



**City of New York
Parks & Recreation**

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To: NY/NJ HEP Habitat Workgroup
From: Marc A. Matsil, Chair, HEP Habitat Workgroup
Date: February 14, 2002
Subject: Minutes from the January 10, 2002
HEP Habitat Workgroup Meeting, Hudson River Foundation

Next meeting: Thursday, March 7, 2002
The Arsenal, Zoo Conference Room
830 Fifth Avenue (at E 64th St), 1st Floor
11am-3pm

Present at Last Meeting:

Steve Barnes (RRA), Laura Bartovics (NYSG, HEP), Bernard Blum (FOR), Megan Callus (Baykeeper), Charles deQuillfeldt (NYSDEC), Aleksandra Dobkowski-Joy (EPA), Eugenia Flatow (CAC and Coalition for the Bight), George Frame (Gateway NRA), Cindy Goulder (EL), Len Houston (USACE), Paul Mankiewicz (NYCSWCD, Gaia Inst.), Marc Matsil (NYC Parks), Reyhan Mehran (NOAA-CPRD), Nancy Niedowski (USFWS), Joyce Novak (NYCDEP), Bob Nyman (EPA, HEP), Mario Paula (EPA, WPB), Manuel Russ (CAC to NYCDEP), Christina Scully (NYC Parks), Rosalie Siegel (PANY&NJ), Don Smith (HMDC), Frank Steimle (NOAA-NMFS), Jim Tripp (ED/DMMWG), Daniel Wright (Scenic Hudson), Christopher Zeppie (PANY&NJ)

Items requiring further action:

- Mitigation Ratios (Nancy Niedowski, USFWS)**
- New Wetland Regulations (ACE)**
- Pile's Creek/Woodbridge Nomination for HEP priority site status (Megan Callus, Baykeeper)**
- NEP Habitat Conference (Marc Matsil, NYC Parks)**
- Targets and Goals for the NY-NJ Harbor Estuary Program (Bob Nyman, EPA and HEP)**

Minutes:

Wetland Compensatory Mitigation (Nancy Niedowski, USFWS):

Nancy Niedowski (USFWS) recently undertook an investigation to develop recommendations for improving wetland mitigation. As seen in recent studies from across the country including the NAS/Joy Zedler study, NJDEP/Marjorie Kaplan study, etc., standard practices for mitigating wetland losses are largely unsuccessful and often result in net-loss of wetlands. To counter this lack of success, the HWG working draft seeks to offer alternatives to current wetland mitigation practices. HEP HWG participants are encouraged to offer advice and comment before the final draft is issued.

Niedowski began by describing the basic conceptual arguments for higher ratio development. They are: the time delay of wetlands in reaching full functionality, urbanization's ongoing and historic wetland losses, and accompanying loss of wetland functionality. She went on to review basic mitigation terminology with the HEP HWG. "On-site", meaning that the site is located within the same watershed or geographic area and "in-kind", meaning that the mitigation site replaces or creates the same habitat type as the one impacted by the permitted activity are both preferred mitigation types. However, Niedowski expressed a need for flexibility when mitigating in an urban environment. She stressed that there was a limit to this flexibility, saying that she does not favor, for example, mitigating a Bronx wetland in the Hackensack Meadowlands. Marc Matsil (NYC Parks) added that potential sites for acquisition in all watersheds have been already identified by the HEP HWG. Steve Barnes (RRA) noted that there are other potential sites that have not yet been identified.

Niedowski stated that one of the benefits of a combination acquisition and restoration ratio would be the opportunity to have "out-of-kind" acquisition although restoration must be "in kind". Matsil agreed and gave his recent visit to Japan as a pertinent example of how headwater development affects downstream areas. Despite extensive degradation on the coast, the forested riparian buffer is intact. Consequently, SAV (*Zostera*) are intact. DeQuillfedlt was uncomfortable with the trade-off of upland for down-land coastal areas. He recommended that public education and access become components of mitigation.

Mario Paula (EPA-WPB) noted that the Clean Water Act is silent on mitigation. There are regulations requiring mitigation, however definite ratios are not developed. Typically common professional practice ratios have been acre per acre or value for value without any regulatory framework. NJDEP mentions regulations but the ACE doesn't. He noted the importance of getting the regulatory agencies to reach an accord on systematic procedures for determining compensatory mitigation requirements. He emphasized the importance of the ACE, as they will have federal jurisdiction over mitigation cases.

On a project review, Paula noted trends of "in-kind" and "on-site" mitigation becoming less common as this often does not produce a benefit from a watershed perspective. Paula also emphasized the need for regulatory agencies to make sure that developers are treated even-handedly. For example, it needs to be decided how to assign responsibility in the present for gradual wetland loss which has occurred over many years.

Barnes questioned whether any group was working on wetland losses in particular watersheds; determining figures of exactly how much mitigation could take place, or the economic value of lost ecosystem services. Niedowski said that no one is working on this, but that it could be something for HEP HWG participants to take on.

Matsil said that ecosystem value varies from site to site. Niedowski said that it also depends on what methodology is taken (*HEP*, *WET*). Matsil noted the effects of different competing ecological stressors. For example, recent restoration projects in Little Neck Bay by the Port Authority and NYC Parks show healthy populations of fish, invertebrates and avifauna returning to the restored systems, while the Arthur Kill has not recovered similar productive functionality with similar restoration efforts, due to cumulative stressors.

Flatow thought it would be useful to get a workshop of the regulating agencies together to talk about these very issues. With this type of meeting, HEP HWG could find out where the consensus among regulatory agencies lies, and where more work needs to be devoted. Niedowski and Matsil agreed with this.

Debate on the 20:1 restoration ratio ensued, at which several workgroup members expressed apprehension. Christopher Zeppie (PANY&NJ), Leonard Houston (ACE), and Charles deQuillfedlt (NYDEP) were uncomfortable with the ratio. All three warned that keeping a numerical ratio at the heart of the paper risks losing support from crucial agencies. Still they expressed support for the paper's arguments in favor of better project planning and implementation. DeQuillfedlt stated that if things are done properly, they often succeed. The problems are in execution and not in the ratio. He added that the timeline in reaching functionality should not be as much of an issue as comparing functional equivalency.

Matsil pointed out that the 20:1 ratio was suggested in reaction to the commonly used 1:1, 2:1 and 3:1 ratios in these urban watersheds. He again stated that the ideal formula would incorporate acquisition/replacement AND restoration to compensate for lost ecological use. Matsil noted that it was suggested that a 3:1 acquisition/replacement AND a 3:1 restoration ratio be used, if there were one. Given the failures of wetland mitigation efforts alone, he stated that it only makes sense to have a larger ratio. After a project fails, given low-bid scenarios, and lack of bonding that rarely exceeds one year, there is not money left over to redo a project that fails to restore ecosystem functionality. In addition, there exists a dearth of qualified firms that are often awarded low bid contracts. Jim Tripp (ED,DMMWIG) agreed with Matsil, stating that having such a large ratio is far from ideal, but you are at least ultimately saving and improving habitat. Houston disagreed and said that we need to look into other options of improving regional and national success rates rather than attempting to mitigate greater acreages. This would include for example, making contractors responsible for failures and refusing payment until projects are completed satisfactorily. Matsil said that method is often ineffective, and contractors walk away from bond money because they can afford to take those losses. DeQuillfedlt recommended looking at harbor-specific numbers for wetland mitigation successes and failures rather than national studies. Given current understaffing in environmental agencies, it is not certain if DEC could undertake this project.

Niedowski said these complications are reason enough to acquire lands now. Since project implementation improvements will come slowly, land must be bought off and

preserved. She was not in favor of completely dropping the ratio comment from the paper, but expressed willingness to compromise and simply state 2 larger ratios as a recommendation. Flatow and Matsil suggested a range for ratios. Niedowski went on to say that the acquisition/restoration combination ratio should definitely be kept because it is in the realm of what is currently obtained. Megan Callus (Baykeeper) recommended including better documentation/justification of the reasoning behind the numbers i.e.) stating that the range is currently attained. Matsil added that government and regulatory agencies think in terms of numbers, so removing them will render this a table document.

Despite disagreement over ratios, Niedowski felt strongly about the HEP HWG recommended monitoring protocols as an integral part of any compensatory mitigation package. Matsil pointed out that the *NY/NJ HEP HWG 2001 Status Report* recommends a minimum 5 years of monitoring. He pointed out that developers often disagree; especially with bonded money, as their complete payoff would depend on habitat functionality.

Zeppie suggested that the HEP HWG begin to focus on greater buffer and adjacent areas, especially with anticipated sea level rise. He then warned that there are private developers waiting to develop wetlands in 10 years in order to cover rebound periods in retrospect.

□ **Arthur Kill Dredging: Responsiveness to multiple letters of concern by trust agencies and environmental organizations regarding environmental damage (Len Houston, ACE)**

In response to the approved ACE Arthur Kill dredging project, the NRDC, NY/NJ Baykeeper and CAC wrote letters to the ACE expressing their concern for potential significant environmental impacts of the project. They felt as though the ACE failed to address their comments regarding coastal erosion, toxic release, marsh functionality, winter flounder habitat destruction, Old Place Creek destruction of an already restored area, compensating mitigation, and GATX.

In preparation for future actions, the CAC made it known that they are on record against future 45 to 50 ft dredging. Flatow added that she specifically wants discussion of the issues regarding the Arthur Kill because of the amount of area to be protected there.

Houston stated that the environmental assessment of the Arthur Kill deepening strictly deals with dredging from 30 to 35 ft. He added that the ACE did not ignore comments, rather they have differences of opinions on environmental impacts. They feel as though their models are appropriate. The ACE does not ignore that marshland is decreasing. They recognize that loss but believe that there are alternatives, similar to what is currently done in Jamaica Bay.

Houston added that the deepening project cannot be blamed for past environmental problems and those that occur before the project even starts. In response, Callus stated that the ACE is not dealing with the fact that dredging will permit larger ships to enter the Harbor and degrade habitat through increased waning and wave action. Houston stated that the ACE model shows no significant increase in Arthur Kill marsh loss with larger ships. The problem is not with bigger, deeper draft ships, but with the shorter tugboats. The number of boats entering the channel will not increase. Rather ships with deeper drafts will enter. He added that the ACE is not able to regulate what the tugboats and

barges do to damage the salt marshes. Callus then questioned if this issue was open to continued discussion. Houston responded that the Arthur Kill deepening is a closed book; authorized and funded by Congress.

For options in combating marsh-loss, Houston said that the seemingly obvious fix of dumping rock in front of the Arthur Kill to block wave action is not necessarily the right solution. A lot of issues and potential problems must still be addressed. He recommended a local sponsor requesting an 1135 or a 206. Matsil stated that this might be difficult in the current fiscal climate. Flatow suggested tying this type of project into global warming/sea-level rise issues. Zeppie said that should not be the first solution tried due to the irreversibility of such a project. He recommended installing a floating breakwater as a buffer for the Arthur Kill because it can be easily removed if unsuccessful. He noted that cages are typically hung, creating habitat. Frank Steimle (NOAA-NMFS) said that this greatly enhances the habitat. Such “reverse eel-grass” also allows sediment trapping to occur. Flatow recommended an Arthur Kill pilot study.

Matsil said that NYC Parks/NRG once installed a wave dissipation barrier comprised of recycled Christmas trees which worked well. NYS DEC also funded an EPF grant to place tensar fencing at Old Place. DEC then requested a design modification that precluded the fence trapping sediment (had to raise the fence about 0.5 m). The project/marsh establishment then failed. He said that we need to find a method that traps sediment, reduces wake amplitude and still allows fish access to buffered areas.

In closing, Flatow volunteered to research other uses of beneficial dredge, Matsil volunteered to give information on tensar fences, and Zeppie volunteered to seek further information on the LaGuardia floating breakwater project.

❑ **State of the PA \$60 million (Christopher Zeppie, NYNJ&PA)**

The Port Authority Board has approved a non-transferable, non-interest bearing \$60 million donation for both NY and NJ. This decision is tied to maintaining the status quo on mitigation ratios. According to Zeppie, by preserving land now, the Port Authority intends to minimize scrutiny when they must diminish similar habitat later. The process has begun with appraisal of priority sites and discussion with the Trust for Public Land.

This money must be spent on property tied to the Port Authority’s mandate with natural resource acquisition as a goal. Examples of this include purchasing natural areas close to Port Authority properties; providing safety/security buffers, and creating natural area public access sites with a Port Authority community development component.

Flatow recommended allotting money towards acquisition of Jamaica Bay high marsh and institution of pilot projects there. She questioned whether or not they could arrange a loan for later substitution. Given the current fiscal climate, it is hard to initiate pilot projects. She pointed out the importance of preserving land now, which can be paid off later in anticipation of an economic rebound. Zeppie said that funding of Blue Ribbon pilot studies was already explored using other monies from an administrative consent order, but it never reached closure.

Zeppie said that the Port Authority will hold title to any acquired land for which a long-term land conservation provision will be included. He mentioned that land acquisition could also be part of an ACE restoration project. Zeppie gave the example of the Hudson Raritan Estuary restoration of Marquis Creek as a project to model after. This project has a 35% local share. Barnes asked if there was a provision for acquisition

under storm water control management. He suggested this option for acquisition of residential units lying on flood plains.

Matsil noted that acquisition does not necessarily need significant monies for maintenance after the initial purchase, although some sites do. In fact, NYC Parks has acquired over 2,000 acres through purchase and mostly land transfers. Because much of the acquisitions support in-tact habitat, initial budgeting often only calls for guard rail to preclude dumping. The Teleport Magnolia Preserve is an example of a site requiring such minimal expenditure because it is a relatively pristine preserve.

Callus inquired whether or not the Port Authority is open to suggestions for other sites. She will write a nomination form for Pile's Creek and Woodbridge under Greenways to the Arthur Kill to present at the next HEP HWG meeting.

Zeppie noted that they have most sites listed of which many are HEP priorities. There are no time constraints on spending money, although he would like to swiftly progress with the land acquisition process since the money is not interest bearing.

□ Proposal to Nominate Lower Raritan River as area of Special Concern (Steve Barnes, Rahway River Association)

Steve Barnes presented the HEP HWG with a proposal to nominate the lower Raritan River, from Bridgewater to Perth Amboy, as a significant coastal habitat under the CCMP and an Area of Special Concern on behalf of the Lower Raritan Watershed Management Steering Committee. He stated that this nomination would ensure better cooperation and coordination between the HEP and Lower Raritan Watershed Management Area's and basin-wide efforts to achieve watershed goals and objectives on a range of topics including control of toxics, pathogens, floatable debris, stormwater and sediments.

Barnes said that there is limited data available on this area through the Planning Authority of the Raritan. Specific acquisition sites are not yet worked out. Steimle recognized the importance of this area, particularly because very little is known about the biological resources it has. He stressed the need for basic biological surveys. Terrestrial wildlife is decently measured, but riverine faunal surveys are not collected. Don Smith noted that he did an Audubon sponsored bird study on the Raritan in 1986 from which he could furnish data.

Flatow and Nyman did not see the value of nominating this area to the same status as the Arthur Kill, Jamaica Bay, and the Hackensack Meadowlands. Flatow said that there are ways to go about conducting surveys and doing work in that area without necessarily giving it Area of Concern status. If we continue to give areas that ranking, the effect will be lessened.

Barnes will report to the Rahway River Association that the area is being considered and that there are other options. Matsil recommended that specific sites get identified there. Callus said that Baykeeper is currently updating their sites and would like to include lower Raritan sites. They are hoping to get that done by their March meeting. Mankiewicz added that the HEP HWG might be able to obtain data on riverine vegetation from Rutgers University. He said that we could recommend algal and invertebrate monitoring by Rutgers. Matsil added that the Biodiversity Monitoring Portal would be useful for documenting such data, if it is funded.

❑ **NEP conference (Marc Matsil, NYC Parks)**

The HEP HWG is planning on hosting a two day National Estuary Program conference at the AMNH this Autumn, for HEP and other NEP's focusing on innovations in inventory, habitat protection, land acquisition, restoration and preservation around the country.

Many of the topics covered in the *NY/NJ HEP HWG 2001 Status Report* will be part of the meeting's agenda. Ideas for sessions to be covered are encouraged from workgroup members. The two-day conference will review creative and effective methods of 1) restoration, monitoring, and research progress, funding and practice; 2) parklands' acquisition methodologies and cost-effective alternatives to land conservation and; 3) zoning mechanisms and creative programs for habitat protection.

Matsil would like to invite organizations from across the country that creatively implement zoning mechanisms. He requested that workgroup members brainstorm additional ideas and think of speakers to invite. Nyman noted that he wants the other NEPs to come as participants bringing ideas and speakers with them. Matsil suggested having Joy Zedler as a potential speaker. Flatow suggested talking about successful partnerships; an example of this is seen with the Water Authority of Portland, OR. Mankiewicz suggested a presentation dealing with different ways of measuring the economic value of wetlands. He would also like to see a presentation on the importance of buffers and different creative landscape buffers.

Matsil suggested Columbia University housing as an option for affordable overnight accommodations. Nyman wants to include this NEP conference in current budget planning. Matsil volunteered to draft an article for the NEP conference.

❑ **Targets and Goals (Bob Nyman, EPA)**

Bob Nyman said that wordsmithing of the current Targets and Goals document will be undertaken at the management committee meeting on January 25, 2002. He has received the HEP HWG comments.

He requested that HWP HWG participants begin submitting ideas for the new budget. He would like all comments by March. Matsil will submit the Biodiversity Monitoring Portal project budget. Flatow pointed out the importance of setting such goals by spring, so that lobbying for funds will be done most effectively.