

TOWNSHIP OF FREDON RESOLUTION 2023- 78

RESOLUTION AUTHORIZING RELEASE OF FUNDS FROM ESCROW IN ACCORDANCE WITH OCTOBER 6, 2021 ADMINISTRATIVE CONSENT ORDER WITH THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION

WHEREAS, the Township of Fredon (“Township”) is party to an Administrative Consent Order (“ACO”), approved by the Township Committee on July 22, 2021, which resolved the matter entitled, NJDEP v. Gale & Kitson Fredon Golf, et al., bearing OAL Docket No. ECELU 05064-2009N (“OAL Proceeding”) involving wetlands and transition area encroachments and wetlands restoration work; and

WHEREAS, the ACO became final on October 6, 2021, following a 30-day public comment period, and memorialization of a modification letter dated October 6, 2021, pertaining to the purchase of mitigation bank credit; and

WHEREAS, in 2006, prior to the OAL Proceeding, the Township and the Planning Board of the Township of Fredon, now the Land Use Board, entered into an Escrow Agreement with the former developer and others to establish an escrow fund (the “Escrow Fund”) to pay for the completion of various wetlands restoration improvements to properties included in the ACO, which Escrow Fund is being held by Escrow Agent, Kevin Kelly, Esq. of Kelly & Ward, LLC, 94 Spring Street, Newton, New Jersey 07860; and

WHEREAS, on October 28, 2021, the Township approved Resolution 2021-65 authorizing the initial release of \$9,500.00 from the Escrow Fund to reimburse Kitson & Evergreen, LLC for the deposit it paid to Sierra Landscape Management, LLC for restoration work required under the ACO; and

WHEREAS, on November 8, 2021, the Township approved Resolution 2021-66 authorizing the release of \$24,529.38 from the Escrow Fund to pay for: (1) the purchase of wetlands mitigation credits required under the ACO from Evergreen Environmental (\$9,237.50); (2) the Wetland Restoration Plan, Completion Report, and related ecological services performed by Wander Ecological Consultants (\$4,000); and (3) the balance of work performed under the Sierra Landscape Management Restoration Work Contract by Sierra Landscape Management, LLC (\$11,291.88); and

WHEREAS, on December 8, 2022, the Township approved Resolution 2022-78 authorizing the release of \$800.00 from the Escrow Fund to pay Wander Ecological Consultants for the first of three annual monitoring reports required under paragraph 20 of the ACO; and

WHEREAS, pursuant to the ACO, on October 30, 2023, Kitson & Partners requested that an additional sum of \$800.00 be released from the Escrow Fund to pay Wander Ecological Consultants for the second of three annual monitoring reports required under paragraph 20 of the ACO; and

WHEREAS, on November 8, 2023, the State of New Jersey, Department of Environmental Protection approved the release of \$800.00 from the Escrow Fund for this purpose; and

WHEREAS, paragraph 28 of the ACO states that “[u]pon written approval by counsel for the [NJDEP] (by letter or e-mail within five (5) business days of receipt of the invoice), the Township and Land Use Board shall authorize the release of, and the Escrow Agent shall pay, such amount from the Escrow Fund to the applicable vendor as identified in the invoice submitted by Respondent within twenty (20) calendar days of the date of receipt of the invoice by the Township attorney.”; and

WHEREAS, pursuant to and in accordance with the ACO, the Township desires to authorize the release of funds in the amount and for the purpose described above.

NOW, THEREFORE, BE IT RESOLVED that the Township Committee of the Township of Fredon, in the County of Sussex, and State of New Jersey hereby authorizes the release of \$800.00 from the Escrow Fund to pay for the second annual monitoring report required under paragraph 20 of the ACO completed by Wander Ecological Consultants having a business address at 28 Warner Road, Newton, New Jersey.

BE IT FURTHER RESOLVED that the Escrow Agent, Kevin Kelly, Esq. of Kelly & Ward, LLC is hereby authorized and directed to pay the amount set forth above in accordance herewith and as required under the ACO.

Moved By: *Glenn Deitz*

Seconded By: *Chris Nichols*

VOTING

Township Committee Member	In Favor	Against	Abstain	Absent
Glenn Deitz	✓			
Carl Lazzaro	✓			
Chris Nichols	✓			
George Plock				✓
John P. Flora	✓			

CERTIFICATION

I hereby certify that the foregoing is a true copy of Resolution adopted by the Fredon Township Committee, in the County of Sussex, at a meeting thereof held November 29, 2023.


Suzanne Boland, RMC
Municipal Clerk