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To: NY/NJ HEP Habitat Workgroup  
From: Marc A. Matsil, Chair, HEP Habitat Workgroup  
Date: February 26, 2001  
Subject: Minutes from February 21, 2001 HEP Habitat  
Mitigation Subgroup Conference Call

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*Present at last meeting:*

Jodi McDonald (US ACOE), Marc Matsil (NYC Parks), Nancy Niedowski (NYS DOS), Mario Paula (US EPA), Surangi Punyasena (NYC Parks), Tali Vardi (NYC Parks).

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*Minutes:*

❑ **MITIGATION RATIOS: REVISING THE WHITE PAPER**

CCMP Objective H-1: Develop a comprehensive regional strategy to protect the Harbor/Bight watershed and to mitigate continuing adverse human-induced impacts.

CCMP Objective H-3: Manage coastal development.

CCMP Objective H-4: Manage shoreline and aquatic habitat modifications.

CCMP Action H-4.4: Ensure that actions impacting habitat in the Harbor core area, in the aggregate, result in a net increase in the acreage and quality of aquatic habitat, where feasible and appropriate. Emphasize key habitat types such as submerged aquatic vegetation.

CCMP Action H-4.2: Ensure regulation of proposed actions involving less than one acres of fill in freshwater wetlands.

The mitigation subgroup reconvened via conference call to discuss revisions to the white paper circulated at the January 24 HEP Habitat Workgroup meeting.

Marc Matsil (NYC Parks) related the conversation that he had with Joy Zedler regarding the upcoming publication of a National Academy of Sciences study on mitigation. The document was currently in peer review. Mario Paula (US EPA) noted that the study was funded by Congress to review the federal 404 program and would be available late April or early May. The study had chosen sites representative of the four or five climatic zones; Boston was representative of the Northeast.

Matsil suggested that the high mitigation ratios promoted by the group for restoration alone may be counterproductive – detracting attention from the argument for combined acquisition and restoration as mitigation. Paula added that the numbers were difficult for federal regulators in particular that did not recognize strict ratios. He suggested that the HEP Habitat white paper reference the 1990 federal mitigation MOA, which set the federal standards for mitigation replacement. He added that the “no net loss” language for federal mitigation standards came out of the 1990 MOA.

Paula noted that Dr. Margerie Kaplan is in the process of reviewing the results of mitigation restorations state-wide for NJ DEP. Paula is a member of the peer-review committee, and he noted that preliminary results showed that restoration success was fairly low, and that forested wetland mitigation was particularly low. The official report should be complete in five months.

Matsil suggested that the subgroup complete a similar survey for New York using NYS DEC and Army Corps records. Jodi McDonald (US ACOE) noted that the regulatory and compliance programs are separate in the Corps, but that DEC tracks the results of mitigation projects, though primarily in terms of vegetation cover. Paula added that mitigation programs required closer scrutiny, and that the National Academy of Sciences study may change the way the federal agencies track success rates.

Matsil noted that the rates of recovery in urban systems were impeded by the cumulative impact of larger environmental stresses. McDonald suggested that the rates of recovery may also depend on the system being restored.

Nancy Niedowski (NYS DOS) noted that because so many papers are currently pending, that finalizing the suggested mitigation ratios be put on hold. She asked the group for their input on Christopher Zeppie’s (PA NY/NJ) concern that government regulations requiring the acquisition of property would inflate property prices and acquisition costs. Matsil said the problem was that not enough attention was being paid and not enough money being set aside now for acquisition and that an acquisition mitigation model would help solve that problem.

Niedowski asked for input in the Habitat Workgroup’s request that modifiers be developed for mitigation ratios, whether the subgroup wanted to take into account historic losses, or remediation of contaminated land. Matsil suggested that the ratios be kept as simple as possible.

Tali Vardi (NYC Parks) discussed the function criteria that Parks/NRG staff drafted, which included compensation for lost ecological function, recovery and failure rates, and regional scarcity. Surangi Punyasena (NYC Parks) explained that the need for high mitigation ratios must be described in as much detail as possible, but that simpler, general categories can then be abstracted.

Paula suggested that the group refer to the mitigation success criteria developed by the Corps Waterways Experiment Station (WES): “Examples of Performance Standards for Wetland Creation and Restoration in Section 404 Permits and an Approach to Developing Performance Standards.” WRT Technical Note WG-RS-3.3, Jan. 1999. This and related reports can be found on the WES website (<http://www.wes.army.mil/el/wrtc/wrp/tnotes/tnotes.html>).

Matsil initiated discussion of a timeline for the completion of the white paper. He suggested that the group wait until the release of the National Academy of Sciences and NJ DEP reports. Niedowski suggested that the group also wait until Paul Mankiewicz (NYCSWCD) was able to provide some of the necessary technical information.

- McDonald volunteered to compile information on the mitigations monitored by the Army Corps, including wetland type and the success criteria used.
- Matsil volunteered to compile the available data on NYC Parks restorations.

- Niedowski volunteered to coordinate the information gathering on NYS sites with Steve Zahn (NYS DEC) and Joe Pane (NYS DEC/Freshwater).
- Paula volunteered to speak with Kaplan regarding the NJ mitigation survey. Matsil suggested that she be invited to speak at the next HEP Habitat Workgroup meeting.

Matsil concluded the meeting by noting that the subgroup needed to demonstrate how unrealistic current mitigation practices, including mitigation banking, are. For most developers, mitigation as part of a permit or as a result of a violation is a cost that can be too easily written off. The dollar figures do not realistically reflect the steep costs of completing a restoration in the harbor (with the price of fill exceeding \$20 to \$40 per cubic yard to remove), which can often exceed \$500,000 to \$800,000 an acre.