



Transcript of the Testimony of **Clean Water Management Trust Fund Meeting**

Date: March 15, 2018

Case: Clean Water Management Trust Fund Meeting

Garrett Reporting Services, Inc.
Phone: 919-676-1502
Email: office@grsnc.com

CLEAN WATER MANAGEMENT TRUST FUND MEETING

TRUSTEES PRESENT:

Greer Cawood, Chair
Frederick Beaujeu-Dufour
Frank Bragg
Dr. Troy Kickler
Renee Kumor
William Toole
Charles Vines
John Wilson

STAFF PRESENT:

Walter Clark, Director
Will Summer, Deputy Director
Steve Bevington
Nancy Guthrie
Damon Hearne
Sydney McDaniel
Justin Mercer
Terri Murray

Also present:
Hank Fordham, Counsel

Invited Guest:
Annette Lucas

Held at: North Carolina Capitol Building
One East Edenton Street
Raleigh, North Carolina 27601

Held on: Wednesday, February 28, 2018
2:00 p.m. to 5:09 p.m.

Reported by: Victoria L. Pittman, CVR-CM-M

1 (Hearing called to order, 2:00 p.m.)

2 CHAIR CAWOOD: I would love to call to order
3 the meeting of the Clean Water Management Trust Fund
4 today, February 20, 2018, at 2:00 p.m. And we are
5 presiding at the state capitol's old senate chamber.

6 I would like to welcome everyone. And
7 thanks, first, to Walter Clark, our executive
8 director, for the idea for us to meet in here. Thank
9 you. It's wonderful. Great to take the tour and to
10 learn more about the wonderful history of this
11 incredible building, and I'm so proud of our state
12 over the years to keep it in such great shape for many
13 generations to get to enjoy seeing it.

14 I will start by doing the roll call.

15 As I said, I'm Greer Cawood, Chair. I'm
16 here.

17 Frank Bragg?

18 MR. BRAGG: Present.

19 CHAIR CAWOOD: Fred Beaujeu-Dufour?

20 MR. BEAUJEU-DUFOUR: Present.

21 CHAIR CAWOOD: Dr. Troy Kickler?

22 DR. KICKLER: Present.

23 CHAIR CAWOOD: Renee Kumor?

24 MS. KUMOR: Present.

25 CHAIR CAWOOD: Bill Toole is not able to be

1 with us.

2 Charles Vines?

3 MR. VINES: Here.

4 CHAIR CAWOOD: And John Wilson?

5 MR. WILSON: Present.

6 CHAIR CAWOOD: Wonderful.

7 We will start with compliance with General
8 Statute 138A-15, which mandates that the Chair inquire
9 as to whether any trustee knows of any conflict of
10 interest or the appearance of a conflict of interest
11 with respect to matters on the agenda.

12 If any trustee knows of a conflict of
13 interest or the appearance of a conflict of interest,
14 please state so at this time.

15 (No response.)

16 CHAIR CAWOOD: Hearing none, I will --

17 DR. KICKLER: Madam Chair, I'm just trying
18 to see -- essentially, Agenda Item Business 1, Outer
19 Banks Dare Challenge, I will have to recuse myself
20 from that.

21 CHAIR CAWOOD: All right. Thank you for
22 that.

23 DR. KICKLER: Is that under the consent
24 agenda?

25 MR. SUMMER: It's Business 5.

1 DR. KICKLER: I will need to recuse myself
2 from that.

3 CHAIR CAWOOD: So noted. Any others?

4 (No response.)

5 CHAIR CAWOOD: All right. Everyone, please
6 put your cell phones on vibrate or turn them off.

7 And next we will see if there are any
8 revisions, additions to the agenda.

9 If not, I will accept a motion to approve
10 the agenda.

11 MS. KUMOR: So moved.

12 CHAIR CAWOOD: Thank you.

13 MR. BEAUJEU-DUFOUR: Second.

14 CHAIR CAWOOD: Thank you. All in favor?

15 (Chorus of ayes.)

16 CHAIR CAWOOD: Any opposed?

17 (No response.)

18 CHAIR CAWOOD: Okay. We have adopted the
19 agenda.

20 Moving on, there are three issues on the
21 consent agenda.

22 First is the approval of the minutes from
23 our November 17 board meeting.

24 Are there any changes or additions to those?

25 (No response.)

1 MR. BRAGG: I move they be adopted as
2 written.

3 CHAIR CAWOOD: Is there a second?

4 MR. VINES: Second.

5 CHAIR CAWOOD: All in favor?

6 (Chorus of ayes.)

7 CHAIR CAWOOD: Any opposed?

8 (No response.)

9 CHAIR CAWOOD: Thank you. We will move on
10 to 2b. And this is a request to extend the date to
11 enter into a construction contract for existing
12 infrastructure grants.

13 And this, we have -- I would like to hear a
14 motion on that.

15 (Discussion off the record.)

16 CHAIR CAWOOD: Okay. Maybe we'll move on to
17 2c and see if there is any discussion on the request
18 to transfer the grant contract from the Conservation
19 Fund to the Tar River Land Conservancy.

20 Are there any questions or thoughts about
21 that? If not, we will just approve the consent agenda
22 items altogether.

23 MS. KUMOR: I make that motion.

24 CHAIR CAWOOD: Thank you.

25 MR. BRAGG: Second.

1 (Chorus of ayes.)

2 CHAIR CAWOOD: Great. We will move forward
3 to our legal update from our counsel, Hank Fordham.

4 MR. FORDHAM: Thank you. I don't think
5 anything I say will add any more weight to what's
6 here, but I want to pretend like it does. So go along
7 with me, if you will.

8 The one question I think I would ask to
9 address today was about site visits. I know that's
10 something that's kind of been percolating around a
11 little bit, something staff's been concerned about
12 and, I think, some of the trustees. And I think you
13 have received prior legal advice that trustees could
14 not make site visits.

15 So I was asked to take a look at that,
16 re-look at that, and I have done that -- looked
17 through the statutes, looked through the relevant
18 North Carolina cases, and discussed it with my boss,
19 the general counsel for DNCR.

20 And my opinion and our opinion is that site
21 visits are okay. It comes down to the question of
22 whether this body, the board of trustees, operates as
23 a quasi-judicial body -- am I talking loud enough? --
24 whether it's a quasi-judicial body or
25 quasi-legislative body.

1 And I think it's clearly a quasi-legislative
2 body; so, therefore, you don't have to act like a
3 court. Quasi-judicial -- the key word is "judicial";
4 it means you have to act like a court.

5 The statutes that set up and organized the
6 trust fund have authorized the board of trustees --
7 one of the key provisions calls for consideration of
8 the various trustees' expertise in the various
9 relevant subject matters, such as acquisition and
10 management of natural areas, conservation,
11 administration of water quality, wildlife and
12 fisheries habitat, environmental management, historic
13 preservation. Judges aren't supposed to bring their
14 personal expertise on the subjects to bear.

15 So -- I'm not going to get into a lot of
16 detail, but in my opinion, you are a quasi-legislative
17 body, which means you have to follow the rules and the
18 prerequisites in the statute; but once you do that,
19 you have broad discretion, as you would with grants.

20 Okay. So a couple of other things just to
21 mention are that, of course, you can visit sites, but
22 actual fairness and appearance of fairness is still
23 important. For judges, for juries, that is hyper-,
24 you know, -intense kind of vigilance. Here, it's not
25 the same level of obligation, but it doesn't mean that

1 it goes away. It just means that you have a lot of
2 discretion.

3 And with respect to sites, if you're
4 familiar with the site and you also have expertise in
5 one of these categories, that's an advantage to this
6 body as it deliberates and makes decisions. And I
7 have seen that in operation. Each person has their
8 own perspective and their own -- you're, in part,
9 selected because of the expertise you bring to this
10 body.

11 Even though you're not a quasi-judicial
12 body, when you're having meetings, you're still a
13 public body; so that means that you are subject to
14 other meetings laws. So anytime a majority of the
15 board or any committee of the board gathers together
16 to do business as relates to Clean Water, that would
17 be an open meeting and would have to be noticed. So
18 what that means in practice is, if you have a site
19 visit, you couldn't have a majority of the whole board
20 or a majority of one of the committees at that site
21 visit.

22 Of course, the rules -- the ethical rules
23 about avoiding improper gifts, favors -- those apply.

24 The other thing that comes to mind is if --
25 you know, having a site visit and if some person that

1 had an interest had offered to buy you lunch, you
2 wouldn't let them do that. Just the rules are kind of
3 nitpicky; so you wouldn't want to accidentally do
4 something that puts it in a bad light.

5 I think that's really it.

6 As I understand it, the way staff and
7 trustees hope for this to work is that it would be
8 Clean Water Management Trust Fund-initiated site
9 visits. It wouldn't be so much that you receive an
10 invitation from an applicant to go visit the site. It
11 would be much more that, for whatever practical
12 reason, there is a historical site and you need some
13 expertise from Troy or others on that or there's a
14 part of the state that somebody's particularly
15 familiar with so that staff and yourselves would be
16 initiating that. And I think that's -- I don't think
17 that's legally required, but I think it's a good
18 practice to just give the appearance of fairness.

19 So if there's any questions, I am happy
20 to --

21 MR. WILSON: So do you recommend that any
22 and all invitations for a site visit from an applicant
23 extended to a trustee be declined?

24 MR. FORDHAM: I would say route it through
25 Will or Walter.

1 In other words, they may have a good reason.
2 There may be something unique about the property; it
3 may be -- I wouldn't make that decision personally. I
4 would rather the staff.

5 MR. WILSON: Okay.

6 MR. CLARK: We felt it would be helpful for
7 the staff to know that's happening and perhaps even
8 provide them more of a mission that we could provide
9 staff assistance for that.

10 I think it's a good practice, and it also
11 avoids any appearance of influence outside of the
12 process.

13 MR. FORDHAM: Yeah. I do think it's really
14 important to relate all that information to Walter or
15 whoever he has to be the coordinator of that.

16 MS. KUMOR: Are you talking about a site
17 visit prior -- to somebody who has made application or
18 to somebody who has completed their application and
19 wants to have kind of a celebratory gathering?

20 MR. FORDHAM: Primarily the former, but it
21 applies to both. In other words, once somebody had
22 been -- was awarded a grant and it was a
23 celebratory-type thing, there's not much potential for
24 there to be, you know -- well, somebody could say,
25 "Well, that was not fair. They didn't visit me."

1 It's really more the ones before that might bring
2 concern, but the same rules apply to both.

3 In other words, if you're there -- if it's
4 purely social, then that doesn't really involve a
5 meeting of a public body. If there is some
6 informational purpose for going, if there's a group --
7 majority of either committee or the board, you know,
8 something more going on than just simply a social
9 celebration, then that would be a public meeting; and
10 if it's purely social, it would not be.

11 CHAIR CAWOOD: And probably good for our
12 trustees to keep in mind a lot of times we have
13 applicants who come back for different phases; so do
14 be as careful as possible.

15 MR. FORDHAM: It seems to be a fairly
16 tight-knit community of applicants. They all know
17 each other and, you know, work with each other and
18 help each other and compete with each other to some
19 extent. So I think that's really good advice. You
20 will see the same people over and over -- I mean, I'm
21 not telling you anything you don't know because you've
22 been doing this longer than I have.

23 Thank you. That's it from me.

24 CHAIR CAWOOD: Thank you. It's great to
25 have you with us, and we appreciate that great advice.

1 Next. Walter?

2 MR. CLARK: I just want to say thanks to the
3 staff and to the staff here at the capitol for the
4 tour this morning -- I know most of you took it --
5 very informative. Greer and I were noting that we had
6 not been to the capitol since we were here on our
7 probably fourth grade visit to Raleigh; so I had
8 forgotten a lot about the history. So it's nice to be
9 connecting, hopefully, to include as part of our
10 mission with site visits to have a meeting here at
11 this historic site.

12 So thank you all.

13 Today -- you know, I realized this morning
14 it's almost been a year, a little less than a year,
15 since I joined Clean Water, and I wanted to say it's
16 been a real honor getting to know this wonderful group
17 of trustees and working with the fantastic and
18 dedicated staff, and that includes our legal guru
19 here, Hank.

20 And I'm really looking forward to the next
21 year. I think we have a lot of work to do. I'm
22 excited, but I wanted to bring you up to date on some
23 of the things that have happened this year that you
24 may not know about, particularly if you have not been
25 reading your executive director e-mails -- which I

1 wouldn't blame you one bit; but there's been a lot of
2 improvements this year, most of which we've talked
3 about.

4 We launched a new Web site. If you haven't
5 been on it, I would encourage you to look at it.
6 Staff did a lot of work building and putting together
7 a Web site that is attractive and very user-friendly
8 for our clients. And that's been real important for
9 this 2018 cycle for our clients to have access to
10 that. So if you have not looked at it, please take a
11 look.

12 Thanks to our one on-staff millennial,
13 Sydney, we have a much better social and Facebook
14 presence. Thank you, Sydney, for such a good job
15 keeping things posted as they have -- some of the
16 press releases and things like that.

17 I realize that most of you may not know --
18 at least we haven't had a meeting since we did some
19 staff reorganization, but we did do some
20 reorganization on the staff. We promoted -- and I
21 consider it a big promotion -- Will to deputy director
22 of Clean Water.

23 (Applause.)

24 MR. CLARK: I think, you know, all of you
25 know that Will has carried a lot of weight of Clean

1 Water, as has Nancy, but Will and Nancy know the
2 history of this program and know it well. And this is
3 the kind of model you really see in most of the other
4 divisions, where there is a division director, deputy
5 director; so we felt it was time to do that.

6 We also have looked at some of our other
7 staff and some of what they do. Terri has taken on a
8 lot of responsibilities. So we have been assessing
9 that. We have requested from the department some
10 salary adjustments to reflect motions and changes in
11 responsibilities. I haven't heard back from them yet.

12 Speaking of Gwyn's departure, we will be
13 filling that position. We're in the late stages of
14 that hiring process, and, hopefully, we will have
15 somebody in place before the next board meeting.

16 Another thing that you may not know -- how
17 many of you worked with Bern Shumack? Any of the
18 trustees? He was with us for a while, and he's been
19 on disability for a long time. And in April, he goes
20 off of the Clean Water payroll. And so we will have
21 another position that will need to be filled. There
22 will be some internal discussion about how to do that,
23 whether or not we hire someone to carry on his good
24 work in stewardship or if we focus on hiring someone
25 that has PR and communications experience or someone

1 to help us with some of the legal issues that we deal
2 with or maybe a combination of all of that. We may be
3 turning to the trustees for some advice on that in the
4 near future.

5 Staff would probably think this is the best
6 thing, but last week we took delivery of two new Ford
7 4x4 extended cab pickup trucks for our field staff to
8 use. So when you go on site visits and you go with
9 the Clean Water staff, you will be riding in style.

10 So ...

11 (Laughter.)

12 MR. CLARK: They're nice. The vehicles that
13 we had we had from motor fleet -- they were old, not
14 dependable. And we had a choice: Either to lease
15 additional vehicles from motor fleet or to purchase
16 new vehicles. And we had the resources to do it, the
17 department gave us the approval to do it, and so we
18 moved forward with that.

19 Funds continue to roll in from our license
20 plate revenue. We are little bit behind where we were
21 last year. Some people have suggested, including
22 Dr. Kickler, that we try to find ways to perhaps
23 advertise the fact that license plates bring in
24 revenue to Clean Water. We're getting a PR person.
25 That might be one of the things that he we will do.

1 We still have been able to fund additional
2 projects.

3 As of right now, we have \$21.4 million,
4 which has allowed us to fund three additional
5 acquisition projects and one additional restoration
6 project. And as funds continue to grant, we will
7 continue to march down that list.

8 The next acquisition project is a big one.
9 It's the Grandfather Mountain acquisition, which is a
10 \$1.2 million property acquisition that will be added
11 to Grandfather Mountain State Park. We may not get
12 all that -- we need to get through it completely. But
13 we are doing well, and, hopefully, we will have
14 another restoration project that we can fund before
15 this cycle ends.

16 Let me see. I think, looking ahead, the
17 general assembly comes back in May for their short
18 session. One of the things that they will be doing
19 will be adjusting budget; so I will be spending some
20 time with the legislature. I will turn to you
21 trustees for some help. And we will be talking to the
22 general assembly about the good work that Clean Water
23 does.

24 We do know that this year that we had 120
25 applications for a total request of over \$55 million.

1 So the demand is definitely there. Compare that
2 \$55 million request with the \$21.4 million that we
3 have allocated this year, and you see the disparity
4 that we always have. We could never fund all of the
5 projects we would like to fund and, really, a lot of
6 very, very good projects. So we will be working with
7 the legislature, talking to them, and trying to be
8 sure that that demand is met and they can support it.

9 One last thing, the reception this evening
10 started as kind of an idea of just getting the
11 trustees and staff together at the Governor's mansion,
12 and it kind of -- it grew from that. It became more
13 probably because the Governor's mansion folks said we
14 had to have at least 40 people there to have an event
15 there; so we started thinking, "Well, how do we do
16 that?" And one option was, "Well, let's invite some
17 of our applicants." And then we thought, "Well, we
18 want to be fair and equitable about that"; so we
19 thought we would invite some of our community
20 partners, communities that have benefited from Clean
21 Water funding, but maybe not necessarily applicants.

22 So we invited the Town of Valdese -- some of
23 you heard from some representatives from Valdese at
24 the September meeting -- very, very passionate about
25 what Clean Water funding would do for their community,

1 creating that waterfront park on Lake Rhodhiss.

2 And we thought, "Well, if we had this good
3 message to tell, why don't we tell it to some people
4 who might make a difference from the funding
5 perspective?"

6 So we extended an invitation to the
7 legislature. And I'm happy to say that we do have
8 some legislators that will be coming this evening.
9 And Governor Cooper and the first lady will also be
10 there.

11 So I think our small event, which was just
12 meant for all of us in the Clean Water family to get
13 together, has kind of turned into a much bigger and
14 nicer event that will allow us to talk about the good
15 work that we do.

16 So that's it for me. Thank you very much.

17 CHAIR CAWOOD: Thank you, Walter.

18 (Trustee Toole present.)

19 CHAIR CAWOOD: And I'm very happy to report
20 that Trustee William Toole has joined us; so we are at
21 our mighty capacity.

22 MR. TOOLE: My apologies.

23 (Discussion off the record.)

24 CHAIR CAWOOD: I want to open it up for --
25 before we get into a brawl, I would like to open it up

1 for any public comments that we have from folks.

2 MEMBER OF THE PUBLIC: I don't have an
3 official comment. Greg Andeck; Audubon North
4 Carolina. Thank you all for everything you do, and
5 I'm just here to listen and watch.

6 CHAIR CAWOOD: Thank you. So we will start
7 on the business portion of our agenda.

8 And as trustees know, we had, at our last
9 meeting, put forth kind of a charge to our acquisition
10 committee and our restoration committee to look at
11 criteria that we've been using for the last few years
12 and really see if there are any unintended
13 consequences, if there were changes that needed to
14 occur to the criteria; and also sent out a document to
15 our partners to ask for their input as to what they
16 thought, if there were any changes that needed to be
17 made or adjustments.

18 So both committees have been diligently
19 working on this, and I know they've put in a number of
20 hours, and I want to thank the trustees for that to
21 begin with, just the thoughtful nature always makes me
22 so proud of our trustees and the work that we do and
23 the great, great support that we get from staff and
24 advice. So I think that those are thoroughly useful
25 and helpful. So thank you to everybody for your

1 participation.

2 So I think we'll start with the restoration
3 committee report, which will be Trustee Kumor.

4 MS. KUMOR: Thank you.

5 As you see in the report in your packet, our
6 committee met once in person and once on the phone.
7 And we are working through some of the criteria that
8 we are making small amendments to. Much of our
9 discussions were driven by the survey that we
10 conducted and tried to be responsive to that, and I am
11 going to ask Steve to add, because we have no finished
12 product, if there is anything more you want to speak
13 to.

14 MR. BEVINGTON: Sure.

15 Thank you, Madam Chair. I will just make a
16 couple of quick points, and that's essentially what --
17 some of the great work the committee did is
18 encapsulated in what Renee just said.

19 I will just point out up here on the
20 slide -- and I apologize for the screen being distant
21 from you -- two areas of that partner survey that did
22 return interesting results to us are on the agenda
23 today. So I just wanted to point out that both our
24 responses back to how we handle public water supply,
25 the people felt that what we're doing is a very

1 well -- sensible criteria and other people have real
2 problems with it. On balance, all of the criteria
3 were generally supported in the survey.

4 And then, also, Nancy and others will have
5 discussion about matching resources and how it might
6 be relevant to communities. And, again, that was an
7 area where people either much agreed with it or
8 disagreed with it. But generally, those were --
9 comments from the public were very positive about our
10 criteria.

11 So the status of the committee is
12 essentially they've been all the way through the
13 criteria for the stormwater -- innovative stormwater
14 program and the planning program with minor edits.
15 They hope to bring it to you -- maybe after looking
16 again one more time -- in June.

17 And they have restoration edits they are
18 considering in three sections of the report: Resource
19 significance -- which we'll talk about some today with
20 the watershed issue that's on the agenda, watershed of
21 public water supplies; the effectiveness area and how
22 we give people credit for what they predict they're
23 going to do; and readiness. And those are the areas
24 that they have draft comments that are going to come
25 in soon.

1 They also did make one motion. At this
2 point, that ends the committee report, Renee, if
3 you're done with it, but there is an item that was
4 brought to your attention, which is next on the
5 agenda.

6 CHAIR CAWOOD: Thank you.

7 Then we will move on to business point b,
8 the restoration committee recommendation on
9 stewardship funds. We have Will on point for this.

10 MR. SUMMER: Thank you very much.

11 So I will start with a little bit of a
12 refresher on how we handle conservation easements in
13 our various programs.

14 So in the acquisition programs, the thing
15 that we pay for is actually acquisition of the land.
16 And when we do that, we protect that investment with a
17 state-held conservation easement. It has our name on
18 it. We're responsible for it in perpetuity. And we
19 take some of those funds, set them aside in an
20 endowment, and we use that to cover the annual
21 monitoring expenses that occur each year, again, on
22 into perpetuity.

23 With the restoration program, it's a little
24 bit different. What we are paying for is actually the
25 construction and the improvement of the stream and the

1 structures, and we have a conservation easement
2 recorded to protect that investment in the
3 infrastructure that we have paid for.

4 In those cases, the state does not hold that
5 easement. We require that easement be recorded, but
6 somebody else holds it. And while our expectation is
7 that they have regular monitoring, we do not set aside
8 any money for ourselves, nor do we pay out lump-sum
9 funds to another entity for the stewardship of
10 expenses. That's just a burden that has traditionally
11 been borne by the folks that apply.

12 So that responsibility to monitor
13 annually -- or regularly, every couple of years --
14 lasts forever. That's a real cost. It has real
15 implications in the future. And both because it is a
16 real cost and because our partners have kind of
17 brought again to our attention and requested that the
18 board reconsider it, we brought it to the committee
19 when they met, and they had recommendations based on
20 that.

21 And I will talk a little bit about why the
22 recommendation -- where staff and the committee came
23 up with that recommendation, what it's based on.

24 So in the donated minigrant program, which
25 is the closest analogue to a restoration program in

1 that we don't pay for land acquisition -- once again,
2 the land itself is donated -- we do require an
3 easement be recorded; but we have somebody else hold
4 that easement, and the endowment is their
5 responsibility.

6 In that program, we do actually share -- we
7 do a cost share on a lump-sum endowment whereby we
8 match dollar for dollar money that they set aside, and
9 it has to be set aside in an endowment account, which
10 is, again, not their checking account. This is an
11 account that must be set up so that the principal is
12 nonwasting and they draw interest and use that
13 interest to pay for the expenses into perpetuity.

14 In the acquisition program -- donated
15 minigrant program -- excuse me -- we use the kind of
16 the criteria that there has to be evidence that they
17 have put money into that endowment account and that
18 they are in a private land trust, which gives us the
19 comfort of knowing that, when we write a check for
20 something that hasn't happened yet, that they are
21 going to be audited on a regular basis by a third
22 party to ensure that they have an endowment. And it's
23 a fairly rigorous process for those land trusts. They
24 have to prove, every time they go up for
25 recertification, that every property they have an

1 easement on, they have to have a set amount for legal
2 defense and stewardship set aside, and that's a pretty
3 high standard.

4 So as we move into consideration of going
5 from not spending any of our funds on this in the
6 restoration program to doing that, I think it's
7 important that we do it in a way that shows
8 accountability because it's the only thing we pay for
9 that hasn't happened yet; everything else is
10 reimbursable. When someone does the work, they pay
11 the bill, they show us the receipt, then we reimburse
12 them. But stewardship is, again, for an expense that
13 has not yet occurred.

14 So with that said, what the committee came
15 to was basically to follow the same recommendation as
16 the donated minigrant program, being that all of the
17 other parameters are roughly the same.

18 So the way this policy would go is that the
19 easements would need to meet or exceed our guidelines.
20 On occasion, the restoration program, there are
21 certain easements that, because of constraints in
22 urban areas, they are just -- they're narrower than
23 they have to be, and we bring that to the board, and
24 we make those concessions to get that project to go
25 forward. But generally, most of our easements in the

1 restoration program meet that kind of minimum
2 expectation of 50 feet traditional forested buffer.

3 We would have that the certified land trust
4 organizations agree to monitor the easement and hold
5 the endowment and that our stewardship funds would be
6 matched at least 50 percent. And, again, upon
7 payment, we would need evidence provided that the
8 funds were deposited into a special endowment fund.
9 That is the basic tenets of the policy.

10 So, with that, the committee recommendation
11 is that the board adopt a stewardship funding policy
12 for restoration projects that's consistent with the
13 one we already use for donated minigrant.

14 And with that, I will take any questions
15 about any of our stewardship programs that you may
16 have.

17 MR. FORDHAM: In terms of wording a
18 potential policy, is it that the Clean Water funds
19 would be 50 percent of the total amount set aside?

20 MR. SUMMER: Yes. For stewardship -- up to
21 50 percent, as in we require at least a one-to-one
22 match.

23 MR. BRAGG: So, Will, we write the check and
24 they match it, and it goes in their endowment?

25 MR. SUMMER: It goes in their endowment,

1 yes, sir.

2 MR. BRAGG: And then they're responsible and
3 we're out, so to speak?

4 MR. SUMMER: Exactly.

5 MR. BRAGG: Okay.

6 MR. WILSON: How many instances have there
7 been, ballpark, of potential applicants not applying
8 because the stewardship funds were not available and
9 they felt like monitoring would be burdensome to the
10 them to the point of not even applying?

11 MR. SUMMER: I can tell you -- and I will
12 turn to the field reps after I give you what I know on
13 this.

14 There are several organizations that are
15 both land trust and do restoration work -- National
16 Committee for the New River, what's now the New River
17 Conservancy, RiverLink -- and those organizations,
18 because they are accredited land trusts, have to have,
19 when they take on a project and they're going to put
20 an easement, they are required to show, let's say,
21 \$12,000 in an endowment account. So that is a -- it's
22 a real responsibility for everybody. But for those
23 accredited organizations, it's real, right-now dollar
24 cost. It's not a promise into the future. It is "We
25 have to show this on our ledger for the accreditation

1 folks."

2 So I know that there's been some concerns
3 with folks in that arena not applying, and I will turn
4 to Damon and/or Justin.

5 Can you shed some light on that?

6 MR. HEARNE: Yes.

7 The applicants that I have talked to bring
8 it up fairly frequently on the restoration side
9 because we're not paying for any of the restoration
10 easements -- that's a donation or something that they
11 acquire -- nor are we covering any of the stewardship
12 costs.

13 They find certain projects or requests to
14 partner with other organizations as burdensome
15 because, if another organization comes in and says,
16 "Would you work with us on this restoration and hold
17 the easement for us?" they say, "Well, we need the
18 \$12,000," and they sometimes have to say no.

19 So there have been several instances of
20 partnerships not coming together or going forward
21 because the stewardship dollars weren't there, and
22 instances, I think, more often where they scraped
23 together the funds for that. Those are real cash
24 dollars they have to raise on the front end, and it
25 feels pretty burdensome to them in that situation,

1 especially since they know they could get paid for
2 those same activities if they were doing an
3 acquisition grant from us. They know we're kind of in
4 that business and see that as a potential to support
5 the work.

6 But there are a number of projects that I
7 have talked to people about where we would love to do
8 this work, but it's just -- it's too cash burdensome
9 at the outset.

10 MR. WILSON: Have there also been defaults
11 on the monitoring, just, you know, monitoring it for a
12 limited period of time and just unable to continue
13 monitoring?

14 MR. SUMMER: We honestly don't know because
15 we set them -- we set them free, as it were, after
16 we've done that. So "This is your responsibility. We
17 expect you to continue with it onward."

18 So I think they may be not be stewarded to
19 the high standards that, say, our acquisition projects
20 are for that very reason: That they don't have funds;
21 they just have a commitment and an unfunded mandate,
22 as it were.

23 MR. TOOLE: I would like to speak to that.
24 I don't know any with regard to restoration, but I
25 know in the wetlands context, there's supposed to be

1 mitigation, but there's no follow-through program to
2 make sure the mitigation always works.

3 And I know of failures that have gone
4 through the cracks because there isn't this process of
5 watching. And so on the restoration committee, we
6 struggled with the cost of watch versus -- you know,
7 and would we lose some projects because of the
8 stewardship cost versus the value of making sure there
9 is a perpetual oversight that makes sure that that
10 restoration program remains in place.

11 That is kind of where we came out after a
12 long, long struggle -- and it is a struggle.

13 MR. BRAGG: My experience with the land
14 trust so far as stewardship and the monitoring of the
15 projects around the state, I think the greatest
16 majority of land trusts, if not all today, are quite
17 capable. I mean, they have stewardship people; they
18 monitor thousands of acres and millions of dollars of
19 stewardship. So I have no fear that they are not
20 doing a good job.

21 Now, number two, my question is how do you
22 determine the amount of stewardship? Is it determined
23 by us? Or is it by size of the project?

24 MR. SUMMER: So it's -- in the same way that
25 acquisition folks currently fill out -- it's basically

1 a one-year monitoring worksheet. So they fill out the
2 number of hours they will spend in the office doing
3 the pre-site visit, number of hours on-site based on
4 the size of the project, and number of hours in the
5 office wrapping up, doing the report, bringing up the
6 maps, and then essentially a mileage rate based on
7 their anticipated mileage and other costs. And we get
8 an annual monitoring costs for that, and we multiply
9 it by 25, assuming, you know, 4 years -- 4 percent of
10 actual interest earned in an endowment.

11 So we do have that, and we take a look at
12 that in the acquisition program, as we would
13 restoration program, to make sure it's in line with
14 its partners and its peers. But it's basically them
15 telling us how much it's going to cost them to go out
16 and look at the site every year, and then we base the
17 endowment on that amount -- or the lump sum payment to
18 the endowment.

19 MR. TOOLE: Well, it might be useful to
20 remind us what kinds of entities apply for restoration
21 projects.

22 MR. SUMMER: Certainly.

23 So in the nonprofit world, there are a few
24 of these organizations that are both conventional land
25 trusts and do a lot of restoration work: The National

1 Committee for the New River -- sorry -- New River
2 Conservancy -- name change there; RiverLink; we have a
3 lot of soil and water conservation districts which are
4 quasi-governmental sort of nonprofit; we have some
5 resource councils, and those organizations are not --
6 they don't wear the land trust hat. I would daresay
7 none of those, the latter type, have an endowment set
8 up or accredited or seeking accreditation.

9 What I would hope with this sort of program
10 is that they can then reach out to the accredited land
11 trust folks that, you know, are in this business and,
12 instead of the soil and water conservation district
13 taking this burden on in the future, assuming they're
14 going to get local government appropriations to pay
15 for their staff which will then do this work, that
16 they bring in a partner such as one of the land
17 trusts; and then we get kind of the same level of
18 stewardship that we expect on our acquisition
19 programs.

20 MR. BRAGG: That's a great point. And it
21 seems to me that there ought to be a way that -- where
22 we can not encourage, but almost mandate that they all
23 use a land -- a certified or qualified land trust to
24 hold and monitor.

25 I mean, is that possible? Or is that going

1 too far?

2 MR. SUMMER: Well, if -- the problem there
3 is you need a willing land trust partner, not that
4 they wouldn't be now that there's funds. I think they
5 would rather -- I'm not aware of anybody that would
6 rather do this themselves. They would much rather
7 hand this money over to a land trust and have the land
8 trust take on this -- I mean, it's a burden. You
9 know, no one donates in conservation to get some more
10 land; they give you a perpetual responsibility.

11 I think if we had funds set aside and they
12 could get the partners, who, again, just lack that
13 dedicated funding, I suspect a lot of folks would
14 gladly take that option.

15 MR. WILSON: I think that, as we are all
16 aware, in these days of more limited funds than ever,
17 and certainly than historically, that having
18 stewardship paid for and hopefully endowed is really,
19 really important and critically important for a lot of
20 land trusts -- not all land trusts but a lot of them
21 that are really operating on very thin and tight
22 budgets.

23 MS. KUMOR: I just wanted to say that the
24 restoration committee worked long and hard on this as
25 a motion and as an idea that we wanted to bring

1 forward. And you can see by the discussion that it
2 was no easy task for us.

3 And with that in mind, I would like to place
4 this as a motion from the restoration committee so
5 that we can see if everybody agrees with us or wants
6 us to go away.

7 CHAIR CAWOOD: Thank you.

8 MR. BRAGG: Renee, I have a question to you.
9 You have been involved, I think, with the RiverLink
10 group.

11 MS. KUMOR: Correct.

12 MR. BRAGG: And I know a little about them.
13 They're in Asheville -- or they were. And I don't
14 know their structure. They are not a land trust, are
15 they?

16 MS. KUMOR: Yes.

17 MR. BRAGG: Oh. They are.

18 MS. KUMOR: What happened was RiverLink
19 noticed that there were small areas of land they were
20 going to provide easements to, but the big land use --
21 it wasn't half an acre; so really worked to get the
22 paperwork together and get that accreditation so they
23 could serve even small easements to protect that land
24 long-term.

25 MR. BRAGG: So they have an endowment. And

1 they monitor --

2 MS. KUMOR: Correct.

3 MR. BRAGG: Okay.

4 MS. KUMOR: It's a new operation for the
5 entity, only three or four years.

6 MR. SUMMER: That sounds about right.

7 Damon, that's your area. RiverLink's
8 certifications --

9 MS. KUMOR: But they saw that, what we're
10 speaking to, and that's why they created that.

11 MR. BRAGG: Okay. Well, good.

12 CHAIR CAWOOD: So since the motion comes
13 from committee, we don't need a second.

14 So any other discussion?

15 If not, all in favor say "aye."

16 (Chorus of ayes.)

17 CHAIR CAWOOD: Any opposed?

18 (No response.)

19 CHAIR CAWOOD: Great. We will move on to
20 Dr. Kickler with the acquisition committee report.

21 DR. KICKLER: Thank you.

22 As noted by earlier by Trustee Kumor, the
23 board charged the various committees to look into
24 grant criteria for restoration projects and what falls
25 under that committee's umbrella, and the acquisition

1 committee to look at projects that fall under its
2 umbrella.

3 When the board was reconstituted a few years
4 back, new criteria was made, and we wanted to see if
5 there would be any changes or tweaks to it.

6 The committee -- the acquisition committee,
7 that is, met on January 29, and we met approximately
8 four hours; February 15, approximately a little over
9 two hours -- so a significant number of good billing
10 hours there that the committees met on these things.

11 And we are not finished yet, but we are
12 definitely moving in a direction -- as chair of the
13 committee, I would like to say I was pleased to learn
14 that most of the applicants -- most of the responses
15 we got from our previous applicants were generally
16 agreeable with the criteria that was already in place.
17 Some had some very good constructive criticisms; those
18 were considered in depth.

19 And so, like I said, we're not finished but
20 we are definitely moving in a direction and tweaking,
21 making this better for applicants, making it more
22 clear for applicants. And I'll let Nancy explain
23 further.

24 MS. GUTHRIE: Thank you.

25 The criteria generally is well supported,

1 and for the most part, I think, understood by
2 applicants. But we find there are a number of places
3 we could make the language clearer, we could make the
4 intent a little bit easier for people to understand.
5 There are some words like "near" that we would like to
6 make a little bit more objective for people.

7 We are also trying to fully use the range of
8 the scale. In a number of our sections, points were
9 assigned -- 1, 3, and 5; so let's find a 2 and a 4 in
10 there to help really give us more spread in our final
11 scores.

12 And one thing I have done since we last met
13 was I had met with Dr. Cherry and Ramona Bartos, who
14 are with the state historic property office, because
15 we did not get any responses on the historic and
16 cultural section of -- in the survey, and we feel like
17 that's because so many other really engaged partners
18 are the land trusts who gave us very thoughtful
19 comments in other areas.

20 I have met with them, and still on the to-do
21 list is to meet with the military personnel and try
22 and, again, spread those points out some more, have a
23 little bit more influence from the military community
24 on their priorities and more input -- still keeping
25 that as a small part of the Clean Water criteria but

1 engaging that community a little bit more. The
2 existing military criteria we have come forward from
3 2004 and really has not been changed much since that
4 time. So that's a section, I think, that also will
5 look different.

6 The other sections I expect to have a draft
7 back to the committee for them to consider will be
8 minor changes and clarifications of the language. And
9 then we hope to bring that back -- we should have that
10 for the committee to consider and then for the full
11 board in June.

12 DR. KICKLER: Thank you. We don't have any
13 actions.

14 CHAIR CAWOOD: Perfect. Thank you. We will
15 look forward in June to seeing the finished products
16 of both of the committees if everything goes as
17 planned.

18 Next, there were two issues that came up
19 with both committees that we thought it was best for
20 the board to have discussion and feel comfortable in
21 the direction.

22 And so, Steve, I will ask you to start with
23 the consideration that surfaced, drinking water supply
24 watersheds ...

25 MR. BEVINGTON: Thank you.

1 All right. So the hard work you had
2 mentioned in both committees continues at this moment,
3 I'm afraid. We are basically capitalizing on the fact
4 we have the two committees together to deal with this
5 issue and another later that is almost exactly
6 duplicated in both criteria, and I think it's
7 important to treat them that way.

8 So it isn't just from the committee
9 concerns -- and we did hear in the committee some
10 comments made about watersheds and the importance of
11 drinking water supplies, public water supplies in our
12 criteria, and asked -- I've heard it in the
13 acquisition committee as I attended, certainly from
14 the restoration committee as well. We also heard from
15 our partners it was an area -- the criteria they
16 wanted us to review. And we -- we certainly hear that
17 from the site visits.

18 Damon and Justin, feel free to interrupt me
19 if we step too far.

20 It's -- another comment we hear in the field
21 is that some of these watershed areas deserve
22 protection. Is there a way Clean Water -- is Clean
23 Water being efficient in their addressing that through
24 their criteria and policy? So that's what we're going
25 to look at quickly today.

1 I do apologize about some of this being not
2 exactly technical, but a list of facts that you might
3 consider more of a committee report -- but maybe this
4 is something we are thinking you could charge back to
5 the committees, having arrived at a common
6 understanding.

7 So let me just begin with this -- and I
8 apologize for way too much small print being on this.

9 But essentially, you are considering a
10 complex water quality classification. The state has
11 five water quality classifications ranging from Water
12 Supply I, which is only deemed Water Supply I, the
13 highest quality watershed, if it's completely within
14 public ownership already. So there's essentially no
15 development.

16 Water Supply II is quite similar,
17 undeveloped areas predominantly, but maybe have some
18 different ownership mixes in there, and it is possible
19 to have actually some inholdings.

20 Watershed III and IV are very often large
21 water supplies near urban centers and do have some
22 levels of development. And I'm sort of describing
23 what they are here.

24 In a minute, we're also going to look at
25 what the associated regulations are with those and how

1 these watersheds work together.

2 And Water Supply V classification is less
3 stringent in many ways, and it's in some ways also a
4 bit of a grab bag. It has waters that are distant
5 from a water supply but are still considered
6 important. It has -- they may be above the Water
7 Supply IV, for example. It may be former water
8 supplies that could be used in an emergency or known
9 places to withdraw water but is not currently being
10 used. And, also, there are industrial uses,
11 sometimes, that private organizations will have the
12 facility to develop drinking water for their employees
13 so the people can actually still be drinking the water
14 out of Water Supply V even though it's not a public
15 water supply.

16 You have seen this before. Just to give you
17 some geographic distribution, the eastern coast of
18 North Carolina has essentially very, very few surface
19 water intakes because of the availability of
20 groundwater, as you get close to the coast, the
21 intrusion of saltwater surface layers. So it really
22 is a Piedmont and mountain issue.

23 Drinking water, of course, takes place
24 across the state; so I think that's something to keep
25 in mind. But I did want to point out sort of what the

1 distribution is across the state.

2 This map barely shows up -- I apologize --
3 it's a little hard to dim the lights in here, but
4 really what I was trying to get at here, this is a
5 Water Supply V. The other ones showed up on the map
6 very clearly as polygons because they are physical
7 areas classified by the state, which has a land use
8 associated with it. And the land -- actual land.
9 Water Supply Vs are only the stream segments
10 themselves; so it's a classification that only applies
11 to the stream, not to a polygon.

12 And by the way, feel free to interrupt me if
13 I'm going too fast or something's not clear or if you
14 need me to hurry up.

15 Here is an example of one other
16 classification. These are presently not in our
17 criteria at all. But Division of Water Resources does
18 classify that little red dot down there, is calling it
19 a critical area. So this is in the Broad River, near
20 the South Carolina border. You can actually see the
21 South Carolina border here, the artificially straight
22 line in the watershed, which is interesting, as we go
23 by. But this red dot has different regulations as
24 well, being a half mile above the intake.

25 So there are number of intake rivers that

1 have this added protection from the state in terms of
2 land use activities, as we'll see in a second, and
3 there's also -- they also consider that half mile
4 above a full pool.

5 So, for example, Lake Norman, which has
6 water supply drinking intakes that head to Charlotte,
7 the full pool and the half-mile buffer in that is also
8 considered the critical area. So it can be --
9 critical area is a half mile from the intake or the
10 pool that it's drawn from.

11 And right now, those -- the reason I'm
12 mentioning this area so much is it's a state
13 classification that is not reflected in our criteria
14 at all, both for acquisition and restoration.

15 And so I just -- Nancy made this map up
16 earlier, and some of you have seen it before. I think
17 it's a great map because it sure shows the complexity
18 of some of these watersheds. They can nest together,
19 where the higher protection areas are in blue and some
20 of the critical areas that are difficult to see, but
21 black lines around the pool here or the lake is the
22 critical area for Lake Norman. This happens to be in
23 the Catawba River basin.

24 But watersheds can -- you know, with
25 different water supplies from small and large

1 communities, can nest together, be closer together,
2 have different regulations associated with them and
3 different opportunities to either protect water
4 quality or protect the drinking water supply for these
5 communities.

6 And you can sort of see little dots
7 sprinkled throughout the map. Those are actually the
8 intakes that the state is aware of that are listed as
9 public water supplies.

10 So presently, and -- both the restoration
11 and the acquisition criteria treat water supplies in
12 some ways exactly the same by weight but differently
13 in the amount the points they get. That's why I have
14 put these sort of into groups, and Will suggested this
15 as a way to keep them straight, essentially.

16 But in terms of resource significance, it's
17 an important factor in determining the applicant's
18 value to relate to the resources that they are
19 protecting, and we reflect that in our scoring of the
20 projects that we see every fall.

21 And right now, the projects are distributed,
22 Water Supply I's -- I mean, through V -- Water Supply
23 V are distributed pretty much throughout the entire
24 availability of points. So 20 percent of points only
25 for a Water Supply IV -- V are given right now and

1 85 percent, almost 100 percent, certainly not the
2 highest score, but for the Water Supply I, and they
3 are sort of almost just scattered throughout.

4 And I don't know, some of you may understand
5 much better the logic behind this, but I think
6 essentially there was a sense that every water supply
7 is a little less important as it goes down the list
8 and we sort of give them less points. And we'll take
9 a peek at that in a minute.

10 And, again, water supply critical areas are
11 not scored anything particular. They would receive
12 the full points for whatever water supply they are.
13 So for a Water Supply IV, critical area, it would be
14 scored as a Water Supply IV at present.

15 This map is -- the text is unreadable, but I
16 bring it to you because the classification has several
17 categories that really link these Water Supply I's and
18 IIs. And if this is too much -- it is in your handout
19 as well, if you want to be able to read some of the
20 captions along the top.

21 But what staff did when they looked at
22 this -- and Nancy was a great help in this, and others
23 as well -- was we are trying to understand what are
24 the protections that the state, through its regulatory
25 process and through public management of public water

1 supplies at the local level, what protections do we
2 get now and how does that play into our criteria?

3 So these bars that I've indicated to sort of
4 try and describe a similarity between Water Supply I's
5 and IIs, the highest-ranking water supplies, both have
6 many things in common that are not true of other water
7 supplies.

8 And the first of these is that wastewater
9 treatment plants are not allowed in those watersheds.
10 They are banned, any new ones, and you can't even
11 become a Water Supply II if you have an existing
12 wastewater treatment plant discharging into your
13 watershed. Those are really the only two.

14 And where you see this orange -- I'm not
15 sure what color that is -- greenish line coming down,
16 it's dipping into the critical area of the Water
17 Supply III. So it does that, in terms of that.

18 The second bar is for erosion control
19 regulations. In the watershed, there are -- is a
20 mandate that, if you're going to continue to operate
21 as a public water supply, you need to have in place
22 local erosion control measures to prevent sediment
23 getting into your lake and into your water supply,
24 into the intake, at a higher level than is required by
25 state standards for all lands.

1 And then transportation activities, in terms
2 of what DOT is doing on their roadsides, how they
3 route stormwater and what kind of chemicals they put
4 on for ice control and stuff like that, is also, for
5 these two water supplies, a similar level above and
6 beyond the standard level.

7 All other watersheds receive, in these three
8 areas, standard treatment from the state. So that's
9 sort of my point; we felt these sort of lumped I's and
10 IIs somewhat together. You will see a staff comment
11 on that in a minute.

12 A similar chart, taking through these links,
13 how Water Supply IIIs and IVs are also lumped
14 together. And these areas -- really, the most
15 important is the center big bar, which is allowable
16 development.

17 So for IIIs and IVs -- for I's and IIs, it's
18 very stringent. You basically have to have a 2-acre
19 lot or smaller development or some other alternatives.
20 But it really maintains it is the rural or very
21 lightly developed community in the watershed on
22 average, while IIIs and IVs really can be developed to
23 about half-acre lots with options for intensive
24 development offsets and things like that.

25 So, again, there's sort of an

1 across-the-board similarity in terms of how the
2 regulation and local government support for Water
3 Supply IIIs and IVs is very similar.

4 And then I will just say that Vs stand out
5 in several ways -- Water Supply Vs. First of all,
6 it's not a watershed, really, at all; it is a stream
7 segment that gets this classification. So there is no
8 particular land use management or anything that could
9 really be tied to it because it isn't an area; it's a
10 line segment.

11 And then for development and for wastewater
12 treatment plants, for putting in any other sort of
13 stringent requirement from DOT, there's no special
14 requirement. It isn't typical of what is essentially
15 done for any other part of the state. It's almost
16 acknowledgment that these are useful options for water
17 supply or there are some industrial use of them, but
18 they're not necessarily -- the public rarely depends
19 on them for regular drinking water.

20 So what has been proposed -- and I think
21 this was discussed at both committees briefly, but you
22 probably know better than I, it certainly was brought
23 up as a topic in the restoration committee, where what
24 we're proposing you think about today is to think
25 about raising the amount of points that are given to

1 these public water supplies in our criteria document
2 along the lines of what I just discussed and sort of
3 kind of lumps of quality.

4 So presently -- and I can't possibly read
5 this -- and it is, again, in your application packet,
6 and the red will stand out clearly. Group 1 is the
7 full points both in restoration/acquisition for the
8 resource significance score, and it is really designed
9 to hit the home run of streams as defined by the
10 state, either ones that are in the 3 of 3 list, and
11 literally the public health to improve and have been
12 identified as such; or they are the healthiest waters,
13 either where people drink -- excuse me -- they're
14 designated as outstanding resource waters by the
15 state, it is our highest value by the experts at DEQ.
16 They define these -- or the shellfish waters on the
17 coast where people are literally eating raw shellfish
18 from these waters.

19 Group 2 is where Water Supply I resides
20 currently in our criteria. And we feel it makes some
21 sense to bring Water Supply II into that same
22 protection level in terms of scoring and also to
23 improve -- to include any projects that would be close
24 to the critical area in that same group; so what it's
25 essentially doing is bringing Water Supply IIs up to

1 the same level of scores as Water Supply I. That's
2 quite a large jump. It comes up by three groups. So
3 it sort of depends which criteria point system you're
4 in but it's -- it's a significant increase in your
5 total score for sure. And, anyway, it would be
6 associated essentially with -- consistent with wild
7 trout waters and things like that: I's and IIs, water
8 supplies, and the critical areas.

9 We're proposing -- staff has thought about
10 bring up Water Supply III and IVs into the next
11 category up. Again, that's a large -- it's a
12 significant elevation for both of those, recognizing
13 these are both large public water supplies. We feel
14 like there is some reason to not give them as much
15 weight in the scoring system or as much score for each
16 of these because the public involvement that matches
17 it, the regulations is less.

18 For example, we could do a stream
19 restoration project there through sediment. At the
20 same time, the development regulations, while better
21 than average, there could still be new developments
22 going in that could threaten that water quality.
23 There's a little more offset in those, but still there
24 is above average North Carolina protections; so it
25 seemed warranted to move these up to Group 3.

1 Sort of it would be the same classification
2 as ones with threatened or endangered species. And
3 these are in the areas of scoring that projects
4 regularly get scored in. So this would bring them
5 into a competitive world.

6 And elevating but also leaving group -- the
7 Water Supply Vs, our proposals leave it really at an
8 intermediate score. It's the bottom of the list there
9 on the screen, but really it's sort of dead in the
10 middle, about 45 to 50 percent of the weight of the
11 possible 15 points in restoration, or 35 points -- the
12 very different scoring system in acquisition.

13 But you get about half the points, maybe a
14 little less, Water Supply V, since -- similar to
15 nutrient-sensitive waters and things like that.
16 Again, some projects have certainly scored those and
17 have been funded in the past; so it's not eliminating
18 them from consideration.

19 We were asked, I think, in both committees,
20 to make sure that any proposed changes we were talking
21 about here wouldn't upset the apple cart and
22 essentially -- you know, if you elevate some project,
23 you obviously are going to eliminate some other
24 project given the limited funding that's available.

25 So we did look back at that, and Will and

1 Nancy scored the acquisition projects again, and I
2 scored the restoration projects again for last three
3 years; and it is about 10 percent of acquisition
4 projects and about 5 percent of restoration
5 projects -- I've got that backwards -- it's 5 percent
6 of acquisition projects, only 12 in the last 3 years
7 that would have received more points, and 4 out of 44
8 restoration projects, about 5 percent -- 10 percent of
9 restoration projects would score more. And there are
10 some reasons for that, when we go into it, it actually
11 makes a lot of sense.

12 But essentially, very -- no actual award
13 differences would have made them happen. There was
14 one project that Justin identified that probably would
15 have -- it was funded, but it was just barely funded
16 on the provisional list, and it would have funded
17 very -- in a nice sweet spot that year.

18 There's no exact way to predict it because,
19 as funding goes up and down and the quality and number
20 of applications that come in, it's uncertain. But
21 looking backwards, it didn't actually appear to us to
22 have made an -- impact a funding decision.

23 One could say, "Why do this in this case?"
24 And I think our argument is that, as we heard earlier
25 discussions about applicants reading the chances,

1 reading the tea leaves and seeing what their chances
2 are, we're comfortable with this as a way that maybe
3 some watersheds that haven't received attention from
4 people considering projects might now be more welcome
5 to -- more likely to look at the scoring criteria, if
6 elevated points are available for these water supply
7 watersheds, potentially get some good applications in
8 the door.

9 So that's what it is. There's another
10 summary up there. Again, these are all on paper in
11 front of you in the application -- in the meeting
12 packet.

13 But essentially, this is really just a staff
14 recommendation. And I don't know how comfortable you
15 feel as a group moving ahead with this much
16 information quickly, but I do know you've each
17 considered them somewhat as a committee, and we
18 considered at least the chance to let you put it
19 together and either instruct committees what to do
20 or -- it's your opportunity to be on the same page
21 with the two committees essentially.

22 So I will be happy to answer any questions
23 or let this discussion go right now.

24 MR. VINES: I'm sorry. On the discharge
25 from the wastewater system, what if it's the last

1 possible point of going into the stream as it goes out
2 to the municipal area boundaries? Would that still
3 affect the water coming from above that?

4 MR. BEVINGTON: Well, so I'm not sure I
5 quite understand your point, but you are saying that,
6 if a last --

7 MR. VINES: In the stream, the last possible
8 point for water to go into the stream after it's
9 discharged would be the last point it would be within
10 the municipal boundaries.

11 MR. BEVINGTON: That would define a Water
12 Supply I or II watershed, yes. Anything -- a Water
13 Supply III could still encompass that entire discharge
14 point because it's just for I's and IIs. That
15 would -- it would be two ways of looking at it. If
16 someone applied for a discharge permit in Water Supply
17 I or II watershed, that permit would be denied. If
18 they had a wastewater treatment plant present and
19 wanted to make it their water supply watershed, it
20 would not be classified a I or a II; it would be a III
21 or lower, if that helps you.

22 MR. VINES: How about a wastewater facility
23 by (indiscernible).

24 MR. BEVINGTON: Yeah. I think this is a
25 generic classification standard; so any discharge,

1 even -- I mean, there's some fantastic reuse programs
2 where people take treated wastewater directly from the
3 wastewater treatment and use it for other things
4 because it can be very clean. But this is sort of a
5 blanket case, I think, potentially anticipating upsets
6 or flooding issues when there is a spill. They say
7 even gray treated water, ultraviolet -- it's still a
8 threat to public water supply. It's not permitted in
9 a I or a II.

10 MR. VINES: Thank you.

11 CHAIR CAWOOD: Other questions?

12 This is something both committees have
13 discussed a great deal; so I would love if people felt
14 comfortable with this that we can propose that the
15 committees make these changes in both of their
16 criteria so that we keep things similar -- as similar
17 as they can be with acquisition and restoration, but I
18 think how we charge resource significance can't be the
19 same with both committees.

20 MR. WILSON: But we are still talking about
21 changes applying to 2019 applications?

22 MR. BEVINGTON: That's correct.

23 MR. WILSON: And the reason for approving
24 this today versus saying, in general, yeah, most
25 likely, but we are going to be voting on all of this

1 in June, is that just to say right now -- help you-all
2 by saying, "Yes, the sense of the board is this is a
3 good idea for the two to be" --

4 MR. BEVINGTON: I do think that's true,
5 although I'll point out Nancy pushed this idea on me.
6 I didn't understand it for a while. She was really
7 pointing out that, in some ways, your approach to
8 water -- to drinking water supply is a policy issue.
9 How important is it to this -- to the Clean Water
10 Management Trust Fund is this decision?

11 So in some ways, that's why we also thought
12 it was good to be heard together, to make sure you all
13 as a group are comfortable with the policy of
14 promoting applications in these kind of watersheds.

15 So with that said, I think it's very much
16 the former, what you said, that we have all of you
17 here in the room together rather than someone coming
18 up with a creative idea two weeks from now in a
19 committee meeting and the other committee finding out
20 about it in June. It would be some juggling.

21 Thank you.

22 CHAIR CAWOOD: Any other discussion?

23 MR. WILSON: So "2019" should probably be
24 added to that motion.

25 CHAIR CAWOOD: For applications beginning in

1 the 2019 cycle? Is that what you're saying?

2 MR. WILSON: Yes.

3 CHAIR CAWOOD: We will make an amendment.

4 Do we have a motion to adopt this

5 amendment -- this proposed amendment?

6 MR. TOOLE: So moved.

7 CHAIR CAWOOD: Thank you, Trustee Toole.

8 MS. KUMOR: Second.

9 CHAIR CAWOOD: Thank you, Trustee Kumor.

10 All in favor say "aye."

11 (Chorus of ayes.)

12 CHAIR CAWOOD: Any opposed?

13 (No response.)

14 CHAIR CAWOOD: Great. And thank you,
15 everyone, for -- that's one of the areas where there's
16 been a lot of thoughtful discussion, and now I
17 understand a lot more about water supply watersheds
18 than I did before we entered this process.

19 I thank you, everyone, for that.

20 Another area which both committees have been
21 discussing and we think is important for the full
22 board to consider and, hopefully, to come to a similar
23 resolution on with respect to restoration committee
24 criteria is the consideration of funding economically
25 distressed communities.

1 And so, Nancy, if you would lead us through
2 that.

3 MS. GUTHRIE: Thank you.

4 This discussion did start with the criteria
5 discussion at our last section that both programs
6 have, which is the value and the weight that is put on
7 matching funds that come along with the -- in the
8 applications.

9 And we did get some comments through the
10 survey about it being difficult in some economically
11 distressed communities and local governments to raise
12 enough local -- or to come up with enough match to
13 score well in that section. And so that's where the
14 discussion really started to be considered of should
15 the fund kind of promote or give some special
16 consideration to those projects in those communities
17 that may have a hard time raising match.

18 And through both committee discussions, what
19 staff was hearing was that you-all do support the idea
20 of special consideration of projects, but you really
21 want to see local commitment to the projects and sort
22 of that ownership of the projects and also to be sure
23 that there are still the high-quality projects that
24 are being funded.

25 So our first difficulty with this is really

1 how do you determine the economically distressed areas
2 on a very broad range of a program the size of Clean
3 Water working throughout the state. And our tier
4 designations are really the best tool that we have at
5 this point to look at that in any kind of very
6 objective way.

7 So let's see.

8 Just to give everyone the picture of the
9 tier designations in North Carolina, the darkest or
10 the highest tier, the counties that are in the best
11 situation economically. And to notice on this map,
12 there are 40 Tier 1 counties, 40 Tier 2 counties --
13 and there always will be, even though these metrics
14 are run and these can change each year -- and then 20
15 Tier 3 counties.

16 This slide shows all Clean Water projects
17 since the fund was started. And importantly to note,
18 this includes when Clean Water was funding wastewater
19 projects and conventional stormwater projects. So
20 there is a spread throughout North Carolina on this
21 slide.

22 Looking at the projects that are funded by
23 Clean Water since the legislation changed
24 significantly in 2013 and starting in the 2014 cycle
25 when we're not funding wastewater and we're not

1 funding local government stormwater projects, this has
2 been the distribution of the projects.

3 And looking ahead at 2018 applications,
4 these will be the choices in front of the board that
5 you will be considering this fall, and -- so just to
6 give you an idea of how these are spread out and where
7 they fall.

8 So there was a lot of thoughtful discussion
9 on this, a lot of thinking after the committee
10 meetings, and staff coming up with some strawman
11 proposals of how this could be possibly worked into
12 the criteria to elevate projects in Tier 1 or Tier 2
13 counties.

14 And we found that changes to the criteria --
15 we kind of kept coming back to you can add points, and
16 that will affect the score and possibly fund more in
17 these counties, but it did not consider the impact on
18 other projects. And as Steve said earlier, every time
19 you promote one project, something else is going to be
20 not funded at that point.

21 So changes to the criteria felt a little too
22 blunt, actually, to really get down to considering
23 that local ownership and making sure that high-quality
24 projects remained funded in any county that they
25 occurred in.

1 The discussion has also been, in the
2 acquisition committee particularly, of not changing
3 their criteria so that they're not locked in to
4 changing the score, but really keeping all of that
5 flexibility in consideration on the projects with the
6 trustees and bringing to you-all's attention the
7 projects in Tier 1 and Tier 2 counties, letting you
8 then look at the significance of those projects, what
9 is being protected, how much ownership the local
10 community has, and then you're also able to consider
11 what that does to other projects on the list.

12 So we did propose a staff recommendation,
13 and this is based on the committee comments, which,
14 again, we're -- we have you all together and want
15 further discussion and modification of this if you
16 want to change any of it. But to present information
17 on the tier designation to the trustees to consider in
18 funding decisions by a including that information on
19 worksheets and having Justin and Damon have that in
20 their slide presentations to you so that you're aware
21 of the county tier and any economic distress
22 consideration you may want to take into your funding
23 decision, but not change the scoring criteria as far
24 as economic status is concerned.

25 CHAIR CAWOOD: And I think something from

1 both committees, since I was a member of both
2 committees, was that -- and, you know, made me feel
3 really good about our process and what we are doing is
4 we want to try to help those that don't have, you
5 know, large staff to be able to look for projects and
6 put in projects for consideration, but just the very
7 strong, strong point that our trustees want the best
8 projects funded and not to dilute that in any way.
9 And that's -- you know, that's our charge with state
10 dollars, is to make sure that they get used in the
11 best possible way.

12 So I was very heartened by that personally.

13 So let's see if there are any questions for
14 Nancy.

15 MS. KUMOR: So what we're saying is that
16 we're not ignoring the economically distressed areas
17 and we're willing to hear that -- the proposals coming
18 from that arena and then, if we choose to value that
19 and value the support that may be coming from local
20 government or from other local entities, that we as
21 the trustees can maybe maneuver that if we think it's
22 a valid proposal anyway.

23 CHAIR CAWOOD: Uh-huh.

24 MS. KUMOR: So that gives us a lot of
25 flexibility.

1 CHAIR CAWOOD: Flexibility. I mean, the
2 criteria there is the guide for us as trustees, and we
3 always have the right to move projects that we feel
4 are particularly important to the state's interest.

5 And this is where I think the field reps,
6 their work is critically important, because they might
7 say, "This is an unbelievable project in Cherokee
8 County, they have been trying their hardest to get
9 money for it and there just aren't the resources to do
10 it; but this would be a big loss if they couldn't get
11 funded."

12 So that's part of the discussion that I'm
13 hoping that we will be able to get through.

14 MS. KUMOR: It also demonstrates that
15 they're responsive to the survey, doesn't it?

16 MR. BRAGG: So, really, the only change is
17 that we will be able to see all the information that a
18 candidate needs?

19 CHAIR CAWOOD: Uh-huh.

20 MR. WILSON: Nancy, something that you and,
21 I think, other staff pointed out to me, to all of us
22 during the acquisition committee meeting, was that,
23 you know, sort of using a one-size-fits-all potential
24 adjustment to elevate, you know, a Tier 1 project
25 isn't appropriate because the Tier 1 project may not

1 truly benefit that Tier 1 county in an economic way;
2 it may not have the local buy-in.

3 My question is does the application invite
4 applicants to provide information that will help us
5 assess potential benefit to a Tier 1 county of a
6 project like this? Or is our application more geared
7 towards eliciting the criteria that get them points?

8 MS. GUTHRIE: The application very much is
9 following the criteria. And that is both because that
10 is where the priority from the board is written, in
11 the criteria, but also, obviously, we need these
12 questions to evaluate.

13 So currently, we do not specifically ask for
14 information on the economic impact, but I do want to
15 say I know Justin and Damon, in this grant cycle --
16 you know, because this had started to become a
17 topic -- have encouraged people in the narrative
18 portion of the application, where they thought they
19 could, to put in a little bit about how this would
20 help their community.

21 I will let them speak more on that if you
22 want and then say that's something we can always add a
23 question in our subsequent grant applications.

24 MR. MERCER: I think Nancy pretty well
25 covered it. Since this topic had come up, I did

1 encourage folks that were in those economically
2 distressed areas to make a case on their application
3 that it would be of economic benefit to that area --
4 just in case the topic did come up for discussion at a
5 board meeting, that we would have that information
6 there.

7 And I think there are several applicants
8 that did take that advice, and, hopefully, you will
9 see that in there when you review their applications
10 between now and September.

11 MR. HEARNE: We also have field sheets that
12 are the questions that we ask out in the field that go
13 beyond the application and get into seeing the parcel
14 and -- in its context, because we're standing out
15 there and we're learning about the community
16 connections and the needs and the history. It's often
17 a lot deeper than they could go into in their paper
18 application or the PDF. And so making sure that that
19 is in our field form questions and something that we
20 cover, especially when we are in counties that are
21 pertinent for this, I think, allows us to develop the
22 story and know kind of what you-all are looking for as
23 far as the background and present that in our
24 PowerPoint presentations.

25 CHAIR CAWOOD: Yes.

1 MR. TOOLE: I think it's fine to take a
2 discretionary approach for the time being. And, of
3 course, the trustees always have the authority to bump
4 a project that scores poorly for whatever reason -- or
5 less strongly than others, to bump it up, as we have
6 done from time to time for reasons that we found
7 compelling.

8 I do caution that a discretionary approach
9 used over time, used without care, can lead the
10 community to feeling that there isn't as much
11 transparency as the criteria of the program has
12 allowed us to portray.

13 So, again, I think in the short term, as we
14 learn how this tiering works, this is a great idea;
15 but we may care to revisit it once we gain some
16 experience and understand how it works, how it doesn't
17 work.

18 CHAIR CAWOOD: Tread carefully.

19 MR. TOOLE: Tread carefully.

20 (Laughter.)

21 DR. KICKLER: Yeah. Our idea in that
22 acquisition committee was that we consider the general
23 statutes and what we have been charged to do, and that
24 is what the criteria is based upon. But there is this
25 concern here, and so we want -- basically, in my mind,

1 I see this as, like, staff going through and
2 highlighting in yellow Tier 1 or Tier 2 communities,
3 and that brings it to our attention when someone is
4 going to have to make a good case that that affects
5 the community, that county's economy in a big way.
6 And it's also a good conservation project and that
7 we're not just funding projects that are in a county
8 simply because they're in the county.

9 MR. CLARK: And I will say that some of this
10 discussion was started at the departmental level about
11 economic distress in a community, having people in the
12 various departments of state government look for ways
13 to help those communities.

14 It has been suggested that perhaps not only
15 there be additional funding associated with this, but
16 having people designated to work with people in the
17 communities to help them understand what resources
18 they have, how they might be able to tap those
19 resources and prepare competitive Clean Water
20 applications might be a good tool.

21 We heard tonight from Valdese. That's an
22 example where our field staff took a failed
23 application, one that wasn't funded two or three years
24 ago in Burke County, which is a distressed county,
25 Tier 1 County, maybe Tier 2 -- I can't remember --

1 Tier 2 -- and basically was able to work with that
2 county, improve their application, and bring them up
3 to a competitive position.

4 So having that kind of outreach is
5 important, and it makes these projects competitive.
6 And oftentimes those communities just don't have the
7 expertise to put competitive applications together.
8 It puts everyone in a conundrum in weighing
9 applications based on their value and natural resource
10 protections.

11 CHAIR CAWOOD: Thank you, Walter.

12 Any other discussion?

13 (No response.)

14 CHAIR CAWOOD: All right. So do we feel we
15 can go with staff's recommendation to charge the
16 committees to not make changes to the criteria as it
17 relates to this but to have consideration that staff
18 would conclude the tier status as it relates to
19 projects and information that we receive?

20 MR. TOOLE: I make that motion.

21 MR. BRAGG: Second.

22 CHAIR CAWOOD: All in favor?

23 (Chorus of "ayes.")

24 CHAIR CAWOOD: Any opposed?

25 (No response.)

1 CHAIR CAWOOD: Thank you, everyone. Again,
2 just a very thoughtful discussion.

3 Next we are going to move to Will to discuss
4 Number 5, The Outer Banks Dare Challenge. And
5 Dr. Kickler has recused himself from this; so we will
6 note for the record that he is not participating in
7 this discussion.

8 (Trustee Kickler absent.)

9 MR. SUMMER: So I will start with
10 background. In 2004, the Clean Water Management Trust
11 Fund awarded \$200,000 to the Wildlife Resources
12 Commission to purchase approximately 120 acres in Dare
13 County. Once the property was purchased, it was
14 subsequently dedicated under the Nature Preserves Act,
15 which, as a reminder, is how we permanently protect
16 all of our state-held lands as opposed to a
17 conservation easement. Like a conservation easement,
18 that type of conservation agreement carries much the
19 same restrictions and weight as a conservation
20 easement.

21 There is an organization known as The Outer
22 Banks Dare Challenge which is a nonprofit drug
23 addiction treatment center that has a facility
24 adjacent to this Wildlife Resource Commission-owned
25 property. That organization has approached the

1 Wildlife Resources Commission to acquire approximately
2 4.2 acres in exchange for 12 acres that they've
3 identified in Currituck County, approximately 20 miles
4 north.

5 So in order for WRC to exchange that land
6 that has our dedication on it -- it was purchased with
7 our funding -- that requires a decision from this
8 board consistent with our conservation agreement
9 amendment policy.

10 So this is the first tract. This is the
11 tract that is currently owned -- or this is a section
12 of the tract that is currently owned by Wildlife
13 Resources Commission. It's approximately 4.2 acres.
14 It's this right here, outlined in yellow. The
15 Wildlife Resource Commission basically would look like
16 this, and this is just on the eastern corner of it.
17 The Outer Banks Dare Challenge facility is right here
18 on this corner, and I believe they have recently
19 acquired this area here.

20 MS. KUMOR: It wasn't part of that?

21 MR. SUMMER: It wasn't part of the Wildlife
22 Resource Property; it was an outparcel, and we
23 purchased the land -- or helped them purchase the
24 land. Everything that's in green -- I'm sorry.
25 Everything in green is WRC-owned land.

1 So they have approached Wildlife Resource
2 Commission about acquiring this 4.2 acres. And, in
3 exchange, they have proposed putting approximately
4 12 acres of what I will refer to as the Wells tract
5 under Wildlife Resource Commission ownership, and
6 they're proposing that then subsequently be dedicated
7 under the Nature Preserves Act. And, again, this is
8 about 20 miles north -- due north in Currituck.

9 So Natural Heritage Program staff have
10 visited both sites. The Wildlife Resources tract is
11 not a rated natural area, as it were; it's just what
12 we call a buffer, which means it's adjacent to a rated
13 area. That area it's adjacent to is Roanoke Island
14 Jonas Marsh (phonetic) which is of R2/C3 significance.

15 The Wells tract -- this is the one they're
16 proposing to swap -- is a rated area. It's a South
17 Currituck Marsh natural area with the same rating,
18 R2/C3.

19 So, though a swap would result in a
20 relatively small parcel that's a management -- might
21 be a management challenge for WRC, I think you could
22 look at this and say, in terms of conservation value,
23 that it's a positive from that perspective.

24 There is the issue that the land that is
25 being traded, as I looked at the tax card today, is

1 probably much less valuable per acre than the land --
2 the higher, dryer land that is adjacent to the road
3 that they are swapping, which runs into another hurdle
4 not only with us, who expect that the money that we
5 would have spent, you know, not be traded down, as it
6 were; but also with state property in general, it's
7 not permissible.

8 So in addition to the conservation value
9 being at least or greater, there's also the actual
10 absolute value of the property being at least or
11 greater.

12 As we speak, an appraisal's being performed
13 to ensure that the monetary value of the swap would be
14 equal or favorable to the state. If it's not, the
15 landowner might be able to add additional acres of
16 that larger parcel that that 12 acres is coming out of
17 to bring that value up.

18 Wildlife Resources -- actually, their
19 commission met this morning, this was put before them,
20 and their motion was to work with the state property
21 office and Dare Challenge to complete the land swap,
22 provided no financial loss to the state. So the
23 landowner, as it were, is supportive of this deal,
24 assuming it crosses that bar.

25 So that said, the part of our conservation

1 agreement amendment policy that pertains to this is
2 under Section C, "Other Circumstances." There are six
3 tenets to that, and I think the first two are the ones
4 that are the deliberative part that this board might
5 consider, and that is: Does this clearly serve the
6 public interest and provide a community benefit, and
7 does it have a net beneficial effect on the relevant
8 conservation values protected by an easement.

9 The other ones are that it not result in a
10 private benefit other than the benefit here on the
11 conservation agreement. One, it's not actually a
12 private entity that's owning this; it's a nonprofit.
13 But, two, because of our involvement with the state
14 property office, any deal that results in an unequal
15 value not to our favor is naturally a no-go either
16 way.

17 Whether it's consistent with the
18 conservation purpose of the easement, I think, if the
19 land traded is of sufficient conservation value, that
20 is acceptable. And then the fifth, the only --
21 Wildlife Resources came to us, and it's actually one
22 of the few grants I found in our history that didn't
23 have a match; so we were the only funder in this case,
24 which is interesting. And then, six, demonstrate that
25 no practical alternative exists and that the impacts

1 can be -- have been minimized.

2 So those are the six parts of our policy
3 pertinent to this decision, and the deliberative ones
4 are 1 and 2, the community benefit and conservation
5 benefit.

6 So that said, the request before us from the
7 Wildlife Resources Commission is to request that these
8 acres be removed from dedication in exchange for 12 or
9 potentially more acres being placed under dedication
10 on a nearby property.

11 And with that, I will take any questions
12 about this proposal.

13 MR. BRAGG: My question has to do with the
14 land around these two tracts of land and what might
15 happen in the future. So when you look at the
16 12 acres of land, I mean, it's surrounded by whatever,
17 but the question is what is going to happen to that;
18 and 12 acres gets real small when it's surrounded by
19 development.

20 MR. SUMMER: It is. In this particular
21 tract -- and this is part of the reason my concern is
22 that the value of the 12 acres as proposed will be
23 sufficient, is that most of everything south and east
24 of this is wader territory. This is --

25 MR. BRAGG: It's what?

1 MR. SUMMER: It's wet. You need waders to
2 get there. In fact, when the Natural Heritage staff
3 visited this, there was a low wind tide that allowed
4 them to kind of walk in on the beach and then cut into
5 the property. So it's -- this property is forest
6 management and duck hunting. I don't see development
7 happening.

8 MR. BRAGG: The follow-up to that, then, is
9 there any potential for a land trust to help us
10 preserve some more of that land?

11 MR. SUMMER: My hope is that -- well, my
12 pure speculation is that, when the appraisers come
13 back on this, in order for this thing to go forward,
14 that 12 acres is probably going to be getting much
15 larger and more attractive. I mean, we have to assume
16 that -- you know, if it's approved as is, that it
17 might not get bigger. But I -- I mean, this is wet,
18 hard to access. There's an access easement from the
19 water. And this is more or less -- it's young
20 loblolly pine. It's -- I won't say high and dry, but
21 it is buildable, as you can see from the area due
22 south of it.

23 I suspect that this land is a lot more
24 valuable and that 12 acres is not going to be
25 sufficient to make this deal go forward as is it sits

1 right now.

2 CHAIR CAWOOD: When do you expect the
3 appraisal back?

4 MR. SUMMER: I think the landowner is
5 waiting to hear a positive -- a nod from WRC and the
6 Clean Water board before spending the money for that.
7 But relatively soon after any decision.

8 MS. KUMOR: Was that building there when
9 this land was brought into conservancy -- or
10 whatever -- was preserved?

11 MR. SUMMER: This land was purchased in
12 '04/'05, and I don't know how old that -- I mean, that
13 outparcel existed, but I don't know how old that
14 facility is.

15 MR. TOOLE: I'd like to follow up
16 Trustee Bragg's comment. I get how 4 acres fits into
17 a larger portfolio of conserved land. I'm struggling
18 with understanding how 12 acres has any conservation
19 meaning because of what's not conserved around it.

20 MR. SUMMER: That's a good question. I
21 think this -- largely, I've left sort of the land
22 management part of it to Wildlife Resources. I mean,
23 they are the ones that would be responsible for this.
24 It is a smaller management unit. I think -- I guess
25 that's a big part of it, is this -- as it's rated, as

1 it sits today, the rating of that 12 acres is higher
2 from a Natural Heritage perspective than the other
3 property; but as it sits, it's a lone parcel.

4 MR. TOOLE: It is a lone subentity.

5 MR. SUMMER: And it may be that this can be
6 built upon in the future, you know, as a starting
7 point, but there's no guarantee of that as it sits.

8 MR. BRAGG: But at the present time, it
9 appears that it could not be developed since it's all
10 wet.

11 So back to our question we have all the time
12 is well, what is the future of this property? If it
13 cannot be developed because it's a wetland, then why
14 do we need to own the land other than for -- to
15 appease the Wildlife Commission, which might be
16 expedient?

17 MR. SUMMER: I think were this just an issue
18 of "Hey, we've got 12 acres over here. Would you like
19 to trade it for 4?" I don't think it would be, to your
20 point -- probably not a worthy discussion. I think it
21 is, Is this an acceptable conservation benefit in
22 order to permit these other activities or this other
23 proposal?

24 But, yeah. I wouldn't -- I wouldn't propose
25 that this be the -- that that is the only thing that

1 makes this of value, is this 12 acres over those 4.

2 CHAIR CAWOOD: Do you know what the
3 discussion was with Wildlife Resources Commission, why
4 they approved this?

5 MR. SUMMER: I think because they want to
6 help the community with this -- the opioid epidemic,
7 and it's just kind of a community need in a lot of
8 North Carolina right now, and I think they were
9 sensitive to that.

10 CHAIR CAWOOD: Thank you.

11 MR. CLARK: I think there was a lot of
12 interest in this and this project site in particular.
13 I think they want to see this on the state level, on
14 the local level, and I think WRC involvement was -- in
15 issue, was trying to be accommodating and follow the
16 rules.

17 We did have a meeting -- Will and I -- with
18 the folks at the Wildlife Resources Commission, and
19 had a very frank discussion about this. I think it's
20 an opportunity, frankly. I think the opportunity may
21 be driven by the fact that these 12 acres is not going
22 to appraise for nearly what the trade value is; so
23 that's the rule that we're going to have to follow.
24 And I believe that that will lead us to a path to a
25 piece of property -- maybe this piece will be expanded

1 greatly or another piece -- that has greater
2 conservation value, I hope.

3 It's not a bad idea to engage with the North
4 Carolina Coastal Land Trust, and I don't know if they
5 have been involved in this or not to assist, but it
6 would not be a bad idea to engage them to see if they
7 can help find parcels of property.

8 I think the challenge for us today is
9 probably the challenge that the Wildlife Resources
10 Commission faced this morning, and that is seeing if
11 we are willing to work with Dare Challenge to try to
12 find a solution to help this community with this
13 project when we have certain standards and obligations
14 that we have to follow.

15 The next thing, which I mentioned, is that
16 appraisal and what the results will be, and I think
17 that takes us down another path.

18 MR. TOOLE: Well, just to weigh in -- I
19 think the appraisal is fine and all that, but it's not
20 in front of us today.

21 MR. CLARK: It's not.

22 MR. TOOLE: And although I am very sensitive
23 to the needs of stemming an opioid epidemic which is
24 probably quite strong in that part of the state, and I
25 get that sense of the urgency of that side of the

1 equation, I am not compelled by the offer because it's
2 a tag-in in a remote area that doesn't tie in to
3 larger conservation values, which, to me, is -- that
4 is the side of the equation I have got to sit and
5 watch out for.

6 To the extent that I can help folks with the
7 Dare program, I want to do it. But they've got to
8 come back with a swap that is not just a 3-to-1 acre
9 swap. It's got to fit into a larger picture for me to
10 get by.

11 MR. MERCER: If I may, there is an existing
12 Ducks Unlimited conservation easement roughly half a
13 mile to the southeast of that 12-acre parcel.

14 MR. TOOLE: To be contiguous like this?
15 Or --

16 MR. MERCER: It is not contiguous, but it is
17 close by.

18 MR. TOOLE: Yeah, I need contiguity.

19 (Laughter.)

20 MR. CLARK: Again, maybe that is what we
21 need to talk, and Millen (phonetic) is going to be at
22 the reception tonight; maybe we should pull her aside
23 and talk to her.

24 MR. BRAGG: She's the chairperson?

25 MR. CLARK: She's the executive director.

1 MR. WILSON: Do we have a map of the
2 4.2 acres in context with the 120 contiguous?

3 MR. SUMMER: I can get you one. Don't have
4 it right now. It's basically if -- so the 4.2 acres
5 is on Roanoke Island. If you go across the island,
6 you take a right on that main drag. It's a few miles
7 down. And if you were to point due north, go across
8 the sound to that little jut around Jarvisburg in
9 Currituck, this property is that way across the sound.
10 So it's almost 20 miles directly due north.

11 MR. WILSON: Which way is it on this map?

12 MR. SUMMER: Due north from that parcel.

13 MR. WILSON: But excluding the little
14 rectangle, the dark --

15 MS. KUMOR: Is this green the outline of the
16 120 acres? Is that the outline of it?

17 MR. SUMMER: Yes.

18 MS. KUMOR: Okay. So that's the parcel.

19 MR. FORDHAM: Is the little parcel that is
20 dark, is it landlocked?

21 MR. SUMMER: I believe so, yes, because
22 everything around it is green.

23 MR. FORDHAM: If it's landlocked and they
24 purchase this, they will get a substantial financial
25 benefit because it is worth nothing now. It has no

1 access. That is just a factor to consider.

2 MR. TOOLE: I would like to suggest that we
3 consider -- I can't speak for the board, of course --
4 but I would like to suggest that we convey to The
5 Outer Banks Dare Challenge our interest and
6 willingness to consider a release of the 4.2-acre
7 conservation easement but for a swap that is -- shows
8 more -- it's got to meet some more conservation
9 criteria. It's not just the number of acres, but it's
10 got to show contiguity to something else. Because
11 otherwise, these patchwork projects just don't work
12 too well.

13 Is that a fair view for you?

14 MR. BEAUJEU-DUFOUR: Yes. Absolutely.

15 MR. BRAGG: It is for me.

16 MR. TOOLE: So I would say --

17 CHAIR CAWOOD: -- bring something back.

18 MR. TOOLE: -- bring something back.

19 We definitely want to talk. We're not
20 saying no, but this particular offer isn't exciting.

21 MR. SUMMER: Understood completely.

22 MR. TOOLE: But I think we need to vote on
23 that, to deny the request.

24 CHAIR CAWOOD: To deny their request as
25 proposed.

1 MR. TOOLE: As proposed, but we are still
2 willing to talk.

3 CHAIR CAWOOD: Any additional discussion?

4 All those in of favor of Trustee Toole's
5 recommendation -- or motion, say "aye."

6 (Chorus of ayes.)

7 CHAIR CAWOOD: Any opposed?

8 (No response.)

9 CHAIR CAWOOD: Thank you.

10 MR. VINES: I need to request a five-minute
11 recess.

12 (Recess, 3:47 to 3:59 p.m.)

13 (Trustee Kickler present.)

14 CHAIR CAWOOD: Thank you for that quick
15 break, and we will get back to the final bit of work
16 that we have to do today, beginning with Business 6.

17 And I think, Trustee Vines, you have a
18 comment?

19 MR. VINES: I ran across something in
20 looking at the Toe River Valley thing. I believe in
21 2013 that I recused myself then because I know all of
22 the players, the property owners, the town; so I will
23 be excuse myself from any deliberations that have to
24 do with that project.

25 CHAIR CAWOOD: Okay. Thank you, Trustee

1 Vines. We will make that duly noted.

2 (Trustee Vines absent.)

3 CHAIR CAWOOD: And we will now begin
4 discussion of the Toe River Valley Watch Request Scope
5 Change.

6 Steve, will you provide that for us?

7 MR. BEVINGTON: Thank you.

8 So this is a request really to revisit
9 consideration we made of a similar request, but under
10 new circumstances now today, that was made last year.
11 I was not employed with Clean Water Management Trust
12 Fund; so there may be aspects of this project you
13 actually understand as well or better than I at this
14 point, but I've tried my best to catch up to speed.

15 So Toe River Valley Watch -- I'll just give
16 you a quick history. Again, you may know better than
17 I, in the 2014 cycle, it was awarded \$375,000 for
18 2,000-foot restoration project on Grassy Creek.

19 And Toe River, working towards performing
20 this project, they did secure letters of intent from
21 all principals with interests on parcels for all
22 portions of the project. However, they then began
23 with construction and proceeded before obtaining
24 either easements or options on easements for all of
25 those parcels -- any of the parcels, in fact. And

1 after completion, to this date, they only have been
2 able to secure some of those easements. And we will
3 go through exactly what they have in a second.

4 In that sort of difficulty -- because they
5 ran into some difficulty securing some of those
6 easements, particularly one in specific, they came to
7 you last March and they put a request to you to allow
8 them to be able to proceed and pay reimbursement on
9 this project even though they did not have all of the
10 easements in place.

11 And at that time, the decision was made by
12 this board to pay 85 percent of the project costs,
13 with the remaining balance of \$56,250 to be paid once
14 the easements are obtained.

15 And that was sort of the letter of the law.

16 Thank you, Terri.

17 So, again, this map will be difficult to
18 see. You may be familiar with it, but the 2,000-foot
19 stream restoration project -- this is the upstream end
20 of it -- proceeds past a -- essentially a small mall
21 in the floodplain down here; and up to a wider extent
22 of the project, it makes a big bend heading north.
23 It's in the vicinity of the Overmountain Victory Trail
24 in Spruce Pine, North Carolina.

25 The little blue area you will see there --

1 and, again, I think you have a copy of it. You might
2 be able to see more clearly in your paperwork -- is a
3 small point of easement that presently they do not
4 have recorded at this point. All the other easements
5 have been recorded in the county record -- deed's
6 records.

7 So since this is a similar request, I do
8 want to point out that there have been some changes
9 since you last considered this.

10 The first thing, just the reality of it is
11 that the Toe River Valley has been sued for remaining
12 unpaid funds for expenses incurred during this
13 project. Toe River Valley -- and I know from
14 communications that the people that -- both sides of
15 that suit know you are deliberating this topic today.

16 Toe River Valley Watch has, since then,
17 received a signed affidavit from the landowner stating
18 that he will put in conservation easement to the Blue
19 Ridge Conservancy the required easement when he is
20 able to do that.

21 As you may remember from the discussion a
22 year ago -- I don't know if I would -- but the
23 difficulty is that there is a sublease that the owner
24 of the property has leased the property to this mall,
25 and the sublease is a Food Lion property which is

1 presently unoccupied. The Food Lion has moved on and
2 the owner feels some comfort that, if he was to change
3 any conditions of his lease, Food Lion would take it
4 as an excuse to stop paying on this property that they
5 are currently not operating on.

6 Other events that happened is that much --
7 after some research, Toe River Valley has tried to
8 determine the conditions of the sublease and
9 determined, as best -- to their extent, it will expire
10 December of this year, which, under their present
11 financial situations, honestly, I think they consider
12 a long way off -- just asked me to say that.

13 The other thing that really happened -- I
14 think it was a pretty important change -- is four of
15 us -- Walter, myself, Will, and Damon -- visited the
16 property and assessed it. I am going to show you some
17 slides of that visit in particular. We had noted
18 before, but we wanted to see it in the light of the
19 easements that had and had not been secured. And
20 one -- I will come up with some of the conclusions of
21 our visit, but the bottom line was essentially that we
22 found that most of the project area where funds were
23 spent is not contiguous with this property. It's
24 downstream of it. So -- for reasons of constraints,
25 very little physical work was actually done in this

1 restoration project in the upper 900 feet of it, which
2 is -- aligns with this portion that is not yet under
3 easement.

4 So just to give you a quick look downstream,
5 the -- this is the very top -- actually, slightly
6 above the beginning of the project. And Damon --
7 these are Damon's beautiful photos. I wish they were
8 a little bigger so you could see them.

9 And if I have misrepresented something, let
10 me know.

11 Looking downstream here, towards the
12 project, and you can see on the left bank the backs of
13 some of the facilities of the mall that is there.

14 The only work that is really done in this
15 area besides removal of exotic vegetation that was
16 done is some in-stream structures that don't take
17 place on the riparian area at all -- they're just
18 in-stream -- to negotiate a water pipe crossing and to
19 minimize erosion. So it's a very narrow corridor at
20 this point.

21 Again, I wish you could see this slide a
22 little bit bigger, but this is downstream now, looking
23 back up to the very long straight stretch of the
24 stream where the work was done along the mall. Again,
25 that's a very small part of the physical work done at

1 this point.

2 And what we're seeing here is a broadening
3 of the project. Once it leaves that sort of
4 constrained property, there is an abandoned -- is a
5 closed and finalized landfill on the left of this
6 picture that constrains restoration activity on the
7 left. And on the right is the mall. And between
8 them, they really had a very narrow margin to work.
9 They didn't do too much work; they just sort of moved
10 exotics and put a few boulders in there to negotiate
11 that pipe.

12 But down below, this is sort of this
13 restoration where you have some pattern put in. The
14 stream meanders back and forth a little bit. It is a
15 very long sandbar that is building now, that has been
16 planted. So this is actually, in fact, where most of
17 the expenses that were expended during the project
18 took place is below the subject property that they are
19 concerned about not getting an easement on.

20 Let's see what's on the next slide.

21 So, in effect, they're asking for a scope
22 change of a temporary nature. Again, what we observed
23 was that the majority of the work, well above
24 85 percent of the funds spent, were spent below this
25 subject property. The Toe River Valley -- you know,

1 we deal in half-million-dollar and million-dollar
2 increments here occasionally -- is \$50,000-plus spent.
3 They have expressed that as a very significant amount
4 of money.

5 The only known obstacle to acquiring the
6 final easement is that sublease concern which is due
7 to expire at a date that is -- we pressed them quite a
8 lot for this date, and they have had two sources now
9 say it's December of 2018, but I don't actually have
10 it from a legal document or proof we could put in our
11 files, but that's what the Realtor says and that's
12 what the agent at the business office for the mall
13 says.

14 So considering this hardship and also
15 considering the fact that there has been some
16 progress, staff do consider one possible solution.
17 And I first need to couch this in a sort of precedent.
18 I read through your last discussions, and people were
19 really quite worried about setting the precedence of
20 allowing any project to proceed without all of the
21 easements being fully in place.

22 And that is something that is a general
23 concern to us, especially with applicants who may be
24 excited about the opportunity of a Clean Water
25 Management Trust Fund award but not necessarily have

1 all of the experience really to pull it off fast and
2 immediately.

3 So I do want to say the other thing that
4 really belongs in the list of activities recently that
5 may be a slight bit different from the last time we
6 considered this is the field reps' excellent work in
7 increasing the amount of connection we do between the
8 central office, which sort of knows the contract rules
9 about the details that Terri and I and Nancy and
10 others go through routinely, and -- and communicating
11 that is just something we are really working on so
12 that these events -- we can't say would never appear,
13 but we hope would be really much less likely to
14 appear.

15 But anyway, that said, that occurred to us
16 that possibly there was a conditional acceptance of
17 their request. That, if we can actually be sure of a
18 date certain when the last impediment to acquiring
19 this easement is secured, whether you would consider
20 or not us essentially trusting that event -- is almost
21 assuming that it is an eventuality, given that we have
22 the owner's permission and affidavits saying he is
23 going to participate, allow us to make a payment early
24 to sort of alleviate some of the difficulties of both
25 the contractors in this project and the nonprofit

1 itself.

2 And I think -- Damon, do you have any
3 thoughts? Or Walter or Will? Since you have all
4 visited the site -- if there are other comments any of
5 you would care to make.

6 MR. HEARNE: My only comment would be just
7 that there has been a lot of work with these folks and
8 detailed discussions and communications in addition to
9 that visit and research and going back quite awhile.

10 So, you know, Steve has all the details that
11 are pertinent, but there has been a lot of stuff that
12 we have worked with on trying to get this figured out
13 and get to a point where we can close out and -- and
14 help their organization be able to move on to other
15 good work.

16 So there has been a lot of work on that.

17 CHAIR CAWOOD: Questions for Steve or Damon
18 or others?

19 MR. TOOLE: I have a question for
20 Mr. Fordham.

21 Is this affidavit legally binding?

22 MR. FORDHAM: No.

23 MR. TOOLE: So we don't have a promise to
24 convey.

25 MR. BEVINGTON: That's correct.

1 The only substantive change, really, is our
2 assessment -- the fact that they have been sued, our
3 assessment that most of the work is protected.

4 But you are right. In terms of having any
5 legal guarantee, there has been no substantive change.

6 The applicant has been asked that many
7 times. I describe it sort of as a noncommunicative --
8 the holder of the permission has ceased communication
9 with them, and our understanding is that would exit
10 once that sublease is -- expires.

11 MR. WILSON: Withholding communications?
12 And is that the property owner?

13 MR. BEVINGTON: The property owner -- excuse
14 me -- yes. The property owner is worried about losing
15 resources.

16 MR. TOOLE: That would be Great Meadows LLC.

17 MR. BEVINGTON: Right. They have ceased
18 immediate conversation.

19 MR. TOOLE: Great Meadows LLC will not give
20 a guarantee of conveyance upon the expiration of the
21 sublease?

22 MR. BEVINGTON: That's correct.

23 MR. TOOLE: Because what this affidavit says
24 is "I have the present intention to one day convey the
25 easement." It's got no date certain.

1 MR. BEVINGTON: That's correct.

2 MR. TOOLE: It's not even -- it's not
3 binding.

4 MR. BEVINGTON: Right.

5 MR. TOOLE: It's just kind of what he felt
6 like on the day he signed it in 2017.

7 MR. BEVINGTON: Right.

8 And I think the applicant was aware of that.
9 They were very happy to have this affidavit, and it
10 was the -- it was the action that encouraged us all to
11 go out as staff to go see the site. And so we
12 recognize that that is the -- it is not a -- in any
13 way meeting the conditions that you set forth last
14 March.

15 And the only -- again, besides our
16 assessment, feeling that more of the work is protected
17 than we had presented last time, the other real change
18 is that -- and, again, while the sort of work they
19 did -- a motion which, again, has no legal weight -- I
20 understand that -- is that we do understand that some
21 equity obstacle to this will expire, and if we had a
22 legal contract with that date when we knew it would
23 happen, we would feel more comfortable with
24 recommending that that payment take place, even at
25 that time being in the future.

1 MR. TOOLE: So I was very uncomfortable, and
2 led a lot of discussion when this came up the last
3 time, and I felt like we were being put into a
4 position not of our making. I continue to feel that
5 way. And we are being asked to bail out folks for
6 whom I have a great deal of sympathy but who created a
7 situation of their own.

8 MR. BRAGG: The staff recommends that we
9 proceed with this -- to go ahead and release the
10 money?

11 MR. BEVINGTON: We do. We had a large -- we
12 felt to accept it on the face of it, as their request
13 was "Pay us now and we hope to get the easement," was
14 weak tea, but we did feel that, at least understanding
15 that the big hassle was eventually going to go away,
16 we can have that in writing from them. When that
17 lease expires, we would have some comfort level, and
18 that's the staff recommendation.

19 MR. BRAGG: Well, I mean, it's easy to
20 second-guess this thing. But where we are, in my
21 opinion, is in the middle of a mess that we don't
22 really like. But these, obviously -- and Charles is
23 not here -- but these are well-meaning people who were
24 trying to do good work is my gut feeling. And it's
25 not necessarily because they didn't do good work; it

1 just got complicated.

2 So I lean toward going ahead and paying the
3 50-some thousand dollars even though we may not get
4 the easement in place because the majority of the work
5 is done. I mean, it's just an unusual circumstance.
6 And second-guessing would say, "How in the dickens did
7 we let this happen in the first place?" I reckon.

8 I mean, are these -- obviously, they're good
9 people and I will assume that they are, but the
10 question is are they a valid land trust or are they a
11 501(c)(3)? Who are these people? And have they done
12 other projects that are valid?

13 MR. HEARNE: Yeah. Toe River Valley Watch
14 is a nonprofit. They have been working with the Blue
15 Ridge Conservancy and Blue Ridge RCMD. Those folks
16 are collaborating, trying to help them out and get
17 this done. It wasn't -- you know, Toe River Valley
18 Watch initiated the project and then started trying to
19 get help from other professional resources and land
20 trusts to kind of complete it.

21 They have done other work in the valley and
22 hope to apply again for other projects. They've been
23 involved in an innovative stormwater application. In
24 fact, the designers and contractors who are the ones
25 that weren't getting paid for completion are kind of

1 part of that -- that whole same community, and the
2 fact that they went -- I don't know how long -- a year
3 or two without being sued was a testament to people
4 trying really hard to make all of this work.

5 And I think I would definitely feel a little
6 bit different about it if it -- nearly all of the work
7 that we put in the ground wasn't protected. The fact
8 that their original grant application had those acres
9 of easement in it was of some fiscal value to the
10 application, but it -- the reality is the work in the
11 ground is protected and there's going to be an
12 extension and interpretation of the Overmountain
13 Victory Trail coming right through this very same
14 site. There was an encampment right there. There is
15 some innovative stormwater work that was done on that
16 property that I think is good for that community to
17 have on the ground.

18 So it's my personal opinion in feeling okay
19 about it. I'm not saying that's the full summary of
20 the staff opinion, but I know the people working
21 there, and, yes, I wish they had executed some more
22 caution at the beginning. But I have also been in the
23 situation of seeing multiple grants that match each
24 other start to expire and deadlines and that need to
25 get the work done.

1 Anyway ...

2 MR. CLARK: And also, to Frank, I think --
3 again, speaking of having some sort of assistance in
4 these local -- nonprofits in local communities to help
5 with that could be really helpful, and our field staff
6 is doing a good job of that.

7 Toe River Valley Watch is pretty much a
8 one-woman show, Starli McDowell, who has been involved
9 in it for years -- certainly well intended. She is
10 one of those community champions that every community
11 needs to get things done, and she has done a lot.

12 It's unfortunate because we are certainly in
13 a conundrum. We have our requirements. We have a
14 well-meaning organization that did good work. Almost
15 90 -- 85, 90 percent of it is protected. And so I can
16 understand and appreciate the trustees' position of
17 trying to hold people accountable but being fair and
18 equitable at the same time.

19 MR. BRAGG: Yes, sir.

20 MR. CLARK: It's tough.

21 MR. WILSON: I have a question. I'm looking
22 at this affidavit, Number 3, "Said lands are being
23 dedicated for conservation purposes to Blue Ridge
24 Conservancy."

25 What does that mean?

1 MR. BEVINGTON: I think legal counsel can
2 say.

3 MR. WILSON: It really means nothing.

4 MR. BEVINGTON: Right.

5 MR. TOOLE: It also is worded in a way that
6 raises more questions than reassurances.

7 So one of the questions it raises for me is
8 what incentive does Byron Phillips and Great Meadows
9 LLC have to follow through with this easement and what
10 incentives or motivations does he have not to?

11 MR. BEVINGTON: Right. And I don't -- so
12 why is he unwilling to commit legally to -- to an
13 easement upon expiration of this sublease? That's my
14 bottom-line question. And what would we do if he was
15 willing to sign such a document?

16 That was more than one question. Sorry
17 about that.

18 (Laughter.)

19 MR. BEVINGTON: So to answer your last
20 question, I mean, that is something -- you're saying
21 we could have requested -- we have requested that the
22 applicant try to seek any other assurances that this
23 will take place in any -- in several forms. And so I
24 put several e-mails out there.

25 And this is where we stand. And I know this

1 affidavit doesn't really take it anywhere. They -- I
2 think I'm trying to say how -- I'm going to say I
3 presented this case in a slightly weaker format to the
4 staff and was told it was weak. So, I mean, we
5 understand that.

6 And we did go back and get them at least to
7 find out when that lease is going to expire. So at
8 least, if that impediment was to release, there is no
9 incentive beyond goodwill that I can understand.
10 There's no financial incentive for anybody to proceed
11 with this.

12 MR. BRAGG: So the question that we have,
13 are we willing to make a statement that we support
14 these grassroots people who are trying to do good
15 work -- and they have done good work with 90 percent
16 of the project; we feel good about. Are we willing to
17 go ahead and release this money -- and that's
18 important -- even though it may not get finished with
19 the easement?

20 And I am willing to do that.

21 CHAIR CAWOOD: So, Trustee Bragg, can we say
22 that that is a motion to approve the request to allow
23 full reimbursement for project expenses?

24 MR. BRAGG: Yes.

25 CHAIR CAWOOD: Do have a second?

1 MR. BEAUJEU-DUFOUR: How do we keep people
2 from coming back with the same problem in the future?

3 MR. TOOLE: And I have a question --

4 MR. BEAUJEU-DUFOUR: I mean, I understand
5 what Frank is saying and I agree with him, people
6 trying to do the right thing. We want to be
7 supportive. But at the same time, if we do that now,
8 I mean, what -- people come back from when we said no
9 a few years ago, you know, "Why not us then?" And
10 when, in the future, they say, "Well, you did it to
11 the Toe River, why not us?" How do you justify it?

12 And that is my biggest problem here with it.

13 CHAIR CAWOOD: I think that that is a great
14 point, and I think that's why our minutes are so
15 important as to -- like it was in 2013, this was not
16 an easy decision for the board to make. There was a
17 lot of discussion.

18 We have, you know, staff comments that lead
19 us to how much work has been going on to try and make
20 this work and get this, but sometimes I think we come
21 across as difficult people, that you're thinking
22 you're going to do one thing and then they do
23 something else.

24 So I think -- I am not speaking for Trustee
25 Bragg -- but just to give a little grace is what I am

1 hearing.

2 Trustee Kickler?

3 DR. KICKLER: I have a question.

4 After our meeting on March 1 when we tried
5 to find a solution for this problem, what -- I see
6 that staff has processed payment -- and forgive me if
7 I missed what's happened since then -- but what has
8 happened to try to get the easement? What type of
9 efforts have been made?

10 MR. BEVINGTON: So we did ask the Toe River
11 Valley Watch to catalog their efforts, and I think
12 they have been thorough, but they have also been
13 frustrated by things that, frankly, I wonder if
14 everyone would've been frustrated by.

15 I mean, in other words, placing calls to try
16 and find out some of these facts about when -- well,
17 let me back up for a second.

18 They did things such as develop a new option
19 to place this exact parcel under easement and offered
20 as an option, instead of a signed document, a small
21 change; but, again, they made the approach and didn't
22 receive positive -- or any feedback. It was sort of a
23 blank no answer.

24 They haven't gotten a negative answer or a
25 positive answer, and staff has harangued them,

1 frankly, to try to find some kind of progress. Is it
2 a "no"? Is it a "I'm just not answering your
3 calls" -- that sort of thing? So I think that's been
4 the only --

5 DR. KICKLER: So they've made repeated calls
6 and letters --

7 MR. BEVINGTON: Repeated calls and repeated
8 submissions. They've also --

9 DR. KICKLER: And the other side is just
10 ignoring?

11 MR. BEVINGTON: Right.

12 MR. HEARNE: The other side has asked legal
13 counsel to stop responding or to not spend more of
14 their money dealing with legal counsel intermediaries.
15 So they don't have a direct one-to-one connection. It
16 has been a little bit awkward that way.

17 DR. KICKLER: I see.

18 MR. BEAUJEU-DUFOUR: The Food Lion lease
19 comes to date, comes to be due --

20 MR. BEVINGTON: Well, that is one of the
21 things that led up to our motion -- not our motion --
22 our proposal, is we have been told by the Realtor -- a
23 Realtor in the region and the business office for
24 people administering the mall that it ends in December
25 of this year, December '18.

1 However, we have asked for it for several
2 months. We haven't -- no one has been able to, from
3 the applicant's end, secure an actual document that
4 proves that. And, frankly, we were hoping to walk in
5 today and say, "The lease expires December 12,
6 2018" -- to tell you that, because it's an important
7 fact. All they have done is be able to say, "The
8 Realtor says so; the business office says so," and so
9 that's why we couched it as "If they can give us that
10 date certain, at least we have another hope that, at
11 some point, an exact known time, this might actually
12 proceed to an easement."

13 MR. BEAUJEU-DUFOUR: Because the lease on
14 the Food Lion is the biggest issue; so why can't we
15 get a letter -- a binding document from the landowner
16 saying, as soon as Food Lion lease is finished, then
17 we get the land? And then we give the money?

18 MR. TOOLE: I think we have to presume -- if
19 we are going to proceed with disbursing the remaining
20 15 percent of the funds, we must do so under the
21 presumption that that easement will not be obtained.
22 If we get the easement, yay, it's a good day. But I
23 think you just have to -- I mean -- because, if this
24 Food Lion lease does expire in 2018, it could be
25 renewed.

1 MR. BEAUJEU-DUFOUR: The Food Lion is
2 vacant.

3 MR. TOOLE: And Food Lion might -- and the
4 same issue could continue about this concern about
5 whether the easement is going to cause the tenant to
6 declare a default.

7 MR. BEAUJEU-DUFOR: Yeah, but at some point
8 in time, we would get it. Even if they renew the
9 lease for 60 years, after 60 years, we would get it.

10 MR. TOOLE: But the problem -- and then that
11 was the point of my question about this affidavit not
12 being binding anyway, is, in a perfect world, you
13 would've gotten a binding agreement to convey the
14 easement at the end of that lease. But if the owner
15 of the property is not communicative, as apparently
16 they are, we are wasting everyone's time to ask for
17 that, although that would be the perfect solution.

18 So I now find myself confronted with
19 sympathy for a small grassroots organization that is
20 facing a lawsuit and sympathy for the contractor that
21 works and needs 56,000 bucks. That's real money.

22 MR. BEAUJEU-DUFOR: Oh, yes.

23 MR. TOOLE: So I'm sympathetic to that. I
24 am concerned about programmatic integrity. I guess I
25 can console myself with the notion that we don't have

1 to do this for someone else in the future.

2 MR. BRAGG: Not really.

3 MR. TOOLE: And I am so heartened by Trustee
4 Bragg's soft heart that I find myself compelled by it.

5 CHAIR CAWOOD: Was that a second?

6 MR. TOOLE: Yes.

7 (Laughter.)

8 MR. WILSON: I do want to go back and ask
9 one part of my question again, and that is what is the
10 incentive for the property owner to convey that
11 easement?

12 MR. BEVINGTON: Damon may have a thought; I
13 don't.

14 MR. HEARNE: So there is a note in the
15 affidavit, if you -- it's worth looking at -- that
16 says that the area is not to be developed, and they
17 are expressing intent. So there is a social integrity
18 pressure to do it from that -- a community social
19 pressure for someone that is a member of the community
20 and a part of the economics there to do this.

21 And so I think, if we hadn't seen that
22 expressed intent or other signals, I would say there
23 could be -- that I had zero faith that it would
24 happen. But that affidavit and knowing those other
25 things give me at least some amount.

1 And I do agree that you have to proceed
2 being okay if it never happens. I don't think there
3 is a big disincentive to do it and that we're talking
4 about a 10- or 11-, 12-foot strip of stream bank
5 between the edge of the curb on the back side of a
6 development and the stream that doesn't have economic
7 value for some other purpose to them or to some future
8 lessor of the project -- of the parcel.

9 So it's not a spot where they are going to
10 put a banana stand or, you know, whatever in the
11 future and try to make hay with that. It's just not.

12 I have walked that property and, you know,
13 they could have some bee in their bonnet that makes
14 them decide not to do it, but there isn't any real
15 evidence there or strong disincentive that we can see
16 that would outweigh what they said they were going to
17 do.

18 MR. WILSON: That's helpful.

19 MR. HEARNE: None of that is very binding,
20 but it's the facts that I can deduce.

21 MR. WILSON: That helpful.

22 MR. BRAGG: What I am hearing is, even if we
23 never get the easement, it's likely not to be anything
24 that is going to destroy the integrity of this
25 project. It's a small area that probably can't be

1 developed anyway.

2 MR. BEVINGTON: I think we would agree with
3 that. I wanted to add one other thing too, in much
4 the same vein, that just in the last few days was made
5 available to me -- to the applicant -- so I wasn't
6 able to put it in your package -- but Toe River also
7 has, for the entire property, a signed letter from the
8 owners to participate in wildlife management through
9 the U.S. Fish and Wildlife Service.

10 So there is some --

11 MR. BRAGG: Yeah.

12 MR. BEVINGTON: And that was accomplished
13 several -- in 2015; so it's nothing new. But the
14 ownership has participated in past conservation
15 practices on the property. So that was why they were
16 able to remove exotics like that.

17 I think the other thing I would say is this
18 was a 2014 project. We have much more stringent goals
19 now for riparian easements; so we probably would have
20 maybe even flagged this project as one we would
21 shorten beforehand and say, "Forget that 900 feet near
22 the mall. Don't count it as you're doing 2,000 feet;
23 you're really doing 1,100," and evaluate their costs
24 in terms of that.

25 So we hopefully won't see that sort of

1 11-foot buffer argument we are facing too.

2 MR. HEARNE: Some of it's a little wider,
3 but it's --

4 MR. BEVINGTON: Right.

5 (Gavel strike.)

6 CHAIR CAWOOD: Very good discussion.

7 Any other thoughts?

8 All right. Well, we have a motion and a
9 second.

10 All those in favor, "aye"?

11 (Chorus of ayes.)

12 CHAIR CAWOOD: Those opposed?

13 (No response.)

14 CHAIR CAWOOD: And I do think that it's
15 extremely important that we do note in the record that
16 there was a lot of discussion over this. There was
17 concern for precedent, there was concern for what this
18 meant to others, and there were extenuating
19 circumstances that made the board comfortable with
20 this action.

21 DR. KICKLER: Madam Chair, let the record
22 show that I abstained from the vote.

23 MR. WILSON: And maybe not "comfortable."

24 (Laughter.)

25 MR. BEVINGTON: Yeah. If I could just state

1 that staff struggled with this, as you can imagine.

2 CHAIR CAWOOD: We appreciate all the work
3 staff has put into this. Obviously, not an easy one.

4 Okay. We will welcome Trustee Vines back to
5 the discussion as we go to Business Number 7,
6 Sandhills Area Land Trust Request for Scope Change.
7 This will be Nancy.

8 And on this, Trustee DuFour will excuse
9 himself from the discussion. Maybe you can tell
10 Trustee Vines he could come back in.

11 (Laughter.)

12 (Trustee DuFour absent; Trustee Vines
13 present.)

14 CHAIR CAWOOD: Nancy?

15 MS. GUTHRIE: Okay. This is a scope change
16 on a 2016 project, and I have put the bullet summary
17 points on the slide for you.

18 It was a small project to begin with,
19 17 acres. It is now reduced to about 9 acres.

20 And in working with Sandhills Area Land
21 Trust, when they first brought this to me, Sandhills
22 Area Land Trust has done a good bit of work with the
23 landowner to also reduce the request to Clean Water
24 Trust Fund by a proportionate amount. And they are
25 doing that by putting some of their own funding into

1 the project that was not there originally and
2 continuing to work with one of the landowners.

3 So the score on this project to begin with
4 was a 69, not a really strong project, but at the same
5 time, it was funded from the military buffer funds.

6 Terri, next slide.

7 This is to put the tract, the Newell tract,
8 in some context along the Deep River, and also there
9 are areas here -- and the lighter areas that are --
10 have been funded as military projects where -- this is
11 a training area for Special Forces using this
12 corridor.

13 The original project, the owner,
14 Mrs. Newell, owned both of -- two properties, and the
15 outline in red near the riparian buffer is what was
16 going to be under Clean Water's easement.

17 Mrs. Newell, even though she did have a
18 letter of intent with Sandhills Area Land Trust and
19 they were working in good faith with her, she sold one
20 of the parcels to a Mr. Bumgarner. He is willing to
21 continue with the project; so then we just simply had
22 two landowners, and that was not a problem.

23 But she then subdivided the remaining parcel
24 and sold a section of it to a landowner who is not
25 interested in continuing with the project and putting

1 an easement on his property.

2 Terri, if you'd go to the next slide.

3 This tries to focus in on the two original
4 parcels there. The southern one sold to the owner who
5 is willing to go forward with the project. The one in
6 the middle is the owner who is not interested anymore.

7 And Sandhills Area Land Trust has decided
8 that the expense and the effort of putting an easement
9 just on that small Newell tract is not enough -- their
10 own board decided not to pursue that one. But they do
11 want to continue working with Mr. Bumgarner. It is
12 now a small easement, though it is still in a corridor
13 where the Army has committed funds on other projects.
14 Sandhills would like to continue with this to build
15 that corridor in hopes that one day this will connect
16 to larger parcels, and maybe Mrs. Newell and the other
17 owner would come on board at some time in the future.

18 Next slide.

19 So, again, this is -- I have become
20 supportive of the project change once I saw that the
21 Sandhills Area Land Trust went to Mr. Bumgarner, got
22 him to increase what he will put in as a match, put in
23 some of their own money into the budget to try and
24 keep everything proportional and keep the score from
25 changing from what it was originally funded.

1 So it's for you-all to decide if this
2 reduced project is still a project you would like to
3 continue with.

4 CHAIR CAWOOD: One quick question.

5 So the score remains the same?

6 MS. GUTHRIE: The match is the same. The
7 resource protection is the same. So those were the
8 major changes that typically shift a score once a
9 scope changes.

10 CHAIR CAWOOD: Okay. Other questions for
11 Nancy?

12 (No response.)

13 CHAIR CAWOOD: If not, is there a motion to
14 approve this request?

15 MR. WILSON: This is supported by staff?

16 MS. GUTHRIE: Yes.

17 MR. TOOLE: And you're asking for motion?

18 CHAIR CAWOOD: I am.

19 MR. TOOLE: I will do it.

20 (Overlapping speakers.)

21 (Laughter.)

22 CHAIR CAWOOD: Is that a second, Mr. Bragg?

23 MR. BRAGG: Second.

24 CHAIR CAWOOD: All in favor?

25 (Chorus of "ayes.")

1 CHAIR CAWOOD: Any opposed?

2 (No response.)

3 CHAIR CAWOOD: Thank you, everyone. And
4 thank you. You could tell that these are tough issues
5 that the staff has put a lot of time into, working
6 very hard, and we appreciate the Sandhills
7 conservancy, the work they've done on that.

8 So thank you.

9 And now I would like to turn to Trustee
10 Kumor to introduce a special guest that we have with
11 us.

12 (Trustee DuFour present.)

13 MS. KUMOR: You can see that, at this
14 meeting, we are having a special presentation,
15 "Innovative Stormwater Program Influence on Statewide
16 Stormwater Practices," and Annette Lucas is here,
17 supervisor for the DEQ Stormwater Program, and she
18 works on stormwater planning. She is a public policy
19 graduate of Duke and a civil engineering graduate from
20 State.

21 And so you have fans from both of those.

22 (Laughter.)

23 MS. LUCAS: Any Carolina people here?

24 (Laughter.)

25 MS. LUCAS: I have a daughter at Carolina.

1 So I am paying tuition to the light blue university
2 now. It's a little strange, but I'm getting used to
3 it. I'm really proud she's there.

4 So like the trustee said, I am glad to be
5 here in front of you, and thank you for making time
6 for me.

7 I am the supervisor of the state Stormwater
8 Program, which is part of NC DEQ. And I'm just going
9 to tell you a little bit about what we do and how
10 you-all have contributed to that, both in the past and
11 possibly as well in the future.

12 So the first thing I want to say to you-all
13 is thank you, because, obviously, you have a lot of
14 different priorities for your funding and you have
15 found space in your budget to help support some
16 innovative stormwater research, and we really
17 appreciate that. I just feel -- you don't know.
18 There are people over there in the Archdale building
19 feeling grateful to you that we can offer options for
20 stormwater treatment in North Carolina that we could
21 not offer if we didn't have y'all's support. And I
22 just wanted to explain that to you.

23 And you may wonder what we do. We don't
24 make it rain. I wish I had control over the rain. I
25 could make it rain just Monday morning, then have it

1 clear on the weekend, but I don't have control over
2 that.

3 But here is what -- the things we do, as we
4 have a very diverse program. Actually, we have over
5 200 different municipalities throughout the state of
6 North Carolina. We oversee their programs and
7 sometimes we visit them, see how they're doing. We
8 don't call audit -- we don't say "audit." That's what
9 we do; we audit them. And we just also try and
10 provide guidance to them. That's that piece of our
11 pie, the orange piece of our pie.

12 The blue piece of the pie is our industrial
13 permits; so there are over 4,000 industries in our
14 state industrial facilities that have a permit from us
15 to hopefully keep any chemicals that they might be
16 storing on their site, usually on their site, out of
17 our stormwater management systems, out of our storm
18 drains, and out of our rivers.

19 We don't want y'all to pay a lot of money
20 for these projects to improve our quality and have an
21 industry inadvertently pollute it. And we have seen
22 recently what kind of challenges can happen with that.

23 So the green piece of the pie is kind of our
24 new development program, and there's really two
25 components to that. One, in parts of the state, we

1 review stormwater management plans; and the lighter
2 green part of the pie is we do our own reviews of
3 stormwater management plans for new development
4 projects. And really, where you-all help us is with
5 this darker green piece of the pie, and that is
6 setting up design standards for new development
7 projects.

8 So if someone is building a new shopping
9 center, a new neighborhood, a new apartment complex,
10 in many parts of the state that is required to treat
11 the stormwater before it is discharged to our streams
12 and wetlands.

13 So we have recently -- and you-all helped us
14 with this whether you realize it or not. We recently
15 had a couple of legislative mandates that caused us to
16 have to update all of our design standards in sort of
17 a quick fashion.

18 So first of all, there was one session law
19 that required us to work with a diverse team of
20 stakeholders to update all of our stormwater design
21 standards. They called it minimum design criteria
22 that we now affectionally call MDC. All of us in the
23 stormwater world know what MDC is. It's the minimum
24 design criteria. I'll tell you a little bit more
25 about that.

1 And then, in addition, we are subject to
2 rules review and readoption. Y'all don't have to do
3 that since you're not regulatory, but all of us
4 regulatory agencies had to all, over all of our roles,
5 look for ways to update them, look for any
6 requirements that were no longer relevant or out of
7 date, make them up to date.

8 So we in the stormwater program wanted to
9 use your tax dollars wisely. So since both these
10 efforts required rule-making, we did one rule-making
11 process that -- of course, we don't kill birds at DEQ,
12 not even the light blue ones -- but we did one
13 rule-making process where we implemented the -- I
14 should say we codified the MDC into rules, and we
15 reviewed and readopted all of our rules together.

16 And we were the first agency at DEQ -- the
17 first program, I should say -- to complete rules
18 review and readoption. We had it done over a year
19 ago. So that was kind of nice, but then you become
20 the expert, and they will ask me, "What did you do?"

21 So what are the minimum design criteria?
22 The legislature came up with that, and what they
23 wanted was for us to have this all-inclusive list of
24 everything you have to do when you're designing a
25 stormwater control measure -- like a stormwater wet

1 pond, stormwater wetland, retention cell. What do I
2 have to do if I am an applicant? What is the end-all,
3 be-all list, if I check all of these boxes off, I know
4 I can get my permit? So that's what we were told to
5 do. Of course, I'm there in that ivory tower there.

6 So here was the stakeholder committee that
7 we convened. It was very diverse, and they told me
8 that I had the pleasure, the honor of leading it. So
9 that seemed a little daunting, and it was at times a
10 little challenging because we made all of our
11 decisions by consensus. We started with the design
12 standards that we currently had, and we went through
13 every one of them and painstakingly updated every
14 single one. Many, we decided, were no longer needed.

15 And the committee was very devoted to this.
16 So everyone was a volunteer, like you-all, and they
17 spent 5 1/2 hours once a month for 18 months helping
18 us update these design standards. And, of course, we
19 are DEQ. We had no resources to reimburse them for
20 their travel. We didn't even give them lunch or
21 anything. We did have free parking at the facility,
22 but that was about all we offered them.

23 (Laughter.)

24 MS. LUCAS: We were really grateful for
25 their effort. And I have to say, being a regulatory

1 agency, a lot of times what we do is we are in that
2 ivory tower Archdale building, and we come up with
3 these rules and ideas, and then we take them out to
4 the public and get their comments and try to improve
5 them.

6 It's a totally different and better process
7 when you work with the stakeholders up front and
8 discuss with them because they have -- a lot of folks
9 were in the building industry, construction industry.
10 They said, you know, "You-all have this design
11 standard, but it doesn't work," or, "We don't need
12 this completely hard and fast one; we need some
13 tolerance here. We can't be sure it's going to come
14 out exactly this certain percent. Give us a range."

15 So they really helped us with that. And
16 then we had two folks from academia, and one of them
17 was Dr. Eban Bean, who used to be at ECU, and the
18 other one was Dr. Bill Hunt, who I'm sure you all know
19 because you funded a lot of his projects. And they
20 were able to contribute to that committee in a very
21 informed manner.

22 So I guess, like I said, we were working on
23 consensus, but we were also working on the idea we're
24 trying to protect water quality here.

25 So Bill was able to say, "I have researched

1 these practices" -- with support from you-all and
2 other funding agencies -- "and I know that you can get
3 away with this to kind of cut costs, but this over
4 here, management strategy or design standard, is
5 really important, and it won't work right unless we
6 have this."

7 So we weren't just shooting in the dark
8 because our researchers were informed, because their
9 research has been supported by people like you-all.

10 So we have new rules, like I said. And we
11 have all of these minimum design criteria or new rules
12 that have been in effect for over a year now. They
13 have been very well received. Actually, Bill Hunt,
14 when you find him -- I'm not trying to advertise for
15 Bill, but he is a good friend -- but you get a lot of
16 bang for your buck when you support some of this
17 research because he turns around and educates the
18 whole state about it.

19 So he and I team up. We have traveled from
20 east to west teaching designers about the new minimum
21 design criteria, and we have educated over 500 people.
22 So every one of our workshops about the new minimum
23 criteria has totally sold out. So I tell my daughter
24 at Carolina and my son, who's still 16, I tell them,
25 you know, "Bill and I are just such rock stars. All

1 our shows are selling out."

2 They don't believe me.

3 So how have we changed from what we had
4 before? Like I said, we had design standards before;
5 of course, they are updated based on science, based on
6 research. They are more efficient, as in they cost
7 less money, and they are also more effective because
8 there are some low-cost things we can do based on
9 research to make these devices work better. And then
10 there are other things that we were requiring people
11 to do that cost a lot of money that didn't have a
12 conventional -- or an improvement in water quality.

13 Of course, I work for DEQ; so I have to
14 think about quality, but I also have to think about
15 cost. I don't want to have a design standard that
16 costs twice as much and results in 2 percent
17 improvement in the performance. I am supposed to find
18 the right balance. I'm not with Sierra Club; I'm
19 supposed to find the right balance between cost and
20 improved water quality.

21 So how much more efficient? So we had to
22 do -- we called rule meetings. They take a lot of
23 staff time. We had to estimate some of the costs and
24 benefits of our various new rules with the minimum
25 design criteria. So the units are in thousands of

1 dollars.

2 So we estimated the various rules that we
3 made the changes -- that we updated the design
4 standards. We estimated that we're saving the
5 development community at the time of development, as
6 well as the owner in terms of less maintenance costs,
7 over \$17 million. So we were conservative about that
8 because we didn't -- we didn't want to overinflate
9 ourselves; so we erred on the conservative side. So
10 we're really proud of that.

11 I already told you, how did we know how to
12 do it? It was because of research that's been funded
13 in our state by agencies like yours.

14 So particular to the Clean Water Trust Fund,
15 here are some of the practices that you-all have
16 supported in the past in research that a lot of the
17 MDC are based on.

18 So -- actually, I had to do this quickly. I
19 really should have added infiltration systems up at
20 the top. That's one of our first chapters in our
21 stormwater design manual now. By the way, this is a
22 screenshot of our stormwater design manual that's
23 available online on our Stormwater home page.

24 So infiltration systems -- you-all funded
25 The Colonnade in Raleigh, and that was one of the --

1 previous to this effort, we limited the use of
2 infiltration systems basically to sandy soils. We
3 said, outside of sandy soils, you can't infiltrate
4 stormwater.

5 Well, this research project you-all funded
6 proved that totally wrong. I mean, here it was right
7 in Raleigh. I don't know if you've seen the
8 photographs of the excavation for that site, but
9 that's got a lot of clay in it. It's bright red, and
10 they were able to infiltrate -- that facility stores
11 350,000 gallons of stormwater and infiltrates it.
12 That site actually releases less stormwater after
13 development than before development, which is unheard
14 of.

15 So that one should be boxed as well. So
16 forgive that omission.

17 Permeable pavements -- you've done -- you
18 funded research in rainwater harvesting; you funded
19 research in green roofs and level spreaders and
20 disconnected impervious surface.

21 So when we give you the box for infiltration
22 systems too; we'll say over half of our manual and
23 especially the more innovative half, that minimum
24 design criteria are based on the findings of research
25 that you-all have supported.

1 Here is our manual. We updated the look of
2 the manual too so we are kind of proud of this.

3 Okay. I can really geek out. As she said,
4 I'm an engineer and we're geeks, and people get tired
5 of listening to us. So I'm not going to talk for too
6 long about this, but I just wanted to give you some
7 highlights of some of the updates that were brought
8 about by the new MDC and the research.

9 So it used to be permeable pavement --
10 that's basically an infiltration system. It's putting
11 a layer of pavement -- we have a layer of pavement. A
12 lot of times, it's these papers. They are very
13 attractive, actually, and they have little gaps
14 between them. If you want to see some, just go
15 outside the new science museum. It's right on the
16 sidewalk there. That's permeable pavement. In
17 Raleigh. In Raleigh.

18 And then there is a layer underneath that
19 you can't see, but that is where the stormwater soaks
20 through into the pavement and is stored. And then the
21 majority of the stormwater goes into the ground.

22 There's not a drain here, but we have an
23 engineered upturn, although it actually stores the
24 water and lets it be infiltrated, and we only bypass
25 stormwater when there's really big storms where we

1 don't want the pavement to flood.

2 So previous to all of these efforts updating
3 the manual, it was only used sometimes on the coast
4 and coastal areas where the soils are sandy. It was
5 only given just a little bit of credit. Now, we allow
6 pavement to be used throughout the state and we allow
7 full treatment credit. We don't prefer a wet pond
8 over a permeable pavement; in fact, we'd prefer
9 permeable pavement. So we have taken down a lot of
10 the barriers to using pavement.

11 On the majority of coastal projects,
12 pavement is -- permeable pavement is considered to be
13 one of the primary practices. Every designer thinks
14 about using it before they go to the next practice,
15 and we are seeing more and more of it throughout the
16 entire state.

17 And you-all funded some research in Boone,
18 North Carolina, Casey & Casey law firm, and that -- we
19 didn't know if it was possible to have successful
20 permeable pavement at Casey & Casey law firm. Well,
21 N.C. State wanted to research what was the quality of
22 the stormwater coming out of that pavement. Well, the
23 problem was there wasn't any stormwater coming out of
24 the pavement, virtually none, because all of it in
25 Boone was going in the ground, and that's what we

1 want.

2 And plus it's great because that's one
3 stormwater control measure I see that you can park on
4 and drive on. It doesn't take up space on your site,
5 and space is limited more and more.

6 And then, in addition, per the MDC, adjacent
7 areas, PUAs, since they're in a built-upon area,
8 adjacent areas can drain onto the pavement. The
9 stormwater from them can soak into the pavement too.
10 So you could have a law firm, you could drain the roof
11 into the permeable pavement, and then the pavement is
12 kind of treating itself, and you wouldn't need any
13 other stormwater treatment practice on your site. You
14 could use your whole entire .3-acre site for your
15 facility.

16 Another update was brought about because of
17 the research that you-all funded is -- that we now
18 allow credit for disconnected impervious surface. So
19 this is a long -- it's a long string of words, but
20 what it just means is we're taking the stormwater that
21 is running off our streets and our roads, and instead
22 of piping it directly to a stream, instead, we're just
23 letting that water soak into the ground and
24 infiltrate.

25 So you hear the common theme: Infiltration.

1 Infiltration is the best way to protect the streams.

2 So in Durham, when you-all funded the
3 disconnected impervious surface project, it was found
4 by N.C. State that the water -- 65 percent of that
5 runoff or the rainfall that occurred during the
6 research period, which was about a year, soaked into
7 the ground. So we kind of conservatively gave some
8 credit for reducing the volume of runoff.

9 Here is a -- this is like a cross-section;
10 so like a slice of a road. Roads are usually crowned
11 and the water flows off into the vegetated area. It's
12 simple and so cheap.

13 So I cut a picture out of this. So this is
14 actually -- this allows people to greatly reduce the
15 size of the stormwater treatment practice that the
16 water eventually flows through; so it's a big savings
17 for virtually no cost.

18 And then another update is we now allow
19 rainwater harvesting based on research. You-all
20 funded some research at the City of Raleigh about
21 rainwater harvesting, and we have been able to take
22 the results of that and allow people to use rainwater
23 artistically as a stormwater treatment strategy as
24 well.

25 And so why is this all important? So this

1 is really important because, if we didn't have y'all's
2 support, most people would always use this practice of
3 the wet pond. And we still allow wet ponds and we
4 probably always will, but they're not always
5 attractive. Sometimes they're attractive, like at the
6 top; but a lot of times we have seen wet ponds like
7 these two at the bottom. They either have algal
8 blooms in them, or they are full of this sediment that
9 actually needs more -- we require two to five days for
10 it to filter out. It takes a lot longer than that for
11 some of those.

12 So I have always thought they're taking
13 stormwater that's not that bad, really, and we're
14 putting it here to clean it before we discharge it to
15 the stream. It's not really the best, sometimes,
16 treatment practice.

17 And then also, a bit less obvious, is we are
18 actually changing the hydrology. This is a geeky
19 engineer graph. But what ponds do is they take
20 stormwater that is generated at the surface and they
21 capture it, and then they release it more slowly over
22 a longer period of time. So it seems like, "Oh,
23 that's a good idea because we're not causing flooding,
24 we're not causing water to come out of the
25 streambanks." So you're solving one problem. You're

1 not flooding people's neighborhoods and their
2 basements and everything. But you're creating another
3 problem because, right here, this is what the wet pond
4 does, is it is holds the water at this bank full level
5 for a longer period of time, and that's the level at
6 which the stream erodes the most. And then another
7 thing we learned about is you're cutting off the
8 recharge of the stream between the storms.

9 I'm almost done. I'm geeking out too much.

10 All right. So we're causing streams to look
11 like this. This isn't really what we want. It's not
12 good water quality.

13 So I mentioned my gratitude for the research
14 you've funded in the past, and you've heard more than
15 you probably wanted to hear about how important it is;
16 and I was really excited when Steve and Will
17 approached me and invited me to share with you-all
18 some areas that we need future research in stormwater.
19 So we posted this on our stormwater manual page, and
20 here are some of the items we're hoping to learn more
21 about stormwater management that would be especially
22 useful for the state.

23 And you don't want me to go through this, do
24 you? Or you do?

25 (Indiscernible comment.)

1 MS. LUCAS: There are six areas that really
2 jumped out at me sitting where I do as manager of the
3 stormwater program. One of them is floating wetland
4 islands. So this is -- they're actually nice. They
5 go on wet ponds, and it's an island with vegetation on
6 it. There's some kind of apparatus that floats, and
7 then plants are actually planted in it. And it takes
8 out -- we think it takes out a lot of the nutrients.
9 We have one study that shows, yes, it's very
10 effective.

11 If it is very effective at removing
12 nutrients, we would like to have another study or two
13 to verify this. And it would be a really fabulous
14 practice as a retrofit in some of our
15 nutrient-sensitive waters. So it doesn't do a lot to
16 address some of the volume issues that I explained
17 with streambank erosion; however, it does a lot to
18 reduce the nutrient concentrations coming out of wet
19 ponds, and it wouldn't cost more space to be taken up.

20 Filtering water through sand in SA -- that's
21 shellfish waters -- this is important because this is
22 in our new rules that I mentioned. We have updated
23 coastal requirements, and we want to make sure that we
24 are getting the bacteria out of the stormwater before
25 we discharge it into our shellfish waters.

1 Stormwater levels of bacteria -- I should
2 say bacteria levels in stormwater are very high. For
3 stormwater -- in order to eat the shellfish that comes
4 out of the water, we want no more than 14
5 colony-forming units of bacteria per milliliter.
6 Stormwater has between 200 and 950 colony-forming
7 units. So it's like two orders of magnitude more than
8 we want.

9 So we think sand filtration can do a lot.
10 It's a requirement in the rule, but we would like to
11 have more research about exactly how to do it
12 effectively along with the maintenance.

13 Green streets and street trees -- we don't
14 give credit for this right now, but I think this is
15 something, you know, when you grow a tree in the
16 middle of a downtown, you can direct some of the water
17 to the roots and it can be filtered. And also the
18 tree itself, the canopy, it pulls things off, which is
19 important in Raleigh and other cities in North
20 Carolina, towns. It also provides canopy that
21 intercepts some of the stormwater.

22 Sand filters are not really innovative;
23 however, with the advent of the new minimum design
24 criteria, there's always intended consequences and
25 unintended consequences. So one of the unintended

1 consequences is we greatly streamline the process for
2 designing sand filters.

3 So guess what we're seeing a year later? A
4 whole lot more sand filters. Sand filters are -- they
5 usually go underground and, you know, you see these
6 things from the street to capture stormwater.

7 A sand filter has -- it will kind of go in
8 place of one of those as one area that just has water
9 in it and it kind of settles out the sediment and
10 other trash and stuff. And then it has another
11 chamber that flows -- that the water flows into that's
12 sand, and the water goes through the sand and then
13 it's discharged out.

14 So we don't have a lot of research on these
15 so we want to make sure, number one, that they work,
16 they are effective. And, number two, that the design
17 criteria that we have for them is the best it can be.
18 It may need to be improved, and that's why we put
19 every practice's minimum design criteria in its own
20 rule, so we can update it more easily without having
21 to open up our whole thing.

22 Flow-through stormwater wetlands. We think
23 that the standards we have for stormwater wetlands are
24 making them bigger than they need to be. We are
25 designing them to capture stormwater and hold it for

1 two to five days. We think we can let the water just
2 flow through the wetlands during the storm event, and
3 that would greatly reduce the size of the wetlands.
4 And what this would do, if it works, is it would cause
5 more people to abandon the wet pond and go to a
6 wetland that has more plants, is more attractive, it's
7 more safe, and has better water quality -- better
8 water quality standards coming out of it. So we would
9 like to see people researching this a little bit more.

10 And lastly, pervious surface management. We
11 know that -- right now in our stormwater program, we
12 focus a whole lot on how much of the site is graded --
13 or how much of a site actually has pavement on it. We
14 don't even think about impervious surface. We assume
15 that a wooded area contributes to stormwater pollution
16 just as much as a golf course -- not that golf courses
17 are bad necessarily. But, you know, I'm not sure if
18 that's a good assumption or not when you have graded
19 an area and you've compacted the soil and you are
20 growing grass and you might be adding nutrients to the
21 grass to make it look pretty. You may actually not
22 have the same impact to water quality, and there may
23 be ways to manage that grass better or to protect
24 water quality better.

25 So that's been our reasoning. It's written

1 up in kind of a brief, hopefully easy to digest format
2 in our manual that you-all can look at. And I know
3 the researchers were directed to look at that. I
4 think you do have a couple -- I didn't get a chance to
5 look at the proposals, but I know you have a couple of
6 proposals for sand filters. So it's just something to
7 think about when you're making your decisions. But I
8 know you-all have a lot of priorities to weigh
9 throughout the whole state.

10 So anyway, I know it's been a long day for
11 y'all, and I thank you-all for listening -- for
12 inviting me and listening to me. And you probably are
13 kind of talked out, but I am more than happy to answer
14 any questions that you might have about our program or
15 anything about the minimum design criteria or anything
16 else.

17 I turn the floor to you.

18 MS. KUMOR: Thank you very much. We
19 wondered if some of our projects had any impact, and
20 you mentioned that question. They did.

21 MS. LUCAS: Absolutely. Absolutely. And we
22 can see that \$17 million number. I know you put a lot
23 into these projects and that they're resulting in not
24 only cost savings for the development community and
25 the ultimate users of the projects, but also better

1 water quality.

2 MS. KUMOR: Thank you.

3 CHAIR CAWOOD: Great. Thank you. We
4 appreciate you being here. And good to hear your
5 expertise to start.

6 Wonderful. Well, anything else to come
7 before the board at this time?

8 (No response.)

9 CHAIR CAWOOD: If not, then I will entertain
10 a motion for adjournment.

11 MR. BRAGG: So moved.

12 MR. BEAUJEU-DUFOR: Second.

13 CHAIR CAWOOD: Thank you. We've got our
14 second.

15 All in favor, say "aye."

16 (Chorus of ayes.)

17 CHAIR CAWOOD: Any opposed?

18 (No response.)

19 CHAIR CAWOOD: All right. Thank you,
20 everyone.

21 (Hearing adjourned, 5:09 p.m.)
22
23
24
25

1 STATE OF NORTH CAROLINA)
2 COUNTY OF WAKE)

3 CERTIFICATE

4 I, Victoria L. Pittman, BA, FAPR, RDR, CRI,
5 CVR-CM-M, the officer before whom the foregoing
6 proceeding was held, do hereby certify that said
7 hearing, pages 1 through 136 inclusive, is a true,
8 correct, and verbatim transcript of said proceeding,
9 to the best of my ability.

10 I further certify that I am neither counsel for,
11 related to, nor employed by any of the parties to the
12 action in which this proceeding was heard; and,
13 further, that I am not a relative or employee of any
14 attorney or counsel employed by the parties thereto,
15 and am not financially or otherwise interested in the
16 outcome of the action.

17 Dated at Wake Forest, North Carolina, the 15th
18 day of March, 2018.

19
20
21
22
23
24
25

Victoria L. Pittman, BA, CVR-CM-M, RCP