

Open Work Session

Maple Dam Conservation Wetland Mitigation Bank Agreement of Sale of Wetland Mitigation Credits November 2, 2021

Mr. Tony Rudy, Airport Manager, and Mr. Paul Wilber, County Attorney, came before Council. Mr. Rudy explained that this is in relation to the runway extension project. He said currently they are working on some wetland permitting issues, which will take about a year to sort through with the State and the Army Corp. He said there were wetlands identified in the area that need to be mitigated for the extension project, and they have a good handle on the amount of acreage that needs to be mitigated.

Mr. Rudy explained, there are a couple of ways they can mitigate; they can build their own wetlands, which is a rather lengthy and expensive process, or they can use this bank that is in place already and has land available; however, there could be other interest by the time they get ready to purchase this, which would obviously lessen the amount of land available. He clarified, what is available now and in the coming months will satisfy their needs just barely, so they should lock this agreement in now. He said there is a stipulation with funding becoming available either through local funds, or FAA or State funds.

Mr. Dodd asked if this bank is in Dorchester County, to which Mr. Rudy responded, yes. He explained, this is really the only bank in this vicinity that would satisfy their needs.

Mrs. Hurley asked if they have done this before because this is new to her, to which Mr. Rudy responded, to his understanding, the County has purchased credits from this bank in the past. Mr. Holloway said the County purchased some in Somerset County one time.

Mr. McCain said the County has purchased ones before, and actually he thinks there is a bank in Wicomico County off Snow Hill Road. Mr. Wilber asked if it is a wetland bank? He clarified, these are wetlands, which is different than a forest. He said these are really unusual.

Mr. Rudy said there was a project many years ago that was in Somerset County, and they explored that to see if there is any more available land there, but that is just not the case.

Mr. Dodd said this is needed, to which Mr. Wilber responded, it is essential.

Mr. Dodd asked where the money will come from because Mr. Rudy mentioned the FAA, but it did not sound like he really knew if they would give the County the money or not, to which Mr. Rudy responded, they have a total estimated amount for the full project, which includes the wetlands, the construction, and design, and a lot of this is going to depend on when the federal funds come in, and State funds will usually follow that. He said there is a certain amount the County is going to have to bond for. He said chances are that the federal money will come in later in the project, so the bond money would probably be used for this up front, but they will not know that until probably June of next year when the FAA typically releases their grant funding for projects like this.

Mr. Dodd asked if this needs a Public Hearing, to which Mrs. Hurley responded, no.

Mr. Cannon asked how the amount of \$119,790 came about, to which Mr. Rudy responded, the dollar figure is based on a dollar amount per square foot or per acre. Mr. Wilber said he had the same question because it seemed like a lot, but apparently these wetland banks are few and far between, so they are obviously naming their price for these wetlands. Mr. Rudy explained, the developer takes this land and

makes it into a viable wetland. He said there used to be a five year process where they had to prove that it is sustainable, and he believes now it is a ten year process, so there is a big investment in the land, and it is not cheap. Mr. Cannon asked if the developer sits on that until someone comes along and ends up purchasing it so it can no longer be used for any other purpose, to which Mr. Wilber responded, it is wetlands forever, and it has been manufactured wetlands, as he understands it. Mr. Rudy clarified, actually the State has a program with available wetlands first and foremost, and after those areas are all exhausted, they have an in-lieu of fee where they can purchase. He said then they will develop wetlands over the years, but they have not done that in a long time, and their fee per acre is actually more than this will cost, but that would not satisfy the federal requirements either.

Mr. Dodd said Mr. Rudy said "if it is available," so it sounds like there may be a rush, which he does not like doing. Mr. Rudy clarified, he is saying that, if all of these wetlands are exhausted, the State would allow them to purchase through them, but that would only satisfy State requirements. He said there are both State and Army Corp Federal requirements, and this actually satisfies both.

Mr. McCain said he is struggling a little bit with the price per acre because they have been involved with these in the past, and he has not seen that kind of number, to which Mr. Rudy responded, the initial number was slightly lower, but being that they are locking this in for a period of more than a year where he has to hold onto this land for the County solely and not for any other use, he cannot sell this, so there is a risk concerning capital gains going up in the future, so he was looking at a higher price per acre, and they kind of negotiated somewhat in the middle.

Mr. McCain said he is just looking for the justification for that number, to which Mr. Wilber responded, he would call it supply and demand. Mr. Dodd said this is the only thing available, so they can name their price. Mr. McCain said that is a highway commercial price per acre number, and Maple Dam Road is a rural area of wetlands. He said personally he would just like to see the justification. He then asked if appraisals were done for the mitigation bank, or something to justify that? Mr. Rudy responded, this is the only game in town, and, as he said, the State in-lieu fee is even higher.

Mr. Holloway asked, what happened to the policy of usually having to have two appraisals on any land purchases? Did they follow that this time, to which Mr. Wilber responded, as he understands it, this is supply and demand. He clarified, this was the only supply, and they needed to fill a need in order to do the runway. Mr. Holloway said he knows they need this and will probably have to pay it, but have they stepped outside the bounds of what they usually do?

Mr. McCain asked, did they say exactly that they have to purchase this from a wetland mitigation bank, or did they tell them they have to designate 13.74 acres of wetlands somewhere, to which Mr. Rudy responded, they have to mitigate the area they are disturbing, which means purchasing it, or they could develop their own wetlands somewhere. Mr. McCain clarified, he is saying that, for this money, they could go out and buy land and do a wetland project for a fraction of that money, to which Mr. Rudy responded, but it is developing that land, making it viable, and guaranteeing over that period of time and in perpetuity that it is going to stay a wetland. He clarified, that is the struggle. Mr. McCain said, when they do a wetland project, it is in perpetuity, unless someone changes it somehow. He then asked if that is an option, to which Mr. Rudy responded, he thinks by the time it would take to do that they are probably talking years. Mr. McCain said, for that money, he will find somebody tomorrow. He said he does not want to be difficult, but this does not make sense, to which Mr. Rudy responded, there is no doubt that this is expensive, but there were no other options.

Mr. Holloway asked what process they followed in finding this, to which Mr. Rudy responded, it is a known quantity in their area that will satisfy their needs. He said there are others in other parts of the State or other parts of the country, but it needs to be in this area for the watershed that it is going to.

Mr. Hastings said, from what little he knows about this, the challenge is that these are usually manufactured properties, and they do not want something that is in a tidal area where the land would eventually go away or erode away. He said this program is essentially created in the same watershed, and they have to then maintain it in perpetuity, so there are associated costs. He said of course there is another option, which is fee in lieu, but that is higher. He said he does not know if the State allows County government to go through that process to be able to create their own individual wetland mitigation bank, but that could be helpful in the future. He said it is not as if Wicomico County does not have a lot of land they could use for that type of situation. He said they need private industry to jump in and create more options to lower the price, but they still have this long time carrying cost, but he was surprised by that amount too. He said there are a few options going forward, from what he understands.

Mr. McCain asked if Mr. Rudy can get back to Council as to whether fee in lieu is an option, to which Mr. Rudy responded, as he said, it will satisfy the State's needs, but not the Army Corp's requirements. Mr. McCain clarified, Army Corp does not give them the fee in lieu option, to which Mr. Rudy responded, from what he understands, they do not have that option.

Mr. Holloway asked if there is any chance of talking to their federal Legislators about some kind of option, to which Mr. Wilber responded, they have not explored that. Mr. Rudy said they are not going to get out of mitigating, to which Mr. Holloway responded, he is not talking about getting out of it. Mr. Wilber said the question is where can they mitigate, and whether there is a cheaper alternative.

Mr. McCain asked if they can explore the option of being able to expand their search because he knows there is a regional requirement, but, at the end of the day, if this is what is going on in their region, maybe there is one in another County that is only \$20,000 an acre. He said, if that is the case, he thinks they need to be addressing that with somebody. Mr. Rudy responded, frankly, he does not think they are going to find them that cheap. Mr. McCain asked if Mr. Rudy has numbers from any of those, to which Mr. Rudy responded, many of those discussions were with MDE, who approves these banks, and basically MDE said this is the one they can use. Mr. McCain asked if they have numbers from any of the other banks that might be outside of their region because he is curious what the price per acre is in those other banks, to which Mr. Rudy responded, he can certainly try to look for that. Mr. Dodd asked Mr. Rudy to do that and be ready for the next meeting in two weeks.

Mr. Cannon asked if they have to follow what MDE dictates as far as which banks are acceptable, to which Mr. Rudy responded, yes. Mr. Cannon asked if they have vetted all the other banks, to which Mr. Rudy responded, this is the only one that MDE says they can use. Mr. McCain said Mr. Grumbles might need to come back and sit in front of the Council if they are doing this. Mr. Rudy said MDE is involved in this process, and they are the ones who approve the transaction between the County and Maple Dam. Mr. Holloway said it does not sound to him like MDE is causing the problem, it is the Army Corp, to which Mr. Rudy responded, they are both in this whole process.

Mr. Hastings said they need more individuals to jump into this style of business. He said it has to be in the watershed they are in or a neighboring watershed, so they need more folks to actually provide more options. He then suggested that maybe Mr. Nick Rice, Purchasing Agent, could be helpful with that.

Mr. Holloway asked if Mr. Rudy researched this, or was it an engineering firm, to which Mr. Rudy responded, it was their airport consultant who has environmental specialists on staff, so they were working together with MDE and Maple Dam.

Mrs. Acle said she would like to see what other Counties' prices are because, if this is all they have in this area, they may need to go higher up to see if they can branch out to other Counties. She said the demand is there, but supply is not.

Mr. Dodd asked Mr. Rudy to get back to Council about finding other available land, to which Mr. Rudy responded, he will get some information on that. He clarified, he is not an environmental specialist. Mr. Dodd suggested Mr. Rudy tell the specialists that a couple of Councilmembers are questioning this.


Mr. McCain clarified, they all get the process and why they are doing this, but that number does not make sense even remotely, so that is their hang up.

Mr. Cannon asked if Mr. Rudy is against any particular timeframe, to which Mr. Rudy responded, they want to lock this agreement in place as soon as they can so no one else can jump in and purchase credits, and this would lock them in until the end of March of next year so they can do all of their permitting planning, secure funds for it, and then actually purchase it by that time.

Mr. Cannon asked if this will be a Resolution or a Legislative Bill, to which Mrs. Hurley responded, it would be a Resolution.

Mr. Dodd asked that a Resolution be prepared for the next meeting if Mr. Rudy can bring back the information to satisfy the questions. Mr. Wilber clarified, there is already a Resolution prepared.

There was no further discussion.



Larry W. Dodd, President, District 3



Joe Holloway, Vice President, District 5



John T. Cannon, At-Large



William R. McCain, At-Large



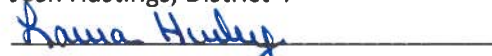
Ernest F. Davis, District 1



Nicole Acle, District 2



Josh Hastings, District 4



Laura Hurley, Council Administrator