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Lt. Governor

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

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Environmental Protection

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Utilities

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CONSTABLE III  
Commissioner  
Department of Community  
Affairs

IN THE MATTER OF UNITED WATER'S )  
REQUEST FOR AN EXEMPTION TO THE )  
WATERSHED PROTECTION AND MORATORIUM )  
ACT TO GRANT EASEMENT TO BERGEN COUNTY )  
ON WATERSHED PROPERTY IN THE )  
TOWNSHIP OF RIVER VALE, BERGEN COUNTY, NJ )  
TO SUPPORT THE RIVERVALE ROAD )  
SLOPE STABILIZATION PROJECT )

ORDER GRANTING  
EXEMPTION

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

**BACKGROUND/PROCEDURAL HISTORY**

On February 19, 2014, United Water New Jersey, Inc. ("UWNJ" or "Petitioner") filed an application with the Watershed Property Review Board ("Board") on behalf of the County of Bergen ("County") to review and approve the Rivervale Road Slope Stabilization Project ("Project"). The Petitioner filed for an exemption from the Watershed Protection and Moratorium Act, P.L. 1998, c. 163, as amended by P.L. 1990, c.19 (the "Act"). UWNJ is currently seeking an exemption to grant the County both temporary and permanent easements on portions of UWNJ's watershed property at Block 1401, Lot 2 and Block 1202, Lot 1 (the "Property").

A Settlement Agreement ("Agreement") was signed between the Board Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network ("Bergen



SWAN") and UWNJ on March 26, 2009 and adopted by Board Order on the same date. Included in the Settlement Agreement is a Conservation Easement between UWNJ (as "Grantor") and the State of New Jersey, Department of Environmental Protection ("NJDEP") (as "Grantee"). The Property is listed in Schedule D of the Agreement.

On February 28, 2014, Board Staff conducted a site visit. Present with Board Staff were representatives from Bergen County and UWNJ. The parties were able to view the potential impact of the Project on UWNJ's watershed property and the County's roadway. The representatives had the opportunity to provide input on any concerns regarding the impact of the Project on water supply. The current soils are unable to support the severe slope down to the Hackensack River. Not moving forward with the Project will lead to a failure of the slope which impacts the roadway, the Hackensack River and UWNJ's watershed property. Also, time is of the essence, as the County anticipates that it will commence seeking federal construction authorization of the Project in the Summer of 2014 and is at risk of losing \$5 million to \$6 million in federal grant funds if the Project is not approved by the Board by May 31, 2014.

The Project consists of the construction of an anchored steel sheet pile wall, which creates the least amount of soil disturbance. This approach will allow stabilization of the roadway and eliminate the ongoing settling of Rivervale Road. Approximately 0.12 acres of permanent easement will be required for the installation of two walls, one will be located in the southern section with 275 linear feet (LF) and the second will be located in the northern section with 805 LF of sheet pile wall, totaling 1,080 feet of sheeting, 1,250 LF of new guiderail, 1,150 LF of fencing and various storm water management improvements. Also, 0.35 acres of temporary easement will be required to carry out the construction activities including grading and mitigation plantings. The estimated cost of the Project is \$5,537,000.00.

Bergen SWAN, through a letter dated March 31, 2014, expressed concerns regarding the amount of tree removal and native species selection for replanting that is required by the Project. The County provided an acknowledgement letter, dated April 2, 2014, and committed to comply with various mitigation tactics to address these concerns.

After reviewing UWNJ's application, Bergen SWAN's letter and the County's response, and conducting a field visit, Board Staff contacted the New Jersey Department of Environmental Protection (NJDEP), Division of Land Use Regulation ("DLUR") to discuss pending Freshwater Wetlands Protection Act and Flood Hazard Area Control Act permit approvals for the Project. The DLUR permit application has been deemed administratively complete for review and is currently within the 90-day review period. It does not appear that DLUR approval of this project will be possible prior to the Board's meeting on May 9, 2014 due to the 90-day permit review period.

The County's current plans include a series of native species plantings, including 70 trees and 627 shrubs, to mitigate for the disturbance to riparian vegetation that must



be removed in order to construct this project. However, this plan may change based on DLUR review.

## **DISCUSSION**

The Act authorizes the Board to provide 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.

UWNJ bases this application for an exemption on its assertion that there is a compelling public need for the Project. The Board is aware of the findings of its Staff that not moving forward with the Project will lead to a failure of the slope which will impact the roadway, the Hackensack River and UWNJ's watershed property. The record before the Board is replete with evidence demonstrating the public safety concerns if the Project is not completed. At the request of Board Staff, the County has provided a Geotechnical Study Report containing alternative analysis for various wall types for the stabilization of the unstable steep slope, providing further support for the conclusion that there is indeed a public safety need for the Project.

Therefore, the Board **HEREBY FINDS** that there is a compelling public need for the Project and denial of the exemption would result in the failure of the slope which will impact the roadway, Hackensack River and UWNJ's watershed property. 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.

As part of its review of this Project, Board Staff requested that the County submit documentation addressing proposed mitigation of any adverse environmental impacts which would result from the Project. To this end, the County submitted the Rivervale Road Slope Stabilization Plans (the "Plans"). The Plans, Bergen SWAN's letter and the County's response set forth standards by which the County shall conduct itself including but not limited to:

- 1- The County must provide UWNJ and Bergen SWAN with notice prior to any construction activity on the Property.



2- The County must work in good faith with UWNJ to determine the most beneficial on-going maintenance plan for the anchored steel sheet pile wall that will limit the impact upon water quality of the Hackensack River.

3- UWNJ must have the opportunity to have its representative present to observe and object to any actions taken by the County on UWNJ's property.

4- The County and UWNJ must ensure that any PSE&G utility pole relocation required for this Project does not occur on UWNJ watershed property.

5- The County and UWNJ must 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 pending permits.

6- In accordance with its agreement with Bergen SWAN, the County must set aside a \$10,000 planting allowance for tree replacement and additional stabilizing vegetation; and make it available for three years. Additionally, the County commits to consult with UWNJ's representatives with respect to input on the native species selection for the replanting.

7- For the purposes of protecting the watershed, Board Staff is satisfied with the County's current mitigation plan which includes the planting of at least 70 trees and 627 shrubs to replace riparian vegetation that must be removed in order to construct the Project. The County commits to consult with UWNJ's representatives with respect to input for the native species selection for the replanting plans. If DLUR, upon permit approval requires the County to plant additional trees and/or shrubs either on site or off site, this will not trigger further Board approval. However, if DLUR requires any substantial changes to the Project that Board Staff determines may negatively affect watershed property, including a reduction in on-site plantings or change in project scope, further review by the Board will be required.

After consideration of the entire application, including the Plans, Report and correspondence between Bergen Swan and the County, 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 safety need for this Project.

The Report and Plans contained in the documents submitted by the Petitioner, including, but not limited to, Bergen SWAN's letter and the County's response, are significant 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, Bergen SWAN's letter and the County's response shall become part of this Order. The Board FINDS that if the DLUR, upon permit approval,

requires the County to plant additional trees and or shrubs either on site or off site, it will not require further Board approval. However, the Board HEREBY ORDERS that if DLUR makes other changes to the Project that Board Staff determines may negatively affect the watershed property that is the subject of this Order, a further review by the Board will be required.

The Board FURTHER ORDERS that the County provide UWNJ with notice prior to any activity on the Project. The Board FURTHER ORDERS that UWNJ work in good faith with the County to determine the most beneficial on-going maintenance plan for the right-of-ways and to limit the impact upon water supply. The Board FURTHER ORDERS that the UWNJ shall have the opportunity to have its representative present to observe and object to any actions taken by the County on UWNJ's watershed property. The Board FURTHER ORDERS that the UWNJ will maintain unfettered access to Rivervale Road and its operation at all times, and the County shall complete site remediation at the conclusion of the completion of the Project, or sooner, if needed.

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 County and UWNJ of any other obligations that may be required pursuant to any statute or regulation.



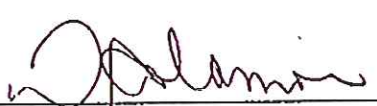
This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on May 9, 2014.

DATED: May 9, 2014 WATERSHED PROPERTY REVIEW BOARD

BY:



Bob Martin,  
Commissioner  
Department of Environmental Protection



Dianne Solomon,  
President  
Board of Public Utilities