

MEMORANDUM

TO: Board of County Commissioners

CC: Bill Barron, Pete Capell, Bronson Potter, Tim Kraft, Troy Pierce, Ron Wierenga, Gordy Euler, Rod Swanson

FROM: Kevin Gray, Deputy Director of Public Works

DATE: December 15, 2008

PROJECT: STORMWATER ORDINANCE UPDATE
WO 11424

SUBJECT: *Board Requests from December. 8, 2008*

At the December 8, 2008, hearing on the stormwater ordinance update, the Commissioners asked staff to review and clarify issues related to rural property thresholds, agricultural exemptions and potential takings claims.

The following memo provides some analysis of the rural property thresholds and agricultural exemptions. Bronson Potter has provided a separate written analysis of federal takings claims (please see memo dated 12-12-08).

Rural Property Thresholds

Commissioner Stuart requested an analysis of how using a percentage-based impervious area threshold in the rural area would compare to the current square footage, or area-based, threshold:

- The proposed area-based thresholds established by the Department of Ecology (Ecology) were developed to identify when a significant amount of runoff from impervious surfaces may be generated. The significance is based on the potential damage to property and the environment.
- Along with the amount of impervious surface, the proximity of the impervious surface to a waterway or property line needs to be considered. The location of the impervious surface is just as critical as the amount of impervious surface. Simply put, a driveway, building or other impervious area that drains directly to the county's stormwater system, or a surface stream or pond, can harm the environment, regardless of the size of the property upon which it sits.
- A percentage of impervious surface threshold alone does not provide the same protection to the waterways and property as the proposed ordinance,

because it does not account for the location and potential damage caused by the resulting stormwater runoff.

- The area-based thresholds are designed to trigger a review and protect the receiving drainage system and water body. For large parcels in the rural area, the ordinance is written to minimize the need for detention ponds and engineered solutions. The larger parcels offer more opportunities for alternative methods, such as dispersion, to manage stormwater. Allowing drainage from impervious areas to disperse before entering the county's drainage ditches and systems, or receiving streams will meet ordinance requirements.

Agriculture Exemptions

Commissioner Stuart requested clarifications regarding what agricultural activities are exempt from the requirements of the proposed ordinance and what activities are not exempt. Furthermore, he asked for more information regarding what provisions have been incorporated into the proposed ordinance to minimize adverse impacts to agricultural operations.

Commissioner Morris asked to define commercial agriculture as it applies to the stormwater ordinance and also indicated that the ordinances should exempt all activities associated with agriculture.

Definition

The definition of commercial agriculture is included in the Department of Ecology Stormwater Management Manual for Western Washington, 2005, which is referenced and incorporated into the proposed ordinance:

Commercial Agriculture

Those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five (5) years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

Current Exemptions, Non-Exemptions and Provisions to Minimize Impacts

All commercial agriculture practices involving "working the land for production" are exempt in the proposed ordinance. This language is directly from the county's municipal stormwater permit.

Agricultural activities that are not exempted in the proposed ordinance are "the conversion from timber land to agriculture and the construction of new impervious surfaces." Again, this language is directly from the municipal stormwater permit.

Provisions in the proposed ordinance to minimize impacts to the agricultural community include an added Best Management Practice (BMP) for dispersion over cropland and pasture, and a simplified submittal package to demonstrate compliance with stormwater requirements that should not require engineered plans.

Exemption Options

For the Boards consideration, below are two options for providing more broadly defined exemptions for agricultural activities:

OPTION 1

Exempt all agricultural practices as defined in Clark County Code 40.100.070, including the construction of roads, buildings and other hard surfaces,:

Clark County Code 40.100.070

"Agriculture," "agriculture uses" or "agricultural activities" means the use of the land for agricultural purposes, including, but not limited to, farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and wineries, apiaries, and animal and poultry husbandry, and the necessary accessory uses and structures; provided, however, that the construction and operation of any such accessory use or structure shall be incidental to that of normal agricultural activities; and provided further, that the above uses shall not include slaughterhouses and meat packing or commercial feeding of animals.

OPTION 2

Exempt agriculture from the stormwater regulations, while addressing the requirements to regulate flows into the county's drainage system, by clarifying with the following revision:

Proposed Clark County Code 40.380A.010(C)(1)(b)

"Construction of agricultural buildings or other impervious surfaces for carrying out agricultural activities is exempt, provided no stormwater is released from the site directly or indirectly to the county's stormwater conveyance system. Implementation of an Agricultural/Habitat Protection Plan under CCC 40.440.040 or a Farm Plan approved by the Clark Conservation District that addresses runoff is considered evidence that stormwater will not be discharged to streams or ditches. In the absence of such plans, enforcement shall be driven by evidence of stormwater discharge to a stream or county ditch."

Please call me at extension 5358 with any questions or concerns you may have.