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Governor

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STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Commissioner
Department of
Environmental Protection

DIANNE SOLOMON
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Utilities

RICHARD E.
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Commissioner
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Affairs

IN THE MATTER OF THE CITY OF JERSEY CITY'S)
REQUEST FOR AN EXEMPTION TO THE)
WATERSHED PROTECTION AND MORATORIUM)
ACT FOR THE SALE OF WATERSHED PROPERTY)
AROUND THE SPLIT ROCK RESERVOIR:)

ORDER GRANTING
EXEMPTION

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

BACKGROUND/PROCEDURAL HISTORY

On December 11, 2013, the City of Jersey City ("City") approved Ordinance No. 13-144 ("Ordinance") authorizing the City to sell City-owned property located in the Township of Boonton, Borough of Kinnelon, the Township of Jefferson, and the Township of Rockaway ("Property") which surrounds the Split Rock Reservoir. Through a written request dated February 27, 2014, the City is seeking an exemption from the Watershed Property Review Board ("Board") for the sale of the above Property to the New Jersey Department of Environmental Protection ("NJDEP"), through the Green Acres Program, for inclusion in the Wildcat Ridge Wildlife Management Area administered through the NJDEP's Division of Fish and Wildlife. Without the exemption, conveyance of the properties would be prohibited by the Watershed Protection and Moratorium Act, P.L. 1998, c. 163, as amended by P.L. 1990, c. 19 (the "Act").

The Property surrounds the Split Rock Reservoir and is owned and maintained by the City for the purpose of protecting a surface water supply source. United Water operates the Jersey City water system through a public-private partnership with Jersey

City Municipal Utilities Authority ("JCMUA"). The Property for sale consists of property with no Block and Lot designation in the Township of Boonton; Block 30, Lots 3 and 4 and Block 300, Lot 5 in the Borough of Kinnelon; Block 271, Lot 5 in the Township of Jefferson; and, Block 31001, Lot 12, Block 50001, Lots 1, 3 and 18, and Block 50003, Lots 19 and 20 in the Township of Rockaway. The Property measures approximately one thousand three hundred fifty (1,350) acres¹. The Property is currently undeveloped and serves as a natural buffer to the Split Rock Reservoir. The City will retain ownership of the concrete form dam, which comprises a portion of Split Rock Road between Block 31001, Lot 12 and Block 50001, Lot 1. The City shall also maintain the dam and the portion of the Split Rock Road over the dam structure in compliance with all federal, state and local requirements including but not limited to the Bureau of Dam Safety under the Safe Dam Act, N.J.S.A. 58:4-8.1 et seq., and N.J.A.C. 7:20-1.4 et seq. While all water rights will be retained by the NJDEP, Jersey City shall retain the right to use of the water contained within the Split Rock Reservoir pursuant to any and all current and future NJDEP permits and approvals.

The Agreement for Purchase of Unimproved Real Property ("Agreement") between the City and the NJDEP will be signed by the City and the NJDEP after the Board Meeting on May 9, 2014. Paragraph 2 of the Agreement states that the purchase price is \$3,148,000 for the Property containing approximately 1,350 acres of land.

In 1996, the Board granted an exemption under the Act for the sale of a conservation easement (recorded at Morris County Deed Book 4395, Page 220, dated June 17, 1996, (the "Conservation Easement") to the NJDEP for lands within the Township of Rockaway and the Borough of Kinnelon, including portions of the Property. The Conservation Easement allowed for public access, retaining and protecting the natural resources, scenic and open space use, as well as maintaining or enhancing air and water quality. Therefore, the NJDEP currently holds a conservation easement on portions of the lands included in the current sale before the Board and is interested in acquiring the underlying fee simple rights to these lands. Board Staff reviewed the Conservation Easement as part of the review of this exemption request.

On January 22, 2013, the Board granted an exemption under the Act for the temporary conveyance of an easement on a portion of the same watershed property located in Township of Rockaway, adjacent to the Split Rock Reservoir, for a temporary access road to support PSE&G's construction of the Susquehanna to Roseland Transmission Line Project.

¹ The actual acreage of the Property will be determined in accordance with the final survey to be prepared by the City but will not be less than 1,350 acres of land (See Section 1 of the Agreement for Purchase of Unimproved Real Property (attached as Exhibit 1)). The Property located in the Township of Boonton and Block 5001, Lot 3 located in the Township of Rockaway are not listed in the City's Ordinance and were discovered while the Purchaser was conducting the final survey. The City contacted Board Staff to notify the Board of these additions and the Agreement has been updated to reflect the purchase of these additional lands.

Representatives of the NJDEP conducted various site visits to the Property. They concluded that the uplands are heavily forested and that there are several abandoned mines on the Property.

DISCUSSION

According to the Act, no "municipality, municipal utilities authority, or public utility shall convey any land utilized for the purpose of the protection of a public water supply" Section 1 of P.L. 1988, c.163. This means that the Act places a moratorium on all conveyances of watershed property. The Act authorizes the Board to provide exemptions to the Act's moratorium if the person applying for the exemption demonstrates "the sale or development of the watershed property is otherwise consistent with the purposes of this Act" P.L. 1988, c. 163 as amended by PL. 1990. 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 City bases this application for an exemption on the sale of the watershed property being otherwise consistent with the purposes of this Act.

The Board **HEREBY FINDS** that the proposed conveyance by the City to the NJDEP is consistent with the purposes of the Act, which include protecting water quality and encouraging open space preservation. 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 particular 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.

After consideration of the entire application, including the Ordinance, the Agreement and the Conservation Easement document, the Board **HEREBY GRANTS** an exemption under the Act from the moratorium on the conveyance of watershed property, limited to the purposes set forth in this application.

On the issue of a possible merger of the Conservation Easement with the acquisition that is the subject of this exemption request, the Board **HEREBY FINDS** that such merger would not be inconsistent with the Act. Although the Conservation Easement imposed specific management restrictions on the Property, the purchase of the Conservation Easement was, and the proposed conveyance of the underlying fee from the City to the NJDEP will be, funded with Green Acres funds administered under the Garden State Preservation Trust Act, *N.J.S.A. 13:8C-1 et seq.* As a result, future use of the Properties will be restricted to "recreation and conservation purposes" as defined under *N.J.S.A. 13:8C-3*. Removal of the Green Acres restrictions will require the approval of the State House Commission under *N.J.S.A. 13:8C-31*. In addition, the NJDEP will be prohibited from conveying more than one acre of the Properties, or

leasing them for more than 25 years, without complying with the provisions of N.J.S.A. 13:1D-51 *et seq.* (requiring public hearing(s), specifying minimum compensation and imposing other requirements on conveyances of NJDEP property). In the past, the Board has granted exemptions from the Moratorium for the fee purchase of watershed lands by the NJDEP and other entities using Green Acres funds. Therefore, although the possible merger of the Conservation Easement with the underlying fee will extinguish the specific provisions of the Conservation Easement, the Board **HEREBY FINDS** that such action would not be inconsistent with the Act.

An investigation was conducted by NJDEP in support of this acquisition. This investigation identified abandoned mines, but no other areas of concern. The Ordinance and the Agreement are significant documents 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 protection against any potential water quality impacts. Therefore, the Board **HEREBY ORDERS** that the conditions agreed to and incorporated in the Ordinance and the Agreement shall become part of this Order. The Board **HEREBY ORDERS** that any material change to these documents be subject to further review by the Board.

The Board **FURTHER ORDERS** that the City provide NJDEP with notice prior to any activity on the Property. The Board **FURTHER ORDERS** that NJDEP work in good faith with the City to determine the most beneficial on-going maintenance plan for the right-of-ways and to limit the impact upon water supply.

Therefore, the Board **HEREBY ORDERS** that the application for an exemption, pursuant to P.L. 1988, c. 163, as amended by P.L. 1990, C. 19., 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 or NJDEP 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 9, 2014.

DATED:

May 9 2014

WATERSHED PROPERTY REVIEW BOARD

BY:

A handwritten signature in black ink, appearing to read 'Bob Martin', written over a horizontal line.

Bob Martin,
Commissioner
Department of Environmental Protection

A handwritten signature in black ink, appearing to read 'Dianne Solomon', written over a horizontal line.

Dianne Solomon,
President
Board of Public Utilities