

A photograph of a modern, single-story building with a grey roof and light-colored siding, surrounded by green trees and a paved walkway. The building has a prominent gable roof and a covered porch area. The background is filled with tall, thin trees under a clear sky.

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From Rooftop to River: The Legal and Administrative Basis for Managing Stormwater Through Low-Impact Development

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Outline

- 💧 Legal Framework
- 💧 Current Situation
- 💧 Legal and Administrative Options

Legal Framework

💧 Federal:

- ◆ “Municipal Separate Storm Sewer Systems”
- ◆ TMDL
- ◆ Delegated to State

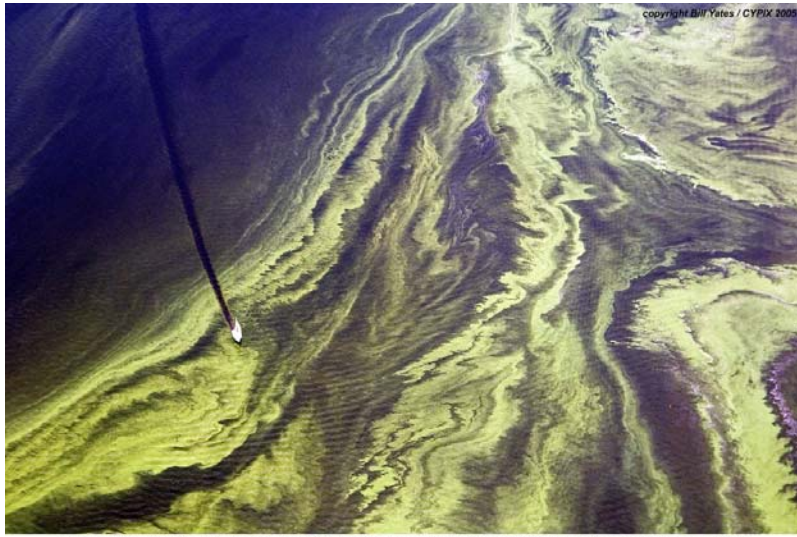
💧 State Environmental Resource Permits

- ◆ 80-95% reduction or post \leq pre

💧 Local gov't regulation

💧 Implementation by design criteria

Current Situation: Water Quality Violations St. Johns River 2005



Microcystis Bloom - St. Johns River mid-channel south of the Buckman Bridge - 08.19.05 - 2:04pm
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Microcystis Bloom - East bank of the St. Johns River - Mandarin - 08.19.05 - 2:42pm
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LID Adoption in Other Jurisdictions

- 💧 Prince George's
Cty., MD
- 💧 Portland, OR
- 💧 Island Cty, WA

After recording return to:

ISLAND COUNTY PRIVATE DRAINAGE FACILITY MAINTENANCE AGREEMENT



Applicant's Name and Address	Legal Description of Property
Project Number and Name	Parcel #

This AGREEMENT is made and entered into this _____ day of _____, _____, between the Island County Department of Public Works, hereinafter called the COUNTY, and the above named APPLICANT, hereinafter called APPLICANT.

Basis for AGREEMENT:

WHEREAS the undersigned APPLICANT has constructed private drainage facilities in connection with the above-referenced project; and

WHEREAS the APPLICANT has agreed to secure the successful maintenance and operation of said improvements for the referenced projects pursuant to Island County Code Title 11.03;

NOW THEREFORE, the APPLICANT hereby agrees and binds itself and its legal representatives, successors, and assigns as follows:

Terms of the AGREEMENT:

1. The improvements constructed by the APPLICANT or his representative shall successfully operate and shall remain free of defects in design, workmanship, and materials. As used in this AGREEMENT, the term "defects" includes but is not limited to, damage resulting from construction activities and/or use.

Current Situation: Stormwater Permitting

💧 Permits to individual lots:

- ◆ Too many permits
- ◆ Operation and maintenance maybe not reliable with individuals
- ◆ Monitoring more resource intensive
- ◆ Enforcement against individuals unpopular

Legal & Administrative Options

- Condominium development model
- Modified HOAs incorporating an independent third party
- Community Development Districts (CDDs)

Legal & Administrative Options: HOAs and LID

💧 HOA Advantage:

- ◆ Control uses of private property

💧 Disadvantages:

- ◆ Internal politics, disorganization sometimes render HOAs ineffective
- ◆ WMDs hesitant to accept as legal entity for assurance of long-term O&M for LID

Legal & Administrative Options: Modified HOAs

- Modified HOA governing documents
 - ◆ Require contract with 3d party
 - ◆ Require assessments for contract
 - ◆ Specify fines
 - ◆ Permitting authority may fine HOA for violations on individual parcels
 - ◆ Educational component funding and structure
 - ◆ Incorporate design plan of LID structures and detailed easements

Legal & Administrative Options:

- Community Dev. Dist. advantages:
 - ◆ Express statutory authority
 - ◆ Must have a board of supervisors and district manager
 - ◆ Many of the powers of local governments
 - ◆ Financial: bonds, special assessments assessed as part of tax rolls
 - ◆ Expressly authorized to deal with “water management”

Legal & Administrative Options: CDDs

💧 CDD disadvantages:

- ◆ Expensive to create
- ◆ A 2000 case found that CDDs lack the authority to enforce CCRs
- ◆ Case gave rise to legislation

Legal & Administrative Options: CDDs

- Use detailed easements based on water plan in conjunction with an HOA
 - ◆ Easements based on engineering drawings
 - ◆ Recorded in favor of CDD and local gov't/ WMD
 - ◆ Forbids property owner from interference with LID element; owner must pay for damage
 - ◆ CDD obligated to monitor, maintain and repair
- HOA CCRs limit impervious area
- HOA or CDD responsible for education

Conclusion

- TMDLs and water quality violations forcing adoption of LID techniques
- LID presents unique issues for long-term operation and maintenance
- Larger homeowners' associations may be designed to offer maintenance & operation
- Community Development Districts offer potential for large developments
- Any plan must include an educational component

QUESTIONS?

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