

New Jersey Freshwater Wetlands Mitigation Council Meeting

December 8, 2015

9:30 a.m.

A regular meeting of the Wetlands Mitigation Council was held on December 8, 2015 at the New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton New Jersey at 9:30 am.

COUNCIL MEMBERS PRESENT: Claudia Rocca, Patricia Burns, David Roth and Susan Lockwood.

STAFF MEMBERS PRESENT: Jill Aspinwall, DAG Jill Denyes, Regina L. Kulola and Ana Incollingo.

Meeting called to order

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on November 19, 2015 to the Secretary of the State's office and written notice was sent to the following newspapers; The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press.

Review and approval of the October 13, 2015 Council meeting minutes.

Ms. Susan Lockwood motioned to approve the October 13, 2015 meeting minutes.

Mr. David Roth seconded to approve the October 13, 2015 meeting minutes.

All present voted in favor.

Update on the Mitigation Fund.

Ms. Jill Aspinwall stated that as of October 31, 2015, the balance of the Mitigation Fund was **\$7,781,201.98**. There were three expenditures since the last report: Deep Run Preserve (\$78,132.72), Thompson Park (\$6,850.00), and Jamesburg Park (\$77,188.58). There are a total of 12 Outstanding Approved Projects with remaining balances: Walnut Brook (\$4,455.00), Cadwalader Park (\$8,640.00), Quakertown Preserve (\$25,137.93), Lake Hudsonia (\$350,000.00), Lenape (\$595,000.00), Skillman Park (\$40,000), Kittatinny (\$1,967,000.00), Pin Oak (\$1,388,769.58), Thompson Park (\$707,730.75), Jamesburg (\$430,836.24), Deep Run Preserve (\$505,240.37), and Bloomfield Township (\$1,755,746.67). The total of allocated funds for these projects is **\$7,778,626.40**, which brings the new fund balance to **\$2,575.58**.

Ms. Jill Aspinwall stated that she revised a table outlining the monetary contributions to the Council along with the status of projects funded through the Council as the requested during the October 13, 2015 meeting. The table showing the history of the Council's approved projects will not change in the future except to show projects as complete. Under the In-Lieu Fee program, any approved projects under the ILF will be tracked in a different document.

Old Business

Resolution memorializing the Council's decision to approve in the amount of \$1,755,746.67, the Third River Floodplain Wetland Enhancement Project, Bloomfield Township, Essex County, NJ.

Ms. Susan Lockwood motioned to approve the Resolution.

Ms. Patti Burns seconded the motion to approve the Resolution.

All present voted in favor.

Councilman Nick Joanow and Mr. Andy Strauss thanked the Council, Rutgers University, and the NY/NJ Baykeeper, for all the extra work, patience, and support required for this Bloomfield project.

New Business

Presentation by CME Associates on a monetary contribution in the amount of \$765,325.00 for NJDEP Permit # 1201-05-0004.2, Carteret Waterfront Marina, Borough of Carteret, Middlesex County.

Ms. Jill Aspinwall stated that this project involves the construction of a marina by the Borough of Carteret that will disturb 6.66 acres of intertidal-subtidal shallows. The Borough of Carteret purchased the last remaining 4.76 credits in the Watershed Management Area (WMA 7) from the Port Reading Bank wetlands mitigation bank, leaving 1.9 unmitigated credits. The Borough of Carteret unsuccessfully sought onsite and offsite mitigation options. In the absence of other mitigation options, the Borough of Carteret prepared a monetary contribution in accordance with the Department's checklist for a monetary contribution at N.J.A.C. 7:7A-15.21 to the Wetland Mitigation Council. The monetary contribution was prepared in accordance with the Coastal Zone Management Rules in effect prior to July 6, 2015. Department staff recommended approving the monetary contribution. If the Council accepts the monetary contribution, it will be attributed to the Raritan Water Region under the new In-Lieu Fee Mitigation Program. This monetary contribution would debit 1.9 credits from the Raritan Water Region's current 14.693 advance credits leaving a balance of 12.739 credits in the Raritan Water Region.

Mr. Joe Giddings from CME Associates explained that the project will consist of 190 slips for recreational use and 7 slips that will be solely used by the State of New Jersey Marine Police Bureau which has an office on the site. Additionally, on the site, there is a mix of 18 foot slips, a single point of entrance and exit, an existing 710 foot long fishing pier, and 2 points of public access for recreation. The existing portion of the project was built 10-12 years ago as a promenade as part of the Borough's efforts at revitalization. The project will also entail the removal of 130,000 cubic yards of dredged materials that will be taken to the Middlesex County land fill, due to Arsenic and other contamination from past industrial uses of the site. The removal of these materials will extend to about 10 feet below mean low water and will leave only the preindustrial uncontaminated sediment layer. The project is under review by the US Army Corps of Engineers and is pending approval contingent upon receipt of a water quality certificate from the State of New Jersey.

Mr. David Roth asked if the construction plan for the project would retain the public fishing pier and Ms. Patti Burns asked for further clarification on the efforts the Borough of Carteret undertook to find other mitigation opportunities off site. Mr. Giddings responded that the pier would remain in place and explained that the Borough of Carteret investigated about a half a dozen other properties along the Arthur Kill and Rahway River as potential mitigation sites, but none were suitable due to private ownership and contamination issues.

There was a discussion on the cost of the credits purchased by the Borough of Carteret, and Mr. Giddings responded that the credits cost the Borough about \$699,000.00 each. This led to an extensive discussion comparing the costs of the credits offered through the bank with the cost of the prepared monetary contribution (\$765,325.00) for 1.9 credits of disturbance. Ms. Aspinwall explained that the existing statutes require applicants to prepare monetary contributions by creating budgets for hypothetical mitigation options involving the purchase of land and the creation or restoration of wetlands and taking the less expensive mitigation scenario for the monetary contribution amount. The Council inquired on the construction techniques used to create intertidal-subtidal shallows, which generally involve the excavation of uplands to create the necessary hydrology to support intertidal-subtidal shallows. Ms. Burns remarked that the appraised land values for the restoration project seemed low. Ms. Susan Lockwood stated that in general, intertidal-subtidal shallow creation projects are often difficult to engineer, and land costs tend to be lower for restoration projects because the properties are to contain wetlands and are therefore of less market value.

Ms. Debbie Manns, NY/NJ Baykeeper inquired on the status of the Coast Guard's authorization of the project and asked for further clarification on whether sampling has been performed to assess if the contamination is causing ecological harm and what precautions will be taken during the removal of the sediments to protect aquatic life. Mr. Giddings responded that the Coast Guard has issued a final letter to the US Army Corps of Engineers containing recommendations, which have also been included in the NJDEP issued Waterfront Development Permit. Mr. Giddings also explained that no fish tissue was sampled for Arsenic, and environmental dredge techniques will be used to reduce the amount of interaction between the dredged material and the water column. Ms. Susan Dietrich from the NJDEP Office of Dredging stated that the conditions imposed on the dredging aspects of the project will be consistent with those required in the NY/NJ Harbor complex that have been in place for decades, and that the project has a Remedial Action Work plan through Site Remediation.

Mr. Mark Renna, Evergreen Environmental asked for clarification on the balance of mitigation remaining and the mitigation ratios required. He stated that based on an email from the US Army Corps of Engineers, the applicant purchased 2.7 credits, which would bring the balance of unmitigated credits to 3.96. He also stated that the Council is not the appropriate body to consider tidal impacts, and that the monetary contribution of \$765,000.00 would not be nearly enough money to do mitigation in a location near the proposed disturbance, considering the extensive contamination issues in the area from prior industrial activities. Mr. Renna stated that based on the current In-Lieu Fee Program, the monetary contribution can be used anywhere in the Raritan Water Region, which includes Watershed Management Areas 7, 8, 9, and 10. Further inquiry focused why a monetary contribution to the Council can be used in any of these WMA, but an applicant cannot purchase credits from banks in the same Water Region as a project. Mr. Renna stated that he would like to see in-kind mitigation for the disturbance, meaning that this monetary contribution should create intertidal-subtidal shallows in Watershed Management Area 7.

Ms. Lockwood and Ms. Aspinwall clarified that the In-Lieu Fee Program is not a mitigation bank, and the Department has an EPA approved In-Lieu Fee Program, which can accept funding from

both the Coastal and Freshwater Wetlands Programs. Ms. Stacey MacEwan, the reviewing official from Land Use Regulation's Mitigation Unit, stated that the Borough of Carteret did purchase a total of 4.67 credits from the Port Reading Bank wetlands mitigation bank. The 2.7 credits referenced by Mr. Renna was required by the US Army Corps of Engineers for mitigation; however, the state of New Jersey required mitigation for the full 6.66 acres, so the applicants later bought the remaining 1.97 from the bank due to high demand for mitigation credits in the WMA; therefore, the applicant owes 1.9 unmitigated credits as originally stated. Ms. MacEwan also stated that the Borough of Carteret explored at least 6 properties as offsite mitigation options.

Mr. William Wolf, an attorney representing the Borough of Carteret, stated that the appraisals and mitigation cost calculations were performed in accordance with the state and federal statutes and regulations in effect at the time and were approved by Departmental staff. He also stated that the Borough of Carteret has produced all required forms correctly, and took on significant risk purchasing credits from a mitigation banks before the permitting process was finalized, due to the imminent closing of the only wetland mitigation bank in the Project's Watershed Management Area. Mr. Wolf explained the public value of the project, and listed the benefits of public access for recreational activities such as fishing and boating for the residents of Carteret and surrounding areas. He remarked that the Council should make their decision on whether or not to accept the monetary contribution based on the facts as outlined, and explained that denial of the monetary contribution could jeopardize the likelihood of completing this project which has been in development for 10 years.

Based on the conversation around the importance of in-kind mitigation, Dr. Beth Ravitt, Rutgers University inquired if the Request for Proposals in the Raritan Region that will be funded with this monetary contribution could be specific in requesting projects that focus on intertidal-subtidal habitat projects. Ms. Lockwood responded that it would not be prudent to restrict the request for proposal. She stated that the Council's funding is going out to public partners, which in turn reduces costs for projects. Ms. Claudia Rocca stated that this monetary contribution should be earmarked for in-kind tidal mitigation projects. Ms. Jill Aspinwall informed the Council that if they choose to accept this monetary contribution under the new In-Lieu Fee Program, the decision on when, when, and how the money will be spent will be determined when the Council reviews the responses to future requests for proposals.

Mr. David Roth motioned to accept the monetary contribution in the amount of \$765,325.00.

Ms. Susan Lockwood seconded the motion.

A roll call vote was taken:

Susan Lockwood: yes

Claudia Rocca: yes

Patti Burns: yes

David Roth: yes

The motion passed.

Presentation by Eileen Kelly, Van Dalen Brower, LLC, on a stipulation of settlement monetary contribution in the amount of \$3,724,00, Block 4; Lots 52 and 52.01, Eaglewood Township, Ocean County.

Ms. Jill Aspinwall stated that this monetary contribution has been prepared to offset the loss of 0.098 acres of tidal, emergent, estuarine wetlands. Mr. David Roth elected to recuse himself from voting on the matter, due to his prior involvement with this project. Ms. Eileen Kelly presented to the Council, however because the Council lacked a quorum due to Mr. Roth's recusal, no action was taken at the time.

Ms. Kelly stated that the request for monetary contribution comes from an overall settlement that is reconsideration of FWPA permit and CAFRA permit denials. The applicant bought the property on 2008, and the property is surrounded by development on all sides. The property has sewer connections and the municipality informed the applicants that the property should be developable because there weren't pristine wetlands on site. However, when the applicants applied for CAFRA and FWPA individual permits they were denied, which led to the stipulation of settlement. The applicant contracted with DuBois Environmental Consultants, LLC to perform a compensatory search for parcels of land for offsite mitigation to compensate for 0.098 acres of disturbance in WMA 13. DuBois Environmental Consultants, LLC was able to identify seven potential offsite parcels that could serve as sites for restoration or creation mitigation. The least expensive of these options totaled \$69,000.00, which was well above the applicant's budget. Therefore, a monetary contribution of \$3,724.00 was prepared in accordance with the checklist at N.J.A.C. 7:7A-15.21.

Ms. Patti Burns inquired on the current development status of the property, and Ms. Kelly responded that the property is vacant. Ms. Susan Lockwood asked about the size of the property, and Ms. Kelly replied that it is about 100 feet by 200 feet. Ms. Susan Lockwood further inquired on how the construction will impact 0.098 acres given the size of the lot. The applicant responded that uplands comprise about a third of the property's area. Ms. Kelly mentioned that the NJDEP has determined that the applicants have minimized impacts to wetlands to the extent feasible with the construction plans. Ms. Burns asked about the extent of the buffers, and was informed that the wetlands are considered as intermediate resource value. Mr. David Roth explained that the property area was filled before the 1970's, and explained that the wetlands present on the property are degraded wetlands on top of fill material.

Mr. Mark Renna stated that there are no wetlands mitigation banks in WMA 13, the location of the impact, and that based on the Water Region Service Areas of the In-Lieu Fee Program, the monetary contribution for this project situated in WMA 13 is located in the Atlantic Water Region which includes WMA's 12, 13, 14, 15, and 16. Therefore, Mr. Renna stated that the applicants should be able to purchase credits from a bank in one of these neighboring WMAs.

Ms. Burns asked that Ms. Kelly and the applicants to bring photos to their presentation at a future meeting when the Council has quorum and can vote on the matter.

Presentation by Randy Baum BRS, Inc. to use \$13,248.83 of the approved Cadwalader Park Ecological Restoration budget to remove and dispose of a perimeter fence, City of Trenton, Mercer County.

Ms. Jill Aspinwall gave the Council context for the presentation, explaining that in 2009, the Council entered into a contract with the City of Trenton for \$60,000. The City of Trenton restored 0.84 acres of palustrine emergent wetlands, 0.30 acres of palustrine scrub/shrub wetlands and 3.82 acres of riparian buffer restoration. Based on the expenditures reported, there is \$13,248.83 remaining within the grant. The project has been completed and the monitoring complete, the outstanding balance is attributed to the fact that the D&R Greenway completed the monitoring but utilized other grant funds to complete the project.

Ms. Aspinwall further stated that the removal of the fence was discussed as a project component in the grant application, within the scope of work. She said that Mr. Randy Baum would be requesting that the Council approve the use of the \$13,248.83 and allow for the removal and disposal of the perimeter fence. The Council can either approve the use of these funds or close out the grant agreement and have the City of Trenton reimburse the Council \$13,248.83.

Mr. Randy Baum, explained to the Council that the project site used to house domesticated deer. The USDA requested the City of Trenton remove the deer from the site, and the City of Trenton complied. Included in this effort was the restoration of the stream reach near the deer paddock, which was undertaken with funds from the Wetland Mitigation Council in 2009, when the City of Trenton partnered with the D&R Greenway. Mr. Baum stated that the City of Trenton would like to use the remaining balance of the \$60,000 to remove the perimeter fence around the project, which was outlined in a grant application prepared for the project. Mr. Baum hopes that the remaining budget will also be able to be applied to interpretive signage and education at the site.

Mr. David Roth asked if the fence was constructed as part of this project to inhibit deer issues, and Mr. Baum responded that the fence predated the mitigation project, and was used to contain the domesticated deer that formally lived within the deer enclosure. Mr. Roth, Ms. Claudia Rocca, and Ms. Patti Burns expressed strong concern with deer browsing in the mitigation project area and asked why a deer enclosure fence is something the City is interested in removing. Mr. Baum explained that the City wants to plant native deer resistant plant material, and he further elaborated that over the past few years several trees have fallen within the fence and created deer access points into the mitigation area. Mr. Baum noted that increased browsing pressure on plant material has not been observed since these parts of the fence have been destroyed. Ms. Burns inquired if the City of Trenton would have the needed funds to reinstall a fence if pressure from deer browsing does increase significantly after the fence is removed entirely. Mr. Jay Watson from D&R Land Trust, who has helped managed the project explained that the area enclosed by the fence is the only area of the park where the public does not have unimpeded access. Mr. Watson explained that the current state of the fence leads to public perception that this area of the park is not being maintained. Therefore, the public views this area of the park as a blight rather than an important habitat area. There has been some effort at installing signage and conducting outreach to explain the value of the site to the general public. However, more interpretive and outreach effort is need. It is Mr. Watson's hope is that there would be no future need to erect additional fencing and that increased public use and presence around the mitigation site area would discourage deer from actively browsing on the plant material.

Ms. Rocca observed that the request is for \$13,248.83 and the remaining budget for the project is \$8,640.00 and asked for clarification on the amount of the request. Ms. Aspinwall explained that the prior Council which approved the grant for this project authorized two advance payments in 2009 and 2010 totaling \$51,360.00 to the City of Trenton. The \$13,248.83 request amount includes funds already paid to the City of Trenton that were not able to be accounted for because D&R Greenway completed the monitoring, but utilized other grant funds to complete the project. Therefore, if the Council chooses not to approve the use of \$13,248.83 for the perimeter fence, the City of Trenton would owe the Council \$4,608.83, which is the difference between the remaining project budget and the outstanding balance.

Mr. Mark Renna asked if the survival criteria for trees (85% survival and 5 feet in height) have been met for the project. Ms. Aspinwall responded that the survival criteria had been met, and explained that the project was more focused on herbaceous species with only a handful of trees planted. Mr. Renna also asked for further clarification on the basis of the approval of the

\$13,248.83 remaining funds. Mr. Watson explained that a contractor has quoted the removal of the fence to be between \$7,000 and \$8,000; however, several areas of the perimeter of the project have steep drop-offs which will require the installation of safety barrier features and will increase the cost of the fence removal. Any remaining funds from the fence removal will be used to increase outreach and interpretive signage around the mitigation project.

Mr. David Roth motioned to approve the use of the \$13,248.83 and allow for the removal and disposal of the perimeter fence and installation of interpretive signage.
Ms. Susan Lockwood seconded the motion.

All other present voted in favor.

Public Comment

Ms. Claudia Rocca asked if there was any additional public comment.
Mr. Mark Renna deferred comment.

ADJOURNMENT: Ms. Claudia Rocca motioned to adjourn the meeting. Ms. Susan Lockwood seconded the motion. All present voted in favor of adjourning the meeting.

The next meeting date has tentatively scheduled for February 9, 2016.