

Green Infrastructure:

What's Legal?

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Flow Series Web Seminar*

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NACWA

Introduction

- I. Quick Introduction
- II. Legal Impediments to Green Infrastructure
- III. Tools for Implementing a Green Infrastructure Program
- IV. Obtaining Regulatory Credit for Green Infrastructure Programs

Green Infrastructure

- Design strategies to control stormwater runoff by restoring, mimicking, or preserving the natural hydrologic cycle
 - On-site stormwater control and treatment
 - Decrease impervious surfaces
 - Increase infiltration, storage
 - Flatten the hydrograph
 - *E.g., Rain gardens / bioretention, green roofs, vegetated swales, buffers, strips, rain barrels, cisterns, permeable pavement, preservation of green spaces/wetlands*
- Paradigm shift – from centralized treatment to decentralized systems

Green Infrastructure Opportunities

- Provide multiple benefits
 - Stormwater control – reduction in CSOs, reduced treatment costs, improved water quality, reduction in number of backups or other disturbances
 - Increased green/open space
 - Water conservation
 - Reduced urban temperatures
 - Energy Efficiency
 - Green Jobs
- Align Planning Process –
 - *E.g.* CSO Long-Term Control Plan, Stormwater Management Plans, Comprehensive/Master Plans, Development Plans, Watershed Plans, Open Space / Preservation Plans

Challenges

- Existing legal frameworks are frequently structured for traditional stormwater management . . .
(Move stormwater off site as quickly as possible)
- . . . or without any thought to stormwater management at all.
(*e.g.* vegetation height regulations aimed at rodent control)
- Silo effect
- Clean Water Act generally anticipates controls and timeframe that are consistent with grey infrastructure.

Removing Legal Impediments

- Existing codes may conflict with GI implementation
 - Plumbing Codes
 - Zoning Codes
 - Building codes
 - Other regulations
- Water Rights

Removing Legal Impediments

- GI may implicate issues or geography that fall under the jurisdiction of multiple agencies or entities
 - *Department of Health*
 - *Sewer Authority / Public Works*
 - *Department of Transportation*
 - *Planning / Zoning Board*
 - *Parks & Recreation*
 - *State and Federal Agencies (Parks, Forests, Refuges, Regulatory)*

Requires coordination, cooperation among agencies

Implementing a Green Infrastructure Program

Identify for *each element* of the GI program

1. What goal(s)?
2. What tool is appropriate
3. What standards will govern construction/implementation
4. Who will implement the project
5. When the activity will be undertaken and completed
6. How it will be financed
7. Who will maintain it
8. How results will be monitored or quantified
9. What happens if an obligation or goal is not met

Implementing Green Infrastructure:

- Tools:
 - Acquisition
 - Regulation
 - Incentives
 - Management Agreements/Contract

Implementing Green Infrastructure: Acquisition

- Fee Simple Acquisitions
- Conservation Easements
- Purchase/Transfer of Development Rights

Implementing Green Infrastructure: Regulatory Mandates

- Stormwater Permits
- Zoning Code, Subdivision Ordinances, or other regulations
- Mitigation Banks

Implementing Green Infrastructure: Incentives

- Tax Incentives
- Stormwater Fee Reductions / Rebates
- Development Incentives
- Recognition & Technical Assistance
- Grants

Implementing Green Infrastructure: Incentives

- Stormwater Fee Reductions
 - Tie stormwater fees to the amount of storm water a property generates for treatment
 - Reductions for on-site detention, reduced coverage of impervious surfaces, implementation of specific GI practices
 - May be permanent reduction in rates or conditional reduction
 - May vary depending upon user (residential, commercial, etc.)
- Stormwater Rebates
 - May be one-time rebate for certain behavior
 - *E.g.* Downspout disconnections

Implementing Green Infrastructure: Management Agreements

- Management Agreement
 - Landowner agrees to certain actions on his or her property for a specified time
 - Cost-sharing arrangement
 - May include a restrictive agreement

Getting Regulatory Credit

- Opportunities to incorporate GI into regulatory obligations
 - Long Term Control Plan
 - Consent Decree Negotiation
 - NPDES permitting (including stormwater)
- Challenges
 - Quantifying the benefits
 - Educating your regulator
 - CWA – focus is reduction in pollution, not maintaining hydrology

Getting Regulatory Credit

- Adaptive Management
 - Identify the goal
 - Identify and Implement GI Components
 - Measure the results
 - Evaluate Progress
 - Adjust Plan if Necessary

Implementing a Green Infrastructure Program

*As with any management tool, municipalities and utilities must be **wise consumers** of green infrastructure, and choose methods that will deliver success for the goals at hand, on the right time scale, with the right economics, according to the site's characteristics.*

Green Infrastructure: Looking Forward

- EPA has publicly embraced GI
- There are intense efforts underway to bridge gaps in our knowledge or legal frameworks
- Some of these questions may be resolved by regulatory developments in the coming years
- EPA's Draft Strategy for Achieving Clean Water (August 2010). EPA will
 - “explore more widespread use of GI techniques in CSO control plans.”
 - “expand municipal stormwater permitting coverage...and establish performance standards for newly developed and redeveloped sites ... including through the use of green infrastructure techniques.”

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