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General Assembly of North Carolina

Fr: Jim Stephenson
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Date: May 15, 2008

Re: Changes to the Coastal Stormwater Rules

Let me begin by stating the NC Coastal Federation is prepared to accept the final rules approved by the NC Environmental Management Commission without changes. The draft rules were the subject of four public hearings and a public comment period. The EMC granted significant concessions to the development and real estate communities in the final rules as the result of public comments.

Inasmuch as a review of the rules is now underway by the legislature, we have reexamined the rules to determine which provisions of importance to the environmental community were compromised during the EMC deliberations. Since everything is back on the table, we are submitting the following for reconsideration by the stakeholders group and the General Assembly.

1. 15A NCAC 02H .1005 (a) – This section establishes the trigger for a permit under the Coastal Stormwater Program. We support the draft rule language that requires a permit for development that disturbs 10,000 square feet or more. We believe a permit is the proper tool for regulating stormwater controls.
2. 15A NCAC 02H .1005 (a)(2) – We support the language that exists in the current rule (as opposed to the draft or final rules).
3. 15A NCAC 02H .1005 (a)(2)(A)(i) – We support the trigger of 12% impervious surface for requiring the use of stormwater management controls within ½ mile of SA waters. The science on the relationship between

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impervious surfaces and water quality degradation is widely accepted within the scientific community.

4. 15A NCAC 02H .1005 (a)(3)(A) – We support the trigger of 24% impervious cover for requiring the use of stormwater management controls elsewhere in the 20 coastal counties. It is clear that the “inner banks” will continue to grow rapidly. It is critically important for development to control stormwater before projects are designed and built. This is the same standard that is applied throughout the state in the Phase 2 Stormwater Program.
5. 15A NCAC 02H .1005 (a)(2)(A)(ii) – This section places a cap upon development within 575 feet of surface waters classified as SA/ORW. This provision exists in current rule. It provides greater protection for SA waters that have the supplemental classification of Outstanding Resource Waters. We support retention of this provision.
6. 15A NCAC 02H .1005 (a)(2)(A)(iii) – We recommend the deletion of the subsection. Vegetated conveyances transport and discharge polluted stormwater to surface waters in violation of the federal Clean Water Act.
7. 15A NCAC 02H .1005 (a)(2)(A)(iv) – We support the 50-foot vegetated buffer. We recommend that the 50-foot buffer be required for all development that does not meet the definition of redevelopment. We recommend that the buffer be naturally vegetated as it is in the Tar-Pamlico and Neuse River Basins.
8. 15A NCAC 02H .1005 (a)(2)(B)(ii) – We support the existing language in the current rule (not the draft or final rules). The current rule limits structural stormwater controls to infiltration systems.
9. 15A NCAC 02H .1005 (a)(2)(B)(iv) – Same position as #5 above.
10. 15A NCAC 02H .1005 (a)(3)(A)(ii) – Same position as #4 above.
11. 15A NCAC 02H .1005 (a)(3)(A)(iii) – Same position as #5 above.
12. 15A NCAC 02H .1005 (a)(3)(B)(iii) – Same position as #5 above.
13. 15A NCAC 02H .1005 (a)(5) – We support the exclusion of jurisdictional wetlands and isolated wetlands from the built upon area calculation. Jurisdictional wetlands cannot be built upon or used for stormwater management according to the U.S. Environmental Protection Agency.
14. 15A NCAC 02H .1005 (a)(6) – We recommend this subsection be deleted.
15. 15A NCAC 02H .1005 (b)&(c) – Same position as #1.