

MEADOWLANDS CONSERVATION TRUST

**MEADOWLANDS CONSERVATION TRUST
OPEN SESSION MEETING MINUTES**

DATE: July 21, 2016
TIME: 10:00 a.m.
PLACE: New Jersey Sports and Exposition Authority- Lecture Room
Two DeKorte Park Plaza – Lyndhurst, NJ

TRUSTEES PRESENT:

WILLIAM SHEEHAN, Chairman
Hackensack Riverkeeper

GREG REMAUD, Vice Chair
NY/NJ Baykeeper

RALPH J. MARRA, JR., ESQ. Delegate
Senior Vice President Legal, NJSEA

GABRIELLE N. GALLAGHER, Delegate
Department of Community Affairs

MAYOR ALBERTO SANTOS, HMMC Delegate
Mayor of Kearny

CHRISTINE A. SANZ, Chief Executive Officer

ALSO PRESENT:

JASON STYPINSKI
Deputy Attorney General

COLLEEN MERCADO
NJSEA Senior Operations Administrator

1. Welcome - Chairman Sheehan welcomed everyone and presided over the meeting.
2. Flag Salute
3. CEO Sanz read the Notice of Meeting required under the Sunshine Law.
4. Roll Call

5. REVIEW OF MINUTES

Minutes of the April 20, 2016 open and closed sessions, were moved by Trustee Gallagher, seconded by Trustee Marra and carried with all in favor. Minutes of the February 10, 2016 closed session were moved by Trustee Marra and seconded by Trustee Gallagher and carried with all in favor.

6. REPORTS

Chairman Sheehan began by stating that it is the height of the tourist season in the Meadowlands and in his second job he is out on the water most of the time. He commenting that we are in a very enviable position here in North Jersey to have this type of resource and not enough people avail themselves of the enjoyment. He encouraged everyone to make a plan to try to get out of the water and enjoy all the natural treasures the Meadowlands offers; whether it is on one of the NJSEA boats or one of the Riverkeeper boats.

CEO Sanz reported on the following matters:

- MCT License Plate Revenue – As of May 2016, the revenue is \$7,361.55.
- CEO Sanz updated the Board on a project that had been discussed briefly before with BCUA and potential partners, Bergen Audubon, to create a public access and viewing area at Mehrhof Pond in Little Ferry. CEO Sanz noted that the BCUA staff and executive director are very supportive of the project, which is essentially fencing the area, erecting a bird blind and providing signage reflecting the history and wildlife in the area. CEO Sanz continued by saying it is a terrific project and that staff anticipates having a resolution for the Board's consideration for appropriation at the August meeting of the Board of Trustees.
- CEO Sanz noted that it would be a great time for Don (Smith) to give an update on the MCT properties.

Mr. Don Smith began by stating that his wife is heavily involved now with the monthly monitoring reports and gave the following updates on the properties:

- Norwood Central –He has been in touch with the Town about spraying some of the mile-a-minute blind on the property so as to stop it from spreading into neighboring yards.
- Fox Hills (Norwood) – there is an occasional dirt bike problem/ATV use on the property and this has been brought to the police's attention. The officers on patrol will keep an eye out to keep the vehicles off the property.
- Meadowlands Properties – the properties are looking great. He added that Andy's project (Kane Mitigation) was moving along fine; noting that they were doing maintenance along the dike.
- Skeetkill – some trail maintenance would be done on the site with the landscaping crew.

Mr. Smith then went on to say that as a part-time resident of Little Ferry he is on the "Build by Design" Committee and noted that they are looking for various ways to prevent future flooding events there. One being to put up a dike - light plastic sheeting along the river to shore up around BCUA. He stated that they would have to cross the Kane Tract at some point and suggested they run it behind the existing dike that Andy (Kane Mitigation) is working on now. Mr. Smith noted that the Committee thought it a viable option and that it would strengthen the dike. He went on to describe what happened during Superstorm Sandy.

CEO Sanz took a moment to clarify that Don Smith participated in the Build by Design meetings as a private citizen, so his comments were offered as a member of the public not MCT's official representative. She noted that the official representative of that project is Trustee Remaud.

CEO Sanz then requested that the record reflect Mayor Santos joined the meeting.

Chairman Sheehan asked Don about the idea of running a parallel wall behind the (existing) dike; whether there is enough service area behind the existing dike to get equipment in and out without disturbing too much of the surrounding wetlands.

Mr. Smith responded and noted that the area is dry phragmites most of the year, so the impact would be negligible and would recover right afterwards.

7. PUBLIC PARTICIPATION

- Mr. Joseph Murphy, Esq. introduced himself as an attorney with Connell, Foley, representing his client, Evergreen Environmental, who could not attend this meeting. He advised that he was asked to attend in connection with the request for modification of the Kane Mitigation Banking Instrument.

CEO Sanz noted that Mr. Murphy was referring to item number nine on the agenda which is New Business and went on to state that the Board had received a request in writing from Mr. Derickson of Kane Mitigation to expand the service area of the Kane MBI and the Board would be considering this request today. She then identified Mr. Murphy, representing Evergreen, and Mr. Derickson from Kane as being in attendance to discuss this item.

Mr. Murphy continued by stating he had submitted a letter addressed to the Board at the request of his client and asked that his letter be entered into record. DAG Stypinski acknowledged that the letter could be made an exhibit to the transcript. Mr. Murphy provided highlights of his letter, referencing various documents that went into the development of the MBI and pointing out his client's concerns and issues they have with the request to expand the service area. Mr. Murphy summarized Evergreen's position that it is not appropriate to change the service area - that given the history of the Bank, a change is not and would not be a minor change - it would be a significant change and noted the following points:

1. They believe the existing service area is consistent with the purpose and powers of the MCT;
2. Prior to any modification, it should be demonstrated that no permit modifications or amendments are required in order to change the service area;
3. Expanding the service area would use up the Bank's credits much sooner and the Meadowlands District would be deprived of the source of mitigation for transportation projects in the District.

Mr. Murphy concluded by pointing out the Kane MBI is not the only potential source of mitigation within the proposed expanded service area; his client Evergreen Environmental operates the Evergreen MRI3 bank and wanted to make the Board aware there is an alternative source of mitigation for projects within the proposed expansion.

Chairman Sheehan thanked Mr. Murphy and asked if anyone had any questions.

CEO Sanz responded by stating that she had asked Mark Renna last time whether he had enough credits to satisfy the Longslip project, encouraging him to have a discussion with Transit. She then asked if there had been any discussion between MRI3 and Transit about providing credits for the Longslip project.

Mr. Murphy responded that he was not sure and he would follow up with Mark Renna to find out the status of available credits. Mr. Murphy then noted he had been told the bank will have sufficient credits.

- Mr. Andrew Derickson of Kane Mitigation introduced himself and provided a brief background of how he became the Bank's sponsor and inherited the MBI - what he considers to be his governing document. Mr. Derickson made reference to final language contained in the MBI, which says "Meadowlands District or in connection with the project related to, or herein connection with the Meadowlands District itself", and noted that the property's Conservation Restriction Easement also references Meadowlands District, as well as Meadowlands Region. He went on to state that NJ Transit is the one asking him to expand his service area as they are not entirely comfortable that "in connection" is going to carry the day. Mr. Derickson continued by saying he has already met with Army Corps, DEP and NJSEA regarding this request; noting that at the MIMAC meeting held on April 26, 2016 no one objected; they think this is a reasonable expansion of the service area, and they are looking for the consent of the landowner, which is a signatory to the MBI.

Mr. Derickson pointed out that he has 14 credits today - enough to service the Longslip project, plus others that NJ Transit has in the current service area. Mr. Derickson made the following comments: if (MCT) denies his request, all it does is allow Mark Renna to be the sole source for a contract with a request for information anticipated from NJ Transit for the Longslip project; if (MCT) denies Evergreen's request and approves what he (Kane) is requesting, all it really does is allow him to respond as well. He concluded by saying that all he is asking for is public fairness

and the ability to compete in a competitive bid process, adding that it is a duty we have to the public, to make sure they get the well thought out, well analyzed competitive bid process, so it doesn't get out of control because it's a sole source.

Chairman Sheehan then asked if anyone had any questions.

At this point, the Board members individually presented their questions to Mr. Derickson and Mr. Murphy. The following are some of the clarifications made during this exchange:

- The expanded service area, as per Mr. Derickson, would include the existing Meadowlands District, all the way to the Hudson Waterfront.
- Mr. Derickson presented a map indicating to the Board where the existing service area is and the additional unit that's being added - just the adjacent area between the existing service area and the Hudson River, on the New Jersey side, not New York.
- Mr. Derickson indicated that NJT has made the argument to the regulators that there is a sufficient connection to the Meadowlands District and that they should be able to obtain its mitigation through Kane credits because of the connection.
- Mr. Derickson questions why his service area wasn't expanded and wasn't exactly the same as Mark Renna's property (Evergreen) which is located next door to his property, yet his service area does include the area for the proposed Longslip Project.
- Chairman Sheehan provided a brief history of MRI projects that were being done, predating the Kane by many years. He noted that the Riverkeeper had opposed the expansion of the service area at that time, but they lost; the Army Corps expanded on whoever was expanding the service area. He then explained the negotiations that brought the property to the Trust in the first place.
- The MCT does not have an indication from MIMAC issuing any approval. It seems they want approval from the landowner (MCT) Board before finishing their review.
- Dr. Feltes, NJSEA representative on MIMAC provided clarification about the linkage between Hackensack, the Hoboken project and expansion of the service area. He noted when Transit came to the IRT explaining they needed credits for their project and wanted it satisfied in the district, the IRT, Corps in particular, went through the step-by-step process on how it could be accomplished. The comments from the Corps were that it could be done in an expedited manner and relatively easily; but wanted input from not only IRT but the landowner. All those who signed the original MBI would have to

agree to this. Dr. Feltes continued by stating that from the beginning (MIMAC's) understanding was, to accomplish this, there would have to be an expansion of the service area.

Mr. Derickson added that Kane Mitigation is not looking for preferential treatment – they are looking for fundamental fairness. He continued by saying he is only asking for the geography of the service area to change, not any responsibilities or other restrictions.

Vice Chair Remaud commented that the job of this Board is not to pick mitigation bankers on notice – it is to form policies, adhere to the mission, to the laws as interpreted by the MCT, and to live up to our responsibility in managing these properties.

Delegate Mayor Santos questioned if there were any other identifiable projects in the expanded service area that would also apply for mitigation credits.

Mr. Derickson responded there are none currently that he is aware of and doesn't know exactly where the Gateway project will impact along the New Jersey side.

Dr. Feltes added that nothing else has come before the IRT.

Mr. Murphy stated that he wanted to make a point of clarification relative to Andy's comparison of the Kane Bank to the Evergreen Bank; why there should be differences, should they both be on equal footings. He continued by saying the Evergreen Bank is a private bank developed on private land; the Kane Bank was developed on public owned land pursuant to a resolution and requests for proposals issued by a public entity. He noted that Evergreen made their investments based on their understanding of the limitations on the Kane Bank, adding that others may have passed on the opportunity to submit a bid based on those limitations. Mr. Murphy concluded by stating that we need to understand there are differences between privately developed banks on private land and a bank developed on public land pursuant to various public documents and mechanisms.

Mr. Derickson pointed out that he has been in litigation for four years making the same argument; trying to make a distinction between things placed on liens, for example, that are placed on public property even though it is a private project. He added that Kane is as much a private project as the Evergreen; it has much more regulatory oversight to the extent it is on MCT property, but doesn't think it is different in any respect. He concluded by saying this is only shutting Kane out of bidding and participating on a very important public bidding transportation project.

Chairman Sheehan then asked if anyone had any questions; there were none. He then thanked both presenters saying it was a very thorough presentation. He continued by stating that whatever decision the (Board) makes, it would have to be very measured and very thoughtful, adding that the (Board) would need a lot of legal advice in order to come to the right conclusion. Chairman Sheehan concluded by saying he was not going to guarantee to either Mr. Murphy or Mr. Derickson that the Board would come up with a solution today, but they would discuss this in closed session.

Chairman Sheehan asked for a motion to go into closed session. Delegate Gallaher moved and Delegate Marra seconded.

CEO Sanz then read the Closed Session Resolution.

8. CLOSED SESSION

Resolution No. 16-06 Resolution authorizing the MCT to conduct a meeting, to which the public shall not be admitted for the purposes of discussing legal matters, personnel matters and contract negotiations. The following issues were taken into consideration:

- Eastern and Western Brackish Marsh - Potential property acquisition - Status/Update
- Request for Modification to the Kane Mitigation Bank - Legal advice regarding potential litigation

Chairman Sheehan stated that there was a first and second motion, and asked for all in favor. All responded in the affirmative to go into closed session.

Closed Session commenced @ 10:55 a.m.

Open Session reconvened @ 11:50 a.m.

Chairman Sheehan began by saying everyone around the table had some questions, noting that some were for either Mr. Murphy or Mr. Derickson, and some for Dr. Ross Feltes in his capacity as a sitting member on MIMAC. He stated the Board was not going to come to a decision today and they were looking forward to MCT's meeting in August, adding that if they gathered enough information between now and then it could be put on the agenda in August.

Chairman Sheehan then opened it up to questions from the Board members.

Delegate Mayor Santos asked for additional information as to how this particular project would fit within the mission of the Trust, specifically its mission with respect to the Meadowlands District and the Hackensack River Watershed. He continued by asking what is the connection between the location in Hoboken; the nexus between the location and the areas of the Trust - MCT's statutory responsibility.

Delegate Marra said he would like to know very clearly if Evergreen has enough credits to satisfy the transit project.

Vice Chair Remaud said (following on the Mayor) that it would be helpful to have a map, geography is a big issue. He asked what the expansion specifically is and what the rationale is for that area, noting there are a lot of terms being heard such as district, regional, watershed. He would like to know exactly where the expansion is.

Mr. Derickson responded that he had submitted a map with his request and his map was done through the drawing of the public access maps, which shows, what he calls, hydrologic units (HUC's). He went on to explain that he worked with Transit to see what they were giving to regulators in connection with their permit applications. He noted that all he did was grab the very next adjacent HUC between there and the Hudson River, adding that he didn't draw boundaries randomly other than picking out what they (Transit) already had on the geological map.

Vice Chair Remaud wanted to clarify that it was not beyond what was proposed by NJ Transit.

Mr. Derickson replied it was not. He went on to say that he didn't want to overstep and list five or six additional ones and that he had literally just grabbed the one that was adjacent on the geological map. Mr. Derickson continued by saying the only other thing he did was to make sure the boundary map did not extend into New York State. He wanted to make sure it stopped in the New Jersey portion of the river.

DAG Stypinski then asked Delegate Mayor Santos if he would want the square miles of the proposed extension; would it be helpful. He noted that the map shows feet but didn't have the actual calculation of the area.

Delegate Mayor Santos responded that he thought it would be helpful and had asked that earlier.

Chairman Sheehan then motioned to Dr. Feltes, stating that he is MCT's link to the IRT and MIMAC.

Vice Chair Remaud asked Dr. Feltes if he had anything to share in the discussions that would help shed some light on the issue, commenting that he has always been very, very helpful and knowledgeable.

Dr. Feltes replied that the IRT members generally had a favorable consideration of this but were waiting to give it further consideration, until the MCT board made a decision. He added that the Corps did state that regardless of the legal decision that the MCT board came to, that Jim Cannon, of the Corps, had said it is probable that he would have his legal counsel review it as well. Dr. Feltes continued by referring to a comment made previously, that there was a process for this and that the service area for the MRI's had been expanded in the past, IRT didn't see this as exceptional - they were aware there was different language in different documents and because of that, they could envision that there might be some legal considerations.

Chairman Sheehan asked Dr. Feltes if he thought it would be possible to get those thoughts in writing from Jim Cannon - would he be willing to communicate his thoughts with the MCT Board.

Dr. Feltes reply was that they do not exist in writing but he could ask.

CEO Sanz stated that she thought it might be helpful if the MCT wrote a letter to Jim Cannon making that request.

Chairman Sheehan requested that CEO Sanz open the communication with the Corps to find out if he would be willing to communicate his thoughts.

Mr. Derickson stated that the only thing he could add was that he knew the Corps spent a very long time discussing this; they had a meeting with Transit for quite a long time and a lot of consideration had been going into the process. He added that he knew the Corps has been consulting with other regional offices on how they deal with modifications of service areas, under MBI and other similar instruments, and they have been going through that discussion for a very long time.

Dr. Feltes added that the statement from Jim Cannon that this could be done in an expedited manner was from discussions that the lead from the Philly district said such matters might be handled largely by e-mail, giving this a fast and less formal approach to this. Dr. Feltes went on to say that he thinks it should be represented that no one made a statement objecting to it, but it is not the same as everybody saying they were all in favor of it. He said there was no objection at that point, pending legal consideration.

Mr. Derickson agreed and added that he was not trying to play lawyer or advocate on that, but his understanding is, no objections whatsoever and they had everyone represented there.

Chairman Sheehan commented "so they reserve their right to object."

Mr. Derickson responded that it wasn't presented to him that way. He said they already made their decision, there were no objections; adding that they were waiting for MCT to move forward.

CEO Sanz then asked Mr. Derickson what his opinion is, from a legal perspective, of what other instruments would need to be modified in addition to the MBI, in order to effectually expand the service area.

Mr. Derickson responded that he thinks it very logical and a very important thing that the MBI be modified and if he was thinking of any other document, MCT could modify the conservation restriction on there. He continued by saying if MCT were going to do one other thing, it would be to go and seek, like he did when doing the loan, consent from the Sports and Exposition Authority.

CEO Sanz then asked Dr. Feltes ecologically speaking and also in a regulatory perspective, if there is a difference between the HUC that is seen on the map (referring to Andy's map) and the Hackensack River Watershed.

Dr. Feltes responded by stating that when a proposed project requiring mitigation is considered in areas that are even more impacted than here, the habitats of impacts and proposed mitigation may be somewhat dissimilar. He noted that in proposals or permit applications where mitigation for projects outside the District is requested to be satisfied in the Meadowlands the background documents from consultants usually make the argument that, depending on the hydrological scale, they are part of the same larger system. He added that he would generally agree with this.

Dr. Feltes concluded by saying the current proposal to perform mitigation in the Meadowlands for impacts outside the District is not the first of its kind.

Vice Chair Remaud followed up on Dr. Feltes point that some of this HUC is in the Hudson River Watershed, and Dr. Feltes responded affirmatively.

CEO Sanz asked Dr. Feltes if the Longslip project is in the Hackensack River Watershed, and Dr. Feltes responded that it was not; it is in Hoboken, on the Hudson.

Mr. Derickson then brought up the Meadowlands District and how it is described on the NJSEA website, with mention of Jersey City.

CEO Sanz and Vice Chair Remaud stated that a section of Jersey City is in the District; a very tiny piece of Jersey City.

Mr. Derickson continued by saying the project sits right where Jersey City hits Hoboken and was asking for clarification that the MCT jurisdictional boundaries did not reach that far up in Jersey City.

CEO Sanz responded by explaining there are different boundaries being discussed. The Hackensack Meadowlands District boundaries are clearly defined and are distinct from the Hackensack River Watershed. The NJSEA has different jurisdictional boundaries from the MCT, which has a larger boundary that extends to the Hackensack River Watershed.

Mr. Derickson then referred to the terms Meadowlands District and Meadowlands Region, which he stated are capitalized terms in the only document he has, the recorded document, and it doesn't define what those are. He made mention to documents that were considered in part of the public bid request, the pre-bid meeting and what came out of it -- the finalized approved MBI, and said that in the end the description of the service area carries forward that language -- Meadowlands District and/or in connection with. His concern is the inconsistent language and inconsistent interpretation.

Delegate Mayor Santos asked Mr. Derickson how this site relates to the Meadowlands District or Hackensack River Watershed.

Mr. Derickson provided his understanding of the Longslip fill project and how the rail spur would travel into the Meadowlands District and that it has sufficient connection with it. He noted that when he spoke to Jim Cannon and NJ Transit that's how it is explained to him and NJ Transit feels there is sufficient connection because of the spur itself.

Delegate Mayor Santos then asked where the spur was -- from where to where.

Mr. Derickson responded that he did not know and he would be happy to get that information from NJ Transit.

Chairman Sheehan gave a brief summary of the Longslip project and noted how the trains that would use the Longslip elevated track would go right through the Meadowlands, across the river, right through Secaucus and ultimately go under Jersey City, Hoboken and get into the

Hoboken Terminal right next to Longslip. He continued by saying that is it relatively easy to see there's a transportation linkage, but questioned whether there is an ecological connection. He concluded by saying you can justify making a decision purely on "hardware" instead of making the decision based on ecological and scientific conservation principles - that's what we are really debating.

A brief discussion ensued on the ARC project and what was anticipated at that time - back in 2010.

Mr. Derickson then brought up that this is all very specific to the Longslip Project and if he is allowed to expand the service area and respond to the IFP, that is all well and good; and he may lose that battle but that's what he thinks Transit and public deserve - a public bid process. He then added that down the road another project could come up, which falls in this same realm, outside the currently defined service area; will we have the same problem at that point. He concluded by asking is it not appropriate to deal with it now, looking to the future, knowing there are other projects coming?

CEO Sanz then commented saying when Mayor Santos asked him that question he didn't have any identifiable projects.

Mr. Derickson responded that Gateway was a good one and when on to explain that it is not known today whether Port Authority or NJ Transit would be the ones looking for the mitigation. He noted that he has been getting phone calls from Amtrak, working with NJ Transit. Mr. Derickson added that he currently did not have any permit applications and continued by saying the fact of the matter is there are other things coming and feels it important to look beyond the immediate project.

Dr. Feltes spoke about the ARC project and how it was anticipated at the time to use Kane, but Kane wasn't approved, so they had to be able to specify a plausible litigation plan. He then brought up the proposed Gateway project, Amtrak Transit project and how they noted ARC as a lesson. Dr. Feltes continued by saying everybody looks at the map for opportunities and often the conclusion is the best place to do the enhancement, or maybe only place is in the Hackensack (Meadowlands). He added that IRT questions him sometimes about having impacts outside the District and doing the mitigation in the District, noting they view this as a positive thing for the Meadowlands; the interest of the Meadowlands benefits. He concluded by saying that there are discussions that come up regularly on this issue.

Vice Chair Remaud commented on Dr. Feltes line of thought by noting the one thing he realized (looking at the map submitted by Mr. Derickson) how bound the HUC is by New York and the Meadowlands, adding that one of the concerns MCT has with geography is, why not Passaic County, or Essex County or the next HUC - how do you draw boundaries. Vice Chair Remaud said that in looking at the map, you see a difference between how this HUC is bound as opposed to the other properties out there. His concern is losing all sense of the boundaries.

Dr. Feltes responded saying Mark Renna tries to push the limit and has been successful in having his service area larger. But the sense of IRT members is that's enough and in some cases questions why they approved some of the expansions for MRI3.

Delegate Mayor Santos then posed a question to Dr. Feltes, asking if there is any benefit to connecting the impact with the mitigation, whether ecologically there is a nexus between the two that they should be kept in the same region; or whether the impact can be 500 miles away as long as we are getting the benefits.

Dr. Feltes responded by saying the Federal regulations try to specify and limit to a watershed approach. He noted that there is regulation that does restrict in a general sense the region, which could be considered generally in the workings of the regulatory body and its advisory committee. If nothing is available, they go to the adjacent or next plausible area.

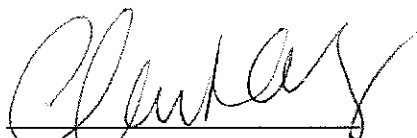
DAG Stypinski then clarified that the map Vice Chair Remaud was referring to was attached to the June 2, 2016 letter from Kane Mitigation to MCT.

Chairman Sheehan commented that the Board would probably not be able to rule today but they we're going to take everything said into consideration and hope to get a letter back and forth between the Army Corps and MCT as quickly as possible. He continued by saying if the Board felt they had enough information to make an informed decision, it would be on the agenda in August. He added that if the Board still had questions, they may ask for a meeting to clarify some of them.

Before adjourning, Chairman Sheehan thanked Mr. Derickson and Mr. Murphy for bringing this to the Board in a very civil way and making it as painless as possible.

Chairman Sheehan asked for a motion to adjourn. Motion was made by Delegate Gallagher, seconded by Vice Chair Remaud, with all in favor.

I certify that this is a true and accurate transcript of the Regular Session Minutes of the Meadowlands Conservation Trust Board meeting of July 21, 2016.



Christine A. Sanz
Chief Executive Officer

July 21, 2016

NAME	Roll Call	16-06	
Chairman Bill Sheehan	P	Y	
NJSEA Delegate Ralph Marra	P	Y	
Trustee Greg Remaud	P	Y	
HMMC Delegate Mayor Alberto Santos	Arrived 10:08am	Y	
NJDCA Delegate Gabrielle Gallagher	P	Y	

P = Present A = Absent R = Recuse
Y = Affirmative N = Negative