

# Transcript of the Testimony of

September 14, 2016

Clean Water Management Trust Fund Board Meeting



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BOARD OF TRUSTEES

CLEAN WATER MANAGEMENT TRUST FUND

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MINUTES OF MEETING

WEDNESDAY, SEPTEMBER 14, 2016

9:44 A.M.

121 W. JONES STREET

RALEIGH, NORTH CAROLINA

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A P P E A R A N C E S

CLEAN WATER TRUST FUND MANAGEMENT BOARD MEMBERS:

- Troy Kickler, Chair
- Frank Bragg
- E. Greer Cawood (present via telephone)
- Frederick Beaujeu-Dufour
- Robin Hackney
- Renée Kumor
- Johnny Martin
- William Toole
- Charles Vines (not present)

CLEAN WATER MANAGEMENT TRUST FUND STAFF:

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

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

2 CHAIRMAN KICKLER: Welcome, everyone. I'd like  
3 to call this Clean Water Management Trust Fund Board  
4 Meeting session. Today's date is September 14, 2016.  
5 We're in the William G. Ross Conference Center on  
6 Jones Street at the Nature Research Center on the  
7 fourth floor conference room.

8 Yesterday, as you know, the acquisitions  
9 committee met and deliberated on recommendations to  
10 the full board of today on such issues as the mini  
11 grant program, planning applications, acquisition  
12 funding, whatever we wanted to cap, how much that cap  
13 should be, et cetera, and those types of issues. And  
14 we'll discuss and vote on the committee's  
15 recommendations, because it's the committee  
16 recommendation that -- there's already been a motion  
17 and a second to that.

18 So, before we get going, let's do some --  
19 let's go through some of the perfunctories here.  
20 First of all is on Commencement 1B, I'll do the roll  
21 call. Troy Kickler, the Chair is present. When I  
22 call your name, please indicate that you are here or  
23 that you are calling in on the phone. Frank Bragg?

24 MR. BRAGG: Present.

25 CHAIRMAN KICKLER: Greer Cawood?

1 MS. CAWOOD: Present.

2 CHAIRMAN KICKLER: Frederick Beaujeu-Dufour?

3 MR. DUFOUR: Present.

4 CHAIRMAN KICKLER: Robin Hackney?

5 MS. HACKNEY: Present.

6 CHAIRMAN KICKLER: Renée Kumor?

7 MS. KUMOR: Present.

8 CHAIRMAN KICKLER: Johnny Martin?

9 MR. MARTIN: Here.

10 CHAIRMAN KICKLER: William Toole?

11 MR. TOOLE: Present.

12 CHAIRMAN KICKLER: Charles Vines?

13 (No response.)

14 CHAIRMAN KICKLER: Let the record show that  
15 there are eight trustees here, and Greer Cawood is  
16 calling in and seven are present at the fourth floor  
17 conference room at the Nature Research Center.

18 As Chair, I have to read, as always,  
19 Journal 138A-15 verbatim and ask if there are any  
20 conflicts of the interest. General Statute 138A-15  
21 mandates that the Chair inquire as to whether any  
22 trustee knows of any conflict of interest or the  
23 appearance of a conflict of interest with respect to  
24 matters on the agenda. If any trustee knows of  
25 conflict of interest or appearance of conflict of

1 interest, please state so at this time.

2 MS. CAWOOD: Mr. Chairman, this is Greer. I  
3 want to recuse myself from Old Business 1, the  
4 discussion of the planning grant funding.

5 CHAIRMAN KICKLER: Okay.

6 MR. MARTIN: Mr. Chairman, I will either recuse  
7 myself for any items dealing with the land acquisition  
8 for the application 2016-024, Currituck County.  
9 They've been a client of mine in the past. For the  
10 appearance of a conflict of interest, I'd like to  
11 recuse myself for discussion of that item.

12 CHAIRMAN KICKLER: That's item 2016-024?

13 MR. MARTIN: Yes, sir.

14 CHAIRMAN KICKLER: Are there any other  
15 conflicts of interest or appearance of one?

16 (No response.)

17 CHAIRMAN KICKLER: All right. As always, if  
18 you are reminded of a conflict of interest or  
19 appearance of one as we are discussing these matters,  
20 you can recuse yourself at that time, but please do so  
21 before we start a robust discussion about any  
22 particular project or action.

23 Okay. Moving on. As a friendly reminder,  
24 please put your cell phones on mute for all  
25 notifications, e-mail, to limit the disruptions that

1 we have for the meeting.

2 The next item of business is to talk about  
3 the agenda that we have today. Are there any  
4 revisions or additions to the agenda?

5 MR. GOSSAGE: I don't have any.

6 CHAIRMAN KICKLER: Okay. Is there a motion to  
7 adopt the agenda?

8 MR. BRAGG: So moved.

9 CHAIRMAN KICKLER: Let the record show  
10 Mr. Bragg has made a motion to adopt the agenda. Is  
11 there a second?

12 MR. BEAUJEU-DUFOUR: Second.

13 CHAIRMAN KICKLER: Thank you, Trustee Dufour,  
14 for the second. Any discussion about the agenda?

15 (No response.)

16 CHAIRMAN KICKLER: If not, all those in favor  
17 of adopting the agenda, please say, "Aye."

18 BOARD MEMBERS: Aye.

19 CHAIRMAN KICKLER: All those opposed?

20 (No response.)

21 CHAIRMAN KICKLER: The agenda has been carried  
22 as we adopted. The next item is Commencement 2, and  
23 that's the consent agenda. As always, a trustee can  
24 remove an item from the consent agenda. Does anyone  
25 want to remove an item?

1 (No response.)

2 CHAIRMAN KICKLER: If not, is there a motion to  
3 adopt the consent agenda?

4 MS. KUMOR: So moved.

5 CHAIRMAN KICKLER: Trustee Kumor has made a  
6 motion to adopt the consent agenda. Is there a  
7 second?

8 MR. HACKNEY: Second.

9 CHAIRMAN KICKLER: Trustee Hackney has made a  
10 second. If there is no discussion on consent agenda,  
11 all those in favor, say, "Aye."

12 BOARD MEMBERS: Aye.

13 CHAIRMAN KICKLER: All those opposed?

14 (No response.)

15 CHAIRMAN KICKLER: The board has adopted the  
16 consent agenda. Now, we'll move on to the next item  
17 of business which is Item 3, legal update. We have  
18 new legal counsel, Hank Fordham, and I'll turn time  
19 over to him to introduce himself and maybe provide a  
20 legal update, if there is one.

21 MR. FORDHAM: I'll be brief. The legal update  
22 shouldn't take more than 30 or 40 minutes.

23 (Laughter.)

24 MR. FORDHAM: I'm teasing. I'm Hank Fordham  
25 and I'm real pleased to be representing you in this



1 capacity. I started about six weeks ago with Kevin  
2 Howell, the general counsel for the DNCR. I enjoyed  
3 yesterday's presentations. Great projects. I used to  
4 camp and fish in the mountains out of state. This  
5 felt like a good place for me to be.

6 I talked to Mary Lucas, who previously had  
7 been representing. There were no carryover items I  
8 need to update you on, so I don't have a legal update.  
9 I'm sure everyone is relieved for that.

10 CHAIRMAN KICKLER: Okay. Thank you. And now,  
11 we will have an executive director's update.

12 MR. GOSSAGE: Thank you, Mr. Chairman. Members  
13 of the board, I do have a number of items to go over  
14 with you this morning. First, as you all noticed when  
15 you were getting your picture taken, it's the 20th  
16 anniversary of the Clean Water Management Trust Fund,  
17 so we'll be having some recognition of that this year,  
18 starting, of course, with some cake for everyone later  
19 today. And thank you, very much, for your time this  
20 morning and your smiles and getting your picture made.

21 Update on grant management system, as you  
22 know, that's a project that we've been working on for  
23 many months with the Trust Fund, and we're working  
24 closely with the other state agency that's the primary  
25 lead on that, which is the Department of

1           Transportation, as well as the vendor company. And  
2           Gwyn and Terri have both worked very hard on that and  
3           have made great progress.

4                     The direction that we're heading in right  
5           now puts us on timeline to enable applicants to apply  
6           online at the opening of the next application period,  
7           which will be in December, and we're very proud of  
8           that. We have a program that manages fifty-plus  
9           million dollars in active grants and having that on  
10          Excel spreadsheets and paper files was just not an  
11          efficient and effective way to manage those, so having  
12          the system in place will be a huge step forward.

13                    I also want to introduce -- well, let me  
14          back up. You'll recall that Haley Medlin, our  
15          executive assistant here for the Trust Fund for a  
16          couple years was pregnant, and she has since had her  
17          son, Westin. His photo was up there rotating in the  
18          rotation earlier this morning. And he was born in  
19          July. And so, Haley has decided to stay at home, be a  
20          full-time mom with him, which is a great decision and  
21          certainly understandable with a cute boy like that.

22                    Her replacement is Sydney, and Sydney has  
23          been here now for -- Sydney McDaniel. She's been here  
24          for two months or --

25                    MS. MCDANIEL: Yeah, about.

1           MR. GOSSAGE: About two months. She's done a  
2           great job, stepped right in, and I know she's helped  
3           many of you with your hotels and all that stuff, so  
4           you've interacted with her.

5                     Hank joined us as legal counsel. You  
6           already him and Justin in June, so I think that covers  
7           our new staff. In this program, the Natural Heritage  
8           Program, the four positions that they lost, as I  
9           mentioned in June, we were on the path for those to be  
10          restored. They were, and so Misty is in the process  
11          of filling those. She's filled one position out west  
12          already, actually, that was a replacement position,  
13          but she's still working on filling those. Did you  
14          want to say anything about that?

15                    MS. BUCHANAN: No. We just are so excited to  
16          get the vote of confidence from the General Assembly  
17          and the governors this year to restore the program.  
18          We'll be hopefully advertising those positions within  
19          the month and filling them by the end of the year.

20                    MR. GOSSAGE: Terri, I know you were ready to  
21          throw another picture up there, so I'll take a moment  
22          and let you boot that program up. There's the other  
23          new addition right there. So, he's about a month old,  
24          so we're proud of him too. He's good.

25                    MR. TOOLE: Who's he named after?

1           MR. GOSSAGE: That's my middle name. My middle  
2 name is Matthew. He's a good baby.

3           MR. TOOLE: Congratulations.

4           MR. GOSSAGE: Thank you. Let's see. Virtual  
5 blue folders. In your blue folders -- you have your  
6 blue folders in front of you. Those have the normal  
7 information. They have the calendar for the 2017  
8 schedule meetings. It should have a snapshot of the  
9 budget, and then typically, it would have things like  
10 your ending paperwork that Sydney needs from you for  
11 your travel authorizations, letters of support for  
12 various projects, which I don't think we received any  
13 for this past order.

14                   And then, we started back in June/July  
15 with a virtual blue folder and I did want to make sure  
16 everyone is receiving that. It's the same information  
17 that comes in on a monthly basis. I want to make  
18 sure, A, everyone is receiving it, and, B, it is good  
19 and helpful information. If there is anything else  
20 you would like to receive in the virtual blue folder,  
21 please let us know and we'll add that in. And if  
22 you're not getting it, let us know. And Mr. Chairman,  
23 that concludes my remarks.

24           CHAIRMAN KICKLER: Okay. Thank you, Bryan.

25           MR. TOOLE: Bryan, I want to say, I think it's

1           fabulous the way we're getting this stuff on a  
2           comparatively real-time basis. I want to thank you  
3           for that. And I want to thank also whoever put the  
4           work into the spreadsheet. It was a lot of work and  
5           it was nice. So thank you.

6                   MR. GOSSAGE: Absolutely. Staff worked long,  
7           hard hours on that. I agree, they do a phenomenal  
8           job.

9                   MR. TOOLE: Well, it is so nice to click and  
10          hyperlink over and not have to read the documents. It  
11          was wonderful. Thank you.

12                   MR. MARTIN: I want to second that. I was in  
13          the hotel room going over this, thanking God for each  
14          and every one of you.

15                   MR. TOOLE: Well, I didn't go that far, but --  
16          (Laughter.)

17                   MR. GOSSAGE: It's a far cry from the stack of  
18          four-inch binders.

19                   MR. TOOLE: Yeah, you saved a couple trees.  
20          And more importantly, you saved me a bunch of time.

21                   MR. GOSSAGE: Well, thank you, very much.

22                   MR. MARTIN: And I would add one thing. Since  
23          it's our 20th anniversary, I think we should mention  
24          Bill Holden's. So thank you, Bill. Maybe we get a  
25          picture with you and Bryan by the cake before we go

1 and --

2 MR. GOSSAGE: Great idea. And staff, we'll  
3 make sure we get a picture out there with staff as  
4 well before we cut the cake.

5 CHAIRMAN KICKLER: All right. Thank you,  
6 Bryan. Now, we'll move on to the public comment  
7 section.

8 I ask the people that they limit -- I'll  
9 be telling you that you limit your comments to three  
10 minutes. If you go over three minutes, I will  
11 politely remind you that you have gone over three  
12 minutes. But when you approach the podium there, if  
13 you could identify yourself and the organization that  
14 you're with, that would be helpful.

15 So, are there any public comments?

16 MR. WILSON: I'll go.

17 CHAIRMAN KICKLER: Yes, sir.

18 MR. WILSON: Good morning. I'm Reid Wilson.  
19 I'm the Executive Director of the Conservation Trust  
20 for North Carolina. Thank you for having us here  
21 today. And I want to thank you again just for all the  
22 hard work that staff and board put in on this  
23 organization.

24 I've been coming to these meetings for  
25 thirteen years and it is amazing the amount of work

1           you all do and how you do it so well and the effect  
2           that it has all over the state in terms of conserving  
3           the land and keeping water clean and improving water  
4           quality and all of the projects you're working on.  
5           All of us from the Land Trust community thank you from  
6           the bottom of our hearts for all the work you do.

7                         This is a big day for us too. We're all  
8           out there wondering if our projects are going to be  
9           punted, so we look forward to your work and your  
10          decisions today.

11                        And, you know, we feel great that you have  
12          more money at your disposal this year. It never hurts  
13          to have a former Clean Water board member as a lead  
14          appropriator in the House. That's always a good thing  
15          to have. But I think it's more than that why this  
16          organization got an \$8.6 million increase, because we  
17          have been down there, the Land For Tomorrow partners,  
18          Land Trust, the National Conservation Groups, working  
19          with legislators, educating them about the projects in  
20          their districts that have been funded, could be  
21          funded.

22                        I really think, at this point, this is a  
23          bipartisan supportive issue where people really  
24          understand the value of land conservation and water  
25          quality. Everybody wants those things, so it's great

1 to have Chuck there. He's huge and great and a leader  
2 and champion, but I think more than that, there's a  
3 strong bipartisan support for the work that you all  
4 do.

5 So, we don't know what's going to happen  
6 with the elections. I'm not going to speculate. My  
7 point in bringing up the elections is no matter who is  
8 elected, we, in the Land For Tomorrow Coalition  
9 continue to build on the success we had in this last  
10 legislative session and try to get more funding into  
11 this trust fund and other ones and to try to bring  
12 back in the conservation tax credit. That was such a  
13 wonderful tool and often could be matched to some of  
14 your funding as well.

15 So, thank you for your hard work. We are  
16 so thrilled to be partners with you all and we're  
17 going to keep fighting the fight to get more resources  
18 into this organization because you all do great work.  
19 Thank you. Hope that was less than three minutes.

20 CHAIRMAN KICKLER: Two minutes,  
21 twenty-three seconds.

22 (Laughter.)

23 MR. GOSSAGE: By his count.

24 (Laughter.)

25 CHAIRMAN KICKLER: That's right. His count.



1 Is there anyone else that would like to make a public  
2 comment?

3 (No response.)

4 CHAIRMAN KICKLER: Okay.

5 (Pause in proceedings.)

6 MR. BRAGG: Mr. Chairman, may I make a comment  
7 since there's a pause here. I'd like to thank the  
8 Land Trust community and the Conservation community.  
9 Without the successes that we've had, it would be  
10 difficult for us to really get any additional money.  
11 We've got a great track record, but without the Land  
12 Trust community lobbying on a regular basis for land  
13 acquisition, we would not be where we are today.

14 So, thank you, Reid and Will and Fred and  
15 Bill. I mean, it's been a great story, but you guys  
16 have been hard at work. So, thank you, very much.

17 CHAIRMAN KICKLER: Okay. We will move on to  
18 Old Business. The first item is consideration of  
19 Acquisition Funding Committee recommendations. So,  
20 I'll read the recommendations and then ask the motion  
21 and a second, for clarity's sake.

22 Acquisition Committee recommends that the  
23 Clean Water Management Trust Fund set aside \$150,000  
24 from the amount currently available for acquisitions  
25 to fund the Donated Minigrant Program.

1                   Is there a motion to adopt the Acquisition  
2                   Committee's recommendations?

3                   MS. KUMOR: I make that motion.

4                   CHAIRMAN KICKLER: Thank you, Trustee Kumor.  
5                   Is there --

6                   MR. BRAGG: Second.

7                   CHAIRMAN KICKLER: Was that -- oh, Frank. It  
8                   has been seconded by Trustee Bragg. Is there any  
9                   discussion regarding the Acquisition Committee's  
10                  recommendation for the Donated Minigrant Program.

11                  MR. MARTIN: So, for those of us who weren't  
12                  here yesterday, so what you have recommended is a cap  
13                  at \$1.2, and so, I guess you're going down to -- I  
14                  guess all those other projects where the ones that  
15                  were asking more money than that could be phased. I  
16                  guess you guys probably had those discussions  
17                  yesterday about that.

18                  CHAIRMAN KICKLER: We did. But currently,  
19                  we're talking about No. 1 up there.

20                  MR. MARTIN: I'm sorry.

21                  CHAIRMAN KICKLER: Before we got into that  
22                  discussion, the Acquisition Committee debated whether  
23                  we wanted to have a Minigrant Program, was there a  
24                  need for it, et cetera, and then, okay, there is, we  
25                  want to put \$100,000 into it, \$300,000 into it, it's

1 not being used as frequently as it was in the past,  
2 but it is being used more so in this cycle than in the  
3 cycle two years ago. So the recommendation bumped it  
4 up \$50,000 from \$100,000 to \$150,000, and I'm sure  
5 Nancy will tell you a little bit more, remind you  
6 about the Minigrant Program.

7 So, we're basically breaking down the --  
8 yeah, we did talk about the cap, but we decided on  
9 this --

10 MR. MARTIN: I'm sorry. I'm sorry.

11 CHAIRMAN KICKLER: That's fine.

12 MR. MARTIN: Bill was asking me a question and  
13 I'm sorry. I got a little lost for a second.

14 MR. TOOLE: The way you dumped it over on me,  
15 though, impressive.

16 MR. MARTIN: That was my fault.

17 CHAIRMAN KICKLER: Is there any discussion  
18 about Recommendation No. 1, the donation for the  
19 Minigrant Program?

20 (No response.)

21 CHAIRMAN KICKLER: We have a motion and a  
22 second. I will call to vote. All those in favor of  
23 setting aside \$150,000 from the amount currently  
24 available for acquisitions to fund the Donated  
25 Minigrant Program, please say, "Aye."

1 BOARD MEMBERS: Aye.

2 CHAIRMAN KICKLER: All those opposed?

3 (No response.)

4 CHAIRMAN KICKLER: The recommendation has been  
5 adopted. Thank you. Now, we'll go to No. 2,  
6 Acquisition Committee recommends that -- oh, and  
7 Trustee Cawood, you have to recuse yourself from this  
8 vote?

9 MS. CAWOOD: Yes.

10 CHAIRMAN KICKLER: Let the record show that  
11 Trustee Cawood, calling in by phone, is recusing  
12 herself from this vote.

13 All right. I'll read the recommendation.  
14 Acquisition Committee recommends that planning  
15 applications 2016-801 North Carolina Audubon and  
16 2016-802 Piedmont Land Conservancy be funded up to the  
17 requested amounts.

18 Is there a motion to adopt this  
19 recommendation?

20 MR. MARTIN: So moved.

21 CHAIRMAN KICKLER: Thank you, Trustee Martin.  
22 Is there a second?

23 MR. BRAGG: Second.

24 CHAIRMAN KICKLER: Thank you, Trustee Bragg.  
25 We have a motion and a second. Is there any

1 discussion regarding this recommendation from the  
2 Acquisition Committee?

3 (No response.)

4 CHAIRMAN KICKLER: All right. Hearing none,  
5 all those in favor of the recommendation, please say,  
6 "Aye."

7 BOARD MEMBERS: Aye.

8 CHAIRMAN KICKLER: All those opposed?

9 (No response.)

10 CHAIRMAN KICKLER: All right. The motion has  
11 carried. So, the board has adopted the Acquisition  
12 Committee's recommendation that planning applications  
13 2016-801 North Carolina Audubon and 2016-802 Piedmont  
14 Land Conservancy be funded up to the requested  
15 amounts.

16 All right. We shall move on to the third  
17 recommendation. Yesterday, there was some discussion  
18 on caps needed, how much of should the cap be, should  
19 there be one. And so, the Acquisition Committee  
20 recommends that the Clean Water Management Trust Fund  
21 cap each acquisition funding award at \$1,200,000. Is  
22 there a motion to adopt this recommendation?

23 MR. TOOLE: Chairman, before we have a motion,  
24 if you don't mind, can we have a synopsis of the  
25 conversation that went back and forth, because this is

1           probably the most important part of the decision  
2           making. We got here and since I was unable to attend,  
3           it would help me to understand.

4                   CHAIRMAN KICKLER: Okay. So, want me to  
5           provide a synopsis?

6                   MR. TOOLE: I think it would be fine if you  
7           did.

8                   CHAIRMAN KICKLER: All right. Well, there was  
9           a debate, first of all, on should there be a cap. And  
10          correct me if I'm wrong, there didn't seem to be any  
11          disagreement about that concept.

12                   Then, there was disagreement on whether  
13          the cap should be \$1.2 million or \$1 million. The  
14          argument for the \$1 million was that we could go  
15          farther down the list. The folks who were wanting  
16          \$1.2 million, the argument was that we were getting  
17          more funds, we're getting more funds now, and so,  
18          we've been trending upward over the past couple years  
19          and the cap increased, because I know the first year  
20          that I was on the Clean Water Management Trust Fund,  
21          the cap was \$750,000 and I think the year before that  
22          it was \$600,000. But the idea was that Clean Water  
23          Management Trust Fund was receiving less money, so we  
24          wanted to go farther down the list.

25                   So you had the argument for \$1 million,

1           then you had the argument for \$1.2 million. In my  
2           mind, I wanted it to be a little more than \$1.2, but,  
3           you know, there were some folks who were making strong  
4           arguments for a million. And so, \$1.2 was what the  
5           committee decided on.

6                         There were five people on the committee.  
7           Trustee Vines was unable to attend, so there were four  
8           who voted, and the vote was three to one.

9                         MR. TOOLE: Was there a feeling at where the  
10          break came between \$1 and \$1.2, if there was a  
11          different in the quality of the projects, or did that  
12          not come up?

13                        CHAIRMAN KICKLER: I don't think that  
14          discussion came up. It was the idea of getting  
15          farther down the list.

16                        MR. TOOLE: Right.

17                        CHAIRMAN KICKLER: And then, with other  
18          recommendations about military funding and -- but --

19                        MR. BRAGG: Mr. Chairman, since I was the one  
20          who voted against the \$1.2, obviously, I do think  
21          there should be a cap. I think that the applicants  
22          have learned, obviously, that they need to teach a  
23          test. In other words, back in the old days when we  
24          had plenty of money, requests were a lot larger. But  
25          now, all the applicants know that we don't have a cap,

1 so they make their projects work, which is smart and  
2 the way it should be.

3 So, when the cap is large, obviously, we  
4 don't go down the list quite as much. It favors the  
5 larger projects. When the cap is -- it's low, you're  
6 gonna do more projects. You're gonna get that into  
7 the smaller projects. Generally speaking, the large  
8 projects are ongoing and will eventually get them  
9 funded, because they're great projects and with a cap,  
10 there can only get so much here, so they have to come  
11 back year after year.

12 So, my thinking is to have a little bit  
13 smaller cap to try to go down the list a little bit  
14 further to pick up additional projects, so that's why  
15 I was in favor of the million dollar cap.

16 MR. MARTIN: I'll just add that, you know, when  
17 I went through it, I was maybe coming up something  
18 more like what you came up with. I was looking at,  
19 you know, \$1.55, because they not only had two  
20 projects that would have to be kind of phased, and it  
21 kind of got at a cutoff. I'm real big about, you  
22 know, I don't want it to cut off of projects that are  
23 graded the same, so that there's not a set -- I know  
24 that we'll have probably add-on funding that will come  
25 into play that will help us get down the list too.



1           So, anyway, it sounds like the \$1.2 is pretty much a  
2           good compromise between all the thoughts that were  
3           happening, so I understand that.

4                   CHAIRMAN KICKLER: In my mind, at least, the  
5           fact that there is a provisional list helps the  
6           project person make the cutoff.

7                   MR. MARTIN: Right. Sure.

8                   CHAIRMAN KICKLER: Any other comments?

9                   MR. TOOLE: I was, personally, I was kind of  
10          hoping we'd have a little lower cap. I wanted to go a  
11          little deeper in. I think there's a recognition we  
12          need a cap. That's the only way we're going to deal  
13          with these kind of things. But I understand that the  
14          cap is a compromise. It's just a matter of trying to  
15          figure out how to allocate the resources.

16                   CHAIRMAN KICKLER: Right.

17                   MR. MARTIN: So the only other question I have  
18          is that with the \$1.2 with the projects that will not  
19          be totally funded, were they ones that the applicants  
20          felt could be broken up a little bit and come back and  
21          finish up later? Was there discussion about that?

22                   CHAIRMAN KICKLER: You mean the top --

23                   MR. MARTIN: Right. I mean, just specifically,  
24          there was one that was -- I know there's a few that --  
25          there's a few of them that always come and we see

1 every year, so I felt like those were ones for sure  
2 that could be phased. But anyway, you know, I was  
3 thinking specifically, well, the Coastal Land Trust  
4 for the Waccamaw River, that's a little bit higher.  
5 It's only \$35,000, but that's -- the November 13th, I  
6 guess they asked for \$2 million for Smith Creek.

7 So that was the only sort of question that  
8 I had, was that could those 00 would those projects be  
9 able to work within that -- within that cap.

10 CHAIRMAN KICKLER: Well, I think there was --  
11 I'm recalling a brief discussion. I think that's been  
12 informed by previous experiences.

13 MR. MARTIN: Right.

14 CHAIRMAN KICKLER: And I think the sentiment  
15 was that it wouldn't -- project or projects wouldn't  
16 be -- wouldn't stop.

17 MR. MARTIN: Right. Okay.

18 CHAIRMAN KICKLER: But to be candid, there was  
19 not an in-depth discussion. There was a brief  
20 discussion.

21 MR. TOOLE: You know, my thought on that kind  
22 of question is we've been doing caps -- it's a  
23 recognition of economic reality that as a matter of  
24 probable practicality, we're going to have to cap  
25 these grants. I can imagine there might be an

1 extraordinary exception where we might be willing to  
2 go over a cap, but that would have -- I think the  
3 applicant would have to flag that, say there is an  
4 unusual opportunity that cannot be met except for we  
5 get the full funding amount. They'd have to flag that  
6 and we'd have to have a very specific conversation  
7 about that.

8 But absent that kind of, you know, high  
9 alert, I just don't think -- we can't go into all  
10 that.

11 MR. MARTIN: Yeah. Sure.

12 CHAIRMAN KICKLER: And the trustees can do  
13 that. Trustees can do what was done I think last  
14 cycle with the --

15 MR. TOOLE: We pulled one up.

16 CHAIRMAN KICKLER: -- the Town of Hookerton,  
17 because if another big storm came, waste would  
18 literally be on the water stream. So, we didn't want  
19 to that happen on our watch.

20 MR. TOOLE: Those are the kind of exceptions,  
21 and I think would be contingent upon the applicant to  
22 say this is one of those deals. We've got to have it  
23 all, and this is why, and they make their case.

24 MR. MARTIN: I make a recommendation that we  
25 accept the \$1.2 and I'll make the motion to accept the

1           \$1.2 million cap.

2                   CHAIRMAN KICKLER:  Trustee Martin has made a  
3           motion that the Clean Water trust fund cap each award  
4           at \$1.2 million.  Is there a second?

5                   MR. TOOLE:  I'll second.

6                   CHAIRMAN KICKLER:  Thank you, Trustee Toole.  
7           There's a motion and a second.  Any further discussion  
8           on that matter?

9                   (No response.)

10                   CHAIRMAN KICKLER:  All those in favor of  
11           accepting the committee's recommendation that -- or  
12           the cap for each -- that the Clean Water Management --  
13           let me rephrase that.  Sorry.

14                   All those in favor of the Acquisition  
15           Committee's recommendation that the Clean Water  
16           Management Trust Fund cap each acquisition funding  
17           award at \$1,200,000, please say, "Aye."

18                   BOARD MEMBERS:  Aye.

19                   CHAIRMAN KICKLER:  All those opposed?

20                   (No response.)

21                   CHAIRMAN KICKLER:  The motion has carried  
22           unanimously.

23                   If you will excuse me for a minute or two  
24           here, I need to --

25                   MR. TOOLE:  May I ask a question in the

1           meantime, Mr. Chairman?

2                   CHAIRMAN KICKLER: Yes. Sure.

3                   MR. TOOLE: So, to the staff, if you could  
4           guide me just a little bit, you know, the average  
5           score was 69. Can you remind me what the average  
6           score -- is that kind of the trend that we've seen is  
7           around 70? Or I just don't remember.

8                   MS. GUTHRIE: That is within mind from the last  
9           two years as far as the average and also the range of  
10          scores. I think the range this year was slightly  
11          wider. But I did not see anything that really jumped  
12          out about those numbers.

13                  MR. TOOLE: So that's kind of why I'm trying --

14                  MS. GUTHRIE: Mm-hmm.

15                  MR. TOOLE: And then, I guess for the trustees  
16          as a matter of the policy, is it something we should  
17          consider whether we try to hit grants down towards the  
18          average or is that average just something that we  
19          don't really care about and we don't -- doesn't guide  
20          us at all?

21                  MR. MARTIN: I think it would be helpful for  
22          when we're making these decisions to kind of see how  
23          things have been trending in the committees, to kind  
24          of see how that is, but I think it will be depending  
25          on funding too, how much we'll be able to go down,

1           sure, but I think it's also some good information to  
2           add to their awesome spreadsheet that we both loved.

3                        So, now that you've overwhelmed us with  
4           that, maybe we could add that. Hopefully, that  
5           wouldn't be too much more, but maybe just a general  
6           summary, year to year, general grouping, average  
7           score, how far we've been able to get down, just so we  
8           can see we're kind of lining up the same. I guess  
9           that's what you're getting at?

10                   MR. TOOLE: Yes. And if I could make an  
11           observation, Nancy, if you could put your cool little  
12           min/max at the top, not the bottom.

13                   MS. GUTHRIE: Sure.

14                   CHAIRMAN KICKLER: We can talk about that  
15           later. In my mind, this is sort of a borderline  
16           policy discussion.

17                   MR. TOOLE: Could well be, yeah.

18                   CHAIRMAN KICKLER: So one of the committees  
19           could talk about that, the Administrative Committee or  
20           the grant -- forgive me. I forget the proper name of  
21           the grant criteria -- or Grant Program. Grant Program  
22           can talk about that.

23                   MR. TOOLE: That would be fine.

24                   MR. BRAGG: Mr. Chairman, one other comment on  
25           that, I think the hardest question to get answered is

1 with a project, what happens if we don't fund it? Is  
2 it going to go away? Is it going to be lost and it  
3 can't come back? Or if you fund part of it, what  
4 happens? I mean, I think that's the most difficult  
5 thing that the staff has to deal with.

6 Maybe I'm wrong, but if there's a request  
7 for \$400,000 on a project and it doesn't quite make  
8 the cut, is that land lost forever or can it come  
9 back? If it was a \$5 million deal and we're funding a  
10 million two, the people who bring those projects know  
11 they're going to ask for a million two every year or  
12 whatever our cap is every year, obviously, and they're  
13 able to keep the financial part going to save the  
14 project, so that needs to be considered. And it's  
15 difficult, I know.

16 CHAIRMAN KICKLER: Again, this is something we  
17 can talk about at another time or committees can take  
18 time. We need to stick to the agenda.

19 MR. BRAGG: Sure. Sorry.

20 CHAIRMAN KICKLER: I was trying to figure  
21 out how best to approve this recommendation, since  
22 Trustee has to recuse himself, so if you can give me  
23 thirty seconds, that would be fantastic.

24 Does everybody have a copy of what's on the  
25 screen, the report?

1 MR. TOOLE: Excuse me?

2 MS. KUMOR: No.

3 MR. HACKNEY: No.

4 CHAIRMAN KICKLER: Let's take a five-minute  
5 break so everybody can get a copy.

6 (Whereupon, a short break was taken at this  
7 time.)

8 CHAIRMAN KICKLER: Thank you for your patience.  
9 We are ready to proceed.

10 All right. In regards to the Report of  
11 Acquisition Committee, which met on September 13,  
12 2016, I have a copy of it. All trustees have a copy  
13 of it.

14 MS. MURRAY: Will's going to e-mail it to  
15 Greer.

16 CHAIRMAN KICKLER: Okay. Greer, are you on the  
17 phone?

18 MS. CAWOOD: I am.

19 CHAIRMAN KICKLER: Okay. Thank you. They are  
20 e-mailing you a copy of the Acquisition Committee  
21 Recommendations Report.

22 MS. CAWOOD: Thank you.

23 MS. MURRAY: Okay.

24 CHAIRMAN KICKLER: Okay. It's been sent to  
25 you, Greer.



1 MS. MURRAY: Tell her both e-mails.

2 CHAIRMAN KICKLER: Hmm?

3 MS. MURRAY: Both e-mails.

4 CHAIRMAN KICKLER: Okay. It's been sent to  
5 both of your e-mails. Can you let me know when you  
6 have it, Greer?

7 MS. CAWOOD: Definitely.

8 (Pause in proceedings.)

9 MS. CAWOOD: Mr. Chairman, I have it.

10 CHAIRMAN KICKLER: Okay. Thank you. All  
11 right. So, again, in regards to the report of the  
12 Acquisition Committee September 13, 2016, I have a  
13 copy of it, all trustees have a copy of it, and the  
14 court reporter has a copy of it. So, we shall  
15 proceed.

16 Now, I have to do this a little  
17 differently because Trustee Martin has to recuse  
18 himself from it -- from one project, and that is Line  
19 Item 2 in the Acquisition Committee Recommendations,  
20 County of Currituck Flyway Tract, 2016-024. So, the  
21 first -- we'll have two votes, one excluding that one  
22 and one just on that one.

23 So, the committee recommends that the  
24 following projects be funded up to the amounts set  
25 forth below, excluding No. 2, 2016-024. Is there a

1 motion to adopt that recommendation?

2 MR. BRAGG: So moved.

3 CHAIRMAN KICKLER: Trustee Bragg has made a  
4 motion. Is there a second?

5 MR. HACKNEY: Second.

6 CHAIRMAN KICKLER: Trustee Hackney has made a  
7 second. Is there any discussion on the committee's  
8 recommendation that the following projects be funded  
9 up to the amounts set forth below, excluding No. 2,  
10 2016-024, and I'm talking about Committee  
11 Recommendation No. 4. Is there any discussion?

12 (No response.)

13 CHAIRMAN KICKLER: Hearing no discussion, all  
14 those in favor of accepting the committee's  
15 recommendation of funding the following projects up to  
16 amounts set forth below, excluding No. 2, 2016-024,  
17 that's recommendation No. 4, please say, "Aye."

18 BOARD MEMBERS: Aye.

19 CHAIRMAN KICKLER: All those opposed?

20 (No response.)

21 CHAIRMAN KICKLER: The motion has carried.

22 Thank you.

23 Now, we will have another vote in regards  
24 to these projects. Let the record show that Trustee  
25 Martin has recused himself from this discussion and

1           actually is not in the area where the vote is being  
2           taken place.

3                       All right. The committee recommends that  
4           Project No. 2016-024, County of Currituck Flyway Tract  
5           be funded up to the amount set forth below. Is there  
6           a motion to adopt that recommendation?

7                       MR. BRAGG: So moved.

8                       CHAIRMAN KICKLER: Trustee Bragg has made a  
9           motion. Is there a second?

10                      MS. KUMOR: Second.

11                      CHAIRMAN KICKLER: Trustee Kumor has made a  
12           second. Is there any discussion?

13                      (No response.)

14                      CHAIRMAN KICKLER: Hearing no discussion, all  
15           those in favor of accepting the committee's  
16           recommendation, please say, "Aye."

17                      BOARD MEMBERS: Aye.

18                      CHAIRMAN KICKLER: All those opposed?

19                      (No response.)

20                      CHAIRMAN KICKLER: Motion has carried. The  
21           committee recommends that Project No. 2016-024 be  
22           funded up to the amount set forth below. The board  
23           approved -- correction. The full board approved  
24           committee's recommendation.

25                      All right. We shall move on. Let's move

1 on to committee recommendation -- Acquisition  
2 Committee Recommendation No. 5. Acquisition Committee  
3 recommends that the following projects be funded from  
4 the \$1 million appropriation set aside for military  
5 buffers in the amounts set forth below. Is there a  
6 motion to accept the committee's recommendation?

7 MR. BRAGG: So moved.

8 MS. HACKNEY: Moved.

9 CHAIRMAN KICKLER: Trustee Bragg has made a  
10 motion. Trustee Hackney, did you make a second?

11 MR. HACKNEY: Second.

12 CHAIRMAN KICKLER: Trustee Hackney has made a  
13 second. Is there any discussion?

14 MS. KUMOR: Mr. Chairman, for the record, I  
15 think you should re-explain what this money is. I  
16 think it's always good at a full board meeting to have  
17 that information out, because we took these projects  
18 even from below our line of projects, and there was a  
19 reason that we did that.

20 CHAIRMAN KICKLER: Okay. I'll let Bryan  
21 explain the process.

22 MR. GOSSAGE: So, as you may recall, the  
23 legislature set aside an additional \$1 million to be  
24 applied toward the board's mission to buffer military  
25 installations and training areas in North Carolina.

1                   And yesterday, the committee, using some  
2                   criteria that Nancy had created specifically  
3                   prioritizing those projects that had Department of  
4                   Defense or REPI funds applied to them, which is  
5                   specifically mentioned in the Clean Water Management  
6                   Trust Fund enabling legislation, and to create an  
7                   order, and the board applied a million dollars and  
8                   this is on the report that you have in front of you.  
9                   These are the projects that are funded.

10                   MS. KUMOR: Thank you.

11                   CHAIRMAN KICKLER: Thank you, Bryan. And  
12                   thanks for bringing that up.

13                   Are there any other comments or  
14                   discussion?

15                   (No response.)

16                   CHAIRMAN KICKLER: We have a motion and a  
17                   second regarding that, the Acquisition Committee's  
18                   Recommendation. Any more discussion?

19                   MR. BRAGG: There's a comment I'd like to make.  
20                   I think it's interesting to note that three projects  
21                   -- were there not three had conservation values that  
22                   were funded out of our usual list, correct?

23                   MS. GUTHRIE: There were four.

24                   MR. BRAGG: Four. So there were four military  
25                   projects that did have good conservation values that

1           were funded, per the last thing we just voted on. So  
2           this is an additional million dollars for these  
3           projects. Correct?

4                   CHAIRMAN KICKLER: That's correct. Any other  
5           discussion?

6                   (No response.)

7                   CHAIRMAN KICKLER: All those in favor of  
8           accepting the Acquisition Committee's recommendation,  
9           this is Recommendation 5, please say, "Aye."

10                   BOARD MEMBERS: Aye.

11                   CHAIRMAN KICKLER: All those opposed?

12                   (No response.)

13                   CHAIRMAN KICKLER: Motion has carried. The  
14           full board approves the Acquisition Committee's  
15           recommendation that the following projects be funded  
16           from the \$1 million appropriation set aside for  
17           military buffers set forth below and their  
18           recommendations.

19                   We'll move on to Recommendation No. 6.  
20           The Acquisition Committee recommends that unencumbered  
21           funds from the \$1 million military funds be used to  
22           fully fund the military projects up to the amounts set  
23           forth below.

24                   Is there a motion to accept that  
25           recommendation?

1 MS. KUMOR: So moved.

2 CHAIRMAN KICKLER: Trustee Kumor has made a  
3 motion. Is there a --

4 MR. BRAGG: Second.

5 CHAIRMAN KICKLER: Trustee Bragg has made a  
6 second. Is there any discussion or comment? Hearing  
7 none, all those in favor of accepting Acquisition  
8 Committee's recommendation, please say, "Aye."

9 BOARD MEMBERS: Aye.

10 CHAIRMAN KICKLER: All those opposed?

11 (No response.)

12 CHAIRMAN KICKLER: The motion has carried. The  
13 full board has approved the Acquisition Committee's  
14 recommendation that unencumbered funds from the \$1  
15 million military funds be used to fully fund the  
16 military projects up to the amounts set forth below in  
17 the recommendations.

18 And I will move on to the final  
19 recommendation from the Acquisition Committee, and  
20 that's Recommendation 7. The Committee recommends  
21 that additional funds available to the acquisition  
22 projects prior to July 1, 2017, be allocated to the  
23 2016 cycle acquisition list, subject to a cap of  
24 \$1,200,000 per project, in order of score.

25 Is there a motion to accept the

1 Acquisition Committee's recommendation?

2 MS. KUMOR: So moved.

3 CHAIRMAN KICKLER: Trustee Kumor has made a  
4 motion. Is there a second?

5 MR. HACKNEY: Second.

6 CHAIRMAN KICKLER: Trustee Hackney has made a  
7 second. Is there any discussion regarding  
8 Recommendation 7 or comment, discussion?

9 (No response.)

10 CHAIRMAN KICKLER: All those in favor of  
11 accepting the Acquisition Committee's recommendation  
12 please say, "Aye."

13 BOARD MEMBERS: Aye.

14 CHAIRMAN KICKLER: All those opposed?

15 (No response.)

16 CHAIRMAN KICKLER: The motion has carried. The  
17 full board has approved the Committee's Recommendation  
18 No. 7.

19 Okay. We will move on to Old Business  
20 No. 2. And that is -- Old Business No. 2 is 2015-033,  
21 City of Lenoir Watershed. And who will be --

22 MS. GUTHRIE: I will take that.

23 CHAIRMAN KICKLER: You will, Nancy. Okay.

24 MS. GUTHRIE: Thank you, Mr. Chairman. The  
25 City of Lenoir was granted an award up to \$755,000 in



1 the 2015 cycle to protect Zacks Fork Watershed. And  
2 with that, they had anticipated the public use of  
3 hiking and potentially as an emergency water supply if  
4 needed.

5 And after the award, as the city was  
6 taking this to city counsel and getting ready to vote  
7 on accepting the contract, they were approached by the  
8 Northwest North Carolina Mountain Bike Alliance, and  
9 the Alliance said they felt this would be a great  
10 tract for some mountain biking trails and use of that  
11 activity. So, the city very quickly called me and  
12 asked if this was okay that they allow mountain biking  
13 or how they should handle this new request for the use  
14 of the tract.

15 And mountain biking is not currently a  
16 standard right in the Clean Water Management Trust  
17 Fund easement. The construction of the trails is a  
18 bit more involved than a hiking trail, which is  
19 allowed. The maintenance of the trails has been a  
20 concern, and I think the board, in the past, has not  
21 addressed this issue, because it hasn't been as much  
22 of a request, and the activity has not been as popular  
23 in North Carolina as it's now becoming.

24 So, in thinking this through, staff, we  
25 are in favor of recreation on conservation easement

1 areas if it can be done to protect all of the  
2 conservation values which you all have always put as a  
3 priority for the protection of the tracts. With  
4 mountain biking, it is an emerging activity in the  
5 state. I think the fund will see more and more  
6 request for this activity. So, we wanted to bring it  
7 today.

8 Lenoir does have a very specific request  
9 in to allow it. I think that you will see this  
10 request more frequently from applicants, and wanted to  
11 bring this to see kind of your discussion and if you  
12 have questions or want to approve Lenoir's request. I  
13 have been in discussions with them and the city  
14 manager is very much in agreement that trails would be  
15 -- the final design and route would be approved by  
16 Clean Water staff before they went out and started  
17 constructing the trails.

18 So, let me pause there and see if you all  
19 have any initial thoughts or questions on this issue.

20 CHAIRMAN KICKLER: Trustee Toole?

21 MR. TOOLE: I'm glad to hear this, actually.  
22 Biking in general is a more popular sport than golf,  
23 tennis, and skiing combined. Mountain biking is a  
24 subset of all that, and it engages many more people.  
25 There are criteria, you know, the concern is always

1 erosion and all that sort of thing.

2 But there has been a lot of learning by  
3 the mountain bike community on how to do these things  
4 so that they don't erode like they used to. And so,  
5 there's -- in the box criteria that I understand are  
6 really reliable and good, y'all would have to evaluate  
7 it, but if we could find a way to easily adopt  
8 criteria on those, you know, maintenance criteria and  
9 design criteria in our easements, I think it --  
10 subject to conversation, should be part of the  
11 standard easement, because it brings more people out  
12 close to the -- to these projects. And I think the  
13 more citizens of North Carolina see what's going on  
14 with these projects, the more enthusiasm there will be  
15 for the protection values and conservation values  
16 we've been talking about.

17 MS. CAWOOD: Mr. Chairman, this is Greer. I  
18 completely agree with Trustee Toole and I would be  
19 happy to take this up with the Administrative  
20 Committees to create some guidelines so it's very  
21 clear that conservation easements are honored, but we  
22 do provide another way for the citizens of North  
23 Carolina to be on the land.

24 CHAIRMAN KICKLER: Okay. Thank you, Trustee  
25 Cawood. And Nancy, you said City of Lenoir would work

1 with Clean Water Management staff?

2 MS. GUTHRIE: Yes.

3 CHAIRMAN KICKLER: Okay.

4 MS. GUTHRIE: Yes, but the City is being very  
5 respectful of Clean Water's easement and the process  
6 for approval. They will go ahead with the purchase of  
7 the tract, as I understand, and then they are willing  
8 to work within guidelines that Clean Water has  
9 adopted.

10 CHAIRMAN KICKLER: Well, all right. Okay.  
11 Well, in the capacity of Chair, I'll refer the  
12 mountain biking policy issue to the Administrative  
13 Committee, and maybe they can meet here shortly and we  
14 can have a -- we can decide on a policy, a more formal  
15 policy then.

16 MS. KUMOR: Mr. Chairman?

17 CHAIRMAN KICKLER: Yes, ma'am.

18 MS. KUMOR: Should that sort of policy become  
19 available, will people who have past relationships  
20 with us in conservation easements be coming forward to  
21 make those alterations, and do we want to see that or  
22 not?

23 CHAIRMAN KICKLER: That's a possibility.

24 MR. GOSSAGE: That, in fact, Mr. Chairman, if I  
25 may, that has affected what you're seeing here today,

1           so I would expect if the board adopts that as one of  
2           the reserved rights for a project, that you may see  
3           more formerly approved projects come and request that  
4           activity be allowed on their site.

5           MR. BRAGG: I gather that this is gonna be a  
6           recommendation of the staff. Is that more or less the  
7           consensus of the staff, that this be allowed? I don't  
8           want to -- am I putting you on the spot?

9           MS. GUTHRIE: It is our consensus that it be  
10          allowed. We also, though, share very much the concern  
11          of protecting the conservation values and how we move  
12          through the process of approving the location, the  
13          construction of trails, so that --

14          MR. BRAGG: With that said, I think that we  
15          should write a set of rules that I think we should do  
16          it on a case by case basis like that, that if we get a  
17          request and the staff gets comfortable and the  
18          trustees get comfortable, that we take it to heart and  
19          can do it, but I don't want to write it in the general  
20          description of what a Clean Water Management Trust  
21          Fund easement looks like, so that it's a given all the  
22          watersheds can put in a mountain bike trail.

23                    I'm a mountain biker myself, and it's  
24                    great to get people out on the land, but it can be a  
25                    huge issue if it's not done right. So maybe a

1 case-by-case basis is better. You can ask for it in  
2 a, what, 28 thousand-acre watershed. Think about  
3 that.

4 Look at Bradley Creek Watershed. You  
5 don't want to -- at least, I wouldn't vote to let  
6 mountain bikers have that opportunity to do whatever  
7 they want to in Bradley Creek. So, a case by case, I  
8 think, is worth trustees doing.

9 MR. BEAUJEU-DUFOUR: I would agree, knowing  
10 that the issue with the mountain would be the erosion  
11 problem. Obviously, if you walk, you can go on steps  
12 and you can stop the erosion on the trails. But on a  
13 bicycle, it's kind of hard going upstairs. So you  
14 have to have everything flat, because that could be an  
15 issue. If you have big rains, heavy rains, you could  
16 bring all the dirt and whatever down and make gullies,  
17 and I do believe we should be very careful with that.

18 In fact, I have no issue with that, but  
19 particularly when we have problems with the erosion, I  
20 think that is something that should be addressed.

21 MR. TOOLE: The community, I don't want to say  
22 was careless, but early on in mountain biking, erosion  
23 was a huge problem. Those who are careful and really  
24 try to do this right are really constructing the  
25 trails just like hiking trails, and now, they're being

1 constructed in ways that anticipate and manage these  
2 erosion issues, so there is existing criteria and they  
3 can be looked at.

4 I think this kind of calls to mind  
5 conversations we sometimes have about  
6 handicap-accessible trails, maybe it's kind of would  
7 fit more in that one-off category. That's a  
8 conversation.

9 CHAIRMAN KICKLER: I understand what everyone's  
10 saying. This particular issue is what's in front of  
11 us today. I did not know that biking, mountain biking  
12 was more popular than those --

13 MR. TOOLE: Huge. It's become huge. Maybe the  
14 way to do this, Mr. Chairman, is say that we are  
15 provisionally open to that kind of amendment, subject  
16 to staff coming back with an approvable --

17 CHAIRMAN KICKLER: That sort of brings me to  
18 the point. I've already referred the issue to the  
19 Administrative Committee. The Administrative  
20 Committee can make a recommendation that it be on a  
21 case-by-case basis or they can make a recommendation  
22 that the staff can weigh in on it.

23 So as far as the broad policy, refer it to  
24 the Administrative Committee to mull over those types  
25 of issues and get that information to help them make

1           that decision. But then also, you know, I mean,  
2           mountain biking to some people means, like, an actual  
3           bicycle and some people might interpret that as ATV  
4           use.

5                   MR. TOOLE: I would straighten that out.

6                   CHAIRMAN KICKLER: That's why I would refer it  
7           to them.

8                           Is there any discussion about this  
9           particular project, 2015-033, City of Lenoir, the  
10          Lenoir Watershed's request?

11                   MR. MARTIN: Well, I think in reading through  
12          it, you know, they're very cognizant of, you know,  
13          trying to do it the right way. They're talking about  
14          not allowing it to be wider than 48 inches. Again,  
15          they're going to want to, I guess -- I don't know who  
16          takes on the liability in this trail. Would it be the  
17          City of Lenoir?

18                           So, that being the case, whoever designed  
19          this trail would really want to make sure that they  
20          put in the appropriate things so they wouldn't have  
21          gullies and things of that nature. So I think some of  
22          that will work itself out, at least, in reading it, to  
23          me, from my engineering perspective, it looks like  
24          they are definitely trying to do things the right way  
25          and minimize sort of the footprint.



1                   So, you know, I would be -- I think the  
2                   positives outweigh -- the potential positives outweigh  
3                   the potential negatives. In what Trustee Bragg was  
4                   saying, of course, I'm sure there are some watersheds  
5                   would be such that we would not want to allow this,  
6                   because maybe the areas are so steep that it would be  
7                   sort of a marginal case, and the danger for having  
8                   issues would be more.

9                   But, I guess based on what I've seen, I  
10                  would be in favor of -- I think this one, they're  
11                  going to do it the right way, and I think we just have  
12                  to -- in the Administrative Committee, we need to talk  
13                  to Larry and be sure what kind of experience he has  
14                  with this from an engineering perspective, and maybe  
15                  we can come up with some sort of guidelines for that.  
16                  If we want to look into coming up with a policy that's  
17                  sort of the -- a minimalist policy that we would  
18                  expect these to do.

19                 CHAIRMAN KICKLER: Thank you. Is there any  
20                 more discussion? That was a good conversation. Any  
21                 other discussion?

22                 (No response.)

23                 CHAIRMAN KICKLER: If not, all those -- well,  
24                 is there a motion to approve the inclusion of mountain  
25                 biking as a reserved right to the City of Lenoir?

1           MR. TOOLE: I'd like to make the motion to  
2           approve the use of mountain biking as a reserved right  
3           to the City of Lenoir, subject to criteria that have  
4           not yet been established, but that we would inform  
5           them about once we figure it out. That's a very  
6           formal motion.

7           CHAIRMAN KICKLER: So if I understand you  
8           correctly, Trustee Toole, you've made a motion to  
9           approve inclusion of mountain biking as a reserved  
10          right to the City of Lenoir, subject to criteria that  
11          has not been established?

12          MR. TOOLE: Yes.

13          MR. BRAGG: Sounds like a good lawyer motion.

14          (Laughter.)

15          CHAIRMAN KICKLER: Okay. What -- Trustee  
16          Toole, what if the criteria that is created is  
17          unsatisfactory to Lenoir?

18          MR. TOOLE: Then they don't get it. They have  
19          to agree to the criteria that we tell them.

20          CHAIRMAN KICKLER: Or to you?

21          MR. TOOLE: Excuse me?

22          CHAIRMAN KICKLER: If the criteria is  
23          unsatisfactory to you.

24          MR. TOOLE: It would have to be criteria that  
25          the board agrees on or, you know, coming from the

1 committee, we'd have to agree it's criteria that we  
2 like.

3 CHAIRMAN KICKLER: Thank you for the  
4 clarification for the record.

5 We have a motion from Trustee Toole. Is  
6 there a second?

7 MR. BEAUJEU-DUFOUR: I second.

8 CHAIRMAN KICKLER: Trustee Dufour has seconded.  
9 Is there any more discussion on Old Business No. 2?

10 (No response.)

11 CHAIRMAN KICKLER: All right. All those in  
12 favor of approving the inclusion of mountain biking as  
13 a reserved right to the City of Lenoir, subject to  
14 criteria that has not been established, please say,  
15 "Aye."

16 BOARD MEMBERS: Aye.

17 CHAIRMAN KICKLER: All those opposed?

18 (No response.)

19 CHAIRMAN KICKLER: The motion has carried.  
20 Now, we'll move on to Old Business 3, which is  
21 2014-415, Polk Soil and Water Conservation District.  
22 And who is handling -- Mr. Horton.

23 MR. HORTON: Thank you, Mr. Chairman. The Polk  
24 Soil and Water Conservation District was awarded a  
25 grant of up to \$400,000 for restoration of

1 approximately 2,100 linear feet of the North Pacolet  
2 River. About 1,500 linear feet of the project had  
3 been completed on December the 29th, 2015 when the  
4 site experienced heavy rainfall and flooding which  
5 resulted in extensive damages to the 1,500 linear feet  
6 of completed work.

7 The Trust Fund does not have a policy  
8 concerning extensive damage to project work due to  
9 storm damage, so in order to avoid delaying repairs,  
10 during which time additional damage could have  
11 occurred to the structures and work that had already  
12 been weakened by the storm, the grant recipient was  
13 given a verbal approval to proceed with repairs and  
14 complete as much of the project scope as possible  
15 based on the Trust Fund funding and match funds that  
16 were available.

17 Because of the amount of the cost of the  
18 expenses to repair the storm damage, there was not  
19 enough Clean Water Management Trust Fund funding and  
20 match funds available to pay for the cost to complete  
21 the whole original project scope of 2,100 linear feet.  
22 Some additional match funds were donated by Altima  
23 Environmental and the contractor, who was Backwater,  
24 and 1,500 linear feet of the original 2,100 linear  
25 feet project scope was completed, and this restoration

1 work is functioning as designed.

2 This resulted in a project scope reduction  
3 of 28 percent, which requires approval by the Board of  
4 Trustees. The grantee's pay request for the project  
5 work has been submitted, and based on 72 percent of  
6 the original project scope that was completed, a  
7 prorated partial payment in the amount of \$299,993 has  
8 already been made for the completed work. The grantee  
9 is requesting reimbursement using all of the remaining  
10 grant funds for the additional expense that was  
11 required to repair the damage due to the storm event.

12 So, what follows is some background  
13 information. I'll just try to summarize that. There  
14 was a big storm on the night of December the 28th and  
15 it extended into the morning of the 29th. Before  
16 that, there was another storm of about three and a  
17 half inches of rainfall on the 24th and 25th. And the  
18 big storm, which occurred on the 28th and 29th, was  
19 about four and a half inches of rain which happened in  
20 approximately three hours.

21 So, the big storm amounted to about a  
22 50 years recurrence. It's actually a little bit above  
23 the 50-year storm. So these two storms caused an  
24 excessive amount of flooding which damaged the work.  
25 The stream gauge data indicates that the earlier storm

1 was not anticipated before the damaging storm  
2 occurred, and about 2010 cubic feet per second of  
3 recorded flow, which was the most measured in 85 years  
4 and was 26 percent greater than the previous maximum  
5 event, which occurred in 1959. So, that's a little  
6 bit of background.

7 If we could scroll down a little bit,  
8 there was some pictures attached way down. Keep  
9 going. There's the precipitation stuff. Keep going.  
10 Keep going. Keep going. And so, that's the flood  
11 amount. You can see that it's really way up. There  
12 will be another photo further down that you'll be able  
13 to compare that to. Keep going.

14 So, this is the -- this is what the damage  
15 looked like. Keep going, Will -- or Terri. More  
16 damage. Keep going. That's the before, more before.  
17 That's damage. Damage. More damage. And this -- go  
18 back up. Back up. So that's some more damage. Go  
19 down.

20 So this is -- and you remember the  
21 previous photo where it was all flooded? This is what  
22 it looks like when it's not flooded. So keep going.  
23 This is repaired -- this is a repair work. Keep  
24 going. That's repair work. Keep going. And that's  
25 it. So that's a little bit of background for you.

1                   So, the storm damage was repaired. The  
2                   1,500 linear feet of restoration that was completed is  
3                   functioning as designed. And the board action  
4                   requested is to approve or not approve or amend the  
5                   project scope reduction and the payment of the  
6                   requested reimbursement amount, which is \$100,007.

7                   That's it. Can I answer any questions?

8                   CHAIRMAN KICKLER: Are there any questions for  
9                   Larry?

10                  MR. TOOLE: You're gonna have to come back and  
11                  get the remainder of the project done, right?

12                  MR. HORTON: So, this is phase one of a larger  
13                  project. And we've actually approved phase two, and  
14                  because this project was shortened, the next piece is  
15                  in phase two. That's correct.

16                  MR. TOOLE: So the issue before us is who bears  
17                  the risk of a force of nature coming and blowing out a  
18                  project?

19                  MR. HORTON: That is correct. And again, we --  
20                  the Trust Fund does not have a policy concerning that.

21                  MR. TOOLE: Johnny, is there insurance against  
22                  that kind of risk?

23                  MR. MARTIN: Most engineering construction  
24                  contracts you're going to see, all in the standard  
25                  forms have -- because as you know, construction

1 contracts have gotten to the point where it's all an  
2 assignment of risk. There's always a -- even most  
3 forms, there's a provision for Acts of God that a  
4 contractor shall not be liable for costs for any sort  
5 of damage due to an Act of God. So, then it just  
6 becomes, okay, what --

7 MR. TOOLE: -- falls on the owner?

8 MR. MARTIN: Right, so then, it -- right. So,  
9 given the amount of this storm, the expense of it, how  
10 large it is, I do think it falls into that sort of  
11 where it comes back onto the owner for, you know, sort  
12 of this type of event, sort of a 50- to 100-year  
13 event, especially when you consider that they have the  
14 antecedent event a few days ahead of time that was  
15 also another three inches, and then everything, ground  
16 water was up, so this really piled up on top of that.

17 So, I mean, in this case, I think it is a  
18 valid argument that this is not something that the  
19 contractor could have had any sort of control over,  
20 and this was sort of not a normal type of event, so,  
21 you know, so I'd be in favor or I understand why we  
22 would -- why we should consider approving this, just  
23 because it does sort of fit into that extreme event  
24 that would not be covered under a normal contractor  
25 accepting that they might have to repair some damage



1           during the event.

2                   MR. BRAGG: So, Mr. Tool is correct. The hard  
3           question is who's responsible, and when the trustees  
4           vote to say, you know, to restoration on a couple  
5           miles of stream and we've done it right and it's going  
6           to be done, what happens when it gets blown out by an  
7           unusual event. We don't want to set a precedent where  
8           every project that we write says, "Well, hey, we have  
9           a problem, we'll still fund it, but we'll only get a  
10          mile of the stream done."

11                   So, it's not quite as easy as saying,  
12          "We're sorry it happened. We'll pay the full amount,  
13          but we'll only get half the project done." So, it's  
14          tricky. So, what's the staff recommend?

15                   MR. HORTON: Well, staff is stressed out over  
16          this and has been for months. And I don't really have  
17          a good, hard answer for you. I will say that as long  
18          as I have been involved with this -- and I actually  
19          went back to Kevin Boyer, who was the person before  
20          me, and I also talked with Will -- we could only come  
21          up with one other event where folks had come to us  
22          with this sort of request.

23                   It was a much smaller amount of money. It  
24          was a smaller problem, but so, we've only had a  
25          recurrence twice. And that one, it was not quite as

1           difficult, because the project came in way under bids  
2           anyway, so there was a whole lot of money there, so we  
3           just picked up the extra part and they finished the  
4           whole project. So, this one is a bit more  
5           complicated.

6                        But again, it's only two events so far.  
7           Staff has discussed this a bit going forward to  
8           whether or not we should pursue a policy. There's  
9           only two events so far, so we don't know that unless  
10          there's some other direction that we would move  
11          forward with that.

12                       To establish this sort of policy, once you  
13          start thinking about it, it's really difficult. I  
14          mean, it's not like it's a real straightforward  
15          exercise. It's like Trustee Martin was just talking  
16          about a moment ago, where do you draw the line?  
17          Where's the bright line when it's an Act of God or  
18          when it's something that you should have expected in  
19          the first place, so --

20                      MR. TOOLE: So, help me understand. It sounds  
21          like from your presentation that Altima and Backwater  
22          have picked up some portion of the excess costs. If  
23          we were to kick in, would they get reimbursed or would  
24          they still be contributors towards resolving a problem  
25          that no one's to blame for? Things happen sometimes

1 and this is not about blame. And would the town be  
2 picking up a piece of the excess costs too or are they  
3 looking to be made whole through us?

4 MR. HORTON: I don't think they're looking to  
5 be made whole by us. I think they're just looking to  
6 get reimbursed for the remainder of the grant amount  
7 and their cost would have exceed the match amount plus  
8 that.

9 MR. TOOLE: So, they're asking everyone to kick  
10 in a little but to help cover something that was  
11 unexpected?

12 MR. HORTON: Right.

13 MR. MARTIN: And there, again, we could come up  
14 with a recommendation to say that we could require  
15 anybody that we awarded a grant to put in their  
16 construction contract that the contractor will be  
17 liable for any damage, no matter what, but then you're  
18 going to pay a lot more per linear foot of stream.  
19 These things are always about assignment of risk.  
20 It's always a balance.

21 And so, I mean, just remind me, too, so  
22 this was 2,100 linear feet of stream. We were talking  
23 about a total budget of about \$400,000, so what was  
24 this sort of on a linear foot per stream basis? I  
25 mean, what kind of costs were we -- I was just trying

1 to think of that. Were we in the \$200 range?

2 MR. HORTON: Bear with me for a minute.

3 MR. MARTIN: The only reason I'm asking is  
4 just, you know, was this already a pretty good price  
5 that we were paying anyway is, I guess, what I'm  
6 trying to get to.

7 MR. HORTON: Right. So, at 2,100 linear feet,  
8 it was \$187 a foot. At \$1,500 -- at 1,500 linear  
9 feet, it's \$261 per foot. So, that was for Phase One.  
10 For Phase Two, which was approved in 2015, it's under  
11 contract now, that's only a thousand feet and the cost  
12 per foot there is \$370 per linear foot. This may not  
13 be an exact apples to apples, because they may be  
14 doing different structures and different work.

15 MR. MARTIN: Sure. Sure.

16 MR. HORTON: But for Phase One, it was at \$187  
17 per foot and it's now at \$261.

18 MR. TOOLE: Based upon this conversation, I'm  
19 inclined to honor the request, because it is an Act of  
20 God. There's no fault. And it sounds like everyone  
21 is bearing some portion of the bad thing.

22 I'm not worried about setting precedent,  
23 because these things are so rare that we can continue  
24 to deal with them on a case-by-case basis and struggle  
25 with the particularities of each individual item. But

1 I could be convinced that my view is not the best one.  
2 These are -- this is the single hardest question, I  
3 think, we have here.

4 MR. GOSSAGE: Mr. Chair, if I may.

5 CHAIRMAN KICKLER: Sure.

6 MR. GOSSAGE: This is a conversation that Larry  
7 and I had extensively; is that fair to say, that our  
8 conversation on this issue was extensive?

9 MR. HORTON: Probably an understatement.

10 MR. GOSSAGE: Because we walked through all  
11 these questions of liability, of insurance, of looking  
12 forward, of precedent, of creating a standard  
13 operating procedure, of policy, and because of the  
14 rarity of this event. And I asked staff to go back  
15 and look and see what's the history, and there really  
16 isn't a history.

17 And when you're creating a policy, you  
18 want to include examples. You want it to be as broad  
19 as possible. And because we didn't have a history to  
20 draw upon, our advice is to not, at this time, create  
21 a policy, but to deal with these on a case-by-case  
22 basis.

23 CHAIRMAN KICKLER: Thank you.

24 MR. MARTIN: And if it just helps too, I mean,  
25 most construction projects, you're thinking are going

1 to be one to two to three years, so then what's a  
2 reasonable time period return event for the contractor  
3 to be thinking about might happen during construction  
4 of a project? Well, then maybe a five-year or a  
5 ten-year would be sort of a reasonable level of risk  
6 that they should -- excuse me. For a return event  
7 during a one- to two- to three-year construction  
8 project. Anything above a ten-year event would get  
9 into that, "Well, you couldn't have reasonably  
10 expected me to include that risk in my cost, so" --

11 MR. GOSSAGE: That was part of our discussion  
12 as well.

13 MR. MARTIN: Given the fact that this is a 50-  
14 to 100-year, I mean, it well exceeds any sort of --  
15 any sort of reasonable expectation we could have had  
16 on the contractor for what to have included in his bid  
17 price.

18 CHAIRMAN KICKLER: Is there any more  
19 discussion?

20 MR. BRAGG: I'm fine to approve this on a case  
21 -- this case on an -- I think it does point out some  
22 of the risks that are inherent in these type of  
23 projects that cannot be seen, whether it's land  
24 acquisition, you know. I have to say that.

25 CHAIRMAN KICKLER: Any more discussion?

1 (No response.)

2 CHAIRMAN KICKLER: Is there a motion to approve  
3 the project scope reduction and payment of the  
4 remaining requested reimbursement amount?

5 MR. MARTIN: So moved.

6 CHAIRMAN KICKLER: Trustee Martin has made a  
7 motion. Is there a second?

8 MR. BRAGG: Second.

9 CHAIRMAN KICKLER: Trustee Bragg has made a  
10 second. Any more comments, discussion?

11 (No response.)

12 CHAIRMAN KICKLER: All those in favor of  
13 approving the project scope reduction and payment of  
14 the remaining requested reimbursement amount, please  
15 say, "Aye."

16 BOARD MEMBERS: Aye.

17 CHAIRMAN KICKLER: All those opposed?

18 (No response.)

19 CHAIRMAN KICKLER: The motion has carried.  
20 Well, folks, does anybody have any comments they would  
21 like to say at this time before we adjourn?

22 (No response.)

23 CHAIRMAN KICKLER: No? Okay. Staff is going  
24 to do a photo. Then afterwards, we can have some  
25 cake. And can't complain about that. All right. Is

1           there a motion to adjourn?

2           MR. BRAGG: I move to adjourn.

3           CHAIRMAN KICKLER: Trustee Bragg has made a  
4           motion that we adjourn. Is there a second?

5           MR. BEAUJEU-DUFOUR: Second.

6           CHAIRMAN KICKLER: Trustee Dufour has seconded.  
7           All those in favor of the motion, say, "Aye."

8           BOARD MEMBERS: Aye.

9           CHAIRMAN KICKLER: Opposed?

10          (No response.)

11          CHAIRMAN KICKLER: Motion has carried and we  
12          are adjourned. Thank you.

13          (Meeting adjourned at 11:29 a.m.)

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CERTIFICATE OF NOTARY - COURT REPORTER

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

I, Christina Kornikh, Notary Public in and for the above county and state, do hereby certify that the foregoing Clean Water Management Trust Fund Board of Trustees Meeting was taken before me at the time and place hereinbefore and was duly recorded by me by means of Stenotype; which is reduced to written form under my direction and supervision, and that this is, to the best of my knowledge and belief, a true and correct transcript of the meeting of the Board of Trustees of the Clean Water Management Trust Fund held at 121 W. Jones Street, Raleigh, North Carolina, on the 14th day of September, 2016.

IN WITNESS WHEREOF, I have hereto  
hand this the 28th day of September 2016

*Christina Kornikh*  
Christina Kornikh,  
Notary Public, Wake County,  
North Carolina  
Notary Public #201515300080

