



August 17, 2022

VIA ELECTRONIC MAIL

Pamela M. Bush, Commission Secretary
Delaware River Basin Commission
25 Cosey Road
PO Box 7360
West Trenton, NJ 08628-0360
pamela.bush@drbc.gov

Re: Docket No. D-2017-009-2 for Delaware River Partners LLC, Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey

Dear Ms. Bush,

Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, (collectively, "DRN") submit the following in response to Delaware River Basin Commission ("Commission" or "DRBC") Executive Director Steven J. Tambini's August 15, 2022 letter.

Background

On June 2, 2022, Delaware River Partners, LLC ("DRP") requested by letter to DRBC Project Review Manager David Kovach, P.G., an extension of Docket No. D-2017-009-2 (the "Dock 2 Docket") beyond the three-year authorization period pursuant to 18 C.F.R. § 401.41(a).¹ By letter dated June 16, 2022, DRBC Executive Director Steven J. Tambini purported to approve DRP's request to extend the date of expiration of the Dock 2 Docket from June 12, 2022, to June 12, 2025.²

After discovering this action by Mr. Tambini via a Freedom of Information Act request, on July 27, 2022, DRN objected to the extension of the Docket outside of the public hearing process.³ On August 12, 2022, the Delaware River LNG Coalition, which includes DRN, submitted a letter making the same objection.⁴ Mr. Tambini responded to DRN on August 15, 2022, claiming that a public hearing was not required but that he would advise

¹ Attachment A.

² Attachment B.

³ Attachment C.

⁴ Attachment D.

the Commission to consider the matter at its September 2022 business meeting.⁵ In that letter, Mr. Tambini solicited a written submission from DRN to the Commissioners, as well as a response from DRP detailing the “current estimate of the cost of the project and a statement of the amount of project costs expended after issuance of the docket.”⁶ Accordingly, DRN submits the following for the Commission’s consideration.

DRP’s request for extension may only be acted upon by the Commission after a public hearing in accordance with 18 C.F.R. § 401.5.

We request that the Commission set this matter for a public hearing in accordance with the Commission’s Rules of Practice and Procedure (“RPP”)⁷ and the Delaware River Basin Compact (“Compact”).⁸ From the outset, the required process has not been followed, and the solution proposed by Mr. Tambini is insufficient to rectify the errors. As established in our letters dated July 27 and August 12, 2022, the RPP requires that requests for extension of an approval must be made by application to the Commission:

Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed *by the Commission upon application*.⁹

The language clearly states that only the Commission has the ability to extend its approval of Docket No. D-2017-009-2, using the same procedure for Commission decision on applications for docket renewal. “Application” is defined in the RPP as “a request for action *by the Commission* in any written form.”¹⁰ Applications are reviewed by staff, and decided upon *at a public hearing after notice* by the Commission.¹¹

Accordingly, the June 16, 2022 letter from Mr. Tambini to DRP is void, and must be rescinded. Throughout DRBC’s RPP, it is very clear which actions the Executive Director may take, and which actions require action by the Commission.¹² The Executive Director does not have the authority to act upon an application except in limited emergency circumstances¹³— which do not exist here.

⁵ Attachment E.

⁶ Attachment E at 2.

⁷ 18 C.F.R. Part 401.

⁸ Delaware River Basin Compact, Pub. L. 87-328, 75 Stat. 688 (Sept. 27, 1961) (hereinafter “Compact”).

⁹ 18 C.F.R. § 401.41(a) (emphasis added).

¹⁰ *Id.* § 401.121(c) (emphasis added).

¹¹ *See id.* § 401.5.

¹² *See, e.g., id.* § 401.6 (proposals for changes to the Comprehensive Plan “shall be based upon the recommendation of the Executive Director and the further direction of the Commission”), § 401.82 (“[T]he Executive Director shall present the request for a hearing to the Commission for its consideration.”), § 401.33 (authorizing the Executive Director to enter into administrative agreements with federal and state agencies).

¹³ The RPP provides that the Executive Director may only authorize an applicant’s request for action “[i]n the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and

In his August 15, 2022 letter, Mr. Tambini claimed that when “a request for extension under Section 401.41(a) does not seek to modify the project or docket conditions, I do not consider the request to be a ‘project application’ for purposes of the hearing rule.”¹⁴ This interpretation contravenes the plain language of the Commission’s RPP, which clearly states that extensions are granted solely by the Commission upon application—just as docket renewals are.¹⁵ Even absent the plain language of § 401.41(a), Mr. Tambini’s reasoning for unilaterally approving DRP’s request for extension is unsupported.

First, Section 14.4(b) of the Compact requires a hearing in certain enumerated circumstances, as well as “in all other cases wherein this Compact requires a public hearing.”¹⁶ Among those other cases are those “with respect to the comprehensive plan prior to the adoption of the plan *or any part of the revision thereof.*”¹⁷ The Comprehensive Plan includes “all . . . private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin to meet present and future needs”¹⁸ The Comprehensive Plan also makes clear that “a project’s inclusion in the comprehensive plan is subject to its completion within a reasonable period of time.”¹⁹ That reasonable period of time is defined by the RPP as three years.²⁰ Thus, an extension of the three-year authorization period is indeed a revision of the Comprehensive Plan—without the extension, the authorization would expire and the project would be removed from the Comprehensive Plan because the project has not been completed within the reasonable period of time. This revision must be subject to a public hearing in accordance with Sections 14.4(b) and 13.1 of the Compact.

Second, despite Mr. Tambini’s assertion that DRP’s request for extension does not seek to modify the docket conditions, an extension of the Commission’s three-year approval of a docket actually does modify a condition set out in that subsection—that any approval “shall expire three years from the date of Commission action”²¹ Furthermore, it is not clear that the project itself has not been modified. DRP recently sought and obtained approval from the New Jersey Department of Environmental Protection (“NJDEP”) for the construction of a large rail loop to support transloading at Dock 2 of the Gibbstown Logistics

irreparable injury to any private person or property” when “the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part” 18 C.F.R. § 401.40(b). There is no emergency that justifies the Executive Director’s approval here.

¹⁴ Attachment E at 1.

¹⁵ See 18 C.F.R. § 401.41(a) (“An approval may be extended or renewed by the Commission upon application.”).

¹⁶ Compact § 14.4(b).

¹⁷ Compact § 13.1 (emphasis added).

¹⁸ Compact § 13.1; see also Del. River Basin Comm’n, Comprehensive Plan § II (2001) (hereinafter “Comprehensive Plan”).

¹⁹ Comprehensive Plan § II-D.

²⁰ See 18 C.F.R. § 401.41(a).

²¹ *Id.*

Center.²² This significant change to a project that had allegedly²³ minimal upland impacts at the time of the Commission's approval. The Commission's review of DRP's extension request must include any changes to the Project, including the new rail infrastructure intended to support transloading operations at Dock 2.

DRP's June 2, 2022 request does not meet the standard for extension.

We also oppose DRP's request to extend Docket No. D-2017-009-2 beyond its three-year period of authorization because DRP has not established that the costs enumerated in Attachment A to its June 2, 2022 request were incurred *after* issuance of the Dock 2 Docket in reliance on the Commission's authorization, as opposed to *prior* to its issuance in support of DRP's original application to the Commission.

In addition, DRP has not met the standard set out in 18 C.F.R. § 401.41(a)—that the funds expended are substantial *in relation to the cost of the project*. Without a comparison to the total cost of the project, the significance of the funds expended by DRP is unknowable. At the time of approval, the estimated cost of the project was \$94,600,000.00.²⁴ Even assuming all costs set out in Attachment A were incurred after issuance of the Dock 2 Docket in reliance thereon, \$1,798,796.00 is merely 1.9% of the total cost of the project. Such a small fraction of the total cost does not, under any conceivable logic, constitute a relatively “substantial” amount.

Conclusion

Accordingly, we request that the Commission rescind Mr. Tambini's letter dated June 16, 2022, and consider DRP's application at a public hearing that has been properly noticed pursuant to 18 C.F.R. § 401.5. Based on the information submitted in DRP's June 2, 2022 letter—and the omission of changes made to the project—the request for extension of Docket No. D-2017-009-2 should be denied. In his August 15, 2022 letter, Mr. Tambini provided DRP an opportunity to respond to DRN's submission with new information, including a cost estimate of the overall project and updated figures showing the funds expended since issuance of the docket. This new information must be made available to the public for review along with DRP's original June 2, 2022 request prior to the public hearing.

²² Attachment F. DRN has appealed NJDEP's decisions to issue these permits to the Superior Court of New Jersey, Appellate Division. *See In the Matter of Permit Nos. 0807-21-001.2 LUP 210001 & LUP 210002 Issued by the N.J. Dep't of Env'tl. Prot. To Delaware River Partners, LLC.*, Nos. A-001897-21 & A-002270-21 (N.J. Super., App. Div.).

²³ The Commission's approval of the Dock 2 Docket is currently subject to judicial review in the U.S. District Court for the District of New Jersey. *See Del. Riverkeeper Network v. Del. River Basin Comm'n*, No. 1:21-cv-01108 (D.N.J.). Among the issues in that case is whether the Commission adequately considered the upland impacts of the project, which DRN maintains were more extensive than claimed by DRP or the Commission, who argued that upland impacts were limited to the temporary disturbance of 0.8 acres of land. DRN maintains that the Commission failed to consider the full extent of the upland impacts of the project at the time of approval.

²⁴ *See* Dock 2 Docket, ¶ 6.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Kacy C. Manahan', with a long horizontal stroke extending to the right.

Kacy C. Manahan
Senior Attorney

Cc: Kathleen Campbell, Esq. (*via email*)
Michael Dillon, Esq. (*via email*)

Attachment A

June 2, 2022

David Kovach, P.G.
Manager, Project Review
Delaware River Basin Commission
25 Cosey Rd.
P.O. Box 7360
West Trenton, NJ 08628
david.kovach@drbc.gov

Re: Docket No. D-2017-009-2

Dear Mr. Kovach,

On behalf of Delaware River Partners, LLC (“DRP”), I am writing to request an extension of Docket No. D-2017-009-2 (the “Docket”), which authorizes dredging and construction of a second dock at DRP’s Gibbstown Logistics Center (the “Dock 2 Project”). The Commission initially issued the Docket on June 12, 2019. After a lengthy administrative appeal process initiated by the Delaware Riverkeeper Network (“DRN” or the “Riverkeeper”), during which the Commission stayed the Docket for approximately three months, the Commission affirmed its initial decision on December 9, 2020.

The Commission’s *Rules of Practice and Procedure* specify that an approval by the Commission expires three years from the date of issuance unless, before the expiration date, the project sponsor has “expended substantial funds (in relation to the cost of the project) in reliance on such approval.” 18 C.F.R. 401.41(a). Additionally, the Commission has discretion to extend a docket upon application by the docket holder. *Id.*

The *Rules of Practice and Procedure* do not specify when the three-year period begins to run in a situation where, as here, the Commission issues a docket which is then the subject of an administrative hearing held by the Commission under Article V. Nor do they address whether a stay pending resolution of the hearing tolls the three-year period. Under the circumstances, DRP believes that the appropriate date for the commencement of the three-year period is the date that the Commission took its final action with respect to the Docket – December 9, 2020. Nevertheless, in an abundance of caution, DRP is now requesting an extension of the Docket in the event that the Commission determines that the initial Docket issuance date of June 19, 2019 is the appropriate start date. As further set forth herein, DRP has expended substantial funds in reliance upon the Commission’s approval. Moreover, DRP has faced and continues to face unanticipated delays of the dredging and construction activities authorized by the Docket. For these reasons, DRP respectfully requests that the Commission extend the Docket for an additional three-year period.

The Dock 2 Project has faced a series of administrative and legal challenges that began almost immediately upon the Commission's approval of DRP's Docket application. Following issuance of the Docket in June 2019, DRN filed with the Commission a request for an adjudicatory hearing under DRBC's *Rules of Practice and Procedure*. On September 11, 2019, the Commission granted DRN's request and subsequently designated an independent Hearing Officer, John D. Kelly, Esquire, to preside over the administrative hearing.

After pre-hearing proceedings were completed, the Hearing Officer presided over eight days of a formal, trial-type administrative hearing that took place between May 11-20, 2020. The Hearing Officer issued his Report of Findings and Recommendations on July 21, 2020, a 101-page report containing 385 findings of facts ultimately concluding with a recommendation that the Commission uphold the Docket as approved in June 2019. Upon the filing of the Hearing Officer's report, post-hearing procedures commenced in accordance with DRBC's rules, with DRP and the Riverkeeper submitting objections to the Hearing Officer's report on August 10, 2020 and DRBC Staff serving comments on the report on August 31, 2020.

Thereafter, the Commission undertook to review the voluminous administrative record developed at Hearing, which contained more than 200 exhibits and testimony from 13 expert and three fact witnesses. On September 10, 2020, the Commissioners stayed the Docket pending their review of the Hearing record and issuance of a final decision. DRBC's suspension of the Docket coincided with DRP's seasonal construction window that is intended to minimize impacts to migrating and spawning anadromous fish, which effectively prevented DRP from conducting any in-water work during the Fall 2020 – Spring 2021 season. *See* Docket Condition C.2. On December 9, 2020, the Commission issued its final decision affirming the issuance of the Docket, nearly 18 months after DRBC's initial approval. The three-month stay of the Docket was lifted concurrently upon the Commissioners' final decision to uphold the Docket.

The Riverkeeper then appealed the Commissioners' decision to the U.S. District Court for the District of New Jersey on January 25, 2021 (Case No. 1:21-cv-1108), where the case remains pending. Briefing before the Court only just concluded on April 29, 2022, and DRP does not anticipate a decision from the Court until sometime after June 2022, more than three years since issuance of the Docket.

Nevertheless, DRP remains fully committed to the Dock 2 Project and intends to commence the work authorized by the Docket as soon as practicable. DRP's commitment to the Dock 2 Project is evidenced by the substantial sums that DRP has expended in reliance on the Docket, totaling almost **\$1.8 Million** to date. Additional detail about the costs that DRP has incurred thus far in furtherance of the Dock 2 Project can be found in **Attachment A**.

In light of the foregoing, DRP requests your concurrence that the Docket should be extended for an additional three-year period, until June 12, 2025, to allow DRP additional time to complete the Dock 2 Project, for which it has already incurred substantial cost in furtherance

David Kovach, P. G.
June 2, 2022
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thereof. Please do not hesitate to reach out should you have any questions about the content of this letter. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Alexander', with a long horizontal flourish extending to the right.

Harry J. Alexander, CEO

cc: Kathleen Campbell, Esq., Manko Gold
Michael Dillon, Esq., Manko Gold
Laura George, Ramboll

ATTACHMENT A

Delaware River Partners LLC- Dock 2

Costs in Reliance on Dock 2 Docket through May 2022*

Architecture & Engineering

Langan Engineering and Environmental Services Inc	Engineering	49,814
Matrix New World Engineering	Engineering	48,172
Moffatt and Nichol	Engineering	1,074,730
Ramboll Environ US Corporation	Engineering	363,854
		<hr/>
		1,536,570

Legal, Licences & Fees

Township of Greenwich	Licenses	84,296
Treasurer, State of New Jersey	Licenses	5,050
		<hr/>
		89,346

Other

Township of Greenwich	Property Taxes	172,850
		<hr/>
		172,850

Total

1,798,766

* Legal costs, including those incurred by DRP in defense of the Dock 2 Docket, not included.

Attachment B



Delaware River Basin Commission

25 Cosey Road

PO Box 7360

West Trenton, New Jersey

08628-0360

Phone: (609) 883-9500 Fax: (609) 883-9522

Web Site: <http://www.drbc.gov>

Steven J. Tambini, P.E.
Executive Director

June 16, 2022

By email to: halexander@repauno.com

Mr. Harry Alexander, CEO
Repauno Port & Rail Terminal
Delaware River Partners LLC
200 N. Repauno Avenue
Gibbstown, NJ 08027

SUBJECT: Docket No. D-2017-009-2 for Delaware River Partners LLC, Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey

Dear Mr. Alexander:

This letter is in response to your letter dated June 2, 2022 on behalf of Delaware River Partners LLC ("DRP"). Your letter requests that the Delaware River Basin Commission ("DRBC") extend the date of expiration of the captioned docket (the "Docket") by three years (to June 12, 2025) in accordance with DRBC's *Rules of Practice and Procedure* at 18 CFR 401.41.

Your letter avers that in reliance on the Docket and other approvals, DRP has expended almost \$1.8 million to date in planning and engineering fees and for installation of an irrigation system to directly or indirectly advance the activities approved by the Docket. This sum excludes DRP's legal expenses in responding to administrative and federal district court appeals of the Docket and appeals of approvals issued by entities other than the DRBC.

In consideration of DRP's conduct and expenditures to date in pursuit of the approved activities, in accordance with the DRBC's regulations at 18 CFR 401.41 and retroactive to June 12, 2022, the Docket is hereby extended through June 12, 2025. If the activities approved by the Docket have not commenced by June 12, 2025, the Docket will expire on that date unless it is again extended prior thereto.

If you have additional questions concerning this action, please contact David Kovach P.G., Manager, Project Review at 609-477-7264 or david.kovach@drbc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stambini', is written over a light blue horizontal line.

Steven J. Tambini,
Executive Director

c: Kathleen Campbell, Esq., kcampbell@mankogold.com
Michael Dillon Esq., mdillon@mankogold.com
Laura George, lgeorge@ramboll.com

Attachment C



July 27, 2022

VIA ELECTRONIC MAIL

Steven J. Tambini, Executive Director
Delaware River Basin Commission
25 Cosey Road
PO Box 7360
West Trenton, NJ 08628-0360
Steve.tambini@drbc.gov

Re: Docket No. D-2017-009-2 for Delaware River Partners LLC, Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey

Dear Mr. Tambini,

By letter on June 16, 2022, you approved Delaware River Partners' ("DRP's") request to extend the date of expiration of the above-referenced docket from June 12, 2022, to June 12, 2025. This purported approval was not in accordance with the Delaware River Basin Commission's ("DRBC's") Rules of Practice and Procedure ("RPP") and had the effect of shutting the public out of the application process. On behalf of the Delaware Riverkeeper Network and its members, we request that you rectify this procedural misstep and refer DRP's request to the Commission to be acted upon at a public hearing.

In your June 16, 2022 letter, you stated that you were taking action pursuant to the DRBC's regulations at 18 C.F.R. § 401.41, which states in relevant part:

Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed *by the Commission upon application*.

Id. at § 401.41(a) (emphasis added). The language clearly states that only the Commission has the ability to extend its approval of Docket No. D-2017-009-2, using the same procedure for Commission decision on applications for docket renewal. "Application" is defined in the RPP as "a request for action *by the Commission* in any written form." 18 C.F.R. 401.121.

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
drm@delawareriverkeeper.org
www.delawareriverkeeper.org

Applications are reviewed by staff, and decided upon at a public hearing after notice by the Commission. *See* 18 C.F.R. 401.5. The Executive Director does not have the authority to act upon an application except in limited emergency circumstances—which do not exist here.

Throughout DRBC’s RPP, it is very clear which actions the Executive Director may take, and which actions require action by the Commission. *See, e.g.* 18 C.F.R. § 401.6 (proposals for changes to the Comprehensive Plan “shall be based upon the recommendation of the Executive Director and the further direction of the Commission”), § 401.82 (“[T]he Executive Director shall present the request for a hearing to the Commission for its consideration.”), § 401.33 (authorizing the Executive Director to enter into administrative agreements with federal and state agencies). In fact, the RPP provides that the Executive Director may only authorize an applicant’s request for action “[i]n the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property” when “the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part” 18 C.F.R. 401.40(b). There is no emergency that justifies your approval here.

Accordingly, we request that you rescind your letter dated June 16, 2022, and refer Delaware River Partners’ application to the Commission to be acted upon in accordance with 18 C.F.R. § 401.5., at a public hearing that has been properly noticed.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper



Tracy Carluccio
Deputy Director

Cc: Pam Bush, Commission Secretary and Assistant General Counsel (*via email*)

Attachment D

August 12, 2022

Steven J. Tambini, Executive Director
Delaware River Basin Commission
25 Cosey Road
PO Box 7360
West Trenton, NJ 08628-0360
Steve.tambini@drbc.gov

VIA ELECTRONIC MAIL

Re: Docket No. D-2017-009-2 for Delaware River Partners LLC, Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey

Dear Mr. Tambini,

We, the undersigned organizations representing the Delaware River LNG Coalition, request that the extension granted by the Delaware River Basin Commission (the "Commission") for Docket No. D-2017-009-2 for Delaware River Partners LLC ("DRP"), Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey be rescinded and that the request be evaluated through the Commission's public process, which requires an opportunity for public comment and a vote by the Commissioners.

By letter on June 16, 2022, in your capacity as Executive Director of the DRBC, you unilaterally approved Delaware River Partners' request to extend the date of expiration of the above-referenced docket from June 12, 2022, to June 12, 2025 (the "June 16 letter"). This approval was not in accordance with the Commission's Rules of Practice and Procedure ("Rules"), which require that such requests be approved by the members of the Commission. 18 C.F.R. § 401.41. This failure to comply with the Commission's Rules had the effect of shutting the public out of the application process.

Our organizations and thousands of our members have participated in myriad ways and for several years in the review of the Gibbstown Logistics Center Dock 2 project. We are disappointed that you would approve this highly controversial Docket extension out of public view. We request that you rectify this procedural error and refer DRP's request to the Commission to be acted upon at a public hearing where members of the public will have the opportunity to comment before a vote by the Commission is taken. Public participation in a transparent government decision making process is essential, especially since this project will directly affect the communities of the Delaware River Watershed and beyond.

Under the Rules, Commission approvals expire "three years from the date of Commission action unless" the project sponsor "has expended substantial funds (in relation to the cost of the project) in reliance upon such approval." 18 C.F.R. § 401.41. The approval may be extended or renewed **by the Commission** upon application.

Applications may be reviewed by staff, but they are decided upon by the Commission at a public hearing after notice. See 18 C.F.R. §§ 401.121, 401.5. In other words, only the Commission

may extend its approval of Docket No. D-2017-009-2, using the procedure required for Commission decisions on such applications. The Executive Director does not have the authority to act upon an application except in limited emergency circumstances outlined in 18 C.F.R. Section 401.40(b)—which do not exist here.

The Rules clearly specify which decisions may be unilaterally made by the Executive Director and which ones must be made by the Commission. For instance, the Executive Director is empowered to recommend changes to the Commission's Comprehensive Plan. See, e.g., 18 C.F.R. § 401.6 (proposals for changes to the Comprehensive Plan "shall be based upon the recommendation of the Executive Director and the further direction of the Commission"). Hearing requests to the Commission must go through the Executive Director. See 18 C.F.R. § 401.82 ("[T]he Executive Director shall present the request for a hearing to the Commission for its consideration."). The Executive Director may also enter into administrative agreements with state and federal agencies. See 18 C.F.R. § 401.33. However, the Executive Director is not authorized to decide on an application to the Commission unless, as the Rules state, there is "an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property" when "the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part." 18 C.F.R. § 401.40(b). There is no emergency here that justifies your approval of this project in this manner; thus, a decision by the full Commission is required.

Furthermore, there are issues that the public can raise related to the extension approval but are being deprived of doing so. For instance, DRP has not satisfied the requirement to show that it has "expended substantial funds (in relation to the cost of the project) in reliance upon [the Commission's prior approval]." 18 C.F.R. § 401.41. DRP's letter requesting the docket extension primarily cited costs paid to various engineering firms without explanation as to how these costs were necessitated by DRP's reliance on the docket having been approved in 2020. Even assuming that these costs were all compelled by DRP's reliance on the Commission's prior approval, the cited \$1.8 million in costs incurred does not rise to the level of "substantial funds" when viewed in relation to the cost of the project; when DRP first applied to the Commission for approval in 2019, it had already spent \$165 million or nearly one hundred times the amount it now cites on the project per its federal filings.

We request that you rescind your letter dated June 16, 2022, and refer Delaware River Partners' application to the Commission to be acted upon in accordance with 18 C.F.R. § 401.5., that the request be processed through the Commission's public process, requiring an opportunity for public comment and a vote by the Commissioners.

Sincerely,

Berks Gas Truth

Catskill Mountainkeeper

Clean Water Action

Damascus Citizens for Sustainability

Delaware Riverkeeper Network
Don't Gas the Meadowlands Coalition
Environment New Jersey
Food & Water Watch
Natural Resources Defense Council
Protect Northern PA
New Jersey Sierra Club

Cc:

Pennsylvania Governor Tom Wolf, Chair, Delaware River Basin Commission
New Jersey Governor Philip D. Murphy, Vice Chair, Delaware River Basin Commission
Delaware Governor John Carney, Member, Delaware River Basin Commission
New York Governor Kathy Hochul, Member, Delaware River Basin Commission
Colonel John P. Lloyd, Army Corps of Engineers, Member, Delaware River Basin Commission
Pam Bush, Commission Secretary and Assistant General Counsel

Attachment E



Delaware River Basin Commission

25 Cosey Road

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Web Site: <http://www.drbc.gov>

Steven J. Tambini, P.E.
Executive Director

August 15, 2022

Via Email to: keeper@delawariverkeeper.org
tracy@delawariverkeeper.org

Maya K. van Rossum
Tracy Carluccio
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007

Re: DRBC Docket No. D-2017-009-2

Dear Ms. van Rossum and Ms. Carluccio:

I am in receipt of your letters dated July 27, 2022 and August 12, 2022, objecting to the extension of Delaware River Basin Commission (DRBC or Commission) Docket No. D-2017-009-2. I have conferred with the designated alternate Commissioners and Counsel concerning this response.

On June 2, 2022, Delaware River Partners (DRP) made a request to extend the 3-year expiration period set forth in 18 C.F.R. § 401.41(a) due to DRP's expenditure of substantial funds for the Gibbstown Logistics Center Dock 2 project. In its June 2 letter, DRP represented that it had expended the substantial sum of \$1,798,766. My letter acknowledged that DRP is entitled to the extension provided by Section 401.41(a) of the Commission's Rules of Practice and Procedure which provides as follows:

Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

In light of your objections, it would be beneficial for the Commissioners to consider the circumstances of the project, the June 2, 2022 request, and the funds expended to date in relation to the cost of the project. I will request that this matter be considered during the Commission's September business meeting.

DRP's request for an extension and the Commission's consideration of that request does not necessitate a public hearing. Section 14.4(b) of the Compact requires a hearing in limited circumstances, none of which apply here. Section 401.5 of the Commission's regulations implementing Section 3.8 of the Compact provides for a public hearing following staff review of each "project application." Where, as here, a request for an extension under Section 401.41(a) does not seek to modify the project or docket conditions, I do not consider the request to be a "project application" for purposes of the hearing rule.

Maya K. van Rossum
Tracy Carluccio
Delaware Riverkeeper Network
August 15, 2022
Page 2

If you would like to make a written submission to the Commissioners for their consideration, please send your submission to Commission Secretary Pamela Bush, with a copy to DRP's counsel, within 10 days of receipt of this letter. I request a response from DRP be submitted to Ms. Bush, with a copy to you, within ten days of your submission, to include a current estimate of the cost of the project and a statement of the amount of project costs expended after issuance of the docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Stambini", with a large, stylized initial "S" that loops around the start of the name.

Steven J. Tambini
Executive Director

c: DRBC Commissioners
Pamela M. Bush, Commission Secretary
Kenneth J. Warren, Commission General Counsel
Harry Alexander, CEO, Repauno Port & Rail Terminal
Kathleen Campbell, Esq.
Michael Dillon, Esq.

Attachment F



**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATERSHED & LAND MANAGEMENT**
Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420
Telephone: (609) 777-0454 or Fax: (609) 777-3656
www.nj.gov/dep/landuse



PERMIT

<p>In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the terms, conditions, and limitations listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition, or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.</p>		<p>Approval Date December 30, 2021</p>
		<p>Expiration Date December 29, 2026</p>
<p>Permit Number(s): 0807-21-0002.1 LUP210001</p>	<p>Type of Approval(s): Flood Hazard Area Individual Permit Waterfront Development Individual Permit (Commercial/Industry/Public (Landward) Coastal Wetlands Permit Water Quality Certificate</p>	<p>Governing Rule(s): N.J.A.C. 7:7-1.1(a) N.J.A.C. 7:13-1.1(a)</p>
<p>Permittee: Delaware River Partners 200 North Repauno Avenue Gibbstown, NJ 08027</p>		<p>Site Location: Rail Infrastructure Project Block: Lot: [8:1,2,4] Municipality: Greenwich Township County: Gloucester</p>
<p>Description of Authorized Activities:</p> <p>The construction of 11,600 linear feet of a new double track rail loop following the alignment of an existing unpaved roadway that runs parallel to the Sand Ditch and another unpaved roadway on top of a levee system that runs parallel to the Delaware River.</p> <p>This permit includes the State's Water Quality Certification pursuant to Section 401 of the federal Water Pollution Control Act (33 USC 1251 et seq.).</p> <p>This permit is authorized under, and in compliance with, the Coastal Zone Management (CZM) Rules (N.J.A.C. 7:7-1.1, et seq.) as amended on October 5, 2021.</p> <p><i>The Department has determined that the herein approved activities meet the requirements of the Flood Hazard Area Control Act (FHACA)/CZM rules. This approval does not obviate the local Floodplain Administrator's responsibility to ensure all development occurring within their community's Special Flood Hazard Area (SFHA) is compliant with the local Flood Damage Prevention Ordinance, and minimum National Flood Insurance Program (NFIP) standards, regardless of any state-issued permits. The Federal Emergency Management Administration (FEMA) requires communities to review and permit all proposed construction or other development within their SFHA in order to participate in the NFIP.</i></p>		
<p>Prepared by: Suzanne U. Biggins</p>		<p>Received and/or Recorded by County Clerk:</p>
<p>If the permittee undertakes any regulated activity, project, or development authorized under this permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the requirements of the permit and all conditions therein.</p>		
<p align="center">This permit is not valid unless authorizing signature appears on the last page.</p>		

STATEMENT OF AUTHORIZED IMPACTS:

The authorized activities allow for the permittee to undertake impacts to regulated areas as described below. Additional impacts to regulated areas without prior Department approval shall constitute a violation of the rules under which this document is issued and may subject the permittee and/or property owner to enforcement action, pursuant to N.J.A.C. 7:7-2.1; N.J.A.C. 7:13-2.1.

Riparian Zone Vegetation	Area of riparian zone (Acres)
Permanent Disturbed	0.14
Temporary Disturbed	0

WFD IP- Commercial/Industrial/ Public (Landward)	Permanent Disturbance (Acres)	Temporary Disturbance (Acres)
Coastal Wetlands	0.019	0

PRE-CONSTRUCTION CONDITIONS:

1. This permit does not authorize any disturbance of freshwater wetlands and transition areas regulated under the Freshwater Wetlands Protection Act. Prior to the start of any disturbance to freshwater wetlands and transition areas regulated under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), the permittee shall obtain the pending Freshwater Wetland Individual Permit from the Division of Land Resource Protection (DLRP File No. 0807-21-0002.1 LUP210002).
2. Within 30 days of permit issuance and/or prior to any construction or site preparation (whichever occurs first), the permittee shall submit to the Division for review and approval a proposal for providing public access in accordance with the Public Access Law, N.J.S.A. 13:1D-150 to -156. The Division approved public access project must be constructed prior to, or concurrent with, the construction of the project authorized by this permit.

FLOOD HAZARD AREA PERMIT SPECIAL CONDITIONS:

1. The Department has determined that the required riparian zone adjacent to the regulated waters affected by the project is 50 feet from the top of the bank. This permit authorizes the permanent disturbance to 0.14 acres (6,246 square feet) of riparian zone vegetation for the construction of rail infrastructure. Any additional disturbance to the riparian zone shall be considered a violation of the Flood Hazard Area Control Act Rules (FHACAR) unless a permit is obtained, prior to the start of the disturbance, from the Division of Land Resource Protection.
2. The Department has determined that this project meets the requirements of the Stormwater Management rules at N.J.A.C. 7:8. Any future expansion or alteration of the approved site plan, which would affect water quality, shall be reviewed and approved by the Department prior to construction.

3. The Department has approved this permit because the project satisfies the requirements of the Flood Hazard Area Control Act Rules and Coastal Rules. The Department has not reviewed the proposed structure/s to determine compliance with the International Building Code or any other local construction codes or flood ordinances. Please contact your municipal construction official for further information.
4. All foundations, slabs, footings and walls of the proposed structure/s shall be designed to resist uplift, flotation, collapse and displacement due to hydrostatic and hydrodynamic forces resulting from flooding up to an elevation 10.0 feet NAVD. Furthermore, all structural components shall be designed to resist the same forces.

WATERFRONT DEVELOPMENT PERMIT SPECIAL CONDITIONS:

1. To protect sensitive habitat for the State-listed Bald Eagle, the Permittee shall adhere to a seasonal restriction on the use of heavy construction equipment/machinery within 300 meters (1000 feet) of any bald eagle nest along the project limit of disturbance from January 1 through July 31 of each calendar year. Adherence to this seasonal restriction shall also be applied if nest building and nest occupancy is observed at any nest location during the months of December and January of the given calendar year of work.
2. To protect sensitive habitat for the State-listed Osprey:
 - a. The Permittee shall adhere to a seasonal restriction on the use of heavy construction equipment/machinery within 300 meters (1000 feet) of any active osprey nest along the project limit of disturbance from April 1 through August 31 of each calendar year. Adherence to this seasonal restriction shall also be applied if nest building and nest occupancy is observed at any given osprey nest location during the months of March and April of the given calendar year of work.
 - b. Avian nest structures sufficient to support osprey nesting and currently exist along Sand Ditch shall be relocated as illustrated on site plan sheet WP-01 dated 24 May 2021, last revised and signed on 9 December 2021. No component of authorized activities along the rail loop, inclusive of project site preparation, clearing, grading, or other site disturbance, may take place until after the Permittee has demonstrated to the Department that the effort to protect nesting habitat has been completed.
3. This permit is issued subject to compliance with N.J.A.C. 7:7-27.2 Conditions that apply to all coastal permits.

COASTAL WETLANDS MITIGATION CONDITIONS:

1. The permittee shall mitigate for the permanent loss of **0.019 acres** of coastal wetlands through an on-site or off-site creation, restoration or enhancement project with the purchase of credits from a mitigation bank serving the appropriate watershed management area.
2. At this time, the following bank(s) are approved to serve the project area; additional banks may be approved at any time, so please contact the Mitigation unit for the most up to date service area information if you would like additional options. **Within 60 days and prior to initiation of regulated activities**, the permittee shall submit proof of purchase for the amount of mitigation credits listed above to the attention of the Mitigation Unit Supervisor, NJDEP, Division of Land Resource Protection at Mail Code 501-02A, P.O. Box 420, Trenton, NJ 08625-0420.

- *Abbot Creek-Contact Mark Renna, Evergreen Environmental, LLC, at (201)644-7302 (office) or 973-356-7164 or by email at mrenna@evergreenenv.com*

3. If mitigation credits are no longer available from the above referenced mitigation bank, the permittee shall contact the Division of Land Resource Protection, Mitigation Unit to arrange for an alternative mitigation option **prior to the initiation of regulated activities.**

STANDARD CONDITIONS:

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit.
2. The issuance of a permit does not convey any property rights or any exclusive privilege.
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit.
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District or designee having jurisdiction over the site.
5. The permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit.
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (WARN DEP hotline) of any noncompliance that may endanger public health, safety, and welfare, or the environment. The permittee shall inform the Division of Land Use Regulation by telephone at (609) 777-0454 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:
 - i. A description of the noncompliance and its cause;
 - ii. The period of noncompliance, including exact dates and times;

- iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and
 - iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action, as well as, in the appropriate case, suspension and/or termination of the permit.
9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity to maintain compliance with the conditions of the permit.
10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29.
11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties.
12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores.
13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:
 - i. Enter upon the permittee's premises where a regulated activity, project, or development is located or conducted, or where records must be kept under the conditions of the permit;
 - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - iii. Inspect, at reasonable times, any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action; and
 - iv. Sample or monitor at reasonable times, for the purposes of assuring compliance or as otherwise authorized by the Federal Act, by the Freshwater Wetlands Protection Act, or by any rule or order issued pursuant thereto, any substances or parameters at any location.
14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel while the regulated activity, project, or development is being

undertaken. Upon completion of the regulated activity, project, or development, the permittee shall remove and dispose of in a lawful manner all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas.

15. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit.
16. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect, so long as the regulated activity, project, or development, or any portion thereof, is in existence, unless the permit is modified pursuant to the rules governing the herein approved permits.
17. The permittee shall perform any mitigation required under the permit in accordance with the rules governing the herein approved permits.
18. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment.
19. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit.
20. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request.
21. The permittee shall provide monitoring results to the Department at the intervals specified in the permit.
22. A permit shall be transferred to another person only in accordance with the rules governing the herein approved permits.
23. A permit can be modified, suspended, or terminated by the Department for cause.
24. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit.
25. Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.
26. The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, 401 East State Street, 4th Floor, PO Box 420, Mail Code

401-04C, Trenton, NJ 08625, at least three working days prior to the commencement of regulated activities.

APPROVED PLAN(S):

The drawing(s) hereby approved consist of six (6) sheet(s) prepared by Nester D. Soler, P.E. of Ramboll dated 5/24/2021, last revised 12/9/2021, and entitled:
“PERMITTING PLANS, PROPOSED RAIL INFRASTRUCTURE, DRP GIBBSTOWN LOGISTICS CENTER, BLOCK 8, LOTS 1, 2 AND 4, TOWNSHIP OF GREENWICH, GLOUCESTER COUNTY, NEW JERSEY”

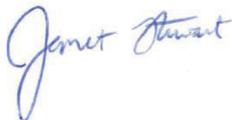
- “RAIL ALIGNMENT OVERALL PLAN”, Sheet WP-01
- “RAIL ALIGNMENT - NORTHEAST QUADRANT”, Sheet WP-02
- “RAIL ALIGNMENT – SOUTHEAST QUADRANT”, Sheet WP-03
- “RAIL ALIGNMENT – NORTHWEST QUADRANT”, Sheet WP-04
- “RAIL ALIGNMENT – SOUTHWEST QUADRANT”, Sheet WP-05
- “RAIL PROFILES AT WATER CROSSINGS”, Sheet WP-06

APPEAL OF DECISION:

Any person who is aggrieved by this decision may submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin (available at www.nj.gov/dep/bulletin). If a person submits the hearing request after this time, the Department shall deny the request. The hearing request must include a completed copy of the Administrative Hearing Request Checklist (available at www.nj.gov/dep/landuse/forms.html). A person requesting an adjudicatory hearing shall submit the original hearing request to: NJDEP Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Mail Code 401-04L, P.O. Box 402, 401 East State Street, 7th Floor, Trenton, NJ 08625-0402. Additionally, a copy of the hearing request shall be submitted to the Director of the Division of Land Resource Protection at the address listed on page one of this permit. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see www.nj.gov/dep/odr for more information on this process.

If you need clarification on any section of this permit or conditions, please contact the Division of Land Resource Protection’s Technical Support Call Center at (609) 777-0454.

Approved By:



Digitally signed by Janet
Stewart
Date: 2021.12.30
13:17:42 -05'00'

Janet Stewart, Section Chief
Bureau of Coastal Permitting
Division of Land Resource Protection

- c: Municipal Clerk, Greenwich Township, clerk@greentownship.org
Construction Official, Greenwich Township, clerk@greentownship.org
Ms. Laura George, lgeorge@ramboll.com



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATERSHED & LAND MANAGEMENT
 Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420
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PERMIT

<p>In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the terms, conditions, and limitations listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition, or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.</p>		Approval Date February 25, 2022
		Expiration Date February 24, 2027
Permit Number(s): 0807-21-0002.1 LUP210002	Type of Approval(s): Freshwater Wetlands Individual Permit Water Quality Certificate	Governing Rule(s): N.J.A.C. 7:7A-1.1(a)
Permittee: Delaware River Partners 200 North Repauno Avenue Gibbstown, NJ 08027	Site Location: Delaware River Partners Rail Infrastructure Project Block: Lot: [8:1,2,4] Municipality: Greenwich Township County: Gloucester	
Description of Authorized Activities: <p>The construction of 11,600 linear feet of a new double track rail loop following the alignment of an existing unpaved roadway that runs parallel to the Sand Ditch and another unpaved roadway on top of a levee system that runs parallel to the Delaware River.</p> <p>This permit includes the State's Water Quality Certification pursuant to Section 401 of the federal Water Pollution Control Act (33 USC 1251 et seq.).</p> <p><i>The Department has determined that the herein approved activities meet the requirements of the Flood Hazard Area Control Act (FHACA)/CZM rules. This approval does not obviate the local Floodplain Administrator's responsibility to ensure all development occurring within their community's Special Flood Hazard Area (SFHA) is compliant with the local Flood Damage Prevention Ordinance, and minimum National Flood Insurance Program (NFIP) standards, regardless of any state-issued permits. The Federal Emergency Management Administration (FEMA) requires communities to review and permit all proposed construction or other development within their SFHA in order to participate in the NFIP.</i></p>		
Prepared by: Suzanne U. Biggins	Received and/or Recorded by County Clerk:	
<p>If the permittee undertakes any regulated activity, project, or development authorized under this permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the requirements of the permit and all conditions therein.</p>		
This permit is not valid unless authorizing signature appears on the last page.		

STATEMENT OF AUTHORIZED IMPACTS:

The authorized activities allow for the permittee to undertake impacts to regulated areas as described below. Additional impacts to regulated areas without prior Department approval shall constitute a violation of the rules under which this document is issued and may subject the permittee and/or property owner to enforcement action, pursuant to N.J.A.C. 7:7A-2.1.

FWW Impacts	Permanent Disturbance (Acres)	Temporary Disturbance (Acres)
Freshwater wetlands	0.0169	N/A
Transition areas	4.132	N/A
State open waters	N/A	N/A

*Transition area impacts are in actively disturbed, unvegetated areas of the existing access road consisting of gravel, compacted soils.

PRE-CONSTRUCTION CONDITIONS:

1. Prior to the commencement of any site preparation, clearing, grading or construction the applicant is responsible for installing and maintaining silt fence sediment barriers around all soils disturbed by construction, which are sufficient to prevent the sedimentation of the wetlands, transition areas, and Delaware River. These fences shall serve as both a siltation and debris barrier as well as a physical barrier protecting the undisturbed regulated areas from encroachment by construction vehicles or activities. All sediment barriers and other soil erosion control measures shall be maintained daily in proper working condition throughout the entire duration of the project until such time that the site is stabilized.
2. To protect sensitive habitat for the State-listed Bald Eagle, the Permittee shall adhere to a seasonal restriction on the use of heavy construction equipment/machinery within 300 meters (1000 feet) of any bald eagle nest along the project limit of disturbance from January 1 through July 31 of each calendar year. Adherence to this seasonal restriction shall also be applied if nest building and nest occupancy is observed at any nest location during the months of December and January of the given calendar year of work.
3. To protect sensitive habitat for the State-listed Osprey:
 - a. The Permittee shall adhere to a seasonal restriction on the use of heavy construction equipment/machinery within 300 meters (1000 feet) of any active osprey nest along the project limit of disturbance from April 1 through August 31 of each calendar year. Adherence to this seasonal restriction shall also be applied if nest building and nest occupancy is observed at any given osprey nest location during the months of March and April of the given calendar year of work.
 - b. Avian nest structures sufficient to support osprey nesting and currently exist along Sand Ditch shall be relocated as illustrated on site plan sheet WP-01 dated 24 May 2021, last revised and signed on 9 December 2021. No component of authorized activities along the rail loop, inclusive of project site preparation, clearing, grading, or other site disturbance, may take place until after the Permittee has demonstrated to the Department that the effort to protect nesting habitat has been completed.

FRESHWATER WETLANDS PERMIT CONDITIONS:

1. The permittee shall comply with the conditions specified in the Flood Hazard Area Individual Permit, Waterfront Development Individual Permit (Landward) and the Coastal Wetlands Permit issued on December 30, 2021 (DLRP File No. 0807-21-0002.1 LUP210001).
2. This permit authorizes the disturbance of approximately 0.0169 acres of freshwater wetlands and 4.132 acres of transition area for the rail loop infrastructure under a Freshwater Wetlands Individual Permit. The wetlands affected by this permit authorization are of Intermediate resource value and the standard transition area or buffer required adjacent to these wetlands is 50 feet buffer associated with the wetlands. This freshwater wetland individual permit includes a transition area waiver, which allows encroachment only in that portion of the transition area which has been determined by the Department to be necessary to accomplish the regulated activities. Any additional un-permitted disturbance of freshwater wetlands, State open waters and/or transition areas besides that shown on the approved plans shall be considered a violation of the Freshwater Wetlands Protection Act Rules unless the activity is exempt or a permit is obtained from the Department prior to the start of the proposed disturbance.
3. If the permittee, before or during the authorized work, encounters a possible historic property, as described at N.J.A.C. 7:7A-12.2(l), that is or may be eligible for listing in the New Jersey or National Register, the permittee shall preserve the resource and immediately notify the Department and proceed as directed.
4. This permit does not verify the full extent of wetlands or transition areas on-site. If the permittee is proposing further construction activities on site they are encouraged to apply for a Verification-type Letter of Interpretation from this office. This type of Letter of Interpretation will verify the extent of wetlands on the property and determine the resource value of those wetlands.
5. This authorization for a Freshwater Wetlands Individual Permit is valid for a term not to exceed five years from the date of this letter. If the permittee wishes to continue an activity covered by the permits after the expiration date of the permits, the permittee must apply for and obtain a permit extension or a new permit, prior to the permit's expiration. If the term of the authorization exceeds the expiration date of the individual permit issued by rule, and the permit upon which the authorization is based is modified by rule to include more stringent standards or conditions, or is not reissued, the applicant must comply with the requirements of the new regulations by applying for a new General Permit authorization or an Individual Permit.
6. This permit is issued subject to compliance with N.J.A.C. 7:7A-9.3 Conditions applicable to an individual permit and N.J.A.C. 7:7A-20.2 Conditions that apply to all permits.

FRESHWATER MITIGATION PERMIT CONDITIONS BANK ONLY:

1. The permittee shall mitigate for the permanent disturbance of **0.0169 acres** of forested wetlands, **0.0001 acres** of emergent wetlands, and **4.132 acres** of transition area through the purchase of mitigation credits from an approved wetland mitigation bank.

At this time, the following bank(s) are approved to serve the project area; additional banks may be approved at any time, so please contact the Mitigation unit for the most up to date service area information if you would like additional options.

- *Willow Grove Lake Wetlands Mitigation Bank – Heather Brecht, The Nature Conservancy – New Jersey Chapter, 2350 Route 47, Delmont, NJ 08314, Phone: (609) 861-4122, Fax: (609) 861-4420, or Email: heather.brecht@inc.org*
2. **Within 60 days and prior to initiation of regulated activities**, the permittee shall submit proof of purchase for the amount of mitigation credits listed above to the attention of the Mitigation Unit Supervisor, NJDEP, Division of Land Resource Protection at Mail Code 501-02A, P.O. Box 420, Trenton, NJ 08625-0420.
 3. If mitigation credits are no longer available from the above referenced mitigation bank, the permittee shall contact the Division of Land Resource Protection, Mitigation Unit to arrange for an alternative mitigation option **prior to the initiation of regulated activities**.

STANDARD CONDITIONS:

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit.
2. The issuance of a permit does not convey any property rights or any exclusive privilege.
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit.
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District or designee having jurisdiction over the site.
5. The permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit.
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (WARN DEP hotline) of any noncompliance that may endanger public health, safety, and welfare, or the environment. The permittee shall inform the Division of Land Use Regulation by telephone at (609) 777-0454 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:
 - i. A description of the noncompliance and its cause;
 - ii. The period of noncompliance, including exact dates and times;
 - iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and
 - iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action, as well as, in the appropriate case, suspension and/or termination of the permit.
9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity to maintain compliance with the conditions of the permit.
10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29.
11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties.
12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores.
13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:
 - i. Enter upon the permittee's premises where a regulated activity, project, or development is located or conducted, or where records must be kept under the conditions of the permit;
 - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - iii. Inspect, at reasonable times, any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action; and
 - iv. Sample or monitor at reasonable times, for the purposes of assuring compliance or as otherwise authorized by the Federal Act, by the Freshwater Wetlands Protection Act, or by any rule or order issued pursuant thereto, any substances or parameters at any location.
14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel while the regulated activity, project, or development is being undertaken. Upon completion of the regulated activity, project, or development, the permittee shall remove and dispose of in a lawful manner all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas.
15. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit.
16. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect, so long as the regulated activity, project, or development, or any portion thereof, is in existence, unless the permit is modified pursuant to the rules governing the herein approved permits.
17. The permittee shall perform any mitigation required under the permit in accordance with the rules governing the herein approved permits.

18. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment.
19. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit.
20. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request.
21. The permittee shall provide monitoring results to the Department at the intervals specified in the permit.
22. A permit shall be transferred to another person only in accordance with the rules governing the herein approved permits.
23. A permit can be modified, suspended, or terminated by the Department for cause.
24. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit.
25. Where the permittee becomes aware that it failed to submit any relevant facts in an application or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.
26. The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, 401 East State Street, 4th Floor, PO Box 420, Mail Code 401-04C, Trenton, NJ 08625, at least three working days prior to the commencement of regulated activities.
27. The permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to Watershed & Land Management at the address listed on page one of this permit.

APPROVED PLAN(S):

The drawing(s) hereby approved consist of six (6) sheet(s) prepared by Nester D. Soler, P.E. of Ramboll dated 5/24/2021, last revised 12/9/2021, and entitled:

“PERMITTING PLANS, PROPOSED RAIL INFRASTRUCTURE, DRP GIBBSTOWN LOGISTICS CENTER, BLOCK 8, LOTS 1, 2 AND 4, TOWNSHIP OF GREENWICH, GLOUCESTER COUNTY, NEW JERSEY”

- “RAIL ALIGNMENT OVERALL PLAN”, Sheet WP-01
- “RAIL ALIGNMENT - NORTHEAST QUADRANT”, Sheet WP-02

- “RAIL ALIGNMENT – SOUTHEAST QUADRANT”, Sheet WP-03
- “RAIL ALIGNMENT – NORTHWEST QUADRANT”, Sheet WP-04
- “RAIL ALIGNMENT – SOUTHWEST QUADRANT”, Sheet WP-05
- “RAIL PROFILES AT WATER CROSSINGS”, Sheet WP-06

APPEAL OF DECISION:

Any person who is aggrieved by this decision may submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin (available at www.nj.gov/dep/bulletin). If a person submits the hearing request after this time, the Department shall deny the request. The hearing request must include a completed copy of the Administrative Hearing Request Checklist (available at www.nj.gov/dep/landuse/forms.html). A person requesting an adjudicatory hearing shall submit the original hearing request to: NJDEP Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Mail Code 401-04L, P.O. Box 402, 401 East State Street, 7th Floor, Trenton, NJ 08625-0402. Additionally, a copy of the hearing request shall be submitted to the Director of the Division of Land Resource Protection at the address listed on page one of this permit. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see www.nj.gov/dep/odr for more information on this process.

If you need clarification on any section of this permit or conditions, please contact the Division of Land Resource Protection’s Technical Support Call Center at (609) 777-0454.

Approved By:



Digitally signed by Janet
Stewart
Date: 2022.02.25 14:54:41
-05'00'

Janet Stewart, Section Chief
Bureau of Coastal Permitting
Division of Land Resource Protection

- c: Municipal Clerk, Greenwich Township, clerk@greenwichtownship.org
Construction Official, Greenwich Township, clerk@greenwichtownship.org

Ms. Laura George
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