



**September 21, 2022 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:07 a.m.
DATE: September 21, 2022
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman Bruce Stout and Robin Madden, designee for Commissioner of Environmental Protection Shawn LaTourette, attended the meeting in the Commission offices. Commissioner Douglas Palmer; Commissioner Philip Lubitz; and Commissioner John Reiser participated via online platform and teleconference.

STAFF: Executive Director John Hutchison was present in the Commission office; Commission Engineer Joseph Ruggeri, Communications Director Darlene Yuhas, Executive Assistant Erica Vavrence, Review Zone Officer Colleen Maloney, and Deputy Attorney General Jason Kane participated via online platform.

GUESTS: Bob Barth, D&R Canal Watch; Patricia Kalleser, Superintendent, Delaware and Raritan Canal State Park; Chingwah Liang, NJDEP Bureau of Flood Hazard and Stormwater Engineering; Robert Von Zumbusch, Delaware and Raritan Canal Commission Master Plan Advisory Committee; Sonia Gawas, West Windsor Council President; Michael Skopin; Dan Sehnal, Dynamic Engineering; Michael Gallagher; Henry Kent-Smith, Fox Rothschild; Brad Bohler, Bohler Engineering; Mark Cifelli; Francis Van Cleve, Dynamic Earth; Nick Leloia; David Ginsberg; Michael Sellar, NJ Water Supply Authority (NJWSA); Alcamo C1; Thomas Letizia, Esq.; Benjamin DeCarlo; Russ Smith, Hopewell Valley Engineering; Chanda Dawadi; Stephen Gilbert; Eric Gatti; Andy Wei; Robert Quinlan.

Since Commission members were participating in person and via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, Vice-Chairman Stout directed the Executive Director to call the roll:

Vice-Chairman Stout	Present
Commissioner Designee Madden	Present
Commissioner Reiser	Present

September 21, 2022

Commissioner Lubitz	Present
Commissioner Shoffner	Absent
Commissioner Palmer	Present

Director Hutchison stated that a quorum was present.

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

Confirmation of October 19, 2022, Meeting Date

Vice-Chairman Stout stated that the next Commission meeting would be held on October 19, 2022. Commissioner Lubitz stated he would not be able to attend.

Minutes

Vice-Chairman Stout inquired if the Commissioners wished to propose comments or corrections to the August 17, 2022, meeting minutes and executive session minutes. Commissioner Lubitz requested that the public session meeting minutes reflect a motion taken in executive session for its adjournment and return to public session. Vice-Chairman Stout stated that staff would examine the matter to determine whether the minutes required amendment, and present both sets of minutes for approval at the October 19, 2022, Commission meeting.

Delaware and Raritan Canal Transmission Complex Utility Lease Agreement with Sunoco

Vice-Chairman Stout asked Director Hutchison to describe the lease agreement. Director Hutchison stated that Commission approval was required for the Delaware and Raritan Canal Transmission Complex utility lease agreement with Sunoco Pipeline LP for operation of a 14-inch pipeline transmission line under and adjacent to the Delaware and Raritan Canal in three separate crossings in the counties of Mercer, Middlesex, and Somerset. Vice-Chairman Stout asked for comments from the Commissioners and members of the public. Hearing none, he called for a motion on the lease approval. Commissioner Lubitz moved to approve the lease, which motion was seconded by Commissioner Designee Madden.

Vice-Chairman Stout asked Director Hutchison to call the roll:

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent

Commissioner Palmer Yes
The motion was approved.

Review Zone Actions

Zone A Projects

- #22-5815 178 Coppermine Road -- Residence Demolition and Reconstruction (Franklin Township)
- #22-5839 40 Enterprise Avenue -- Proposed Warehouse/Distribution Center (Lawrence Township/Trenton City)

Vice-Chairman Stout asked the Commissioners if they wished either of the Zone A projects to be considered individually. Commissioner Lubitz stated he wished to consider the 40 Enterprise Avenue project separately.

Vice-Chairman Stout entertained a motion on DRCC #22-5815 178 Coppermine Road. Commissioner Lubitz motioned to approve the project, which was seconded by Commissioner Designee Madden. Vice-Chairman Stout asked whether there were any comments on the project from the Commissioners or the public. Hearing none, he asked Director Hutchison to call the roll:

- Vice-Chairman Stout Yes
- Commissioner Designee Madden Yes
- Commissioner Reiser Yes
- Commissioner Lubitz Yes
- Commissioner Shoffner Absent
- Commissioner Palmer Yes

The motion was approved unanimously.

Vice-Chairman Stout entertained a motion on DRCC #22-5839 40 Enterprise Avenue -- Proposed Warehouse/Distribution Center. Commissioner Lubitz moved to approve the project with the condition recommended by staff related to the landscaping plan as specified in the September 12, 2022, staff report. The motion was seconded by Commissioner Designee Madden. Vice-Chairman Stout asked whether there were any comments on the project from the Commissioners or the public.

Mr. von Zumbusch stated that the 1984 Delaware and Raritan Canal State Park Historical and Recreational Development Plan, DBC 317 made recommendations for the industrial area abutting the park north of the Route 1 “Trenton Freeway.” Mr. Von Zumbusch observed that many of the sites along Route 1 were not used or were under-used along the freeway’s approach to the Capital. He noted that the 1984 plan recommended that, as land becomes available, consideration should be given to the acquisition of a wider strip of land along the freeway. The freeway is one of the gateways along the canal into the City of Trenton. Mr. von Zumbusch stated that large shade trees lining the Trenton Freeway would be a desirable improvement.

Mr. von Zumbusch stated that the Commission might also consider prohibiting the erection of billboards on this and other properties in perpetuity.

Vice-Chairman Stout stated that it was his understanding that the Commission regulations already imposed height and size restrictions on commercial signage and advertising structures in Review Zone A, and in the event the applicant wished to install signage such as billboards, he or she would be required to submit an application to the Commission.

Director Hutchison stated that Vice-Chairman Stout was correct in his assessment of the scope of the Commission's regulatory jurisdiction. He stated that N.J.A.C. 7:45-10.4(d) 3 and 4, respectively, provide that no commercial sign or outdoor advertising structure in excess of 80 square feet shall be visible from the Delaware and Raritan Canal State Park. He also noted that, in the Transportation canal environment, no freestanding signs may be erected within 200 feet of the park, and that no advertising device may be fitted with moving or movable parts, or flashing, animated or intermittent illumination. Finally, the Director noted that, in the Transportation canal environment, no freestanding sign may be constructed more than 40 feet above ground level.

Vice-Chairman Stout asked for further comment. Hearing none, he asked Director Hutchison to call the roll:

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The motion was approved unanimously.

Zone B Projects

Vice-Chairman Stout stated that since there were persons in attendance who wished to object to DRCC #22-5858 399 Princeton Hightstown Road -- Proposed Warehouse, the project would be considered separately from the other Review Zone B projects. Accordingly, he requested a motion on the following projects:

#22-1095B	Brunswick Toyota -- Demolition and Reconstruction (North Brunswick Township)
#22-4327D	351 Terhune Road -- Multi-Family Residential Development (Municipality of Princeton)
#22-5075A	269 Wyckoff Mills Road -- Major Modification (East Windsor Township)
#21-5747	Millstone Plaza -- Proposed Liquor Store (Millstone Township)
#22-5857	1052 Spruce Street -- Residential Development (Lawrence Township)

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

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes

Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The motion was approved unanimously.

Vice-Chairman Stout asked for a motion on the following project:

#22-5858 399 Princeton Hightstown Road -- Proposed Warehouse (West Windsor Township)

Commissioner Lubitz made a motion to approve the project, which was seconded by Commissioner Designee Madden. Vice-Chairman Stout then asked a representative of the applicant to provide an overview of the project.

Daniel T. Sehnal, P.E., of Dynamic Engineering, stated that he was a licensed professional engineer and represented the applicant. He stated that the existing project site was used as an agricultural field with row crops, pockets of freshwater wetlands, and some wooded areas. He stated that the applicant proposes to construct a single-story warehouse, along with associated truck bays, truck courts, vehicle parking and circulation areas.

Mr. Sehnal stated that the project is in Commission Review Zone B and that it did not impact any Commission-regulated stream corridors. He further noted that the project was subject to the Commission's stormwater runoff and water quality impact review standards. He stated the application has been approved by both West Windsor Township and Mercer County, including the Mercer County Soil Conservation District.

Mr. Sehnal stated that the project's stormwater system was quite complex, with various stormwater management systems in place, consisting of pervious pavement designs and several aboveground storm water management basins. He noted that in response to opposition to the project from neighbors, the applicant had over-designed some of the basins to provide additional capacity and further reduce the rates of discharge from this site. He noted that care had been taken, especially along that western property line, to ensure that the project reduced stormwater rates.

Mr. Sehnal stated that there are four points of analysis associated with this site, and that the site essentially drained to four different spots. He stated that the project as designed had met quantity reductions for each of those locations and maintained the existing stormwater patterns. He noted that in some instances, the volume of the stormwater in the proposed condition would be reduced when compared to the existing conditions. He stated that while the site was technically undeveloped and in agricultural use with some wooded areas under the proposed conditions, the proposed stormwater management techniques will result in a better condition than that which exists under the existing conditions. He also stated that the September 15, 2022, letter from Dynamic Engineering to the Commission staff responded to objector's concerns, and that the project as designed was fully compliant with the Commission regulations.

Vice-Chairman Stout noted that the objectors submitted written materials in which they assert that the project is not compliant with the Commission's stormwater runoff and water quality impact review standards. Specifically, he said the objectors conceded that the proposed stormwater basins can infiltrate the 10- and 100-year storm events within 72 hours. However, the Vice-Chairman stated that the objectors have charged that the mounding analysis used to design the basins assumes only the stormwater runoff volume produced by the "water quality design storm" and not the actual volume of stormwater runoff under 10- and 100-year storm events to be discharged through exfiltration. He also noted that the objectors further assert that a correct mounding analysis shows that under the current design, it would be impossible for the proposed basins to infiltrate the 10- and 100-year storm events within 72 hours. This, in turn, would not be compliant with Chapter 13 of the New Jersey Stormwater Best Management Practices (BMP) Manual and, by extension, not be compliant with the Commission stormwater quantity standard at N.J.A.C. 7:45-8.6. Vice-Chairman Stout asked Mr. Sehnal to respond to those specific assertions.

Mr. Sehnal stated that he understood the substance of the objector's complaint and the specific section of the New Jersey BMP Manual that they referenced. However, while they do reference Chapter 13 with respect to the duration of infiltration period, the BMP Manual states that the runoff volume to be infiltrated may be either the runoff volume produced by the water quality design storm or 100-year storm.

Mr. Sehnal stated that the standard in the BMP Manual was an "either/or" statement, and what has been done in practice and reviewed and approved by various government agencies was to use the water quality design storm, which demonstrated that the groundwater mounding analysis met regulatory requirements. He noted that this "either/or" requirement is not a "must" or "shall" that requires the application to show that the exfiltration of 100-year storm complied with groundwater mounding, and it did not state that the water quality design storm could only be used if the basin is designed just for the water quality storm. Accordingly, Mr. Sehnal stated that it was his reading of the rule that the project was fully compliant with the first portion of that section of the BMP Manual by modeling using the water quality design storm.

Vice-Chairman Stout inquired if the project had been reviewed and approved by the Department of Environmental Protection (DEP). Mr. Sehnal stated that the project was currently under review by the DEP and there was a full application pending before the department related to freshwater wetlands and stormwater impacts. Mr. Sehnal stated that he received an email communication from the DEP stating that the project was compliant with respect to freshwater wetlands; however, they are waiting for the completion of the stormwater management review.

Mr. Sehnal noted that the DEP received the same comments from the objectors that were sent to the Commission, which they addressed, and they have been included in the DEP permit application files. Mr. Sehnal noted that there was no mandated timeline for the conclusion of the department's wetlands review, and that the applicant had been waiting for a decision since October 2021.

Vice-Chairman Stout asked if other members of the Commission had questions for the applicant.

Commissioner Lubitz requested that the Commission hear from the objectors regarding the “either/or” issue and infiltration and mounding analysis objections.

Mr. Andy Wei introduced himself and stated that he lived a 21 East Kincade Drive in West Windsor Township. He stated that he lived adjacent to the proposed warehouse and that he was, therefore, concerned if the mounding analysis for the project was a failure. He said that the BMP Manual’s mention is “either/or” but that the water quality storm was a comparatively small amount of stormwater when compared to the applicant’s claim that the design could infiltrate the 10- or 100-year storm. To do so, Mr. Wei stated, the actual amount of stormwater should be used, and the mounding analysis should show that the actual amount could be infiltrated. He did not see it as a simple “either/or” when the applicant could choose the smaller storm to satisfy the requirement, and that such an approach did not make sense.

Mr. Wei said that he and the other objectors were arguing this point with the DEP, and that they would schedule a meeting with the department soon. Mr. Wei stated that the objector is a professional certified engineer and that they disagreed with the applicant’s analysis.

Mr. Wei further stated that the Commission should ask the applicant, at the least, to assume the impact of the 10-year storm and not even the 100-year storm, and whether the project could infiltrate that amount of water within 72 hours. Mr. Wei said it would not be possible when you have chosen to only infiltrate the water quality storm. A 10-year storm would be a disaster for the objector’s backyards, and he noted that his property had a septic system in the backyard.

Mr. Wei thanked the Commission for hearing his objections to the project.

Commissioner Lubitz stated that he believed that issue of the interaction between the mounds had been addressed, but that there was a request for the actual data on that issue. He asked if the applicant or the applicant’s engineer wished to comment on this issue.

Mr. Sehnal stated that the information had been included within the submitted mounding analysis and that the project’s geotechnical engineer was present on the online platform and could discuss the technical calculations of the interactions between the two basins. He noted that this information was included in the groundwater mounding report that was submitted to both the Commission and the DEP, and that report demonstrates that the project is in compliance with respect to the basin interactions.

Vice-Chairman Stout asked Commission engineer Mr. Ruggeri if he had reviewed the submitted project application materials relating to this issue. Mr. Ruggeri stated that the interactive groundwater impact which the objector was commenting on refers to the situation where more than one BMP measure infiltrates into the ground. In such a case, the water infiltrates into the ground and the groundwater mounds or rises. And if a project has several of these BMP measures, they may interact with each other. Mr. Ruggeri stated that he had not reviewed the actual interactive analysis to see if that had been done.

Vice-Chairman Stout asked Commissioner Lubitz if he had additional questions. Commissioner Lubitz stated that he wished to discuss the process of excavating the substratum. Commissioner Lubitz asked Mr. Sehnal to clarify, if it is discovered that there is less permeability, then the applicant would have a

professional onsite to observe that situation, and if there is less infiltration than expected, the applicant would be able to take remedial action.

Mr. Sehnal stated since the project is raising the site, they would be replacing the soil and would ensure that the soil brought in would meet that desired permeability rate to ensure that the design worked. Or they would have a geotechnical engineer onsite to oversee the import of the fill, and they would test and monitor the basins to ensure they met the desired infiltration rate for the basins to meet the intention of their design.

Commissioner Lubitz asked Mr. Sehnal if the applicant would object to having another professional present onsite as a second observer, provided at the expense of the objectors. Mr. Sehnal stated there would be no objection to such a proposal on the part of the applicant. Commissioner Lubitz then asked Mr. Wei if he would find that acceptable.

Commissioner Lubitz observed that such an approach would address the part of the project analysis that has not been reviewed yet by the Commission's engineering staff.

Mr. Sehnal stated that the horizontal hydraulic conductivity is based upon the location of the state that the project is in, and it is a quantity, or a parameter, that goes into the calculation. The soil that is interacting with the basin itself is the soil that the water comes in relation to and the zone of infiltration. That is the soil that would be essentially replaced or imported with the correct soils. The parameters just added to the calculation of itself for that horizontal relation just based on where the state is. Mr. Sehnal reiterated that it was his belief that the project was in compliance.

Mr. Wei challenged the horizontal hydraulic conductivity assumptions used by the applicant when using soil replacement to improve the permeability of the soils onsite. He stated that the applicant should have used the same horizontal value in the calculation as was used for the vertical direction.

Mr. Sehnal then responded by saying that this was correct; and, that this is why the soil replacement was not included within the submitted calculation, and that, therefore, the calculation still complied with the relevant regulations.

Vice-Chairman Stout asked if the geotechnical engineer would comment on the mounding analysis. Francis Van Cleve, P.E., of Dynamic Earth, introduced himself and stated that he was a licensed professional engineer in New Jersey. He stated that Dynamic Earth performed the groundwater mounding analysis. Regarding the question about the horizontal soil permeability, Mr. Van Cleve said that this would be addressed, as Mr. Sehnal stated, by means of excavation during construction. Mr. Van Cleve stated that extensive soil testing was performed at this site, and there were occasional restrictive soil layers, which were typical. However, the underlying soils are well-draining and consistent with the design infiltration rate. He also stated that, as part of the earthwork during the early stage of construction, *in situ* soil testing would be performed in accordance with the New Jersey BMP Manual to confirm that the underlying soils were consistent with the design infiltration rates.

Commissioner Lubitz stated, regarding the downward flow, that he needed clarity on how that soil testing at the time of construction would deal with the horizontal flow.

Mr. Van Cleve responded that they recommend horizontal excavation as well, beyond the lateral extent of the basin, which would address this concern.

Commissioner Lubitz then asked Mr. Wei if he would be satisfied with the Commission issuing a conditioned approval that would allow him to have a professional present during the process of constructing the basins at his expense.

Mr. Wei stated that this would not address his issue of concern, which was the mounding analysis and the impossibility of addressing the 10-year storm event.

Commissioner Lubitz asked for clarification from Mr. Wei that he would not be satisfied with a condition being placed upon the project that would permit someone of his choosing to observe the construction of the basin at his expense. Mr. Wei stated he was not satisfied with such a condition.

Commissioner Lubitz noted that he was only speaking of the construction of the basin, and addressing the substrata issue, which as explained in the previous conversation would also include the horizontal flow concerns.

Mr. Wei stated that is one issue of concern, but that the issue of greater importance was the mounding analysis, which he said was a failed design based upon the inability to infiltrate even the 10- year storm event.

Commissioner Lubitz reminded Mr. Wei that the Commission was trying to address his objections one issue at a time.

Mr. Wei stated that, based upon the BMP Manual, the horizontal excavation should not have been assumed, but that the objectors would support a review of the basin construction at their own expense.

Commissioner Lubitz acknowledged Mr. Wei's response and indicated that he wished to return to the "either/or" issue as it applied to infiltration and the objections to the mounding analysis. He stated to Mr. Sehnal that the Commission could have the applicant calculate the percentage of the total expense of the project that would be increased by using the "or" rather than the "either" scenario.

Mr. Sehnal stated he did not understand the question.

Commissioner Lubitz responded by stating that he was trying to understand why the applicant selected "either" instead of "or" when conducting their mounding analysis.

Mr. Sehnal stated what was done was the standard way to calculate groundwater mounding, because the majority of the storms that a site experiences are essentially the water quality storm. He acknowledged that people comment on the frequency of these types of storms. He clarified that it was the 100-year storm event; but by the definition of the term, the 100-year storm event is the probability of the storm to take place once every 100 years. So, Mr. Sehnal stated, that is essentially what they designed the project to comply with, that this condition is a very rare circumstance, and that they wanted to ensure that they protect facilities downstream with the site.

Mr. Sehnal stated that they designed the basin to make sure that it fully contains the 100-year storm, and the intent is to make sure that it protects properties offsite. And in that case, there are various parameters that are going to increase or change groundwater mounding. When a 100-year storm happens, it does not matter if it occurs on the applicant's site or the site next to it. The ground will be saturated and will greatly change the way that the stormwater basin interacts with the groundwater. The result is higher groundwater throughout the region when a big storm event occurs. The intent of the project's design is to make sure that it complies with the quantity reductions and quality requirements for those two 100-year design storms.

However, Mr. Sehnal stated that the applicant cannot be forced by an objector to comply with standards that are more stringent than those set forth in the BMP Manual, and that the BMP Manual gives the applicant the option of using "either/or" for a quality design storm design; the applicant chose "either" in this case.

Commissioner Lubitz said that he thought Mr. Sehnal was giving him two different answers. Commissioner Lubitz stated that the applicant and the engineers chose their design because that design had the likelihood of having greater volume and, therefore, would protect the properties around the project site. But, Commissioner Lubitz noted, at the same time the applicant argues that they cannot be forced to use a more stringent design. Accordingly, Commissioner Lubitz said that he was trying to understand whether the calculation was made because, as Mr. Sehnal stated in his own words, it would be the less stringent design. Commissioner Lubitz noted that was to his thinking a dollar calculation and he asked what percentage of the total cost of the project would be affected by using the more stringent calculation, and still be the best fit for the project site.

Mr. Sehnal responded to Commissioner Lubitz by stating that designing to a more stringent design and infiltrating the 100-year storm would likely have the effect of expanding the size of the proposed basin, which would, in turn, impact the neighboring properties even more by reducing the buffer area by greatly oversizing the proposed basin. While it would be technically compliant with the stormwater requirements, the larger basin would have a greater area of infiltration, and groundwater mounding that would take place over a longer period. But this approach would require the removal of more trees and the removal of the more of the buffer between the project and the neighbors around the site.

Mr. Sehnal stated that this approach would provide more area for the water to go, but that the approach they used preserved more of this area in a natural state. By designing the project in this manner, they are using the water quality storm, which is allowed as an option, and it allowed the applicant to keep the project basin's footprint smaller and protect the surrounding area and trees while still meeting the Commission's requirements.

Mr. Sehnal stated that he was not certain what would happen if they designed for exfiltration of the 100-year storm in terms of compliance. He stated further that he was certain it could be designed to be compliant. The one basin that was called into question was an infiltration basin that did not have a direct outlet control structure. Mr. Sehnal stated that such an outlet control structure could probably be added, and that basin would still comply with the Commission's regulations; but again, he noted that it was their intent in the design to protect the neighbors by not creating a point source discharge by

containing the entire 100-year storm within the one basin. As designed, there is no outlet flowing toward properties, and the project contains all of that water onsite. It was his opinion that this was a better design, and by using that design, the project results in a smaller basin that ensures compliance using the permitted water quality design with the groundwater mounding calculations.

Vice-Chairman Stout asked Commissioner Lubitz if he had further questions. Commissioner Lubitz stated that he did not.

Vice-Chairman Stout recognized Mr. Wei, who said that he wished to make two points. First, in the calculation provided by his engineer, Mr. Wei stated, it was illustrated that the project was not compliant to address the 100-year storm and was not even compliant to infiltrate for the 10-year storm. Secondly, the applicant's engineer argued that an alternative would result in a reduced buffer. Mr. Wei countered that the applicant could always reduce the size of the proposed warehouse and comply with the stormwater regulations. The applicant was trying to maximize the warehouse size. He argued that the applicant did not have to sacrifice the size of the buffer; the applicant could choose to build a smaller warehouse. Mr. Wei stated that while they could, of course, do that, they choose not to do so to maximize their profits.

Vice-Chairman Stout asked if any other members of the Commission had any questions or comments regarding the application. He then asked Mr. Ruggeri if it was his view as the Commission's engineer that the project is in compliance with the Commission's stormwater quantity standards. Mr. Ruggeri stated that the objector had raised valid concerns in items No. 1, 2 and 3 of their submitted comments. However, he stated he was not concerned about the soil replacement process because the Commission has always permitted soil replacement as a compliance strategy. He further noted that the the third comment on the interaction between the BMPs and the infiltration and the mounding was something the Commission might wish to review. He stated that the first comment was more of a commentary on the interpretation of the language set forth in the New Jersey Stormwater BMP Manual, which Mr. Ruggeri then shared with the Commission using the online platform.

Vice-Chairman Stout asked the applicant's representatives if they would be amenable to the Commission rejecting the project without prejudice to allow the Commission's engineer to further review the issues raised in the discussion, and then reconsider the project at the October Commission meeting.

Mr. Sehnal replied that that the applicant was seeking an approval, and that the application was in compliance with the BMP Manual as presented on the Commission online platform shared screen. The language clearly says that "...may be either the runoff volume produced by the water quality design storm or the volume of runoff to be discharged through infiltration." If acceleration of runoff during base and routing is used, it does not say it "must" or "shall," and it does not say that when the water quality is designed, the storm can only be used if it is used for the water quality design storm.

Mr. Sehnal concluded by stating that it was his opinion that the application was in full compliance with what is outlined exactly in the BMP Manual.

Mr. Ruggeri returned the Commission’s attention to the BMP Manual language on the online platform shared screen and stated that he had consulted with colleagues at the DEP on this matter. He confirmed that the language says where the volume of runoff may be “either” the runoff produced by the water quality and design storm “or” the volume of runoff to be discharged through external exfiltration. He also stated his concern that a considerable amount of water was being put into the ground at one point, and by putting that water into the ground at one point, it could raise the water level significantly enough to affect any nearby structures.

Vice-Chairman Stout opened the floor to comment from the public on the proposed project.

Mr. von Zumbusch stated that since the DEP freshwater wetlands and stormwater reviews were ongoing, it made sense to delay the project by one month to allow a more detailed review by the Commission staff to be completed.

Vice-Chairman Stout asked Mr. Ruggeri if there was a condition that the Commission could impose along with the approval of the project that would assure him that it met the Commission’s stormwater quantity regulations.

Mr. Ruggeri stated that he thought it would be difficult to devise a blanket condition that could address that point; however, he suggested that Commission staff be permitted to review the project again, examine the groundwater mounding information, and take a rigorous look at the interaction between the stormwater BMPs, which staff did have the opportunity to do. He noted that the Commission engineers typically study the water quality storm; however, when the project proposes to infiltrate more than the water quality storm, the possibility existed that there could be a concern. Therefore, Mr. Ruggeri thought it would be prudent for the Commission to reexamine some of the stormwater calculations. He stated that if the Commission wanted to approve the project with a condition, that would be the condition he would recommend.

Vice-Chairman Stout stated that the Commission could reject the proposal without prejudice to provide the staff an opportunity for further review. Commissioner Lubitz stated that he wanted the analysis made available to the objector, since the objector raised the issue that the calculations were not included in the application. Mr. Sehnal stated the documents can be made available to the objector and observed that they were already public information that was submitted to the DEP as part of their stormwater application materials.

Vice-Chairman Stout asked Commissioner Lubitz if he wished to modify his original motion. Commissioner Lubitz stated he wished to withdraw his motion to approve and instead move to reject the application without prejudice. Commissioner Designee Madden agreed to second the new motion.

Vice-Chairman Stout asked Director Hutchison to call the roll on the motion to reject the proposal without prejudice pending further analysis of compliance with Commission’s stormwater runoff and water quality regulations at N.J.AC. 7:45-8:

Vice-Chairman Stout Yes

Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The motion was approved.

Mr. Sehnal asked if the project would be carried over to the Commission’s October 19, 2022, meeting. Director Hutchison responded that the applicant would be sent a letter from the Commission pursuant to N.J.A.C. 7:45-3.4(e)2 within the next seven days informing them of the denial without prejudice and the reasons for the denial. Mr. Hutchison said that when the applicant addressed the reasons for the denial, and the Commission staff reviewed those responses, another staff report would be prepared for reconsideration, presumably in time for consideration at the October Commission meeting.

Executive Director’s Report

Director Hutchison reported that in addition to the projects considered at the meeting, Commission staff completed 24 deficient staff reports, 16 jurisdictional determinations, 6 certificates of approval, and 14 general permits. In addition to preparing these documents, staff also organized and conducted 18 pre-application meetings related to proposed projects and 2 site inspections pertaining to pending applications. He noted that as of September 21, there were 26 active projects undergoing staff review. Mr. Hutchison observed that the number of jurisdictional determination applications, pre-application meeting requests, and pending applications all indicate a continued busy workload for the Commission staff for the foreseeable future.

Director Hutchison reported that fee collections for the month totaled \$59,850, which compared favorably to the \$33,050 collected this time last year and the \$46,650 deposited in September 2020. The total fee collections for the fiscal year totaled \$127,928.

Director Hutchison reported that one of the general permits completed this month was to the NJWSA for the in-kind repair of the footbridge that spans the Alexauken Creek aqueduct in the City of Lambertville. The Director thanked NJWSA’s Chief Engineer Darin Shaffer for providing the Commission staff with old plans related to the 1947 reconstruction of the aqueduct by the Department of Conservation, which revealed the existence of As-built plans of the 19th century wooden aqueduct structure that preceded the current concrete trough made by the Pennsylvania Railroad in 1921 and held by the New Jersey State Archives.

Director Hutchison reported that he “attended” a virtual public information center (PIC) hosted by an engineering firm retained by the N.J. Department of Transportation (NJDOT) for the proposed replacement, relocation, and expansion of the bridge that conveys N.J. State Highway Route 29 northbound over the Delaware and Raritan Canal immediately north of the Scudder Falls Bridge in Ewing Township, Mercer County. The 407-foot-long bridge was constructed in 1960 and last rehabilitated in 1984. The project was in the planning stages and would commence in the fall/winter of 2026. From the perspective of the Commission, the movement (slight 3’9” to the east) and expansion of

the bridge posed questions of visual, historic, and natural quality impacts. Also, the present bridge is supported by five concrete piers which rest within the prism of the canal. The removal or reduction of the number of piers will be a point of discussion with NJDOT as the project advances.

Director Hutchison offered his opinion that the Mechanically Stabilized Earth (MSE) retaining walls used for the Scudder Falls Bridge that carries Interstate Highway Route No. 95 over the Delaware River had proved unsatisfactory from a visual perspective. It was his hope that a design which utilized a more natural random ashlar patterned stone facing can be employed in areas where any proposed retaining wall is visible from the park multiuse trail.

Director Hutchison reported that one of the site visits conducted this month was to the bridge over the canal on Bridge Street in Stockton Borough. He stated that he met with NJDOT, Sanzari Construction, the Park Superintendent and Mr. Seller from the NJWSA to discuss the jurisdiction, planning and scope of a project to repair the superstructure to the bridge, which has experienced subsidence in the roadway. The bridge is a concrete cast-in-place T-beam bridge constructed in 1926. However, a 1941 State Highway Department Survey indicates that the current bridge was constructed by the Pennsylvania Railroad during the period of that company's leasehold over the canal. The survey indicates that the center pier pre-existed the 1926 bridge and was encased in concrete and capped to raise the bridge by five feet to its current height. The 1926 bridge appears to have replaced a circa 1900 wooden fixed span, which roughly corresponds to the closure of the feeder canal to navigation in 1913.

Director Hutchison reported that the project document scanning project is proceeding under Erica Vavrence's supervision. Since last month's report, ACCSES-NJ had scanned documents two additional batches of 1,509 documents into pdf format.

Director Hutchison reported that the Commission staff installed new faux wooden blinds in the office, replacing the rusted and non-functional sets that were apparently put in place in 1984 and rarely, if ever, cleaned since that time. Also, Limbach Co., the State contract vendor for HVAC services, ordered a replacement furnace for the office at a cost of \$9,898. The new unit will replace the current unit installed in 2002, which had come to the end of its useful life.

Park Superintendent's Report

Superintendent Kalleser reported the success of the 5th Annual Delaware River Cleanup from Holland Township to Hamilton Township, which drew 200 volunteers and included many dedicated State, county and municipal employees.

Superintendent Kalleser reported that the DEP Office of Resource Development had estimated that the project to expand the parking lot at the Cooley Preserve in Kingwood Township would be completed in May or June 2023.

The Superintendent reported that the project to elevate the utilities to the second floor of the Port Mercer Bridgetender's House in Lawrence Township were ongoing, as was the project to tie the house up to the Ewing-Lawrence Sewer Authority sanitary sewer service.

The Superintendent reported that the Park Service had created an Eventbrite account to enable interested persons to sign up online for public programming and other events offered by the staff of the Delaware and Raritan Canal State Park (<https://www.eventbrite.com/o/dampr-canal-state-park-33461201207>).

Superintendent Kalleser reported that progress was ongoing to repair and improve several of the park gates along the main section of the canal.

Superintendent Kalleser stated that she was pleased to report that the East Millstone Bridgetender's House and the recently restored bridgetender's station would be two of the 30 historic sites open to the public as part of Somerset County's annual "Journey Through the Past" weekend event on October 8 and 9. She stated that members of D&R Canal Watch would be present at the house during the event.

Superintendent Kalleser expressed her appreciation to D&R Canal Watch and its volunteers for the project to restore the canoe dock at the park public access area near the Kingston Locktender's House.

Vice-Chairman Stout inquired about the status of the project to repair the park multiuse trail and the trestle over the Wickecheoke Creek at the Prallsville Mills, which had suffered erosion damage from Tropical Storm Ida. The Superintendent reported that the DEP and NJDOT had secured a contractor and that work was anticipated to be completed by Memorial Day 2023.

Commissioner Lubitz asked the Superintendent if she had any information to share on what appeared to be work at the inlet to the canal on Bulls Island. He asked if landscaping and planting were planned for the area. The Superintendent deferred the question to Mr. Sellar.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar informed the Commission that work on the project to rehabilitate the NJWSA spillway at Landing Lane in New Brunswick remained delayed because of materials supply issues, and that the project was now tentatively scheduled to commence in late October.

Mr. Sellar reported that the NJWSA was awaiting the approval of permit applications from State agencies, other than the Commission, before they could commence the Six Mile Run culvert rehabilitation project.

Mr. Sellar stated that NJWSA had completed the final close-out work related to the project to dredge the main portion of the Delaware and Raritan Canal, including road paving work on Canal Road in Somerset County.

Mr. Sellar reported that NJWSA's 2022 application of the herbicide fluoridone to treat the invasive aquatic plant Hydrilla within the Delaware and Raritan Canal concluded on September 9, 2022.

Mr. Sellar reported that within the month, the NJWSA would submit a permit application to the Commission for "Phase 1" of the project to repair the western embankment of the Delaware and Raritan Canal in the Borough of Stockton in the area generally south of Prallsville Mills.

Mr. Sellar reported that the NJWSA recently submitted an application for the in-kind reconstruction of approximately 820 linear feet of the embankment of the Delaware and Raritan Feeder Canal at 17 areas

located between the northern terminus at Raven Rock at the Bulls Island Recreation Area and the Prallsville Lock. The NJWSA has determined that mature trees and vegetation growing in the sediment over the embankment have been the primary cause for the damage to the feeder canal, in combination with frequent overtopping episodes during flood events on the Delaware River.

Mr. Sellar reported that the NJWSA was in the process of awarding the design contract for repair of the Prallsville Mills culvert and the proposed modification of the wastegate at the mill complex.

Mr. Sellar reported that plan specifications and permit applications were in the process of being prepared for the replacement of 11 lock gates at various locations on the canal.

Mr. Sellar reported that the NJWSA had addressed damage from the Tropical Storm Ida at the northern terminus of the feeder canal at the Bulls Island Recreation Area. The work included dredging the mouth of the canal, regrading and restoration of the work area. He stated that NJWSA was also evaluating a project to restore the “lower” roadway that runs parallel to the feeder canal at the northern end of the island. Commissioner Lubitz commented that the prompt restoration of the work area was important since any unrestored areas would inevitably be overtaken by invasive species.

Old Business

None.

New Business

None.

Public Comment

Mr. von Zumbusch observed that with respect to the West Windsor warehouse discussion, the 100-year storm was once considered rare, but that was no longer the case. He stated that the Commission’s and DEP’s stormwater regulations were no longer sufficient to address the 100-year storm. Mr. Wei agreed with Mr. Von Zumbusch’s comments and remarked that existing stormwater management infrastructure now fails during the 10-year storm events.

Written Public Comments

None.

Adjournment

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

The meeting adjourned at 11:10 a.m.

Respectfully submitted,

September 21, 2022

A handwritten signature in black ink, appearing to read "John Hutchison". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Hutchison, Secretary