



January 21, 2005

Bruce Williams
U. S. Army Corps of Engineers, Norfolk District
803 Front Street
Norfolk, VA 23510-1096

Re: December 2004 Draft Revisions to a Proposed Requirement to Low Impact Development

Dear Mr. Williams:

The Northern Virginia Building Industry Association (NVBIA) commented previously regarding the Proposed Requirement Relative to LID in August 2004 (attached). A revised version was circulated to those who provided comments originally in December 2004. As we have indicated, NVBIA is not against LID practices per se. We are, however, opposed to being caught in a Catch 22, required to apply principles which are in direct conflict with state and local requirements.

NVBIA contends that while some clarifications have been made in the introduction, the fundamental issue of NVBIA contention against this implementation remains. Implementation of this requirement at this time conflicts with local zoning as well as state and federal standards for stormwater management, minimum American with Disabilities Act (ADA) requirements, and Virginia Department of Transportation (VDOT) 2005 subdivision street standards.

We are disappointed in the apparent lack of understanding by the Corps of the magnitude of these issues. The statement in the Purpose section of the draft that "Virginia has no known local, state, or federal prohibitions in law, regulations, or guidance that specifically preclude the use of LID practices (design strategies)" is misleading and belittles local ordinance and state and local stormwater requirements and processes as something easily modified and arbitrary. Because we are familiar to these processes, we can assure you it is not, and we reiterate our original comments that implementation of the LID requirements is premature.

The second statement that is troubling is the "outline of information the Norfolk District would require when LID is considered to be an alternative to conventional stormwater management for commercial and institutional developments." What entity will decide when LID is "considered to be an alternative...": the Corps? LID is a new and unproven practice/design technique; will the Corps be liable for failures under such practices? Will the Corps engineers place their engineering seals on the project plans? Most engineers are apprehensive about certifying plans that are not in compliance with state and local stormwater requirements.

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NVBIA also finds the last two paragraphs of the clarification troubling. While you state the types of projects to which this LID requirement will be applied, it appears to be rescinded by stating that all impacts to water and wetlands be minimized to the maximum extent practicable, and that projects that do not incorporate **ALL** appropriate and practicable measures to avoid will be denied. We would like to stress that the 404 (b)(1) guidelines do incorporate cost, existing technology, and logistics in light of overall project purposes as "practicable." This point appears to be overlooked when it comes to this push for LID requirements, as well as the cost to investigate LID alternatives for a project. We contend that the existing technology is unproven and fails to address large storm events, state and local stormwater management requirements, and local ordinances.

The checklist is virtually unchanged from the original and still does not address the majority of our concerns. No criteria for "achieved" and "not achieved" is given, it does not address VDOT Road Standards and ADA requirements, nor does it address Regional Stormwater Management. We do appreciate the clarification of what soil types LID review will required, but it remains insufficient.

NVBIA continues to stress that LID addresses upland and stormwater management issues which are outside of the Corps jurisdiction. While the introduction does point out that it will only be required when impacts to waters occur, it remains that requiring review of these upland and stormwater management issues are a stretch of regulatory authority.

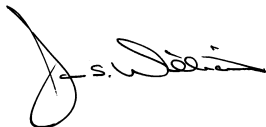
In addition to the above and comments sent previously (attached), NVBIA believes the following need to be completed prior to Requiring LID as a permitting requirement:

1. Public Notice of this draft and any future draft on the Corps website for a complete public comment.
2. Assurance that LID complies with **all** state requirements.
3. Allowance for localities the time and opportunity to implement local ordinances that address LID alternatives, update their design manuals, and train staff to review LID measures.

Most Northern Virginia counties and the state are currently putting together task forces to review the use of LID as it relates to stormwater and zoning ordinances. LID Guidelines, standards and recommendations are still months, if not years, away. Implementing this now will require design engineers to place redundant stormwater features, in addition to LID practices, to comply with state standards. While NVBIA members agree that there is some benefit to limited LID usage, we believe implementing a requirement at this stage to be premature, and in direct conflict with state and local regulation.

NVBIA appreciates the opportunity to comment on the proposed LID requirements as a supplement to our original comments.

Sincerely,



James S. Williams
Executive Vice President

Cc: Dr. Ellen Gilinsky, DEQ
Attachment