



Transcript of the Testimony of **CWMTF Meeting**

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CLEAN WATER MANAGEMENT TRUST FUND MEETING

109 East Jones Street
Room 208
Raleigh, NC 27603

Wednesday, November 8, 2017
10:03 a.m. - 11:19 a.m.

In attendance: E. Greer Cawood, Chairman
Hank Fordham
Walter Clark
Troy Kickler, Ph.D.
Frederick Beaujeu-Dufour
Steve Bevington
Terri Murray
Will Summer
Justin Mercer
Nancy Guthrie
Gwyn McCullough
Sydney McDaniel

Appearing telephonically: Frank Bragg
Bill Toole
John Wilson
Charles Vines
Damon Hearne

Also present: Glenn Sappie
Bill Holman

Reported in Stenotype by
Lisa A. DeGroat, Registered Professional Reporter
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1 CHAIRMAN CAWOOD: Well, I think we'll
2 get started, everyone. I want to welcome
3 everyone, and this should be a pretty quick
4 meeting. We don't have that many items, but
5 there are some important items that we need to
6 take care of before our next meeting.

7 So I want to appreciate everyone being
8 involved and being here. And, Fred, and, Troy,
9 appreciate you-all being here in person.

10 MR. KICKLER: Thank you.

11 CHAIRMAN CAWOOD: And for the trustees
12 on the phone.

13 So I will start with, I am Greer
14 Cawood. I am here. And maybe the folks in
15 person first.

16 MR. KICKLER: Troy Kickler, present.

17 MR. BEAUJEU-DUFOUR: Fred
18 Beaujeu-Dufour present.

19 CHAIRMAN CAWOOD: And those on the
20 phone?

21 MR. VINES: Charles Vines, present.

22 MR. TOOLE: Bill Toole, present.

23 MR. BRAGG: Frank Bragg, present.

24 MR. WILSON: John Wilson, present.

25 MS. MURRAY: Everyone.

1 CHAIRMAN CAWOOD: Excellent. Thank
2 you, everyone.

3 And, to begin with, we will do
4 compliance with General Statute 138A-15, which
5 mandates --

6 MR. BRAGG: Madam Chairman?

7 CHAIRMAN CAWOOD: Oh, yes, sir.

8 MR. BRAGG: Madam Chairman, this is
9 Bragg. I can hear very clearly all of the people
10 who called in, but I can barely -- barely hear
11 you.

12 CHAIRMAN CAWOOD: Well, that is a
13 first. That is not normally an issue that we
14 have. Will is moving the table.

15 MR. FORDHAM: Will is serving as our
16 tech expert.

17 CHAIRMAN CAWOOD: Will, as our tech
18 expert once again, shows his talents.

19 Is that better for those on the phone?

20 MR. BRAGG: That's much better.

21 CHAIRMAN CAWOOD: Okay. Wonderful.
22 Thank you for letting us know, Trustee Bragg.

23 MR. BEAUJEU-DUFOUR: Couldn't have done
24 better.

25 CHAIRMAN CAWOOD: So, to begin with,

1 General Statute 138A-15 mandates that the chair
2 inquire as to whether any trustee knows of any
3 conflict of interest or the appearance of a
4 conflict of interest with respect to matters on
5 the agenda.

6 If any trustee knows of a conflict of
7 interest or the appearance of a conflict of
8 interest, please state so at this time.

9 (NO AUDIBLE RESPONSIBLE WAS GIVEN.)

10 CHAIRMAN CAWOOD: Okay. Hearing none,
11 we can proceed to, of course, please put your
12 cellphones on vibrate or turn off. And, also, as
13 Trustee Bragg showed us, for those trustees on
14 the phone, if you could, please state your name
15 before you speak, so that the court reporter can
16 make note of that.

17 Next, are there any revisions,
18 additions of the agenda?

19 (NO AUDIBLE RESPONSE WAS GIVEN.)

20 CHAIRMAN CAWOOD: Hearing none, we'll
21 move for adoption of the agenda.

22 MR. BRAGG: So moved. Bragg.

23 MR. VINES: Charles Vines. Second.

24 CHAIRMAN CAWOOD: Thank you very much.

25 All in favor, say aye.

1 MR. WILSON: Aye.

2 MR. KICKLER: Aye.

3 MR. BEVINGTON: Aye.

4 MR. BRAGG: Aye.

5 MR. TOOLE: Aye.

6 CHAIRMAN CAWOOD: Great. We will move
7 on to the consent agenda, and we'll -- I think
8 everyone -- Sydney, I saw that you sent out the
9 minutes to everyone. So everyone should have had
10 those to review.

11 Are there any changes to the minutes?

12 MR. BRAGG: This is Bragg. I propose
13 that we approve the minutes as written.

14 MR. BEAUJEU-DUFOUR: Second.

15 CHAIRMAN CAWOOD: Wonderful. Second
16 from Fred. Thank you.

17 All of those in favor?

18 MR. KICKLER: I have one thing I want
19 to say.

20 CHAIRMAN CAWOOD: Uh-huh.

21 MR. KICKLER: There's one small
22 revision that needs to be made on what I said,
23 and I meant to contact Will sooner than today
24 about that.

25 MR. SUMMER: Were those on the admin

1 committee meeting minutes?

2 MR. KICKLER: Yes.

3 MR. SUMMER: Okay. Good. So --

4 MR. KICKLER: So this is not what we're
5 talking about?

6 CHAIRMAN CAWOOD: That's the board
7 meeting.

8 MR. SUMMER: The board meeting.

9 MR. KICKLER: The board meeting. Then
10 I have nothing to say.

11 MR. SUMMER: Okay.

12 CHAIRMAN CAWOOD: Awesome. Well, all
13 those in favor, say aye.

14 MR. BRAGG: Aye.

15 MR. WILSON: Aye.

16 MR. TOOLE: Aye.

17 UNIDENTIFIED SPEAKER: Aye.

18 CHAIRMAN CAWOOD: Any opposed?

19 (NO AUDIBLE RESPONSE WAS GIVEN.)

20 CHAIRMAN CAWOOD: All right. That's
21 approved.

22 Also had been sent to all trustees the
23 appointment of the next peer advisory committee a
24 new member of that committee. I didn't know,
25 Walter, if there's anything additional you wanted

1 to say about that.

2 MR. CLARK: Her name is Shelly
3 Bembridge. She came highly recommended by Mike
4 Remige, who is the director of Jennette's Pier.
5 Reading her letter, she looks very qualified, has
6 a house in Kill Devil Hills, is from Edenton.

7 CHAIRMAN CAWOOD: I saw that.

8 MR. CLARK: So -- and, as far as I
9 know, the department and the pier support her
10 and, obviously, ask that we nominate her and
11 approve her nomination to serve on their advisory
12 board.

13 CHAIRMAN CAWOOD: Perfect. Well, good.
14 Do we have a motion to approve her appointment?

15 MR. VINES: This is Vines. I vote to
16 approve her.

17 MR. BRAGG: Bragg. Approve.

18 CHAIRMAN CAWOOD: Okay. All in favor?

19 MR. FORDHAM: Did we get a motion, or
20 are they just voting?

21 CHAIRMAN CAWOOD: That was a motion,
22 wasn't it, Charles?

23 MR. VINES: Yes, it was. I'm sorry.

24 CHAIRMAN CAWOOD: Perfect. And Trustee
25 Bragg was the second.

1 So all in favor?

2 UNIDENTIFIED SPEAKER: Aye.

3 UNIDENTIFIED SPEAKER: Aye.

4 UNIDENTIFIED SPEAKER: Aye.

5 THE COURT REPORTER: Can they identify
6 themselves?

7 MR. CLARK: Aye.

8 CHAIRMAN CAWOOD: Any opposed?

9 (NO AUDIBLE RESPONSE WAS GIVEN.)

10 CHAIRMAN CAWOOD: Great. She will --
11 I'm sure we'll look forward to hearing about her
12 work on that. Thank you very much.

13 And, Hank, do you have anything in the
14 legal update for us?

15 MR. FORDHAM: I do have a couple of
16 things that I can talk about. I think one was we
17 were going to talk about e-mail accounts briefly.

18 Is that -- is this the appropriate time
19 to do that, Will?

20 MR. SUMMER: I think this will be a
21 great time.

22 MR. FORDHAM: Okay. And --

23 MR. VINES: Madam Chair?

24 CHAIRMAN CAWOOD: Yes.

25 MR. VINES: This is Chuck Vines.

1 CHAIRMAN CAWOOD: Yes, Chuck.

2 MR. VINES: I'm having difficulty
3 hearing what Mr. Fordham is saying.

4 CHAIRMAN CAWOOD: We will move this his
5 way. Here you go. And I'm also a tech expert.

6 MR. FORDHAM: Can you hear me now?

7 MR. VINES: Yes, sir. Thank you.

8 MR. FORDHAM: Okay. Thank you for
9 saying -- speaking up.

10 We're going to talk a little bit about
11 e-mail accounts, private versus public e-mail
12 accounts, and the benefits to both of those and
13 also just the legal requirements.

14 But the first thing is to define what
15 is a public record when it comes to e-mail. An
16 e-mail is a public record anytime it's sent or
17 received in connection with Clean Water business.

18 So I'm just going to focus on Clean
19 Water, not abstractly about e-mails. So anytime
20 a Trustee sends or receives an e-mail related to
21 a transaction of Clean Water's business that's a
22 public record.

23 The device that's used doesn't matter,
24 whether it's a personal device, a public device,
25 you know, a computer at a public library, you

1 know, any kind of phone, iPad. The device is
2 irrelevant.

3 It's a content-based determination of
4 what is a public record, and so the key thing
5 here today is accounts. It also doesn't matter
6 what account is used. So it's the content of the
7 e-mail and who is sending it that matters, not
8 the account.

9 So if it's -- you're sending it on a
10 DNCR account or a Clean Water account that --
11 that Clean Water has obtained through a vendor,
12 then if the content is related to the transaction
13 of Clean Water's business, then that's a public
14 record.

15 If it's a private e-mail account,
16 Gmail, iCloud, you know, whatever the popular
17 ones are, you know, a proprietary, your own
18 business, your account, your own domain name, if
19 you're sending or receiving an e-mail related to
20 a transaction of Clean Water's business, that is
21 a public record, regardless of what account is
22 used.

23 Any questions so far on any of that?

24 MR. BRAGG: Hank, when you say it's a
25 public record, does that mean that we have to

1 send copies of any correspondence to Walter or
2 what is the procedure here?

3 MR. FORDHAM: It doesn't mean that.
4 And if it's okay, I'll get into what it means,
5 what you have to do with public records. And
6 that's not a question --

7 MR. BRAGG: Okay.

8 MR. FORDHAM: That's not a question I
9 anticipated. So I'll try to go ahead and answer
10 it.

11 No. If you receive or send a public
12 record, there's not automatically a legal
13 obligation to send it to any particular person.
14 So you don't have a duty with public records to
15 send them to Walter or copy them to Will or me or
16 anybody else. Okay?

17 MR. KICKLER: It's just if asked.

18 MR. FORDHAM: I'm sorry?

19 MR. KICKLER: It's just if asked, then
20 we have to.

21 MR. WILSON: Isn't there a duty not to
22 destroy a public record and to retain it?

23 MR. FORDHAM: Oh, yeah, yeah. And if
24 it's okay, we'll get to those that -- what it
25 means if it's a public record in just a second.

1 I'm also through with the -- the first part.

2 The only other thing I wanted to add
3 about whether it's a public record or not is that
4 if you have an e-mail that's partly transacting
5 Clean Water's business and partly personal.

6 Say you e-mail another trustee, and you
7 say, looking forward to the meeting. This is an
8 important topic for us to discuss at the meeting.
9 And then you also say, by the way, let's meet at
10 so-and-so river to do two hours of trout fishing,
11 you know, before the meeting.

12 MR. BEAUJEU-DUFOUR: Cool.

13 MR. FORDHAM: The part about the trout
14 fishing is not a public record. Okay. So we're
15 all familiar with the term redaction. So if
16 you've got a public records request, then you
17 would divide out the content of that e-mail.

18 Here you probably wouldn't bother,
19 because going fishing is no big deal. It's not
20 that private, but you legally would be okay in
21 leaving the part that's public visible and then
22 blacking out the part that's private.

23 Probably a more germane example is if
24 you're using a public account, and you send your
25 wife or your husband or someone an e-mail saying,

1 let's meet for lunch, you know, on Thursday,
2 that's -- that's private.

3 And if you received a public records
4 request, you wouldn't have to produce that
5 e-mail, if that's all it said. But if somehow
6 the e-mail touched on the public's business and
7 also on that private thing, you would redact out
8 the personal.

9 If you sent an e-mail to your doctor,
10 you know, in a public account, saying, you know,
11 I'm going to be late for that appointment,
12 whatever, you probably wouldn't use your public
13 account, but if you just, in the haste of getting
14 something out, you did, that's private.

15 So that just goes back to the general
16 theme that it's the content that determines
17 whether it's a public record or just a private --
18 private communication.

19 Okay. Now coming to the questions that
20 Bill and Frank were asking, what does it mean if
21 it's a public record? It means the custodian of
22 that record has a duty to retain it and a duty
23 not to destroy it.

24 In fact, to intentionally destroy a
25 public record is a misdemeanor, but the primary

1 duty you have -- the legal duty is just to say
2 you have a duty to retain it in accordance with
3 the retention schedule published by the
4 Department of Natural and Cultural Resources.

5 That's convenient. It's your
6 department that, you know, has the schedule and
7 produces the schedule. I think it's the
8 Department of Archives that actually publishes
9 the schedule. The exact number of years you have
10 to retain it I don't recall offhand for the Clean
11 Water Management Trust Fund.

12 MS. MURRAY: Twenty.

13 MR. FORDHAM: How many?

14 MS. MURRAY: Twenty.

15 MR. FORDHAM: Okay. The thought here
16 in the room is that it's 20 years.

17 MR. KICKLER: Twenty years?

18 MR. FORDHAM: So a lot of them are
19 permanent. The legal stuff is permanent.
20 There's almost nothing in the legal department
21 you can ever destroy, but -- so, in effect, it's
22 a permanent retention for practical purposes.

23 Twenty years is a long time, and -- so
24 the duty is to retain those, not destroy them,
25 and have them to where they are available if you

1 receive a public records request.

2 Sometimes you hear the term Freedom of
3 Information Act request. That's a federal term,
4 but it's used, you know, colloquially to cover
5 North Carolina public records requests too.

6 So, you know, you'll either hear
7 somebody has made a public records request or
8 somebody has made a FOIA request or a Freedom of
9 Information Act request.

10 All of those are the same thing, and
11 the public has a right to -- anybody can request
12 public records. They can't even be forced to
13 disclose why they want it.

14 So if somebody asks, you can't make
15 them tell you why they want it. They don't have
16 to be a citizen. They don't have to be a
17 resident. It's totally nonqualified to write to
18 request public records.

19 So in a practical sense what does it
20 mean if you have to retain it? It would impose
21 the legal duty to act reasonably with respect to
22 retention. And so that would mean to have some
23 mechanism to back up your e-mails, some mechanism
24 to archive them.

25 So translate that into a practical

1 thing. If you're using a private e-mail account
2 for public e-mails, then you'd want to have a
3 separate folder, and you would want to save all
4 that you sent and all that you receive into that
5 folder.

6 And then you would want to back that
7 folder up every now and then. Probably most
8 people use a type of e-mail account where the
9 original copy is saved on a server.

10 I don't know that everybody -- I think
11 it's called -- what? An iMap account or
12 Microsoft Exchange server, but, technologically
13 speaking, the public e-mails, anyway, are not
14 just resident on my computer. They're at the
15 central server.

16 So if this thing gets destroyed, I drop
17 it in the Ararat River, when we're up there in
18 Mount Airy, the e-mails aren't gone. They're on
19 the server, and the public IT department is
20 making backups of those.

21 So if somehow those get destroyed, it's
22 not my fault. If a judge says, you know,
23 Mr. Fordham, why can't you produce those e-mails?
24 It's -- it was on the public account. IT backed
25 it up. My computer was stolen. You know, I'm

1 sorry. I'm not going to be in trouble for that.

2 So if it's personal, you'd want to make
3 a -- you know, keep that archive folder, where
4 you have all of your public e-mails that's sent
5 or received. And it would include if a
6 constituent e-mails you about the public's
7 business, that's a public record.

8 If trustees e-mail between each other,
9 that's a public record if it's about public
10 business.

11 Slight digression. If you send an
12 e-mail to a majority of the group of trustees,
13 that might raise some open meeting questions, if
14 it's about the public business, so I'd recommend
15 not doing that.

16 Of course, there's no problem with
17 administrative e-mails reminding you about the
18 meeting, sending out the agenda, those sorts of
19 things, but you wouldn't want to deliberate or
20 discuss a topic by a majority by e-mail. End of
21 the digression.

22 So then at the end of your term you
23 would want to then share that archive folder,
24 give a copy of that to somebody on the staff of
25 Clean Water, so it would be permanently

1 preserved.

2 It would probably be good once a year,
3 you know, on January 2nd of each year just to
4 send a copy of your archive folder over.

5 So all that is to say that using the
6 private e-mail server or account is -- you know,
7 if you're not archiving, you're not backing up,
8 and worrying about it, it's really easy and
9 convenient. But when you add those practical
10 obligations in, it becomes less convenient and
11 less attractive to do it.

12 The Office of General Counsel
13 recommends using a public e-mail account.
14 It's -- you know, we're not in the chain of
15 command. We can't tell you what to do, but, you
16 know, I've been on the end of lots of public
17 records requests, you know, from municipalities,
18 a lot for the state, and never had any trouble
19 with the state issues.

20 I won't go through all of the different
21 things, but it can be difficult if private e-mail
22 accounts are used and the people aren't vigilant
23 about doing this archiving system to just recover
24 the e-mails.

25 And, you know, I would say that judges

1 are not lenient on this e-mail stuff, and they
2 take very seriously the duty of public officials
3 to have these things available for the public
4 upon request. And, of course, we all know the
5 N&O newspapers will show no mercy about a public
6 official who doesn't produce their e-mails.

7 Any questions about that? I mean,
8 there -- I can touch briefly on the practicality
9 of it.

10 Most devices you can add an e-mail
11 account to your e-mail program, so it almost
12 becomes transparent that you're using the public
13 account, in that, you know, on an iPhone if you
14 add -- I have Outlook on mine.

15 So I have my personal e-mail account,
16 and I have Outlook. That's really easy, because
17 when I want to do something public, I use
18 Outlook. I never use my personal account.

19 If I get an e-mail from someone that's
20 sent to my personal account, I forward it to my
21 public account, and I'll only respond from my
22 public account.

23 So, I mean, there's -- there are better
24 people to talk to you about the technological
25 side, but it's not so difficult to switch to a

1 public e-mail account. Probably easier than, you
2 know, the archiving system.

3 But, anyway, end of sermon on that.

4 Any questions from anybody on the phone?

5 (NO AUDIBLE RESPONSE WAS GIVEN.)

6 MR. FORDHAM: Did I put you to sleep?

7 MR. VINES: No. You've been very
8 clear. Those -- those of us that have a Clean
9 Water account, they're going to go away?

10 MR. SUMMER: I'm --

11 MR. CLARK: The existing account is,
12 but I think we have another one set up. It's a
13 departmental account. Will knows more about that
14 than I. So --

15 MR. SUMMER: So, just to touch on that,
16 the cwmtf.net account that many of you have, and
17 not a whole lot of you actually use, we do have,
18 that is going to go away on the 14th, actually.

19 We looked into getting a dncr.gov
20 account, just like we have, the staff. And
21 Sydney can do that. It's -- it only requires two
22 things. One, that you get an NC ID, which Sydney
23 can help you with.

24 And then once you get that account, as
25 Hank said, I can help you get it on your phone,

1 in your tablets and other things, and it's just
2 another -- you know, when you want to send an
3 e-mail, you just select which account to send it
4 from, and it should be pretty -- pretty seamless
5 for you folks.

6 MR. VINES: Thank you.

7 CHAIRMAN CAWOOD: And so, Hank, I'm
8 hearing from you that you're recommending that we
9 call Sydney and set up --

10 MR. FORDHAM: Yes.

11 CHAIRMAN CAWOOD: -- a public account?

12 MR. FORDHAM: Yes.

13 MR. CLARK: It seems like it would
14 be -- this is Walter. It seems like it would be
15 a lot easier than trying to separate these public
16 e-mails from your private e-mails in your private
17 account ultimately to do that, but --

18 CHAIRMAN CAWOOD: Is it still okay for
19 Sydney to send it to our Clean Water account and
20 our personal account, as she has in the past?

21 MR. FORDHAM: Yes.

22 CHAIRMAN CAWOOD: Okay.

23 MR. FORDHAM: Yeah. There's nothing
24 illegal -- I should have said this. There's
25 nothing illegal about using your private account.

1 It's just that you have those legal duties that
2 are -- still apply whether it's a public or a
3 private account.

4 So, yes, Sydney could -- and that would
5 be a really good idea, at least during the
6 transition, to send an e-mail out to the public
7 and the private, because, you know, if the habit
8 is to check your private account, then you see it
9 in your private account, and then you say, oh,
10 I'll scoot over to the public account and take
11 care of it. So that's -- that's a good idea.

12 MR. KICKLER: So what will happen to
13 the -- the cwmtf.net e-mails from the past?

14 MR. BRAGG: Can't hear you.

15 MR. KICKLER: My question is, what will
16 happen to the cleanwater.net e-mails that we've
17 been exchanging --

18 MS. MURRAY: That was Frank.

19 MR. KICKLER: -- for the past three or
20 four years?

21 MR. SUMMER: And I'll answer that. I'm
22 sorry. I'll answer that.

23 Can you folks hear me on the phone?

24 MR. BRAGG: Yeah.

25 MR. SUMMER: So what I have on my

1 calendar is before that expires I'm going to go
2 in and archive all of your cwmtf.net accounts
3 before that closes.

4 MR. KICKLER: And that will take care
5 of whether we're sending it personal and --

6 MR. SUMMER: Yes. I'll have -- the
7 cwmtf.net accounts I will archive for you at the
8 end of this week probably. Before they --

9 MR. KICKLER: Okay.

10 MR. SUMMER: -- disappear.

11 MR. KICKLER: Thank you.

12 MR. SUMMER: Uh-huh.

13 MR. FORDHAM: And, one last comment, if
14 you -- if you do switch to a personal account, or
15 even if you don't, to the extent you have e-mails
16 already on personal accounts, it would be good to
17 move those into an archive folder.

18 And if you switch over to the public,
19 you could get rid of that burden by then, you
20 know, archiving it to a separate folder, giving
21 it to Will or Sydney.

22 You know, e-mailing it to them, and
23 then -- then you're done with the past having to
24 worry about that. If a request is made to you,
25 then you could refer it to -- to staff.

1 CHAIRMAN CAWOOD: And, Sydney, since we
2 have a couple of trustees that aren't with us,
3 can -- do you mind sending out an e-mail to
4 every -- to all trustees and just say, on the
5 advice of counsel --

6 MS. McDANIEL: Yeah.

7 CHAIRMAN CAWOOD: -- you know, we -- we
8 should get in touch with you to set up a public
9 account.

10 Any other questions for Hank on that?

11 (NO AUDIBLE RESPONSE WAS GIVEN.)

12 CHAIRMAN CAWOOD: Awesome. Did you
13 have another item, Hank?

14 MR. FORDHAM: I have one other item.
15 Did you want me to go ahead and talk about the
16 conservation easement mediation at this point?

17 MR. SUMMER: We've got it as an agenda
18 item. So I think we can probably discuss it in
19 full there.

20 MR. FORDHAM: Okay. That's it for me.

21 CHAIRMAN CAWOOD: Great. Thank you,
22 Hank, as always, for what you provide for us and
23 look after us. So we greatly appreciate that.

24 And, Walter, for your executive
25 directors update.

1 MR. CLARK: Yes. I'll be -- I'll be
2 brief. I want to welcome our one member of the
3 public who is here, Bill Holman.

4 MR. HOLMAN: Good morning.

5 MR. CLARK: From the conservation
6 committee.

7 MR. HOLMAN: Greetings from the
8 conservation committee.

9 MR. CLARK: Yes. Thanks, Bill. Well
10 represented.

11 And I want to thank the trustees for
12 joining us today. I think most of you know that
13 this has been a pretty sad week for Clean Water.
14 We lost a former staff member with the untimely
15 death of Larry Horton, who was killed in a
16 hunting accident in Idaho last week.

17 Larry had just retired in April, after
18 about ten years with Clean Water. And he and I
19 only overlapped for about a week, but during that
20 week I was able to discern how much he meant to
21 this staff and to Clean Water over the years that
22 he was here.

23 He was clearly a friend and a
24 colleague. There was a memorial service for him
25 yesterday, and the outpouring of people that were

1 there, it was pretty amazing. A real tribute to
2 who he was as a colleague and a friend.

3 The staff had the great idea of
4 honoring Larry by purchasing a brick at NC State.
5 Larry was a big Wolf Pack fan. So we felt like
6 that would be a tangible way to remember him.

7 So Terri is collecting contributions
8 that will be used to purchase his brick. It will
9 be located in a connector between the PC -- PNC
10 Arena and the Carter Finley Stadium. So if any
11 trustees wish to contribute, please contact
12 Terri, she'll help you out.

13 On to some better news. This Monday
14 Clean Water launched its long anticipated new
15 Website. So if you haven't seen it, please go
16 look at it. This was a project that's been
17 months in the making and conscientiously guided
18 by our own Will Summer with lots of help from the
19 staff.

20 The Website is really designed to do
21 two things, to be very client friendly, both to
22 current applicants and to help applicants
23 throughout the life of their projects, and it
24 does that well.

25 There's a lot of technical needs to

1 make that happen. And I know Gwyn and Terri and
2 everybody on the staff worked hard to be sure
3 that our application processes were synced with
4 the Website.

5 But the other thing it does is it was
6 designed to be attractive, something that the
7 general public can go to, look at, learn about
8 Clean Water, get excited about our program.

9 And if you've seen the old Website
10 recently, you should look at the new one and
11 compare it, because you'll see that we've really
12 come light years in that regard. So the Website
13 is good. It's up.

14 There's two addresses, I assume, Will,
15 you can access it at. One is www.cwmtf.net, and
16 the other is www.cwmtf.nc.gov. And both of those
17 Web -- both of those sites should get you to the
18 Website.

19 Since our June board meeting, I mean,
20 staff has been diligently working on contracts.
21 I know Nancy and Steve have been working hard to
22 get contracts out to our new applicants.

23 And our applicants have been busy
24 issuing press releases about their awards and
25 having celebrations within their communities.

1 Last Friday, for example, Damon went to
2 the Town of Valdese. They had a celebration with
3 regard to the grant they got for their park, Lake
4 Rhodhiss. Damon said there was about 60 people
5 in attendance, including Representative
6 Blackwell, and lots of good things said about
7 Clean Water.

8 We're going to be making an effort as a
9 staff to try to attend as many of those
10 celebrations as possible when we know about them.
11 They're a great opportunity for us to network
12 with our constituents and supporters.

13 And, honestly, it just makes you feel
14 good when you go to an event like this and people
15 express their gratitude. So, I mean, it's really
16 important for us to do that. We're going to make
17 an effort.

18 As a matter of fact, Greer and I are
19 going to Bethania on Saturday to celebrate the
20 work of the Natural Heritage Trust Fund and Clean
21 Water in protecting historic properties in that
22 community.

23 And then on Saturday night I'm going to
24 the Land Trust for Central North Carolina's donor
25 appreciate dinner, where they're going to give

1 Clean Water an award for our work and help in
2 their land conservation efforts.

3 So we'll continue to do that as much as
4 we can. We're continuing to get revenues from
5 our license plate sales. For the last two months
6 we've gotten additional revenues of about 800 and
7 \$17,000. What that does, of course, is allow us
8 to go further down on the provisional list.

9 And that -- by the way, that does not
10 include November's proceeds. So that's allowed
11 us to fund two acquisition projects. The
12 remainder of the nature conservancy's three-step
13 four stack position and to fund the
14 North Carolina Wildlife Commission's usher track.

15 And on the restoration side, we've been
16 able to fund the remainder of -- speaking of
17 Mount Airy -- Resource Institute's Ararat River
18 project.

19 So we're moving down the list. As we
20 get more money in, we'll continue to move down
21 that list.

22 I know, Troy, Fort Dobbs is coming up
23 soon on the provisional list. It will probably
24 be funded, you know, by our November receipts.

25 MR. KICKLER: Uh-huh.

1 MR. CLARK: But certainly by the end of
2 the year. So Fort Dobbs and Wildlife Resources
3 Commissions, Godwin Track are the two others that
4 are coming up for funding. So hopefully we'll
5 continue to move down that list pretty quickly.

6 And, I guess, last, but not least, at
7 our next board meeting, with the help of Sydney
8 and staff, we hope to have a board manual for
9 everybody. It's an updated manual.

10 We -- John Wilson, you are our
11 experiment. We gave John a more hastily put
12 together board manual since he is our new
13 trustee.

14 But in going through that process we
15 realized that all of you needed an updated
16 manual. There could be some changes in the next,
17 you know, month or two to sort of -- a staff
18 flowchart and some other things that we will
19 update in the manual, as well as all of our
20 policies. So stay tuned for that. It's needed.

21 That's really all I have.

22 CHAIRMAN CAWOOD: Great. Wonderful.

23 Any questions for Walter?

24 (NO AUDIBLE RESPONSE WAS GIVEN.)

25 CHAIRMAN CAWOOD: Great. And,

1 Mr. Public, do you have any?

2 MR. CLARK: Mr. Public.

3 CHAIRMAN CAWOOD: Do you have any
4 comments or thoughts that you'd like to share
5 with us today?

6 MR. HOLMAN: No, ma'am. Good -- good
7 to be with you-all, and keep up the good work.

8 CHAIRMAN CAWOOD: Wonderful. Thank
9 you.

10 We'll move on to our business, and,
11 starting with the first item, Steve, you're going
12 to talk about Piedmont Triad Council of
13 Government's scope change request.

14 MR. BEVINGTON: Thank you. And maybe
15 if you could slide the phone one step closer to
16 the side.

17 Can the folks on the phone hear me all
18 right?

19 Thank you. I won't take long. That's
20 probably good there. I'll try and enunciate.

21 How is the volume at this end?

22 (NO AUDIBLE RESPONSE WAS GIVEN.)

23 MR. BEVINGTON: They'll speak up, I'm
24 sure.

25 The Piedmont Triad Council of -- excuse

1 me.

2 MR. BRAGG: Steve, I can't hear you.

3 MR. BEVINGTON: All right. Perfect.

4 MR. CLARK: Will it reach over there?

5 MR. SUMMER: Maybe.

6 MR. BEAUJEU-DUFOUR: Will that go
7 around the table?

8 MR. BRAGG: All I know is it's coming
9 from somewhere.

10 MR. BEVINGTON: Is the noise settling
11 down and is my voice more easily heard?

12 MR. BRAGG: It's good.

13 MR. BEVINGTON: Thank you. All right.
14 Agenda item one on business is the Piedmont Triad
15 Council of Governments has requested a scope
16 change to modify their monitoring approach and to
17 change the required match down from \$129,600 to
18 \$60,000.

19 A change in match of \$69,600 in total
20 funds. It's a planning grant. Essentially
21 the -- the Piedmont Triad Council of Governments
22 is under contract to study the Swearing Creek
23 watershed and to identify water quality issues in
24 that --

25 I'll let the dog -- I'll let the dog

1 hang up.

2 As awarded the project was to be
3 matched at 63 percent. Quite a high match. With
4 most of that coming from the City of Lexington.

5 By the way, Swearing Creek drains the
6 City of Lexington and some of Davidson County and
7 drains into High Rock Lake.

8 Lexington was to provide \$45,000 and a
9 few extra dollars in equipment to monitor the
10 system, as well as \$26,000 of in-kind services
11 and to provide a total match of \$58,000 --
12 \$58,100.

13 Instead, the City of Lexington chose to
14 conduct the required monitoring under a different
15 method. And instead of buying any equipment they
16 used existing program staff that they had to
17 collect water quality measurements.

18 They originally had planned four sites
19 to be monitored for 18 months, but they instead
20 monitored five sites for 12 months, collecting
21 ten water quality parameters at each of those
22 sites.

23 And the Piedmont Triad Council of
24 Governments has proceeded on its schedule with
25 this project and has presented to us the results

1 of those data that were collected by the city.

2 And essentially staff's assessment at
3 this point is that while the City of Lexington
4 did not monitor their in-kind contribution and
5 would not be able to document that, and they also
6 did not buy any equipment for the project, they
7 did deliver as expected a very robust set of
8 water quality data that characterize the
9 watershed.

10 So it's staff's assessment that
11 essentially the contract conditions have been
12 met. Although, the match requirements are now
13 sort of being reduced, in terms of actual
14 financial contribution, but we're matched with
15 this deliverable data that actually makes the
16 project acceptable and competent to describe the
17 issues in the watershed.

18 So at this point I'm asking whether the
19 board has further questions or if they wish to
20 approve, deny or amend the request, which is
21 attached in your agenda from the Piedmont Triad
22 Council of Government.

23 MR. BRAGG: This is Trustee Bragg. I
24 move that we approve the scope as requested.

25 CHAIRMAN CAWOOD: Do we have a second?

1 (NO AUDIBLE RESPONSE WAS GIVEN.)

2 CHAIRMAN CAWOOD: Do we have a second?

3 MR. TOOLE: This is Trustee Toole,
4 seconding.

5 CHAIRMAN CAWOOD: Thank you, Trustee
6 Toole.

7 All of those in favor, say aye.

8 MR. BRAGG: Aye.

9 MR. TOOLE: Aye.

10 MR. WILSON: Aye.

11 MR. VINES: Aye.

12 CHAIRMAN CAWOOD: Okay. Any opposed?

13 (NO AUDIBLE RESPONSE WAS GIVEN.)

14 CHAIRMAN CAWOOD: Great. It's
15 approved.

16 And the next item of business is the
17 administration committee recommendations for the
18 2018 grant cycle. And we had a great meeting on
19 that. I want to thank Trustee Bragg, Kickler and
20 Vines for serving on that with me. And --

21 MR. BRAGG: I can't hear you.

22 MR. CLARK: Oh.

23 CHAIRMAN CAWOOD: Oh, thank you,
24 Trustee Bragg.

25 I wanted to thank the members of that

1 committee. It was a lengthy committee meeting,
2 but we got into a lot of important issues, and I
3 appreciate everyone's participation.

4 And, with that, we will give it back to
5 Steve for line item 2-A.

6 MR. BEVINGTON: Thank you, Chairman
7 Cawood.

8 What level of detail do you think is
9 appropriate? I'll give a quick summary, since
10 the administration committee has already made
11 their recommendation.

12 CHAIRMAN CAWOOD: Exactly. Their
13 recommendation. Yes.

14 MR. BEVINGTON: All right. The first
15 item considered by the administration committee
16 was a minor change to the restoration criteria
17 narrative that describes points.

18 And essentially this is a matter of
19 three points being awarded to restoration
20 projects when they can demonstrate that during
21 the application process they have already
22 completed their designs and received a permit to
23 proceed.

24 A very sensible award, recognizing
25 these projects are ready to take off and have a

1 lot of momentum. And also -- as well as a strong
2 match at that point.

3 The difficulty is over the last two
4 cycles only six projects have been able to
5 capitalize any points in this area. And, in
6 fact, only three of them got the full points for
7 a design and a permit in hand.

8 I think a large reason for that is to
9 get that far down the project you may have spent
10 as much as 30 percent of your total budget
11 already, and not many applicants are ready to
12 come to us with a project when they've spent so
13 much money. And it's a lot to lay out if you
14 don't know where the rest of the money is coming
15 from yet.

16 Further, and, more importantly, and why
17 I brought it to the committee's attention, and
18 why they approved this change, is that there are
19 much simpler ways and less expensive ways to get
20 almost as much information, in terms of our
21 project review.

22 Essentially a survey, a professional
23 survey, of the proposed site can produce
24 excellent data to show us what the impairment is
25 of a stream and what the ecological uplift will

1 likely be, probably in the range of a couple
2 thousand dollars.

3 So, instead of outlaying perhaps
4 \$100,000 for a full design and permits, they can
5 give us almost as good information for us to
6 evaluate the application for a modest fee.

7 So the committee had recommended
8 maintaining full points for projects that do have
9 the permits in hand and their full designs ready
10 to go, but also allowing two points to be awarded
11 for projects that have an existing condition
12 survey complete and a design reach identified,
13 which is a model stream somewhere that they find
14 ideal that they would like to try and imitate and
15 allow one point if they've just simply done the
16 existing condition survey.

17 We feel that will provide staff a
18 better sense of the true value of the project, in
19 terms of ecological uplift, without an undue
20 expense on the applicant before we've considered
21 funding.

22 So at this point, unless you have
23 further questions, the -- we're looking for a
24 motion to approve, deny or amend the committee
25 recommendation as it came.

1 MR. TOOLE: This is Trustee Toole. I
2 have a question.

3 MR. BEVINGTON: Yes.

4 MR. TOOLE: Getting an application in
5 is not the same as having a permit. And I'm
6 curious to know to what extent have we
7 experienced where an application has been
8 submitted, and there have been delays in getting
9 the permit since the application was incomplete
10 or because the regulator felt that more work was
11 necessary before --

12 MR. BEVINGTON: Bill, we're having a
13 little trouble hearing you. Can you say that
14 perhaps a little louder towards your phone?

15 MR. TOOLE: Yes. I'll be glad to.

16 So the question I have is to what
17 extent do we have knowledge of circumstances
18 where a permit application has been submitted,
19 but there have been delays in getting the permit,
20 either because the permit application was
21 incomplete and required supplementation or
22 because the regulator was concerned about the
23 project in its entirety?

24 MR. BEVINGTON: So thank you. That is
25 an excellent question. We do have cases where

1 permitting has been a hang-up. It's delayed
2 projects. I can't give you an exact number, but
3 it's a very small percentage of our restoration
4 projects.

5 We do encounter delays quite
6 frequently, in terms of access and land owners
7 willingness to participate. So where letters of
8 intent have been signed, but people back out or
9 have concerns about access to the -- to the
10 stream bank, those dominate our delays in my
11 experience. I don't have exact numbers for you,
12 Bill.

13 MR. TOOLE: All right. So -- but, to
14 follow up then, is this point criteria designed
15 to make sure that the staff gets adequate
16 information to evaluate, or is the point criteria
17 designed to establish readiness -- project
18 readiness or both?

19 MR. BEVINGTON: It -- it is both.
20 Although, I think technically where the narrative
21 reads it's a little of the latter, making sure
22 they're ready to proceed.

23 Our experience and the field reps
24 experience has been that this actual data on the
25 stream is invaluable in their field assessments.

1 So I think, Justin, if you need to
2 correct me on that, that's fine, but we -- we see
3 a true value. So I hear what you're saying,
4 Bill. It is -- it is a little bit of a bending
5 of this application perhaps, but it's an area
6 where we find it invaluable to really
7 differentiate between projects that are going to
8 make a big difference to a stream bank's
9 stability and ones that maybe are less of a
10 threat than is sort of promoted by pictures taken
11 at the right time of year with limited vegetation
12 on eroding banks, that sort of thing.

13 MR. TOOLE: And so the committee has
14 decided that the readiness criteria is less
15 important in this particular instance, that an
16 application is sufficient evidence of readiness;
17 is that the ultimate evaluation?

18 MR. VINES: This is Trustee Vines.
19 That's correct, Bill.

20 MR. TOOLE: Okay. Thank you, Chuck.

21 All right. I'm finished. No further
22 questions.

23 CHAIRMAN CAWOOD: Okay. Since this
24 comes from a committee, we just need a second on
25 the motion.

1 MR. BRAGG: I couldn't hear what you
2 said, Greer.

3 MR. CLARK: We'll pass the speaker back
4 over here, Frank. Hold on just a second.

5 CHAIRMAN CAWOOD: Frank, I was just
6 saying, since this is a motion that comes from
7 the committee, we only need a second.

8 MR. BRAGG: Well, I'll second this
9 motion to approve.

10 CHAIRMAN CAWOOD: Thank you, Trustee
11 Bragg.

12 All in favor, say aye.

13 MR. KICKLER: Aye.

14 TELEPHONIC SPEAKER: Aye.

15 TELEPHONIC SPEAKER: Aye.

16 TELEPHONIC SPEAKER: Aye.

17 CHAIRMAN CAWOOD: Any opposed?

18 (NO AUDIBLE RESPONSE WAS GIVEN.)

19 CHAIRMAN CAWOOD: Great. Well, we will
20 move on to 2-B, and we will pass this back over
21 to Steve.

22 MR. BEVINGTON: Thank you for your
23 patience with the -- with the technology here.
24 Again, interrupt if you can't hear all.

25 The next item is to adjust a -- a

1 committee recommendation to adjust the
2 contingency policy to reflect a match required to
3 share the cost between Clean Water Management
4 Trust Fund and applicants.

5 And essentially right now we have
6 several projects out, and it has been our policy
7 in the past to allow a contingency line item for
8 construction.

9 It's a very common practice in the
10 construction industry to leave some monies in
11 reserve that you hope not to spend, but when you
12 encounter unforeseen circumstances, you have a
13 reserve to either survive periods of really poor
14 weather for construction or if you're digging and
15 encounter things that are more difficult to move,
16 for example, you have some reserve to do that.

17 Our experience has been, however, that
18 we have no control really over that decision.
19 The current policy is to receive contingency
20 funds through our contract process.

21 An applicant must document that they've
22 spent 100 percent of their construction monies,
23 line item, and also that they've got 90 percent
24 of their total matches all met.

25 But it comes after the fact. If they

1 run into difficulties, we sort of receive these
2 letters requesting this expenditure when it's
3 already essentially pretty much necessary, rather
4 than any involvement in the process. We simply
5 don't have the feet on the ground to manage this.

6 And it just seemed to be an attractive
7 option, to put skin in the game on both parts, so
8 that the applicant, who may have more direct
9 contact with the contractor and also more ability
10 to be on the ground and see the construction
11 issues, would be in a position during
12 construction to observe cost overruns and to
13 identify problems and head them off before they
14 go so far as to require a contingency payment.

15 So the committee, seeing that need, has
16 suggested that our current policy, which is in
17 the restoration program, number two, policy
18 manual, be modified with essentially saying the
19 construction contingency funds be matched at no
20 less than 50 percent.

21 And that's the committee recommendation
22 at this point.

23 MR. BRAGG: This is Trustee Bragg. I
24 approve -- I move that we approve as recommended.

25 CHAIRMAN CAWOOD: All in favor, say

1 aye.

2 MR. KICKLER: Aye.

3 MR. FORDHAM: Aye.

4 MR. VINES: Madam Chair, before we
5 vote, are there any questions from anyone else on
6 the board?

7 CHAIRMAN CAWOOD: That was Trustee
8 Vines.

9 (NO AUDIBLE RESPONSE WAS GIVEN.)

10 CHAIRMAN CAWOOD: Great.

11 MR. BEVINGTON: No questions.

12 All right. I'll move right along. And
13 I apologize for so many small items on your
14 agenda today, but another issue that came before
15 the committee -- administrative committee was
16 issue 2-C to allow educational signs to be used
17 as match for restoration and innovative storm
18 water projects.

19 Current guidance materials that we
20 provide and have provided for the last two years
21 to applicants do not allow educational signs on
22 projects to be considered as part of the match of
23 the total cost.

24 And I think that was really meant as a
25 cost-saving issue, because there was limited

1 control over what kind of signs were going to go
2 up and what -- how much they would cost and that
3 sort of thing, which was seen as a cost-saving
4 measure.

5 However, recent requests from a number
6 of applicants and examples from the past five or
7 six years ago, where we have seen excellent
8 educational materials, made us revisit that.

9 And we propose some language that the
10 committee recommendation is to allow us now to
11 consider educational signs as match on a project
12 under a couple of conditions.

13 One would be that any such match would
14 address specific features of the Clean Water
15 Management Trust Fund project, they be placed in
16 visible points of either overlook or egress to
17 the project, they would contain a reference to
18 our agency, as well as our logo, and that this is
19 really only just intended for physical signs on
20 the property or next to the property, not offsite
21 educational materials or Internet materials of
22 any sort.

23 So the committee recommendation is to
24 propose change to our guidance materials to allow
25 this match to be considered in project evaluation

1 and scoring.

2 MR. VINES: Trustee Vines. I second
3 that motion.

4 CHAIRMAN CAWOOD: All in favor, aye.

5 MR. BEAUJEU-DUFOUR: Aye.

6 TELEPHONIC SPEAKER: Aye.

7 TELEPHONIC SPEAKER: Aye.

8 MR. BRAGG: Aye.

9 CHAIRMAN CAWOOD: Any opposed?

10 (NO AUDIBLE RESPONSE WAS GIVEN.)

11 CHAIRMAN CAWOOD: Okay.

12 MR. BEVINGTON: And 2-D is a
13 recommendation again from the committee to allow
14 post-construction monitoring to be considered as
15 match.

16 And I think the best way to describe
17 this difficulty we have with some review
18 applications is through an example in the last
19 cycle.

20 The Town of Stanley originally proposed
21 for their steam restoration project a match of
22 \$25,000 that was coming from the U.S. Fish &
23 Wildlife Service, a very robust monitoring plan
24 to look at endangered species survival in and
25 around the project area for five years.

1 Any contract requirement we have -- and
2 usually restoration project contracts are no
3 longer than two years in length. A few have been
4 extended, unfortunately, but --

5 But as we close out a contract we need
6 to have an assurance that all matches have been
7 provided. So we looked at the project and
8 realized that the monitoring that was going to
9 take place over five years the value of that was
10 really outside of the contract period, and we
11 discounted it \$20,000 out of the project.

12 It only made a difference of one point
13 in their score, and Stanley was one of the
14 projects that was considered by the board and
15 awarded funding, but it sort of brought up a
16 point that we were almost discouraging extremely
17 good science and work and really a good way to
18 document the success of Clean Water Management
19 Trust Fund projects.

20 So after some discussion the committee
21 recommended a change for applications that
22 propose post-construction monitoring that we
23 could consider some period of monitoring beyond
24 that period in the scoring and then forgive that
25 for natural contract development, so that they --

1 we could close out the project without them
2 having to hold a retainer for five years to
3 collect that data.

4 Again, it's sort of a minor change, but
5 one we think can encourage better applications
6 and better tracking of our projects in the
7 future.

8 MR. BRAGG: I'll second this motion to
9 approve.

10 MR. WILSON: I have a question. It's
11 John Wilson.

12 Is there perhaps a need to limit or tap
13 the amount of time that post-construction
14 monitoring could take place?

15 The example you gave was five years,
16 \$25,000. What if the proposal had been ten or 15
17 or 20 years and, you know, corresponding
18 multiples of \$25,000?

19 MR. BEVINGTON: Right. So I have
20 never -- I've only reviewed two or three years
21 worth of Clean Water Management Trust Fund
22 applications.

23 I haven't seen any extending longer
24 than five years, but you're right. Theoretically
25 that could happen. I would have no heartburn

1 over limiting it to five years.

2 Some of the monitoring of vegetation,
3 which trees grow on projects, and they become a
4 natural forest, conceivably it could be longer,
5 but I think the value of that, monitoring in the
6 future, would be quite small in the project
7 anyway.

8 So I think staff's intent would be to
9 take a sort of common sense approach to it, and
10 we would probably limit it at five years, but
11 that's not in the exact policy as we've written
12 in these notes.

13 MR. WILSON: So do you feel -- so do
14 you feel there's any need to specify a limit or
15 will you-all automatically in the staff review
16 impose such a limit or -- or make exceptions
17 as -- as appropriate?

18 MR. BEVINGTON: The language we -- we
19 jotted it down after the meeting -- or during the
20 meeting, was considering all reasonable
21 monitoring costs as match.

22 So I think, knowing my two -- the two
23 field reps for Clean Water Management Trust Fund,
24 I think they would point out to me sort of the
25 absurdity of monitoring for something ten years

1 after a contract closes, but -- so I feel
2 comfortable with that, but if you want to make a
3 specific limit in there, I think that would work
4 just as well.

5 MR. WILSON: No. I'm okay with
6 reasonable.

7 CHAIRMAN CAWOOD: Very reasonable of
8 you, Trustee. Thank you.

9 Okay. We had the second.

10 All in favor?

11 MR. BEAUJEU-DUFOUR: Aye.

12 MR. KICKLER: Aye.

13 TELEPHONIC SPEAKER: Aye.

14 TELEPHONIC SPEAKER: Aye.

15 CHAIRMAN CAWOOD: We are moving the
16 speaker again.

17 MS. GUTHRIE: I'll move.

18 MR. CLARK: Nancy, if you'd like to
19 come over here and have a seat.

20 MS. GUTHRIE: Yeah.

21 CHAIRMAN CAWOOD: And thank you, Steve.
22 Those -- you said, you know, they're small
23 adjustments, but it's important. You've been in
24 your role for a number of months. So you're
25 seeing things that need to be changed. So thank

1 you for bringing them to our attention.

2 MR. BEVINGTON: Thank you.

3 CHAIRMAN CAWOOD: Perfect. And, Nancy,
4 you're next with item 2-E.

5 MS. GUTHRIE: Yes. Thank you.

6 As staff continues to work with our
7 applicants, and we get questions on our
8 applications and policies and guidelines, we
9 sometimes realize that we have guidelines and
10 practices that have just evolved over time.

11 And we don't have a clear policy that
12 guides us a lot of times with advice that we are
13 giving our clients, and so we do appreciate when
14 we can bring these issues back to the committee
15 and get some clarity for ourselves.

16 And one of those issues has been with
17 property management cost, which local governments
18 have been able to apply for when applying for a
19 grant. And there's not a lot of good, clear
20 written material on the establishment of this
21 practice.

22 And as we, among staff, were talking
23 about this, we agreed that it is a great idea for
24 organizations that purchase land, there may be a
25 gap in time before they're really ready to take

1 management and ownership of that property and
2 open it to the public.

3 But in the meantime there may need to
4 be some immediate gate or other work on the
5 property to really secure that for -- in the
6 short term.

7 And then we also discussed with the
8 committee that this -- this need would apply, not
9 only to local governments, but also to
10 nonprofits, where land trusts frequently now are
11 purchasing properties, holding that for a year or
12 two and then transferring it to the state
13 government, to the parks, to wildlife commission,
14 and in the meantime they are trying to prevent
15 trespass and perhaps limit access to some of the
16 really valuable areas on the property.

17 We also discussed with the committee
18 then the fact that this could become expensive at
19 times. So we discussed a cap and some of the
20 processes for how staff would pay for these
21 items.

22 So, with that, the committee
23 recommendation is to modify the guidance on
24 property management reimbursements, so that it's
25 more clear that this is a short-term securing the

1 property or protecting resources.

2 It would be allowed for local
3 governments, nonprofits and state agencies that
4 do not have a dedicated acquisition mechanism,
5 and there would be a cap on the funds reimbursed
6 by Clean Water or credited as a match at \$5,000.

7 And then all of these items would have
8 to occur -- be incurred during the contract
9 period. They'd have to be substantiated with
10 invoices, which is standard for all items
11 reimbursed by Clean Water.

12 We want these identified upfront, so
13 that we know they're coming in the contract, and,
14 of course, they would not be allowed to be used
15 for anything that's prohibited by another policy.
16 And an example of that would be cleaning up
17 debris or removing structures on a piece of
18 property.

19 So that was your committee
20 recommendation.

21 MR. VINES: Madam Chair? Trustee
22 Vines.

23 CHAIRMAN CAWOOD: Yes.

24 MR. VINES: I'll second the motion.

25 CHAIRMAN CAWOOD: Thank you. Since it

1 came from committee that will be a second for
2 Trustee Vines on the motion.

3 All in favor, say aye.

4 MR. BEAUJEU-DUFOUR: Aye.

5 CHAIRMAN CAWOOD: Aye.

6 TELEPHONIC SPEAKER: Aye.

7 TELEPHONIC SPEAKER: Aye.

8 TELEPHONIC SPEAKER: Aye.

9 CHAIRMAN CAWOOD: Any opposed?

10 (NO AUDIBLE RESPONSE WAS GIVEN.)

11 CHAIRMAN CAWOOD: Great. Thank you
12 very much, Nancy.

13 MS. GUTHRIE: Uh-huh.

14 CHAIRMAN CAWOOD: Appreciate it.

15 The next item of business is item
16 three, which is committee reorganization. And
17 this is something that the administrative
18 committee also discussed.

19 And looking at -- you know, we've had a
20 few years of our current system and setup and
21 trying to find, you know, is there a better way
22 to use trustee time and talents. Walter and I
23 began the discussion, and then we also took it to
24 the administrative committee.

25 And you have in your packet of

1 information the recommendation that we reorganize
2 our standing committees into three committees.
3 An acquisition committee, which would handle
4 everything that comes up dealing with
5 acquisition.

6 You know, Nancy's issue that she
7 brought up today would have gone through the
8 acquisitions committee, as opposed to an
9 administrative committee.

10 The same with Steve. He would have a
11 dedicated restoration -- restoration innovative
12 storm water and planning committee. So the items
13 that he brought today that went through the
14 administrative committee would go through that.
15 It would also -- they would handle the funding,
16 as we've done in the past.

17 And then we would have an executive
18 committee, which would have myself, the vice
19 chairman and the chairs of those committees.

20 And so that was the discussion there.
21 Are there any thoughts from trustees on that
22 recommendation?

23 (NO AUDIBLE RESPONSE WAS GIVEN.)

24 CHAIRMAN CAWOOD: All right.

25 Hearing --

1 MR. KICKLER: I'll -- I'll just say
2 what I --

3 CHAIRMAN CAWOOD: Uh-huh.

4 MR. KICKLER: Just an observation.
5 This is Troy.

6 Just that in this realignment, just
7 reiterate again, that it will mean there will be
8 more participation --

9 CHAIRMAN CAWOOD: Uh-huh.

10 MR. KICKLER: -- from more members.
11 Pro side.

12 The con side is we hope that there will
13 be active participation on these committees,
14 because the committees will probably meet, I
15 would guess, a minimum of quarterly.

16 MR. CLARK: Quarterly.

17 MR. KICKLER: Or -- probably. So --
18 so, anyway, I just wanted to stress that.

19 CHAIRMAN CAWOOD: Definitely. Thank
20 you, Troy.

21 Okay. It comes from committee. So
22 we'll just need a second.

23 MR. BRAGG: Frank Bragg. I'll second.

24 CHAIRMAN CAWOOD: Thank you, Frank.

25 And all in favor, say aye.

1 TELEPHONIC SPEAKER: Aye.

2 TELEPHONIC SPEAKER: Aye.

3 TELEPHONIC SPEAKER: Aye.

4 MR. BEVINGTON: Aye.

5 MR. KICKLER: Aye.

6 CHAIRMAN CAWOOD: Great. And I think
7 this will be the appropriate time to thank Frank
8 Bragg. Frank has agreed to be our vice chair,
9 and I am very happy to have Trustee Bragg in that
10 role.

11 And I will be contacting all trustees
12 to ask for your service on one of the two
13 committees. So you-all can look for a call from
14 me with that.

15 Okay. So we will move on to item four.
16 And, Will.

17 MR. SUMMER: I'll move right up here.

18 CHAIRMAN CAWOOD: Here you go.

19 MR. SUMMER: All right. Thank you.

20 So item number four is Wildlife
21 Resources Commission's request for exception to
22 dedication to the Hill Farm.

23 This was a project that was awarded by
24 Clean Water Management Trust Fund in 2014
25 originally to the Piedmont Land Conservancy.

1 And since then they have passed it over
2 to Wildlife Resources Commission. And since
3 Wildlife Resources wasn't at the table they
4 weren't able to request the exceptions based on
5 that specific property and their specific
6 management needs.

7 So they have made the -- the standard
8 dedication to Wildlife Resources is generally a
9 hundred foot buffer on any stream, plus any areas
10 of natural heritage significance. And in certain
11 waters where the stream contains state or federal
12 threatened species, it's -- the default is to a
13 300 foot buffer.

14 This exception is more or less
15 consistent with those that we have heard in
16 recent meetings. You know, you're familiar with
17 the Needmore Game Land request, which we heard in
18 June, and a prior one the previous year.

19 So I'd like to add on the three things
20 that they've asked the board to approve. And had
21 Wildlife Resources been the initial applicant,
22 they would have simply asked for them when the
23 original application was approved.

24 But the first is to maintain the
25 existing road to the Dan River to allow access of

1 a fish stocking truck, so they can put the farm
2 raised -- or hatchery-raised trout in the river
3 for folks to catch.

4 The second is to construct a four to
5 six vehicle gravel parking lot near the existing
6 trailhead at the Collins Town Road Bridge. And
7 the third is to maintain the portion of an
8 existing field or approximately 1,900 feet of the
9 Dan River with wildlife value crops.

10 And what they would propose is allowing
11 it to come back up in woody vegetation for the
12 first 75 feet, and then plant warm season
13 grasses, which will be maintained primarily
14 through burning for the next 50 feet, which would
15 effectively be 125 foot buffer before they began
16 the annual rotation of wildlife friendly crops in
17 the field.

18 And probably the best resource for that
19 would be the first map in your packet, if you
20 want to take a quick look. Let me get there.

21 So on the north end of the property you
22 can see the field. It has a red hash and a green
23 hashmark on it. The green hash is that 75 foot
24 woody buffer.

25 Currently there's virtually no buffer.

1 Just one small row of trees along the river. And
2 then outside of that they've put another 50 foot.
3 And then the remainder of the field would be
4 managed essentially wildlife food plots, but --

5 So that would be one request. And
6 that's similar to -- the past request has been
7 simply a hundred foot woody buffer. And, for our
8 purposes, I think 125 foot, it's 75 foot woody,
9 and 55 -- 50 foot warm season native grasses, is
10 roughly equivalent or perhaps even better.

11 The other exception is the black and
12 blue dashed line referred to as Oliver Lane that
13 goes all of the way to the river with the little
14 icon of fish. That's where they want to maintain
15 that existing road, so they can get to the river
16 and stock trout.

17 And then the final request is down near
18 the southeast portion of the parcel. There's a
19 little P right next to the icon with the kayaker.
20 And what that trailhead would do is allow folks
21 to access this blue dashed river access trail to
22 access the southern portion of the property.

23 The third map in this packet has a
24 close-up of that parking area. And it -- though
25 you can't tell from the first map, it actually

1 would be probably about 125 feet away from the
2 river where they hope to put this in. So I don't
3 think it will have any -- too significant of an
4 impact to water quality.

5 So those are the three exceptions as
6 they've requested them. For my part, you know,
7 staff has reviewed it, and they feel it to be
8 consistent with the exceptions we've made on
9 other WRC properties in the past.

10 And, with that, I'll take any
11 questions.

12 CHAIRMAN CAWOOD: And, Will, from the
13 looks of it the parking area is on the other side
14 of the road. Just so trustees --

15 MR. SUMMER: It is. They have that
16 little -- that little corner is part of the
17 property, and there's that kind of larger
18 out-parcel where there was an existing mill. The
19 Jones parcel. It's the white hash on the first
20 map. So it is -- it is across the road, but it
21 was -- there was no -- no place for them to put
22 it on the southern part.

23 CHAIRMAN CAWOOD: Uh-huh.

24 MR. SUMMER: It was really the only
25 southern access, I should say.

1 CHAIRMAN CAWOOD: Any questions for
2 Will?

3 (NO AUDIBLE RESPONSE WAS GIVEN.)

4 CHAIRMAN CAWOOD: Hearing none, I'll
5 accept a motion for this --

6 MR. VINES: Madam Chair? Trustee
7 Vines. I'll make a motion that the agenda item
8 be moved forward. Wildlife Resources
9 Commission's request for exception to dedication
10 to Hill Farm, Clean Water Management's project
11 2014-053 for approval, please.

12 CHAIRMAN CAWOOD: A second?

13 MR. BRAGG: Second. Trustee Bragg.

14 CHAIRMAN CAWOOD: Thank you, both.

15 All in favor, say aye.

16 MR. KICKLER: Aye.

17 MR. BEAUJEU-DUFOUR: Aye.

18 MR. CLARK: Aye.

19 MR. FORDHAM: Aye.

20 MR. SUMMER: Aye.

21 TELEPHONIC SPEAKER: Aye.

22 CHAIRMAN CAWOOD: None opposed?

23 (NO AUDIBLE RESPONSE WAS GIVEN.)

24 CHAIRMAN CAWOOD: Perfect.

25 We will move on to business item five.

1 And, Will, this is you and Hank.

2 MR. SUMMER: Thank you. I'm going to
3 cue this up from the -- the Clean Water
4 perspective. Then I will hand it off to Hank for
5 the -- the technical legal aspect of it.

6 So the short of this one is this is a
7 project that we funded via a donated mini grant
8 in 2006. And, to refresh your memory on the
9 donated mini grants, we paid for acquisition
10 transaction costs for a property or an easement
11 that's going to be donated.

12 What separates this from a normal
13 acquisition project is we don't hold the
14 easement. The conservation easement is in some
15 other entity's name. In this case it's
16 Conserving Carolina, which is formerly the
17 Carolina Land Conservancy.

18 However, we do maintain third-party
19 right-of-enforcement on all of these easements,
20 so that if the initial easement holder is not
21 managing it to our standard or to our
22 expectations, we have the legal right to step in
23 and force the -- the easement.

24 And in this case the landowner had
25 recorded a plat that subdivided a portion of her

1 property off that contained a section of our
2 conservation easement, which is in conflict with
3 our no subdivision clause, which is in nearly
4 every easement, both ours and the other
5 conservation easement.

6 And it's a really important tenet
7 really for two reasons. One, because it allows
8 unified management. And, two, because one -- the
9 biggest cost associated with stewarding a project
10 forever in perpetuity is contacting the land
11 owner or any land owner, educating the land
12 owner, working with the landowner when there are
13 encroachments and other issues.

14 And since that's a big part of your
15 costs, if you're going to put money in an
16 endowment to steward that indefinitely, you need
17 to know how many landowners you've got to
18 interact with.

19 So if you take a thousand acre parcel
20 with one landowner, you know that's going to cost
21 you X per year, and you can plan for that. If
22 they divide it up into a thousand one-acre lots,
23 then your cost has increased exponentially, and
24 you didn't have a way to plan for that. Plus
25 it's harder to manage the system as a unified

1 piece if it's -- you know, everything gets too
2 small to manage effectively.

3 So the no subdivision clause is a very
4 important tenet of our agreements, and we -- we
5 and the land trust community want to defend it.

6 So what this landowner had done in
7 separating this plat and planning to sell a
8 portion of our easement and her property to
9 another person would have been in violation of
10 this.

11 She contacted the land trust. They
12 said, no. You're not able to do this. And she
13 disagreed, and they went into mediation. And
14 that is where I will hand this over to Hank to
15 explain everything.

16 MR. KICKLER: Throw it over.

17 MR. FORDHAM: Yeah, thanks, Will.

18 This has a really innocent sounding
19 name. It's Skipper's Ridge conservation
20 easement. And -- so it's a -- it's a dispute
21 over the conservation easement. Just to kind of
22 reiterate a couple of things that Will said and
23 go through chronologically.

24 In 1992 the landowner, a private
25 landowner, bought 192 acres along the top of a

1 ridge near Hendersonville. In 2006 the
2 landowner, whose name is Ms. Johnston, but her
3 name is not particularly pertinent, but the
4 landowner conveyed a conservation easement to
5 Conserving Carolina.

6 She got tax benefits at the time. And,
7 as Will said, the state was given a right to
8 enforce the easement. Once this dispute arose,
9 just -- that right is really helpful, because the
10 private land trusts really appreciate the state's
11 backing them up.

12 In other words, at the end of the
13 mediation -- I'll get to that -- we ended up
14 working it out, subject to your approval. You
15 know, that was one of the things they expressed.
16 They really appreciated the state backing them up
17 on that.

18 But in 2017 the conservation easement
19 was conveyed to Conserving Carolina, a
20 third-right -- a third-party right-of-enforcement
21 to the state in 2006.

22 In 2017 the land owner recorded a
23 subdivision survey that showed about a four and a
24 half acre tract of land off of her tract,
25 subdivided out from the rest of her land. And

1 she started with 192 acres.

2 And the conservation easement is about
3 81 acres. So the 81 acres is what's called a
4 conservation easement area. And that's, you
5 know, maybe roughly half of her entire tract.

6 So in 2017 she showed this four and a
7 half acre tract being subdivided off from her
8 land, and 1.2 acres of that is within the
9 conservation easement. And that's where the
10 problem lies.

11 And she didn't contact Conserving
12 Carolina, but somehow they became aware that this
13 map had been recorded through the surveyor or
14 somehow, and they brought it, I think, to Will's
15 attention.

16 And the conservation easement says that
17 you shall not divide the conservation easement
18 area. It has to stay in its original
19 configuration.

20 And those are for all of the policy
21 reasons that Will mentioned. Mainly the cost of
22 long-term stewardship is increased if you have
23 more landowners to deal with.

24 Conserving Carolina tried, through
25 numerous communications, to work this out. Tried

1 to, you know, in no way give up their no division
2 clause in the conservation easement. They
3 weren't able to work it out.

4 Probably it got worked out for the best
5 that they weren't able to work it out before
6 mediation, because some of the solutions I think
7 that were proposed aren't as innocuous as the one
8 that was finally approved in mediation.

9 Is everybody familiar with what
10 mediation is?

11 MR. CLARK: Yes.

12 TELEPHONIC SPEAKER: Yes.

13 MR. FORDHAM: Okay. All right. So at
14 the mediation both sides presented their -- their
15 point of view. We stood very heavily on the no
16 subdivision clause. And, you know, they took
17 their positions that the division clause didn't
18 mean what it said.

19 I won't go through all of the details,
20 unless you have any questions.

21 But the basic resolution that they
22 finally agreed to was something that they could
23 have done anyway, which was they agreed not to
24 divide out any portion of the conservation
25 easement area, but only to convey out portions of

1 the property that are not subject to the
2 conservation easement to this family that wanted
3 to buy the four and a half acres.

4 They also -- we agreed we wouldn't
5 object to them granting that family an easement
6 to use the conservation easement area that they
7 had wanted to convey, but the conservation
8 easement doesn't prevent that.

9 That's something we might want to talk
10 about with regard to future conservation
11 easements, because you can picture -- and I have
12 a map, if anybody is interested, but it's a
13 triangular piece of property.

14 And the conservation easement is
15 primarily at the base of the triangle. And you
16 can picture somebody kind of cherry picking and
17 dividing off an acre of their land that's not in
18 the conservation easement, but then granting a
19 full use easement, you know, to ten acres of the
20 conservation easement to go with each one of
21 these lots.

22 And then, as a practical matter, you're
23 dealing with a lot of people. It's not dealing
24 with them in the same way you would if they owned
25 it, but that's something that staff may look at

1 and maybe bring something back to you.

2 So they agreed to that. It went --
3 these mediations always take a long time,
4 regardless, because there's a lot of
5 psychological dynamics, personal dynamics that go
6 into play when you have a landowner and that type
7 of thing.

8 So around about 4:30 we finally got
9 something typed up. And we started at 10:00 that
10 morning, and --

11 CHAIRMAN CAWOOD: Approaching the 5:00
12 hour helped you.

13 MR. FORDHAM: The time always helps.
14 Meals -- meals always help, if you're approaching
15 mealtime without any food.

16 MR. CLARK: And the next day you were
17 going fishing. So --

18 MR. FORDHAM: And the next day I was
19 going fishing. So I was hoping we could wrap it
20 up by midnight. But sometimes they run late into
21 the evening.

22 But -- so the proposal is basically,
23 subject to your approval, for them to agree not
24 to sell any portion of the conservation easement
25 area. In other words, not to divide it.

1 That Clean Water doesn't object to them
2 granting an easement to that. In other words,
3 it's a sub-easement, subject to all of the
4 restrictions that are already in the conservation
5 easement.

6 So they don't gain any rights. This
7 third-party doesn't gain any rights to do
8 anything that the landowner couldn't do now.

9 That they pay \$100 transfer fee, which
10 was part of the -- the conservation easement
11 required that if the land owner conveyed any
12 interest at all in the conservation easement
13 area, they were required to pay some money. And
14 that -- that was about the right amount of money,
15 given the -- the way you computed it.

16 And that both parties were releasing
17 each other -- all three parties would release
18 each other from any claim that they had caused
19 the other parties damage.

20 In other words, they maybe could try to
21 claim that by objecting to this division that we
22 slowed down their sale to this family, but that's
23 all waived.

24 So that's it. I could talk more about
25 mediation, but I won't. Any questions?

1 MR. WILSON: This is John Wilson. I
2 just want to commend Conserving Carolina and the
3 Clean Water Management Trust Fund for standing
4 firm on the no subdivision clause.

5 I think that's really important and
6 sounds like you-all did the right thing, and, you
7 know, I hope it didn't take too much staff and
8 legal time and expense for those two, Conserving
9 Carolina and the -- and the Fund, to -- to do the
10 right thing.

11 MR. FORDHAM: Yeah. Will and Walter
12 both made it very clear that that was a critical
13 element of any discussions that we -- the state
14 would never agree to any weakening of the
15 division clause.

16 And one advantage we had is I don't get
17 paid by the hour, and the landowner's attorney
18 does. So at -- so at the mediation, you know,
19 I'm there for the duration and -- anyway, she had
20 an expensive law firm too. So --

21 CHAIRMAN CAWOOD: Just saying.

22 MR. FORDHAM: Just saying.

23 CHAIRMAN CAWOOD: Wonderful. Any other
24 questions for Hank and Will?

25 (NO AUDIBLE RESPONSE WAS GIVEN.)

1 MR. CLARK: Just a big thank you to
2 Hank --

3 MR. FORDHAM: My pleasure.

4 MR. CLARK: -- for all of your work on
5 this and spending the day there.

6 MR. FORDHAM: My pleasure.

7 CHAIRMAN CAWOOD: Yes.

8 MR. FORDHAM: You're welcome. My
9 pleasure.

10 CHAIRMAN CAWOOD: Great. Is there any
11 other business trustees have before the board
12 today?

13 MR. SUMMER: Do we need a motion on
14 this?

15 MR. FORDHAM: A motion to -- to approve
16 the --

17 CHAIRMAN CAWOOD: Oh, I'm sorry. Yes.
18 If we can have a motion to approve the
19 resolution?

20 MR. WILSON: So moved. John Wilson.

21 MR. VINES: Trustee Vines. Second.

22 CHAIRMAN CAWOOD: All right. All in
23 favor, say aye.

24 MR. BEAUJEU-DUFOUR: Aye.

25 MR. BEVINGTON: Aye.

1 MR. CLARK: Aye.

2 MR. KICKLER: Aye.

3 TELEPHONIC SPEAKER: Aye.

4 TELEPHONIC SPEAKER: Aye.

5 CHAIRMAN CAWOOD: Great. And I will
6 hear a motion to adjourn.

7 MR. BRAGG: I move to adjourn. This is
8 Trustee Bragg.

9 CHAIRMAN CAWOOD: Do we have a second?

10 MR. TOOLE: Bill Toole. Second that
11 motion.

12 CHAIRMAN CAWOOD: Wonderful. Thank
13 you, everyone, for your time. Greatly appreciate
14 it. Thank you-all for being on the phone and
15 thank you to those present.

16 MR. BEVINGTON: Absolutely.

17 CHAIRMAN CAWOOD: And we will look
18 forward to talking with everyone soon.

19 MR. VINES: Great job, Madam Chairman.

20 CHAIRMAN CAWOOD: Thank you, Trustee
21 Vines.

22 (MEETING CONCLUDED AT 11:19 A.M.)

23

24

25

1 STATE OF NORTH CAROLINA

2 COUNTY OF PERSON

3

4

5 REPORTER'S CERTIFICATE

6

7 I, Lisa A. DeGroat, RPR, a Notary Public in
 8 and for the State of North Carolina, do hereby certify
 9 that there came before me on Wednesday, the 8th day of
 10 November, 2017, the people hereinbefore named, the
 11 proceedings reduced to typewriting under my direction,
 12 and the transcript is a true record of the
 13 proceedings.

14

15 IN WITNESS WHEREOF, I have hereto set my
 16 hand, this the 19th day of November, 2017.

17

18

19

20

21

22

23 LISA A. DeGROAT
 24 Registered Professional Reporter
 Notary Public 19952760001

25