STATE OF NORTH CAROLINA COUNTY OF PERQUIMANS	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 15 EHR 07012
STEPHEN E. OWENS and JILLIAN G. BADAWI, Petitioners, v. NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF ENERGY MINERAL AND LAND RESOURCES, Respondent.	**REPLY BRIEF IN SUPPORT OF WEYERHAEUSER COMPANY'S MOTION TO INTERVENE**

Proposed Respondent-Intervenor, Weyerhaeuser Company ("Weyerhaeuser"), respectfully submits this reply to Petitioners' Memorandum in Opposition to Weyerhaeuser Company's Motion to Intervene. For the reasons discussed in its Memorandum of Law in Support of its Motion to Intervene and below, Weyerhaeuser is entitled to intervene as a matter of right or, alternatively, permissively or discretionarily.

First, Weyerhaeuser has a direct and immediate interest relating to the property and transaction that is the subject of this action. Weyerhaeuser not only has an interest in approximately $275,000 per year in payments from Atlantic Wind, LLC ("Atlantic Wind") in connection with the Desert Wind Project, as acknowledged by Petitioners, but also has a direct and immediate interest in the property that is involved in this action. As set forth in its Memorandum of Law and the Affidavit of Aaron Welch, Weyerhaeuser owns approximately 2,938 acres of the 22,000 acres of land where the Desert Wind Project will be constructed.

Weyerhaeuser's fundamental right to use, develop, market or sell its property will be significantly impaired, resulting in substantial, adverse economic consequences if this Court

grants Petitioners' requested relief. The North Carolina Supreme Court has held that a property owner is a necessary party and therefore has a vital interest in the controversy at issue. *See Griffin & Vose v. Non–Metallic Minerals Corp.*, 225 N.C. 434, 436, 35 S.E.2d 247, 249 (1945) (holding that trial court erred in denying the owner of property at issue, a necessary party, the opportunity to participate); *see also Moore Printing, Inc. v. Automated Print Solutions, LLC*, 216 N.C.App. 549, 556, 718 S.E.2d 167, 172 (2011) ("A necessary party is one who is so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence."). As an owner with a legal interest in the property subject to this action, Weyerhaeuser has sufficient interest relating to the subject matter of this action to intervene as a matter of right.

Despite Petitioners' arguments otherwise, Weyerhaeuser's interest in the property and transaction that is the subject of this action is direct and immediate. As discussed above, if the Court grants Petitioners' requested relief, Weyerhaeuser's fundamental right to use, develop, market or sell its property will be impaired. As the Petitioners recognize, if Atlantic Wind is required to go through the permitting process, this could result in lengthy and unnecessary delays, which would jeopardize the project. Further, although any required permit application should be approved, it is conceivable that the Respondent may determine that the project does not meet one of the many requirements for permit approval, including, but not limited to, impacts to military operations, the environment, natural resources, wildlife or views. N.C. Gen. Stat. § 143-215.120(a). Thus, not only could Atlantic Wind decide not to pursue the project as a result of being required to go through the permitting process, it is conceivable, but not likely, that the permit process itself could result in the project not going forward. These delays and potential elimination of the project would impair Weyerhaeuser's ability to use, develop, market and sell

its property and impose financial hardship on Weyerhaeuser. Therefore, Weyerhaeuser has a direct and immediate interest in the property and transaction subject to this action.

Second, Weyerhaeuser's interest in this action is not adequately represented by the existing parties. As set forth in Weyerhaeuser's Memorandum of Law in Support of its Motion to Intervene, Respondent is a state agency that represents numerous complex and conflicting interests that are not necessarily aligned with Weyerhaeuser's interests. Further, Respondent does not have a financial interest in the property or transaction at issue in this action. Respondent also will not be adversely affected by the relief requested in the same manner as Weyerhaeuser and may therefore have less interest in vigorously opposing such relief. Where a third party brings a contested case challenging an action taken by state environmental officials with respect to a regulated party, the Office of Administrative Hearings routinely allows parties with an interest in the property or transaction at issue to intervene in the contested case to protect their interest in the agency action. *See, e.g., North Carolina Coastal Federation v. DENR*, 2008 WL 2627123, 07 EHR 0345 (NCOAH, Apr. 7, 2008); *Waterkeeper Alliance v. DENR*, 2007 WL 1075037, 02 EHR 1353 (NCOAH, Jan. 30, 2007); *Infiltrator Systems, Inc. v. DENR*, 2003 WL 21361384, 02 EHR 0836 (NCOAH, Mar. 3, 2003).

Third, Weyerhaeuser's defenses to Petitioners' claims share common questions of law and fact, as Weyerhaeuser's position is that Petitioners are not entitled to their requested relief. Weyerhaeuser agrees with Respondent that this Court lacks subject matter jurisdiction over the petition and that Petitioners failed to state a claim for relief. Consistent with Respondent's position, Weyerhaeuser disputes, *inter alia*, Petitioners' allegation that Respondent exceeded its authority, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law in determining that Atlantic Wind is not subject to the permitting

requirements set forth in N.C. Gen. Stat. §§ 143-215.115, *et seq*. Therefore, Weyerhaeuser's defenses to Petitioners' claims share common questions of law and fact, and, in the alternative, Weyerhaeuser is entitled to permissive or discretionary intervention.

For the foregoing reasons, Weyerhaeuser respectfully moves for an Order allowing it to intervene in the above-captioned case and to participate fully as a party in this proceeding as Respondent-Intervenor.

Respectfully submitted this 25th day of February, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **REPLY BRIEF IN SUPPORT OF WEYERHAEUSER COMPANY'S MOTION TO INTERVENE** has been served this day by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

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This the 25th day of February, 2016.

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