

**New Jersey Freshwater Wetlands Mitigation Council Meeting  
October 21, 2021**

A regular meeting of the Wetlands Mitigation Council was held on October 21, 2021. Due to the 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, Dr. Philip Orton

STAFF MEMBERS PRESENT: DAG Kristina Miles, DAG Jay Stypinski, Jill Aspinwall, 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 October 7, 2021. A statement on the COVID-19 pandemic and the virtual meeting was included.

A roll call attendance was taken:

Dr. Tedesco- Present

Ms. Rocca- Present

Dr. Orton- Present

Mr. DuBois- Present

Ms. Lockwood- Present

**Review and decision regarding the June 17, 2021, Council meeting minutes.**

There was no August 2021 meeting, so the Council approved the June 2021 Council meeting minutes.

Dr. Tedesco moved to approve June 17, 2021, meeting minutes.

Ms. Lockwood seconded the motion to approve the June 17, 2021, meeting minutes.

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

A roll call vote was taken:

Dr. Tedesco- Yes

Ms. Rocca- Yes

Dr. Orton- Yes

Mr. DuBois- Yes

Ms. Lockwood- Yes

All Council members voted in favor of approving the June 17, 2021, meeting minutes.

## **Update on the Mitigation Fund**

Ms. Aspinwall presented an update on the Mitigation Fund. Ms. Aspinwall stated that as of October 4, 2021, the Mitigation Fund balance is \$2,817,960.60. There was also a transfer from a brokerage account which was a transferring of funds to pay on projects. The projects paid were Skillman Park, Buckelew Bogs, Kittatinny Kenco. Ms. Aspinwall provided an update for the approved projects that are still ongoing. All projects are currently up to date, and most are in monitoring. Lake Hudsonia and Buckelew Bogs will start construction in 2022. Liberty State Park is still in design. Lenape Farms and Thompson Park had close out site inspections the week of October 18, 2021. Total funds allocated for contractual projects is \$1,760,450.96 leaving a fund balance of \$1,057,509.64. The total interest earned on the account is \$296,169.29.

Ms. Aspinwall asked if there are any questions.

Mr. Marc Renna asked to make public comment.

Dr. Tedesco asked Mr. Renna to hold his comments for later.

## **Review and decision on a proposed monetary contribution in the amount of \$16,302.31 for Del Corps Enterprises, Inc. NJDEP #1520-12-0010.1, Township of Ocean, Ocean County New Jersey.**

Dr. Tedesco asked Ms. Aspinwall for background information on the application.

Ms. Aspinwall explained that the applicant proposed a monetary contribution in the amount of \$16,302.31 for impacts to 0.09 acres of freshwater wetlands in WMA 13, Township of Ocean, Ocean County New Jersey. This application is the second monetary contribution proposal from Del Corps Enterprises, Inc. The applicant came before the Council in June 2021 proposing \$4,095.00 which would have been equivalent to the general permit rate for a single-family homeowner. The Council denied that application. Ms. Aspinwall described the history and background of the property and application. In 2017, the DEP denied a freshwater wetlands individual permit. The applicant requested ADR, which resulted in DEP issuing an amelioration authorization. One stipulation of the amelioration authorization required that the applicant perform mitigation for the disturbance. The amelioration authorization allowed the applicant to construct a single-family home, a clearing, and a retaining wall which will impact 0.09 acres of freshwater wetlands. The applicant purchased the property by deed on May 5, 2006, with the intent to build a single-family home and sell the property for profit. The applicant was aware that there were wetlands on the property however, it was his belief that he could obtain a general permit 6 which would not require mitigation. The applicant claims that it has exhausted all mitigation options. The applicant reached out to Mullica River Mitigation Bank and Great Bay Bank. Mullica River Mitigation Bank does not service WMA 13 and Great Bay Bank would not sell the applicant credits at this time. The applicant prepared an application in accordance with the Freshwater Wetlands Protection Act Rules (Rules) following the individual permit requirements. The lower of the two

cost estimates was calculated to be \$181,136.57. Ms. Aspinwall reiterated that this calculation was correctly prepared and that the Council should accept a monetary contribution in this amount. However, the applicant multiplied \$181,136.57 by 0.09 acres to obtain the \$16,302.31 figure, which is the amount that the applicant is proposing as a monetary contribution to the Council. The applicant claims financial hardship. The applicant notes that a calculated contribution of \$181,136.57 for 0.09 acres would equate to a monetary contribution of more than \$1.8 million for a 1-acre wetland impact. Imposing a monetary contribution at the amount calculated pursuant to the DEP's in-lieu fee program structure would result in a significant economic hardship for the applicant since the applicant purchased the property with the understanding that the wetlands were isolated, and a General Permit #6 would be available. The applicant noted that if the Council were to accept the applicant's proposed contribution amount of \$16,302.31, the applicant may "break even" in investments with the anticipated sale of a house. The applicant's projected financial investment in the subject property is estimated to be \$312,000.00. The applicant also asserted that the existing developed nature of the area near the subject property, including adjacent parcels, municipal zoning, regulatory requirements, and the applicant's initial understating that freshwater wetlands present within the subject property were isolated, supported the applicant's reasonable expectation at the time of the initial investment that the property could be developed with a single-family dwelling. Since the time of the acquisition, the applicant's further investment includes the carrying costs of real estate taxes, as well as payments for engineering and professional fees associate with obtaining approvals and associated permits to build a modest single-family dwelling.

Council staff has reviewed the monetary contribution proposal and determined that the proposed monetary contribution in the amount of \$16,302.31 was not prepared in accordance with the Rules. While Council staff does not recommend approval of the proposed \$16,302.31 monetary contribution, staff advised the decision to accept the proposed monetary contribution and associated financial hardship request is up to the Council.

Ms. Aspinwall introduced the applicant and the Chair opened the floor to the person speaking on behalf of the applicant.

DAG Miles reminded the Council that Mr. DuBois is recused from this matter based on advice given to the Council by the Ethics Liaison Officer.

Mr. DuBois left the meeting.

Dr. Tedesco asks if a presentation has been prepared by the applicant.

Mr. Steve Dalton, Esq. introduced himself to the Council. Mr. Dalton is a lawyer from Giordano, Halloran, and Ciesla law firm. Mr. Dalton provided background information for the Council. The applicant and Mr. Peter Ritchings were also present for the meeting. Mr. Dalton stated for the record that the applicant takes exception to Mr. DuBois recusing himself because there was no client relationship between Mr. Dalton's client and Mr. DuBois. Mr. Dalton clarified that Del Corp Enterprise, Inc purchased the property, for which Mr. Del Prete is the principal. Mr. Dalton also clarified that approval for construction on the property was initiated in 2016 and has spanned several years. The approval was in the form of an amelioration authorization and not an individual

permit. Mr. Dalton reiterates that his client proposes a monetary contribution to satisfy the mitigation condition of the amelioration authorization in the amount of \$16,302.31 instead of \$181,136.57 which was calculated using the Rules, on the basis that the higher number would cause financial burden and economic hardship. This proposal is about four times more than the former proposal. Mr. Dalton stated the Council should approve the current proposal based on the following factors. The lot is a modest lot of 4800 square feet. After a delineation, the applicant would minimize the disturbance to less than 0.1 of an acres and preserve a portion of the lot with a conservation restriction. Mr. Dalton asserts that if his client received a general permit, no mitigation would have been required because the impact falls below 0.1 acres. Mr. Dalton's client is now faced with having to pay \$181,136.57. When Mr. Dalton's client first obtained the property, they were under the belief that the wetlands were isolated and would fit the requirements of a general permit. However, the municipality made modifications to the drainage which altered the hydrodynamics of the area. If a general permit were given, then the applicant would have had to contribute \$4500 rather than \$181,136.57 under the Rules. Mr. Dalton argued that to force a monetary contribution of that amount on a single-family development is extremely burdensome. Mr. Dalton stated the applicant understands that its permit is not a general permit but still believe that the Council should use their discretion to approve the application given the economic hardship. Mr. Dalton acknowledges that the applicant acquired the property for investment purposes, but the time, effort, and significant cost of this process would result in a "break even" scenario. Mr. Dalton also asserted that if his client must pay \$181,136.57, then the project will no longer be viable. The applicant has exhausted all other forms of mitigation as explained by Ms. Aspinwall and has reached this last option with a monetary contribution.

Dr. Tedesco thanked Mr. Dalton for the summary and asked if the Council has any discussion.

Ms. Lockwood stated she thought that the proposal provided that the monetary contribution was based on the amount of the cost to actually do mitigation and not on the cost to obtain a property to do the mitigation but when Ms. Aspinwall gave her summary, she said that the whole number was calculated in accordance with the Rules which would have included the property but then it was multiplied by 0.09 which is the impacted acreage.

Ms. Aspinwall provided an explanation. Using the wetland creation scenario, the applicant did use 0.818 acres (two times the acreage) to assess their land value, so the applicant did calculate the individual permit correctly but then the applicant multiplied the individual permit amount by 0.09.

Ms. Lockwood clarified her question. With every mitigation project there is land value and the mitigation cost. Where does the \$16,302.31 fall in the assessment as if it were an actual mitigation project?

Ms. Aspinwall stated that the monetary contribution amount of \$16,302.31 is an arbitrary number that the applicant calculated. The applicant had land value in their calculation with the correct ratios in their application.

Ms. Lockwood clarified her question again. How much was the land portion and how much was the mitigation cost? The argument made by the applicant appealed to Ms. Lockwood in the sense that when an applicant buys credits from a bank, the land value is spread across many property

owners. With an individual mitigation project there aren't many landowners, so the entire land value is forced upon one person which is in accordance with the Rule. Ms. Lockwood wondered, if the applicant took away the land cost in this specific calculation, what would the cost be?

Mr. Ritchings explained that table 1 and table 2 in the proposal provide an itemized cost for freshwater wetland creation at a 2:1 ratio and freshwater wetland enhancement at a 3:1 ratio. Each table has land acquisition costs presented based on real estate information and the amount of land needed. Of the number \$181,136.57, \$70,000 was land acquisition cost. The cost would be \$111,136.57 with the \$70,000 deducted.

Ms. Lockwood said that she agreed that land acquisition is the largest portion of the cost. However, even with the cost of land removed the \$111,136.57 is still significantly more than the proposed \$16,302.31.

Mr. Dalton stated that for this project to have different monetary contributions based on the type of permit (the difference between a general permit and an individual permit) is highly inequitable.

Ms. Lockwood said that the difference is that the statute tells the State very specifically how to mitigate for an individual permit but not for a general permit. There are limitations that are preestablished for permits and general permits are more flexible and simplified. An applicant must meet the requirements for the general permit to obtain a general permit. The distinction between general and individual permits is important. If an impact goes beyond a general permit, then it requires an individual permit.

Mr. Dalton responded that the impact does not exceed the general permit requirement. Mr. Dalton agrees with Ms. Lockwood that the Rule structure focuses on the impact. However, the impact proposed in the application despite the amelioration authorization does not even rise to the levels of requiring mitigation. Mr. Dalton believes that is what makes this case so unique and asked that the Council use its discretion to approve the monetary contribution. Mr. Dalton compared the applicant's situation to an application to the Tidelands Resource Council, which is obligated to obtain fair market value consideration but will consider the case at hand before making a decision.

Dr. Tedesco asks for any other question or comment

## **Public Comment**

Dr. Tedesco opened the floor to public comment.

Ms. Aspinwall asks for any public comment.

Mr. Marc Renna from Evergreen Environmental introduced himself. He commended the Council's economical approach to mitigation which was reflected in the June meeting minutes and the overview of the Fund. Mr. Renna explains that his company's mitigation bank was mentioned. The applicant requested credits from Great Bay Mitigation Bank for its application. Great Bay Mitigation Bank does not have credits that Mr. Renna is willing to sell for the 0.09 acre impact but he recognizes that mitigation in WMA 13 is very difficult due to CAFRA and

Pinelands area designations. He stated that Great Bay Mitigation Bank will likely have credits for sale in 2022. Mr. Renna will offer a credit purchase for a 0.09 disturbance at a rate of more than \$60,000 which reflects the true cost of doing mitigation in WMA 13. Mr. Renna also noted that another banker is on the line from the adjacent watershed, and it may be advantageous to ask him how much his credits would sell for from the Mullica River Mitigation Bank. Mr. Renna asserts that a monetary contribution at either rate, \$4,000 or \$16,000, is low and puts great responsibility on the Council to replace the 0.09 acres of lost freshwater wetlands.

Ms. Aspinwall asks for any other public comment.

Mr. Brian Cramer with GreenVest confirmed that the applicant reached out to the Mullica River Mitigation bank even though the impact site was not in the service area of the bank. Mr. Cramer shares the same concern as Mr. Renna that the monetary contribution proposed by the applicant is considerably low compared to purchasing credits.

Mr. Dalton asks Mr. Cramer if the price is the same as or lower than the Great Bay Mitigation Bank.

Mr. Cramer says that credit from Mullica River Mitigation bank is slightly less than Great Bay Mitigation bank.

Ms. Aspinwall asks for any other public comment.

No more comments from the public which opens the floor to council comment.

### **Council Comment**

Dr. Tedesco asks the Council to consider the application, remembering that the Council is responsible for replacing the wetland function and considering the cost differential.

Ms. Rocca responds that she voted yes to the original application in June because the State and DEP has rendered decisions for this project. Ms. Rocca asks the Council to take into consideration that the applicant exhausted all other options and is in a stalemate at no fault of its own.

Dr. Tedesco asked for other comments.

Ms. Lockwood stated that Dr. Tedesco is correct that the Council takes responsibility for replacing the wetland function. The individuals who do projects for the Council usually already have a property identified or owned. Ms. Lockwood says it may be appropriate not to have the land value so heavily present in the equation when calculating a cost estimate. The actual mitigation costs may also be higher, but Ms. Lockwood agrees with Ms. Rocca. Ms. Lockwood asserted that if a bank was available, the Council would likely not be having this conversation.

Dr. Tedesco noted that the calculation of mitigation without land value was still \$111,000.

Ms. Aspinwall asks for a motion to move before voting on the application.

Ms. Lockwood moves to accept the monetary contribution in the amount of \$16,302.31.

Ms. Rocca seconds.

A roll call vote was taken:

Dr. Tedesco – no

Ms. Rocca – yes

Dr. Orton – yes

Ms. Lockwood – yes

Mr. DuBois – recused

The Motion did not pass. The monetary contribution was not accepted.

Ms. Aspinwall explains that Dr. Orton had to leave the meeting due to another commitment, and Mr. DuBois may return.

Mr. DuBois returns and Dr. Orton leaves bringing the Council back to a quorum.

### **Final Comments/Public Comment**

Dr. Tedesco opens the floor to public comment.

Mr. Renna introduces himself to the Council. He begins by saying his comment relates to the application the Council just reviewed and to the Fund update. The Council is working very hard to grapple with the real cost of mitigation. Mr. Renna also points out that there is an unusual aspect to the Fund that the Council has no input on, the ISS collection. There are numerous ISS contributions with no input from the Council on the dollar amount and the Council never funds ISS creation projects. Mr. Renna noted that there are banks that do ISS mitigation that are State and federally approved. Mr. Renna also said that no matter the mitigation type (South Jersey, North Jersey, Coastal Jersey, Freshwater, Forested, and so on) is very costly. Mr. Renna referred to the application just discussed by the Council as an example because the cost of mitigation on the low end was over \$100,000. Mr. Renna also agrees with the Council conversation earlier which discussed cost of property. Mr. Renna would like to see a deduction of income tax incorporated into the calculation. There are tremendous numbers of small ISS disturbances coming in at a tremendous rate. Mr. Renna thanked the Council for the opportunity to make public comment.

Ms. Aspinwall asked for any other public comments.

Mr. Renna wished Ms. Aspinwall luck with her new position and thanks her for her stewardship with the Council.

Ms. Aspinwall explains that there are staffing changes to the Council. Ms. Aspinwall has accepted a position for Site Remediation within DEP so Council responsibilities will be returning to the Mitigation Unit. A new staff to the Council has not been picked but Ms. Faelyn Meyers will be aiding in Council responsibilities. DAG Miles also advised the Council she will no longer be the Deputy Attorney General assigned to the Council. DAG Jay Stypinski will be taking over. However, DAG Miles will be DAG Stypinski's supervisor.

### **Executive Session with DAG Kristina Miles**

Meeting minutes for this executive session are provided separately.

### **Adjourn**

Dr. Tedesco moved to adjourn the meeting.

Ms. Lockwood seconded the motion to adjourn the meeting.

A roll call vote was taken:

Dr. Tedesco- Yes

Ms. Rocca- Yes

Mr. DuBois- Yes

Ms. Lockwood- Yes

Dr. Orton- Absent

Meeting was adjourned.

The next meeting date has been tentatively scheduled for December 16, 2021.