

LID: Open wide and swallow

Low impact development, the feel-good way to manage stormwater, is being forced down the throats of developers in key areas of the state. On August 7, the Pollution Control Hearings Board became the first in the nation to require low impact development (LID) on development projects—from individual sites to entire subdivisions.

The decision comes from an appeal of the Phase I municipal stormwater permit (muni permit), which applies to Seattle and Tacoma, as well as King, Snohomish, Pierce, and Clark Counties. The muni permit is similar to the construction permit—just as Ecology requires contractors to get a permit for stormwater flowing off construction sites, it also requires local governments to get a permit for stormwater carried through public storm sewer systems. The muni permit regulates how jurisdictions convey and treat stormwater and directs them to adopt erosion control ordinances. These ordinances must include a stormwater review and approval process for construction projects, site inspections, and now—thanks to the Board—low impact development.

After the muni permit was released by Ecology in January 2007, Tacoma and Seattle, along with Snohomish and Clark Counties, appealed many of its restrictive, costly provisions. Puget Soundkeeper Alliance and People for Puget Sound also appealed, claiming the permit didn't go far enough and failed to protect water. As proof they pointed to the lack of mandatory LID. The Board bought their arguments, holding that "LID methods are technologically and economically feasible and capable of application at the site, parcel, and subdivision level at this time."

LID is a set of on-site management practices that attempts to capture and infiltrate water at its source, rather than ferry-

ing it through traditional pipes and ponds. LID practices include vegetation retention, narrow roads, bio-retention areas (rain gardens), porous pavement, and green roofs. While many developers and builders are intrigued with LID, most cannot do it because of expensive materials, installation, and engineering; the lack of certified applicators; lack of experienced engineers; a market that isn't sold on small lots, narrow streets, and few sidewalks; a complicated local approval process, made more difficult with limited staff understanding of and agreement on LID; few flow credits (to offset the exorbitant cost); and widespread low-infiltrating soils.

Most of these things will change over time, but for now they make LID extremely expensive and in most cases prohibitive for the standard development. Ignoring these realities (and relying heavily on Ecology and enviro testimony), the Board declared that "implementation of LID techniques on the ground for new or redevelopment, or even retrofitting existing development, is less costly, or no more costly, than conventional engineered BMPs."

While the Board poo-pooed building and engineering costs, it did recognize that "navigating a system of regulation and development that was not created with LID in mind" could be expensive. As a supposed answer to this, the Board included an escape hatch: The jurisdictions listed above will require LID "where feasible." Despite this appearance of flexibility, I am concerned local governments—fearing enviro lawsuits if they don't require LID—will make developers prove LID infeasible before giving project approval.

Given that Seattle joined the lawsuit specifically to contest mandatory LID, it will be interesting to see if the City appeals the Board ruling. If it or any other jurisdiction appeals, BIAW will support them

to oppose mandatory LID. It is not economically feasible and illegally allows Ecology to regulate land use. The Phase II municipal stormwater permits for Eastern and Western Washington—which govern the majority of urbanized local governments—are still under appeal. Whether the Board will apply LID statewide is unknown; a decision is expected this fall. ☔



Jodi Slavik
Of Counsel

Construction Stormwater Permit Appeal Update

BIAW has been fighting the onerous construction permit ever since its adoption in December, 2005. We won several battles before the Pollution Control Hearings Board, but we also lost some. In February, 2008, we appealed two of the Board's rulings—whether local governments can use alternate stormwater manuals and whether Ecology can use dilution in setting benchmarks. Winning these issues will give contractors more flexibility and protection. Oral arguments were held on September 12 before Thurston County Superior Court Judge Chris Wickham. A decision is expected in the next few months.

