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Department of
Environmental Protection

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President, Board of Public Utilities

**CHARLES A. RICHMAN** 

Commissioner
Department of Community
Affairs

WATERSHED PROPERTY REVIEW BOARD )
REQUEST o/b/o COUNTY OF BERGEN FOR )
APPROVAL OF CLOSTER/HARRINGTON PARK )
BRIDGE REPLACEMENT PROJECT )

ORDER GRANTING EXEMPTION

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

SUEZ Water New Jersey Inc. ("SWNJ") (formerly known as United Water New Jersey, Inc.), a public utility regulated by the New Jersey Board of Public Utilities, o/b/o County of Bergen, has filed an application with the Watershed Property Review Board ("Board") for an exemption to the prohibition from conveying watershed property under the Watershed Protection and Moratorium Act, P.L. 1988, c. 163, as amended by P.L. 1990, c. 19 ("Act"). This exemption will allow SWNJ to convey a temporary license and permanent easements on watershed property adjacent to the Oradell Reservoir in the Borough of Closter and the Borough of Harrington Park to the County of Bergen ("County") to support the Closter-Harrington Park Bridge Replacement Project ("Project"). This order adopts Board Staff's recommendation to grant the requested exemption in accordance with the conditions outlined below.

## **BACKGROUND/PROCEDURAL HISTORY**

On April 17, 2017, SWNJ filed an application with the Board for an exemption from the Act. Specifically, SWNJ sought an exemption to grant the County of Bergen a temporary license and permanent easements on portions of the following properties (the

Properties") to support the construction of the Project:

Borough of Closter, Bergen County – Block 403, Lot 39

Borough of Closter, Bergen County - Block 701, Lot 1

Borough of Closter, Bergen County – Block 707, Lot 1

Borough of Harrington Park, Bergen County - Block 1101, Lot 1

Borough of Harrington Park, Bergen County - Block 1209, Lot 1

The Oradell Reservoir is a water supply source for the residents of Bergen and Hudson Counties. All of the Properties included in the project area are owned by SWNJ, are located directly adjacent to the Oradell Reservoir and are being held for the purpose of protecting a surface water supply source. Therefore, the Properties fall under the Board's jurisdiction and are subject to the Act's moratorium on the conveyance of watershed property.

In addition, a Settlement Agreement ("Agreement") was signed between Board Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network ("Bergen SWAN") and SWNJ on March 26, 2009 and adopted by Board Order on the same date. Included in the Settlement Agreement is a Conservation Easement between SWNJ (as "Grantor") and the State of New Jersey, Department of Environmental Protection ("NJDEP") (as "Grantee"). Under the Settlement Agreement, as mitigation for identified violations of the Act, SWNJ granted a conservation easement to the New Jersey Department of Environmental Protection ("NJDEP") on approximately 3,095 acres of its lands and provided \$1 million to the Garden State Green Acres Preservation Fund to be utilized for the purchase of additional open space protective of the watershed in Bergen County, New Jersey. The Properties are listed in Schedule D of the Agreement and are subject to the Conservation Easement.

The Project is generally located at the Oradell Reservoir, between the intersections of County Route 505 (Knickerbocker Road and Livingston Street), Closter Road and Harrington Avenue on the municipal border between the Boroughs of Closter and Harrington Park, Bergen County. This intersection was originally supported by a concrete bridge that spanned the reservoir's channel. During the 1970s, a large storm event caused the bridge to collapse. Since this road is part of a local evacuation route, in the interest of public safety, the County needed to re-open the intersection as soon as possible. The County performed emergency repairs consisting of constructing an atgrade crossing with seven temporary corrugated metal pipe culverts, which hydraulically connected both sides of the reservoir.

Due to the deterioration of these temporary corrugated metal pipe culverts over time, several roadway and shoulder areas along the intersection have subsided. Heavy silt and sediment accumulation has significantly reduced the capacity for the culverts to convey water, essentially creating a dam and further causing erosion to the area. The

County is now looking to perform a major repair safety project to promote improved safety and circulation in the area.

The County proposes to replace the seven temporary culverts with a permanent bridge consisting of three reinforced concrete box culverts with associated headwalls, wing walls and stone rip-rap aprons. In addition, the County will also be reconfiguring the intersection to promote improved safety and circulation which will require minor utility relocation work as well as moving fencing and guiderails. Stormwater runoff from the intersection currently sheet flows directly into the reservoir. The County proposes to place inlets along curb lines which will trap debris from entering the reservoir.

While the County does not need the Board's approval to work in the existing right of way ("ROW"), which predates the Act, the County asked SWNJ for access to remove, replace and maintain the culverts and associated improvement as well as widen a portion of the intersection. Therefore, the County will need a temporary license to facilitate the construction of culverts and walls, undertake road widening activities and install the rip-rap. The County has also requested two permanent easements for the continued maintenance of the proposed improvements and the widening of the intersection on SWNJ's watershed property. Approximately 0.28 acre of temporary license area will be required to carry out the construction activities, including grading and subsequent mitigation plantings. The temporary license area is depicted on the Proposed Temporary License Plan attached as Exhibit 1.

Approximately 0.12 acre of permanent easement area will be required for the installation and maintenance of the box culverts, concrete headwall and wing walls and rip-rap areas on either side of the intersection. Approximately 0.041 acre of permanent easement area will be required for road widening activities, including installing new guiderail and fencing along with various stormwater management upgrades. This road widening easement will apply to areas where asphalt, fencing and guiderails currently exist outside the ROW on the Properties. While the Project will require the removal of approximately six trees, greater than six inches in diameter, only three of these trees are located on the Properties. The Project will also require the removal of various understory vegetation within the license and easement areas. The permanent easement areas are depicted on the Proposed Permanent Easement Plan attached as Exhibit 2.

In anticipation of this submission, on January 15, 2016, Board Staff conducted a site visit with representatives of SWNJ, Bergen SWAN and Hackensack Riverkeeper. The parties were able to view the hazardous transportation conditions, establish the public need for the project as well as review the potential impacts of the Project on the Properties.

In a letter dated May 10, 2017, Bergen SWAN stated that it does not object to the Project and set forth certain conditions which SWNJ subsequently agreed to. This letter is attached as Exhibit 3.

On January 22, 2016, the County received NJDEP, Division of Land Use Regulation ("DLUR") approval of a Freshwater Wetlands Protection Act General Permit

No. 10A (Minor Road Widening) (0200-06-0001.2 FWW 15001) and a Flood Hazard Area Control Act Individual Permit (0200-06-0001.2 FHA 15001) for the project. The County also received Bergen County Soil Conservation District approval for the project on February 4, 2016.

The County proposes to restore the area, post construction, by seeding and replanting the disturbed areas with native species. A total of 14 trees will be planted throughout the Project area, with six trees to be planted on the Properties, to mitigate the six trees being removed during construction. The County also proposes to plant an additional 150+/- shrubs and perennials on the Properties.

The channel in the area of the project consists of rocks, trash and debris from the original collapsed bridge that was never removed. The County proposes to restore these areas and will remove the remaining concrete debris in order to improve the hydraulic capacity of the channel and provide better water quality for the Oradell Reservoir. The banks of the Oradell Reservoir will be stabilized with rip-rap on either side of the Project. These rip-rap areas will continue to be maintained by SWNJ, the property owner, after the completion of the Project.

In addition, due to the reconfiguration of the intersection, approximately 0.16 acre of impervious surfaces is being replaced with pervious landscaping and lawn area. The proposed landscaping will consist of native species of trees, shrubs and grasses. While this new pervious area is outside of the Properties, it will result in less surface water runoff from the Project and will provide improved stormwater conditions in the area.

The County received \$2 million in funding for the Project from the New Jersey Department of Transportation ("NJDOT") through the Local Bridges, Future Needs Program. This funding is conditioned upon receiving Board exemption approval as well as a construction contract being awarded by the County prior to October 19, 2017.

## **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 permits the Board to grant an exemption from the moratorium under three circumstances. Section 2(a) of P.L. 1988, c. 163. The Board may permit the conveyance of watershed property if it finds: "(1) that there is a compelling public need for the conveyance of the property; (2) the denial of the exemption would result in extraordinary hardship; or (3) the sale or development of the watershed property is otherwise consistent with the purposes of this act" (which are generally to protect water quality and encourage open space preservation). Any person applying for an exemption must submit to the Board appropriate documentation addressing any impact on buffer areas and proposals for mitigation.

SWNJ is seeking an exemption which would allow it to convey to the County both a temporary license and permanent easements over portions of the Properties. SWNJ

maintains the Properties for the purpose of protecting the Oradell Reservoir, a public water supply. Hence, the Act's moratorium is applicable and prohibits SWNJ from conveying any easements to the County unless this Board finds one of the three exemptions applies.

The County states that there is a compelling public need for the Project since it will: reduce the likelihood of roadway closures due to structural problems; replace a functionally obsolete bridge structure on a highly traveled roadway on a local evacuation route; improve the hydraulic conveyance and reliability of the Oradell Reservoir; improve water quality through the reduction of soil erosion and debris entering the reservoir; and, significantly improve vehicular and pedestrian safety. Any inaction may lead to a failure of the culverts resulting in impacts to the intersection, the Oradell Reservoir and SWNJ's watershed property.

Based on the January 2016 site visit and its review of the information provided by SWNJ and the County, Board Staff concurs there is a compelling public need for the Project. In addition, Board Staff is satisfied that the County's current mitigation plan, which includes the planting of at least six trees and various shrubs and perennials to replace riparian vegetation that must be removed in order to construct the Project, is protective of the watershed.

Therefore, Board Staff recommends that this Board approve the request for an exemption subject to the following conditions:

- 1. The County shall provide SWNJ and Bergen SWAN with notice prior to any construction activity on the Properties;
- 2. The County shall work in good faith with SWNJ to determine the most beneficial on-going maintenance plan for the Project improvements that will limit the impact upon water quality of the Oradell Reservoir;
- SWNJ shall have the opportunity to have its representative present to observe and comment on any actions taken by the County on SWNJ's property;
- 4. The County and SWNJ shall ensure that any PSE&G, Orange and Rockland Electric, Verizon or other utility relocations do not occur on SWNJ watershed property unless the area is subject to an existing utility easement.
- 5. The County and SWNJ shall comply with any and all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLUR Freshwater Wetlands Protection Act and Flood Hazard Area Control Act permits (0200-06-0001.2).
- 6. The County commits to consult with SWNJ's representatives with respect to input for the native species selection for any mitigation and/or replanting plans undertaken for the Project.

- 7. SWNJ agrees to comply with the conditions set forth in Bergen SWAN's May 10, 2017 letter.
- 8. This Order does not relieve SWNJ of any obligations regarding the Conservation Easement held by NJDEP.

## 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 culverts and the current configuration of the roadway. The record before the Board is replete with 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 a temporary license and permanent easements from SWNJ to the County. This finding is the result of the thorough and complete review of the record in this proceeding and it is limited to the facts and circumstances of this unique 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, permits, plans, and the conditions included above set forth standards by which the County shall conduct itself. After consideration of the entire application, including the Permits and Plans, the Board <u>HEREBY GRANTS</u> an exemption under the Act from the moratorium of conveying watershed property, limited to the purposes set forth in this application. As stated above, the Board <u>FINDS</u> that there is a compelling public need for this Project.

The application, permits and plans contained in the documents submitted by SWNJ are significant and the Board <u>RELIES</u> upon the conditions and protections contained therein in considering this application. The Board <u>HEREBY FINDS</u> that these protections, plus the additional conditions of this Order provide sufficient mitigation of any potential water quality impacts. Therefore, the Board <u>HEREBY ORDERS</u> that the conditions agreed to and incorporated in the Plans and Permits shall become part of this Order.

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

This Order addresses consideration of an exemption from the Act and does not relieve SWNJ 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 May 18, 2017.

DATED: 5 18 17

WATERSHED PROPERTY REVIEW BOARD

BY:

Bob Martin,

Commissioner

Department of Environmental Protection

Richard Mroz,

President

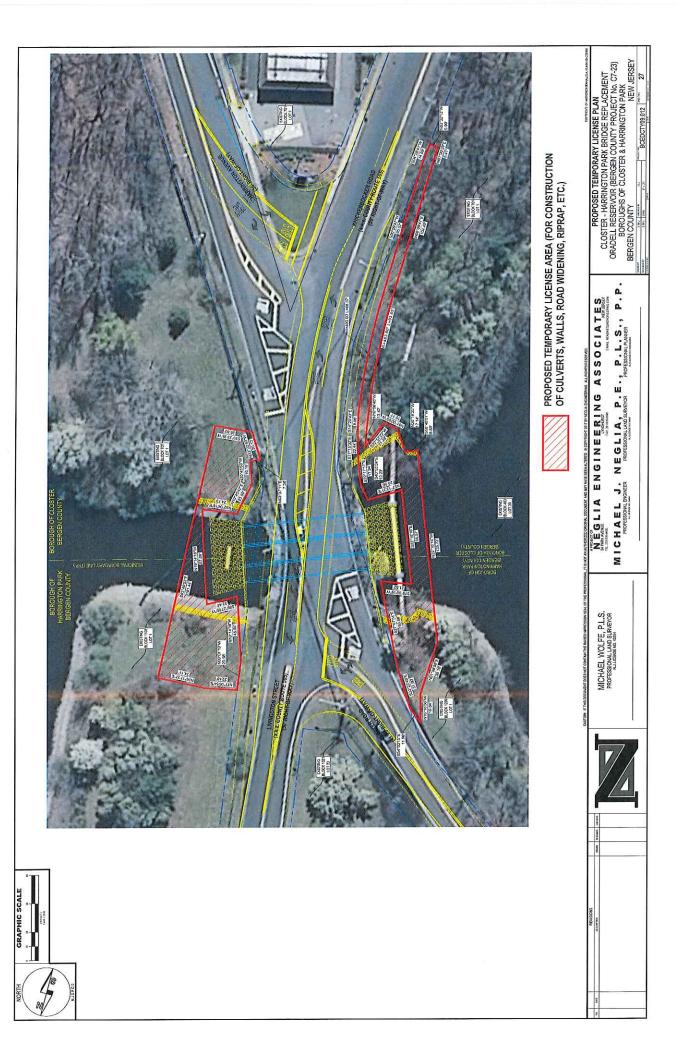
Board of Public Utilities

Charles A. Richman,

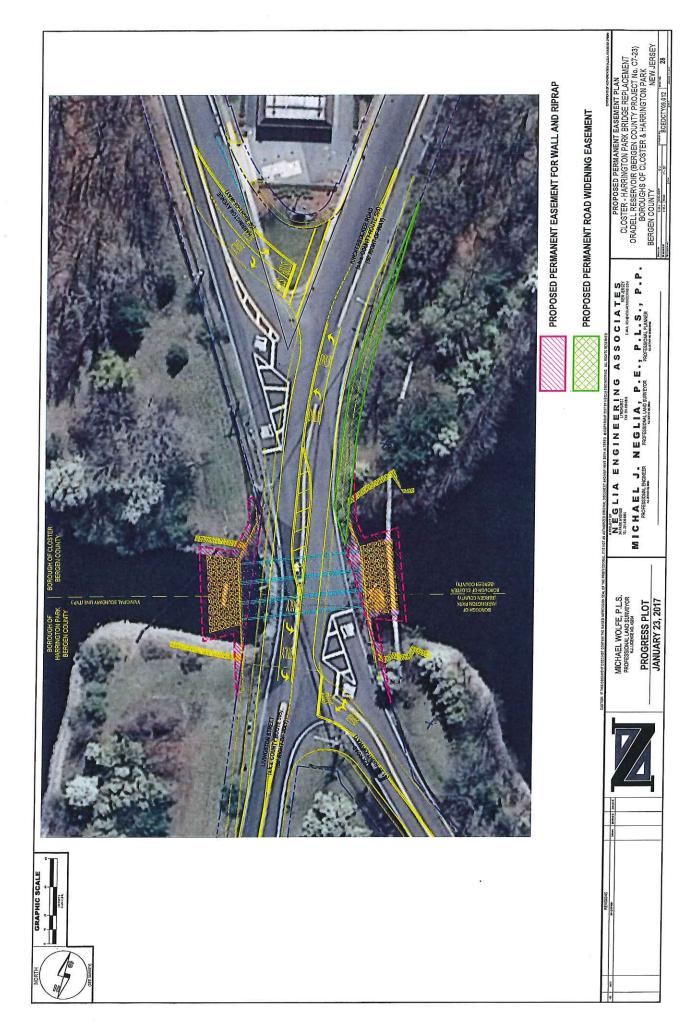
Commissioner

Department of Community Affairs

## EXHIBIT 1 PROPOSED TEMPORARY LICENSE PLAN



## EXHIBIT 2 PROPOSED PERMANENT EASEMENT PLAN



# EXHIBIT 3 BERGEN SWAN LETTER



May 10, 2017

via regular mail and email, john.dillon@suez-na.com
John T. Dillon
Suez Water New Jersey, Inc.
461 From Road, Suite 400
Paramus, NJ 07652

Dear Mr. Dillon,

I am writing on behalf of Bergen SWAN regarding the proposed replacement of the culvert at the intersection of Livingston Street & Harrington Avenue in Closter Township, Bergen County. The Watershed Protection and Moratorium Act requires that the Watershed Property Review Board ("WPRB") approve this proposal.

Bergen SWAN will not object to the proposal if Suez completes the items detailed below and sets forth a thorough maintenance schedule.

- 1. Suez will require the County to minimize the number of trees that must be removed.
- 2. Suez will require the County to restore areas disturbed during construction by seeding and replanting as well as ensure a net reduction of at least 0.16 acres of impervious cover by replacement with pervious landscaping and lawn.
- 3. Suez will require the County to add at least:
  - five deciduous trees
  - nine ornamental trees
  - two hundred shrubs
  - 316 perennials and grasses

All of these will be native, non-invasive species. The maintenance plan must include steps to ensure that a high percentage of these plantings survive.

- 4. Invasive species, especially autumn olive, currently dominate the shore areas. Suez will require the County to remove these invasives from the shore line within the work area during project construction, and take steps to restore these areas with native, non-invasive species of shrubs and vegetation.
- 5. Last, Suez will require the County to install inlets for stormwater runoff to trap trash and debris along the roadway from entering into the waterway. The maintenance plan must include regular cleanings of these inlets.

Please feel free to call or email me anytime to discuss further.

Sincerely,

c: via regular mail:

Charles A. Richman, Commissioner New Jersey Department of Community Affairs 101 South Broad Street Box 800 Trenton, NJ 08625-0800

### via email:

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Agenda Date: 5/18/17

IN THE MATTER OF THE WATERSHED PROPERTY REVIEW BOARD
REQUEST o/b/o COUNTY OF BERGEN FOR APPROVAL OF CLOSTER/HARRINGTON
PARK BRIDGE REPALCEMENT PROJECT,
BOROUGH OF CLOSTER AND BOROUGH OF HARRINGTON PARK,
BERGEN COUNTY, NEW JERSEY
APPROVAL IS REQUESTED ON BEHALF OF THE
COUNTY OF BERGEN, NEW JERSEY

### SERVICE LIST

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Agenda Date: 5/18/17

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