



# Environmental Watch

Examining Environmental Claims and Their Costs • October 2008

## **Low Impact Development Standards: State's Top-down Approach Not Working**

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### **Claim**

*"Gregoire's plan calls for the Legislature to allocate \$25 million to the stormwater problem, in part for local governments to do demonstration projects for 'low-impact development.'"* *"Gregoire offers blueprint to rescue Puget Sound,"* by Robert McClure and Lisa Stiffler, **Seattle Post-Intelligencer, December 14, 2006.**

*"Bill Moore, head of Ecology's stormwater unit, said it's easy to advocate low-impact development, but hard for regulators to come up with rules to enforce it. 'The term 'maximum extent practicable,' without some objective standards around it, is very, very subjective. It's in the eyes of the beholder.'"* *"State and local governments side with builders on runoff pollution,"* by Robert McClure, **Seattle Post-Intelligencer, July 6, 2008.**

### **Facts**

Low Impact Development (LID) regulations are not new. They are part of the evolving world of land use development. LIDs are nothing more than improving of standards from past practices and the lessons learned.

At the root of the arguments to include prescriptive LID regulations as part of development practices are the principles of free market enterprise. Armed with new technologies and ideas on how to develop increasingly difficult land and meet the demand of consumers, developers and builders put out the latest and greatest projects. But at the center of the discussion of how to use LIDs, government has muddled the water while attempting to determine when, how and at what cost, LIDs should be mandated.

### **What are LID regulations?**

The Puget Sound Partnership provides a technical definition for LIDs in its 2005 Low Impact Development Technical Guidance Manual for Puget Sound. The manual states that low impact is:

*"a stormwater management strategy that emphasizes conservation and use of existing natural site features integrated with distributed, small-scale stormwater controls to more closely mimic natural hydrological patterns in residential, commercial, and industrial settings."*<sup>1</sup>

In non-technical terms, LID deals with stormwater in ways that avoid putting pollutants into the environment caused by development's direct discharges. Instead developments use LID regulations by attempting to mimic, through capture and infiltration techniques, the flow of water to pre-development conditions.

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<sup>1</sup> "Low Impact Development Technical Guidance Manual for Puget Sound," by Curtis Hinman, Puget Sound Action Team, Washington State University – Pierce County Extension, Revised May 2005.

Common LID techniques are retention of large areas of native vegetation, narrower roads, fewer sidewalks, rain gardens, green roofs, reverse crown roads, vegetated ditches instead of culverts, permeable pavement, larger lot sizes, and engineered infiltration systems.

The Puget Sound Partnership has issued at least four personal service contracts for work on LIDs in more than 30 cities and counties around the Puget Sound. All of the contracts have been issued to one company, AHBL, Inc.

The purpose and goal of the contracts is:

“...to develop new and/or revise existing local government regulatory language related to stormwater management and land development that better allows for, encourages and/or requires the use of low impact development (LID) practices in the jurisdictions.”<sup>2</sup>

“...for the project (that extends beyond the life of this project) is to develop regulatory language related to LID that local government managers will present before their elected officials for consideration of adoption. The Puget Sound Action Team’s (“Action Team”) overall goal is to help increase the use of the LID approach and individual LID techniques by removing local regulatory hurdles that prevent or impede use of LID.”<sup>3</sup>

### *Results*

Since 2004, over 30 jurisdictions around Puget Sound have taken part in the AHBL led process. Each jurisdiction was presented with policies and ordinances that local elected officials could use to adopt LID regulations.

It is not clear this lengthy and expensive process has been a success. There is agreement from those jurisdictions that we talked with that the process has created more consciousness and awareness about the possibilities of LIDs. However, few jurisdictions have actually adopted all, if any, of the recommendations that have been put forward by AHBL.

### *Uncertainty*

Many of the jurisdictions have not adopted LID standards because of ongoing changes and legal challenges to the state’s stormwater manual and permits. Since 1992 the state has had at least three major revisions to its stormwater manual and in 2007 the state issued new requirements to the stormwater permit. Since the release of the new permit requirements, there have been ongoing legal challenges regarding the new requirements.

To complicate matters, The Pollution Controls Hearing Board, a three-person board for appeals to state environmental regulation, ruled the state Department of Ecology must implement LID regulations. The Board said, “Ecology must require LID techniques for all new development where feasible.”<sup>4</sup>

This ruling has local government officials scrambling to figure out how they will implement LID techniques. The ambiguous ruling only highlights the problems that jurisdictions have had for some time. In its ruling, the Pollution Board did little to settle the debate between environmentalists and developers about when or how to implement LID regulations.

### *Local Conditions*

Local governments that have been through the state led LID process with AHBL consultants have done

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<sup>2</sup> Personal Services Contract between Puget Sound Action Team and AHBL, Inc., PSC 200404.

<sup>3</sup> Ibid.

<sup>4</sup> “New rules on stormwater ordered,” by Warren Cornwall, The Seattle Times, August 9, 2008.

little or nothing with the recommendations provided to them. Most local officials believe the one-size-fits-all approach used by AHBL simply would not work for their local needs. Most officials say there is a greater need for flexibility in the application of LID techniques on a site-by-site basis. Others cite the existing stormwater manuals and development regulations that already include LID allowances, making it unnecessary to adopt tighter measures.

Overall, elected officials appear to be apprehensive about adopting standards that are unproven.

Developers, as well, are cautious about restrictive LID regulations. Peter Orser, president of Quadrant Homes, echoed what many builders feel about LID regulations.

“...low-impact techniques should be left up to builders because they’re not practical everywhere. The industry fears “cookie-cutter” rules that may not work in various development scenarios. Orser calls for an “incentive-based” system that creates the right climate for builders without forcing them to employ the techniques.”<sup>5</sup>

## **The Cost to Taxpayers**

The costs of implementing LID regulations around the Puget Sound are both tangible and anecdotal. Millions of dollars in grants are available every year at the federal, state and local levels for the inclusion of LIDs into development regulations.

### *Tangible Costs*

Four personal service contracts have been issued by the Puget Sound Partnership since 2004. In each case the consulting firm of AHBL was awarded the contract. The cost varies based on the number of jurisdictions covered by each contract.

The contracts were first awarded in 2004 with the last being offered in 2008 and cost \$121,000<sup>6</sup>, \$104,000<sup>7</sup>, \$174,000, and \$50,000<sup>8</sup> respectively. The contracts combined add up to just less than five-hundred thousand and were funded by taxpayers through The Environmental Protection Agency (EPA) and state Department of Ecology.

Additional funding was spent in 2004 to create a statewide manual on LID regulations. The Puget Sound Action Team and Washington State University’s Pierce County Extension, along with AHBL, commissioned and authored the 2005 *Low Impact Development Technical Guidance Manual for Puget Sound*.

### *Anecdotal Costs*

Part of the requirement for a local jurisdiction to participate in the AHBL led process was the commitment by the local jurisdiction to provide a staff person to work with AHBL and others during the process. As a result, over thirty jurisdictions have supplied countless numbers of staff time and resources to the creation of LID recommendations and regulations.

The local staff time only accounts for a small portion of the overall time and effort devoted by state and federal agencies over the past several years. The EPA, Puget Sound Partnership and Ecology, among others have all been involved in the pursuit of LID regulations.

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<sup>5</sup> “State and local governments side with builders on runoff pollution,” by Robert McClure, Seattle PI, July 6, 2008.

<sup>6</sup> Personal Services Contract between Puget Sound Action Team and AHBL, Inc., PSC 200404.

<sup>7</sup> Personal Services Contract between Puget Sound Action Team and AHBL, Inc., PSC 200511.

<sup>8</sup> Personal Services Contract between Puget Sound Partnership and AHBL, Inc., PSC 200839.

Collectively, the costs to develop LID regulations are hard to track because so many different programs, approaches and ideas are being applied. But there is little doubt that the costs are adding up.

## **Conclusion**

In order for LID regulations to have a meaningful impact they are going to have to be incentive based and flexible enough to allow local government to adapt them to fit their own land development problems. The top-down approach used over the past five years has produced poor results.

As Bill Moore suggests, LIDs are subjective and in the eye of the beholder. Perhaps the Pollutions Board was correct to not define what “where feasible” means, because its members understand that a prescriptive method will not work.

Even in the case where local government, developers and the environmental community agree on an approach to LID, problems still arise. In Olympia a developer and activists worked in concert, using proscribed techniques, to develop the first low impact development on the city’s Westside. Now, years later, failing LID concepts and designs have left residents mad and the city considering going after a million dollar bond put up by the developer.<sup>9</sup>

Top-down regulations will not create useful Low Impact Development regulations. Flexibility and voluntary incentives at the local level are much more likely to create effective long-term environmental solutions.

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<sup>9</sup> “City gives Triway ultimatum,” by Matt Bachelder, The Olympian, October 7, 2008.