

WATERSHED PROPERTY REVIEW BOARD (WPRB)

Watershed Protection and Moratorium Act, P.L. 1988, c. 163, as amended by P.L. 1990, c.19

Board Staff Guidance

The Watershed Protection and Moratorium Act (the “Act”) imposes a moratorium on the conveyance of land by a municipality, municipal utility authority or public utility which is utilized for the purpose of protecting a public water supply. Properties regulated under the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq. and the Coastal Area Facilities Review Act, N.J.S.A. 13:19-1, et seq. are not subject to the moratorium. The Watershed Property Review Board (“WPRB”) is authorized to exempt certain sales from the moratorium when 1) there is a compelling public need for the conveyance of watershed property; 2) the denial of the exemption would result in extraordinary hardship; or 3) that the sale or development of watershed property is otherwise consistent with the purposes of the Act.

The WPRB is comprised of the Commissioner of the Department of Environmental Protection (DEP), the Commissioner of the Department of Community Affairs (DCA) and the President of the Board of Public Utilities (BPU). Staff from all three member agencies (“Board Staff”) assist the WPRB in two main tasks: (1) determining whether the WPRB has jurisdiction over a particular property and (2) if jurisdiction is found, reviewing applications for exemptions from the moratorium.

The purpose of this document is to provide guidance from Board Staff to applicants for jurisdictional determinations or exemptions from the moratorium imposed by the Act.

Jurisdictional Determinations

A municipality, municipal utility authority or public utility may contact Board Staff for guidance in determining whether a parcel of property is subject to the moratorium, and thus, the jurisdiction of the WPRB. If the WPRB determines, either directly or via duly delegated WPRB authority to Board Staff or another delegee, that a parcel is not subject to the Act, it may issue a letter regarding its determination.

A request for a jurisdictional determination should be made in the form of a letter to Board Staff and include:

- ☐ 1. A **narrative description** of the current use and anticipated future use of the property. (A parcel will not be reviewed if there is no anticipated transfer of land rights).

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- ☐ 2. **Site location maps and/or site plan** depicting the location of the property in question, with the portion of the property to be conveyed clearly identified.
- ☐ 3. **Location** of all parcels, including County, Municipality, tax map block and lot and mailing address of the relevant properties.

Applications for Exemption from the Act

PRIOR TO SUBMITTING AN APPLICATION FOR AN EXEMPTION FROM THE ACT:

For the purposes of an exemption application, the Applicant is the regulated entity/water purveyor/owner of watershed property subject to the Act.

Board staff recommends that the Applicant request a Pre-Application Conference with Board Staff to discuss the application process and the proposed project that requires or is believed by the Applicant to require an exemption from the Act. The Pre-Application Conference should be requested as soon in the planning process as the Applicant identifies that an exemption may be needed for the proposed project. A Pre-Application Conference can be held virtually or in-person, depending upon the availability of Board Staff. Board Staff may recommend a site visit as part of the Pre-Application Conference. A Pre-Application Conference must be attended by the Applicant but can include any other parties the Applicant deems appropriate (i.e., interested third party, private consultants and attorneys).

The schedule for the WPRB's annual meetings can be found at <http://wprb.nj.gov>. In order for an exemption application to be considered for an upcoming meeting, Board Staff must receive a complete application at least three months (90 days) prior to the meeting date. This time period is the minimum needed for Board Staff to review the application, conduct a site visit (if not completed during the Pre-Application Conference), request additional information if necessary for adequate review of the Application, provide the public with a 30-day notice and the opportunity for comment, and brief the members of the WPRB on the request. Incomplete and/or complex applications may take longer to review.

To streamline the exemption application review process, the following items are required for an application to be considered complete and should be submitted as part of any request for any exemption from the Act:

- ☐ 1. **Letter from the Applicant requesting an exemption from the Act.** This written request shall clearly identify which of the three basis for exemptions from the Act the applicant is asserting: 1) there is a compelling public need for the conveyance of watershed property; 2) the denial of the exemption would result in extraordinary hardship; or 3) that the sale or development of watershed property is otherwise consistent with the purposes of the Act, which are to protect water quality and encourage open space preservation. More than one basis may be asserted. The request

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must also clearly state which type of legal rights are proposed to be transferred (i.e., temporary access/right of entry, sale of real property, permanent easement, transfer/sale of water system, lease or license agreement).

- ☐ 2. A **narrative description** of the watershed property in question, the proposed project for which the transfer of watershed property is required and justification(s) for the type of exemption being requested.
- ☐ 3. **Documentation addressing existing and proposed buffer areas** surrounding the public water supply and mitigation proposals for any adverse environmental impact which would result from the requested exemption and proposed project. Please note that this documentation should include an identification of any trees (six inches in diameter at breast height or greater) which will be removed as a result of the project, as tree mitigation may be required.
- ☐ 4. **Site location maps and/or site plan** depicting the location of the watershed property in question with portion of the property to be conveyed clearly identified.
- ☐ 5. **Location** of all parcels, including County, Municipality, tax map block and lot and mailing address of the relevant properties. If the Applicant does not intend to identify all parcels of property owned by a large system in connection with the sale of the system, an applicant should contact Board Staff for guidance prior to submitting an application.
- ☐ 6. **Draft legal documents for the proposed conveyance** (i.e., draft deed, sales contract or easement language), as available at the time of submission.
- ☐ 7. If the exemption request involves the sale/transfer of an entire water system, a complete request shall also include the Agreement of Sale, a discussion of the reason for the sale, a listing of any pending DEP violations within the system (with case numbers and DEP contact information as available), and a list of all property interests (fee and easement) to be conveyed.
- ☐ 8. A list of other relevant governmental entities or regulatory approvals at the local, state or federal level that the applicant anticipates needing to obtain in relation to the transfer of property.
- ☐ 9. A list of existing easements, infrastructure and other structures on the property (owned by the applicant or a third-party). Identify any changes to any existing easements, infrastructure and other structures requiring additional approval from the WPRB.
- ☐ 10. Any **additional information** requested by Board Staff at the Pre-Application Conference.

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In addition to the information required above, please indicate the following in the application:

- Has a Jurisdictional Determination been previously completed by Board Staff? If not, was one requested?
- Have DEP, Division of Land Resource Protection (DLRP) approvals been granted or applications been initiated for the proposed project? If so, please provide the application number. Please note that we highly recommend that Applicants begin the DLRP application process prior to submitting an exemption request to WPRB.
- Has the Applicant obtained approval or initiated contact with DEP, Office of Transactions and Public Land Administration (OTPLA) regarding the use of DEP-held property (if the project takes place on DEP-held property or within a DEP-held conservation easement)? More information about requesting approval to use DEP property can be found at <https://dep.nj.gov/otpla/requests-for-use-of-njdep-property/>. It is highly recommended that an Applicant begin the OTPLA Request to Use DEP Property process prior to submitting an exemption request to WPRB.
- Does the Applicant anticipate any impact on the water supply due to any land use changes within the watershed property (i.e., development and property sales) associated with the proposed conveyance that would affect the quality and availability of public water supply and would require Board of Public Utilities (BPU) oversight to ensure compliance with regulations to protect public water sources? If so, has the Applicant initiated contact with BPU?
- Does the Applicant anticipate needing to obtain any other approval from BPU in connection with the proposed conveyance? If so, has the Applicant initiated contact with BPU?
- Are there any other encumbrances on the watershed property that may be impacted by the Applicant's exemption request?

The foregoing is the minimum information that Board Staff needs to review an application. Board Staff reserves the right to request or use any additional information, time or process necessary for adequate review of an application consistent with the purposes of the Act. Applications for exemptions from the Act shall be directed to Board Staff at WPRB@dep.nj.gov. Any questions regarding the application process should be directed to Board Staff. Board Staff contact information can be found at <http://wprb.nj.gov>.

**PLEASE NOTE THAT THE SUBMISSION OF A COMPLETE JURISDICTIONAL
DETERMINATION OR APPLICATION IN NO WAY GRANTS ANY APPROVAL FOR
THE PROPOSED PROJECT OR EXEMPTION FROM THE ACT. EXEMPTION
APPROVAL MAY ONLY BE GRANTED BY THE WATERSHED PROPERTY
REVIEW BOARD.**