



PHIL D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

SHAWN M. LaTOURETTE
Commissioner
Department of
Environmental Protection

JOSEPH FIORDALISO
President
Board of Public Utilities

SHEILA Y. OLIVER
Commissioner
Department of Community
Affairs

REQUEST FOR AN EXEMPTION FROM)	ORDER
THE WATERSHED PROTECTION)	GRANTING
AND MORATORIUM ACT BY)	EXEMPTION
THE CITY OF NEWARK ON BEHALF OF THE)	
NEW JERSEY DEPARTMENT OF TRANSPORTATION)	
FOR ROUTE 23 NB, BRIDGE OVER THE)	
PEQUANNOCK RIVER)	
WEST MILFORD TOWNSHIP, PASSAIC COUNTY)	

(SERVICE LIST ATTACHED)

On March 21, 2023, the City of Newark ("Newark"), on behalf of the New Jersey Department of Transportation ("NJDOT"), filed an application with the Watershed Property Review Board ("Board") 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, Newark seeks an exemption to convey a temporary construction easement ("TCE") to NJDOT on a portion of its watershed property located in the Township of West Milford, Passaic County in connection with NJDOT's Route 23 Northbound, the Bridge over Pequannock River project ("Project"). Without the exemption, the conveyance of any easement, even one temporary in nature, 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

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 New Jersey Department of Environmental Protection ("NJDEP") holds conservation easements on most of these watershed lands (approximately 33,000 acres). These easements were purchased by the NJDEP in phases between 1994 and 2006, and generally transferred all non-water supply related development rights on the properties to the NJDEP. 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 (hereafter, the "Property"). The Phase 7 conservation easement is held by the NJDEP and is administered as part of Wawayanda State Park.

The Project consists of a bridge replacement (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. The existing bridge structure, built in 1968, is a single span prestressed concrete I-beam superstructure with reinforced concrete composite deck. The Pequannock River (FW2-TPC1¹) flows under the bridge from the southwest to the northeast through the Project area. The east wingwalls of the existing bridge extend past NJDOT's right-of-way ("ROW") and encroach upon the Property. A recent bridge re-evaluation survey report classified the bridge as 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 Project has been designed to correct substandard vertical and horizontal stopping sight distances, address unsafe conditions and meet all required design criteria. The proposed structure is a single span, prestressed concrete spread box beam bridge with a span length of 50 feet and will be located within the same general footprint as the existing bridge structure. The abutments will be situated along the same skew as the existing bridge to maintain the substructure's alignment relative to the Pequannock River, and a three-foot-wide wildlife passage will be provided along each abutment. The proposed bridge will carry two 12-foot lanes, a 5-foot 2 inch wide inside shoulder and an 18-foot 4-inch-wide outside shoulder. The superstructure will be supported by full height, cast-in-place concrete abutments with U-shaped wingwalls at all four bridge corners to locate the new structure entirely within the NJDOT's ROW and eliminate the existing encroachment on 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 feet) temporary construction easement on the Property to the NJDOT to accommodate the heavy construction equipment needed to demolish the existing wingwalls and construct the proposed bridge within NJDOT's ROW limits. During construction the existing railroad maintenance access driveway will also be reconstructed. It is anticipated the construction

¹ According to the New Jersey Surface Water Quality Standards at N.J.A.C. 7:9B, the Pequannock River is classified as a FW2-TPC1 stream. FW2 is a classification given to fresh waters that are not designated as FW1 or Pinelands Waters. TP means trout production waters and C1 means a Category One water body.

will begin in the Fall of 2023 and last for approximately eight to twelve months. The attached "Parcel E84" plan, dated May 2022, depicts the TCE location in Exhibit 1.

The Project will also include improvements to one outfall located at Block 566.02, Lot 1 in the Township of Jefferson (also Newark watershed property) and the construction of a new outfall on the Property. NJDOT has demonstrated that it has pre-existing rights (under the document filed in Passaic County Deed Book 2154, Page 101, dated October 6, 1970 and recorded October 9, 1970) to construct, maintain and improve these outfall structures. Therefore, Newark's exemption request does not include these elements of the Project.

There are ten trees, greater than six inches in diameter at breast height, located within the TCE. NJDOT 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. NJDOT will restore the property through seeding, landscaping and the planting of four trees within the Project area.

On September 7, 2022, NJDOT received NJDEP, Division of Land Resource Protection ("DLRP") approval of a Flood Hazard Area Individual Permit and Freshwater Wetlands General Permits 10B and 11 for the Project. On May 17, 2023, NJDOT received a two-year Right of Entry approval from the NJDEP's Office of Transactions and Public Land Administration granting access to the bridge over the Property which is covered by the NJDEP-held conservation easement.

Board Staff conducted a site visit on April 10, 2023. 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.

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. 1988, 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. 1988, 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 propose mitigation of any adverse environmental impact which would result from an exemption granted by the Board.

In the matter at hand, Newark is seeking an exemption which would allow it to convey a TCE over a portion of the Property. Newark represents it maintains the Property for the purpose of protecting Newark's Pequannock Watershed lands, a source of Newark's public water supply. Hence, the Act's moratorium is applicable and prohibits Newark from conveying any interest in the Property, even on a temporary basis, to the NJDOT unless this Board finds one of the three exemptions applies.

NJDOT asserts that there is a compelling public need for the Project since it will maintain safe passage of vehicular traffic on Route 23 northbound as well as eliminate an existing encroachment on Newark's watershed lands.

Based on the April 10, 2023 site visit, and its review of the information provided by Newark and NJDOT and having received no public comments, Board Staff believes that there is a compelling public need for the conveyance of the temporary construction easement over a portion of the watershed property. The removal of the currently encroaching wing walls will have a net positive benefit on the watershed property. Board Staff is further satisfied that NJDOT's current mitigation plan is protective of the watershed. Board Staff therefore recommends that this Board approve the request for an exemption subject to the following conditions:

1. The NJDOT shall provide Newark with notice prior to any construction activity on the Property;
2. The NJDOT shall provide Newark with the opportunity to have its representatives present to observe and comment on any actions taken by the NJDOT on the Property;
3. The NJDOT shall comply with all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLRP Flood Hazard Area Individual Permit and Freshwater Wetlands General Permits as well as the Right of Entry Agreement with NJDEP; and
4. The NJDOT commits to consulting with Newark's representatives with respect to input for the native species selection and a maintenance schedule for any mitigation and/or replanting plans undertaken for the Project, including but not limited to the planting of four replacement trees. These trees shall be at least 2" to 2.5" caliper in size. NJDOT must ensure survival of these trees for at least two years. Any tree that does not survive within the first two years must be replaced.

CONCLUSION

The Board is aware of the findings of its Staff that not moving forward with the Project will lead to further public safety and water quality concerns due to the deterioration of the existing bridge. The record before the Board contains sufficient evidence demonstrating the public safety and water quality concerns if the Project is not completed. Based on the foregoing discussion and the conditions set forth above, the Board **HEREBY FINDS** that

there is a compelling public need for the Project and the conveyance of the temporary construction easement in portions of the property from Newark to the NJDOT. This finding is the result of the thorough and complete review of the record in this proceeding and it is limited to the facts of the Project and shall not be construed as a determination by this Board with regard to 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. Further, the Board is satisfied that the mitigation plan for this Project is appropriate and protective of the watershed.

The application, including the site plans, the NJDEP permits and approvals and the conditions included above, set forth standards by which the NJDOT and Newark shall conduct themselves in implementing the Project. After consideration of the entire application, including the site plans and the NJDEP permits and approvals, the Board **HEREBY GRANTS** an exemption from the moratorium of conveying watershed property under the Act, limited to the plan and purposes set forth in this application. As stated above, the Board **FINDS** that there is a compelling public need for this Project.

The application, including the site plans, and the NJDEP permits and approvals contained in the documents submitted by the NJDOT, is made part of the record and the Board **RELIES** upon the conditions and protections contained therein in considering this application. The Board **HEREBY FINDS** that these protections, plus the additional conditions of this Order provide sufficient mitigation of any potential water quality impacts. Therefore, the Board **HEREBY ORDERS** that the conditions agreed to and incorporated in the site plans and the NJDEP permits and approvals shall become part of this Order.

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 Newark and NJDOT of any other obligations that may be required pursuant to any statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on July 11, 2023.

DATED: 7/12/23

WATERSHED PROPERTY REVIEW BOARD

BY:



Sean D. Moriarty
Deputy Commissioner
Department of Environmental Protection
Pursuant to delegation order dated
February 24, 2022



Donald Palombi
Chief Regulatory Officer
Department of Community Affairs
Pursuant to delegation order dated
August 15, 2018

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
PEQUANNOCK RIVER, WEST MILFORD TOWNSHIP, PASSAIC COUNTY

SERVICE LIST

Joseph L. Fiordaliso
President
Board of Public Utilities
44 South Clinton Avenue, 7th Floor
Trenton, NJ 08625-0350

Sean D. Moriarty
Deputy Commissioner
Department of Environmental Protection
401 East State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625

Donald Palombi
Chief Regulatory Officer
New Jersey Department of
Community Affairs
101 South Broad Street
P.O. Box 800
Trenton, NJ 08625

Geoffrey Gersten
Division of Law
Dept. of Law and Public Safety
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101
geoffrey.gersten@law.njoag.gov

Jessica Patterson
NJDEP, Office of Transactions & Public
Land Administration
401 East State Street, 7th Floor
Mail Code 401-07 P.O. Box 420
Trenton, NJ 08625-0420
jessica.patterson@dep.nj.gov

Mike Kammer
Board of Public Utilities
Division of Water & Energy
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
mike.kammer@bpu.nj.gov

Brandon Simmons
Division of Law
Dept. of Law and Public Safety
RJ Hughes Justice Complex, 7th Fl
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Brandon.simmons@law.njoag.gov

Rebeca J. Karol, Esq.
Division of Law
Transportation, Construction &
Condemnation Section
25 Market Street, 8th Floor
P.O. Box 114
Trenton, NJ 08625-0114
Rebecca.karol@law.njoag.gov

DRAWN BY: ADVANTAGE ENGINEERING ASSOCIATES, P.C.

