

## **LID Comments from Jodi Slavik, Building Industry Association of Washington**

Ed, et. al--

Thank you for the preliminary draft. I distributed it to key individuals with experience and interest in LID within my membership. Not surprisingly, given the short timeframe and summer schedules, I am still waiting for responses from almost all of them. Similarly, I was only able to give the draft a cursory review. For the purpose of the meeting tomorrow, my top three comments/concerns with the proposed LID requirements and timelines are summarized below. Unfortunately, I will not be able to attend the meeting because I will be out of town.

### 1. Too burdensome for small sites and Phase II jurisdictions.

Applying this new regulatory framework over the current complex land use system (which greatly varies by jurisdiction) will take a great deal of education for both the local jurisdictions and permit applicants. This is why it is so important that Phase II jurisdictions, most of which are just dipping their toes in the LID waters, be given a longer time period to adopt LID requirements. In respect of the Board Order (limiting LID on Phase II to elimination of barriers), the proposed requirements should only be included in the Phase I permit rewrite. Let them apply LID, work out the kinks, figure out the best way to educate local staffers and applicants, and then use those experiences to SUCCESSFULLY implement LID in Phase II jurisdictions (and revise LID as necessary in Phase I). This would appropriately respond to the Board's direction that Ecology "lag the Phase II jurisdictions behind the Phase I jurisdictions and provide some flexibility to those jurisdictions in developing LID techniques."

This draft ratchets down on small sites by requiring engineering of almost all projects. The draft notes this in its requirement of permeable pavement for small sites unless engineering feasibility is shown ("A drawback with this approach is that professional services may have to be employed to justify not using permeable pavement..."). I would argue that an engineer or soil specialist is going to be required to design the site to account for the pavement, given the hilly terrain and/or poor soils of many infill sites. Not only are small sites required to implement LID and dramatically increase engineering costs, but local jurisdictions will also have to review the engineering design, implementation, and maintenance. Sites disturbing under 10,000 acres should not be required to implement LID until the practices are widely used and accepted--as applied on larger sites under the revised muni permits.

### 2. Insufficient feasibility consideration.

The Board found that the Phase I Permit (only) should be "modified to require use of LID where feasible, as it is necessary to meet the MEP and AKART standards of federal and state law, respectively." The Board did not limit feasibility considerations to certain types, sizes, or placement of development. Moreover, the Board recognized one of the major costs in using LID at a site was the permitting and regulatory process. At the

early stages, these costs could make LID features infeasible and force an applicant to walk from a site. However, economic and local conflict feasibility considerations have been dropped from this draft. I did not see an explanation for why economic feasibility was not included, with the exception of commercial green roofs. Economic feasibility is particularly important in light of the comment in End Note i, pg 5: "Compliance with both performance standards is considered reasonably achievable with the assumed LID techniques and a detention facility which is not any larger than if the LID techniques were not used." How will public and private projects get financing if the LID measures are in addition to the already required detention facilities?

A variance/exception process for "relief from local preferences, values, or vision" is extremely burdensome and expensive--for local governments and applicants alike. Applicants need a user-friendly process that allows them to justify why LID is not practical or feasible on site. Allow the jurisdiction to make the call. Collect the information from the feasibility determinations, and refine future LID requirements in the Phase I and II permits. Without recognition of the initial economic and practical difficulty of applying LID to all sites--especially small sites and those in Phase II--Ecology is inviting resistance and appeal of the muni permit revisions. Worse yet, good LID will slow down. Get the best projects with the best resources (including public projects) up and running, learn from them, and then focus on the small guys.

3. Basin planning is overbroad and burdensome.

The Board was adamant that basin planning is not required to meet federal and state water quality standards. It also stated "a permit condition requiring municipalities to implement LID at a basin or watershed level is not, at this time, reasonable or practicable." Overall, the Proposed Requirements for Basin-Scale Approach go beyond the purpose and role of municipal stormwater permits and improperly puts Ecology into land use regulation. Ecology, through municipal stormwater permits, should not require local governments to justify an increased UGA or increased density. Local governments do not have the time or money to spend doing an extensive prove-your-work exercise, only to be sued at the end. All available time and money should be spent educating local staff on LID and how to effectively welcome it into planning design and permit review.

On a more detailed level, I would like to see specific examples of recent expansions or increases that would qualify as "significant." Is "cumulative increases in area" over time or at one time? The density language is similarly confusing. Under B.1.b. "mitigation targets" are set that include "setting limits." A limit is not a target. A limit is a limit and will be challenged as an arbitrary impervious surface limitation. Same comment in 3.d.