



PHIL D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

SHAWN M. LaTOURETTE
Commissioner
Department of
Environmental Protection

JOSEPH FIORDALISO
President
Board of Public Utilities

SHEILA Y. OLIVER
Commissioner
Department of Community
Affairs

WATERSHED PROPERTY REVIEW BOARD)	ORDER
REQUEST FOR AN EXEMPTION)	GRANTING
SUEZ WATER NEW JERSEY, INC.)	EXEMPTION
OLD TAPPAN ROAD BRIDGE REPLACEMENT)	
PROJECT- BOROUGH OF OLD TAPPAN AND)	
TOWNSHIP OF RIVER VALE, BERGEN COUNTY)	

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

SUEZ Water NJ Inc. ("SWNJ") 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 a temporary access license and permanent easements on watershed property adjacent to the Hackensack River in the Borough of Old Tappan and the Township of River Vale, Bergen County to the County of Bergen ("County") and Public Service Electric and Gas Company ("PSE&G") to support the Old Tappan Road 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 October 7, 2021, SWNJ filed an application with the Board for an exemption from the Act. Specifically, SWNJ seeks an exemption to grant the County both a temporary access

license and permanent easement and to grant PSE&G a permanent aerial easement on portions of the following parcels ("Properties") to support the construction of the Project:

Borough of Old Tappan, Bergen County – Block 2901, Lot 1
Township of River Vale, Bergen County – Block 1202, Lot 1

An aerial map illustrating the Properties is attached as Exhibit 1.

The Oradell Reservoir is a water supply source for the residents of Bergen and Hudson Counties. The Hackensack River (FW2-NTC1), which is a tributary to the reservoir, flows under Old Tappan Road and through the Properties. The Properties are vacant and densely wooded, and act as watershed buffer land for the purpose of protecting a surface water supply source. Therefore, the Properties fall under the Act's moratorium on the conveyance of watershed property.

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. The proposed licenses and permanent easements involve activities prohibited by 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.).

The County owns and has jurisdiction over the Old Tappan Road Bridge (Bergen County Bridge No. 020043A), which carries Old Tappan Road over the Hackensack River in the Borough of Old Tappan and the Township of River Vale. The existing single span bridge was constructed in 1900 and widened/rehabilitated in 1972. The existing curb-to-curb bridge width is 30 feet, with one 14-foot lane and one one-foot shoulder in each direction. There is a 7.5-foot-wide sidewalk on the south side of the bridge. Current conditions include encroachments of a gas main, guiderail and sidewalk on the Properties totaling 268 square feet (0.006 acres).

As a result of a 2016 bridge inspection, the County determined that the Old Tappan Road Bridge is in a severe state of deterioration. The County has decided to replace the existing bridge since it is structurally deficient due to the poor condition of the deck, superstructure, and substructure. After reviewing various alternative designs, the County decided to replace the bridge with a prestressed concrete spread box beam superstructure. The Project will include widening the bridge to incorporate two twelve-foot lanes, eight-foot shoulders on each side of the bridge and a six-foot wide sidewalk on the southern side of the bridge. The new bridge will maintain a deep foundation with piles being installed below the scour depth as a scour countermeasure. The proposed project also seeks to eliminate the existing encroachments to SWNJ property (gas main, guiderail and sidewalk).

The demolition of the existing bridge, construction of the proposed prestressed concrete spread box beam superstructure and associated roadway improvements will result in a disturbance to approximately 0.2461 acres of land. The majority of this disturbance will occur within the limits of the existing County road right-of-way ("ROW"). While the County does not need the Board's approval to work in the existing ROW, which predates the Act, the County will need a temporary license for access during construction, and a permanent easement on SWNJ's watershed property for future maintenance and access to the bridge. No improvements will be constructed on the Properties.

To facilitate construction of the Project, the County is requesting two temporary license areas totaling 865 square feet (0.019 acre). These license areas will be extinguished at the conclusion of construction. The temporary license areas are depicted in Exhibit 2 and are summarized here:

- Temporary License (Area 1) – 570 square feet - Block 1202, Lot 1 Township of River Vale
- Temporary License (Area 2) – 295 square feet - Block 2901, Lot 1 Borough of Old Tappan

The County is also requesting a permanent construction and maintenance easement for the same areas. The permanent easement being sought under this exemption request totals 865 square feet (0.019 acre), is depicted in Exhibit 3 and is summarized here:

- Construction and Maintenance Easement (Area 1) – 570 square feet - Block 1202, Lot 1 Township of River Vale
- Construction and Maintenance Easement (Area 2) – 295 square feet - Block 2901, Lot 1 Borough of Old Tappan

As part of the Project, the County decided to remove and relocate one utility pole located within Block 1202, Lot 1. The pole will be relocated 17ft from its existing location to the County ROW. Once the new pole is installed, relocation of the overhead electric lines will take place. This relocation will require a separate permanent construction and maintenance easement for the new location of the overhead electric lines. The permanent aerial easement being sought under this exemption request totals 3,871 square feet (0.088 acre), is depicted in Exhibit 4 and is summarized here:

- Aerial Easement (Area 1) – 1,268 square feet - Block 1202, Lot 1 Township of River Vale
- Aerial Easement (Area 2) – 1,291 square feet - Block 2901, Lot 1 Borough of Old Tappan
- Aerial Easement (Area 3) – 1,312 square feet – Block 2901, Lot 1 Borough of Old Tappan

PSE&G and the County have identified seven trees, with a diameter at breast height (DBH) greater than six inches, within the permanent easement areas. Of these, four trees

(21-inch red maple, 14-inch red maple, 16-inch red maple and 16-inch ash) are deemed unsafe and in very poor condition. SWNJ has determined that these trees to be removed and is not seeking mitigation for the removal of these trees given the poor health. PSE&G determined that the remaining three trees (18-inch maple, 22-inch sycamore and 24-inch sycamore) will require removal at the time of construction of the project due to their location within the permanent aerial easement. SWNJ will require mitigation for these three trees. The project will also require the removal of certain understory vegetation that will be restored with the appropriate seeding and replanted with native species at the conclusion of the project. SWNJ's corporate tree mitigation schedule, which it applies to projects impacting its lands, ranges from 1:1 to 4:1 mitigation for the trees being removed, depending on the diameter of the tree. It is estimated that eight trees will be planted to mitigate for the three healthy trees to be removed. The 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 and will provide the County and PSE&G 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.

The project will require NJDEP's Division of Land Resource Protection ("DLRP") to issue a Flood Hazard Area Individual Permit, as well as Freshwater Wetlands General Permits and a Water Quality Certificate for the Project. Applications are currently under review with DLRP.

Due to the proximity of the Project to the Hackensack River, the County has proposed to implement the following soil erosion and sediment control devices during construction: tree protection, 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 floating turbidity barriers during excavations. These measures will be memorialized in the local and State permits issued for the Project.

On November 12, 2021, Board Staff conducted a site visit with representatives of SWNJ and the County. A representative of Bergen SWAN participated in the site visit. 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.

Bergen SWAN and Hackensack River Keeper were provided an opportunity to comment on the project. On February 7, 2022, Bergen SWAN advised Board Staff that it had no comments on the project. Bergen SWAN requested the project limit the removal of trees to the greatest extent possible and that replacement trees be planted. No additional comments were received by Staff.

The County has secured New Jersey Department of Transportation, Local Aid and Economic Development, Local Bridge Fund funding to support the Project and is awaiting approval of SWNJ's exemption request by the Board exemption approval before advertising for construction bids for 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. 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 that would allow it to convey to the County a temporary license and permanent easement and to PSE&G a permanent aerial easement over portions of the Properties. Staff notes that currently, a PSE&G pole encroaches on the Properties and an aerial electric line crosses the Property. SWNJ maintains the Properties for the purpose of protecting the Oradell Reservoir. Hence, the Act's moratorium is applicable and prohibits SWNJ from conveying any easements to the County or PSE&G unless this Board finds one of the three exemptions applies.

Therefore, Board Staff believes there is a compelling public need for the Project and recommends that this Board approve the request for an exemption subject to the following conditions:

1. The County and PSE&G must provide SWNJ with notice prior to any construction activity on the Properties;
2. SWNJ must have the opportunity to have its representative present to observe and object to any actions taken by the County and/or PSE&G on SWNJ's property;
3. The County, PSE&G and SWNJ must ensure that any utility pole relocation does not occur on SWNJ watershed property, outside of the pre-existing and requested easements;
4. The County, PSE&G and SWNJ must comply with any and all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLRP Freshwater Wetlands Protection Act and Flood Hazard Area Control Act pending approvals (File No. 0200-21-0005.1);
5. For the purposes of protecting the watershed, Board Staff is satisfied with the tree mitigation ratios required by SWNJ. The County committed to consulting with SWNJ's representatives with respect to the native species selection for the replanting plan. The eight replacement trees are to be placed within the Properties or other watershed property held by SWNJ;

6. Before SWNJ grants any permanent easements on the Properties to the County, 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; and

7. The County and PSE&G must supply Board Staff with copies of the executed permanent easements. This approval allows for the reduction in size of the permanent easements requested herein without needing further Board approval. However, if the permanent easement areas increase (i.e., as a result of pending approvals) or if the easements impact a portion of the Properties not subject to this approval, regardless of whether the easement area is decreased in size, further Board approval will be needed.

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. The record before the Board contains sufficient evidence demonstrating the public safety and water quality concerns if the Project is not completed. Not moving forward with the Project will lead to failure impacting the roadway, the Hackensack River and SWNJ's watershed property. 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 access license and permanent easements from SWNJ to the County and a permanent aerial easement to PSE&G. 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 including the development plans, the conditions included above set forth standards by which the County and PSE&G shall conduct themselves in implementing the Project. The Board has also considered the comments of the parties to the Settlement. After consideration of the entire application, including 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 including the plans contained in the documents submitted by SWNJ, the County and PSE&G are made part of the record and the Board **RELIES** upon the conditions and protections contained therein in considering this application. The Board **HEREBY FINDS** that these protections, plus the additional conditions of this Order provide sufficient mitigation of any potential water quality impacts. Therefore, the Board **HEREBY ORDERS** that the conditions agreed to and 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.

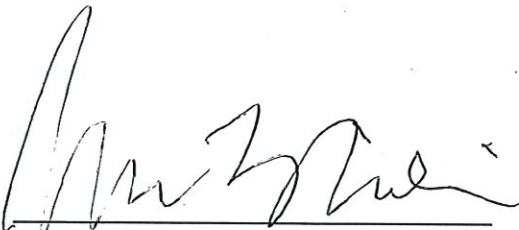
This Order addresses consideration of an exemption from the Act and does not relieve SWNJ of any other obligations that may be required pursuant to any statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on February 24, 2022.

DATED: 2/28/22

WATERSHED PROPERTY REVIEW BOARD

BY:



Joseph L. Fiordaliso
President
Board of Public Utilities

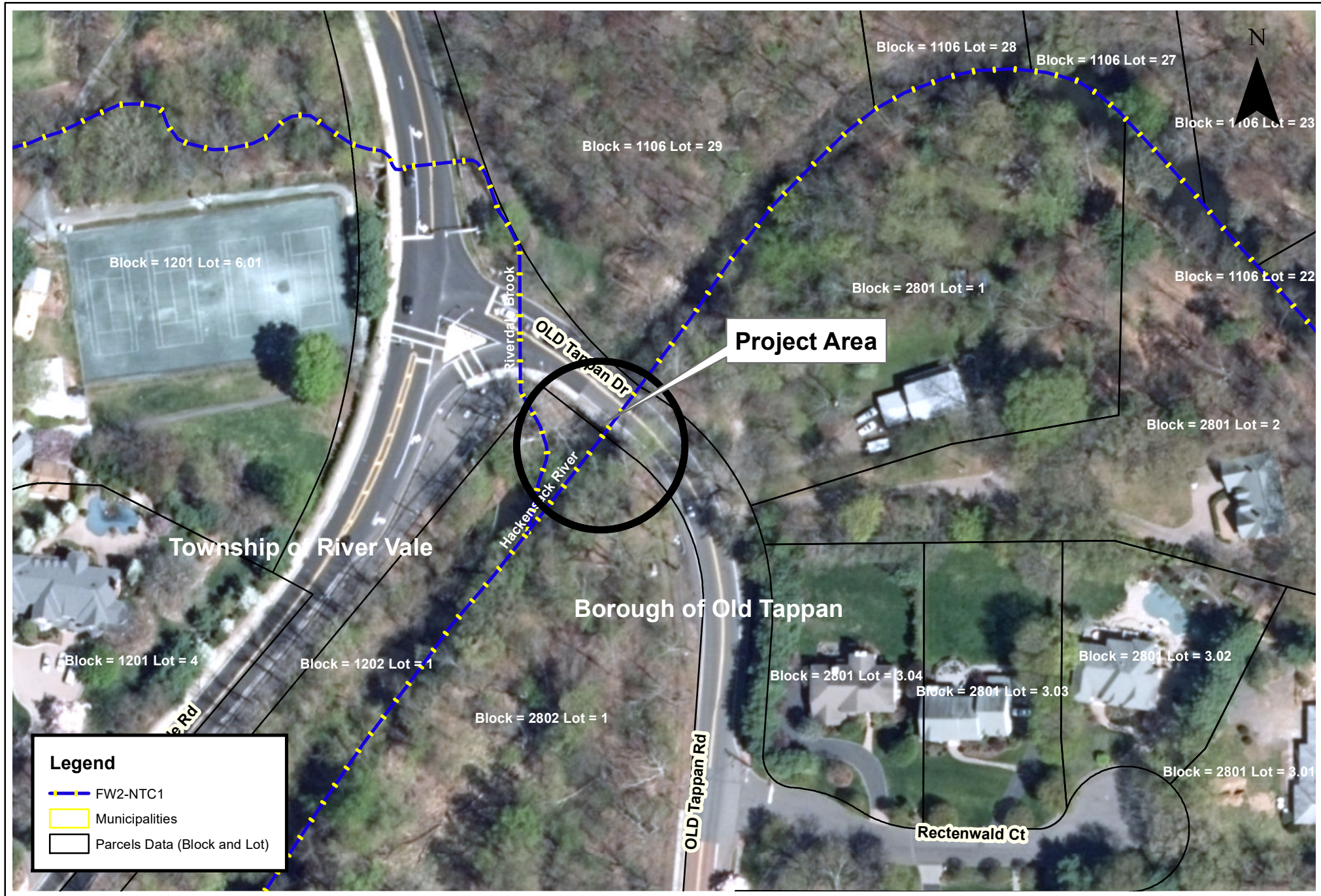


Donald Palombi
Chief Regulatory Officer
Department of Community Affairs
Pursuant to delegation order dated
August 15, 2018

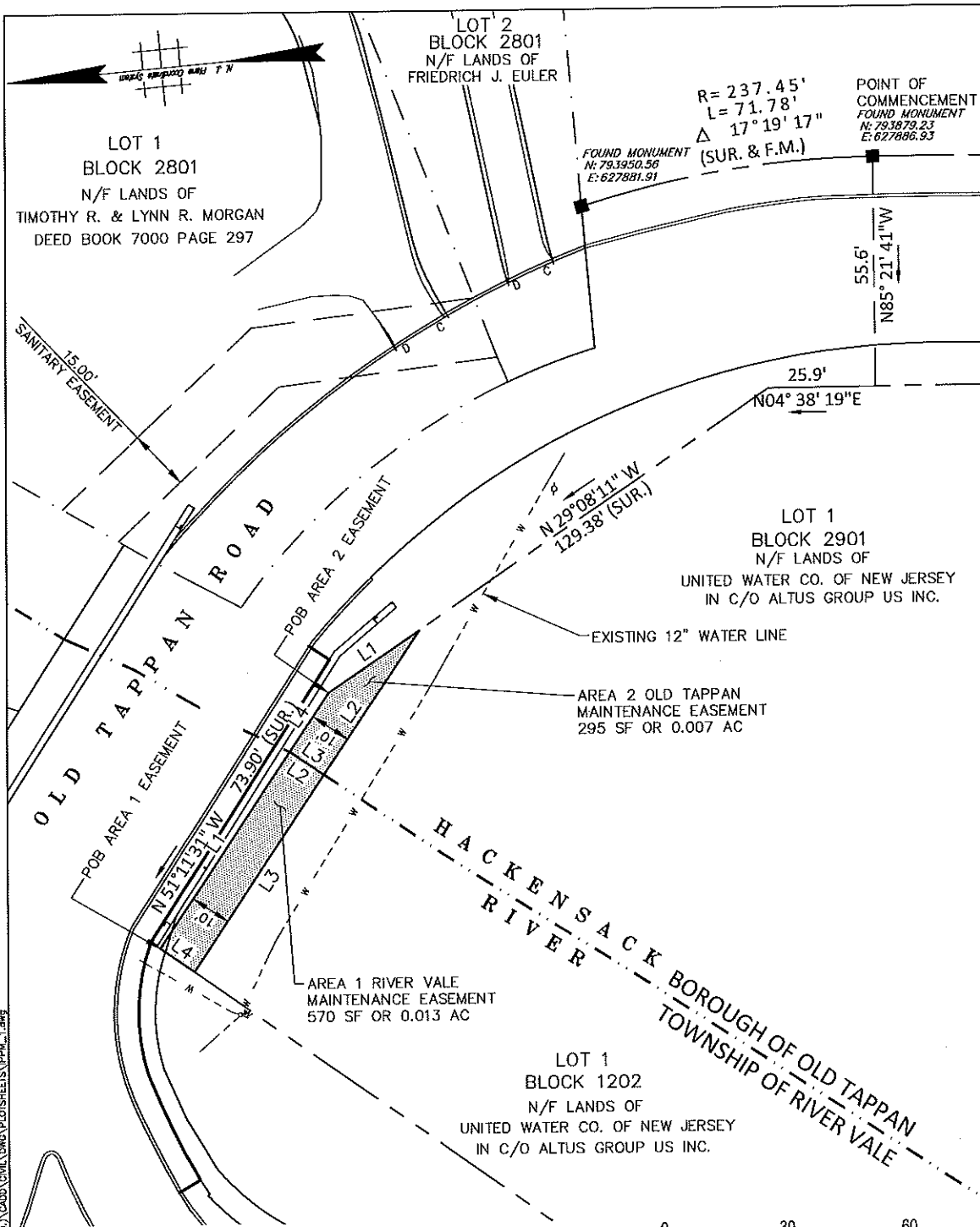


Sean D. Moriarty
Deputy Commissioner
Department of Environmental Protection
Pursuant to delegation order dated
February 24, 2022

Exhibit 1 - Aerial Map of the Properties



1 inch = 100 feet



LINE #	LENGTH	DIRECTION
L1	60.66	S01° 11' 31"E
L2	10.00	S39° 08' 37"W
L3	87.06	N51° 11' 31"W
L4	10.00	N40° 12' 37"E

LINE #	LENGTH	DIRECTION
L1	26.63	S22° 08' 11"E
L2	41.78	N51° 11' 31"W
L3	10.00	N30° 08' 37"E
L4	17.04	S01° 11' 31"E

NOTES:

- THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE.
- BASIS OF BEARING,
HORIZONTAL DATUM: NEW JERSEY STATE PLANE
COORDINATE SYSTEM, (NAD83).
VERTICAL DATUM: NAVD 88, ESTABLISHED BY GLOBAL
POSITIONING SYSTEM METHODOLOGY.

DAVID D. RUPNARAIN, PROFESSIONAL LAND SURVEYOR
N.J. LICENSE NO. 246503587100

REPLACEMENT OF OLD TAPPAN ROAD
BRIDGE OVER THE HACKENSACK RIVER
BOROUGH OF OLD TAPPAN & TOWNSHIP OF RIVER VALE
BERGEN COUNTY BRIDGE NO. 020043A
BERGEN COUNTY PROJECT NO. C1-24

KSE
KS ENGINEERS, P.C.

Engineers • Surveyors • Construction Managers
2 Riverfront Plaza, 3rd Floor Newark, N.J. 07102
Phone: (973)623-2969, Fax: (973)623-2988

ENGINEERING DIVISION, D.P.W.
BERGEN COUNTY, NEW JERSEY

JOSEPH A. FEMIA
BERGEN COUNTY ENGINEER

INDIVIDUAL PROPERTY PARCEL MAP
BERGEN COUNTY MAINTENANCE EASEMENT

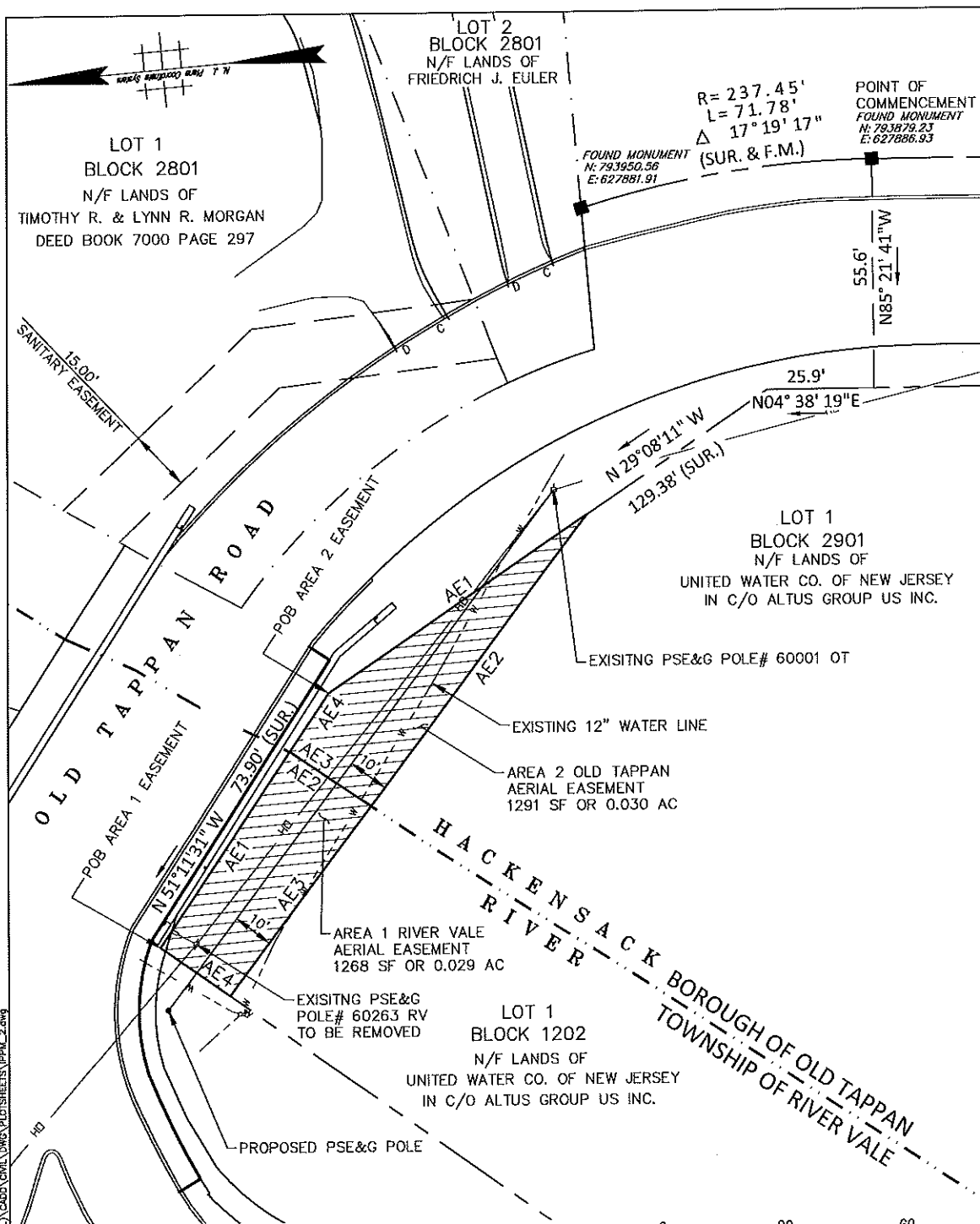
PARCEL NO.: _____ DATE: 09/08/2021

OWNER: N/F LANDS OF UNITED WATER CO. OF NEW JERSEY

BLOCK NO.: 1202 LOT NO.: 1

BOROUGH OF OLD TAPPAN ~ TOWNSHIP OF RIVER VALE ~ BERGEN COUNTY ~ NEW JERSEY

**EXHIBIT
3**



AREA 1 RIVER VALE AERIAL EASEMENT		
LINE #	LENGTH	DIRECTION
AE1	58.89	S51° 11' 31"E
AE2	23.80	S39° 08' 37"W
AE3	57.32	N48° 01' 21"W
AE4	20.84	N40° 12' 37"E

AREA 2 OLD TAPPAN AERIAL EASEMENT		
LINE #	LENGTH	DIRECTION
AE1	76.35	S29° 08' 11"E
AE2	88.08	N48° 01' 21"W
AE3	23.80	N39° 08' 37"E
AE4	17.04	S51° 11' 31"E

0 30 60
SCALE IN FEET

NOTES:

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VERTICAL DATUM: NAVD 88, ESTABLISHED BY GLOBAL POSITIONING SYSTEM METHODOLOGY.

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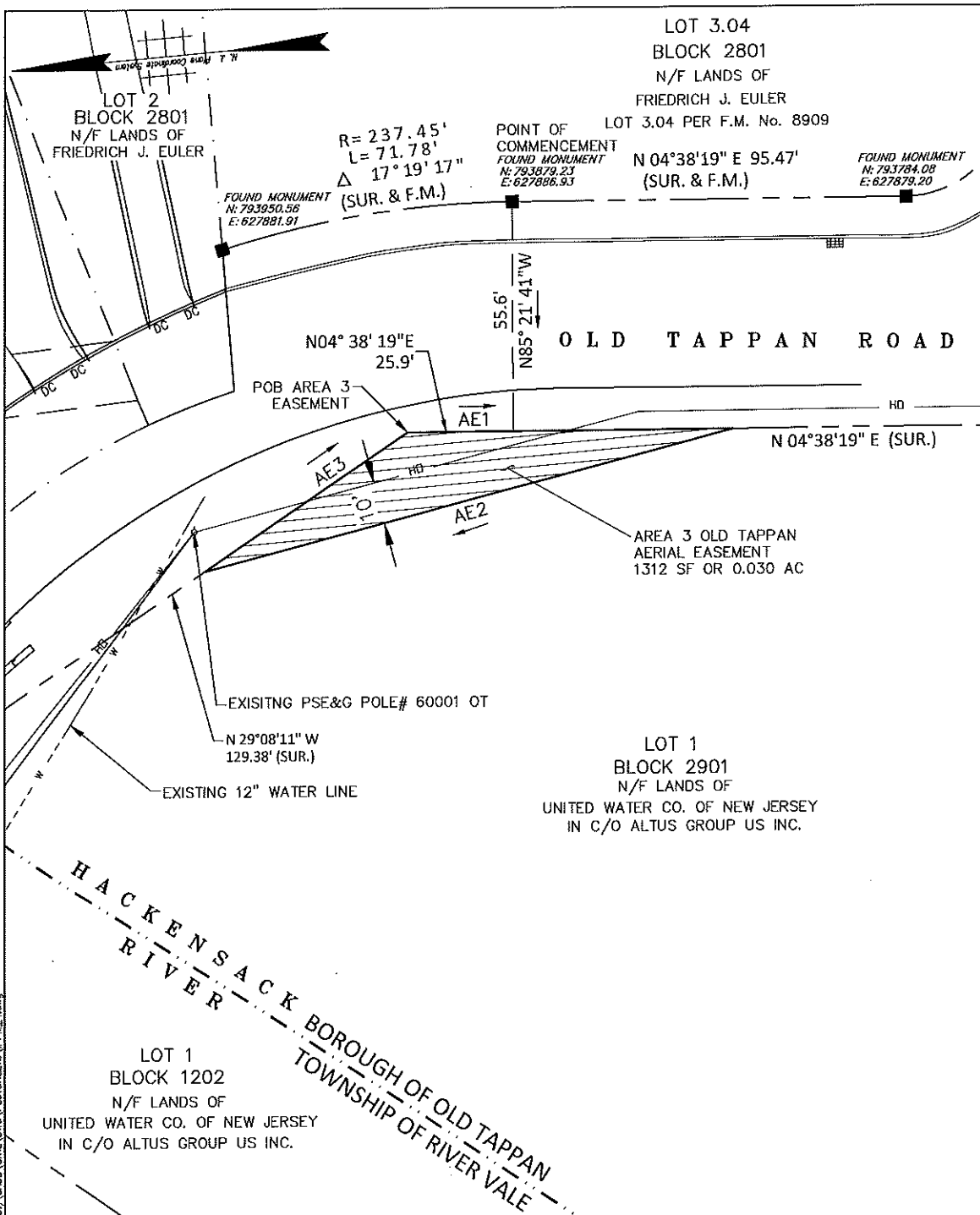
INDIVIDUAL PROPERTY PARCEL MAP
PSE&G AERIAL EASEMENT

PARCEL NO.: _____ DATE: 09/08/2021

OWNER: N/F LANDS OF UNITED WATER CO. OF NEW JERSEY

BLOCK NO.: 1202 LOT NO.: 1
BOROUGH OF OLD TAPPAN ~ TOWNSHIP OF RIVER VALE ~ BERGEN COUNTY ~ NEW JERSEY

Exhibit
4



AREA 3 OLD TAPPAN AERIAL EASEMENT		
LINE #	LENGTH	DIRECTION
AE1	78.18	S4° 38' 19" W
AE2	132.84	N8° 47' 58" W
AE3	59.82	S29° 08' 11" E

0 30 60
SCALE IN FEET

NOTES:

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HORIZONTAL DATUM: NEW JERSEY STATE PLANE
COORDINATE SYSTEM, (NAD83).
VERTICAL DATUM: NAVD 88, ESTABLISHED BY GLOBAL
POSITIONING SYSTEM METHODOLOGY.

DAVID D. RUPNARAIN, PROFESSIONAL LAND SURVEYOR
N.J. LICENSE NO. 246S03587100

REPLACEMENT OF OLD TAPPAN ROAD
BRIDGE OVER THE HACKENSACK RIVER
BOROUGH OF OLD TAPPAN & TOWNSHIP OF RIVER VALE
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ENGINEERING DIVISION, D.P.W.
BERGEN COUNTY, NEW JERSEY

JOSEPH A. FEMIA
BERGEN COUNTY ENGINEER

INDIVIDUAL PROPERTY PARCEL MAP
PSE&G AERIAL EASEMENT

PARCEL NO.: _____ DATE: 09/08/2021

OWNER: N/F LANDS OF UNITED WATER CO. OF NEW JERSEY

BLOCK NO.: 2901 LOT NO.: 1

BOROUGH OF OLD TAPPAN ~ TOWNSHIP OF RIVER VALE ~ BERGEN COUNTY ~ NEW JERSEY