



**July 15, 2020 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:02 a.m.
DATE: July 15, 2020
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Director of Parks and Forestry Olivia Glenn, designee for Commissioner Catherine McCabe; Commissioner Phillip Lubitz; Commissioner John Reiser; Commissioner Caryl “Chris” Shoffner; and Commissioner Bruce Stout all participated via online platform and teleconference.

STAFF: Executive Director John Hutchison was present in the Commission conference room; Commission Engineer Joseph Ruggeri, Ms. Colleen Maloney, and Deputy Attorney General Jason Kane participated via online platform and teleconference.

GUESTS: Park Superintendent Patricia Kalleser; Marc Brooks, Executive Director New Jersey Water Supply Authority (NJWSA); Mike Sellar, NJWSA; Robert von Zumbusch, D&R Canal Commission Advisory Committee; Robert Barth, Canal Watch; Rikki Massand; Linda Barth, Canal Watch.

Director Hutchison informed Commissioner Lubitz that Vice-Chairman Loos would be unable to attend the meeting; and, that pursuant to the provisions of Article II, Section 3(b) of the Commission Bylaws, Commissioner Lubitz was therefore authorized to preside over the meeting.

Acting Chairman Lubitz 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.

Commissioner Lubitz 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

Since Commission members were participating via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, Commissioner Lubitz directed the Executive Director to take the roll. There being five Commissioners present, the Director indicated that a quorum was present, and that the transaction of Commission business could therefore proceed.

Commissioner Lubitz confirmed the August 19, 2020 Commission meeting date and stated that, given the ongoing public health emergency and declared state of emergency related to the COVID-19 pandemic, that the meeting would likely be held via online platform and teleconference.

Minutes

Commissioner Lubitz asked if there were any comments with respect to the June 17, 2020 meeting minutes, and, hearing none, he called for a motion. Commissioner Stout motioned to approve the minutes and Commissioner Reiser seconded the motion. The motion was approved unanimously.

Review Zone Projects

Zone A Projects

- 18-3651E Princeton Sanitary Landfill -- Proposed Corrective Actions (Municipality of Princeton)
- 20-5541 2 Main Street -- Proposed Mixed Use Development (South Bound Brook Borough)

Commissioner Lubitz asked the Commissioners if they would like to discuss either of the two Zone A projects.

Commissioner Stout stated that he had a question about the Princeton Sanitary Landfill project. Specifically, he asked what mechanism would be used to ensure that the structural stormwater management items that needed to be rehabilitated, as noted in the staff report, would be addressed by the applicant. Commissioner Lubitz also requested information about maintenance of the non-structural elements of the project. Mr. Ruggeri responded that the applicant would address those items and that the operation and maintenance manual submitted by the applicant outlines maintenance procedures for structural and nonstructural stormwater facilities, including measures to be completed on a weekly, monthly, quarterly, and annual basis.

Commissioner Lubitz asked for further comment on the two Zone A projects from the Commissioners and then the public, and hearing none, he called for a motion. Commissioner Stout moved to approve the Zone A projects, which motion was seconded by Commissioner Reiser.

The Director called the roll:

- Director Glenn Yes
- Commissioner Reiser Yes
- Commissioner Stout Yes
- Commissioner Lubitz Yes

Commissioner Shoffner indicated that she voted “Yes” to approve DRCC#18-3651E -- Princeton Sanitary Landfill; however, she noted that she would “Abstain” on DRCC#20-5541 -- 2 Main Street -- Proposed Mixed Use Development.

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The motion was approved.

Zone B Projects

- 20-2391M BMS Lawrenceville Campus -- Carter Road Bicycle Trail Connector (Lawrence Township)
- 20-2441AA Princeton University -- Route 1/Washington Road Solar Array (West Windsor Township)
- 18-3463A 179 Federal Road -- Proposed Residence (Monroe Township)
- 19-3656A Abeel Road JCG -- Proposed Office/Warehouse (Monroe Township)
- 18-5151 Dayton 2 Warehouse Expansion (South Brunswick Township)

Commissioner Lubitz asked if any of the Commissioners wished to discuss the Zone B projects.

Commissioner Stout asked staff for an overview of the stream corridor mitigation proposed for the Abeel Road project. Director Hutchison presented a map using the online platform which illustrated the proposed stream corridor mitigation associated with the project. Mr. Ruggeri described the project site and Commission-regulated stream corridor, including proposed grading and access drive area within the corridor. He noted that the stream corridor intrusion which would result from the construction of an additional access drive was a requirement placed upon the applicant by the municipality for public safety/emergency response reasons.

Mr. Ruggeri provided a further description of the proposed mitigation, including proposed improvements to the existing condition of the corridor through the revegetation of the corridor with native plantings. Mr. Ruggeri also noted that the applicant proposed to add a contiguous buffer compensation area to the existing stream corridor. Mr. Ruggeri stated that, as a result of the combination of the revegetating and buffer averaging, the applicant in his opinion was eligible for a waiver of strict compliance with the stream corridor impact review standards pursuant to the criteria set forth at N.J.A.C. 7:45-12.4(a)2.

Commissioner Lubitz called for further comment from the Commissioners and then the public, and hearing none, he asked for a motion on the five Zone B projects. Commissioner Stout offered a motion to approve the Zone B projects, which motion was seconded by Commissioner Shoffner.

The Director called the roll:

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| Director Glenn | Yes |
| Commissioner Reiser | Yes |
| Commissioner Stout | Yes |
| Commissioner Shoffner | Yes |
| Commissioner Lubitz | Yes |

The motion was approved unanimously.

Executive Director's Report

Director Hutchison reported on the Commission workload for the period encompassing June 16, 2020 to

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July 14, 2020. In addition to the 7 projects calendared on the agenda, the staff: completed the review of 13 administratively deficient staff reports; issued 4 jurisdictional determinations; released 2 certificates of approval; and approved 4 general permits.

The Director reported that fee deposits for the month totaled \$24,500, which compared favorably to Fiscal Year 2019, when \$28,550 was deposited, as well as Fiscal Year 2018, when \$16,450 was deposited. Total deposits for Fiscal Year 2020, which was extended to September 30, 2020 pursuant to the provisions of P.L. 2020, c. 19 now stood at \$648,638. Using the revised anticipated annual appropriation of \$450,000, the Commission had exceeded its anticipated appropriation by \$198,638.

Commissioner Stout asked Director Hutchison if Ms. Romsdahl was presently working in the Commission office, or whether she had been furloughed. The Director provided the Commissioners with an overview of the furlough agreement entered into by the State Government with the Communications Workers of America (CWA). Under the State-CWA agreement, DEP was required to identify 10 days of furlough for each CWA-represented employee. DEP has approximately 2,000 CWA-represented employees. The manner in which this was implemented as explained by the Commissioner and the DEP Chief of Staff was that the number of furlough days was implemented on a sliding scale, from a maximum of 12 to a minimum of 8, with the lower-paid employees getting more furlough days, and the higher paid (over \$70,000) getting less.

Director Hutchison noted that media reports indicated that the reason for this is that the lower-paid employees could qualify for the enhanced CARES Act unemployment insurance benefits -- which are 100% paid by the federal government and expire at the end of July. Part of the agreement also entails two unpaid furlough days (Friday after Thanksgiving and Washington's Birthday) and the deferral of the 2% raises in the CWA agreement.

Review Zone Officer Colleen Maloney, who is not represented by a bargaining unit, was not impacted by the furlough agreement. Director Hutchison noted that his bargaining unit, IBEW Local 30, was not party to the State-CWA agreement, so his employment was also unaffected.

Mr. Hutchison then specifically described how the furlough agreement impacted the Commission staff, including how the suspension of the Alternate Workweek Program (AWP) impacted the activities of the Commission engineering staff. He also noted that Commission Engineer Friebel informed him that because he had no AWP days after July 13th, he would not be available for Commission work after that date and until August.

Director Hutchison noted that the suspension of the AWP program during the month of July had the unfortunate corollary effect of shifting the Commission's engineering work onto Joe Ruggeri, who has to work around his furlough days to do both his DEP work and Commission work. The Director expressed the belief that if the staff remained focused on core operations and well-organized, that the Commission's work would be completed within the required statutory and regulatory timeframes without producing a major disruption of operations.

Commissioner Stout inquired whether it would be prudent to engage a temporary employee in the event that Ms. Romsdahl was unable to work due to childcare issues which might arise from a potential future suspension of in-school classroom instruction. Director Hutchison responded that a purchase order to

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rehire the Commission's current temporary hourly employee was under review at the DEP Office of Management and Budget, and that he believed that an authorization for her to resume work would be forthcoming shortly.

Deputy Attorney General Kane provided the Commissioners and members of the public with a summary of the provisions of Executive Order No. 159 (2020) which was signed by Governor Murphy on June 30th. He noted that the Order temporarily extends and tolls certain statutory deadlines across State Government that require review and action by agencies before a specified deadline. Deputy Attorney General Kane noted that E.O. No. 159 was primarily focused on deadlines in the departments of Banking and Insurance, Health and Human Services, Labor, as well as certain election-related statutory provisions. He further noted that no Department of Environmental Protection or Department of Agriculture statutes were identified in the Order, and that the Order did not impact the Commission's statutory deadline to consider an individual permit application within 45 days of it being deemed administratively complete. He surmised that another Order extending environment-related statutory provisions could be issued in the near future, and that such an Order might include the Commission.

Director Hutchison indicated that on June 18th he was contacted by Commissioner Julia Cobb Allen, who notified him of her intention to resign from the Commission with immediate effect. He noted that staff was presently assisting Commissioner Allen with the preparation of the appropriate documents notifying the Governor's Appointments Office, Commissioner McCabe, Director Glenn and the Commission Vice-Chairman of her decision.

The Director informed Commissioners that on July 1st, P.L 2020, c. 53, entitled the "Permit Extension Act of 2020" took effect when the Legislature adopted the Governor's recommended conditional veto language to the legislation. The law extends certain State, regional, county, and municipal agency permit approvals for the duration of the declared "public health emergency" associated with the COVID-19 pandemic. The law creates a "COVID-19 extension period" which covers permits in existence during the period in which the COVID-19 public health emergency is in effect. Such approvals would be extended by at least six months after the conclusion of the extension period. The law took effect immediately and is retroactive to March 9, 2020.

Director Hutchison indicated that it was unclear how many Commission approvals are impacted by the legislation, since the project database does not capture all permits which may be subject to the Act -- projects for which a certificate of approval has been issued, but are not complete and are not likely to be completed within the pendency of the public health emergency, which is itself a potentially moving date. The Director noted that there would likely be an indeterminate but modest impact upon fee collections, since projects which would otherwise be required to resubmit their applications would be extended for the duration of the public health emergency, plus an additional six months.

Using remote meeting technology, the Director reported that he was able to hold nine pre-application meetings from June 16th through July 14th. In addition, he conducted two site visits involving project applications. One of these site visits was at the area immediately south of the Route 202 toll bridge, where Commission staff is working with PSE&G and the Delaware River Joint Toll Bridge Commission to mitigate the impact of a project to replace electric transmission lines in Commission Review Zone A which would entail the removal of vegetation in the right-of-way in order to comply with electric grid resiliency requirements imposed by federal and State energy regulators.

Director Hutchison reported that after a six-year process, he took possession of the Commission's new vehicle, a 2020 Chevrolet Traverse all-wheel drive sport utility vehicle. The Director noted that the replacement of the inoperative vehicle that had been surrendered in 2014 has been a long and difficult process, but that the purchase of the new vehicle will permit the staff to conduct stream corridor inspections, site visits to assess the visual impacts of Zone A projects, and more quickly retrieve files from the DEP Central Warehouse in Trenton. The Director thanked DEP vehicle coordinator Rick Pocino for completing the purchase, and offered his thanks to Director Glenn and Superintendent Kalleser for their roles in allowing the Commission vehicle to count against the overall vehicle limit imposed on the Division of Parks and Forestry, thereby allowing the purchase to go forward.

Park Superintendent's Report

Superintendent Kalleser reported that the New Jersey American Water Company would be starting a project in the upcoming week to effect the in-kind replacement of two existing deteriorating sections of grating on the company's foot bridge over the Delaware and Raritan Canal near the confluence of the Millstone and Raritan rivers in the vicinity of Weston Canal Road, Franklin Township, Somerset County.

The Superintendent reported that the park interpretive sign located at the Kingston spillway in the Delaware and Raritan Canal State Park was reinstalled with concrete footings following its upheaval by vandals. In addition, she reported that the historic towpath mile marker located in the Municipality of Princeton had been cleaned of graffiti; but that unfortunately following the cleaning the marker had once again been "tagged" by vandals. The marker was re-cleaned, and a report was filed with the State Park Police.

On a more encouraging note, the Superintendent reported that an Eagle Scout had successfully completed a project to construct a boardwalk over a particularly muddy section of the Frenchtown Preserve trail.

Superintendent Kalleser reported that she was in the process of organizing a meeting in early August for State agency stakeholders to discuss the findings contained in the "Existing Conditions Assessment Report" prepared by HMR Architects for the East Millstone Bridgetender's Station located near Amwell Road in Franklin Township. The Superintendent thanked Canal Watch for their financial contribution toward defraying the cost of the report.

The Superintendent reported that Transco was completing repairs to the natural gas pipeline which crosses the Delaware and Raritan Canal State Park near Jacobs Creek in Ewing Township, Mercer County. She noted that park users should anticipate intermittent closures of the park multiuse trail in the vicinity of the proposed repair work, and that Transco would be providing a flagger to ensure public safety during the project.

The Superintendent reported on a situation in Frenchtown Borough, in which people were crossing State-owned property in order to gain access to an approximate one-mile section of the Delaware River for swimming. She noted that after reviewing the block and lot designation of the impacted property, it was determined that the properties were owned by the State. She noted that Division of Parks and Forestry staff worked with the Frenchtown Police Department to post signs to warn people not to enter

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the property.

Superintendent Kalleser reported that Delaware and Raritan Canal State Park Naturalist Stephanie Fox and Park Historian Vicki Chirco were designing a self-guided one-mile loop trail for the Mapleton Preserve portion of the park, and that this project would enhance park use while maintaining the social distancing protocols necessitated by the COVID-19 pandemic.

The Superintendent reported that during the weekend of July 11-12, two water rescues were conducted on the Delaware River at the Byram boat launch and at Fireman's Eddy. Additionally, an ambulance call was made to Bulls Island Recreation Area to respond to a park patron who fell from his bicycle after suffering an unspecified medical episode.

Commissioner Stout inquired about an article which appeared in the *Hunterdon County Democrat* regarding the status of a six- to seven-mile trail area running between Frenchtown and Milford boroughs in Hunterdon County currently owned by the Black River and Western Railroad which in the future might be added to the Delaware and Raritan Canal State Park. Commissioner Stout asked whether the lands in question would become part of park, or would there be some kind of alternate arrangement involving Hunterdon County.

Superintendent Kalleser reported that the potential purchase was being pursued by the Green Acres program, but that if the lands were ultimately purchased by Hunterdon County, then an agreement could be executed regarding the future use of the property. She noted that the process had been temporarily delayed by departmental furloughs. Commissioner Stout indicated his support for the proposed purchase and noted that it would complement the acquisition by Hunterdon County of open space along the Delaware River in Milford to create a new riverfront county park. The Superintendent noted that the purchase would also create another loop trail with Pennsylvania by connecting the New Jersey park trails with those of Pennsylvania at Black Eddy.

Mrs. Barth commented that the conditions report related to the East Millstone Bridgetender's Station report referred to by Superintendent Kalleser in her report was funded by Canal Watch in partnership with the East Millstone Historical Society, the Millstone Valley Preservation Coalition and the Canal Society of New Jersey.

Mr. Massand noted that he also supported the Hunterdon County trail acquisition project mentioned by Commissioner Stout, noted his support for enhanced connectivity and signage between the various State and local parks within the Delaware River region, and the role parks play in the economic development of the region.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported that the ongoing project to dredge the main portion of the Delaware and Raritan Canal began on June 26th in the "Reach No. 5" area, and that the dredging contractor would be employing a second dredge within the next week.

Mr. Sellar reported that NJWSA staff received eight bids on July 9th in the range of \$241,000 to \$1.4 million for the project to rehabilitate the riverbank and canal embankment downstream of the Island Farm Weir in Franklin Township. He noted that NJWSA staff was evaluating the bids.

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Mr. Sellar reported that the Hydrilla invasive aquatic plant treatment program began on June 29th. The herbicide injection would be done at a target dosing rate of 3 parts per billion and would proceed for a period of 90 days.

Mr. Sellar reported that the plans for the rehabilitation of the damaged western canal embankment in the Borough of Stockton Borough were now 90% complete, and that the NJWSA would prepare permit applications for the relevant State regulatory agencies by the fall. He further noted that the tentative construction date for the embankment repair project was the spring of 2021.

Mr. Sellar reminded the Commission that the dye testing conducted at the Six Mile Run Culvert that he mentioned at the June Commission meeting was completed, and that the NJWSA's consultant was now working on a schematic design for the rehabilitation of the culvert.

Mr. Sellar reported that the water quality improvement projects addressing the issue of sediment loading into the canal over its final 11 miles, between Ten Mile Lock and the State Highway Route No. 18 spillway, and located at various stormwater basins in Franklin Township (Laird Terrace, Renoir Way, Municipal Building, and Gauguin Way) were now substantially complete, with only some minor punch list items needing completion prior to the projects being closed out.

Mr. Sellar reported that a contractor was mobilized on June 24th for the repair of the eroded embankment at the Transco pipeline near Scudders Falls in Ewing Township. The contractor installed a porta dam on June 29th, and that Mr. Sellar anticipated that the repair work would be completed during the upcoming week.

Mr. Sellar reported that the asbestos building tiles illegally dumped in the canal in Franklin Township that he reported on at the June meeting were successfully remediated under a change order to the NJWSA canal dredging contract on July 13, 2020.

Mr. Sellar reported that the preparation of a request for proposals (RFP) for the Cedar Grove Brook Watershed project in Franklin Township was almost complete, and that the RFP would consider the evaluation of alternatives and effects of designs upstream of the weir located in the vicinity of Easton Avenue with the goal of improving the quality of the water draining into the canal from the brook.

Old Business

None.

New Business

None.

Public Session

There was no public comment. Commissioner Lubitz noted that the Commission accepts written comments from the public, which will be included in the Commission meeting minutes.

Written Public Comments

The Commission received written public comments from Mr. Massand contained in an email to Director

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Hutchison on July 13, 2020. In that email, Mr. Massand requested information on the status and application materials related to a proposed cellular communications monopole to be built at 694 River Road in Montgomery Township. He noted that he felt that the Commission should discuss this project during the July meeting.

The written comments also set forth Mr. Massand's views regarding the increased presence of bicyclists and vehicles on River Road, noting that the roadway was not designed for bicycles, having only two lanes with no shoulder space. He also inquired about the Commission staff's purported participation in a project to create a potential "tourist attraction or placemaking idea" from the Montgomery Township or Somerset County.

Director Hutchison responded to this email that the proposed monopole was the subject of a jurisdictional determination (DRCC #20-4650A), in which the Commission staff requested additional information regarding the project; specifically, the dates at which the project lot was subdivided, and the amount of impervious surface coverage placed cumulative to January 11, 1980. He also noted that it his understanding from the project applicant's correspondence that the project was being revised to address issues raised by the State Historic Preservation Office. Until such time as the applicant submits the additional information requested and the appropriate analysis is conducted, Director Hutchison responded that the Commission staff would decline to speculate on the project.

With regard to any "tourist or placemaking" initiative regarding the use of the Staats Farm, Director Hutchison advised Mr. Massand the Delaware and Raritan Canal Commission staff was: unaware of any proposed project regarding that property; possesses no documents relating to any such a project; and, has not engaged in any conversations on this topic during his tenure as Executive Director.

Executive Session

None.

Adjournment

There being no other business, Acting Chairman Lubitz entertained a motion to adjourn. Commissioner Stout moved to adjourn the meeting, which was seconded by Commissioner Reiser. Commissioner Lubitz called for a voice vote on the motion to adjourn, which was approved unanimously.

The meeting adjourned at 10:55 a.m.

Respectfully submitted,



John Hutchison, Secretary