



**October 16, 2019 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10 a.m.
DATE: October 16, 2019
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice Chairman John Loos; Commissioner Bruce Stout, Commissioner Phil Lubitz; Director Olivia Glenn; Commissioner Julia Allen via telephone.

STAFF: Executive Director John Hutchison; Commission Engineer Damian Friebe; Deputy Attorney General Jason Kane and Ms. Tammy Romsdahl.

GUESTS: Superintendent Patricia Kalleser; Mike Sellar, NJWSA; Robert Barth, D&R Canal Watch; Robert von Zumbusch, D&R Canal Commission Advisory Committee; Mr. Thomas O'Shea, Van-Note Harvey Associates; Chris Shoffner, Mayor South Bound Brook; Alison Fetten, South Bound Brook Borough Council; Kathryn Kelly, South Bound Brook Borough Council; Herb Spiegel, D&R Canal Commission Advisory Committee; Ms. Judy Detrano, resident of Lambertville; Ms. Mary Anne Borge, Lambertville Recreation Committee.

Vice-Chairman Loos announced that this was a monthly meeting of the Delaware and Raritan Canal Commission and that the provisions of the "Senator Byron Baer Open Public Meetings Act" (OPMA) had been complied with in the scheduling of the meeting.

Vice-Chairman Loos announced that the meeting was being taped pursuant to the exception set forth at Section C.(1) of DEP Policy & Procedure 2.85 "Prohibition of Recording in the Workplace" Policy adopted on September 18, 2019.

Administrative Items

Vice-Chairman Loos asked for a motion on adoption of 2020 meeting calendar, copies of which had been distributed to the Commission. Commissioner Stout moved to approve the meeting calendar as proposed and Commissioner Lubitz seconded the motion. The vice-chairman called for a vote. The motion was approved unanimously.

The Commission confirmed the November 20, 2019 Commission meeting date.

Minutes

Vice-Chairman Loos requested that a correction be made to the language on page 9 of the September 24, 2019 Commission meeting minutes; specifically, that the language be amended to state that Director Hutchison was awaiting a follow-up meeting with Division of Parks and Forestry regarding Bulls Island Recreation Area matters, rather than awaiting the preparation of a mission statement on the matter. Commissioner Lubitz made a motion to approve the minutes with the proposed correction, and Commissioner Stout seconded the motion. Vice-Chairman Loos called for a vote. The minutes were approved, with Director Glenn abstaining, and Vice-Chairman Loos, and Commissioners Lubitz, Stout, and Allen voting to approve the motion.

Review Zone Projects

Zone A Projects

Vice-Chairman Loos entertained for a motion on the following three Zone A projects:

- 19-1669B North Union Street Park -- Wildlife Garden Fence (Lambertville)
- 19-0349B Lemli Residence Relocation -- Modification (Franklin Twp.)
- 19-1841E Janssen Pharmaceutical -- Proposed Walking Trail Extension (Hopewell Twp.)

Commissioner Lubitz made a motion to approve the projects, Commissioner Stout seconded the motion. Vice-Chairman Loos asked for comment. Hearing none, he called for a vote. The projects were approved unanimously.

17-3424A Franklin Township Recreational Fields (Franklin Twp.)

Vice Chairman Loos asked for motion on the project, which would allow discussion on the project. Commissioner Glen motioned to approve the project and Commissioner Lubitz seconded the motion. Commissioner Stout recommended conditioning the approval on use of only native species plantings, and an 85% survival rate at three years. Vice-Chairman Loos asked Director Glenn if she would agree to amend the motion to include the condition. She agreed and Commissioner Lubitz agreed to the amended motion. Vice Chairman Loos asked for comment.

Director Hutchison gave an overview of the project and its relationship to the adjacent Summerfields residential development. He noted the recreation fields property was donated to the township as part of the settlement agreement relating to changing the residential development from age-restricted to unrestricted. The proposed project would require the Commission to allow a portion of an existing conservation easement to be extinguished, which in turn would allow Franklin Township direct access to the recreational fields from Weston Canal Road. Franklin Township would, in turn, place an equal amount of property on the same site in a conservation easement with the Commission. It was noted that lighting was not part of the currently proposed project.

Vice-Chairman Loos asked for comment and, hearing none, he called for a vote. The project was approved, with the amended motion, unanimously.

Zone B Projects

Vice Chairman Loos asked for a motion on the following three Zone B projects:

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19-2057A Team Collision Center (Ewing Twp.)

19-1849A 170 Township Line Road -- Parking Expansion (Hillsborough Twp.)

19-3153A Proposed Primrose School Childcare Center (Hillsborough Twp.)

Commissioner Stout moved to approve the projects, Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment. Hearing none, he called for a vote and the projects were approved unanimously.

Executive Director's Report

The Director reported on the workload during the period encompassing September 24, 2019 to October 10, 2019. He noted that the reduced workload was mostly a function of the shortened timespan between Commission meetings, and not the result of any precipitous decline in applications observed by staff.

The Director noted that fee collections remained strong, and that Commission staff had deposited \$20,512.50 during the month of October. Deposits for Fiscal Year 2020 stood at \$178,700.50, which compared favorably to the same point in FY 2019 when the Commission had deposited \$120,528. Mr. Hutchison noted that staff was holding approximately \$32,000 in checks to confirm that the applicants had paid the correct application fees.

The Director noted that he had participated in seven pre-application meetings since the last Commission meeting.

Director Hutchison noted that the restoration of the 22/22 mile marker in the vicinity of Rocky Hill Borough was accomplished on October 4, 2019 by the historic masonry contractor. Removing it from the embankment, a vertical crack was discovered, which was repaired. Because of the crack, it was decided not to insert steel rebar into the marker. He noted that he was onsite when the marker was repositioned at the correct angle and placed on newly poured base. The entire project was supervised by the Park Historian Vicki Chirco.

The Director noted that on September 30th he participated in a meeting with Director Glenn, Superintendent Kalleser and Canalwatch.org on the potential implementation of a boat ride on the canal. The Director noted that the discussion touched upon the same unresolved operational, fiscal, logistical and liability issues that were discussed in 2016, and before that in 1998.

The Director reported that on October 7th he attended a permit coordination meeting with Lambertville Mayor Fahl and various program elements of the DEP to discuss both procedural and substantive issues relating to the proposed Lambertville MUA resiliency project. The mayor indicated that she wanted a more comprehensive explanation of process, which she could in turn make available to the city council and the public at-large. The Director then provided the Commissioners with an overview of the project's major design elements. He also noted that Commission engineer Ruggeri had provided the city with detailed comments regarding the engineering aspects of the project, which would be a Zone A "major" project, subject to review for stormwater, stream corridor, visual historic and natural quality impacts, alteration of an existing historic structure, as well as traffic. The Director noted that this does not even cover the potential impact of locating a pump station on what is presently park property.

Nevertheless, the mayor has requested a public document setting forth the procedural requirements going forward. The Director noted that this was a fair request that the Commission staff intended to honor. Accordingly, he advised DEP Permit Coordination that the city should file for a jurisdictional determination, and the Commission staff will respond in detail to the procedural and substantive issues arising from the proposed project in a document that is publicly-available.

Mr. Hutchison detailed the results of his September 27th meeting with archivists from the Division of Archives and Records Management (DARM) in the Department of State to discuss the Commission's collection of 35mm photographic slides, which are kept in decidedly non-archival conditions in the Executive Director's office. Mr. Hutchison noted that former-director Amon compiled a considerable collection of slides, consisting of historic photos and post cards of the canal and its structures, photos depicting the construction of the park, as well as photos of the flora and fauna of the canal region. These photos are generally inaccessible, since the public is unaware of their existence. They are uncollated and kept either in the "carousels" used to display them, or in three-ring binders.

The Director reported that DARM was willing to scan and produce electronic copies of the collection (+/-1,000 images to start) and then provide the images to the Commission, ultimately for posting on the relaunched Commission website. However, pursuant the law that created the State Archives, DARM would do so only if the Commission agreed to a Memorandum of Agreement (MOA) which provides for the "accession" of the originals to the Department of State.

Director Hutchison noted that in the archival sense, accessioning is the act of taking physical and legal custody of a group of records or other material and documenting that receipt. Legal custody is documented through a deed of gift or an acquisitions agreement (like a MOA). Accessioning forms part of the legal and ethical obligations of a repository when they take in material. By documenting receipt of legal agreements and accounting for contents, accessioning helps to authenticate the provenance of the records by accounting for chain of custody as well as address any transfer of physical or intellectual property.

Accessioning represents an opportunity for the repository to gain basic physical and intellectual control of material, and in this way, accessioning forms the basis of any good collection management apparatus. Thus, in the case of the Commission slide collection, the original slides would thereafter become the legal property of DARM and stored in the State Archives in Ewing Township in archivally-appropriate setting and using correct storage materials. The originals would be made available to scholars, writers and the public at the archives building, and could be made available for museum displays if a canal museum were ever constructed. However, Director Hutchison stated that it must be understood that under such a plan, the Commission would no longer own the slides.

The Director requested that the Commission agree to the proposed accession and authorize him to work with DARM on an accession MOA for the Commission's approval. If the accessioning of the slides is successful, the Director stated that he could request that it be expanded in the future to include the collection of historic documents that are stored in binders in the Commission director's office.

Mr. Barth noted that consolidating the records, including slides and other artifacts, in the archives made a lot of sense. Mr. von Zumbusch noted he has slides that may also be of archival value.

Vice-Chairman Loos asked for a motion on the matter of archiving Commission materials with DARM. Commissioner Stout made a motion to authorize the executive director to begin discussion with DARM to draft a MOA which would lay out the process for archiving slides and additional materials to DARM. Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment and, hearing none, he called for a vote. The motion was approved unanimously.

The Director reported that PSE&G emailed on October 9th to state that their contractor has gone out to the revegetation project site near Amwell Road in Franklin Township approved at the September 24th Commission meeting and looked at the area proposed for seeding between the Millstone River and the canal. PSE&G stated that the contractor thought that because the successional vegetation was so thick in the area, seeding would not work. He noted that PSE&G was requesting a meeting with the Park and Commission staff to discuss next steps.

The Director reported that he had a meeting scheduled with the State Historic Preservation Office (SHPO) tomorrow to attempt to gain a better understanding of their concerns about the proposed Commission/NJDOT Joint Bridge Task Force MOA and arrive at a decision on whether they will be a signatory to the document. Commissioner Stout indicated that, as co-chair of the task force, he and his co-chair from NJDOT wrote a letter to the Director of SHPO, but they failed to receive the courtesy of reply. Commissioner Stout suggested moving forward on the MOA if SHPO fails to respond. In response to a question, Director Hutchison noted that SHPO may be concerned about design standards the Commission may adopt within the MOA and potentially arrive at a series of design elements with which the Historic Sites Council may disagree, and potential for dissonance amongst agencies in the DEP.

The Director reported that the NJDOT project to replace the bridge over the canal at Alexander Road had finally obtained SHPO approval. Consequently, the Commission could issue the certificate of approval for the project. The Director offered his opinion that the multiple approvals, the late decision to revise the project based upon the value engineering model, and the subsequent delays encountered all spoke to the need to adopt a MOA between the affected agencies.

The Director noted that the Commission continues to receive sporadic telephone calls from residents of the City of Lambertville vaguely opposing the use of “chemicals” within the city limits. In addition to concerns about the alleged spraying of glysohate into the canal by the Black River and Western Railroad, there have been calls demanding that the hydrilla program be halted, alleging that the use of the fluridone herbicide is no different than the spraying of pesticides. There appears to be misapprehension that the Commission is the agency conducting the hydrilla program and that the herbicide was being injected near the city’s water intakes. The Director suggested that an update from NJWSA at the next Commission meeting could hopefully address some of the potentially inaccurate commentary from the community.

Park Superintendent’s Report

Superintendent Kalleser reported a plane crash within the park in the area of the Borough of Manville. She stated she will meet with the owner of Central Jersey Regional Airport to discuss a restoration plan prepared by the Division of Parks and Forestry to restore for the trees and vegetation damaged as a result of the accident and the rescue activities undertaken to extricate both the pilot and aircraft from the park.

The Superintendent reported that she has photos of the 22/22 mile marker restoration project in Rocky Hill available if anyone would like to review them. The superintendent noted that the new hunting changes at Six Mile Run have been well received by the public, and include a non-fee permit with registration only. She also reported that bicycle repair station was installed at Bulls Island Recreation Area.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported that the dredging in Franklin Township continues until October 21, 2019. Mr. Sellar reported that the NJWSA had removed approximately 35,000 tons of about 47,000 tons of materials from the U.S./N.J. Route 202 storage site. He noted that the project was expected to be complete mid-November, after which time the temporary bridge will be removed. Mr. Sellar reported that specifications were under development for the Landing Lane -- Raritan River bank rehabilitation project. He also reported that a recent hydrilla inspection yielded no hydrilla in the treated areas and that tuber sampling will be conducted during the next week. He noted that Heather Desko would be available to brief the Commission on the success of the program next month. Mr. Sellar also reported that bids for the Cedar Grove Brook basin rehabilitation project were progressing.

Public Forum

Ms. Detrano stated her concern that based upon informal conversations with the workers at the Route 202 dredged materials site, that there was a large excavation and associated proposed structure into which would be deposited the material dredged from a future canal dredging project within the City of Lambertville. She requested to know when this future dredging project within the city would happen, what its impact upon the city might be, and what would be the nature and purpose of the alleged structure near Route 202.

Mr. Sellar responded that there were no maintenance dredging activities planned for Lambertville, but that he could discount the future need for the NJWSA to conduct maintenance dredging in Lambertville or Mercer County order to reestablish water flow in the canal. Mr. Sellar noted that the present dredging project on the main canal being undertaken by a contractor using dredging vessels in the canal was different from the periodic maintenance dredging conducted by the NJWSA due to the size of the project and, the thickness of the silt and the time constraints involved in completing the project within two years.

Mr. Sellar noted that maintenance dredging is typically much smaller in scope and usually employs a long-arm excavator extended from the multiuse trail. Mr. Sellar then provided a detailed explanation on how the Route 202 dredged material site operated, and that perhaps the structure which Ms. Detrano referred to as a "tower" would be a concrete outlet structure to an existing stormwater pipe. Mr. Sellar then explained how such an outlet structure worked.

Ms. Detrano requested information on why the NJWSA annual plan for vegetation management for the canal in Lambertville was not completed. Director Hutchison responded by stating that he had received an email from the NJWSA Executive Director requested additional time to complete the plan. Mr. Hutchison noted that this delay was communicated to the Lambertville City Business Administrator. Ms. Detrano stated that it was nearly November and the Lambertville vegetation plan was not ready. Both Mr. Sellar and Director Hutchison informed her that the plan encompasses the entire length of the Delaware and Raritan Canal, and not just that portion of the canal within Lambertville.

Old Business

Report on status of the proposed Moores Creek Swing Bridge Project:

Director Glenn reported that the proposed Moores Creek bridge project was subject of an internal meeting within DEP. In the course of that meeting it was determined that the projected cost of the materials and the overall cost of the project were significantly greater than what had been originally envisioned. Given the cost considerations and the fact that there were design elements of the project that could not be revised, Director Glenn stated that the DEP needed to examine other opportunities for funding; and, therefore the proposed project would need to be put on hold for an undetermined period of time. Vice-Chairman Loos inquired which agencies were signatories of the agreement to construct the bridge. Mr. Hutchison noted that they were the Delaware Joint Toll Bridge Commission, DEP Parks and Forestry and SHPO. Vice Chairman Loos provided a summary of the swing bridge project and requested that Director Glenn keep the Commission apprised of any future discussions or decisions related to the project.

Commissioner Lubitz asked if the suspension of the swing bridge project could give impetus to a boat ride on the canal and inquired whether such a boat could operate on the canal. Director Glenn noted the meeting with Canalwatch.org and that organization's campaign to implement such a scheme on the canal. Director Glenn noted that while the Division of Parks and Forestry budget had been increased, there were nonetheless budgetary constraints which had to be considered as part of any future project under consideration. Director Glenn noted that there may be an opportunity to provide an educational or informative display at a smaller scale and more responsible cost. Commissioner Lubitz inquired as to the status of the boats presently moored in the Pennsylvania Delaware Canal. Mrs. Barth noted that they were not "boats"; and were actually scows that once operated in New Hope and were not in very good shape. Director Glenn noted that Canalwatch.org would be putting together a proposal for the boat ride that was of a respectable scale and utilized a manageable timetable, that also met with the approval of the Park Service and NJWSA.

Commissioner Stout and Director Glenn discussed the cost of the of proposed swing bridge. Director Glenn noted that while the Division of Parks and Forestry capital budget had increased to \$36 million in the present fiscal year, that amount was for the entire State park system. Commissioner Stout lamented the greatly increased costs of the project, which had doubled since its inception. Superintendent Kalleser confirmed that the proposed cost of the swing bridge project as presently configured exceeded available monies by \$1 million. Director Glenn noted that to use \$1 million of the \$36 million capital budget on the swing bridge would not be responsible.

Commission Stout inquired about a topic discussed many months ago; namely, that a charitable foundation be established to support the State park system. Director Glenn responded that the issue was being discussed within the Administration; but that rather than implementing the proposal as a Divisional Order or an Administrative Order from the Commissioner, it would be preferable to seek the enactment of legislation. Director Glenn observed that while the work of securing legislative support was ongoing, it could not be accomplished in enough time to apply it to the swing bridge project.

New Business

Discussion of proposed amendments to the "Delaware and Raritan Canal State Park Law of 1974":

Vice-Chairman Loos noted that the Commissioner and staff had always kept informal lists of suggested amendments to the Commission's enabling statute. The Vice-Chairman thought that it would be an appropriate time to authorize the Executive Director to compile a more formal document of proposed revisions to the law that could be shared with Commissioners and given to the Office of Legislative Services for analysis. Commissioner Lubitz suggested that legislative amendments could expand the scope of the Commission land use regulatory program to include the sound impacts of proposed development projects. Vice-Chairman Loos noted that the Route 29 "rumble strip" issue was one such example of how the Commission's regulations as currently promulgated do not specifically address the issue of sound impacts.

Discussion of potential use of mitigation monies related to DRCC #05-3250 PSEG Transmission Pole:

Vice Chairman Loos noted that the approximately \$100,000 in the account was to be dedicated to canal park projects within Franklin Township. He asked Superintendent Kalleser what projects she would recommend for the use of funds. Superintendent Kalleser made the following suggestions:

1. Preparation of a plans to enhance the Demott Lane entrance to the park and the adjacent parking area in Franklin Township.
2. Repairs and possible relocation to the East Millstone Bridgetenders Station, which the Superintendent noted was in an advanced state of deterioration.
3. Restoration of damaged or missing mile markers throughout the park.
4. Crosswalk or crossing safety improvements at Weston Canal Road.
5. Sewer line access extension to the Griggstown Causeway for park facilities.
6. Parking and other site improvements at the Five-Mile Lock spillway.

Vice-Chairman Loos noted that the intent of the mitigation monies was to improve access to the park in the vicinity of Easton Avenue. Vice-Chairman Loos also agreed with the other suggestions proposed by the Superintendent. He asked the Superintendent to continue to prepare a "wish list" of needed projects and associated cost estimates for projects that could benefit from future project mitigation monies collected by the Commission.

Mr. Barth gave a critique of the suggestions made by the Superintendent and proposed two additional ideas, especially repairs to the East Millstone Bridgetenders Station and replacement of missing mile markers throughout the canal State park. He also noted: path improvements within the Borough of South Bound Brook where the path is not contiguous and the steep spillway; and, stabilization of the bridgetenders house at the entrance to the Zarephath Bible Institute. He cautioned against "throwing money" at projects that were not in his estimation of historic importance or needed to help people enjoy the park, such as proposed infrastructure improvements to the parking lot at Demott Lane. Vice-Chairman Loos disagreed with Mr. Barth's assessment of the situation at Demott Lane, noting the general lack of visibility and difficulty of access to the area from Easton Avenue, as well as the limited number of parking spaces at the access point.

Superintendent Kalleser and Mr. Sellar also commented on the spillway near Lock 11, which can be daunting for certain cyclists to navigate, as a worthy use of any future Commission mitigation monies.

Vice-Chairman Loos reported with regret that Commissioner Mary Alessio Leck had resigned from Commission on October 1st with immediate effect. Vice-Chairman Loos noted that Dr. Leck's

resignation had exacerbated that already difficult situation with respect to obtaining a quorum at future Commission meetings. He reminded the Commission that in the event a quorum could not be obtained at a future meeting, a scenario could unfold whereby the absence of a quorum would render the Commission unable to conduct its business, resulting in the 45-day automatic approval of project applications pursuant to the Commission's enabling statute.

Mayor Shoffner of South Bound Brook Borough introduced herself to the Commission and stated that she looked forward to further improving the working relationship with the Commission and possibly serving as a Commissioner. The mayor noted that South Bound Brook is bordered by the canal on two sides, and what happens to the canal, happens to the borough. Vice-Chairman Loos thanked her for her attendance and expressed the hope that she might one day join the Commission.

Director Glenn reported that once the Commissioner's Office became cognizant of the quorum situation occasioned by Dr. Leck's resignation, the leadership of the Department began active efforts to resolve the Commission appointment situation with the Governor's Appointments Office.

Commissioner Lubitz moved that the Commission thank Dr. Leck for her years of service to the Commission, her comradeship to her fellow Commissioners, and for offering her considerable scientific expertise in environmental matters related to the Commission's mandate. Commissioner Stout enthusiastically seconded Commissioner Lubitz's remarks, as did Director Glenn. Vice-Chairman Loos asked the Executive Director to draft a more comprehensive resolution expressing the Commission's sentiments for consideration at a future meeting. The motion was approved unanimously.

Public Session

Mrs. Barth asked about the status of the repairs to the pedestrian (former-swing) bridge in South Bound Brook. Mayor Shoffner noted the repairs were delayed by the milling of the new bridge timbers, but that would be completed by the end of the month and that the project engineers had been in regular contact with the Commission staff.

Mrs. Barth requested to review the DEP's draft mission statement for the restoration of public access to the northern portion of the Bulls Island Recreation Area. Director Glenn noted that the document was still an interagency working draft, and that it was not yet available to the public review and comment. She expressed the hope that a completed version of the document would be available for review before the end of the year.

Mr. Barth requested that the Commissioners observe the framed proclamation hanging on the Commission conference room wall which commemorated October 2, 1976 as "Canal Day" in New Jersey and celebrating the canal as a water, recreational and historic resource to the State. He noted the identities of those in the photograph, including Governor Byrne. He then presented to the Commission a wood lacquered "Friend of the Canal" plaque presented at the Morven Museum in 1984 to the then-living canal boatman John L. Collins, commissioned by William McKelvey.

Mr. Barth asked the Commission for the status of the update Delaware and Raritan Canal State Park Master Plan, which in his opinion should proceed any amendments to the Commission's enabling statute. Director Hutchison stated he drafted the procurement documents necessary to issue an RFP to

proceed with the revision of the 1989 Master Plan by a consultant or an institution of higher education in this State, and that such documents were ready for the planned meeting with Senators Smith and Bateman. Mr. Barth inquired when the proposed meeting was to occur. Director Hutchison noted that Mr. Barth and Mr. Von Zumbusch had agreed to arrange the meeting with the Senators. Mr. Von Zumbusch stated that he was hopeful that the meeting could occur after the November general election. Vice-Chairman Loos suggested that this become a standing item of "Old Business" going forward. Director Glenn stated that such a meeting could also be arranged with the assistance of the DEP Office of Government Relations, and that it might be beneficial to include a site visit to the canal State Park as part of the agenda for such a meeting.

Mr. Barth suggested additional projects for the canal park, including a project for a floating bridge and circular path in Franklin Township near the Staats House. Mr. Barth then commented on the "loss" of two bridges with the suspension of the Moores Creek bridge project, which he had campaigned for over a number of years. He reiterated his call for the expenditure of mitigation monies for projects that enhance the visitor experience and historic resources of the canal, citing the need to repair the Griggstown Visitors Center restrooms as an important project. Superintendent Kalleser noted that the monies dedicated from the Scudder Falls Bridge project could only be used for interpretation or educational purposes. Mr. Barth noted that he was saddened by the failure to construct the Moores Creek bridge and stated that "everybody fell down on this one."

Ms. Detrano questioned why trees on N.J. State Highway Route No. 29 were being cut by the NJDOT, and whether the Commission was complicit in the project, which she claimed had "basically butchered" the trees along the highway, even though she did not observe any power lines at some of the trimming sites. Vice-Chairman Loos asked whether there might have been traffic safety reasons for the removal of certain trees. Director Hutchison noted that in the certificate of approval for a prior tree removal project, NJDOT sought to remove Ash trees that were infested with Emerald Ash Borer, trees suffering from Bacterial Leaf Scorch, as well as hazard trees that could fall onto the roadway.

Ms. Detrano questioned the activities of the NJDOT tree removal project, which she said compared unfavorably to European countries that trim trees in a "very aesthetic manner" so as to remain visually beautiful while preventing power outages. She noted that the Commission should compel NJDOT to stop the work. Director Hutchison offered to contact the NJDOT to ensure that they were acting in an authorized manner and suggested that the NJDOT Landscaping "Good Neighbor" program may be able to assist with an aesthetically-pleasing replanting plan.

Mayor Schoffner stated she was concerned by the proliferation of poison ivy along the lock canal in South Bound Brook which is damaging the canal embankment pushing out phlox in the area. Superintendent Kalleser outlined the operational difficulties associated with removing vegetation from this area of the canal. She further noted that there had been an effort well into the 1990s to remove trees growing from the embankment, and that a recent examination of the area showed that the embankment was stable and not in imminent danger of failure. The Superintendent noted that of all the former lock along the canal, South Bound Brook is the only location where the lock was not faced in concrete when the canal was converted for use as a water transmission complex.

Mr. von Zumbusch expressed his concerns regarding the NJDOT tree trimming activities and noted that it might be possible that the large trunks would be removed at a later date. He also noted that the

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Millstone Scenic Valley Byway, which partly encompasses the Delaware and Raritan Canal State Park and is part of the NJDOT Scenic Byway Program is presently engaged in a marketing plan for the byway and that they would be taking photographs in the area.

Director Glenn informed the Commission and public that the East Coast Greenway Alliance is planning a bike ride from New York City to Philadelphia which includes the Delaware and Raritan Canal State Park multiuse trail on May 16 to 2020.

Vice-Chairman Loos asked Deputy Attorney General Kane for an update on the PennEast pipeline litigation. DAG Kane informed the Commission and members of the public of the details of the federal Third Circuit Court of Appeals decision reversing the District Court decision to allow condemnation of State properties by PennEast and upholding the State's appeal of the PennEast pipeline decision. DAG Kane noted that the Third Circuit issued a 35-page opinion this morning vacating the District Court's condemnation orders for the 42 State properties on sovereign immunity grounds argued by the State of New Jersey. The matter will now be remanded to the District Court for dismissal of the claims against the State. DAG Kane noted that it was presumed that the district court would dismiss all of the orders of condemnation for the 42 properties with State property interests.

DAG Kane noted that PennEast was seeking an "en banc" review of the decision before the entire Third Circuit Court of Appeals, and that it was possible the matter could still end up before the United States Supreme Court in 2020. He also noted that the litigation in the District of Columbia Circuit had been held an abeyance, which was helpful to the DEP and the Commission, which would not have to expend further resources on litigation until the other appeal is resolved.

Executive Session

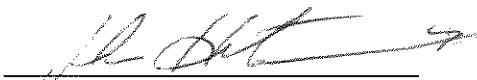
No executive session.

Adjournment

There being no other business, Vice-Chairman Loos entertained a motion to adjourn. Commissioner Lubitz moved to adjourn, which motion was seconded by Commissioner Stout. The motion was approved unanimously.

The meeting adjourned at 11:50 a.m.

Respectfully submitted,



John Hutchison, Secretary