

New Jersey Freshwater Wetlands Mitigation Council Meeting

May 17, 2018

A regular meeting of the Wetlands Mitigation Council was held on May 17, 2018, at the NJDEP Offices located at 501 East State Street in Trenton, NJ.

COUNCIL MEMBERS PRESENT: Dr. Lenore Tedesco (Chair, appointed 4/24/17), Mark Renna, Claudia Rocca, Dr. Philip Orton, Susan Lockwood

STAFF MEMBERS PRESENT: DAG Kristina Miles, Jill Aspinwall, Kim Springer, Katelyn Brennen

Dr. Tedesco called the meeting to order at 9:32 am, and stated that public notice for this meeting was given to the Secretary of 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 on May 3, 2018.

Dr. Tedesco introduced Kristina Miles to the Council as she has been assigned as the Council's DAG.

Review and approval of the January 18, 2018 Council meeting minutes

Ms. Lockwood made a motion to approve the January 18, 2018 Council meeting minutes.

Ms. Rocca seconded the motion to approve the January 18, 2018 Council meeting minutes.

There were no questions or discussion on the January minutes, and all Council members voted for approval of the minutes.

Update on the Mitigation Fund

Ms. Aspinwall stated that as of March 31, 2018, the Mitigation Fund balance is \$4,725,697.86.

Ms. Aspinwall provided an update for each of the approved projects that are still ongoing. A total of \$3,692,623.10 has been allocated to approved projects, leaving a balance of \$1,033,074.76 of non-allocated funds.

There were two deposits since the last report: 12/1/17 in the amount of \$600 (NJDEP File #2009-14-0002.6) and 3/26/18 in the amount of \$7,410 (NJDEP File #1407-06-0006.1).

Dr. Tedesco requested that a line for interest earned on the account be added as a line item so the Council can track the accumulated interest.

Dr. Tedesco also requested that presentations be made at each meeting so that the Council may be updated on the various projects' progress. Ms. Aspinwall suggested the Kittatinny and Skillman Park projects be presented to the Council next. Dr. Tedesco requested that any documents associated with the presentations be provided to Council members in advance of the next meeting so that Council members may familiarize themselves with the projects.

Old Business

Discussion by the Council on the Liberty State Park Scientific Advisory Team Question

A question had been raised to the previous DAG regarding the Council's obligations related to the Liberty State Park Project's Scientific Advisory Committee. DAG Miles stated that the NJDEP and Council executed an MOU for the Liberty State Park Project and that paragraph 6b, page 3 of the MOU is the only section where the Scientific Advisory Team is discussed. DAG Miles noted that the MOU described the scientific advisory body as a "team," not a "committee." Based on the MOU language, DAG Miles opined that the Scientific Advisory Team was already in place when the MOU was signed. The Team was set up outside of the Council. DAG Miles explained that the Council can liaison with the team to review documents and ensure the Council's needs are met. But currently, since that phase of the project has passed, the team is no longer meeting. Therefore, the Council has no need to act since the project has moved beyond the freshwater component.

Mr. Renna asked about the status of the Project in relation to the team, noting the project requires permit revisions and asked who would be able to resurrect the team? Mr. Renna also asked whether the Council could request that the team be resurrected?

Ms. Aspinwall explained that only Dave Bean and John King, both of NJDEP, who are overseeing the project could resurrect the team, depending on the need for additional scientific input from the team.

Mr. Frank Gallagher, Rutgers University requested to speak upon the topic. Mr. Gallagher was a former NJDEP employee that had written the original grant and MOU. He was able to give a bit of historical knowledge about the project, and the origin of the Scientific Advisory Team. The intent was for Universities to coordinate a monitoring program that would coordinate with the scientific research of a freshwater wetland in an urban environment. He noted there was no intention to create a regulatory role for the team, as the sole intention is to further the legacy of this unique site.

New Business

Presentation by Ryan Meyers, on a proposed monetary contribution in the amount of \$4,212.00 for NJDEP Permit # 1506-10-0039.1 FWW 110002, Brick Township, Ocean County.

Ms. Aspinwall stated that the Council has received a request for a monetary contribution from Ryan Myers in the amount of \$4,212.00 for 0.108 acres of impact in Brick Township, Ocean County. The proposed monetary contribution was prepared in accordance with the conditions of NJDEP Permit #1506-10-0039.1 and was based on the single family general permit monetary contribution. The reason this is before the Council and was not processed under the streamlined general permit contribution resolution is because this permit is an individual permit and therefore would not typically be eligible for the general permit monetary contribution rate. In this particular case, the general permit monetary contribution formula was required as mitigation in order to avoid a takings case because the entirety of the property is encumbered with wetlands, thereby prohibiting any development. NJDEP made the decision to require a monetary contribution in the amount of the general permit contribution. Staff recommends approval of the proposed monetary contribution. Mr. Steve Dalton attended the meeting to represent his client and to provide additional information to the Council.

Mr. Dalton gave some historical information about the property, and that the proposed home to be built upon the property was a modest dwelling. There are no mitigation banks that serve the impacted area and therefore purchasing credits from a mitigation bank is not an option. The applicant came before the Council to request that they accept the monetary contribution that had been decided on by the Department. Mr. Dalton provided the Council a summary of the property owner's financial considerations and pointed out that if the Council denied the proposed monetary contribution, it would be similar to an inverse condemnation due to the financial burden and the applicant's expectations.

Mr. Renna commented that the amount of the monetary contribution was far less than what would be needed for the Council to provide mitigation for the impacted wetlands.

Dr. Tedesco reminded the Council that the NJDEP makes the regulatory decisions, and the only determination the Council was to make is to accept or deny the proposed monetary contribution.

Ms. Rocca made a motion to accept the monetary contribution in the amount of \$4,212.00.

Dr. Orton seconded the motion to accept the monetary contribution in the amount of \$4,212.00.

Dr. Tedesco asked for a rollcall vote:

Mr. Renna: No

Dr. Orton: Yes

Ms. Lockwood: Yes

Ms. Rocca: Yes

Dr. Tedesco: Yes

The motion passed.

Review and approval of a revised Council Resolution entitled "RESOLUTION MEMORIALIZING THE DECISION OF THE FRESHWATER WETLANDS MITIGATION COUNCIL TO AUTHORIZE STREAMLINED APPROVALS OF GENERAL PERMIT, SINGLE FAMILY HOMEOWNER AND ENFORCEMENT

MONETARY CONTRIBUTIONS MEETING THE CHECKLIST AND REGULATIONS”.

The resolution allows those monetary contributions that were prepared in accordance with the regulations to be made to the Fund without the applicant having to appear before the Council. This resolution does not apply to individual permits.

Ms. Aspinwall stated that there were a few minor edits that were made to the document provided to Council members prior to the meeting based on comments received from several Council members. Specifically, an “s” was added to “wetland” in reference to the Wetlands Protection Act Rules and the term “per acre” was added in the 19th whereas clause to clarify the monetary contribution rate is based on acreage.

Ms. Lockwood stated that the general permit requirements and the statute were designed for general permit mitigation, and within those guidance documents, there is a formula put in place to streamline the process for the Department and the Council.

Ms. Lockwood made a motion to approve the resolution.

Ms. Rocca seconded the motion to approve the resolution.

The motion was passed unanimously.

Review and approval by the Council on a template for Request For Proposals using In-Lieu Fee Program contributions

Ms. Aspinwall worked with a sub-committee to draft and complete a Request for Proposal (“RFP”) template for the Council. Ms. Aspinwall drafted the template using examples of RFP’s that the Department has used. The sub-committee reviewed and provided comments on the template. The sub-committee believes they have designed an RFP that covers the needs of the Council. The template, if approved by the Council, would be used by the Council whenever it is decided that that an RFP should be put out.

Ms. Lockwood started that the normal applicants for such an RFP tend to be non-profits and other government entities. As a member of the sub-committee, her desire was to ensure the project needs and the Council’s job were clearly written out.

Ms. Lockwood motioned to approve the RFP Template as written.

Ms. Rocca seconded the motion to approve the RFP Template as written.

The motion was passed unanimously.

Discussion by the Council on whether or not to put out a Request for Proposals for the Raritan Water Region

Ms. Aspinwall explained that this discussion was requested at the last Council meeting. At this time the Council has \$773,335.00 for 2.097 acres of impact within the Raritan Region and is not under any obligation to put out a Request for Proposals (RFP).

A member of the public asked whether applicants could apply to mitigate a portion of the acreage? Ms. Aspinwall explained that while the maximum amount that could be awarded is \$773,335, there could be multiple projects to provide mitigation for the 2.097 acres of impact. Since the implementation of the ILF, only two water regions have received monetary contributions. In the Raritan Region there were 14.69 established credits when the ILF was signed. The Council has debited 2.097 credits leaving 12.593 credits still available in the Raritan Region.

The Council discussed whether or not additional projects would likely come in and whether or not this was an active area. The Raritan region is an active area and there are large infrastructure projects within the area. It was noted that WMA 7 has no banks.

Dr. Tedesco asked if there was any public comment on the discussion.

Mr. Brian Cramer, GreenVest stated that smaller projects would be more likely. Mr. Cramer asked if there would be a preference for proposals for WMA 7.

The Council discussed how potential proposals would be reviewed, asking whether the evaluation would be based on function and value assessments, a formula or other parameters. Ms. Aspinwall read the section from the RFP template which explained how the Council would review submitted proposals.

Dr. Tedesco asked the Council how they would like to proceed.

Ms. Lockwood made a motion to proceed with putting out an RFP for the Raritan Water Region.

Ms. Rocca seconded the motion to proceed with putting out an RFP for the Raritan Water Region.

Dr. Tedesco asked for a rollcall vote:

Mark Renna: Abstained

Dr. Philip Orton: Abstained

Susan Lockwood: Yes

Claudia Rocca: Yes

Dr. Lenore Tedesco: Yes

The motion did not pass as four yes votes were not received.

Dr. Tedesco requested that the discussion be placed on the Council's January meeting agenda.

Council Comment

There were no comments.

Public Comment

Dr. Beth Ravitt, Rutgers, asked if the original question regarding the Scientific Advisory Team for Liberty State Park had been answered fully. Dr. Tedesco stated that since the project had moved beyond the freshwater component, that there was no action needed by the Council. If for some reason the team were to be resurrected, the Council would work with them to ensure all needs were met.

ADJOURNMENT: Ms. Rocca motioned to adjourn the meeting.

Dr. Orton seconded the motion to adjourn the meeting.

All present voted in favor of adjourning the meeting.

The meeting was adjourned at 10:42am.

The next Wetland Mitigation Council meeting has been tentatively scheduled for July 18, 2018.