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STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Department of
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Affairs

WATERSHED PROPERTY REVIEW BOARD)	ORDER
REQUEST FOR AN EXEMPTION)	GRANTING
BY THE CITY OF JERSEY CITY)	EXEMPTION
BOONTON RESERVOIR PROTECTION AND)	
TRAIL PROJECT)	
TOWN OF BOONTON AND TOWNSHIP OF)	
PARSIPPANY-TROY HILLS, MORRIS COUNTY)	

(SERVICE LIST ATTACHED)

The City of Jersey City ("City") 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 is needed to allow the City to execute a long-term lease with the Morris County Park Commission ("Commission") for the development, maintenance and management of a perimeter trail around the Boonton Reservoir in the Town of Boonton and the Township of Parsippany-Troy Hills, Morris County. This order adopts Board Staff's recommendation to grant the requested exemption in accordance with the conditions outlined below.

BACKGROUND/PROCEDURAL HISTORY

On September 14, 2022, the City filed an application with the Board for an exemption from the Act. Specifically, the City seeks an exemption from the Board regarding the Recreational Trail Lease Agreement ("Agreement") it entered with the Commission on February 14, 2019, for the purpose of development, maintenance and management of a

7.7-mile perimeter public access loop trail around the Boonton Reservoir ("Project") while providing extensive security upgrades and water quality improvements which will enhance the property and the water supply for the City's residents. The Agreement was conditioned upon the City and the Commission adopting a Property Management Plan ("PMP") and the Board granting an exemption. There will be no permanent conveyance of property resulting from this exemption request.

The City is the owner of the 1,300-acre Boonton Reservoir (also known as the Jersey City Reservoir), located in the Rockaway River Watershed, consisting of the following parcels: Block 79, Lots 17-19; Block 90, Lots 68.01 and 84; Block 90.01, Lots 2-4, 9, 22, 47 and 67; Block 105, Lots 3 and 4.02; and Block 105.01, Lot 3 in the Town of Boonton and Block 400, Lot 1; Block 450, Lots 1 and 2; and Block 494, Lot 8 in the Township of Parsippany-Troy Hills, Morris County. An aerial map illustrating the Boonton Reservoir is attached as Exhibit 1.

The Boonton Reservoir was constructed by the City in 1902. Currently, there is a public-private contract between the City and Veolia North America, formerly SUEZ, for the operation and maintenance of the City's water system. Veolia currently oversees the treatment of the reservoir's water supply; onsite facilities include a filtration plant, pump stations and associated office buildings. The remainder of the reservoir property includes densely wooded and forested wetland areas which act as watershed buffer land for the purpose of protecting the surface water supply source. Therefore, the reservoir property falls under the Act's moratorium on the conveyance of watershed property.

Recognizing the natural beauty, vast open space and recreational potential of the reservoir property, the City and the Commission entered into the Agreement with an initial forty-year lease term and a single option to renew for an additional forty years upon mutual party consent. As a condition of the Agreement, the Commission, in partnership with the Open Space Institute (a nonprofit organization) and Greener by Design (a private consulting firm), created the PMP which provides a comprehensive guide for the construction, operation and maintenance of the public trail, establishes procedures for responsible stewardship of the Boonton Reservoir and outlines a strategy for maximizing the public benefits of the project. The Commission authorized the PMP by resolution on January 28, 2019, and the City adopted the PMP by resolution on December 4, 2019.

The PMP describes the trail as a non-motorized recreational and educational trail that will be no greater than eight (8) feet in width and made of pervious material. At this time, the permitted uses on the trail will include only passive activities such as walking, running and cross-country skiing, birding and nature study; with no pets allowed, fishing, boating and swimming in the Boonton Reservoir is prohibited. The trail surface will be adequate for use by emergency vehicles (including rescue vehicles, ATVs and horses) and no structures other than parking, trailheads, kiosks, benches and interpretive signage will be permitted.

The NJDEP pedestrian bridge plans indicates that the trail will be constructed employing US Forest Service trail construction standards in four phases: Phase I – Eastern Trail;

Phase II – Boonton Trail; Phase III – Dam Trail; and Phase IV – Western Trail. Phase I (approximately three miles long) will begin at the Greenbank Road south parking area. This section of the trail will follow an existing access road along the eastern and southern edge of the reservoir. Phase II (approximately two miles long) will be accessible from the Parsippany Boulevard parking area and trailhead on Route 202 south of the existing Washington Street pedestrian bridge. Phase III (0.6 miles long) will be accessible from the Greenbank Road north parking area. This section of the trail will provide an opportunity for visitors to see the impressive reservoir dam infrastructure. Phase 4 (approximately two miles long) is the most naturalized section of the trail. The route of this western forest trail is designed to avoid ecologically sensitive areas (including heron foraging and Bald Eagle nesting areas). Where necessary, boardwalks and bridges will be constructed to allow visitors to cross wetland areas. The estimated cost for this Project is \$4,937,500 which will be funded through the Highland Council.

The NJDEP parking area site plans indicates that the trail will be accessible from three parking lots located in Parsippany-Troy Hills Township (Greenbank Drive North and South Parking Areas totaling 47 parking spaces and Parsippany Boulevard Parking Area with 34 parking spaces) and from the existing Washington Street Bridge trailhead in the Town of Boonton. These three gravel parking areas will be secured with lockable gates and removable bollards and will include bioswales to capture surface runoff and naturally filter pollution and silt. The parking areas will also be ADA compliant, with ADA spaces constructed with pervious pavers or pervious asphalt.

The construction of the Parsippany Boulevard Parking Area will require the removal of several trees. To offset any impact to the Boonton Reservoir, the Project includes a mitigation area adjacent to the parking lot to be planted with native tree species. Forty-one (41) trees will be planted within a currently cleared area along Parsippany Boulevard. This newly forested area will provide a buffer between the parking lot and the Boonton Reservoir.

During field reconnaissance for the PMP, a significant number of stormwater outlets and natural stream channels were identified which drain into the reservoir. Of greatest concern are several stormwater outlets along the western edge of the property, three of which drain runoff from Interstate Route 287. Stormwater improvements are proposed in Phase II and Phase IV of the Project. A combination of engineering solutions and native vegetation plantings are proposed to improve the ecological conditions and improve water quality at stormwater runoff locations.

The Boonton Reservoir has generally been off limits to the public in the past, however the chain-link fence around the perimeter of the property has not deterred the public from creating their own access points to the reservoir. Because the proposed Project will result in enhanced public visitation to the property, the PMP envisions regular security patrols by the Commission and the Sheriff's departments ("Parties"). Day to day monitoring will be coordinated by these Parties and aided by the placement of cameras and signage throughout the property. New fencing will be installed to prevent trail users from accessing critical infrastructure and the reservoir. Since public water supply is the primary use of the

site, security and water quality is paramount. Therefore, the Agreement gives the City the sole right to suspend or terminate public access to the trail if any hazardous conditions, security threats or decline in water quality are encountered which cannot be resolved within a reasonable period.

NJDEP's Division of Land Resource Protection ("DLRP") approved the project on August 25, 2022 (File Number 1429-03-0012.2 LUP210001). NJDEP's Division of Dam Safety & Flood Engineering has been consulted and is currently reviewing the project. The Hudson and Morris County Offices of Emergency Management have also provided guidance on this project; however, a full security assessment has not been completed to date.

Board Staff previously notified the Board, at its October 15, 2019 meeting, that it was in discussions with the City regarding this project. Board Staff conducted two site visits with representatives of Veolia, Greener by Design and the Open Space Institute and attended several additional project meetings over the past several years regarding this 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 by these entities. Under past Board precedent, a long-term lease is considered to be a conveyance under the Act. 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 potential impacts on watershed buffer areas and must propose mitigation to address those impacts.

The City is seeking an exemption for a long-term lease that would allow the development, maintenance and management of a 7.7mile perimeter public access trail around the Boonton Reservoir while providing extensive security upgrades and water quality improvements which will enhance the property and the water supply for the City's residents. Staff notes that this Agreement is conditioned to the PMP's comprehensive guide for the construction, operation and maintenance of the public trail; procedures for the stewardship of the Boonton Reservoir; and outlines a strategy for maximizing the public benefits of the Project. Hence, the Act's moratorium is applicable and prohibits the City from conveyance of the property to the Commission unless this Board finds one of the three exemptions applies.

Therefore, Board Staff believes that the sale or development of the watershed property is otherwise consistent with the purposes of this Act and recommends that this Board approve the request for an exemption subject to the following conditions:

1. The Commission must provide the City with notice prior to any construction activity at the reservoir property;
2. The City must have the opportunity to have its representative present to observe and object to any actions taken by the Commission on the City's property;
3. The Commission and the City 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 approvals (File No. 1429-03-0012.2LUP210001); and
4. Any future agreements or amendments to the Agreement between the parties that will affect the City's land rights or will require the transfer of any additional land rights may require further Board action. The Board, therefore, directs the City to consult with Board Staff if the parties to the Agreement mutually agree to amend the Agreement or otherwise change the project. Such changes that would require consultation with Staff include, but are not limited to, providing ADA accessibility, adding additional access points, changing the permitted uses on the trail and adding impervious surfaces. Staff shall work with the parties to determine whether proposed changes require additional Board action.

CONCLUSION

The Board is aware of the findings of its Staff and recognizes that the development of the recreational trail system, increasing security and improving the environmental conditions around the Boonton Reservoir, is consistent with the purposes of the Act since the goal of the project is to protect water quality and encourage open space and recreation on the property. The record before the Board contains sufficient evidence demonstrating the public benefit that will entail if the Project is completed. Based on the foregoing discussion and the conditions set forth above, the Board **HEREBY FINDS** that there is a public benefit for the Project and the no permanent conveyance of the property from City to the Commission will occur. The Board **ALSO FINDS** that the Agreement gives the City the sole right to suspend or terminate public access to the trail if any hazardous conditions, security threats or decline in water quality are encountered which cannot be resolved within a reasonable period. These findings are the result of the thorough and complete review of the record in this proceeding and it is limited to the facts 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 site plans, PMP and the Agreement and the conditions included above set forth standards by which the Commission and the City shall conduct themselves in implementing the Project. After consideration of the entire application, including the site plans, PMP, and the Agreement, the Board **HEREBY GRANTS** an exemption to the prohibition from conveying watershed property under the Act, limited to the purposes set forth in this application. As stated above, the Board **FINDS** that there is a public benefit to developing a recreational trail system around the Boonton Reservoir.

The application including the site plans, PMP and the Agreement contained in the documents submitted by the City is 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, and encourages open space and recreational use in the property. 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.

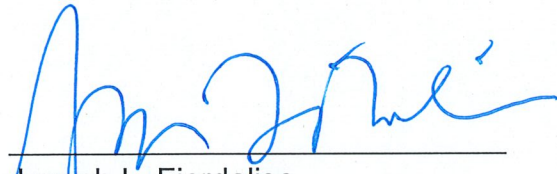
This Order addresses consideration of an exemption from the Act and does not relieve the City of any other obligations that may be required pursuant to any statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on October 27, 2022.

DATED: 11/1/22

WATERSHED PROPERTY REVIEW BOARD

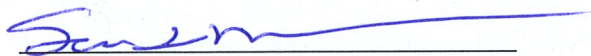
BY:



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

