



**PHILIP D. MURPHY**  
*Governor*

**SHEILA Y. OLIVER**  
*Lt. Governor*

**STATE OF NEW JERSEY**  
WATERSHED PROPERTY REVIEW BOARD

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*Commissioner*  
*Department of*  
*Environmental Protection*

**JOSEPH L. FIORDALISO**  
*President*  
*Board of Public Utilities*

**SHEILA Y. OLIVER**  
*Commissioner*  
*Department of Community*  
*Affairs*

**MINUTES OF REGULAR MEETING OF WATERSHED PROPERTY REVIEW BOARD**

A regular meeting of the Watershed Property Review Board ("WPRB" or "Board") was held on July 11, 2023 at the New Jersey Board of Public Utilities' office at 44 South Clinton Avenue, Trenton, New Jersey pursuant to the Board's public notice and posted agenda.

Public notice was given pursuant to the Open Public Meetings Act ("OPMA") at N.J.S.A. 10:4-18 by posting notice of the meeting on the WPRB, Department of Environmental Protection ("DEP") Office of Transactions and Public Land Administration, Department of Community Affairs ("DCA") and Board of Public Utilities ("BPU") websites. Notice was also given in the DEP Bulletin and delivered to the Department of State and the following newspapers circulated in the State of New Jersey:

The Bergen Record  
The Star Ledger

The following members of the Board were present:

Deputy Commissioner Sean Moriarty, DEP  
Chief Regulatory Officer, Donald Palombi, DCA

Deputy Attorney General ("DAG") Gersten opened the meeting with a call to order at 2:07 PM and a reading of the OPMA statement indicating that adequate public notice of the meeting was given including posting notice on the WPRB, DEP Office of Transactions and Public Land Administration, DCA and BPU websites. Notice was also posted in the DEP Bulletin and delivered to the Department of State, the Bergen Record and the Star Ledger.

DAG Gersten took roll call and welcomed the members of the Board. BPU President Fiordaliso was not able to attend the meeting, however BPU Deputy Chief of Staff Henry Gajda was present. DAG Gersten reminded the Board that Deputy Chief of Staff Henry Gajda could comment but not vote on the agenda items. DAG Gersten confirmed that there was a quorum and asked for opening comments. Hearing no opening comments from the members of the Board, DAG Gersten began with the first item on the agenda.

## **II. Request for an Exemption from the Watershed Protection and Moratorium act by the City of Newark on Behalf of the New Jersey Department of Transportation for Route 23 NB, Bridge over the Pequannock River Located in the Township of West Milford, Morris County**

The City of Newark filed an application with the Board for an exemption from the Act. Specifically, Newark seeks an exemption to convey a temporary construction easement ("TCE") to the New Jersey Department of Transportation ("DOT") on a portion of its watershed property located in the Township of West Milford, Passaic County in connection with DOT's Route 23 Northbound, Bridge over Pequannock River project ("the Project"). Without the exemption, the conveyance of any easement, even one temporary in nature, is prohibited by the Act. There will be no permanent conveyance of property resulting from this exemption request.

The Newark-Pequannock Watershed lands are located within six municipalities throughout three New Jersey counties: Morris, Passaic and Sussex. These lands encompass approximately 35,000 acres and were purchased by Newark in 1900 for the purpose of supplying clean water to its residents. The DEP holds conservation easements on approximately 33,000 acres of these watershed lands. These easements were purchased by the DEP in phases between 1994 and 2006, and generally transferred all non-water supply related development rights on the properties to the DEP. A Deed of Conservation Easement (Phase 7), dated May 31, 2006, covers 9,640 acres of the watershed lands, including Block 16906, Lot 3 in the Township of West Milford (the "Property"). The Phase 7 conservation easement is held by the DEP and is administered as part of Wawayanda State Park.

The Project consists of the replacement of bridge Structure No. 1605-174 and roadway improvements on Route 23 northbound at mile marker 25.52, between Reservoir Road and Canistear Road, in the Township of West Milford. It was determined that the existing bridge structure, built in 1968, is structurally deficient due to the poor condition of the bridge deck and substructure. Replacement of the bridge is necessary since the structure is nearing the end of its useful life. The Pequannock River flows under the bridge from the southwest to the northeast through the Project area. The east wingwalls of the existing bridge extend past DOT's right-of-way ("ROW") and encroach upon the Property.

The proposed improvements will have unavoidable impacts on the Property given that the existing bridge wingwalls are already located on the Property. Therefore, in support of the Project, Newark proposes to convey a 0.212-acre (9,232-square foot) temporary construction easement on the Property to DOT to accommodate the heavy construction equipment needed to demolish the existing wingwalls and construct the proposed bridge within DOT's ROW limits. During construction the existing railroad maintenance access driveway will also be reconstructed. It is anticipated the construction will begin in the Fall of 2023 and last for approximately eight to twelve months.

There are ten trees, greater than six inches in diameter at breast height, located within the TCE. DOT will protect six of these trees during construction by placing snow fencing around the base of the tree. However, it is anticipated that the other four trees (two red maple and two black locust trees) will be removed to facilitate the temporary construction activities. DOT will restore the property through seeding, landscaping and the planting of four trees within the project area.

DOT received DEP, Division of Land Resource Protection ("DLRP") approval and received a two-year Right of Entry approval from the DEP's Office of Transactions and Public Land Administration granting access to the bridge over the Property which is covered by the DEP-held conservation

easement. A 30-day written public comment period was held from May 1, 2023 to May 31, 2023. Board Staff did not receive any public comment on this application.

DAG Gersten asked if there were any comments. Deputy Commissioner Moriarty thanked DOT for getting all other DEP approvals prior to coming before the Board for an exemption request. Hearing no further comments, DAG Gersten asked for a motion on this item. Deputy Commissioner Moriarty moved to approve this project and Chief Regulatory Officer Palombi seconded. Both members of the Board voted to approve the exemption request.

### **III. Watershed Property Review Board Request to Exempt Conveyance of Watershed Property Involving the Exchange Properties within the Butler Reservoir System with Our Lady of Magnificat Catholic Church Located in the Borough of Kinnelon, Morris County**

The Borough of Butler filed an application with the Board for an exemption from the Act. Specifically, Butler seeks an exemption to allow an equal exchange of property within the Butler Reservoir System with lands held by Our Lady of Magnificat Catholic Church ("OLM") located in the Borough of Kinnelon, Morris County. Without the exemption, the conveyance of watershed property is prohibited by the Act.

The Butler (Takeout) Reservoir is the source of potable water for the Butler Water Department. Butler owns various watershed lands adjacent and upstream of the reservoir, including Block 33801, Lot 101 (57 acres); Block 33901, Lot 101 (68.94 acres) and 34401, Lot 101 (105 acres) along Miller Road and Fayson Lake Road in the Borough of Kinnelon, Morris County ("Butler Property"). These three properties are undeveloped and managed by Butler for water supply and watershed purposes.

OLM currently owns Block 33801, Lot 102 (rectory property) and Block 34401, Lot 102 (church and cemetery property) on either side of Miller Road in the Borough of Kinnelon, Morris County. Undeveloped portions of Block 33801, Lot 102 have been identified by Butler as important watershed property since the Stone House Brook passes through this property connecting two surface water bodies on adjacent Butler Property.

In an effort to consolidate management and ownership of watershed property in the area and to enable holistic management of the connecting water features, including wetlands, riparian corridors and transition areas in the area, Butler is seeking to acquire approximately 30.43 acres of Block 33801, Lot 102 from OLM. Acquisition of this area will improve Butler's ability to administer its reservoir system. Both Butler and OLM have invested significant time and resources over the years in negotiating a fair and equitable (acre-for-acre) exchange of land. Appraisals commissioned during negotiations indicate that the proposed exchange is equitable in terms of fair market value. A Forest Habitat Evaluation Report, generated by Watermen, LLC, concluded that the lands proposed for exchange are of equal value measured in terms of forest structure, density and species.

Butler's Mayor and Council agreed to move forward with the land exchange on the condition that the land being granted by Butler to OLM is used strictly for the expansion of the existing cemetery and there is no future construction of commercial or residential buildings on the property. Therefore, OLM has agreed to impose a conservation restriction on the property it receives from Butler, which will limit development on all but one parcel. Development on this parcel (known as Parcel 3) is limited to cemetery use only. Board Staff has reviewed and approved the proposed conservation easement language and has recommended that the Board condition any exemption

approval using this Staff approved conservation easement language. A 30-day written public comment period was held from May 1, 2023 to May 31, 2023. Board Staff did not receive any public comment on this application.

DAG Gersten asked if there were any comments. Deputy Commissioner Moriarty stated that all parties did a thorough job negotiating this land swap and it appears to be a net benefit for the watershed. Chief Regulatory Officer Palombi agreed that it appears to be a win-win proposal. DAG Gersten asked for a motion on this item. Chief Regulatory Officer Palombi moved to approve this project and Deputy Commissioner Moriarty seconded. Both members of the Board voted to approve the exemption request.

#### **IV. Jurisdictional Determinations**

DAG Gersten informed the Board that Staff conducted one jurisdictional determination this year for the Borough of Allendale who was seeking a whole system sale to Veolia Water New Jersey in the Borough of Allendale, Bergen County. Staff determined that the Board did not have jurisdiction over the properties included in the sale and sent a letter to the Borough on February 3, 2023, confirming its determination. Board members did not have any comments on this agenda item.

#### **V. Update on the Activities of the WPRB Staff Since the Previous Board Meeting in October 2022**

DAG Gersten provided an update on Board Staff activities since the previous Board meeting in October 2022. Updates included Staff continuing the review of an exemption request the Board received from New Jersey American Water (NJAW) for a proposed conveyance of land in the Township of Millburn, Essex County. NJAW also recently approached Staff regarding a possible sale of property to the New Jersey Conservation Foundation in the Township of Clinton, Hunterdon County. Staff will continue to work with these applicants and will bring forth any requests that are complete for review at the next Board meeting. There were no comments from the members of the Board on this agenda item.

DAG Gersten asked if there were any final comments or question for Staff, hearing none, asked for a motion to adjourn the meeting. Deputy Commissioner Moriarty moved and Chief Regulatory Officer Palombi seconded.

There being no further business before the Board, the meeting was adjourned at 2:38 PM.



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Jessica Patterson, Board Staff

Dated: August 17, 2023