



**PHIL D. MURPHY**  
*Governor*

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

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

**SHAWN M. LATOURETTE**  
*Acting Commissioner*  
*Department of*  
*Environmental Protection*

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

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

REQUEST O/B/O BOROUGHES OF CLOSTER AND	)	ORDER
NORWOOD FOR APPROVAL BY	)	GRANTING
WATERSHED PROPERTY REVIEW BOARD	)	EXEMPTION
OF MORATORIUM ACT EXEMPTION FOR BRIDGE	)	
REPLACEMENT PROJECT	)	

(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 Boroughs of Closter and Norwood ("Boroughs"), 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 both temporary access and permanent easements on watershed property adjacent to the Dwars Kill in the Boroughs of Closter and Norwood to the Boroughs to support the Blanch Avenue Bridge Replacement Project over Dwars Kill ("Project"). This order adopts Board Staff's recommendation to grant the requested exemption in accordance with the conditions outlined below.

**BACKGROUND/PROCEDURAL HISTORY**

On March 19, 2021, SWNJ filed an application with the Board for an exemption from the Act. Specifically, SWNJ seeks an exemption to grant the Boroughs both temporary

access and permanent easements on portions of the following parcels ("Properties") to support the construction of the Project:

Borough of Closter, Bergen County Block 1101, Lot 1  
Borough of Closter, Bergen County – Block 1102, Lot 1  
Borough of Norwood, Bergen County – Block 94, Lot 1  
Borough of Norwood, Bergen County – Block 95, Lot 1

The Oradell Reservoir is a water supply source for the residents of Bergen and Hudson Counties. The Dwars Kill (FW2-NTC1), which is a tributary to the reservoir, flows through the Properties, under Blanch Avenue and directly into the upper reaches of the reservoir. The Properties are all vacant and densely wooded, and act as watershed buffer land for the purpose of protecting a surface water supply source. Therefore, the Properties fall within the Act's moratorium on the conveyance of watershed property. An aerial map illustrating the Properties is attached as Exhibit 1 to this Order.

After a lengthy investigation of alleged violations of the moratorium by United Water New Jersey, Inc., SWNJ's predecessor, a Settlement Agreement was executed between Board Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network ("Bergen SWAN") and SWNJ (then United Water New Jersey, Inc.) 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"). The Properties are subject to the Conservation Easement, which will require SWNJ to obtain a separate approval from NJDEP under the New Jersey Conservation Restriction and Historic Preservation Restriction Act (N.J.S.A. 13:8B-1 et seq.).

Blanch Avenue is a municipal roadway connecting the Boroughs of Closter and Norwood. It serves as one of the primary routes to the industrial area of Closter. This industrial area includes a waste transfer station, lumber yard, and bus company, among other businesses, all of which generate significant truck traffic. The Blanch Avenue Bridge was built in 1910 and carries Blanch Avenue over the Dwars Kill through a culvert. The existing Blanch Avenue right of way ("ROW") is relatively narrow, with a width of 42 feet in Norwood and only 33 feet in Closter. Blanch Avenue currently consists of one 13-foot lane in each direction with no adjacent sidewalks or paved shoulders. A portion of the existing roadway pavement, at the northeast corner of the West Street and Blanch Avenue intersection, is located outside the ROW and is encroaching on the SWNJ property (Block 1101, Lot 1 in Closter).

In August 2020, a sinkhole was observed in the northbound lane of Blanch Avenue adjacent to the north bridge abutment. Upon further investigation, it was determined that the northeast wing wall, which supports the bridge and the roadway, had collapsed, causing the sinkhole. The New Jersey Department of Transportation ("NJDOT") further identified missing mortar, large spalls, and a hole through the deck at the west end of the bridge. Given the condition of the bridge structure and the substandard conditions, it was determined that the bridge could not be fixed but instead would need to be replaced. Due

to safety concerns, Blanch Avenue has been closed since the sinkhole was identified. According to the Boroughs' engineer, as a result of the closure, commercial traffic has been re-routed through nearby residential neighborhoods, creating residential safety concerns.

The Boroughs, as co-managers of the Project, seek to replace the bridge to improve public safety and to provide safer transportation infrastructure. While the Boroughs do not need the Board's approval to work in the existing ROW, which predates the Act, the Boroughs will need a temporary construction license and additional permanent easements on SWNJ's watershed property to improve the existing substandard and unsafe conditions as well as to incorporate portions of the existing pavement encroaching on the Properties within the Boroughs' ROW. Therefore, the Boroughs request two permanent roadway widening easements, totaling 1,521 square feet (0.035 acre), to create a uniform ROW width of 42 feet. The new bridge, along with minor road widening and relocated utilities, will be located within the new 42-foot ROW. Two permanent bridge maintenance easements, totaling 1,049 square feet (0.024 acre), are also requested for future maintenance and access to the bridge. The permanent easements being sought under this exemption request are depicted in Exhibit 2 and are summarized here:

- Road Widening Easement (Area 1) – 431 square feet – Block 1102, Lot 1 Closter
- Maintenance Easement (Area 2) – 700 square feet – Block 1102, Lot 1 Closter and Block 94, Lot 1 Norwood
- Road Widening Easement (Area 3) – 1,090 square feet – Block 1101, Lot 1 Closter
- Maintenance Easement (Area 4) – 349 square feet – Block 1101, Lot 1 Closter and Block 95, Lot 1 Norwood

To facilitate construction of the Project, the Boroughs are requesting temporary license areas on either side of the bridge, totaling 947 square feet (0.021 acre). These license areas will be extinguished at the conclusion of construction and no permanent property interest is being conveyed to the Boroughs. The temporary license areas are depicted in Exhibit 3 and are summarized here:

- Temporary License (Area 5) – 500 square feet - Block 1102, Lot 1 Closter and Block 94, Lot 1 Norwood
- Temporary License (Area 6) – 447 square feet - Block 1101, Lot 1 Closter and Block 95, Lot 1 Norwood

The Project will require the removal of one maple tree, approximately 17 inches in diameter, and various understory vegetation within the permanent easement and temporary license areas. The areas of disturbance will be restored with the appropriate seeding and replanted with native species. SWNJ's corporate tree mitigation schedule, which it applies to projects impacting its lands, requires 2:1 mitigation for the tree being removed. The two replacement trees are to be a minimum of 2.5 inches caliper balled and burlapped trees. SWNJ will select the species and the location for planting on the Properties and will provide the Borough with planting specifications. SWNJ requires

maintenance of the trees over the first two growing seasons and any tree that dies within two years of planting must be replaced by the Boroughs.

On March 23, 2021, the NJDEP's Division of Land Resource Protection ("DLRP") issued a Flood Hazard Area Individual Permit, as well as Freshwater Wetlands General Permits and a Water Quality Certificate for the Project. DLRP required the planting of nine trees and 31 shrubs on the Properties to mitigate for impacts to riparian vegetation resulting from the Project.

Due to the proximity of the Project to the Oradell Reservoir, the Boroughs will implement the following soil erosion and sediment control devices during construction: construction and silt fencing to delineate the limit of disturbance, inlet filters, rip-rap outlet protection, and hay bales around any stockpile areas, stabilized construction entrances and coffer dams during excavations.

The Project will also entail the relocation of several utilities: (1) Verizon's telephone duct bank, which currently crosses the Dwars Kill just downstream of the Blanch Avenue Bridge, will be relocated and attached to the downstream façade of the proposed bridge; (2) the 12" Suez watermain will be relocated and attached to the upstream façade of the bridge; and (3) Rockland and Orange Electric Company ("RECO") electric utility poles will be relocated (Pole 20299CS at the southeast corner of the bridge and Pole 20002CS on the southerly approach to the bridge) and one pole will be eliminated (Pole 20001NW at northeast corner of the bridge). Currently, RECO holds an existing ROW adjacent to the bridge and does not need Board approval to work within its easement.

On March 25, 2021, Board Staff conducted a site visit with representatives of SWNJ and the Boroughs. The parties were able to view the hazardous transportation conditions, establish the public need for the project, and review the potential impacts of the Project on SWNJ's property.

On April 5, 2021, via email, Bergen SWAN provided comment on the Project to Board Staff. Bergen SWAN encourages the Boroughs to adhere to the tree replacement formulas and to work closely with SWNJ regarding a planting plan which includes native grasses and ground covers. Bergen SWAN also wishes to see some of the invasive vines removed from the area.

The Boroughs secured from the NJDOT Local Aid and Economic Development funding, totaling \$438,000 to support the Project and will require Board exemption approval before constructing the Project.

## **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. 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 proposals for mitigation.

SWNJ is seeking an exemption which would allow it to convey to the Boroughs both temporary 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 Boroughs unless this Board finds one of the three exemptions applies.

Based on the site visit and its review of the information provided by SWNJ and the Boroughs, Board Staff concurs there is a compelling public need for the Project. In addition, Board Staff is satisfied that the SWNJ proposed mitigation plan, which includes planting of nine trees and 31 shrubs on the Properties to mitigate for impacts to riparian vegetation resulting from the Project, is protective of the watershed. Board Staff further believes that improvement of the culvert and bridge as part of this project will help protect and preserve the water quality within the Oradell Reservoir. Therefore, Board Staff recommends that this Board approve the request for an exemption subject to the following conditions:

1. The Boroughs shall provide SWNJ with notice prior to any construction activity on the Properties;
2. SWNJ shall have the opportunity to have its representative present to observe and object on any actions taken by the Boroughs on SWNJ's property;
3. The Boroughs and SWNJ shall ensure that any utility pole relocation does not occur on SWNJ watershed property, outside of the pre-existing RECO utility easement;
4. The Boroughs 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 (0207-20-0006.1LUP200001);
5. The Boroughs shall commit to consulting with SWNJ's representatives with respect to input for the native species selection for the replanting plan. The replacement trees are to be placed within the Properties; and
6. Before SWNJ grants any permanent easements on the Properties to the Boroughs, SWNJ must obtain a partial release of the Conservation Easement from the DEP Commissioner in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act at N.J.S.A. 13:8B-1 et seq.

## **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 current structural deterioration of the existing bridge and traffic safety hazards. 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 temporary and permanent easements from SWNJ to the Boroughs. 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 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, NJDEP permits, plans, the conditions included above set forth standards by which the Boroughs shall conduct themselves in implementing the Project. After consideration of the entire application, including the NJDEP permits and 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, NJDEP permits and plans contained in the documents submitted by SWNJ are accurate 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 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 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 April 20, 2021.

DATED: April 22, 2021

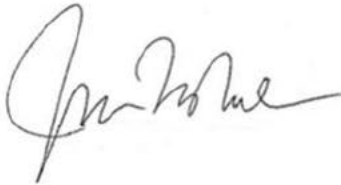
WATERSHED PROPERTY REVIEW BOARD

BY:

Ray  
Bukowski

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Bukowski  
Date: 2021.04.22  
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Ray Bukowski  
Assistant Commissioner  
Department of Environmental Protection  
Pursuant to delegation order dated  
August 23, 2018



Joseph L. Fiordaliso  
President  
Board of Public Utilities



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



REQUEST O/B/O BOROUGHES OF CLOSTER AND NORWOOD FOR APPROVAL BY  
WATERSHED PROPERTY REVIEW BOARD OF MORATORIUM ACT EXEMPTION  
FOR BRIDGE REPLACEMENT PROJECT

SERVICE LIST

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

Megan Lupo  
Board of Public Utilities  
Division of Water  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350  
[megan.lupo@bpu.nj.gov](mailto:megan.lupo@bpu.nj.gov)

Ray Bukowski  
Assistant Commissioner  
Department of  
Environmental Protection  
401 East State Street, 7<sup>th</sup> Floor  
P.O. Box 402  
Trenton, NJ 08625

Yanina Lepore  
Board of Public Utilities  
Division of Water  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350  
[yanina.lepore@bpu.nj.gov](mailto:yanina.lepore@bpu.nj.gov)

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

Bryant Gonzalez  
Corporation Attorney  
SUEZ Water New Jersey  
461 From Road, Suite 400  
Paramus, NJ 07652  
[bryant.gonzalez@suez.com](mailto:bryant.gonzalez@suez.com)

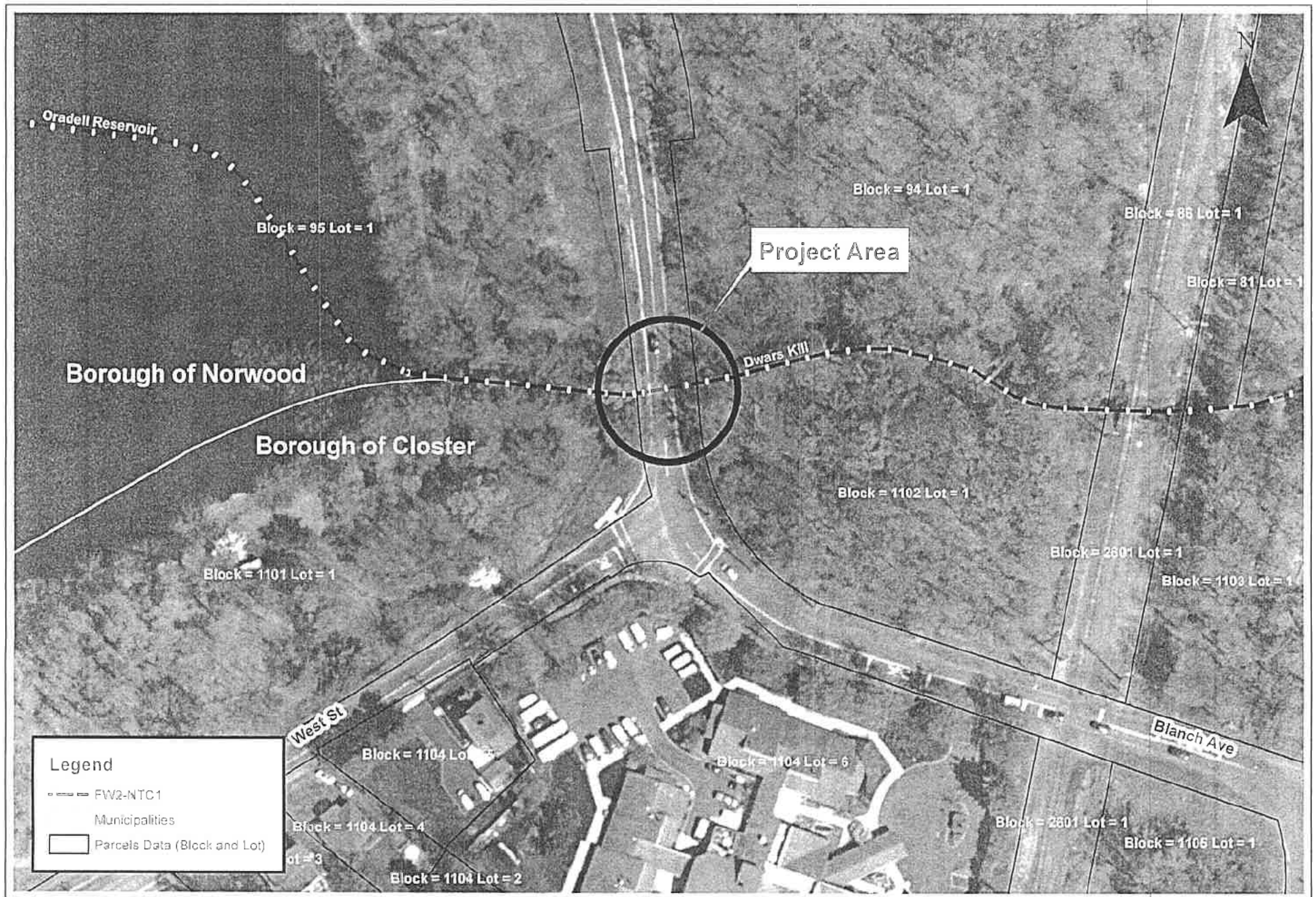
Geoffrey Gersten  
Division of Law  
Dept. of Law and Public Safety  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101  
[geoffrey.gersten@law.njoag.gov](mailto:geoffrey.gersten@law.njoag.gov)

Nick DeNicola, P.E., P.P.  
Boswell Engineering  
330 Phillips Avenue  
P.O. Box 3152  
South Hackensack, NJ 07606-1722  
[ndenicola@boswellengineering.com](mailto:ndenicola@boswellengineering.com)

Jessica Patterson  
Bureau of Legal Services and Stewardship  
NJDEP, Green Acres Program  
501 East State Street  
Mail Code 501-01 PO Box 420  
Trenton, NJ 08625-0420  
[jessica.patterson@dep.nj.gov](mailto:jessica.patterson@dep.nj.gov)



# Exhibit 1 - Aerial Map of the Properties



1 inch = 100 feet



