Legislative Affairs for Coastal North Carolina Real Estate & Building Industries

BUSINESS ALLIANCE FOR A SOUND ECONOMY

Coastal Stormwater Rules Working Group
CSRWG

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Sub: Coastal Stormwater Revisions

The following comments are submitted per the draft revision 6/5/08 on behalf of the Business Alliance for a Sound Economy (BASE). BASE represents numerous independent businesses and the approximately 12,000 members of the Brunswick County Home Builders Association, the Brunswick County Landowners Association, the Topsail Island Association of REALTORS® and the Wilmington Cape Fear Home Builders Association**.**

BASE contends that the proposed rules need to be delayed and sent to a legislative study committee as they are still fundamentally flawed, too complex, and remain technically and economically infeasible. Further, the justification to drastically expand and apply more stringent coastal stormwater requirements does not exist. That said, below are numerous outstanding concerns that have yet to be adequately vetted by the working group:

1. ***Stormwater devices such as Wet Detention Ponds used within ½ mile SA waters***

   Current language in the Phase II post construction practices allows for wet detention ponds to be designed and constructed within areas ½ mile of SA waters. The proposed rules do not specifically state or allow for this measure. BASE insists that this language from Phase II requirements carries over to the proposed rules.

2. ***Page 8 (d) Exclusions (4)***

   This provision allows for a minor modification of a State Stormwater Permit which is defined as a "modification that does not increase the net area of impervious surfaces within the project site or does not increase the overall size of the stormwater controls that have been previously approved for the

development activity."

BASE would like clarification on one particular issue of concern: once a development is permitted and the permittee wants or is required to change their overall layout, it would technically be deemed a modification, CORRECT? Let's say for an example that the permittee wants to take a section of smaller ponds and join them together to create a larger regional pond, would this fall under a modification situation? There would be no new impervious areas and the stormwater calculations would stay the same, so the end result of this action would use the original drainage flow and stormwater calculations.

3. ***S/A Waters Classification vs. SRW Waters Classification***

The Phase II requirements use Shellfish Resource Waters as the measurement for development activities within ½ mile of these areas. However the proposed rules will use just SA waters as a determination. This is a dramatic change without any merit scientific data to correlate this change. BASE would argue that the SRW determination uses a measured characteristic, which is quantifiable, whereas a SA determination is and has been used as a discretionary measurement. Furthermore, BASE would argue that the terminology "unnamed freshwater tributaries" is a highly debatable term with many interpretations.

4. ***Page 6 (c) Residential Development activities within the 20 Coastal Counties that are located within ½ mile SA waters.***

It would seem that DWQ has addressed this issue by the requirement of obtaining a state stormwater permit. However, there are still numerous concerns with this provision. What happens once a permit gets issued by the state and then a house is sold? Technically, a state stormwater permit is only good for 10 years and then has to be renewed by the permittee. Will the new owner be required to obtain a new permit or will the permit need to be revised? How will the state monitor this action since they are not present in the closing process of a house? Furthermore, what happens when the permit is up for renewal, will it require an inspection to see if all of the stormwater devices that were installed are working properly?

BASE also contends that the provision as it stands is onerous as the rule still requires collection of the runoff from the one-year 24 hour storm event. Once you perform this calculation you really find the true meaning of the 1 year – 24 hour storm event. (Calculation Provided Below)

Within ½ Mile of SA waters – 1yr 24 hr storm equals to 3.5 inches of rain. Just on a 2400 square foot house alone devices will have to be designed and installed that would be able to collect 5236 gallons of water.

Due to the unnecessary hardship this will place on property owners and the fact

that there still remain substantive unanswered questions, BASE contends that this entire provision needs to be deleted from the proposed rule.

5. ***Built-Upon Area***

   Grass Areas should be allowed to be used in the calculation for impervious areas. Currently these areas are included in the impervious calculations. If the rules are based upon such sound science, then it needs to be explained why grass areas are still used in the impervious calculations. The definition of Built Upon Area needs to clearly define this.

6. ***Rainfall Amounts***

   The engineering community needs a better understanding of how the rainfall amounts are prescribed. A clear methodology should be provided for describing the rainfall amounts. There are too many determinations made as to what constitutes a 1 yr 24 hr. storm event.

7. ***Buffer Requirements***

   BASE contends that the expansion of the buffer requirement is unfounded. The current Phase II rules require that all Built Upon areas be 30' landward of all perennial and intermittent surface waters. The Universal Stormwater Management Program places a 30' buffer landward of all perennial and intermittent surface waters as well. BASE also asks for clarification regarding impoundments, and impounded structures as it relates to the buffer definition. Are detention ponds classified as impoundments? BASE would also argue that language needs to be added in the rule that the buffers as they are applied in this rule are not used "in addition to" any other buffers or setbacks as referenced in the Tar-Pamlico, Neuse, CAMA requirements, or any other buffer requirements.

8. ***Vesting Language***

   The rules continue to need more vesting language for all Phase II local government as well as permitted projects that were brought in by SL 2006-246 under the auspice of the 1990/2000 Census designation. Many of these local governments spent lots of money in permit and ordinance requirements to comply with current regulations.

   Furthermore, BASE argues that property owners of previously platted and recorded lots need to be afforded the proper protections. The memo from DENR to Rep. Bonner Stiller that was drafted during the finalization of the SL 2006-246 that addresses the definition of a "common plan of development" needs to be better referenced in the rule. The memo details the intent of DENR regarding implementation of Phase II for previously platted and recorded lots. The memo was referenced in the resulting session law but only by its

description, and thus, it was summarily ignored. BASE argues that the mere introduction of language in the proposed rule that highlights a memo is not the proper course of action in any rule. BASE would like to see the references and definition of a “common plan of development” better memorialized in the proposed rules.