



**Minutes of the Meeting
Delaware and Raritan Canal Commission
September 24, 2019**

TIME: 10:10 a.m.
DATE: September 24, 2019
PLACE: DRCC Office, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman John Loos; Commissioner Bruce Stout; Commissioner Phil Lubitz; Commissioner Mary Leck; and Mr. Mulvan as representative for Commissioner of Environmental Protection Catherine McCabe.

STAFF: Executive Director John Hutchison; Mr. Joseph Ruggeri; Ms. Colleen Christie Maloney. Deputy Attorney General Mark Collier attended via telephone.

GUESTS: Superintendent Patricia Kallessen; Mr. Michael Sellar and Ms. Kathy Hale, New Jersey Water Supply Authority (NJWSA); Mr. Herb Spiegel, DRCC Advisory Committee; Mr. Bob Barth and Ms. Linda Barth, D&R Canal Watch; Mr. Kevin Morse; Mr. Felix Boraway; Mr. Scott Turner, Menlo Engineering; Mr. Michael Abramowitz, MAAC Development Group; Ms. Suzanne Gitomer, Ms. Judy Detrano, Ms. Anita Crandall, and Mr. Max Crandall, Keep Lambertville Green.

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 confirmed that the next regular meeting of the Commission would take place on October 16, 2019.

Minutes

Vice-Chairman Loos called for a motion to approve the August 21, 2019 meeting minutes. Commissioner Stout made a motion to approve the minutes and Commissioner Leck seconded the motion. Vice-Chairman Loos asked for comment and, hearing none, he called for a vote. The motion was approved unanimously.

Review Zone Projects

Zone A Project

Vice-Chairman Loos requested a motion on the following project:
19-5371 PSE&G D&R Canal State Park Vegetation Compliance Project (Franklin)

Commissioner Stout moved to approve the project and Commissioner Lubitz seconded the motion. The vice-chairman called for comment. Commissioners Stout, Leck, and Lubitz and Vice-Chairman Loos discussed the planting plan, including survivability rates, deer browsing, and selection of plantings, including Mallow. Commissioner Stout amended his motion to include a three-year survival rate of 85% for the plantings. Commissioner Lubitz accepted the amended motion. The vice-chairman called for a vote. The motion was approved unanimously. Vice-Chairman Loos requested that Director Hutchison inform the applicant that the Commission recommends that the planting plan include Marsh Mallow.

Zone B Projects

Vice-Chairman Loos announced that the applications for two projects that appeared on the Meeting Notice, DRCC# 19-4954A NJ Transit -- Delco Lead Storage & Inspection County Yard Improvements and DRCC# 19-5463 Cranbury Historical & Preservation Society -- Bodine House Relocation, respectively, did not contain the items required for a complete application pursuant to N.J.A.C. 7:45-3.4, and would not be considered by the Commission.

Vice-Chairman Loos requested a motion on the following Zone B projects:

19-2823G The Hun School of Princeton -- Theatre Building Renovation (Princeton); and
16-4864 The Grove at Somerset -- Proposed Townhouse Development (Franklin)

Commissioner Stout moved to approve the projects, which motion was seconded by Commissioner Lubitz. The vice-chairman called for comment from the applicant or the public, and hearing none, he called for a vote. The two projects were approved unanimously.

Vice-Chairman Loos requested a motion on the following Zone B project:

19-4687B Phillips Concrete Facility (Hillsborough)

Commissioner Lubitz and Mr. Ruggeri discussed the benefits and practical implication of planting of trees as a stormwater management strategy when there is a change of land use at a particular property. Commissioner Leck moved to approve the project but proposed that the approval be conditioned upon the applicant choosing plantings from the Commission's native tree and shrub lists, and that a three-year survivability rate of 85% for the plantings be required. Commissioner Lubitz seconded the motion. The vice-chairman called for further comment, and, hearing none, he called for a vote. The project was

approved unanimously.

Vice-Chairman Loos requested a motion on the following Zone B project:

19-4935A Highmark Mixed Use Development -- Major Modification (Hillsborough)

Commissioner Stout moved to approve the project and Commissioner Lubitz seconded the motion. Commissioner Lubitz inquired about the modification of the previously-approved project, which proposes the relocation of a stormwater outlet from its proposed location on U.S./N.J. Highway Route 206 into the Commission-regulated stream corridor, and why the proposed modification was being advanced and whether the modification would negatively impact the Commission-regulated stream corridor. Mr. Morse, representing the applicant, noted that the change was imposed upon the applicant by the New Jersey Department of Transportation (NJDOT). Mr. Turner also commented that the NJDOT advised the applicant that they would not entertain any new discharges into the State administered stormwater system on Route 206 under any circumstances. Mr. Turner also noted that whereas under the previously-approved project, the stormwater discharge into the system along Route 206 would have been "uncontained." Mr. Turner observed that the modified project had the environmental benefit of filtering stormwater through the detention basin before it is ultimately discharged from the outfall. Vice-Chairman Loos noted the placement of the outfall in the stream corridor was permissible in that it was a "conditional use" within the stream corridor, rather than an prohibited use that would require a waiver of strict adherence with the stream corridor impact review standards. The vice-chairman called for further comment, and, hearing none, he called for a vote. The project was approved unanimously.

Vice-Chairman Loos requested a motion on the following Zone B project:

17-5053 24 Sunnyside Lane -- Proposed Pool House (Montgomery)

Commissioner Leck and Vice-Chairman Loos discussed maintenance of the proposed meadow area, noting that it would be undesirable if the meadow area were to be treated the same as maintained lawn. They also discussed the need for planting of native species from the Commission native tree and shrub lists, as well as the desirability for the conservation easement agreement for the project. Vice-Chairman Loos requested that the motion include conditions of 85% survivability rate at 3 years for the plantings, and that the standard Commission stream corridor signage be modified in the case of this project to include the following required language: "No Mow April 15 -- August 15."

Commissioner Lubitz moved to approve the project with the conditions discussed by Vice-Chairman Loos and Commissioner Leck. Commissioner Stout seconded the motion. The vice-chairman called upon the public and requested further comment. Hearing none he called for a vote. The project was then approved unanimously.

Vice-Chairman Loos requested a motion on the following Zone B projects:

19-5152A Parker at Somerset -- Major Modification (Franklin); and
19-5155A 103 Fitzer Road -- Proposed Home Expansion (Kingwood)

Commissioner Stout moved to approve the projects and Commissioner Leck seconded the motion. The vice-chairman called for comment, and, hearing none, he called for a vote. The projects were approved unanimously.

Vice-Chairman Loos requested a motion on the following Zone B project:

19-5320A Shelburne Place Subdivision (Hillsborough)

Commissioner Stout moved to approve the project and Commissioner Lubitz seconded the motion. Commissioner Stout raised the question of whether sequential subdivisions of one large lot into ten smaller lots would trigger Commission review for any proposed development or construction on those subdivided lots. Director Hutchison responded by noting that the current one quarter acre of impervious surface coverage threshold under which a development project is considered a "major project" under the Commission's regulations was a cumulative standard that is applied by the staff retrospectively to 1980. The vice-chairman called for further comment, and, hearing none, he called for a vote. The project was approved unanimously.

Vice-Chairman Loos requested a motion on the following Zone B project:

19-5380 Improvements to Prospect Plains Road -- Stonaker Drive to Applegarth Road (Cranbury/Monroe)

Commissioner Stout moved to approve the project and Commissioner Leck seconded the motion. The vice-chairman called for further comment, and, hearing none, he called for a vote. The project was approved unanimously.

Executive Director's Report

Director Hutchison provided the Commission with an overview of the prior month's workload and noted that the staff was generally quite busy from August 19, 2019 to September 23, 2019 the staff processed 18 deficiency letters, issued 14 jurisdictional determinations, issued 11 certificates of approval to applicants, and processed 7 general permits for minor projects in Commission Review Zone A.

The director noted that the demanding workload was reflected in the monthly fee collections. The staff deposited \$91,888 during the month of August, and deposits for Fiscal Year 2020 totaled \$158,188. The director noted that this amount compared favorably to the same point in FY 2019 when we had deposited \$95,638.59. He also reported that the staff was holding approximately \$23,000 in application fee checks to confirm that the applicants had paid the correct amount.

Director Hutchison noted that he participated in seven pre-application meetings since the August Commission meeting.

The director reported that the first phase of the Commission office exterior building renovation project will commence in approximately two weeks. He also noted that Mr. White and the departmental architectural firm would be visiting the Commission office in the upcoming weeks to plan future phases of the building project. The director noted that he was pleased that Mr. Mulvan was present at the Commission meeting and thanked him for his ongoing assistance with the project.

The director reported that the Commission had its first quarterly budget meeting with DEP Budget and Fiscal Operations staff on September 17th. Mr. Hutchison reported that generally the Commission was in a favorable fiscal position with an overall account balance of \$391,010. He noted that it was

suggested that the Commission take action to encumber monies for the building renovation project and other long-term projects so that Treasury Department officials do not get the mistaken impression that a large balance is being carried forward for no justifiable reason; which in turn could endanger the fringe and indirect waivers that we have obtained for the last two fiscal years.

The director stated that the restoration project for the 22/22 mile marker near Rocky Hill would be done by the historic masonry contractor on either October 3rd and 4th, depending upon the weather, and that he hoped to be onsite to observe at least part of the work.

Director Hutchison reported that he and Mrs. Maloney attended a meeting with Delaware and Raritan Canal State Park Naturalist Stephanie Fox and Rosa Yoo from the Division of Forestry on updating and expanding the Commission's list of native plants and shrubs. He recounted for Commissioner's that the Commission regulations refer to native plants in two areas. First, the Commission's stream corridor regulations implicitly endorse the use of native plantings when the Commission issues waivers of strict compliance for a project that meets the criteria of not having an adverse impact upon a stream corridor's ability to function as a buffer for a water course's ecological health and as a natural area. More explicitly, the visual, historic and natural quality impact standards direct at N.J.A.C. 7:4510.5(d)5 that for projects in Zone A, wherever possible, natural terrains, soils, stones, and vegetation should be preserved, and that new vegetation, stones, and soils should be "native to the environment in which they are placed."

Mr. Hutchison noted that Commissioners and the regulated community have often struggled with the implementation of these requirements. Commissioners have to deal with applications to plant non-native species for ornamental purposes, while the regulated community has periodically found fault with the Commission lists, complaining that they are out-of-date and list species that are difficult to obtain from commercial nurseries.

The director noted that staff was working on a two-pronged approach to this issue that he hoped to submit for the Commissioner's consideration in the near future. First, he would like to provide applicants with a list of invasive vegetation that the Commission can furnish to applicants listing the species that are to be discouraged within the Review Zone. The Friends of Hopewell Valley Open Space has created a list of invasive species for central New Jersey and staff will compare it to the Commission list to make sure there are no conflicts between the two. Second, he noted that the staff would like to expand the current list of native trees and shrubs to include species from the list recently devised by the Office of Natural Lands Trust, which devised a Statewide list of native plants following the enactment of legislation in 2017.

Vice-Chairman Loos asked Commissioner Leck if she approved of the approach being proposed, noting her long-standing interest in this issue and her academic expertise. Commissioner Leck agreed with the proposed approach and particularly noted the importance of providing applicants with a list of invasive species that should always be discouraged in the Commission Review Zone. Commissioner Lubitz cautioned that the list of native species needed to be reviewed in the context of what was appropriate for the canal region, and that past lists employed by the DEP tended to be statewide and included species that were not appropriate for the central part of the State.

Finally, the director expressed the Commission staff's gratitude to Stephanie Fox and Rosa Yoo for

taking the time to meet and sharing their considerable expertise.

The director noted that on September 19th he attended a meeting at NJDOT to discuss their pending projects to replace the Hermitage Avenue Bridge and the Route 206 northbound bridge (North Broad Street) in the City of Trenton. The director stated that based upon this meeting, it was apparent that both bridges presented design challenges. In the case of Hermitage Avenue, while the bridge structure has 4' 3" of clearance, the effective clearance is much less due to utility lines contained in a timber box spanning the canal. The NJDOT would like to incorporate the utility lines within the bridge superstructure -- a design element the Commission has requested on other projects in order to conceal the visual impact of these features. However, they would also like to lower the structure in order to reduce the grade at the bridge approach. Mr. Hutchison noted that he advised NJDOT that an effective freeboard of at least 36 inches is the preferred approach. They are proposing the T-4 "New Hampshire" rail and no concrete pylon; so, despite the slow pace of the bridge task force deliberations, he observed that NJDOT was getting the message about designing the bridges in a manner that will ultimately secure Commission approval.

In the case of Route 206 northbound at the Trenton Battle Monument, the director noted that there is presently only about 25" of freeboard. This bridge features the white painted concrete parapets with recessed yellow rectangular panels that are in place at a number of the Trenton bridges (Calhoun, West Hanover, Willow, Pedicaris Place, Prospect Street, N. Montgomery). The director expressed the concern over the apparent belief expressed by the engineering firm that the poured concrete parapet design could not be replicated. Route 206 is a divided road that lies on either side of the Battle Monument (North Warren is the southbound street) and an identical bridge lies only 140 feet to the west. The director reported that he proffered the opinion to NJDOT that a dissimilar design to what is presently in place was unlikely to obtain Commission or SHPO approval.

The director reported on his meeting with the DEP Chief of Staff on September 10th. Director Hutchison noted that Mr. LaTourette kindly gave him an hour to discuss a number of Commission related issues, which he greatly appreciates given the demands on his time. Assistant Commissioner Bukowski happened to be present in the Commissioner's office and also attended the meeting, as did Director Glenn via telephone. The meeting focused on the following issues:

- Appointment of Commission Chairman
- Commission Member Appointments
- Engineering Staff Compensation
- Non-Engineering Staff Issues
- Continuation of the Fringe and Indirect Budget Waivers
- Long-term Planning Issues (Master Plan/Stream Corridor inspections)

Finally, the director noted that he received a telephone message from a resident of Lambert Lane in the City of Lambertville who lives in one of the townhomes that face the Delaware River on that street. The townhomes maintain a parking lot that is located between Lambert Lane and the canal. When they recently sealed and restriped the parking lot, they noticed that the sealer took a very long time to dry, and that if you press on the sealer it expresses water. They thought that maybe there was a leak that was making its way from the canal across the parking lot and heading for the river. Mr. Sellar kindly went out to examine the situation and reported that the canal was not leaking, and that the likely culprit was

debris-filled catch basins. Commission staff reported this fact to the homeowner within 24 hours, and he emailed to say that he was "delighted" by the quick response and that the homeowner association would look into the basin issue.

Director Hutchison reported that the DEP State Historic Preservation Office (SHPO) had not recommended approval of the modified design for the proposed replacement of the bridge that carries Alexander Road over the Delaware and Raritan Canal. The director noted that he informed the NJDOT project manager that the Commission certificate of approval for the project (DRCC #19-5103C) was conditioned on SHPO review. Since that approval was not recommended, NJDOT had not satisfied the condition of the approval. Therefore, the project was not in compliance with the provisions of N.J.A.C. 7:45-4.1(b), which states that the failure to comply with conditions on an individual approval imposed by the Commission to be carried out either during or post construction shall render the approval null and void. The director remarked that NJDOT was not best pleased with the situation, but that he offered the Commission staff's assistance in resolving the outstanding issues with the project.

Commissioner Lubitz requested that the director supply his prepared meeting remarks and a financial report at commission meetings. Director Hutchison and Vice-Chairman Loos discussed the quarterly spending report supplied by DEP. The vice-chairman requested that the director report at each meeting on the anticipated program fees, fees accepted to date, and the previous year's fee at that same time.

Park Superintendent's Report

Superintendent Kalleser reported on a fatality in the Delaware River near Firemans Eddy and the search for a missing person in or around Bulls Island. She reported on the commencement of bow hunting, including acreage added at Six Mile Run. She reported that in early October, the NJDOT would plant replacement trees along the canal between Church and Grant Streets in the Titusville section of Hopewell Township pursuant to a tree removal project approved by the Commission. The superintendent reported that on September 21st a cleanup program comprised of 140 volunteers from a wide range of environmental and community groups cleaned an area within the Delaware and Raritan Canal State Park between Frenchtown and West Amwell Township.

Superintendent Kalleser reported that Princeton University would begin the process of staging the pipe that would be used to convey dredged material from the Lake Carnegie dredging project across the park multiuse trail to its ultimate destination at the de-watering facility on university-owned property near Route 1 in West Windsor Township.

The superintendent reported that a car and a number of safes were recovered from the bottom of the canal near County Route 518 in Rocky Hill by the contractors engaged in the main canal dredging project. She noted that the safes had been turned over to the Middlesex County Prosecutor's Office.

Commissioner Lubitz commented on the high volume of park users he saw over the Labor Day holiday weekend at Bulls Island Recreation Area, including 17 jet skis on the Delaware River. He expressed his concern that there were not sufficient park police or park staff resources to manage such a volume of park patrons and watercraft users.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported on the status of the canal dredging project in Reach 5 in the main canal, the dredging

aspect of which will stop at the end of December for the year. He reported on the installation of the temporary bridge in the vicinity of the Route 202 Bridge at Lambertville and the trucking away of dredging materials. Mr. Sellar reported on the Hydrilla treatment program, draft specifications for the rehabilitation of the Six Mile Run culvert, and the request for proposals (RFP) for the Cedar Grove Brook watershed improvement project.

Vice-Chairman Loos asked if the public had any questions regarding the reports made by Superintendent Kalleser and Mr. Sellar. Ms. Detrano requested to speak and offered a critique of the continued vegetation management activities of the NJWSA within the City of Lambertville. She thanked Mr. Sellar for the specific tree removals being undertaken on the west bank of the canal and stated her belief that the cutting was being done in a more judicious manner than before.

Ms. Detrano inquired of Mr. Sellar whether the NJWSA was aware of, and whether they would submit an annual vegetation maintenance plan to the Commission for review and approval. She also inquired as to whether the NJWSA activities had uncovered invasive species of plants, and whether this had interfered with maintenance activities and whether this had been reported to any appropriate authorities. She also requested to know why the proposed replanting plan for the area that had been previously cut had been "held up" and not been submitted to the Lambertville City Council for approval.

Director Hutchison requested to clarify a number of points. First, he stated that the 1986 lease agreement between the DEP, the Commission and the NJWSA conveys upon the authority the ability to conduct maintenance activities within the "prism" of the canal. He further noted that the one of the appendices to the lease agreement contains a provision that the NJWSA is required to submit a vegetation maintenance plan annually to the Commission, and that in the absence of such a submission, the prior years' plan remains in effect. He stated that he looked forward to NJWSA Director Gates submitting a new plan, which he in turn would submit to the Commission for approval.

Director Hutchison noted that the removal of invasive plant species from the embankment of the canal presented operational difficulties for the Division of Parks and Forestry. He noted that often the removal of invasive species had to be done manually, since the use of pesticides in such circumstances could only be done by a person holding a special aquatic pesticide applicator license from DEP. Mr. Hutchison also observed that people deliberately -- albeit inadvertently -- plant invasive species along the boundary of the park property. Commissioner Stout observed that there has been an unfortunate proliferation of bamboo along the canal, creating what amounted to a wall of inappropriate vegetation that is highly-invasive and difficult to eradicate.

Finally, Director Hutchison reminded the assembled public that the responsibility to approve any physical alteration to the Delaware and Raritan Canal State Park and implement the park Master Plan rested entirely with the Commission, pursuant to section 14 of the "Delaware and Raritan Canal State Park Law of 1974," and that the notion that the Lambertville City Council possessed the authority to veto the decision-making of the Commission was altogether incorrect as a matter of law.

Old Business

Mr. Mulvan reported that the NJDEP had conducted an internal meeting to discuss whether the proposed construction of a swing bridge at Moores Creek as mitigation for the visual impact of the Interstate 95/Scudder Falls Bridge project remained viable from a fiscal perspective. Vice-Chairman Loos

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inquired of Mr. Mulvan whether the project was considerably over budget. Mr. Mulvan commented that it was fair to estimate that the project costs were approximately \$1 million greater than the \$2 million in available monies. The vice-chairman agreed that \$1 million was a considerable sum.

Vice-Chairman Loos stated that it would be beneficial if the remaining mitigation funding from the PSE&G pole line project that was initially earmarked for the proposed pedestrian bridge in Franklin Township near the Somerset Diner property, could be repurposed on projects within the park. He noted that improving the Demott Lane pedestrian bridge parking area and entrance, or improvements such as a crosswalk at Weston Canal Road would benefit park users now that the pedestrian bridge project was cancelled. He requested that the Park Superintendent report to the Commissioners on which projects would be most beneficial to park users and most-needed by the Division of Parks and Forestry.

Commissioner Lubitz inquired about the status of the northern end of Bulls Island Recreation Area. Director Hutchison answered that he was awaiting a follow-up meeting with the Division of Parks and Forestry.

Superintendent Kallesser commented that specimens of Tree-of-heaven (*Ailanthus altissima*) located at Bulls Island Recreation Area have become infested by Spotted Lanternfly, an invasive pest that has been seen throughout the central New Jersey region.

Vice-Chairman Loos left the meeting at 11:30.

New Business

Commissioner Lubitz opened the meeting to new business, of which there was none.

Vice-Chairman Loos returned to the meeting at 11:35.

Public Forum

Ms. Barth noted that D&R Canal Watch is selling a 2020 calendar which benefits the Bridge Tenders Station and features park user photographs related to the Delaware and Raritan Canal.

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 Leck. The motion was approved unanimously.

The meeting adjourned at 11:35 a.m.

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Respectfully submitted,


John Hutchison, Secretary