

**New Jersey Freshwater Wetlands Mitigation Council Meeting**  
March 16, 2017

A regular meeting of the Wetlands Mitigation Council was held on March 16, 2017, at the New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2<sup>nd</sup> floor, Trenton New Jersey.

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

**STAFF MEMBERS PRESENT:** DAG Lewin Weyl, Jill Aspinwall, Kim Springer, Katelyn Brennen, Mariel Hathaway, Madhu Guru

Ms. Claudia Rocca called the meeting to order at 9:32am, 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.

The Council introduced themselves: Ms. Claudia Rocca is the acting Council Chair and is a development representative, Dr. Lenore Tedesco is the Director of the Wetlands Institute and is an environmental representative, Mr. Bryon DuBois of DuBois Environmental is a development representative, Ms. Susan Lockwood of NJDEP is the Commissioner's appointee, Dr. Philip Orton of Stevens Institute of Technology is an academic representative, and Mr. Mark Renna of Evergreen Environmental is an environmental representative. Mr. Lewin Weyl, Deputy Attorney General, and Ms. Jill Aspinwall, Staff to the Council, were also introduced.

**Review and approval of the January 19, 2017 Council meeting minutes**

It was mentioned that since the minutes were emailed to the Council, Bryon DuBois' name was corrected for spelling.

Dr. Tedesco motioned to approve the corrected January 19, 2017 Council meeting minutes.

Mr. Dubois seconded the motion to approve the January 19, 2017 Council meeting minutes.

Ms. Rocca, Ms. Lockwood, Dr. Tedesco, Dr. Orton, Mr. Renna, and Mr. DuBois voted in favor of approving the January 19, 2017 minutes.

**Update on the Mitigation Fund**

Ms. Aspinwall stated that as of January 31, 2017, the Mitigation Fund balance is \$7,096,902.80.

There were two expenditures since the last report: Lenape (\$30,181.03) and Thompson Park (\$23,627.99).

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

The document showed all projects that still have money allocated, but which have not been paid out. For informational purposes, the project at Liberty State Park was included in the list of open projects, even though the project had been paid upfront, in full, by the Council.

### **Ethics/Abstention Announcement**

Ms. Aspinwall reported that she had emailed the Council members a memo about Ethics and the proper procedure for abstentions. It was a confidential memo and would not be discussed during the meeting. If Council members have any additional questions about the memo, they can contact Ms. Aspinwall or the Ethics Office. Ms. Aspinwall stated that a representative from the NJDEP's Ethics office was in attendance if there were any questions.

Ms. Aspinwall explained that any Council member must announce at the beginning of a meeting if they need to abstain from a particular agenda item. When it is time to discuss that agenda item, the Council member will leave the meeting space, accompanied by a NJDEP employee. They will be invited back once the conversation and vote have been completed.

### **Old Business**

Mr. Dave Bean, of NJDEP, gave a brief overview of the Liberty State Park project and the current status of the project. In 2012 a MOU was signed by the Council for the Liberty State Park Project. At the time of approval, NJDEP Parks and Forestry was working with the Army Corps of Engineers to design the project. Unfortunately, the US Army Corps of Engineers was unable to complete the work. Mr. Bean worked with Treasury to receive approval to go out to bid for the work, but shortly after approval Hurricane Sandy devastated New Jersey. Due to the severe damage Liberty State Park suffered, the priorities of the park shifted resulting in the request for bids being delayed until 2015. Shortly after the bid period, the project was put on hold due to a massive amount of publicity on the site. Since then, there have been a series of alternative ideas for the site and staff is working to move this project forward.

The park's interior will be worked on, as well as the freshwater piece that is being funded by the Council. Mr. Bean is hopeful that the entire project will be greenlit at the same time to move forward. Mr. Bean mentioned that the MOU anticipated specific acreage for the freshwater enhancement; and he was happy to say that these numbers will be met and exceeded.

Mr. Bean mentioned that this project will allow the reopening of a section of the park that has been closed since the early 1980s, and will allow the Liberty Science Center to utilize the park for additional educational opportunities.

Dr. Tedesco asked about the plans for hydrology of the site, and the issue of contamination. Mr. Bean explained that the contamination will either be removed or capped with clean substrate to ensure that no animals or humans will come in contact with any contamination.

Dr. Tedesco also asked about the process of cancelling a project if it looks as if the project is not moving forward, or if the project is stalled for a long period of time. Ms. Aspinwall explained that in this instance, there is no violation of the MOU so there is no reason to cancel this project. They may be behind the timeline they had originally envisioned, but the project is still meeting its milestones.

Mr. Renna asked how much of the Council money had been spent toward the project thus far. Mr. Bean explained that none of the funding money from the Council had been touched, and that it is in an account accruing interest. The funds spent so far toward the project are NRD funds. Mr. Renna also asked how much of the project is complete. Mr. Bean explained that they have completed 100% of the design and permitting.

Mr. Renna asked how many acres of wetlands will be mitigated by the freshwater creation. Mr. Bean explained that the MOU cited how many acres needed to be created and enhanced through their funded project, and that the project will meet the objectives.

Ms. Lockwood asked if Mr. Bean would be able to give the Council a rough estimate of a timeline. Mr. Bean explained that they would need to go back through Treasury for approval, and that he was presently unable to offer a timeframe.

Mr. Renna asked if he could review their monthly financial reports. Ms. Aspinwall explained that until Liberty State Park spent any of the Council's money, they are not expected to submit such reports.

DAG Weyl explained that it is not surprising that a project of this magnitude and sensitivity would have bumps along the way.

Mr. Renna expressed his concern that the project may not go ahead, and Mr. Bean assured the Council that he will give them updates whenever called upon.

The Council requested a copy of the Liberty State Park MOU to review since many of the members did not serve on the Council at the time.

Mr. Greg Remaud, of NY/NJ Baykeeper, asked if the money would be pulled from the project, and if so, how would the Council announce that information to the public? Ms. Lockwood explained that the project was not currently in jeopardy of being canceled by the Council and that the money had already been awarded. DAG Weyl further expressed that the money was in a dedicated account and had already been awarded and deposited in a dedicated account.

Ms. Beth Ravitt asked what protection would ensure the freshwater area would not be impacted by salt water. Mr. Bean explained that during Sandy, the salt water did not reach the area

intended for the freshwater project. Thus, Parks felt confident that such salt water issues would not pose a problem in the future.

Dr. Philip Orton, a leading storm surge expert in New Jersey, explained and added information about storm surges in the area. He explained that due to elevation in the area, that Sandy waters were unable reach the project site.

Mr. Mark Gallagher asked if they had any push back by using stormwater to recharge the project site. Mr. Bean replied that he had no received push back, but had received questions about the approach.

### **DAG Response to Council Questions**

At the January 19, 2017 Council meeting, a question was asked pertaining to N.J.A.C. 7:7A-15:21. Is it acceptable for the Council to accept a monetary contribution at the general permit rate for a proposed development that would otherwise require an individual permit? DAG Weyl explained that the Department is authorized to relax the rules to avoid a taking. The statute allows the minimization of disturbance but still allows for mitigation. However, it is up to the Council to decide whether or not to accept the money.

Mr. Damian Holynski, GreenVest Environmental, asked DAG Weyl if the Department has the option to deny a permit does that allow for a taking. DAG Weyl explained that a taking is determination by a judge that the Department, or other government entity, has taken necessary steps and has discovered that the property in question has no economic value. Once that decision has been made, the Department can then decide to authorize a single-family dwelling, or to acquire the property. But, in the absence of any viable use of the property, the owner would be entitled to compensation for the property.

At the January 19, 2017, a question was asked pertaining to N.J.A.C. 7:7A-15:21(b)1 which pertains to the general permit rate. The general permit rate, per the rule, should be updated annually. The rules have not been updated. But, N.J.A.C. 7:7A-15:21(e), states that the Department can only charge more upon update of the rule via the New Jersey Register. DAG Weyl further explained that the current rules are in the process of an update. It was also explained by Ms. Aspinwall that the Council does not determine when the fee should be updated, but they can suggest to the Department to increase the fee. Ms. Lockwood asked whether or not it would make sense for the Council to pass another resolution recommending increasing the general permit rate. Ms. Aspinwall stated that she is aware of the existing Council's resolution.

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

The Council had requested at the January 19, 2017 Council meeting to discuss the idea of putting out an RFP for projects in the Raritan Watershed. Ms. Aspinwall explained to the Council that they did not need to request any proposals now since they had met the required

mitigation with previous projects in that area. There was a general discussion on whether or not to put out a request for proposal. In the end the Council decided that they would hold off for now and put this as an agenda item for their first meeting of 2018 to reevaluate whether or not to put out a request for proposals for the Raritan Water Region.

### **Council Comment**

Mr. Renna asked about projects that were identified on an outdated list that were not on the list of current projects in 2017. Had they been closed out, or were they still open? Ms. Aspinwall explained that the list of projects presented during the Update on the Fund, was the most up to date and accurate list of all pending Council project.

Dr. Tedesco requested an annual summary on any projects that had closed during the prior year. Ms. Aspinwall stated that she would add that to the agenda for the first meeting of 2018 and annually thereafter.

### **Public Comments**

Mr. Greg Remaud, of NY/NJ Baykeeper, thanked the Council for its support of the Liberty State Park project. He expressed his appreciation for funds, patience, and for keeping the conversation going.

**ADJOURNMENT:** Ms. Claudia Rocca motioned to adjourn the meeting.

Mr. Bryon Dubois 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 May 18, 2017 at 9:30am.

