



**April 19, 2023 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.  
DATE: April 19, 2023  
PLACE: Prallsville Mills, Stockton, New Jersey

**ATTENDING COMMISSIONERS:**

Commissioner Phillip Lubitz attended the meeting in the Commission office. Vice-Chairman Bruce Stout; Robin Madden, designee for Commissioner of Environmental Protection Shawn LaTourette; Commissioner Douglas Palmer; Commissioner John Reiser; and Commissioner Caryl “Chris” Shoffner participated via online platform and teleconference.

STAFF: Executive Director John Hutchison and Deputy Attorney General Jordan Viana were present in the Commission office; Commission Engineer Joseph Ruggeri, Communications Director Darlene Yuhas, and Executive Assistant Erica Vavrence participated via online platform.

GUESTS: Lauren Rojewski, Superintendent, Delaware and Raritan Canal State Park; Vicki Chirco, Resource Interpretive Specialist, Delaware and Raritan Canal State Park; Michael Sellar, Facilities Manager, New Jersey Water Supply Authority (NJWSA); Robert Barth, D&R Canal Watch; Robert von Zumbusch, The Kingston Historical Society; John P. Mikusa, New Jersey Department of Transportation (NJDOT); Steve Esposito; Sharon Coe, NJDOT; Omar Hameed, NJDOT; Bill Brown; Kerry Frabizio; Jan Brant, Citizen Warehouse Action Group (CWAG); Joe Hoffman, CWAG; Tobie Kramer, CWAG; Angela Kavalesky, CWAG; Stan Zacharczyk, CWAG; Mahesh Muchhala, CWAG; Sudhir Shah, CWAG; Eleanor Ogin, CWAG; Kiki Anastasakos, CWAG; Rikki Massand.

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	Absent
Commissioner Reiser	Present
Commissioner Lubitz	Present

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Commissioner Shoffner	Present
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 May 17, 2023, Meeting Date

Vice-Chairman Stout stated that the next Commission meeting would be held on May 17, 2023.

**Minutes**

Vice-Chairman Stout inquired if any of the Commissioners wished to propose comments or corrections to the March 15, 2023, meeting minutes. Seeing none, he asked for a motion to approve the minutes as prepared by staff. Commissioner Reiser made a motion to adopt the minutes as proposed, which was seconded by Commissioner Shoffner.

Commissioner Designee Madden joined the meeting at 10:03 a.m.

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

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

The minutes were approved.

**Review Zone Actions**

Zone A Projects

#23-4721E Washington Road Bridge over Delaware and Raritan Canal -- Replacement (Municipality of Princeton/West Windsor Township)

Vice-Chairman Stout asked if any of the Commissioners had any questions regarding the project. Seeing none, he asked if any member of the public had any questions. The Vice-Chairman recognized Mr. Barth, who wished to ask three questions regarding the project. Mr. Barth inquired how the project

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would impact the park trail on the east side of the canal, since it was his hope in the future that the trail on that side of the canal would be extended to the NJ Transit Princeton Branch (i.e., “Dinky”) railroad bridge.

Vice-Chairman Stout invited Mr. Esposito to respond to Mr. Barth’s question. Mr. Esposito stated that the project design was developed to minimize the impacts to the towpath, and that there would be a minor realignment of approximately 12 feet in the area close to the roadway.

Mr. Barth then questioned whether the parking area on the West Windsor side of the canal would be maintained. Mr. Esposito responded that the project limits did not extend to the existing informal parking area to which Mr. Barth referred.

Mr. Barth asked for clarification regarding the proposed guiderails. Specifically, he asked whether the guiderail would extend onto the bridge, which would separate the bridge walkway for pedestrians and cyclists from the roadway. Mr. Esposito responded that there would not be any barrier at the curb line between traffic and the walkway, which would be the same as the existing conditions on the bridge. Mr. Esposito stated that this issue was vetted with the local permitting agencies, and he stated that there was a concern that if a guiderail was installed, it would reduce visibility at the pedestrian crossing.

Mr. Massand was recognized and stated that as a board member of Preservation New Jersey, the adjacent Washington Road Elm Allée historic district was one of the “10 Most Endangered Historic Places in New Jersey” in 2000. He noted that he lives close to that area and that the white bridge railings and bridge are evident when driving across the bridge. While the stone bridge over Lake Carnegie was “more majestic,” the design of the canal bridge was especially important for maintaining the environment of the area.

Commissioner Lubitz requested clarification on the freeboard underneath the proposed new bridge. Mr. Esposito noted that the existing superstructure was extremely shallow, and the current bridge had three interior supports and piers. He noted that the new bridge would be a single span to avoid recreating some of the present obstructions in the canal, and that the bridge would be well above the three-foot minimum freeboard required by the Commission. Mr. Hutchison noted that the staff report indicated the freeboard to be four feet, seven and one-half inches. Mr. Esposito confirmed that the number was correct.

Seeing that no other member of the public wished to speak, the Vice-Chairman requested a motion. Commissioner Designee Madden made a motion to approve the project with the recommended conditions set forth in the Commission staff report. The motion was seconded by Commissioner Shoffner, whereupon Vice-Chairman Stout directed that the Director call the roll:

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

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Zone B Projects

- #23-5665A 29 Pleasant Valley Harbourton Road -- Major Modification (Hopewell Township)
- #21-5755 200 Willow Road -- Proposed Commercial Dog Kennel (Hillsborough Township)

Vice-Chairman Stout asked if any Commissioner wished to consider the Zone B projects separately. Hearing no such request, he asked if any Commissioner had any questions or comments regarding the Zone B projects. Seeing none, he asked if any member of the public had any questions or comments regarding the projects. Seeing none, he asked for a motion. Commissioner Lubitz moved to approve the projects, which motion was seconded by Commissioner Reiser.

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

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

The motion was approved.

Executive Session

Vice-Chairman Stout stated that there was a need for the Commission to meet in executive session. He asked Executive Director Hutchison to summarize the reason for the session and to explain Commission Resolution No. 2023-04. Director Hutchison recited the text of the resolution, which stated that the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., permits the holding of closed sessions by public bodies in certain circumstances, and the Commission was of the opinion that those circumstances existed, and that the Commission would meet in executive session to discuss matters involving pending or anticipated litigation within the meaning of N.J.S.A. 10:4-12(b)(7).

Vice-Chairman Stout asked if any member of the public wished to discuss Resolution No. 2023-4. Seeing none, he asked for a motion to approve the resolution. Commissioner Lubitz made a motion to convene in executive session, which motion was seconded by Commissioner Reiser.

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

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

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The motion was approved.

Director Hutchison requested that the public absent themselves from the room, and that members of the public attending through the online platform leave the meeting and return at approximately 10:35 a.m.

Mr. Wei inquired if the Commission was going to discuss Agenda Item No. 7. Director Hutchison stated that the Commission would address that item when it returned from executive session, and that the Commission meeting would not resume until Mr. Wei was present.

### **Post-Executive Session**

Vice-Chairman Stout stated that the Commission had returned from executive session, and that the Commission would vote on Resolution No. 2023-05, the provisions of which he asked the Executive Director to summarize.

Director Hutchison stated that Agenda Item No. 7 on the Commission meeting notice was a resolution regarding an adjudicatory hearing request. By way of background, the Director noted that during the September 21, 2022, meeting, the Commission considered a proposed warehouse application at 399 Princeton Hightstown Road. The proposed development also required permits from the Department of Environmental Protection and West Windsor Township. The Commission heard public comment from Mr. Zhi Wei, a property owner adjacent to the proposed warehouse, and Daniel Sehnal, a licensed professional engineer for the applicant. The application was rejected without prejudice pending further analysis of compliance with the Commission's stormwater runoff and water quality regulations.

On October 13, 2022, the Commission emailed Mr. Zhi Wei the revised staff report for the proposed warehouse project, including the supporting Stormwater Management Report and Site Plans. At the October 19, 2022, Commission meeting, the Commission reconsidered the proposed warehouse application at 399 Princeton Hightstown Road. The Commission heard objections to the proposed warehouse project from Mr. Wei and Mr. Chakrapani Dabbara. The Commission then unanimously voted to approve the project, as a determination was made that it complied with the Commission's regulations.

On January 7, 2023, the Commission received an adjudicatory hearing request from Mr. Wei and other concerned residents that live adjacent to the proposed warehouse.

Commission Resolution No. 2023-5 states that Mr. Wei and the other concerned residents do not have standing for an adjudicatory hearing under the statutory requirements of the "Administrative Procedure Act" because they have not demonstrated a particularized property interest of constitutional significance. The Commission would vote on the resolution denying the motion for an adjudicatory hearing request.

Vice-Chairman Stout requested a motion on the resolution. A motion to approve the resolution was made by Commissioner Designee Madden, which was seconded by Commissioner Reiser.

Vice-Chairman Stout asked if any member of the public wished to speak on the resolution and recognized Mr. Wei.

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Mr. Wei indicated that he wished to challenge the certificate of approval for the warehouse project based upon four major arguments. First, Mr. Wei stated that the Commission’s approval for the project was based upon West Windsor Township’s approval of the project. Mr. Wei stated that the township approval procedure was not legitimate; specifically, that the applicant’s groundwater mounding analysis dated April 26, 2020, was not submitted to the West Windsor Township Planning Board 10 days prior to the hearing in which it was considered, which is required by law. Therefore, he stated that the Commission approval was invalid because it inappropriately cited the “illegal” West Windsor approval.

Mr. Wei further stated that the second argument was that the impacted residents and their expert were not given ample opportunity to present their own analysis to the Commission. Mr. Wei stated that there were many technical deficiencies in the proposed project, and the residents submitted their concerns about the project to the Commission in September 2022. While the Commission did consider comments and reject the application in September 21, 2022, the applicant submitted a revised version to the Commission for approval at the October 2022 meeting. However, the Commission notified the residents less than a week before the meeting, and that their engineering expert was unable to testify due to other obligations, which could not be rescheduled. Mr. Wei stated that they requested an extension of the hearing for the project, but this was rejected. Therefore, since their expert was not given proper time to review the revised design submitted by the applicant in the same way they reviewed the original project submission, he believed that the Commission should maintain the same standard when reviewing the revised plan and give him “ample time” for a review.

Mr. Wei then stated that his third argument was that the project approved by the Commission was technically deficient because it was different from the latest version of the project submitted to the DEP. Mr. Wei noted that since the Commission approved the application, the warehouse developer’s plan had been revised several times to address the DEP’s concerns. In other words, Mr. Wei stated, the plans approved by the Commission are now different from the last version submitted to the DEP.

Mr. Wei continued by stating his fourth argument, which was that there were many technical deficiencies in the proposed project. He said that his expert was able to finish reviewing the revised plans, and that their report identified multiple deficiencies in the developer’s plans. Mr. Wei claimed that these design deficiencies were also recognized by the DEP’s stormwater management expert and that, as a result, the project’s Freshwater Wetlands General Permit had been suspended. Mr. Wei concluded by saying that he has raised powerful arguments, and that he hoped the Commission would approve his hearing request and give his expert a fair chance to present their review and analysis of the project.

Vice-Chairman Stout asked if any Commissioner or other member of the public wished to comment. Seeing none, he directed Executive Director Hutchison to call the roll:

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

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The motion was approved.

### **Executive Director's Report**

Director Hutchison reported on the workload for the period encompassing March 15, 2023, to April 18, 2023. He noted that, in addition to the projects listed on the agenda, the staff issued 16 deficient staff reports, 15 jurisdictional determinations, 9 certificates of approval, and 13 general permits.

In addition to these matters, staff organized and conducted 21 pre-application meetings related to proposed and pending projects. Mr. Hutchison also reported that pursuant to N.J.A.C. 7:45-4.2(b) he issued a letter approving a minor modification to a project to construct a single-family residence on White Oak Drive in the Municipality of Princeton (DRCC #22-4815B).

The Director stated that application fee collections for the prior month totaled \$34,675.62, which compared favorably to the \$45,662.50 collected in April 2022. He further noted that the Commission had collected \$444,850.12 with two months remaining in the fiscal year. Thus, the Director observes, the Commission needed to collect about \$55,000 during the remaining two months of Fiscal Year 2023 to meet its anticipated appropriation of \$500,000.

Director Hutchison reported that with respect to the Master Plan update process, on March 30, he delivered the completed Master Plan grant award packet to the New Jersey Historic Trust ("Trust"). He noted that Darlene Yuhas was working with the Trust to clarify certain information relating to the Commission's federal tax identification number and other details, but that he did not anticipate any difficulties in complying with these requests.

With respect to next steps in the Master Plan process, the Director stated that the Trust would review the Commission's paperwork and send back a detailed grant agreement for review and approval. Mr. Hutchison noted that it was important to remember that the Commission's grant is one of many awarded in the nearly \$16 million grant round for 2022, and that the Trust staff need time to perform their role in the process to ensure the Commission is in compliance with the relevant grant regulations and procedures. In the meantime, the Commission staff were working to shape information that will be helpful to the Trust and presumably the Department of the Treasury for issuing a Request for Proposal for the project.

Director Hutchison informed the Commission that the project to replace the aged and unstable MS Access project database was proceeding, and that he was pleased to report that Erica Vavrence and DEP Office of Information Technology (DEP/OIT) staff had successfully launched the new GIS database. More than 10,400 records were successfully transferred from the MS Access database to the new platform. He noted that as new projects are submitted, they will be temporarily logged into both the GIS and Access databases as staff works to "normalize" the data, which involves reconciling the various input styles and idiosyncrasies used for project inputting in previous years. Once normalized, the Commission will have a front-facing application that can be used by all the staff and ultimately can be shared with the public.

The Director stated that along with Commission engineer Joseph Ruggeri, he conducted a second site

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inspection on March 12 to examine whether the solar array approved in 2016 by the Commission (DRCC #16-4951) located on 967 Croton Road in the Quakertown neighborhood of Franklin Township, Hunterdon County, was in compliance with the Operations and Maintenance Manual.

Finally, the Director noted that among the general permits issued last month, he issued a General Permit No. 1 for several in-kind repairs to the Kingston Toll House. Repairs to the roof and door, which are in poor condition, would be undertaken, and they are necessary for the stabilization of the building and for security purposes. The present cedar shake roof would also be replaced with western red cedar shakes, and the rotted wooden door facing the Delaware and Raritan Canal would be removed and replaced (DRCC #23-5831C).

Vice-Chairman Stout praised Director Hutchison and Darlene Yuhas for their work on the Master Plan update, saying he was excited to see the project getting under way.

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

Superintendent Rojewski stated that she was excited to attend her first official Commission meeting since she took over on April 1.

The Superintendent noted that the project to repair the pedestrian bridge at the Millstone Aqueduct in Plainsboro Township, Middlesex County, would begin the week of April 24. Park maintenance staff will replace boards and make safety improvements to the footbridge over the canal to the multiuse trail. Park maintenance staff would be engaged in securing the area and preparing for the project start.

Superintendent Rojewski reported that on April 15, the Delaware and Raritan Canal State Park watershed ambassador at Bulls Island Recreation Area conducted an invasive species removal event with local volunteers. Together they pulled out bamboo material and Japanese Knotweed and were hoping to return to the area and conduct further removals and potentially replant the area with native species.

The Superintendent updated the Commission on preparations for the upcoming season. She noted that the Park Service would be engaged in additional seasonal staff hiring for the Bulls Island area and associated parking lots. She also noted that the park staff were on schedule to install a concessionaire staircase by May 15.

Superintendent Rojewski stated that boat launch passes would be sold this year, and that the park staff were working through standard operating procedures for how that process would operate. As part of that process, she noted that the park staff would install "parking by permit only" signage at spaces to help allow access to the boat ramp for people who purchase those passes.

The Superintendent reported that portable sanitation units for the park should be delivered May 1, or the following week at the latest.

The Superintendent reported on the schedule to repair the eroded portion of the multiuse trail at the former Belvidere-Delaware railroad trestle at Prallsville Mill. She noted that a meeting was scheduled for April 25 with the DEP Office of Resource Development and NJDOT to review a start date and

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project logistics.

She also noted that later today she would be attending a meeting regarding the Washington Road bridge replacement project to discuss additional project details with NJDOT and other DEP program elements.

The Superintendent provided Commissioners with an update on the project to extend the Delaware and Raritan Canal State Park in the area of Milford Borough, Hunterdon County. The 7.4-mile extension located on lands owned by the Black River and Western Railroad has been in the works for quite some time, and the Superintendent noted that park staff would be examining logistics issues and planning next steps in May.

Lastly, the State Park Service has been working with the Delaware River Joint Toll Bridge Commission and tri-county Marine Rescue Association to install color-coded signage at bridge crossings, which would allow distressed boaters to better communicate their location on the river with first responders and emergency rescue dispatch teams.

Vice-Chairman Stout asked Superintendent Rojewski when the project to repair the eroded former railroad trestle bridge at Prallsville Mills would commence. The Superintendent said that they were looking to start in the near future, and that she believed they were on schedule to reopen by their target date of July 4. Vice-Chairman Stout thanked her and said that it was great news.

Commissioner Designee Madden noted that the repair of the bridge created an opportunity for the Commission and the Park Service to discuss the operational issues arising from people jumping off the bridge and swimming in the canal. She stated that at some point she would like to figure out a way to augment or redesign the bridge railings in the future, but that this would require a detailed internal discussion with the State Historic Preservation Office (SHPO). Vice-Chairman Stout observed that jumping from the bridge was a common practice, and that Commissioner Designee Madden's observations were correct.

Commissioner Lubitz inquired about the invasive species removal at Bulls Island Recreation Area, noting his approval of the removal of invasive vegetation at the area where park patrons can view the canal wing dam in the Delaware River. He also noted that bamboo tends to sprout and send up its shoots during this time of year, and that removal would be easiest during the next three to four weeks.

Commissioner Lubitz also applauded the acquisition of "Point Breeze," the former Bonaparte mansion site in Bordentown, Burlington County. Superintendent Rojewski stated that she was familiarizing herself with the site, and that the DEP would be finalizing a joint management agreement with Bordentown City to operate that area as a park. The management agreement would cover park operations, events, and other related issues. Commissioner Lubitz stated his approval of the approach and noted that the property would be a welcome addition to the area of the park south of Trenton.

Superintendent Rojewski also noted that the site would be the future location of the Bordentown City Hall, and that the historic gardener's house on the property would be managed by separate entity. Commissioner Designee Madden noted that Point Breeze was acquired pursuant to a partnership between the DEP Green Acres Program, the Delaware and Raritan Greenway Land Trust, and

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Bordentown City, and that the day-to-day management of the property would mostly be led by the city, with the Trust playing a role. She noted that the gardener's house was the only original building left from the Bonaparte estate, the mansion having burned down. She also noted that there would be "soft opening" of the property on May 5, and that a new park sign would be erected at the main entrance.

Vice-Chairman Stout recognized Mr. Bill Brown, who noted the outsized role the canal plays in the Borough of Stockton. He noted that there has been an increased use of unregulated e-bikes on the multiuse trail, traveling at speeds well in excess of the DEP regulations. He noted that the multiuse trail is narrow in this area and that he had witnessed near collisions between walkers and e-bike users who have rented their bike from the vendor in Lambertville, who were not familiar with the operation of e-bikes and are confused as to what they should do when confronted by a bicyclist coming from the opposite direction.

Mr. Brown stated that there were safety studies conducted when the Delaware and Raritan Canal State Park was created and that risk control measures were addressed. He asked if risk control measures were being applied to the multiuse trail of what he believed was the most frequently used park in the State.

Superintendent Rojewski responded that the State Park Service was in the process of establishing an e-bike policy, which would encompass safety considerations and risk control measures, and that this policy would be released in the near future. Mr. Brown suggested that a delay in implementing new policies invites accidents based upon the two scenarios he mentioned. He further noted that he had never seen any enforcement of speed regulations on the canal multiuse trail, and that he did not think it would be possible to enforce such regulations.

Commissioner Designee Madden requested that Mr. Brown email her outlining his concerns and the issues that he experienced in the park. She also suggested that any hazardous situation in the State parks system be immediately reported to the 1-877-WARNDEP toll-free telephone number, so that it is directed to law enforcement. While the State Park Police were severely understaffed, she noted that if reported, there was an opportunity for them to respond and conduct a targeted patrol. She also noted that education and social media outreach could help inform e-bike users of the existing regulations.

Vice-Chairman Stout observed that as a daily user of the park in the area between Lambertville and Frenchtown, he has often been passed without anybody saying "on your left" by an e-bike traveling at a high speed. He also noted that enforcement of any new policy will be a challenge for the DEP.

Commissioner Designee Madden noted that the DEP wants to start by educating e-bike users before resorting to law enforcement. She noted that speed limits are already adopted in the Administrative Code, but that further clarification of the policy is needed.

Superintendent Rojewski concurred and observed that the situation was less about making sure there were policies in place and more about ensuring that the public was educated about how to behave on the park multiuse trail.

Vice-Chairman Stout suggested that a conversation with the Lambertville e-bike vendor would be helpful and that maybe it was possible to install speed "governors" on rented e-bikes.

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Mr. Brown stated his view that the notion of enforcement on the canal multiuse trail was an unrealistic chimera. He believed that a sounder approach would include the erection of signs and regulations requiring cyclists to notify people that they were passing on the left.

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

Mr. Sellar reported that work was proceeding on the Landing Lane Spillway rehabilitation project (DRCC #19-3300B) located in the City of New Brunswick. He noted that a date to arrange a review of the mock-up of the stonework of the depressed spillway area on the park multiuse trail by the Commission had not been set, but that the project had a tentative completion date of June.

Mr. Sellar informed the Commission that the project to rehabilitate the stone culvert, which conveys Six Mile Run underneath Canal Road, the Delaware and Raritan Canal and the park multiuse trail, in Franklin Township, Somerset County (DRCC #22-3306C), would commence in the summer. He noted that the project would require the closure of Canal Road, which would be a matter of interest to the residents of Franklin Township.

Mr. Sellar informed the Commission that Phase 1 of the project (DRCC #22-3255D) to repair an approximate 1.0-mile section of the western embankment of the Delaware and Raritan Feeder Canal that separates the canal from the Delaware River and is generally located between the Prallsville Lock and the railroad bridge crossing over the canal at Brookville in Stockton Borough, was put out for public bid by NJWSA during the week of April 9. He reminded the Commission that Phase 1 of the project entailed the removal of the temporary emergency repairs implemented in 2011, and would include the removal of the plastic tarps, removal of trees and leveling of the multiuse trail. Phase 2 of the project would entail stability improvements to the embankment, but the immediate goal was to reopen the multiuse trail for recreational use.

Mr. Sellar reported that with respect to the project to replace 11 canal sluice gates in Somerset County (DRCC #22-5924), a notice to proceed was issued by NJWSA and that a pre-construction meeting was held with the contractor. Mr. Sellar noted that there was a several month lead time to fabricate the gates, but that in the meantime the contractor would be conducting preliminary work and using divers to take measurements and assess the site conditions.

Mr. Sellar stated that with regard to the NJWSA Hydrilla management plan, the authority did not find any tubers in the canal in 2022, and that they would observe conditions in the canal this coming season. He also noted that Heather Desko, NJWSA Senior Watershed Protection Specialist, would brief the Commission on Hydrilla and other subaquatic vegetation control issues at the May 17 Commission meeting.

Through the chair, Mr. Brown inquired about the details of the proposed leveling of the canal multiuse trail in conjunction with the in-kind embankment repair project. Specifically, he asked if by leveling, Mr. Sellar meant lowering the high spots or raising the low spots. Mr. Sellar stated that the project would entail both, but that the embankment would be returned to its pre-flood elevation.

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Mr. Brown then requested details on the proposed embankment repairs. Mr. Seller stated that specific engineering options were still under review, but that injection grouting was a strategy under active consideration, given the manner in which the embankment had become saturated by the 2011 flooding.

**Old Business**

None.

**New Business**

Vice-Chairman Stout noted that a copy of a resolution praising Patricia Kalleser for her exemplary record as Superintendent of the Delaware and Raritan Canal State Park was transmitted to the Commissioners, and he asked for a motion on Resolution No. 2023-03. Commissioner Designee Madden made a motion to approve the resolution, which was seconded by Commissioner Lubitz.

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	Yes
Commissioner Palmer	Yes

The motion was approved.

Mr. Barth offered his support for the resolution and observed that Superintendent Kalleser was one of the most fantastic superintendents he had worked with, she was always there to help solve problems and she would be sorely missed. He then welcomed Superintendent Rojewski and offered the assistance of D&R Canal Watch.

Mr. Von Zumbusch stated that Mrs. Kalleser was an outstanding Superintendent to work with, and that while they did not always agree, they usually did. He further noted that she was always responsive, and that he appreciated her work. He also thanked the Canal Society of New Jersey for funding the repairs to the Kingston Toll House.

**Public Comment**

Kiki Anastasakos identified herself as a resident of the Canal Walk age-restricted community in Franklin Township, Somerset County, and a member of CWAG. She expressed the hope that the Commission would help them tremendously in their fight against warehouse sprawl in their community, where the warehouses were no longer limited to a business area or a warehouse district but would be located 100 feet from their homes.

She characterized warehouse development in Franklin Township as “unfettered” and “overwhelming,” and that nine million square feet of warehousing had been approved in their municipality. Given the impacts of climate change, she requested that the Commission embrace a long-term approach and

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undertake a study of the cumulative impact of warehouse projects. She further asserted that one project, located at 96-104 Schoolhouse Road, would result in the removal of 400-500 trees, which would exacerbate flooding in the area and deposit pollution in the Delaware and Raritan Canal such as diesel fuel, tire particles and paint. She also called upon the Commission to conduct independent studies of the cumulative impacts of traffic, noise, air pollution, habitat loss and impacts to migratory bird populations caused by the warehouse projects in Franklin Township.

Vice-Chairman Stout observed that concerned residents should monitor the Commission website regarding warehouse projects in their community, and that it would be helpful for them to understand that the Commission has explicit regulatory standards. He noted that some of the concerns that were raised fall within those regulations, and others do not.

Stan Zacharczyk identified himself as a resident of Constitution Way in Franklin Township. He stated that warehouse-related truck traffic along Western Canal Road would result in the emission of carcinogens that would impact the Delaware and Raritan Canal and wildlife. He stated that traffic studies related to warehouse projects do not mention the discharges from the trucks, and that the expansion of warehouses in this area would result in eight trucks per two-hour period, but that these studies did not account for trucks avoiding peak times when car traffic predominates. He asserted that a more accurate description would be that 50 to 60 new trucks would travel 24-7 for these warehouses. He noted that 20 applications were pending in Franklin Township for warehouses, which would increase the truck traffic to 500-1,000 trucks each day from Interstate Highway Route No. 287 at Exit 12 through Weston Canal Road.

Tobie Kramer identified herself as a resident of 55 Bryant Court, Franklin Township. She stated that the residents had retained their own engineer who had discovered that the warehouse applicant at 96-104 Schoolhouse Road no longer possessed a valid Letter of Interpretation (LOI) for their DEP Freshwater Wetlands General Permit No.6., and that a new application for an LOI for the project had not been submitted until February 14, 2023. She argued that the expiration of the LOI “resets and changes everything” and that the applicant should be required to submit a new application to the Commission and be subject to the Franklin Township moratorium on new warehouse projects.

Jan Brant identified herself as a member of CWAG. She noted that 5.5 million square feet of warehousing had been constructed in Franklin Township and that an additional 8 million square feet was proposed. She stated that the cumulative impact of this construction needed to be taken into consideration by the Commission when considering the project at 96-104 Schoolhouse Road. She stated that the traffic study for this project was inaccurate, since it used ITE Land Use Code 150 -- Warehouse and should have used the land use code for a high cube fulfillment center. She stated that the recently enacted Franklin Township ordinance barring truck traffic from Mettlers Road did not apply to deliveries. She further remarked that 20 pending warehouse projects in Franklin Township would result in the removal of 1,000 trees, which would result in flooding.

Ms. Brant continued by stating that CWAG’s expert hydrologist has disputed the soil evaluation for the 96-104 Schoolhouse Road project and asserted that the classification of the soils as “D” soils was accurate. Although the Commission staff had answered her questions, she was concerned about this project and the Commission staff’s review. She stated that the Commission did not evaluate all the trees

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that would be cut down, all the excess traffic that has not been reported, the soil conditions, and the safety of the citizens of Franklin Township. She noted that during Hurricane Ida, the Borough of Manville was flooded, people died, and property was ruined.

Joe Hoffman was recognized to speak by the Vice-Chairman. Mr. Hoffman stated that based on his research, the watershed area adjacent to the planned Franklin Township warehouses was among the most polluted along the entire length of the Delaware and Raritan Canal using impairment categories such as degraded aquatic life, nitrogen and phosphorus, mercury, bacteria, metals, and acidity. He said that this would only be exacerbated when the additional warehouses were constructed. He also noted that the U.S. Environmental Protection Agency water quality measurement for that portion of Somerset County, where the Canal Walk community and the proposed warehouses are located, was 20 out of possible 100, and that the national average score was 55. He requested that the Commission take into consideration that Franklin Township was already overburdened with warehouses.

Sudhir Shah, resident of 74 Bryant Court, was recognized to speak. He stated that he was aware that the Commission protected the canal and the area surrounding the canal in Franklin Township and Manville Borough. He noted that there was serious flooding from Tropical Storm Ida, and that President Biden visited and promised to take action. He wanted to know what the Commission was doing to prevent flooding in these areas. He also wanted to know that if flooding was found to occur, then why was the Commission not planning any studies of the area. He also asked why the Commission was not cleaning the canal in Franklin Township, since it was being used for drinking water.

At the direction of the Vice-Chairman, Executive Director Hutchison explained in detail the scope of, and process employed in, the Commission's land use regulatory program. The Director noted that with respect to the first comment on "flooding," the Commission addresses the environmental impact of stormwater runoff quantity pursuant to regulations at N.J.A.C. 7:45-8.6. Those regulations require that a "major project" in Review Zone B subject to stormwater review shall be designed in such a way so that the post-construction peak runoff rates for the 2-, 10- and 100-year storms, are 50, 75 and 80%, respectively, of the pre-construction runoff rates.

With regard to the second comment on whether the Commission conducts independent scientific studies of project applications, the Director stated that this was not the case. The Commission, consistent with the statutory requirements of the "Delaware and Raritan Canal State Park Law of 1974," and the regulations adopted pursuant thereto, examines submitted project applications. These submissions are examined by Commission engineers, who are licensed professional engineers in the State of New Jersey and are also DEP employees of long-standing experience in reviewing land use projects.

If a project is found to be deficient, then it is returned to the applicant with a staff report indicating the deficiencies that may require clarification or correction. The applicant then responds to the staff report, modifying and revising the project until it comes into compliance with the Commission's technical requirements. Upon receipt of any required municipal approvals, the project can be calendared for consideration by the Commission.

With regard to the physical removal of debris from the Delaware and Raritan Canal, the Executive Director observed that the NJWSA, pursuant to a 1986 lease agreement, was authorized and responsible

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for the maintenance of the water transmission complex of the Delaware and Raritan Canal.

Mr. Shah indicated that the residents were concerned with the dust particles and other pollutants that would ultimately settle in the water of the canal, adversely impacting its quality.

Director Hutchison responded by noting that the Commission's regulations at N.J.A.C. 7:45-8.7 addressed the water quality impacts of regulated projects. This section of the regulations provides that stormwater management control measures, referred to as best management practices (BMPs), be designed so that 80% of the post-construction load of total suspended solids (TSS) in the water quality design storm be reduced. The Director noted that even stricter standards of 95% TSS removal were applied to projects that outfall directly into the canal.

To better clarify this point, the Director explained that TSS referred to suspended particles that are not dissolved in a sample of water that can be filtered and analyzed. TSS is used by regulatory agencies as a proxy for environmental impacts, such as turbidity, and can serve as surrogate for other pollutants of concern. For example, the Director observed, if a regulating agency measured for TSS and the project applicant addressed its impact, then the agency could be satisfied that the applicant addressed the impacts of a wider array of other pollutants.

Mr. Hutchison then asked for Mr. Ruggeri to confirm that he accurately represented how the TSS removal requirement was utilized in the context of the Commission's regulations. Mr. Ruggeri responded that the Director's explanation was technically correct and again summarized how water quality impacts of proposed projects were examined.

Mr. Hoffman asked if the applicant was responsible for ensuring that the 80% TSS removal standard worked for any runoff entering the canal. Mr. Ruggeri responded that the standard applied to any runoff leaving the project property, which may be located well beyond the boundaries of the canal itself. Mr. Hoffman then asked who would be responsible for measuring if the project was in compliance with the 80% TSS removal standard. Mr. Ruggeri said it was not an issue of post-construction measurement; rather, it was a requirement that the applicant's engineer design a BMP measure that meets the standard. Mr. Ruggeri noted that the acceptable design standards, which could include retention or detention basins, rain gardens, infiltration basins, manufactured treatment devices, were set forth in the DEP Stormwater BMP Manual, which could be viewed on the department website.

Mr. Hoffman stated that an applicant could hire an engineer who would say that they are designing the project to the required standard, but once the project was built, there were "no teeth" in the regulations and no compliance monitoring by the Commission.

Vice-Chairman Stout then stated that signed and sealed engineering plans submitted by applicants were, in fact, scrutinized by the Commission's engineers to ensure that projects were designed to meet the relevant regulatory requirements.

Commissioner Lubitz also noted that municipalities possess the authority to inspect all stormwater basins within their respective jurisdictions, and that the Commission requires applicants to submit Operations and Maintenance (O&M) Manuals that detail the practices that will be used by property

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owners to ensure that the BMP measures onsite properly function.

Tobie Kramer commented that she spoke with the Mayor and Administrator of Manville Borough, who were concerned that the flooding in that community is caused by development in Franklin Township. She asked if the Commission examined region-wide flooding in the aggregate, rather than on a “piecemeal” basis.

Commissioner Lubitz stated that the Commission operates within a defined statutory and regulatory construct. Commissioner Lubitz averred that in an ideal world, we would examine the flooding situation in Manville, and address it by employing regional strategies that improve the situation, rather than responding to individual projects to ensure that the situation does not get worse.

Ms. Kramer asked if the new Department of Community Affairs (DCA) warehousing guidelines could be used to ensure that municipalities strengthen their regulations. Commissioner Lubitz stated that was an idea he was personally supportive of, but that the Commission could not unilaterally adopt and enforce the DCA guidance as part of its regulations.

Vice-Chairman Stout recognized Angela Kavalesky, who introduced herself as a resident of 1 Hale Place in the Canal Walk development. She related her experience as a resident of the area and the impact of recent flood events.

Vice-Chairman Stout recognized Mr. Shah for a second time. He asked if the Commission played any role in studying what caused the flooding from Tropical Storm Ida on Manville. Deputy Attorney General Viana suggested contacting the DEP.

Vice-Chairman Stout recognized Ms. Brant. She stated that the submitted site plan for project DRCC #22-5853 incorrectly stated that the project area was 26.8 acres, when in fact it was 20 acres. She asked that the project area be reviewed by the Commission engineer. She also disputed the designation of the soils onsite, and information contained in the geotechnical report, which she could not locate and would submit to the Commission subsequent to the meeting. She inquired of the Executive Director whether the project would be subject to a new review.

Director Hutchison noted that project DRCC #22-5853 was technically complete and deficient for municipal approval. However, the Director stated that in the interest of transparency, the final staff report that would be presented to the Commission would list every objection that every objector had made, and that a written response would be provided in the report addressing each issue. The Executive Director explained that the Commission’s regulations require that within 45 days of a project being deemed technically and administratively complete, the project was required to be calendared for consideration by the Commission. However, since the project had not received a memorialized resolution of approval from the Franklin Township Planning Board, no action would be taken until such an approval was submitted.

The Director noted that the Commission’s regulations did not provide for the staff to issue updated reports based upon objector concerns about potential harms to their community. The Director further stated that the Legislature, when it created the Commission in 1974, specifically provided that the

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Commission could not act on an application until the affected municipality acted. In that way, the Legislature provided that the residents and governing body of a particular community like Franklin Township were the ultimate arbiters of what kind of community they wanted to have.

Mr. Wei asked if he could comment on the denial of the adjudicatory hearing request. Vice-Chairman Stout invited him to speak. Mr. Wei wanted to clarify that to address the suspension of the DEP permit, he would have to take that up with the DEP separately, and he thanked the Commission for the clarification. Mr. Wei also stated that the West Windsor Township permits for the warehouse project were being challenged in court, and that the court could order the applicant to revise the project.

Vice-Chairman Stout asked Mr. Wei if he could temporarily suspend his comments while the Commission finished taking testimony from the people in the Commission conference room.

Vice-Chairman Stout then recognized Mr. Shah for a third time. Mr. Shah wanted a fuller explanation from the Executive Director on the role of the Commission and the relevant statutory requirements. He stated that the Commission's seems to review each project individually and singularly, but that there was no mandate to consider the cumulative impact of five to six million square feet of projects being proposed over a period of time in Franklin Township. Mr. Shah indicated that he did not understand why this was the case.

Executive Director Hutchison stated that the Commission administers a regional land use program, which covers a defined 450-square-mile "Review Zone" encompassing portions of five counties in central New Jersey. Based on the statutory and regulatory mandate that the Commission has been granted by the Legislature, it does not have the authority to impose a moratorium on municipal land use approvals based on cumulative development concerns.

An unidentified person asked if the Commission ever rejected an application. Executive Director Hutchison said that the Commission did reject applications. The Director noted that the statutory and regulatory framework under which the Commission operates requires it to review applications. Any application may be determined to be deficient by the Commission staff many times, and each time the application is refined, corrected, and revised to come into compliance with the standards in the regulations, and hopefully improved. By the time the Commission votes on a project, it may have been revised multiple times. Counting the number of rejections as a measure of the Commission's commitment to enforcing its regulations would be misleading at best.

Vice-Chairman Stout recognized Mr. Wei. Mr. Wei stated that he had a general comment or question regarding the 399 Princeton Hightstown Road warehouse. He said that he believed that the application reviewed by West Windsor Township may contain many deficiencies that will be challenged in court. Suppose, he asked, it was found out later that the project was technically deficient, and applicant had to revise the project, does that not mean that the application approved by the Commission would need to be revised.

Director Hutchison asked Mr. Wei if, what he meant to say was if the project at 399 Princeton Hightstown Road needs to be changed, what would happen. Mr. Wei said yes because he believed this would happen.

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Director Hutchison said that if, based upon some other regulatory process, an approved Commission project needed to be redesigned, then the applicant would be required to submit an application for a “major modification” of the certificate of approval to the Commission. This would require the submission of a new application, the submission of application fees in the amount of 25% of the original project application fee, a new review of that portion of the project proposed for modification, and ultimately another vote by the Commission.

Director Hutchison informed Mr. Wei that it was very important that he review the relevant regulations at N.J.A.C. 7:45-4.2. A “major modification” means the Commission would review only what is proposed to be changed. It was not what is referred to in regulatory parlance as a “reopener” of the entire original project approval. The Commission would review that portion of the project which is proposed to be changed. Mr. Wei indicated that he understood. Mr. Hutchison said he hoped that answered his question accurately.

Mr. Wei then asked how the Commission determined if a modification was a “minor modification,” and whether the applicant would be required to submit a new application. Director Hutchison responded by directing Mr. Wei to the Commission’s regulations at N.J.A.C. 7:45-4.2(b)1 and noted instances where a minor modification would be appropriate. Any other change, the Director noted, would be a “major modification” that would require a new application and review by the Commission.

Mr. Wei said he understood and stated his belief that the applicant would be required to submit a modification to the Commission based upon revisions that would be required by the DEP. He stated he would consult his attorney.

**Written Public Comments**

None.

**Adjournment**

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

The meeting adjourned at 12:35 p.m.

Respectfully submitted,



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John Hutchison, Secretary