



**November 18, 2020 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.  
DATE: November 18, 2020  
PLACE: Prallsville Mills, Stockton, New Jersey

**ATTENDING COMMISSIONERS:**

Vice-Chairman John Loos; Acting Director of Parks and Forestry Robin Madden designee for Commissioner Catherine McCabe; Commissioner Phillip Lubitz; Commissioner John Reiser; Commissioner Bruce Stout; Commission Chris Shoffner; and Commissioner Douglas Palmer; 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: Stephanie Fox, DEP Natural Resource Specialist, Delaware and Raritan Canal State Park; Michael Sellar, New Jersey Water Supply Authority (NJWSA); Rikki Massand; Linda Barth, D&R Canal Watch; Robert Barth, D&R Canal Watch; Robert von Zumbusch, D&R Canal Master Plan Advisory Committee; Mark Texel, Assistant Director DEP Division of Parks and Forestry; Delaware and Raritan Canal State Park Historian Vicki Chirco; Nori Sheppard, New Jersey Department of Transportation (NJDOT); Brendan Brock, NJDOT; Drew Tompkins, Director of Policy, New Jersey Audubon Society; Wayne Petko.

Vice-Chairman John 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**

Since Commission members were participating via telephonic device pursuant to Article III, Section 4

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of the Commission Bylaws, Vice-Chairman Loos directed the Executive Director to take the roll. There being seven Commissioners in attendance, the Director indicated that a quorum was present, and that the transaction of Commission business could therefore proceed.

Vice-Chairman Loos confirmed the December 16, 2020 Commission meeting date and stated that given the ongoing public health emergency and declared state of emergency related to the COVID-19 pandemic, the meeting would likely be held by means of an online platform and teleconference.

Vice-Chairman Loos stated that the Commissioners had received a document containing a list of proposed Commission meeting dates for the 2021 calendar year. He called for a motion to approve the dates, which continue to be the third Wednesday of the month at 10:00 a.m. Commissioner Stout made a motion to approve the proposed dates set forth in the circulated document, and Commissioner Lubitz seconded the motion. Vice-Chairman Loos directed Director Hutchison to call the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Absent
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

### **Minutes**

Vice-Chairman Loos asked if there were any comments with respect to the October 21, 2020 meeting minutes. Hearing none, he called for a motion. Commissioner Lubitz motioned to approve the minutes and Commissioner Stout seconded the motion. Vice-Chairman Loos directed Director Hutchison call the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

### **Review Zone Projects**

#### **Zone A Projects**

#20-3262H	Bull's Island Recreation Area -- Proposed Inlet Trail/Planting Plan (Delaware Township/Kingwood Township)
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Vice-Chairman Loos explained for the benefit of Commissioners and members of the public not present at the time, that several years ago the northern section of the Bull's Island Recreation Area was closed, and the project before the Commission proposed to reopen these areas to the public. He then asked Director Hutchison to provide a brief history of the proposed project.

Director Hutchison stated that on June 28, 2011, a man was killed and a woman severely injured when a 42-inch-diameter American Sycamore tree fell on their tent whilst they were sleeping at the northern campground area. In response, DEP immediately closed the upper and lower campground areas and, in July 2011, contracted with Bartlett Tree Experts to perform a tree risk assessment in the upper campground area to determine the cause of the tree's sudden failure on what was otherwise a calm and sunny day. The survey concluded that the root system of the fallen sycamore, as well as those of the majority of trees in the upper campground, had become compromised from the buildup of alluvial soils deposited around these trees during frequent flooding events that occurred at Bull's Island in recent decades.

Director Hutchison noted that in 2013, the DEP Division of Parks and Forestry proposed a project which would have allowed the area to re-open, without camping, and with a much more robust tree removal plan than that proposed in the project under consideration by the Commission. Director Hutchison noted that the current project proposed the development of a loop trail at the northern end of Bull's Island using existing trails, and which would require the removal of a much smaller number of trees than was the case under the 2013 proposal. According to the submitted application, the project proposed approximately 20 trees for removal, some of which were ash, and therefore terminally-affected by the emerald ash borer, while others were *Ailanthus altissima* "Tree of Heaven", which is affected by the invasive spotted lanternfly. Director Hutchison also clarified that unlike the 2013 proposed project, the current project was a "minor project" within Commission Review Zone A, since it proposed a reduction in impervious surface coverage and disturbed less than one acre of land.

Acting Director Madden stated that the Division of Parks and Forestry had undertaken a series of small stakeholder meetings with interested environmental advocacy groups, as well as stakeholders who were regularly engaged with the department on issues impacting the Delaware and Raritan Canal State Park. She stated that the proposal has received widespread support from those organizations.

Vice-Chairman Loos called for a motion. Commissioner Stout made a motion to approve the project, which was seconded by Commissioner Lubitz. Vice-Chairman Loos then asked the Commissioners if they had any questions or comments for DEP or Commission staff.

Commissioner Lubitz asked Park Natural Resource Specialist Fox if existing downed large trees in the area would be removed. Ms. Fox stated that one area of the trail may require the clearing of trees from the path, but in a limited area. She also noted that the project includes ADA-approved trail, which would afford park patrons with disabilities or mobility issues greater access to the park.

Commissioner Stout stated that he voted against the project proposed in 2013. He recalled that at the time he found the project to be appalling; however, he noted that the current proposed project was exciting because the Division of Parks and Forestry had listened to the feedback they received in 2013 and were responding to it in a positive manner. He further noted that the proposed project met the shared goal of reopening the northern section of the recreation area, but with minimal tree cutting, and

that the project allowed public access to the historically-significant areas of the canal and the Delaware River wing dam. Commissioner Stout congratulated the DEP on the project and stated that it was an example of “how government should work.” He stated he would vote in favor of the project with enthusiasm. Commissioner Lubitz stated he agreed with the sentiments expressed by Commissioner Stout in his comments. Vice-Chairman Loos also stated that he agreed with Commissioner Stout’s remarks.

Mr. von Zumbusch stated that when he worked on the historic and recreational development plan for the park, he was not in favor of the existing campground at Bull’s Island. He felt the area was important as a natural area and that it gave access to the inlet of the canal. He stated he fully supported the proposed project and noted his specific support for the provisions of the project which authorized the placement of interpretive and didactic signage along the proposed trail.

Mr. Tompkins, Director of Policy for the New Jersey Audubon Society, stated that the society’s stewardship staff had studied the proposed plan, and found that overall the project was a significant improvement over prior plans, which called for removal of over 100 trees. He also stated that the site was a “birding hotspot” and the project would result in a number of benefits, including: the removal of existing impervious pavement; allowing greater public accommodation at the recreation area, which included the addition of 0.8 miles of ADA-accessible trail; the conversion of a camping area to passive recreation space; the planting of trees and vegetation in areas which would enhance breeding and migratory habitat of birds species such as the cerulean and yellow throated warblers, as well as the creation of habitat for terrestrial species such as the wood turtle. Mr. Tompkins also noted that the proposed project addressed the proliferation of invasive vegetation through the planting on native species, and that the proposed addition of interpretive signage regarding the flora and fauna of Bull’s Island would also be beneficial.

He noted his staff had expressed some concerns about the planting plan and recommended reducing the proposed number of Eastern Red Cedar and hornbeam. He offered the society’s assistance with the planting plan and said that a report detailing their findings would be transmitted to the Division of Parks and Forestry. He also offered the assistance of the New Jersey Audubon Society with the development of any future interpretive and education materials. Ms. Fox stated that cedar and hornbeam plantings could be readily be adjusted, and that she appreciated Audubon’s offer to assist with the interpretive materials. Ms. Fox concluded by stating that she looked forward to reopening the northern portion of the area to the park-going public.

Commissioner Lubitz stated that the Commission should note the contribution of DEP Deputy Commissioner Olivia Glenn for working with Commission staff to advance the project.

Commissioner Stout stated that he wished to amend his motion to approve the project to include language stating that if the applicant changed the proposed plantings, the Commission Executive Director would review and approve such changes, without the need for the applicant to return for Commission subsequent review and approval. Commissioner Lubitz stated that he concurred with the amendment to the original motion that he had seconded.

Director Hutchison stated that based upon the prior discussion, it might be sensible to further amend the motion to include similar language relating to the content of the didactic and interpretive signage noted

within the staff report, so that those elements of the project would not require further review by the Commission.

Vice-Chairman Loos noted the amendments to the motion and asked the Director to call the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Absent

The motion was approved.

#19-3921E NJDOT Bull’s Island Day Use Area Tree Planting Mitigation Plan (Delaware Township)

Vice-Chairman Loos asked Director Hutchison to describe the project. Director Hutchison stated that, in 2019, the NJDOT removed vegetation from Route 29 from Brookville Hollow area of Stockton Borough, south to Gaia’s Way Farm (previously known as the Holcombe Farm/Stavola property). The vegetation removal took place within the road right-of-way, but also within the Delaware and Raritan Canal State Park and within Commission Review Zone A, and without approvals from the Commission or the DEP.

In order to address the impact of the tree trimming project upon the Delaware and Raritan Canal State Park and the Commission Review Zone, the NJDOT, the DEP Division of Parks and Forestry, the NJWSA and the Commission staff engaged in a cooperative process to devise a mitigation plan. As a result of this consultative process, the NJDOT agreed to undertake a replanting plan at Bull’s Island Recreation Area. Bull’s Island Recreation Area was deemed the most appropriate location for the planting plan.

The “day use” area of the Bull’s Island Recreation Area is a heavily-used picnic area behind the visitor center populated by mature shade trees of the same relative age. Director Hutchison noted that the northern portion of the day use area is monoculture predominantly comprised of Red oak (*Quercus rubra L.*) trees, along with a lesser amount of tuliptrees, Eastern red cedar (*Juniperus virginiana*), White pine (*Pinus strobus*), Norway spruce (*Picea abies*) and Eastern dogwood. The day use area also contains a number of Ash trees impacted by EAB. In recent years the Park Service has removed 10-15 trees from the day use area in order to protect picnickers who sit beneath the tree canopy.

The red oak trees are all of the same age class with a diameter at breast height (dbh) of over 24 inches. The Director noted that DEP had determined that the red oak in the day use area were at high risk for oak wilt, a devastating and fatal disease caused by a fungus that spreads from diseased to healthy trees overland by insect or other airborne vectors and through root grafts. DEP also noted that the oak trees at the day use area were susceptible to bacterial leaf scorch, which is a chronic and potentially fatal disease

which affects many species and for which there is at present no cure.

In anticipation of future losses of these trees due to the above referenced diseases, the proposed project would ensure that the day use area continues to provide shade for park patrons and wildlife habitat. Director Hutchison also noted that DEP related to him that since the day use area was a heavily-used picnic area, natural regeneration of the extant trees was unlikely given the area’s intensive use.

Mr. Hutchison noted that the proposed mitigation planting plan would allow continued growth of the mature trees and allow for new plantings which would outlive the current shade trees, thus providing a continuous shaded day use area for years to come. Thirteen trees were removed from Brookville Hollow to Gaia’s Way Farm. NJDOT would bear the cost of the plantings, which would include planting of 29 new large caliper trees. Ms. Fox stated the replanting of the day use area was a useful project for which the park staff had been seeking funding, and that the proposed project would guarantee future succession so that park patrons in the day use area would continue to enjoy the shade for the next 10 to 15 years.

Vice-Chairman Loos requested a motion. Commissioner Stout made a motion to approve the project. The motion was seconded by Commissioner Reiser. Vice-Chairman Loos requested if there were any comments or questions from the public with regard to the project. Hearing none, the Vice-Chairman requested that the Director call the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The motion was approved.

Vice-Chairman Loos stated it was great to see the DEP looking forward to the next generation of park users.

Zone B Projects

Vice-Chairman Loos stated that the project #20-5572 343 Princeton-Hightstown Road -- Proposed Office Building, which was listed on the agenda, was removed from the agenda as it did not meet the Commission requirements for completeness.

- #19-2282B The Promenade at Somerset -- Proposed Townhome Development (Franklin Township)
- #20-2894A Heritage Business Park -- Proposed Flex Warehouse (Hillsborough Township)
- #20-3429D West Windsor-Plainsboro High School South -- Additions and Renovations (West Windsor Township)
- #20-5411A 118-122 Churchill Avenue -- Proposed House of Worship (Franklin Township)

The Vice-Chairman stated that he would entertain any comments or questions on the Zone B projects from the public. Hearing none, Vice-Chairman Loos requested a motion on the Zone B projects. Commissioner Lubitz moved to approve the Zone B projects with the exception of #20-5572, which motion was seconded by Commissioner Stout. Vice-Chairman requested that the Director call the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

**Executive Director’s Report**

The Director informed the Commission that the Governor had signed Executive Order No. 191 extending the COVID state of emergency by an additional 30 days. The Director also reported that the Governor also signed Executive Order No. 196, which reduced the number of persons who may attend a gathering from 25 to 10. Given the foregoing, Director Hutchison indicated that he anticipated the Commission meetings would be accomplished by remote technology for the foreseeable future.

Director Hutchison reported on the workload for the period encompassing October 20 to November 17. During that time, in addition to the 7 projects on the agenda, the staff completed 13 deficient staff reports, 10 jurisdictional determinations, 6 certificates of approval, and 8 general permits.

The Director reported that fee deposits for the preceding month totaled \$28,500, which also constituted the total deposits for the current 2021 Fiscal Year. The amount was less than what was deposited in FY 2020 and FY 2019, but given the large number of pending applications, the Director stated that he was not concerned about a precipitous drop in future Commission fee collections.

In response to a query from Commissioner Stout at the November meeting, the Director reported that FY 2020 fee deposits were \$747,238. Using the revised anticipated annual appropriation of \$450,000, the Commission had therefore exceeded its anticipated appropriation by \$297,238.

As is evident from the workload and fee collection reports, the Director noted that Commission staff remained very busy with project review activities. He noted that there have been between 35-40 projects pending at any given time over the last month, and the fact that staff were able to stay ahead of the workload was a tribute to Commission engineer Joe Ruggeri’s efforts.

The Director reported that he was pleased to inform the Commission that he had issued a General Permit No. 1 for the replacement of the septic system at the Port Mercer Canal House (DRCC #20-4322B). As Commissioners were aware, he noted that the replacement of the failed septic system partly using Commission mitigation monies will permit the Division of Parks and Forestry to re-occupy the second

floor apartment, and allow the Lawrence Historical Society to more comfortably use the first floor as their headquarters.

Mr. Hutchison reported that Hawley Brothers General Contractors from Chesterfield, New Jersey, were the successful bidder on the project to repair the exterior of the Commission offices. They anticipated starting the project in early December, weather permitting. Specifically, the project scope of work includes the replacement of deteriorated and wildlife/insect-damaged siding on the building façade, replacement of wood glider and double hung windows which have become fogged due to seal failure with new casement and double-hung windows, installation of a gutter and leader on the east elevation, and miscellaneous exterior repairs. The project will be overseen by Mr. White of the DEP Office of Resource Development (ORD).

The Director reported that on October 30 he and Commissioner Stout had a conference call with Tina Shutz of the NJDOT on the Bridge Task Force MOA. Mr. Hutchison stated that NJDOT was working on confirming the location of each bridge that would be subject to the MOA using their GPS coordinates. He was hopeful that the final draft of the MOA would be completed by the end of the year, after which time the Bridge Task Force will hopefully meet for the last time to approve the document and recommend its final adoption by the Commission.

The Director reported that the main Commission office telephone line 609-397-2000 was inoperative. DEP General Services was endeavoring to repair the line, which has been plagued by chronic malfunctions for a number of years. Fortunately, the line to 609-397-2001 still functioned, along with the voicemail system.

The Director noted that he added additional meeting minutes to the Commission website. Meeting minutes dating back to the year 1997 were now available for public review.

Vice-Chairman Loos stated that Director Hutchison was to be commended for initiation and management of the upgrades to the Commission office, while maintaining the historic character of the building. Director Hutchison noted that Mr. Mulvan and Mr. White of DEP ORD were highly supportive of the projects to improve the physical plant of the Commission.

### **Park Superintendent's Report**

Delaware and Raritan Canal State Park Naturalist Fox reported that Park Historian Chirco had submitted a grant application to the New Jersey Historic Trust which resulted in a \$23,531 grant for a conditions assessment of the historic houses within the Six Mile Run park area.

Ms. Fox reported that ash tree and Tree of Heaven removal was underway in the City of Lambertville. The project was taking longer than expected due to rainy weather and, on sunny days, heavy park usage. She noted that in December some work would require use of a crane to reach over the canal to retrieve large fallen ash trees.

Ms. Fox reported that DEP ORD and a construction maintenance specialist were assessing a drainage issue at the park at the junction of the park multiuse trail and the D&R Greenway near Jarvis Place in the City of Trenton. Based upon those assessments, a strategy would be developed to address the issue.



**Old Business**

No old business.

**New Business**

No new business.

**Public Session**

Vice-Chairman Loos invited members of the public to offer comments.

Mr. von Zumbusch expressed his hope that the Commission would continue to offer online access to the monthly meetings, even after the Commission resumed in-person meetings. He noted that the remote technology allowed those concerned with the possibility of COVID-19 exposure an option to participate in future Commission meetings, as well as an easier way for public participation going forward.

Mr. Massand stated his concerns about a cell tower and that information regarding same was available on the Montgomery Township website.

Mr. Massand stated his interest in the success of a November 29, 2020 event at the Prallsville Mills which would be conducted using social distancing practices.

Mr. Massand stated that he was aware of a program within Hunterdon County regarded municipalities being reimbursed for personal protective equipment (PPE) through the Federal Emergency Management Agency. Acting Director Madden responded that the State Government worked through the Emergency Response Office for the PPE equipment, and the Commission -- being part of the DEP -- had access to that office as well. Director Hutchison stated staff had been in regular contact with DEP General Service staff, and that given the Commission's modest staffing level and facilities, he was able to purchase sufficient quantities of items such as face masks, sanitizer, as well as plexi-glass shield for the office secretarial desk.

**New Jersey Water Supply Authority (NJWSA) Report**

Mr. Sellar reported that the dredging project for the main portion of the Delaware and Raritan Canal in the area known as "Reach No. 6" was underway until early December, after which time the dredging operations would cease, and that removal of dredge material would commence in late December. He also reported that demobilization of the dredging equipment was presently underway.

Mr. Sellar reported that the contractor for the project to rehabilitate the canal embankment downstream of the Island Farm Weir (DRCC #19-4584C) had commenced site work.

Mr. Sellar reported that the work for the rehabilitation of the western canal embankment in Stockton will be bid, with work expected to start in the summer of 2021.

Mr. Sellar reported that canal maintenance dredging was completed at the Prallsville Mills in Stockton, and that site restoration activities were underway. The excavator used for the dredging was moved to Bull's Island Recreation Area to begin maintenance dredging work on a culvert which drains into the feeder canal from the lock to the Delaware River.

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**Old and New Business**

The Vice-Chairman opened the floor to Old Business and New Business, for which there were no comments.

**Written Public Comments**

None.

**Executive Session**

None.

**Adjournment**

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

The meeting adjourned at 10:55 a.m.

Respectfully submitted,



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John Hutchison, Secretary