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Governor

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Lt. Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Commissioner
Department of
Environmental Protection

RICHARD MROZ
President, Board of Public
Utilities

CHARLES A. RICHMAN
Commissioner
Department of Community
Affairs

WATERSHED PROPERTY REVIEW BOARD ("WPRB"))
EXEMPTION APPLICATION IN CONNECTION WITH THE)
PROPOSED TRANSFER OF 9.2 +/- ACRES OF LAND AND)
IMPROVEMENTS LOCATED IN THE BOROUGH OF) ORDER GRANTING
HARRINGTON PARK, COUNTY OF BERGEN) EXEMPTION
(THE "HEADQUARTERS PROPERTY") AND THE)
TRANSFER OF CERTAIN EASEMENTS IN CONNECTION)
THERETO)

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

SUEZ Water New Jersey Inc. ("SUEZ") (formerly known as United Water New Jersey, Inc.), a public utility regulated by the New Jersey Board of Public Utilities ("BPU"), has filed an application with the Watershed Property Review Board ("Board" or "WPRB") 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 SUEZ to convey 9.2+/- acres of land and improvements, currently consisting of a corporate office building adjacent to the Oradell Reservoir in the Borough of Harrington Park, Bergen County, to Allegro Development Company, LLC ("Allegro"), a private, senior living industry company. This order adopts Board Staff's recommendation to grant the requested exemption in accordance with the conditions outlined below.

BACKGROUND/PROCEDURAL HISTORY

A Settlement Agreement ("Agreement") was signed between the WPRB Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network ("Bergen SWAN") and SUEZ ("the Parties") on March 26, 2009 and adopted by WPRB Order on the same date. Under the Settlement Agreement, as mitigation for identified violations of the Act, SUEZ granted a conservation easement ("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.

Block 1601, Lot 1 in the Borough of Harrington Park ("Property") was included in the Conservation Easement subject to a 9.2-acre exception area containing SUEZ's corporate headquarters ("Headquarters Property"). An aerial map illustrating the Property and the Headquarters Property is attached as Exhibit 1. Schedule D of the Agreement, indicates that the 9.2 acres is exempted from the Conservation Easement. While the Headquarters Property was developed with an existing building and is not encumbered by the Conservation Easement, the Settlement Agreement specifically states that SUEZ agrees that it will not sell or convey any interest in the Headquarters Property to any third party without the WPRB's prior approval. The Settlement Agreement takes special care to include an undertaking by SUEZ to obtain the prior approval of the BPU, with consultation with the NJDEP, in the event that the WPRB ceases to exist.

The Property (totaling 63.23 acres) abuts Old Hook Road south of the intersection with Bogerts Mill Road in the Borough of Harrington Park, Bergen County. Approximately 54.03 acres of the Property are subject to the Conservation Easement and the remaining 9.2 acres are developed as the Headquarters Property. At present, the Headquarters Property contains an abandoned 68,400 ft² corporate office building (originally constructed in 1979), associated parking areas, an entrance drive and landscaped areas. The Oradell Reservoir, located directly south of the property, is a water supply source for the residents of Bergen and Hudson Counties. While the majority of the 9.2-acre easement exception area is developed, there is a densely wooded area located between Old Hook Road and the existing building in the northern portion of the property.

SUEZ is proposing to subdivide the Property and to sell the Headquarters Property, which land is not subject to the Conservation Easement, to Allegro. Allegro proposes to construct a senior living facility on the property, allowing for independent congregate living, assisted living, and/or memory care uses ("Project"). The proposal includes the full demolition of the existing building and the construction of a 64,125 ft² assisted living facility (including approximately 172 units), reconfiguring of the parking areas onsite (resulting in 167 parking spaces using a mixture of pervious and impervious pavement) and the construction of various walkways, landscaped areas and stormwater management facilities. The proposed facility is depicted in Exhibit 2. SUEZ proposes to retain an access easement from Old Hook Road through the Headquarters

Property in order to access the rest of Block 1601, Lot 1 and the Oradell Reservoir to continue its water utility operations.

As set forth above, such sale requires an exemption from the WPRB. On January 9, 2015, SUEZ filed an application ("Initial Application") with the WPRB to request an exemption from the Act. On October 20, 2015, SUEZ submitted additional information to supplement the Initial Application ("October 20, 2015 Supplemental Submission") and continued to affirm that this provided more sufficient evidence that the proposed transfer satisfies the standard for approval set forth in the Act. On May 4, 2016, SUEZ submitted a second supplement to the Initial Application ("May 4, 2016 Supplemental Submission") with revisions to Allegro's proposed Project.

Specifically, SUEZ seeks an exemption to permit: (1) the transfer of that portion of SUEZ's land that is already developed and was exempted from the Conservation Easement known as the Headquarters Property; (2) the transfer of a certain assumed drainage easement located in the watershed land encumbered by the Conservation Easement; (3) the conveyance to Allegro of a Limited Right of Entry to additional watershed lands owned by SUEZ and encumbered by the Conservation Easement to carry out mitigation plantings required by the NJDEP in connection with the permitting of the proposed Allegro facility; and (4) the conveyance of a Supplemental Conservation Easement to the NJDEP on a portion of the Headquarters Property.

SUEZ/Allegro's position in support of an exemption

In an effort to consolidate its corporate offices into one location, SUEZ recently moved its corporate headquarters to a larger facility in the Borough of Paramus. SUEZ asserts that the need for this move was supported by a feasibility study conducted by SUEZ which reviewed the possibility of expanding the existing Harrington Park office. This action would not require approval from the WPRB since the expansion of water utility operation infrastructure is allowed on the Headquarters Property under the Settlement Agreement. The study concluded that there was no cost-effective manner in which to expand at the existing Headquarters location to accommodate the corporation's growing staff of approximately 300 employees. The cost to upgrade the Headquarters Property was estimated at over \$13.6 million and it was determined that this investment would be an unfair burden on ratepayers because it would divert funds away from system infrastructure improvements.

Once it was determined that SUEZ would be moving its corporate offices, SUEZ applied for and received \$5.5 million in tax credits from New Jersey Economic Development Authority's Grow New Jersey Program to keep the corporate offices in New Jersey. Since SUEZ is now leasing office space in the Borough of Paramus, the company no longer needs the Headquarters Property for water utility operations. SUEZ marketed the property to various sectors and received various offers for uses ranging from luxury residential rental units to a senior assisted living facility. There was no interest from the Borough of Harrington Park, Bergen County or the State to preserve this property for open space due to the cost of maintaining or removing the existing structures.

SUEZ further asserts that the Borough will experience financial hardship if the WPRB does not permit the repurposing of the already disturbed Headquarters Property. SUEZ is the largest taxpayer in the Borough. If the site is not redeveloped, but is instead left vacant, the Borough will suffer a significant loss in ratables. SUEZ assumes this will likely increase the tax burden on the Borough's residents. For example, in 2014, SUEZ paid the Borough \$292,000 in real estate taxes. Thus denying the approval of the application will result in an extraordinary hardship for SUEZ, its ratepayers and the Borough of Harrington Park.

Suez ultimately entered into a contract for sale with Allegro. In support of the exemption, Allegro conducted a market study in Bergen County in which the demographics indicated the need for a senior housing facility in the Harrington Park area. SUEZ asserts that courts in New Jersey, have held that special housing needs of the elderly constitute an inherently beneficial use. See Jayber, Inc. v. Municipal Council of Tp. of West Orange, 238 N.J. Super. 165 (App. Div. 1990), cert. denied 122 N.J. 142 (1990). Inherently beneficial uses are deemed to serve the zoning purpose of promoting the general welfare. The Jayber court, noting that some commercial uses "inherently serve the general welfare," ruled that specialized housing for the elderly such as congregate care facilities constitutes an inherently beneficial use. See Jayber, supra at 175. In Jayber, the Appellate Division found that "the use proposed here both advances the senior citizen housing purpose of N.J.S.A. 40:55D-2(1) and is also, beyond debate, an inherently beneficial use in that it promotes the general welfare." Id. at 174-175. Furthermore, in Sica v. Bd of Adjustment, 127 N.J. 152 (1992), the Supreme Court of New Jersey noted that

[a]lthough inherently beneficial uses are generally non-commercial, various profit-making ventures have been deemed to be inherently beneficial. Examples of inherently beneficial commercial uses include private, for-profit senior citizen congregate-care facilities. Kunzler v. Hoffman, 48 N.J. 277, 288 (1996); Jayber, Inc. v. Township of West Orange, 238 N.J. Super., 165, 174-75, (App. Div. 1990); a 120-bed nursing home, Urban Farms, Inc. v. Borough of Franklin Lakes, 179 N.J. Super. 203, 212, (App. Div. 87 N.J. 428, 434 (1981)).

Approximately 10% of the assisted living and memory care beds, included in the Project, will be Medicaid eligible. There will also be a number of affordable housing units included in the facility. The amount of affordable housing units will be determined by the Borough of Harrington Park as part of the site plan approval process for the Allegro Project.

SUEZ asserts that the savings to ratepayers as a result of the sale of the Headquarters Property to Allegro is substantial. SUEZ asserts that the impact to the ratepayers if the Headquarters Property is not sold to Allegro will be almost \$600,000.00. Based on SUEZ's calculation, the anticipated net reduction to New Jersey rates if the Headquarters Property is sold is \$733,294.00. In contrast, the anticipated net

reduction in New Jersey rates if the Headquarters Property is not sold and the building is demolished is \$140,606.00. Furthermore, if the Allegro sale is not approved, there will be additional carrying costs incurred while SUEZ puts the Headquarters Property back on the market, which costs will ultimately be borne by New Jersey ratepayers. There is also the risk that SUEZ's failed attempt to obtain WPRB approval for the Allegro transfer will have a chilling effect on future interested purchasers such that SUEZ may not be able to find another buyer that is willing to pay a similar purchase price.

Property improvements as a result of the Project

At the request of Board Staff, SUEZ and Allegro agreed to permanently restrict from development approximately 2.05 acres of the 9.2-acre Headquarters Property proposed for sale in order to provide further assurance that watershed buffers and the water supply will be protected in perpetuity. A Supplemental Conservation Easement will protect the forested area located between the proposed senior living facility and Old Hook Road (the "North Easement Area" totaling 81,519 square feet) and a small area in the south of the site where impervious parking will be removed as part of the proposal (the "South Easement Area" totaling 7,938 square feet). The majority of the utilities supporting the current building cross through the Supplemental Conservation Easement area. The Northern Easement Area is subject to existing electric/telecom/cable and gas easements and assumed sanitary sewer, water and cable easements totaling 8,508 square feet. The Southern Easement Area is subject to assumed drainage, water and electric easements totaling 3,575 square feet. These existing and proposed easement areas are considered the Reserved Utility Easements. The Supplemental Conservation Easement areas and the Reserved Utility Easements are identified in Exhibit 3 and Exhibit 4, respectively.

Section 4.a. of the Act requires NJDEP to review and make recommendations on the impacts of the conveyance on the water quality of the affected water supply and on the State's open space, conservation and recreation requirements. In reference to water quality, Allegro's Project proposes to remove a portion of the paved parking area and replace that area with grass or other vegetation would be a benefit to the watershed land encumbered by the Conservation Easement. This would result in less impervious surface near the reservoir. The existing drainage was constructed in the 1970s when there were limited and less restrictive stormwater management regulations. The proposed Project also included the upgrade of the drainage and therefore, resulted in improved water quality.

As stated above, the Headquarters Property currently has no water quality protections. There are no hoods in the existing catch basins to reduce litter and floating liquids from reaching the reservoir. The Project will improve water quality runoff from the property from the existing condition utilizing a number of methodologies. Initial site planning for the new development of the property included a reduction in the pavement surface, inherently improving water quality. Additionally, the site improvements will incorporate water quality improvements including pervious pavement with infiltration beds and manufactured treatment devices for the remaining and existing pavement

surfaces. The majority of the existing large parking area to the east, currently with no water quality protections, will incorporate a manufactured treatment device to meet current NJDEP water quality standards. In addition, the existing paved surfaces which will not be improved/modified as part of this Project will also incorporate manufactured treatment devices to provide improved water quality. These measures will significantly improve the water quality from new pavement surfaces as well as a majority of the remaining existing paved surfaces.

The NJDEP's Division of Land Use Regulation ("DLUR") approved a Flood Hazard Area Individual Permit for the Allegro Project on August 9, 2016. DLUR determined that the Project met the requirements of the Stormwater Management Rules at *N.J.A.C. 7:8*. Stormwater from all proposed impervious areas and a vast majority of the existing impervious surfaces onsite, which currently have no stormwater quality controls, will be treated via a manufactured treatment device ("MTD") installed along the access drive before being discharged to the Oradell Reservoir. An underground stormwater detention system will also be installed. Stormwater will be directed to two existing outfall structures located within the Conservation Easement. Since there are no recorded drainage easements for these facilities on record, SUEZ is looking to transfer a 10,324 ft² drainage easement to Allegro to allow it to use, operate, maintain and repair these facilities as part of the new stormwater management system.

In order to mitigate for the removal of riparian vegetation (both lawn and trees) within regulated areas, DLUR required three tree mitigation areas, totaling 33,000 ft² or 0.75 acre. An onsite area of approximately 4,000 ft², located to the north of the access drive, will be planted with a mixture of trees and shrubs and restricted from future development. Two additional mitigation sites are located outside of the Headquarters Property and will also be planted with a mixture of trees and shrubs. These two areas (approximately 4,500 ft² of Block 1601, Lot 1 and 24,500 ft² of Block 4601, Lot 1) are currently owned by SUEZ and are subject to the Conservation Easement. The Conservation Easement allows for the restoration of watershed property including tree planting. While a Limited Right of Entry needs to be granted to Allegro as part of this process in order to conduct mitigation activities in these two locations, these two mitigation sites will be retained by SUEZ and will continue to be subject to the Conservation Easement. The mitigation areas are identified in Exhibit 5.

Stakeholders

SUEZ and Allegro have taken steps to involve and inform various stakeholders about the proposed sale. In addition to consultation with stakeholders, the public was informed of the Allegro Project through various newspaper articles and through the Borough of Harrington Park newsletter. As a result of this outreach, in October 2015, Borough of Harrington Park Mayor Paul A. Hoelscher provided a letter in support of the sale stating that "the Borough is concerned about the impact of any reduction in real estate tax revenue" that could result from SUEZ relocating its offices from the Headquarters Property. Therefore, he believes leaving the property vacant would be "a substantial detriment and hardship to the community." Mayor Hoelscher supports the sale since the proposed sale of the property to Allegro would provide equal or increased

real estate taxes, would not impact the area school system and would have environmental benefits by improving stormwater management on the property.

Bergen SWAN and Hackensack Riverkeeper have been in contact with Board Staff since this Project was first brought to the Board's attention and have played an active role in the review of this Project since its inception. In August 10, 2015, Hackensack Riverkeeper provided a letter in support of the Allegro Project, stating that "the proposed Project may even have a positive effect on water quality by minimizing the amount of urban runoff that gets in the reservoir" due to the Project's compliance with NJDEP stormwater regulations as well as Category 1 buffer rules. A copy of this letter is attached as Exhibit 6.

On March 8, 2017, the Eastern Environmental Law Center, on behalf of Bergen SWAN, submitted a letter to SUEZ outlining several proposals to ensure that the buffers on the Headquarters Property provide adequate protection for the Oradell Reservoir. These measures include: removing the proposed walkway through the North Easement Area and limiting any unnecessary buffer disturbance; minimizing disturbance to vegetation within the Reserved Utility Easements; locating the access road northward further from the shoreline; improving the buffer between the shoreline and the service road through native plantings; no pesticide use onsite; and, quarterly site visits to inspect the entire Headquarters Property. These issues were discussed at a subsequent meeting and modifications have been made to address some of Bergen SWAN's concerns. Allegro's proposed plan has been amended to include comments received from Bergen SWAN and other various stakeholders, including WPRB Staff, over the life of the Project. By letter dated May 10, 2017, Bergen SWAN confirmed that it had reached an agreement with SUEZ on additional mitigation and restrictions on the subject property. A copy of this letter is attached as Exhibit 7.

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 permits the Board to grant an exemption from the moratorium under three circumstances. Section 2(a) of P.L. 1998, 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 proposing mitigation as appropriate.

SUEZ is seeking an exemption which would allow it to convey the Headquarters Property to Allegro in fee along with a permanent drainage easement over portions of the Property.

Based on our review of the extensive record, Board Staff believes that the sale of the Headquarters Property and the associated conveyance of a drainage easement can qualify for an exemption based on a compelling public need (Exemption #1) and that the conveyance of the Supplemental Conservation Easement to the NJDEP and the granting of a Limited Right of Entry for mitigation purposes to Allegro are consistent with the purposes of the Act (thus qualifying those actions for Exemption #3).

1. Exemption for Sale of Headquarters Property and Associated Drainage Easement

SUEZ asserts that as a Board of Public Utilities regulated utility company, it has a fiduciary responsibility to preserve the value of its regulated assets. SUEZ projected savings to ratepayers, as a result of the proposed sale, are substantial asserting the anticipated net reduction to SUEZ's NJ rate base is \$733,294. SUEZ is currently the largest taxpayer in the Borough of Harrington Park; the 2016 assessed taxes for the Headquarters Property were over \$306,000. Allegro's proposal will likely increase the ratables for the Borough.

SUEZ views Allegro's proposed use to be a benefit to the residents of Bergen County, where the demand for senior living and assisted living facilities continues to grow. Allegro's marketing staff and a third party market study indicate that the demographics in the Borough of Harrington Park area show a significant need for senior housing. State and local agencies as well as the courts have recognized the need to provide senior housing and that such facilities are a value to communities since they serve the public good and promote general welfare.

New Jersey courts have held that special housing needs of the elderly (such as congregate care facilities) constitute an inherently beneficial use even if supplied by a private, for-profit group. See Kunzler v. Hoffman, 48 N.J. 277, 288 (1966); Jayber, Inc. v. Township of West Orange, 238 N.J. Super. 165, 174-175 (App. Div. 1990); Urban Farms, Inc. v. Borough of Franklin Lakes, 179 N.J. Super. 203, 212, (App. Div.). 87 N.J. 428, 434 (1981). In Sica v. Bd of Adjustment, 127 N.J. 152 (1992), the Supreme Court of New Jersey noted that "although inherently beneficial uses are generally non-commercial, various profit-making ventures have been deemed to be inherently beneficial."

Allegro advised SUEZ and Board Staff that 10% of the assisted living and memory care beds will be Medicaid eligible and there will be a number of affordable housing units included in the facility in order to further promote the general welfare. The amount of the affordable housing units will be determined by the Borough of Harrington Park as part of the site plan approval process for the Allegro Project.

SUEZ maintains that Allegro's proposal represents a responsible repurposing of the Headquarters Property which has been disturbed and utilized for commercial uses since the 1970s and is not currently subject to the NJDEP Stormwater Management rules, as set forth in N.J.A.C. 7:8 et seq. The proposal will expand conservation

restrictions onsite that will enhance the protection of buffers to the Oradell Reservoir where none currently exist. In addition, SUEZ will have an ongoing obligation that all stormwater discharge from the proposed Drainage Easement areas, passing through the Conservation Easement areas into the Oradell Reservoir, complies with the NJDEP Stormwater Management rules.

2. Exemption for Conveyance of a Supplemental Conservation Easement and Limited Right of Entry

Board Staff requested that SUEZ provide additional permanent buffer areas on the Headquarters Property as part of the sale, in order to provide further assurance that watershed buffers will be retained on site and the water supply of the Oradell Reservoir will be protected. SUEZ and Allegro agreed to permanently restrict from development approximately 2.05 acres of the 9.2-acre Headquarters Property proposed for sale. In addition, as a condition of the DLUR Flood Hazard Area Control Act Individual Permit, in order to mitigate for the removal of riparian vegetation (both lawn and trees) within regulated areas, DLUR, required three tree mitigation areas, totaling 33,000 ft² or 0.75 acre.

SUEZ, therefore, is also seeking an exemption which would allow it to convey a Supplemental Conservation Easement on the Headquarters Property to the NJDEP (prior to its conveyance to Allegro) as well as grant a Limited Right of Entry to Allegro to conduct mitigation activities. The Supplemental Conservation Easement and Limited Right of Entry are consistent with the purposes of the Act, which are to protect water quality and encourage open space preservation. This proposal will lead to improved stormwater management and permanent protection from future development on approximately two acres of the Headquarters Property that are not currently protected.

In this matter, Board Staff recommended to the Board that this Project can qualify under the Act for an exemption based on a compelling public need for the sale of the Headquarters Property to Allegro and associated conveyance of a drainage easement and that the conveyance of the Supplemental Conservation Easement to the NJDEP and the granting of a Limited Right of Entry for mitigation purposes to Allegro are consistent with the purposes of the Act. This recommendation is based on the specific facts presented by this petition, including that the property is currently disturbed and only has minimum storm water controls. After conveyance, Allegro will be required to incorporate more substantial protections of the watershed than currently exist and SUEZ will be required to monitor stormwater runoff for compliance with NJDEP Stormwater Management rules. Therefore, based on its review of this matter and the information above, Board Staff recommends that this Board approve SUEZ's application for an exemption to the Act, subject to the conditions outlined below.

CONCLUSION

Based on the foregoing discussion, the WPRB **HEREBY FINDS** that there is a compelling public need for the sale of the Headquarters Property and conveyance of a

drainage easement and agrees with the need to provide housing for the elderly and that such facilities are a value to communities since they serve the public good and promote the general welfare. The WPRB **FURTHER FINDS** that conveyance to NJDEP of the Supplemental Conservation Easement and the granting of a Limited Right of Entry are consistent with the Act. These findings are 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 WPRB 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 WPRB, any future determination will be made on a case by case basis giving due regard to the information presented within each such application.

The application, permits, plans and the Supplemental Submissions as well as the letter setting forth agreed upon restrictions between Bergen Swan and SUEZ contained in the documents submitted by SUEZ, including the Deed, Drainage Easement, Supplemental Conservation Easement and the Limited Right of Entry documents contain conditions, restrictions and agreements to which are incorporated into this Order. Additionally, this Order is conditioned on the following:

1. Allegro shall provide SUEZ, Bergen SWAN and Hackensack Riverkeeper with notice prior to any construction activity on the Headquarters Property;
2. SUEZ and Allegro must comply with any and all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLUR Flood Hazard Area Control Act Individual Permit No. 0224-10-0001.1 FHA160001.
3. SUEZ must retain an access easement from Old Hook Road through the Headquarters Property in order to permit ingress and egress to the shoreline of the Oradell Reservoir and the Conservation Easement area for inspection purposes and continuing water supply operations. In addition, the NJDEP must be added as a beneficiary of this access easement.
4. Any and all discharge from the proposed Drainage Easement areas must meet the requirements of the NJDEP Stormwater Management rules at N.J.A.C. 7:8. The mechanical treatment device to be installed within the existing access drive shall be inspected in accordance with the NJDEP, DLUR Flood Hazard Area Control Act Individual Permit No. 0224-10-0001.1 FHA160001 in order to maintain the stormwater management system in good working order.
5. SUEZ maintains its obligation to protect the public water supply and shall monitor as frequently as necessary to assure compliance with the NJDEP Stormwater Management rules at N.J.A.C. 7:8 for all water that passes into the Oradell reservoir. SUEZ shall ensure that water passing into the public water supply complies with NJDEP Stormwater Management rules at N.J.A.C. 7:8.

6. In accordance with the proposed Drainage Easement, after any construction activities, the area within the Conservation Easement area shall be restored to pre-activity conditions.
7. The Board supports the current DLUR mitigation plan which includes the planting of native trees and shrubs on approximately 0.75 acre to replace riparian vegetation that must be removed in order to construct the senior living facility and requires compliance as part of its approval.
8. SUEZ shall convey a Supplemental Conservation Easement to the NJDEP, which shall be recorded, to permanently restrict development of approximately 2.05 acres of the Headquarters Property and to further protect buffers to the Oradell Reservoir, prior to or concurrent with its conveyance to Allegro. There shall be no disturbance to the area within the Supplemental Conservation Easement area except as permitted within the Reserved Utility Easements and to address dead/dying trees according to the standard set forth therein.
9. SUEZ/Allegro shall provide a survey and metes and bounds description of the Additional Easement Lands and Reserved Utility Easements included in the Supplemental Conservation Easement at least 30 days prior to transfer. The survey and metes and bounds description must be reviewed and approved by an in-house DEP surveyor. The boundaries of the Additional Easement Lands must be marked in the field (i.e. concrete monuments or other boundary markers acceptable to Board staff).
10. SUEZ shall attach and make the WPRB Order part of the deed and shall record the same with the property deed. Any mitigation and other agreements and restrictions on the Property as agreed to in furtherance of this exemption request shall be made part of or otherwise incorporated into the record title of the Property.
11. SUEZ will continue to maintain its rights to protect its property and to safeguard the water supply. Allegro will comply with the conditions of the permits and approvals issued in connection with its Project and current storm water and discharge regulations. Finally, NJDEP will continue to maintain its regulatory and enforcement powers in connection with the property, the 3,095 acre Conservation Easement and the Supplemental Conservation Easement provided as part of the Project.
12. This Board approval is based on the current proposal to transfer the Headquarters Property to Allegro. If the sale to Allegro is terminated, this exemption approval will expire and SUEZ will need to obtain Board approval for any future sale proposals. SUEZ and Allegro have agreed that in recording this Order with the Deed, it is intended that the conditions set forth in this Order, the Supplemental Conservation Easement and that the agreed upon restrictions shall

be recorded and run with the land and SUEZ/Allegro shall comply with the other terms and conditions of the exemption approval.

13. SUEZ agrees to comply with the conditions set forth in Bergen SWAN's May 10, 2017 letter.

14. If any of the conditions relied upon by this Board in approving this exemption are modified in a manner that negatively impacts the protection of surface water supply, this approval shall be null and void and SUEZ shall return to the Board seeking a modified exemption.

After consideration of the entire application, including the Permit and Plans, the WPRB **HEREBY GRANTS** 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 WPRB **FINDS** that there is a compelling public need for this Project.

The application, permits, plans and the Supplemental Submissions contained in the documents submitted by SUEZ, including the Deed, Drainage Easement, Supplemental Conservation Easement and the Limited Right of Entry documents are significant and the WPRB **RELIES** upon the conditions and protections contained therein in considering this application. The WPRB **HEREBY FINDS** that these protections, plus 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 and incorporated in the Supplemental Conservation Easement document shall become part of this Order.

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

Therefore, the WPRB **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 SUEZ 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
AERIAL MAP

SWNJ Harrington Park Corporate Facility (Block 1601, Lot 1)



EXHIBIT 2

SITE PLAN

EXHIBIT 3

SUPPLEMENTAL CONSERVATION EASEMENT AREA

EXHIBIT 4

RESERVED UTILITY EASEMENT AREAS

EXHIBIT 5
MITIGATION AREAS

EXHIBIT 6

HACKENSACK RIVERKEEPER LETTER



Captain Bill Sheehan
Executive Director &
Riverkeeper

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461 From Road Suite 400
Paramus, NJ 07652

I write on behalf of Hackensack Riverkeeper regarding the proposed sale and planned reuse of the United Water New Jersey (UWNJ) Headquarters on Old Hook Road in Harrington Park NJ. During the settlement talks prompted by our petition to the New Jersey Watershed Review Board, the UWNJ headquarters was exempted from the list of properties within the Watershed surrounding the reservoirs that are now protected by Green Acres Easements.

I have been briefed several times by representatives of UWNJ about the sale of the property and have met with representatives of Allegro Senior Living. I have found these parties to be committed to sharing the details of the proposed Senior Living facility and nothing I have seen during their presentation and heard in the way of responses to questions that were asked during the meetings has raised any red flags or prompted me to be overly concerned with the proposed use of the site.

During these meetings the subject of maintaining the Category 1 buffers around the proposed additions and the various impacts that may result during the construction and post construction phases of the project were discussed at length to my satisfaction.

Realizing that the proposed reconstruction of the existing building and the additions to the building will have to go before the Harrington Park Planning Board, I am confident that Allegro will be held to the standards of both Municipal Land Use Law and by the standards set forth in the Municipal Stormwater Rules.

It is my opinion that with proper application of the MS4 rules and review by NJDEP for the Category 1 buffer rule, the proposed project may even have a positive effect on water quality by minimizing the amount of urban runoff that gets into the reservoir. Since the existing facility was built many years before these rules were promulgated, this proposed reuse will bring the new facility into compliance with twenty-first century standards.

Sincerely,

Bill Sheehan
Riverkeeper



EXHIBIT 7

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 to follow up on our ongoing discussions regarding the Harrington Park property.

Suez proposes to sell a 9.2-acre portion of the Harrington Park property to the Allegro Management Company, who will convert the use of the existing building and property into a residential community for seniors. The Watershed Protection and Moratorium Act requires that the Watershed Property Review Board ("WPRB") approve this sale.

In a letter dated March 8th, SWAN proposed several additional environmental protections. In a meeting on March 21st, Suez agreed to incorporate several of these proposals. We also discussed preparing a Supplemental Conservation Easement for the property.

Again, we appreciate the time and effort that Suez and Allegro have put into maintaining an open dialogue with all parties, including SWAN and the Hackensack Riverkeeper, regarding this sale. We also appreciate the efforts by both companies to minimize the environmental impacts on the Harrington Park property, and incorporate our proposals.

Bergen SWAN will not object to the proposed sale of the Harrington Park property, if Suez executes a Supplemental Conservation Easement for this property prior to sale, with the following environmental protections detailed further below:

- The North Easement Area will be preserved and maintained in a manner consistent with its open space character.
- No walkway will be installed in the North Easement Area.
- Allegro will take steps to minimize the disturbance of vegetation in the utility easement areas located in the North Easement Area.

The Supplemental Conservation Easement must be recorded and indexed in the Bergen County Clerk's Office, in accordance with the Conservation Easement and New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13-8b-1 et seq.

SWAN will further support the sale if Allegro agrees to make a good faith effort to explore the implementation of an Organic Land Care Program for the property, but understands that Allegro reserves the right to make the ultimate decision.

I. Items to be Included in the Supplemental Conservation Easement

1. North Easement Area

The North Easement Area, comprised of 81,519 square feet, is depicted in the attached drawing titled "Additional Easement Land."

As we discussed, the North Easement Area will be preserved and maintained in a manner consistent with its open space character.

No walkway will be installed in the North Easement Area.

As discussed, Suez and Allegro agree that these commitments will be reflected in the Supplemental Conservation Easement.

2. Utility Easements

Several utility companies hold easements on this property. As discussed and agreed, Allegro will take steps to minimize the disturbance of vegetation in the utility easement areas located in the North Easement Area.

II. Additional Items Not Included in the Supplemental Conservation Easement

1. Southern Buffer Zone

All parties agree that moving the service road northwards, to expand the buffer zone, would be environmentally beneficial and provide further protection for the Reservoir. We will continue to urge Allegro to seek NJDEP approval for that move.

Suez maintains a buffer zone between the south side of the main service road for the Harrington Park property, and the Reservoir. For the sake of clarity, this property is and shall remain owned by Suez and is subject to the 2009 Settlement Agreement and Conservation Easement.

As we discussed and agreed, Suez will put in additional native non-invasive plantings in this area. As also discussed and agreed, Suez agrees to consult with Bergen SWAN and Hackensack Riverkeeper on the plantings, but reserves the right to make the ultimate decisions regarding scope and timing.

2. Land Care Program

Synthetic pesticides, herbicides, and fertilizers applied to the Harrington Park grounds can easily leach into the Reservoir. These synthetic chemicals are also harmful to those living or working on the Harrington Park property.¹ In the long term, a landscape chemically dependent on synthetics is more expensive to maintain than a landscape maintained through an organic care program.

For all of these reasons, Suez has stopped using synthetic pesticides and herbicides on this property.

We urge Allegro to avoid synthetics, both for the health of the Oradell Reservoir, and for the health of those living and working the residential community Allegro will set up on the Harrington Park property.

In place of synthetic and harmful chemicals, Allegro can maintain the Harrington Park property's landscape by implementing an organic land care program that: prioritizes the use of natural, slow-release fertilizers; allows no use of synthetic herbicides or pesticides; places a high priority on water conservation and careful stewarding of on-site run-off into vegetated areas; severely limits the use of plastics in the landscape; and showcases more native plantings and less lawn.

The experts with the Rutgers New Jersey Agricultural Experiment Station Cooperative Extension recently published an excellent Organic Land Care Best

¹ <http://organiclandcare.net/green-room/health-studies>

Management Practices Manual on this topic.² The Northeast Organic Farming Association has also published a comprehensive guide of practices for landscape design and maintenance, titled “NOFA Standards for Organic Land Care.”³

Allegro can use these resources to implement an organic land care program to maintain a healthy and beautiful landscape at the Harrington Park property, without putting the Reservoir or Allegro’s residents at risk.

SWAN will further support the sale if Allegro agrees to make a good faith effort to explore the implementation of an Organic Land Care Program for the property, but understands that Allegro reserves the right to make the ultimate decision. As discussed, Allegro agrees to take this request under consideration.

3. Site Visits

Suez will continue to conduct periodic site visits to inspect the remainder of the Harrington Park property that it stills owns consist with the 2009 Settlement Agreement. Suez will provide periodic opportunities for Bergen SWAN and Hackensack Riverkeeper to visit these sites accompanied by Company Personnel. Suez will provide two opportunities per year, between May and September. Suez will continue to work in good faith with Bergen SWAN and Hackensack Riverkeeper on scheduling.

² <http://njaes.rutgers.edu/pubs/publication.asp?pid=E357>

³ <http://organiclandcare.net/sites/default/files/upload/standards2011.pdf>

In sum, Bergen SWAN will not object to the sale of the Harrington Park property, if prior to sale, Suez executes a Supplemental Conservation Easement with the NJDEP that incorporates the environmental protections delineated in Section I above. SWAN will further support the sale if Allegro agrees to make a good faith effort to explore the implementation of an Organic Land Care Program for the property, but understands that Allegro reserves the right to make the ultimate decision.

Again, we appreciate the opportunity to address the parties through the open dialogue that Suez has maintained. Please feel free to call or email me anytime to discuss further.

Sincerely,

/s Raghu Murthy
Raghu Murthy

c: **via** regular mail:

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via email:

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IN THE MATTER OF THE WATERSHED PROPERTY REVIEW BOARD
REQUEST IN CONNECTION WITH THE PROPOSED TRANSFER OF 9.2 +/- ACRES OF
LAND AND IMPROVEMENT LOCATED IN THE BOROUGH OF HARRINGTON PARK,
COUNTY OF BERGEN (THE "HEADQUARTERS PROPERTY") AND THE TRANSFER OF
CERTAIN EASEMENT IN CONNECTION THERETO

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