

**New Jersey Freshwater Wetlands Mitigation Council Meeting
December 16, 2021**

A regular meeting of the Wetlands Mitigation Council was held on December 16, 2021. Due to declared COVID-19 state of emergency and related executive orders, the Freshwater Wetlands Mitigation Council meeting was held virtually via Microsoft Teams Meeting.

COUNCIL MEMBERS PRESENT: Dr. Lenore Tedesco (Chair), Bryon DuBois, Susan Lockwood, Claudia Rocca

STAFF MEMBERS PRESENT: DAG Jay Stypinski, Faelyn Meyers

Dr. Tedesco called the meeting to order at 9:30 am and announced that public notice for the meeting was given to the Secretary of State's office and written notice was sent to The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press on December 2, 2021. A statement on the COVID-19 pandemic and the virtual meeting was included.

Ms. Meyers took roll call attendance:

Dr. Tedesco- Present
Ms. Rocca- Present
Mr. DuBois- Present
Ms. Lockwood- Present
Dr. Orton - Absent

Review and decision regarding the October 21, 2021 Council meeting minutes.

The Council approved the October 2021 Council meeting minutes.

Ms. Rocca moved to approve the October 21, 2021, meeting minutes.

Mr. DuBois seconded the motion to approve the October 21, 2021, meeting minutes.

Dr. Tedesco asked if there was any discussion to the minutes. There was none.

Ms. Meyers took roll call vote:

Dr. Tedesco- Yes
Ms. Rocca- Yes
Mr. DuBois- Yes
Ms. Lockwood- Yes
Dr. Orton- Absent

All Council members present voted in favor of approving the October 21, 2021, meeting minutes.

Update on the Mitigation Fund

There was no update to the mitigation fund during the October 21, 2021 meeting.

Review 2022 Council Meeting Schedule

There was no identified conflict with the 2022 Council meeting dates.

Ms. Lockwood motioned to adopt the 2022 schedule.

Ms. Rocca seconded the motion to adopt the 2022 schedule.

Ms. Meyers took roll call vote:

Dr. Tedesco- Yes

Ms. Rocca- Yes

Mr. DuBois- Yes

Ms. Lockwood- Yes

Dr. Orton – Absent

All Council members voted in favor of adopting the 2022 schedule.

Discuss subcommittee for new policy regarding monetary contributions

Dr. Tedesco explained that the following new business was to clean up issues in association with Monetary Contribution applications and the hardship clause.

Dr. Tedesco asked the Council if there was any interest in creating a subcommittee to discuss the current monetary contribution rules established by the Department

Ms. Rocca stated that it would be great to have this issue cleared up, but that it might not be the best decision for the Council to take on the task themselves. Ms. Rocca added that it may be too late in the current rulemaking process for NJPACT to add changes needed to remove pressure on the Council for financial analysis of monetary contribution applications

Ms. Lockwood stated that the Council would need to decide the appropriate approach for monetary contributions. Proposing a monetary contribution for impacts to intertidal subtidal shallows (ISS) is comparable to proposing a monetary contribution for a single family homeowner (SFHO) with a general permit (GP); the Rules provides an equation to calculate the monetary contribution amount.. Ms. Lockwood further explained that the Council established the SFHO rate for monetary contributions to alleviate some of the cost for non-commercial development properties which can be adjusted again. Ms. Lockwood expressed that the Council will need to decide what they are comfortable with changing prior to initiated a Rule change with the Department. It has

been many years since the Council decided on a separate SFHO rate for monetary contributions. Ms. Lockwood advised the Council to discuss the needed amendments and provide some type of document to the Department. Ms. Lockwood helped to streamline the process for ISS, which was supposed to be a temporary fix until amendment of the rules, but there has not yet been an amendment. For single-family homes, the applicant can claim that they cannot afford the amount, but there may be no solution. The Council should try to find a way to fix this issue.

Mr. DuBois stated that he would sit on a subcommittee and wanted to sit and talk about the issue.

Ms. Rocca stated that the rules are quiet regarding the GP.

Ms. Lockwood clarified that there are Rules in place for a GP, but that applicants with individual permits (IP) have a more in-depth calculation process for determining a monetary contribution amount and thus have expressed a desire to use the GP rate since it is easier and typically less expensive.

Ms. Rocca asked if the GP and IP should be the same rate. She stated that the Council is not in the business of doing financial evaluations. The Council understands that they likely will not be able to provide no-net-loss of regulated resources through mitigation if they accept monetary contributions at a lower rate.

Ms. Lockwood stated that IP rate is statutory and the GP rate is based on the consumer price index. When the Council came up with their current method, they acknowledged at the time that the number was not going to be a replacement value but was a percentage of a replacement value. Applicants who apply for hardship are outside of the Rules. Ms. Lockwood advised that the Council should not do its own Rule amendment but provide a recommended rule amendment with specific changes to the Department.

Dr. Tedesco asked Ms. Lockwood if the understanding that the SFHO rate was not replacement value was statutory.

Ms. Lockwood clarified that that is not the case. The Council chose 10% of replacement value for single families.

Mr. DuBois stated that the original hardship clause was clear to follow. Some people owned property before 1988. They were elderly, met hardship requirements, owned property with a sewer or by water, or had property where less than a tenth of an acre was wetland. It used to be easy to determine if someone met hardship, and most people just wanted what they paid in taxes. Currently, people can go to consultants understanding they purchased a property with wetlands present but will force their way through the Department to get their value out of the land. Mr. DuBois recommended that the Council create a trigger in the Rules that acknowledges when an applicant did not meet the original hardship requirement.

Ms. Rocca stated that the reasons may not be that applicants are making up false hardship claims, but either way, it is not in the Councils description to analyze financial situations. The Department

approved a permit where wetlands would be impacted, and if an applicant has a permit, they should be allowed to make a monetary contribution.

Dr. Tedesco stated that the Council understands how it got to this issue, but the landscape has shifted, and they need to decide what is and is not appropriate. Dr. Tedesco recommended creating a subcommittee to frame the issues and the possible solutions. The subcommittee can then bring their findings back to the Council to draft official correspondence for the Department.

DAG Stypinski stated that in order to appoint members to the subcommittee, the Council needs to nominate them and vote. DAG Stypinski recommended waiting for Dr. Orton to be present.

Dr. Tedesco stated that this can be made a business item for the next meeting.

Public Comment

Dr. Tedesco Lenore opened the floor to public comment.

Ms. Meyers confirms that there were no public comments.

Executive Session

The Council did not require an executive session.

Adjourn

Ms. Rocca moved to adjourn the meeting.

Ms. Lockwood seconded the motion to adjourn the meeting.

A voice vote to close was taken.

Meeting was adjourned.

The next meeting date has been tentatively scheduled for February 17, 2022.