

New Jersey Freshwater Wetlands Mitigation Council Meeting

January 19, 2017

A regular meeting of the Wetlands Mitigation Council was held on January 19, 2017, at the New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton New Jersey.

COUNCIL MEMBERS PRESENT: Claudia Rocca, Bryon DuBois, Dr. Lenore Tedesco, Mark Renna, Dr. Philip Orton, Susan Lockwood

STAFF MEMBERS PRESENT: Assistant Commissioner Ginger Kopkash, DAG Jill Denyes, Kim Springer, Katelyn Brennen, Jennifer Lesniak, Madhu Guru

Assistant Commissioner Ginger Kopkash, called the meeting to order and explained the roles of the council, how each meeting should be run, and how projects are brought before the council. AC Kopkash was reviewing the document entitled “Council Roles and Responsibilities”, which is attached to these minutes as an appendix. AC Kopkash further explained that there is a DAG and NJDEP staff members that are assigned to aid with the council.

Mr. Mark Renna asked staff to explain how the Chair of the Council is selected.

Ms. Claudia Rocca called the meeting to order, 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.

AC Kopkash explained that the Chair of the Council, to her knowledge, is chosen by the Senate. AC Kopkash explained that she will speak with the Governor’s Office to ensure an official Chair is named for the Council, and explained that until someone is named the Council can share the Chair responsibility if they so choose.

AC Kopkash also reminded the Council that if there are any questions about the In-Lieu Fee Document, that they can contact Jill Aspinwall and she will be happy to walk them through it.

Mr. Renna raised a question from page 28 in the In-Lieu Fee document about the word ‘assumed’. He asked for clarification on the words ‘assumed’ and ‘freshwater’, and what the Council’s role is in regard to freshwater – does the Council cover the State from border to border?

AC Kopkash explained that ‘assumed’ means that an applicant only has to have a permit from the State of New Jersey to fill wetlands. Unassumed are impacts in tidal areas that the Army Corps (USACE) has jurisdiction over as well. AC Kopkash mentioned a resolution that was signed many years back by the Council that allowed them to accept contributions for impacts in the unassumed areas on a case by case basis for mitigation. This was put into place for use when

the USACE does not require mitigation, but the State would. Mr. Renna requested that the document be shared with the current Council.

Review and approval of the February 9, 2016 Council meeting minutes

During the last, April 2016 Council meeting, Mr. Renna, then a member of the public and not yet a Council member, asked if the minutes could be approved by a member of the Council who wasn't present for the meeting, referring to Mr. Robert Tucker's vote in favor of approving the minutes. Based on Mr. Renna's comment, the review of the minutes was tabled.

Prior to the January Council meeting staff researched the question. During the January 2017 Council meeting, DAG Jill Denyes stated that if a member of the Council was not present at a previous meeting the minutes be approved by acclamation, and that Council members who were not present could vote based on a reasonable perception that other members of the Council correctly understood the minutes.

Ms. Susan Lockwood motioned to approve the February 9, 2016 Council meeting minutes.

Ms. Rocca seconded the motion to approve the February 9, 2016 Council meeting minutes.

Ms. Claudia Rocca, Ms. Susan Lockwood, Dr. Lenore Tedesco, Dr. Philip Orton, and Mr. Bryon DuBois voted in favor of approving the February 9, 2016 minutes.

Mr. Mark Renna abstained.

Review and approval of the April 16, 2016 Council meeting minutes

Ms. Lockwood motioned to approve the April 16, 2016 Council meeting minutes.

Dr. Tedesco found a date error in the April minutes where the referenced date of the previous meeting minutes from February 9, 2016 was typed as February 12, 2016.

Ms. Lockwood amended her motion to approve the amended meeting minutes from April 16, 2016.

Ms. Rocca seconded the motion to approve the April 16, 2016 Council meeting minutes.

Ms. Claudia Rocca, Ms. Susan Lockwood, Dr. Lenore Tedesco, Dr. Philip Orton, and Mr. Bryon DuBois voted in favor of approving the April 16, 2016 minutes.

Mr. Mark Renna abstained.

Update on the Mitigation Fund

AC Kopkash stated that as of November 30, 2016, the Mitigation Fund balance is \$7,146,816.94.

There were three expenditures since the last report: Quakertown Preserve (\$1,477.43), Basil Reimbursement (\$3,534.00), and Deep Run Preserve (\$311,009.44). A deposit was received from Mr. Umberto Rescinio in the amount of \$8,322.00. There are a total of 12 outstanding approved projects with remaining balances: Walnut Brook (\$4,455), Cadwalader Park (\$8,640), Quakertown Preserve (\$11,804.66), Lake Hudsonia (\$306,617.89), Lenape (\$164,329.69), Skillman Park (\$37,530.47), Kittatinny (\$1,841,000.00), Pin Oak (\$1,388,769.58), Thompson Park (\$169,080.91) Jamesburg (\$430,836.24), Deep Run Preserve (\$194,230.93), and Bloomfield Township (\$1,755,746.67). Total Amount of Funds Allocated: \$6,313,042.04. New Balance: \$833,774.90.

ILF Funds are designated by water region: Raritan Region (\$765,325.00) and Atlantic (\$8,322.00).

Ms. Lockwood asked if there will be an opportunity for a funding round for the Raritan water region since there are funds designated for that water region.

AC Kopkash asked, and it was agreed, to add an agenda item to the next meeting to discuss that.

Mr. Renna raised a question about the Basil reimbursement, asking what it was for. It was explained by staff that the project never went through and the permit expired. The family came forward and asked for their money to be returned since no activity ever occurred.

Ms. Lockwood further explained that the permit expired and the project had not occurred, therefore, the applicant was entitled to receive a refund of the monetary contribution. After the Department concurred that no activity had occurred on the property and that the permit expired, the Department issued the refund. Ms. Lockwood further explained that a refund of a monetary contribution was not a normal occurrence.

Shortly thereafter Mr. Renna questioned the Rescinio payment and it was explained that the Council at the last meeting had voted to accept the payment for mitigation. Ms. Lockwood further explained that normally the payments occur after the resolution is signed, but in this case the payee turned over funds early.

Review and approval of a resolution for the Rescinio Payment

Ms. Lockwood made a motion to sign the resolution.

Mr. Renna raised a question about the Rescinio payment, asking when the public could raise a question about the topic if it was seconded. Ms. Katelyn Brennen, NJDEP, explained to Mr. Renna that once a motion was made and then seconded, that it is then available for discussion.

Mr. Renna raised more questions about the resolution. Ms. Lockwood explained that the resolution memorialized a conversation and a vote that was held during a previous Council meeting. The decision of the previous Council regarding that project is not up for additional

debate or discussion. DAG Jill Denyes asked if Mr. Renna owned a Mitigation Bank in that area. He responded that he does, and was then reminded that he was recused from the discussion and voting on the matter since he has an interest in that area.

Mr. Mike Hayduk from the Army Corps wanted to further answer Mr. Renna's question from earlier about what is an assumed freshwater wetland vs. a non-assumed wetland. Mr. Hayduk explained that non-assumed wetlands frequently included those on the 1970 wetlands map.

Ms. Claudia Rocca reminded the Council that a motion was made, and needed to be seconded.

Dr. Lenore Tedesco seconded the motion to approve the Rescinio Resolution.

A roll call vote was taken:

Dr. Philip Orton yes

Ms. Claudia Rocca yes

Dr. Lenore Tedesco yes

Ms. Susan Lockwood yes

Mr. Bryon DuBois yes

Mr. Mark Renna abstained

The motion passed.

Review of the 2017 Meeting Dates

AC Kopkash asked if anyone had an issue with the 2017 meeting dates.

Mr. DuBois has an issue with the May date and will not be able to attend.

Public Comments

Mr. Renna went to open the comment period, and Ms. Lockwood reminded him that he was a member of the Council and could not comment during the Public Comment section.

He asked when Council members could bring up comments. It was suggested that there be a 'Comments of the Council' section. It was agreed to allow the Public to speak first.

Mr. Andy Strauss from Strauss Associates/Planners wanted to thank the Council for their aid with the Bloomfield project. They're excited to begin the next phase. Mr. Strauss said he would be back during the upcoming year with updates on the project as they move forward.

Mr. Renna asked Mr. Strauss if he could explain what portion of the site is restoration, creation, and enhancement. Mr. Strauss gave a rough idea, but explained that Jill Aspinwall had the exact numbers.

Council Comments

Mr. Renna requested that the Council receive an update on the Liberty State Park project. He reiterated that he was aware that the Council could make a request that an update be given by the project coordinators, and that Council could request a field review. Mr. Renna stated that he would be happy to go on such a review.

AC Kopkash confirmed that the Council wanted a presentation added to the next agenda.

Mr. Renna asked for a legal interpretation of N.J.A.C. 7:7A-15.21. Can this regulation be used for single family homeowners if they have an individual permit or is it limited to general permits? Also, Mr. Renna asked about the single family homeowner rate and why it hasn't been adjusted in a decade. DAG Jill Denyes will get back to the Council at the next meeting.

Ms. Lockwood was able to answer Mr. Renna's question about the single family homeowner rate. She explained that since the rate had not been changed in so long, that to update the rate now, it would take a rule change to do so.

Mr. Renna asked when the Freshwater Rules were last updated. Ms. Lockwood stated that the rules were updated in June 2016. AC Kopkash concurred and further stated that there were edits made to the fee section of the Freshwater Wetlands Rules when the Flood Hazard Rules were recently adopted. Mr. Renna then questioned why the single family homeowner fee was not updated.

Mr. Renna asked if the Council can adopt rules. AC Kopkash and Ms. Lockwood explained that they can suggest rule changes to the documents.

It was asked that it be added to the agenda that DAG Jill Denyes explain N.J.A.C. 7:7A-15.21 and answer the associated questions.

AC Kopkash commented that the Department is currently undergoing updates to the Freshwater Rules and that one of the items being reviewed is the update of the Single Family Homeowner Rate.

Mr. Renna voiced his concern that if the Council is violating N.J.A.C. 7:7A-15.21 that it could be an ethics violation. It was reiterated that DAG Denyes would submit more information about the questions raised. Ms. Lockwood explained that some applicants come to the Council through N.J.A.C. 7:7A-17. Reconsideration, while others come to the Council under N.J.A.C. 7:7A-15.21, after receiving approval from the Department that they meet the requirements of N.J.A.C. 7:7A-15.

ADJOURNMENT: Dr. Lenore Tedesco motioned to adjourn the meeting.

Ms. Susan Lockwood seconded the motion to adjourn the meeting.

All present voted in favor of adjourning the meeting.

The meeting was adjourned.

The next meeting date is tentatively scheduled for March 16, 2017 at 9:30am.

APPENDIX
Council Roles and Responsibilities

Wetlands Mitigation Council: Responsibility and Guidelines

Welcome to the Mitigation Council and thank you for Volunteering.

The **Wetlands Mitigation Council** (Council) reviews monetary contributions or donations of land to satisfy mitigation requirements. No monetary contribution or land donation can be accepted to satisfy a mitigation requirement unless it has been referred to the Council by the Department and then approved by the Council.

Council History:

The Council was established by statute under the Freshwater Wetlands Protection Act of 1987. The Council is comprised of seven members as follows: the Commissioner of Environmental Protection, who shall serve ex officio; and six members from the general public to be appointed by the Governor with the advice and consent of the Senate, two of whom shall be appointed persons recommended by recognized building and development organizations; two of whom shall be appointed from persons recommended by recognized environmental and conservation organizations; and two of whom shall be appointed from institutions of higher learning in the State. Each member appointed from the general public shall serve for a term of three years; and until a successor is appointed and qualified.

Council Authority & Function:

The Council is responsible for the management and disbursement of dollars from the Wetland Mitigation Fund and pursuant to N.J.S.A 13:9B-15. The Council may use these funds to finance mitigation sites for freshwater wetland enhancement, restoration or other mitigation efforts, research to enhance the practice of mitigation, or enhancement or restoration of freshwater wetlands on public land.

The Council typically meets six times per year or every other month; however, if there are no items to discuss a regularly scheduled meeting may be cancelled.

The Department of Environmental Protection provides staff to the Council. In addition, a Deputy Attorney General is assigned to assist as needed.

The Department receives applications for monetary contributions and land donations on behalf of the Council. The Department ensures that they meet the Freshwater Wetland Protection Act rules and checklists before passing them to the Council with recommendations for review and consideration.

The Council is not responsible for reviewing the permit decisions made by the Department, but is responsible for determining if the amount of the monetary contribution is acceptable or not. If an application for a monetary contribution is before the Council, the Department has already determined that it meets the rules with respect to the feasibility to satisfy the mitigation requirement through another action such as completing the mitigation on-site or offsite. The Council is then responsible for funding projects to provide mitigation for the funds collected.

Council Ground Rules:

1. Council meetings will begin promptly at 9:30.
2. All meetings will follow the agenda unless there is a consensus by the Council to change agenda sequence.
3. All meeting attendees are expected to actively and respectfully listen to what others have to say, without interruption.
4. All meeting attendees are expected to turn off cell phones during meetings.
5. All meeting attendees are expected to show courtesy to everyone by not engaging in side conversations.
6. Only one person will be permitted to speak at a time.
7. Only topics on the agenda will be permitted to be discussed during the meeting and at the allocated time.
8. Everyone who speaks has a responsibility to identify him or herself, the entity they are representing, and to be as brief as possible.

Meeting Structure:

1. Council Chairperson will open the meeting by reading the Open Public Meeting Statement.

2. The Council will follow Roberts's Rules of Order and is required to post meeting notices at least two weeks in advance of meeting. Once the meeting is noticed, no new agenda items may be added.
3. Council will proceed with each agenda item in the order it appears on the agenda.
4. Public Comment:
 - Written comments on substantive issues may be submitted to Council staff, prior to each Council meeting.
 - 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 Council Chairperson will formally open the floor by asking "Are there any 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.