

**December 18, 2013 MINUTES OF THE MEETING  
TO BE REVIEWED January 15, 2014**

**Delaware and Raritan Canal Commission**

TIME: 10 a.m.

DATE: December 18, 2013

PLACE: D&R Canal Commission Office  
Stockton, New Jersey

**ATTENDING:**

**COMMISSIONERS:** Chairman Robert Bostock and Commissioners Julie Cobb Allen, Mary Alessio Leck, Phillip Lubitz, Bruce Stout, and Ed Trzaska, and Director Mark Texel

**STAFF:** Ms. Marlene Dooley, Ms. Colleen Christie Maloney, Mr. Vince Mazzei, Deputy Attorney General Lisa Daglis

**GUESTS:**

Ms. Patricia Kalleser, Superintendent, D&R Canal State Park  
Mr. Joe Shepherd, NJ Water Supply Authority (NJWSA)  
Assistant Commissioner Richard Boornazian, DEP  
Mr. Robert von Zumbusch, D&R Canal Comm. Advisory Council, D&R Canal Coalition  
Dr. Theodore Chase, Jr., Franklin Twp. and D&R Canal Commission Advisory Council  
Mr. Robert Barth, D&R Canal Watch and D&R Canal Commission Advisory Council  
Mrs. Linda Barth, D&R Canal Watch  
Mr. Joel Greenberg, Schwiebert Chapter of Trout Unlimited  
Mr. Bob Lester, Schwiebert Chapter of Trout Unlimited  
Mr. Bill McKelvey, Liberty Historic Railway  
Mr. Bill Wolfe, NJ PEER  
Ms. Amy Greene, ASGECI  
Mr. Chris Tarr, Stevens & Lee  
Ms. Miyuki Kaneko, Stevens & Lee  
Mr. Bradley Mitchell, Stevens & Lee  
Mr. John Masten, Institute for Advanced Study  
Mr. Bob Consilio, DEP  
Mr. Carlos Rodrigues, Rodrigues Urban Design  
Ms. Carolyn M. Nicklen, Resident and Hunterdon Hiking Club  
Mr. Jeff Worthington  
Ms. Kip Cherry, Princeton Battlefield Society  
Ms. Stephanie Fox, D&R Canal State Park  
Ms. Barbara Ross, D&R Canal Watch and DRGP  
Ms. Mary Coffey  
Ms. Roberta Lane, National Trust for Historic Preservation

Mr. Jerry Hurwitz, Princeton Battelfield Society  
Mr. Emile DeVito, NJ Conservation Foundation  
Mr. James Steen, Bridge Street House  
Ms. Sharon Petzinger, NJ Fish and Wildlife  
Mr. Neil Hendrickson, Bartlett Tree Research Lab  
Mr. Russell Smith, Hopewell Valley Engineering, PC  
Mr. Joseph Ruggeri, DEP  
Mr. Robert Reck, AKRF, Inc.  
Mr. Bill Marsch, Princeton Battlefield Society  
Mr. Bruce Afran  
Ms. Lynn Fleming, DEP Director of the State Forestry Service  
Ms. Carrie Sargeant, DEP forester  
Mr. Tom O'Shea, Van Note-Harvey Associates  
Mr. John Ryder, Van Note-Harvey Associates

Chairman Bostock announced that this was a regularly scheduled meeting of the D&R Canal Commission and that all provisions of the Open Public Meeting Law of 1976 had been met in the scheduling of the meeting.

In attendance at 10 a.m.: Chairman Bostock and Commissioners Allen, Leck, Lubitz, Stout, and Trzaska, and Director Texel.

Chairman Bostock thanked the Lambertville-New Hope Ambulance and Rescue Squad for preparing the meeting room, the walkways, and the parking area for the meeting.

#### **Administrative Items**

A. Chairman Bostock confirmed the next month's meeting date with the commissioners as January 15, 2014.

#### **Minutes of the Meeting**

##### **Minutes of the Meeting of November 20, 2013**

Chairman Bostock asked for a motion on the previous meeting's minutes. Commissioner Stout moved approval, and Commissioner Lubitz seconded the motion; the minutes were approved unanimously.

#### **Review Zone Projects**

##### **Review Zone A Projects**

##### **13-3262C Bull's Island Safety Improvements (Delaware and Kingwood Twps)**

Chairman Bostock stated that representatives from the DEP would make a presentation and then the public would have opportunity to comment.

Richard Boornazian, Assistant Commissioner, DEP, Natural and Historic Resources, gave an overview of the proposed project. Assistant Commissioner Boornazian started by stating that a camper was killed in the park when a tree fell. DEP closed the park to

camping and to investigate why this accident happened. Assistant Commissioner Boornazian noted that the tree that fell was a perfectly healthy looking sycamore tree. He explained that, on examination of the root structure of the tree, it was discovered that the main root structure was rotted, but there were alternate roots growing near the soil surface which allowed the tree to obtain nutrients but which could not support the tree. The DEP was concerned it might be a systemic problem and hired a consultant to conduct an evaluation of the 5-acre upper campground trees. The consultant determined that most of the large over-story trees in the upper campground had root systems that were compromised. The DEP had the consultant perform a further evaluation of the 14-acre lower campsite area and found that the same problem existed. Because the DEP took those additional steps, he stated that DEP was under an additional liability to investigate the problem and since they did, there was an additional responsibility to protect the public health and safety; therefore DEP has kept the park closed. Assistant Commissioner Boornazian noted that the public may have heard that there were plans to clear cut the approximately 20 acres; no one at the DEP was comfortable with clear cutting very mature trees. It is a huge habitat area for many endangered species. He stated that the plan before the Commission is a reasonable compromise; it opens the park along a specific trail to the river where the wing dam is located and places signs to notify the public that the remaining area is closed; areas will be posted to keep people out because DEP believes the area is dangerous. Assistant Commissioner Boornazian noted there is an inherent danger in any outdoor recreation, but because of the static nature of camping, where people are in one place for a period of time, there will be no camping on the island.

Assistant Commissioner Boornazian noted that the proposed plan is to create a corridor clear of trees at-risk of falling, within a 50 foot area on either side of the path, and provide a path to the river. Assistant Commissioner Boornazian noted that since Hurricane Sandy, 30 trees have fallen in Bull's Island. The cutting plan to create the corridor for the pathway to the river will cut approximately 80 out of approximately 500 to 600 trees which are compromised and at risk of falling in the coming years. For public health and safety, Assistant Commissioner Boornazian noted, the plan is a reasonable compromise in order to open the park and maintain a measure of safety to keep people out of harm's way.

Lynn Fleming, Director of the State Forestry Services and the State Forester, DEP spoke next.

There were technical difficulties with the computer presentation. Director Fleming continued with the verbal presentation.

Director Fleming provided her background including that she entered the forestry service for the love of the forest and would not want to cut trees but she does want to see a healthy forest, a safe area, fires prevented, and public access to parks. Director Fleming noted that her office looks at state forest resources with a responsibility for long term planning and safety is a consideration in that review. She noted that she spent 20 years in the department with many of those years in the park service. She stated trees are and can be a risk. She noted that people have said that we take a risk when we walk in the woods.

She agreed and noted fatalities that have occurred due to falling trees in New Jersey parks in the past 4 years: She specifically noted that in 2009, an employee was killed when a high hazard tree flipped while he working on the tree; that in 2010, a camper was killed at Wharton State park when a tree fell during a storm; in 2011, a camper was killed and his wife severely injured on Bull's island when an apparently healthy tree fell on a calm day; and in 2012, two young campers were killed when a tree fell during a storm in South Jersey. Director Fleming stated that the DEP is focused on Bull's Island because it is in a floodplain and has repeated flooding events and, as a result, and particularly on the northern end of Bull's Island, more soil comes in, siltation occurs, and the root systems of trees are compromised. She stated that unlike the other fatalities mentioned above, when the tree fell at Bull's Island, there was no storm. There was no triggering event. She noted that the large sycamore that fell had no healthy roots to support it. There were small roots, "adventitious" roots, near the surface which deliver water and nutrients so the tree has a green appearance above the ground but the root system below that would support the tree was gone.

Director Fleming noted that consideration was given, at one time, to clearing the 5 acres on the northern end of Bull's Island of trees in order to reopen the campground. Director Fleming further stated that although the 14 acres of the lower campground floods, it is higher in elevation so they assessed that area; they found the same problem existed. Every tree over 12" in the 5 acre section was inventoried. 50% of the root systems were compromised. In the second inventory, a sampling was done and 75% of the root systems were compromised; there were adventitious roots but no supporting roots. In some cases, the consultant, in excavating the roots had to dig 18 inches to two feet due to siltation.

Director Fleming stated that, in the Park Service, if hazards are seen, they are removed. She gave examples such as cutting branches and dead trees. The hazard in the case of the fatal accident at Bull's Island was not visible; but, now that tree evaluations show the hazard, the DEP must address it. Director Fleming noted that she does not want to cut the trees, but she does want to remove the hazard. She further noted that while DEP discussed cutting five acres, once they realized the problem existed on 20 acres, no one suggested to clear cut 20 acres.

Director Fleming provided background regarding the island including that Bull's Island is a 79 acre area with a southern natural area and a 20-acre northern campground. She stated that the plan is for the 20-acre northern area. We have two choices. We can either close the area completely or provide minimal access. She noted that if DEP had provided camping, the 5-acre area would have had to be clear cut. She stated DEP must remove the known hazards; therefore camping will be provided elsewhere. Director Fleming noted the area is popular for walking along the water, for birding and for tubing so the DEP would like to continue to provide access to the water; but it has to be a safe area. She stated that there is a liability on the department now. We know we have hazards. She reiterated that if you see a tree and it is damaged, you know it is a hazard. But if you cannot see it, the public will make the assumption when they go down the path to go fishing or tubing that the State has taken care of the hazards. Our job and mission is to ensure the public safety and provide the benefits the trees provide to us, water quality, wild life, etc.

Director Fleming stated that the goal of the proposed plan is to retain an existing 2,000 foot walkway to the wing dam. DEP asked its contractor to assess trees on 55 feet of either side of the path. She noted that there is an element of risk that the DEP is willing to accept. She also noted that the risk is over time. A tree may look healthy today but over time may not be. She stated that the DEP is not willing to accept risk within a 50-foot band on either side of this walkway. She stated that there were 134 trees in the 50 foot area adjacent to either side of the path. DEP has identified 79 trees within that area to be removed to allow a safe pedestrian walkway along the river and to the wing dam. In addition, infrastructure within the park will be removed, including roadways, shower facilities, and the campsites. A road along the canal will be retained for NJWSA use. No other roads will remain.

Commissioner Lubitz raised a point of order to the Chairman. He asked if the Commission can proceed if the applicant can not show its exhibits which are part of the hearing. After some discussion, Chairman Bostock responded that the applicant could proceed with the verbal presentation; once the verbal presentation is concluded, if the presentation is still not available, then the Commission can determine if the presentation was adequate. Commissioner Lubitz noted that it was not uncommon for people to come with physical exhibits, so as not to rely completely on a power point presentation.

Director Fleming continued with her presentation, explaining that the plan was to remove the trees, remove the infrastructure, and plant a lower canopy of trees. She noted again, that the DEP is planning long term and we don't want to replant and continue a problem. She listed the plan benefits as to provide access to park goers and minimize impact to the island.

Director Fleming noted, that when the cutting occurs in the field, additional trees may be identified as a hazard or may be damaged, and need to cut. Therefore, in reviewing the 79 trees to be cut, it is plus or minus 10%. She stated that of the 79 trees to be cut, 60% of the identified trees are less than 24" diameter breast height (dbh); four trees of the 79 trees are greater than 40" dbh. Two are sycamores and two are silver maples. Director Fleming noted that 180 trees were assessed in the first phase survey of the 5-acre upper area; 68 trees were assessed in the second phase of the survey of the lower campground area and 134 were assessed in the third phase of the survey near the proposed path. She stated that DEP evaluated 382 trees total and that within the 382 assessed there are 28 sycamores over 40" which will remain. She stated further that 22 sycamores of varying size will be removed and at least 58 will remain. She stated that there are more large trees on the island because not all trees were assessed. She stated that the large canopy will remain. Twenty percent of the canopy will be impacted by the project. There will be no impact to the migrating flyway, no impact on the wood turtle as long as monthly activity is monitored, and the bald eagles will not be impacted.

Director Fleming outlined the schedule including that the cutting must take place from February to March 15 to ensure no impact on endangered species. The infrastructure will also be removed during this time. The planting plan will occur later and will include 425

trees, 540 shrubs, and 900 herbaceous plants and grasses, planted in a cluster layout method. Invasive species will be monitored. Smaller materials will be planted where infrastructure is removed. The project will remove 0.9 acres of impervious surface.

The computer presentation became available. Chairman Bostock stated that Director Fleming should only refer to slides that show an image that needs to be seen since she has already given the verbal portion of her presentation.

Director Fleming continued with her presentation including showing the southern natural area, northern upper and lower campgrounds, the canopy, areas surveyed, the NJWSA roadway, other internal roadways, and other amenities of the park. Director Fleming also showed an illustration of the soil level, buried roots, lack of buttress roots and the adventitious roots. Commissioner Lubtiz asked if such a situation is uncommon with sycamore trees. Director Fleming noted that the sycamores are a common species in floodplains but it is unusual to find that they have no root system. This is due to the siltation from the numerous floods. Director Fleming also noted that during the time of the survey, 30 more trees had fallen, some during storms such as Hurricane Sandy, but not all were from storms. Chairman Bostock asked, of the 30 trees that had fallen, how many had the adventitious roots and no buttress roots. Director Fleming replied; all the trees.

Director Fleming stated that the proposed plan would prevent complete closure of the park; she further stated that Bull's Island is a recreation area and will remain so with this plan. She stated that the goal of the plan is to remove known hazards and provide safe access. Director Fleming noted that the island is 79 acres and the tree removal would be within 3.8 acres of the 20-acre northern area. She noted that 134 trees of 6" diameter were assessed, 79 trees plus or minus 10% would be removed, and, of the 79 trees to be removed, 22 are sycamores and 26 are black walnut.

Director Fleming showed an illustration of the proposed path with the 50' safe corridor on either side, the infrastructure to be removed, and the road to be retained for use by NJWSA. Director Fleming showed an illustration of the planting plan. She noted the DEP is receptive to planting suggestions for the area. The DEP must obtain two permits, D & R Canal Commission and DEP Flood Hazard, for the project. Director Fleming noted that tree stumps will be left in place to minimize impact; soil disturbance will be monitored. Director Fleming noted the decrease in peak flow rate and runoff volume, both positive outcomes from the project. Planting would take place in the spring and the fall and a 2-year maintenance contract was required for materials planted. Director Fleming stated that the DEP would support an application to designate the upper area of Bull's Island as a "Natural Area."

Director Fleming noted the cost of the project:  
\$42,000 tree removal  
\$250,000 infrastructure removal totaling 0.9 acres  
\$60,000 replanting program

She stated that the total cost of the project was anticipated to be \$352,000

Director Fleming concluded her presentation.

Chairman Bostock stated that the meeting would now be open to comments from the Commissioners.

Chairman Bostock noted his experience of hiking and camping for forty years and the risk one assumes when in nature. He stated that he understood the logic related to the campgrounds, but as to walking, why not just post the area and let folks know what the hazard is? He further stated that he understood that the hazard is not obvious because a tree looks healthy and on a windless day you do not expect it to fall. But if you are just walking in the area, he would expect the odds of being struck by a tree to be much less than if one were camping. Director Fleming replied that people do not read signs and noted that signage can deteriorate. With access provided, they may sit and relax and spend more time in the area. Now that DEP knows that there is a risk, that there is a hazard, and people might not pay attention to that warning; DEP has assumed that liability and DEP needs to provide a safe corridor. There are still large trees outside the walkway but not within the proposed 50'. DEP has minimized risk. She stated again that there is a risk that DEP feels it must address to provide access. DEP will not accept the risk of the trees within the 50' area. There is an assumption that we are providing a safe area. One cannot know there is a risk next with an apparently healthy tree.

Chairman Bostock asked if the DEP had obtained advice from the Department of Law and Public Safety or how DEP reached the conclusion that not cutting down the trees would expose the department to greater liability than exists in any natural area. Director Fleming noted that there were other fatalities and the DEP did not cut trees. But if there is a known hazard, one must address it. Assistant Commissioner Boornazian stated that the Attorney General's Office was directly involved in their decisions, that the DEP Commissioner feels strongly about public safety, that all options were discussed with the Attorney General's Office, the state is under increased liability and the proposed project was the compromise.

Commissioner Stout asked to follow-up on Chairman Bostock's comments. Commissioner Stout stated that he found it implausible that people will not go to the northern portion of the island. He noted that when he did a tour of the island, the park was closed but the area was covered with foot prints and dog tracks. People will go to the upper area. Therefore the proposed project seems to be driven more by liability than anything else. He asked if the special nature of the northern portion of Bull's Island offers an educational opportunity and suggested that the DEP could leave downed trees, provide signage that discusses the impact of silt accumulation on trees and states the liability. He stated that he understands that camping can not continue; it would be more inherently risky than walking through the woods. Assistant Commissioner Boornazian noted the educational opportunity can exist in the 20 acres but not in the proposed 100-foot-wide pathway. Commissioner Stout asked why it was not sufficient to leave the downed trees, put signage, explain the risk and allow for education of silt accumulation on butress

roots. Assistant Commissioner Boornazian stated that the Commissioner feels strongly about public safety thus DEP is going to provide access to the river, DEP wants to provide a relatively safe corridor; the rest of the park is still open. Commissioner Stout asked if, other than a gate at the road for the NJWSA, the DEP is taking other measures to keep people off the northern area. Director Fleming noted that since the state is 'inviting' the public to the walkway it must provide a safe area. DEP will be providing signs in the remaining area. The remaining area is not where the DEP is inviting the public. No fencing is planned.

Commissioner Stout asked if there were plans to address future silt accumulation. Director Fleming stated that the replanting of low growing plants and the lower canopy was to address this issue.

Superintendent Kalleser noted that the park hires seasonal visitor assistants and that they and the NJ State Park Police would monitor park users who might want to venture into the closed area.

Commissioner Lubitz stated he also had follow-up questions regarding the current line of discussion. Commissioner Lubitz asked Director Fleming if there would be signage to keep people on the pathway. She stated that there would be. Commissioner Lubitz then asked if people were in danger of falling trees if they step off the path into the 50-foot buffer. He stated he was wondering about the liability related to inviting people onto the walkway when they might step off that walkway. Commissioner Lubitz also noted that people are being invited to the river and could go swimming or go tubing. He wondered about fatalities related to swimming and tubing in the area as compared to fatalities from trees in the park. Assistant Commissioner Boornazian noted there had been several fatalities in the Delaware River from swimming and tubing. Commissioner Lubitz further elaborated that the DEP invites people by having given a concession to a vendor for tubing on the river and asked if tubing is inherently a more dangerous activity on the river than walking along Bull's Island and having a tree fall on you. Director Fleming agreed tubing was an inherent danger but it is one of those dangers that is a known danger. She stated DEP is looking at an unknown danger in that a tree cannot sustain itself.

Commissioner Lubitz asked Director Fleming to elaborate on the thinking that went into closing the northern tip of the island with access only to the strip in the lower campground that leads to the river. Director Fleming stated the goal is to provide access to the popular area of the park near the wing dam and close off the area where the fatality occurred not as a memorial but to have sensitivity to that area.

Commissioner Lubitz asked if the DEP obtained public input on the beauty of the area of the park to be closed and the public's wishes related to the area. Director Fleming noted that more trees would need to be removed to reopen the northern area of the park and the proposed plan, to close off the area, made tree removal minimal.

Commissioner Stout asked if there was a representative from Bartlett Tree Experts



(Bartlett), DEP's tree consultant. Mr. Hendrickson from Bartlett Tree Research Laboratories was present. Commissioner Stout asked about the methodology of the study. Mr. Hendrickson noted that for all trees examined, they were excavated with an air spade. Mr. Hendrickson noted several points, including that his company assessed risk using a best management practice called TRAQ method (Tree Risk Assessment Qualification) and most trees were assessed at low or moderate. He stated that the hazard is a separate discussion. It is a continuum not "hazard" or "no hazard." The management of that risk is your risk tolerance. A tree could be rated as low but you could decide that the risk is still not tolerable. He also noted that the stand of trees looks even but it is not. The roots of the tree that failed were four feet down. He stated that with each inundation, there is the potential to regenerate trees as others fail. Some trees examined had roots at the surface and others nearby were three feet down. Also, if some trees are removed because their roots are three feet down, others with good root systems could subsequently be inundated or exposed to other winds.

Commissioner Stout asked if, since sycamores are a tree found in the floodplain, whether it was unusual that they were found to be of high risk. Mr. Hendrickson stated it was not unusual. It has to do with the amount of silt, the nature of the silt, and the duration of the floods. The more root systems are buried, the more likely the tree will lose its original, structural roots. They cannot regenerate structural or buttress roots, and adventitious roots are generated. They will stay green but unstable. The basic tenet of tree risk assessment is that failure occurs when load exceeds strength. In the case of the tree which caused the fatality, there was no load, but the strength went to zero.

Commissioner Stout noted that the Commission received written testimony stating that risk assessment methodology used was inappropriate because it was for trees in an urban environment and asked Mr. Hendrickson to comment. Mr. Hendrickson stated it is a continuum. All we are judging is the likelihood of failure, understanding the loads and then the consequences of failure. This is legitimate. We are not only talking about the likelihood but the consequences. What will it hit and what will be the consequences. So, if a tree is in the woods and it falls and hits no target it has zero risk. All those things are taken into consideration so the methodology is appropriate when discussing the public and a tree.

Commissioner Allen stated that there is a proposed frequent use risk rating of high, moderate and low. She asked DEP to discuss and re-examine the 40 or 50 trees at low risk that are all high frequency; She stated the need to be cautious but not too cautious; She noted considerations such as there is no camping, people are walking, areas can be gated during a storm, and the park is closed at night. She asked if the amenity of the trees can overshadow a small risk. Director Fleming noted the need to look at the long term needs since there will be more flooding and siltation. She also noted that removal of a high risk tree may affect a neighboring low risk tree. Carrie Sargeant, forester at DEP, stated that that when removing trees, one sometimes increases risk for neighboring trees. Ms. Sargeant described the various factors which may affect a low risk tree, including disturbance, wind, load, and the changing conditions over a long period of time.

Commissioner Leck noted the dynamic nature of the floodplain and asked why the flooding does not take away silt as well as bring it to the island. Director Fleming responded that the area is a low depression area, and a lot more silt is being deposited on the island than washed away. Commissioner Leck asked, if the Commission does not approve this particular plan, when DEP will reassess usage of the park. Director Fleming noted that, at this time, there is no plan to reassess usage of the park. The DEP will close the park completely to public use. Commissioner Leck asked if that meant forever. Director Fleming stated that, at this time, it is forever.

Chairman Bostock opened the floor to public comment.

Mr. Lester requested that the D&R Canal Commission subpoena any documents and correspondence between Governor Christie and the DEP or his administration or the offices of DEP related to this project; he noted that the studies were done by tree surgeons who would have a vested interest in such a plan and suggested that a study be done by PhD-level botanists at Rutgers University. Mr. Lester asked the DEP be mandated to reopen some campsites in the vicinity of Bull's Island. He questioned the objectivity of the report, given that it found that the plan met all the standards and nothing was problematic. Mr. Lester also noted that he suspects that this process of sustainability encourages the limiting of access to public lands because of the inherent cost that DEP associates with risk.

Mr. Worthington appreciated the update on the plan; he noted his concern that the amount of trees to be removed is excessive, and encouraged returning the area to a "natural" versus "managed" area.

Mr. Wolfe noted his serious concerns regarding the length of time for review of the project, especially just before the holidays. He urged the commission to ask the DEP to voluntarily work with the Commission and the public to come up with a better plan. Mr. Wolfe noted he takes exception to the DEP's position that the Commission must approve this plan or they will close the park. Mr. Wolfe noted he had submitted a memorandum the day before and requested that it be shared with the commission. He noted the history of the project including the original plan to clear cut 6 acres without input, that we are now just trying to reel it in a bit and raised concerns we were sacrificing public lands to do so. He noted his concern about the risk assessment. The Bartlett representative stated that there is a technical methodology for evaluating the health of a tree and its probability of failure and then there is another key concept called the target zone. Who is going to be there, what's the frequency of use, the intensity of use, etc. Mr. Wolfe stated that he provided a competing methodology to the Commission; it is a quantitative risk assessment that is rigorous and real. He stated that there is a severe deficiency in the analytical basis for the target zone. There is no analysis of park users and their amount of time in the target zone. He also noted Commissioner Lubitz's point about inviting risk. Mr. Wolfe raised two points. Mr. Wolfe noted that the wing dam is inherently hazardous and DEP is inviting people to it. Mr. Wolfe asked, from a risk standpoint, the probability of a fatality from a tree failure and someone happening to be on the path at the same time, versus swimming, tubing, or visiting the wing dam and he noted that the latter was not

even considered. He also noted the "edge affect", where taking out a tree on the edge of the walkway might raise the hazard level of a neighboring tree. Mr. Wolfe noted that he supports a "natural area" designation, and feels having it as a natural area and posting it should be the compromise position. Mr. Wolfe also noted the benefits of removing impervious surface and the educational opportunities noted earlier. He noted his concerns which included staff review related to referencing the 30 trees that fell since the fatality, not finding a stream corridor on the island and then not applying the stream corridor standards; he believes the rules do apply and raised concerns that commission staff may be under political pressure. Mr. Wolfe noted that a petition to protect the trees on the island last year resulted in 20,000 signatures. Mr. Wolfe asked Chairman Bostock to ask the applicant to allow additional time for the project to be reviewed and considered. Mr. Wolfe noted that two years ago, DEP Parks and NJWSA bulldozed a 400-foot long area along the river, during which small sycamores were bulldozed. Lastly, Mr. Wolfe questioned if the DEP has a consultant which can manage such a sensitive area.

Mr. Barth noted that it was a sad day because we are discussing losing our ability to enjoy our environment and learn about our history by having part of our park system closed. Mr. Barth asked if in any of the places where there were fatalities, if those places were closed forever. He asked why the road/path used by NJWSA along the canal was not receiving the same level of safety review by the DEP; he stated that the plan may be flawed in that respect. Mr. Barth asked for the status of identifying a new camping area. He noted that he understands why the park has to be closed to camping but it is part of our heritage that we are losing. Mr. Barth also stated that there should have been more public input than just today's hearing.

Dr. Chase asked the Commission to consider several issues including that in the report in "plant part of concern" it lists branches but it is unclear how branches are affected by root burial and if it means there are dead branches why not just remove the dead branches. He also agreed with earlier comments related to the number of trees listed as 'possible' and low risk even with frequent use conditions being re-examined. Mr. Chase stated that the applicant has stated that 30 trees that have fallen since the fatality but he asked if anyone considered how many trees at risk have survived the hurricane despite their supposed weak root system. Dr. Chase also raised concern regarding the replanting plan and it's being limited to trees of 40 feet in growth height; he noted it would result in a change in the ecology of the site; it does not allow for black walnut, red oak, and sycamore; the sycamore is the signature species of a floodplain. He suggested that the taller trees be replanted in the areas away from the walkway such as the roadway; he also noted that eastern red cedar is particularly inappropriate. He does not believe there are any on Bull's island and it is a tree of upland succession. He noted also that pussy willow might not be correctly categorized as a tree. Dr. Chase asked for clarification if a tree assessment such as this will be extended to other state parks and closure of other State parks. Franklin Township is an example where the park area extends between the canal and a river and is within a floodplain.

Ms. Coffey noted her concerns regarding trees to be removed. She asked for the age of the 24"-40" DBH trees and suggested it is possible they are 150 years old; she stated it

should be noted that they have been able to succeed in that location for that long a time. She noted that studies can be made to support varying conclusions and an unbiased study of the trees may be needed. Ms. Coffey wondered if the DEP is being sued or expects to be sued for the fatality incident.

Mr. DeVito, New Jersey Conservation Foundation, noted that we are here because the campground was put in one of the most dynamic floodplains in New Jersey. He also noted that the applicant's tree expert, Mr. Hendrickson is a respected, PhD-qualified expert. Mr. DeVito noted the positive aspects of the proposed plan, including that, over the past year, the DEP has developed a decent plan to remove the campgrounds, replant, that the DEP is open to suggestions from the public for the replanting plan, and the DEP indicated it would support an application to designate the northern area as a "natural area." He stated that the NJ Conservation Foundation would gladly work to establish the northern portion of the island as a natural area. He noted that there did not seem to be debate regarding protecting the upper campground area or removing camping. It has always been Conservation Foundations concern that this is an old, dynamic forest and an excellent example that people need to learn from. Even with an area being a natural area, he believes there is an ability to arrange a tour or access the closed area of the island for educational purposes. He noted that the proposed walkway will have shrubs and dense vegetation on both sides of the path so it is less likely the public would walk into the 50-foot buffers on the sides of the pathway. Mr. DeVito noted that perhaps the only area left for discussion by the group would be Commissioner Allen's issue of the low risk trees. Mr. DeVito reiterated that there is a two step process of what is the probability that the tree is going to fail and is it going to hit something. Perhaps there is room to discuss the path area. Mr. DeVito noted that there was discussion regarding extending the path to the tip of the island. If there is the need to remove trees, Conservation Foundation would have concerns because the canopy would be intruded upon and then it would impact the cerulean warbler and the yellow throated warbler. He noted DEP did a pretty good job addressing that it is a popular recreation area and providing access and being sensitive to the forest canopy. He noted that, we are very close to something that people could agree on; we simply need to take all these concerns into account and it could result in something very good.

Ms. Nicklen identified herself as a resident of Raven Rock. She noted that the locals use the path around the island. She would like the Commission to consider having it remain open to walking with the public knowing that they are taking a risk. She noted the importance of being able to walk through a natural area, not just stand 100 feet away looking at it.

Mr. von Zumbusch stated that the road for NJWSA shown in the report appears to be the road between the canal and the trees but he noted that there is a historic route along the canal that is between the canal and the road. He would like the public to have access to the internal road adjacent to the canal up to the northern tip of the island. He also noted that when he worked on the D&R Canal Historic and Recreational Master Plan, the reviewing group recommended to remove camping from Bull's island and to turn the upper area of the island into a natural area.

Ms. Dooley commented, in reference to a question that was asked earlier, that the Commission has historically not put a stream corridor along the Delaware River. Mr. Mazzei further explained that this was because, once the water enters into the canal at the northern tip of the island, the rest of the river bypasses the island. The Delaware River parallels the park but does not go into it downstream from the inlet.

Chairman Bostock stated that the public comment period was complete and asked the applicant if they would like to respond.

Assistant Commissioner Boornazian noted that the DEP is considering two or three different sites for camping, including a 130-acre parcel in Kingwood Township and an 80-acre parcel up the road from Bull's Island. He also noted that there was no political pressure from the Governor's Office to move the proposed Bull's Island Safety Plan forward.

Ms. Sargeant stated that the tree risk assessment looks at all the parts of the tree including the canopy, trunk, and the roots of the tree; therefore the consultant would note any branches with structural damage. Branch trimming is a regular part of park maintenance. Failure in the root system of a tree is, obviously, a larger problem not addressed with pruning of branches. She noted the DEP is open to working with people on the replanting plan including planting the larger trees in areas away from the proposed walking path.

Director Fleming noted that there were fatalities mentioned in other state parks from trees that did not result in an assessment because there was a trigger such as a storm. An assessment was done at Bull's Island because there were recent significant river floods which made Bull's Island a different situation. If DEP had another area with an unusual situation, it would be assessed. She also noted that tree assessment work was done by public bid. The standards being used are the standards in the industry.

Chairman Bostock asked if the Commission had further questions for the applicant.

Commissioner Stout expressed to DEP Assistant Commissioner Boornazian that he can not help but believe that the plan is about liability not just about public safety. As pointed out, the NJWSA will still use the road in the closed area which has high risk trees; he thinks it is likely that the public, despite the patrols by park police, will continue to access areas off the path. Commissioner Stout reframed his question to ask if there was no way that DEP could deal with liability by making this an educational opportunity, posting the area well, and advising people of that liability. He noted that even the Bartlett scale is an additive, ordinal scale that looks at risk but also the potential for harm or damage; he further stated that it seems like the potential for harm or damage with people walking through the woods is a fairly low probability of a drastic event. Couldn't we deal with that liability through advising the public on the risk they assume when they enter the park rather than by removing these trees?

Assistant Commissioner Boornazian responded that you could but DEP felt that taking the additional step of removing a few hazard trees as opposed to clear cutting was a reasonable approach to the State's liability. We are concerned about the risk and this proposed walkway/corridor was a compromise. The DEP met with environmental groups to solicit input and it was found that the corridor was the balance.

Commissioner Allen suggested that more time be given to review the plan. She noted she was comfortable with the amount of public access, but not with the number of low risk trees to be cut. She wished to see further evaluation of the low risk trees because the more you do in the area the more you change the dynamics of the area.

Assistant Commissioner Boornazian noted he was comfortable with the number of approximately 80 trees because the number could have been 500 to 600. He noted they do have a deadline. If we take more time, we will miss the cutting season and the park will be closed for another year. He noted that the DEP has been pushing on their end to get the park open. Chairman Bostock asked for clarification that the cutting window went to March 15. Assistant Commissioner Boornazian said yes, but stated that the project is subject to the State's bidding process. Chairman Bostock asked what if the Commission asked to continue to review the project at the January 15, 2014 meeting. Assistant Commissioner Boornazian noted that it was on the edge. He then looked at a calendar and stated that, to wait until January, would risk that the procurement process for a contractor might not be completed before the cutting window closed.

Chairman Bostock asked if other approvals were received. Assistant Commissioner Boornazian noted that the DEP Flood Hazard permits should be available by the end of the month.

Commissioner Trzaska suggested allowing the cutting of the high and medium risk trees and then conducting a further evaluation of the low risk trees. Assistant Commissioner Boornazian noted that the trees are clustered together. Ms. Sargeant noted that the tree that fell, on a visual inspection, would have been a low risk tree and many factors are taken into account when taking the trees down; the plan often evolves in the field. Commissioner Trzaska stated that DEP found that they are low risk but determined that they exceed the hazard threshold.

Commissioner Leck commented that the park has been closed for two years, and it would seem another year to take some time if we need it, is appropriate. Chairman Bostock noted that once the trees are gone, they are gone. One could argue that over the long term it would be better to lose one more season of access than it would be to lose trees that may not have to be lost.

Director Texel noted that the park is a recreation area, first and foremost. That is the existing condition. He stated that his job as a park director is to make that park fulfill its mission not only to the public but to the D & R Canal State Park Master Plan for the enjoyment of the beauty and the historic features such as the wing dam. He noted that his staff hears complaints every day from the public and that thousands of people will not

have an opportunity to enjoy the recreation area in the park. They are going illegally, and that involves park police and staff in managing the issue which is unfortunate and has many costs. We have to keep those people safe. There is a lawsuit but that is not what is driving this plan. The need is the need to reopen the park for park users. It is time to move forward and not miss the window for the proposed project. Our mission is to make the park accessible. Parks has already compromised; Parks has given up our most popular campground but we did because we realize there are other important issues. Director Texel stated that you hike at your own risk but when you have a recreation area, you have a responsibility to make it safe. Director Texel noted Parks would be supportive of interpretive plans and that guided tours would be a great opportunity for the park as it transforms from a campground to a managed area. He stated that we can not tell people to walk at their own risk. Professionals put a lot of time together on the plan. The plan puts science and park planning together for a win-win situation.

Commissioner Stout apologized but stated he was having trouble understanding why the Commission has to approve this plan or close the park. Commissioner Stout used Mt. Rainier as an example. Mt. Rainier is a national park and people die climbing Mt. Rainier but the park service does not close Mt. Rainier. People who climb Mt. Rainier recognize that that is the risk that they are taking. Commissioner Stout stated that he did not understand why leaving it open but notifying people of the liability is not a third option that we could consider. Director Texel responded that DEP did examine the issue with the Division of Law. He noted the issues are complicated but that, in part, even though it sounds counterintuitive, the more signs and fences that are put up, the liability is increased. He noted that there is hunting on our public lands "at risk" but it's a different risk and user group.

Chairman Bostock stated that he would entertain a motion on the project. Commissioner Trzaska motioned to approve the proposed project; Director Texel seconded the motion.

Commissioner Trzaska stated that he was unhappy with the closure of the park. Commissioner Trzaska stated that he believes one of the best ways to gain support for our parks is through increased access and use. The project would provide good, safe access. Also, the project appears to be a scaled down project. He stated he was in favor of designating the old campground areas as "natural" and liked the removal of all the impervious surface. He suggested that the Commission make it a requirement for the DEP to work with the public on a planting plan not just at the path but in the natural area with the changes that were previously noted in the discussion for sycamore and walnut trees of varying ages to be planted. He noted that, overall, it would be important to have this park open.

Commissioner Leck noted the road along the canal should be accessible to park users. She asked if funding was available for educational opportunity in the park. Director Texel noted there was funding available for such activities and programs.

Commissioner Stout asked about the lumber which would be harvested from the cut trees, and suggested the wood could be donated to a group, such as the Peter's Valley artisans.

Director Fleming responded that she would need to review the contract.

Commissioner Leck asked what mechanism would be available for public participation in the landscaping plan. Director Fleming noted that there could be availability on the DEP website or a notification could be made to the D&R Canal Commission.

Commissioner Lubitz commented that the project is the epitome of the "Nanny State." There are miles of park land that follow our canal and go down to the river where exactly the same conditions exist and people are not banned from traveling in those areas. The DEP's rationale is not consistent. Commissioner Lubitz stated that he regularly walks on our path and that trees come down on the path on a regular basis and it is more dangerous than the conditions that exist Bull's Island. He further noted that Kingwood is directly across from Bull's Island and that he could identify places on his own road where more than 30 trees have fallen. Commissioner Lubitz stated that it showed the resiliency of the forest at Bull's Island that only 30 trees have fallen. Commissioner Lubitz stated that he could not in good conscience vote for the plan. Commissioner Lubitz objected strongly to the threat that the park will remain closed if the Commission does not approve the plan as presented. He also noted that he was very disappointed that there was not more opportunity for public participation. Commissioner Lubitz stated that thousands of people use the park. He commented on the short notice of the meeting and that is difficult for people to attend a daytime meeting.

Chairman Bostock called for a vote. Commissioners Allen and Trzaska and Director Texel voted in favor of the project. Chairman Bostock and Commissioners Lubitz, Leck, and Stout voted against the project. The project was not approved.

Commissioner Allen left the meeting at 12.30 p.m.

Chairman Bostock asked Ms. Dooley to give an overview of each remaining Review Zone A project:

13-4497 35 Risler Street Shed (Stockton)

Ms. Dooley outlined the project including that it was located in Stockton adjacent to the Prallsville Mills and was not visible from the canal path. Chairman Bostock asked for comments from the Commissioners and then the public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Stout moved to approve the project and Commissioner Leck seconded; the motion was approved unanimously.

13-1697B Patriot's Tavern Gas Tank (Hopewell Township)

Ms. Dooley outlined the project including that it was located in Hopewell Township adjacent to the canal, and the applicant would be required to plant evergreen trees to block the project from view of the canal park. Chairman Bostock asked for comments from the Commissioners and then the public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Stout moved to approve the project and Commissioner Leck seconded; the motion was approved unanimously.



13-2624A 75 Bridge Street Window (Lambertville)

Ms. Dooley outlined the project including that it resulted in no new impervious surface and is not visible from the canal. Chairman Bostock asked for comments from the Commissioners and then public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Stout seconded; the motion was approved unanimously.

13-2903B PSE&G Mercer Switching Station Improvements (Hamilton Township)

Ms. Dooley outlined the project including that it is not visible from the canal and will result in no new impervious surface. Chairman Bostock stated he would entertain a motion on the project. Commissioner Stout moved to approve the project and Commissioner Trzaska seconded. Chairman Bostock asked for comments from the Commissioners and then public. Commissioner Leck offered a correction to the staff report, noting that the stream in the area was Watsons Creek rather than Crosswicks Creek. Chairman Bostock noted the correction and asked for a vote on the project. It was approved unanimously.

13-4160A Café Galleria Deck (Lambertville)

Ms. Dooley outlined the project including that it is not visible from the canal and has received approval from the local historic district. Chairman Bostock asked for comments from the Commissioners and then public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Lubitz moved to approve the project and Commissioner Stout seconded; the motion was approved unanimously.

At 12:34, Chairman Bostock announced that there would be a five minute break. The meeting resumed at 12:40 p.m. Commissioner Lubitz left the meeting at 12:40 p.m. In attendance at 12:40 p.m. were Chairman Bostock, Director Texel, and Commissioners Trzaska, Stout, and Leck. Chairman Bostock confirmed that this was a quorum.

Review Zone B Projects

Chairman Bostock noted that there were representatives for one Zone B project, The Institute for Advanced Study Faculty Housing, and discussed proceeding with the remaining Zone B projects first. Chairman Bostock asked Ms. Dooley to give an overview of the remaining five Review Zone B projects.

13-2436DD Bristol-Myers Squibb Cogeneration Plant (Hopewell Township)

Ms. Dooley noted that the project meets commission stormwater management regulations and a commission stream corridor was previously established on the property.

13-4441 Gateway Mixed Use Project (Monroe)

Ms. Dooley noted that the project is approximately 28 acres, meets commission stormwater management regulations and is not subject to stream corridor review.

13-2973B Sharbell Plainsboro Amended Easement (Montgomery Township)

Ms. Dooley noted that the applicant is seeking to amend its easement to reflect a sanitary

sewer line from the adjacent Herring property to a pumping station on its property.

13-3469A Morris Hall Meadows (Lawrence Township)

Ms. Dooley noted that the skilled nursing project will be constructed on an undeveloped 30-acre site, meets commission stormwater management regulations and is not subject to stream corridor review.

13-3599A The Pennington School Improvements (Borough of Pennington)

Ms. Dooley noted that the project is located on the 32-acre site and it meets commission stormwater management regulations. The project does not encroach upon a previously-approved Commission stream corridor.

Commissioner Trzaska noted he would abstain from voting on the Sharbell project because it is located in Montgomery Township, Somerset County, where he is mayor. Chairman Bostock asked for comments from the Commissioners and then the public on the four Review Zone B projects other than the Sharbell project. Hearing none, Chairman Bostock stated he would entertain a motion on the projects. Director Texel moved to approve the projects and Commissioner Leck seconded; the motion was approved unanimously.

Chairman Bostock then asked for comments on the Sharbell project from the Commissioners and then public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Stout moved to approve the project and Commissioner Leck seconded; Chairman Bostock, Commissioners Stout and Leck, and Director Texel voted to approve the motion. Commissioner Trzaska abstained from the vote. The motion was approved.

13-3791A Institute for Advanced Study Faculty Housing (Princeton)

Chairman Bostock asked the representatives of the applicant to begin their presentation. The applicant's attorney, Mr. Tarr, gave an overview of the Institute for Advanced Study and the project, which includes constructing eight townhomes and seven single-family homes on the Institute campus. He outlined four issues which the objectors have commented on; including distance of a house from a stream corridor, waiver for activities in a stream corridor, the objector's concern about storm water related to a stream, and the objector's concern related to the Letter of Interpretation from the DEP.

Mr. O'Shea, engineer for the applicant, presented a slide show during which he addressed the issues and described the project, including the standard for 25 feet of usable yard for a property abutting a stream corridor and adding split-rail fence to keep the home residents from using the corridor; the waiver for stream corridor impact and methods of buffer averaging and landscaping; the benefits of the project's clustering; the project's impact on a stream and drainage which will feed the stream; and the two DEP Letters of Interpretation for Wetlands which the applicant holds.

Commissioner Leck asked if the stream corridor easement would last in perpetuity, which Mr. Tarr confirmed.

Chairman Bostock asked the public for comment. Ms. Cherry, Mr. Barth, Mr. Hurwitz, Ms. Greene, and Mr. Smith deferred their comments to the next meeting.

Ms. Lane from the National Trust for Historic Preservation noted that, in 2012, the Princeton Battlefield was listed as one of the 11 most endangered places in the country and named the battlefield as a national treasure. She noted the cultural, historical, and environmental importance of the site. Speaking on behalf of the National Trust for Historic Preservation, Ms. Lane requested that the Commission deny the request for a waiver for the project, based on potential impacts of changes in runoff created by the project to the archeological resources on the site, and the fact that it is a historic and natural area.

Mr. Afran, attorney for the Princeton Battlefield Society, noted, in part, the group's concern about the application not meeting the standard for a waiver, the project's affect on wetlands and that wetlands along a stream will be deprived of natural water supply, and the Commission's mission to consider if this project creates a better environment or ecological outcome than is there now. Mr. Afran noted that the Princeton Battlefield Society's experts will address these issues.

Mr. Bostock noted to the applicant and the objector that they will be heard relative to the Commission's jurisdiction. Further discussion would take place at the January 2014 meeting of the Commission.

#### **Other**

##### **Executive Director's Report**

Ms. Dooley distributed a report (see attached report) related to projects which were addressed by staff over the past month and monthly fees. She noted that the objector to the Heritage Shopping Center project had submitted a request for a 3<sup>rd</sup> party hearing. The Heritage Project was approved by the Commission at the November 2013 meeting.

##### **D and R Canal State Park Superintendent's Report**

Superintendent Kalleser noted the acquisition of a 138-acre park parcel in Kingwood Township, abutting the Horseshoe Bend Preserve and that four buildings had been demolished on the site. There was a preconstruction meeting on December 3, 2013 for the Demott Lane Bridge replacement, and the new bridge may be installed in ten to twelve weeks. Park staff has been shoveling and snow plowing. Parks met to discuss crosswalks and line of site at the Weston Causeway and Ms. Kalleser learned the Weston Causeway Bridge will be closed for construction starting in February for six months. The State House Commission tabled discussion of the proposed sale of the Holcombe House in Lambertville. Ms. Kalleser noted she met with commission staff, NJWSA, and State Historic Preservation personnel to discuss an area of the path of concern to a park user.

##### **New Jersey Water Supply Authority Report**

Mr. Shepherd noted that NJWSA staff met with an engineer and cultural resources to

discuss repairs to the flood guard bank between Bull's Island and Prallsville; 17 low points and areas of scour are to be repaired.

**Old Business**

There was no old business or new business.

**Public Forum**

Chairman Bostock opened the floor to public comment.

Mrs. Barth asked how Bull's Island is closed to the public. Ms. Dooley noted that there is a saw horse and signage.

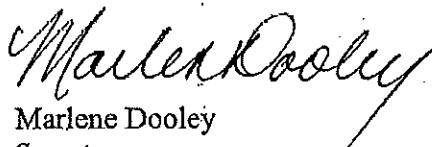
**Executive Session**

There was no executive session.

**Adjournment**

Chairman Bostock thanked the Lambertville-New Hope Ambulance and Rescue Squad for being a great host and for use of the room. Commissioner Leck moved to adjourn the meeting; Commissioner Stout seconded; the motion was approved unanimously and the meeting adjourned at 2 p.m.

Respectfully submitted,



Marlene Dooley  
Secretary