



**RESOLUTION OF THE DELAWARE AND RARITAN CANAL COMMISSION 2020-01:
STAFFING**

WHEREAS, the Legislature created the Delaware and Raritan Canal State Park in 1974; and

WHEREAS, the Legislature also established the Delaware and Raritan Canal Commission (Commission), and charged it to prepare, adopt, and implement a master plan for the physical development of the park; and

WHEREAS, the Commission has adopted such a master plan and has approved review zones that impact on the park; and

WHEREAS, the Commission is charged with approving or denying requests for permits for development within these review zones in a timely manner to ensure that development actions conform as nearly as possible to the commission's master plan; and

WHEREAS, if no action is taken by the commission within a period of 45 days from the date of submission of the development application to the Commission by the municipal reviewing agency, it shall constitute an approval by the Commission; and

WHEREAS, the Legislature also charged the Commission to review State and local actions that impact on the park to ensure that these actions conform as nearly as possible to the commission's master plan; and

WHEREAS, hiring an Executive Director and other staff to carry out all these and other responsibilities is of utmost importance to the Commission fulfilling its legislatively-mandated responsibilities; and

WHEREAS, the Legislature expressed its intent concerning compensation of commission staff, at N.J.S.A. 13-13A-11f, which states, “The commission shall select from its members a vice-chairman and shall employ an executive director, who shall be secretary, and a treasurer. The commission may also appoint, retain and employ, without regard to the provisions of Title 11, Civil Service, of the Revised Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation [Emphasis added]; and

WHEREAS, the Commission has, as mandated by the enabling legislation, hired four different Executive Directors since its inception in 1974 and in every case the commission has set their initial, and subsequent, levels of compensation; and

WHEREAS, the Commission, at its February 20, 2019 meeting, passed a duly authorized motion that granted its Executive Director to receive a 4% increase in salary and subsequent to that the Department of Environmental Protection (DEP), was asked by the commission to process that increase; and

WHEREAS, in a December 10, 2019 letter to the Commission, the DEP's Director of the Division of Human Resources stated that they would not process that salary increase because they had made a determination that the position of Commission Executive Director was covered by collective bargaining agreement (CBA), dating back to July 1, 2013 and that that contract, not the commission, determined the salary of the Executive Director; and

WHEREAS, the commission had not previously been advised by the DEP that its Executive Director was covered by any CBA -- despite such being in effect since 2013;

WHEREAS, the commission has reviewed the CBA and finds that certain higher-level employees are excluded from coverage under the CBA; and

WHEREAS, it is the Commission's understanding that DEP employees serving in positions at the level of "Manager 4" are covered by the CBA and that any manager above that level (e.g., Bureau Chief, Assistant Director, Director), is not covered by the CBA; and

WHEREAS, the Commission asserts that its Executive Director serves in a position that has responsibilities above that of a Manager 4; and

WHEREAS, the CBA repeatedly references provisions of Civil Service that apply, the commission's enabling statute specifically states that it may employ, "without regard to the provisions of Title 11, Civil Service, of the Revised Statutes"; and

WHEREAS, the Commission is not willing to cede to the DEP its legislatively-granted authority over staffing and compensation; and

WHEREAS, the Legislature also gave the Commission authority to review State actions that impact on the park to ensure that these actions conform as nearly as possible to the commission's master plan; and

WHEREAS, when the Legislature also gave the DEP's Commissioner only one of the nine seats on the commission and mandated that it could not chair the Commission, it made it clear that the commission was to have certain regulatory authority separate from and over the DEP; and

WHEREAS, the clear language of the enabling statute assigns to the Commission the authority to hire an Executive Director under the authority of the Commission; and

WHEREAS, the Commission's powers to hire and determine compensation levels for staff as articulated in N.J.S.A. 13-13A-11f are essential to the Commission's exercise of its independent regulatory authority; now therefore,

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby asserts its right to hire and set the compensation of its staff; and
2. The Commission hereby petitions the DEP to recognize that the Executive Director of the commission is an employee whose responsibilities are above those at the level of "Manager 4" and, accordingly are not covered by the CBA; and
3. The Commission, once again, petitions the DEP to process the increased salary compensation of the commission's Executive Director as authorized by the February 20, 2019 duly authorized action; and
4. That a duly authenticated copy of this resolution will be transmitted to the Governor, the Commissioner of Environmental Protection, the Attorney General, the President of the Senate, the Speaker of the General Assembly, to the Chairman and members of the Senate Environment and Energy Committee, the Assembly Environment and Solid Waste Committee, and to members of public interest groups who have shown past interest in the Commission's undertakings.



John Loos, Vice Chairman

I hereby certify the foregoing to be a true copy of the resolution adopted by the Delaware and Raritan Canal Commission at their meeting of November 20, 2019.



John Hutchison, Secretary

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Attachment A

This act shall be known and may be cited as the "Delaware and Raritan Canal State Park Law of 1974."

L.1974, c. 118, s. 1, eff. Oct. 10, 1974.

13:13A-2. Legislative findings and declarations

The Legislature finds and declares that:

a. The Delaware and Raritan Canal is a vital source of water supply and is of historic, ecological, and recreational value to the citizens of New Jersey; that the canal and the narrow band of land along the canal banks owned by the State are also an extremely attractive and lucrative asset to the State; that the quantity and quality of surface water runoff, flooding potential, esthetic surroundings, and even the structural integrity of the canal, can all be adversely affected by surrounding developments; that within the State Government, decisions which affect the canal and the State owned land appertaining thereto are often made separately by different State agencies and local governing bodies; that the surrounding properties are private and public portions of 17 municipalities in four counties, each with its own planning and zoning authority; that, in general, the decisions which are made often reflect local expediencies rather than a coherent plan.

b. The State of New Jersey must act immediately and thereafter to preserve, locate, survey, and acquire such lands as are now available for public recreation and the conservation of natural resources, in order to promote the public health, prosperity, and general welfare, as a proper responsibility of government; that the enactment of the provisions set forth in this act would create a Delaware and Raritan Canal State Park to be maintained and operated under the jurisdiction of the Department of Environmental Protection, which shall have the power, with the approval of the Delaware and Raritan Canal Commission, as hereafter provided, to take such measures as may be necessary to preserve, maintain, improve, and enlarge the park, if funds for these purposes are made available from time to time; that a Delaware and Raritan Canal Commission be established to prepare, adopt, and implement a master plan for the physical development of the park, and to review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the commission's master plan; that funds will be appropriated in this act to the Department of Environmental Protection for the purposes of locating, surveying, and selecting necessary land sites appertaining to the canal, immediately and thereafter, which information shall be reported to the Legislature for its consideration, and for the use of the Delaware and Raritan Canal Commission in the performance of its powers and duties pursuant to this act, and that funds will be appropriated for the use of the commission in the performance of its powers and duties pursuant to this act.

13:13A-3. Definitions

As used in this act:

a. "Department" means the Department of Environmental Protection.

b. "Park" means the Delaware and Raritan Canal Park as determined by the Department of Environmental Protection, pursuant to section 6 a. of this act.

c. "Canal" means the Delaware and Raritan Canal, its feeder canal, and the abandoned section of the canal in the township of Hamilton, county of Mercer, to be determined, pursuant to subsection 6 f. of this act.

d. "Commission" means the Delaware and Raritan Canal Commission.

e. "Commissioner" means the Commissioner of the Department of Environmental Protection.

f. "Review zone" means that region appertaining to and including the park, as determined pursuant to subsections 6 e. and 14 a. of this act, in which proposed "projects," as defined in subsection 14 c., may cause an adverse impact on the park including, but not limited to, drainage, esthetic, and ecological factors. Such review zone shall not include that portion of the canal and those lands along and appertaining to the canal banks situated between the Landing Lane bridge and the juncture of the canal with the Raritan River.

13:13A-4. Designation; maintenance and operation

The Delaware and Raritan Canal and the lands along the canal banks, now or hereafter owned by the State, except that portion of the canal and those lands along and appertaining to the canal banks situated between the Landing Lane bridge and the juncture of the canal with the Raritan river, are designated as the Delaware and Raritan Canal State Park, to be maintained and operated under the Department of Environmental Protection as a State park.

13:13A-5. Preservation, maintenance, development and improvement of park; approval of plans by commission; alteration of facilities; approval

a. The department shall, as funds for these purposes are made available from time to time, take such measures as may be necessary to preserve, maintain, develop and improve the park in such manner and to such extent as, in its judgment, will best make it of use to the public. In the development of the park, the department shall have the power to install permanent improvements for the health and comfort of the public; provided, however, that the department shall take no such measures, nor install such improvements, unless the plans therefor shall have been submitted to and approved by the Delaware and Raritan Canal Commission, created pursuant to section 11 of this act.

b. Notwithstanding the provisions of any other law to the contrary, no building or structure, streets, bridges, parking areas, public transit lines, utilities, sewerage, and service-water supply facilities may be altered within the park unless the plans or specifications for the proposed alteration meet park standards to be adopted and promulgated by the department.

13:13A-6. Selection of land sites for acquisition

a. The department shall, within 1 month after this act takes effect, proceed to locate, survey and select critical land sites, and within 1 year after this act takes effect, and from time to time

thereafter, such other land sites appertaining to the park which may be advisable, proper or necessary for the purpose of establishing the park and to expand and preserve the uses, benefits, and enjoyments thereof to the people, and report its findings, including its recommended priorities, and a schedule of required funding for the acquisition of such lands, pursuant to the provisions of subsection 6 d. of this act, to the Legislature.

b. In locating, surveying, and selecting the land sites mentioned in subsection 6 a. of this act, the department shall: (1) assemble a detailed data base, including updated mapping and zoning information, to determine the ownership and use of lands appertaining to park properties; and (2) consult with the Delaware and Raritan Canal Commission, county and municipal governmental officials of jurisdictions in which the State park or any of the land sites therefor are located; concerned environmental groups; water suppliers; historical associations and such State agencies as now or hereafter have jurisdiction over the park, or any part thereof.

c. In determining which land sites described in subsection 6 a. of this act should be recommended to the Legislature for acquisition, the department shall consider: (1) the existence of present historical structures; (2) the immediate danger of an occurrence of adverse impact to the park including, but not limited to, drainage, esthetic, and ecological factors; (3) proximity to high-density population concentrations; and (4) the availability of land at a cost advantageous to the State.

d. The department shall, pursuant to the provisions of subsection 6 a. of this act, determine and recommend to the Legislature a schedule of required funding for the acquisition of those land sites described in subsection 6 a. of this act. The schedule may provide for any combination of: (1) inclusion of necessary revenues in a future State bond issue for the acquisition of open space or other lands; (2) special authorization for purposes of completing the State Park; and (3) local-State matching fund proposals to implement or expand the agreed plan.

e. The department, in locating, surveying, and selecting the land sites described in subsection 6 a. of this act, and in assembling a detailed data base pursuant to subsection 6 b. of this act shall locate, survey, select, and recommend to the commission land sites to be included in the review zone, pursuant to the provisions of subsection 14 a. of this act; provided that such recommendations shall not be binding on the commission.

f. The department shall, within 3 months after this act takes effect, proceed to locate, survey, and select the abandoned section of the canal, in the township of Hamilton, county of Mercer, which, for purposes of this act, shall be considered part of the canal.

g. The department shall in locating, surveying, and selecting the land sites described in subsection 6 a. of this act, exclude those lands situated between the Landing Lane bridge and the juncture of the canal with the Raritan river.

13:13A-7. Entry on lands, waters or premises

In addition to the foregoing powers, the commissioner and his authorized agents and employees may enter upon any lands, waters, and premises for the purpose of making surveys, soundings, drillings, and examinations as he may deem necessary or convenient for the purposes

of this act, all in accordance with due process of law, and such entry shall not be deemed a trespass nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The commissioner shall make reimbursement for any actual damages resulting to such lands, waters, and premises as a result of such activities.

13:13A-8. Acquisition of lands by gift, devise, purchase or eminent domain; authorization

The department shall have power to take title, in fee or otherwise, by gift or devise, and, if funds are made available for these purposes from time to time, by purchase or eminent domain to such lands appertaining to the park and to any rights, interests and easements therein, in the name of the State of New Jersey. In the event that it becomes necessary or advisable to acquire any lands or interest therein for the purpose of this act by eminent domain, the procedure for condemnation of such lands shall be taken in accordance with the provisions of the "Eminent Domain Act of 1971," P.L.1971, c. 361 (C. 20:3-1 et seq.).

13:13A-9. Hiring or leasing lands to private enterprises

The department, to effectuate the general purpose of this act, shall with the approval of the commission, have power to hire, rent or lease any portion of such lands to private enterprises and such moneys as are derived from such hiring, renting, or leasing shall be deposited with the General State Fund.

13:13A-10. Rules and regulations; powers of employees as peace officers

The department shall, with the approval of the commission, have power to make such rules and regulations for the use and protection of the park as may, in its judgment, be necessary. The department shall, subject to the approval of the Attorney General and in accordance with such regulations for the protection of the public safety and welfare as the Attorney General shall prescribe, further have power to vest in such of its employees as it may be determined to be necessary the powers and duties of peace officers for the abatement of nuisances, stopping of abuses, and protection and management of the park under any rules and regulations the department may prescribe.

13:13A-11. Delaware and Raritan canal commission

a. There is hereby established in the Department of Environmental Protection a Delaware and Raritan Canal Commission which shall consist of nine members appointed and qualified as follows:

(1) The Commissioner of the Department of Environmental Protection, serving ex officio; provided, however, that the commissioner may designate an officer or employee of the department to represent him at meetings of the commission, and such designee may lawfully vote and otherwise act on behalf of the commissioner. Any such designation shall be in writing delivered to the chairman of the commission and shall continue in effect during the period the commissioner is in such office, or until revoked or amended by writing delivered to the chairman of the commission.

(2) Eight citizens of the State, appointed by the Governor, with the advice and consent of the Senate, no more than four of whom shall be of the same political party; at least four of whom shall be residents of the counties of Hunterdon, Mercer, Middlesex and Somerset, respectively,

and one of whom shall be a mayor of a municipality appertaining to the Delaware and Raritan Canal State Park; provided, however, that no more than one citizen shall be appointed from any one municipality. In making appointments to the commission, the Governor may consider the recommendations of concerned environmental groups; historical associations; water suppliers; real estate interests; and members of relevant professions.

b. The commissioner shall serve on the commission during his term of office and shall be succeeded by his successor in office. Each member appointed by the Governor shall serve for terms of 5 years; provided that of the first members appointed by the Governor, two shall serve for a term of 2 years, two for a term of 3 years, two for a term of 4 years, and two for a term of 5 years. Each member shall serve for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only.

c. Any member of the commission may be removed by the Governor for cause after a public hearing.

d. Each member of the commission, before entering upon his duties, shall take and subscribe to an oath to perform the duties of his office faithfully, impartially, and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

e. The members of the commission shall serve without compensation, but the commission may reimburse its members for necessary expenses incurred in the discharge of their duties.

f. The Governor shall designate one of the members of the commission, other than the Commissioner of the Department of Environmental Protection, as chairman. The commission shall select from its members a vice-chairman and shall employ an executive director, who shall be secretary, and a treasurer. The commission may also appoint, retain and employ, without regard to the provisions of Title 11, Civil Service, of the Revised Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation.

g. The powers of the commission shall be vested in the members thereof in office from time to time, and a majority of the total authorized membership of the commission shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof by the affirmative vote of a majority of the members, unless in any case the bylaws of the commission or any of the provisions of this act shall require a larger number; provided, however, that the commission may designate one or more of its agents or employees to exercise such administrative functions, powers, and duties, as it may deem proper, under its supervision and control. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission, except that the commission shall not take any final action on any matter to be submitted to the Legislature, pursuant to subsection 12 g. of this act, except by a vote of two-thirds of the full membership of the commission.

h. The commission shall prepare, adopt, and implement a master plan for the physical

development of the park, or a portion thereof; review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the commission's master plan; and coordinate and support activities by citizens' groups to promote and preserve the park.

i. On or before December 31 in each year the commission shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. Each such report shall set forth a complete operating and financial statement covering its operations during the year, all as more fully provided in section 15 of this act. The commission may, in addition, at any time request the Governor and the Legislature to appropriate funds for commission purposes, as more fully provided in subsection 12 g. of this act.

j. The commission shall cause an audit of its books and accounts to be made at least once in each year and the cost thereof shall be treated as one incurred by the commission in the administration of this act, and a copy thereof shall be filed with the State Treasurer and the Office of Fiscal Affairs.

k. (1) No member, officer, employee, or agent of the commission shall be financially interested, either directly or indirectly, in any project or any part of a project area, other than a residence, or in any contract, sale, purchase, lease, or transfer of real or personal property to the Department of Environmental Protection for inclusion in the Delaware and Raritan Canal State Park.

(2) Any contract or agreement knowingly made in contravention of this section is voidable.

(3) Any person who shall willfully violate any of the provisions of this section shall forfeit his office or employment and shall be guilty of a misdemeanor.

13:13A-12. Powers

The commission shall have the following powers:

a. To adopt and from time to time amend and repeal suitable bylaws for the management of its affairs;

b. To maintain offices at such place or places within the State as it may designate;

c. To enter upon any building or property in order to conduct investigations, examinations, surveys, soundings, or test borings necessary to carry out the purposes of sections 13 and 14 of this act, all in accordance with due process of law;

d. To receive and accept, from any Federal or other public agency or governmental entity, grants or loans for, or aid of, the purposes of sections 13 and 14 of this act, and to enter into cooperative agreements with the Federal Government or any other public or governmental agency for the performance of such acts as may be necessary and proper for the purposes of sections 13 and 14 of this act;

e. To enter into any and all agreements or contracts, execute any and all instruments, and do

and perform any and all acts or things necessary, convenient, or desirable for the purposes of the commission or to carry out any power expressly given to the commission in this act;

f. To conduct examinations and investigations, hear testimony and take proof under oath at public or private hearings, of any material matter, require attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of State, unable to attend, or excused from attendance;

g. To petition the Legislature for specific direction or appropriation to accomplish commission objectives, in the event of substantial disagreement between the commission and the department.

13:13A-13 Master plan for physical development of park; review of State projects, permits.

13. a. The commission shall prepare, or cause to be prepared, and, after a public hearing, or public hearings, and pursuant to the provisions provided for in subsection 13 b. of this act, adopt a master plan or portion thereof for the physical development of the park, which plan may include proposals for various stages in the future development of the park, or amend the master plan. The master plan shall include a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan. The master plan shall be a composite of the one or more written proposals recommending the physical development and expansion of the park either in its entirety or a portion thereof which the commission shall prepare after meetings with the governing bodies of the affected municipalities and counties, and any agencies and instrumentalities thereof.

b. In preparing the master plan or any portion thereof or amendment thereto the commission shall give due consideration to: (1) the function of the canal as a major water supply facility in the State; (2) the necessity to provide recreational activities to the citizens of this State, including but not limited to, facilities, design capacities, and relationship to other available recreational areas; (3) existing historical sites and potential restorations or compatible development; (4) the range of uses and potential uses of the canal in the urban environments of the older, intensively developed communities through which it passes; and (5) designated wilderness areas to be kept as undeveloped, limited-access areas restricted to canoeing and hiking. In preparing the master plan or any portion thereof or amendment thereto the commission shall consider existing patterns of development and any relevant master plan or other plan of development, and shall insure widespread citizen involvement and participation in the planning process.

c. The commission shall act in support of local suggestions or desires to complement the park master plan. Consultation, planning, and technical expertise will be made available to local planning bodies that wish to implement land-use policy to enhance the park area. The commission shall act on or refer complaints by citizens' groups or private residents who discover hazardous situations, pollution, or evidence of noncompliance with use regulations.

d. The commission shall review and approve, reject or modify, any State project planned

or State permits issued in the park, and submit its decision to the Governor.

e. The commission shall consult with the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), on any provision of the park master plan that may impact upon or otherwise affect the Highlands Region or the Highlands regional master plan, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), and any such provision shall be consistent with the Highlands regional master plan adopted by the council pursuant to that act.

13:13A-14 Review zone designated.

14. a. The commission shall determine, after a public hearing, or public hearings held in Hunterdon, Somerset, Mercer, and Middlesex counties respectively, the extent and limits of the region to be designated the review zone. Any subsequent modification of the review zone shall be made by the commission only after public hearings in the county or counties in which the modification is to be made. All public hearings required pursuant to this section shall be held only after giving prior notice thereof by public advertisement once each week for two consecutive weeks in such newspaper or newspapers selected by the chairman of the commission as will best give notice thereof. The last publication of such notice shall be not less than 10 days prior to the date set for the hearing.

b. The commission shall approve all State actions within the review zone that impact on the park, and insure that these actions conform as nearly as possible to the commission's master plan and relevant local plans or initiatives. The State actions which the commission shall review will include the operations of the Division of Water Resources concerning water supply and quality; the Division of Parks and Forestry in developing recreation facilities; and the activities of any other State department or agency that might affect the park.

c. The commission shall review and approve, reject, or modify any project within the review zone. The initial application for a proposed project within the zone shall be submitted by the applicant to the appropriate municipal reviewing agency. If approved by the agency, the application shall be sent to the commission for review. The commission shall review each proposed project in terms of its conformity with, or divergence from, the objectives of the commission's master plan and shall: (1) advise the appropriate municipal reviewing agency that the project can proceed as proposed; (2) reject the application and so advise the appropriate municipal reviewing agency and the governing body of the municipality; or (3) require modifications or additional safeguards on the part of the applicant, and return the application to the appropriate municipal reviewing agency, which shall be responsible for insuring that these conditions are satisfied before issuing a permit. If no action is taken by the commission within a period of 45 days from the date of submission of the application to the commission by the municipal reviewing agency, this shall constitute an approval by the commission. The commission's decision shall be final and binding on the municipality, and the commission may, in the case of any violation or threat of a violation of a commission's decision by a municipality, or by the appropriate municipal reviewing agency, as the case may be, institute civil action (1) for injunctive relief; (2) to set aside and invalidate a decision made by a municipality in violation of this subsection; or (3) to restrain, correct or abate such violation. As used herein:

(1) "project" means any structure, land use change, or public improvements for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits; and (2) "agency" means any body or instrumentality of the municipality responsible for the issuance of permits or the approval of projects, as herein defined, which shall include, but not be limited to, governing bodies, planning and zoning boards, building inspectors, managers and municipal engineers.

d. To the extent that any action the commission takes pursuant to this section may impact upon or otherwise affect the Highlands Region or the Highlands regional master plan, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the commission shall consult with the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), and any such action taken shall be consistent with the Highland regional master plan adopted by the council pursuant to that act.

13:13A-15. Annual audit of accounts; employment of accountant

The commission shall cause an annual audit of its accounts to be made, and for this purpose it shall employ a registered municipal accountant of New Jersey or a certified public accountant of New Jersey. The audit shall be completed and filed with the commission within 4 months after the close of the fiscal year of the commission, and a certified duplicate copy thereof shall be filed in the Office of Management and Budget in the Department of Environmental Protection, in the office of the Division of Budget and Accounting in the Department of the Treasury, and in the Office of Fiscal Affairs within 5 days after the original audit is filed with the commission.