

New Jersey Freshwater Wetlands Mitigation Council
Meeting Minutes of March 4, 2014
9:30 am
New Jersey Department of Environmental Protection
501 East State Street, Hudson Room
Trenton, NJ

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on February 11, 2014.

Review and approval of the December 3, 2014 Council meeting minutes.

Susan Lockwood motioned to approve the minutes. Claudia Rocca seconded the motion. Yang Deng abstained from voting; all other council members voted in favor of approving the minutes.

Update on the Mitigation Fund.

Jill Aspinwall stated that the current balance of the wetland mitigation fund is \$8,623,042.19 as of January 31, 2014. Ms. Aspinwall stated that she has undertaken a review of all the open Council grant agreements in order to determine the exact amount the Council remains contractually obligated for payment. In addition, Ms. Aspinwall provided an update on the Cadwalader Park and Union County projects. The Cadwalader Park project has been constructed and the applicant is currently working on bringing the monitoring reports up to date. Union County was given a deadline of February 28, 2014 to submit all required paperwork to bring their grant agreement into compliance and to seek reimbursement. Ms. Aspinwall stated that Union County emailed a request on February 28, seeking additional time to locate the files necessary to submit Attachment C of the grant agreement. Ms. Aspinwall asked the Council if this request should be granted. The Council gave Union County an additional 2 weeks to submit the required information. Mark Renna requested that the Council determine if the project was successful and that they should require that the land be placed under a conservation restriction.

Total Amount Outstanding in Contracts: \$581,512.93. The Council has three conceptual proposals that have been approved that total \$4,202,036.00. There are two full proposals before the Council today. These projects together total: \$908,149.92. If the Council full funds every project listed the new balance in the fund would be \$2,931,343.34

Update on the status of approved Wetland Mitigation Banks.

Jill Aspinwall stated that from the last time the Council saw this document, there was one change. One credit was sold from the Cranbury Bank, leaving 2.399 credits available for sale. Ms. Aspinwall stated that this document is not a static document so there may have been some changes since the date the report has been run.

Ms. Aspinwall requested that the Council remove the banking ledger from the agenda for future meetings.

Claudia Rocca requested that banking information should be made available to the Council when it is pertinent to a decision by the Council. Ms. Aspinwall stated that it would be pertinent when reviewing a monetary contribution and that staff comments can include information on whether or not there is a bank within the service area and whether or not it has credits available.

Mark Renna stated that there are errors on the ledgers and recommended that this information continue to be available to the Council. It is useful to see the total number of credits available across the state. Currently there are over 300 credits available and most of the state is covered by a bank. In addition, he has previously commented that Pio Costa has no credits to sell and that the bank ledger be updated accordingly.

Sue Lockwood stated that it is the Department's responsibility for maintaining the bank ledgers and for overseeing the banks. Dave Roth and Yang Deng asked whether or not this ledger could be posted on the website. Jill Aspinwall stated that all approved banks are identified on the website. The website indicates the service area for each bank, the contact person for the bank, and whether or not credits are available. Dave Roth stated that there is a date on the ledger. Claudia Rocca asked whether or not it is necessary for the Council Meeting. Sue Lockwood stated that it is a Department decision and that the Department is not a broker. Claudia Rocca motioned to remove the item from future agendas. Sue Lockwood seconded the motion. Dave Roth and Bob Tucker abstained; all other Council members voted in favor of removing the ledger from future agendas.

Old Business

Approval of resolution for Ocean County Department of Engineering for approval of a land donation to satisfy mitigation requirements for permit #1507-09-0147.4 for Ocean County College Road Improvements and #1507-12-0022.1 for Fisher Boulevard Improvements in Ocean County, New Jersey.

Susan Lockwood stated that the reason this is back on the agenda is that there is an outstanding resolution. The County has withdrawn any suggestion that the land donation will be used for any other purposes included banking.

Patti Burns asked what ratio was used? Is the donation sufficient?

Susan Lockwood stated that using a 27:1 ratio, the County exceeds the requirement for mitigation. The County needed approximately 60 acres of land and they are restricting 184.66 acres. In addition 28.11 acres that have been removed for the swamp pink and will not be used for wetland mitigation. In the end the County is preserving 156.55 acres, when they were required to donate 60 acres.

Patti Burns asked of the 156 acres, what percentage is wetland and what percentage is upland?

Claudia Rocca stated that this information is on page 2 and 3 of the resolution. Ms. Rocca also stated that land donation doesn't matter whether the property is wetland or upland.

Bob Tucker stated that preserving the parcel is good, but he is uncomfortable with the procedure and it should be a do over. Proper procedure should be to start again. He stated that the Conservation Foundation recently sent a letter stating that the swamp pink should be protected. Dr. Tucker stated that Steve Mars from USFWS had previously spoken about a number of things that could be done to protect the swamp pink.

Claudia Rocca stated that the Council approved the proposed land donation in July 2013. When the resolution came up for a vote, Council members changed their vote. Ms. Rocca stated that a resolution is a memorialization of a Council decision.

David Roth stated that it is not within the Council's purview to determine the applicability of a permit. The public was well aware of the issues before the close of the public comment period of the Individual Permit Review. The permit is the Department's responsibility.

Claudia Rocca stated that there was ample time to allow public comment during the permitting review process and that the Council is a separate body. The Council was asked if these were acceptable lands at proper ratios? The Council voted yes.

Yang Deng stated that permitting is out of our scope, the project is valuable.

Claudia Rocca motioned to approve the resolution

David Roth seconded the motion.

Jill Aspinwall conducted a roll call:

Yang Deng: Yes
Bob Tucker: No
Susan Lockwood: Yes
Claudia Rocca: Yes
Patricia Burns: No
David Roth: Yes

Approval of a resolution for conceptual approval for funding in the amount of \$49,000 for Skillman Park Wetland Enhancement, Block 260001, Lot 1, Montgomery Township, Somerset County.

Susan Lockwood motioned to approve the resolution.

Claudia Rocca seconded the motion to approve the resolution.

Mark Renna recommended that the applicant be notified about 15.20(b) that a conservation restriction must be in place prior to receiving Council funding.

All Council members voted in favor of approving the resolution.

Approval of a resolution denying conceptual approval for funding in the amount of \$349,969.00 for Newark Wetland Restoration and Enhancement, Block 5078, Lot 91, City of Newark, Essex County.

Susan Lockwood motioned to approve the resolution.

Bob Tucker seconded the motion to approve the resolution.

All Council members voted in favor of approving the resolution.

Approval of a resolution for conceptual approval for funding in the amount of \$2,093,000 for Kittatinny Valley State Park – Kenco Acquisition, Block 29, Lot 28; Independence Township, Warren County.

Susan Lockwood motioned to approve the resolution.

Bob Tucker seconded the motion to approve the resolution.

All Council members voted in favor of approving the resolution.

Mark Renna recommended that the applicant be notified about 15.20(b) that a conservation restriction must be in place prior to receiving Council funding. This comment was duly noted by the Council.

Approval of a resolution for conceptual approval for funding in the amount of \$1,969,036 for West Branch Elizabeth River Wetland and Stream Restoration, portions of Block 184, Lot 3, Kenilworth Borough; Block 2719, Lots 12-14/ Block 3106, Lot 1/Block 3003, Lot 1, Union Township, Union County.

Susan Lockwood motioned to approve the resolution.

Bob Tucker seconded the motion to approve the resolution.

All Council members voted in favor of approving the resolution.

Mark Renna recommended that the applicant be notified about 15.20(b) that a conservation restriction must be in place prior to receiving Council funding. This comment was duly noted by the Council.

Approval of a resolution for a monetary contribution in the amount of \$174,003.21 for NJDEP permit #1216-13-0001.3 for Perth Amboy Terminal Phase 2 Project-Terminal Marine Dock System Upgrades; Blocs B481, 484; Lots L1 and L1.10, Perth Amboy, Middlesex County.

Susan Lockwood motioned to approve the resolution.

David Roth seconded the motion to approve the resolution.

Mark Renna noted in approved minutes that this is in assumed areas. Part of the issue is the Council collecting monetary contributions from non-assumed waters.

Susan Lockwood stated that the wetlands on site were cut off from the tide. Generally the Department checks with the USACE to determine if a USACE permit is required. If the project was in non-assumed waters and the USACE required mitigation, the applicant would not have been able to come to the Council.

Mark Renna stated that there is a wetland mitigation bank that contains the impact within the service area. The applicant was not approved to use the bank.

Susan Lockwood stated that this question goes to permitting. The permitted process determines assumed or non-assumed. If the USACE had taken jurisdiction, they would not have come to the Council. The Department determined that the wetland on property was freshwater wetlands and that Port Reading has coastal credits and therefore was not appropriate for use.

Claudia Rocca stated that the Department made the determination as to the type of permit required.

Patti Burns abstained from voting.

All other Council members voted in favor of the resolution.

Request by GreenTrust Alliance and NJDEP DFW for final approval on funding in the amount of \$851,649.92 for wetland enhancement/restoration activities on the Lenape Farms portion of the Tuckahoe Wildlife Management Area; portions of Block 54, Lot 1; Estelle Manor City, Atlantic County.

Jill Aspinwall stated that this is a project that the Council members recently heard a presentation on. Ms. Aspinwall stated that the applicant was present and willing to give a presentation. She asked whether the Council preferred the applicant to focus on the minor changes and the budget request. The Council members agreed to focus on the minor changes and the budget request.

Brian Cramer, GreenTrust Alliance, stated that there were minor changes, but the majority of the application was unchanged. GreenTrust Alliance removed the budget line for Financial Assurance as this was deemed to not be required since the NJDEP Division of Fish and Wildlife was an applicant. Mr. Cramer proposed a payment milestone, in that there would be an advance payment for milestone one and once the Department and the Council agree that all deliverables were met for that milestone, payment for the next milestone would be released. Because of this payment schedule, Mr. Cramer requested waiver of the 10% retainage fee, typically associated with Council grant agreements.

Patti Burns asked what type of permits are required?

Brian Cramer responded that a GP 16, Flood Hazard IP and soil erosion permits were necessary.

Patti Burns asked if the fees were included within the budget. Brian Cramer responded yes.

Yang Deng asked if the Council was the only funding source. Brian Cramer responded yes.

Patti Burns asked what the applicant was expecting to find when conducting the ecological risk assessments. Mark Gallagher, Princeton Hydro responded that they were expecting data below screening level due to the historic nature of the property. Ms. Burns continued to discuss the budget details with Mr. Cramer. Ms. Burns asked how big the site is. Mr. Gallagher stated that the restoration area is 18 acres, however it is broken down into four sites, that each require its own set of permit plans. Ms. Burns indicated that this is a top heavy program, and a lot of financial effort for an 18 acre site.

David Roth asked whether or not the state could reduce the permit fee.

Susan Lockwood stated that the GP 16 has no fee and that the FHA rules do not provide for permit fee reduction.

David Roth asked if any funds are not used, would they be returned to the Council and can the applicant move money around to different budget categories without Council approval.

Jill Aspinwall stated that the way that the payment schedule is set up, assuming Council approval, if not all money is spent within a payment milestone, the amount of money for the next milestone would be reduced accordingly. In addition, the applicant would need Council approval to move money from one budget area to another in accordance with the Grant agreement.

Mark Renna stated that a conservation restriction in accordance with N.J.A.C. 7:7A-15.20(b) be in place prior to the release of Council funds. Mr. Renna asked whether or not this project is within assumed areas. All of the project is above mean high water.

Susan Lockwood stated that she did not know for certain, there has been some correspondence with the Philadelphia USACE. The applicant would have to check to see if the USACE would require a permit.

Sam Reynolds from the Philadelphia USACE outlined the process for a JD from the USACE and explained the rationale on how the USACE determines whether or not they would take jurisdiction of the site.

Bob Tucker motioned to approve the request for funding pending final resolution of assumption. Patti Burns seconded the motion to approve but further requested a detailed breakdown of the budget.

All Council members voted in favor of the motion to approve the request for funding pending the final resolution of assumption and a detailed review of the budget.

Request by Somerset County for final approval for funding in the amount of \$56,500 for Skillman Park Wetland Enhancement, Block 260001, Lot 1, Montgomery Township, Somerset County.

Jill Aspinwall stated that this is a proposal that the Council had recently seen. Mark Gallagher, Princeton Hydro was present to answer questions.

Mark Gallagher stated that the project budget was revised based on staff comments and Council recommendations to incorporate some baseline sediment sampling. The budget has increased from \$49,000 to \$56,500.

Sue Lockwood asked if the County has any concerns regarding the placement of a conservation restriction. Tom Bocchino, Somerset County, stated that the County has no concerns over the placement on a conservation restriction.

Bob Tucker motioned to approve funding for this project.

Yang Dang seconded the motion to approve funding for this project.

All Council members voted in favor to approve funding for this project.

Mark Renna thanked the Council for putting the requirement for a conservation easement in writing.

Presentation by staff on Council meeting guidelines and procedures

Jill Aspinwall stated that the document on Council Meeting Guidelines and Procedures was originally approved on December 10, 2004 and has been updated for Council review. The procedures set forth basic ground rules for a meeting and sets out three options for taking public comment. The options include:

OPTION 1:

- Public Comment will be taken immediately following the Open Public Meeting Statement and again at the conclusion of the meeting. Public Comment per person will be limited to 5 minutes during each comment period.

OPTION 2:

- After staff and council members have the opportunity to discuss agenda items and hear any presentation on the topic, the Council Chairperson will open the floor to public comments.

- The Public will have an opportunity at this time to come forward and provide comment on that particular agenda item only. The public will be asked to come forward, state their name for the record, and then make their comment. Public comment will be limited to 3 minutes per person and must remain relevant to topic.
- After receiving public comment, the Council will make their decision.
- Public Comment will also be taken at the conclusion of the meeting. Public comment will be limited to 5 minutes per person.

OPTION 3:

- After staff and council members have the opportunity to discuss agenda items and hear any presentation on the topic, the Council will make their decision on the project. The Council Chairperson will then open the floor to public comments. Public comment will be limited to 3 minutes per person and must remain relevant to topic.
- Public Comment will also be taken at the conclusion of the meeting. Public comment will be limited to 5 minutes per person.

Yang Deng stated that he would recommend option 2.

Yang Deng motioned to approve option number 2.

David Roth seconded the motion to approve option number 2.

Mark Renna state that option number 2 is great, but when making a proposal, there is no other dissemination of information prior to the vote. People need input prior to a vote.

Susan Lockwood state that this board operates similarly to the rest of the state. Written comments submitted prior to the meeting do not have equal weight to verbal comments.

Claudia Rocca stated that any substantive comments could be submitted in writing to Council staff.

Emile Devito, the Conservation Foundation stated that sometimes everything happens in one day. Mr. Devito state that he supports option number 2 and is glad that the Council supports that as well. Mr. Devito suggests that the Council specifically say “any public comment?” If nobody says it, people may not realize that they could speak at that time.

David Roth stated that in general anything that promotes public comment and transparency is a good thing.

The document will be revised according to comments received and will be presented at the April 1, 2014 Council meeting.

Presentation by staff on grant application procedures

This is another document that the Council had previously approved. It has been updated and revised. The idea would be to have the guidelines in place to guide applicants and eventually these procedures would be incorporated into the ILF document.

Claudia Rocca stated that she liked the idea of the guidance.

Mark Renna stated that he had the following comments. The proposal should require applicants to identify whether or not the project is in assumable or non-assumed waters. Ninety days advanced notice to a body that meets 6 times a year is too long and restrictive. In Appendix A: delete "tidal". Appendix C: A vote by the Council will make this checklist law. The checklist has issues that warrant technical input and discussion. Item 10: 8-12 % organics is baseless and unrealistic and should be eliminated or revised. Item 17: requires a CDR, as should all mitigation proposals pursuant to 15.20(b).

Bob tucker asked if 45 days was adequate time?

Claudia Rocca stated that some boards with funding have a onetime shot at funding, while the Council allows for rolling availability.

Jill Aspinwall stated that for each time frame chosen you need to take 2 weeks off of the review time in order to accommodate the Open Public meetings act requirements.

Sam Reynolds, USACE, stated that references to assumed and non-assumed waters are an issue of assumption and went on to explain the USACE jurisdiction and mitigation.

Patti Burns asked if Mr. Reynolds was suggesting that Lenape Farms request a JD from the USACE.

Sam Reynolds state that the USACE is not in a position to require someone to obtain a JD.

Susan Lockwood state that the Council is operating from our statute and this is important for the proposed In Lieu Fee program, "ILF." There needs to be a way for the Council to address ILF. If there is a good project it shouldn't matter whether it is located in assumed or non-assumed waters. The USACE could agree and that would be great. The ILF document intends to move us there. Regardless of whether assumed or non-assumed, a project may or may not require a permit in addition to state permits.

Emile Devito state that there is no legal reason money collected from applicants could not be used in coastal areas. These projects should be designed to meet sea level rise and should have a good chance of working into the future.

Mark Renna stated that the Council was formed under the Freshwater Wetlands Protection Act but New Jersey is coast to coast. Money from assumed areas may be spent in Lenape but how does the Army Corps feel about money spent in a non-assumed bank. In assumed areas, only

DEP should approve. DEP already received noncompliance letter from the EPA regarding its ILF. ILF and Banks should be treated equitably.

Presentation by staff on draft In-Lieu Fee document

Jill Aspinwall presented the draft ILF document to the Council. Ms. Aspinwall stated that this is a continuation of previous drafts that the Council has seen and is a draft that has not been legally reviewed. Ms. Aspinwall proposed an April 11, 2014 deadline for comments on the document. This would give adequate time for feedback and allow oral comments to be taken during the April 1, 2014 Council meeting. The DRAFT document would be posted on the Council's webpage by the COB March 5, 2014.

Sam Reynolds stated he needs to know what the State wants to do with the Corps. If the document is meant to be a statewide document consistent with the Federal ILF program then that has to be approved by the USACE and the state should go through the Federal IRT process. Mr. Reynolds recommends that the State send a formal letter to both District Heads in Philadelphia and New York to solicit comments. Mr. Reynolds also recommends that the State solicit comments from NOAA and USFWS.

Susan Lockwood stated that the State is taking direction from the EPA.

Bob Montgomerie stated that at this point under assumption the main goal is to ensure that the State's program is as stringent as the Federal rules.

Public Comment

Emile Devito, NJ Conservation Foundation, stated that someone on behalf of Lenape farms made a comment that the cost/acre of mitigation for the project is comparable. An applicant shouldn't compare if the costs do not include land acquisition funds. The Council should look at what you are getting for your dollars. If the project is good it is good for natural resources.

Claudia Rocca stated that the next meeting date has been scheduled for April 1, 2014 and adjourned the meeting.

New Jersey Freshwater Wetlands Mitigation Council Meeting

April 1, 2014

9:30 a.m.

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on March 17, 2014.

Review and approval of the March 4, 2014 Council meeting minutes.

Susan Lockwood motioned to approve the minutes. Patti Burns seconded the motion. Susan Lockwood, David Roth, Patti Burns, and Claudia Rocca voted in favor of approving the minutes.

Update on the Mitigation Fund.

Jill Aspinwall stated that the balance as of February 28, 2014 is \$8,662,562.70 and no monetary contributions were received during this reporting period. The Council has \$1,489,662.85 in contracted amounts and \$2,383,000.00 in approved conceptual projects. The Council should note that the Union County project was withdrawn from consideration. There are two conceptual projects before the Council today totaling \$5,856,136.66. If all projects were approved the Council will have a \$1,066,236.81 deficit.

Patti Burns asked what happens with a deficit.

Jill Aspinwall stated that the Council can conditionally approve projects subject to availability of funds. The Council could also create a list of approved conceptual projects and as funds become available, the money can be allocated to a particular project.

Review and approval of a resolution approving final approval on funding in the amount of \$851,649.92 for wetland enhancement/restoration activities on the Lenape Farms portion of the Tuckahoe Wildlife Management Area; portions of Block 54, Lot 1; Estelle Manor City, Atlantic County.

Dr. Robert Tucker motioned to approve the resolution.

David Roth seconded the motion to approve the resolution.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the resolution.

Review and approval of a resolution approving funding in the amount of \$56,500 for Skillman Park Wetland Enhancement, Block 26001, Lot 1, Montgomery Township, Somerset County.

Susan Lockwood stated that the resolution should be revised to reflect the March 4, 2014 Council meeting.

Dr. Robert Tucker motioned to approve the resolution pending the resolution of the language.

Sue Lockwood seconded the motion to approve the resolution pending the resolution of the language.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the resolution pending resolution of the language.

Presentation by the Lomax Consulting Group on a monetary contribution from Dawn Calderon in the amount of \$623.20 to satisfy the mitigation conditions of NJDEP Permit #1507-06-0127.1; Block 295, Lot 1; Township of Toms River, Ocean County.

Jill Aspinwall stated that Ms. Calderon is a single family homeowner who prepared the monetary contribution in accordance with the Council requirements. The monetary contribution of \$623.20 is a condition of the Waterfront Development permit for construction of a bulkhead for minor impacts to intertidal subtidal shallows.. Ms. Aspinwall stated that Ms. Calderon, her agent and attorney were present if there were any questions from the Council.

Ms. Patti Burns asked if there was a permit associated with the monetary contribution.

Mr. Steve Dalton stated that this was a Hurricane Sandy related waterfront development permit.

Ms. Kristin Wildman, from Lomax Consulting Group, stated that Ms. Calderon suffered severely from Hurricane Sandy as her home was unlivable for 18 months. The bulkhead was designed to be to be in line with the adjacent bulkheads on either side of the property. The bulkhead was approved by a coastal engineer.

Ms. Susan Lockwood stated that for a small impact the Department tries to make mitigation as easy as possible. If there was a bank they would have been sent to a bank.

Mr. David Roth confirmed that if there was a bank, the Department would have approved a bank purchase.

Mr. Steve Dalton stated that Ms. Calderon had received approval in 1996 for revetment which would have resulted in greater impacts to intertidal subtidal shallows.

Ms. Claudia Rocca stated that the monetary contribution was calculated using the \$38,000.00 figure, since any change to that number needs to be approved and noticed by the Department.

Ms. Claudia Rocca asked if there was any public comment.

Mr. Mark Renna stated that Water Management Area (“WMA”) 13 is the only watershed management area that does not have an approved wetland mitigation bank. The permit process

goes back to 2006, why wasn't the bulkhead built then? Mr. Renna also stated that the applicant is not eligible to make a contribution to the Council. Mr. Renna asked whether this was single family home a primary home.

Ms. Susan Lockwood stated that the Department would have checked with the Army Corps of Engineers and if they did not require mitigation then it would be appropriate for the applicant to make a contribution to the Council.

Mr. Steve Dalton stated that this is a single family home and a primary residence and that the monetary contribution is a precondition of approval. He stated that Ms. Calderon went through the process and the proposed bulkhead has a de minimus impact. Ms. Calderon would have preferred no mitigation obligation but agreed to the condition. The Army Corps issued a nationwide permit for this project with no mitigation required.

Dr. Robert Tucker motioned to approve the monetary contribution in the amount of \$623.20.

Ms. Patti Burns seconded the motion to approve the monetary contribution in the amount of \$623.20.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the monetary contribution in the amount of \$623.20.

Presentation by GreenTrust Alliance on a revised budget on the Lenape Farms portion of the Tuckahoe Wildlife Management Area; portions of Block 54, Lot 1; Estelle Manor City, Atlantic County.

This application was previously granted conditional approval pending more detailed budget information to be supplied by the applicant, GreenTrust Alliance.

Mr. Brian Cramer, with GreenTrust Alliance, stated that they had outlined the scope of work under each task and more precisely detailed out the permitting and maintenance and monitoring tasks. Application Fees were included. The maintenance and monitoring tasks identifies two separate monitoring tasks, the traditional wetland monitoring and monitoring requested by NJDEP Division of Fish and Wildlife to conduct a faunal survey for vernal pools. This study is budgeted at \$2497/year, while traditional monitoring is budgeted at \$13,900/year. The traditional monitoring amount includes 15% of the planting costs to cover additional plantings if maintenance is required.

Ms. Claudia Rocca asked whether this affected the overall budget. Mr. Cramer stated that it did not.

Mr. David Roth asked GreenTrust Alliance to clarify the difference between traditional monitoring and vernal habitat monitoring. Traditional monitoring would be monitoring the soils vegetation and hydrology for all four of the wetland sites within the project. Mr. Brett Berkley stated that any funds not utilized would be returned to the Council. Mr. Roth stated that the

NJDEP Division of Fish and Wildlife monitoring is not required. Mr. Cramer stated that it is one of the success criteria; NJDEP Division of Fish and Wildlife requested this monitoring since we are trying to establish a vernal habitat. The only way to document success of the habitat is to conduct the faunal monitoring. Mr. Roth asked if labor for nighttime survey work was included. Mr. Cramer said that it was.

Ms. Patti Burns stated that the mitigation site is 17.5 acres in total with four areas. She asked how often monitoring would occur. Mr. Berkley stated that generally, quarterly monitoring is conducted with more intense monitoring early in the monitoring years. There will be one annual monitoring report generated.

Ms. Patti Burns asked whether there were any cultural resource concerns. Mr. Berkley responded that they were not concerned about cultural resources.

Ms. Patti Burns stated that the advance payment is a fair amount of the cost. Ms. Susan Lockwood stated that that advance payments are somewhat rare but in some cases an advance payment makes sense. The Council approved an advance payment in the Saeger Preserve Dam Removal because initial tests were required to determine the project's viability. Some projects require an initial monetary investment in order to proceed at all. Ms. Lockwood stated that the Council might consider restructuring the payments; however the project would require an advance payment. Ms. Jill Aspinwall stated that the Council has approved many advance payments in the past, and in some cases has approved the entire project amount up front. The proposed payment schedule in terms of grant management is much easier to maintain than constantly receiving requests for reimbursements of each invoice. Ms. Claudia Rocca noted that the project required a lot of upfront costs. She suggested the advance payment could be split into 2 phases and that tasks 8, 9 and 10 should not be included in the first payment. Mr. Brett Berkley stated that he has no issues with this split as it is a logical place to break the budget. Ms. Rocca stated that the 50% GreenTrust Alliance grant administration fee should be broken out between Phase 1A and 1B, at 25% for each phase. If there were any issues that arose, the money would have been spent. Mr. Cramer agreed that it made sense to split the payments in that manner.

Mr. Sam Reynolds stated that the project would likely require a Corps permit. The Corps is required through the Section 106 to ensure compliance with the Natural Historic Preservation Act. Mr. Reynolds recommended that the applicant come into the Corps prior to submission of the permit to begin these discussions. He stated that cultural issues it could deal with as a condition of a permit. Mr. Brett Berkley stated that they would collaborate with the Corps on the permit with the Corps.

Mr. Mark Renna recommended in general, that no funds should be approved until the In Lieu Fee instrument program was approved. He stated that the Council had accepted 48 acres of impact and provided funding for 106 acres. Mr. Renna requested that this information be available to the public.

Ms. Susan Lockwood stated that the vernal habitat survey task is a relatively small amount of money and a vernal habitat is a wetland. The Council needs to be careful to include only those items that relate to the Council's mission.

Mr. David Roth stated that stream restoration may or may not include wetlands, but a vernal habitat is a wetland. Ms. Susan Lockwood stated that by definition it provides unique habitat and we want to know that species are using the vernal habitat.

Mr. Mark Gallagher stated that he had a project that filled a vernal habitat and the Department made the applicant monitor the created vernal habitat in a similar manner to the proposed monitoring for the Lenape Farms Project.

Ms. Patti Burns stated that it is challenging to restore habitat and that it is helpful to have the science especially if it is made available to the public. Mr. Brett Berkley stated that NJDEP Division of Fish and Wildlife would seek to apply the results to other sites throughout NJ.

Mr. David Roth state that this site is not being built in a vacuum, there are nearby species.

Ms. Claudia Rocca motioned to approve the advance payment with the condition that it be split into two phases and the administrative fee also be split between the two phases.

Ms. Susan Lockwood seconded the motion to approve the advance payment with the condition that it be split into two phases and the administrative fee also be split between the two phases.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the advance payment with the condition that it is split into two phases and the administrative fee also be split between the two phases.

Presentation by Princeton Hydro on the progress of the Saeger Preserve Dam Removal and Wetland Restoration Project; Block 10, Lot 9, Holland Township, Hunterdon County.

Mr. Paul Woodworth of Princeton Hydro presented a history of the project. The project is on property owned by the Hunterdon Land Trust and is located in Holland Township, Hunterdon County. There is an offline stream that does not actively convey flow. There is an earthen berm that is 18 feet in elevation from top of crest to outflow elevation with large mature trees on the berm. There is no overflow spillway and the dam is out of compliance with existing regulations. The Land trust wants to remove the dam and also want to improve the ecological value of the area, by removing the impoundment, removing invasive species and improving habitat. The impoundment created an unstable stream situation.

At a prior Council Meeting in October, 2013, Princeton Hydro presented a plan that would involve removing the berm and realigning the stream channel. They presented a conceptual plan to the Council. The Council was skeptical and only approved Tasks 1 and 2 which included site inspection and design. The stream is perched 15 feet above the pond which presented logistical and feasibility concerns. Princeton Hydro noted bedrock outcropping and thought it ran the

length of the entire valley. A boring contractor was enlisted to confirm bedrock. Three borings were taken and all of them failed to encounter bedrock on the site. Mr. Woodworth stated that the best and most stable long term solution would be to reroute the channel to the original pre-dam alignment, and to breach the berm and regrade on site but that this design would not likely result in wetland creation. This presents the Council with a different scenario than what was presented in October. There is a wetland on site, but the channel would be rerouted through the wetlands. The revised monetary request would need to be greater than originally requested to account for increased permitting fees and construction costs. This project would now require both a Flood Hazard Act approval and Freshwater Wetland Protection Act (“FWPA”) IP.

Mr. David Roth asked whether based on the bathymetry, the only possibility was to remove the berm. Mr. Woodworth explained the bathymetry, and that if the berm were removed there would be a channel running higher than the lowest point in the valley which could lead to a catastrophic failure. Mr. Roth asked if the berm was unconsolidated. Mr. Woodworth confirmed that it is composed of both fine and unconsolidated materials. Mr. Woodworth stated that they did find a surface water gradient and ground water flow through the berm.

Mr. David Roth asked whether, if you were to move the stream in line and leave the berm, you could size a pip to handle the storm to allow wetland hydrology. This has been done in the Midwest but not on a steep slope.

Mr. Mark Gallagher stated that they did not want to do something overly engineered and would like to stick with true restoration. The project was revised from a wetland-focused project to a stream-focused project to avoid something contrived.

Mr. Roth stated that from a pure water quality perspective, restoring the stream makes sense, but it is not a wetland project.

Ms. Susan Lockwood asked whether the Land Trust has interest in pursuing the design. Mr. Woodworth responded yes.

Ms. Claudia Rocca stated that this is now a stream project with no wetland component and also may be damaging a wetland system. Mr. Woodworth responded that this is why it would now require an IP as a means of cut and balance.

Ms. Rocca stated that overall the site is generally stable and this would be a water quality improvement. Ms. Patti Burns stated that this doesn't resolve the needs of the Hunterdon Land Trust.

Ms. Lockwood stated that when issues are resolved with Hunterdon Land Trust the Council may be interested in assisting at that point, but at this point there is nothing obvious to contribute to.

Mr. Mark Renna stated that some sites die early and perhaps it is time to cut your losses. He asked how much of the \$169,000 allocated had been spent so far? Ms. Lockwood responded about \$20,000. Ms. Claudia Rocca stated that the Council should not move forward with the proposal.

Request by Bloomfield Township for conceptual approval on funding in the amount of \$2,000,000.00 for wetland creation and enhancement activities on the Third River Floodplain Wetland Enhancement Project; Block 871, Lots 55 and 102 and Block 792, Lots 130-132; Bloomfield Township, Essex County.

Mr. Nick Joanow, Councilman for Bloomfield Township provided a history of the site. The site is urban and is entirely in a floodplain with a history of flooding. This flooding represents a health and safety issue for the residents of the area, as they can become stranded in their homes during a flood event. The site is the last viable space of property in Bloomfield, as the town is approaching 100% build out. The Township is currently undergoing condemnation proceedings in order for the township to acquire the site for habitat and open space use. Mr. Joanow stated that it is critical that this site be restored, and that it is an opportunity to set a standard for doing what is right for the township. The township has 9,000/people per square mile and with redevelopment occurring in the Southern portion of the town, the town is stressed for open space. The political will is here for the acquisition of the property and the need to combine it with restoration.

Dr. Robert Tucker asked whether the site is part of the park system. Mr. Joanow stated that it is not currently part of the park system as it is surrounded by residential buildings. Mr. Andy Strauss stated that it would become part of the park system.

Dr. Tucker asked whether the site is a wetland. Mr. Joanow stated that the site is a brownfields site.

Ms. Claudia Rocca asked if the condos were carved out. Mr. Strauss stated that it is a land acquisition of 2 separate parcels known as the DeSimone Property and the Scientific Glass Property, which together total 18 acres. The DeSimone Property is approved for 44 attached homes all in the floodplain. This property has been acquired by the Township and they would like to undertake wetland restoration, creation and enhancement.

Mr. Mark Gallagher passed out photos of the site. He stated that even as the condemnation action was moving forward, development construction is ongoing and therefore the number of wetlands enhanced or created might differ slightly from what is currently proposed. Condemnation will be completed in a few weeks. The entire site is a floodplain and construction was approved under a Stream Encroachment permit. The goal is to reconnect the third river to the floodway so that it floods frequently. The site does not have threatened and endangered species concerns. The site is a fill site as well as a CERCLA site. The requirements of the CERCLA site have been satisfied; however the DEP is working with the developer's LSRP to resolve any issues. The areas that the project deals with are primarily the areas where the storm water basins are located. The elevation of the bottom of the basin is at the same elevation as the Third River. The cost of the project is high because of the urban setting and, because the site is in a flood plain, all materials have to be removed from the site. The transportation and disposal costs are estimated to be \$1,000,000. In addition prevailing wage or union job costs are higher. The total cost is a moving target and was based on initial preconstruction costs. Now that

construction has started and the two basins have been constructed this could alter the costs and modify the number of created wetlands. Photo's one and two are the stormwater basins with the bottom elevation located at or 1 foot above the elevation of the Third River. Photo three shows the retaining wall. The plan is to connect the 2 lower points by removing a part of the wall. Having the retaining wall for people to look down into the wetland system can be really valuable in this urban setting.

Ms. Claudia Rocca asked what the plans were for the remaining parcel. Mr. Gallagher stated that the township is planning for active recreation and a butterfly garden closer to the wetlands in order to create a larger natural area.

Mr. Roth asked if the areas to be excavated were subject to a deed notice? Mr. Gallagher stated that he wasn't sure since the LSRP process makes it more difficult to have this information, however they should receive this information after condemnation.

Mr. Gallagher stated that all of the proposed homes are within the 100 year floodplain and showed a map of the area. He said that the township will need a hardship waiver for the vegetation in the riparian zone.

Mr. Roth asked whether, under condemnation proceedings Bloomfield would have to take on remediation obligations, and whether that would increase the cost of mitigation? Mr. Strauss stated that the town would take on additional remediation requirements. He said that the town's plan is not to develop and to remove more of the fill. There may be additional remediation requirements and some additional liability but the town is trying to improve the site and to remove the threat of flooding in the residential neighborhoods by restoring the wetlands.

Dr. Tucker stated that urban areas are the Council's highest priority and motioned to approve the conceptual proposal in the amount of \$2,000,000.00.

Ms. Rocca asked, what is the timing was for the condemnation. Mr. Strauss stated that the ordinance has been read and approved with a 7-0 majority. The town is looking at financing and bonding. The town has the authority to undertake a declaration of takings but the condemnation should be complete in a few months.

Ms. Rocca asked whether the area of wetlands would decrease. Mr. Gallagher stated that the amount of proposed wetlands to be created should remain fairly consistent with the final request for funding. The construction of the basins reduced the construction costs and they have discovered another area that could be enhanced. The amount of wetlands and the costs will need to be a balance.

Mr. David Roth asked whether everything must leave the site, and whether the site was subject to today's requirements? Mr. Gallagher answered yes.

Ms. Claudia Rocca seconded the motion to approve the conceptual proposal in the amount of \$2,000,000.00.

Mr. Mark Renna stated that the Passaic River watershed has one operating bank and a pending Troy Meadows Bank that is 500 acres and more than 50 credits. This project would provide 3.6 credits at \$551,000 per credit. In the private sector when a bank charges in that range, 40% of the sale goes to taxes. This project is talking about remediation, but at what level? It is mentioned in staff comments that typical deed restrictions should be in place. There is a lot of mitigation in this area.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the conceptual proposal in the amount of \$2,000,000.00.

Request by GreenTrust Alliance for conceptual approval on funding in the amount of \$3,856,136.66 for wetland enhancement activities on the Deeprun Preserve-Block 8004, Lots 7.1, 7.11, 8, 9 and 10, Old Bridge Township; Thompson Park Conservation Area-Block 20, Lots 28.06 and 28.08, Monroe Township; Jamesburg Park Conservation Area, Block 18, Lots 5, 6, 6.05 and 7, Helmetta Borough; and Pin Oak Forest Conservation Area, Block 1020.01, Lot 1.03, Woodbridge Township, Middlesex County.

Mr. Rick Lear, Middlesex County Parks thanked the Council for the opportunity to present the project. The County is excited to partner with GreenTrust Alliance, GreenVest and Princeton Hydro on this project. In 1995 voters in Middlesex County approved the open space and historic preservation trust to fund county land preservation efforts. Since its inception that County has been successful in the preservation of 7500 acres of land. In 2006 the County recognized that it had made an investment in the land, but needed to maintain that investment so they established the Middlesex County Conservation Corps to improve the land that they have preserved. This request for funding continues the need that the Freeholders saw to improve the quality of the properties preserved by the County.

Mr. Mark Gallagher stated that there are four sites: Deep Run Preserve, Thompson Park Conservation Area, Jamesburg Park Conservation Area, and Pin Oak Forest Conservation Area.

The Pin Oak Preservation area is a phragmites dominated area with Atlantic white cedar. The goal is to enhance the wetlands by the removal of phragmites and fencing to eliminate the deer and allow the Atlantic white cedar to reestablish.

Ms. Patti Burns asked what was there before the phragmites.

Mr. Gallagher stated that there is nothing obvious to determine how the phragmites took hold. There is a dam downstream where it could have originated from or it could have come from the nearby road. The plan for the site is to control the phragmites and get the site back on track.

Ms. Burns asked whether the application of herbicide is the planned method for controlling phragmites. Mr. Gallagher stated that there will be a maintenance program. The first treatment should substantially reduce the phragmites and then there will be less aggressive treatments over time. In addition, there will be routine maintenance after that. In his experience after 5 years there would be virtually no phragmites left.

Mr. Brian Cramer stated that the phragmites density diminish as you move away from the road.

Ms. Burns stated that we miss a step in dealing with phragmites. We never look at the soils and get a sense of what happened on the site. Aerial photography is helpful in this step. Unfortunately in the 1970's when most of the disturbances were occurring, there is little aerial photography.

Mr. Gallagher stated that there is no compaction in the soils and as you walk the site, it still has a hummock and hollow feel.

The Thompson Park site is an agricultural landscape. The goal on this parcel is to plug ditches to enhance hydrology, undertake invasive control and conduct upland enhancement. Mr. Cramer stated that there will be some minor excavation as well.

Mr. Gallagher stated that the Deep Run Preserve is in the South River headwaters. The enhancement project is within two areas of the site. The site contains a Bald Eagle nest and the primary goals are to remove invasive species to restore the habitat. The South River is known for being a threatened and endangered species habitat. The Pin Oak Forest most recently contains red-headed woodpecker. The site has an impoundment with a network of phragmites surrounded by a pin oak- sweet gum forest. There are several drainage features that will be utilized to enhance the habitat. There is an opportunity to provide benches and additional habitat. Mr. Gallagher stated that they are willing to work with the Department to design the site. The site is a well-used park with an existing trail system. It is a valuable educational opportunity. Overall, the proposal is to enhance 73.4 acres of wetlands and enhance 11.9 acres of uplands at an estimated cost of \$151,900 per mitigation unit.

Mr. David Roth stated that the photos of the Thompson Park show shallow ditches, and asked whether the area immediately adjacent were mowed. Mr. Gallagher stated that it was historically farmed and more recently mowed. There are some pockets of upland, with sporadic phragmites. Mr. Roth asked what happens if the mowing is stopped. Mr. Brian Cramer stated that it would likely become a Russian olive stand. Mr. Gallagher stated that there will be deer exclusion measures, fencing and minor grading.

Mr. Rick Lear stated that the Thompson Park site is part of the County's deer management program.

Mr. Brett Berkley stated that there are four sites in three watershed management areas 7, 9, and 10. There is a wide diversity of enhancement types. The headwater systems in 7 and 9 are historically where lots of fees are collected. The sites are completely surrounded by urban areas, with each site selected for its mitigation yield, cost and success, and unique characteristics. Mr. Berkley stated that he realizes that this is lots of information but the project covers a large area of the state. In the Raritan and Rahway watersheds these types of opportunities are limited. This is an example of another urbanized site for less money.

Ms. Susan Lockwood stated that the sites seem to have merit and are the type of project the Council likes to see, however the amount of money is a concern. The properties should be prioritized with the funding going first to the sites with the greatest merit.

Dr. Robert Tucker asked whether, with four separate projects, was there an economy of scale. Mr. Brian Cramer stated that these are four independent projects, so limited economies of scale.

Ms. Patti Burns asked whether there is anything ecologically important or challenging or whether the collection of data would help to prioritize. Mr. Brett Berkley stated that each of the sites is unique, they have their favorites, but they are not concerned about ecological risk. They will coordinate with the County to prioritize. They always look for sites that are feasible.

Mr. Mark Renna stated that the Council has come a long way to the credit of the private sector collaborating to the point where there is a deficit. There is only so much money and Brett makes a good point, there is a good net return on investment. WMA 9 and 10 have banks and WMA 1 has only one. He is leaning towards Pin Oak as a priority. The Council should not spend what it doesn't have; there should be a reservation system.

Ms. Susan Lockwood stated that in WMA 7 there is a need for a freshwater wetland site. The Council will need to prioritize and the Council needs to think about the factors to prioritize.

Ms. Claudia Rocca stated that perhaps you could upgrade one project and down grade the other sites in an effort to prioritize.

Ms. Susan Lockwood stated that this is the way other states work. They don't necessarily fund the whole project. They sell advance credits.

Mr. Brett Berkley stated in New York the money collected in one WMA is used in that WMA.

Ms. Lockwood stated that if there was a bank, then an applicant would be using the bank; this is an alternative if there is no bank.

Mr. Berkley stated that a banker cannot petition the Council for fees to buy credits from a bank.

Ms. Lockwood stated that perhaps we should prioritize structure for ILF ("In Lieu Fee") and identify projects upfront. Our goal is not to be holding the money. If there is a bank, it should be used.

Ms. Burns asked if this is something that GreenTrust Alliance can work with Jill on, to prioritize and come back with a final proposal with priorities addressed. Mr. Berkley stated yes.

Dr. Robert Tucker motioned to approve the conceptual proposal contingent upon availability of funding and with the prioritization of sites.

Ms. Susan Lockwood seconded the motion to approve the conceptual proposal contingent upon availability of funding and with the prioritization of sites.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to conceptual proposal contingent upon availability of funding and with the prioritization of sites.

Review of revised meeting guidelines and procedures.

Ms. Jill Aspinwall stated that the meeting guidelines and procedures were updated to reflect option 2 and to include the statement that the chairperson will formally open the meeting up to public comments.

Ms. Susan Lockwood motioned to approve the revised meeting guidelines and procedures.

Mr. David Roth seconded the motion to approve the revised meeting guidelines and procedures.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the revised meeting guidelines and procedures.

Review of revised grant application procedures.

Ms. Jill Aspinwall stated that the grant application procedures were further revised to reflect the discussions from the March 4, 2014 meeting. The 90 day requirement was amended to 75 days and the checklist as an attachment was removed.

Mr. Paul Woodworth asked if this would be available on line. Ms. Aspinwall responded that it would.

Mr. Mark Renna stated that the document requires the FWPA checklist, but the conceptual proposal checklist states that you can include tidal.

Ms. Susan Lockwood stated that it was good to include in the submission whether or not the site is tidal.

Ms. Susan Lockwood motioned to approve the revised guidelines dated March 17, 2014, for grant applications.

Ms. Claudia Roth seconded the motion to approve the revised guidelines dated March 17, 2014, for grant applications.

Susan Lockwood, David Roth, Patti Burns, Claudia Rocca and Dr. Robert Tucker all voted to approve the revised guidelines dated March 17, 2014, for grant applications.

Public Comment on the draft In-Lieu Fee document

Ms. Jill Aspinwall stated that written comments can be submitted until close of business April 11, 2014.

Mr. Mark Renna state that the ILF has to be in line with Federal Regulations, but the State has assumed the program. The ILF must be treated the same way. EPA has stated that the Council is not in compliance with EPA rules. The ILF requires that an ILF program have an instrument and a service area. Everything must be equal. There is inequality in assumed and non-assumed areas. An ILF can collect money in non-assumed waters and use the money in assumed waters. Mitigation sites in assumed waters are ok, but mitigation sites in non-assumed waters are not treated equally. If you develop a bank in New Jersey in an assumed area, the assumed part cannot be used in non-assumed areas. How much jurisdiction does the Council have in ILF? Every corner of the State? Mr. Renna believes that this goes far beyond the Council's authority. Evergreen will submit formal written comments.

Public Comment

Ms. Beth Ravitt, Rutgers University asked when looking at proposed enhancement in tidally influenced areas, is the Council factoring in sea level rise?

Ms. Patti Burns stated that the Council recently denied a project in Newark because of this comment. The Council does consider it.

Ms. Ravitt stated that there should be a standard or a rationale related to future planning that the Council can utilize.

Ms. Burns stated that the Council would be happy to work with a standard but would not be developing the standard.

Ms. Susan Lockwood stated to Mr. Renna's point the Council has not dealt with tidal waters. When dealing with tidal waters the Federal Standards may come to play. The Council does not know how to address the issue. Generally the applicants will try to address these issues for us.

Ms. Ravitt stated that the Council should review the new 2014 State plan to see if there are any State initiatives in the document that relate to wetlands.

Ms. Lockwood stated that it would not be inappropriate to consider these.

Mr. Mark Renna stated that he is concerned that there is a difference between the Council's decision and the Act. In the case of the single family homeowner rate \$623.20 monetary contribution, the Council approved that this should only be used for a general permit under Freshwater Wetlands.

Ms. Patti Burns stated that the Waterfront Development Rules require an applicant to follow the FWPA rules.

Mr. Renna stated that it wasn't so that every regulation could then go "me to" and ordained under assumption.

Ms. Burns stated that the Federal law does this as well as State regulations.

Mr. Renna stated that the Council should have used Individual Permit standards not General Permit standards. How does the Council take \$623.20 and accomplish their mission? Also, the Council goes through so much time changing the monetary contribution rate from 38,000 to 41,000 only to then say that the State needs to adopt the change that is supposed to be adjusted annually. The Council's own resolution gets trumped. On a wetland front we have lost. How can the Council not follow the law?

Ms. Susan Lockwood stated that a change in the fee requires a rule change.

Mr. Renna stated that the change should be done on January 1 every year.

Ms. Claudia Rocca motion to adjourn, next Council meeting scheduled for June 3, 2014.

Ms. Patti Burns seconded the motion to adjourn.

New Jersey Freshwater Wetlands Mitigation Council Meeting

June 3, 2014

9:30 a.m.

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on May 20, 2014.

Review and approval of the April 1, 2014 Council meeting minutes.

Dr. Robert Tucker motioned to approve the minutes. Mr. Dave Roth seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving the minutes.

Update on the Mitigation Fund.

Ms. Jill Aspinwall stated that the balance in the Mitigation Fund as of April 30 is \$8,894,719.23. Three monetary contributions were received during this reporting period from Buckeye, Calderon and NJDOT. The Council has \$1,350,212.85 in contracted amounts and \$2,290,000.00 in approved conceptual projects. There are final projects before the Council today totaling \$5,948,690.41. If all projects were approved the Council will have a \$693,184.03 deficit.

Union County Project

Ms. Jill Aspinwall stated that she neglected to mention an update in the “update to the fund” portion of the agenda. Ms. Aspinwall stated that she had previously sent a letter to the County of Union asking for a report relating to the 2001 Grant Agreement so that the project could be closed out. Upon request from the County, the Council granted an extension of that time frame for two weeks at the March 2014 meeting. The County ultimately submitted information was incomplete and similar to information that has been previously submitted and rejected. The County submitted costs to be reimbursed that were not allowed under the original grant agreement. Further, the grant agreement expired in 2003. The County failed to respond to numerous requests by the Department over the years to submit its reports. DEP Staff to the Council requested approval to close out the contract for failure to meet the terms of the contract and because the contract expired. The Council agreed. A letter will be sent by staff to the County or Union, advising them that the contract will be closed immediately

Review and approval of a resolution funding in the amount of \$56,500.00 for Skillman Park Wetlands Enhancement, Block 26001, Lot 1, Montgomery Township, Somerset County.

Dr. Robert Tucker motioned to approve the resolution. Ms. Patricia Burns seconded the motion to approve the resolution. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving funding in the amount of \$56,500.00 for Skillman Park Wetlands Enhancement.

Review and approval of a resolution approving monetary contribution from Dawn Calderon in the amount of \$623.20 to satisfy the mitigation conditions of NJDEP Permit # 1507-06-0127.1;Block 295, Lot 1; Township of Toms River, Ocean County.

Dr. Robert Tucker motioned to approve the resolution. Mr. Dave Roth seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving a monetary contribution in the amount of \$623.20 from Dawn Calderon.

Review and approval of a Resolution approving Council Meeting Guidelines and Procedures.

Ms. Patricia Burns motioned to approve the meeting guidelines and procedures. Ms. Claudia Rocca seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving the meeting guidelines and procedures.

Review and approval of the entitled “Guidelines for Grant proposals”

Ms. Claudia Rocca motioned to approve the resolution. Mr. Dave Roth seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving the document entitled “Guidelines for Grant proposals.”

Request by Amy S. Greene Environmental Consultants, Inc. on behalf of North Jersey RC&D for final approval for funding in the amount of \$2,093,000 for Kittatinny Valley State Park-Kenco Acquisition, Block 29, Lot 28, Independence Township, Warren County.

Ms. Jill Aspinwall summarized the history of the proposed project and stated that staff is recommending approval of the project.

Mr. Rob Piel of Amy S. Greene Environmental Consultants, stated that this property is owned by Division of Park & Forestry and Fish and Wildlife. Ms. Mimi Dunn, NJDEP Division of Fish and Wildlife, was introduced as the land owner. Ms. Grace Messinger, North Jersey RC&D, was introduced as the project manager. North Jersey RC&D is a non-profit organization that works to protect natural resources and to improve an area’s economy, environment and living standards.

Ms. Messinger stated that she is currently managing the Council’s Walnut Brook Project, which is now in the 5th year monitoring. The project has been ongoing since 2007. North Jersey RC&D will be able to bring volunteers to the project to help keep the cost of the project as low as possible.

Craig Metzger of Amy S. Greene stated that had an on-site informal pre-application meeting with DEP. Based on the discussion during that field meeting, the project has been modified and is now proposing more ditch filling and more enhancement particularly on the stream bisecting the site as shown in the revised proposal. Mr. Metzger stated that the project will coordinate with Fish & Wildlife, the State Historic Preservation Office and Land Use Regulation.

Ms. Messinger requested an advance payment of \$126,000 and then installment payments based on project deliverables. Ms. Messinger stated that the project is proposing to complete final design and permitting will be done in the fall of this year and will start construction in spring and planting in fall 2015.

There were discussions between the Council and the applicant on what is required based on State Historic Preservation Offices as well as the Flood Hazard Area Permits. There was a discussion on

the size of the ditches on site and whether the Council was the sole funding source. There were discussions on whether there were any possibilities of engaging local Universities or agencies to conduct additional research on the property.

Dr. Robert Tucker motioned to approve funding in the amount of \$2,093,000 for the project. Dave Roth seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving funding in the amount of \$2,093,000 for the project.

Request by Green Trust Alliance for final approval on funding in the amount of \$3,856,136.66 for wetland enhancement activities on the Deep Run Preserve-Block 8004, Lots 7.1, 7.11, 8, 9 and 10, old Bridge Township; Thompson Park Conservation Area-Block 20, Lots 28.06 and 28.08, Monroe Township; Jamesburg Park Conservation Area, Block18, Lots 5,6, 6.05 and 7 Helmetta Borough; and Pin Oak Forest Conservation Area, Block 1020.01, Lot1.03, Woodbridge Middlesex County.

Ms. Aspinwall stated that this project received conceptual approval during the April 1, 2014 Council meeting. The applicant prioritized the four individual sites prior to coming in with a full proposal. Each of the properties is an individual project with an individual budget. Staff is recommending approval of the project.

Mr. Brian Cramer of GreenTrust Alliance stated that they prioritized the sites in the following order: Pin Oak, Thompson Park, Jamesburg and then Deep Run.

There was a discussion by the Council and the project applicant on the benefits of the individual projects. There was concern over the amount of money spent verses the number of credits that will be generations.

Dr. Robert Tucker motioned to approve full funding for the first three priorities, and not to fund Deep Run Preserve until the Council has the funds to fully cover the cost of the project. Mr. Dave Roth seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of approving funding for the Pin Oak, Thompson Park, and Jamesburg Project and to approve pending sufficient money in the Council's fund to cover the entire cost of the Deep Run Preserve project.

Public comment;

Mr. Andy Strauss representing the Scientific Glass Project located within Bloomfield Township asked the Council to explain the In Lieu Fee and its relationship with the service area and how the Council established priority sites. The Council and Mr. Strauss had a discussion of how the Council operates now and the direction they are moving towards with the development of the In Lieu Fee Document.

The next meeting date has been tentatively scheduled for August 5, 2010.

ADJOURNMENT: Claudia Rocca motioned to adjourn the meeting. Dave Roth seconded the motion. Dr. Robert Tucker, Susan Lockwood, David Roth, Patti Burns, Yang Deng and Claudia Rocca voted in favor of adjourning the meeting.

New Jersey Freshwater Wetlands Mitigation Council Meeting

August 5, 2014

9:30 a.m.

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for the meeting was given on May 20, 2014 to the Secretary of the State's Office and written notice was sent to the following newspapers: The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press.

Review and approval of the June 3, 2014 Council meeting minutes.

Susan Lockwood motioned to approve the minutes. Patricia Burns seconded the motion. Yang Deng, Claudia Rocca, Patricia Burns and Susan Lockwood voted in favor of approving the minutes.

Update on the Mitigation Fund.

Jill Aspinwall stated as of April 30, 2014, the balance of the fund is \$8,866,451.40. Since the last report, the Council received two contributions one for the 0700-12-0001.1 in the amount of \$105,048.00 and the second was unexpended funds from the Seager grant in the amount of \$225.00. The Council also expended funds for Quakertown Preserve, Lenape, and Skillman Lake Projects in the amount of \$157,264.65.

Ms. Aspinwall commented that the Union County project was removed from the category of the outstanding approved projects. Ms. Aspinwall stated that on June 6, 2014 she sent Union County a letter closing the project. On July 31st the Department received a letter from the County stating that they had met the requirements of the grant and requesting to be placed on the agenda to discuss the Council's decision to close out the grant. Ms. Aspinwall stated that they would be placed on the October agenda and that she would prepare staff comments. In addition, she would send a response letter to the County.

Ms. Aspinwall stated that the Pin Oak Conservation Area, Thompson Park Conservation Area, and Jamesburg Park Conservation Area restoration projects in Middlesex County were included in the "Outstanding Approved Projects with remaining balance" section of the fund update.

Ms. Aspinwall stated that she added a new category to the fund update: "Project approved and awaiting available funds." This category currently includes the Deep Run Preserve Project in Middlesex County. Funds are now available to move that project forward to contract.

The Council inquired as to the status of the remaining projects in the category of "Outstanding Approved Projects with remaining balance." Ms. Aspinwall stated that Walnut Brook and Cadwalader Park projects are in the last year of monitoring. She stated that the Quakertown Preserve project is also in the monitoring period, and they have asked for a budget modification, which will be on the Council's October agenda.

Review and approval of a resolution funding in the amount of \$2,093,000 for Kittatinny Valley State Park-Kenco Acquisition, Block 29, Lot 28; Independence Township, Warren County.

Patricia Burns motioned to approve the resolution. Claudia Rocca seconded the motion to approve the resolution. Susan Lockwood, Patti Burns, Yang Deng and Claudia Rocca, all voted in favor of approving the resolution for funding in the amount of \$2,093,000 for Kittatinny Valley State Park Acquisition.

Review and approval of a resolution approving funding in the \$3,856,136.66 for wetlands enhancement activities on the Deep Run Preserve-Block 8004, Lots 7.1, 7.11,8,9 and 10, Old Bridge Township; Thompson Park Conservation Area-Block 20, Lots 28.06 and 28.08, Monroe Township; Jamesburg Park Conservation Area, Block 18, Lots 5, 6, 6.05 and 7, Helmetta Borough; and Pin Oak Forest Conservation Area, Block 1020.01, Lot 1.03, Woodbridge Township, Middlesex County.

Patricia Burns motioned to approve the resolution. Claudia Rocca seconded the motion to approve the resolution of the funding in the amount of \$3,856,136.66. Patricia Burns, Yang Deng, Susan Lockwood and Claudia Rocca voted in favor of approving the resolution.

Public Comment

Mark Renna stated that he has applied to be a member of the Wetland Mitigation Council. He asked the Council the status of the appointments. There was a discussion by the Council that they are not part of the process for nominating members and only know members once appointments are announced. Jill Aspinwall stated that she has submitted the paperwork and is still waiting to hear the status.

Mark Renna asked the Council for the status of the In Lieu Fee document. There was a discussion on the status of the document. Patti Burns said that the Council reviewed the document and had no opinion to share on the document, since it was read a while ago. Claudia Rocca stated that she was supportive of the ecoregion approach and having projects ready to go when money is available. Jill Aspinwall stated that the document was currently under attorney review and she should have more of an update for the October Council meeting.

The next meeting date has been tentatively scheduled for October 7, 2014.

ADJOURNMENT: Claudia Rocca motioned to adjourn the meeting. Patricia Burns seconded the motion. Susan Lockwood, Patricia Burns, Yang Deng and Claudia Rocca voted in favor of adjourning the meeting.

New Jersey Freshwater Wetlands Mitigation Council Meeting

October 7, 2014

9:30 a.m.

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on September 23, 2014 to the Secretary of the State's office and written notice was sent to the following newspapers; The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press.

Review and approval of the August 5, 2014 Council meeting minutes.

Ms. Susan Lockwood motioned to approve the minutes. Mr. David Roth seconded the motion. Ms. Claudia Rocca, Mr. David Roth, Ms. Patricia Burns and Ms. Susan Lockwood voted in favor of approving the minutes.

Update on the Mitigation Fund.

Ms. Jill Aspinwall stated that as of August 31, 2014 the balance of the fund is \$8,863,996.44. Total amount of outstanding in contracts is \$7,091,638.61. Total of outstanding approved conceptual proposals is \$2,290,000.00. There was a discussion by the Council on what happens if and when the conceptual proposals do come in. Ms. Aspinwall stated that it would work in a similar manner to the fourth Middlesex County project, in which there was not enough money in the fund to fully cover the costs, so the Council approved the project subject to the availability of funds. Once the funds became available, the Council entered into a contract with the applicant.

Old business

Ms. Aspinwall stated that Mr. Yang Deng had resigned from the Council.

New Business

Review of proposed budget modification for the Quakertown Preserve property.

Ms. Aspinwall stated that Quakertown Preserve project is requesting budget modification where the requested modification is greater than the 10% that is allowable for staff to process. Ms. Aspinwall stated that after completing the restoration project and budgeting for 5 years of monitoring, they currently have a billable grant balance of \$26,067.92. They are requesting to move \$5,762.82 from "Other Costs" to "Consultants and Subcontractors", and \$15,067.92 from "Other Costs" to "Personnel Costs/Salaries." The total unexpended balance in "Other Costs" is currently \$24,530.74. Their request to modify the current project budget is in order to maximize the use of remaining funds to improve project outcomes. Staff is recommending the approval modification. Ms. Patricia Ruby of Hunterdon Land Trust was present and explained the how the money will be used.

Ms. Patti Burns asked if there was an anticipated need for additional consultants. Ms. Ruby stated that there is no anticipated need for additional consultants and no additional budget modifications anticipated as 2015 is the final year of monitoring.

Mr. David Roth asked whether the Council would be approving salary rates or consulting fees. Ms. Aspinwall stated that they usually estimate what they need based on the staff assigned to the project.

Public Comment

Mark Renna stated that one of the problems with the site is the less than 85% survivorship rate. Mr. Renna asked how, besides planting resistant shrubs, would the new plants be protected from deer. Ms. Ruby stated that they generally installed fence around the entire area and allowed hunting on the property.

Ms. Claudia Rocca motioned to approve the budget modification. Ms. Patricia Burns seconded. Susan Lockwood suggested a roll call vote.

Roll call was taken

Susan Lockwood	yes
Claudia Rocca	yes
Patricia Burns	yes
Dave Roth	yes

Request by Union County for reconsideration of the closure of their grant agreement.

Ms. Aspinwall stated that Union County emailed her with the request to be removed from the agenda because they needed more time to respond to the Council's staff comments. Ms. Aspinwall stated that she told the County that the agenda item could not be removed because notice of the Council meeting agenda had already been published, but that their request would be brought before the Council. Ms. Aspinwall further stated that she did not believe that the County could offer any new response to the staff comments, as the staff comments were simply a summary of communication between the Department and the County over the last 10 years.

Ms. Susan Lockwood suggested that the Council uphold its June decision to cancel the project adding that 10 years was a sufficient amount of time to allow the County to respond before closing out this project.

Ms. Aspinwall stated that she would prepare a formal resolution upholding the Council's June decision to cancel the project.

Ms. Claudia Rocca motioned to uphold the Council's June decision to cancel the project.

Ms. Patricia Burns seconded the motion.

Ms. Susan Lockwood suggested a roll call vote.

Roll Call

Susan Lockwood	yes
Claudia Rocca	yes
Patricia Burns	yes

New Jersey Freshwater Wetlands Mitigation Council Meeting

December 8, 2008

9:30 a.m.

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on September 23, 2014 to the Secretary of the State's office and written notice was sent to the following newspapers; The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press.

Review and approval of the October 7, 2014 Council meeting minutes.

Ms. Susan Lockwood motioned to approve the minutes. Ms. Patti Burns seconded the motion. Ms. Claudia Rocca, Mr. David Roth, Ms. Susan Lockwood, and Ms. Patti Burns all voted in favor of approving the minutes.

Update on the Mitigation Fund.

Jill Aspinwall stated that as of October 31, 2014, the balance of the fund is \$8,319,921.96. Since the last report Council has not received any new monetary contributions, four projects have received payments, with the amounts reflected in the contract balance. The total amount of money under contract is \$6,525,989.53. There are three conceptual proposals that total \$2,290,000.00. If all projects are funded, including the conceptual proposals the total amount allocated would be \$8,815,989.53, creating a deficit of -\$496,067.57.

Old business

Review and approval of a resolution upholding the Council's June 2014 decision to terminate the Union County grant agreement.

Ms. Patti Burns motioned to approve the resolution. Mr. David Roth seconded the motion. Ms. Susan Lockwood, Ms. Claudia Rocca, Ms. Patti Burns, and Mr. David Roth all voted in favor of approving the resolution.

New Business

Review of a proposed monetary contribution from Francisco Salas in the amount of \$3,534.00 for impacts to 0.093 acres of freshwater and coastal wetland as a condition of a stipulation of settlement.

Ms. Jill Aspinwall stated that this was a proposed monetary contribution in the amount of \$3,534.00 for impacts to 0.093 acres of freshwater and coastal wetlands. The applicant was required to perform mitigation in accordance with the terms of a stipulation of settlement between Mr. Salas and DEP. Mr. Mike Schuit, Deputy Attorney General, was present to provide additional information on the proposed monetary contribution. Mr. Salas and his attorney were also present.

Mr. Schuit stated that the stipulation of settlement was entered into to avoid a taking, and stated that the property is on 0.4 acres in Brick, Ocean County on an infill lot. Mr. Schuit stated that there were water, sewer, and gas services adjacent to the property that could serve the property. As a condition of the settlement agreement, the property owner reduced the area of impact and proposed to build the single family home on pilings. The total footprint of disturbance from the

home would equal 30'x50', and total disturbance from the house and driveway would equal 46' x 88'. Mr. Schuit stated that this would be a de minimus impact. In addition, Mr. Schuit stated that the remainder of the property would be deed restricted in perpetuity under a conservation easement. Mr. Schuit stated that the regulations were used to determine the amount of the monetary contribution, by using the general permit amount of \$38,000 x 0.093 acres. The Department and the Attorney General's Office support the monetary contribution to the Council.

There was a discussion among the Council and the public as to whether or not this was an enforcement case or if there is a penalty. In addition, there were questions raised as to whether there had been any land filled before an approval from DEP. Mr. Ira Weiner, Counsel for Mr. Salas, stated that while there may have been fill placed by the previous owner, the current owner had not placed any fill on the property and there had been no enforcement action or penalty on the property.

There was a discussion on how the deed restricted land would be managed, whether the land to be deed restricted is contiguous with other wetlands. It was stated that the Department would hold the deed restriction.

Mr. Mark Renna stated that the impact is within watershed management area 13, which is the only watershed management area that does not have a bank. Mr. Renna believes that the Council should require that the applicant purchase credits in a nearby area or an adjacent watershed management area since this is an enforcement case. Mr. David Roth asked how does the public appeal or comment on a stipulation of settlement. Mr. Schuit stated that the stipulation of settlement will appear in the DEP Bulletin and that public notice would be given to nearby property owners within 200 feet of the project. Ms. Nina Chen of the Nature Conservancy commented that the price of \$38,000/acre of impact is 1/10 the cost of private bankers, and asked how this was fair. Mr. Weiner repeated that the stipulation of settlement was not as a result of any enforcement action and that the property owner has purchased the property in 2002. Mr. Weiner said that the property owner had completed his due diligence on the property by obtaining maps from the US Army Corps of Engineers that showed no wetlands on the property. It was only after purchase that the DEP determined that there were wetlands on the property. The stipulation of settlement was entered due to the possibility of a taking because prohibiting construction of the house would deny the property owner any economic benefit of the property.

There was further discussion by the Council and the public, that this project dates back very far and has undergone extensive litigation. It was stated that the applicant did not ask to skip the mitigation alternative of purchasing credits from a wetland mitigation bank, because one does not exist. It was further stated that it was very appropriate for this project to be before the Council.

Ms. Susan Lockwood motioned to approve the monetary contribution. Mr. David Roth seconded the motion. Ms. Susan Lockwood, Ms. Claudia Rocca, and Mr. David Roth all voted yes. Ms. Patricia Burns voted no.

The motion failed.

Presentation by staff on New Jersey's Draft In-Lieu Fee Instrument.

Jill Aspinwall summarized the goal and objectives of New Jersey's ILF Program. Ms. Aspinwall stated that to provide a third-party compensatory mitigation option for unavoidable impact to waters of the United States and waters of the State approved by the State of New Jersey,

To provide a third-party compensatory mitigation option for enforcement actions approved by the State of New Jersey; and to ensure New Jersey's mitigation program is as stringent as the Federal In Lieu Fee rules.

Ms. Aspinwall presented a detailed description of the In-Lieu Fee document in order to provide the Council and the public an overview of the In-Lieu Fee document. The presentation highlighted the following components of the In-Lieu Fee document:

- EPA has concurred with the provisions of the document.
- The document sets forth the guidelines and responsibilities for the establishment, use, operation, protection, monitoring, and maintenance of the ILF Program to assure the work associated with the ILF Program produces the necessary compensatory mitigation credits to compensate for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under New Jersey Freshwater Wetlands Protection Act Rules, Coastal Zone Management Rules and the Coastal Permit Program Rules.
- Identified the goals and objectives of New Jersey's ILF Program.
- Sets forth the qualifications of the NJDEP.
- If the Program Administrator does not perform in accordance with the ILF Program, including ensuring the timely completion of mitigation projects, the NJDEP may not authorize any permittees to make a monetary contribution as an acceptable form of mitigation. During this suspension of authorization, the NJDEP would reevaluate the effectiveness of the ILF Program and make any necessary changes.
- The ILF document outlines the qualifications of the Council, which was established by the FWW Protection Act
- The Program Administrator shall act as the recipient of all monetary contributions into the ILF Program and shall play no role in any regulatory decision made by the NJDEP determining the nature and extent of any required compensatory mitigation, or determining the appropriateness of any specific monetary contribution.
- The State will be divided into both a primary and secondary service area. The primary service area will be the service area in which the monetary contribution was collected in, and where the impact occurs. The service areas will include both freshwater and tidal waters as the ILF Program covers the entire State.
- The amount of a monetary contribution shall be determined based on the type of authorization or permit received by the permittee.
- The total number of credits that will be generated from an ILF Program project will be determined by the Program Administrator
- To implement the ILF Program, the Program Administrator is authorized to sell advanced credits to provide compensatory mitigation for impacts authorized by the NJDEP within each service area.
- The NJDEP will only consider the Council to be a feasible alternative for mitigation if the Council maintains a minimum balance of 10 advance credits and the NJDEP is satisfied the Council is accurately accounting for its mitigation obligations and advance credits.
- Sets forth the guidelines for processing a grant from the Council.
- In the event that the Council is not performing in accordance with this ILF document, its enabling statute, or its implementing regulations, the NJDEP will reevaluate whether using the Council is a feasible means of ensuring mitigation. If NJDEP determines the Council is no longer a feasible alternative for mitigation, prospective permittees will be directed to other forms of mitigation.

There were brief discussions regarding the ILF document primarily relating to the public's perception that there was not adequate time to review the draft ILF and that there should be a longer public comment period. Ms. Aspinwall stated that the document had been made available three weeks prior to the Council meeting and ample time was provided during the Council meeting to hear the comments. There were no substantive comments received on the document.

Review and approval of the Draft In-Lieu Fee Instrument.

Ms. Susan Lockwood motioned to approve the ILF document pending EPA's approval. Ms. Patti Burns second the motion to approve the ILF document.

Ms. Susan Lockwood suggested a roll call vote:

- Patricia Burns yes
- Susan Lockwood yes
- Claudia Rocca yes
- David Roth yes

Proposed meeting dates for 2015.

- February 10, 2015
- April 14, 2015
- June 9, 2015
- August 11, 2015
- October 13, 2015
- December 8, 2015

Public Comment

There was a discussion regarding the increase in fees for a monetary contribution and the status of appointments to the Council. The proposal to increase the fees for a monetary contribution is currently being reviewed by the Department's legal affairs. The proposed fee increase is subject to rule making schedules and deadlines. The appointments to the Council were sent to the Governor's office and we are still awaiting information on the status.

The next meeting date has been tentatively scheduled for February 10, 2015.

ADJOURNMENT: Ms. Claudia Rocca motioned to adjourn the meeting. Mr. Dave Roth seconded the motion. Ms. Susan Lockwood, Ms. Patricia Burns, Ms. Claudia Rocca, and Mr. David Roth voted in favor of adjourning the meeting.