

**CSRWG 9 June 2008**

**Wright (email)**

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From: Clark Wright [<mailto:icw@dhwlegal.com>]

Sent: Friday, June 06, 2008 8:03 PM

To: George Givens (Research)

Subject: RE: CSRWG - Coastal Stormwater Rules Working Group - Meeting and Information

George, the attached has received preliminary review and approval by our client, with the caveat that time was very short to try and get our thoughts together and properly on paper. Note there are several places where 12% has a red two in it - no change in the number, just a computer typo I could not figure out how to undo.

The proposed revisions should show up in red; but it may depend on the receiver's version of WORD; to help with that, I also have printed it out and color scanned it and attached it as a pdf file.

The rationale behind some of the more substantive revisions is to find a way to reincarnate low density in a way that answers the assertion (partially true, partially not true) that for the past 15 years low density has gotten a "free ride" with regard to stormwater treatment, management and control.

Also, for higher density projects, it makes little sense to say that treated stormwater also needs an increase from 30 to 50 feet.

The delayed effective date is designed to allow those landowners, large or small, who bought or otherwise acquired land in the past few years (not to mention their lenders and appraisers!) in reliance on the then-current rules to have some time to implement development in a manner consistent with what they reasonably relied on as being the regulatory environment in which they would need to act. This is not violin sawing. The economic impacts and costs here are very real; for instance, the fiscal note is completely silent on the issue of land devaluation, yet anyone who has ever bought land with the goal of development knows that value is almost totally driven by the density development allowable, and great quantities of land exist in the 20 coastal counties where it was bought and sold over the past few years with the reasonable reliance that, while existing rules might well get tweaked here and there, the EMC would not be expected to make a 180 degree turn away from its long standing policy of EXPRESSLY FAVORING low density development.

[In short, reliance on the availability of some form of cost-effective, realistic low density development was a reasonable thing.]

One related point I do not believe a single soul has talked about at the stakeholder meetings is the fact that most land bought and sold by developers, large and small, is financed with various lenders, both local and national, based on land appraisals that assume then-current low density development scenarios to determine value. What happens to those loan to value ratios when, as is now

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starkly the case in our State and nationwide, we are experiencing double digit land value reductions, and you then couple that with increased development costs due to either a 50% or more reduction in lot density to stay low density, or a major increase in stormwater control costs if you have to go from low density to high density, as is the goal of the proposed rules, even as modified in the stakeholder process?

Put those two potential adverse financial impacts together, and then add in the fact that many of the 20 coastal counties have NOT experienced the great economic boom that other areas have, and you have a potential significant adverse meeting together of reduced land collateral value, coupled with the well-publicized strains on the financial system, and it is not out of the realm to forecast lenders asking NC coastal developers (large and small) for updated appraisals, and smaller business developers then hearing their bank ask for another 10-20% cash injection to return the reappraised LTV to where it was before. This is not unlike Bear Stearns getting impossible calls to inject liquidity due to sudden, large mark downs in the appraised value of those weird CDO instruments, except here we are talking about markdowns in something as fundamental as land values, where part of the mark down is the market downturn, but also part will be due to increased stormwater compliance costs, either in the form of density reductions or increased high density treatment costs.

Perhaps some of us "down east" have not done a good enough job of making distinctions here in past stakeholder meetings and public comments. The concern is not so much with the higher end, more upscale developments that can command higher prices; they will incur extra costs, too, but they can manage it. The same is NOT true for the more marginal landowner and smaller scale developer who likely bought his or her land in the past few years when land prices were high, and had a project that likely was only marginally profitable based on the prior low density percentage stormwater rules, but now is essentially going to be forced into much higher cost high density stormwater controls - regardless of whether he or she wants to go with a higher density, and regardless of whether other factors, such as subdivision concept, other zoning rules, etc. lend themselves to the higher density project that now is necessary to offset the increased stormwater control costs. These are NOT pie in the sky forecasts of doom, but rather realistic, real world financial constraints, concerns and impacts. And all the fiscal note had to say was look at \$3k of increased costs at the individual homeowner level on a \$300k home, and what's the big deal, or look at one example of one retention pond cost . . . needless to say, that kind of analysis totally missed the mark. We do not seek to rehash the niceties of whether such a fiscal note was or was not legitimate, but we do seek to have all concerned understand that there are very real cost concerns tied to these rules, even as modified - and that very real financial impacts may occur.

Much good progress has been made on many issues in the 605 process; and while me and my client(s) I continue to sincerely and strongly believe that imposing much tougher new rules tied to a belief that reducing percentage

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impervious surfaces at the lot level on a one-size fits all 20 counties basis will somehow materially reduce bacterial contamination of our valuable shell fishing water resources is a terribly false assumption, and while we continue to press that case with anyone who will listen, and fairly judge the science that is out there with regard to THIS PARTICULAR subset of the very real stormwater pollution issue, we also remain committed to constructive continuation of the stakeholder process, and it is in that vein that the attached is submitted. It is because of our strongly and sincerely held concerns on the critical need for better science on source identification (which likely varies tremendously within our 20 coastal counties) that we propose a 4-year sunset provision, coupled with an express mandate to have the three major environmental regulatory divisions within DENR work together with the CWMTF to better target and identify source problems and cost-efficient solutions. I think all will agree that we will never see significant improvement in coastal waters bacterial contamination levels unless we find ways to target and fix EXISTING problems AND better learn how to identify actual bacterial contamination SOURCES, whether in a particular area they be failing septic systems, poorly maintained existing high density stormwater controls, pet waste, wildlife waste, or runoff from existing low and high density projects - or whether SOME areas are just plain naturally not likely to have bacterial levels right after rainfall events that are low enough to allow shellfish to be eaten by humans, which may well be the case in some areas.

In closing, I offer my best personal regards to you, and my personal wishes for improved health. I can say with a great deal of personal conviction that you have been a great and patient asset to this process, as you have to so many before.

Clark

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