been made to the permit as a result of this comment.

Comment #54 (R. G. Rhinehart, U.S. Navy)
2.2.1 Please delete this section since it holds equally true if included in the permit or not.

EPA Response: 40 CFR § 122.34(b)(2)(i) states that a Permittee must "comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program." Section 2.2.1 reflects this requirement. No change has been made to the permit as a result of this comment.

Comment #55 (R. G. Rhinehart, U.S. Navy)
2.2.4. Please include the Kitsap Water Festival and Earth Day events as an example volunteer activity. These are local activities already familiar to the Navy.

EPA Response: These activities have been added to Part 2.2.4 of the Final Permit.

Comment #56 (R. G. Rhinehart, U.S. Navy)
2.3.1. Please include "as appropriate given allocated resources and in consideration of water quality impacts" after the statement "must be mapped for all known outfalls..."

EPA Response: As written, this provision provides flexibility for elements of the mapping program that may not be possible to complete during this permit term, e.g., "known MS4 outfalls". This provision reflects the MEP for MS4s located within Western Washington. The original language is retained in the Final Permit.

Comment #57 (R. G. Rhinehart, U.S. Navy)
2.3.2.2.5. Please include discharges from secondary containment units (berms) with this section. Discharges from these units, after sampling and visual inspection, are unlikely to cause water quality impairment.

EPA Response: Secondary containment areas are designed to capture pollutants from spills and leaks, and waters collecting in these areas are highly likely to contain residues of those pollutants. However, stormwater controlled discharges from secondary containment areas are appropriate following sampling to verify that no pollutants occur at concentrations that will cause or contribute to water quality impairments. EPA is including secondary containment structures in Part 2.3.2.2.5, but clarifies that (unlike one-time only sampling for utility vaults) the sampling must occur after any event during which notable amounts of contaminated materials accumulated in the secondary containment structure.

Comment #58 (R. G. Rhinehart, U.S. Navy)
2.4. The terms New Development and Redevelopment are applicable to public entities such as cities and counties. Since we own and operate our facilities, the terms are not applicable to the Navy. No change requested.

EPA Response: The terms *New Development* and *Redevelopment* have been defined in the permit and used in the permit to apply to relevant activities at Naval Base Kitsap.

Comment #59 (R. G. Rhinehart, U.S. Navy)
2.4.2. Please remove this section (2.4.2, 2.4.2.1, and 2.4.2.2). We are the sole owners and operators of our facilities. Enforcement authority is implicit in facility ownership. Furthermore, in this context, the Navy would refer to this type of direction as an "Instruction". Please include language acknowledging both terms as equivalent.

EPA Response: The requirements included in Parts 2.4.2, 2.4.2.1 and 2.4.2.2 of the permit (e.g., site planning, BMP design criteria), are fundamental elements of a stormwater program for development, new development and construction; they are retained in the Final Permit. The provision to use an "enforceable mechanism" to provide accountability around these requirements is sufficiently general to allow the Permittee to determine what the mechanism(s) should be. EPA understands that the Navy's sole ownership/operatorship of activities at the Naval facility differs from a municipal framework where codes, ordinances and by-laws are necessary enforceable mechanisms. However, this does not mean that accountability mechanisms aren't necessary, e.g., contract terms for contractors or subcontractors undertaking relevant activities at Naval Base Kitsap. The existing language does not limit the permittee in anyway and the language allows the Permittee to implement an enforceable mechanism that is appropriate under the laws and procedures at a particular facility. The original language is retained in the Final Permit.

Comment #60 (R. G. Rhinehart, U.S. Navy)
2.4.2.3. Please remove this section (regarding airport operations) for Naval Base Kitsap and Naval Station Everett. Neither conducts air operations. For Naval Air Station Whidbey Island, we will consult the noted reference but our overriding policy is, and will continue to be, Navy air operation policy.

EPA Response: This provision is included in Washington Department of Ecology's Water Quality Certification Statement, and is therefore incorporated into the permit pursuant to Clean Water Act Section 401(d). No change has been made to the permit as a result of this comment.

Comment #61 (R. G. Rhinehart, U.S. Navy)
2.4.4. The word "Investment" is in the title and "Improvement" in the text. Please edit for consistency. Note, permit is unclear on how Permittee shall record identified EAPs within one year of the effective permit date. Per Navy discretion, identified EAPs shall be included in the SWMP.

EPA Response: EPA has corrected any inconsistent uses of these terms in the Final Permit.

Comment #62 (R. G. Rhinehart, U.S. Navy)
2.4.4.1. We are concerned this section will result in disagreement with the parties mentioned and make Plan finalization challenging. Possibly pushing us into a non-compliance position. We would like to discuss ways to accomplish the intent of this section in a way to minimize disagreement and/or delay. The Navy may need to rely on "to the extent possible" to get this complete within the time frame specified.

EPA Response: Language in the Final Permit has been modified to reflect that the Permittee should consider input from the Services (NOAA Fisheries and the U.S. Fish and Wildlife Service) rather than consult with them. EPA does not intend for the Services to have controlling input on the Navy's MS4 program, but the Permittee should consider that the Services could provide informed suggestions which could improve environmental outcomes for endangered species.

Comment #63 (R. G. Rhinehart, U.S. Navy)
2.4.4.2. This section, particularly Table 2.4.4, is premature since the Biological Opinion is not complete/available. We suggest deleting this section and instead holding a meeting of EPA, Navy, and the Services once the Biological Opinion is complete. At that meeting, we will define pollutants of concern. Following the meeting, the Navy will determine how to address them. After the meeting, the

Navy will finalize the Plan and submit it to EPA.

EPA Response: The Services have reviewed the current list of pollutants of concern. If new information becomes available in the future on pollutants impacting endangered species that warrants a change to the permit, EPA will modify the permit at that time; in fact, EPA has included a reopener provision in the permit (Part 6.3) to this effect. EPA will continue to work with the Services to complete consultation on issuance of this permit.

Comment #64 (R. G. Rhinehart, U.S. Navy)
2.4.4.3. While we understand the intent of this and section 2.4.4.4, the Navy is concerned it is not achievable. It is big technical/scientific step to: (1) examine a variety of stormwater data sources, (2) determine our water quality impacts, and then (3) determining necessary structural stormwater control measures. Even if we were to hire a consultant, the task is complex and perhaps the result would lack the connections the permit seeks. We would like the permit to specify a partner in this effort or perhaps a strategic meeting to help us get on the smart path.

EPA Response: The objective of the MS4 program is to implement pollution control measures that reduce the discharge of pollutants to the MEP. The program is adaptive in nature and EPA realizes that it may take several permit terms to fully implement a full suite of stormwater control measures. The permit reflects this and allows the Permittee to establish priorities and propose schedules that will be implemented in this and future permit terms. The plan itself will be modified over time, consistent with the adaptive management approach.

Comment #65 (R. G. Rhinehart, U.S. Navy)
2.4.5. Please change "all" to "key" staff. "Key" is more appropriate since our staffing in this area is large and we may choose to target training to staff that hold directive authority.

EPA Response: The full context of this requirement is "…all staff whose primary job duties are implementing the program…", which accurately reflects EPA's intent. The Permittee has adequate latitude to customize the content and identify staff, but emphasizes that it is even more important for on-the-ground and in-the-field staff such as those undertaking maintenance or landscaping activities, for example, to be properly educated on stormwater management measures than it is for in-the-office managers. No change has been made to the permit as a result of this comment.

Comment #66 (R. G. Rhinehart, U.S. Navy)
2.5.1.3. The Navy inherently has this enforcement mechanism in-place since we own and operate our facilities. Please remove this section.

EPA Response: See response to comment #59.

Comment #67 (R. G. Rhinehart, U.S. Navy)
2.5.5. Please remove "total universe of." This language is unnecessary.

EPA Response: This phrase has been removed from the Final Permit.

Comment #68 (R. G. Rhinehart, U.S. Navy)

2.5.6. Please remove "including the development of nutrient management and integrated pest management plans." We have/implement pest management plans but not nutrient management plans. Application of pesticide/herbicide to waters of the US would require a separate NPDES permit, which we have obtained in the past. While the scope of an Integrated Pest Management plan includes water quality concerns, their scope is much broader. Requiring it is beyond the scope of this permit. Is there a specific nutrient concern? If not please remove the requirement for developing the plans.

EPA Response: Following discussion with the Navy over the relevance of this language, this phrase has been removed from the Final Permit.

Comment #69 (R. G. Rhinehart, U.S. Navy)
2.5.8. Please remove "on-going" as it implies a higher level of involvement than the balance of the section indicates.

EPA Response: The intent of the wording in this provision is to ensure that the Permittee continues to provide the necessary training when there are staff turn-overs, new policies and/or technologies, and changes in standard operating procedures related to stormwater management. No change has been made to the permit as a result of this comment.

Comment #70 (R. G. Rhinehart, U.S. Navy)
2.5.9. Most (perhaps all) of our equipment maintenance yards are already included in our industrial SWPPPs. Any that are not will likely be included in our industrial SWPPPs when updated next. No change requested.

EPA Response: EPA acknowledges the comment.

Comment #71 (R. G. Rhinehart, U.S. Navy)
3.2. Please modify this section so we can switch between Options 1 to Option 2 at any time during permit term with prior notice to EPA. Option 2 is our preference, but it will be a challenge to join. The extra time/flexibility would be beneficial for us to implement a monitoring option that will work.

EPA Response: The Final Permit is revised to include the following in Part 3.2: *Should the Permittee opt for participation in SAM later in the permit term, the Permittee shall notify EPA of this decision and include a specific schedule for transitioning from Monitoring Option 1 to Monitoring Option 2.*

Comment #72 (R. G. Rhinehart, U.S. Navy)
3.3.5. Add "if long term monitoring... are not detected at levels of concern in MS4 discharges." Many of the pollutants of concern can be detected at very low (trace) levels and not be a concern. In such a case, it will be most effective to stop long term monitoring and concentrate efforts on higher priority pollutants.

EPA Response: Language in the Final Permit has been modified to reflect that infrequent detection in only trace amounts may be justification for reducing or eliminating monitoring of a particular pollutant of concern.

Comment #73 (R. G. Rhinehart, U.S. Navy)

3.3.5. Please remove flow as a pollutant of concern. Flow values could be helpful in evaluating other pollutants of concern but flow is not inherently a pollutant. An additional concern is that stormwater flow is variable and hard to measure.

> **EPA Response:** EPA agrees that flow, *per se*, is not a pollutant in this context. For similar reasons, neither is hardness. However, both are necessary parameters to include in a monitoring program in order to interpret other monitoring data. EPA has asterisked these parameters in Table 3.3.5 to clarify that these are interpretive parameters rather than pollutants.

Comment #74 (R. G. Rhinehart, U.S. Navy)
3.3.5. For NBK Bangor we would like EPA to consider using overall stormwater volume discharged as a surrogate indicator for effective stormwater management (versus pollutants of concern). Stormwater quality improvement will be via LID and landscape management techniques, which will reduce discharge volume. As stormwater volumes decreases pollutant loadings decrease. As stormwater volumes decrease the hydraulic profile gets closer to the predevelopment condition.

> **EPA Response:** EPA is open to using stormwater volume as an indicator for stormwater impacts, and volume reductions as an indicator for pollutant reductions. This framework has been utilized in other MS4 permits/programs. EPA recommends that the Permittee develop additional detail around the use of flow/volume as a stormwater metric, and propose that framework to EPA. If adequately robust, this framework could be fully implemented during the next permit term. EPA is available to have additional conversations with the Permittee about how this might be achieved.

Comment #75 (R. G. Rhinehart, U.S. Navy)
3.3.6.1. Requesting additional language for the ability to estimate flow versus measuring it. Estimating flow is a more achievable output for the Navy while maintaining the intent of this section for monitoring.

> **EPA Response:** In this context, relevant methods for determining flow are “estimates” rather than “measures”. The permit requires the use of an approved method, but has left selection of a specific method to the discretion of the Permittee. If this comment is suggesting the use of modeled estimates versus the use of a meter or a weir method, then EPA notes that this is not an approved method for the purposes of this monitoring program. No change has been made to the permit as a result of this comment.

Comment #76 (R. G. Rhinehart, U.S. Navy)
3.3.8. Please remove this section for our MS4 facilities except NBK Bangor. There are no streams on these properties to monitor. Navy facilities for the most part are located directly adjacent to Puget Sound. We do have a few streams but the relative stream length on our properties is low.

> **EPA Response:** Biological and habitat monitoring does not necessarily have to be restricted to streams. This type of monitoring *may* be appropriate for other water body types. The Permittee is provided the latitude to propose this type of monitoring for locations where it will provide useful information. No change has been made to the permit as a result of this comment.

Comment #77 (R. G. Rhinehart, U.S. Navy)

3.3.9. Please remove the details of what must be included in the QAPP. The referenced documents are specific. Please remove the reference to Ecology document 04-03-030. The Navy is concerned about conflicting guidance and prefers EPA guidance documents.

EPA Response: The comment/request provides no rationale for removal of quality assurance requirements, which are critical to ensuring that the monitoring program produces quality data. The manuals are referenced only with respect to chain-of-custody requirements, not all QAPP development requirements. No change has been made to the permit as a result of this comment.

Comment #78 (R. G. Rhinehart, U.S. Navy)
3.3.9.2. Please remove guidelines for preparing QAPP.

EPA Response: See response to comment #77.

Comment #79 (R. G. Rhinehart, U.S. Navy)
3.4.1. Please add verbiage so we can participate in the SAM program at any point during the permit term. We favor this option, however, joining SAM will be difficult and we would appreciate more time to join. Please also remove the last phrase of the paragraph starting "and be a fully participating member of SAM within 1 year..." for similar reasons.

EPA Response: See response to comment #71.

Comment #80 (R. G. Rhinehart, U.S. Navy)
3.6. Please remove "Freedom of Information Act" wording. The language is true regardless of inclusion in the permit.

EPA Response: This provision provides clarity to anyone who may request information, that the permit is not establishing a records access process separate from the Freedom of Information Act (FOIA). This language is intended only to provide clarity, and does not place any requirements on the Permittee. EPA recognizes that the Permittee may charge fees for copies of the documents in response to requests from the public. No change has been made to the permit as a result of this comment.

Comment #81 (R. G. Rhinehart, U.S. Navy)
3.7.2.2.4. Please include the following for this section: "Provisions herein should not be interpreted to require obligations or payments of funds in violation of the Anti-Deficiency Act, 31 U.S.C. *§* 1341." The Navy will commit to complying with this permit with the funds and resources it is allocated.

EPA Response: See response to comment #22.

Comment #82 (R. G. Rhinehart, U.S. Navy)
4. The notification threshold of "credible site-specific information" is sufficiently ambiguous that we could incur liability based on supposition. Please remove section 4. Section 5 addresses the specifics of the permit and outlines what will happen if we falter. We have control of specific permit conditions and if we achieve them adequately will address water quality concerns. As section 1.3.1states, "if the Permittee complies with al! the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality

standards."

EPA Response: Per follow-up conversation with the Navy, EPA is retitling Part 4, *Required Responses to Violations of Water Quality Standards* to *Required Responses to Exceedances of Water Quality Standards* as the latter more accurately reflects the purpose of this section, i.e., determining thresholds for Permittee reporting/response rather than thresholds for determining permit violations. EPA does not agree that the term "credible site-specific information" is ambiguous in this context, since the Permittee has full discretion to notify EPA at any time regardless of how robust the available information may be. In addition, there is no justification for removing Part 4, which specifies appropriate responses to discovering exceedances of water quality standards.

Comment #83 (R. G. Rhinehart, U.S. Navy)
5.5. Please remove this section as it conflicts with section 2.5.1.2 and appears to be related to wastewater treatment plant operations.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #84 (R. G. Rhinehart, U.S. Navy)
5.6. Please remove, as EPA cannot implement this requirement without modifying the permit.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #85 (R. G. Rhinehart, U.S. Navy)
5.7. This permit will regulate a variety of stormwater infrastructure. That infrastructure requires somewhat frequent planned changes. Please clarify the second bullet so we can more confidently provide notification at a standard that EPA intends. Perhaps a dollar threshold of $50,000 for an individual treatment device is applicable. Suggest that storm sewer piping system work would not require notification.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #86 (R. G. Rhinehart, U.S. Navy)
5.10. Stormwater treatment devices have, by design, built in bypass mechanisms. Request this section acknowledge that. Please include a statement that by-design bypass is not subject to this section.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #87 (R. G. Rhinehart, U.S. Navy)

5.11. This section is applicable to wastewater treatment plants not stormwater infrastructure. Please delete this section.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment. No change has been made to the permit as a result of this comment.

Comment #88 (R. G. Rhinehart, U.S. Navy)
6.10. This section is equally factual if included in the permit or not. Please delete.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #89 (R. G. Rhinehart, U.S. Navy)
6.11. This section is equally true if included in the permit or not. Please delete.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #90 (R. G. Rhinehart, U.S. Navy)
Appendix B. Annual Report Template. Please include a not applicable check box "N/A" for item 15.

EPA Response: Item 15 refers to the requirement in Part 2.2.2 (staff coordination), which is always applicable. The original yes/no response options are retained in Item 15 of the Annual Report Template.

Comment #91 (R. G. Rhinehart, U.S. Navy)
Appendix D. Section D.2 Please change “connected to a Public Owned Treatment Works (POTW)” to “connected to a Public Owned Treatment Works (POTW) or Navy Owned Treatment Works (NOTW)”.

EPA Response: The Final Permit provides this clarification.