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Wetlands Mitigation Bank

January 1, 2000 to January 31, 2002

**Richard L. Fair
State Auditor**

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President of the Senate

The Honorable Richard J. Codey
President of the Senate

The Honorable Albio Sires
Speaker of the General Assembly

Mr. Albert Porroni
Executive Director
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Enclosed is our report on the audit of the Wetlands Mitigation Bank for the period January 1, 2000 to January 31, 2002. If you would like a personal briefing, please call me at (609) 292-3700.

A handwritten signature in black ink, appearing to read 'Richard L. Fair', is placed above a light pink rectangular stamp.

Richard L. Fair
State Auditor

June 10, 2002

Table of Contents

	Page
Scope	1
Objectives	1
Methodology	1
Conclusions	2
Findings and Recommendations	
Valuation Methodology and Timely Communications	3
Identifying Projects to Fund	5
Transfer of Land Titles	7
Fund Receipt Controls	8

Wetlands Mitigation Bank

Scope

We have completed an audit of the Wetlands Mitigation Bank for the period January 1, 2000 to January 31, 2002. The bank, which is allocated within, but not of, the Department of Environmental Protection, was established to be the repository of funds donated for the restoration of wetlands or land donated to replace degraded wetlands. The bank is governed by the Wetlands Mitigation Council. The council is responsible for the disbursement of monies to finance mitigation projects and also has the power to purchase land for the replacement of lost freshwater wetlands. The council, through a cooperative agreement with the New Jersey Natural Lands Trust, transferred responsibility for monies received on behalf of the council to the trust. The trust has created a fund known as the Wetlands Mitigation Fund. The Wetlands Mitigation Fund had a balance of \$3.8 million at the end of calendar year 2001. Receipts were \$116,000 and \$70,000 for calendar years 2000 and 2001, respectively.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the program, were reasonable, and were recorded properly in the Wetlands Mitigation Fund.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the State Comptroller, and policies of the agency. Provisions that we considered significant were documented and compliance with those requirements

was verified by interview, observation, and through our samples of financial transactions. We also read the board minutes, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the program and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Transactions were judgmentally selected.

Conclusions

We found that the financial transactions included in our testing were related to the program, were reasonable, and were recorded properly in the Wetlands Mitigation Fund. In making this determination, we noted certain internal control weaknesses and matters of compliance with laws and regulations meriting management's attention.

Valuation Methodology and Timely Communications

V a l u a t i o n
m e t h o d o l o g y
should be documented.

Contributions into the Wetlands Mitigation Bank result from individuals or corporations that have impacted wetlands and are required to replace these wetlands or donate funds for the restoration of wetlands. The Wetlands Mitigation Council will assess the wetlands impact and can approve a contribution. Contributions can also come from enforcement actions based on assessments by the Bureau of Coastal and Land Use Enforcement. Our audit disclosed there is inadequate communication between these groups resulting in uncertainty regarding valuation assessments.

We noted the valuation methodology used in assessing impacted wetlands by the council is consistently applied. We tested all of the cash contributions totaling \$2.4 million. Our tests revealed these contributions made through the council were well documented as to reasonableness and methodology.

There were a total of ten cases valued at \$1.8 million resulting from enforcement actions. Of these ten, nine were properly valued in accordance with departmental practice consistent with the methodology used by the council. The remaining one was valued at \$1.5 million, of which \$150,000 has been collected to date. We found no evidence of valuation in the file we reviewed supporting the reasonableness of the enforcement contribution. Without such documentation, the council cannot be assured they received the proper amount of money. The council is not consistently notified by the enforcement bureau of pending receivables or deposits made into the council's account. The contributions generated through enforcement are sent directly to the Natural Lands Trust, which should then notify the council via memo that a deposit has

been made. However, the trust also does not consistently notify the council of these deposits in a timely manner.

Recommendation

When valuing wetlands impacts that will result in large contributions from enforcement actions, the council should be involved in the valuation process. The methodology used in arriving at these valuations needs to be consistently applied and properly documented.

We also recommend the Natural Lands Trust and the enforcement bureau provide the council with timely information as to deposits and enforcement actions.

Auditee's Response

The Council has taken great strides in making sure that the monetary contributions that are reviewed directly by the Council are sufficient to compensate for the wetland impact. The Council members were pleased to discover that the draft report confirms that the contributions made directly through them were well documented as to reasonableness and methodology.

The Council also receives funds directly into their account from settlement and enforcement cases. This arrangement is as a result of two separate resolutions passed by the Council. The first resolution was passed on May 10, 1994 which stated that the Council will accept land and/or monies from Settlement Cases acquired by the New Jersey Department of Environmental Protection, Land Use Regulation Program as a result of a settlement of matters arising from matters involving the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.), the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.). The second resolution was passed on July 11, 1995 which stated the Council agrees to accept monies acquired by NJDEP, Land Use Regulation Program as a form

of mitigation for impacts to coastal wetlands, coastal waters and intertidal and subtidal shallows arising out of the issuance of coastal permits; and that these monies will be used and/or held by the Council for the purpose of preservation, creation and restoration of freshwater wetlands, waters and uplands in the coastal zone in the State of New Jersey.

When the Council originally set up these resolutions they were not aware of the number of cases the Department would resolve in this manner. Based on the number of contributions that have been settled in this manner and as a result of the auditor's findings, the Council is prepared to pass a resolution which requires all contributions deposited into the fund come before the Council for their review and approval. Applicants that come before the Council will be required to adhere to the Council's evaluation methodology. This change in our procedure will result in the Council being informed of the amount of the wetland, water, intertidal and subtidal shallow impact and will require that the Council's valuation methodology be used in calculating proposed contributions.

Additionally, the Natural Lands Trust has established a written policy that the Wetlands Mitigation Council will be copied on correspondence that acknowledges receipt and deposit of all revenue provided for the fund. The inconsistency discovered in the audit occurred during a time when the previous Executive Director of the Trust was gravely ill, and staff may have failed to either correspond with the Council or to document a correspondence that did not occur. The written policy has been distributed to staff.



Identifying Projects to Fund

The Wetlands Mitigation Council has encountered difficulty in identifying appropriate and acceptable creation, enhancement and restoration projects.

The council should pursue other options for the use of the funds.

Consequently, there is over \$3.8 million in the Wetlands Mitigation Fund as of December 31, 2001. Total receipts of the fund since inception were \$3.1 million while expenditures were only \$180,000. These expenditures do not include \$376,000 approved by the council at year end. The council is also committed to disbursements of \$466,000 from this fund on approved projects. Contributing to the lack of identifiable projects to fund is the department's failure to assist counties in identifying these projects as required by N.J.S.A. 13:9C-2.

Our audit disclosed the department has not submitted a report to the legislature documenting the success or failure of mitigation measures within two years of the enactment of the Freshwater Wetlands Protection Act as required by N.J.S.A. 13:9B-29. The reporting requirement could provide the legislature with information to measure the accomplishment of the act's goals and objectives.

Recommendation

We recommend the council use mitigation dollars to purchase land, undertake mitigation with the cooperation of the department, or encourage and compensate developers for the creation, restoration, and enhancement of wetlands.

Auditee's Response

Over the years the Council has taken many steps to try and spend the accumulating dollars in the Fund. Starting in 1994 the Council disbursed funds for several projects, which have included assisting in the preservation of land, wetland enhancement projects and wetland creation projects. The Council has also published two separate requests for proposal seeking projects to fund. Letters were also sent to land trusts and Council staff has met with watershed groups and telephoned nonprofits all in an attempt to find projects that the Council could sponsor. Each attempt at spending this money has been education for the Council.

As I am sure you are aware, the Freshwater Wetlands Protection Act was structured in a manner that

defined the types of projects the Council could grant funding to and the organizations that could receive those dollars. The Council may contract with nonprofit organizations, the Division of Fish, Game and Wildlife in the department, the United States Fish and Wildlife Service and other agencies to carry out its responsibilities.

Based on the Act the Council is prepared to continue to partner with nonprofit and governmental entities to carry out their responsibilities. The Council has also been working with the Department to locate sites on existing public holdings to restore wetland acreage. The council disagrees with the recommendation of your office to purchase mitigation bank credits and compensate developers for the creation, restoration and enhancement of wetlands. It is the Council's opinion these partnerships are not consistent with the statute. The Council, however, will consider using some of their funds to purchase land.



Transfer of Land Titles

When accepted as a form of mitigation, land donations, as set forth in N.J.A.C. 7:7A-15.19, must result in the property being legally transferred to a governmental agency or charitable conservancy. The purpose of this requirement is to ensure wetlands destroyed as a result of construction or negligence are replaced and safeguarded in perpetuity.

The land donation proposal and acceptance process is a lengthy one, requiring numerous reviews, revisions, valuations and debate. The final step in the process is the legal transfer of ownership of the property to a governmental agency or charitable conservancy. The ultimate disposition and use of these properties can not be guaranteed until the transfer of ownership is complete. Our review of the nine land donations accepted by the Wetlands

The council should verify title transfer of land donations.

Mitigation Council to date disclosed that two had not been legally transferred. One should have been transferred in March 1997 and the other in January 2001. The council does not have an established procedure to verify that the transfer was actually completed.

Recommendation

The council should establish a formal procedure to ensure land donations are being legally transferred to a governmental agency or charitable conservancy.

Auditee's Response

The audit revealed a problem that the Council was not fully aware of which is the untimely transfer of property associated with land donations. As a result of these findings the Council requested that staff take steps to properly monitor these transactions. We are also prepared to place a time frame in the land donation resolution which requires that the applicant complete the transfer of property within a specified time frame. In addition, the Council is also prepared to make the agreement to donate land as a form of mitigation null and void if the applicant fails to complete the transfer in the designated time frame. This action should result in more timely donations.



Fund Receipt Controls

Checks should be deposited timely and the account reconciled monthly.

The council, through a cooperative agreement with the New Jersey Natural Lands Trust, transferred responsibility for monies received on behalf of the council to the trust. One employee of the trust prepares and makes the deposit, and no independent reconciliation of deposits to the bank account is prepared. No record of incoming checks is maintained during the opening of the mail. Our cash receipts testing for calendar year 2000 and 2001 noted that 11 of the 15 checks received, ranging from \$100 to \$52,580, were not deposited timely. Nine of the checks were held from two weeks to more than

three months before being deposited. Treasury Circular letter 94-24-OMB requires the deposit of receipts within 24 hours.

Recommendation

Incoming checks should be recorded on a mail log. An independent reconciliation to the bank account statements should be prepared on a timely basis to ensure that receipts and disbursements are recorded accurately and timely. The Natural Lands Trust should comply with Circular Letter 94-24-OMB and deposit cash within 24 hours of receipt.

Auditee's Response

The Natural Lands Trust now has a written policy that requires a daily check log be prepared of all incoming revenue, that checks be deposited no more than one day after receipt, and that monthly bank statements be reconciled. The written policy has been distributed to staff.

