



## **North Carolina General Assembly**

### **ENVIRONMENTAL REVIEW COMMISSION MINUTES**

December 18, 2008

The Environmental Review Commission was scheduled to meet at 10 a.m., Thursday, December 18 2008 in Room 1228 of the Legislative Building. Co-Chairwoman Lucy Allen presided. The meeting was called to order at 10:11 a.m.

#### **Welcome and Attendance**

Members present were Co-Chairwoman Lucy Allen, Co-Chairman Pryor Gibson, Co-Chairman Dan Clodfelter, Senator Katie Dorsett, Representative Pricey Harrison, Senator Fletcher Hartsell, Representative Carolyn Justice, Senator A. B. Swindell, Representative Charles Thomas, Representative Edith Warren and Senator David Weinstein. Commission staff present was Commission Counsel George Givens, Assistant Counsel Jeffrey Hudson, Assistant Counsel Jennifer McGinnis, Research Assistant Mariah Matheson and Committee Assistant Jessica Kozma Bennett.

A meeting notice was distributed to staff, members and outside parties electronically and is included as an attachment to the minutes as **Exhibit A**. A reminder was sent electronically December 17. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B and Exhibit C**, respectively.

Co-Chairwoman Allen recognized co-chairs of the Commission; she then recognized staff, thanking them for their work for the Commission.

#### **Report to the Commission and Explanation of Agenda Items**

Commission Counsel Givens thanked the chairwoman and said that he regretted that the Commission was not meeting in its usual room, Room 544 of the Legislative Office Building. He reminded members to sign reimbursement forms and said there would not be an upcoming out-of-town meeting.

Mr. Givens continued noting that there was a public staff meeting held December 2, 2008. He said that the substantive part of the day's meeting would focus on an upcoming water allocation study. He ended his comments saying that coastal hazards may be taken up at a future meeting. He encouraged members to attend one of two public meetings regarding water allocation to be held subsequent to the day's meeting.

Co-Chairman Gibson said that water allocation needed to be at the “top of the agenda” among items the Commission undertakes.

**Approval of the October 9, 2008 and November 25, 2008 minutes**

With a motion by Senator Weinstein and seconded by Senator Dorsett, minutes from the October 9 and November 25, 2008 meetings were approved by unanimous vote.

**Annual report on development and implementation of a plan to reduce vehicle miles traveled by State and private sector employees and vehicle emissions resulting from job related travel, including commuting to and from work**

Ms. Tamra H. Shaw, mobility development specialist with the Public Transportation Division, Department of Transportation was recognized by Chairwoman Allen. A copy of her presentation is included in the minutes as **Exhibit D**.

She began explaining that The Ambient Air Quality Improvement Act of 1999 charged the NCDOT to develop a plan to reduce the growth of commuter VMT by 25 percent by July 1, 2009. A goal of the program is to focus on efforts to reduce roadway space demand through influencing travel choices. Another goal, she said, is to encourage more walking, cycling and use of public transit.

The statewide plan took its first steps in 2004, publishing the statewide plan and funding local programs. Programs today include the Blue Ridge Commuter Connection, SmartCommute@rtp, and the Cape Fear Breeze, among others. The programs now promote challenges to commuters, vanpool programs in Charlotte, the Triad and the Triangle and there is now a statewide rideshare matching web site. Commuter challenges, she continued, are campaigns to increase public awareness of alternative commuting options.

Another program stemming from the program, the “Best Workplaces for Commuters” is a public and private partnership that recognizes employers with outstanding commuter benefits. Statewide, more than 100,000 employees work for such businesses.

Ms. Shaw then reviewed growth in “Share the Ride NC” and public transportation statewide. There are almost 20,000 registrants for “Share the Ride NC” and 55,000 passengers. In the eight years the program has been in place, there has been a 24 percent reduction. Thus, the 25 percent reduction is projected to be met.

In the future, statewide surveys are to be conducted; reductions will continue until 2015, more highway signs will be visible to motorists.

Representative Justice said that perhaps current goals should be increased. Ms. Shaw was thanked by Chairwoman Allen.

**Discussion of Draft 2008 Report of the Water Allocation Study (S. L. 2007-518, Sec. 1 (a) as amended by S. L. 2008-10) and issues related to increasing water supply and reservoir construction (S. L. 2008-143, Sec. 6)**

Chairwoman Allen then recognized Mr. Bill Holman, principal investigator and visiting senior fellow of the Nicholas Institute for Environmental Policy Solutions with the Nicholas Institute for Environmental Policy Solutions at Duke University.

Mr. Holman thanked the Commission and said he looked forward to the afternoon and evening public hearings. He then said he was there that day to answer questions among members. Chairwoman Allen thanked Mr. Holman and opened the floor for questions.

Co-Chairman Gibson asked how many formalized comments were submitted. Mr. Holman said that so far there were only two submitted. Co-Chairman Gibson followed up and asked about wiki activity, of which Mr. Holman responded that the water wiki still had many hits. Mr. Holman was thanked and Co-Chairwoman Allen moved to the next agenda item.

**Annual report on the program to streamline the process for the issuance of an improvement permit or an authorization to construct for an on-site subsurface wastewater system in certain counties**

Co-Chairwoman Allen recognized Mr. Terry L. Pierce, director of the Division of Environmental Health (DENR) to discuss a pilot project charged through House legislation. He began his presentation.

Several counties experienced backlogs due to increased development, with Cherokee County having the largest backlog.

To be selected in the program, a county must meet three criteria: a) the population of the county must not exceed 25,000, according to the most recent census; b) the county must not have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective side of the act and; c) the board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program. So far to date, the only county that has met the criteria is Cherokee County.

He continued reporting that staff provides technical assistance, orientation and interpretation to help with the permitting. He then reviewed the process of the program.

Among findings, Mr. Pierce reported that any backlog had been eliminated; that there were five full-time Cherokee County employees assigned to onsite wastewater activities. There were 152 construction authorizations issues between May 1, 2007 and October 1, 2007. Another 72 were issued between October 1, 2007 and November 1, 2008. Applications for permits have dropped significantly in 2008.

The co-chairwoman called on questions and comments from membership.

Senator Swindell asked if additional positions were added to address the former backlog. Mr. Pierce said that no additional staff was added. Co-Chairperson Gibson suggested that the program be suspended until the economy betters. With no further discussion, Co-Chairwoman Allen thanked Mr. Pierce.

A copy of his report is included in the minutes as **Exhibit E**.

**Discussion of alternative methods of disposing of treated wastewater**

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Co-Chairwoman Allen recognized Mr. Francis A. Sanders, director of operations for Onslow County. Mr. Sanders began his presentation discussing the uses of reclaimed

water. These include: spray irrigation, infiltration ponds, crop irrigation and limited wetlands augmentation. He reviewed land use in Onslow County, and then showed a map depicting saltwater intrusion. Reclaimed water, he said, expanded wetlands and stream augmentation, provided deep well injection and created ocean outfall. On another slide, Mr. Sanders showed the Commission reason to create wetlands augmentation. These include enhancing wetlands during times of drought; and putting water where it is needed; providing for groundwater recharge. He then reviewed deep well injection.

In 1968, Hercules Chemical constructed an injection well. Four years later, wastewater showed up on one of 14 monitoring wells. The wastewater migrated from one aquifer to another upper aquifer. It has not been permitted in the State since.

Mr. Sanders, however, suggested that deep well injection could include reclaimed water and that the salinity barrier was of beneficial use.

Senator Bingham asked if deep well injection was legal in other states, of which Mr. Sanders answered that it was. Representative Tucker said that DENR had historically done a "heinously bad job" protecting people from drinking contaminated water.

**Annual report on the Wastewater Discharge Elimination Program (S.L. 2001-452, Sec. 2.9)**

This item was deferred.

**Annual report on the implementation of stormwater rules and programs (G.S. 143-214.7©)**

Mr. T. Bradley Bennett, stormwater permitting unit supervisor (DENR) was recognized by the chair to give the annual stormwater management program report. Mr. Bennett thanked the chairwoman and began his presentation.

Program areas for stormwater include a state level program and protection of sensitive waters as well as a federal program that is focused on certain activities or communities. Coastal stormwater rules were finalized in January 2008 and are up for legislative review for the 2008 session. Major requirements for the program include sediment and erosion control, buffers for new and re-development, among other items.

A copy of this report is attached to the minutes as **Exhibit F**.

Other requirements include low density thresholds for development and high density storm control measures.

Technical assistance as well as education and outreach efforts are also part of the program, he reported.

**Annual report on the implementation of the Sedimentation Pollution Control Act of 1973 (G.S. 113A-67)**

This item was deferred to be heard at the January meeting.

**Annual report on fish kills in the previous year**

This item was deferred to be heard at the January meeting.

**Discussion of the protection of conservation land from eminent domain (S. L. 2008-181, Sec. 6.8)**

Co-Chairwoman Allen recognized Mr. Edward Poe, Jr., who addressed the Commission on behalf of the North Carolina Land Trust Council. A copy of his report, entitled “Protecting Conservation Easements in Eminent Domain Proceedings,” is attached to the minutes as **Exhibit G**. A second background statement is also attached to the minutes as **Exhibit H**.

He began discussing population growth in the State. North Carolina is projected to be tenth most populous state next year, with a 30 percent growth juxtaposed to 18 percent growth nationally. In 2030, the State is projected to become the seventh most populous state, leaving California, Texas, Florida, Illinois and New York and Pennsylvania as the only larger states.

Mr. Poe continued that the State is losing natural landscapes at a rate of 100,000 acres per year. Metropolitan areas lead the loss of natural space. An example of this is Mecklenburg County, where it is projected that there will be three percent open space by 2030. He then reviewed current policy on open space, including statutory requirements to acquire more open space.

Goals for the Trust include balancing the interest of condemning authorities with the strong public policy favoring conservation easements; ensuring that public policy supporting conservation easements is not subverted through the condemnation process; protecting the State’s investment in conservation lands and preserving lands under conservation easements without unreasonably limiting the power of eminent domain.

Mr. Poe made the following recommendations:

- “Following the threshold finding by a Superior Court Judge that reads such action is “unavoidable public necessity and absence of a prudent and feasible alternative.
- To award attorney’s fees and costs to purported condemnee if the judge does not make the threshold ruling in the condemnor’s favor.
- Award of just compensation based on unrestricted fair market value of the easement-burdened land.
- Twenty-five percent mitigation payment to compensate the not-for-profit condemnee for locating and arranging for a substitute conservation easement or using the proceeds in a manner consistent with the conservation purposes of the conservation easement.”

Co-Chairwoman Allen then recognized Kimberly S. Hibbard, associate general counsel for the North Carolina League of Municipalities. Ms. Hibbard told the Commission local governments sometimes have a role as holder of conservation easements, and local governments do exercise the power of eminent domain for infrastructure. She said there were concerns about carving out different types of tests for specific property and tax consequences on such properties. She asked that balance be applied in future policy discussions.

Mr. Jeffrey O'Briant, manager for siting and acquisition for Progress Energy of the Carolinas was recognized by the co-chair. Mr. O'Briant told the Commission that there is the potential for "extreme" challenges.

Lastly, Mr. John Monaghan, community relations manager for the North Carolina East Region for Piedmont Natural Gas Company was recognized. Mr. Monaghan said that any legislation passed on the protection of such easements could adversely affect the utility business. He then discussed the "delights" of natural gas, and asked that legislators consider any unintended consequences statutory changes would impact on the natural gas industry.

The meeting was adjourned at 12:55 p.m.

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Co-Chair Lucy Allen  
Presiding

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Co-Chair Dan Clodfelter

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Jessica Kozma Bennett  
Commission Clerk

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Co-Chair Pryor Gibson