

**NEW JERSEY WETLANDS MITIGATION
COUNCIL MEETING**

MINUTES OF February 16, 2012 (as corrected on July 9, 2012)

A regular meeting of the Wetlands Mitigation Council was held on February 16, 2012 at the New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton, New Jersey at 9:30 a.m. This meeting was called to order by John Tiedemann.

COUNCIL MEMBERS PRESENT: Sue Lockwood, Bryon DuBois, Mark Renna, John Tiedemann and Dr. Robert Tucker.

STAFF MEMBERS PRESENT: Three members of staff were present: Stacey MacEwan, JoDale Legg and Karin Bauer.

ATTENDING: John Peterson
Paul Woodworth of Princeton Hydro, LLC.
Brett Berkeley
Doug Freese
Mark Renna

Approval of the October 26, 2011 Council meeting minutes.

John Tiedemann motioned to accept the October 26, 2011 meeting minutes.

Bryon DuBois 2nd motion.

All present voted in favor.

Update on the Mitigation Fund.

JoDale Legg stated that the update on the Mitigation Fund is that the fund has \$9,586,432.30 as of December 30, 2011. There are no conceptual projects before the Council today. There is a full proposal before the Council that was to be approved for the outstanding balance of \$7,551,354.00.

Mark Renna stated that the Council set a new record of \$9.5 million which each dollar represents a lost wetland acre. In general, money is collected at a rate per acre of impact at about \$38,000. This 9.5 million could represent \$300,000 per acre of impact.

Update on the status of approved Wetland Mitigation Banks

Wyckoff Mills – On December 20, 2011, the Department released all remaining credits.

Rancocas Phase 1 and 2 - On February 13, 2012, 5.3 credits were released.

Stipsons Island – 3.62 credits released, January 2010.

Cranbury wetlands – 5.629 credits released December 2010.

Review and approval of a resolution memorializing the Council's decision to allow the reallocation of unspent funds for the approved Mitigation Grant for Walnut Brook

Bryon Dubois motioned to approve.

Dr. Robert Tucker 2nded the motion.

All others present voted in favor.

Review and approval of a resolution memorializing the council's decision to provide Conceptual Approval for a Wetland mitigation Grant Proposal for Pond Removal and Wetland Restoration; Holland Township, Hunterdon County

Dr. Robert Tucker motioned to approve.

Bryon Dubois 2nded the motion.

All others present voted in favor.

Request for approval for Lake Hudsonia Dam Removal and Hibernia Brook Wetland Restoration; Block 30101, Lot 3; Rockaway Township, Morris County

Paul Woodward of Princeton Hydro stated that Lake Hudsonia is a 6.6 acre lake in Rockaway Township, and this project has gone on for an extensive amount of time due to much needed repairs of the dam. The dam was not in compliance of Dam Safety standards. The options for repairing the dam was above and beyond what the township was willing pay. There was also lack of interest to repair the dam, so now the township is considering removing the dam. The 6.6 acres of wetlands, after the dam is removed, will be restored.

The goals and objectives are: first, remove the obsolete dam; second, is to not increase flood elevations downstream, as a lake community exists downstream. The township is aware of this community downstream. Flood plain wetlands are to be restored without allowing rock sediments to travel downstream.

Dr. Robert Tucker motioned to approve the Conceptual Approval.

Bryon Dubois 2nded the motion.

All others present voted in favor

Request by Douglas A. Freese (Amy S. Greene Environmental Consultants) to donate 17.28 acres of wetlands/uplands to satisfy the mitigation requirements for Bridge EH-21 Replacement, Egg Harbor Township, Atlantic County, File #0108-09-0016.1

Douglas Freese stated that the County purchased this property, about 37 to 38 acres, for the specific purposes of mitigation to offset impacts associated with the variety of bridge replacement projects. Bridge EH-21 over English Creek in Atlantic County was damaged by Hurricane Irene in August of 2011 and had to be closed as a result. Atlantic County has an approved permit from DEP. The County needs to offset the impact associated with replacing that bridge. DEP is seeking mitigation bank approval (through the Federal Interagency Review process) for a portion of this property. However, due to the urgency of replacing this bridge, the County did not feel credits

would be available from the bank in time for the construction to proceed. All permits, Federal and State, are approved and Council approval is being sought to take a portion of the property, which was dedicated to mitigation, to be set aside as a first-phase to offset the EH-21 bridge replacement impact. The balance of the property will become a bank and is almost in the final stages of approval.

The property was tested in accordance with DEP regulations for hazardous wastes, etc., and the County will maintain ownership of the property. The County will be the long-term steward of not only the land donation parcel but also of the adjacent mitigation bank.

JoDale Legg stated that the donation has no easements, right of ways or deed restrictions. Wetlands impacted by this bridge project have a moderate rating in terms of primary productivity. In comparison, the property to be preserved was ranked high for primary productivity.

John Peterson stated that given the limit of public funds, funds should be allowed for tidal mitigation. Brett Berkley stated this is an important project. The bridge needs to be replaced immediately due to the impact it has on the community (especially due to increased response time of emergency vehicles). The County can mitigate for the bridge replacement. The best approach was to take a portion of the property and use it as a land donation just for the bridge project. Credits received would be at a ratio of 27:1 and would be used to accelerate replacement of the bridge. The land is being preserved now and has a deed restriction on it so the bridge can be rebuilt.

The Statute talks about land donations needing Council approval. The Department has translated that into any type of piece of property as to be set aside for use as mitigation. The Council has to agree that the parcel is a valuable component of the freshwater wetlands ecosystem.

This project is an emergency situation in the public interest. The piece of property preserved for the bridge project would have been used as an integral part of this bank which includes creation, and enhancement. The property has development potential. Egg Harbor Township was not happy to have the county purchase it. This piece of property purchased removed potential commercial real estate out of the equation.

John Peterson stated that according to the attorney and the surveyor, there is an easement that only encumbers existing electrical infrastructures to such an extent that it allows for maintenance of that existing infrastructure. The easement allows Atlantic City Electric to maintain their existing electric distributing infrastructure, which are poles along the road. The blanket easement only applies to existing infrastructure.

Mark Renna(?) stated that Atlantic City Electric has been involved in lawsuits that have killed banks. If there are any questions, they should be thoroughly resolved with Atlantic Electric upfront.

Dr. Tucker motioned to approve the land donation.

Bryon Dubois abstained

Susan Lockwood seconded the motion.

Sue Lockwood and Dr. Robert Tucker voted "yes."

John Tiedeman voted "no."

Bryon Dubois abstained

Request by Stavola Construction Materials, Inc. to donate land to settle Enforcement File #1806-05-0005.1

George Tyler represented Stavola Construction Materials, Inc. Larry Baier stated that in 2005 Stavola proposed a donation to offset an enforcement action. Stavola owns a rock quarry in Bridgewater Township, Somerset County. They were cited in 2006 after allegedly filling approximately 6.5 acres of wetlands. The company has not yet filed for a permit and in some cases, alternatives are not possible. This leaves the company with mitigation options. Stavola would have to create another quarry somewhere else.

Mr. Baier also stated that one resolution discussed with NJDEP Commissioner Bob Martin is donating some of their land holdings in the Barnegat Bay watershed. To improve the Barnegat Bay watershed, saving ecologically sensitive lands in Barnegat Bay and its tributaries is a cost-effective way to prevent development activities that could further degrade the watershed. Likewise, maintenance and restoration of Barnegat Bay is included in the Department's next generation of environmental management, directly all agencies in the Department to seek out innovative approaches to try to enhance, protect and restore Barnegat Bay. Proposed donation presents the Department and the Council with a rare win-win opportunity for both DEP and the Mitigation Council and this would immediately allow Stavola to satisfy its mitigation requirement for the alleged violation while making a significant contribution towards the protection of Barnegat Bay.

To resolve an alleged violation, the Department shall take into consideration the size and severity of the violation and the functions and values provided by the mitigation. Mitigation proposals submitted as part of a settlement for an enforcement action shall provide for mitigation that is at least as ecologically valuable as the mitigation that would be required under this chapter as a result of a permitted impact.

David McKeon showed maps of the Metedeconk River. Donation of 127 acres of land in Jackson Township would offer a preservation of a 244 acre of block of land in the waters of the Metedeconk. Further north along the Monmouth County line, the adjacent public land is Turkey Swamp, which is well over 1000 acres of public holdings. The property would be donated to Ocean County.

The proposed land donation by Stavola presents a unique opportunity for buying a proposed land donation with existing preserved open space. This would be an increase in ecological and water quality value donated to the area and would further protect the environmental integrity of existing public lands. Mr. McKeon showed on the map the lands that Stavola would be donating are in Manchester and Toms River Township, also in Jackson Township. There are no known contaminants on the donated lands.

Bryon Dubois motioned to approve the land donation.
Dr. Tucker 2nded the motion.

Bryon Dubois, Dr. Robert Tucker and John Tiedemann voted "yes."
Susan Lockwood abstained.

Request to make monetary contribution to settle Enforcement file #1010-07-0005.1, Bruce and Maureen Cargill, Franklin Township, Hunterdon County

Tanya Hattan from Compliance and Enforcement stated that an Enforcement action was started in April 13, 2007 for the disturbance of 11,000 square feet of transition area. A portion of this area was due to the construction of a home, pool, and septic system. An NOV was issued in August of 2007. An ACO was issued in November of 2010 which was required to restore all but 8,674.4 square feet which was unable to be restored because of the construction of the home, pool, and septic system. The homeowners were given a 20 foot “envelope” around their home for family usage of that nature. They were able to restore 8,674 square feet on site of the 2:1 requirement and for the remaining 1:1 they are requesting to be allowed to make a donation of \$3,781 to the Mitigation Fund. This would be at a rate of \$19,000 per acre which is half the \$38,000 amount because the impact was to transitional areas and not to the wetlands itself.

Staff discussed not to change the money amount, but instead of the Council taking the money, let the money be credited to the appropriate bank rather than to the Mitigation Fund. The Council is approving the amount under the condition that they provide that money to the active bank to purchase credits rather than have it go to the Council.

Bryon Dubois motioned to approve the monetary contribution.
Dr. Tucker 2nded the motion.

All voted in favor.

Request to make monetary contribution to settle Enforcement file #1010-07-0007.1, Deborah and Peter Kane, Franklin Township, Hunterdon County

Tanya Hattan from Compliance and Enforcement stated that the homeowners were given an NOV in April of 2007. They were required to restore the 35,000 square feet of transition area. They were able to restore everything except 7,975.3 square feet of which were either a pool, patio, or part of their home. They were given a 20 foot envelope around their home for personal usage. As with the above-cited enforcement case, They were required to make a donation of \$3,420.00 to the Mitigation Fund based upon the same rate of \$19,000 per acre to replace transition areas only. Also, as with the Cargill application, the Council expressed its preference for the donation to go to the Mitigation Bank serving the area.

Bryon Dubois motioned to approve the monetary contribution.
Dr. Tucker 2nded the motion.

All voted in favor.

Old Business

Presentation at NJ Land Conservation Rally: Saturday, March 10, 2012 at Brookdale Community College.

Susan Lockwood stated that on February 12, 2012, an updated list of Council members was forwarded to the Governor’s office for review and appointment.

Public Comment

Executive Session

None

The next meeting date has been scheduled for May 21, 2012.

**NEW JERSEY WETLANDS MITIGATION
COUNCIL MEETING**

MINUTES OF July 9, 2012

A regular meeting of the Wetlands Mitigation Council was held on July 9, 2012 at The New Jersey Department of Environmental protection, Hudson Room, 501 East State Street, 2nd floor, Trenton, New Jersey at 9:30 a.m. This meeting was called to order by John Tiedemann.

COUNCIL MEMBERS PRESENT: Susan Lockwood, Bryon DuBois, John Tiedemann and Dr. Robert Tucker.

STAFF MEMBERS PRESENT: Three members of staff were present: Stacey MacEwan, Jo Dale Legg and Karin Bauer.

ATTENDING: John Peterson
Mark Gallagher of Princeton Hydro, LLC.
Paul Woodworth of Princeton Hydro, LLC.
Brett Berkeley of Greenvest, Inc.
Mark Renna of Evergreen

Approval of the February 16, 2012 Council meeting minutes.

Bryon DuBois motioned to approve the meeting minutes from February 16, 2012.

Mark Renna stated that the February 16, 2012 minutes are incomplete and not accurate. On page 3, the (Atlantic County) bridge project was not stated as an emergency replacement project, relative to Hurricane Irene, which occurred in 2011, since the plans for this project were developed in July 2010. Also, the preservation mitigation is part of a proposed bank that is currently on hold. On page 4, Mr. Renna stated that regarding the Stavola application, there was no mention of the lengthy discussion by many at the meeting that this project is in WMA 9 where there is a mitigation bank. On page 5, the Cargill application, the minutes are inaccurate. The minutes should say that there was a motion by the Council to provide the money to an active bank in the service area and not to the Mitigation Fund. The minutes go on to say that the Bryon DuBois motioned to approve the land donation, but this was not a land donation, so the minutes are inaccurate. Mr. Renna also noted that the minutes have contradictory statements. Overall, he stated that the minutes should be tabled before approval.

The Council voted to table the minutes so they can be corrected for the next meeting.

Update on the Mitigation Fund.

Jo Dale Legg stated that the Mitigation Fund as of May 31, 2012 has \$9,731,883.04. There are no conceptual projects before the Council today. There are full proposals that have been approved so the outstanding balance in the fund is \$7,696,784.74.

Update on the status of approved Wetland Mitigation Banks

Jo Dale also reported on the status of approved mitigation banks. Rancocas Phase 1 and 2 - On February 13, 2012, 5.3 credits were released. Port Reading – credits released in April 2012.

Mark Renna stated that Marsh Resources MRI3 mitigation bank has an approved banking instrument signed in May. That bank has credits for use in the Meadowlands. Another bank called Marsh Bog Brook was also built. MRI3 was not listed on the Mitigation Bank chart and this needs to be updated.

The lower east coast of New Jersey, which includes WMA's 12, 13, 14, 15 and 16, has not had a mitigation bank available for many years. Mark Renna stated that WMA12 now has a bank, Marsh Bog Brook. There are many banks covering almost all of the state except for WMA's 13 and 14. The Mitigation Fund grew to \$9.7 million with no new proposals before the Council, showing that the State is collecting the money without replacing dead wetlands. The banks are held to the highest standard such that they have to produce high quality mitigation in advance of impacts across the state. Yet after viewing the chart, and looking at credits sold, there are banks that have been in operation since 2009 with most of their credits released that have sold as little as 0.002 credits. Looking at Stipson's Island, for example, about 4 credits have been released; however, only 0.002 credits have been sold. The bottom of the chart shows the Cranbury Mitigation bank has a service area of 3 watersheds and about 6 credits released, but none have sold. It is interesting that since the Council has a role in this, why preservation is being used as mitigation option, when there are banks in the service area with advanced mitigation that are held to the highest standards for mitigation under the jurisdiction of the DEP and many times Army Corps of Engineers. The Federal Mitigation Rule and State policy promote the use of mitigation banks as the first alternative when a permit requires mitigation. If the Council continues to accept money that clearly is not replacing lost wetlands when there are mitigation banks available, are the rules and policies being implemented as required?

Mark Renna also noted, that according to a May 7, 2012 letter that the Council may not be aware of, addressed to Rob Piel of the DEP Division of Land Use Policy, the EPA shares the opinion that there are issues of concern pertaining to DEP's in lieu fee program. EPA is most concerned with wetland mitigation by the Council which does not meet the in lieu fee mitigation requirements of the Federal Mitigation Rule. The Federal Rule specifies that the in lieu fee program be treated similar to Mitigation Banks with service areas, and credit schedules. The NJ in lieu fee program does not operate in this manner. The EPA requested a response within 30 days, which would have been June 7, 2012.

Susan Lockwood stated that the Land Use Program, to whom the EPA letter was directed, is going to commit to EPA to put together a schedule of what Land Use needs to do and what they will do to bring the Mitigation Council program into compliance. The Council will be included in that process.

Request for approval for Lake Hudsonia Dam Removal and Hibernia Brook Wetland Restoration; Block 30101, Lot 3; Rockaway Township, Morris County

Mark Gallagher of Princeton Hydro stated there was nothing new to add to this discussion, as it was the same as the previous discussion.

Bob Tucker motioned to approve the resolution.

Bryon DuBois 2nded the motion.

All voted in favor of the resolution.

Resolution memorializing approval of land donation/preservation to satisfy the mitigation requirements for Bridge EH-21 Replacement, Egg Harbor Township, Atlantic County; File #0108-09-0016.1.

Mark Renna stated that the Council resolution and motion on the February 16, 2012 meeting was predicated on various assumptions presented to the Council, then repeated back in general, in recommendations as well as in the resolution. One of them was that the bridge replacement, which impacted wetlands, was an emergency. Mark Renna supports any project that replaces a bridge that impacts wetlands for the sake of safety and transportation. However, despite the reference to the emergency due to Hurricane Irene on August 29, 2011, the plans for the bridge were developed in July 2010. The Council is being asked to consider preservation as emergency mitigation for the bridge, but it is preservation in WMA 15 where there is a mitigation bank. The other assumption is that these 17 acres of preservation will become part of a mitigation bank called Lakes Creek that will happen any day. However, that same testimony was given at the last meeting on February 16th, and it is now July 9th and the bank project is in a holding pattern although it was put out by prospectus in 2011. It is disturbing that when a mitigation bank has real creation, enhancement, and restoration planned, that pieces are sliced off as preservation. If the bank is going to happen, then we say build the bank, withdraw the credits from Lakes Creek and apply them to the bridge, or, if you want to take a piece of the Lakes Creek property, which is about 15 acres, then do not take the 17 acres of “low-hanging fruit, real easy to use” preservation. Take a piece of “creation,” create wetlands, and replace the lost wetlands with wetlands.

Susan Lockwood stated that the Council reviews preservation projects, which is why this project was here before the Council. Normally, if the whole bank was ready for review and only one element is preservation, the whole bank would not need to come before the Council. But because they need to have advanced mitigation for the bridge, and that mitigation is preservation and donation, the Council must approved it separately from the rest of the bank.

Bryon DuBois recused himself.

Susan Lockwood moved the application.

Bob Tucker seconded.

Susan Lockwood voted yes.

Robert Tucker voted yes.

John Tiedemann voted no.

Susan Lockwood stated that because only three people are voting, we need to check with our attorney to determine if the majority of three would be too small to approve an application, but that is the only way it would work if there are only four members on the Council and one person has to recuse him or herself. Three people voting would normally not be considered a majority.

She also stated that if the whole bank was together, instead of separating out the preservation piece, there would be no requirement to bring the application to the Council meeting.

Mark Renna stated that this has happened before (that preservation was used for mitigation in an area with a bank). He said there are 2 to 3 outstanding issues relating to the preservation/donation, the applicant is not present, and despite what was said in February, the bank has not moved one inch. Therefore, the issue should be tabled.

Susan Lockwood stated that Atlantic County needs the mitigation.

Mark Renna stated there is a bank that can sell credits to Atlantic County. He says there is no problem with obtaining mitigation and one can build a bridge without mitigation (do it 4 years from now) if it is an emergency situation. There are other projects in this state that have been built years ago that still have not done their mitigation, so this project will not be the first one.

Susan Lockwood stated it is not DEP's choice to tell Atlantic County what they should and should not do to satisfy their mitigation requirements.

Mark Renna says that as a member of the Council, the DEP gets a bit conflicted when they get involved in the permit. Mark says that he does not see from the Army Corps or DEP perspective, or from the permit that the bridge project cannot happen. The bridge can be built, if it is not built already.

Resolution memorializing approval of request by Stavola Construction Materials, Inc. to donate land to settle Enforcement File #1806-05-0005.1

John Tiedemann stated there is an amendment to the acreage by block and lot designations, reflecting actual onsite survey results.

Susan Lockwood stated the corrected resolution reflects all the corrected block and lot acreages.

Mark Renna requested a map showing the correct blocks and lots, but the map just showed the acreages. Without the survey, nobody was sure exactly how much acreage was in each.

Bob Tucker made a motion to approve the resolution.

John Tiedemann stated there was a resolution in February, and it was up for approval at the current meeting. After the February meeting, there was a huge newspaper article about this land donation. He supposes this was tied into giving the Governor some press on his Barnegat Bay issue. Mr. Tiedemann said an announcement like that should have waited until this resolution was approved rather than be in a press article before the Council has taken action. Mr. Tiedemann is not sure if the press office or the Governor's press office was responsible. This action trivializes the process, if not the actual moving on this issue.

Susan Lockwood stated it was likely DEP and she tried to advise them it was not a good idea, but DEP thought it was the right thing to do.

Mark Renna stated the revised resolution says it is a 191.4 acre land donation. This is 20 acres less for the same impact as the February 16 approval. This is a downgrade to compensate for the 6.5 acres which is in WMA9, which is the drainage of the Raritan River. As John noted, the donated

land is near the Barnegat Bay, which is WMA13. WMA9 includes Wyckoff Mills, which is a 160-acre mitigation bank that has been in good standing for more than a decade. All of those concerns, including the dramatic drop in acreage make him recommend that the Council not approve this revised resolution.

Jim Aversano, on behalf of Stavola Construction stated there was a discrepancy between the acreage: 212 acres is now 191.4, but it still exceeds the 27 to 1 criteria for land preservation. The land itself did not change. When the application was presented, it was done with all the best information available, which was from the tax maps. Ocean County went out to survey the land. It is near water bodies so an acreage discrepancy is not unexpected. Green Acres runs into this a lot; private property transactions do as well. Council determined that this is a higher value wetland than the alleged disturbed wetlands and the amendment to the resolution is really just to reflect the changes relative to the actual survey.

John Tiedemann asked why the resolution refers to 6.4 acres of **alleged** wetland impacts. Katherine Hunt, the DAG for the DEP Enforcement Bureau, stated this was in litigation, and there was no finding of an actual disturbance. This mitigation is part of a settlement.

Bryon DuBois 2nded the approval.

100% voted in favor.

Request to make monetary contribution to settle Enforcement file #1010-07-0005.1, Bruce and Maureen Cargill, Franklin Township, Hunterdon County

Susan Lockwood stated there was a correction to the resolution because the Council did approve the contribution but asked that it go to a bank in the appropriate service area, and so the resolution had to be corrected so that it does not say the donation is going to the Mitigation Fund.

Dr. Robert Tucker moved to approve the resolution.

Susan Lockwood 2nded the motion.

100% voted in favor.

Mark Renna stated that he supports the funds going to a wetland mitigation bank in the service area, and Evergreen supports correcting the resolution so that it reflects what was presented in February. However, and this pertains to a legal issue, he believes the Council has been missing something. The in-lieu fee discount for single-family homeowners, at \$38,000 per acre of impact, is only permitted for general permits. It is not for individual permits and especially not permitted for violators (in his opinion). Many violations are being routed through the Council over the past few years, so in-lieu fee is being permitted through enforcement when mitigation should be handled by the applicant either doing the mitigation, going to the bank and buying the appropriate number of credits, or coming to the Council's in-lieu fee which is the last choice in the hierarchy of the Freshwater Wetlands Act. Before coming to the Council, the violator should be determining what it would cost to find a piece of land to do mitigation at the required ratio, take care of it, build it, monitor it for 5 years, and maintain it for 5 years and then donate it to a non-profit with an endowment fee. He supports the in-lieu fee but the use of \$38,000 as a discount, is below market rate because it cannot possibly replace wetlands in Hunterdon County. It is not legally applicable to a violation.

Susan Lockwood stated enforcement has its own regulations, and to the extent that they try to follow the mitigation hierarchy that is fine, but when in settlement situations, they are not bound by these rules.

Mark Renna stated that if Enforcement is not bound by these rules, then he does not know why the Council feels bound to “nuke wetlands” at discounted rates. He indicated the Council is losing wetlands at a rate faster than imagined.

Susan Lockwood stated the monetary amount can apply to a violator if enforcement decided to apply it. Enforcement rules are different rules, and once you get into the enforcement realm to the extent they can follow the permitting rules, they may but they are not required to. Further, what is ironic about this is that there is no wetland violation. They only violated transition areas, which really are a violation, but they did not have a wetland impact – they had a transition area impact, and so enforcement did try to get mitigation for that impact to try to get a settlement. There is nothing in the Freshwater Wetlands rules that says they have to mitigate transition areas, except only in rare circumstances.

Request to make monetary contribution to settle Enforcement file #1010-07-0007.1, Deborah and Peter Kane, Franklin Township, Hunterdon County

Resolution was revised to reflect the Council’s desire that the contribution be sent to a bank in the service area rather than to the Mitigation Fund.

Bob Tucker moved to approve the resolution.

Bryon Dubois 2nded.

All voted in favor of the resolution.

New Business

Request to make a monetary contribution in the amount of \$17,860.00 Stephen Cafiero c/o James Cafiero, Esq.; Block 95.03, Lot 15; Middle Township, Cape May County; File #0506-08-0004.1

Susan Lockwood stated this is not an enforcement action – instead it is a wetland permit application. The applicant was told to use a mitigation bank. After contacting the bank, the applicant came back stating the price was too high. Then the applicant appealed to the Office of Administrative Law. The appeal went to DEP’s Office of Dispute Resolution. The Office of Dispute Resolution came to the conclusion that the property was owned prior to 1971, and based on an appraisal of the property, the full amount requested by the bank, \$193,500, in relation to the \$250,000 property value, was a large number. Therefore, the Dispute Resolution ended by recommending allowing the use of the single-family home contribution.

Bryon DuBois asked, “When do these stop? What is the sense?”

Susan Lockwood stated that this homeowner has been waiting since September to have his case heard.

Madhu Guru stated that the Department evaluated the package like a “taking.” The lot is worth \$250,000 and with a cost of \$193,000, it would appear to make the lot unbuildable. The project itself was carefully evaluated to make sure they minimized wetland impacts. The size of the house is the minimum, and the house is set as far back from the wetlands as possible. Unfortunately, they have a septic field and therefore they couldn’t avoid impacts to the wetlands. There is a chance that if the Council does not accept the donation, they will Susan DEP for a taking because we will have made the property unbuildable due to the cost of mitigation.

Bryon DuBois asked how that comes to the Council.

Tom Wells asked if the same person has owned the property since 1971.

Susan Lockwood said, yes, it is the same owner.

Someone (?) asked if the property was put out for purchase by local non-profits or land trusts? Madhu Guru responded that that would have been part of the review for the permit. The same person said he was surprised that someone would not have purchased it in Cape May.

Mark Renna asked if they tried to find their own mitigation before they came to the Council for an in lieu fee? Did they go directly from bank to in lieu fee without trying to mitigate?

Bryon DuBois said that that was the point he was making. It is frustrating if people just go and appeal and end up at the Mitigation Council.

John Tiedemann asked if they have a permit to build a house on the property.

The answer was “yes.” John Tiedemann continued, “And the permit said, go to a bank, and they got a quote from a bank. Then to whom did they appeal?”

Susan Lockwood replied that the appeal was to the Office of Administrative Law where you can appeal any permit or permit condition.

John Tiedemann asked, who made the decision that the applicant could come to the Council? The Office of Administrative Law?”

Susan Lockwood stated that instead of going all the way through the OAL process, the Office of Dispute Resolution can be an interim step. If it can be resolved, then it is not necessary to go all the way through the OAL process.

John responded, “Then that is the Office that made the recommendation that the applicant come to the Council?”

Susan Lockwood said “yes.”

Mark Gallagher stated that this issue has come up before, and part of the frustration is when someone is looking at the value of wetlands from the Land Use side, they use a Green Acre appraisal route, and it really is based on the land’s development potential. When Land Use looks at a wetland, from a financial perspective, it has very little value. There is a disconnect with how they would place an economic value on a wetland through Land Use compared to the people at the Council, knowing how much it would cost to actually get a bank approved and the cost of a

wetland. So if one is looking at value of a wetland through a general appraisal process, then it is going to be of little value because it is constrained by the regulations. But DEP is missing the point that the land is protected because of the service values. So when an applicant hears how much a credit costs, the people in Land Use are surprised at the high credit cost. It's a cultural issue on how to place a monetary value on wetlands.

Mr. Tiedemann stated that the Council has become the dumping ground for everything DEP does not want to deal with. He went on to say that what he was hearing on this case is, DEP doesn't want to make them buy credits because they may challenge DEP. The DEP is just taking the easy route by sending them to the Council and then the Council winds up with the tough decisions and has no recourse. The Council is being told by DEP that if the Council does not accept this contribution, then there is an Office of Conflict Resolution that does not want to deal with this because they are afraid that the applicant will challenge DEP over the taking of their land. The Council is not regulators, and does not have any statutory authority over a number of things that come to the Council. All the Council has is the question of whether this money basically should be directed to some use.

Bryon DuBois thought this would have been worked out, and wondered if some of this should have waited. He believes that DEP and the bankers are "so far off" on land value issues that perhaps these projects should wait. The Council shouldn't be making these decisions.

Tom Wells asked if the regulations say that by right single family homeowners get to go to the Council.

John Tiedemann responded that the regulations say the Council is the last resort but by default, the Council has become the "only stop" based upon public comment over the past years. It has been building up since more banks have become available.

Mark Renna stated that he provided comments on this agenda item. It is Evergreen's bank and this is a 0.47 acre impact, for an individual permit, and individual permits do not qualify for the \$38,000 single-family homeowner donation. The second issue is, how many single-family homes does everyone get? This is not Senator Cafiero's first home on the property.

Mr. Renna has spoken to Senator James Cafiero numerous times. This house was for his son Stephen. Mr. Renna says "it is not funny" when the Council members scrap 0.5 acres of wetlands for \$17,000 when that money does not even go to WMA16. But at the mitigation bank, a 4:1 ratio was required. So for the bank to provide 0.5 acres of wetland mitigation, two acres of mitigation would have to be provided at the bank. Mark Gallagher designed this mitigation bank and oversaw the construction. Mr. Renna stated that to do mitigation, Senator Cafiero would have to buy about 3 acres of land, design a mitigation project, get permits, plant it, monitor it and report to DEP on an annual basis, and then donate it to a land trust with a fee (if he had to follow the same process as a banker does to replace wetlands). But for \$17,000, nobody could buy the land for that much. Plus the Council has been put in a position to approving things that are illegal according to the regulations. Applicants should go to the bank.

Mark Renna asked Council member Bob Tucker if he opposes banks. Bob said no but also said that the Council treats single family homeowners through the process of contributing \$38,000 (which previous was \$28,000).

Mark Renna says that applicants (or the DEP) never ask what the costs are and that is relevant because the contributions are not sufficient to meet no net loss. No one questions the fact that when

the property was purchased it was bought for less than \$10,000 and it was two lots (since the other has already gone to the first son). No one questions that the property has improved in value; but then doesn't consider the costs going into a mitigation bank. The applicant should be told that if he doesn't want to go to the bank, he should do his own mitigation.

Bob Tucker motioned to approve the contribution.

Susan Lockwood 2nd the motion.

Bob Tucker – yes

Susan Lockwood- yes

Bryon DuBois – no

John Tiedemann - no

The motion failed.

Mark Renna said that the single-family home in-lieu fee has not gone up since 2006. If you read the regulations, the in-lieu fee is to be increased every year, based on cost of living. The CPI has gone up, and if it were to be increased, in 2011 the cost of the single family homeowner contribution would be \$43,700. The \$300,000 for everyone else (also only for general permits) would be \$345,000 using the CPI.

Madhu Guru stated that the Department's economic advisor was looking at these costs on behalf of the Department since the ability to adjust the number is written in the regulations.

Request for conceptual approval of a land donation to settle ACO: Tilcon New York Inc.; File #NEA800001 1601-08-0001.1, Block 60, Lots 62 and 63, Bloomingdale Boro, Passaic County

Presenting the project was Brian Montag, Regulatory Council for Tilcon Inc., along with Rich Finley (Chief Engineer for the company), and Laura Newgard from EcolSciences. Mr. Montag stated this is a proposed conceptual land donation to settle impacts to 1.27 acres of wetlands that Tilcon of Bloomingdale quarried. The DEP settlement has been discussed at length with the appropriate Department representatives. The property is in WMA3 and they are proposing purchase of property in WMA3, possibly a 90 acre parcel. They are proposing a 2.71 acre donation which would amount to 34.29 acres to be permanently preserved. Jo Dale Legg indicated that the property is in the WMA3 service area of a bank, but the bank did not have credits available at the time this settlement was discussed which is why a land donation was pursued. There is a 35 acre lot on the southern end that Tilcon is proposing for donation. The property is currently under contract by Tilcon, which was extended for review and consideration. Tilcon quarry is adjacent to the Elks Camp which is a camp for children with special needs. What Tilcon is proposing to the camp is instead of staying next to the quarry in Bloomingdale, since there is extra space the Elks Camp will be moved to this property and given 35 acres, which will be an excellent facility for the children with special needs.

Laura Newgard of EcolSciences did a PowerPoint presentation. The presentation showed the land evaluated for land donation. It is a 98-acre property located in West Milford (on Union Valley Road) in Passaic County. The presentation focused on possible areas of donation. One is a 65 acre portion on the southern end of the site. The reason for this is that it includes the possible relocation of the Elks Camp. The quarry continues to get closer and closer to the camp, which is why there is the need for the relocation. The applicant looked at the environmental settings of the site –all the

existing documentation of the property- and one thing was the freshwater wetlands maps. Belchers Creek, runs along the wall of the outer road through several ponds and numerous areas of wetlands. There are forested wetlands on the site as well as scrub shrub and emergent. One concern was the hemlock trees dying out along the wetlands, but the trees are making a comeback. The site includes the creek tributaries coming in from the east, and the creek coming in from Hidden Valley road. This is a 150-foot riparian zone along the creek. The creek is a nice open creek with a gravel and sand bottom, lots of overhanging bank which is a good habitat for wildlife and vegetation. The tributary coming in from the east is a stony brook coming in from the hillside, and there is a man-made pond adjacent to which the Elks Camp may be sited. The map shows the site is actively used by plants and wildlife, including some endangered species.

Bob Tucker motioned to approve the conceptual land donation.
Bryon DuBois seconded the motion.

All voted in favor.

Request to make a monetary contribution in the amount of \$18,198.20 to settle enforcement case File #: 1016-04-0010.1, Scott J. and Jane E. Cowley; Block 26, Lot 6, Kingwood Township, Hunterdon County

This item was tabled.

Old Business

Presentation at NJ Land Conservation Rally: Saturday, March 10, 2012 at Brookdale Community College.

Attendees were John Tiedemann, Susan Lockwood, Frank Gallagher and Grace Messinger from Walnut Brook. They highlighted a few projects, and some were interested in putting projects together for the Council.

John Tiedemann stated that the Barnegat Bay Program has changed to the Barnegat Bay Partnership. They have updated their strategic plan and their plan not only includes the estuary portion of the bay but also addresses the watershed. He encouraged the Technical Advisory committee to bring a restoration project to the Council for funding. The committee was unsure if they could take money from the Council because the committee is funded by EPA. If this is truly an issue, Mr. Tiedemann suggested a number of non-profits they could participate with. Mr. Tiedemann has spoken to some people in Ocean County, including the Save Barnegat Bay group, but nobody has come forward saying they want to do a project.

Overall the rally went well; however, nobody has presented a project to the Council at this time.

Public Comment

None

Executive Session

None

The next meeting date has been scheduled for September 2012.

**NEW JERSEY WETLANDS MITIGATION
COUNCIL MEETING**

MINUTES OF October 4, 2012

A regular meeting of the Wetlands Mitigation Council was held on October 4, 2012 at The New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton, New Jersey at 9:30 a.m. This meeting was called to order by Mr. John Tiedemann.

COUNCIL MEMBERS PRESENT: Susan Lockwood, Bryon DuBois, Claudia Rocca, Mr. John Tiedemann and Dr. Robert Tucker.

STAFF MEMBERS PRESENT: Three members of staff were present: Stacey MacEwan, JoDale Legg and Karin Bauer. Also Jill Denyes, DAG

ATTENDING: John Peterson
Mark Gallagher of Princeton Hydro, LLC.
Paul Woodworth of Princeton Hydro, LLC.
Brett Berkeley of Greenvest, Inv.

Approval of the revised February 16, 2012 Council meeting minutes.

Mr. John Tiedemann motioned to approve.

All favored the motion.

Approval of the July 9, 2012 Council meeting minutes

Mark Renna said that at the July 9 meeting, on pages 5 and 6, there are two issues: Cargill and Kane. Mr. Renna asked if the contribution of the in-lieu fee was to be directed to the bank that was mentioned and has that occurred?

Susan Lockwood answered yes.

Mr. Renna's second question was since the meeting minutes of July 9 also address a topic that is going to be reopened and readdressed--item #6--would approval of these meeting minutes validate the results of the vote previously taken on the action listed as agenda #6 ? Can you revisit an item that was voted upon with changing membership?

Mr. Renna stated the Council voted on an item in the Council meeting minutes on July 9, and now it appears again with no procedure.

Susan Lockwood stated that the Council voted, and normally would come back with a resolution. However, before the Council passed a resolution, it had a request to reconsider the action and that is why it is back on the agenda.

Mark Renna stated there was a motion that was voted on.

John Tiedemann stated that if there was a decision anyone did not like, they could come back on the next Council meeting with a new distribution of members and revisit the issue. He said that typically once a motion is passed, we have a Resolution finalized before the next meeting. He asked was that motion finalized?

Susan Lockwood answered no, because there was a request to the Council to reconsider our actions.

Mr. Tiedemann stated, to answer Mr. Renna's question, if we accept these minutes, what does that do in terms of what the minutes reflect in terms of previous votes?

John Tiedemann motioned to approve the minutes of July 9, 2012.

Susan Lockwood 2nded the motion.

All voted in favor.

Update on the Mitigation Fund.

JoDale Legg stated that the Mitigation Fund is at \$8,264,083.82 as of August 31, 2012.

This amount is less than the last meeting's amount because we made a payment to the State parks. We also received payment from a general permit of \$32,000. Once you take away money allotted for outstanding approved concept plans, the new balance is \$7,762,429.82.

Mark Renna stated that general permit funding of Texas Eastern \$36,000 never came up as an in-lieu fee in this forum. He went through all the files, he does not know if there is a bank in the WMA, but he did not know what the \$36,000 was for.

JoDale Legg stated it was for a general permit for a line replacement in the Port Reading service area, and it was for forested impacts.

John Tiedemann asked Stacey McEwan if this came before the Council.

Stacey McEwan answered this came before the Council as the general permit is acknowledged. However, Council approval is not required for General Permits.

Update on the status of approved Wetland Mitigation Banks

Stipsons Island – tidal credits released May 2012

Port Reading also has credits released February and April 2012

Great Egg Harbor River Bank – credits released September 2012

Nishisakawick Bank - credits released February 2012

Kane Bank- credits released September 2012

Cranbury - .35 credits released December 2010, and 0.3 credits released April 2012

MRI – 2 credits released in May and July 2012
Marsh Bog Brook- credits available

JoDale Legg stated she would change the format of the bank report for the next time, instead of reporting on total credits allocated, she will focus on available credits.

Mark Renna stated this would a good change, because for example, MRI3, the bank that has the potential for 21.3 credits, has 8.35 credits available. But when you look at a bank like Pio Costa, it has 25 credits, but all the credits have not been released. The credit table indicates the amount releases, and the remaining potential to get to the total. He also asked if Pio Costa, with its allocated 28.62 credits, is required to sell credits at 1-to-1 or a 2-to-1?

JoDale Legg stated she is not sure how it came to be 2-to-1. The original resolution required credits to be sold at a ratio of 2 credits for each one acre of impact. However, the bank never really went forward and completed all requirements for an approved bank. So the owner built the bank and the Department set up to be 2 to 1 because we were unsure how successful it would be. Currently, however, the bank is almost completed. So the Department has asked the owner to delineate what wetlands they actually have on the site, and we will work with them to get the right number of credits. The Department is in the process of evaluating their delineation.

Mark Renna stated “it is a crying shame” that banks going back to the 1990’s, such as Willow Grove and Wyckoff Mills still have credits available when there have been in the same time period, hundreds of acres of impact, with zero mitigation and millions of dollars of in-lieu fees as opposed to using the banks that blanket the entire state.

Resolution memorializing approval of the conceptual approval of a land donation to settle ACO: Tilcon New York Inc: File #NEA80001 1601-08-0001.1, Violation located at Block 60, Lots 62 and 63, Bloomingdale Boro, Passaic County

John Tiedemann stated how can we approve a land donation if we do not know who it is being donated to? He asked if we approve the conceptual proposal then does that give the applicant the go ahead to proceed with the land purchase and find someone to donate it to?

John Tiedemann asked if anyone was present to represent the project?

JoDale Legg stated that no one was present this morning represent the project. The point of the request before the Council was to provide the applicant with an opportunity to gather opinions prior to acquiring the property. The applicant is simply seeking the approval of the Council before they moved forward with acquiring the property and trying to identify someone to take control of the property and tackle other issues like screening for contamination.

John Tiedemann asked what happens if we do not find someone to donate the land to?

Susan Lockwood stated that if the applicant fails to find someone to take control of the property, then they will need to find another project.

Bob Tucker made the motion to approve the land donation.

Susan Lockwood 2nd the motion
All others voted in favor

Request for reconsideration of the Council's decision denying the request to make a monetary contribution in the amount of \$17,860.00: Stephen Cafiero c/o James Cafiero, Esq.: Block 95.03; Lot 15; Middle Twp., Cape May County; file #0505-08-0004.1

Rick Riccardi stated that property owner James Cafiero was present to answer any questions. He stated no house was ever built on this property. Mr. Riccardi explained the Mr. Cafiero purchased three (3) lots for his sons throughout the County; none of the lots are contiguous, and he never subdivided the parcels.

Mr. Cafiero reiterated the fact that no house was ever built on the property and expressed concern that his proposal was denied at the last meeting due to the misunderstanding of that fact as represented in the meeting minutes. Additionally, he was concerned that the Council may have believed that he had taken "another bite out of the apple" which may have resulted in the negative finding.

Mark Renna states the minutes from the previous meeting were inaccurate, because this was a comment about a single-family homeownership and how many times each of us gets the right to build a house and claim an exemption for single-family homeownership. He was referring to a situation where people have a primary home and they have a beach house, they have a house for themselves, have a rental property, they have a property they are going to build for resale, or have a property they are going to use. He was not indicating, and he has no knowledge, as to whether or not this project has already been built or if there was a house already on the property.

John Tiedemann stated that before the Council, is a request to reconsider accepting an in lieu fee of \$17,860 instead of the applicant following the permit which requires the use of mitigation banks. That is what was before us at the last meeting, and what was voted on. The vote was not to accept the fee, and to send it to the bank. The Council is being asked to reconsider that.

Mr. Tiedemann stated the minutes will be corrected to the fact that there is no house on the lot.

Mr. Tiedemann asked the staff whether the permit condition requiring the applicant to purchase 0.47 credits from the Stipson Island mitigation bank has been modified?

Linda Taylor, of the Office of Dispute Resolution, stated that the permit has been appealed. It is with the office of Administrative Law and has been referred to the Office of Dispute Resolution within DEP.

Mr. Tiedemann asked how the Council can make a decision if the permit is under appeal?

Ms. Taylor stated that in the mediation under the Office of Dispute Resolution, a potential resolution of the appeal would be acceptance by the Council of the single family contribution. The request was brought to the Council, and they voted on it. However, it appeared there was some misinformation and the applicant asked for his case to be reconsidered. The Department agreed and it was granted.

Mr. Tiedemann, as a member of the Council felt that the Department is dumping these issues on the Council. It is the Department's responsibility to address an appeal, not "dump it" on the Council.

Susan Lockwood stated that an action by the Council was a possible resolution to the appeal.

Mr. Tiedemann stated that the Council had already voted.

Linda Taylor stated that Council action was a possible resolution. She was not involved in the original mediation, but it was her understanding the mediator does not come up with the resolution – the resolution is discussed between the requestors and the staff. So it is not the Office of Dispute Resolution who is trying to dump this on the Council. She is trying to seek a resolution to the appeal. If it cannot be resolved here, that is fine.

Mr. Tiedemann stated that Mr. Cafiero has a permit that has a stipulation on it. They (the Council) are not regulators – they are not involved in the appeal. The permit modification does not come before the Council.

Susan Lockwood stated at there was a previous applicant, Mr. Garrigan. This was exactly the same scenario – he had a permit condition to use the bank, and he came before the Council. The Council in that case, decided that it was acceptable to take a donation. Once the Council agreed, the Department went back and revised Mr. Garrigan's permit to change the permit conditions to accept a donation. So if indeed the Council agreed and this became the resolution to the permit appeal, then, yes, the DEP would have to go back, and change the permit to reflect the fact that a donation to the Council is an acceptable option. So this request is not out of order. The DEP is not going to change the permit first because the Council could say “no” to the contribution.

John Tiedemann did not remember Garrigan. He felt the Department was placing the Council in a precarious situation to make regulatory decisions. If there is a bank in the service area, the bank would be the appropriate option.

Bob Tucker stated that in his 10 years on the Council, the Council has not failed to approve a request for a single family donation. He then motioned to accept of the reconsideration request to make a donation in terms of the single-family amount and have the donation go to the bank. The donation amount would be used to purchase as many credits as it would buy at the bank.

Susan Lockwood seconded the motion.

Mark Renna stated that this had been on the agenda for some time. Evergreen sent a letter, because the item has been visited so many times, they felt the Council needs to go through this very carefully before precedent is made. Evergreen opposed the use of in lieu fee. The Cafiero project is 0.47 acres of wetland impact under an individual permit. If you go to the regulations on mitigation, you will see that when you approve a monetary contribution for an individual permit, you will first go through steps where you actually calculate the amount of money it would cost to replace the wetlands. The issue is replacing wetlands with wetlands, if that is what the Freshwater Wetlands Act is all about. Banks risk millions of dollars to replace wetlands in advance. Bank credits remain unsold. The Cafiero project, obtained an individual permit for a ½ acre of impact. They are proposing to give \$17,000 to the Council. How much wetlands does that replace? At the Stipson Island bank, the banker received a 4-1 ratio for wetland enhancement. That means that to replace 0.47 acres at the Stipson Island bank, it would require 1.88 acres of wetland enhancement. He stated that in his letter to the Council, he wrote that Mr. Cafiero would have to find 2.5 to 3 acres of land, design a project to build and monitor a wetland for 5 years, or the Council would inherit that \$17,000 and the Council would be required to do that to replace the wetlands lost on behalf of the citizens of New Jersey. So he stated that the in lieu fee amounts should be the amount to actually replace the 0.47 acres. If Mr. Cafiero finds his own mitigation site, and builds it, he would

be under no obligation from the wetlands mitigation bank. But he believes that in the hierarchy that use of bank credits, should be much higher than the in lieu fee.

DAG Jill Denyes stated that Mark Renna's assessment of the regulations is correct in that an Individual Permit is ineligible for the single-family homeowner in lieu fee.

John Tiedemann stated that we now know that this an individual permit. He has been on the Council for 11 years. The Council is the last place you wind up. The Council is sitting here and DEP is saying the applicant should just give a contribution to the Council. Appointed Council members have no regulated authority. Why should the Council tell them this may be inconsistent with the regulation and how does that wind up in the Council's lap?

Linda Taylor stated she did not make the recommendation sending the project to the Council. It was not a recommendation by the mediator. She is unsure if it was by a DEP employee.

Rick Riccardi stated that the applicant has done everything that the Department has directed him to and that the Office of Dispute Resolution recommended coming to the Council as part of the appeal process. He also restated that he thought it was unreasonable to ask Mr. Cafiero to purchase credits from a bank for almost \$200,000 when the house at its highest value would be worth \$250,000; that in addition to the permitting, engineering and construction costs would make the approximate final cost of the project \$450,000.

John Tiedemann asked why is this before the Council?

Susan Lockwood stated that the suggested way to resolve the appeal is to allow the use of the single-family contribution. The problem is that the only one who can accept single-family contributions is the Council. If the DEP could have done it on their own, they would have done it on their own, but they cannot do it on their own because the Council is the only entity that can say yes or no to contributions.

Bob Tucker restated the motion to accept the reconsideration request to make a donation in terms of the single-family amount and have the donation go to the bank. The donation amount would be used to purchase as many credits as it would buy at the bank.

Mark Renna asked is that motion legal? He said this motion was not reconsidered – it was a specific motion to send \$17,000 to a bank to buy .05 credits to replace 0.47 acres of lost wetlands in Cape May.

DAG Jill Denyes stated yes, that the motion is legal.

John Tiedemann stated the permit did not request that a contribution should be made to the Council. He asked was not the permit the legal binding document?

Susan Lockwood said it was appealed. Once it is appealed, the applicant can say "yes we took your permit, we have issues with your permit, we are appealing your permit". So the whole thing was reopened to reexamination and reconsideration through that appeal process.

Can this Council collect in lieu fee money under an individual permit when the rules require the use of a bank?

DAG Jill Denyes stated the regulations are binding upon the Department. She then went on to clarify that Council Members are not employees of the Department but rather members of the public. They are being asked to consider the problem.

John Tiedemann stated that in the recent past the Council has accepted the single family in-lieu fee and directed applicants to the bank within their Service Area. So far in doing that no one has come back to the Council and said the bank didn't want to accept the in-lieu fee for the purchase of credits.

Susan Lockwood stated that for all of the other recent cases that had been handled in the same manner, the in-lieu fee had been accepted by the mitigation bank within the Service Area of the project,

Mark Renna stated that Stipson's Island Bank would not accept the in lieu-fee in order to purchase any credits.

Linda Taylor then questioned what type of resolution does that offer the Cafiero's if the banker would not accept the in-lieu fee?

John Tiedemann explained that the Council has no authority over the banks or bankers. As a result the applicant would go back to the Office of Dispute Resolution.

John Tiedemann made a motion to reconsider the agenda item.

Claudia Rocca seconded the motion.

All of the members voted unanimously in favor of reconsidering the agenda item.

John Tiedemann then made a motion that the discussion was closed and that the Council vote on Dr. Bob Tucker's previous motion.

Bob Tucker made a motion to accept the donation.

Susan Lockwood 2nd the motion.

Bob Tucker voted yes.

Susan Lockwood voted yes.

Claudia Rocca voted yes.

John Tiedemann voted no.

Due to the need for four people to vote yes (a majority of the full Council of seven), the motion failed.

Request to make a monetary contribution in the amount of \$236,491: Texas Eastern Transmission, and the Algonquin Gas Transmission, LLC, NJDEP Permit No. 0000-11-0004.1; NJ-NY Project located in the City of Linden, Union County; City of Bayonne, city of Jersey City, City of Hoboken, Hudson County; and Hanover Twp., Morris County

Mike Luchkiw of Decotiis, FitzPatrick, Cole & Wisler, LLP, Mike Tyrell of TRC and Gus McLaughlin of Spectra Energy

Mike Luchkiw of Decotiis, FitzPatrick, Cole & Wisler, LLP stated that he was here on behalf of the applicant along with his colleagues in order to make a presentation and to answer any questions that the Council may have regarding the proposal.

John Tiedemann asked if there are banks in this particular region.

Susan Lockwood stated that the line went through the Pio Costa service area, but they did not have any forested impact within that service area, but they did have forested impact in the Port Reading service area. However, Port Reading does not have freshwater wetland/forested credits.

John Tiedemann asked if this should be handled the same way (as the previous application). Should the Council accept the monetary dollar value but send it to a bank, rather than have it be in contribution to the in lieu fee?

Susan Lockwood stated there is no bank serving the area. DEP has to make the determination, when establishing a bank what the service area will be. It is possibly to have extended (secondary) service areas but to date DEP has not provided such areas in the banks in the State. Therefore, the mitigation cannot be sent to an adjacent bank that was not originally established to serve the area of the impact.

John Tiedemann asked if it would be agreeable to look outside the service area, if this were the dollar value to be accepted, and the applicant will pay the bank rather than make the contribution. He stated he didn't understand why the Council could not accept a contribution and direct it to the nearest bank. He made the motion to accept the monetary dollar value and to direct that money to purchase appropriate credits of the appropriate wetlands at the nearest bank to the particular project site.

Mike Tyrell of TRC stated for the record that they had tried to purchase credits but they were required to look in the service area.

Mr. Tiedemann stated that if the Council accepts the contribution, it would accept the \$236,491 and direct the applicant to take that amount of money and purchase appropriate wetland type credits from a bank, outside of the service area. He asked the applicant if that was agreeable?

Mr. Tyrell stated procedurally, yes, but that amount does not reflect the number of credits we have to purchase. We have .14 acres of wetlands impact.

Mr. Tiedemann stated that what the Council has before them, is the monetary contribution of \$236,491, and his motion is to suggest that rather than make a monetary contribution to the wetlands mitigation fund, you take that same amount as we have done with the previous project, find the appropriate bank, and purchase however many credits that bank can release to you at that amount.

Mark Renna asked Mike Luchkiw and Mike Tyrell about the report by staff and Council indicates that of the 0.56 acres of impact to freshwater wetlands, 0.144 is forested. They asked the Council to donate funds to cover the 0.144 acres. What mitigation is being done for the remainder of the impacts?

Mike Luchkiw responded that they are doing in-kind, onsite restoration for the wetlands that are disturbed; the scrub-shrub wetlands can become scrub-shrub again, but they cannot have forested wetlands on the pipeline.

Mark Renna stated the cost basis of \$236,000 is based on 0.14 acres of impact, and then a 2-1 ratio, to create 0.28 acres of mitigation in this part of the state. All costs of mitigating, obtaining property, dealing with contamination, are part of the calculation for the contribution. He also mentioned that the utility runs through the service area of the MRI3bank. This bank was not considered but maybe it should be.

Susan Lockwood stated that if it had been appropriate to purchase tidal wetland credits to satisfy the mitigation requirement for forested, freshwater wetlands, those credits would have been purchased at the Port Reading Bank since that is the nearest bank to the impacts.

Mark Renna stated that the Council has \$8 million in the account, it is going to be \$8.236 million after this vote. Will that money be used to actually replace these lost wetlands?

Bob Tucker made the motion to vote approve the contribution.

Susan Lockwood seconded the motion.

Bob Tucker votes yes
Claudia Rocca voted no
Susan Lockwood voted yes
John Tiedemann noted no

Due to the need for four people to vote yes (a majority of the full Council of seven), the motion failed.

Susan Lockwood asked now what are they supposed to do?

Bob Tucker made a motion that the Council accept the monetary contribution but direct it to the most appropriate bank they can find.

John Tiedemann stated that the Council has \$8 million dollars and is doing nothing with it. The applicant is willing to take \$230,000 and actually do something with it and that's a good thing.

Susan Lockwood stated for the forested impact it would be most appropriate to direct them to the Pio Costa Bank, because they are having an impact in that service area. They do not happen to be forested impacts, but Pio Costa definitely has some forested wetlands so for the record I will direct them to that bank.

John Tiedemann stated the motion again is to accept the dollar figure; the new motion is to accept the dollar amount of \$236,491 as an appropriate figure and direct them to the best and most appropriate bank.

Claudia Rocca questioned whether the council needed to be involved (i.e. make a motion) in directing the contribution at all?

Susan Lockwood stated that Claudia Rocca was correct and no motion was needed. Since we told them the Council will not accept the in lieu fee it is now up to them and the Department to find an alternative for their money.

John Tiedemann stated that he would like the minutes to reflect that his suggestion is to find the appropriate bank from which to purchase credits and that it is his opinion that this is probably the most positive thing the Council has done in a while.

Presentation by Donald C. Gates, Clean Communities Coordinator and Environmental Commission Member for Conceptual Approval of a \$14,000 Wetland mitigation Grant proposal for Many Mind Creek Wetland Restoration; Borough of Atlantic Highlands, Monmouth County

Adam Hubeny, the Borough Administrator of the Atlantic Highlands in Monmouth County, spoke about Mr. Gates, who is on the Environmental Commission, and has spent a lot of time looking at and surveying the Many Mind Creek. He also thanked the Council, on behalf of his governing body, for the opportunity to present their project.

Donald Gates stated the reason they came to the Council is that they attended the Conservation Rally in March, and spoke to Mr. Tiedemann and Susan briefly. They discovered the amount of money that is available and hope to apply for a grant to maintain the environmental nature of a portion of Many Mind Creek.

The location of the project starts at East Washington Ave., and runs down to where Lakeside Ave intersects. At this point, it runs along Sears Ave and then heads in a different direction. The part we are concerned with is directly along Sears Ave which is an asphalt paved road. A lot of people access their homes via State Hwy 36 and Sears Road. A lot of traffic on that road affects the site and the stream and a lot of erosion has been coming from a development called Thousand Oaks where the stormwater drains. They end up with a very heavy flow through the area of the proposal, then it flows all the way down through the watershed and again heads across Rt. 36, and the second time into Sandy Hook Bay. The source of the creek, one branch of the creek, is located adjacent to Thousand Oaks. The problem is during a storm, the runoff runs to developed areas, and increases flooding and the creek bed is eroding away. The wetlands are being degraded and threatened as well downstream. The whole watershed is being threatened by sediment, and destruction of the creek bed.

The Borough realizes that there may be a connection with their stormwater management plan. A stormwater study was done with a report published in 2008. There have been some methods used in the past that attempted to slow down the erosion. He feels that some methods of revetment or rip-rap with space for natural and native plants to come back in are preferable. Our conceptual proposal is concerned with a 460 foot section of the stream. He stated that are looking for money to study a solution of the caving in of the roadway and the banks and looking for funding of the preservation of the wetlands.

Claudia Rocca questioned what Mr. Gates meant by preserve? What steps would the Borough be taking in order to preserve the wetlands?

Mr. Gates stated that the Borough would hire an engineering firm to advise them on how they could keep the banks from collapsing, incorporating native plants, and exploring how the invasive species could best be controlled on the site. He also added that he felt that the Knotweed may be beneficial in helping to curb erosion on the site.

JoDale Legg offered that the effect of invasive knotweed is quite the opposite. Actually knotweed causes erosion. She went on to explain that the Borough would need to remove the existing soil and bring in fresh material in order to get rid of the rhizomes.

John Tiedemann stated that since the Council had given conceptual approval they would like to see a plan depicting what the riparian zone would entail. He stated that he was a bit uneasy because he didn't believe the Council should be paying for rip-rap but definitely the revegetation of the area especially if they see a plan that would work.

Claudia Rocca stated that as proposed, the activities would likely require permits and the DEP would most likely point the Borough towards bioengineering in lieu of rip-rap.

John Tiedemann stated that moving forward the Council would like to see a conceptual plan and an itemized budget showing the amount of money the Borough would be requesting.

Mr. Hubeny expressed concerns over timing. Specifically, he was concerned about the time that it would take to obtain the information that the Council requested versus the shelf-life of the short term fixes that the Borough employed to alleviate the problems.

Madhu Guru stated that the applicant would also have to meet with DLUR in order to ensure that the proposed project is able to obtain the necessary permits. Additionally, she stated that DLUR would work with the Borough to issue an Emergency Permit if they found they needed to conduct their repairs prior to the completion of all of the items requested by the Council.

John Tiedemann made the motion to entertain the full proposal for the project.

Susan Lockwood seconded the motion.

Bob Tucker votes yes
Claudia Rocca voted yes
Susan Lockwood voted yes
John Tiedemann noted yes

The motion was passed unanimously by the Council.

Presentation by Evergreen Environmental, on behalf of Transcontinental Gas Pipe Line Company, for approval of a Land Donation; Permit #0718-10-0002.3; Block 6301, Lot 20 and Block 6701, Lot 9, Fairfield Twp., Essex County

Jamie Holt of Evergreen Environmental stated there are two permits involved – one is for the Stanton Loop in Watershed Management Area 8, and the second is for the Caldwell replacement and compressor station 303 in WMA 6. Although the impacts are in two individual permits, it is considered to be one linear project. Evergreen's proposal for mitigation is to do a substantial wetland and riparian enhancement project in WMA 8 which addresses almost 80% of the mitigation required for the entire linear project. There was a small amount of wetland and riparian mitigation leftover that could not be satisfied at the enhancement site, so Evergreen is proposing the donation of two sites in WMA 6 to make up the difference. Both permits require riparian and wetlands mitigation. Because you cannot buy riparian mitigation credits from a bank, some kind of off-site mitigation would be required to satisfy the debt. The enhancement site in WMA 8 is on

Cakepoulin Creek which is 2.6 miles from the Stanton Loop. Evergreen is not asking for approval from the Council for the enhancement site; they are asking for the Council to accept the land donation of these two properties as a part of an overall mitigation package which includes the off-site enhancement project.

Brett Berkeley of Greenvest asked if the land donation was meant to satisfy the outstanding riparian zone impacts?

Jamie Holt responded that the land donation was meant to satisfy both outstanding riparian and wetland impacts.

Mr. Berkeley then went on to inquire whether the projects were to be split between WMA 8 & 6. He recognized that the Department does not officially recognize riparian banking but stated that there are 2 banks that are approved in WMA 8 (Cranbury and Wycoff). He went on to state that nearly all of Cranbury Bank's (owned by Greenvest) 138 acres with the exception of 15 acres are within the riparian zone and the bank has wetland credits available. He went on to further state that Evergreen is the biggest advocate in New Jersey for the Mitigation Banking industry and though they appreciate that, Greenvest also have credits to sell.

Jamie Holt responded that Evergreen understands that but at the time when they purchased credits the Greenvest Bank in WMA8 didn't have any credits available.

Mr. Berkeley countered that though Cranbury Bank didn't have any credits available because they were approved in 2010, Wycoff Mills Bank most certainly had credits available.

Bob Tucker asked who the land would be donated to?

Jamie Holt stated that since the Borough of Fairfield owns almost everything adjacent to the site however, Evergreen has donated most of their land up here to Natural Lands Trust and that is the requirement in the permit.

Claudia Rocca stated that it would be helpful if the staff provided additional information on the specific permit conditions on the project.

Stacey MacEwan stated that she included conditions that stated the site had to be fully characterized for contamination, submit a plan that include a metes and bounds description of the property, and include a Department approved Conservation Restriction placed upon the property.

Jamie Holt stated that both sites had been characterized and there were no signs of contamination or dumping onsite. They will of course record the Conservation Restriction as soon as it is approved and charitable land donation is a condition of the permit and they have some time for that as they are not going to donate the land prior to obtaining approval.

Brett Berkeley asked why the Department is considering the approval of a land donation when there are approved banks with credits to sell in the Service Area? He also went on to say that Evergreen can't have it both ways.

Mark Renna stated that the project is offsite enhancement and that the land donation is only for a portion of the project. He restated the fact that riparian banking is not yet available but Evergreen is waiting for the time when it would be.

Brett Berkeley stated that there is no reason why Evergreen couldn't purchase credits to satisfy the riparian impacts in Greenvest's Bank as most of the bank has both riparian and freshwater wetlands.

Jamie Holt questioned whether a Flood Hazard permit had ever been able to purchase riparian credits?

Susan Lockwood stated that if there are overlapping riparian and freshwater wetland impacts that the Department has and would allow the purchase of credits from an approved mitigation bank that was in a riparian zone.

Claudia Rocca questioned whether the Council should have the applicant go to the bank within the Service Area and purchase credit.

Bob Tucker stated that they had already purchased the property and if they were denied then, the applicant would have to come up with another project in addition to the credit purchase.

John Tiedemann stated what was before the Council is whether the land donation is acceptable to satisfy the mitigation requirement .

Susan Lockwood motioned approve the land donation.

John Tiedemann seconded the motion.

Susan Lockwood voted yes

Claudia Rocca voted yes

Bob Tucker voted yes

John Tiedemann voted yes

The motion was approved by the Council unanimously.

Request by Doug Lashley, representing GreenVest, for Mitigation Council to contribute \$636,000 to purchase credits from the Rancocas Mitigation Bank

This item was pulled from the agenda

Old Business

Public Comment

Executive Session

None

The next meeting date has been scheduled for January 29, 2013.