

# Low Impact Development: Brace yourself for impact



**Jodi Slavik**  
**Of Counsel**

**M**ost developers and builders (and local jurisdictions) are unaware of the regulatory freight train hurtling their way. In a few short years, low impact development will be required in most Western Washington jurisdictions.

The goal of low impact development (LID) is to mimic natural hydrology by infiltrating rain on site, preventing dirty runoff and preserving healthy stream levels (cue birds chirping and fawns frolicking). LID is intended to replace traditional stormwater systems. What this means for you is that you must design sites differently and install new features, including rain gardens and porous pavement, or prove why it is impossible to do so. It also means that you will pay additional engineering fees and be spending more time with the local planner figuring out what you can do on your site.

Because LID is so new and expensive, BIAW and many jurisdictions opposed mandatory LID, but the Pollution Control Hearings Board didn't agree, issuing a 2008 decision that requires LID "where feasible." The mandatory LID standard was immediately imposed in Seattle, Tacoma, King, Snohomish, Pierce, and Clark Counties. Other urbanized Western Washington jurisdictions were given some lag time before LID is the law.

The Department of Ecology will require LID in the Phase I and Phase II municipal permits (that regulate municipal stormwater systems), and local governments—to be in compliance with these permits—will require LID in the project approval process. Before Ecology amends the municipal permits, it will take recommendations from two advisory committees on what LID practices should be required, to what level they must perform, and when sites are exempt from LID. BIAW is a member of the Implementation Advisory Commit-

tee, which has been meeting since October, 2009.

The advisory committees are just getting to key, controversial issues that will dictate how construction sites plan for and implement LID, including:

- Should projects be required to meet a

**It [mandatory LID] also means that you will pay additional engineering fees and be spending more time with the local planner figuring out what you can do on your site.**

hydrologic performance standard?

- What is that standard?
- Can redevelopment and small sites use a standardized checklist?
- What are off-ramps to LID? Poor soils, high groundwater, cost?
- Will local governments be given flexibility to make these calls?
- How long do local governments have to update codes?

So far, BIAW has been promoting a reasonable hydrologic performance standard for larger sites. This gives projects a specific end goal and freedom to figure out how to get there. Because this usually requires an engineer and more planning, it is not practical for small sites. We are promoting a standardized checklist for redevelopment and small sites, so long as the local jurisdiction is educated and flexible in its use.

Perhaps one of the most hotly debated issues is off-ramps: when can a project get out of doing LID? What if traditional treatment does a better job of protecting

resources? When can a local jurisdiction allow traditional treatment because the engineering, installation, and maintenance of LID features on site is too difficult or costly? Despite these reasonable concerns, environment committee members oppose off-ramps and Ecology is lukewarm to the idea.

Even Seattle, which has been crafting a mandatory LID ordinance for over two years, has feasibility off-ramps. Seattle requires "green stormwater infrastructure" (GSI) for new homes, redevelopment, and remodels. Applicants must select from a prioritized list of possible GSI (e.g., maintain trees, install rain gardens, include permeable paving) unless engineering, site constraints, or cost makes them infeasible. You can't just claim infeasibility—you have to prove it with worksheets and writing.

The Seattle process will probably serve as a template for Ecology's proposed checklist. The key is to preserve as many off-ramps as possible without a paperwork laden proof process. We also want to keep as much discretion as possible for local jurisdictions so they can allow flexible LID application—the locals know the projects they serve the best. And the locals can respond quickly if the process is too difficult or the standards too heavy-handed.

To follow this issue and provide critical feedback on whether the developing LID standards are workable for your projects, click on *Low Impact Development* under *Builder Issues* at [www.BIAW.com](http://www.BIAW.com). Or, I'd love to hear from you in person at 800-228-4229. ☺