

**NEW JERSEY WETLANDS MITIGATION
COUNCIL MEETING**

MINUTES OF JANUARY 29, 2013

A regular meeting of the Wetlands Mitigation Council was held on January 29, 2013 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 Claudia Rocca.

COUNCIL MEMBERS PRESENT: Susan Lockwood, Patricia Burns, Claudia Rocca, David Roth, Dr. Yang Deng. Also via telephone, Robert Tucker and John Tiedemann.

STAFF MEMBERS PRESENT: Several members of staff were present: Stacey MacEwan, Jo Dale Legg, Anika Andrews-Spilman, Jill Denyes (DAG) and Karin Bauer.

ATTENDING: Paul Woodworth of Princeton Hyro, LLC
Brett Berkeley of Greenvest, Inc.
Mark Renna of Evergreen

Approval of the October 4, 2012 Council meeting minutes.

Susan Lockwood motioned to approve the meeting minutes from October 4, 2012.

Robert Tucker seconded the motion (via telephone)

Robert Tucker, John Tiedemann, Claudia Rocca and Susan Lockwood voted to approve the minutes.

Dr. Yang Deng, Patricia Burns, and David Roth abstained.

Old Business

Resolution memorializing the reconsideration and denial of 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

Susan Lockwood made the motion to approve the resolution

John Tiedemann seconded the motion (via phone)

Bob Tucker voted no (via telephone)

Claudia Rocca voted yes.

Dr. Yang Deng, Patricia Burns, and David Roth abstained.

Ron Prann asked for clarification on why there was a denial.

Susan Lockwood told Bob Tucker that the resolution memorializes what happened last meeting. So the Council is not voting on whether or not to allow the donation, but rather voting on the fact that the resolution accurately memorializes the activity that happened at the last meeting. She agreed that Bob voted against the action but advised that the resolution is a memorialization of the action that was taken. It does not change how he voted and that the resolution reflects that he voted against it. Susan Lockwood then clarified that the Council was not voting on the actual project but rather memorializing the resolution. At which point Dr. Tucker stated that he was in favor of approving the resolution but opposed to denying the single family donation.

After which all Council members voted in favor of the motion to approve the resolution.

Resolution denying monetary contribution in the amount of \$236,491; Texas Eastern Transmission, and 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 Township, Morris County

Susan Lockwood made a motion to approve the resolution.

Susan Lockwood stated that just like the last resolution, this is a resolution memorializing the fact that the Council denied accepting the donation.

John Tiedemann stated that the Council directed them to donate it to a Mitigation Bank.

Susan Lockwood stated that the Council denied accepting it and the Department is working on assisting them to purchase credits at a bank, instead of making a donation to the Council.

John Tiedemann seconded the motion.

All voted in favor.

Resolution approving Conceptual Approval of a \$140,000 Wetland Mitigation Grant Proposal for Many Mind Creek Wetland Restoration; Borough of Atlantic Highlands, Monmouth County

Claudia Rocca stated that we indicated that the idea is promising but that we would need more information before we could approve any money.

Susan Lockwood made the motion to approve the resolution

Claudia Rocca seconded the motion.

John Tiedemann, Bob Tucker, Claudia Rocca and Susan Lockwood voted to approve the resolution. Dr. Yang Deng, Patricia Burns, and David Roth abstained.

Mark Renna asked if there would be an opportunity for discussion on any of these items. Susan Lockwood responded not on resolutions.

Resolution conceptually approving Transcontinental Gas Pipe Line Company Land Donation; Permit #0718-10-0002.3; Block 6301, Lot 20 and Block 6701, Lot 9, Fairfield Township, Essex County

Bob Tucker made the motion to approve the resolution.

Susan Lockwood seconded the motion.

Bob Tucker voted yes.

John Tiedemann voted yes.

Claudia Rocca voted yes.

Dr. Yang Deng, Patricia Burns, and David Roth abstained.

Council/Staff introduction

Patricia Burns introduced herself as a new Council member. She has been working within the State of NJ for 25 years doing wetlands work.

David Roth introduced himself as a new Council member. He has 24 years of experience in wetlands consulting and permitting. He has a Master's degree in Soil Science from the University of New Hampshire. He is currently working as manager of major permits and field services for PSE&G.

Claudia Rocca has been a wetlands consultant for 9 years. Currently she is with PSE&G, environmental and land use permitting.

Jo Dale Legg has been with the Wetlands Mitigation Unit for 11 years.

Karin Bauer is in the Administrative/Clerical unit for the Bureau of Tidelands. She records and does the minutes for the Wetlands Mitigation Council.

Anika Andrews works with the wetlands endangered species unit, and she also does part-time mitigation work. She has been with the Department for 12 years.

Madhu Guru is the Assistant Director of the Division of Land Use Regulation and attends the wetlands Mitigation Council meetings.

Susan Lockwood is the Supervisor of the Mitigation Unit but she also fills the position on the Council of the Commissioner of DEP.

Dr. Yang Deng is a new Council member, and he is an assistant professor at Montclair University.

Mark Renna asked for comments on item #1. He said this is a public meeting and it could have comments. He wants to thank the three new members for joining.

Mark Renna stated that there is one person from the DEP assigned as an ex officio member, that would be Susan, and there are six members of the general Council that are appointed by the Governor from various classes. Those classes are building and development, environmental

conservation, and institutions of higher learning. He then asked the new members which class they fit in?

Patti Burns – Environmental Consulting

David Roth- Builders

Claudia Rocca- Builders

Yang Dang – Higher Education

David Roth asked what a quorum for this group is.

Susan Lockwood stated the quorum is four, except that you also have to have four votes to count them. That is why when we went through the resolutions, if Bob voted no, that could be a problem because we could not pass the resolution with only three votes. We have to have four. So if we have a full Council things work a little better.

Update on the mitigation fund

Jo Dale Legg stated that the Mitigation Fund as of November 30, 2012 has \$8,330,739.73. She says we have some outstanding conceptually approved projects. In addition, full proposals before the Council today would be \$160,150.00 which if approved brings the new balance to \$7,689,085.43.

This amount reflects a payment received from David Kim to complete payments from file #1408-92-0011.3/1408-02-0002.1: \$460 and a payment to NJDEP Parks and Forestry for Liberty State Park in the amount of \$1,545,462.60

Update on the status of approved Wetland Mitigation Banks

Willow Grove has had all of its credits released and has 22.5 credits available.

Pio Costa. As explained last meeting, the Department will be working on adjusting their credits, making it a 1:1 purchase rather than a 2:1 purchase. We do not yet have total credits available. They sold 3.2 credits, and based on what was originally available, there are 6.34 left.

Wyckoff Mills has had all of their credits released. 10 credits are available minus a recent sale not yet in the ledger.

Rancocas Phases I and II have a majority of their credits released, and have .0745 available.

Stipsons Island has 2.6 credits available. The tidal portion has 4.331 credits available.

Port Reading has 3.1565 credits available. A total of 5.273 have been released.

Great Egg Harbor River Bank has 3.1565 credits available.

Nishisakawick Bank: Out of 3 credits allocated, 1.2 have been released and 1.109 are available.

Cranbury has 0.65 credits available at this time.

MRI-3 has 8.325 credits available.

Marsh Bog Brook has 1.041 credits available.

Oxford West has recently had its banking instrument approved. There are no credits yet available.

Mark Renna asked for an update on the status of the Pio Costa bank. Jo Dale was not sure what the status is. She said that Chris Squazzo has an application and is reviewing it. He is supposed to be doing the LOI's to determine the total wetland acreage.

Mark Renna stated that usually the first release for a bank upon signing a banking instrument is 10%. Cranbury is a 38 credit bank, and it has a very high number of credits released. Could you please explain to us what that represents?

Jo Dale Legg stated that they received 100% of their preservation credits plus 10% of the rest of the bank credits.

Brian Cramer says Cranbury has 4 credits released, and the chart has to be updated.

Presentation by Paul Woodworth, Princeton Hydro, on behalf of Hunterdon Land Trust for Final Approval for a Wetland mitigation Grant Proposal for Pond Removal and Wetland Restoration; Holland Township, Hunterdon County (aka Saeger Property)

Paul Woodworth of Princeton Hydro submitted a conceptual plan for the Saeger Property Pond Restoration Project located on Block 10, Lot 9, Holland Township, Hunterdon County on behalf of the Hunterdon Land Trust. The Hunterdon Land Trust is requesting funds from the Council for the breach of an earthen dam, removal of a 0.6 acre pond and restoration of adjacent freshwater wetlands. Milford Creek (FW2-Trout Production, Category One Water), crosses the southern side of the property and flows southeast to Harihokake/Hakihokake Creek in Milford before joining the Delaware River. Historically the pond had been created by excavation in the floodplain. The long-term plan is for upland management of the orchard which has been overrun with invasive autumn olive. The pond is high enough to meet the definition of a dam. Offline from the stream it has an intake pipe that is approximately 6 inches in diameter and a standpipe that is 12 inches in diameter. The goal of the project is to remove this public safety hazard and liability from the property, restore the wetlands, eliminate the invasives that are on the berm and remove the pond.

The main objective is to remove a portion of the 8 foot earthen berm that separates the pond from the lake, drain the pond, restore the pond as a wetland, and re-route the channel. They are requesting funding for site investigation, wetlands inventory and mapping, plant inventory, a basic hydrologic budget to demonstrate that they can support a wetland in place of the pond, engineering design and wetland permitting as approximately five permits would be required for completion of the project. They would also do five years of monitoring. Indiana bat, wood turtle and migratory bird timing restrictions would be applied to the project.

The members of the Mitigation Council Patty Burns, Claudia Rocca, Dave Roth, and Dr. Yang Deng asked a series of technical questions regarding fish passage, height of the stream versus that of the surrounding wetlands, effects of the berm removal on freshwater wetlands and pond depth.

Paul Woodworth explained that he was unable to adequately answer some of the technical questions due to the cost. He commented that the applicant was requesting funding from the Mitigation Council so that some of the questions regarding the more technical aspects of the project could be answered after initial funding is provided. He also mentioned that it may be beneficial for him to come back to the Council after some of the more technical aspects had been completed.

Mark Renna (?) stated that if you take this berm out, and the stream finds its way naturally, you may have no opportunity for wetlands since the only thing driving this area is the stream. He was wondering where there would be a nice, little flat area for wetlands to develop. In this watershed area, you can have forested wetlands in flat areas, high up in the basin, but when you get towards the middle of it, the streams are really deeply insized, and the wetlands are very minor areas along the stream. So the question is, is there going to be a wetlands here, and if we give money to a part that does not wind up eventually being a wetlands, although there may be other ecological benefits, did we achieve a goal?

David Roth asked Susan Lockwood about the allocation of funds – do they have to result in the creation of wetlands?

Susan answered that the money coming from the Council is intended to provide funding for projects that provide important components of the freshwater wetlands ecosystem. Obviously the goal is to have wetlands there, but if it is contributing to the wetland ecosystem, then the process has value. The funds taken into the Mitigation Fund were collected for the goal of replacing the impacted wetlands. So we have to consider whether the project is going to do that.

JoDale Legg read the staff comments for the project, and noted that the project has merit and as such Division staff recommends approval of the project.

Claudia Rocca noted that the project did have merit and as such made the motion to approve initial funding aspects of the project which would include; site surveys [\$10,700] and environmental engineering design [\$19,000] for a total of \$29,700.

Dave Roth seconded the motion to approve initial funding aspects of the project. The remaining members of the Mitigation Council voted unanimously to approve the initial funding aspects of the project.

Transfer of Council Bank fund account from Merrill Lynch to Van Guard

Susan Lockwood informed the Council that for the past 25 years the money in the mitigation fund has been held in an account with Merrill Lynch. In December, the Department was informed that Merrill Lynch did not want to deal with the State accounts anymore and would terminate the account. Termination of the account would have resulted in fees.

As a result, the money has been safely transferred to an account with Van Guard. No fees were incurred with the transfer. Details are still being worked out and as of now, we are unable to write checks from that account. Hopefully this will be resolved by the next meeting. We also do not have a statement from the end of the year stating exactly how much money was moved.

Discussion of In Lieu Fee Program

Susan Lockwood spoke about an in-lieu fee program. There are Federal rules from 2008 that talk about the required procedures and components for an in-lieu fee program. The Mitigation Council is an in lieu fee program because in lieu fee means that you take money in lieu or requiring someone to do a wetland mitigation project.

This in-lieu fee program was set up in 1987. Those who established the State's Freshwater Wetlands Act were pretty visionary because they were thinking about in lieu fee back in 1987. In 2008, the EPA and Army Corp got together and they came out with rules that talk about wetland mitigation, and their rule talked about mitigation banking, and they talked about in-lieu fee programs. The Federal rules gave anyone operating an in-lieu fee program five years to get your act together and line yourself up with the Federal program. This is complicated by the fact that New Jersey has assumed the permitting program from the Army Corps of Engineers and the Federal in lieu fee rules did not speak to those of us with assumed programs. In-lieu fee programs under the Federal rules place all the authority with the Army Corp of Engineers to set up these programs and to deal with all that. New Jersey is an anomaly.

When people come to see the Council right now, you will never see someone come here if they have an Army Corps permit, because the Federal agencies have not agreed to our in-lieu fee. So anytime someone has a federal permit and a state permit, they cannot come here to the Council, if even there is no other mitigation option available to them. They cannot come here; they have to use other mitigation options, because the Army Corp will not accept the Council as part of their in-lieu fee program. There is no in-lieu fee as far as the federal government is concerned. Therefore, right now the only applicants we see are those from assumed areas of the State where there is no need for an Army Corps permit.

The Department committed to EPA that it would have a proposed in lieu fee program to them by the end of November 2012. Hurricane Sandy has slowed things down. However, there is a proposal pending that has been signed off by everyone but the Commissioner.

The Federal rules require that ILF programs be set up very similarly to mitigation banks. There are several components to an ILF program under the Federal rules. The following summary provides key components of a Federal ILF and a brief comparison with the Council's program:

1. **Service Area.** When money is accepted, we much take note of where the money was taken from and direct it to a project in the same area. An acceptable ILF program directs approved contributions to an approved project in the same area as where the original wetland impact occurred. That area is defined in advance and is generally a watershed or group of watersheds. The Council has not established services areas. It accepts money and tracks the watershed from which the money came but does not limit the grant funding to projects in a specific watershed. It's difficult to target the money to areas from whence it came.

2. **ILF Projects are identified in advance.** An ILF project at the Federal level is identified in advance of the collection of funds. Currently, projects could be pre-identified in areas where there is money and nothing would change in the way the Council reviews those projects. However, in the long run, projects would be identified in advance and money will only be directed to those projects when it comes in in the appropriate service area. We would know in advance where the money would go when it is received.

This change would go a long way in making EPA feel better about the State's program because EPA does not like the loss of time or lack of mitigation occurring when money sits in an account.

3. Projects are evaluated in terms of Credit allocation. Like banks, all projects to receive ILF funds are evaluated and the amount of credit is calculated in advance. The credit system is a way to evaluate the merits of individual projects and provides a basis of comparison across projects. Credits are assessed based on a combination of acreage and the activities to be undertaken to create, enhance, or restore the wetlands. Credits reflect the ecological improvement that a project provides. It can be somewhat complicated but this is the process used for mitigation banks.

4. Acceptable ILF projects can only be undertaken by government or non-profit entities. The Council is consistent and only allows its funds to be used by government and non-profit entities. The States' statute already limits the use of ILF money to government and non-profit projects so the Council is totally consistent with the Federal rules.

5. Proposed ILF projects are reviewed by an Interagency Review Team. The Federal Interagency Review Team is comprised of the ACOE, EPA, National Oceanic and Atmospheric Administration, the US Fish and Wildlife Service, and interested parties like a State representation from the State where the mitigation is proposed. The Army Corps is the lead and convenes the IRT.

The Council members, with their diverse backgrounds, are similar to an Interagency Review Team. They are not Federal entities but they play different roles and are similar to an IRT.

All of those factors are under consideration. Assumption confuses this issue because the rules do not tell us who is in charge of an IRT in a State with assumption. We hope that if EPA likes what the State proposes as an in lieu fee in assumed areas, perhaps it can help the State work on something similar in the non-assumed areas with the ACOE.

Once the Commissioner gives the go ahead, we will work with EPA.

Public Comment

Mark Renna stated that he was in favor of the establishment of an in-lieu-fee program and asked about the deadline. Madhu Guru stated that the Department was supposed to get back to the EPA by December, but we are waiting for the Commissioner's sign off. Mark Renna asked when the public will be able to review the in lieu fee program. Susan Lockwood stated that the EPA has to review it first and they ask almost weekly for a status update.

Mark Renna asked questions regarding how the in-lieu-fee program would work in assumed and unassumed areas and in situations when the Army Corps is the lead. Susan Lockwood stated that at this time the program would only be for assumed areas and if a project is in an unassumed area but the Corps does not require mitigation and the State does, we hope to address that too.

Mark Renna asked about economics. He pointed out the much of what is in the fund was collected at the single-family home owner rate of \$38,000/acre, but projects will cost more per acre or credit than that to implement. He stated that at real project costs, He calculates the \$8 million in the fund should really be \$40 million based upon the "real" costs of mitigation vs. the single family assessment. Susan Lockwood pointed out that the money can only be used by non-profits and state

agencies. Mark Renna stated concerns regarding success rates of mitigation conducted by public and non-profit agencies. He would like to see the government match up a non-profit with a private sector entity to increase the likelihood of success. He also believes that although the Council has diverse knowledge regarding wetland mitigation, if they function like an IRT they will be self-regulating and that could be a problem/conflict of interest.

Mark Renna also stated that he submitted a proposal to Susan Lockwood to revisit the single family home-owner fee and realign it with the Consumer Price Index as it is supposed to be annually. He hopes to present it at the next Council meeting.

Mark Jaworski of Westin Solutions asked if there is interest in the in lieu fee program and how is it being accepted by non-profits? Has there been outreach? The success or failure depends on how many entities want to participate in the program. Susan Lockwood stated that the Council presented information with multiple speakers regarding the mitigation fund at the Land Rally last year. She received a lot of interest but only has seen the Many Mind Creek proposal as a result. We will need to aggressively find projects. The State cannot sit and wait for projects to come in because they haven't yet.

Grace Messinger of NJRCD stated that she started working with the Council in 2004 in Hunterdon County on a project and it took a lot of time to get before the Council and get money, which would need to be addressed. There are a lot of hurdles for a non-profit to overcome. She is also concerned that her agency may not be able to acquire money for a portion of the area they represent because of how the service areas may be established. They only have interest/work in certain areas of the State so they would not be able or interested to work outside their area. Susan Lockwood stated that the State can have many in lieu fees and an entity could pick their preferred area of the State to work in as an in lieu fee. We are not suggesting that one group would have to take on the whole State.

Grace Messinger also stated that long term monitoring and maintenance is an issue for non-profits and that would need to be allotted for as part of the funding. It is also difficult to get the technical information. Funding is always a challenge. Using the Council can be intimidating for small non-profits. Often several partners are needed and not all non-profits have that ability.

Paul Woodworth also stated that as a consultant they have to do a lot of pro-bono work before even getting the money for a project. They are always on the lookout for possible projects.

Jamie Holt from Evergreen stated that non-profits doing the work is an issue because normally they would be required to get financial assurance and non-profits cannot necessarily provide a guarantee. There needs to be some type of guarantee that the wetlands function as expected. He stated that North Carolina puts out RFPs with no limitations and the State can review and determine what projects offer the greatest benefits for the lowest cost. Non-profits don't have to do the work. They can contract with companies to do the work for them. An RFP with specific requirements may result in several proposals.

Executive Session

None

The next meeting date has been scheduled for the second last week in March.

**NEW JERSEY WETLANDS MITIGATION
COUNCIL MEETING**

MINUTES OF March 21, 2013

A regular meeting of the Wetlands Mitigation Council was held on March 21, 2013 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 Claudia Rocca.

COUNCIL MEMBERS PRESENT: Patricia Burns, Dr. Yang Deng, Susan Lockwood, Claudia Rocca, David Roth, and Dr. Robert Tucker.

STAFF MEMBERS PRESENT: Two members of staff were present: Anika Andrews-Spilman and Stacey MacEwan, Jill Denyes (DAG) and Karin Bauer.

ATTENDING: Mark Gallagher of Princeton Hydro, LLC
Mary Paist-Goldman of Princeton Hydro, LLC
Grace Messinger of North Jersey RC&D
Ron Prann of Shaw Environmental

Approval of the January 29, 2013 Council meeting minutes.

Dr. Robert Tucker motioned to approve the meeting minutes from January 29, 2013.

Dave Roth seconded the motion

The minutes were unanimously approved.

Update on the mitigation fund

Stacey MacEwan stated that the Mitigation Fund as of December 31, 2012 has \$8,335,480. She said we have some outstanding conceptually approved projects totaling \$671,354.30. In addition, full proposals before the Council today would be \$1,136,436.00 which if approved brings the new balance to \$6,527,689.70.

Update on the status of approved Wetland Mitigation Banks

Willow Grove has had all of its credits released. They have 22.5 credits available

Pio Costa has 6.34 credits available.

Wyckoff Mills has had all of their credits released. There are 10 credits available minus a recent sale not yet in the ledger.

Rancocas Phases I and II: 0.0745 credits available.

Stipsons Island all released FWW credits have been sold. The tidal portion has 4.331 credits available.

Port Reading has 3.0485 credits available.

Kane Mitigation Bank has 0.065 credits available.

Great Egg Harbor River Bank has 2.326 credits available.

Nishisakawick Bank: 1.109 credits available.

Cranbury has 0.65 credits available at this time.

MRI-3 has 8.325 credits available.

Marsh Bog Brook has 1.041 credits available.

Oxford West has recently had its banking instrument approved. There are no credits yet available.

Old Business

Resolution memorializing partial grant funding to the Hunterdon Land Trust in the amount of \$29,700 for site survey and environmental design tasks: Saeger Property, Holland Township, Hunterdon County

Dr. Bob Tucker motioned to approve the resolution

Dave Roth seconded the motion

All voted unanimously to approve the resolution

Update: Conceptual Approval of a \$140,000 Wetland Mitigation Grant Proposal for Many Mind Creek Wetland Restoration; Borough of Atlantic Highlands, Monmouth County

Susan Lockwood stated that she received an email regarding the Many Mind Creek Project. They are planning on submitting a complete proposal in the future. They are working with Princeton Hydro to finalize the project and address the technical concerns raised by the Council.

Update: Walnut Brook Wetland Mitigation Site presentation and status-Grace Messinger for North Jersey RC&D

Grace Messinger of North Jersey RC&D presented a status update on the Walnut Brook Wetland Mitigation Site. She stated some background information about her organization. The Council had initially awarded funding to the project in 2004-2005 and the project is in its 3rd year of the required 5 year monitoring period.

Grace Messinger asked whether the Council or the Department staff reviewed the monitoring reports.

Susan Lockwood responded that the monitoring reports are reviewed in-house by Department staff.

Ms. Messinger went on to tell the Council that the more detailed information regarding the site was contained within the monitoring reports that Department has and is available for their review.

Ms. Messinger stated that the project was looking good, from a vegetative cover standpoint at 100% however at the shrub level the numbers are lower than what they need to achieve. She noted that although the project had completed its 3rd year of monitoring, the organization would like to request an onsite consultation with a Department staff member to address some of the issues that are occurring on the project site. Specifically, issues related to herbivory, and recommendations that would facilitate the project meeting the success criteria required by the Department. She also reported that the soils onsite were beginning to show signs of redoximorphic features and evidence of soil saturation. Ms. Messinger then shared some soil samples taken prior to construction and post construction with the Council. The NRCS has been working with North Jersey RC&D on the project. NRCS has assessed the site using the point intercept method for collecting plant data, which values sites having three or less as having a hydrophytic community onsite. The NRCS has assessed three pools of the project area and they are all valued at three or less. The NRCS had recommended an additional 10 to 15 years of monitoring on the site to assess the trends that occurring at the site. Ms. Messinger noted that the recommendation was being taken into consideration but nothing has been decided upon.

Dave Roth asked a series of technical questions including what was the role of the NRCS and why the woody vegetation was failing.

Grace Messinger responded that the NRCS provides technical support to non-profits upon request. For this project NRCS has provided both soils and plant biologists to assess the site and make recommendations. Ms. Messinger attributed the failure of the woody vegetation to heavy deer browse and low rain fall. She noted that volunteer species are coming in.

Mark Gallagher asked where most of the herbivory damage was occurring: is it outside of the wetland?

Grace Messinger responded that the herbivory is in the corridor between the stream and the edge of the wetland. They will be going out in the spring to conduct additional investigations. She then requested a representative from the Department come out to give their professional advice. Initially, 15 gallon size trees were planted 10 feet on center and shrubs were planted 8 feet on center and that while they have had some success with the implementation of deer fencing, the fencing required a great expenditure of time and effort on the part of staff and volunteers in addition to funding for maintenance.

Dr. Bob Tucker asked if the funding request was adequate for funding the project.

Grace Messinger replied that while more moneys are always welcome, she found the requested funding to be stable and that the organization made their requests for funding in phases and has been able to manage with the funds that they have.

Patricia Burns asked if there was a mature overstory.

Ms. Messinger replied yes. One section of the wetland and along the existing streambed onsite has an existing overstory to help with organic material onsite.

Mark Gallagher encouraged Grace Messinger to make note of the various awards that the project has won. She went on to point the Council to the handouts which noted the various achievements of the site, including a 30 minute video about the site.

New Business

Presentation by Grace Messinger representing North Jersey RC&D for conceptual approval of a Wetland Mitigation Grant for Lopatcong Creek Restoration Project, Route 519, Greenwich and Lopatcong Townships, Warren County

Grace Messinger of North Jersey RC&D and Mark Gallagher and Mary Pace Goldman of Princeton Hydro presented the Lopatcong Creek Restoration Project for conceptual approval. The project includes stream and wetland restoration as well as protection for the historic Morris Canal. They are breaking the project up into phases and requesting approval to submit a full proposal for the project and funding for Phase 3 of the project. Phase 3 includes activities associated with the final design, permitting and preparation. The estimated cost of this phase is between \$65,000 and \$85,000. Claudia Rocca asked if the \$1.14 million noted in the proposal is the total project cost. Grace clarified that \$1.14 million is the amount they expect the project to cost over the next 5 to 7 years and initially they are seeking funding for just this phase of the project to cover the costs associated with permitting, design and the Phase 1B survey that was requested by the State Historic Preservation Office.

Bob Tucker motioned to approve the conceptual proposal and noted that the Council has also funded a project at Liberty State Park that is at the other end of the Morris Canal.

Susan Lockwood stated that we need to know how much wetland to expect at the site because the money is for mitigation. Mary stated that they are confident with their estimate that the project will result in the creation of 2.5 acres of wetland and there is potential for more.

Yang Deng asked if this is the only source of funding that they are seeking. Grace confirmed that they are only seeking money from the Council for this phase, but they are looking for money from other funding sources for Phase 4 (construction and implementation) in addition to Council support.

Patti Burns expressed concern about obtaining a Flood Hazard Area permit for the project. Mary stated that they have met with permitting staff and they indicated the project was approvable provided they can demonstrate that there will be no net fill or changes to the Flood Hazard Area line and no other properties will be affected by the project. Madhu Guru agreed that permitting was feasible under those circumstances.

Claudia Rocca asked if the Council money would be used to pay for the Phase 1B archaeological survey. David Roth asked if they had the impression that SHPO would require them to monitor, because they may be able to just put the money toward monitoring since the project is an excavation. The presenters stated that they did not believe SHPO would require monitoring and that they felt that the survey would find no historic resources.

Susan Lockwood stated that it would not be appropriate to pay for the archeological survey using mitigation funds. David Roth stated that mitigation funds are used to pay for engineering studies and permitting related to the project and asked how the survey differed. They agreed that the archeological survey would be needed to obtain a wetland permit. Grace said that they would separate the costs of the survey associated with obtaining the permit and the restoration project from any archeological survey required for the historic goals of the project.

Dr. Bob Tucker repeated his motion to approve the conceptual proposal for Phase 3.
Dave Roth seconded the motion
All members of the Council voted in favor.

Request from Ron Prann representing Phillips 66, to make a monetary contribution to the Council in the amount of \$900,000 to satisfy mitigation requirements, File No. 2009-04-0001.1; Linden City, Union County.

Ron Prann of Shaw Environmental, made an unofficial presentation to the Council. He noted that while a Department request for additional information had precluded the project from being presented, he wanted to take the opportunity to familiarize the Council with the project so that when it comes back in at the next meeting they (the Council) wouldn't be starting from scratch. Specifically, Mr. Prann noted that the proposed project is related to the construction of a new terminal to receive and unload rail cars containing crude oil for processing through Bayway Refinery. As proposed the project requires a FWW-IP for disturbances totaling 3.18 acres of PFO1 (freshwater forested) wetlands and associated transition area. The project calls for 1.5 acres of PFO1 disturbance and 2.13 acres of Transition Area disturbance for completion. The preferred method and solution for mitigation for this project is wetland banking. Presently, there are no freshwater forested wetland banks serving the Phillips 66 watershed (WMA07). The Port Reading Wetland Bank is a tidal wetland bank and serves Watershed Management Area 07 and 09, but for tidal impacts only and therefore is not suitable. As a result, the Wyckoff Mills Wetland Bank was contacted. While Wyckoff Mills does have the appropriate credits available, they do not service the WMA 07. Additionally, the applicant has investigated both on and offsite mitigation options neither of which are feasible. With the lack of suitable on the ground mitigation options within WMA 07, the applicant has been directed by Department staff Susan Lockwood and Anika Andrews-Spilman to submit a proposal for monetary contribution for review by the Wetlands Mitigation Council in accordance with the "Monetary Contribution Proposal" checklist. He went on to note that he is currently working to address the Department's request for additional information. The information should be submitted within the next few weeks and that should satisfy the Department and ensure the project a slot on the agenda for the next Council Meeting.

Both Susan Lockwood and Anika Andrews-Spilman agreed with Mr. Prann's assessment. Ms. Andrews-Spilman added that the staff comments would highlight the applicant's endeavor to follow the hierarchy.

Update: Transfer of Council Bank fund account from Merrill Lynch to Van Guard.

Susan Lockwood stated that she receives online notification regarding the fund. She has had conversations with Bob Cartica who will be managing the fund to eliminate fees that would be incurred if Van Guard was managing the investments. Currently the money is held in various CDs

and money market accounts and managed in a way so there is money accessible when funding is granted for projects. We are also now able to write checks.

Update on restructuring of Department/Council Mitigation fund/ In lieu fee program

Susan Lockwood stated that as of March 20, 2013 the final draft of the In-lieu fee Program was hand delivered to EPA for review and comment. Ms. Lockwood also noted that she advised Dan Montella of EPA that the Department was open to receiving their comments and guidance. As such, the Department will await EPA comment prior to proceeding further with In lieu fee program specifics.

Public Comment

Susan Lockwood stated that Mark Renna was unable to attend the meeting. However, he submitted written comments on the agenda items addressed at today's meeting. She stated that the comments were provided to the members of the Mitigation Council for review prior to the meeting and that she could provide anyone else who would like to review those specific comments with a copy.

Brian Cramer of Greenvest, Inc. requested and was provided a copy of the comments. None of the other attendees requested the comments.

Susan Lockwood stated that the deadline for submitting information to the Council is one month prior to the Council Meeting so that staff has time to review the information and prepare documents for the public notice which is done 2 weeks prior to the meeting.

Mark Gallagher offered to update the Council on the Quakertown project at the next meeting.

Patricia Burns motion to adjourn the meeting

Claudia Rocca 2nd the motion

All remaining Council Members voted to adjourn the meeting

Executive Session

None

The next meeting date has been scheduled for May 21 or 29, 2013.

New Jersey Freshwater Wetlands Mitigation Council

Meeting Minutes of May 29, 2013

9:30 a.m.

New Jersey Department of Environmental Protection
501 E. State Street, Hudson Room
Trenton NJ

Claudia Rocca called the meeting to order, read the Sunshine Law statement and asked for approval of the March 21, 2013 Council meeting minutes.

Patricia Burns noted several typographical errors in the minutes for the last meeting and motioned to approve the minutes with those corrections. Dr. Bob Tucker seconded the motion. All members voted in favor.

Update on the Mitigation Fund. JoDale Legg stated that unfortunately there is no official update today because the new provider that services the Mitigation Fund only provides statements quarterly. Although we have completed a quarter, the statement does not arrive until the next quarter. She then noted that there would be an update at the next Council Meeting. As of December 31, 2012 the balance was \$8,335,480. Additionally, no projects are scheduled to appear before the Council today. With the outstanding conceptually approved projects subtracted out, the balance is \$7,664,125,70.

Update on the status of approved Wetland Mitigation Banks.

Jo Dale Legg updated the Council on the status of the approved mitigation banks. Most banks have credits available and the amounts are noted on the table. She noted that the Pio Costa Bank is in the process of resolving their number of credits and also working toward another phase of the bank. Oxford West was recently approved and no credits have been released yet. They are expected to start construction this year. Lakes Creek was recently approved and has not been added to the table yet. They have no credits released yet and will only sell credits to Atlantic County.

David Roth asked how many credits Lakes Creek will have. Ms. Legg believed it was approximately 23 credits which are a combination of freshwater and tidal credits.

Dr. Bob Tucker asked if we had a price range for credits. Ms. Legg stated that although we do not regulate prices, they range from \$325,000 to \$800,000 or more in the Meadowlands area.

Mark Renna asked for a schedule on resolving the Pio Costa Bank. Ms. Legg stated that they have submitted a GP16 for the next phase of their bank and she is planning to visit the site to confirm the wetland line for the bank. Mr. Renna stated that this is an old bank that was created many years ago with an expanded service area. He would like to know when their credits will be resolved to inform future business decisions. Ms. Legg estimated that it could be resolved in the next two months.

Old Business

Update: Conceptual Approval of a \$140,000 Wetland Mitigation Grant Proposal for Many Mind Creek Wetland Restoration; Borough of Atlantic Highlands, Monmouth County.

JoDale Legg noted the both she and Susan Lockwood conducted a site inspection of the proposed project site. As a result it was determined that while the project has merit, a majority of the work for which the applicant is seeking

Council funding is outside of the scope of freshwater wetlands. Specifically, most of the work is State open water/streambank restoration. Ms. Legg reported that she directed the applicant to consider applying for a 319 Grant from New Jersey Department of Environmental Protection- Watershed Management Program since much of the work is a better fit for the stormwater aspects of the project. Additionally, Ms. Legg encouraged the applicant to tease out those aspects of the project that would meet the criteria for Mitigation Council funding and make a request for those activities. She also noted that the project area is dominated by invasive Japanese knotweed and would benefit from the project. There is the unique opportunity to start at the headwater areas and work down the stream which would be effective. Ms. Legg closed by stating that the applicant would likely be back to appear in front of the Council at the next meeting.

Resolution providing Conceptual Approval for a Wetland Mitigation Grant for Lopatcong Creek Restoration Project, Route 519, Greenwich and Lopatcong Townships, Warren County

Susan Lockwood made a motion to approve the resolution providing conceptual approval. Dr. Bob Tucker seconded the motion and all members voted in favor of approving the resolution.

Mark Renna commented that the funding requested by the applicant is \$1.1 million dollars and only \$15,000 had been collected within WMA1. He added that the amount of the request was disproportionate to both the monies in that area and to the need for wetlands mitigation within that particular WMA.

Claudia Rocca and Susan Lockwood both pointed out that the Council had requested additional information, specifically a cost analysis due to the historic and stream restoration aspects of the project to ensure that Council funding was going to those aspects that were directly related to freshwater wetlands mitigation. They also noted that the request for additional information was part of the reason why the applicant would not be appearing in front of the Council at this meeting.

New Business

Presentation by Nathan Charron representing North Jersey RC&D for approval of a Wetland Mitigation Grant for Lopatcong Creek Restoration Project, Route 519, Greenwich and Lopatcong Townships, Warren County

This item was removed from the agenda.

Request by Doug Chabrak from Amy Greene Environmental on behalf of Essex County to make a monetary contribution in the amount of \$105,048.00; File#0700-12-0001.1: South Orange Avenue Road Improvements; Townships of Millburn, Maplewood and South Orange Village; Essex County.

Doug Chabrak did not attend the meeting. Stacey MacEwan stated that the Department approved an individual permit on June 12, 2012 for traffic operations and roadway improvements including the construction of three pedestrian bridges on South Orange Avenue in Millburn, Maplewood and South Orange in Essex County. The permit authorized impacts to 0.033 acres of forested freshwater wetlands and 0.043 acres of State open water. The applicant demonstrated that there were no on-site or off-site alternatives for a mitigation project and proposed a monetary contribution in the amount of \$105,048 based on the estimated cost of enhancing wetlands and creating wetlands in uplands taking into consideration the ratios required for both options.

Madhu Guru asked if there was a bank in the area. Ms. MacEwan stated that the project is within the service area of the Port Reading Bank, but that bank does not offer forested freshwater wetland credits.

Dr. Bob Tucker motioned to approve the monetary contribution and Patricia Burns seconded the motion.

Mark Renna asked to comment prior to the vote. He stated that that amount is equivalent to \$1.4 million per credit and exceeds bank prices. Mr. Renna noted that \$105,000 for 0.076 acres amounts to approximately \$1,000,000 per acre for mitigation. Both he and Mark Gallagher commented that this was probably a “real” number.

Madhu Guru asked if the contribution could be sent to the bank that serves that area. Susan Lockwood stated that it would be considered out-of-kind mitigation which is not consistent with the federal rules.

Mark Renna noted that he does not know the specific project location, but the road spans WMA 6 and 7. WMA 6 is within Pio Costa’s service area. Ms. MacEwan stated the project is only within WMA 7.

Bob moved to approve the contribution. Patti seconded. All members voted in favor to accept the contribution in the amount of \$105,048.

Council discussion of Single-Family Homeowner contribution issue.

Susan Lockwood gave an overview of how the single- family homeowner (SFH) contribution came into play and gave an update on the concerns and issues that have been associated with the contribution to date. Specifically, that the contribution amount has not been adjusted in years, the mitigation banker’s frustration with the contribution amount in relation to the actual cost of mitigation, and the element of surprise that the homeowners encounter because often the mitigation concerns are not addressed until the end of the permitting process. Ms. Lockwood stated that it was the opinion of New Jersey Department of Environmental Protection-Land Use and the mitigation banking community that it was time to re-evaluate the amount of the standard SFH contribution.

Dave Roth asked how a single family gets approved for a “large” impact because everything is supposed to be minimized. Madhu Guru assured him that the permitting folks do everything they can to minimize impacts but if there is a septic system involved, the impacts are greater.

Patricia Burns noted that criteria should be established regarding the contributions. The Council should focus on and make decisions related to the following issues:

- Is the residence a primary home or a secondary home? Is it a question of reality or luxury?
- Was the land purchased prior to July 1, 1987 or after?
- Is the application for an Individual Permit or a General Permit?
- What is the amount of disturbance, and was the disturbance minimized to the fullest extent possible?

Claudia Rocca added that there should be a section added to the rules to address SFH so that the issues are addressed prior to coming before the Council and then it would help to ensure the appropriateness of the request.

Mark Gallagher mentioned that there is a disconnect in how the State views the value of wetlands-encumbered lands and the ecological value of wetlands. Basically, the State uses appraisals that are geared toward development value and as a result of low development value, there is a lower value assessed to the wetland encumbered properties. He stated that there has to be a better way to assess the value of wetland properties.

Randy Bearce from Enforcement suggested that perhaps Mark Gallagher was referring to some Enforcement cases. He said when a violation occurs, the value that they consider is the value to the “developer” of the land, which would be the development value.

Patti Burns believes that consultants are more likely these days to advise their clients about the costs of filling wetlands.

Susan said that she agrees but when a client does not take the advice of the consultant, it still could become the Council’s problem when they want to make a contribution using the single family number.

Claudia repeated that this conversation is limited because the rules are specific about when the single family contribution could (and could not) be used. So in the absence of a rule change, there was very little that could be done by the Council. She also suggested a stakeholder meeting at some point.

Mark Renna recommended that the Council use the authority within the rules to annually adjust the Consumer Pricing Index (CPI) to increase the amount of the SFH contribution so that it is more accurate, as related to the current pricing of wetlands mitigation which ranges from \$250,000 per credit to \$800,000 a credit at the various mitigation banks within the State. Mr. Renna noted that the rules allow such adjustments and since the rules were adopted in 2008, the number has never changed.

Madhu Guru stated that if the Council asks the Department to adjust the number, she will work with the Department's economic group to get the appropriate number and go through the process to get the number adjusted.

Dr. Bob Tucker agreed with the assessment that it was time to adjust the SFH contribution in accordance with CPI.

Susan Lockwood stated that someone should make a motion to request that New Jersey Department of Environmental Protection adjust the CPI. She then stated that the change could be made via a notice.

Dr. Bob Tucker made a motion to request the adjustment in the SFH contribution. Patricia Burns seconded the motion. The remaining members voted unanimously in favor of requesting the adjustment to the SFH contribution.

Public Comment

Susan Lockwood stated the Department received a grant from the EPA to get all of the mitigation sites entered into the database currently used by the Department. We hired two hourly employees who are entering the data and digitizing the sites. She stated that this is also forcing us to go back to old projects and we have already been able to close out a few projects. She added that the grant is for three years.

David Roth asked how are they are digitizing sites. Ms. Lockwood stated that they are identifying the block and lot, mitigation area itself and a centroid based on the plans and using other mapping such as the Land Use/ Land Cover where they can.

David Roth asked if we will be getting shapefiles for sites when they are proposed. Ms. Lockwood stated that we will have to ask for that in the future. Mark Renna indicated that it would be easy to submit a shapefile with the as-built plan and that Evergreen would have no problem doing so.

Mark Gallagher asked if the Department will be asking for the boundaries of the Council projects. Ms. Lockwood stated that that information would be requested once we get a protocol in place.

Adjourn. The next meeting date has been tentatively scheduled for (pick a date in July)

The Council tentatively scheduled the next meeting for July 16th or 17th.

New Jersey Freshwater Wetlands Mitigation Council
Meeting Minutes of July 24, 2013
9:30 am
New Jersey Department of Environmental Protection
501 E. State Street, Hudson Room
Trenton, NJ

Dr. Yang Dang was unable to attend the meeting as he is sick.

Claudia Rocca called the meeting to order, read the Sunshine Law statement and asked for approval of the May 29, 2013 Council meeting minutes. Patricia Burns seconded the motion. All Council members voted in favor. Mark Renna noted that the minutes were accurate but on page four they had voted on an action but there was no resolution. Susan Lockwood stated that they still needed to adjust the single family home owner contribution to which Madhu Guru added that it was sent to the commissioner and a response is being awaited. The resolution cannot be finalized until a response is given. Jill Denyes stated that the resolution can be that the Council resolved to pass the recommendation along to the Commissioner and thus it can be put into the next meeting to pass the resolution.

Update on the Mitigation Fund.

JoDale Legg updated the Council on the mitigation fund. As of March 31, 2012 there is a balance of \$8,376,297. Outstanding conceptual/approved projects total \$671,354.30. There are no conceptual or full proposals before the Council today. With the outstanding conceptually approved projects subtracted out, the balance is \$7,704,942.70. Susan Lockwood said the reports on the mitigation fund are issued quarterly but the Council must ask for them. Mark Renna noted a minor typo on the Update on the Mitigation Fund. For the balance it says March 31, 2012 instead of March 21, 2013. He also agrees that it is good to ask for updates.

Update on the status of approved Wetland Mitigation Banks.

JoDale Legg updated the Council on the changes to the table. There is now information about credits released and available. The status of the banks is the same as the last meeting. All credits have been released for Rancocas Bank. 1.806 credits were released for Nishisakawick Bank and 2.1 for Oxford Western Bank. Credits were added to Marsh Bog Brook II which now has 1.6 total and 0.808 available. Lakes Creek, for Atlantic County road and bridge projects is under construction: 6.76 credits will be available, 5.27 of which are coastal and 1.49 of which are freshwater. David Roth wanted to clarify that Oxford Western Bank has 21 credits allocated. JoDale Legg said that is correct.

Susan Lockwood noted that another bank was recently approved and that the credits were released yesterday, July 23, 2013.

Mark Renna asked for an update on Pio Costa. JoDale Legg said she visited the site right after a big storm but that it looked really good and she thinks it met full acreage. She can confirm that at the next meeting. David Roth asked what column one (credits allocated) will look like. Susan Lockwood said that is not known at this time. Pio Costa needs to revise their numbers so there is

no error factor. The Council needs to know how many acres they have and what area was enhancement. Pio Costa had built in extra acres in case they were not successful.

Mark Renna noted that if you add up the columns, over 300 credits are allocated, 218 released and 148 sold. This leaves about 70 available credits. Mark Renna stated that there is a lot of unused fee money and since there are credits available, that the Council could solve some of the wetlands lost by purchasing credits.

Review of contribution chart and table.

Susan Lockwood noted that Mark Renna had a chart from the EPA last meeting. Now it is included for everyone to have. The chart consists of information that the DEP sent to the EPA. The EPA wants the Council to do in-lieu mitigation by watershed because the money needs to go back into the watersheds from which it was collected. She stated that when a banker does a project, they have to pay for the costs up front. However, with in-lieu fee programs the non-profit organization or government entity does not have the money up front. The area from which in-lieu fees are collected may be much larger than the area of a bank and covers multiple watersheds. Thus, collections are taken based on watershed eco-regions. She noted that a similar approach is used in Maine. There they use larger areas containing several watersheds so they can collect money more quickly. Thus, she stated that the Council should spend money in accordance with eco-regions. The EPA said this is a good idea but asked what is going to be done next. She said the EPA will likely send a letter to the Council on where to go next.

David Roth clarified that the second column from the right is the mitigation needed. He wanted to know if the 34.6 acres done under the Hackensack and Pascack mean that the Council funded 34.6 acres with in-lieu fees. Susan Lockwood said that is correct and that it includes Council funds that went to Liberty State Park.

Claudia Rocca stated that the table is a good tool to target projects under review and to use it is a guide for the Council.

Susan Lockwood said that the Council has not been totally successful as the money is adding up and projects do not come in in the areas where they are needed. She stated that they need a non-profit organization to do the legwork.

David Roth suggested that another column may be useful to show whether or not each non-profit organization has the ability to work only in a specific region based on their charter. Susan Lockwood stated that when looking for a non-profit, there could be requests for proposals, not for specific projects. The Council would seek non-profits to work for the Council to get the Council the projects. Susan Lockwood has a conference call with a non-profit organization next week that does this type of work in states outside of New Jersey. Last year the Council tried outreach through the Land Conservation Rally to see who might have good projects to work with. All it turned up were a couple of projects. In New York State, Ducks Unlimited is successful and finds many projects. In Maine and Virginia, the Nature Conservancy is the entity that collects the money and works on the projects. Claudia Rocca added that the Council should reach out to Trout Unlimited and the Corporate Wetlands Sponsorship.

Susan Lockwood stated that the Council hopes to get rid of the money they have. The Council does not want it sitting; they want it to go directly to projects.

Claudia Rocca said that for some of the banks there are fractions of acres needed and asked if the Council is allowed to purchase credits. Susan Lockwood said the Council's statute will not allow it. It was a question raised in the past but the statute clearly prohibits it even though Federal rules allow it if there is a buildup of money and no projects. David Roth suggested having consultants focus efforts on connections with non-profits. Susan Lockwood says that the Council needs to do something different as the Council keeps doing the same thing and is not getting anywhere. Patricia Burns added that a lot of GP 4s are not required to remediate upstream and downstream, but if upstream and downstream are in bad shape, to have the consultants look into remediating them. Patricia Burns added that the Council needs to explore all avenues.

Susan Lockwood said everyone has great ideas but she still recommended going through a third party as the DEP is very limited. The DEP is not allowed to solicit; they must put in a general request to everyone due to the public contracting laws, so it ends up not working because the DEP gets in its own way. She reiterated that the Council needs a 3rd party/non-profit organization since they can reach out and get things done. Dr. Bob Tucker countered that the Council can reach out. Claudia Rocca suggested that we wait to get the letter from the EPA.

David Roth asked what the downside to using money to purchase credits is. Susan Lockwood, said it is not that there is a downside, but that it is illegal. A mitigation bank is commercial and the Council cannot give money to anyone who is not non-profit. The Council does not have the same option as the Federal government. Jill Denyes said that money cannot be given without consideration which results in a contract, so Susan Lockwood is correct.

Mark Renna stated that the federal rules have changed and that there are successful wetlands out there but nothing is being done. Mark Renna also pointed out that row three of the table shows wetlands impact to be 1.192 acres and that mitigation needed is also 1.192 acres. There is no 1:1 ratio and thus the header needs to be changed because more mitigation is needed. Susan Lockwood said the numbers are not wrong but that the mitigation needed is "equivalent." Mark Renna stated that the mitigation needed has to be enough to compensate for the loss and that the state needs a lot more mitigation. Mark Renna then referenced line nine and said they cannot collect enough land based on money and gave an example of North Carolina buying credits. David Roth agreed that "mitigation needed" needs a different header. JoDale Legg suggested "equivalent credits". Susan Lockwood stated that the ratio could never be 1:1 but a minimum of 2:1 and a maximum of 27:1. David Roth said it is unfortunate that we constrained ourselves. Susan Lockwood agreed and said that Federal government always has flexibility due to "discretion," but the Council does not.

Mark Renna asked the Council to explain row seven. Susan Lockwood said the DEP took a monetary contribution but put it in a separate fund. JoDale Legg stated that the DEP took financial assurance because the mitigation was not completed. This money is not in the Council's money because the Army Corps is involved. Mark Renna asked for further information.

Susan Lockwood stated that one million dollars was given to National Lands Trust to purchase lands with special habitats. They have depleted the one million dollars and would be happy to do more if given another one million dollars. Mark Renna wanted to know why money was given just to buy land. Brian Dubois (a former Council member) spoke out that it was more than just to buy land but that once the land was purchased work was done to eliminate invasives and restore bog turtle habitat among other things. Patricia Burns asked who coordinated this and Brian Dubois said Jason Verrano and Brian Zarrati among others. Mark Renna said he sees millions of dollars but not sure what is being done. He stated that destroyed wetlands need to be replaced but wanted to know if this million dollars actually did that. Susan Lockwood said the majority of the nation is doing what this Council is doing (using one watershed management area for bank service areas but multiple watershed management areas for in lieu fee service areas). Mark Renna wanted to know if that is based on a HUC 8 or HUC11 as it changes the dynamics tremendously.

Old Business

Update on the status of Lopatcong Creek Project-Project team is working to acquire the property before coming back to the Council. Anticipate that purchase will be completed by late fall.

Susan Lockwood reiterated that the Council wanted to know what is owned by the applicant and thus the applicant wants to complete the acquisition project first. Claudia Rocca said they are purchasing property not a project. Susan Lockwood said Lopatcong has received conceptual approval and they will come back with details when they are ready.

Approval of Resolution memorializing the Council's decision to approve Essex County Department of Public Works monetary contribution in the amount of \$105,048 to satisfy the mitigation requirements for freshwater wetlands individual permit #0700-12-0001.1 fwwip.

Susan Lockwood made a motion to approve. Dr. Bob Tucker seconded the motion. All members voted in favor. Mark Renna asked for public comments. Claudia Rocca declined to take comments at that time.

New Business

Request by Kristopher Krzyston of T&M Associates on behalf of 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 #1507-12-112.1 for Fischer Boulevard Improvements in ocean County, New Jersey.

Frank Scarantino, Ocean County engineer, spoke representing Ocean County College and the Ocean County Board of Chosen Freeholders. He said Ocean County College came to the Ocean County Board of Chosen Freeholders in 2005 and informed them that the enrollment is increasing and they need to develop a plan for the future of the campus and to include Kane University in this plan as well. In 2007 a plan was developed to double the size of the campus. The campus is 1,000 acres and includes sensitive lands on the fringe but the heart of the campus has a lot of upland area. In 2008 Ocean County began buying properties for the campus and began non-regulated activities. As the economy continued to downfall, enrollment continued to increase as people chose to go to college instead of getting a job. He said he was presenting the

Council with what he believes to be the final version of the campus. The project includes the campus itself as well as two roads. The college is doing the buildings while the Ocean County Board of Chosen Freeholders is dealing with the infrastructure (roads, parking, storm water, and some utilities). He hopes to have the project complete within the next 2 years. He said there is an urgency for this project as the campus is bursting at its seams.

Kristopher Krzyston, with T&M Associates then took over and spoke about the traffic on Fischer Boulevard and Hooper Avenue. With the current road configuration, traffic is at a standstill and thus Ocean County College is proposing a third driveway to ease the traffic. They have chosen the most simplistic and minimized driveway to construct and will also work on jug handle improvements. He reiterated that enrollment is going up 14% each year and stated that the campus project will impact 1.499 acres of freshwater wetlands while the roads will impact 0.738 acres of freshwater wetlands for a total of 2.237 impacted acres. He then discussed the swamp pink population as being very strong at a particular location on site and that something needs to be done upstream to preserve it and thus they are proposing land preservation. He said that preservation is the best option as Ocean County already owns the land. Ocean County does not have the money to spend on credits from a mitigation bank and wants to save tax payers from seeing an increase in taxes.

Katie Kinsella presented that the U.S. Fish and Wildlife Service wants to protect the swamp pink population and suggested preserving the proposed land preservation area to protect the hydrology. Land will also be given to Green Acres to offset a Green Acres diversion.

Kristopher Krzyston spoke again stating that the total campus is 184.66 acres and that they would like to save any extra credits from the land preservation area for future improvements off site. They have looked into other options including agricultural and forested lands, but feel that preservation is the best option.

Frank Scarantino then stated that they only predict minor campus expansion in the future all of which would be covered under Freshwater Wetlands General Permits. However, Toms River owns a fringe area that they would like to use for recreation and Ocean County would like to use some credits to help Toms River in the future. He reiterated that preservation is the best option as Ocean County has paid \$130 million dollars for debris removal as a result of Hurricane Sandy. (FEMA has just started to pay back). The Ocean County College project would have been put off if it was not for the enrollment demand.

Kristopher Krzyston then mentioned that there is an issue with two of the lots that may have contaminated groundwater. They are currently in the process of looking further into it. He also informed the Council that all land will be dedicated to the Ocean County Land Trust. Stacey MacEwan had asked for maintenance funds but Kristopher Krzyston is asking that the Council not make that a requirement. Frank Scarantino added that Ocean County has always taken care of its land in the past, and they have never had to provide a maintenance fund.

Patricia Burns then asked how difficult it is to preserve swamp pink as swamp pink is a very good indicator of stream damages from sedimentation and also indicates little scour. She wanted to know how much of an increase in impervious coverage there will be as that will increase

runoff. Kristopher Krzyston responded that the preservation upstream will help keep the population intact. Manufactured treatment facilities will be used to help reduce sedimentation as much as possible. Frank Scarantino added that except for basin one, the rest is encapsulated by preserved lands and that the ridge line will not be developed. Runoff will drain through parking lots to nitrogen removal basins. All of this will be implemented in advance of building construction. Patricia Burns asked how far the discharges will be from the pink swamp. Frank Scarantino responded that it will be about 6,000 feet from the colony. Madhu Guru added that there will be no new discharges.

David Roth wanted to know if the Green Acres area is part of the total acreage calculation for credits. Kristopher Krzyston responded that it is not. It is preservation without any strings attached.

Stacey MacEwan then gave a review of DEP staff comments. She stated that the two projects (college expansion and road improvements) came in together, that there is no bank in the area nor is there any area available for enhancement. The applicants looked for mitigation upstream of the swamp pink and the location of the campus is at the top of the watershed.

Questions were raised about differing numbers. Katie Kinsella explained that 1.607 acres dropped to 1.499 acres so the other numbers dropped as well; 2.237 acres is what needs to be mitigated for. The mitigation required is 60.426 acres (at a ratio of 27:1) while the total preservation acreage is 184.66. This leaves an excess of 124.24 acres for future use.

Stacey MacEwan added that the project will protect swamp pink as well as the Barnegat Bay and that the applicant is working on addressing the groundwater contamination issue. The project will require a deed restriction.

Claudia Rocca asked if future projects will need to come back before the Council to use the excess credits. Susan Lockwood stated that the DEP would set them up as a bank and have conditions that the credits can only be used for certain projects in watershed management area 13. She said it would be best to just set something up front so the Council does not need to review it every time. Claudia Rocca agreed that would be good and then asked about the maintenance fund. David Roth asked what it is typically used for and stated that maintenance funds do not apply when it is a governmental agency. Frank Scarantino said the land would be governmental as the entity is the Ocean County Land Trust.

Patricia Burns asked if they will have to go through what a regular bank goes through. Kristopher Krzyston said everything would be coordinated through Susan Lockwood and Stacey MacEwan. Patricia Burns then asked if the instrument will come before the Council for resolution. Susan Lockwood said no. If the Council is in agreement to approve the preservation, the DEP will put the instrument together and that does not require an interagency review team. Claudia Rocca asked if this will require additional work from the applicant. Susan Lockwood said no and Stacey MacEwan added that they will just need to deal with the possible groundwater contamination issue.

Claudia Rocca motioned to accept the 184.66 acres of land for donation for preservation, create the mitigation bank instrument, and waive the maintenance fund. Dr. Bob Tucker seconded the motion. Mark Renna asked for public comment before all voted. Susan Lockwood said no to which Mark Renna asked if he should submit formal comments before meetings. Susan Lockwood responded that Ocean County bought the land specifically to mitigate. Mark Renna countered that he was able to find a site in the same watershed as Ocean County College to use for mitigation for parkway enhancement projects. Dr. Bob Tucker called a question for all to vote. All members voted in favor.

Request by Andrew Kostialik on behalf of his family to make a single family contribution in the amount of \$2,774.00 to satisfy mitigation requirements for permit #1415-05-0011.1; Block 157, Lot 43; Kinnelon Township, Morris County.

JoDale Legg briefed the Council on the project and stated that Linda Kostialik owns 1.05 acres that she purchased in 1973. In 1997 the Kostialik family prepared to build a single family home on the property. The Kostialik Family received a Freshwater Wetlands Individual Permit in 2011. JoDale Legg stated that 0.073 acres of wetlands will be impacted and that the Kostialiks went to a mitigation bank in the area and received an estimate of \$32,850. The Kostialik family cannot afford this; they have already spend \$70,000 in preconstruction costs and \$70,000 in taxes over the years. JoDale Legg stated that the family is asking for the single family home contribution for 3,000 square feet of impact, \$2,774, to give to either the Council or the banker. The staff of the DEP advised the Kostialik family to bring this before the Council since they owned the land prior to the wetland regulations and it is a minimal impact. JoDale Legg said that the Kostialik family has been trying to find a resolution since February, 2012 and have not been able to find any alternatives.

Madhu Guru inserted that there are no Freshwater Wetland General Permits for this type of activity and the only option was a Freshwater Wetlands Individual Permit, which does not allow for a single family contribution. David Roth asked if the lot is all wetlands. Mrs. Kostialik stated that it is not, only a small portion is. David Roth then asked if it is new construction or if it is expansion. Mrs. Kostialik responded that it is new. David Roth asked if the 0.073 acres is the footprint of disturbance or the footprint of the house and asked for a site plan. Susan Lockwood said there is no plan here as the permit has already been approved. David Roth asked how you determine if the cost of mitigation is unaffordable. Claudia Rocca added that the quote the Kostialik family received from the bank is on the high side. David Roth wanted to know how you determine that the cost is prohibitive without getting a perspective. Jill Denyes said that at the last Council Meeting when the Council discussed this in general terms they looked at what the property was appraised at.

Dr. Bob Tucker said that this type of situation has historically been approved as it has a very low impact and motioned to approve the single family home contribution of \$2,774. Patricia Burns stated that all the target points have been hit: ownership predated the rules and minimized impact, and that the Council must assume the DEP went through all of the details. However, Patricia Burns stated that she is uncomfortable going through with a decision without the details, such as what resource value those Freshwater Wetlands have. Susan Lockwood stated that the DEP takes all of that into consideration when issuing a permit. Claudia Rocca said it appears the homeowners have no other option and seconded the motion. David Roth asked if it is possible to

eliminate the concept of perspective without risking questioning the decision of the DEP. Susan Lockwood stated that at the last Council meeting, the Council had a generic conversation about what was needed to make this type of decision, and they have everything in front of them. It is not set in stone; the Council can ask applicants to include other information in the future. David Roth stated that different applicants cannot be held to different standards and what if the property owners are land rich and cash poor; property appraisals would not help. Susan Lockwood said that the DEP is getting better at making sure the applicant knows up front that they will have to mitigate and that this was not done in the past. Patricia Burns stated that the applicant did target what they wanted, but that she still has grey areas. David Roth called the question and all voted in favor. Patricia Burns did not oppose, she was just still unsure.

Public Comment

Mark Renna had comments in regard to the decision on the Kostialik's contribution. He stated that since they received a Freshwater Wetlands Individual Permit, they cannot use the single family homeowner's contribution. He went on to discuss that the family could afford more as they have a few different properties and stated the high value of homes where they are building. Mark Renna stated that even though it is a small impact, the statute still states that they must go to a mitigation bank and that legally the Council cannot endorse this. Mark Renna thinks it was wrong that a decision was made with a lack of information and no public comments. David Roth countered that this is what the DEP reviews. Susan Lockwood reiterated that they owned the property prior to passing the law and they have a right to develop, that others would not have. If the Council did not agree, the Kostialiks could have claimed a taking. The Council understands that they cannot replace the wetlands impacted with only \$2,744. Claudia Rocca said that the Council is working on improving for the future. Mark Renna asked Claudia Rocca if she made the decision as a result of sympathy. Susan Lockwood asked why should the Council make the single family homeowners jump through hoops just to end up in front of the Council. Mark Renna stated that the Council wants to control the price of banking and that they are fearful of lawsuits.

Susan Lockwood asked the Council where they want to contribution to go: to the banker or to the Council. David Roth wanted to know why the banker would want it, if it takes away 0.073 credits. Claudia Rocca said it would not. Susan Lockwood stated that the way it was voted upon, the credits will go into the Council fund. All members agreed that is fine.

Mark Renna voiced that he had an issue with the Council approving a bank solely for preservation and said that in the past the Council stated they would never approve a preservation bank. He is okay with the current project using the preservation of land but not okay with future projects and that the Council's decision sets precedent for future preservation banks. Susan Lockwood stated that Ocean County has no other choice as they have left over credits. The Council is calling it a bank to formalize the process and to ensure that it meets all the criteria required. Susan Lockwood said if it is good enough for this project, it will be good enough for future projects. Mark Renna countered that the land can change. Claudia Rocca said that is why an instrument will be set up. Susan Lockwood said the only difference is that Ocean County is bringing it up now as opposed to later and that she does not see a major difference. Patricia Burns added that preservation is ecologically more beneficial than creation.

Adjourn

The next meeting was tentatively scheduled for October 1st, 2013 or October 2nd, 2013. (It has since been confirmed for October 1st, 2013, 9:30 am in the Hudson Room.)

Claudia Rocca motioned to adjourn the meeting. Dr. Bob Tucker seconded the motion. All members voted in favor.

**New Jersey Freshwater Wetlands Mitigation Council
Meeting Minutes of October 1, 2013
9:30 am
New Jersey Department of Environmental Protection
501 E. 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 September 13, 2013.

Review and approval of the July 24, 2013 Council meeting minutes.

Dr. Bob Tucker moved to approve the minutes of the July 24, 2013 Council meeting. Dr. Yang Deng seconded the motion. All Council members voted in favor.

Update on the Mitigation Fund.

Jo Dale Legg stated that no update is available.

Update on the status of approved Wetland Mitigation Banks.

Jo Dale Legg updated the Council on the Wetland Mitigation Banks. Port Reading bank sold 0.212 credits to PVC shore. Great Egg Harbor bank had credits released in August. In addition, Jo Dale stated that a sale was received the day before, September 30, 2013 for 1.43 credits to the New Jersey Turnpike authority so now Great Egg Harbor bank has 1.084 credits available. MRI-3 has 8.215 credits available. Marsh Bog Brook II sold 0.16 credits to First Energy.

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.

Claudia Rocca first wanted to respond to public comments that had been received. She stated that it is the Department's responsibility to determine if proposed mitigation is good, not the Council's and started to motion to approve the resolution. Dr. Bob Tucker asked her to wait as some serious questions have been raised. Susan Lockwood responded that the Department would have already had to answer these questions.

Stacey MacEwan stated that the 1985 project area for Pine Barrens Tree Frogs was left out of Ocean County's mitigation proposal and that Ocean County is not double dipping. Stacey also addressed the US Fish and Wildlife comments about the inclusion of the parcels they required preserved in their recommendations by stating that the lots were included in the proposal and the Department had addressed this issue. Stacey also noted that recommendation number 5 recommended the preservation of all upstream areas, which is what is being accomplished by the proposal.

Frank Scarantino from Ocean County added that the 3.28 acres that Fish and Wildlife had requested was preserved but is not part of the current mitigation proposal as there is a separate

deed. David Roth asked Frank Scarantino if it is defined by a conservation easement. Frank Scarantino responded that there will be a conservation easement and that the deeds are prepared but that it is not part of the mitigation. David Roth asked if the calculation included any land area previously deed restricted or already within Green Acres. Frank Scarantino said no.

Stacey MacEwan stated that the 3.28 acre area is in the calculation of the total land to be preserved. Frank Scarantino clarified that it is but that they are not asking for mitigation credits for it. Stacey added that they still need to address contamination on some of the blocks and lots before mitigation credit can be received. Frank Scarantino stated that even if they are removed from the overall mitigation credit, they will be restricted and added that all preserved County lands will become part of a Land Trust that includes about 400 acres and that this will define forever the expansion limits of the college since all of the land that is not currently slated for development is being preserved.

Helen Henderson of the Littoral Society stated that the information she has showed lot 51 as a large parcel and that a portion of it was proposed to mitigate for the Green Acres diversion. Frank Scarantino responded that this has changed and that the information she has is not up to date. Helen Henderson asked for an update. Frank Scarantino stated that lot 51 is not part of the Green Acre's diversion in any way.

Susan Lockwood commented that Claudia Rocca is accurate that the Department does its job in regard to determining if the proposed mitigation is appropriate and that is the only way it gets to the Council. The Department makes sure all other options are exhausted and that the only option besides the proposed land donation is a monetary contribution. However, Susan Lockwood stated that the site is very valuable for its freshwater wetlands and endangered species components and that all of this goes into the Department's consideration, and why it is in front of the Council today. Susan Lockwood restated that if this option is rejected, there is no option left besides a monetary donation but that the Council does not need more money; instead they need wetlands. Without this land donation there can be another college expansion in the future.

Helen Henderson asked for the Council members to introduce themselves so that everyone can know who is speaking and asked Claudia Rocca to repeat her previous comments. The Council members introduced themselves. Claudia Rocca restated that it is the Council's responsibility to vote on if the land donation is the proper amount to mitigate for the disturbance to the wetlands and it is the Department that decides if the mitigation is appropriate. Helen Henderson asked if this land donation will turn into a bank in the future. Both Susan Lockwood and Claudia Rocca responded that that is up to the Department, not the Council. Helen Henderson asked if the Council is approving it to be a bank. Susan Lockwood said no. Claudia said she would like to take that off the table because banking is not under their jurisdiction. Susan stated that banking would need to be approved by the Department and the Council is accepting the parcel as a land donation. If they want to make a bank they would have to set it up that way and the Department would have to approve it.

Ryan Scerbo, Esq. of DeCotiis, FitzPatrick & Cole, representing Evergreen, stated that their issues are not with the question of whether the land is good. Instead the issue is with it not complying with the Department's rules at N.J.A.C. 7:7A-15.4 and that the Department needs to

make sure that it complies. Mr. Scerbo stated that he could find no evidence that the land was acquired with this intent in mind and that the proposal provides no new wetlands. He added that it needs to be determined if there is a better option such as restoration and enhancement and that it cannot be said that there are no other options; instead they need to find another option. The Department needs to value rules. He also provided written comments.

Jill Denyes stated that she agrees with Claudia Rocca on the fact that the Council cannot take on re-reviewing the permit and that 15.4 does not appear to be on point here and suggested that maybe there is a gap in the rules.

Ryan Scerbo stated that the Department is encouraging the Council to make a decision, but wants to know why, when 15.4 has been ignored? Jill Denyes stated that 15.4 is for off-site and this is onsite donation because it is a property the County owns. Ryan Scerbo countered that that is not what the rules were intended to be, but instead onsite needs to be on the same parcel. Susan Lockwood added that it is onsite because it is the same location as the impact. Kristopher Krzyston, with T&M Associates, stated that the road transects it. Ryan Scerbo responded that that is true for only some of the parcels. Kristopher Krzyston stated that they did look offsite. Kristopher Krzyston also said that the road does transect the entire area and that the County is doing everything to preserve this watershed, that there is no other option, and they want to minimize the impact to tax payers. Ryan Scerbo responded that the Department should follow the rules and not go by taxpayers; that this site is offsite as it is adjacent property. Ryan Scerbo added that this decision is going to impact future decisions.

Emile DeVito, with NJ Conservation Foundation, asked the Council to clarify that it is not the Council's responsibility to determine if a rule is being followed properly because the Department should have already done that. Susan Lockwood responded that that is correct and that the statute says what the Council's responsibilities are. Claudia Rocca stated that in accordance with N.J.A.C. 15.22 it is up to the Council to review the piece of land and if it is appropriate. Ryan Scerbo stated that a permit decision cannot be based on the issuance of mitigation. Susan Lockwood responded that the Department cannot approve a piece of property, only the Council can. Susan Lockwood further stated that applicants are not required to have a mitigation proposal at the time of review, as the permit can be conditioned for it. Susan Lockwood added that the permit does not approve a land donation but that the Department can determine that a land donation is an appropriate avenue to mitigate for a particular impact and that is what the Department has done. If the Department does not have a mitigation proposal at the time of review, the permit is issued with a condition that mitigation must be conducted on or before the regulated activity; a proposal is not required with the permit. The Department can only say that it believes it looks like it satisfies the rules but the statute puts that decision on the Council.

Ryan Scerbo asks why the Department asked to see that the County purchased the land for mitigation if it is considered onsite. Susan Lockwood responded that that is a requirement for both onsite and offsite mitigation. Ryan Scerbo asked for the proof that it was purchased for mitigation. Stacey MacEwan responded that the Department received a letter from the County attorney. Ryan Scerbo said that it was not supported and that he has had to prove intent in the past.

David Roth asked if these Individual Permits were issued with a condition or if mitigation was discussed prior to the permit being issued. Kristopher Krzyston said that the Individual Permits were not issued until after the last Council meeting. David Roth asked if there was an opportunity for public participation. Susan Lockwood responded yes, public comment could have been given when the permit was applied for and added that it was on the agenda for the last Council meeting. Claudia Rocca added that it was also posted in the Bulletin. David Roth then posed the question, if the Council is only voting on land and folks are concerned about the opportunity for public participation on the means of mitigation, aren't they covered? Susan Lockwood said that the State is unlike the Federal government, which will not move on a permit without a mitigation proposal, and that there are more options for public participation since the land donation needed Council approval.

Emile DeVito asked if he was allowed to make statements. Jill Denyes said yes. Emile DeVito then stated that the land was not acquired for mitigation and that he believes the Council should not accept it. He also asked why was there a meeting in July to see if the mitigation was appropriate since it should be independent from the permit decision. Susan Lockwood responded that the Department is darned if they do, and darned if they do not. Susan Lockwood stated that the DEP thought it was good to know what the Council's decision would be before issuing the permits. Although they did not need to wait, and could have conditioned the permit, since the donation was on the Council's agenda and the permit was ready to go, they decided to wait and see what happened instead of conditioning the permit. Susan Lockwood said that the Department waited to issue the permit after the Council meeting because there were already pending activities onsite and the faster the permit was approved, the faster the cleanup and issues such as impacts to swamp pink can be addressed. This is not what the Department normally does.

Claudia Rocca stated that N.J.A.C. 7:7A-15.22 talks about considering exceptional wetlands and stated that the property in question appears to be very valuable.

Frank Scarantino clarified that just because the lands are owned by the government and contain wetlands, there is an assumption they are already preserved. There have been approvals for developing pockets of uplands here. The college envisioned the development of these lands in their master plan, but the freeholders did not agree. The lands were purchased with Right-of-Way Funds. These lands are contiguous with the campus, but they are owned by the County. The County does not want private development to encroach so he thought it was a no-brainer to preserve the remainder of the land.

Mark Renna referenced back to the July 24, 2013 Council meeting and said that it was the first time in 20 years that public participation was not allowed. Mark Renna said public comment was only allowed late in the meeting, and it was after the applicant left the room. However, public comment on this project did not exist until today.

Claudia Rocca asked if the Council had any more questions and motioned to accept the resolution as it stands since there is no "double dipping." Dr. Bob Tucker said that the resolution does not represent the summary of the current meeting and that it needs to be re-drafted and he wanted to table it for now. Susan Lockwood countered that it does not reflect the current

meeting but it reflects the Council meeting from July. Dr. Bob Tucker responded that it needs to reflect the current meeting and that the current draft includes a banking statement. Claudia Rocca stated that the current draft does not include a banking statement. Mark Renna stated that there is one in the third paragraph.

Patricia Burns said that it needs to be further determined if the land donation is considered onsite versus offsite and that the Department still has work to do. Patricia Burns stated that the intent of purchase needs to be further investigated and that public comment was overlooked. Patricia Burns added that the land donation looks like the right thing to do because without it the land will be pushed to development and that she is in favor of it but would like all current issues addressed further. Susan Lockwood responded that the Department cannot do anything else as the permit is already issued. David Roth asked when the permit was issued. Multiple people responded that it was issued August 8, 2013.

Susan Lockwood reiterated that there is nothing in the resolution about banking, it just discusses the land. Mark Renna brought her the copy he had that discussed banking. Susan Lockwood noted that he had a different version of the resolution than she has and that the current version does not have anything about banking.

David Roth asked which Bulletin this permit would have been based on with its issuance date of August 8, 2013. David Roth stated that his point is that anyone who had an issue with the resolution had the opportunity to appeal it assuming appeals are still open. Since the permit was issued after the last Council meeting, people could have appealed it. Emile DeVito stated that it appeared in the August 25, 2013 bulletin so the 45 days ends in a few days. Ryan Scerbo stated that his client does not have an issue with the project but wants all to be treated the same. Ryan Scerbo added that they are not objecting to the permit, but instead the mitigation.

Claudia Rocca stated that this is a land donation and the Council is determining if it meets the rules; it is not the Department's determination. Jill Denyes said Claudia Rocca is correct but that there is an issue with the two different drafts of the resolution. Dr. Bob Tucker motioned to table the resolution and re-draft. Claudia Rocca seconded the motion.

Stacey MacEwan asked how the resolution should be re-drafted. Patricia Burns stated that she wants to see things addressed and look further at alternatives as well as discuss onsite versus offsite. Claudia Rocca argued that this is not something the Council can make a decision on. Patricia Burns said that maybe it was brought to the Council prematurely and that the Department's review was not complete. Susan Lockwood said that it was complete and that the Department never easily gets to a preservation option. However, this site is forested and has endangered species and that there is nothing else around. Susan Lockwood added that there is nothing else left for the Department to do as they have been very thorough. Patricia Burns said that she does not want this to become precedent-setting. Patricia Burns said she needs clarification on onsite versus offsite and proof of intent to purchase so that there is no gray area.

Susan Lockwood said the only gray area is the issue of public land and that the rules are inconsistent on how to address public land. The statute is clear on what the Council does and does not do. Susan Lockwood added that when it is public land the rules are inconsistent on

when the land can be used to mitigate. Susan Lockwood said that they must always fall back on the statute and that she is not worried about precedent because there has never been a case like this before. Claudia Rocca added that it would be the Department's precedent, not the Council's.

Frank Scarantino stated that future development is more important than preservation. He added that much of the land to be donated is upland and it will not be regulated and thus the campus will be able to build stadiums and dorms if the land is not preserved.

Claudia Rocca stated that the resolution needs to be revised. Jill Denyes agreed with Claudia Rocca and suggested it should be tabled until next time as well as provided to the public. Dr. Bob Tucker commended the chairman for opening it to the public and is glad for the comments but wishes to hold off until the next Council meeting to clarify.

Kristopher Krzyston stated that he understands the Council's position but that this is the best proposal that can be offered and he cannot fathom how this could not be considered onsite.

Claudia Rocca again seconded to table and to remove the banking from the resolution. Susan Lockwood stated that some things can be added to clarify concerns and to address comments. Dr. Bob Tucker, Yang Deng, and David Roth voted in favor, Patti Burns voted nay.

Approval of a resolution for Andrew Kostialik to make a single family contribution in the amount of \$2,774.00 to satisfy mitigation requirements for permit #1415-05-0011.1; Block 157, Lot 43; Kinnelon Township, Morris County.

Susan Lockwood asked the Council if they are ready to move on the resolution. Mark Renna asked for public comment. Jill Denyes advised the Council that they should allow public comment.

Mark Renna stated that public comment was not provided during the July Council Meeting. Mark Renna stated that the resolution is illegal and inconsistent as there is a Mitigation Bank in the area and mitigation is the preferred alternative. Susan Lockwood said that this was discussed during the last Council meeting.

Susan Lockwood voted to approve the resolution. Bob Tucker seconded the motion.

Council members voted unanimously to approve this resolution.

Approval of a resolution memorializing the Council's decision to recommend an increase in the single family homeowner contribution in accordance with the Consumer Price Index.

Claudia Rocca asked if there are any comments about increasing the cost from \$38,000 per acre to \$41,000 per acre. Susan Lockwood motioned to approve. Claudia Rocca seconded the motion. Susan Lockwood added that it will still need approval from the Commissioner. All Council members voted in favor.

New Business

Request by Tilcon New York Inc. for final approval to satisfy an Administrative Consent Order (ACO) file #1601-08-0001.1 with a land donation located at 1202 Union Valley Road, Block 8002, Lots 5 & 8, West Milford Township, Passaic County

Brian Montag said that they received conceptual approval for a land donation in May of 2012. He said that there will be 1.27 acres of wetlands impacted and that he agrees with the five conditions of the letter from JoDale Legg and that the five conditions have been completed: 1.Phase I completed and submitted; 2.Historic investigation completed; 3.Survey completed; 4.Receipt from charitable organization completed-Passaic River Coalition will receive 34.3 acres and are very pleased as they are adjacent to the property; and 5.Receipt of the Department's conservation/restriction. Brian Montag said that he has hard copies of a PowerPoint presentation to hand out. Before going to the PowerPoint, JoDale Legg added that Pio Costa Mitigation Bank currently has credits available, but did not at the time the application was approved.

Laura Newgard went through the PowerPoint and pointed out the following information. The site is approximately 90 acres and was occupied by Paintball Depot. Before the paintball there was a trout hatchery which shows that the water is clean. The existing buildings will be used so as not to expand development. The wetlands have been delineated and they found that they are emergent, scrub/shrub, and forested wetlands. In addition, there are small areas of impounded waters that make for possible vernal pool habitats. The scrub/shrub is found mostly in the western portion of the property associated with the stream and pond perimeters. The emergent wetlands are found mostly around Reflection Lake. The remainder of the site is upland and a hemlock forest dominates the upper slopes of the property. In addition, the meadow where paintball occurred is an upland successional field. Thus, many ecosystems are covered all on one site.

A 150-foot Riparian Zone is expected for the stream based on on-site wood turtle mapping since the species is state threatened. Belcher Creek is slow moving, while its main tributary is fast moving. There are three on-stream lakes: Reflection Lake, Central Lake, and Southwestern Lake. Reflection Lake is very emergent. Central Lake is forested to the edge. Southwestern Lake is forested but has an open understory. Many bird species were observed over one day, as well as herptiles, invertebrates, and mammals. Based on landscape layer version 3.1, the majority of the property is mapped for Barred Owls and the southern edge of the property is mapped for Red Shoulder Hawks. In addition, the property provides good habitat for both Timber Rattlesnakes and Northern Copperheads due to nice rock outcroppings which allow for good basking areas for snakes. These two species desperately need habitat so this is very important.

Bobcat habitat is mapped for the majority of the site. There are a lot of adjacent undeveloped lands so this is a good area for Bobcats since they need a lot of space. There is also a Great Blue Heron Rookery immediately off-site. The slow moving creek makes a great habitat and nesting area for wood turtles which are mapped in the central and southern portions of the property. While a live turtle was not seen, a 1 year old eaten by a bear was found. The site is also a potential habitat for Blackburnian, Black-throated Blue, and Worm-eating Warblers. This was just a one day survey, not a complete survey. While it is not mapped on the landscape layer, USFWS lists West Milford as Hibernacula and the site has many huge Shagbark Hickories which make great habitats for bats.

Conclusions are: 1. The property is characterized by diverse ecological communities including upland deciduous and upland hemlock forest, rock outcrop/ledge communities, upland successional fields, and palustrine forested, scrub-shrub, and emergent wetlands. 2. The site includes numerous surface water features including Belcher Creek and its unnamed tributary, three on-stream lakes, and ditches associated with the former trout hatchery operation. 3. The property includes potential habitat for several threatened and endangered species including the State-endangered bobcat, red shouldered hawk, and timber rattlesnake and the State-threatened barred owl and wood turtle. 4. The presence of the State-threatened wood turtle was confirmed on-site during EcolSciences' site investigation. 5. The presence of great blue heron utilizing the site was confirmed by EcolSciences. In addition, a great blue heron rookery was observed in the adjacent Pettit Pond. 6. The site provides potential summer habitat for the Federally-listed Indiana bat as well as other tree bats.

David Roth asked if there were any further habitat breakdowns since the August 8, 2013 letter. Laura Newgard said no but about half is freshwater wetlands and half is upland. Dr. Yang Dang asked if there are any contaminants on site. Laura Newgard responded that a Phase I had been completed and no contaminants were found.

Claudia Rocca opened the floor for public comment. Mark Renna asked what would the future impact of development be as well as what type of mitigation would occur? Preservation? Brian Montag said it will be an Elks camp for children with special needs and this offers a great opportunity to move the camp. Brian Montag added that requirements are minimal since they are going to use the existing structures and that there will be 20 acres for the camp. Brian Montag said the balance, 35 acres, is intended for the future-possibly banking or mitigation, not for development, but no specific plan at this time. Patricia Burns asked how much of the 35 acres is wetlands versus uplands. Laura Newgard showed the map and said it is about the same-half and half. Patricia Burns stated that it would be banking by preservation. Dr. Bob Tucker motioned to approve. Patricia Burns seconded the motion. David Roth asked if those that were not here for the conception can vote. Jill Denyes told David Roth yes. All Council members voted in favor.

Request by Green Trust Alliance for the funding in the amount of \$812,370.91 for wetland enhancement/restoration on the Lenape Farms portion of the Tuckahoe Wildlife management Area; portions of block 54, lot 1, Estelle Manor City, Atlantic County

Doug Lashley stated that this would be a use of in-lieu fee money and that the Green Trust Alliance has been around for about ten years during which time they have received grants for innovative technologies.

Marty McCue said that Lenape Farms is within Watershed Management Area 15 and managed by the Division of Fish and Wildlife. He added that it is a 17,500 acre wildlife management area that faces challenges with stewardship as Fish and Wildlife is responsible for 340,000 acres. It is a tough job without an enhancement project and this project would be a great model for a public/private partnership. He said that Lenape Farms is a unique mix of habitats and has some degraded areas that will benefit from this project. He discussed the history of Lenape Farms

which was farmed until 1945 when 13 families purchased the land to preserve it and to help protect the watershed. Marty McCue said that it is a challenging job for Fish and Wildlife and he believes this partnership will help.

Dave Golden, the superintendent for the southern region of Fish and Wildlife, said that they will focus on degraded areas-specifically 3 areas where previous land use has had a detrimental impact. Area A is an Atlantic White Cedar Swamp that was clear cut recently and a phragmitis marsh; Area B is a modified agricultural wetland where they propose vernal pools; and Area C was a landing site and has no vegetation. Dave Golden said that vernal pools have been built in the past and been very successful. Dave Golden stated that Area B has Pine Barrens tree frogs which show a priority for vernal pools as well as spotted turtles which make use of adjacent sites.

Mark Gallagher then further described the different areas. He stated that Area A is degraded phragmitis which will be removed and replaced with more desirable species and that there have been two logging events. Thus they would like to fence the area and allow Atlantic White Cedar to develop. In the more recently logged area they would like to initiate a planting program.

Mark described Area B as a previous agricultural land where there is a very shallow wet spot where they would need to create the correct hydrology and revegetate the surrounding area.

Mark Gallagher said Area C has been logged and clear cut and that there are three existing shallow depressions where they would do the same thing as in Area B and that they would allow the meadow to develop naturally.

David Roth asked for more details. Mark Gallagher said that they would use herbicide treatment on Area A. David Roth asked what the land should be. Mark Gallagher responded that Area A is at the edge of impoundments that were tidal at one point and said that stewardship is important for the herbicide and replanting because they will be held for five years of monitoring.

Patricia Burns asked if there were three acres of phragmitis. Mark Gallagher said that there are 7.1 acres. Patricia Burns further asked if there is any other phragmitis surrounding and if they will be getting all of it. Mark Gallagher said they plan on getting all of it; there is none other surrounding. Patricia Burns asked why then did it become phragmitis? Mark Gallagher said it was a result of being cut off and historic logging events. Patricia Burns asked why they would just be using herbicide. Mark Gallagher responded that when the phragmitis is very dense that they at least need to start with herbicide. Susan Lockwood questioned whether a hydrological modification will be done in addition. Mark Gallagher replied that based on the landscape they would not consider hydrological modifications because a lot of damage would be caused just to get there and that the other areas are already impounded so the herbicide should discourage future growth. Patricia Burns asked if they are going to look at the soils because the soils are often so far degraded that it is hard for natives to find a place. Mark Gallagher responded that they will.

Mark Gallagher described Area B as a low spot in a field surrounded by a forest. David Roth asked if it is well drained soil. Mark responded that it is pretty poorly drained. David Roth asked if they will continue to farm. Dave Golden responded that regular mowing will occur to

keep the grass down and to maintain an early successional habitat which is good for amphibians that use vernal pools. David Roth asked if the land will be for public use and if it will be stocked with birds. Dave Golden responded that it will not.

Mark Gallagher described Area C as a transition area from wetlands to dry uplands and may actually entail a creation element. Doug Lashley stated that they are prepared to comply with the conditions from the letter from the Department.

Mark Renna commented that it is good to use the funds and that it looks like a good project and a good price for credits as the land is free. Mark Renna then asked if they have maintenance planned out and if they will have enough money to keep it to a high standard? Mark Gallagher said they do as they have set it up for five years of monitoring with yearly updates and that it is not a one shot deal. Marty McCue added that they are in this for the long haul. Dave Golden said that they receive funding through corporate tax funding and grants but it is limited and if they can make this project work it is a great opportunity.

Mark Renna stated that this is cash outflow and that the Council is not collecting enough money to meet mitigation. Emile DeVito commented that it is a great project and he supports it as it is a great way to spend the money the Council has collected.

Patricia Burns commented on using herbicides to get rid of the phragmites stating that herbicides are short lived but the surfactants are not. Patricia Burns added that it is important to look at alternatives to herbicides and it would be good to have a research part of the project.

Susan Lockwood moved to approve this conceptual plan and to move toward a final proposal subject to the conditions they said they will comply with including more watershed information as well as the obtainment of any permits they will need for the project. Claudia Rocca seconded the motion. All Council members voted in favor.

Public Comment

Susan Lockwood stated that Dan Montella from the EPA had hoped to deliver a letter about in-lieu fees today but could not as a result of the government shutdown. Susan Lockwood said that Dan Montella did send a draft and that the EPA is very supportive of the Council but they need to move ahead. It was suggested that a subcommittee meet to discuss the letter further and then to bring it to the entire Council at the next meeting.

Doug Lashley stated that he has a letter from (Russ ?) in Washington, who is Dan Montello's "boss," about the prospect of using credits to offset impacts where there is an in-lieu fee and he will send this letter to Dan Montello. Susan Lockwood said that this Council tends to fall outside the EPA's rules and the State statute prohibits the Council from doing this. Doug Lashley responded that he will move to amend the statute. Susan Lockwood stated that in other States, if you do not use money in a certain amount of time, the EPA allows the purchase of credits from mitigation banks but that our statute prohibits this because it is not a public or government non-profit, so the Council cannot use a mitigation bank. Susan Lockwood stated that the Council knows it is not appropriate to have money just sitting.

Claudia Rocca agrees that a subcommittee should be formed. Susan Lockwood stated that it should consist of 3 members and David Roth added it should be one member from each of the three contributing areas. The Council determined to have Patricia Burns, Claudia Rocca, and Dr. Yang Deng as the three members of the subcommittee. JoDale Legg stated that the letter wanted the Council to respond within thirty days of the date of the letter. Madhu Guru said that the response needs to be at the next meeting.

Claudia Rocca motioned to create a three person subcommittee in response to the letter. Mark Renna asked if the public can get a copy of the letter and can the public serve as technical guidance. The Council gave Mark Renna a copy of the letter. Claudia Rocca responded that the subcommittee will consult with the public after their initial meeting. Claudia motioned to provide a letter that the staff is requesting an extension and that a subcommittee has been formed. Patricia Burns seconded the motion. All Council members voted in favor.

Emile DeVito commented that if Lenape Farms has the appropriate hydrology they can try to duplicate what they have done with swamp pink in Pine Hill as it is a very inexpensive procedure. Emile DeVito said that the Council does need money for these fabulous projects, contrary to Susan Lockwood saying earlier in the meeting that the Council does not need any more money.

Ryan Scerbo asked to have his written comments become a part of the minutes and agrees with Patricia Burns' request for more information on the Ocean County College project which was not formalized in the motion.

Patricia Burns motioned to obtain clarification about on-site versus off-site and the intent of purchase. Dr. Bob Tucker seconded the motion.

Susan Lockwood stated that it can be added into the resolution. Patricia Burns stated the resolution needs to address these issues. Jill Denyes questioned who the Council is asking information from? Patricia Burns stated that they need more of a checklist and they need information from the Department, legal level, and property owner. Claudia Rocca opposed this motion and stated it is outside the Council's regulations. Susan Lockwood also opposed the motion. Dr. Bob Tucker voted in favor of the motion. David Roth opposed the motion. Thus, the Council was split which Jill Denyes said meant that the motion was defeated.

Ryan Scerbo commented that none of the attached documents proved that the land was purchased for mitigation and encouraged the Council to look into it.

Adjourn

The next meeting was scheduled for December 3rd, 2013, 9:30 am in the Hudson Room. Claudia Rocca motioned to adjourn the meeting.

**New Jersey Freshwater Wetlands Mitigation Council
Meeting Minutes of December 3, 2013
9:30 am
New Jersey Department of Environmental Protection
501 E. 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 November 19, 2013.

Review and approval of the October 1, 2013 Council meeting minutes.

Claudia Rocca noted that the minutes were quite extensive. Susan Lockwood motioned to approve the minutes. David Roth seconded the motion. All council members agreed to approve the minutes.

Update on the Mitigation Fund.

Jo Dale Legg stated that the current balance is \$8,623,042.19. She stated that \$57,000.00 was received on October 7, 2013 for a general permit. She also named two outstanding conceptual/approved projects and stated that two will be cancelled due to inactivity. The two cancelled amounts will total about \$88,000.00. David Roth asked if the calculation excludes this amount. Jo Dale responded that it does not. Betty Ann Kelly, of Union County, asked if she could speak to Jo Dale after the meeting about the Union County project. Jo Dale agreed to speak with her. Jo Dale went on to state the new balance of \$7,218,166.28 and that there are also four conceptual projects which total \$4,461,005.00. There are no full proposals before the Council so the new total, if all conceptual projects are approved, is \$2,757,161.28.

Update on the status of approved Wetland Mitigation Banks.

Jo Dale Legg stated that there has been very little activity. She noted that Lakes Creek has completed the freshwater wetlands portion but has not requested credit release yet.

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.

Dr. Bob Tucker noted that the resolution has changed as it has taken out the reference to a bank. However, it appears the Department will be acting as a bank for the County and thus the concept has not changed; only the word “bank” has been taken out. Susan Lockwood responded that Dr. Bob Tucker’s comment brings the Council back to where they started. She reiterated that the Council just determines whether land to be donated or preserved is a valuable component of the freshwater wetland ecosystem. They do not determine whether land donation is the acceptable form of mitigation—the Department does that. She added that the Department is not “acting as a

bank;” the applicant would have to go through the entire process to become a bank. She stated that the Department is doing nothing different with this applicant than it does for all others. Dr. Bob Tucker countered that the proposal is holding aside 96 acres. Susan Lockwood stated that the applicant needs the Council’s approval to preserve or donate land as only the Council is able to say if the land is good for mitigation. Susan Lockwood added that the Council always reviews the land to determine if it is a good piece of property and referenced Lakes Creek Bank. She stated that the Council approved the preservation piece of Lakes Creek Bank and then the rest of the land was approved for a bank. She stated that this is the same case and that the Council does not need to approve the bank, just the preservation piece. She stated that the Council needs to do this whether it is a bank or a standalone project.

Claudia Rocca asked if the Council has any questions. David Roth responded that he did not. Susan Lockwood motioned to approve and stated that answers to questions, such as it whether or not the land was previously deed restricted, if certain pieces were preserved and not included in the mitigation requirement, and answers to concerns about swamp pink, were added to the resolution. Susan Lockwood asked Stacey MacEwan if anything else was added. Stacey MacEwan responded that the mentioned items were the big additions and that she also included provisions about going through the hierarchy processes.

Steven Mars, from U.S. Fish and Wildlife Service stated that he wrote a letter back on September 26, 2013 about preservation only. He stated that restoration should be part of the project especially in this watershed which is 50% built out and where the swamp pink population is slipping due to poor water quality. Mr. Mars added that just preservation is allowed only under certain conditions such as imminent threat. He stated that there needs to be additional discussion as preservation is a slippery slope and many other municipalities have land that could be considered “mitigation.” Steven Mars stated that the issue is not being addressed and that approval would be precedent setting. He asked if the letter was presented to the council and added that he wants real, on the ground, mitigation in an area that is already degraded and has State and Federally listed species in it. He stated that both preservation and mitigation is needed.

Robert Moss, of the Sierra Club, stated that it could also be an option to use privately owned land where there is a stream that feeds the swamp pink population and that the owners drive their ATVs across the stream. Susan Lockwood responded that that assumes the owners want to sell. Robert Moss responded that the County could use eminent domain.

Frank Scarantino, of Ocean County, stated that he strongly disagrees with Steven Mars. Frank Scarantino stated that the project does promote water quality enhancement as they have retrofitted much of the campus and added technical treatment devices on all the stormwater basins. He stated that they have gone above and beyond and have modified the three primary basins for nitrogen removal. He added that they have done everything that Steven Mars has asked for them to do in order to protect and preserve the swamp pink and that all of it has either been implemented into the plan or already completed. Frank Scarantino stated that they have invested about one million dollars to go above and beyond for water quality improvement and that that number rises to about three million dollars when you take into account the nitrogen removal.

Kristopher Krzyston, of T & M Associates, stated that they are preserving land to prevent the college from adding more development as the college had talked about adding dorms and other structures. Kristopher Krzyston stated that he believes this is the appropriate place for preservation.

Patricia Burns asked for Steven Mars to give some specific concerns. Steven Mars stated that he thinks more needs to be done even though he appreciates what has been done. He stated that the president of the college said that they cannot use some of the upland areas for parking lots as they do not want to put students at risk of crossing the road, which Steven Mars understands. Steven Mars stated that he has been to the site numerous times and that there are recreational fields that appear that they are not being used and that these fields adjoin wetland areas. He stated that the softball field was wetlands until about 2003 that that hydric vegetation goes right up to center field. Steven Mars stated that the three fields could be converted to wetlands easily so it depends on how much will there is to restore Barnegat Bay. He added that the 20 acres of impervious coverage are all above headwaters that serve as habitat for State and Federally listed species.

Susan Lockwood responded that 99% of what Steven Mars stated related to permit considerations, not Council decisions and that the Council has already agreed that the land is valuable. She added that by the time the applicant gets before the Council, the Department believes that all other options have been exhausted. She stated that no one has said that the land is not appropriate for preservation and added that preservation is not appropriate unless there is an imminent threat of development which is a big issue in this watershed. Susan Lockwood stated that the Department is strongly in favor of Barnegat Bay restoration but is also in favor of colleges which bring people to the state. Susan Lockwood added that the Department went through alternatives, and reduced the scope of the final build out. She stated that some would say the college should not expand at all, but healthy colleges are good and that this is one situation where we will have to agree to disagree. Susan Lockwood stated that we are not going to tell them to tear down the building and that the Council has had this discussion many times and now it needs to decide if the resolution reflects the decision process.

Emile DeVito, of the NJ Conservation Foundation, stated that he appreciates the need to separate the Department and Council decisions. Emile DeVito referenced the U.S. Fish and Wildlife service letter from September 26, 2013, and stated that preservation is not suitable under the Federal rules and that the college cannot be its own threat. Emile DeVito added that that New Jersey standards need to be at least as strong as the Federal standards. Emile DeVito asked if the 19 acres pledged to be protected from swamp pink are a part of mitigation. Susan Lockwood responded that they are not. Emile DeVito stated that the Council should not be memorializing a vote in June when it is has changed. Susan Lockwood corrected Emile DeVito, and said the vote was in July. Emile DeVito stated that it needs to be proved that the land was acquired for mitigation purposes and that it is dangerous to just accept a statement saying so because it will be precedent setting. Emile DeVito added that about 60 acres of uplands are being preserved and that the standards say the land has to contain an appropriate upland buffer of 150 feet plus an additional 150 feet. Susan Lockwood responded that she does not know where Emile DeVito is getting that from as there is no 300 foot buffer in the Freshwater Wetland rules. Emile DeVito stated that a buffer is needed plus the 150 feet if the uplands are to count for preservation and

that only about 20 acres meets this requirement. Susan Lockwood responded that Emile DeVito may be interpreting something wrong. Emile DeVito turned in a letter to the Council.

Joan McGee, of Stony Brook, asked Susan Lockwood about an economic balancing test and about her statement that expanding the college is good. Susan Lockwood responded that there is a benefit. Joan McGee asked if it is Susan Lockwood's position that these economic balances are a consideration. Susan Lockwood responded that yes, there is a public benefit test included in the rules and the statute.

Claudia Rocca asked if the Council has any questions. Mark Renna, of Evergreen, commented that preservation and mitigation are not the same things and that preservation is not compensation for an impact. Mark Renna added that according to the standard 27:1 ratio, the applicant owes 60 acres and he does not understand how the Council could risk approving this as it could have restoration potential. Mark Renna stated that it is a very hot County politically. Mark Renna stated that the decision would be premature for the use of 96 acres and that he agrees with Dr. Bob Tucker that it would be a bank in everything but name.

Claudia Rocca stated that it "may" be used in the future and they would still have to go through the process. Mark Renna responded that then we should have them come back and do that. Susan Lockwood responded that it makes sense as a bigger project. Mark Renna asked if all the 96 acres will be deed restricted. Susan Lockwood responded that they will and that it is better to look at it as a whole, and not in little pieces. Mark Renna stated that he would like 100 acres to be preserved at a 27:1 ratio. Dr. Bob Tucker stated that if you hold off on 96 acres, you can consider some later. Susan Lockwood asked how one can justify that? Mark Renna responded that you can justify it because the impact is unknown and that the Council denied his preservation plan when he presented it as a test to the Council. Mark Renna added that there is a place for preservation. Susan Lockwood responded that there is a place for preservation in a watershed that is 50% developed and asked which is more valuable: 150 acres or 60 acres?

Mark Renna asked how many votes it will take to approve the resolution. Jill Denyes responded that four votes were required. Claudia Rocca noted that Susan Lockwood already motioned to approve the resolution. Claudia Rocca seconded the motion. Jo Dale Legg conducted a roll call:

Dr. Bob Tucker: No,
Susan Lockwood: Yes
Claudia Rocca: Yes
Patricia Burns: No
David Roth: Yes

The motion failed.

Approval of a resolution for Tilcon New York Inc. for final approval to satisfy an Administrative Consent Order (ACO) file # 1601-08-0001.1 with a land donation located at 1202 Union Valley Road, Block 8002, Lots 5 & 8, West Milford Township, Passaic County.

Susan Lockwood moved to approve the resolution. Dr. Bob Tucker seconded the motion. All Council members in favor.

Approval of a resolution for conceptual approval for the funding in the amount of \$812,370.91 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 City.

Susan Lockwood moved to approve the resolution. Dr. Bob Tucker seconded the motion. Mark Renna asked for comments and stated that it is a great project. Mark Renna added that for 5.19 credits, each credit would cost \$156,000 which is not needed in Watershed Management Area 15. Mark Renna stated that the Council has only collected \$99,000 in this area and thus does not know how this balances. Mark Renna stated that he believes it is a great project but does not know how it is good economically.

Susan Lockwood stated that they have spoken with the EPA and that this is a very common way to establish credits and service areas for in lieu fees. Susan Lockwood stated that the applicant does not have enough resources upfront and this is why it is set up this way.

Sam Reynolds, of the Philadelphia District of the Army Corps of Engineers, asked if the project is all in assumed waters. Susan Lockwood responded that it is and that the Council will not spend money in non-assumed waters because they can only take money from assumed waters.

Claudia asked if all were in favor. All Council members voted in favor.

New Business

Request by Princeton Hydro on behalf of Somerset County for conceptual approval for funding in the amount of \$49,000 for Skillman Park Wetland Enhancement, block 260001, Lot 1, Montgomery Township, Somerset County.

Mark Gallagher, of Princeton Hydro, stated that Skillman Park was purchased from Montgomery Township and that it was a former impoundment area where the dam was removed by Montgomery Township. Mark Gallagher stated that the site looks good but they would like to integrate a natural element into the park system. Mark Gallagher stated that most of the vegetation there is annual and that they are requesting \$49,000 for planning and monitoring under the existing permit for the dam removal. Mark Gallagher stated that they hope to provide more habitat and species richness.

David Roth asked if the formally flowed area was wetlands. Mark Gallagher responded that about 8.8 acres were as the site was dredged within the last decade before the dam was removed. Mark Gallagher added that there does not appear to be an invasive species problem, just a few broad leaf cattails but since the site is currently dominated by annuals, the stewardship will allow them to improve the site.

David Roth asked if this will be done without any management. Mark Gallagher responded that they were surprised how well the site has done in the first year, however one large storm event could cause an invasive problem and they need more perennials to prevent against that.

Dr. Bob Tucker moved to conceptually approve the funding. Claudia Rocca seconded the motion. Mark Renna asked for comments and stated that the project seems great but that it produces 0.29 acres for \$1,000 per acre. Mark Renna stated that Mark Gallagher has characterized the project as passive involvement and Mark Renna believed this is an underestimate and that it is worth much more than 0.29 acres.

Mark Renna asked if an easement/deed restriction will be recorded prior to the transfer of funds. Mark Gallagher responded that he does not know the answer and he is not sure if there is an existing easement. Emile DeVito commented that if it is park land, that is better than a conservation easement because it is under Green Acres, which is stronger. Mark Renna countered that it could still be turned into a baseball field in 2050. Emile DeVito agreed and said it was a good point. Joan McGee agreed with Mark Renna and stated that the project should have an easement. Mark Gallagher agreed as well and said the County is okay with that and that he did not realize he had to do that before funding.

Susan Lockwood asked for staff comments. Jo Dale Legg stated the Department requested an eco-risk evaluation. Mark Gallagher responded that since it had been historically dredged, he did not think it would be an issue but that he can modify it for the final proposal.

Susan Lockwood stated that Dr. Bob Tucker should modify his motion to approve by adding the requirements for placement of a conservation easement and an eco-risk assessment. Dr. Bob Tucker agreed and modified his motion. David Roth seconded the motion and all Council members voted in favor.

8. Request by Brick City Development Corporation on behalf of the City of Newark for 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.

Stephen Kehayes, of Brick City Development Corporation, stated that he believes in sustainability. Stephen Kehayes stated that there are 12 acres in Newark Bay that Black Crowned and Yellow Crested Night Herons use as habitat. Stephen Kehayes stated that he has no background in wetlands so he will let his colleagues discuss that aspect but finished by stating that this is one of the last few natural lands in that area.

Mark Jaworski, of Weston, stated that he has been engaged in this project since 2010 and believes that this project can have even more value because they may be able to include an additional 15 acres. Mark Jaworski added that the site is very unique as it is in Watershed Management Area 7 and is tidal but also receives water from freshwater wetlands which have an ecological value, as well as the value of flood storage. Mark Jaworski stated that Newark and Green Acres are negotiating a conservation easement for the property. Mark Jaworski stated that the site has low and high marsh and about five acres of phragmites which is continuing in the native areas. Mark Jaworski added that there is severe shoreline erosion at the site; about 4.5

acres have been eroded by Newark Bay but that there is a stone revetment wall that has been there since 1954 which is still in good shape. Mark Jaworski added that the site is largely landlocked and until an easement is worked out with adjacent properties, they would utilize the navigation channel to work at the site. Mark Jaworski stated that he hopes for restoration and enhancement for the herons. Mark Jaworski stated that there is a 15-foot berm which tidal waters do not go over, even during Superstorm Sandy, and that they would like to finish the berm as a flood control project and enhancement to wetlands, as well as the creation of green jobs.

Mark Jaworski said the current investment in the project to date is \$52,441, which is split between Newark and Weston and that they are requesting the design cost, of \$349,969, from the Council. Mark Jaworski added that the construction will cost about \$2.6 million and a three year monitoring program will cost \$128,357. He stated that if they get the design dollars, it will help them to get funding for the construction costs. He added that barge mounted drilling raises the costs, so these costs can be reduced if they obtain an easement.

David Roth asked if the existing revetment is on the eastern boundary. Mark Jaworski said yes. David Roth asked where the project is with the permitting aspect. Mark Jaworski responded that they have not done any permitting yet. David Roth asked what the plan is for the revetment. Mark Jaworski responded that they want to bring down granite on a barge from the Hudson. David Roth asked if they will heighten the wall or use riprap. Mark Jaworski responded that they will heighten the wall because if it wasn't for the wall, there would be much more erosion. Mark Jaworski added that they will have a V-notch to allow certain amounts of tidal water in. David Roth asked to see the historical photographs again. Mark Jaworski showed them and stated that it is much worse today than in 2002. David Roth asked who owns south of the Turnpike. Mark Jaworski responded that the Turnpike and Newark do. David Roth asked if the wall is causing scouring and how will they prevent transferring energy to the south. Mark Jaworski responded that they will use scour modeling to make sure there will be no problems and explained that they are not bringing in the Turnpike yet because it would just delay the project so they chose to start with just the one side. Stephen Kehayes added that it is their goal to do both sides.

Susan Lockwood stated that they have met with the Department conceptually and have discussed the issue. Susan Lockwood added that there are many moving parts and that the first step to take is to get it off the ground. David Roth stated that he is concerned about the large scour to the south and is worried about problems if the two projects are not done together. David Roth added that the Turnpike Authority needs to find their own mitigation sites and asked Mark Jaworski if he knows what they plan to do with their property. Mark Jaworski responded that he does not but he thinks they will be excited.

Steven Mars stated that the Department will want characterization of the sediments as high dioxin levels are very problematic for organisms. Steven Mars added that he would caution approval because the site may become re-contaminated. Mark Jaworski stated that he believes it may not be contaminated since it is eroding and accreting. Steve Mars stated that the U.S. Fish and Wildlife Service has just gotten back some reports from mitigation banks nearby and are

reconsidering any mitigation projects in the wetlands due to contaminants. Mark Jaworski responded that they will conduct ecological testing once they get the results.

Brett Berkley, of GreenVest, asked if the entire site is intertidal. Mark Jaworski responded that it is. Brett Berkley stated that it is non-assumable so it would not be eligible for funding from the Council. Mark Jaworski responded that there are two storm water channels that drain to freshwater and thus the site is eligible for funding for the Council. Brett Berkley stated that it is an intertidal salt marsh, so questioned as to if it is regulated by the Army Corps. Mark Jaworski responded that it is also regulated by the Council.

Patricia Burns stated that the site will require re-flushing since it is a tidal marsh and based on Weston's experience, would flushing occur that will allow sediments to accrete?. Patricia Burns stated that they need to come up with some ways to model this since the sea level is rising and one thing they could do is to look at literature reviews. Patricia Burns added that Fish and Wildlife may be able to help and asked if the USFWS would support a heron rookery in this location. Larry Torok has been out to the site to evaluate it.

Mark Renna commented that it is a large expenditure of funds and will cost well over \$3 million which equates to about \$320,000 per credit. Mark Renna stated that under the Freshwater Wetlands Act, tidal marsh projects, with a lot of issues should not be used, and that they cannot be used for freshwater wetlands. Mark Jaworski countered that it is a great transition area.

David Roth asked if this will set a precedent to use funds for tidal projects. Susan Lockwood stated that there has only been one other tidal project and the Council gave preliminary funding for the design but the applicant never came back and she does not believe they ever took the funding. Susan Lockwood added that the Council did give money to Liberty State Park. Mark Renna stated that that money was used for the freshwater component. Susan Lockwood stated that the Council does focus on Freshwater Wetlands and that the Department would like to fund this project as it is a good restoration opportunity in an area with few opportunities. Susan Lockwood stated that she is excited by the potential and added that anything done anywhere in the area will have all of the same issues and this is part of the reason there is so much money in the fund in that area.

Mark Renna asked why they would not just partner with HRE. Mark Jaworski responded that they have tried but there will need to be a slight bit of a habitat conversation and that NOAA refused to be a partner to the Army Corps of Engineers, so the Army Corps of Engineers cannot participate. Susan Lockwood added that when they first came in to the Department, they came in with the south side but NOAA cannot support that. Steven Mars asked why they cannot partner with the Turnpike. Mark Jaworski answered that you need two federal agencies and that the Army Corps of Engineers is interested and that they just need a second federal agency. Mark Jaworski added that the Council is their last hope.

Mark Renna suggested making a bank. Mark Jaworski said they did consider that. Brett Berkley said that that would require a permit from the Army Corps of Engineers and then NOAA will comment. Brett Berkley advised that they need to work things out but that NOAA is not the only

Federal sponsor. Brett Berkley added that he knows the site well and that it is intertidal and thus not right for freshwater wetlands money.

Susan Lockwood stated that the State has both a freshwater wetland law as well as a coastal wetland law and that the Army Corps of Engineers does not; 404 addresses all wetlands. Susan Lockwood stated that freshwater wetlands and coastal wetlands are artificially separated by statutes in New Jersey and she hopes that one day they will not be as they are all interconnected.

Susan Lockwood motioned to approve the conceptual proposal. Dr. Bob Tucker seconded the motion. Claudia Rocca stated that she struggles with tidal issue but sees it as a valuable project. Mark Jaworski stated that the project will go away if it does not get approval. Dr. Bob Tucker stated that it is a provisional approval. Claudia Rocca stated that there will still be a battle for the funding to do the work. Mark Jaworski responded that they have not worked on it for three years just to see it go away and that it is a priority of Newark's Mayor. Jo Dale Legg did a roll call.

Dr. Bob Tucker voted in favor.
Susan Lockwood voted in favor.
David Roth voted to oppose it.
Patricia Burns voted to oppose it.
Claudia Rocca voted to oppose it.

The motion failed.

Request by Amy S. Greene Environmental Consultants, Inc. on behalf of Ducks Unlimited for conceptual approval for funding in the amount of \$2,093,000 for Kittatinny Valley State Park-Kenco Acquisition, Block 29, Lot 18; Independence Township, Warren County.

Amy Greene spoke on behalf of Ducks Unlimited and stated that this is a proposal for a restoration and enhancement project at Kenco. Amy Greene added that the key player in the project is the Division of Fish and Wildlife.

Nick Biasini, the biologist for Ducks Unlimited, stated that he is involved in restoring and enhancing wetlands and that it is his job to find funding and design projects.

Martin McHugh stated that it is a great site due to the wildlife and Kittatinny landscape. He stated that the site has been heavily impacted by agriculture and that there are been many wetlands impacted. Damian Holynskyj stated that he wants to restore the hydrology as the site can be valuable to many common species and vernal ponds can be valuable to rare species. Mr. Holynskyj added that the site is an important migratory corridor for land species and that endangered and threatened species, including the hooded warbler and the warm eating warbler, have been spotted. He stated that the site has many public resources, such as fishing and trails, due to its great location.

Craig Metzger stated that he grew up two miles north of the site and knows that there are depleted resources at the site screaming for restoration. He added that they have received many

letters of support and that there is much public awareness. He stated that it is within a one mile flood plain.

Doug Lashley, of GreenVest, stated that Great Meadows is a 2,000 acre site with organic soils that used to be a glacier lake. He stated that it was farmed in the 1930s where the organic soils were thinner and that it was bounded on three sides by mountain ranges which restricted the flow. He stated that the Pequest was straightened in the 1950s.

Craig Metzger stated the existing conditions include an existing sod field, a mature (50-60 year old) forest area, a ditch system with two miles of drainage, and the straightening of the Pequest which has one pool in a mile and is not currently a sustainable aquatic community. He stated that if the site is left alone, invasive species will dominate and prevent native germination. He added that the sod makes it tough for anything to grow there and that he would love to restore the Pequest to its original location but wants to be reasonable. Mr. Metzger stated that the majority of the cost would come from earth movement in basin and flood plain areas and that they would first do hydrological enhancements, including the use of ditch plugs to raise the surface water and hold it onsite as long as possible, as well as to take all of the culverts out. He stated that they would then do floodplain, wetland, forest, and riparian habitat enhancements by creating a flood every two to three years as opposed to 50 and allowing willows and other species to grow. He stated that their third focus would be on emergent wetlands and vernal pool habitats where they would convert basins and have emergent, scrub shrub, and forested upland areas. They would do other wetland activities where they would take some sod out and preserve the areas with natural species where the natural species are already occurring as well as rid areas of all sod and convert those areas back into wet meadows. Finally, they would like to do habitat enhancement including bat boxes, wood duck boxes, brush piles, and perches.

Doug Freese stated that if the project gets approval, they will start collecting data. Prior to channelization the channel was 44 feet wide with a three-foot bank width and that post channelization it was 10½ feet wide with a 90-foot-wide bank. He stated that the water is confined to the stream and no longer floods the fields and thus he would like to recreate the flood plain. They would start monitoring immediately and have a plan of control for invasive species. Doug Freese added that they will need to get a Flood Hazard Area Individual Permit which may impact the actual design but that once the design is done, it will be quick to implement. He stated that they are asking for about \$2 million dollars for 90 acres and 30 mitigation units which equates to about \$67,000 per unit.

Rob Piel stated that it is good to look at eco-regions and that the Council has had the money for a long period of time. He stated that the eco-region, Kittatiny Mountain, has no money there for wetlands but if you use landscape mapping there is money. Rob stated that the EPA uses eco-regions which are more detailed as well as the U.S. Forest Service and Army Corps. Rob stated that he is not suggesting that the Council should change what they do, but he is just showing alternatives since eco-region is just a guideline. Rob stated that they will form a stewardship with Fish and Wildlife and Forestry and that this is a cost effective project.

David Roth asked if the earth moving will involve soil leaving the property permanently. Doug Lashley responded that it will. David Roth asked what they will be able to leave and what they

will take out. Doug Freese responded that it depends on what the sampling turns up. David Roth asked if Doug Freese has any prior experience with sod farm conversions. Doug Freese responded that he does. David Roth stated that there tends to be pesticide issues with sod farms. Doug Freese responded that it tends to be hit or miss and depends on the site. Doug Freese added that they find DDT almost all of the time but 80% to 90% of what needs to be removed is for the flood plain and deeper soils are less likely to be contaminated.

Steven Mars stated that there are Federal endangered species downstream and that preventing stream sediment from going downstream will help the species. Steve Mars added that if there are wood turtles it is possible that bog turtles are present as well.

Mark Renna stated that Watershed Management Area 7 must have Army Corp concurrence and that Watershed Management Area 9 is thus the closest watershed with money and thus money would be taken from the Atlantic. Mark Renna added that there are banks in the area. He stated that it does look like a good project but that a decision would be premature due to the in lieu fee draft not being a law. He stated that this needs to get straightened up and that the Council owes the State a lot of wetlands and thus is asking for this project decision to be tabled.

Doug Lashley talked about Great Meadows which is mostly drained now and said that there have been a lot of wetland losses but not any money into the Council. Rob Piel stated that when he was on the Council, the Council was criticized for not finding projects and now there is a good one before them. Doug Lashley stated that this is a dilemma because historically the state has not collected enough money but that it is not a unique problem to New Jersey. He added that this project is a good opportunity at a great cost for a large scale project and gives an opportunity for the Council to catch up because no other project will give you this many benefits for the same cost.

Emile DeVito stated that it is a great project and that they should take a look at Franklin Parker Preserve which is about 1,000 acres. Emile DeVito added that that project has been ongoing for three years and can teach a lot especially about how to design a project. Emile DeVito stated that while he supports the project, urban areas will object if the money does not go to the correct place and that the Council needs to solve their in-lieu fee problem first.

Claudia Rocca asked Stacey MacEwan to go through the staff comments. Stacey MacEwan stated that the comments discussed water budgets, historic preservation, work with Fish and Wildlife, Letter of Interpretation, Flood Hazard Area, and Freshwater Wetland Permits, more detailed budget information, and threatened and endangered species information. Stacey MacEwan stated that she thinks it is a good ecological uplift.

David Roth asked if it is a State agency applying. Susan Lockwood responded “no, the applicant is Ducks Unlimited.” Rob stated that there will be some Flood Hazard Area permit fees. Marty McHugh stated that it is a great opportunity and that the ecological uplift will be great.

David Roth motioned to approve. Susan Lockwood asked where the money would come from as there is none in that pot and because there are banks in the area there is no money coming in.

Patricia Burns asked what about the eco-regions. Susan Lockwood responded that it is based on the EPA regions. Rob stated that that is an administrative issue and that they are not going to find sites in the areas where the money is coming from. Patricia Burns stated that it requires conversations but she thinks there are options. Susan Lockwood stated that some other region will not have the money. Patricia Burns asked about watershed connections. Claudia Rocca responded that there are not connected because the other watershed management areas drain in the other direction. Emile DeVito asked if there is any money left in the Natural Land Trust. Susan Lockwood responded that there is not. Dr. Bob Tucker seconded the motion with a condition that the Department look into the money issued. Susan Lockwood responded that it is not the Department, but the Council that has the responsibility for Council funding. Bob Tucker stated that the Council and Department should look at it together. Claudia Rocca asked if the Council is promising dollars. Susan Lockwood responded that they need to figure out where the money is coming from as they will be drawing it from another area. Madhu Guru asked if we can look into the interest. Susan Lockwood responded that they cannot because the interest is already calculated in. Susan Lockwood added that she is not saying the project cannot be done and that she thinks it is better to put the money into a good project than to let it sit in the bank. Mark Renna stated that they should revamp the in-lieu fee and come back in February to approve it as they have the power to do that. Brett Berkley stated that it is a great project but that you do not want to draw down projects in urban areas because that is where all the impacts are. Claudia Rocca stated that the EPA said they need to work together and that they need to do that before approval. Susan Lockwood stated that it needs to go to a vote.

Dr. Bob Tucker voted in favor.

David Roth voted in favor.

Patricia Burns voted in favor.

Claudia Rocca opposed.

Susan Lockwood voted in favor.

10. Request by Green Trust Alliance on behalf of Union County for conceptual approval for funding in the amount of \$1,969,036 for West Bank 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.

Doug Lashley started by stating that the Army Corps, EPA, and Fish and Wildlife are all represented at this meeting. He stated that there has been pressure on both the Department of Environmental Protection and Council about the 2008 Federal rule amendments and that he is happy to see that funds are being used and that the Council is doing everything needed to comply. Doug Lashley added that these types of projects are indicative of the 2008 amendment and that it is important to manage land that has been conserved. Doug Lashley stated that they are proposing a 56 acre restoration project for 14 mitigation units which equates to about \$140,000 per unit. He stated that about 94% of the funding is within Watershed Management Area 7 and that they are seeking approval for the remainder within the eco-region.

Marty McHugh stated that it is an urban setting and that they entered into a partnership with Union County in September. He added that there is significant bird use in this area and that wetlands have been impaired by decades of development as well as large oil spills in the 1990s.

He stated that the ecological functions are very important with climate change issues and that ecological uplift is very important.

Mark Gallagher stated that it is a very developed watershed and that finding these types of sites is very difficult as highly urbanized areas can create the right opportunities. Mark stated that there is a golf course on the site which has a wooded area with some phragmites as well as a phragmites dominated area. He stated that there is also a forested area that is degraded as the understory is absent and the groundcover is mostly invasive. He added that areas with herbaceous vegetation are mostly phragmites. Mr. Gallagher stated that the project is to restore the area through vegetation, removal of phragmites, and the construction of a fence to prevent deer. He also stated that there is a second site which is smaller, about 8.8 acres, dominated by phragmites, and that they are proposing the same projects for this site as well as riparian enhancements.

Marty McHugh stated that Betty Anne Kelly, from Union County, is in support of the project. Susan Lockwood asked what is being asked for. Jo Dale Legg stated that they will be replacing 14.4 acres for about \$1.9 million dollars. David Roth asked for a breakdown of the budget. Mark Gallagher stated that it is based on following mitigation requirements and the budget will probably be reduced. David Roth responded that the last project discussed earth work as a major driver of the budget, and asked what the major driver of this project is? Susan Lockwood responded that there are some contamination issues that will cost money and asked if they will be moving earth? Brett Berkley responded that they will but that the earth work will not be too major as they are proposing a stream plug and will dispose of excavated soil off-site. Brett Berkley added that money will also go to invasive/exotic control. David Roth wanted to know if there will be any benefit to just fencing off the forested area with a lack of understory to decrease costs and if there will be beneficial regeneration without additional plantings. Mark Gallagher responded that in certain areas that will work, as stilt grass may be outcompeted, but that most is developed so there is not much seed input. Mr. Gallagher added that the area was a glacier lake basin and he is concerned that the most desirable species may not be in the watershed. He also stated that stilt grass is an annual and thus treating it once will not work.

Emile DeVito discussed a demonstration fence from around 1995 that was used once with natives and once without natives but with a seed source. He stated that the natives came back really thick and kicked out the silt fence but that small plantings are still needed and thus Mark is correct. Mr. DeVito stated that Union County is a great steward as it is the first County with a deer program, and also has adopt-a-park, adopt-a-trail, and major restoration projects.

Patricia Burns asked for more information on the fencing, including wanting to know how permanent it is. Mark Gallagher responded that it is not a chain link fence but will be more permanent. Brett Berkley stated that it will have 8 inch posts and be about 10 feet high. Mark Renna stated that the project must be held to the same standard as mitigation sites and asked about tree density. Mark Gallagher responded by discussing the stilt grass which is an oddity in a site so wet and that it may not disappear quickly and that they may not satisfy the less than 10% invasives requirement within a normal monitoring period. Patricia Burns asked about the texture of the soil. Mark Gallagher stated that it is Carlisle and Adrian muck. Mark Renna asked what is

in the native community. Mark Gallagher responded that it is already forested so they want to supplement.

Mark Renna (in looking at the table of monetary contributions) stated that the Council will need to draw funding from Watershed Management Area 7 which will need the Army Corps approval. Susan Lockwood stated that that is not correct as there is only one monetary contribution in WMA 7 that needs the Army Corps approval and it is not included in the table. Mark Renna stated that everything needs to be on the same playing field and that it is not clear what wetland we end up with. Mark Gallagher responded that it will be forested.

Susan Lockwood moved to approve. Claudia Rocca seconded the motion. All Council members voted in favor.

Request by Buckeye Perth Amboy Terminal LLC to make a monetary contribution in the amount of \$174,003.21 to mitigate for 0.28 acres of freshwater wetlands impacts resulting from Individual permit #1216-13-0001.3 for the Perth Amboy Terminal Phase 2 Project-Terminal Marine Dock System Upgrades; Blocks B481, 484; Lots L 1 and L1.10, Perth Amboy, Middlesex County.

Kate Muscalino, of **Porzio, Bromberg & Newman, P.C.** stated that the Buckeye project is to upgrade the ladder track system to bring it into current standards. She stated that they already received the Freshwater Wetlands Individual Permit in September and that a condition of the permit was that there would be in-kind mitigation which they are trying to accomplish for 0.008 acres. She stated that there is only one bank in Watershed Management Area 7 and it only had tidal credits, there are no neighboring banks, and creating a bank would be an ecological risk. She stated that they looked into on-site restoration by creating wetlands next to the existing but that there is no space and there is possible contaminated soils. She stated that they then looked into off-site restoration but there was nothing suitable, and part of a site they looked at included a landfill so now they are proposing a monetary contribution.

Ms. Muscalino stated that they looked at two sites for value. One site was in Woodbridge and was part wetlands and the rest uplands; it was vacant but would need two easements and thus would not be able to use for offsite. Kate Muscalino stated that the estimate for creating wetlands on this site is \$174,0003.21. The other site is in Union and is a car dealership storage lot that is mostly paved.

Susan Lockwood stated that the applicant exhausted all options so they were required to find real properties to get a cost estimate and to pay the lower of the two estimates. David Roth asked how many acres this is based on. Claudia Rocca responded that it is 0.28 acres. Mark Gallagher asked if the wetlands on the original site developed on fill. Susan Lockwood responded that they may have been connected to other wetlands but the site was cut off a long time ago. Mark Gallagher then asked why they would not qualify as tidal since the site used to be tidal even though freshwater wetlands grew on top. Susan Lockwood responded that it is a freshwater wetlands impact, not tidal, so this is the way it is evaluated. Mark Renna asked what about eco-regions because then there would be an approved wetland bank that serves a portion of Watershed Management Area 7, MRI3. Susan Lockwood responded that MRI3 would not

provide credits to Perth Amboy. Mark Renna responded that while it does not include Perth Amboy but there is a bank that could replace wetlands. Susan Lockwood stated that she disagrees and that there are no banks available as eco-regions do not apply to banks. Claudia Rocca stated that the project is not in a service area of a bank and that the eco-regions are just for in-lieu fees. Mark Renna stated that the standards need to be the same.

Susan Lockwood motioned to approve. Claudia Rocca seconded the motion. David Roth stated that he wants to be consistent on what voting for and they are just voting on math, not on a determination regarding whether the monetary contribution is the right mitigation option. All council members voted in favor.

Public Comment

Joan McGee stated that she heard references to the in-lieu fee and a letter and that she received an e-mail that stated that there would be a discussion of getting into compliance on the agenda. Claudia Rocca responded that the Department asked for an extension. Susan Lockwood added that the subcommittee had a meeting and decided they needed more direction and that the subcommittee will meet with the EPA and then put something out as a proposal. Susan Lockwood stated that whenever something is ready it will be on the agenda. Joan McGee asked who is on the committee. Claudia Rocca and Patricia Burns stated that it is the two of them and Dr. Yang Deng. Joan McGee asked how many EPA members. Susan Lockwood responded that there are two.

Emile DeVito stated that invasive species are very bad in urban areas and that there may soon be a biological control for knotweed and that there is a fungus for killing stilt grass. Emile DeVito asked if there is any way to find a way to use the money to unleash a control. Claudia Rocca responded that she would love to hand out money for research but that they cannot. Mark Renna stated that the regulations stated that they can. Susan Lockwood responded that the 2008 Federal rules do not allow it. Dr. Bob Tucker stated that the two need to be married together.

Adjourn

Claudia Rocca motioned to adjourn the meeting. Susan Lockwood seconded the motion. All Council members voted in favor.