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Parks & Recreation**

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To: NY/NJ HEP Habitat Workgroup
From: Marc A. Matsil, Chair, HEP Habitat Workgroup
Date: February 7, 2001
Subject: Minutes from the January 24, 2001
HEP Habitat Workgroup Meeting, Hudson River Foundation

Next meeting: Wednesday, February 28, 2001
10.00 am – 2.00 pm
Hudson River Foundation Conference Room
40 West 20th Street, 9th Floor

Present at last meeting:

Melissa Alvarez (NYS DEC), Emily Ayers (Columbia University), Steve Barnes (Baykeeper), Lisa Baron (NJMR), Peter Blanchard (TPL), Bernard J. Blum (Friends of Rockaway), Paul Brunn (NYC DCP), Megan Callus (NJ Conservation), Kevin Clarke (NYC DEP), Eugenia M. Flatow (CAC, NYCSWCD), Tom Gulbransen (Battelle), Zoe Kelman (US EPA), Marc Matsil (NYC Parks), Andrew MacLachlan (US FWS), Mark E. Maglienti (NYS DOT), Paul Mankiewicz (Gaia Institute, NYCSWCD), John McLaughlin (NYC DEP), Dan Montella (US EPA), Nancy Niedowski (NYS DOS), Bob Nyman (US EPA), Marta Panero (NYAS), Surangi Punyasena (NYC Parks), Greg Remaud (NY/NJ Baykeeper), Lisa Rosman (NOAA), Manuel Russ (CAC Pollution Prevention), John Sacco (NJ DEP), Don Smith (HMDC), Inga Van Eysden (NYC Law), Judith S. Weis (Rutgers University), Christopher Zeppie (PA NY&NJ).

Items requiring further action:

- Development of the Habitat Workgroup 2001 Initiatives.
- Marc Matsil (NYC Parks) will contact Joy Zedler for a draft copy of the National Academy of Sciences Report on wetland mitigation.
- The mitigation ratio subgroup will investigate ratio modifiers.
- Greg Remaud (Baykeeper) will follow-up on the Cheesequake Marsh mitigation plan

Minutes:

❑ **HEP HABITAT WORKGROUP 2001 PRIORITIES**

Mitigation ratios. At the top of the workgroup's list for the upcoming year's priorities was the discussion of mitigation ratios. Marc Matsil (NYC Parks) nominated that the Workgroup continue to develop mitigation protocols and ratios that adequately responded to the long-term loss of habitat function.

NEP Habitat conference. Matsil nominated a second item that had been one of the Workgroup's funding requests last year: a regional or national conference of NEP Habitat workgroups.

Funding. The next item nominated was the continued effort to raise monies for HEP acquisition and restoration priorities. Greg Remaud (Baykeeper) noted that Baykeeper has focused its attention on raising money for land acquisitions in an effort to protect the remaining natural areas of the harbor. HEP participants have worked in bi-state groups; NRDC, Baykeeper, and the other nonprofit groups have talked to legislators.

One result: Senator Lautenberg allocated \$1 million for the acquisition of sections of the Raritan Bayshore. Several sites have been identified – Margaret Creek (Marquis Creek) is a top candidate. One concern, however, is that there is no money allotted for the management of the site, once purchased. The site must also be appropriate for an estuarine research preserve.

Don Smith (HMDC) asked about the status of Conaskonk Point. Remaud responded that the owner, GPU Energy, has been acquired by an Ohio utility, so that acquisition has been put on hold. John Sacco (NJ DEP) noted that NJ DEP will provide a Green Acres match for the site.

Smith asked whether there are plans for ongoing research on the contamination in Raritan Bay. Greater scaup, which winters in the bay, have high levels of metal contamination in blood samples and are suffering from poor reproductive success. He suggested that the Raritan acquisition include a research component.

Eugenia Flatow (CAC, NYCSWCD) suggested that the workgroup's fundraising activities take a more activist approach, depending on local constituents. She suggested that the workgroup pin down its priorities as specifically as possible. In New York, there has been interest in the Bronx River and Jamaica Bay. In New Jersey, there is interest in the Raritan and Passaic. The Arthur Kill has not received as much attention as it should.

Matsil noted that there is not enough publicity of HEP projects. He suggested that the HEP outreach office do more press events. He suggested that the NWI document *Wetlands of Staten Island* be publicized. Sacco noted that though the Department of the Interior may now have a more western focus, the EPA will have strong ties to the east. Matsil noted that Whitman has had a strong commitment to land acquisition and that it may be useful to involve her in HEP events. Smith suggested that the workgroup have a one-day conference to inform the press and elected officials of what the workgroup is and the what it has accomplished.

Bernard Blum (Friends of Rockaway) questioned the status of Dubos Point and Matsil noted that HEP has had tremendous success in focusing attention on Jamaica Bay. Blum later interrupted the meeting with threats directed at Flatow, in response to having been left off the Help the Harbor brochure. Matsil called him out of order, and warned that he would be banned from future meetings.

Remaud introduced Megan Callus (NJ Conservation). (The New Jersey Conservation Foundation and the Trust for Public Land produced the *Arthur Kill Greenways*). Callus was hired to deal with land acquisition on the Arthur Kill and contamination issues. Her participation in HEP will aid

efforts to renew attention on the Arthur Kill. Callus added that NJ Conservation will have funding for a one-day conference on the Arthur Kill watershed in the spring.

Flatow noted that CAC/STAC will hold 12 regional meeting to publicize HEP's accomplishments. There will also be briefings and a boat trip for the legislators to see some of the sites. The June 14th meeting will discuss priorities. She noted that the major port outfits and unions want to participate in and sponsor the meetings. The meetings are designed to listen to the constituents. Steve Barnes (Baykeeper) noted that HEP needed public input to decide on its priorities.

Public access. Flatow added that the workgroup has not addressed several important community issues: access and recreation. This includes improving water quality so fish can be consumed, boating, and swimming. Matsil suggested that the acquisition and restoration priorities with an access component be identified on the HEP map.

Watershed planning and management. Barnes noted that three New Jersey watersheds need to be planned and managed with New York State: the Hackensack, Raritan Bay, and Passaic. He stressed the need that both states participate in any management plan.

Barnes nominated that the lower Raritan River be considered as an area of special concern by the workgroup. He requested that the US FWS Significant Habitats report be expanded and updated to include the lower Raritan River.

Redefining habitat replacement. Matsil requested that the workgroup focus attention on the issue of "replacement habit" in light of the substantial wetlands loss occurring in Jamaica Bay and the Arthur Kill. This would include discussion of NYS DEC regulatory hurdles and beneficial reuse of dredged sediment.

Flatow suggested that participants from permit divisions of DEC, US ACOE, and NJ DEP be included in workgroup discussions on issues from eelgrass to reintroduction of oysters to beneficial reuse of dredge materials. Matsil suggested that he and Melissa Alvarez (NYS DEC) reinstate the regulatory and enforcement subgroup. Sacco will investigate whether similar replacement habitat issues exist in NJ DEP regulations. Smith noted that NOAA/NMFS has traditionally opposed restorations that involve filling in open water on the grounds that a functional aquatic habitat would be sacrificed.

Christopher Zeppie (PA NY&NJ) suggested that the workgroup adopt sewer sludge as the model for the redefinition of dredged material. He suggested, however, that Pelham Bay may be a better first project than Jamaica Bay.

Characterizing benthic habitat. Bob Nyman (US EPA) suggested that the workgroup work to characterize the benthic habitat of the harbor. Flatow noted that there had been no response to a previous RFP for benthic inventory. She suggested that HEP partner with HREMP, which is completing a geologic survey of the Hudson to the Verazzano.

Matsil suggested a literature search and noted that John Tanacredi (NPS) is heading a study funded by JBERT that inventories the benthos of Jamaica Bay. Smith noted that HMDC and Rutgers will complete a two-year benthic survey and fisheries update of the Hackensack Meadowlands. Sacco added that the Army Corps has allocated \$3 million for a estuary-wide benthic characterization in their Hudson-Raritan Estuary Study.

❑ HEP HABITAT WORKGROUP 2001 BUDGET REQUESTS

The budget requests Matsil submitted on behalf of the workgroup were the same as those that remain unfunded from last year.

HEP map. Matsil noted that NYC Parks is no longer able to cover the cost of printing the HEP Priority Acquisition and Restoration Sites Map. The map should be printed once a year, because it is continually updated. Matsil noted that LISS was already in its second or third printing of its map. He estimated that there are about 500 requests per year from consultants, HEP participants, and elected public officials. NJ DEP has offered to print the map, but there is currently no clear commitment. NYC Parks will also submit an application for an HRF/NYC Environmental Fund grant to pay for map printing.

Flatow noted that the maps were extremely effective with legislators, who can immediately identify their district and included HEP sites. Nyman suggested that the back include encapsulated summaries of the sites and watersheds – with similar information on the website.

NEP conference. Matsil also requested \$15,000 for a regional or national NEP two-day conference.

❑ MITIGATION RATIOS CONTINUED

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.

Nancy Niedowski (NYS DOS) handed out the revised “white paper” draft on mitigation ratios – the working draft for the mitigation subgroup – revised after the December 18th mitigation subgroup conference call. The format of earlier drafts was retained: including a brief discussion of what standard practices are and a discussion of the urban setting of mitigation, which may justify a revision of mitigation practices. The two major tenets of the argument are that higher ratios for mitigation replacement are necessary to compensate for all aspects of habitat loss and that acquisition replacement (in addition to current restoration mitigation ratios) may be one way to protect sites that would otherwise be developed.

The preferred mitigation ratio is the proposed combination of acquisition and restoration with 2:1 acquisition and 3:1 restoration. Restoration replacement has been discussed as high as 20:1. Niedowski noted that the workgroup needs to decide whether it is satisfied with these numbers.

Paul Mankiewicz (NYCSWCD) noted that a method that took into account the time required for a restored system to reach the biomass, biological diversity, and the biogeochemical capacity of the marsh that was destroyed would be fairer than the current method. He outlined several functional measures: primary productivity (above and below ground biomass); secondary productivity (numbers of individuals and species densities – different species can be ascribed different importance values); niche differentiation (most engineered salt marshes lack surface heterogeneity); measures of respiration, community metabolism, photosynthesis rates; and nitrogen and sulfur reduction. He added that most restorations built on a sand substrate will not give you all facets of functional capacity in the short-term.

Mankiewicz added that mitigation ratios, when all these factors are taken into account, may be four or five times current numbers. He thought that some of the multipliers will fall out quickly and volunteered a graduate student to complete the literature search.

Niedowski noted that the 20:1 ratio demonstrates the value of habitat in an urban area and what is needed to fairly compensate for its loss. The proposed and preferred alternative to a 20:1 ratio is the acquisition-restoration combination, which would raise the ratio, but not an excessive amount.

Judith S. Weis (Rutgers University) suggested that the ratio reflect the condition of the site being restored. The destruction of something that has function in return for greater function in the future (e.g. restoration of a Phragmites marsh) may not be as equitable as the restoration of a cement-covered lot.

Barnes suggested that the ratios be based on a watershed context. Mitigation should occur where the loss occurred; if the restoration occurs outside the effected watershed, the ratios should be higher.

Zeppie voiced concern over the proposed ratios. He suggested that the policy would favor development in suburban and rural areas and promote urban sprawl. Theoretically, there is a high hurdle for development occurring in a wetland in the first place, where development must address a public need. High ratios would be an overwhelming burden.

He suggested that special consideration should be made of the mitigations that clean up contaminated sites. With a single ratio, these expensive mitigations would be ignored. He added that requiring acquisition of property may also drive up the cost of acquisitions.

Flatow noted that there is an urgency to come to closure on the issue of adequate mitigation ratios for the Comprehensive Port Improvement Plan (CPIP). She stressed that this discussion was prompted by the need to rethink status quo policies. The criteria for “no loss” have been ignored in New York State. The HEP CCMP highlights the need to increase wetland habitat, and this objective is not being addressed. She continued that not all development allowed on wetlands is necessary. What the workgroup wants is an investment in the harbor in acquiring and restoring what we already have. Development had to be put in a larger context.

Matsil noted that the discussion began with new information on recovery rates for all projects in the harbor, some in response to violations. The penalties for most violations are nominal, and only a small suite of functions return – more acres are lost to erosion than are successfully restored (as in the case of oil spill damage at Old Place and Saw Mill Creeks). Current mitigation practices ignore that the value of wetlands as a diminimous resource and the multiple stresses on an urban system that lengthen recovery and increase failure rates in restored urban systems.

Dan Montella (US EPA) was concerned that there was no accurate method to calculate the cumulative impact of urban stresses on a restoration. He was also concerned with blanket ratios, because each restoration is unique. Without adequate data to justify ratios, regulators would be faced with lawsuits. Matsil, however, thought the onus should be on those completing a restoration mitigation to demonstrate that a restored marsh has actually returned to full function. Montella reminded the workgroup that a National Academy of Sciences report on mitigation is due out this spring. Matsil volunteered to contact Joy Zedler for an advance copy of the report.

Zoe Kelman (US EPA) noted that Majorie Kaplan (NJ DEP) was conducting statewide research on the return of freshwater wetland. Her data would likely support increased ratios.

MacLachlan noted that having a single ratio to fit all mitigations may be difficult to sell; the biology and function of a wetland changes with the type. He suggested that consideration be made of the size and effort of the restoration action and the implementation of monitoring and other investments.

Niedowski noted that the Mitigation Subgroup had spent the bulk of the conference call discussing what research was available and potential ratio modifiers. The primary effort at this stage is to open a dialogue; the numbers and methods are up for discussion.

Matsil suggested developing a range of ratios (from 5:1 to 20:1). He stressed that the push to raise ratios intends to reach a balance that adequately compensates for lost function. He suggested that acquisition replacement may be a viable model when habitat is continually being lost to development.

Zeppie worried that stressing preservation of remaining land in a developed watershed would push urban sprawl by making land too costly to develop in the metropolitan area. Barnes believed that stressing preservation would force development to be limited to already developed land. He noted that the problem with evaluating the value of land was that the cost of purchasing and developing a site does not necessarily reflect the larger cost to the community.

➤ *Niedowski noted that the subgroup will focus on developing modifiers as suggested by the workgroup.*

☐ **ARTHUR KILL/KILL VAN KULL DREDGING**

CCMP Action H-1.2: Foster information transfer and tools to enhance and encourage watershed planning.

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

Matsil introduced the Arthur Kill/Kill van Kull dredging. He noted that the role of channelization is overlooked in the loss of wetlands in Jamaica Bay, the Arthur Kill, and elsewhere. He stated that the proposed mitigation plan, with a 2:1 ratio, underestimated the value of the Arthur Kill wetlands and the impact of dredging. Sacco noted that the 2:1 ratio had been agreed to by committee, although Matsil noted that NMFS, NRDC, and others have expressed concern for the potential impact to existing marshes.

☐ **NJ Update: Cheesequake Marsh, Liberty State Park, and the Rahway River**

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 Objective H-11: Identify significant coastal habitats warranting enhanced protection and restoration.

CCMP Action H-11.4: Identify and protect locally significant habitats in the Harbor core area.

CCMP Objective H-12: Develop and implement plans to protect and restore significant coastal habitats and impacted resources.

Cheesequake. Remaud updated the workgroup on the status of the violations at Cheesequake Marsh [see the August 16th and October 19th HEP Habitat Workgroup minutes]. The clear-cutting of 1500 feet of bluff and resulting erosion has destroyed acres of freshwater and tidal wetland. Cheesequake is just outside the coastal boundary and 500 feet from state property.

He noted that there are violations of local soil erosion laws and federal wetland violations. Baykeeper originally procured a stop-work order from the Army Corps and the town of Sayerville stopped issuing certificates of occupancy. But the silt fences that were put up are still being breached, and soil is still flowing into the marsh. Since last August, 50% more bluff has been clear-cut.

He stated that Baykeeper and others had not been given adequate time to review the NJ DEP-approved restoration plan. Both freshwater and saltwater restoration plans are inadequate, the species lists are questionable, not enough plants are required, and no monitoring or bluff restoration is planned.

Jim Tripp (Environmental Defense) wrote to the Army Corps, requesting that there be damages and criminal penalties. According to Remaud, he was told that there was a restoration plan for the bluff, but Remaud only knew of a planting scheme with grasses and some trees and shrubs at the foot of the bluff; the view would not be “obstructed”. The units at the edge of the clearing are now being sold as more expensive units. Remaud was outraged at the lack of response by the responsible regulators. He stressed that Baykeeper did not have the resources to follow up on its own.

- *Lisa Rosman (NOAA) suggested that HEP and Baykeeper write back to the Army Corps asking for the plan and additional time to review it.*

Remaud noted that there was no real penalty imposed. If the restoration failed, there could be only be a maximum of \$17,000 in fines. Barnes added, related to the earlier discussion on mitigation ratios, that the fine did not match the actual losses. A developer could easily write off such a small penalty.

Barnes continued that the New Jersey Soil Erosion and Sediment Control Act is the environmental law most often violated by developers. Permits are granted by the state agriculture soil districts, but as a rule there is no enforcement of these permits. (In the case of La Mer, the town of Sayerville is the responsible authority). He expressed concern for buffer areas around wetlands and transitions zones. Riparian corridors are regulated under state law, but not ecologically significant buffer areas.

- *He suggested that the workgroup focus on reform of land use law after the mitigation ratio debate.*

Flatow asked what bank is financing the development. She noted that banks would be more sensitive than the developer to potential trouble. She suggested that the event be publicized.

Remaud responded that Baykeeper had widely publicized the violations, with newspaper editorials and an NBC newscast. But the developer survived the publicity, and no action was taken afterwards. He suggested that the workgroup develop a mechanism for mobilizing to deal with violations such as this.

Flatow suggested that the state attorney general could act on this violation and raise the punitive fines, or at least lengthen the timetable for the developer.

Liberty State Park. The three alternatives for preservation of the site will set aside the 200 core acres. The battle now is over the 50-acre outer fringe.

The first option is to leave it as buffer; the second is to open it to passive recreation; and the third is to open it to more active use, including commercial development. Baykeeper and the Liberty State Park Conservancy have opposed the Jersey City mayor’s plans for the development of a commercial water park. Thirty-six conservation groups joined a letter expressing opposition to a water park, resulting in a reversal by the mayor, though he is still pushing for active recreation.

Rahway. Barnes added that the City of Rahway received \$3.75 million for a Army Corps WRDA project. Plans include bank stabilization.

❑ **HEP Priority Acquisition/Restoration Nominations Update (Bob Nyman, US EPA)**

Nyman updated the workgroup on the six sites pending Management Committee approval (Acquisitions: South Beach Wetlands and Great Kills Harbor, Staten Island; Restorations: Bergen Beach and Idlewild, Queens; Pelham Bay/Tallapoosa West, Bronx; Liberty State Park Interior, Jersey City). Approval had not been finalized at the last management committee meeting in November. He anticipated approval of the sites at the upcoming February meeting.

❑ **CCMP Habitat Tracking Report (Zoe Kelman, US EPA)**

Kelman distributed copies of tables from the tracking report completed for the EPA Washington Office. The report needs to be final by June. HEP is taking credit for 300 acres of restoration and acquisition for 2000, costing \$50 million. Matsil stated that the numbers were actually higher, and will be reflected with the Habitat Workgroup Status Report, to be released in March. Flatow asked that receipt of funding be tracked, because funding is often promised and then retracted, especially with changes in administration.

Kelman added that the tracking report is not the best means to publicize the accomplishments of HEP. She suggested a 10-page summary and fact sheets. Flatow suggested that the HEP map be plotted against a political map for the benefit of legislators.

Matsil requested addresses for the HEP status report, which is due out in March. The workgroup set the next workgroup meeting for Wednesday, February 28, 2001.