

**RESOLUTION OF THE NEW JERSEY FRESHWATER WETLANDS MITIGATION COUNCIL MEMORIALIZING THE COUNCIL'S DECISION TO ACCEPT A MONETARY CONTRIBUTION IN THE AMOUNT OF \$21,879.00, ASSOCIATED WITH NJDEP FILE NUMBER 1408-17-0001.1, TOWNSHIP OF DENVILLE, MORRIS COUNTY**

WHEREAS, the Freshwater Wetlands Mitigation Council ("Council") is responsible for the governance of the Wetland Mitigation Fund pursuant to N.J.S.A. 13:9B-14; and

WHEREAS, the Council is responsible for the management and disbursement of dollars from the Wetland Mitigation Fund pursuant to N.J.S.A. 13:9B-15, and 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; and

WHEREAS, on December 2, 2019, Council staff received a request on a proposed monetary contribution associated with NJDEP File # 1408-17-0001.1 FWW180001 in the amount of \$21,879.00 for 0.495 acres of transition area disturbance in WMA 6 located on Block 60203, Lot 1 of the Township of Denville, Morris County; and

WHEREAS, on August 29, 2019, the applicant received an Individual Special Activity Transition Area Waiver, under N.J.A.C. 7:7A-8.3(g), from the Department to build a single-family home on a 4.31 acre parcel, of which the applicant is proposing to impact 0.495 acres of transition area; and

WHEREAS, the property contains a mix of uplands, wetlands and transition area; and

WHEREAS, the proposed monetary contribution is based on the monetary contribution amount for general permits rather than the monetary contribution amount for an individual permit; and

WHEREAS, both Troy Meadows Mitigation Bank and Pio Costa Mitigation Bank service WMA 6 and both have wetlands mitigation credits available for purchase; and

WHEREAS, the applicant is proposing a monetary contribution rather than the purchase of credits from either wetlands mitigation bank because the applicant believes the cost of credits to be higher than the value of the property in question; and

WHEREAS, the applicant included a cost estimate from Troy Meadows Mitigation Bank for \$297,000.00 for 0.495 credits in the application for the proposed monetary contribution, but the applicant did not provide a quote from the Pio Costa Mitigation Bank; and

WHEREAS, the monetary contribution for an individual permit is calculated in accordance with using N.J.A.C. 7:7A-11.16 (c), wherein the applicant determines 1) the cost of buying and enhancing and/or restoring existing degraded freshwater wetlands and/or state open waters, resulting in an area that will provide equal functions and values to that disturbed, and 2) the cost of buying uplands and creating freshwater wetlands, and/or State open waters, resulting in an area that will provide equal functions and values to that disturbed; and

WHEREAS, pursuant to N.J.A.C. 7:7A-11.6(c), after the applicant calculates the costs for enhancement and creation, the Wetlands Mitigation Council then accepts the lesser of the two amounts the applicant calculated; and

WHEREAS, the monetary contribution for a general permit under N.J.A.C. 7:7A-11.16(e) is calculated based on the amount of acreage disturbed multiplied by either \$44,200 for single family homeowners or \$349,000 for all other property owners; and

WHEREAS, the application, prepared as per N.J.A.C. 7:7-11.16(c), used the checklist and based the enhancement and creation costs from a separate 2015 In Lieu Fee monetary contribution proposal known as Carteret Waterfront Marina individual permit monetary contribution application, located in Carteret, Middlesex County; and

WHEREAS, the applicant used the Carteret Waterfront Marina Proposal as an example to ensure that the applicant considered all costs associated with the proposed monetary contribution; and

WHEREAS, the applicant's analysis using their own research regarding costs and calculations showed that enhancement of wetlands at a 3:1 ratio would cost \$472,310.00 and the creation of wetlands at a 2:1 ratio will cost \$677,060.00; and

WHEREAS, based on these numbers, the Wetlands Mitigation Council would ordinarily be obligated to accept the proposed individual permit monetary contribution rate of \$472,310.00; and

WHEREAS, the applicant also submitted a July 2018 appraisal of the property at issue, which, set the property value at \$125,000, using the assumption that the property is buildable; and

WHEREAS, since the value of the property is significantly less than the cost to purchase credits from a mitigation bank (\$297,000) or the individual permit monetary contribution (\$472,310), the applicant has proposed to use the monetary contribution rate of \$44,200.00/acre for general permits; and

WHEREAS, in support of using the single-family home general permit contribution amount, the applicant states it has owned the subject property since 1952, has paid property taxes throughout, and modern regulations create "substantial limitations" to developing the property, due to freshwater wetlands or transition areas restrictions; and

WHEREAS, the application further argued that "[a]ny cost greater than the general permit monetary contribution would decrease the value of the subject property too much and render construction of the single-family dwelling impractical"; and

WHEREAS, the application points out that the project will only .495 acres of transition areas and will not directly disturb freshwater wetlands; and

WHEREAS, on-site mitigation is not possible as the permit requires 3.69 acres of the remaining undisturbed area to be preserved under a conservation restriction; and

WHEREAS, the applicant argues that denial of the request for a contribution using the single-family home general permit rate, in context of the ownership history and environmental restrictions, would essentially result in a taking of the property; and

WHEREAS, the Council staff has reviewed the monetary contribution proposal and determined that both the individual monetary contribution amount and the general permit monetary contribution amount were prepared in accordance with the rules; and

WHEREAS, based on the monetary contribution amount for general permits and the aforementioned rationales, the applicant now seeks approval from the Council to make a monetary contribution in the amount of \$21,879.00 for impacts to 0.495 acres of transition area; and

WHEREAS, during the June xx 2020 Wetlands Mitigation Council meeting, \_\_\_\_\_ moved to approve the proposed monetary contribution in the amount of \$21,879.00; and

WHEREAS, during the June xx 2020 Wetlands Mitigation Council meeting, \_\_\_\_\_ seconded the motion to approve the proposed monetary contribution in the amount of \$21,879.00; and

WHEREAS, a roll call vote was taken:

Dr. Philip Orton- Yes/No  
Ms. Susan Lockwood- Yes/No  
Ms. Claudia Rocca- Yes/No  
Dr. Lenore Tedesco- Yes/No  
Mr. Bryon DuBois- Yes/No

WHEREAS, the motion failed/passed; and

NOW THEREFORE BE IT RESOLVED that pursuant to N.J.A.C. 7:7A-15.21(d)2, the New Jersey Freshwater Wetland Mitigation Council hereby approves/rejects a \$21,879.00 monetary contribution from the applicant as mitigation for the disturbance of 0.495 acres of transition area disturbance authorized by NJDEP File # 1408-17-0001.1 FWW180001, subject to the following conditions:

1. Applicant must pay \$21,879.00 within 60 days of the signed Resolution and shall not start construction until payment is made in full.
2. Nothing in this Resolution shall preclude the Department from enforcing any of its responsibilities under Federal or State law.
3. The mitigation requirement shall not be considered satisfied until the required monetary contribution is paid in full.

So resolved as aforesaid

AYES:  
NAYS:  
ABSTENTIONS:  
ABSENT:  
ATTEST:

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Jill Aspinwall  
Staff to Council

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Dr. Lenore Tedesco  
Chairperson

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Date