

## **New Jersey Freshwater Wetlands Mitigation Council Meeting**

April 1, 2014

9:30 a.m.

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

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

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

### **Update on the Mitigation Fund.**

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 The Council should note that the Union County project was withdrawn from consideration.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

Patti Burns asked what happens with a deficit.

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

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

Dr. Robert Tucker motioned to approve the resolution.

David Roth seconded the motion to approve the resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Review of revised meeting guidelines and procedures.**

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

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

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

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

### **Review of revised grant application procedures.**

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

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

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

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

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

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

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

### **Public Comment on the draft In-Lieu Fee document**

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

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

### **Public Comment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Patti Burns seconded the motion to adjourn.