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Governor

TAHESHA WAY
Lt. Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Commissioner
Department of Environmental
Protection

CHRISTINE GUHL-SADOVY
President
Board of Public Utilities

JACQUELYN A. SUAREZ
Commissioner
Department of Community
Affairs

WATERSHED PROPERTY REVIEW BOARD) ORDER
REQUEST ON BEHALF OF THE COUNTY OF) GRANTING
BERGEN FOR APPROVAL OF MORATORIUM) EXEMPTION
EXEMPTION FOR EASEMENT FOR A)
PORTION OF BLOCK 2301, LOT 1, COMMONLY)
KNOWN AS 7 PASCACK ROAD,)
WOODCLIFF LAKE, NEW JERSEY)

(SERVICE LIST ATTACHED)

On August 30, 2024, Veolia Water New Jersey (“Veolia”) on behalf of the County of Bergen (“County”), filed an application with the Watershed Property Review Board (“Board” or “WPRB”) for an exemption from the Watershed Protection and Moratorium Act, P.L. 1988, c. 163, as amended by P.L. 1990, c.19 (the “Act”). Specifically, Veolia seeks to convey an approximately 2,264 square feet or 0.052-acre permanent easement on its property at Block 2301, Lot 1 in the Borough of Woodcliff Lake, Bergen County to the County of Bergen (“County”) in support of the County’s Rosengren Court/Pascack Road Drainage Improvement Project (“Project”). Without the exemption, the conveyance of any permanent easement interest is prohibited by the Act. This order adopts Board Staff’s recommendation to grant the requested exemption in accordance with the conditions outlined below.

BACKGROUND/PROCEDURAL HISTORY

Block 2301, Lot 1 in the Borough of Woodcliff Lake, County of Bergen (“Property”) contains the majority of the Woodcliff Lake and numerous acres of forested buffer land

surrounding the reservoir. Woodcliff Lake was created in the early 1900s by damming the Pascack Brook (FW2-NTC1¹), a tributary to the Hackensack River, and has a drainage area of 19.4 square miles and a storage capacity of 871 million gallons of water. The Property is owned and operated by Veolia for the purposes of protecting a surface water supply source. Therefore, the Property falls under the Act's moratorium on the conveyance of watershed property.

The intersection of Pascack Road and Church Road is located adjacent to the southwest corner of the Property. The County owns and maintains Pascack Road and the current stormwater system for Pascack Road. County records indicate that a stormwater outfall structure, which drained Pascack Road via two inlets located on the west side of the road and an inlet located at the corner of the intersection, has existed on the Property since at least 1916. Current inspection, however, revealed no proper stormwater outfall exists for the terminus of the County's storm drain system within Pascack Road, allowing stormwater to sheet flow into the Property without any point of discharge or erosion control measures.

During large rain events, water ponds in the area of the two existing inlets. The stormwater system does not provide for proper drainage and has caused localized flooding on the west side of Pascack Road and erosion along the north side of Church Road. This failure of the existing stormwater system has become a potential hazard to vehicular traffic on Pascack Road. In light of the current conditions and a new residential development (Woodstack Homes) to be constructed across Pascack Road from the Property, which will tie into the County's existing storm drain system, improvements to the stormwater system are necessary. Woodstack Homes proposes to redevelop a previously approved single family residential five lot subdivision with a multifamily residential development of four proposed townhouse buildings. The stormwater system for this development will tie into the County's existing stormwater management facilities along Pascack Road.

In order to remedy the existing road hazard conditions and the lack of a stormwater outfall for the drainage system, the County is seeking a 0.052-acre (2,264 square foot) permanent easement from Veolia in support of the Rosengren Court/Pascack Road Drainage Improvement Project. The Project will include the construction of a headwall and scour pad in conformance with standard outfall design methods which will provide erosion control and water quality measures and allow for the proper maintenance of the storm drain system by the County. These improvements will significantly improve public safety along Pascack Road and address the existing sheet flow into the Property. The proposed permanent easement will allow the County to construct, access, and maintain the drainage improvements within the easement area. An aerial map illustrating the Property and the proposed easement area is attached as Exhibit 1. The proposed easement area is further identified in Exhibit 2.

¹ According to the New Jersey Surface Water Quality Standards at N.J.A.C. 7:9B, the Pascack River is classified as a FW2-NTC1 stream. FW2 is a classification given to fresh waters that are not designated as FW1 or Pinelands Waters. NT means non trout production waters. C1 represents Category One waterways. C1 waters are protected from any measurable change to existing water quality because of their exceptional ecological, recreational, fisheries or water supply significance.

During the review of this application, Board Staff identified a small fifty square foot roadway encroachment on the Property. This encroachment most likely occurred as a result of paving that was undertaken by the County road contractor and included guiderail, curbing and part of the pavement of Pascack Road. As a result of this finding, Veolia and the County agreed to expand the scope of the permanent easement being requested as part of this exemption to acknowledge the roadway encroachment and to allow it to remain until such time that the roadway is repaved or future improvements are made to the intersection at which time the encroachment will be eliminated. Since this fifty square foot area is already contained within the proposed easement, the permanent easement area does not have to be altered or enlarged.

The proposed stormwater outfall structure will be located more than 600 feet from the water's edge of Woodcliff Lake reservoir. A scour pad made of stone will be provided at the outfall to dissipate stormwater flow, eliminating any erosion potential on the Property. The easement area consists of maintained lawn areas so no trees (six inches or greater in diameter at breast height) were identified within the proposed easement area. Therefore, the Project will not result in any impacts to the forested watershed buffer on the Property. Even though there is a densely wooded 600-foot buffer from the Project area to the reservoir, the County proposes to install silt fencing to delineate the limit of disturbance during construction as well as inlet filters to limit the amount of sediment leaving the Project area.

A Settlement Agreement ("Agreement") was signed between Board Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network and Veolia (then United Water New Jersey, Inc.) on March 26, 2009, and adopted by Board Order on the same date. Under the Agreement, as mitigation for identified violations of the Act, Veolia (the "Grantor") granted a conservation easement ("Conservation Easement") to New Jersey Department of Environmental Protection ("NJDEP") (as "Grantee"). The Property is subject to the Conservation Easement. The proposed permanent easement will require the County and Veolia to obtain a separate approval from NJDEP's, Office of Transactions and Public Land Administration.

Board Staff conducted a site visit on September 19, 2024 and was able to view current conditions, establish the public need for the Project, and review the potential impacts of the Project on Veolia's watershed property. A 30-day written public comment period was held from September 9, 2024 to October 8, 2024. Board Staff did not receive any public comment on this application.

DISCUSSION

The Act prohibits any "municipality, municipal utility authority, or public utility" from conveying "any land utilized for the purpose of the protection of a public water supply." Section 1 of P.L. 1998, c. 163. In other words, the Act places a moratorium on all conveyances of watershed property. The Act authorizes the Board to grant exemptions to the Act's moratorium if the applicant demonstrates "that there is a compelling public

need for the conveyance of the property, that the denial of the exemption would result in extraordinary hardship, or that the sale or development of the watershed property is otherwise consistent with the purposes of [the] Act.” P.L. 1998, c. 163 2a. The requirements for demonstrating the need for an exemption are listed in the disjunctive, and an applicant need only demonstrate one of the three enumerated reasons to obtain an exemption to the Act. The Act further requires that an applicant proposes mitigation of any adverse environmental impact which would result from an exemption granted by the Board.

In the matter at hand, Veolia is seeking an exemption that would allow it to convey to the County a 0.052-acre permanent easement over a portion of the Property. Veolia represents it maintains the Property for the purpose of protecting the Woodcliff Lake reservoir, a source of public water supply. Hence, the Act’s moratorium is applicable and prohibits Veolia from conveying any easements to the County unless this Board finds one of the three exemptions applies.

CONCLUSION

The Board is aware of the findings of its Staff that there is a compelling public need for the conveyance of the permanent easement in support of the County’s Project. These findings are the result of the thorough and complete review of the record in this proceeding and are limited to the facts of this unique Project. Further, these findings shall not be construed as a determination by this WPRB regarding any other conveyance of properties for which a future application may now be pending or may be brought in the future. As with all determinations by this Board, any future determination will be made on a case-by-case basis giving due regard to the information presented within each such application.

Based on the September 19, 2024 site visit, review of the record and in consideration that no public comments were received, Board Staff concurs that there is a compelling public need for the Project. In addition, on the same basis, including consultation with the NJDEP, Board Staff is satisfied that Veolia and the County’s acknowledgement of the future elimination of the fifty square foot roadway encroachment on the Property, as well as the proposed drainage improvements, are protective of the watershed and that granting of the exemption will not pose a threat to the water supply. The proposed outfall will further represent an improvement from the current sheet flow of water from the roadway. Therefore, Board Staff recommends that this Board approve the request for an exemption subject to the following conditions:

1. The County must provide Veolia with notice prior to any construction activity on the Property.
2. Veolia must have the opportunity to have its representative present to observe and object to any actions taken by the County on Veolia’s property.

3. No tree removal shall result from any construction activities on the Property.
4. Before Veolia grants any permanent easement on the Property to the County, Veolia and the County must obtain approval from the NJDEP's Office of Transactions and Public Land Administration, Public Land Administration Section in regards to the Project's impact on the NJDEP-held Conservation Easement.
5. Veolia must submit for Board Staff review and approval amended permanent easement language that includes acknowledgement of the roadway encroachment.

The application, the Deed of Easement and plans contained in the documents submitted by Veolia are significant and the WPRB **RELIES** upon the conditions and protections contained therein in considering this application. The WPRB **HEREBY FINDS** that the additional conditions of this Order provide sufficient mitigation of any potential water quality impacts. Therefore, the WPRB **HEREBY ORDERS** that the conditions agreed to in the Deed of Easement document shall become part of this Order.

The WPRB **FURTHER ORDERS** that Veolia work in good faith with the County to determine the most beneficial on-going maintenance plan for the proposed stormwater management facility and to limit the impact upon water supply. The WPRB **FURTHER ORDERS** that Veolia shall have the opportunity to have its representative present to observe and object to any actions taken by the County on Veolia's property.

Therefore, the Board **HEREBY ORDERS** that the application for an exemption, pursuant to Section 2(a) of P.L. 1988, c. 163, as amended, shall be and hereby is **APPROVED** subject to the conditions recited above.

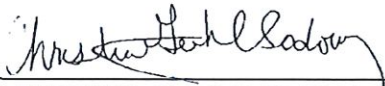
This Order addresses consideration of an exemption from the Act and does not relieve Veolia and the County of any other obligations that may be required pursuant to any statute or regulation, including any obligations under the NJDEP-held Conservation Easement.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on October 24, 2024.

DATED: 10/24/24

WATERSHED PROPERTY REVIEW BOARD

BY:



CHRISTINE GUHL-SADOVY
President
Board of Public Utilities



JUDITH YEANY
Assistant Director, Office of Transactions and Public Land Administration
Department of Environmental Protection
Pursuant to delegation order dated February 5, 2024.



DONALD PALOMBI
Chief Regulatory Officer
Department of Community Affairs
Pursuant to delegation order dated March 18, 2024

WATERSHED PROPERTY REVIEW BOARD
REQUEST ON BEHALF OF THE COUNTY OF BERGEN FOR APPROVAL
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PORTION OF BLOCK 2301, LOT 1, COMMONLY KNOWN AS
7 PASCACK ROAD, WOODCLIFF LAKE, NEW JERSEY
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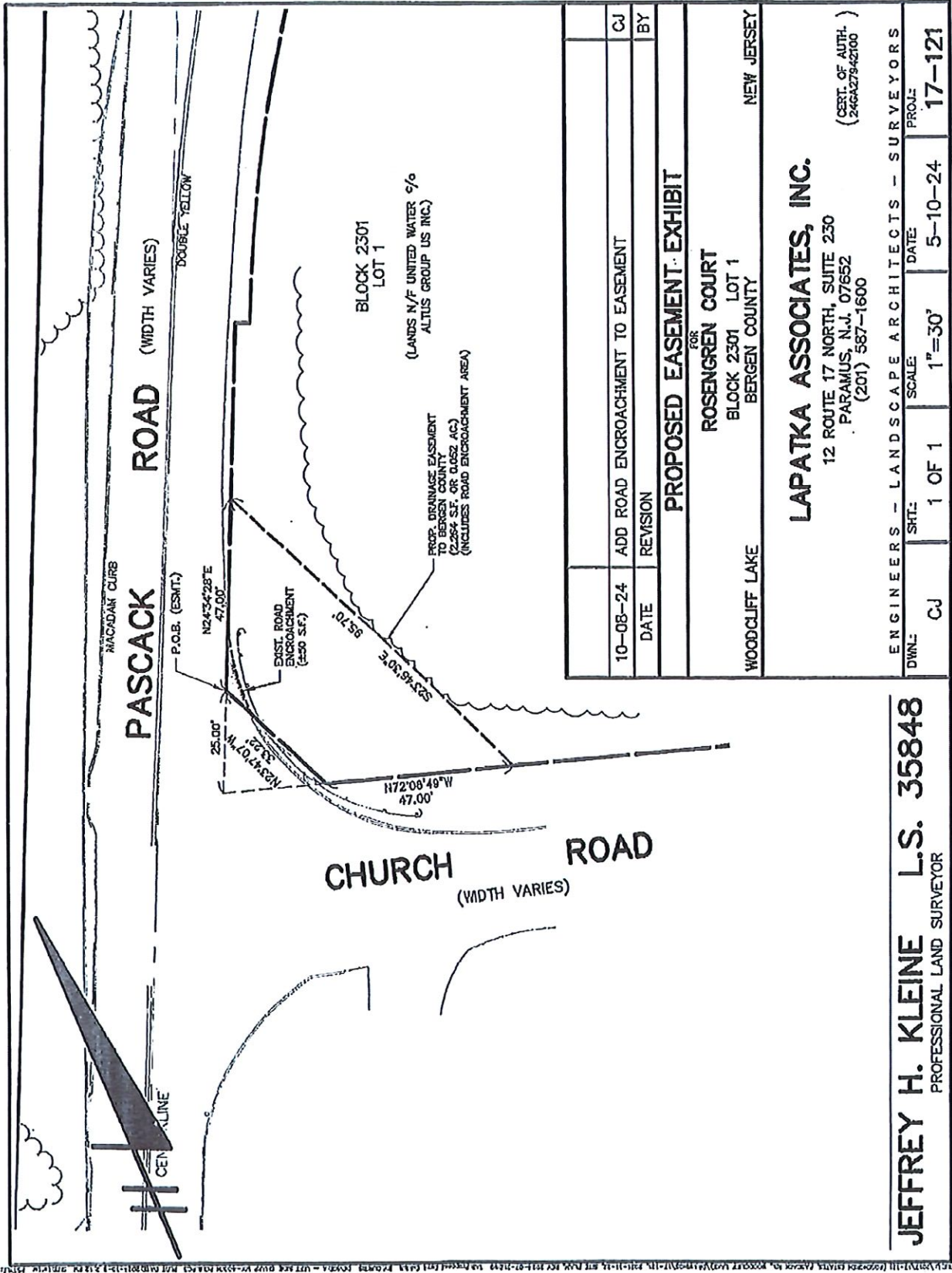
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10-08-24	ADD ROAD ENCROACHMENT TO EASEMENT	CJ
DATE	REVISION	BY
PROPOSED EASEMENT EXHIBIT		
FOR ROSENGREN COURT BLOCK 2301 LOT 1 BERGEN COUNTY NEW JERSEY		
LAPATKA ASSOCIATES, INC. 12 ROUTE 17 NORTH, SUITE 230 PARAMUS, N.J. 07652 (201) 587-1600 (CERT. OF AUTH. - 246A279-62100)		
ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS		
DRAWN: CJ	SHT: 1 OF 1	SCALE: 1"=30'
	DATE: 5-10-24	PROJ: 17-121

JEFFREY H. KLEINE
PROFESSIONAL LAND SURVEYOR
L.S. 35848