**ENVIRONMENTAL MANAGEMENT COMMISSION**

**WATER QUALITY COMMITTEE MEETING SUMMARY**

**November 8, 2017**

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| **BRIEF**   |  | | --- | | The Water Quality Committee (WQC) of the Environmental Management Commission (EMC) at its November 8, 2017 meeting:   * approved the revised draft summary of the September 13, 2017 WQC meeting. * approved requests from Sonya and Ahmed Ramadan and the City of Durham for a major variance from the Neuse Riparian Area Protection Rule for the   1) the construction of a single-family home at 621 Bon Air Avenue in Durham, NC and  2) the expansion Department of Waste Management Mist Lake facility at 1600 Mist Lake Drive, Durham, respectively.   * approved a request from Air Dreams, Inc. for a major variance from the Jordan Lake Riparian Area Protection Rule for construction the of a single-family home at 1318 Vickers Avenue in Durham, NC. * approved the 2018-2020 North Carolina Coastal Habitat Protection Implementation Plan. * approved to proceed to the EMC with the draft Environmental Management Commission and Department of Environmental Quality 2017 Annual Basinwide Water Management Plans ERC Report per GS 143-215.8B (d). * received an update on Tar Pamlico and Neuse agriculture rules. * received an overview of the stakeholder meeting for the re-adoption of the current 15A NCAC 02B .0232 - .0261 rules. * received an update on NC Nutrient Criteria Development, and on Implementation of Falls and Jordan Nutrient Strategies. | |

**WQC Members in Attendance:**

Dr. Albert R. Rubin, WQC Chair

Ms. Marion Deerhake, WQC Vice Chair

Ms. Julie Wilsey, EMC Vice Chair

Mr. Steven Keen

Dr. Suzanne Lazorick

Dr. Stan Meiburg

Mr. Mitch Gillespie

Mr. J.D. Solomon, EMC Chair  
  
**Others Present:**Dr. Richard Whisnant, EMC

Ms. Jennie Hauser, Attorney General Office

Ms. Sheila Holman, Department of Environmental Quality Assistant Secretary

**I. Preliminary Matters**

Dr. Albert Rubin, the WQC Chair, read the conflict of interest statement under General Statute § 138A-15. No member of the WQC expressed a conflict of interest with any item on the November 8, 2017 WQC agenda.

Ms. Julie Wilsey moved to approve two amendments for the summary for the September 13, 2017 WQC meeting which are 1) add the motion for agenda item number 2 and 2) the add text for agenda item number 6. WQC Vice-Chair Deerhake seconded the motion. The motion passed unanimously.

**II. Agenda Items**

**1. Request for a Major Variance from the Neuse Riparian Area Protection Rule by Sonya and Ahmed Ramadan for construction of a single-family home at 621 Bon Air Avenue in Durham, NC**

**Description**Ms. Jennifer Burdette, on behalf of the 401and Buffer Permitting Branch of the Division of Water Resources, asked the WQC to grant a Major Variance from the Neuse Riparian Area Protection Rule to Ms. Sonya and Mr. Ahmed Ramadan because their single-family residence within Zone 1 and Zone 2 of the buffer at 621 Bon Air Avenue in Durham, NC has met all requirements in 15A NCAC 02B .0233. To mitigate the buffer impact, the applicant proposed to purchase buffer credits from a private mitigation bank. A rain garden was also proposed to treat stormwater runoff from the proposed home.

# **Discussion** Mr. Keene inquired if there were other lots near the proposed project that were plated before the effective date of the rule. Ms. Burdette replied that yes there are. Dr. Meiburg asked when the property was purchased was it known that it was subject the Neuse buffer rule. Ms. Burdette replied that yes, the property owner understood the property was subject to the buffer rule. Ms. Burdette explained that if the variance was not available to properties purchased after the effective date of the rule then the rule would render properties platted prior to the rule and sold after rule went into effect unbuildable and would deprive property owners of reasonable use of their property. Dr. Meiburg asked what is the process for ensuring that the mitigation credits concerning the buffer impacts are credible. Ms. Burdette explained that they [Mr. and Mrs. Ramandan] would submitted a statement of availability from the mitigation bank that states the credits are available with their application. WQC Vice-Chair Deerhake asked was it customary for the Division to approve the variance, knowing that this was a common circumstance within the protected basin. Ms. Burdette answered yes. She explained that this [decision] is based on session law and the hardships in the buffer rule. WQC Vice-Chair Deerhake asked if there is mandatory disclosure by a realtor agent as to the conditions associated to the property so that buyer is fully aware of them before it is purchased. Ms. Burdette answered that she is not aware if this is a requirement for the realtor.

**Motion**Mr. Keene made a motion that the WQC approve the major variance request with the following conditions recommended by DWR staff:

* The applicant shall provide mitigation for the buffer impacts by purchasing buffer credits from the North Fork Little River Nutrient Offset & Buffer Bank
* The applicant implements the stormwater treatment plan consisting of a rain garden and associated downspout drains as depicted on plan sheets received by the Division on October 2, 2017.

Ms. Wilsey seconded the motion. Although the motion was opposed by WQC Vice-Chair Deerhake, the motion passed with a majority vote.

**2. Request for a Major Variance from the Neuse Riparian Area Protection Rule by the City of Durham – Department of Water Management for expansion of their Mist Lake facility at 1600 Mist Lake Drive in Durham, NC**

**Description**  
Ms. Jennifer Burdette, on behalf of the 401and Buffer Permitting Branch of the Division of Water Resources, asked the WQC to grant a Major Variance from the Neuse Riparian Area Protection Rule to the City of Durham for the expansion of their Department of Water Management Mist Lake Facilities within Zone 1 and Zone 2 of the buffer at 1600 Mist Lake Drive because it has met all the requirements in 15A NCAC 02B .0233. To mitigate the buffer impact, the applicant proposed to purchase buffer credits from a private mitigation bank. A stormwater management plan was also proposed to treat stormwater runoff from the proposed facility expansion.

**Discussion**Mr. Keeneasked staff if they had looked at stormwater runoff for particular types of vehicles [vehicles used by the water management division] that would be maintained at the [Misty Lake] facility and where is the retention pond in reference to the area to be protected located. Ms. Burdette explained that the maintenance facility would be required to have an industrial stormwater permit, which would require them to develop and maintain a spill prevention, control, and countermeasure plan, and that much of the stormwater management is underground detention and underground sand filter combined with level spreaders. She said that the stormwater strategy would be reviewed by the City of Durham Planning Department. WQC Vice-Chair Deerhake asked whether the applicant submitted other alternative plans for their expansion. Ms. Burdette said that the application indicated that it wasn’t possible to expand the City of Durham’s other water management location and that similar or greater resource impacts would be expected at green site due to the large footprint required for the maintenance facility.

**Motion**Mr. Gillespie made a motion that the WQC approve the major variance request with the following conditions, recommended by DWR staff:

* mitigation will be provided as indicated by DWR, and
* a stormwater management plan will be implemented

Mr. Keene seconded the motion. Although the motion was opposed by WQC Vice-Chair Deehake and Dr. Meiburg, the motion passed with a majority vote.

**3. Request for a Major Variance from the Jordan Lake Riparian Area Protection Rule by Air Dreams, Inc. for construction of a single-family home at 1318 Vickers Avenue in Durham, NC**

**Description**Ms. Jennifer Burdette, on behalf of the 401and Buffer Permitting Branch of the Division of Water Resources, asked the WQC to grant a Major Variance from the Jordan Lake Riparian Area Protection Rule to Air Dreams, Inc. for a single-family residence, detached garage and two rain gardens within Zone 1 and Zone 2 of the buffer at 1318 Vickers Avenue in Durham, NC because it has met all the requirements in Section 8.5.12 of the Durham Unified Development Ordinance. Durham County has been designated authority to administer the Jordan Lake Riparian Area Protection Rule. To mitigate the buffer impact, the applicant proposed to purchase buffer credits from the Division of Mitigation Services. Two rain gardens were also proposed to treat stormwater runoff from the proposed home and detached garage.

**Discussion**Building setbacks and access and proposed rain gardens were discussed

**Motion**Mr. Keene made a motion that the WQC approve to major variance request. The motion was seconded by Ms. Wilsey and passed with a majority vote.

**4. Request Approval of the 2018 - 2020 North Carolina Coastal Habitat Protection Implementation Plan**

**Description**  
The Coastal Habitat Protection Plan (CHPP) Steering Committee made up of two members from the Environmental Management Commission (EMC), Coastal Resources Commission (CRC), and the Marine Fisheries Commission (MFC) met and recommends approval of the 2018-2020 Coastal Habitat Protection Implementation Plan. Mr. Jimmy Johnson with the Albemarle National Estuary Program asked the EMC’s Water Quality Committee to approve the implementation plan. The plan is the means by which the recommendations and actions found within the revised 2016 CHPP are implemented. Mr. Johnson summarized the implementation actions developed by DWR and Division of Energy Mining and Land Resources (DEMLR) staff which are included in the implementation plan.

**Discussion**Dr. Meiburg asked does the Division have the resources to do the stormwater controls proposed in the implementation plan. Mr. Johnson replied probably not, but these are actions that the staff felt like they could get started on.

**Motion**WQC Vice-Chair Deerhake made a motion that the WQC approve to submit the 2018-2020 Coastal Habitat Protection Implementation Plan to the EMC. Dr. Lazorick seconded the motion and the motion passed unanimously by the WQC.

**5. Request Approval to Proceed to the Environmental Management Commission with the Draft Environmental Management Commission and Department of Environmental Quality 2017 Annual Basinwide Water Management Plans ERC Report per GS 143-215.8B (d)**

**Description**Mr. Ian McMillian, on behalf of the Basinwide Planning Branch of DWR, asked the WQC to approved proceeding to the EMC with the Draft Environmental Management Commission and Department of Environmental Quality 2017 Annual Basinwide Water Management Plans ERC Report per GS 143-215.8B(d).

**Discussion**Some WQC members had questions about the sample protocols that were used to come up with water quality trends shown in the 2017 Annual Basinwide Water Management report. WQC Vice Chair Ms. Deerhake asked staff to provide the trends for total nitrogen and nitrate. Also, she suggested that staff measure acid neutralizing capacity in areas where pH is declining. Recognizing other [stakeholder] agencies referenced in the report, WQC Chair Dr. Rubin asked how well this report was reviewed within the division. Mr. McMillian explained the plan was reviewed by Division upper management including the Director, Deputy Director, and Water Quality Planning Section Chief, and the Department of Environmental Quality. The WQC Chair asked if the report went to the Department of Health and Human Services Environmental Health section to get input on their activities to reduce nutrient input into waterways. The WQC Chair told staff to make the report available to other [stakeholder] agencies and contact them to make comments.

**Motion**Ms. Wilsey made a motion that the WQC approve the report contingent upon a small subset of individuals from the WQC and Water Allocation Committee making revisions in working with the Division’s basinwide planning staff and will approve the report based on the WQC Chair’s approval. The motion was approved by another WQC member and passed unanimously by the WQC.

**6. Annual Progress Reports on the Tar-Pamlico and Neuse Agricultural Rules**

**Description**  
Mr. Jim Hawhee, on behalf of the Non-Point Source Planning Branch of DWR and the Neuse and Tar-Pamlico Basin Oversight Committees, gave a presentation on the Tar-Pamlico and Neuse Agriculture Rules (15A NCAC 2B .0256 and .0238). These rules require their respective Basin Oversight Committees to report to the EMC regarding annual implementation progress. These reports demonstrate agriculture’s ongoing collective compliance with each rule. The reports estimate cumulative nitrogen loss reductions from crop agriculture of 56% in the Tar-Pamlico basin and 52% in the Neuse basin relative to the baseline time period of each strategy.  These reductions are slightly down in relation to those achieved last year, which were the highest reported to date.  An evaluation of qualitative indicators also showed no increased risk of phosphorus loss into the Tar-Pamlico basin.

**Discussion**None

**Motion**  
Not Applicable

**7. Update on DWR Stakeholder Activities for re-adoption of 15A NCAC 02B and 02H Rules Explanation**

**Description**  
Mr. John Huisman, on behalf of the Non-Point Source Planning Branch of DWR, gave a quick overview of the stakeholder meeting that took place (in October 2017) as requested by the WQC for the re-adoption of the current 15A NCAC 02B .0232 - .0261 rules (Neuse & Tar-Pamlico New Development Stormwater, Nutrient Offset, Buffers, Randleman Lake Stormwater, Agriculture, Wastewater, Purpose & Scope, and Definitions). At the meeting, staff from the Division’s Non-Point Source Planning Branch, NPDES Wastewater Permitting and the 401and Buffer Permitting Branch presented proposed revisions for these rules. Sixty plus attendees (stakeholders) attended the meeting with the goal of gaining an understanding of the changes proposed and to provide constructive feedback. The division received only minor clarification comments. No presentation was given for the remaining 02B rules nor the 02H rules.

**Discussion**There was no time for discussion

**Motion**  
Not Applicable

**8. Updates on NC Nutrient Criteria Development, and on Implementation of Falls and Jordan Nutrient Strategies, for Environmental Review Commission Annual Report**

**Description**  
Mr. Brian Wrenn, on behalf of DWR, updated the WQC on the history of North Carolina’s nutrient criteria development and on the implementation of the Falls and Jordan Lakes nutrient strategies. Session Law 2005-190 (as amended by SL 2006-259 and 2009-486) requires the EMC to report quarterly to the Environmental Review Commission (ERC) its progress in developing and adopting nutrient control criteria for drinking water reservoirs, and in implementing nutrient management strategies for Falls and Jordan Lakes. Session Law 2017-10 reduces the frequency of these reports to annual, January 1st. The information on these topics is included in the Environmental Review Commission Annual Report.

**Discussion**There was no time for a discussion

**Motion**  
Not Applicable

**9. Algal Blooms - (Information Item) (Mark Vanderborg, DWR)**

This topic was not presented due to a lack of time.

**III. Closing Comments – WQC Chair, Dr. Albert Rubin**

**Summary prepared by Jennifer Burdette (DWR), Jimmy Johnson (DEQ/APNEP), Ian McMillian (DWR), John Huisman (DWR), Jim Hawhee (DWR), Brian Wrenn (DWR), and Adriene Weaver (DWR)**