



**July 21, 2021 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:15 a.m.
DATE: July 21, 2021
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman Bruce Stout; Assistant Director of Parks and Forestry Mark Texel, designee for Commissioner of Environmental Protection Shawn LaTourette; Commissioner Phillip Lubitz; Commissioner John Reiser; Commissioner Chris Shoffner; Commissioner Douglas Palmer; all participated via online platform and teleconference.

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

GUESTS: Patricia Kalleser, Superintendent, Delaware and Raritan Canal State Park; Mike Sellar, NJWSA; Linda Barth, D&R Canal Watch; Robert Barth, D&R Canal Watch; Robert von Zumbusch, D&R Master Plan Advisory Committee; Ricki Massand; Derek Jordan, Colliers Engineering and Design; Marina Stinely; Ray Merrell G-1 Holdings; Michael Burns; Kathy Hale; Marcus Mitchell; Vicki Chirco, Delaware and Raritan Canal State Park Historian.

Vice-Chairman Stout 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 Stout 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, Vice-Chairman Stout directed the Executive Director to call the roll.

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Vice-Chairman Stout	Present
Assistant Director Texel	Present
Commissioner Reiser	Present
Commissioner Lubitz	Present
Commissioner Shoffner	Present
Commissioner Palmer	Present

Minutes

Vice-Chairman Stout inquired if Commissioners had any comments on the June 16, 2021, meeting minutes. Assistant Director Texel requested a change to page 8, correcting the spelling of the last name of DEP Park Police Sergeant Tim Kasony. The Vice-Chairman called for further comment, and hearing none, he called for a motion to approve the minutes with the correction and as prepared by the staff. Commissioner Lubitz made a motion to approve the minutes, which was seconded by Commissioner Shoffner. Vice-Chairman Stout directed Director Hutchison to call the roll:

Vice-Chairman Stout	Yes
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The minutes were approved.

Confirmation of June Meeting Date

Vice-Chairman Stout confirmed the August 18, 2021, meeting date. Commissioner Palmer stated he had a scheduling conflict and would not be able to attend.

Review Zone Projects

The Vice-Chairman stated that since he was aware of the need for Commissioners to recuse themselves on votes relating to two projects on the meeting’s agenda, the projects would be reviewed in an order different than that listed on the notice.

Vice-Chairman Stout stated that Commissioner Shoffner chose to recuse herself from discussion and vote on Zone A project #20-0496D 114 Canal Road -- Remediation Project (South Bound Brook Borough). Commissioner Shoffner stated that she would recuse herself from the discussion and vote on the project and left the meeting at 10:10 a.m. Vice-Chairman Stout requested a motion on the project. Commissioner Lubitz motioned to approve the project. Commissioner Reiser seconded the motion. Vice-Chairman Stout asked for comment from the Commissioners and then the public.

Mr. Barth stated that he was thankful for the site clean-up that would result from the project, and that he was pleased that the proposed slope of the bank would allow a kayak or canoe to be launched more easily into the canal. He asked why the applicant did not propose to restore the bank with riprap. Director Hutchison and Mr. Ruggieri stated they were unaware of the rationale for that decision. Mr. Von Zumbusch stated that he could see no reason why riprap could not be restored and that using the

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material would be in keeping with the history of the canal. He stated that he hoped that the New Jersey Historic Preservation Office (SHPO) would pick up on this detail during their review of the project. Vice-Chairman Stout stated that SHPO review was a proposed condition of the Commission's approval, and was specifically listed as one of the eight conditions set forth in the July 14, 2021 staff report.

Vice-Chairman Stout asked Commissioners Lubitz and Reiser if they would agree to modify the motion to include the eight conditions as listed in the July 14, 2021 staff report. They agreed, whereupon Vice-Chairman called for a vote and asked the Executive Director to call the roll.

Vice-Chairman Stout	Yes
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Recused
Commissioner Palmer	Yes

The motion was approved.

Commissioner Shoffner returned to the meeting at 10:17 a.m.

Vice-Chairman Stout stated he would recuse himself from Zone B project #21-2789U The College of New Jersey -- Pedestrian Path. He left the meeting at 10:19 a.m. Commissioner Lubitz assumed the chair and asked for a motion on the project. Commissioner Reiser offered a motion to approve the project, which was seconded by Assistant Director Texel. Commissioner Lubitz inquired if there were any comments from the Commissioners or the public. Hearing none, he asked the Executive Director to call the roll.

Vice-Chairman Stout	Recused
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

Vice-Chairman Stout returned to the meeting at 10:19 a.m.

Vice-Chairman Stout noted that Commissioner Lubitz wished to discuss Zone A project #21-2422C The Center School -- Proposed Solar Carport. The Vice-Chairman requested a motion to allow discussion. Assistant Director Texel moved to approve the project, which motion was seconded by Commissioner Palmer. The Vice-Chairman then asked for comments on the project.

Commissioner Lubitz stated that he was generally supportive of solar array projects located over parking lot areas, which minimized the impact of such projects with respect to impervious surface coverage.

However, he stated that he was concerned that in the case of the Center School, the panels, while proposed to be located beyond the required 200 foot setback, would still be visible from the Delaware and Raritan Canal State Park. He also observed that in some cases parking areas are not visible from the park, yet the vehicles parked within the parking area were visible. In the case of the proposed project, the applicant's line-of-sight submission illustrated that the arrays would be approximately 10 feet above the surface of the parking lot and would clearly be visible from the park. Commissioner Lubitz stated that he would be willing to approve the project, provided a more robust vegetative screening were put in place between the proposed solar array and the park.

Vice-Chairman Stout asked the applicant's engineer, Mr. Jordan, if the applicant would be amenable to including an evergreen screen to block the view of the solar array from the canal. Mr. Jordan observed given the steep slope at the property which ran down to Weston Canal Road, it would be better if any such plantings were placed at the top of the slope. Commissioner Lubitz stated that a screen of red cedar trees, at maturity, in the form of an evergreen hedge would be sufficient. The Vice-Chairman observed that the motion to approve the project could be modified to include a condition that the applicant work with the Executive Director of the Commission to finalize a planting plan which included a screen of evergreen vegetation which would be planted at the top of the slope of the property.

The Vice-Chairman asked for further comment. Assistant Director Texel stated that he agreed the screening would benefit the park and asked for clarification of the placement of plantings. Executive Director Hutchison used the online platform to present the submitted line-of-sight exhibit provided by the applicant.

Vice-Chairman Stout asked for further comment from the Commissioners and then the public. Mr. von Zumbusch stated his agreement with Commissioner Lubitz that the project would benefit from a dense evergreen hedge at the top of the slope, and expressed interest in the Commission mandating additional plantings along Weston Canal Road. Mr. Barth agreed with Mr. von Zumbusch.

Vice-Chairman Stout asked Assistant Director Texel if he would agree to modify his motion to include the planting of the evergreen hedge, the plantings of which would be selected from the Commission's Native Trees and Shrub Lists, at the top of the bank as illustrated on the line-of-sight exhibit, with the Commission's standard condition of an 85% survival rate of the plantings at three years, the final design of which would be approved by the Executive Director. Assistant Director Texel agreed to the modified motion as did Commissioner Palmer. The Vice-Chairman asked the Executive Director to call the roll.

Vice-Chairman Stout	Yes
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

Vice-Chairman Stout asked for a motion on the following four Zone A projects:

- #21-3880A 62-64 Coryell Street -- Parking Lot Gate Operator & Barrier Arm (Lambertville City)
- #20-4594A 80 Wilson Street -- Major Modification (Lambertville City)
- #21-5712 Transcontinental Gas Pipeline -- Proposed Tree Clearing (Franklin Township)
- #21-5731 28 Coleman Lane -- Proposed Fence (Hopewell Township)

Assistant Director Texel motioned to approve the four projects, and Commissioner Lubitz seconded the motion. Vice-Chairman Stout asked for comment from the Commissioners and then the public.

Mr. Barth stated his concern regarding the proposed clear-cutting of a swath of vegetation 75 feet wide and 200 feet long for project #21-5712 Transcontinental Gas Pipeline -- Proposed Tree Clearing, stating that such action would tremendously change the project area. Vice-Chairman Stout stated that based upon his experience from two pipelines in Delaware Township, it was necessary to keep the right-of-way clear of any vegetation beyond grass for safety reasons. Executive Director Hutchison stated that the pipeline was placed into service in 1949 and that clearing within the right-of-way was required by the Federal Energy Regulatory Commission (FERC) in order to permit maintenance of pipeline. He further noted that he and the park Superintendent and he made a visit to the project site with the applicant, and that the project included removal of a total of 12 trees of 3 inches caliper or greater. Superintendent Kallesser stated that the area in question had always been maintained in a cleared condition, but that maintenance cutting had not taken place in five years. She reported that the new State lease being worked on by the DEP and Transco would require the entity to come before the Commission before this type of maintenance was undertaken.

Mr. von Zumbusch agreed that the proposed plan was acceptable. Mr. Massand stated that the project resulted in a large visual impact, and there should be a public information event planned for such a project.

Vice-Chairman Stout called for further comment on the four Zone A projects, and hearing none, asked the Executive Director to call the roll.

Vice-Chairman Stout	Yes
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

Vice-Chairman Stout asked the Commissioners if they required any of the remaining two Zone B projects to be considered separately. Seeing no objections, Vice-Chairman Stout requested a motion on the following two Zone B projects:

- #21-3423A 1440 Lower Ferry Road -- Site Improvements (Ewing Township)

#21-5553A 261 Livingston Avenue -- Apartment Building (New Brunswick City)

Commissioner Palmer made a motion to approve the two Zone B projects, which was seconded by Commissioner Lubitz. Vice-Chairman Stout asked for comments and questions from the Commissioners and then the public. Hearing none, he asked the Director to call the roll:

Vice-Chairman Stout	Yes
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

Executive Director’s Report

Director Hutchison reported on the staff workload for the period encompassing June 15 to July 19. In addition to the 9 projects listed on the meeting agenda, the staff completed 31 deficient staff reports issued, 11 jurisdictional determinations, ten certificates of approval issued, and 5 general permits. In addition to preparing those documents, staff organized 12 pre-application meetings for proposed projects, which, like last month, was an indication of a significant, ongoing workload. In addition, 39 active projects were undergoing review as of the date of the Commission meeting.

Director Hutchison reported that fee deposits for the month totaled \$63,425.74. Deposits for Fiscal Year 2022, which began on July 1, 2021, also total \$63,425.74. He stated that this compares favorably to July 2020 when fees totaled \$24,500, Fiscal Year 2019 when \$28,550 was deposited, and Fiscal Year 2018, when only \$16,450 was deposited. The large number of pending projects and the number of submitted jurisdictional determinations for proposed projects indicated to him that fee collections would remain strong in the short term.

Director Hutchison reported that the project to stain the exterior of Commission offices started on July 7 and was successfully completed on July 9 by Spectra Painting. The Director observed that the painting project, new roof, replacement windows and doors, repairs to the badly rotted sliding conference room door, and the removal and repair of damaged exterior siding, had significantly improved the appearance, weather-proofing, and safety of the Commission’s office. He notes that the next planned physical plant improvements would concentrate on the repair of the perished stone mortar on the building’s foundation and the replacement of the older of the two Commission furnaces, which appears to have been installed in 2002, and was reaching the end of its useful life.

Director Hutchison reported that at the request of the municipal engineer on June 21 Commission engineer Damian Friebel accompanied the Director to conduct a site inspection of the stream corridor at Block 4020, Lot 59 in Montgomery Township (street address 130 Scarborough Road). He noted this marks the first such inspection in over a decade. He observed that the Commission vehicle proved its usefulness in the inspection, and it provided a visible example to the community that the Commission is

watching over the lands that it is charged by law to protect.

Director Hutchison reported that on June 25 the Superintendent of the park accompanied the Director on a site inspection of the project area for DRCC #21-5712, the project to remove trees within the right-of-way of the Transco pipeline in Montgomery Township. He stated that, again, the Commission vehicle proved its worth traversing the multiuse trail. The Superintendent and Director were able to ask the applicant questions related to the project and devise appropriate mitigation to compensate for the impact of the tree clearing on the Delaware and Raritan Canal State Park.

Director Hutchison reported that the Commissioners and members of the public may wish to take note of the new and improved Native Tree and Shrub Lists posted on the Commission website. The lists are based upon observations made in 1973 by the planner Fritz Golden, which were then presented to the Commission in an (unpublished) report titled “The Delaware and Raritan Canal: the Nature of its Surroundings” and subsequently referenced in the 1977 Master Plan. The list used by the Commission and posted on the website consisted of a particularly unhelpful xeroxed sheet of paper that has been in use for four decades without revision. The Director noted that this was another legacy issue that has been allowed to linger for decades and created the unfortunate impression that the Commission is moribund agency frozen in the 1970s and 1980s.

Director Hutchison further stated that the list had been replaced with two new documents, which corrected archaic scientific names that had been updated or were no longer in use, fixed spelling errors, and added additional common names to the lists, so that applicants could better understand which species were listed. The new list contained hyperlinks to the U.S. Department of Agriculture Plant Database, which features useful information on the distribution, original duration, growth habit, and native status data of vascular plants throughout the United States. The new lists also explicitly advise applicants of the Commission’s policy that plantings shall have an 85% survivability rate over 3 years following planting.

Finally, Director Hutchison stated that Tammy Romsdahl would be leaving the Commission staff on August 1 to assume a position in the New Jersey Department of Health. He thanked Tammy for her work at the Commission and wished her well in her new job on behalf of the Commission and its stakeholders.

Vice-Chairman Stout stated that Executive Director Hutchison had done a remarkable job in improving the office infrastructure. In addition, he asked the Director to express the Commissioner’s gratitude to Ms. Romsdahl for her service to the Commission.

Commissioner Lubitz requested, with consideration to the office infrastructure improvements, that an evaluation of a carbon neutral heating/cooling solution be explored. Director Hutchison stated he would ask the architect and their HVAC specialist about costs and benefits of such an idea.

Park Superintendent’s Report

Superintendent Kalleser reported a presumed drowning death at Bull’s Island Recreation Area on July 6.

Superintendent Kalleser also reported that the Division of Parks and Forestry was engaged in conversations regarding “e-bike” use on the Delaware and Raritan Canal State Park multiuse trail. Specifically, an e-bike policy was under discussion with NJDEP staff. She stated that “Class 1” and “Class 2” e-bikes are permitted within the park, whereas “Class 3” e-bikes were not. The Superintendent stated that park staff has met with rental companies in Lambertville to discuss what types of e-bikes they rent, and found that the companies make some modifications to limit the speed of rented bikes used on the canal. She stated that park staff was seeking public input on an e-bike policy and comments would be shared with Assistant Director Texel. Such comments could help shape the policy, such as with speed limit within the park. The Superintendent stated that “Class 1” e-bikes are pedal-assisted and can reach a speed of 20 m.p.h., “Class 2” e-bikes are pedal-assisted and have a throttle and can reach a speed of 20 m.p.h., and that “Class 3” e-bikes had additional capabilities such as a speedometer, can reach a speed of 28 m.p.h. and were considered a “motor vehicle” in many jurisdictions.

Superintendent Kalleser reported on a meeting at the Holcombe Jimson Museum regarding a proposed project to create a working model of the Delaware and Raritan Canal at the farm museum. Park Historian Vicki Chiro took part in the discussion along with members of Canal Watch.

Superintendent Kalleser reported that a microburst weather event resulted in the need for rescues in the Delaware River and the canal. She stated that park staff member Marsha Apffel was to be commended as she assisted with the rescue of park patrons. The event included the sheering of a utility pole near the Bulls Island Park office and downed trees. Park staff followed up with tree clearing the next day from Stockton to Frenchtown. Vice-Chairman Stout commended park staff for managing the weather event.

The Superintendent reported that Park Historian Vicki Chirco has created a “points of interest page” about the Port Mercer community along the canal in Lawrence Township. The project was a required action item related to the State House Commission approval of the Port Mercer septic replacement project. The interest page text will be culled to create an interpretive wayside sign which will be installed at Port Mercer.

The Superintendent reported that the newly-resurfaced multiuse trail in the City of Trenton between the Battle Monument and Whitehead Road had unfortunately suffered from severe erosion shortly after installation. She stated that an enforcement action related to this event was under consideration.

The Superintendent reported that the Youth Conservation Corps, which includes intercity youth, will participate in a three-week program within the park starting July 12, 2021. The program will entail park maintenance activities, such as the building of picnic tables in Trenton in the morning, and afternoon visits to state park sites and historic sites such as Washington’s headquarters at Rockingham and the Governor’s Mansion at Drumthwacket.

The Superintendent reported that the South Bound Brook Spillway had been defaced by a painted swastika. Park staff addressed the matter immediately and removed the hateful image.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar stated that the site restoration for the dredging project on the main portion of the Delaware

and Raritan Canal will continue through the remainder of this year.

Mr. Sellar reported that the contract for the Landing Lane Spillway Rehabilitation/Repair Project (DRCC #19-330B) was awarded, and work would begin in August. He noted that NJWSA is coordinating with NJDOT, which has a project to repair the Landing Lane bridge over the canal in the vicinity of the spillway.

Mr. Sellar reported that the Hydrilla management program began July 6 at a target dose rate of 2.5 ppb and that the treatment would take place for 75 days.

Mr. Sellar reported that the Dellwood Lane Basin sediment project in Franklin Township was complete. Mr. Sellar reported that hydraulic modelling had been completed for the Cedar Grove Watershed project, and that the feasibility study and final report were in the process of being drafted.

Mr. Sellar reported that the underwater inspections of locks, as discussed at the May Commission meeting, continue to be on hold until the repair of a gate at the South Bound Brook lock was complete.

Vice-Chairman Stout requested a status report on the canal embankment repair in Stockton Borough. Mr. Sellar reported that there was no further update at this time, and that plans were being finalized and permits filed with the appropriate regulatory entities, including the U.S. Army Corps of Engineers. Vice-Chairman Stout voiced his frustration that the embankment had been an issue for many years and that it had still not been addressed. He encouraged the NJWSA to move with greater urgency with respect to the needed repairs. Commissioner Lubitz suggested that the Commission express its concerns about the matter to NJWSA in writing. Vice-Chairman Stout asked the Executive Director to draft a letter to NJWSA Executive Director Marc Brooks expressing the Commission’s concerns.

Old Business

Commissioner Lubitz stated that a municipal governing body in Pennsylvania had passed a resolution opposing the rockfall mitigation plan under consideration by NJDOT, which would affect the Kingwood Township rock formation along N.J. State Highway Route No. 29, known locally by generations of residents as “the Devils Tea Table.”

New Business

Vice-Chairman Stout requested pursuant to the provisions of N.J.S.A. 13:13A-11i., a motion to allow the Commission to consider approval of the draft annual report for its activities for calendar year ending December 31, 2019, and post the document on the Commission website. Commissioner Reiser made a motion to approve the report, which was seconded by Assistant Director Texel. The Vice-Chairman directed the Executive Director to call the roll.

Vice-Chairman Stout	Yes
Assistant Director Texel	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Absent

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The motion was approved. Vice-Chairman Stout thanked Commission staff member Darlene Yuhas for drafting the document.

Public Comment

The Vice-Chairman opened the floor to public comment.

Mr. von Zumbusch stated that the Kingston Historical Society, with the permission of Park Service, has reopened the Kingston Locktender's house to the public on Saturdays, Sundays and on major holidays from 10 a.m. to 5 p.m.

Mr. von Zumbusch thanked the park's maintenance staff cleaning the park in Kingston after the recent storm events.

Written Public Comments

None.

Executive Session

None.

Adjournment

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

The meeting adjourned at 11:03 a.m.

Respectfully submitted,



John Hutchison, Secretary