

South Carolina Mitigation Association

Executive Committee
Meeting Minutes
May 12, 2020

Opening

The regular meeting of the Executive Committee of the South Carolina Mitigation Association was called to order May 12, 2020 at 9:06 AM via Skype by Allen Conger, SCMA President.

Attending:

Allen Conger
Tommy Cousins
Doug Hughes
Daniel Johnson
Kristin Knight-Meng
Ross Nelson
Sydni Redmond
Jack Smith
Adrienne Graham

I. Approval of Previous Meeting Minutes

Meeting minutes from the Executive Committee Meeting April 12, 2020 were reviewed and approved. The approved minutes will be posted on the website member page. Mr. Conger reviewed the process for the meeting minutes, which are that Adrienne Graham submits a draft of the minutes to Kristin Knight-Meng. She reviews and sends to Mr. Conger who will review and send to the Executive Committee. Ms. Graham will post the approved minutes on the website.

II. COVID-19 Crisis

- Mr. Conger discussed this tumultuous time and inquired as to how everyone was doing. Those companies with DOT contracts may be especially hard hit.
- Tommy Cousins stated that SCDOT is anticipating the release of the solicitation the end of May. SCDOT is reviewing all projects to assess which ones are necessary. This solicitation was to have been released in late March.
- Doug Hughes commented that his company is furnishing raw materials for paper products, which are in demand. He is seeing mitigation moving cautiously. Residential development need for mitigation is especially skittish right now.
- Infrastructure projects should be a priority and revenues are beginning to recover which equates to increased gas tax.

III. Member Care

The draft letters for new members, lapsed members and membership upgrade are with Ross Nelson. The mitigation contact list circulated in April from Daniel Johnson and Kristin Knight-

Meng's will be the basis for the new member contacts. Adrienne Graham will get the letters out as soon as possible.

IV. Quarterly Meeting

- Mr. Conger informed the committee the College of Charleston has been unresponsive on reserving the space for the 2nd quarter meeting. Ms. Graham had inquired about members in Charleston that may have very large meeting spaces. However, members may still have travel restrictions or may not be comfortable in a large group setting. Mr. Conger polled the Committee verbally and they agreed a virtual meeting would be the better option at this time. Mr. Conger and Ms. Graham will coordinate on the virtual meeting.
- Mr. Conger will follow up with Mr. Cousins on the surety bond company as a secondary speaker.
- Mr. Conger will ask SCDOT to give an update.
- Mr. Conger will reach out to Chris Ryan, who recently joined RES, on the meeting speakers.
- The proposed dates for the October and December meeting will be sent to the Committee with the May Meeting Minutes.

V. Directors and Officers Insurance

- The options for Directors and Officers Insurance were presented to Mr. Conger and Ross Nelson prior to the call. Ms. Graham forwarded the information to the Committee during the call. Hartford Insurance Company was the lowest price and Mr. Nelson commented that he had dealt with them in the past for other insurance and found them easy to work with. Mr. Nelson made a motion to purchase the D&O policy from Hartford. Jack Smith seconded the motion, which carried unanimously. Ms. Graham will move forward with this.
- In the future, the Executive Committee will approve a budget prior to the new fiscal year with this insurance and any other projected or known costs incorporated into it. Any unusual items will be brought to the Executive Committee.

VI. Old Business

- Mr. Conger informed the Committee that he and Mr. Nelson had received an email from Annie Wilson, Partner of Capitol Consultants, reviewing the financial procedures. Mr. Nelson was fine with everything in the memo including moving the account. Mr. Nelson will reach out to Ms. Wilson and Ms. Graham to set a conference call to facilitate the transition for the financial information to Capitol Consultants before the next meeting.
- Mr. Conger asked about who in the Capitol Consultants office would sign checks. Ms. Graham stated that as part of the check and balance system, she approves invoices, the Financial Director will check the invoice against the budget and cut the check, and Ms. Wilson would sign the check if SCMA approves her to do so.
- Mr. Nelson stated the CPA was filing the Form 990 for 2019.
- Mr. Nelson has been paying the Capitol Consultants invoices.

- As a follow up to the discussion of the Public Notice of the Holy Grail Project during the April Executive Committee call, Mr. Johnson reported that a letter from SCMA was submitted to the U.S. Army Corps of Engineers to follow the mitigation hierarchy as outlined by a previous procedure SCMA had created. The Corps acknowledged receipt of the letter. Mr. Conger also sent the letter to DHEC.
- Mr. Johnson reviewed a procedure that SCMA established in April 2018 that stated SCMA supported the hierarchy. We communicated this to the U.S. Corps of Engineers. For our formal reviews of public notices and responses, we essentially comment on the mitigation plan and whether it addresses the 12 components of the mitigation plan identified by the Corps. In the Holy Grail response, we did not have the opportunity to review the mitigation plan, so we could not state whether this mitigation plan addressed those 12 required components.

SCMA needs to review the mitigation plan before we submit a formal comment letter on a public notice. This will let us identify if the mitigation plan presents and addresses the 12 components. Mr. Conger asked Mr. Johnson to send the previously-approved SCMA public comment protocol letter 12 components to the Committee. The Committee should review the protocol and comment on it if needed in the next meeting.

Mitigation details are often vague in the public notice. SCMA should request and review the mitigation plan if available. SCMA wants to ensure that the standard process is being followed. This will be the case if the hierarchy is followed.

- Mr. Cousins brought up a current issue related to the impacts that directly effects the mitigation industry - applicants claiming mitigation credit for on-site preservation. They are following the hierarchy of avoidance and minimization, but then go back and claim mitigation on the wetlands they avoided and minimized like they were supposed to do. This reduces the demand for mitigation and does not provide much benefit over any overall uplift to those on-site wetlands, which become fragmented and lose functional value.

Mr. Conger asked if in the SOP, there is a reduction of 25% of the required credits if the on-site plan preserves and buffers the remaining wetlands with a legal instrument that is appropriate.

Mr. Cousins responded that there is a concession for this but he has also seen where this is part of the mitigation credit calculations, not just a reduction in the overall demand. He can cite specific examples if needed. The SOP does allow for a reduction in overall mitigation need if you preserve on site. However, this is a tricky subject. If it is a viable project and wetlands have been avoided and minimized as they should in order to get an Individual Permit, it should not get credit for not impacting everything. If you are impacting wetlands and building a project adjacent to wetlands that you are preserving and putting a minimum buffer on it, then those wetlands will be indirectly impacted by what is going on around it. There is only limited benefit by preserving onsite wetlands that are not being impacted.

- The SOP is under consideration for changes. David Wilson has requested input on the wetland changes by the end of the year. Mr. Conger asked if the Executive Committee would like to comment.

Mr. Nelson commented that this particular caveat was put into the guidelines because of DHEC's rules, not necessarily because of the no net loss rule. DHEC has their wetland master plan guidelines that require you to dictate what will be done with all of the remaining onsite wetlands

within a development. To appease applicants, the caveat for the 25% reduction for preserving and buffering all onsite wetlands was made to satisfy that condition from Ocean and Coastal Resource Management (OCRM). OCRM was going to require applicants to do that anyway regardless of whether or not they were generating credits for those activities. Mr. Nelson suggested this will probably need to be addressed more with DHEC than the Corps.

Mr. Smith recommends following the federal rule and to point out those things that are not clear or clearly do not fit is important. Part of the process is transparency. If it affects the ability of mitigation banking to be more successful or to be maintained, or if it is an erosion of that, then it is appropriate to comment on that perspective. If these types of adjacent impacts are not recognized, then it is appropriate to point this out.

Mr. Conger requested that Mr. Cousins review this and provide language that recognizes that there are indirect impacts, and perhaps the ratios need to be addressed in the revisions of the SOP out of recognition of the lack of viability of this type of onsite mitigation. The Committee agreed with his thought process that we are missing some mitigation demand because of a loop hole. Mr. Conger stated the languages needs to be reasonable but to bring the point up with the Agency in the next SOP and reference the hierarchy as we do in the comment letters. Mr. Johnson and Mr. Hughes agreed to assist with this. Mr. Conger requested this document by the July. We can share with the Corps and IRT members to make sure they are hearing our concerns.

- Mr. Cousins added that he believes that some Jurisdictional Determinations (JD) are not up to standard. Some JD's he has gone through are missing a large amount of wetlands. The need for mitigation begins with the JD. If these are below standards, it has a trickledown effect. Mr. Conger commented that the role of SCMA is as an advocate. The Corps has the lead role on approving the JD's. If these are not done correctly, impacts and mitigation will not be appropriate. Mr. Smith commented that this has gone the other way as well. Relationships with individuals in the regulatory program are important in these situations to point out that something may be wrong. Ask about quality control or what is the protocol and procedure and if there is training or guidelines on what to expect so we all have the opportunity to make sure we are using the same rules to measure by. This may be the only way to address this. Everyone needs to be diligent and ensure that the rules are being applied fairly to all. Mr. Smith also recommended asking the membership attending quarterly meetings if they have had these experiences or if there is a trend we have not noticed. Is this a question of individual involvement or an agency issue?
- Mr. Conger will follow up with Vince McCarron, SCDOT, on the SCDOT mitigation solicitation.

VII. New Business

- Mr. Smith reported that the judge in Montana who had nullified Nationwide Permit 12 narrowed his decision so that it is only applicable to oil and gas pipelines. The threat of losing this permitting tool is abated for now. So for example, once confirmed, the Charleston or Wilmington District may, as a result of this ruling yesterday, may accept this ruling for other than oil and gas.

VIII. Adjournment

Meeting was adjourned at 10:05 am by Mr. Conger. The next Executive Committee Meeting will be at 9:00 am on June 9, 2020 via Skype conference call.

Minutes submitted by: Kristin Knight-Meng

Approved by: