

BOARD OF TRUSTEES

CLEAN WATER MANAGEMENT TRUST FUND

MINUTES OF MEETING

WEDNESDAY, MARCH 1, 2017
10:04 A.M.

NORTH CAROLINA STATE ARCHIVE BUILDING
109 EAST JONES STREET
RALEIGH, NORTH CAROLINA

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A P P E A R A N C E S

CLEAN WATER TRUST FUND MANAGEMENT BOARD MEMBERS:

- Troy Kickler, Chair
- Frank Bragg
- Frederick Beaujeu-Dufour
- Robin Hackney
- Renée Kumor (via telephone)
- Johnny Martin
- William Toole
- Charles Vines

CLEAN WATER MANAGEMENT TRUST FUND STAFF:

- Justin Mercer
- Damon Hearne
- Hank Fordham
- Sydney McDaniel
- Larry Horton
- Gwyn McCullough
- Nancy Guthrie
- Will Summer
- Terry Murray

ALSO PRESENT:

- Darlene Spivey
- Glen Spivey
- Rich Moore
- Reid Wilson
- Bill Holman

1 P R O C E E D I N G S

2 CHAIRMAN KICKLER: Welcome, everyone, to
3 the Clean Water Management Trust Fund board meeting on
4 March 1, 2017. We're in the State Archive Building
5 located at 109 East Jones Street. I believe this is
6 the first time this Clean Water Management Trust Fund
7 Board has met in this building. Because we are under
8 the Department of Natural and Cultural Resources; so
9 we're meeting in this building this morning.

10 Before we get started, let me take the
11 roll and please indicate your presence for the record.
12 Let the record show that Chairman Troy Kickler is
13 present.

14 Frank Bragg.

15 MR. BRAGG: Present.

16 CHAIRMAN KICKLER: Greer Cawood.

17 MS. CAWOOD: Present.

18 CHAIRMAN KICKLER: Frederick
19 Beaujeu-Dufour.

20 (No response.)

21 CHAIRMAN KICKLER: Robin Hackney.

22 MS. HACKNEY: Present.

23 CHAIRMAN KICKLER: Renée Kumor.

24 MS. KUMOR: Present.

25 CHAIRMAN KICKLER: Let the record show

1 that Renée Kumor is calling in via phone.

2 Johnny Martin.

3 MR. MARTIN: Present.

4 CHAIRMAN KICKLER: William Toole.

5 MR. TOOLE: Here.

6 CHAIRMAN KICKLER: Charles Vines.

7 MR. VINES: Present.

8 CHAIRMAN KICKLER: Thank you. We have
9 eight here and that's definitely a quorum; so we will
10 proceed.

11 I am required by General Statute 138A-15
12 to read the statute and ask if there's any conflict of
13 interest. So let's proceed to that important matter.

14 General Statute 138A-15 mandates that the
15 Chair inquires as to whether any trustee knows of any
16 conflict of interest or the appearance of a conflict
17 of interest with respect to matters on the agenda. If
18 any trustee knows of a conflict of interest or the
19 appearance of a conflict of interest, please state so
20 at this time.

21 THE BOARD: (No response.)

22 CHAIRMAN KICKLER: It appears that there
23 are no conflicts or appearance of a conflict of
24 interest. But if you remember something as we
25 proceed, you can always recuse yourself before we get

1 to that matter. As a friendly reminder, please make
2 sure that your cell phones are off.

3 And we'll move to item 1E. Are there any
4 revisions or additions to the agenda?

5 If not, if there are no revisions and
6 additions, is there a motion to adopt the agenda?

7 MR. BRAGG: So moved.

8 MS. CAWOOD: Second.

9 CHAIRMAN KICKLER: Thank you, Trustee
10 Bragg and Trustee Cawood. Any discussion?

11 Hearing none, all those in favor of
12 adopting the agenda for March 1, 2017, please say
13 "Aye."

14 THE BOARD: Aye.

15 CHAIRMAN KICKLER: All those opposed?

16 THE BOARD: (No response.)

17 CHAIRMAN KICKLER: The motion has been
18 adopted.

19 Before we proceed any further, we're happy
20 to have Chief Deputy Secretary Reid Wilson with us
21 today, and he would like to say a few words to the
22 board.

23 MR. WILSON: Y'all have heard from me
24 before. Thank you, Chairman Kickler. I've been
25 coming to these meetings for 14 years. Back in the

1 day, as Trustee Bragg knows, there were ten meetings a
2 year; so I've been to a lot of these. But I'm
3 thrilled to be here in a new role with the Department
4 of Natural and Cultural Resources. I think -- you
5 know, I've always loved working with this
6 organization. You do such great work protecting nice,
7 clean waters and helping to restore degraded waters,
8 and it's really important for everybody in this state
9 because you're making sure people have places to fish
10 and places to swim and safe water to drink. So
11 everything you do is really critical to future health,
12 quality of life, and economic development in the
13 state. So I look forward to continuing to work with
14 you.

15 If all goes according to plan, the
16 Governor is releasing his budget as we speak. But
17 since I don't know that for sure, I'm not going to
18 comment on what is in it. But whatever is in it --
19 since we're talking about this organization, whatever
20 is in it for the Clean Water Management Trust Fund,
21 rest assured that the state employees will do
22 everything they can to support that budget.

23 I know there are some other people in this
24 room who may seek increases in various places in the
25 state budget. That is their right. But, you know, I

1 think we're saying this to all the groups that we work
2 with across this varied department, that that's your
3 right to do. Just hold harmless other parts of the
4 department so we're not taking from one to fund
5 another. There are lots of important needs of this
6 department. We want to make sure everything goes
7 forward in a good, positive way. I think I hit my
8 little highlights.

9 I'm just thrilled to be here and looking
10 forward to continuing to work with all of you sort of
11 in a different way but still trying to accomplish all
12 the same goals. In a few minutes, I have to duck out
13 for a meeting with the legislature, but then I'll come
14 back as soon as I can. And I know Secretary Hamilton
15 is on her way to join you as well. So thank you.

16 CHAIRMAN KICKLER: Thank you, sir.

17 Okay. Moving forward, item 2 under
18 commencement is the consent agenda. As you know, a
19 trustee has the right to poll one of these meetings so
20 we can talk about it later on. Is there any
21 discussion about the -- well, no. We don't need to
22 discuss it. Is there a motion to adopt the consent
23 agenda? If no one wants to poll anything, is there a
24 motion to adopt the consent agenda?

25 MR. BRAGG: So moved.

1 MR. MARTIN: Second.

2 CHAIRMAN KICKLER: Trustee Bragg makes a
3 motion. Trustee Martin has made a second. All those
4 in favor, please say "Aye."

5 THE BOARD: Aye.

6 CHAIRMAN KICKLER: All those opposed?

7 THE BOARD: (No response.)

8 CHAIRMAN KICKLER: The consent agenda has
9 been adopted. Moving on to the legal updates, I'll
10 turn the time over to Henry Fordham.

11 MR. FORDHAM: I'll just comment on one
12 item. I think I mentioned the Dingle Creek stormwater
13 project that's in Asheville -- just south of
14 Asheville. And a dispute had arisen between the city
15 of Asheville, who's the holder of that stormwater
16 easement, and a developer who owned property around
17 the access easement. And it looks like that's been
18 worked out.

19 The developer offered an alternate access
20 as well as to pay Asheville one half of the cost to
21 use the alternate access, which is actually more
22 expensive than the original access. It looks like a
23 good resolution to it. The current access, the way
24 the subdivision built out, would be kind of a source
25 of continuing problems. This alternate access will be

1 established before any homeowners go in. Asheville, I
2 think, is still subject to the town council's
3 approval, the city council's approval, but I believe
4 that's been worked out.

5 And the State Clean Water Management Trust
6 has put \$167,500 into the original project. We're a
7 third-party beneficiary of the stormwater easement,
8 where the state has the right to enforce it. The
9 attorneys for Asheville did ask us to weigh in with
10 the developer, and we did pretty strongly, that they
11 needed to work this out in a way that did not
12 compromise the stormwater easement. So I'll report if
13 anything goes wrong with it, but, hopefully, that will
14 be the last time I need to mention that. Thank you.

15 CHAIRMAN KICKLER: As you know, Will
16 Summer is the acting executive director right now. So
17 I'll turn this time over to him to give us an update.

18 MR. SUMMER: Thank you. And good morning,
19 Master Chairman and members of the board.

20 First, I'd like to say that I feel very
21 privileged to be speaking to you as the acting
22 executive director. I did communicate with Brian last
23 week, and he wanted me to let you know how
24 appreciative he was to all of you for your terrific
25 support and efforts and that he very much enjoyed the

1 experience. And I would like to thank him for his
2 3 1/2 years of service to the board.

3 As far as finding permanent employment for
4 this position goes, I'm told by the powers that be
5 that they're working on it, but in the interim I'm
6 honored to serve in this capacity. And as you know,
7 the team I have working for me is second to none; so
8 we will continue program delivery at 100 percent.

9 Moving on to an update of our 2016 grant
10 funds. Since we last met and funded projects this
11 fall, we have funded an additional nine projects from
12 the provisional list, adding \$4.3 million to the total
13 of \$27.7 million awarded so far this fiscal year with
14 four months left for additional projects to be funded.

15 And as a reminder, those are funded from
16 both our monthly license plate revenues as well as any
17 unspent funds from previous grants. And I've put an
18 updated version of our 2017 funded list in all your
19 blue folders for reference.

20 On February 6th we received our 2017 grant
21 cycle application. We received 135 applications
22 requesting over \$67 million. So the field reps and
23 program managers and staff are going to gear up for a
24 very busy spring. We're excited about that. And a
25 summary of these projects as well as a map is also

1 located in your blue folder.

2 About this cycle -- this was our first
3 application to be submitted in our online grants
4 management system, which I believe you are all aware
5 of. I think it went very well given that it's a new
6 system. There is room for improvement. As we speak,
7 we have an online survey going out to all of our
8 partners to get feedback so that we can focus our
9 efforts on improving this and making it even better
10 the next cycle.

11 Looking forward on our board meeting
12 schedule, our next board meeting is June 1st. The
13 chairman expressed an interest in having a meeting
14 format similar to the one that we had last June. If
15 you will recall, we met, took care of our business,
16 and then had some informal tours of previous projects
17 that afternoon and the following morning. I think
18 that's a great idea. It was a great success. I got a
19 lot of positive feedback from all of the trustees that
20 were in attendance.

21 So we are going to be looking to do a
22 similar thing this year. Staff is currently working
23 on a location to kind of base our meeting out of
24 that's good and close to a lot of our other projects.
25 Because we have trustees scattered all across our

1 longitudinally blessed state, we're going to look for
2 something in the Piedmont area so that it is not too
3 long a haul for the folks living way out in the
4 corners. We'll keep you posted on that.

5 I do not have any legislative updates for
6 you, but I do understand that the Governor's budget is
7 coming out this morning, probably as we speak. I did
8 want to let you know that I met with the chief deputy
9 secretary and our legislative liaison yesterday to
10 advance the items that the board voted on in March of
11 2015 to update the name Clean Water Management Trust
12 Fund to the North Carolina Land and Water Preservation
13 Trust Fund. So we will be moving that forward per
14 your requests and keep you posted on that as it moves.

15 Finally, I would like to put Larry Horton
16 on the spot for a moment. As y'all know, Larry Horton
17 is our even-keeled, data-driven engineer with our
18 infrastructure program on track during the board
19 meetings, and in the office he's a calm, fact-based
20 engineer who keeps the program on track as well. His
21 spreadsheets are masterpieces using the entire color
22 palette which require no less than the largest format
23 our printers can handle to be legible. After many
24 years with the state, the last ten of which have been
25 in the service of the Clean Water Management Trust

1 Fund, Larry is retiring to hunt, fish, support the
2 Wolfpack, spend time with the grandkids, and dutifully
3 haul his wife's pottery from show to show around the
4 state.

5 Larry, you have had a very positive
6 influence on the way our program runs, and you will be
7 remembered for years to come as your diligence, hard
8 work, and foresight will bear fruit for many years. I
9 would like to thank you personally for your service,
10 and if you would like to say any words, I'm looking
11 forward to hearing them.

12 MR. HORTON: Thank you all for those very
13 kind words. I mainly just want to say how thankful I
14 am to have the privilege to work with such great
15 coworkers and trustees and grant recipients and
16 applicants over the years. It's been ten years here
17 and a lot of things have happened. It's really flown
18 by. It's really nice when people ask me, "What do you
19 do?" And to be able to say, "I work with such a great
20 program. I couldn't ask for better people to work
21 with." That's really just the one thing. I'm going
22 to miss seeing everybody -- my coworkers each day,
23 hearing their stories, working through difficult
24 issues. There's just really nothing that compares to
25 working through a difficult problem with really super

1 people. It's just very satisfying. When you've had a
2 chance to do it for ten years, you start to take it
3 for granted. I just have to sometimes remind myself
4 what a wonderful thing that is.

5 So I am looking forward to a new chapter,
6 new adventures, spend more time with the grandkids.
7 My wife has promised me, she's advised me that, if I
8 get bored or something like that and I don't know what
9 to do next, she'll help me out with that.

10 So anyway. Thanks again. It's really
11 been an honor and privilege. Thank you.

12 MR. SUMMER: Thank you, Larry. And thank
13 you again for your service.

14 Mr. Chairman, that concludes my report.

15 CHAIRMAN KICKLER: Thank you, Will. Thank
16 you for bringing -- announcing Larry's next chapter
17 and bringing that to our attention so we could act
18 appropriately. And we can extend our remarks after
19 the main meeting. And thank you for updating us about
20 various issues including the upcoming board meeting
21 that will be in June.

22 And I was talking to Will about this. And
23 I think the last time we had a similar board meeting
24 last year in June, that was a good event. We worked.
25 After we finished our business, we went out and

1 learned some more so we could be more effective, make
2 wiser decisions when a grant application comes before
3 us. I think this is a good opportunity for us to
4 learn again or be reminded of something that we have
5 forgotten about. Because things change. There is
6 always something to learn to improve on. And then
7 what was cutting edge and seen as grand success 10, 15
8 years ago, there may be some history there. Maybe it
9 needs to be reexamined and tweaked. And so I just
10 think this is a good opportunity for us all the way
11 around. So I'll be staying in tune to what sites
12 staff find might be a good location to have such an
13 event.

14 All right. We'll move on to public
15 comments at this time. The public is invited to make
16 comments to the board. They are timed about three
17 minutes per person; so please be mindful of that. And
18 I will open it up.

19 Is there anyone who would like to say
20 anything?

21 Yes, sir.

22 MR. HOLMAN: Thank you, Mr. Chairman,
23 members of the board, and staff. I'm Bill Holman,
24 state director for the conservation fund. But I'm
25 really here today representing the Land for Tomorrow

1 Coalition. It is a group of land conservation act
2 organizations that advocate for conservation funding
3 and tax policies in the general assembly.

4 As Chief Deputy Secretary Mr. Wilson
5 reported, the Governor's budget is coming out today.
6 We all have our fingers crossed that it will include
7 additional funding for the Clean Water Management
8 Trust and the other conservation programs. I'll say
9 the Land for Tomorrow Coalition will be seeking about
10 a \$28 million preparation for clean water as well as a
11 similar preparation for the Parks Trust Fund and a
12 boost in the Agricultural Development and Farmland
13 Preservation Trust Fund. And we're also trying to see
14 if we can restore part of the conservation income tax
15 credit session in the general assembly. That's an
16 ambitious agenda. But we've had a lot support in the
17 general assembly that passed, and we continue to build
18 on that support. And a lot of that is based on the
19 good work you're doing. You're approving good
20 projects, you're leveraging public funds, and you're
21 working across the state. So I think that it's a good
22 relationship between the land conservation
23 organization and the board.

24 I'll say we're also trying to see if
25 there's a greater role that your program might play in

1 the Matthew recovery on both the conservation and the
2 restoration side of things. So we'll be exploring
3 that, and we will try to work with your staff and
4 coordinate that. I think the general assembly may be
5 looking for some places to put the Matthew recovery
6 funding. And last year they showed a willingness to
7 basically put it in place as a program. It had a
8 track record and delivered on hurricane response. And
9 so I think the track record of the Clean Water
10 Management Trust Fund bodes well for conservation and
11 restoration projects in the floodplains in eastern
12 North Carolina. So we'll keep you posted about that.

13 And I'm glad you're going to get out in
14 the field in June. I think that's a great idea, and
15 we'll be happy to coordinate with your staff on lots
16 of places that you -- you fund good projects across
17 the state. Thank you very much.

18 CHAIRMAN KICKLER: Is there anyone else
19 who would like to say a few words?

20 Good morning. The public is invited to
21 speak, but at this point it's three minutes per
22 person.

23 MR. MOORE: It's not going to take that.

24 CHAIRMAN KICKLER: Okay.

25 MR. MOORE: My name is Rich Moore. I work

1 with McDavid Associates. I'm joined by Mayor Darlene
2 Spivey and town clerk Glen Spivey from the town of
3 Trenton. We're on your agenda today, and so we just
4 wanted to say that we appreciate y'all's consideration
5 for what's going to be presented before you today.
6 And we certainly appreciate Larry's effort to kind of
7 help us move through the project. So I do want to
8 personally thank Larry for all that he's done to help
9 the town out. Because it has made a difference.
10 Without y'all a lot of the improvements that have been
11 made couldn't have been made. And we're certainly
12 trying to stick that project forward and continue to
13 help the town out. So we're available as you move
14 into discussion if you need any information. I just
15 wanted to offer our gratitude for what y'all have
16 done. So we appreciate it.

17 MR. SUMMER: Thank you.

18 CHAIRMAN KICKLER: Anyone else?

19 Okay. We will proceed. Let the record
20 show that Trustee Frederick Beaujeu-Dufor is in
21 attendance.

22 MR. BEAUJEU-DUFOR: Sorry for being late.
23 540 had an accident and Jones Street was closed and
24 parking was full.

25 MS. CAWOOD: There we have it -- a perfect

1 storm.

2 MR. BEAUJEU-DUFOUR: I do have a seat,
3 though.

4 CHAIRMAN KICKLER: All right. We'll move
5 forward to old business. The first item is old
6 business 1. And I think old business 1A is an action
7 item and old business 1B is more like a report. The
8 committee was asked to look into an issue about
9 signage, and they did; so we'll learn what the
10 committee thinks about that. So 1A is an action item
11 and 1B is not. So we'll proceed to old business 1A.
12 And I turn that -- Greer Cawood is the chairman of the
13 administrative committee.

14 MS. CAWOOD: Great. I wanted to let the
15 trustees know, as y'all might have remembered from our
16 last board meeting, the issue of how we allow mountain
17 biking on our properties has come up, and staff had
18 mentioned this is an issue since mountain biking is
19 becoming more popular. This is an issue that's coming
20 up more often for staff to comment on with our
21 applicants. So the administrative committee thought
22 it would be best to get together, come up with a
23 policy so staff had something to work from going
24 forward.

25 I'd like to compliment Will and Damon on

1 their work on this. We met a couple of times. The
2 first meeting was really to get some background on the
3 issue, to speak to an expert in the field who, you
4 know, works with the trails coordinator with the
5 department of -- what is she?

6 MS. GUTHRIE: Division of Parks & Rec.

7 MS. CAWOOD: Division of Parks &
8 Recreation. Thank you, Nancy. And she gave us really
9 some great, great information to work from. I want to
10 thank Trustee Toole for being a part of that
11 discussion based on some background that he has in
12 this area. That was very helpful. And, of course,
13 members of the committee Charles Vines and Johnny
14 Martin provided great, great input. So I'll pass it
15 off to Will and Damon to work through.

16 So y'all know, our committee got the
17 background on this issue first and came up with some
18 general thoughts that Will and Damon took back. And
19 we met again to really refine the policy which you
20 have in front of you. So I'll turn it back to you,
21 Will.

22 MR. SUMMER: Thank you. So if I can
23 summarize the conclusion that the committee came to
24 with mountain biking -- if I don't accurately reflect
25 it, please let me know. But to summarize what --

1 after kind of reviewing the data and having the
2 experts speak, I think the notion was that the
3 planning and construction of the trails were more --
4 if not -- as if not more important in terms of the
5 impact of the conservation rights and the end use.
6 That is, a poorly built trail that you hike on would
7 be worse than a well-built trail that you were to bike
8 on. And with that kind of notion in mind, that guided
9 a lot of what the committee directed us as staff to
10 write in the policy and easement.

11 Another important thing that came out as
12 we listened to the experts is that management
13 maintenance is also a critical part of the successful
14 trail in terms of managing its sustainability. So as
15 a result, the policy focuses more on the aspects -- on
16 those aspects for all the natural surface trails
17 regardless of the end use. And to that end, I think
18 what the committee has developed improves our process
19 for all of our trail uses. I think it's very
20 positive.

21 I do want to note that we requested that
22 Hank Fordham review the language that we listed in the
23 amendments to the conservation easement, and that most
24 recent markup is in your blue folder. It's one page,
25 front and back, and at the top it says "Excerpt from

1 the existing easement template markup." So this will
2 be substantively the same thing that you received in
3 your agenda packet, just with some improvements on the
4 form and language, courtesy of our counsel.

5 So thank you, Mr. Fordham.

6 So let me talk about the substantive
7 changes in the easement language, and then I'll talk a
8 little bit about the policy. So in the easement
9 language, some of the bigger changes were that we
10 separated the greenway and natural surface trail
11 section into two distinct headings in the easement
12 language. And that allowed us to kind of put some
13 restrictions specific to the paved greenway trail and
14 different restrictions specific to the natural surface
15 trails. We required greenway trail alignment that
16 does not follow any existing roads, railway, or
17 utility corridors to have prior approval by the fund;
18 and that's a new aspect.

19 We require new natural surface trail
20 construction that results in soil disturbance to
21 follow the best practices for sustainable trail design
22 and receive prior approval by the fund. And I'll talk
23 a little more about what that is as we talk about the
24 policy.

25 It also gives the fund the right to close

1 any trails that are considered detrimental to
2 conservation values as well as remove the specific
3 number limit on stream crossings but does require new
4 stream crossings to be approved by the fund. And
5 also, I think that gives us a little more flexibility
6 and staff a little more input after the fact if what's
7 going on in the ground is impacting the values for
8 which we allocated funds and put these protection
9 mechanisms in place.

10 So in addition to directing the easement
11 language, the policy provides more specific guidance
12 on what aspects of design construction should be
13 considered as well as direct staff to seek input from
14 the experts such as the Department of Parks &
15 Recreation trail specialists, historic resources, and
16 natural heritage staff as we guide the trail location.

17 It also addresses requests made on
18 easements prior to this policy that are silent on
19 mountain bike construction. That was something that
20 the staff asked for because we do have a lot of
21 easements that don't mention mountain bikes as a
22 reserve right. They don't mention it as a prohibited
23 right, and we wanted a little guidance on how to
24 approach that. And the short of that is that, as long
25 as it's consistent with the easement and consistent

1 with the intent of the initial part, that recorded
2 easement, we can consider it per the same guidelines
3 that we have outlined for new easements.

4 So the standard reserve right in the
5 easement for trails will continue to be hiking, but
6 biking would be a standard optional right. That is,
7 when someone submits an application and makes a
8 request, they mention that they want that as a
9 standard reserve right, we know how to handle it.
10 We've got a policy. We have a policy in place now,
11 and it won't be a one of four with the board or staff
12 at that point.

13 And one last note on this. The effective
14 date on the draft document that you have is a
15 placeholder, and it's currently July 1st. If the
16 board elects to approve this policy today, it could do
17 so with a motion to make the policy effective when
18 passed, and we will amend it to make that read March
19 1st instead of July 1st.

20 With that, I will take any questions on
21 the trail easement or the policy.

22 CHAIRMAN KICKLER: Any questions or
23 discussions? How about the date? The effective date?

24 MS. CAWOOD: I move that we do do the
25 effective date as March 1st as opposed to July 1st.

1 MS. HACKNEY: Second.

2 CHAIRMAN KICKLER: There's been a motion
3 to move the effective date to -- what was the date?

4 MS. CAWOOD: March 1st.

5 CHAIRMAN KICKLER: -- to March 1st.
6 Motion to second. If there's no discussion, all those
7 in favor of the amendment, please say "Aye."

8 THE BOARD: Aye.

9 CHAIRMAN KICKLER: Opposed?

10 THE BOARD: (No response.)

11 CHAIRMAN KICKLER: The amendment has
12 passed. The effective date is March 1st. Is there
13 any discussion or questions about the policy in
14 general with the amended date?

15 MR. BRAGG: Occasionally, there's conflict
16 with the design of trails from the state level to the
17 county level, and I just wondered what considerations
18 were given. For an example, in Mecklenberg County,
19 all the trails are ten-foot wide, paved, and have
20 end-cap (inaudible). That changes once you get out of
21 Mecklenberg County. So I just wondered what kind of
22 considerations are given to accommodate the county and
23 state laws.

24 MR. WILL: So for greenway trails we are
25 silent on the required width, and we allow them to

1 make it as wide as necessary for safe travel and ADA
2 requirements. And greenway trails are a little
3 different than the natural surface trails, in that we
4 expect that corridor not to serve a safe function as a
5 natural area outside of the trail. We understand that
6 it will be 10 to 12 feet of asphalt and then another
7 20 feet of mowed turf for safety reasons. So we
8 understand that. And I think we'll always work with
9 the local folks on those needs.

10 CHAIRMAN KICKLER: Any other questions or
11 discussion?

12 MR. MARTIN: I just want to thank
13 everybody for their work on this and especially
14 bringing in the expert. And Mr. Toole has been really
15 helpful to make this a really good solid adjustment in
16 allowing to let us do this.

17 CHAIRMAN KICKLER: If there's no other
18 questions, is there a motion to adopt the Clean Water
19 Management Trust Fund policy concerning mountain
20 biking on Clean Water Mountain Trust Fund Conservation
21 easement area as amended?

22 MR. TOOLE: So moved.

23 MR. VINES: Second.

24 CHAIRMAN KICKLER: Trustee Toole has made
25 a motion. Mr. Vines has made a second. If there's no

1 more discussion, all those in favor of adopting the
2 policy recommendation as amended, please say "Aye."

3 THE BOARD: Aye.

4 CHAIRMAN KICKLER: All those opposed?

5 THE BOARD: (No response.)

6 CHAIRMAN KICKLER: The motion has carried
7 and the policy has been adopted as amended with the
8 effective date of March 1st.

9 So now we will move on to the next item,
10 old business 1B, which is a report from the
11 administrative committee that doesn't need any action.

12 MS. CAWOOD: And on this, again, I want to
13 thank my committee members in their thoughtfulness in
14 looking through this issue and Justin and Nancy for
15 their staff work on this. It was brought up -- the
16 question that Trustee Toole, I think, did in our last
17 board meeting is the question of what kind of signage
18 and what kind of recognition of the funds that clean
19 water gives to projects are actually visible in those
20 projects. And especially when they are high
21 visibility, high traffic areas, is clean water
22 mentioned as a major funder of those projects?

23 And staff did some initial review, and as
24 you might guess, it's all over the place. In some
25 areas which Trustee Martin showed us, there's a great

1 high traffic area in the coast, and it's great
2 recognition of what clean water has done. In other
3 places there's a battered sign that we really don't
4 want up. It doesn't look good. Wasn't it front of a
5 jail or a prison kind of thing? It was really kind of
6 strange. And then there are other little mentions.
7 But, you know, some of them have the new logo that the
8 state has. Some have the old. And it's just a really
9 hodgepodge out there.

10 And we kind of looked at it and thought,
11 "Okay. What would be the right, you know, thing that
12 we believe Clean Water Management Trust Fund should do
13 at this point, both being fiscally responsible and
14 also having in mind that the board had put forth a
15 name change. So are we going to do a bunch of signage
16 and pay a bunch with our old name if we're going to --
17 if the general assembly agrees that our name is based
18 on our edict now, what we have going forward.

19 So we've decided as a committee that the
20 best thing to do and to be mindful of staff time also
21 is to ask our project managers while they are out
22 looking at the sites for this upcoming funding cycle,
23 to ask them to look at what's out there and give us a
24 good idea. And if there's an inexpensive way to --
25 which staff found for us to put a small, little, you

1 know, sign fund but not spend a bunch of money going
2 out and putting signs where it's not needed and would
3 be a big expense to the state.

4 So that's kind of where we came out on
5 this, is to assess it in the next year, come back with
6 recommendations to the fund and to the trustees, and
7 then we move from there. And I'd ask Justin and Nancy
8 to add any additional information they'd like to.

9 MR. MERCER: I don't think there's a whole
10 lot more. We will be looking into the costs
11 associated with the smaller sign. I believe we also
12 requested to at least look into at this point what it
13 would cost get some of the larger signs that we had
14 previously so that we can have that for evaluation as
15 well.

16 CHAIRMAN KICKLER: Did the committee talk
17 about a -- I don't know how to term it -- a lot of
18 sites -- like they have Web sites as well -- sort of
19 like online signage. Like that could be part of --

20 MS. CAWOOD: We did, Mr. Chairman. That's
21 a great thing to add in.

22 CHAIRMAN KICKLER: It would be a cheap way
23 to do it.

24 MR. BRAGG: I think that it's really
25 important, if we do new signs -- and the signs that

1 I've seen are about this big -- that we state that
2 it's a partnership between the state and the Clean
3 Water Management Trust Fund and local entities or
4 however it would be worded so it's inclusive. The
5 current signs really don't say anything about that
6 partnership. And I love the word "permanent." That
7 needs to be added to the signs so that people can say,
8 "Hey. This is pretty good. It was part state money,
9 part local money." We can get that done and it's a
10 permanent project.

11 CHAIRMAN KICKLER: This reminds me of an
12 insert in your blue folder. And I'll turn it over to
13 Will to tell you a little bit more about it because I
14 think it fits nicely with this conversation.

15 MR. SUMMER: Thank you. So the shiny,
16 glossy, pretty thing that is in your folder, we have
17 recently printed some of these. Now this was in the
18 works and approved before the name change was back on
19 the surface. So we're going to use these up as
20 quickly as we can in anticipation of maybe in a couple
21 months a successful name change effort. But it's
22 meant to be something you can hand to people that
23 don't know much about the fund. They can get the gist
24 of what we do. The back's got little, quick
25 graphic-rich icons and infographics that kind of tell

1 you what we do with some aspects just to let people
2 know -- decision-makers, folks that the field reps
3 meet with when they go out on their visits, local
4 county and town officials; and it's a good looking way
5 to share what we do. And if you guys need any of
6 these to carry back to folks you interact with, I will
7 be happy to provide you with as many as you need.

8 MR. BRAGG: Excellent.

9 CHAIRMAN KICKLER: Are there any other
10 questions to the committee or to the staff about the
11 signage reports?

12 All right. If not, we'll move on. Thank
13 you. Thank you, committee and staff, for looking into
14 that. It's like a lot of things. When you get into
15 it, there's nuances to things. So we have a deeper
16 understanding of that.

17 Old business 2. We'll move on to old
18 business 2 -- 2013-416 Toe River Valley Watch. And
19 I'll turn the time over to Mr. Larry Horton to tell us
20 more about this request.

21 MR. HORTON: Thank you, Chairman Kickler.
22 So the Toe River Valley Watch was awarded \$375,000.
23 The project is restoration of approximately 2,000
24 linear feet of grassy creek in the town of Spruce
25 Pines. The project is behind a commercial shopping

1 center.

2 So standard grant condition requires that
3 conservation easements must be reported for the whole
4 project before the trust fund will make any payment
5 for construction costs. Our policy also allows for
6 option agreements to be in place instead of
7 conservation easements to allow for reimbursement for
8 construction costs.

9 Toe River Valley Watch was confident
10 they'd be able to obtain the conservation easements
11 for all of the project stream sites and proceeded with
12 stream restoration construction without having
13 obtained conservation easements and option agreements.
14 The construction work was completed in December 2015;
15 however, staff has not approved reimbursement for any
16 of the construction work because neither the
17 conservation easements nor option agreements have been
18 obtained. Toe River Valley Watch has determined that
19 most of the conservation easements for the restoration
20 project can be recorded very soon; however, they are
21 not able to obtain one of the easements which their
22 previous information indicated would not be a problem.

23 Bear with me for a minute. I'm not used
24 to doing this.

25 MR. TOOLE: How many colors are on that

1 spreadsheet?

2 MR. HORTON: My mouse died. I hate that.
3 I don't know what I did wrong.

4 So on February 13th we received a letter
5 from Toe River Valley Watch requesting reimbursement
6 for a portion of the stream restoration work which has
7 been completed after the conservation easement has
8 been recorded for that part of the work. The trust
9 fund calculations indicate that 85 percent of the
10 project would have an easement and 85 percent of the
11 grant amount is not \$300,000. It is \$318,000 --
12 \$318,750. I have no idea how they did that
13 calculation.

14 Anyway, so some background and additional
15 information. After making a diligent effort, Toe
16 River Valley Watch has determined they cannot obtain
17 the conservation agreement or an option agreement for
18 the areas shaded in blue on the map attached to the
19 letter at this time.

20 Could you go to the map?

21 So you can see they've got most of the
22 easement. They will be able to record most of the
23 easement. But easement 3, the area shaded in blue, is
24 just not going to happen at this time. The area is
25 part of a property that the Food Lion leases but no

1 longer occupies. The property owner has indicated
2 that Food Lion would like to get out of the lease.
3 They're not on the property; so they don't want to pay
4 rent. Toe River Valley Watch has concluded that the
5 property owner will not grant the conservation
6 easement for this property because of a perceived risk
7 that Food Lion would use the change in the property as
8 leverage to get out of the lease. Toe River Valley
9 Watch may be able to obtain the conservation easement
10 for this property when the lease agreement with Food
11 Lion expires. It is the trust fund's understanding
12 that the lease will expire in approximately 2.5 years.

13 So the board actions that are needed is to
14 approve -- not approve -- or amend the request for
15 reimbursement for a portion of the construction work
16 after the conservation easement has been recorded for
17 protection of that part of the work even though not
18 all the project work will have an option agreement for
19 conservation easement when reimbursement is made.

20 So, any questions?

21 CHAIRMAN KICKLER: Any questions?

22 Trustee Toole?

23 MR. TOOLE: Do we have a history -- have
24 we before ever partially funded something given
25 circumstances like this?

1 MR. HORTON: I don't know that we have for
2 something like this particular thing with a
3 conservation easement. I can't think of anything
4 right off the bat. And so that's why we were
5 hesitant. That's why the construction work was
6 completed in December 2015. It's been over a year.
7 They have not be able to pay the contractor.

8 MR. TOOLE: You said they haven't paid the
9 contractor?

10 MR. HORTON: They have not paid the
11 contractor, I don't think. They've not paid the
12 contractor because the Toe River Valley Watch just
13 does not have that kind of cash to pay them. They
14 were entirely confident they'd be able to get this
15 conservation easement. And the document that they had
16 gotten from their people they were working with led
17 them to believe that it would all be obtained.

18 So we've hesitated because it does
19 establish -- you have to worry about establishing a
20 precedent. So we looked at what's different whenever
21 we worry about a precedent. What makes this case
22 different? I think it makes it a little different in
23 that they really did have some evidence that they
24 thought that they would be able to get this
25 conservation easement.

1 They have gone through due diligence
2 that was -- we didn't put this in our part here. It
3 is attached as part of the letter of all the things
4 they went back and forth over to try to get that. So
5 that is a concern. We felt like they had done quite a
6 bit of work to try to get this and this, was the only
7 possible solution that we have come up with. It's one
8 of the most difficult issues that we're working on
9 that I've ever seen.

10 MR. TOOLE: Just so I'm clear, Toe River
11 partnership does not have any skin in the game other
12 than the reputation. The one who's really suffering
13 is the contractor financially.

14 MR. HORTON: Yes. I would say that is the
15 case right now. Exactly. And they have been very
16 forthcoming. They haven't balked or whatever. When
17 we've worked with Toe River Valley, they haven't tried
18 to stonewall us or anything else. They've been good
19 partners in trying to work through this.

20 CHAIRMAN KICKLER: Trustee Bragg.

21 MR. BRAGG: Larry, is any of this area to
22 be a public trail or is there public opinion on this
23 project for anything other than cleaning up the creek?

24 MR. HORTON: It's been a really good
25 project. And there is an overland trail. Damon may

1 be able to talk on more details on that.

2 MR. HEARNE: Yes. There is a greenway
3 section that goes through there, and they're working
4 on a phase 2 that would continue. There's also
5 Overmountain Victory Trail Encampment that is right
6 adjacent to it, and part of this is that this trail
7 and restoration site would augment it. It really is
8 part of a bigger picture through there. So it's not
9 just an island of restoration with no public
10 involvement.

11 When we did the big restoration conference
12 in Asheville, one of the tour stops was at this site,
13 and they showed off their work. And a lot of people
14 are really excited about it and pleased with the
15 results there and how it ties into the town and a
16 potential greenway and historic stuff. It's pretty
17 interesting. It feels like a good project.

18 MR. BRAGG: So there's nothing definitive
19 that a trail was planned to go here yet, but it's a
20 potential; is that correct?

21 MR. HEARNE: There is not one there now,
22 but I think that this connects up to a piece. I
23 believe that there is a trailway that is kind of an
24 unofficial piece of this now. But I haven't been back
25 there since this summer to see if it changed or not.

1 MR. TOOLE: And our money was to pay for
2 the restoration or the acquisition or --

3 MR. HORTON: The stream restoration.
4 That's correct.

5 MR. TOOLE: Which has been completed.

6 MR. HORTON: It has been completed. And
7 we would not -- they, of course, have requested --
8 they requested all the funds. We would still be
9 holding part of the \$375,000 involved. There would be
10 50-some odd thousand that we would still hold. And,
11 hopefully, they will be able to get this other
12 conservation easement. The difference here is that
13 we're making a payment for construction before all of
14 the conservation easements or an option agreement is
15 in hand.

16 MR. TOOLE: So how critical is this blue
17 piece to protection of the stream? I've looked at the
18 survey, and I confess, I'm a little unclear. Is the
19 stream -- where is the stream located on this?

20 Maybe you could use that mouse if that one
21 doesn't work.

22 MR. HEARNE: It was working. It's just
23 hard to see it, I think, up there.

24 MR. HORTON: See where the blue part is?

25 MR. TOOLE: Yes, sir.

1 MR. HORTON: And see that yellow line that
2 runs right next to it?

3 MR. TOOLE: Yes.

4 MR. HORTON: That is right between those
5 two lines.

6 MR. TOOLE: And the blue is critical to
7 protecting one bank of the stream?

8 MR. HORTON: It is. In fairness, all of
9 that part on the left-hand side is a shopping center.
10 So there's the stream right there. And all of this
11 area here is shopping center.

12 MR. BRAGG: So the shopping center
13 obviously is at the center of the creek? Is that the
14 deal?

15 MR. HORTON: Probably. I'm not 100
16 percent sure.

17 MR. HEARNE: There is a decent buffer
18 between the road that kind of goes behind the shopping
19 center where the cardboard and everything is disposed
20 of or taken care of. And the stream -- it's
21 definitely right there. But it's not like right
22 against it. So there is a buffer there that will
23 serve some protection.

24 MR. MARTIN: So the construction's already
25 been completed and construction's been done on that

1 stretch of the stream that abuts the easement?

2 MR. HORTON: Yes, it has. It's all done.

3 MR. MARTIN: The only purpose of that
4 easement will be to provide a buffer to the stream
5 we've already restored, pretty much.

6 MR. HORTON: Correct.

7 MR. MARTIN: The construction's already
8 been done. The only benefit that it gives is that it
9 gives us a buffer for that area.

10 MR. HEARNE: Permanent protection.

11 MR. HORTON: It gives us permanent
12 protection for that area on that side of the stream.

13 MR. BRAGG: Larry, I mean, obviously, it's
14 a floodplain; so they can't build anything anyway.
15 Can they? I mean, if we don't get the easement,
16 what's the worst thing that can happen?

17 MR. HORTON: The difficulty would be that
18 they would be able to mow right down to the stream and
19 cut everything in that buffer off and just really
20 trash that area.

21 MR. BRAGG: But the S.W.I.M. buffer is
22 what, 50 feet? I mean, it applies in this area, I
23 assume.

24 MR. HORTON: Right.

25 MR. MARTIN: Will the amount the chief

1 asked for, would that pay the contractor? He would
2 still have to wait for the remainder, whenever that
3 comes in?

4 MR. HORTON: I would imagine that he's
5 going to be short, unless they can come up with funds
6 somewhere else.

7 MS. CAWOOD: But the work's been done.
8 The kind of thing that's sitting with me is the work's
9 been done. He did the work; so he deserves to be
10 paid.

11 MR. HORTON: He does deserve to be. It's
12 been a year.

13 MR. TOOLE: But the problem here is they
14 went and they contracted the work before they had
15 buttoned up anything with ink on it. Which, as their
16 lawyer, I'd say, "No, no, no, no. We don't spend
17 money until we've got ink." And so here we are. And
18 so we're in the awkward position of trying to make the
19 poor consultant whole because he did the -- or she --
20 did what they were asked to do. They weren't
21 involved. They're just doing their jobs. They
22 apparently did the job.

23 MS. CAWOOD: In a timely manner.

24 MR. TOOLE: In a timely manner, blah,
25 blah, blah.

1 And, you know, normally what you do in
2 this situation is you hold back something that would
3 really keep Toe River partnership's attention focused,
4 except for it's not their money. It's the
5 consultant's money that we'd be holding back. So
6 we're not really -- unless we get a new grant
7 application for the trail, we don't really have much
8 leverage over Toe River Watershed Partnership other
9 than the fact that they want to keep a good reputation
10 by holding back.

11 MR. MARTIN: To be honest, I'm amazed the
12 contractor hasn't sued them.

13 MR. TOOLE: Well, they've got no money
14 probably; so what's the point?

15 MR. MARTIN: Right. But I'm just saying
16 that I'm surprised the contractor has been this
17 patient.

18 MR. TOOLE: They're in an awkward
19 position.

20 MR. BRAGG: So I reckon the question is
21 since work's been done -- and I understand the big
22 picture question. But the question basically is how
23 much danger is the project in or how vulnerable is it
24 to a new development or whatever might happen that
25 would destroy it and we'd waste our money? And maybe

1 we can stretch this thing to make it work. The
2 contractor's hanging out.

3 MR. HORTON: The only piece of this
4 project that has liability as far as the conservation
5 easement goes is the blue piece. The rest of it is
6 built, is established. It's done. It's complete, I
7 mean, as far as the stream restoration work. And all
8 of the rest of the 85 percent of the project where the
9 yellow is has a conservation easement. So that's all
10 protected. And our leverage to hold them to finish
11 this would be the other \$50,000 and change.

12 MR. TOOLE: Larry, is it possible that the
13 landowner who seems to be interested but for their
14 concern about the Food Lion lease, that they would
15 write a commitment letter saying, "We're not going to
16 allow any mowing or destruction of the restoration
17 work"? It would be just a -- it would not be an
18 easement, but it would at least get us through --

19 MR. HORTON: That's an excellent question.
20 And we have been back and forth with the Toe River
21 Valley Watch. They have tried to work with the owner,
22 the one that holds the Food Lion lease. We've even
23 asked them to try to get a commitment letter that just
24 said "We'll commit to doing an option -- to enter into
25 an agreement and conservation easement in a year and a

1 half or whenever the lease is done." So they tried
2 that. The owner is just basically stonewalling them
3 now totally and just won't even respond. They've just
4 basically said categorically "We're not doing any more
5 with this." That's it.

6 MR. TOOLE: So we have to presume we ain't
7 never going to get that.

8 MR. HORTON: We have to presume that we're
9 not going to get it for at least the time that he is
10 worried -- that the property owner is worried about
11 losing that lease with Food Lion. So in a year and a
12 half, things may change and we may be able to get
13 that.

14 MR. BRAGG: Would it be asking too much
15 for us to go the property owner and ask if we or the
16 Toe River group could fence that area with a permanent
17 treated post, concrete bottoms so as to have some
18 assurance that it's designated and not going to be
19 encroached upon? Some assurance that --

20 MR. HORTON: We could ask that. The
21 problem that -- and my intuition is that the problem
22 is that -- and because of how this conversation has
23 gone and what we've seen going that's been between
24 these folks, is that the owner would just flatly say
25 no. Because, again, Food Lion would take that -- even

1 though it doesn't seem to have any bearing on their
2 use of that land, they would take that as a way to
3 say, "Oh. You somehow restricted my use of this
4 property. I want out of this lease."

5 CHAIRMAN KICKLER: Counsel has a question.

6 MR. FORDHAM: Did the Toe River folks ever
7 propose a conservation easement with a specific clause
8 that said "Food Lion's rights are excepted so that
9 Food Lion continues to have whatever leasehold rights
10 they have, you know, superior to the conservation
11 easement"? And then make it personal to Food Lion so,
12 when Food Lion moves on, then that goes away.

13 MR. HORTON: I don't know that we've done
14 that.

15 MR. SUMMER: We haven't. But the thing
16 that I think Larry has alluded to is that the Toe
17 River Valley Watch as well as the Liberty
18 Conservancy's attorney has been assisting us with
19 this, and their contact is the landowner's attorney
20 who drafted the initial affidavit that you've all seen
21 in the packet. That is the thing that made them feel
22 comfortable that they can move forward, is that "I
23 have the right to do this, and I intend to."

24 What's happened in the last, I'm going to
25 say, 9 to 12 months is that that attorney said,

1 I didn't pick up on the Toe River Valley Watch project
2 in a county that I live in. I don't think it's a
3 conflict to me, but I would like the attorneys to hear
4 me out and address it. I had no input into it. It
5 wasn't even -- I knew the project came to us years
6 back when it was approved and done, but outside of
7 that, I hadn't nothing whatsoever to do with that.
8 And I don't know whether that would be either a
9 perception or a conflict.

10 MR. FORDHAM: Your only connection is the
11 county where you reside?

12 MR. VINES: That's correct.

13 MR. FORDHAM: No relationship to the party?

14 MR. VINES: No, sir.

15 MR. FORDHAM: You don't have a conflict.

16 MR. VINES: Okay. Thank you.

17 MR. MARTIN: So we still get down to the
18 fact that the risk of standing out, then there's a
19 contractor that's completed his work and has not been
20 paid. So at some point that person's patience is
21 going to wear out and (inaudible) how they need to be
22 paid.

23 MS. CAWOOD: Where you don't want to a set
24 a precedent, I think that it sounds like, from staff
25 discussions with Toe River Watershed Partnership, they

1 want to do the right thing. And it's just this
2 landowner who -- it's just one piece of land. So I
3 tend to think that we should let the monies go forward
4 and pay the person for doing the work that they've
5 done.

6 MS. HACKNEY: This was multiple owners
7 too, wasn't it, as I understand correctly? That blue
8 piece is owned by this person, but they put the parcel
9 together with a group of owners.

10 MR. SUMMER: That is correct.

11 MS. HACKNEY: So in my partly -- trying
12 not to set a bad precedent of things, I mean, they did
13 get a majority of -- you know, it wasn't just a
14 homeowner that owns that whole piece, but he's going
15 to accept this piece. That's a whole separate owner.
16 So they have, in my -- I mean, you know, in my
17 thinking, they've done whatever, 85 percent of the
18 work. And as a contractor, I mean, he's been
19 extremely patient to sit there with that kind of money
20 out there and not put a lien on whatever. So yeah.

21 MR. MARTIN: Where did the 85 percent
22 number come from? Because really 100 percent of the
23 construction's been done. So 85 percent is just --

24 MR. HORTON: What we said was, "Okay. How
25 much -- how many linear feet of conservation easement

1 would you need to have the whole thing protected, and
2 how much do you have?"

3 MR. MARTIN: And you were counting both
4 sides.

5 MR. HORTON: Yes. Counting both sides.
6 So 85 percent of the work would be completed
7 completed. There would be another 15 percent where
8 the construction work would be completed but they
9 wouldn't have a conservation easement.

10 MR. MARTIN: Are we paying the landowners
11 anything as part of the conservation easement?

12 MR. HORTON: No.

13 MR. TOOLE: You've got no leverage.

14 CHAIRMAN KICKLER: How common is this?
15 And is there a way to try to learn and avoid a similar
16 situation?

17 MR. HORTON: It's very rare. I don't know
18 how you could -- I don't know how you could make this
19 a 100 percent bulletproof. It's in the grant
20 contract. I had conversations with them before the
21 project -- before, in the early part of the project,
22 that this was -- you had to do this. You can't stop
23 people from hiring a contractor and doing work. I
24 mean, there's just really not much way around that.
25 So I don't know. I haven't thought of anything. I

1 would certainly be open to suggestions.

2 CHAIRMAN KICKLER: So it's rare but --

3 MR. HORTON: It is rare. It's extremely
4 rare.

5 CHAIRMAN KICKLER: -- you're dealing with
6 humans and humans operate differently.

7 MR. HORTON: Darn it.

8 CHAIRMAN KICKLER: Are there any other
9 questions?

10 MR. TOOLE: I do have one question.

11 You're going to hate me for this one.

12 Will, what's y'all's thought on what we
13 ought to do?

14 MR. SUMMER: Well, as Larry said, what he
15 has tried to do is build a case that is a special case
16 that we're not opening the door for everyone to go
17 out, spend money, ignoring the lines of the contract.
18 And the vast majority of people are well aware of that
19 that we work with. And if I recount the story, it
20 isn't going to be "Oh, no. You can't do that. You're
21 at risk." And I think that Toe River Valley just felt
22 like that affidavit was solid and ironclad. The
23 contractor's in a tough spot because you can't get
24 blood from a stone. He could sue Toe River, but I
25 don't think he would get anything.

1 MR. TOOLE: We have no obligation to the
2 consultant. So your feeling is 85 percent is fair and
3 what you'd recommend?

4 MR. SUMMER: That's good. This does not
5 come up often. I don't think we would set a
6 precedent, again, because what Larry talked about.
7 One person has thought to do this in all of our
8 history that we're aware; so I don't think this is a
9 problem where people want to go out and risk money
10 for -- to put it on the grace of the board to bail
11 them out. I don't see this as a common issue.

12 MR. HORTON: I would say that, if it were
13 to come up again and someone were to say "Well, you
14 did this for Toe River Valley," we could -- the trust
15 fund could say, "Yes. And once you've tried and tried
16 for a year or so to -- and can show us your due
17 diligence, maybe we'll consider your case too." I
18 mean, so -- to make it equal.

19 MR. TOOLE: There's no suggestion that Toe
20 River was acting in bad faith. They clearly worked
21 hard.

22 MR. HORTON: I'm just thinking about
23 what -- I assume what you're thinking about is what
24 would happen in the future and how often does this
25 come up and what's the trust fund's authority going

1 forward.

2 MR. TOOLE: I'm willing to make a motion
3 with some reservation that we fund 85 percent of the
4 grant request and that we would pay the remaining 15
5 percent if they get the permanent conservation
6 easement that was part of the original request.

7 MR. MARTIN: I second that.

8 CHAIRMAN KICKLER: So we have a motion and
9 a second to fund 85 percent of the grant request and
10 pay the remaining 15 percent if they get the easement.

11 MR. TOOLE: Yes.

12 MS. KUMOR: Can you repeat that, please?

13 CHAIRMAN KICKLER: Yes, ma'am. This is in
14 regards to agenda item 2013-416, a motion and a second
15 to fund 85 percent of the grant request and pay the
16 remaining 15 percent if Toe River gets the easement.

17 MS. KUMOR: Thank you.

18 CHAIRMAN KICKLER: Any questions or
19 discussions regarding -- or discussion regarding the
20 motion?

21 Okay. Hearing none, all those in favor,
22 please say "Aye."

23 THE BOARD: Aye.

24 CHAIRMAN KICKLER: All those opposed?

25 THE BOARD: (No response.)

1 CHAIRMAN KICKLER: The motion is carried
2 to fund 85 percent of the grant request and pay the
3 remaining 15 percent if Toe River gets the easement.

4 Is it possible for staff to look into how
5 there could be -- to try to avoid this type of
6 situation, like where people don't go out and hire --

7 MR. SUMMER: Now that this is in our
8 history, we can have the field reps certainly make
9 that point often and early before it even gets to that
10 phase. And Larry has something of a preconstruction
11 contact with the applicant. And when the contract is
12 an issue, we could firm that up from Larry's
13 successor, that a preconstruction meeting could be
14 part of our SOP.

15 CHAIRMAN KICKLER: It would be good timing.

16 MR. SUMMER: We can certainly do that.
17 It's in the contract. The trick is getting people to
18 read the contract. But we can make that something
19 that's certainly highlighted.

20 CHAIRMAN KICKLER: Moving on to the next
21 item, which is old business 3. It's 2004A-511 Trenton
22 WWTP. And I will turn the time over to Larry once
23 again.

24 MR. HORTON: Thank you.

25 Do you have that PowerPoint for us, Mr. --

1 MR. HEARNE: Let's confirm that Renée can
2 see it.

3 Can you see that PowerPoint now, Renée?

4 CHAIRMAN KICKLER: Trustee Kumor, are you
5 on the line?

6 MS. KUMOR: Excuse me?

7 MR. HEARNE: Can you see the PowerPoint
8 now on the screen?

9 MS. KUMOR: Yes.

10 MR. HEARNE: Okay. Thank you.

11 MR. HORTON: Okay. So this is the agenda
12 item for the town of Trenton. You have a rather long
13 agenda item in your packet information to look over.
14 It's several pages long. There is a lot of
15 information attached to that: the town letter,
16 engineering report, so on and so forth. So we've put
17 together a PowerPoint to try to work through that and
18 hit as many points as we could. If there's questions,
19 of course, after that, then we'll be glad to field
20 those and do the best we can.

21 MR. SUMMER: Would you mind speaking up
22 for those on this end of the room, Larry?

23 MR. HORTON: Okay.

24 MR. SUMMER: Thank you very much.

25 MR. HORTON: So this is a description of

1 the original project that was funded in 2004. The
2 town of Trenton was awarded \$1,369,000 for assistance
3 in constructing a land application wastewater
4 treatment facility. The town contribution at that
5 time was \$100,000 match. The project was to eliminate
6 the town wastewater treatment plant's discharge into
7 the Trent River and land apply the treated effluent
8 instead.

9 And some of details of that were to
10 construct a storage lagoon, purchase the land, build
11 an irrigation sytem, install some pumps and a backup
12 generator. Their existing wastewater treatment plant
13 is in a floodway. As part of this original project,
14 the wastewater treatment plan would pretreat and then
15 send the effluent to a storage lagoon, and then from
16 the storage lagoon, it would be irrigated onto the
17 land that had been purchased. As time went on, it
18 became evident that this project as it was was not
19 going to be feasible.

20 And some explanation about that. So there
21 was difficulty in preparing the necessary land for
22 application, which caused a project delay of nearly
23 four years. During that time excessive inflow and
24 infiltration caused by surface and groundwater flowing
25 into old decaying sections of pipe increased the

1 amount of flow into the wastewater treatment plant.
2 And there was change in regulations that required a
3 higher level of treatment, which resulted in the
4 proposed system being inadequate to handle the amount
5 of wastewater being generated by the system.

6 So the town actually did acquire some
7 land. We'll talk about that a little bit more. But
8 because of flow increase, they weren't going to have
9 enough land to dispose all of that flow, is what it
10 amounts to.

11 So some flow data -- I'll just try to
12 explain this a little bit. So you can see the
13 application was made in 2003 -- December 2003, the end
14 of that year. The data that they had prior to the
15 application was based on these numbers. This is the
16 yearly average flow. So that number is 29,000. So
17 their treatment plant is at 70,000 gallons per day.
18 So based on these numbers, it appeared that their
19 application was okay. As you can see, after they
20 applied, the numbers started to go up, and then these
21 are numbers past that.

22 So this is a graph of flow data. I think
23 this is helpful. Our friends over at the Division of
24 Water Infrastructure put this together for us. So
25 this blue line represents 70,000 gallons per day.

1 That's what the treatment plant is permitted for and
2 approximately what the land that they acquired would
3 be able to accept. You can see, again, this is the
4 flow before 2003, right here. And then you can see
5 after that it really does trend up. So the red line
6 is the monthly average. The gray lines are daily
7 flows. So you can see they really spike up. And you
8 can see that that really gets a lot worse after this
9 time frame right here.

10 So once the town recognized this, there
11 was a request to go with what's called a conjunctive
12 use permit, which would be to discharge part of the
13 their flow -- to continue discharging part of their
14 flow to the Trent River and dispose part of it to the
15 land that they had acquired.

16 They came to the trust fund with that.
17 They got pushback from us -- from me, because it
18 really wasn't what was approved. What we were looking
19 for is not how the project was approved in the first
20 place. That's not what we made an agreement for.

21 So there were a lot of conversations.
22 There were meetings with the Washington regional
23 office. Our friends at the Division of Water
24 Infrastructure helped us out some. And the other
25 funders -- there was a lot of talk and working with

1 consultants. It was basically determined that you
2 just really got too much inflow/infiltration. So no
3 matter what you do, that's going to be a problem.

4 So we all worked together. We decided to
5 go with a two-phase project. We would make this a
6 two-phase project. Phase 1, we'll eliminate some of
7 the inflow/infiltration to the wastewater treatment
8 plant so the land application site would be sufficient
9 to accept the flow. And phase 2 would eliminate the
10 discharge. All the water would be now -- the water
11 has been reduced enough that we can send that to the
12 land and eliminate the discharge.

13 So the grant contract was amended. It was
14 written pretty specifically. And part of the amended
15 contract includes the condition that states "After the
16 phase 1 work has been completed, if the phase 2 work
17 and elimination of the treatment plant discharge does
18 not appear to be feasible, then no additional trust
19 fund funds will be available for phase 2 and the grant
20 will be closed out." And that was based on the
21 board's decision at that time when we went from phase
22 1 to phase 2. So that's a big part of why we're here
23 discussing this today.

24 So phase 1 was completed. A lot of work
25 was done. The town evaluated the system and

1 determined that the work did not reduce flow enough
2 for confidence that the discharge to the river could
3 be eliminated and effluent discharged at the land
4 application site without creating ongoing violations.
5 The town determined that, in order to complete phase
6 2, they would need additional funding. They went to
7 the Division of Water Infrastructure in April 2016 and
8 got a \$3 million grant.

9 So part of that grant, they were told they
10 needed to consider various alternatives. Okay. We've
11 got a problem. This is typical of this sort of
12 infrastructure. We've got a problem. So what are the
13 alternatives? What could we do and then analyze those
14 alternatives and come up with a selected path forward.

15 So the engineering report -- they
16 submitted an engineering report to the Division of
17 Water Infrastructure in December 2016. The
18 engineering report included an analysis of several
19 alternatives to address the current wastewater needs.
20 The selected alternative -- we'll talk more about
21 it -- is a new 140,000-gallon-per-day capacity
22 wastewater treatment plant with additional treatment
23 capabilities including nutrient removal. The new
24 treatment plant would be located at the site that was
25 purchased for the land effluent disposal, and the

1 treated effluent would be discharged to the Trent
2 River at the existing discharge location. The
3 existing wastewater treatment plant, which is located
4 in the Trent River floodplain, would be decommissioned.

5 So these are the alternatives that were
6 considered. They considered six alternatives. The
7 first two are ones that you -- whenever you do an
8 alternative analysis for this sort of thing, you have
9 to take those two into account. What would happen if
10 we didn't do anything? So there's words about that in
11 their analysis in the report.

12 Alternative 2, what would happen if we
13 just took what we've got and made the best use of it?
14 We'll repair it. We'll do the best thing. We'll make
15 it run as good as we can. How would that work?

16 Alternative 3 is the preferred
17 alternative: Construct a new 140,000-gallon-per-day
18 biological nutrient removal wastewater treatment plant
19 at the site that was obtained for land disposal --
20 it's also known at the Mayfield Road site -- and
21 discharge to the Trent River.

22 Alternative 4 is rehabilitate and expand
23 the existing treatment plant to 140,000 gallons per
24 day, continue discharging 70,000 gallons per day to
25 the Trent River, and construct a new

1 70,000-gallon-per-day irrigation system at the
2 Mayfield Road site. If that sounds familiar, it
3 should. That's what they had proposed to us back in
4 2012, that they were going to discharge part of their
5 flow to the river and then they were going to land
6 apply the other part of it on the land that they had
7 obtained. That's called a conjunctive use permit.

8 Alternative 5 is rehabilitate the existing
9 70,000-gallon-per-day, eliminate the discharge at the
10 Trent River, and construct a new 70,000-gallon-per-day
11 irrigation system at the Mayfield Road site. That
12 should sound very familiar. That's the project that
13 we funded as it stands now.

14 Alternative 6 is to rehabilitate and
15 expand the treatment plant to 140,000 gallons per day,
16 eliminate the discharge to Trent River, and construct
17 a new 140,00-gallon-per-day irrigation system at the
18 Mayfield Road site.

19 So they did what's known as a present
20 worth analysis, crunched the numbers. They only did
21 that for three alternatives. They did it for
22 alternative 3, which is the selected alternative;
23 alternative 4, which is one they had proposed to us
24 before, the conjunctive use; and alternative 5, which
25 is the project that we funded. They did not do

1 alternative 6. Alternative 6 is similar to
2 alternative 4 but it's more expensive.

3 And if you'll look on far left column --
4 I'm sorry -- the far right column, that total present
5 worth -- it's hard to read those numbers. The
6 selected alternative is \$5.4 million. Alternative 4
7 is \$8.2 million. Alternative 5 is about \$5.6 million.
8 So if alternative 4 -- the reason they didn't do
9 alternative 6 is it's basically alternative 4 but more
10 expensive. And if alternative 4 is just way out of
11 the running, there's no point in doing alternative 6.

12 MS. CAWOOD: Excuse me, Larry.

13 MR. HORTON: Yes.

14 MS. CAWOOD: Why the big jump? That just
15 continues to be on my mind. What happened in 2003
16 that has changed until now that the volume has
17 continued and the flow has increased that amount?

18 MR. HORTON: Well, there's a lot of
19 conjecture about that, and there's a lot of discussion
20 about it in their letter and in part of the agenda
21 item. I'll make a run at it. If I don't -- if I
22 can't really get there, I have Rich Moore in the back
23 there. I'm sure he can help us out.

24 Part of the conjecture is that there's a
25 mill pond that's adjacent -- when you go to Emerald

1 Isle, when you go down that way to the beach, you're
2 going to go through Trenton and see the mill pond over
3 there. So the mill pond was drained. There was a
4 hurricane and the pond was drained. So the
5 groundwater table at the time was lower. Part of the
6 conjecture is that, once the mill pond was
7 reestablished, the groundwater table came back and
8 that's increased the flow. That's one of the
9 theories. That's not an ironclad, 100 percent, we
10 know that's what it is. But that's part of their
11 thinking.

12 MS. CAWOOD: Okay.

13 MR. NORWOOD: Does that help?

14 Okay. So this is a map of the current
15 treatment plant location and the new wastewater
16 treatment plant location. So over here -- so this is
17 the Trent River right here. This is the existing
18 wastewater treatment plant. It discharges right
19 there. This is the land that was obtained, that the
20 town bought, and this is where the irrigation system
21 would have been. This is where the new -- somewhere
22 on this site there would be a new wastewater treatment
23 plant. The flow would be -- once it's treated at this
24 treatment plant, it would be pumped back along this
25 green line and then discharged at the existing

1 discharge point right here.

2 So when we think about scope change, one
3 of the things that we always want to think about is
4 what are the water quality benefits, how do they
5 compare. That's what this slide is about. The Ross
6 project would not eliminate the discharge, which is
7 what we had intended to do in the first place;
8 however, there would be other water quality benefits.
9 The effluent discharge would be a higher quality.
10 Actually, it would be a much higher quality, especially
11 with regard to nitrogen loading, which is very
12 important in this particular river basin. Flooding at
13 the treatment plant would be eliminated because of
14 relocation to a new site from the current flood-prone
15 site. And if we do go -- if there was an irrigation
16 system at the land site and without adequate capacity
17 for the excessive flows and spikes, if there are,
18 there would be negative impacts from overland flow.
19 That's very typical of these land disposal sites that
20 are marginal in the gray area. They get overloaded.
21 Then there's overland flow, negative impact on surface
22 waters.

23 This is the proposed revised schedule. It
24 looks like a long time. It is a long time. But for
25 those of us involved with big infrastructure projects,

1 they take a long time. Each little piece of it takes
2 longer than one would think. So in other words, I
3 guess what I'm saying is it looks like a fairly
4 realistic schedule even though it's a long schedule.

5 So what if the trust fund were to say "No.
6 We're not doing that. You'll have to get your money
7 from somewhere else"? What would that mean? So the
8 impact on user funds of not approving the use of the
9 remaining Clean Water Management Trust Fund, the town
10 would have to obtain additional loan funds probably
11 from Division of Water Infrastructure to replace our
12 \$768,568 grant funds. The average sewer bill would
13 increase by approximately \$17.12 per month. The
14 current combined monthly water and sewer rate is --
15 for a 5,000-gallon-per-month user is \$87.25, which
16 represents 3.13 percent of the town's median household
17 income, which is above the state's high unit cost user
18 rate threshold. So if the combined -- if it did go up
19 \$17, the combined cost for water and sewer would be
20 about \$104 per month. So that's the impact.

21 These are just some slides just so you can
22 see what the existing treatment plant looks like.
23 This is the floodplain going between the treatment
24 plant and the river. You can see that the river is
25 right -- the river is right here. So it's very close.

1 It's in the floodplain. There's pictures of the
2 beautiful Trent River.

3 So these are the board actions that are
4 needed: to approve, not approve, or amend the
5 requested project scope change; and grant contract
6 time extension. Some alternatives would include
7 approve the requested change of scope and requested
8 grant contract time extension, don't approve the scope
9 change but approve the limited amount of time to
10 provide time for the town to determine what they want
11 to do next, or don't approve the scope change and
12 don't approve extending the grant contract time.

13 So these are extra slides that I included
14 in case there's more questions about the time line.
15 So that's it.

16 Questions?

17 CHAIRMAN KICKLER: Thank you, Larry. That
18 was a thorough presentation. Much appreciated. Are
19 there any questions?

20 MR. MARTIN: I guess what I would say, you
21 know, Larry, I mean, we always hate to see things
22 change, but would it be your opinion that, if there's
23 such a thing as a blessing in disguise, that this
24 project now with its changes would probably be better
25 in the fact that you're moving -- abandoning a

1 facility that's in the floodplain? And I'm reminded
2 of that one in Greene County that we had to do
3 something to protect. So there's a benefit now of
4 this system that we will not have a system in the
5 floodplain. And, two, with, you know, the topsoils
6 and being able to put in a wastewater treatment plant
7 option that we will have a higher level of confidence
8 that the quality of the water that will ultimately
9 either end up in the groundwater or in the surface
10 water system will be a higher quality than the project
11 that we were originally talking about.

12 MR. HORTON: Absolutely. And I think a
13 big part of this whole discussion is the really --
14 they're in a gray zone with their disposal to land.
15 You don't want to be in a gray zone, especially with a
16 system like that. It just leads to a lot of notices
17 of violations. It's just a continuing problem. And
18 those things have happened in other places in the
19 state. It's one of the things that caused the
20 Washington regional office and Division of Water
21 Infrastructure especially to just really balk at
22 moving forward with a project that eliminated that
23 discharge because of the amount of pipe that they have.

24 So we just don't really -- the thing is
25 you don't want to set up someone for failure or for

1 just continuing difficulties. There's no such thing
2 as a bulletproof system. This system was certainly --
3 this proposal would be much, much more bulletproof
4 than the -- much less cause for issues.

5 MR. BRAGG: I'm in Fayetteville, number
6 one, but I have a question about the bigger picture of
7 the area. I would assume this drains into the boat
8 sound? The Trent --

9 MR. SUMMER: Neuse River.

10 MR. BRAGG: The Neuse. Okay. I was way
11 off. As far as the surrounding area, remind me the
12 people you serve with this system or what's going on
13 around here. Is the Neuse endangered in that area?

14 MR. SPIVEY: Well, the Neuse is a right
15 good ways from us.

16 MR. BRAGG: Right.

17 MR. SPIVEY: It joins in New Bern. Trent
18 goes into New Bern. There's 20 miles to the Neuse
19 River, where our water would eventually go to the
20 Neuse River.

21 MR. MOORE: And a customer base of, you
22 know, 220-ish, and so it's not a growth corridor or
23 anything; so it wouldn't be a concern for the
24 development. And the proposal is really -- the
25 structural supplement can meet the existing flow.

1 It's not really to accommodate any potential for
2 significant growth.

3 MR. BRAGG: Okay.

4 CHAIRMAN KICKLER: Are there any other
5 questions?

6 MR. MARTIN: Well, if there are no other
7 questions, I'll make a motion that we -- Larry, you
8 can try to help me out here with how I should actually
9 word this -- that we would approve the requested
10 change of scope and requested grant contract time
11 extension.

12 CHAIRMAN KICKLER: Okay. In regards to
13 old business item 3, 2004A-511 Trenton Wastewater
14 Treatment Plant, Trustee Martin has made a motion.

15 MR. VINES: I second the motion,
16 Mr. Chairman.

17 CHAIRMAN KICKLER: To approve the
18 requested change of scope and the requested grant
19 contract time extension, Trustee Vines has made a
20 second. The motion is on the table. Is there any
21 more discussion or questions about the motion? If
22 not, all those in favor of approving the requested
23 change of scope and the requested grant contract time
24 extension with regards to old business item 3,
25 2004A-511 please say "Aye."

1 THE BOARD: Aye.

2 CHAIRMAN KICKLER: All those opposed?

3 THE BOARD: (No response.)

4 CHAIRMAN KICKLER: The motion has carried.

5 Let's take a five-minute break. We'll

6 reconvene.

7 (The board recessed at 11:42 a.m.)

8 (The board reconvened at 11:52 a.m.)

9 CHAIRMAN KICKLER: There's no new
10 business; so before we adjourn, I'm going to ask if
11 the trustees want to say anything to the board or to
12 the staff at this time. If not, is there a motion to
13 adjourn?

14 MR. MARTIN: When is Larry's last day?

15 CHAIRMAN KICKLER: When is your last day,
16 Larry?

17 MR. HORTON: Last workday is April 28th.
18 It's a Friday.

19 MR. TOOLE: I just want to say thank you
20 very much for your help. You've made my job as
21 trustee super simple. So thank you, Larry.

22 MR. HORTON: It's been a pleasure and an
23 honor.

24 CHAIRMAN KICKLER: Anybody else?

25 MR. VINES: I just would like to comment

1 to the board and to the staff. Due to my limited
2 availability over the last 18 months, I appreciate all
3 y'all putting up with me, and I'm very thankful and
4 blessed to be here today.

5 CHAIRMAN KICKLER: Thank you, Trustee
6 Vines. We're glad you could be here today, and thank
7 you for the work that you've done, especially in the
8 administrative co-committee and your expertise in
9 matters such as that so that the full board can make
10 an informed decision on things. It's greatly
11 appreciated by me.

12 If there are no other comments or
13 questions from staff, is there a motion to adjourn?

14 MR. BRAGG: So moved.

15 MS. CAWOOD: Second.

16 CHAIRMAN KICKLER: Trustee Bragg has made
17 a motion to adjourn. Trustee Cawood has seconded. If
18 there's no discussion, all those in favor, please say
19 "Aye."

20 THE BOARD: Aye.

21 CHAIRMAN KICKLER: Opposed?

22 THE BOARD: (No response.)

23 CHAIRMAN KICKLER: We are adjourned.

24 (The meeting adjourned at 11:54 a.m.)

25

1 CERTIFICATE OF NOTARY - COURT REPORTER

2 STATE OF NORTH CAROLINA

3 COUNTY OF WAKE

4 I, KAREN ROCHE, Notary Public in and for the
5 above county and state, do hereby certify that the
6 foregoing Clean Water Management Trust Fund Board of
7 Trustees meeting was taken before me at the time and
8 place hereinbefore set forth and was duly recorded by
9 me by means of stenotype, which is reduced to written
10 form under my direction and supervision; and that this
11 is, to the best of my knowledge and belief, a true and
12 correct transcript.

13 I further certify that I am neither counsel
14 to any party nor interested in any way in the outcome
15 of this meeting.

16 This is the 1st day of March, 2017.

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Karen Roche
Notary Public, Wake County,
North Carolina
Notary No. 201519800020