



PHIL MURPHY
Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Lt. Governor

JOSEPH L. FIORDALISO
President
Board of Public Utilities

CATHERINE R. McCABE
Commissioner
Department of
Environmental Protection

SHEILA Y. OLIVER
Commissioner
Department of Community
Affairs

IN THE MATTER OF THE REQUEST FOR AN)
EXEMPTION FROM THE WATERSHED)
PROTECTION AND MORATORIUM ACT BY THE) ORDER
CITY OF NEWARK ON BEHALF OF THE NEW)
JERSEY DEPARTMENT OF TRANSPORTATION) GRANTING
FOR ROUTE 23 CORRIDOR IMPROVEMENTS) EXEMPTION
HARDYSTON TOWNSHIP, SUSSEX COUNTY, NJ)

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

BACKGROUND/PROCEDURAL HISTORY

On June 21, 2019, 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 additional rights-of-way ("ROW") and permanent easements, including slope, utility and construction and maintenance easements, to NJDOT on portions of its watershed properties located in the Township of Hardyston, Sussex County in connection with NJDOT's Route 23 Corridor Improvement Project ("Project").

The Project consists of safety and operational improvements in three separate sections, totaling 1.2 miles, of Route 23. These improvements involve safety and roadway

operations within the section limits, including the offset of the intersection of Route 23 with Holland Mountain Road and Snufftown Road, as well as the segment of Route 23 between the intersection and the bridge over Lake Stockholm Brook.

The need for improved safety and roadway operations within the Holland Mountain Road Section of Route 23 has been recognized since at least the late 1990's. At present, the intersection of Holland Mountain Road and Snufftown Road with Route 23 is offset by 250 feet. This offset intersection leads to limited sight distances, higher than average accident rates and poor levels of service. In addition, Route 23 has one 12-foot lane in each direction and substandard shoulders on both sides.

The existing alignment, geometrics and configuration of Route 23 have inherent safety and operational issues that have resulted in numerous traffic accidents. Various roadway features are functionally obsolete when compared to current highway design standards. These deficiencies contribute to the reduction of traffic efficiency, levels of service, and safety conditions on the roadway, resulting in diminished traffic performance, driver safety, and heightened operational concerns.

Several commercial establishments are located along the Route 23 roadway including a bank property, a strip mall, an ice rink, smaller businesses and a residential property. Local officials have also identified a safety problem as cars and school buses access these properties. On July 26, 2019, the Hardyston Mayor and Council submitted a letter to Board Staff expressing their support of the exemption request. The letter indicated that the subject portion of Route 23 is heavily traveled, and the Project proposes several enhancements which are essential to improving the safety and traffic conditions within the Township of Hardyston.

The Project has been designed to correct substandard conditions and meet all required design criteria. The improvements will serve to correct the offset intersection, improve shoulder widths, road operations and overall safety within this portion of Route 23. The proposed improvements, including intersection improvements, road widening, shoulder construction, the addition of turning lanes, and other related roadway improvement, within the Holland Mountain Road Section of the Project will impact a total of 0.984 acre on four Newark-Pequannock Watershed properties within the Township of Hardyston.

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 and customers. 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 between 1994 and 2006 and generally transferred all non-water supply related development rights on the properties to the NJDEP.

The additional fee ROW and permanent utility, slope and construction and maintenance easement areas are located adjacent to the existing roadway and will impact the edge of

the following four properties:

Block & Lot	Total Lot Acreage	ROW Taking (acres)	Utility Easement (acres)	Slope Easement (acres)	Construction & Maintenance Easement (acres)	Total Impact (acres)
B36, L56	1.36	0.089	N/A	0.017	0.027	0.133
B43, L2	218.47	0.217	0.007	0.134	N/A	0.358
B60, L15	699.48	0.036	NA	0.008	N/A	0.044
B41, L7 ¹	23.4	0.172	0.0013	0.277	N/A	0.449
					TOTAL	0.984

The NJDOT proposes to construct a retaining wall within the Holland Mountain Road ROW to address existing erosion and minimize impacts to the Lake Stockholm Brook and related environmentally sensitive areas due to construction activities. NJDOT requests a permanent construction and maintenance easement to access and carry out construction activities on the proposed retaining wall. This construction will result in the removal of riparian vegetation (predominantly forested and scrub-shrub communities) and the construction of additional impervious surfaces. Additional vegetative buffers, mainly forested and maintained lawn areas, will be impacted east of Holland Mountain Road along an unnamed tributary to the Pequannock River.

To mitigate these impacts, NJDOT proposes to incorporate best management practices (“BMPs”) and low impact design techniques to the fullest extent practicable. BMPs will include the installation of a storm water management basin and two manufactured treatment devices within the Project area. Implementation of these BMPs will result in less surface water runoff from the Project and will provide improved storm water conditions in the area, as compared to the current roadway. These BMPs were designed in accordance with the NJDEP Stormwater Management Rules.

The Project will result in 115 trees, greater than six inches in diameter at breast height, being removed from watershed lands throughout the Project area. The tree survey plan provides for the removal of 70 trees from Block 41, Lot 7; 25 trees from Block 43, Lot 2; and, 20 trees from Block 36, Lot 56. There will be no tree removal from Block 60, Lot 15. NJDOT proposes a monetary contribution of \$83,160 to mitigate for the disturbance to 1.6 acres of forested areas project-wide. These funds will be placed into the NJ Forest Service’s Urban and Community Forest Grant Program which provides grants to local governments and shade tree commissions to assist in the implementation of Community Forestry Management Plans throughout the State.

On August 7, 2018, NJDOT received NJDEP, Division of Land Use Regulation (“DLUR”) approval of a Flood Hazard Area Individual Permit, Flood Hazard Area Verification and Freshwater Wetlands Individual Permit for the Project. Newark received approval for the conveyance of ROW and easement to NJDOT from the NJDEP Commissioner and the

¹ Block 41, Lot 7 is a Newark-owned watershed parcel that is not subject to a NJDEP held conservation easement. The remaining three parcels included in this exemption request are subject to a conservation easement, dated May 8, 2004 and recorded on February 24, 2006 in Sussex County Deed Book 6269, Page 236.

State House Commission on June 6, 2019 and June 24, 2019, respectively.

As a condition of these approvals, NJDOT purchased Block 36, Lot 55 to satisfy any permit-related mitigation requirements and to retain portions of property to construct the stormwater management basin described above. This parcel is predominantly forested, contains a segment of Lake Stockholm Brook and is adjacent to the Properties. This parcel comprises approximately 4.609 acres and will be used to fulfill the following requirements: (1) As part of the State House Commission approval, Newark agreed to accept fee title to a 1.8-acre portion of the property and transfer a conservation easement to the NJDEP over this area so the property is restricted in a similar manner as other Newark-Pequannock Watershed lands; and (2) a portion of the remaining acreage will be used to mitigate for riparian zone impacts. In total, approximately 9.5 acres of riparian zone will be preserved off-site to mitigate for the Project's impacts on riparian vegetation. An aerial map of the mitigation parcel in relation to the Properties is attached as Exhibit 1 to this Order.

DLUR also required NJDOT to purchase credits from an approved wetland mitigation bank to mitigate for the permanent disturbance of 0.184 acres of freshwater wetlands for the construction of the Project.

Prior to the submission of the application, Board Staff conducted a site visit on April 15, 2019. Board Staff was able to view the potential impact of the Project on Newark's watershed property, as well as the existing conditions on the portion of Route 23 and the subject intersection included in the Project. Board Staff confirmed that there are safety issues regarding the existing Route 23 corridor and the intersection of Route 23 with Holland Mountain and Snufftown Roads, as well as embankment erosion along Route 23 and the bridge over Lake Stockholm Brook.

DISCUSSION

The Act prohibits any "municipality, municipal utility authority, or public utility" from conveying "any land utilized for the purpose of the protection of a public water supply." Section 1 of P.L. 1998, c. 163. In other words, the Act places a moratorium on all conveyances of watershed property. The Act authorizes the Board to grant exemptions to the Act's moratorium if the applicant demonstrates "that there is a compelling public need for the conveyance of the property, that the denial of the exemption would result in extraordinary hardship, or that the sale or development of the watershed property is otherwise consistent with the purposes of [the] Act." P.L. 1998, c. 163 2a. The requirements for demonstrating the need for an exemption are listed in the disjunctive, and an applicant need only demonstrate one of the three enumerated reasons to obtain an exemption to the Act. The Act further requires that an applicant propose mitigation of any adverse environmental impact which would result from an exemption granted by the Board.

In the matter at hand, NJDOT is seeking an exemption which would allow Newark to convey additional ROW as well as permanent slope, utility and construction/maintenance

easements over portions of the Properties. Newark represents it maintains the Properties for the purpose of protecting Newark's Pequannock Watershed lands, a source of Newark's water supply. Hence, the Act's moratorium is applicable and prohibits Newark from conveying any interest in the Properties to the NJDOT unless this Board finds one of the three exemptions applies.

NJDOT states that there is a compelling public need for the Project since it will improve the safety and configuration of the roadway, address roadway embanking erosion and limit the impact to Lake Stockholm Brook by the installation of a retaining wall.

Based on the April 15, 2019 site visit and its review of the information provided by NJDOT, Board Staff concurs there is a compelling public need for the Project. In addition, Board Staff is satisfied that NJDOT's current mitigation plan, which includes off- and onsite preservation of 9.536 acres of riparian zone vegetation, the purchase of credits from an approved wetland mitigation bank, the preservation of 1.8 acres of additional lands within the Newark-Pequannock Watershed and monetary compensation for tree removal required as a result of 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 NJDOT shall provide Newark with notice prior to any construction activity on the Properties;
2. The NJDOT shall work in good faith with Newark to determine the most beneficial on-going maintenance plan for the Project improvements that will limit the impact upon water quality of Newark's properties;
3. 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 Newark's property;
4. The NJDOT shall ensure that any utility relocations do not occur on Newark watershed property unless the area is subject to an existing utility easement or has been approved herein;
5. The NJDOT shall comply with any and all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLUR Flood Hazard Area Individual Permit, Flood Hazard Area Control Verification and Freshwater Wetlands Individual Permits as well as the NJDEP Green Acres Program and State House Commission approval (SHC #0328-001); and
6. The NJDOT commits to consult with Newark's representatives with respect to input for the native species selection for any mitigation and/or replanting plans undertaken for the Project.

CONCLUSION

The Board is aware of the findings of its Staff that not moving forward with the Project will lead to further public safety, erosion and water quality concerns due to the current configuration and deterioration of the existing roadway and intersection. 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 additional ROW and permanent easements from Newark to 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 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, NJDEP permits, plans and the conditions included above set forth the standards by which NJDOT shall conduct itself in implementing the Project. After consideration of the entire application, including the NJDEP permits and Project plans, the Board **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 Board **FINDS** that there is a compelling public need for this Project.

The application, permits and plans contained in the documents submitted by NJDOT are sufficient, 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 plans and NJDEP permits 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.

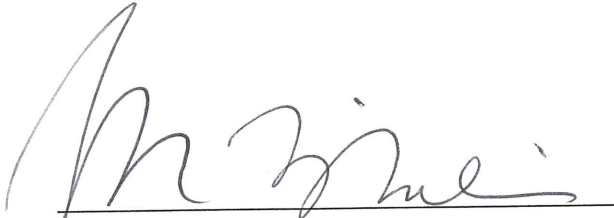
This Order addresses consideration of an exemption from the Act and does not relieve Newark or NJDOT of any other obligations that may be required pursuant to any statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on October 15, 2019.

DATED: 10/15/19

WATERSHED PROPERTY REVIEW BOARD

BY:

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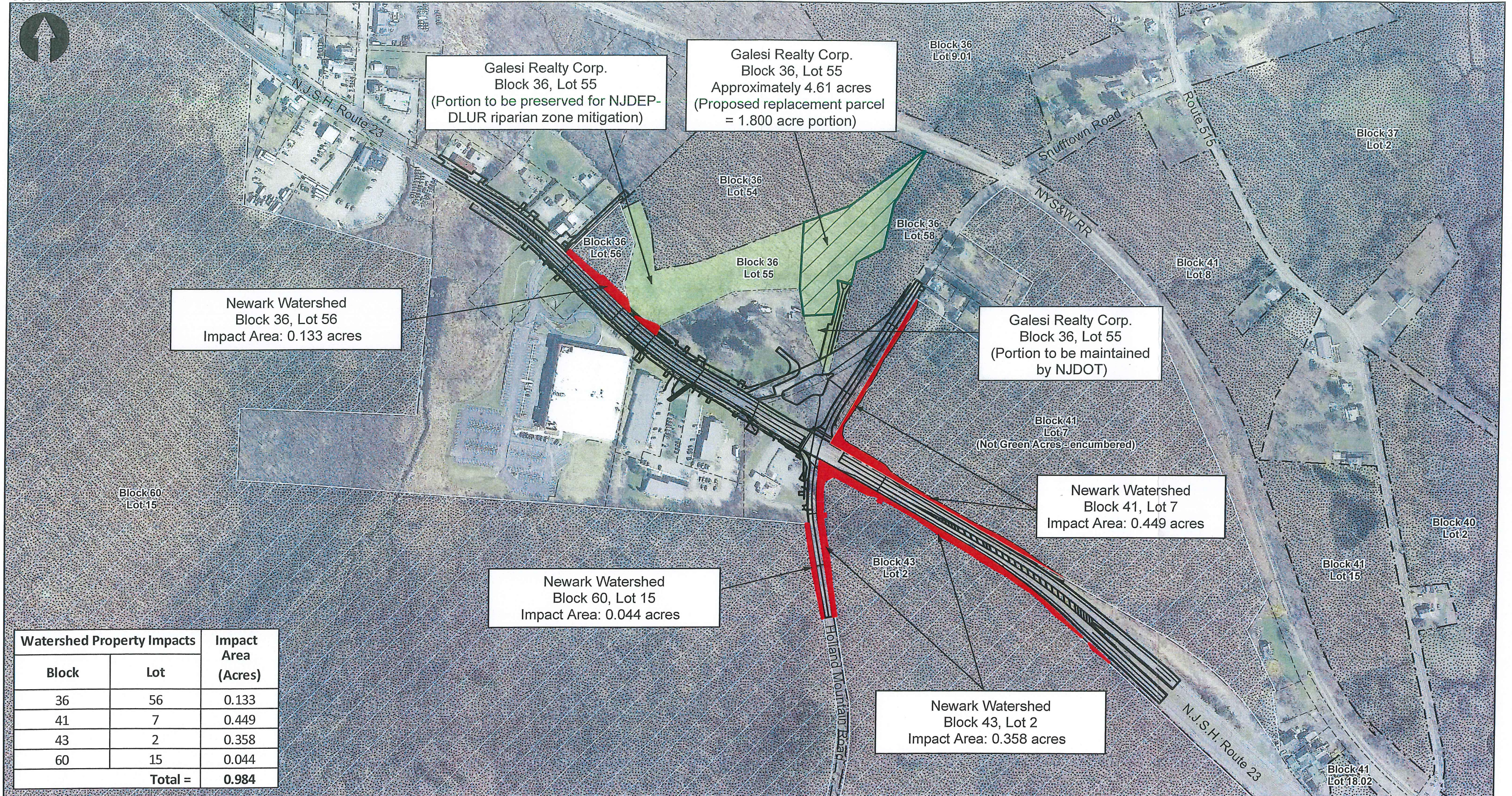
Joseph L. Fiordaliso
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A handwritten signature in blue ink, appearing to read "Donald Palombi", written over a horizontal line.

Donald Palombi, Chief Regulatory Officer
As designee of
Lt. Governor Sheila Y. Oliver
Commissioner
Department of Community Affairs
Pursuant to delegation letter dated
August 15, 2018

EXHIBIT 1

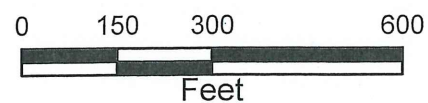
WATERSHED PROPERTY IMPACT MAP



Watershed Property Impacts		Impact Area (Acres)
Block	Lot	
36	56	0.133
41	7	0.449
43	2	0.358
60	15	0.044
Total =		0.984

Legend

- Project Area
- Watershed Property Impacts
- Newark Watershed Lots
- Block 36, Lot 55
- Newark Watershed Lots Impacted
- Proposed Replacement Parcel



Watershed Property Impact Map

New Jersey Department of Transportation
Route 23 Roadway Improvements Project
Holland Mountain Road Section
Hardyston Township, Sussex County

WATERSHED PROPERTY REVIEW BOARD
REQUEST BY THE CITY OF NEWARK,
ON BEHALF OF NEW JERSEY DEPARTMENT OF
TRANSPORTATION IN SUPPORT OF THE
ROUTE 23 CORRIDOR IMPROVEMENTS IN THE
TOWNSHIP OF HARDYSTON, SUSSEX COUNTY

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