

**New Jersey Freshwater Wetlands Mitigation Council
Meeting Minutes of March 4, 2014
9:30 am
New Jersey Department of Environmental Protection
501 East State Street, Hudson Room
Trenton, NJ**

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on February 11, 2014.

Review and approval of the December 3, 2014 Council meeting minutes.

Susan Lockwood motioned to approve the minutes. Claudia Rocca seconded the motion. Yang Deng abstained from voting; all other council members voted in favor of approving the minutes.

Update on the Mitigation Fund.

Jill Aspinwall stated that the current balance of the wetland mitigation fund is \$8,623,042.19 as of January 31, 2014. Ms. Aspinwall stated that she has undertaken a review of all the open Council grant agreements in order to determine the exact amount the Council remains contractually obligated for payment. In addition, Ms. Aspinwall provided an update on the Cadwalader Park and Union County projects. The Cadwalader Park project has been constructed and the applicant is currently working on bringing the monitoring reports up to date. Union County was given a deadline of February 28, 2014 to submit all required paperwork to bring their grant agreement into compliance and to seek reimbursement. Ms. Aspinwall stated that Union County emailed a request on February 28, seeking additional time to locate the files necessary to submit Attachment C of the grant agreement. Ms. Aspinwall asked the Council if this request should be granted. The Council gave Union County an additional 2 weeks to submit the required information. Mark Renna requested that the Council determine if the project was successful and that they should require that the land be placed under a conservation restriction.

Total Amount Outstanding in Contracts: \$581,512.93. The Council has three conceptual proposals that have been approved that total \$4,202,036.00. There are two full proposals before the Council today. These projects together total: \$908,149.92. If the Council full funds every project listed the new balance in the fund would be \$2,931,343.34

Update on the status of approved Wetland Mitigation Banks.

Jill Aspinwall stated that from the last time the Council saw this document, there was one change. One credit was sold from the Cranbury Bank, leaving 2.399 credits available for sale. Ms. Aspinwall stated that this document is not a static document so there may have been some changes since the date the report has been run.

Ms. Aspinwall requested that the Council remove the banking ledger from the agenda for future meetings.

Claudia Rocca requested that banking information should be made available to the Council when it is pertinent to a decision by the Council. Ms. Aspinwall stated that it would be pertinent when reviewing a monetary contribution and that staff comments can include information on whether or not there is a bank within the service area and whether or not it has credits available.

Mark Renna stated that there are errors on the ledgers and recommended that this information continue to be available to the Council. It is useful to see the total number of credits available across the state. Currently there are over 300 credits available and most of the state is covered by a bank. In addition, he has previously commented that Pio Costa has no credits to sell and that the bank ledger be updated accordingly.

Sue Lockwood stated that it is the Department's responsibility for maintaining the bank ledgers and for overseeing the banks. Dave Roth and Yang Deng asked whether or not this ledger could be posted on the website. Jill Aspinwall stated that all approved banks are identified on the website. The website indicates the service area for each bank, the contact person for the bank, and whether or not credits are available. Dave Roth stated that there is a date on the ledger. Claudia Rocca asked whether or not it is necessary for the Council Meeting. Sue Lockwood stated that it is a Department decision and that the Department is not a broker. Claudia Rocca motioned to remove the item from future agendas. Sue Lockwood seconded the motion. Dave Roth and Bob Tucker abstained; all other Council members voted in favor of removing the ledger from future agendas.

Old Business

Approval of resolution for Ocean County Department of Engineering for approval of a land donation to satisfy mitigation requirements for permit #1507-09-0147.4 for Ocean County College Road Improvements and #1507-12-0022.1 for Fisher Boulevard Improvements in Ocean County, New Jersey.

Susan Lockwood stated that the reason this is back on the agenda is that there is an outstanding resolution. The County has withdrawn any suggestion that the land donation will be used for any other purposes included banking.

Patti Burns asked what ratio was used? Is the donation sufficient?

Susan Lockwood stated that using a 27:1 ratio, the County exceeds the requirement for mitigation. The County needed approximately 60 acres of land and they are restricting 184.66 acres. In addition 28.11 acres that have been removed for the swamp pink and will not be used for wetland mitigation. In the end the County is preserving 156.55 acres, when they were required to donate 60 acres.

Patti Burns asked of the 156 acres, what percentage is wetland and what percentage is upland?

Claudia Rocca stated that this information is on page 2 and 3 of the resolution. Ms. Rocca also stated that land donation doesn't matter whether the property is wetland or upland.

Bob Tucker stated that preserving the parcel is good, but he is uncomfortable with the procedure and it should be a do over. Proper procedure should be to start again. He stated that the Conservation Foundation recently sent a letter stating that the swamp pink should be protected. Dr. Tucker stated that Steve Mars from USFWS had previously spoken about a number of things that could be done to protect the swamp pink.

Claudia Rocca stated that the Council approved the proposed land donation in July 2013. When the resolution came up for a vote, Council members changed their vote. Ms. Rocca stated that a resolution is a memorialization of a Council decision.

David Roth stated that it is not within the Council's purview to determine the applicability of a permit. The public was well aware of the issues before the close of the public comment period of the Individual Permit Review. The permit is the Department's responsibility.

Claudia Rocca stated that there was ample time to allow public comment during the permitting review process and that the Council is a separate body. The Council was asked if these were acceptable lands at proper ratios? The Council voted yes.

Yang Deng stated that permitting is out of our scope, the project is valuable.

Claudia Rocca motioned to approve the resolution

David Roth seconded the motion.

Jill Aspinwall conducted a roll call:

Yang Deng: Yes
Bob Tucker: No
Susan Lockwood: Yes
Claudia Rocca: Yes
Patricia Burns: No
David Roth: Yes

Approval of a resolution for conceptual approval for funding in the amount of \$49,000 for Skillman Park Wetland Enhancement, Block 260001, Lot 1, Montgomery Township, Somerset County.

Susan Lockwood motioned to approve the resolution.

Claudia Rocca seconded the motion to approve the resolution.

Mark Renna recommended that the applicant be notified about 15.20(b) that a conservation restriction must be in place prior to receiving Council funding.

All Council members voted in favor of approving the resolution.

Approval of a resolution denying conceptual approval for funding in the amount of \$349,969.00 for Newark Wetland Restoration and Enhancement, Block 5078, Lot 91, City of Newark, Essex County.

Susan Lockwood motioned to approve the resolution.

Bob Tucker seconded the motion to approve the resolution.

All Council members voted in favor of approving the resolution.

Approval of a resolution for conceptual approval for funding in the amount of \$2,093,000 for Kittatinny Valley State Park – Kenco Acquisition, Block 29, Lot 28; Independence Township, Warren County.

Susan Lockwood motioned to approve the resolution.

Bob Tucker seconded the motion to approve the resolution.

All Council members voted in favor of approving the resolution.

Mark Renna recommended that the applicant be notified about 15.20(b) that a conservation restriction must be in place prior to receiving Council funding. This comment was duly noted by the Council.

Approval of a resolution for conceptual approval for funding in the amount of \$1,969,036 for West Branch Elizabeth River Wetland and Stream Restoration, portions of Block 184, Lot 3, Kenilworth Borough; Block 2719, Lots 12-14/ Block 3106, Lot 1/Block 3003, Lot 1, Union Township, Union County.

Susan Lockwood motioned to approve the resolution.

Bob Tucker seconded the motion to approve the resolution.

All Council members voted in favor of approving the resolution.

Mark Renna recommended that the applicant be notified about 15.20(b) that a conservation restriction must be in place prior to receiving Council funding. This comment was duly noted by the Council.

Approval of a resolution for a monetary contribution in the amount of \$174,003.21 for NJDEP permit #1216-13-0001.3 for Perth Amboy Terminal Phase 2 Project-Terminal Marine Dock System Upgrades; Blocs B481, 484; Lots L1 and L1.10, Perth Amboy, Middlesex County.

Susan Lockwood motioned to approve the resolution.

David Roth seconded the motion to approve the resolution.

Mark Renna noted in approved minutes that this is in assumed areas. Part of the issue is the Council collecting monetary contributions from non-assumed waters.

Susan Lockwood stated that the wetlands on site were cut off from the tide. Generally the Department checks with the USACE to determine if a USACE permit is required. If the project was in non-assumed waters and the USACE required mitigation, the applicant would not have been able to come to the Council.

Mark Renna stated that there is a wetland mitigation bank that contains the impact within the service area. The applicant was not approved to use the bank.

Susan Lockwood stated that this question goes to permitting. The permitted process determines assumed or non-assumed. If the USACE had taken jurisdiction, they would not have come to the Council. The Department determined that the wetland on property was freshwater wetlands and that Port Reading has coastal credits and therefore was not appropriate for use.

Claudia Rocca stated that the Department made the determination as to the type of permit required.

Patti Burns abstained from voting.

All other Council members voted in favor of the resolution.

Request by GreenTrust Alliance and NJDEP DFW for final approval on funding in the amount of \$851,649.92 for wetland enhancement/restoration activities on the Lenape Farms portion of the Tuckahoe Wildlife Management Area; portions of Block 54, Lot 1; Estelle Manor City, Atlantic County.

Jill Aspinwall stated that this is a project that the Council members recently heard a presentation on. Ms. Aspinwall stated that the applicant was present and willing to give a presentation. She asked whether the Council preferred the applicant to focus on the minor changes and the budget request. The Council members agreed to focus on the minor changes and the budget request.

Brian Cramer, GreenTrust Alliance, stated that there were minor changes, but the majority of the application was unchanged. GreenTrust Alliance removed the budget line for Financial Assurance as this was deemed to not be required since the NJDEP Division of Fish and Wildlife was an applicant. Mr. Cramer proposed a payment milestone, in that there would be an advance payment for milestone one and once the Department and the Council agree that all deliverables were met for that milestone, payment for the next milestone would be released. Because of this payment schedule, Mr. Cramer requested waiver of the 10% retainage fee, typically associated with Council grant agreements.

Patti Burns asked what type of permits are required?

Brian Cramer responded that a GP 16, Flood Hazard IP and soil erosion permits were necessary.

Patti Burns asked if the fees were included within the budget. Brian Cramer responded yes.

Yang Deng asked if the Council was the only funding source. Brian Cramer responded yes.

Patti Burns asked what the applicant was expecting to find when conducting the ecological risk assessments. Mark Gallagher, Princeton Hydro responded that they were expecting data below screening level due to the historic nature of the property. Ms. Burns continued to discuss the budget details with Mr. Cramer. Ms. Burns asked how big the site is. Mr. Gallagher stated that the restoration area is 18 acres, however it is broken down into four sites, that each require its own set of permit plans. Ms. Burns indicated that this is a top heavy program, and a lot of financial effort for an 18 acre site.

David Roth asked whether or not the state could reduce the permit fee.

Susan Lockwood stated that the GP 16 has no fee and that the FHA rules do not provide for permit fee reduction.

David Roth asked if any funds are not used, would they be returned to the Council and can the applicant move money around to different budget categories without Council approval.

Jill Aspinwall stated that the way that the payment schedule is set up, assuming Council approval, if not all money is spent within a payment milestone, the amount of money for the next milestone would be reduced accordingly. In addition, the applicant would need Council approval to move money from one budget area to another in accordance with the Grant agreement.

Mark Renna stated that a conservation restriction in accordance with N.J.A.C. 7:7A-15.20(b) be in place prior to the release of Council funds. Mr. Renna asked whether or not this project is within assumed areas. All of the project is above mean high water.

Susan Lockwood stated that she did not know for certain, there has been some correspondence with the Philadelphia USACE. The applicant would have to check to see if the USACE would require a permit.

Sam Reynolds from the Philadelphia USACE outlined the process for a JD from the USACE and explained the rationale on how the USACE determines whether or not they would take jurisdiction of the site.

Bob Tucker motioned to approve the request for funding pending final resolution of assumption. Patti Burns seconded the motion to approve but further requested a detailed breakdown of the budget.

All Council members voted in favor of the motion to approve the request for funding pending the final resolution of assumption and a detailed review of the budget.

Request by Somerset County for final approval for funding in the amount of \$56,500 for Skillman Park Wetland Enhancement, Block 260001, Lot 1, Montgomery Township, Somerset County.

Jill Aspinwall stated that this is a proposal that the Council had recently seen. Mark Gallagher, Princeton Hydro was present to answer questions.

Mark Gallagher stated that the project budget was revised based on staff comments and Council recommendations to incorporate some baseline sediment sampling. The budget has increased from \$49,000 to \$56,500.

Sue Lockwood asked if the County has any concerns regarding the placement of a conservation restriction. Tom Bocchino, Somerset County, stated that the County has no concerns over the placement on a conservation restriction.

Bob Tucker motioned to approve funding for this project.

Yang Dang seconded the motion to approve funding for this project.

All Council members voted in favor to approve funding for this project.

Mark Renna thanked the Council for putting the requirement for a conservation easement in writing.

Presentation by staff on Council meeting guidelines and procedures

Jill Aspinwall stated that the document on Council Meeting Guidelines and Procedures was originally approved on December 10, 2004 and has been updated for Council review. The procedures set forth basic ground rules for a meeting and sets out three options for taking public comment. The options include:

OPTION 1:

- Public Comment will be taken immediately following the Open Public Meeting Statement and again at the conclusion of the meeting. Public Comment per person will be limited to 5 minutes during each comment period.

OPTION 2:

- After staff and council members have the opportunity to discuss agenda items and hear any presentation on the topic, the Council Chairperson will open the floor to public comments.

- The Public will have an opportunity at this time to come forward and provide comment on that particular agenda item only. The public will be asked to come forward, state their name for the record, and then make their comment. Public comment will be limited to 3 minutes per person and must remain relevant to topic.
- After receiving public comment, the Council will make their decision.
- Public Comment will also be taken at the conclusion of the meeting. Public comment will be limited to 5 minutes per person.

OPTION 3:

- After staff and council members have the opportunity to discuss agenda items and hear any presentation on the topic, the Council will make their decision on the project. The Council Chairperson will then open the floor to public comments. Public comment will be limited to 3 minutes per person and must remain relevant to topic.
- Public Comment will also be taken at the conclusion of the meeting. Public comment will be limited to 5 minutes per person.

Yang Deng stated that he would recommend option 2.

Yang Deng motioned to approve option number 2.

David Roth seconded the motion to approve option number 2.

Mark Renna state that option number 2 is great, but when making a proposal, there is no other dissemination of information prior to the vote. People need input prior to a vote.

Susan Lockwood state that this board operates similarly to the rest of the state. Written comments submitted prior to the meeting do not have equal weight to verbal comments.

Claudia Rocca stated that any substantive comments could be submitted in writing to Council staff.

Emile Devito, the Conservation Foundation stated that sometimes everything happens in one day. Mr. Devito state that he supports option number 2 and is glad that the Council supports that as well. Mr. Devito suggests that the Council specifically say “any public comment?” If nobody says it, people may not realize that they could speak at that time.

David Roth stated that in general anything that promotes public comment and transparency is a good thing.

The document will be revised according to comments received and will be presented at the April 1, 2014 Council meeting.

Presentation by staff on grant application procedures

This is another document that the Council had previously approved. It has been updated and revised. The idea would be to have the guidelines in place to guide applicants and eventually these procedures would be incorporated into the ILF document.

Claudia Rocca stated that she liked the idea of the guidance.

Mark Renna stated that he had the following comments. The proposal should require applicants to identify whether or not the project is in assumable or non-assumed waters. Ninety days advanced notice to a body that meets 6 times a year is too long and restrictive. In Appendix A: delete "tidal". Appendix C: A vote by the Council will make this checklist law. The checklist has issues that warrant technical input and discussion. Item 10: 8-12 % organics is baseless and unrealistic and should be eliminated or revised. Item 17: requires a CDR, as should all mitigation proposals pursuant to 15.20(b).

Bob tucker asked if 45 days was adequate time?

Claudia Rocca stated that some boards with funding have a onetime shot at funding, while the Council allows for rolling availability.

Jill Aspinwall stated that for each time frame chosen you need to take 2 weeks off of the review time in order to accommodate the Open Public meetings act requirements.

Sam Reynolds, USACE, stated that references to assumed and non-assumed waters are an issue of assumption and went on to explain the USACE jurisdiction and mitigation.

Patti Burns asked if Mr. Reynolds was suggesting that Lenape Farms request a JD from the USACE.

Sam Reynolds state that the USACE is not in a position to require someone to obtain a JD.

Susan Lockwood state that the Council is operating from our statute and this is important for the proposed In Lieu Fee program, "ILF." There needs to be a way for the Council to address ILF. If there is a good project it shouldn't matter whether it is located in assumed or non-assumed waters. The USACE could agree and that would be great. The ILF document intends to move us there. Regardless of whether assumed or non-assumed, a project may or may not require a permit in addition to state permits.

Emile Devito state that there is no legal reason money collected from applicants could not be used in coastal areas. These projects should be designed to meet sea level rise and should have a good chance of working into the future.

Mark Renna stated that the Council was formed under the Freshwater Wetlands Protection Act but New Jersey is coast to coast. Money from assumed areas may be spent in Lenape but how does the Army Corps feel about money spent in a non-assumed bank. In assumed areas, only

DEP should approve. DEP already received noncompliance letter from the EPA regarding its ILF. ILF and Banks should be treated equitably.

Presentation by staff on draft In-Lieu Fee document

Jill Aspinwall presented the draft ILF document to the Council. Ms. Aspinwall stated that this is a continuation of previous drafts that the Council has seen and is a draft that has not been legally reviewed. Ms. Aspinwall proposed an April 11, 2014 deadline for comments on the document. This would give adequate time for feedback and allow oral comments to be taken during the April 1, 2014 Council meeting. The DRAFT document would be posted on the Council's webpage by the COB March 5, 2014.

Sam Reynolds stated he needs to know what the State wants to do with the Corps. If the document is meant to be a statewide document consistent with the Federal ILF program then that has to be approved by the USACE and the state should go through the Federal IRT process. Mr. Reynolds recommends that the State send a formal letter to both District Heads in Philadelphia and New York to solicit comments. Mr. Reynolds also recommends that the State solicit comments from NOAA and USFWS.

Susan Lockwood stated that the State is taking direction from the EPA.

Bob Montgomerie stated that at this point under assumption the main goal is to ensure that the State's program is as stringent as the Federal rules.

Public Comment

Emile Devito, NJ Conservation Foundation, stated that someone on behalf of Lenape farms made a comment that the cost/acre of mitigation for the project is comparable. An applicant shouldn't compare if the costs do not include land acquisition funds. The Council should look at what you are getting for your dollars. If the project is good it is good for natural resources.

Claudia Rocca stated that the next meeting date has been scheduled for April 1, 2014 and adjourned the meeting.