

**ENVIRONMENTAL MANAGEMENT COMMISSION
WATER QUALITY COMMITTEE MEETING SUMMARY**

**Archdale Building-Ground Floor Hearing Room
May 9, 2012**

BRIEF

At the May 9, 2012 meeting of the Environmental Management Commission (EMC) Water Quality Committee (WQC), the WQC:

- approved a major variance request with the recommended conditions by staff for a 22 Unit Condominium Development to Flamingo Development LLC at 1113 Chelsea Road in New Bern, NC.
- approved moving the proposed Flexible Buffer Mitigation rules and associated fiscal analysis to the EMC for approval.
- approved sending the final drafts of the basinwide water quality plans for the Little Tennessee River, the Savannah River, and the Hiwassee River to the EMC for approval.
- approved sending local programs implementing the Jordan Lake New Development Stormwater Rule to the EMC for approval and delegated authority to the Division of Water Quality (DWQ) Director to approve subsequent local program amendments.
- heard an overview of DWQ's Random Ambient Monitoring System and results from 2007-2010.

WQC Members in Attendance:

Dr. Charles H. Peterson (Chairman)
Mr. Dickson Phillips III
Mr. Donnie Brewer
Mr. Tom Ellis
Mr. Kevin Martin
Mr. Steve Tedder
Mr. Stephen Smith
Dr. Ernest Larkin
Mr. Jeffrey Morse
Mr. William Les Hall, Jr

Others Present:

Mr. Chuck Wakild, DWQ Director
Mr. Ted Bush, DWQ Deputy Director
Mr. Frank Crawley, Attorney General Office
Mr. Marvin Cavanaugh, EMC
Ms. Amy Pickle

According to General Statute 138-A15, Dr Charles H. Peterson gave the opportunity to each WQC member present to state any conflict or the appearance of a conflict of interest they may have with any matter on the meeting agenda. No one had stated that they had a conflict with any matter. Therefore, each WQC member present was able to render a decision on any agenda matter.

(THIS ITEM HAS BEEN REMOVED)

1. Request for a Major Variance from the Neuse River Riparian Area Protection Rules for a single family residence to Lindsay Veit and John Bayer at 526 Oakland Drive in Raleigh, NC - (Action Item) (Amy Chapman)

A request has been received for the Water Quality Committee (WQC) to grant a Major Variance from the Neuse River Riparian Area Protection Rules (15A NCAC 2B .0233) to Lindsay Veit and John Bayer for a single family residence at 526 Oakland Drive in Raleigh, NC. Due to the size of the property and the presence of Big Branch creek running through it, the proposed residence and home will need to encroach into Zone one and two of the buffers. The applicant is proposing mitigation and use of rain barrels/cisterns to offset the proposed buffer impacts. Although the Division of Water Quality (DWQ) recognizes that the applicant does not comply with the evaluation criteria 15A NCAC 02B .0233 (9) (a) (i) (E) because the owner purchased the property after the effective date of this rule, it supports this major variance request.

2. Request for a Major Variance from the Neuse River Riparian Area Protection Rules for a 22 Unit Condominium Development to Flamingo Development LLC at 1113 Chelsea Road in New Bern, NC - (Action Item) (Amy Chapman)

Description

A request has been received for the WQC to grant a Major Variance from the Neuse River Riparian Area Protection Rules (15A NCAC 2B .0233) to Flamingo Development LLC for the proposed condominium development at 1113 Chelsea Road in New Bern, NC. Due to property lines, presence of 404 wetlands and the stream location, a small portion of one of the condos will encroach into Zone one of the buffers. The applicant is proposing mitigation and stormwater treatment to offset the proposed buffer impacts. Although DWQ recognizes that the applicant does not comply with the evaluation criteria 15A NCAC 02B .0233 (9) (a) (i) (E) because the owner purchased the property after the effective date of this rule, it requested the support of this major variance request.

Discussion

Mr. Martin provided historical knowledge of the motivation for the evaluation criteria 15A NCAC 02B .0233 (9) (a) (i) (E) – date of purchase of property after the effective date -as requested by the Chair of the WQC. Mr. Wakild stated that the Division could come back in July to the WQC and present ideas on how to move forward on the two buffer rule revisions that are needed. Specifically the soil survey map language clarification and the purchase date in the variance hardships. The Chair of the WQC concurred. Mr. Smith stated he wanted to see the most recent draft language from the draft consolidated buffer rules in the July WQC package.

Motion

Mr. Tedder made a motion to approve the major variance request with the recommended conditions by DWQ staff. Mr. Martin requested that a copy of the interpretative ruling on the meaning of the most recent version of NRCS Soils Survey Map Referenced in the Neuse and Tar-Pamlico Riparian Buffer Protection Rules along with the approval be sent to the applicant and its attorney.

3. Request Permission to Proceed to the Environmental Management Commission (EMC) with the Proposed Consolidated Buffer Mitigation (Flexible) Options Rule - (Action Item) (Amy Chapman)

Description

DWQ is proposing to consolidate several Riparian Buffer Mitigation Rules (15A NCAC 02B.0242, .0244, .0260, .0268, .0609 and .0252) into one Riparian Buffer Mitigation Rule (0295). The purpose of this consolidation is to make these rules easier to use and also to comply with requirements in Session Law 2009-337. Also included in this consolidation of existing rules are new rules addressing Flexible Mitigation Options as required by the North Carolina General Statute 143-214.20. DWQ presented these draft rules to the WQC in

January 2012, September 2011, July 2011, March 2011, January 2011 and November 2010 and presented a summary of the draft fiscal analyses for these rules. DWQ requested to proceed to the July 2012 EMC meeting with the proposed consolidated buffer and buffer mitigation rules for approval.

Discussion

Recognizing the complexity of conducting fiscal analyses for the proposed buffer mitigation rules, Mr. Smith stated that he hopes to hear a presentation in July on the process of creating a fiscal analysis from the staffs of DWQ and Office State Budget Management. He also said that he wants to see costs on the fiscal analysis if no action was taken (rule not written); what the societal costs would be if no buffer mitigation was allowed; and restoration versus impacts allowed. He also recommended that the following changes be made to the latest version of the proposed buffer mitigation rules: Consolidated Buffer Mitigation Rule 3.0 version to May 2012 final markup document.

- Clarify what it means to “maximize nutrient removal and buffer functions” for the definitions for Preservation Site and Restoration Site. 2B .0295 (b) (12) and (13).
- Place charts under applicable options. 2B .0295(e).
- Replace “can” with “may” in the sentence the starting with “However the applicant can get narrow...” 2B .0295 (g) (10).
- Remove 2B .0295 (j) (3) (A).
- Add conditions for the use of a property that contains any hazardous substances as a mitigation site. 2B .0295 (j) (3) (I).
- Add the words “prior to time the property is accepted as a mitigation site” to the end of sentence of requirement 2B .0295 (j)(3)(J)

Mr. Martin asked if some of the costs in the fiscal analyses are new costs under the current rules. Mr. Phillips mentioned that the numbers reflect additional costs over and above what is being done presently per the mitigation rules. Ms. Chapman confirmed Mr. Phillips’s statement.

The WQC with Attorney General Council, Mr. Crawley, discussed at great length the process for handling ideas that are not addressed in the proposed buffer mitigation rules prior to these rules going to public hearing. In the discussion, two proposals were mentioned as potential ideas to add to the proposed rules (1) buffer mitigation credit for areas containing sewer easements, and (2) including a binding intergovernmental agreement with DWQ to complete the buffer mitigation project.

Motion

Mr. Martin motioned to move the proposed flexible buffer mitigation rules to the July EMC with the understanding that DWQ staff will at that meeting discuss the two proposals (mentioned immediately above in the Discussion section) for consideration by the EMC as to whether or not to include them in the public hearing package. Mr. Morse seconded the motion and the WQC passed it. It is important to note that this motion includes approval of the approved fiscal analysis.

4. Summary of the Savannah, Hiwassee and Little Tennessee River Basinwide Water Quality Plans and a Request for Approval to Send these Final Plans to the EMC for Approval – (Action Item) (Heather Patt)

Description

DWQ staff requested permission to take the final drafts of the *Savannah, Hiwassee and Little Tennessee River Basinwide Water Quality Plans* to the EMC for approval. Staff presented the fourth edition of these plans with an emphasis on new water quality impairments and restoration activities.

Discussion

Mr. Morse asked whether local governments in these basins were under the stormwater rules. Ms. Patt said that only stormwater requirements applicable are those associated with Outstanding Resource Waters, High Quality Waters and Water Supply Waters.

Motion

Mr. Tedder motioned to approve DWQ staff's request to take the final drafts of the basinwide water quality plans for the Little Tennessee River, the Savannah River, and the Hiwassee River to the EMC in July for final approval. Mr. Martin seconded this motion and the WQC passed it.

5. Request to Proceed to the EMC for Approval of Local Programs Implementing the Jordan Lake New Development Stormwater Rule and Delegation of Further Approval Authority to the DWQ Director – (Action Item) (Jason Robinson)

Description

The Jordan Lake New Development stormwater rule, 15A NCAC 2B .0265, requires 33 local governments to prepare, adopt, and implement programs to achieve nutrient control on runoff from new development within their respective jurisdictions. In March 2011, the EMC approved a model local program developed by staff with input from stakeholders. The Jordan watershed communities submitted proposed programs for DWQ staff review in September 2011 and have made subsequent revisions based on staff comments. Staff requested that the WQC recommends that the Commission take the following actions:

- Approve 32 of these local programs as meeting the minimum requirements established in Item (3) of the rule, and disapprove Pittsboro's program. If disapproved, Pittsboro will have two months to resubmit a program for staff's review, and staff will provide recommendations to the Commission within two months of that submission.
- Delegate authority to the DWQ Director to approve any subsequent program amendments that these communities may propose from time to time. The DWQ Director will forward unique future program revisions of concern to the WQC for review.

Discussion

The Chair of the WQC asked whether it is expected that Pittsboro will move forward. Mr. Robinson said that Pittsboro assured him that they would submit their program to DWQ next month.

Motion

Mr. Morse made a motion to approve DWQ staff's request. Mr. Ellis seconded this motion and the WQC passed it.

6. Overview of DWQ Random Ambient Monitoring System (RAMS) and Results from 2007-2010 - (Information Item) (Steven Kroeger)

Description

In 2007 DWQ initiated a statistically based water quality monitoring program known as RAMS, which evaluates the condition of all freshwater streams and rivers in NC. An overview of how statistically based monitoring differs from traditional monitoring programs was presented, along with a summary of the RAMS results obtained between 2007-2010.

Discussion

Mr. Morse asked what is meant by low level mercury. Mr. Kroeger said that it is a concentration of mercury that is lower than the detection limit for mercury. Mr. Tedder asked how confidence levels are incorporated in the assessment of data, as far as violation of standards. Mr. Kroeger said that the levels are used in basin assessment reports. However, in terms of use support evaluations a raw score approach is used, that is to say, more than 10% results exceeds the standard constitutes a violation of the standard. Mr. Tedder asked whether

a comparison of the results between the Random Ambient Monitoring and targeted, Ambient Monitoring programs have been made to identify similar trends.

Motion

Not Applicable

This summary was prepared by Adriene Weaver, Amy Chapman, Heather Patt, Jason Robinson, and Steve Kroeger in May 2012.