



Agenda Date: 6/30/17
Agenda Item: 5B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF SUEZ WATER)
NEW JERSEY, INC. FOR APPROVAL OF THE SALE)
AND CONVEYANCE OF APPROXIMATELY 9.2+/-)
ACRES OF LAND AND IMPROVEMENTS SITUATED)
IN THE BOROUGH OF HARRINGTON PARK, COUNTY)
OF BERGEN AND THE TRANSFER OF CERTAIN)
EASEMENTS IN CONNECTION THERETO,)
PURSUANT TO N.J.S.A. 48:3-7 AND N.J.A.C. 14:1-5.6¹)

DECISION AND ORDER

DOCKET NO. WM15010043

Parties of Record:

Nilufer O. DeScherer, Esq., Archer & Greiner, P.C., on behalf of SUEZ Water New Jersey, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On January 12, 2015, SUEZ Water New Jersey, Inc. ("SUEZ," "Petitioner," or "Company"), a public utility of the State of New Jersey, subject to the jurisdiction of the New Jersey Board of Public Utilities ("Board"), filed a verified petition pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, seeking approval to sell certain property owned by the Company and the transfer of easements in connection thereto.

SUEZ provides water service to approximately 198,000 customers located in portions of Bergen, Hudson, Passaic, Morris, Hunterdon, and Sussex counties.

The Company states that in considering its options for the sale of the Harrington Park Property, it has given significant consideration to the State's goals of open space, recreation and affordable housing, and that the requested regulatory treatment is a critical element in its decision to sell. The Agreement of Sale ("Agreement") is contingent on satisfactory regulatory treatment in the Company's direction.

¹ The Petition was originally filed by United Water New Jersey Inc. ("United Water" or "UWNJ"). By letter dated January 27, 2016, from Stephen B. Genzer, Esq., to the Honorable Irene Kim Asbury, Secretary, Board of Public Utilities, it was advised that the United Water Inc. companies had changed their operating names to SUEZ, the ultimate corporate parent of United Water. Also, the above caption reflects the corporate name change as requested by Mr. Genzer for this docket.

DESCRIPTION AND HISTORY OF THE PROPERTY

The property being sold is known and designated as 200 Old Hook Road, Block 1601, Lot 1, in the Borough of Harrington Park, Bergen County, New Jersey ("Borough"). The Company seeks approval to sell an approximately 9.2+/-acre portion ("Headquarters Property") of an approximately 63.226 acre parcel of land ("Harrington Park Parcel") located in the Borough. The property, located in the watershed, was constructed in 1979 and had been used as the Company's corporate headquarters. SUEZ seeks approval to sell the Headquarters Property to Allegro Development Company LLC ("Allegro" or "Purchaser"), a private senior living industry company, because the Company has outgrown the headquarters and the building is no longer adequate for its intended purpose. Petitioner also requests approval of the transfer of an existing assumed drainage easement located on watershed land encumbered by the Conservation Easement, the scope of which shall not be expanded by the Purchaser.

On March 26, 2009, SUEZ (formerly UWNJ), Bergen SWAN, the Hackensack Riverkeeper and the Watershed Property Review Board, entered into a Settlement Agreement that expressly exempts 9.2 +/-acres of the Headquarters Property from being subject to the Conservation Easement restrictions imposed on the remainder of the Harrington Park Parcel. SUEZ's Petition is limited to the transfer of the 9.2 +/- exempt property that is not encumbered by the Conservation Easement.

BACKGROUND FOR BOARD-REQUESTED RELIEF

The Petitioner is requesting approval for the sale of the property pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, based on the following:

1. The sale of the Headquarters Property shall not adversely affect the public interest;
2. The Headquarters Property is no longer used or useful for utility purposes;
3. There is no cost efficient manner in which to expand the Headquarters Property location for staffing purposes;
4. The Headquarters Property is not necessary to protect the water quality of a public water supply;
5. The Headquarters Property is not encumbered by a mortgage;
6. The proposed use by the Purchaser as an assisted living facility will not adversely impact the water supply;
7. The sale of the Headquarters Property will not impact the State's open space, conservation and recreation requirements;
8. The sale of the Headquarters Property shall not affect the ability of the utility to render safe, adequate and proper service;
9. The selling price represents the fair market value of the property to be sold based on a current independent appraisal; and

10. There is no relationship between the parties other than that of transferor and transferee, or lessor and lessee.

In its petition, SUEZ states that, pursuant to N.J.A.C. 14:1-5.6, it advertised the proposed sale of the Headquarters Property in the Bergen Record on October 28, 2014 and November 4, 2014. SUEZ further states that it received no bids by the November 17, 2014 deadline for bid submission. The Company further states it listed the property for sale with an experienced real estate broker ("broker") in an effort to obtain the highest price for the former Headquarters Property, while also being sensitive to environmental and local community considerations. The broker evaluated potential uses and buyers for the Headquarters Property. Offers were limited as a result of the significant limitations to development of the Headquarters Property such as the existence of 300 foot C-1 buffers and the Borough's desire for a development that would be in the best interest of the Borough's residents and which would be least impactful to area infrastructures as well as the watershed. Petitioner received no offers to purchase the Headquarters Property for open space, but it did receive several offers from developers interested in purchasing the land for the development of townhouses, apartments and other residential uses. However, these offers were for residential projects of a substantially higher density of residential units than the offer the Company ultimately accepted for the purchase of its former Headquarters Property and involved demolition of the existing office building.

The Company has entered into an Agreement dated September 5, 2014 to sell the property to Allegro that includes the transfer of easements for existing uses on the Harrington Park Parcel and associated regulatory treatment in connection with such sale. SUEZ states that Allegro's offer and executed Agreement together constitute a sealed bid pursuant to N.J.A.C. 14:1-5.6(b)(6). SUEZ further states that this Agreement is an arms-length transaction and that there is no relationship between the parties other than that of the proposed buyer and seller. The total purchase price is \$6,622,000. The Company has proposed journal entries to account for the difference between the net book value of the property and the purchase price. The Petitioner states that there is no gain or loss recorded on the books of SUEZ as a result of the sale of the property. The Petitioner further states that there will be no immediate rate impact on rates as a result of the transaction.

Board Staff and the New Jersey Division of Rate Counsel ("Rate Counsel") served numerous interrogatories on the Company, and the Parties² held several meetings to discuss the Company's responses to interrogatories and to explore the possibility of settlement.

THE WATERSHED PROPERTY REVIEW BOARD

The Watershed Property Review Board ("WPRB") consists of the President of the Board, the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP") and the Commissioner of the New Jersey Department of Community Affairs.

The Headquarters Property located at Harrington Park, NJ is subject to review by the WPRB pursuant to the Watershed Protection and Moratorium Act ("Act") P.L. 1988, c. 163, and the procedures established by the Board in I/M/O the Joint Petition of Lyonnaise American Holding, Inc. and United Water Resources, Inc. for Approval of a Change in Ownership and Control of the New Jersey Operating Utilities, Docket No. WM99110853. (July 20, 2000), wherein the

² The Parties to this proceeding are Petitioner, Board Staff, and Rate Counsel.

Board reiterated that UWNJ shall be bound by I/M/O Hackensack Water Company in Re Three Golf Courses Transfer, Order dated August 28, 1993, and I/M/O the Petition of Hackensack Water Company – removal from Rate Base and Transfer of Excess Lands; and Consideration of Stipulation Regarding Golf Course Transfers and Utility Acquisition of Watershed Properties, Order dated October 12, 1993, in Docket No. 8312-1096, 8506-586, 8712-1465 and WC90040266. The WPRB approved a Settlement Agreement entered into on March 26, 2009 by UWNJ, Bergen SWAN, the Hackensack Riverkeeper and the Attorney General of the State of New Jersey. While the settlement and the Order represent a comprehensive resolution of longstanding issues involving SUEZ land use, the terms thereof which are pertinent to that Petition are:

Certain Company properties, including Properties in Docket No. WM11030147, are not maintained by SUEZ for the purpose of protecting a surface water supply and the WPRB does not have jurisdiction over them.

SUEZ requested an exemption from the WPRB to permit: (1) the transfer of a portion of SUEZ's land that is already developed and was exempted from the Conservation Easement known as the Headquarters Property; (2) the transfer of a certain assumed drainage easement located in the watershed land encumbered by the Conservation Easement; (3) the conveyance to Allegro of a Limited Right of Entry to additional watershed lands owned by SUEZ and encumbered by the Conservation Easement to carry out mitigation plantings required by the NJDEP in connection with the permitting of the proposed Allegro facility; and (4) the conveyance of a Supplemental Conservation Easement to the NJDEP on a portion of the Headquarters Property.

The WPRB Staff thoroughly investigated the Harrington Park property for sale. On May 18, 2017, the WPRB issued the attached Order Granting Exemption ("WPRB Order"), with the conditions outlined below:

1. The WPRB found that there is a compelling public need for the sale of the Headquarters Property and conveyance of a drainage easement and agrees with the need to provide housing for the elderly and that such facilities are a value to communities since they serve the public good and promote the general welfare. The WPRB granted an exemption under the Act from the moratorium of conveying watershed property.
2. The WPRB found that conveyance to NJDEP of the Supplemental Conservation Easement and the granting of a Limited Right of Entry are consistent with the Act. These findings are 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 Project, and shall not be construed as a determination by the WPRB with regard to any other conveyance of properties for which a future application may now be pending or may be brought in the future.
3. The application, permits, plans and the Supplemental Submissions as well as the letter setting forth agreed upon restrictions between Bergen SWAN and SUEZ contained in the documents submitted by SUEZ, including the Deed, Drainage Easement, Supplemental Conservation Easement and the Limited Right of Entry documents contain conditions, restrictions and agreements to which are incorporated in the WPRB Order and subject to the following conditions:

- a. Allegro shall provide SUEZ, Bergen SWAN and Hackensack Riverkeeper with notice prior to any construction activity on the Headquarters Property.
- b. SUEZ and Allegro must comply with any and all federal, state and local regulations and permit conditions including, but not limited to, the NJDEP, DLUR Flood Hazard Area Control Act Individual Permit No. 0224-10-0001.1 FHA160001.
- c. SUEZ must retain an access easement from Old Hook Road through the Headquarters Property in order to permit ingress and egress to the shoreline of the Oradell Reservoir and the Conservation Easement area for inspection purposes and continuing water supply operations. NJDEP must be added as a beneficiary of this access easement.
- d. Any and all discharge from the proposed Drainage Easement areas must meet the requirements of the NJDEP Stormwater Management rules at N.J.A.C. 7:8. The mechanical treatment device to be installed within the existing access drive shall be inspected in accordance with the NJDEP, DLUR Flood Hazard Area Control Act Individual Permit No. 0224-10-0001.1 FHA160001 in order to maintain the stormwater management system in good working order.
- e. SUEZ maintains the obligation to protect the public water supply and shall monitor as frequently as necessary to ensure compliance with the NJDEP Stormwater Management rules at N.J.A.C. 7:8 for all water that passes into the Oradell Reservoir. SUEZ shall ensure that the water passing into the public water supply complies with NJDEP Stormwater Management rules at N.J.A.C. 7:8.
- f. In accordance with the proposed Drainage Easement, after any construction activities, the area within the Conservation Easement area shall be restored to pre-activity conditions.
- g. The WPRB supports the current DLUR mitigation plan which includes the planting of native trees and shrubs on approximately 0.75 acre to replace riparian vegetation that must be removed in order to construct the senior living facility and requires compliance as part of its approval.
- h. SUEZ shall convey a Supplemental Conservation Easement to the NJDEP, which shall be recorded, to permanently restrict development of approximately 2.05 acres of the Headquarters Property and to further protect buffers to the Oradell Reservoir, prior to or concurrent with its conveyance to Allegro. There shall be no disturbance to the area within the Supplemental Conservation Easement area except as permitted within the Reserved Utility Easements and to address dead/dying trees according to the standard set forth therein.
- i. SUEZ/Allegro shall provide a survey and metes and bounds description of the Additional Easement Lands and Reserved Utility Easements included in the Supplemental Conservation Easement at least 30 days prior to the transfer. The survey and metes and bounds description must be reviewed and

approved by an in-house NJDEP surveyor. The boundaries of the Additional Easement Lands must be marked in the field (i.e., concrete monuments or other boundary markers acceptable to WPRB Staff).

- j. SUEZ shall attach and make the WPRB Order part of the deed and shall record the same with the property deed. Any mitigation and other agreements and restrictions on the Headquarters Property as agreed to the furtherance of this exemption request shall be made part of or otherwise incorporated into the record title of the Headquarters Property.
- k. SUEZ will continue to maintain its rights to protect its property and to safeguard the water supply. Allegro will comply with the conditions of the permits and approvals issued in connection with its Project and current storm water and discharge regulations. NJDEP will continue to maintain its regulatory and enforcement powers in connection with the property, the 3,095 acre Conservation Easement and the Supplemental Conservation Easement provided as part of the Project.
- l. The WPRB approval is based on the current proposal to transfer the Headquarters Property to Allegro. If the sale to Allegro is terminated, this exemption approval will expire and SUEZ will need to obtain WPRB approval for any future sale proposals. SUEZ and Allegro have agreed that in recording this WPRB Order with the Deed, it is intended that the conditions set forth in the WPRB Order, the Supplemental Conservation Easement and that the agreed upon restrictions shall be recorded and run with the land and SUEZ/Allegro shall comply with the other terms and conditions of the exemption approval.
- m. SUEZ agrees to comply with the conditions set forth in Bergen SWAN's May 10, 2017 letter, which is attached as Exhibit 7 to the WPRB Order.
- n. If any of the conditions relied upon by the WPRB in approving this exemption are modified in a manner that negatively impacts the protection of surface water supply, the WPRB approval shall be null and void and SUEZ shall return to the WPRB seeking a modified exemption.

INITIAL COMMENTS OF RATE COUNSEL

By letter dated May 25, 2017, Rate Counsel submitted comments in this matter. Rate Counsel stated that based on its review of the Petition and discovery, it appears that SUEZ has satisfied the regulatory filing requirements. (Initial Comments at 6). But Rate Counsel asserted that the Board must determine whether the Company put forth sufficient evidence for the Board to fully evaluate whether Allegro's offer was in fact the best price obtainable. Id. at 5-6. However, Rate Counsel further stated that the Board can only approve the sale after finding that it meets the criteria set forth in In re Erie-Lackawanna Ry. Co., 75 P.U.R. 3d 246 (N.J. Bd. of Pub. Util. 1968) ("Erie-Lackawanna") as follows:

- a. The property must be no longer used or useful, presently or prospectively, for utility purposes.
- b. The sale and conveyance of the property under the terms proposed will not adversely affect the ability of the utility to

- render safe, adequate, and proper service.
- c. The proposed sale price is the best price obtainable and represents fair market value for the property.

(Initial Comments at 4-5, citing In re Atl. City Elec. Co., 2013 Super. Unpub. LEXIS 1775, *30-31 (App. Div. 2013) ("Atlantic City Electric") and Erie-Lackawanna, supra, 75 P.U.R. 3d at 247.)

Rate Counsel further stated that SUEZ appears to have met the first two prongs of the Erie-Lackawanna test, as SUEZ, having moved its headquarters from the property, the Headquarters Property is no longer used or useful for utility purposes. (Initial Comments at 4.) Also, Rate Counsel noted that the sale of the property will not adversely affect the ability of SUEZ to render safe, adequate, and proper service to its customers. Ibid. Rate Counsel stated that the third prong, however, requires additional analysis by the Board. Ibid.

According to Rate Counsel; (i) SUEZ received nine bids for the Headquarters Property; (ii) four bids were lower than the accepted bid and do not require additional review, but four bids were higher and do require additional analysis; (iii) while Allegro's bid did not provide the highest monetary amount, SUEZ believed that it was the best price obtainable for the property; (iv) SUEZ stated in response to a discovery request that the Company believed that the first rejected bid would not be approved by the relevant regulatory authorities and that the second rejected bid would have a greater impact on the environment; (v) SUEZ also stated that Borough officials expressed concerns over the viability and construction of market rate apartments on the property; (vi) with regard to the third rejected bid, SUEZ stated in response to a discovery request that the Company determined that Allegro's offer provided a higher per unit purchase price, thereby reducing the impact on the environment and increasing the likelihood of obtaining the necessary State, County and local approval; (vii) with regard to the fourth rejected bid, SUEZ stated in response to a discovery request that it believed that it would have been very difficult for the proposed project to obtain the necessary State, County and Local approvals; and (viii) SUEZ stated in response to a discovery request that in reviewing the proposals, the Company believed that the Allegro project was the most likely to receive the necessary State, County and Local approvals and that the "best price obtainable" is not necessarily the highest monetary bid. (Initial Comments at 4-5.)

Rate Counsel recognized SUEZ's attempts to explain why the four other bids were not the best price obtainable, and Rate Counsel noted that SUEZ apparently believes that the other bids were not likely to receive the necessary State, County, and local approvals and were therefore not as viable as the selected bid from Allegro. Id. at 5. Nevertheless, Rate Counsel posited that it is incumbent upon the Board to make a determination whether SUEZ has put forth sufficient evidence to fully evaluate that assertion and then whether, given the evidence in the record, Allegro's offer was in fact the best price obtainable. Id. at 5-6.

In addition, since the purchase price, net of sales expenses, will be credited to the accumulated depreciation reserve, thus reducing rate base, Rate Counsel recommends that any Board Order be contingent on the sales price being at least the \$6,622,000 that the Company represents will be the actual sales price. Id. at 6. Rate Counsel also recommends that the expenses associated with the sale be capped at the requested \$643,000 and that additional review be required if the amount exceeds \$643,000. Ibid.

PETITIONER'S PROPOSED FINDINGS OF FACT

On June 12, 2017, Petitioner submitted Proposed Findings of Facts Relating to the Company's Satisfaction of the Erie-Lackawanna Test ("Proposed Findings of Fact").³ The Company stated that:

1. SUEZ has satisfied each of the following three prongs of the Erie-Lackawanna test: (1) the property must be no longer used or useful, presently or prospectively, for utility purposes; (2) the sale and conveyance of the property under the terms proposed will not adversely affect the ability of the utility to render safe, adequate, and proper service; and (3) the proposed sale price is the best price obtainable and represents fair market value for the property.
2. SUEZ moved its headquarters from the Headquarters Property to Paramus, New Jersey as of May 2015, and thus the Headquarters Property is no longer used for utility purposes satisfying the first prong of the Erie-Lackawanna test. (See RCR-19 attached hereto as Exhibit B.)
3. The sale and conveyance of the Headquarters Property under the terms proposed will not adversely affect the ability of SUEZ to render safe, adequate, and proper service.
4. The proposed sale to Allegro is the "best price obtainable" and represents the fair market value for the Headquarters Property.
5. The actual sales price of the Headquarters Property is \$6,622,000 (see RCR-24 attached hereto as Exhibit C), while the appraisal report valued the property between \$5,400,000 and \$5,700,000. A copy of the cover letter summarizing the July 15, 2013 Appraisal Report is attached hereto as Exhibit D.
6. The Headquarters Property is located in the watershed and is under the jurisdiction of the Watershed Property Review Board ("WPRB"), and thus, in addition to BPU approval, SUEZ was required to obtain an exemption from the WPRB pursuant to its authority under the Watershed Protection and Moratorium Act (the "Act").
7. As part of a Settlement Agreement signed between WPRB Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network, and SUEZ, on March 26, 2009 ("Settlement Agreement"), SUEZ could not to sell or convey any interest in the Headquarters Property to any third party without the WPRB's approval.
8. In order to obtain an exemption from the moratorium on the conveyance of any land utilized for the purpose of the protection

³ Attached to the Proposed Findings of Fact are Exhibits A through L.

of a public water supply, the WPRB must find: (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 the development of the watershed property is otherwise consistent with the purposes of the Act which are generally to protect water quality and encourage open space preservation.

9. In determining what offer had the best obtainable price, SUEZ had to be cognizant of and consider the required exemption and other approvals necessary to consummate the proposed sale.
10. SUEZ advertised the proposed sale of the Headquarters Property in the *Bergen Record* on October 28, 2014 and November 4, 2014. (See Verified Petition, ¶26.)
11. SUEZ received no bids by the November 17, 2014 deadline for submission. (See Verified Petition, ¶26.)
12. SUEZ engaged an experienced real estate broker to market the Property in an effort to obtain the highest price for the sale of the Headquarters Property, while recognizing the environmental and local community sensitivities associated with the unique Harrington Park Parcel and made the consideration of the highest obtainable price a balancing of risks presented by each prospective offer. (See Verified Petition, ¶27.)
13. SUEZ received nine offers for the Headquarters Property ranging from \$1,200,000 to \$10,000,000. (See RCR-7 without attachments to the summary table, attached hereto as Exhibit E.)
14. Four of the nine offers for the Headquarters Property were lower than Allegro's accepted offer, and thus, further review of these bids is unnecessary. (See RCR-17 attached hereto as Exhibit F.)
15. The four offers that were higher than Allegro's offer were submitted by Alliance Realty Partners, Avalon, Eagle Burman Group, and Russo Acquisitions, and these offers were not the "highest obtainable price" because of risk factors associated with the offers given the unique nature of the Harrington Park Parcel and the required approvals and exemptions.
16. The other offers presented much higher intensity of use, greater impact on the environment and demand for municipal services making it unlikely the proposed projects would obtain the necessary approvals and exemptions and also lengthening the process thus lowering the present value of the offers.
17. Alliance Realty Partners proposed to develop the Headquarters Property as an age restricted residential complex consisting of substantially more units than Allegro's proposal, without

centralized supervision. (See RCR-17 (Exhibit F) and RCR-22 attached hereto as Exhibit G.)

18. The Alliance Realty Partners proposal also called for a four story building over 1 level of parking and possibly a half level of subgrade parking below, which made the achievability of its proposal unlikely, especially when compared to Allegro's proposal. (See RCR-22 (Exhibit G).)
19. Avalon proposed to develop the Headquarters Property as a luxury apartment complex consisting of market rate residential units that would have a greater impact on the environment. The number of units proposed by Avalon was significantly higher than the number of units proposed by Allegro. (See RCR-17 (Exhibit F) and RCR-22 (Exhibit G).)
20. Prior to accepting the Allegro proposal, SUEZ met with representatives of the Borough of Harrington Park, who expressed strong opinions and concerns over the viability and construction of market rate apartment units on the Headquarters Property. (See RCR-22 (Exhibit G).) In light of the Borough's comments, and the impact on the school system, SUEZ determined that Avalon's proposal did not represent a viable project for the site.
21. SUEZ presented each of the proposals to Harrington Park officials and Allegro was the clear favorite. (See the Certification of Michael Algranati attached hereto as Exhibit H.)
22. Engle Burman Group proposed to develop the Headquarters Property with assisted living units and beds, with related common facilities, and market rate residential units. The number of total units proposed by Engle Burman Group was significantly higher than the number of units proposed by Allegro. (See RCR-17 (Exhibit F) and RCR-22 (Exhibit G).)
23. Allegro's proposal provided a higher per unit purchase price than Engle Burman Group's offer and was much more likely to receive local approvals, especially because of the market rate residential units in Engle Burman Group's offer. (See RCR-17 (Exhibit F) and RCR-22 (Exhibit G).)
24. Russo Acquisitions proposed two options for the development of the Headquarters Property with one option being market rate rental units, which project would have been very difficult if not impossible to receive the necessary approvals, and the other option was for age restricted units at a lower per unit price than Allegro's offer. Russo Acquisitions proposed significantly more market rate residential units than the number of units proposed by Allegro. (See RCR-17 (Exhibit F) and RCR-22 (Exhibit G).)

25. A conventional house development on the Headquarters Property could have been a financial drain to the community and created additional resistance making it highly unlikely for the developers to achieve the necessary approvals and exemptions. Attached hereto as Exhibit I is a letter from Mayor Paul H. Hoelscher, dated October 16, 2015.
26. In addition to SUEZ meeting with municipal officials prior to selecting Allegro, SUEZ conferred with the Hackensack Riverkeeper and Bergen SWAN, the non-governmental parties to the Settlement Agreement. They were more receptive to the Allegro project than proposals for a town-house development on the Headquarters Property. Attached hereto as Exhibit J is an article in *The Record*, dated September 11, 2015. The article reported on the Hackensack Riverkeeper, Bill Sheehan's concern regarding potential overly intensive uses of the Headquarters Property, which concerns he expressed to SUEZ prior to SUEZ accepting the Allegro proposal. As set forth in the WPRB Order Granting Exemption, these stakeholders were involved in the entire process from selection of a purchaser to obtaining the WPRB approval (which took more than 18 months – January 9, 2015 to May 18, 2017). A copy of WPRB's Order Granting Exemption is attached hereto as Exhibit K. See also the exhibits attached to the WPRB's Order Granting Exemption.
27. It is expected that the age of most of the residents of the Allegro project will be in their mid-80's or older. See Exhibit J.
28. When SUEZ evaluated the different proposals, each rejected "higher" offer required that the existing building be demolished, whereas Allegro proposed that it would utilize the existing footprint of the existing building with any expansion utilizing the area immediately surrounding the existing footprint making its proposal more attractive from an environmental impact standpoint for not only the Headquarters Property but also the surrounding watershed. (See RCR-17 (Exhibit F).) After Allegro's offer was accepted, its plan changed such that the existing Headquarters Building will be demolished, but Allegro's plan is to continue to utilize the existing footprint of the existing building, with an expansion utilizing the area immediately surrounding the existing footprint. (See RCR-22 (Exhibit G).)
29. Allegro's proposed project, to construct a senior living project and assisted living facilities in New Jersey, has been recognized as inherently beneficial making the proposed project significantly more likely to be approved than the projects of the other developers with the "higher" offers. (See Verified Petition, ¶14.)
30. Allegro's proposal to develop a senior housing community in a tranquil setting was significantly more likely to receive state, county, and local approvals because, among other reasons, the

project would have no impact on the school system, the project would benefit the Borough with increased tax rateables while not causing a drain from an increased demand on Borough services, it protected water quality, and the project will generate less vehicle traffic to and from the Headquarters Property. (See RCR-22 (Exhibit G); See also Exhibit J.)

31. The unique location of the Headquarters Property and its proximity to the watershed mandate that considerable consideration be given to the use of the property and the control of those on the property to ensure that the necessary approvals and exemptions could be obtained.
32. On May 18, 2017, the WPRB confirmed that Allegro's proposed use of the Headquarters Property meets the criteria for an exemption and awarded the necessary exemption to allow the sale of the Headquarters Property to Allegro. See Exhibit K.
33. Allegro agreed to grant a conservation easement to the New Jersey Department of Environmental Protection over approximately 2.05 acres of the 9.20 acres of the Headquarters Property, limiting future development in this area and thus ensuring the preservation of additional open space and future tranquility of a portion of the site in perpetuity. A copy of the Supplemental Conservation is attached hereto as Exhibit L. The granting of this Conservation Easement is an express condition of the WPRB approval.
34. On May 9, 2018, the Planning Board of the Borough Harrington Park ("Harrington Park Board") unanimously granted preliminary site plan and subdivision approval to the Allegro project. A resolution memorializing the approval is on the July 11, 2017 Agenda of the Harrington Planning Board. See Exhibit H.

[Proposed Findings of Fact at 1-8].

COMMENTS OF RATE COUNSEL IN RESPONSE TO PROPOSED FINDINGS OF FACT

Rate Counsel filed its response to Petitioner's Proposed Findings of Fact by letter date June 16, 2017, essentially reemphasizing its comments dated May 25, 2017, *i.e.*, SUEZ's burden of showing that the Allegro offer represents "the best price obtainable." (Response Comments at 4-5.) In addition, Rate Counsel continues to recommend that any Board order approving the sale include the following language:

1. Approval under this Order is contingent on a purchase price of at least \$6,622,000.
2. Expenses associated with processing the sale that will be netted against the purchase price for accounting purposes are capped at a maximum of \$643,000.

[Response Comments at 5].

Rate Counsel states that it appreciates the environmental sensitivity of the Headquarters Property, and Allegro appears to be the highest bid that does not include market rate housing or market rate senior housing, which arguably may have a greater environmental impact on the property than Allegro's proposed assisted living facility. Id. at 4. Also, referencing Paragraph 28 of the Proposed Findings of Fact, Rate Counsel questions whether Allegro's proposal still will cause the least disturbance to the property, given Allegro's change in plan such that the existing Headquarters Building will now be demolished. Id. at 4-5. But Rate Counsel also recognizes that Allegro is providing an additional two acre conservation easement on the property to the Department of Environmental Protection, and that the Board may consider these factors in determining the extent to which they may render the project "unattainable." Id. at 5.

PETITIONER'S REPLY TO RATE COUNSEL'S COMMENTS

By letter dated June 16, 2017, Petitioner replied to Rate Counsel's Comments dated May 25, 2017, essentially providing additional arguments in support of petition. (SUEZ Reply at 1-3.) According to the Company, its Proposed Findings of Fact provides "sufficient evidence for the Board to approve the Company's petition." Id. at 1.

According to SUEZ, as detailed in the Proposed Findings of Fact, the determination that Allegro's offer represents the "best price obtainable" is supported by detailed evidence in the record, including but not limited to the filed Petition and the Proposed Statement of Facts and exhibits attached thereto. The different evidence, including but not limited to the dollar amount of each proposal, the type of building needed for the proposal, the use of the property, the necessary approvals for proposed structures, the opinions of stakeholders, the risks of the proposals, etc., were all considered in reaching the conclusion that Allegro's offer represents the best obtainable price. Id. at 2-3. And, for accounting purposes, SUEZ agrees to Rate Counsel's two conditions set forth in its Response Comments dated June 16, 2017. (SUEZ Reply at 3.)

DISCUSSION AND FINDINGS

The Board is required to review the proposed sale of the property at issue here under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. N.J.S.A. 48:3-7(a) provides in pertinent part:

[N]o public utility shall, without the approval of the board, sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility.

Also, pursuant to N.J.A.C. 14:1-5.6(b), the Company was required to advertise the property for bid. And, the Board, in reviewing the sale of utility property under the authority given to it by N.J.S.A. 48:3-7(a), must consider the three factors of Erie-Lackawanna, specifically:

- a. The property must be no longer used or useful, presently or prospectively, for utility purposes.
- b. The sale and conveyance of the property under the terms proposed will not adversely affect the ability of the utility to render safe, adequate and proper service.

- c. The proposed sale price is the best price obtainable and represents fair market value for the property.

See Erie-Lackawanna, *supra*, 75 P.U.R. 3d at 247. See also In re W. Jersey & Seashore R.R. Co., 46 N.J. Super. 543, 548-49 (App. Div.), *certif. denied*, 25 N.J. 491 (1957) ("West Jersey") (the sale price for which approval was sought was not the best price obtainable for the property). The Appellate Division in Atlantic City Electric, *supra*, reversed the Board's approval of the sale of the property because the Board had failed to address the merits of the sale under the Erie-Lackawanna doctrine. 2013 N.J. Super. Unpub. LEXIS 1775, at *38. However, citing Erie-Lackawanna and West Jersey, the court in Atlantic City Electric recognized that when a utility is disposing of property and multiple offers have been made, the Board's determination of which offer is the best price obtainable requires more than a comparison of the offers; rather, the Board must consider risk factors of the offers with an eye towards which truly in the best price obtainable. 2013 N.J. Super. Unpub. LEXIS 1775, at *34-35.

As noted above, Rate Counsel and SUEZ agree that Petitioner has met the first two prongs of the Erie-Lackawanna test. The Petitioner had moved its headquarters from Harrington Park to Paramus, which means that the Headquarters Property was no longer used or useful for utility purposes. Also, the sale of the property will not adversely affect the ability of SUEZ to render safe, adequate, and proper service to its customers. Thus, the Board must determine whether the Allegro offer is the best price obtainable and represents fair market value for the property.

The Board has reviewed the record, including Rate Counsel's Initial and Response Comments, the Petitioner's Proposed Findings of Fact, and SUEZ's Reply, and **HEREBY FINDS** that under the Erie-Lackawanna test, the Agreement is the best price obtainable and represents the fair market value for the Headquarters Property. The Board **FURTHER FINDS** that:

1. SUEZ moved its headquarters from the Headquarters Property to Paramus, New Jersey as of May 2015; thus the Headquarters is no longer used or useful for utility purposes.
2. The actual sales price of the Headquarters Property is \$6,622,000. The appraisal report submitted by Petitioner valued the property between \$5,400,000 and \$5,700,000.
3. The Headquarters Property is located in the watershed and is subject to the jurisdiction of the WPRB.
4. As part of a Settlement Agreement signed between the WPRB Staff, the Hackensack Riverkeeper, Bergen SWAN and SUEZ, SUEZ agreed not to sell or convey any interest in the Headquarters Property to any third party without the WPRB's approval.
5. In order to obtain an exemption from the moratorium on the conveyance of any land utilized for the purpose of the protection of a public water supply, the WPRB must find: (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 of development of the watershed property is otherwise consistent with the purposes of the Act.
6. By Order dated May 18, 2017, the WPRB confirmed that Allegro's proposed use of the Headquarters Property meets the criteria for an exemption and award the necessary exemption to allow the sale of the Headquarters Property to Allegro.

7. In determining what offer had the best obtainable price, SUEZ had to be cognizant of and consider the required exemption and other approvals necessary to consummate the proposed sale.
8. SUEZ advertised the proposed sale of the Headquarters Property in the Bergen Record on October 28, 2014 and November 4, 2014.
9. SUEZ received no bids by the November 17, 2014 deadline for submission.
10. SUEZ engaged an experienced real estate broker to market the Headquarters Property in an effort to obtain the highest sale price for the Headquarters Property, while recognizing the environmental and local community sensitivity associated with the Headquarters Property and made the consideration of the highest obtainable price a balancing of risks presented by each prospective offer.
11. SUEZ received nine offers form the Headquarters Property ranging from \$1,200,000 to \$10,000,000.
12. Four of the nine offers for the Headquarters Property were lower than Allegro's accepted offer. Thus further review of these bids is unnecessary.
13. The four offers that were higher than Allegro's offer were submitted by Alliance Realty Partners, Avalon, Eagle Burman Group, and Russo Acquisitions. These offers were not the highest obtainable price because of risk fact associated with the offers given the nature of the Headquarters Property and the required approvals and exemptions.
14. The other offers presented much higher intensity of use, greater impact on the environment, and demand for municipal services, thus making it unlikely the proposed projects would obtain the necessary approvals and exemptions, and lengthening the process thus lowering the present value of the offers.
15. Alliance Realty Partners proposed to develop the Headquarters Property as an age restricted residential complex consisting of substantially more units than Allegro's proposal, without centralized supervision.
16. The Alliance Realty Partners proposal also called for a four story building over 1 level of parking and possibly a half level of subgrade parking below, which made the achievability of its proposal unlikely, especially when compared to Allegro's proposal.
17. Avalon proposed to develop the Headquarters Property as a luxury apartment complex consisting of market rate residential units that would have a greater impact on the environment. The number of units proposed by Avalon was significantly higher than the number of units proposed by Allegro.
18. Prior to accepting the Allegro proposal, SUEZ met with representatives of the Borough of Harrington Park, who express strong opinions and concerns over the viability and construction of market rate apartment units on the Headquarters Property. In light of the Borough's comments, and the impact on the school system, SUEZ determined that Avalon's proposal did not represent a viable project for the site.
19. SUEZ presented each of the proposals to Harrington Park officials and Allegro was the clear favorite.

20. Allegro's proposed project, to construct a senior living project and assisted living facilities in New Jersey, has been recognized as inherently beneficial making the proposed project significantly more likely to be approved than the projects of the other developers with the higher offers.
21. Allegro's proposal to develop a senior housing community in a tranquil setting was significantly more likely to receive State, County, and local approvals because, among other things, the project will have no impact on the school system, the project will benefit the Borough with increased tax rateables while not causing a drain from an increased demand on Borough services; the project will protect water quality; and the project will generate less vehicle traffic to and from the Headquarters Property.
22. The unique location of the Headquarters Property and its proximity to the watershed mandate that considerable consideration be given to the use of the property and the control of those on the property to ensure that the necessary approvals and exemptions could be obtained.
23. Allegro agreed to grant a conservation easement to the NJDEP over approximately 2.05 acres of the 9.2 acres of the Headquarters Property, limiting future development in this area and thus ensuring the preservation of additional open space and future tranquility of a portion of the site in perpetuity. The Petitioner submitted a copy of the Supplemental Conservation and the Board **NOTES** that the granting of the Conservation Easement is an express condition of the WPRB approval.
24. On May 9, 2017, the Planning Board of the Borough unanimously granted preliminary site plan and subdivision approval to the Allegro project. The Petitioner has indicated that a resolution memorializing the approval is on the Planning Board's July 11, 2017 agenda.

Based on the foregoing, and considering the risk factors associated with Allegro's proposed project and the other proposed projects, the Board, having reviewed the entire record, **HEREBY FINDS** that:

- 1) The sale will not adversely affect the public interest, and the subject property is no longer used or useful for utility purposes.
- 2) The sale and conveyance of the property under the terms proposed will not adversely affect the ability of the utility to render safe, adequate, and proper service.
- 3) The actual sale price of \$6,622,000 satisfies the third prong of the Erie-Lackawanna test, because the proposed price is the best price obtainable and represents fair market value for the property.

The Board **NOTES** that the Petitioner included testimony and exhibits in its last base rate case that addressed the ratemaking treatment associated with the sale of the Headquarters Property. However, the Board **FURTHER NOTES** that both the Order and Stipulation that resolved that proceeding are silent regarding the ratemaking treatment associated with the sale. See In the Matter of the Petition for Approval of an Increase in Rates for Water Service and Other Tariff Changes for SUEZ Water New Jersey, Inc., BPU Docket No. WR1510177, OAL Docket No. PUC 16468-15 (March 18, 2016.) Thus, the Board **HEREBY FINDS** the any rate related issues

associated with the sale of the Headquarters Property should be addressed in SUEZ' next base rate case.

The Board **HEREBY APPROVES** the sale and conveyance of the property and property interests as more fully described in the Petition. The Board **HEREBY APPROVES** the Company's proposed journal entries. Having considered the Petition, the Board **HEREBY FINDS** that the sale of the property is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future land transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting the Company.
3. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liabilities now owned or hereafter to be owned by the Petitioner.
4. Within thirty (30) days of the date of the closing of this transaction, the Petitioner shall file with the Board proof of the closing, net transaction costs, and the final journal entries along with a detailed calculation, including selling expenses, of the sale.

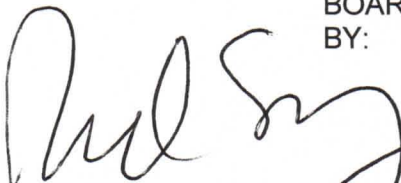
This Order shall be effective on July 10, 2017.

DATED: 6/30/17

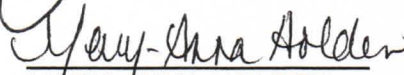
BOARD OF PUBLIC UTILITIES
BY:



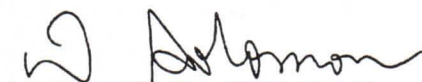
JOSEPH L. FIORDALISO
COMMISSIONER



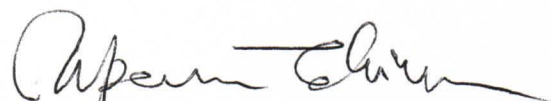
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PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER

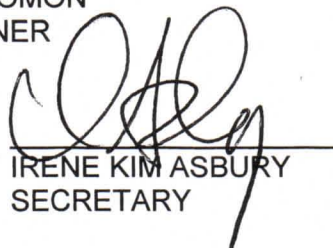


DIANNE SOLOMON
COMMISSIONER



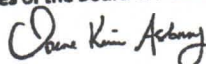
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities



**IN THE MATTER OF THE PETITION OF SUEZ WATER NEW JERSEY, INC.
FOR APPROVAL OF THE SALE AND CONVEYANCE OF APPROXIMATELY 9.2+/-
ACRES OF LAND AND IMPROVEMENTS SITUATED IN THE BOROUGH OF
HARRINGTON PARK, COUNTY OF BERGEN AND THE TRANSFER OF CERTAIN
EASEMENTS IN CONNECTION THERETO, PURSUANT TO N.J.S.A. 48:3-7 AND
N.J.A.C. 14:1-5.6**

DOCKET NO. WM15010043

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KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

May 25, 2017

VIA HAND DELIVERY

Irene Kim Asbury, Secretary
State of New Jersey, Board of Public Utilities
44 South Clinton Avenue, 10th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: **I/M/O Suez Water New Jersey - Sale of Harrington Park**
Docket No. WM15010043

Dear Secretary Asbury:

Please accept for filing an original and ten hard copies of the Division of Rate Counsel's ("Rate Counsel") comments in the above-referenced matter. Please date stamp the additional copy as "filed" and return it in the enclosed, self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

On January 9, 2015, Suez Water New Jersey ("Suez" or "Company") filed the above-referenced matter seeking the approval of the Board of Public Utilities ("Board") for the sale of its former headquarters located in Harrington Park, New Jersey pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. As set forth below, the Board can approve the sale only after finding that the Company has complied with N.J.S.A. 48:3-7(a), N.J.A.C. 14:1-5.6, and the Erie-Lackawanna criteria for the sale of real property.

Background

By way of this petition, the Company seeks Board approval to sell approximately 9.2 acres (the “Headquarters Property”) of an approximately 63 acre parcel (the “Harrington Park Parcel”), which includes the headquarters building, and associated easements the Company owns in Harrington Park, Bergen County to Allegro Development Company (“Allegro”). The Headquarters Property served as the Company’s corporate headquarters from 1979 until 2015. Petition para. 8 and 10. The Headquarters Property is a watershed property under the jurisdiction of the Watershed Property Review Board (“WPRB”). Petition, para. 3.

The Harrington Park Parcel is composed of approximately 63 acres, including the developed Headquarters Property. The remaining 54 acres is subject to a conservation easement granted by Suez to the New Jersey Department of Environmental Protection in 2009. Petition, para. 22.

Suez originally solicited bids for the property for sale in the Bergen Record in October and November, 2014. Petition, para. 26. No bids were submitted. Id. Suez then proceeded to list the property for sale with a real estate agent. Petition, para. 27. Suez received nine offers on the property, mostly from real estate developers. RCR-7. From these offers, Suez chose to sell the property to Allegro. Allegro intends to develop the property into an assisted care living facility. Petition, para. 14. Suez chose Allegro in part because of this intended use, which New Jersey has recognized as an “inherently beneficial use.” Id. Suez also believes that, of all the bids received, Allegro was most likely to receive State, county and local approvals, as it would have no impact on the school system, contribute to ratables, minimize traffic, and have the least impact on the community and on property itself. Suez also believes that the centralized control

afforded by an assisted living facility would encourage a responsible re-use of the property. RCR-22.

The sales contract between Suez and Allegro provides for a purchase price of \$38,500 per unit. While the sales price could increase or decrease depending on the number of units that Allegro receives approval for, it is Rate Counsel's understanding that the actual sales price will be \$6,622,000 based on 172 units. RCR-24, RCR-25. This proposed sale price would be netted against the expenses associated with the sale, such as legal expenses, surveys, and brokerage commissions. Suez proposes expenses of \$643,000. Suez's actually incurred sales-related expenses are \$553,000 through the end of 2016. RCR-21.

Suez's last base rate case reflected the retirement of the Headquarters Property in rates. The net proceeds from the sale will be used to increase the Company's accumulated depreciation reserve. This accounting will reduce the Company's rate base by an amount equal to the net sale proceeds. RCR-14. There will be no gain from the sale of the property.

This matter was held in abeyance for part of 2015 and all of 2016 while Suez was pursuing approval of the sale from the WPRB. The WPRB recently approved the sale by order dated May 18, 2017.¹

Analysis

A public utility must obtain the approval of the Board before it sells any real property. Any sale of utility property without Board approval is void. N.J.S.A. 48:3-7(a). Additionally, prior to the sale of any property, the utility must also comply with the requirements of N.J.A.C. 14:1-5.6, which sets forth the requirements for a utility's petition for approval of the sale of real property. Thus in this matter, Suez must comply with both the statute and the regulation.

¹ I/M/O Watershed Property Review Board Exemption Application in Connection With the Proposed Transfer of 9.2 +/- Acres of Land & Improvements Located in the Borough of Harrington Park, Order Granting Exemption, (5/18/17).

In interpreting N.J.S.A. 48:3-7(a), the Board has established three factors known as the Erie-Lackawanna test:

- a. The property must be no longer used or useful, presently or prospectively, for utility purposes.
- b. The sale and conveyance of the property under the terms proposed will not adversely affect the ability of the utility to render safe, adequate, and proper service.
- c. The proposed sale price is the best price obtainable and represents fair market value for the property.

In re Atl. City Elec. Co., 2013 N.J. Super. Unpub. LEXIS 1775, 30-31 (App. Div. 2013), citing In re Erie-Lackawanna Ry. Co., 75 P.U.R. 3d 246, 247 (N.J. Bd. of Pub. Util. 1968).

In the present matter, Suez appears to have met the first two prongs of the test. Having moved its headquarters from the property, the Headquarters Property is no longer used or useful for utility purposes. The sale of the property will not adversely affect the ability of Suez to render safe, adequate and proper service to its customers. The third prong, however, requires additional analysis by the Board.

Suez received nine bids for the Headquarters Property.² While Allegro's bid did not provide the highest monetary amount, Suez believed that it was the best price obtainable for the property. See RCR-22.³ The first rejected bid "proposed a greater number of units and did not provide for centralized supervision for a portion of the residents." Id. Suez believed that the project as proposed would not be approved by the relevant regulatory authorities. The second rejected bid "would have a greater impact on the environment, both on the Property and surrounding area." Id. In a meeting with the town, officials expressed concerns over the

² Four bids were lower than the accepted bid and do not require additional review. Four bids were higher, and do require additional analysis.

³ The responses to RCR-22 contained confidential and non-confidential information. The citation to RCR-22 in these comments refers only to the non-confidential information provided in that response.

viability and construction of market rate apartment units on the property. Id. With regard to the third rejected bid, “SUEZ determined that Allegro’s offer provided a higher per unit purchase price, thereby reducing the impact on the environment and increasing the likelihood of obtaining the required Watershed Property Review Board, Board of Public Utilities, and other State, County and local approvals.” Id. Finally, with regard to the fourth rejected bid, “SUEZ believed that it would have been very difficult for this proposed project to receive the necessary Watershed Property Review Board, Board of Public Utilities and other State, County and local approvals.” Id.

In reviewing the proposals, Suez believed that the Allegro project was the most likely to receive necessary state, county and local approvals. Id. The “best price obtainable” is not necessarily the highest monetary bid. In Erie-Lackawanna, the Board approved the railroad’s rejection of the highest monetary bid, finding the rejected bidder’s ability to perform under the terms of its bid was “doubtful” and that the mortgage supporting that bid was “speculative.” Thus, the bid was not the highest and best price. Erie-Lackawanna, 75 P.U.R.3d at 250. The Appellate Division explained, “clearly, the BPU in Erie-Lackawanna recognized that when faced with multiple offers, determination of which offer is the best price obtainable required more than the comparison of the face value of the offers. Rather, the BPU must consider risk factors of both offers with an eye toward which truly is the best price obtainable.” In re Atl. City Elec. Co., 2013 N.J. Super. Unpub. LEXIS 1775 at 34.

Here, Suez attempts to explain why the four other bids were not the best price obtainable. It appears that Suez’s explanation is that the other bids were not likely to receive the necessary state, county or municipal approvals and were therefore not as viable as the selected bid from Allegro. It is incumbent upon the Board to make a determination whether

Suez has put forth sufficient evidence for the Board to fully evaluate that assertion and then whether, given the evidence in the record, Allegro's offer was in fact the best price obtainable. If the Board is to approve this transaction, it must first make these findings.

With regard to the regulation, Suez appears to have complied with the advertising requirements set forth in N.J.A.C. 14:1-5.6(b). Suez received no bids from this advertising process, and proceeded to market the property with a real estate broker. Suez eventually received several offers, including the bid from Allegro. Suez also appears to have satisfied the filing requirements set forth in N.J.A.C. 14:1-5.6(a). This regulation includes a number of filing requirements that must be filed when the Company files its petition for approval by the Board. Based on Rate Counsel's review of the Petition and discovery, Suez has satisfied these filing requirements.

The purchase price will be \$6,622,000. RCR-24. As noted above, the purchase price, net sale expenses, will be credited to the accumulated depreciation reserve, thereby reducing rate base. Given that the sales agreement between Allegro and Suez permits a purchase price lower than \$6,622,000 depending on the number of units, Rate Counsel recommends that any Board Order be contingent on the sale price being at least the \$6,622,000 that the Company represents will be the actual sales price. Rate Counsel also recommends that expenses associated with the sale be capped at the requested \$643,000. Since the net proceeds are offset by these expenses, additional review would be required if the amount exceeds \$643,000.

If the Board finds that the Company has complied with the Erie-Lackawanna criteria and approves the sale, Rate Counsel recommends that any Board order approving the sale include the following language:

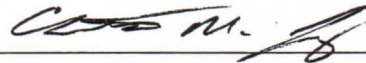
1. Approval under this Order is contingent on a purchase price of at least \$6,622,000.

2. Expenses associated with processing the sale that will be netted against the purchase price for accounting purposes are capped at a maximum of \$643,000.

Respectfully submitted,

STEFANIE A. BRAND, ESQ.
Director, Rate Counsel

By: _____



Christine M. Juarez, Esq.
Assistant Deputy Rate Counsel

CMJ/kah
cc. Service List

Service List

**I/M/O of the Petition of United Water New Jersey Inc. for Approval of the Sale of Land and Conveyance of Approximately 9.2 +/- Acres of Land and Improvements Situate in the Boro. Of Harrington Park, County of Bergen and the Transfer Certain Easement in Connection Therefore, Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6
BPU Docket No. WM15010043**

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STEFANIE A. BRAND
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June 16, 2017

via E-Mail & Hand Delivery

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Trenton, New Jersey 08625-0350

Re: I/M/O Suez Water New Jersey - Sale of Harrington Park
Docket No. WM15010043

Dear Secretary Asbury:

Please accept for filing an original and ten hard copies of the Division of Rate Counsel's ("Rate Counsel") comments in the above-referenced matter. Please date stamp the additional copy as "filed" and return it in the enclosed, self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

On January 9, 2015, Suez Water New Jersey ("Suez" or "Company") filed the above-referenced matter seeking the approval of the Board of Public Utilities ("Board") for the sale of its former headquarters located in Harrington Park, New Jersey pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. At the request of Board Staff, on June 12, 2017, Suez filed proposed findings of fact and accompanying exhibits. Rate Counsel submits this letter in response to Suez's June 12th filing. As set forth below, the Board can approve the sale only after finding,

based on the record evidence, that the Company has complied with N.J.S.A. 48:3-7(a), N.J.A.C. 14:1-5.6, and the Erie-Lackawanna criteria for the sale of real property.

The Company seeks Board approval to sell approximately 9.2 acres (the “Headquarters Property”) of an approximately 63 acre parcel (the “Harrington Park Parcel”), which includes the headquarters building, and associated easements the Company owns in Harrington Park, Bergen County to Allegro Development Company (“Allegro”). The Headquarters Property served as the Company’s corporate headquarters from 1979 until 2015. Petition para. 8 and 10. The Headquarters Property was a watershed property under the jurisdiction of the Watershed Property Review Board (“WPRB”). Petition, para. 3.¹ This matter was held in abeyance for part of 2015 and all of 2016 while Suez was pursuing approval of the sale from the WPRB. The WPRB recently approved the sale by order dated May 18, 2017.²

A public utility must obtain the approval of the Board before it sells any real property. Any sale of utility property without Board approval is void. N.J.S.A. 48:3-7(a). Additionally, prior to the sale of any property, the utility must also comply with the requirements of N.J.A.C. 14:1-5.6, which sets forth the requirements for a utility’s petition for approval of the sale of real property. Thus in this matter, Suez must comply with both the statute and the regulation.

In interpreting N.J.S.A. 48:3-7(a), the Board has established three factors known as the Erie-Lackawanna test:

- a. The property must be no longer used or useful, presently or prospectively, for utility purposes.

¹ The Watershed Protection and Moratorium Act, P.C. 1988, c. 163 as amended by P.L. 1990 c. 19 applies only to land owned by a public utility. Once Suez completes the transaction, this property is no longer watershed property subject to the jurisdiction of the WPRB.

² I/M/O Watershed Property Review Board Exemption Application in Connection With the Proposed Transfer of 9.2 +/- Acres of Land & Improvements Located in the Borough of Harrington Park, Order Granting Exemption, (5/18/17).

- b. The sale and conveyance of the property under the terms proposed will not adversely affect the ability of the utility to render safe, adequate, and proper service.
- c. The proposed sale price is the best price obtainable and represents fair market value for the property.

In re Atl. City Elec. Co., 2013 N.J. Super. Unpub. LEXIS 1775, 30-31 (App. Div. 2013), citing In re Erie-Lackawanna Ry. Co., 75 P.U.R. 3d 246, 247 (N.J. Bd. of Pub. Util. 1968). The Company's proposed findings of fact attempt to address the three requirements set forth in Erie-Lackawanna.

Suez appears to have met the first two prongs of the test. Having moved its headquarters from the property, the Headquarters Property is no longer used or useful for utility purposes. The Company also represents that sale of the property will not adversely affect the ability of Suez to render safe, adequate and proper service to its customers. The third prong, however, requires additional analysis by the Board.

In order for the Board to approve the sale, there must be evidence in the record that the Allegro bid represents the "best price attainable." In re Erie-Lackawanna Ry. Co., 75 P.U.R. 3d 246, 247 (N.J. Bd. of Pub. Util. 1968). Suez bears the burden and the Board must detail the evidence supporting its findings that the bid represents the best attainable price. The Company's "beliefs," without supportive evidence, are not sufficient evidence to find that the proposed sales price is the "best price attainable." The Company's beliefs must be supported by evidence in the record. For example, Suez notes that it rejected the proposed bid from Alliance in part because Suez "believed [the proposed building] would exceed local building height requirements." RCR-22(b) (attached as Exhibit G). This is an example of a "belief" that requires further explanation or additional evidence, such as the local building ordinances, if the Board intends to use it as a basis for its approval.

The Company argues that it rejected several higher bids, in part, because it believed that these projects would have difficulty receiving approvals from local authorities, notably the Township of Harrington Park. Findings of Fact, para. 1. Thus, while the other bids were higher, the Company maintains that they were not the highest “attainable” price. The Company points to a letter from the Mayor of Harrington Park (Exhibit I) and a Certification of Michael Algranati (Exhibit H) in support of its belief. The Company states further that it presented the offers to Township officials before selecting Allegro. *Id.* Allegro was “the clear favorite of the Harrington Park officials.” Exhibit H. Suez implies that the Allegro bid was also preferred by the WPRB and that other projects may not have received WPRB approval. Findings of Fact, paras. 26 and 32. The Board must decide whether the proofs submitted to support Suez’s belief that the higher bids would not have been approved by the Town and/or the WPRB are sufficient. While all relevant evidence, including hearsay, is admissible in an administrative proceeding, “some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” N.J.A.C. 1:1-15.5.³

Rate Counsel also appreciates the environmental sensitivity of the Headquarters Property. Allegro appears to be the highest bid that does not include market rate housing or market rate senior housing, which arguably may have a greater environmental impact on the property than Allegro’s proposed assisted living facility. Suez appears to state that Allegro’s proposal will cause the least disturbance to the property, although with the change in plans, it is

³ It should be stressed that the preference of local officials is not dispositive. While it is understandable that municipalities prefer development that maximizes tax revenues while minimizing impacts on their communities, it is Suez’s obligation to pursue land sales that represent “the best price attainable.” While incompatibility with local ordinances may support rejection of a bid, the mere preference of local officials is likely insufficient under Erie.

unclear if that is still true. Findings of Fact, para. 28. Additionally, Allegro is providing an additional two acre conservation easement on the property to the Department of Environmental Protection. These are factors that may be considered by the Board in making its determination to the extent they may render the project "unattainable."

In conclusion, it is incumbent upon the Board to make a determination regarding whether Suez has put forth sufficient evidence that Allegro's offer was in fact the best price obtainable. The Board must base its decision upon facts in evidence, and not mere beliefs or preferences. If the Board is to approve this transaction, it must first make the Erie findings based on actual evidence in the record.

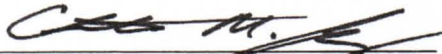
In addition, Rate Counsel continues to recommend that any Board order approving the sale include the following language:

1. Approval under this Order is contingent on a purchase price of at least \$6,622,000.
2. Expenses associated with processing the sale that will be netted against the purchase price for accounting purposes are capped at a maximum of \$643,000.

Respectfully submitted,

STEFANIE A. BRAND, ESQ.

Director, Rate Counsel

By: 

Christine M. Juarez, Esq.
Assistant Deputy Rate Counsel

Service List

**I/M/O of the Petition of United Water New Jersey Inc. for Approval of the Sale of Land and Conveyance of Approximately 9.2 +/- Acres of Land and Improvements Situate in the Boro. Of Harrington Park, County of Bergen and the Transfer Certain Easement in Connection Therefore, Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6
BPU Docket No. WM15010043**

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May 18, 2017

WATERSHED PROPERTY REVIEW BOARD ORDER



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

BOB MARTIN
Commissioner
Department of
Environmental Protection

RICHARD MROZ
President, Board of Public
Utilities

CHARLES A. RICHMAN
Commissioner
Department of Community
Affairs

WATERSHED PROPERTY REVIEW BOARD ("WPRB"))
EXEMPTION APPLICATION IN CONNECTION WITH THE)
PROPOSED TRANSFER OF 9.2 +/- ACRES OF LAND AND)
IMPROVEMENTS LOCATED IN THE BOROUGH OF)
HARRINGTON PARK, COUNTY OF BERGEN)
(THE "HEADQUARTERS PROPERTY") AND THE)
TRANSFER OF CERTAIN EASEMENTS IN CONNECTION)
THERETO)

ORDER GRANTING
EXEMPTION

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

SUEZ Water New Jersey Inc. ("SUEZ") (formerly known as United Water New Jersey, Inc.), a public utility regulated by the New Jersey Board of Public Utilities ("BPU"), has filed an application with the Watershed Property Review Board ("Board" or "WPRB") 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 SUEZ to convey 9.2+/- acres of land and improvements, currently consisting of a corporate office building adjacent to the Oradell Reservoir in the Borough of Harrington Park, Bergen County, to Allegro Development Company, LLC ("Allegro"), a private, senior living industry company. This order adopts Board Staff's recommendation to grant the requested exemption in accordance with the conditions outlined below.

BACKGROUND/PROCEDURAL HISTORY

A Settlement Agreement (“Agreement”) was signed between the WPRB Staff, Hackensack Riverkeeper, Bergen Save the Watershed Action Network (“Bergen SWAN”) and SUEZ (“the Parties”) on March 26, 2009 and adopted by WPRB Order on the same date. Under the Settlement Agreement, as mitigation for identified violations of the Act, SUEZ granted a conservation easement (“Conservation Easement”) to the New Jersey Department of Environmental Protection (“NJDEP”) on approximately 3,095 acres of its lands and provided \$1 million to the Garden State Green Acres Preservation Fund to be utilized for the purchase of additional open space protective of the watershed in Bergen County, New Jersey.

Block 1601, Lot 1 in the Borough of Harrington Park (“Property”) was included in the Conservation Easement subject to a 9.2-acre exception area containing SUEZ’s corporate headquarters (“Headquarters Property”). An aerial map illustrating the Property and the Headquarters Property is attached as Exhibit 1. Schedule D of the Agreement, indicates that the 9.2 acres is exempted from the Conservation Easement. While the Headquarters Property was developed with an existing building and is not encumbered by the Conservation Easement, the Settlement Agreement specifically states that SUEZ agrees that it will not sell or convey any interest in the Headquarters Property to any third party without the WPRB’s prior approval. The Settlement Agreement takes special care to include an undertaking by SUEZ to obtain the prior approval of the BPU, with consultation with the NJDEP, in the event that the WPRB ceases to exist.

The Property (totaling 63.23 acres) abuts Old Hook Road south of the intersection with Bogerts Mill Road in the Borough of Harrington Park, Bergen County. Approximately 54.03 acres of the Property are subject to the Conservation Easement and the remaining 9.2 acres are developed as the Headquarters Property. At present, the Headquarters Property contains an abandoned 68,400 ft² corporate office building (originally constructed in 1979), associated parking areas, an entrance drive and landscaped areas. The Oradell Reservoir, located directly south of the property, is a water supply source for the residents of Bergen and Hudson Counties. While the majority of the 9.2-acre easement exception area is developed, there is a densely wooded area located between Old Hook Road and the existing building in the northern portion of the property.

SUEZ is proposing to subdivide the Property and to sell the Headquarters Property, which land is not subject to the Conservation Easement, to Allegro. Allegro proposes to construct a senior living facility on the property, allowing for independent congregate living, assisted living, and/or memory care uses (“Project”). The proposal includes the full demolition of the existing building and the construction of a 64,125 ft² assisted living facility (including approximately 172 units), reconfiguring of the parking areas onsite (resulting in 167 parking spaces using a mixture of pervious and impervious pavement) and the construction of various walkways, landscaped areas and stormwater management facilities. The proposed facility is depicted in Exhibit 2. SUEZ proposes to retain an access easement from Old Hook Road through the Headquarters

Property in order to access the rest of Block 1601, Lot 1 and the Oradell Reservoir to continue its water utility operations.

As set forth above, such sale requires an exemption from the WPRB. On January 9, 2015, SUEZ filed an application ("Initial Application") with the WPRB to request an exemption from the Act. On October 20, 2015, SUEZ submitted additional information to supplement the Initial Application ("October 20, 2015 Supplemental Submission") and continued to affirm that this provided more sufficient evidence that the proposed transfer satisfies the standard for approval set forth in the Act. On May 4, 2016, SUEZ submitted a second supplement to the Initial Application ("May 4, 2016 Supplemental Submission") with revisions to Allegro's proposed Project.

Specifically, SUEZ seeks an exemption to permit: (1) the transfer of that portion of SUEZ's land that is already developed and was exempted from the Conservation Easement known as the Headquarters Property; (2) the transfer of a certain assumed drainage easement located in the watershed land encumbered by the Conservation Easement; (3) the conveyance to Allegro of a Limited Right of Entry to additional watershed lands owned by SUEZ and encumbered by the Conservation Easement to carry out mitigation plantings required by the NJDEP in connection with the permitting of the proposed Allegro facility; and (4) the conveyance of a Supplemental Conservation Easement to the NJDEP on a portion of the Headquarters Property.

SUEZ/Allegro's position in support of an exemption

In an effort to consolidate its corporate offices into one location, SUEZ recently moved its corporate headquarters to a larger facility in the Borough of Paramus. SUEZ asserts that the need for this move was supported by a feasibility study conducted by SUEZ which reviewed the possibility of expanding the existing Harrington Park office. This action would not require approval from the WPRB since the expansion of water utility operation infrastructure is allowed on the Headquarters Property under the Settlement Agreement. The study concluded that there was no cost-effective manner in which to expand at the existing Headquarters location to accommodate the corporation's growing staff of approximately 300 employees. The cost to upgrade the Headquarters Property was estimated at over \$13.6 million and it was determined that this investment would be an unfair burden on ratepayers because it would divert funds away from system infrastructure improvements.

Once it was determined that SUEZ would be moving its corporate offices, SUEZ applied for and received \$5.5 million in tax credits from New Jersey Economic Development Authority's Grow New Jersey Program to keep the corporate offices in New Jersey. Since SUEZ is now leasing office space in the Borough of Paramus, the company no longer needs the Headquarters Property for water utility operations. SUEZ marketed the property to various sectors and received various offers for uses ranging from luxury residential rental units to a senior assisted living facility. There was no interest from the Borough of Harrington Park, Bergen County or the State to preserve this property for open space due to the cost of maintaining or removing the existing structures.

SUEZ further asserts that the Borough will experience financial hardship if the WPRB does not permit the repurposing of the already disturbed Headquarters Property. SUEZ is the largest taxpayer in the Borough. If the site is not redeveloped, but is instead left vacant, the Borough will suffer a significant loss in ratables. SUEZ assumes this will likely increase the tax burden on the Borough's residents. For example, in 2014, SUEZ paid the Borough \$292,000 in real estate taxes. Thus denying the approval of the application will result in an extraordinary hardship for SUEZ, its ratepayers and the Borough of Harrington Park.

Suez ultimately entered into a contract for sale with Allegro. In support of the exemption, Allegro conducted a market study in Bergen County in which the demographics indicated the need for a senior housing facility in the Harrington Park area. SUEZ asserts that courts in New Jersey, have held that special housing needs of the elderly constitute an inherently beneficial use. See Jayber, Inc. v. Municipal Council of Tp. of West Orange, 238 N.J. Super. 165 (App. Div. 1990), cert. denied 122 N.J. 142 (1990). Inherently beneficial uses are deemed to serve the zoning purpose of promoting the general welfare. The Jayber court, noting that some commercial uses "inherently serve the general welfare," ruled that specialized housing for the elderly such as congregate care facilities constitutes an inherently beneficial use. See Jayber, supra at 175. In Jayber, the Appellate Division found that "the use proposed here both advances the senior citizen housing purpose of N.J.S.A. 40:55D-2(1) and is also, beyond debate, an inherently beneficial use in that it promotes the general welfare." Id. at 174-175. Furthermore, in Sica v. Bd of Adjustment, 127 N.J. 152 (1992), the Supreme Court of New Jersey noted that

[a]lthough inherently beneficial uses are generally non-commercial, various profit-making ventures have been deemed to be inherently beneficial. Examples of inherently beneficial commercial uses include private, for-profit senior citizen congregate-care facilities. Kunzler v. Hoffman, 48 N.J. 277, 288 (1996); Jayber, Inc. v. Township of West Orange, 238 N.J. Super., 165, 174-75, (App. Div. 1990); a 120-bed nursing home, Urban Farms, Inc. v. Borough of Franklin Lakes, 179 N.J. Super. 203, 212, (App. Div) 87 N.J. 428, 434 (1981).

Approximately 10% of the assisted living and memory care beds, included in the Project, will be Medicaid eligible. There will also be a number of affordable housing units included in the facility. The amount of affordable housing units will be determined by the Borough of Harrington Park as part of the site plan approval process for the Allegro Project.

SUEZ asserts that the savings to ratepayers as a result of the sale of the Headquarters Property to Allegro is substantial. SUEZ asserts that the impact to the ratepayers if the Headquarters Property is not sold to Allegro will be almost \$600,000.00. Based on SUEZ's calculation, the anticipated net reduction to New Jersey rates if the Headquarters Property is sold is \$733,294.00. In contrast, the anticipated net

reduction in New Jersey rates if the Headquarters Property is not sold and the building is demolished is \$140,606.00. Furthermore, if the Allegro sale is not approved, there will be additional carrying costs incurred while SUEZ puts the Headquarters Property back on the market, which costs will ultimately be borne by New Jersey ratepayers. There is also the risk that SUEZ's failed attempt to obtain WPRB approval for the Allegro transfer will have a chilling effect on future interested purchasers such that SUEZ may not be able to find another buyer that is willing to pay a similar purchase price.

Property improvements as a result of the Project

At the request of Board Staff, SUEZ and Allegro agreed to permanently restrict from development approximately 2.05 acres of the 9.2-acre Headquarters Property proposed for sale in order to provide further assurance that watershed buffers and the water supply will be protected in perpetuity. A Supplemental Conservation Easement will protect the forested area located between the proposed senior living facility and Old Hook Road (the "North Easement Area" totaling 81,519 square feet) and a small area in the south of the site where impervious parking will be removed as part of the proposal (the "South Easement Area" totaling 7,938 square feet). The majority of the utilities supporting the current building cross through the Supplemental Conservation Easement area. The Northern Easement Area is subject to existing electric/telecom/cable and gas easements and assumed sanitary sewer, water and cable easements totaling 8,508 square feet. The Southern Easement Area is subject to assumed drainage, water and electric easements totaling 3,575 square feet. These existing and proposed easement areas are considered the Reserved Utility Easements. The Supplemental Conservation Easement areas and the Reserved Utility Easements are identified in Exhibit 3 and Exhibit 4, respectively.

Section 4.a. of the Act requires NJDEP to review and make recommendations on the impacts of the conveyance on the water quality of the affected water supply and on the State's open space, conservation and recreation requirements. In reference to water quality, Allegro's Project proposes to remove a portion of the paved parking area and replace that area with grass or other vegetation would be a benefit to the watershed land encumbered by the Conservation Easement. This would result in less impervious surface near the reservoir. The existing drainage was constructed in the 1970s when there were limited and less restrictive stormwater management regulations. The proposed Project also included the upgrade of the drainage and therefore, resulted in improved water quality.

As stated above, the Headquarters Property currently has no water quality protections. There are no hoods in the existing catch basins to reduce litter and floating liquids from reaching the reservoir. The Project will improve water quality runoff from the property from the existing condition utilizing a number of methodologies. Initial site planning for the new development of the property included a reduction in the pavement surface, inherently improving water quality. Additionally, the site improvements will incorporate water quality improvements including pervious pavement with infiltration beds and manufactured treatment devices for the remaining and existing pavement

surfaces. The majority of the existing large parking area to the east, currently with no water quality protections, will incorporate a manufactured treatment device to meet current NJDEP water quality standards. In addition, the existing paved surfaces which will not be improved/modified as part of this Project will also incorporate manufactured treatment devices to provide improved water quality. These measures will significantly improve the water quality from new pavement surfaces as well as a majority of the remaining existing paved surfaces.

The NJDEP's Division of Land Use Regulation ("DLUR") approved a Flood Hazard Area Individual Permit for the Allegro Project on August 9, 2016. DLUR determined that the Project met the requirements of the Stormwater Management Rules at *N.J.A.C. 7:8*. Stormwater from all proposed impervious areas and a vast majority of the existing impervious surfaces onsite, which currently have no stormwater quality controls, will be treated via a manufactured treatment device ("MTD") installed along the access drive before being discharged to the Oradell Reservoir. An underground stormwater detention system will also be installed. Stormwater will be directed to two existing outfall structures located within the Conservation Easement. Since there are no recorded drainage easements for these facilities on record, SUEZ is looking to transfer a 10,324 ft² drainage easement to Allegro to allow it to use, operate, maintain and repair these facilities as part of the new stormwater management system.

In order to mitigate for the removal of riparian vegetation (both lawn and trees) within regulated areas, DLUR required three tree mitigation areas, totaling 33,000 ft² or 0.75 acre. An onsite area of approximately 4,000 ft², located to the north of the access drive, will be planted with a mixture of trees and shrubs and restricted from future development. Two additional mitigation sites are located outside of the Headquarters Property and will also be planted with a mixture of trees and shrubs. These two areas (approximately 4,500 ft² of Block 1601, Lot 1 and 24,500 ft² of Block 4601, Lot 1) are currently owned by SUEZ and are subject to the Conservation Easement. The Conservation Easement allows for the restoration of watershed property including tree planting. While a Limited Right of Entry needs to be granted to Allegro as part of this process in order to conduct mitigation activities in these two locations, these two mitigation sites will be retained by SUEZ and will continue to be subject to the Conservation Easement. The mitigation areas are identified in Exhibit 5.

Stakeholders

SUEZ and Allegro have taken steps to involve and inform various stakeholders about the proposed sale. In addition to consultation with stakeholders, the public was informed of the Allegro Project through various newspaper articles and through the Borough of Harrington Park newsletter. As a result of this outreach, in October 2015, Borough of Harrington Park Mayor Paul A. Hoelscher provided a letter in support of the sale stating that "the Borough is concerned about the impact of any reduction in real estate tax revenue" that could result from SUEZ relocating its offices from the Headquarters Property. Therefore, he believes leaving the property vacant would be "a substantial detriment and hardship to the community." Mayor Hoelscher supports the sale since the proposed sale of the property to Allegro would provide equal or increased

real estate taxes, would not impact the area school system and would have environmental benefits by improving stormwater management on the property.

Bergen SWAN and Hackensack Riverkeeper have been in contact with Board Staff since this Project was first brought to the Board's attention and have played an active role in the review of this Project since its inception. In August 10, 2015, Hackensack Riverkeeper provided a letter in support of the Allegro Project, stating that "the proposed Project may even have a positive effect on water quality by minimizing the amount of urban runoff that gets in the reservoir" due to the Project's compliance with NJDEP stormwater regulations as well as Category 1 buffer rules. A copy of this letter is attached as Exhibit 6.

On March 8, 2017, the Eastern Environmental Law Center, on behalf of Bergen SWAN, submitted a letter to SUEZ outlining several proposals to ensure that the buffers on the Headquarters Property provide adequate protection for the Oradell Reservoir. These measures include: removing the proposed walkway through the North Easement Area and limiting any unnecessary buffer disturbance; minimizing disturbance to vegetation within the Reserved Utility Easements; locating the access road northward further from the shoreline; improving the buffer between the shoreline and the service road through native plantings; no pesticide use onsite; and, quarterly site visits to inspect the entire Headquarters Property. These issues were discussed at a subsequent meeting and modifications have been made to address some of Bergen SWAN's concerns. Allegro's proposed plan has been amended to include comments received from Bergen SWAN and other various stakeholders, including WPRB Staff, over the life of the Project. By letter dated May 10, 2017, Bergen SWAN confirmed that it had reached an agreement with SUEZ on additional mitigation and restrictions on the subject property. A copy of this letter is attached as Exhibit 7.

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. 1998, 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. 1998, 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 proposing mitigation as appropriate.

SUEZ is seeking an exemption which would allow it to convey the Headquarters Property to Allegro in fee along with a permanent drainage easement over portions of the Property.

Based on our review of the extensive record, Board Staff believes that the sale of the Headquarters Property and the associated conveyance of a drainage easement can qualify for an exemption based on a compelling public need (Exemption #1) and that the conveyance of the Supplemental Conservation Easement to the NJDEP and the granting of a Limited Right of Entry for mitigation purposes to Allegro are consistent with the purposes of the Act (thus qualifying those actions for Exemption #3).

1. Exemption for Sale of Headquarters Property and Associated Drainage Easement

SUEZ asserts that as a Board of Public Utilities regulated utility company, it has a fiduciary responsibility to preserve the value of its regulated assets. SUEZ projected savings to ratepayers, as a result of the proposed sale, are substantial asserting the anticipated net reduction to SUEZ's NJ rate base is \$733,294. SUEZ is currently the largest taxpayer in the Borough of Harrington Park; the 2016 assessed taxes for the Headquarters Property were over \$306,000. Allegro's proposal will likely increase the ratables for the Borough.

SUEZ views Allegro's proposed use to be a benefit to the residents of Bergen County, where the demand for senior living and assisted living facilities continues to grow. Allegro's marketing staff and a third party market study indicate that the demographics in the Borough of Harrington Park area show a significant need for senior housing. State and local agencies as well as the courts have recognized the need to provide senior housing and that such facilities are a value to communities since they serve the public good and promote general welfare.

New Jersey courts have held that special housing needs of the elderly (such as congregate care facilities) constitute an inherently beneficial use even if supplied by a private, for-profit group. See Kunzler v. Hoffman, 48 N.J. 277, 288 (1966); Jayber, Inc. v. Township of West Orange, 238 N.J. Super. 165, 174-175 (App. Div. 1990); Urban Farms, Inc. v. Borough of Franklin Lakes, 179 N.J. Super. 203, 212, (App. Div.). 87 N.J. 428, 434 (1981). In Sica v. Bd of Adjustment, 127 N.J. 152 (1992), the Supreme Court of New Jersey noted that "although inherently beneficial uses are generally non-commercial, various profit-making ventures have been deemed to be inherently beneficial."

Allegro advised SUEZ and Board Staff that 10% of the assisted living and memory care beds will be Medicaid eligible and there will be a number of affordable housing units included in the facility in order to further promote the general welfare. The amount of the affordable housing units will be determined by the Borough of Harrington Park as part of the site plan approval process for the Allegro Project.

SUEZ maintains that Allegro's proposal represents a responsible repurposing of the Headquarters Property which has been disturbed and utilized for commercial uses since the 1970s and is not currently subject to the NJDEP Stormwater Management rules, as set forth in N.J.A.C. 7:8 et seq. The proposal will expand conservation

restrictions onsite that will enhance the protection of buffers to the Oradell Reservoir where none currently exist. In addition, SUEZ will have an ongoing obligation that all stormwater discharge from the proposed Drainage Easement areas, passing through the Conservation Easement areas into the Oradell Reservoir, complies with the NJDEP Stormwater Management rules.

2. Exemption for Conveyance of a Supplemental Conservation Easement and Limited Right of Entry

Board Staff requested that SUEZ provide additional permanent buffer areas on the Headquarters Property as part of the sale, in order to provide further assurance that watershed buffers will be retained on site and the water supply of the Oradell Reservoir will be protected. SUEZ and Allegro agreed to permanently restrict from development approximately 2.05 acres of the 9.2-acre Headquarters Property proposed for sale. In addition, as a condition of the DLUR Flood Hazard Area Control Act Individual Permit, in order to mitigate for the removal of riparian vegetation (both lawn and trees) within regulated areas, DLUR, required three tree mitigation areas, totaling 33,000 ft² or 0.75 acre.

SUEZ, therefore, is also seeking an exemption which would allow it to convey a Supplemental Conservation Easement on the Headquarters Property to the NJDEP (prior to its conveyance to Allegro) as well as grant a Limited Right of Entry to Allegro to conduct mitigation activities. The Supplemental Conservation Easement and Limited Right of Entry are consistent with the purposes of the Act, which are to protect water quality and encourage open space preservation. This proposal will lead to improved stormwater management and permanent protection from future development on approximately two acres of the Headquarters Property that are not currently protected.

In this matter, Board Staff recommended to the Board that this Project can qualify under the Act for an exemption based on a compelling public need for the sale of the Headquarters Property to Allegro and associated conveyance of a drainage easement and that the conveyance of the Supplemental Conservation Easement to the NJDEP and the granting of a Limited Right of Entry for mitigation purposes to Allegro are consistent with the purposes of the Act. This recommendation is based on the specific facts presented by this petition, including that the property is currently disturbed and only has minimum storm water controls. After conveyance, Allegro will be required to incorporate more substantial protections of the watershed than currently exist and SUEZ will be required to monitor stormwater runoff for compliance with NJDEP Stormwater Management rules. Therefore, based on its review of this matter and the information above, Board Staff recommends that this Board approve SUEZ's application for an exemption to the Act, subject to the conditions outlined below.

CONCLUSION

Based on the foregoing discussion, the WPRB **HEREBY FINDS** that there is a compelling public need for the sale of the Headquarters Property and conveyance of a

drainage easement and agrees with the need to provide housing for the elderly and that such facilities are a value to communities since they serve the public good and promote the general welfare. The WPRB **FURTHER FINDS** that conveyance to NJDEP of the Supplemental Conservation Easement and the granting of a Limited Right of Entry are consistent with the Act. These findings are 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 unique Project, and shall not be construed as a determination by this WPRB 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 WPRB, any future determination will be made on a case by case basis giving due regard to the information presented within each such application.

The application, permits, plans and the Supplemental Submissions as well as the letter setting forth agreed upon restrictions between Bergen Swan and SUEZ contained in the documents submitted by SUEZ, including the Deed, Drainage Easement, Supplemental Conservation Easement and the Limited Right of Entry documents contain conditions, restrictions and agreements to which are incorporated into this Order. Additionally, this Order is conditioned on the following:

1. Allegro shall provide SUEZ, Bergen SWAN and Hackensack Riverkeeper with notice prior to any construction activity on the Headquarters Property;
2. SUEZ and Allegro must comply with any and all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLUR Flood Hazard Area Control Act Individual Permit No. 0224-10-0001.1 FHA160001.
3. SUEZ must retain an access easement from Old Hook Road through the Headquarters Property in order to permit ingress and egress to the shoreline of the Oradell Reservoir and the Conservation Easement area for inspection purposes and continuing water supply operations. In addition, the NJDEP must be added as a beneficiary of this access easement.
4. Any and all discharge from the proposed Drainage Easement areas must meet the requirements of the NJDEP Stormwater Management rules at N.J.A.C. 7:8. The mechanical treatment device to be installed within the existing access drive shall be inspected in accordance with the NJDEP, DLUR Flood Hazard Area Control Act Individual Permit No. 0224-10-0001.1 FHA160001 in order to maintain the stormwater management system in good working order.
5. SUEZ maintains its obligation to protect the public water supply and shall monitor as frequently as necessary to assure compliance with the NJDEP Stormwater Management rules at N.J.A.C. 7:8 for all water that passes into the Oradell reservoir. SUEZ shall ensure that water passing into the public water supply complies with NJDEP Stormwater Management rules at N.J.A.C. 7:8.

6. In accordance with the proposed Drainage Easement, after any construction activities, the area within the Conservation Easement area shall be restored to pre-activity conditions.
7. The Board supports the current DLUR mitigation plan which includes the planting of native trees and shrubs on approximately 0.75 acre to replace riparian vegetation that must be removed in order to construct the senior living facility and requires compliance as part of its approval.
8. SUEZ shall convey a Supplemental Conservation Easement to the NJDEP, which shall be recorded, to permanently restrict development of approximately 2.05 acres of the Headquarters Property and to further protect buffers to the Oradell Reservoir, prior to or concurrent with its conveyance to Allegro. There shall be no disturbance to the area within the Supplemental Conservation Easement area except as permitted within the Reserved Utility Easements and to address dead/dying trees according to the standard set forth therein.
9. SUEZ/Allegro shall provide a survey and metes and bounds description of the Additional Easement Lands and Reserved Utility Easements included in the Supplemental Conservation Easement at least 30 days prior to transfer. The survey and metes and bounds description must be reviewed and approved by an in-house DEP surveyor. The boundaries of the Additional Easement Lands must be marked in the field (i.e. concrete monuments or other boundary markers acceptable to Board staff).
10. SUEZ shall attach and make the WPRB Order part of the deed and shall record the same with the property deed. Any mitigation and other agreements and restrictions on the Property as agreed to in furtherance of this exemption request shall be made part of or otherwise incorporated into the record title of the Property.
11. SUEZ will continue to maintain its rights to protect its property and to safeguard the water supply. Allegro will comply with the conditions of the permits and approvals issued in connection with its Project and current storm water and discharge regulations. Finally, NJDEP will continue to maintain its regulatory and enforcement powers in connection with the property, the 3,095 acre Conservation Easement and the Supplemental Conservation Easement provided as part of the Project.
12. This Board approval is based on the current proposal to transfer the Headquarters Property to Allegro. If the sale to Allegro is terminated, this exemption approval will expire and SUEZ will need to obtain Board approval for any future sale proposals. SUEZ and Allegro have agreed that in recording this Order with the Deed, it is intended that the conditions set forth in this Order, the Supplemental Conservation Easement and that the agreed upon restrictions shall

be recorded and run with the land and SUEZ/Allegro shall comply with the other terms and conditions of the exemption approval.

13. SUEZ agrees to comply with the conditions set forth in Bergen SWAN's May 10, 2017 letter.
14. If any of the conditions relied upon by this Board in approving this exemption are modified in a manner that negatively impacts the protection of surface water supply, this approval shall be null and void and SUEZ shall return to the Board seeking a modified exemption.

After consideration of the entire application, including the Permit and Plans, the WPRB **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 WPRB **FINDS** that there is a compelling public need for this Project.

The application, permits, plans and the Supplemental Submissions contained in the documents submitted by SUEZ, including the Deed, Drainage Easement, Supplemental Conservation Easement and the Limited Right of Entry documents are significant and the WPRB **RELIES** upon the conditions and protections contained therein in considering this application. The WPRB **HEREBY FINDS** that these protections, plus the additional conditions of this Order provide sufficient mitigation of any potential water quality impacts. Therefore, the WPRB **HEREBY ORDERS** that the conditions agreed to and incorporated in the Supplemental Conservation Easement document shall become part of this Order.

The WPRB **FURTHER ORDERS** that SUEZ work in good faith with Allegro to determine the most beneficial on-going maintenance plan for the Stormwater Management rules and to limit the impact upon water supply. The WPRB **FURTHER ORDERS** that SUEZ shall have the opportunity to have its representative present to observe and object to any actions taken by Allegro on SUEZ's property.

Therefore, the WPRB **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 SUEZ 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 18, 2017.

DATED: 5/18/17

WATERSHED PROPERTY REVIEW BOARD

BY:



Bob Martin,
Commissioner
Department of Environmental Protection



Richard Mroz,
President
Board of Public Utilities



Charles A. Richman,
Commissioner
Department of Community Affairs

EXHIBIT 1
AERIAL MAP

SWNJ Harrington Park Corporate Facility (Block 1601, Lot 1)



SWNJ "Headquarters Property"
(200 Old Hook Road)
Approx. 9.2 acres

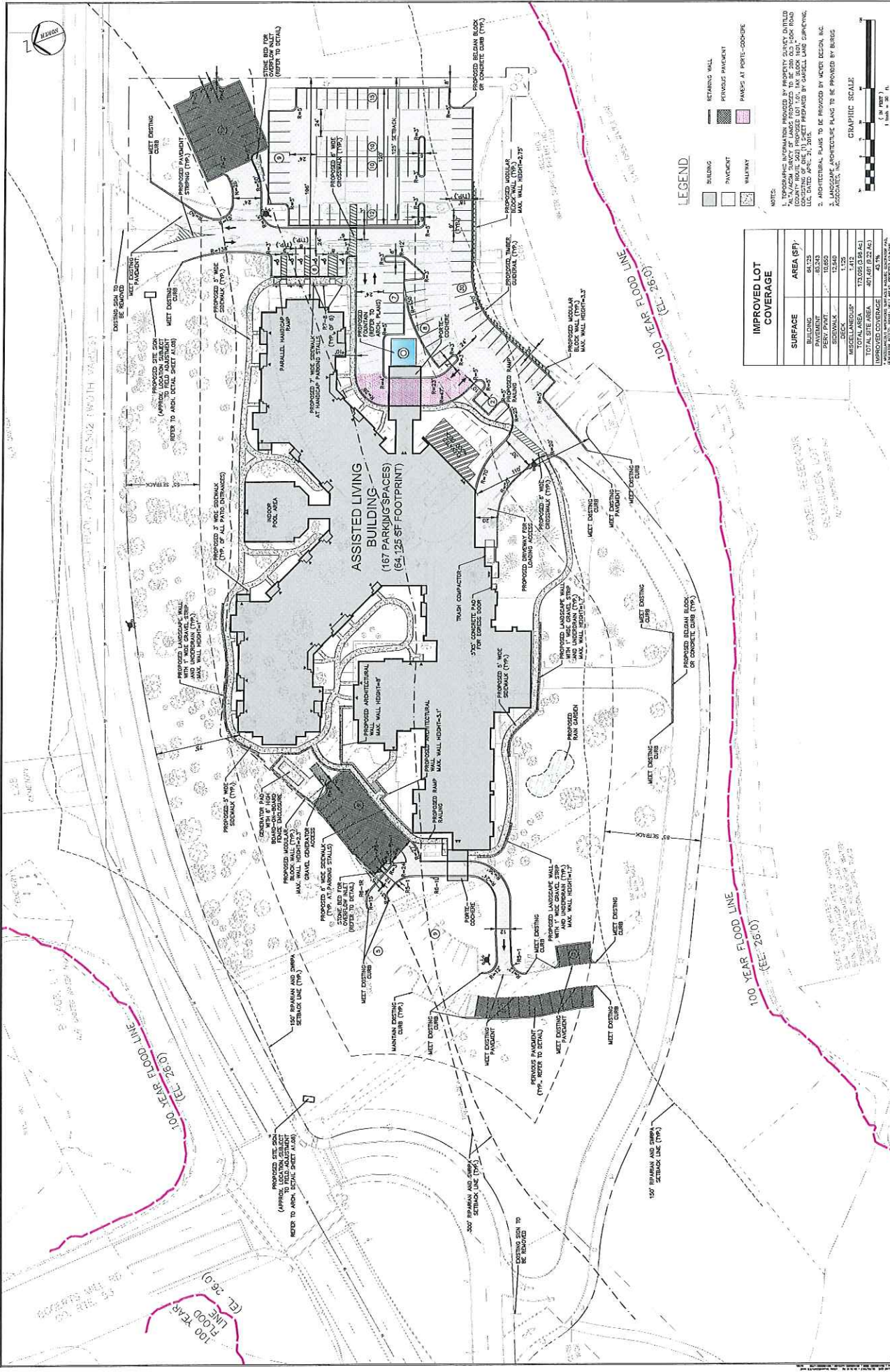
Block 1601, Lot 1 - "Property"

Legend

- Conservation Easement Area

1 inch = 500 feet

EXHIBIT 2
SITE PLAN



LEGEND

[Symbol]	RETAINING WALL
[Symbol]	PERVIOUS PAVEMENT
[Symbol]	PARKING
[Symbol]	WALKWAY
[Symbol]	PAVING AT PERTE-CORPORATE

IMPROVED LOT COVERAGE

SURFACE	AREA (SF)
BUILDING	84,125
PAVEMENT	8,533
SIDEWALK	12,540
DECK	1,125
MISCELLANEOUS	137,000 (SEE PLAN)
TOTAL SITE AREA	407,147 (8.22 AC)
IMPROVED COVERAGE	45.7%

NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITION OF THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IMC).
2. ARCHITECTURAL PLANS TO BE PROVIDED BY ARCHITECT, INC.
3. LANDSCAPE ARCHITECTURE PLANS TO BE PROVIDED BY BURG ASSOCIATES, INC.

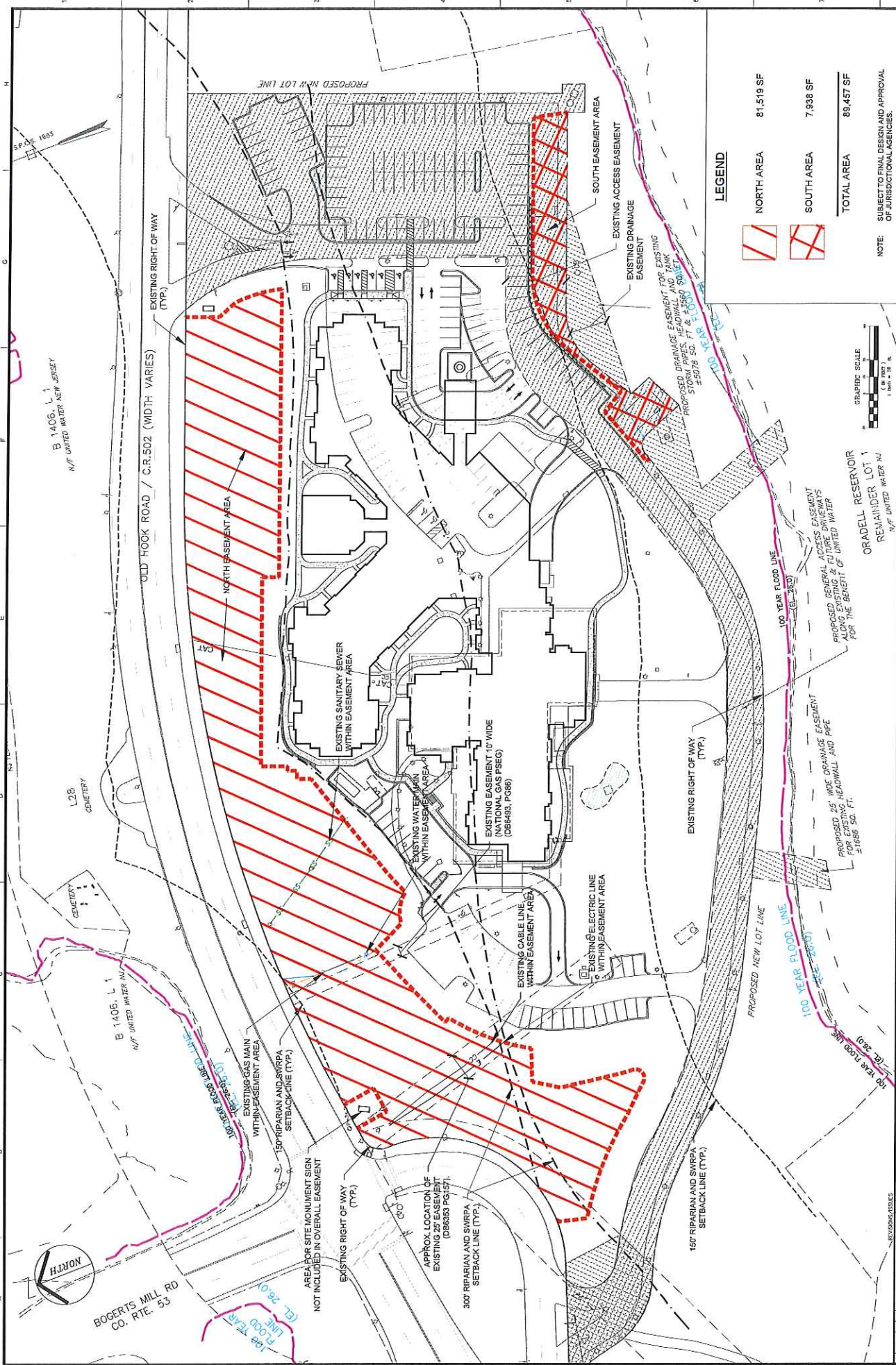
GRAPHIC SCALE
1" = 30' (SEE PLAN)

<p>CONSULTANT</p> <p>PAULUS DEVELOPMENT ARCHITECTS, LLC P.O. BOX 1000 1000 W. 10TH STREET TAMPA, FL 33613 PHONE: (727) 837-7700 FAX: (727) 837-7701</p>	<p>CONSULTANT</p> <p>ORIENTATION/NET PLAN</p>	<p>CLIENT</p> <p>USA A. DIERDORF, P.E. PROFESSIONAL ENGINEER N.J. LIC. NO. 37007</p>	<p>PROJECT</p> <p>ALLEGRO DEVELOPMENT COMPANY, LLC</p>	<p>SHEET TITLE</p> <p>SITE PLAN</p>	<p>PROJECT NO. 0440002</p> <p>SITE 040000</p> <p>CONSIDERED BY: ASAD</p> <p>SCALE: 1"=30'</p> <p>DATE: 11/20/17</p> <p>SHEET NO. 01</p> <p>TOTAL SHEETS: 04</p>

C-04

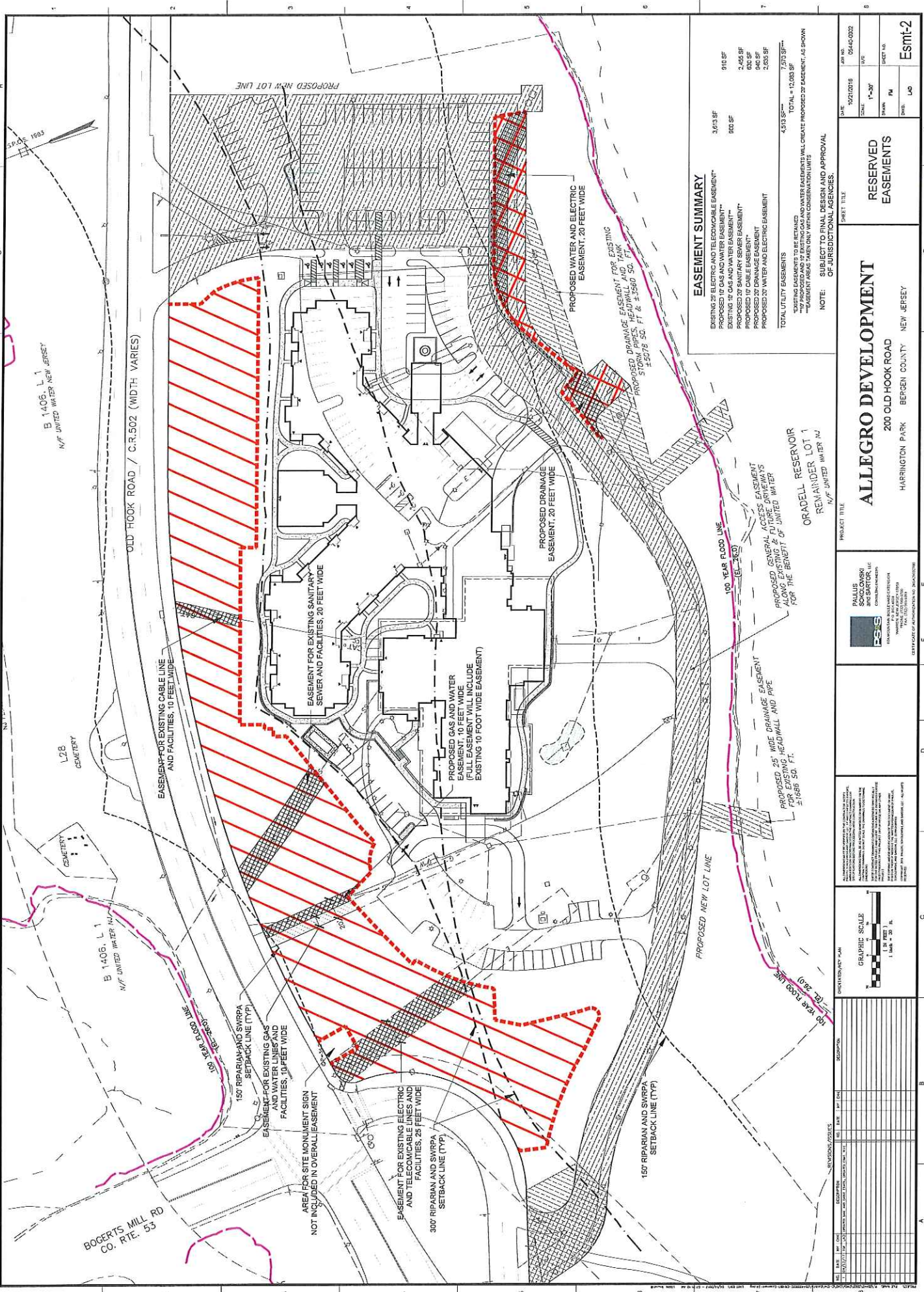
EXHIBIT 3

SUPPLEMENTAL CONSERVATION EASEMENT AREA



PROJECT TITLE		SHEET TITLE		DATE	SCALE	PROJECT NO.	SHEET NO.
ALLEGRO DEVELOPMENT		ADDITIONAL EASEMENT LANDS		10/01/2016	1"=30'	200-002	Esmt-1
200 OLD HOOK ROAD		HARRINGTON PARK		BERGEN COUNTY	NEW JERSEY		
PROJECT TITLE		SHEET TITLE		DATE	SCALE	PROJECT NO.	SHEET NO.
ALLEGRO DEVELOPMENT		ADDITIONAL EASEMENT LANDS		10/01/2016	1"=30'	200-002	Esmt-1
200 OLD HOOK ROAD		HARRINGTON PARK		BERGEN COUNTY	NEW JERSEY		
PROJECT TITLE		SHEET TITLE		DATE	SCALE	PROJECT NO.	SHEET NO.
ALLEGRO DEVELOPMENT		ADDITIONAL EASEMENT LANDS		10/01/2016	1"=30'	200-002	Esmt-1
200 OLD HOOK ROAD		HARRINGTON PARK		BERGEN COUNTY	NEW JERSEY		
PROJECT TITLE		SHEET TITLE		DATE	SCALE	PROJECT NO.	SHEET NO.
ALLEGRO DEVELOPMENT		ADDITIONAL EASEMENT LANDS		10/01/2016	1"=30'	200-002	Esmt-1
200 OLD HOOK ROAD		HARRINGTON PARK		BERGEN COUNTY	NEW JERSEY		

EXHIBIT 4
RESERVED UTILITY EASEMENT AREAS



EASEMENT SUMMARY

EXISTING 25' ELECTRIC AND TELECOM EASEMENT*	3,613 SF
PROPOSED 10' GAS AND WATER EASEMENT**	688 SF
PROPOSED 10' GAS AND WATER EASEMENT**	2,455 SF
PROPOSED 20' SANITARY SEWER EASEMENT**	10,942 SF
PROPOSED 20' DRAINAGE EASEMENT	946 SF
PROPOSED 20' WATER AND ELECTRIC EASEMENT	2,033 SF
TOTAL UTILITY EASEMENTS	4,533 SF
*EXISTING EASEMENTS TO BE RETAINED	TOTAL = 13,088 SF
**EASEMENTS TO BE CREATED	
**EASEMENT AREAS TAKEN INTO COMBINATION UNITS	

NOTE: SUBJECT TO FINAL DESIGN AND APPROVAL OF JURISDICTIONAL AGENCIES.

DATE	10/21/2016
SCALE	1"=30'
PROJECT	RESERVED EASEMENTS
DATE	10/21/2016
PROJECT NO.	2544-0202
DATE	10/21/2016
PROJECT NO.	2544-0202

ALLEGRO DEVELOPMENT

200 OLD HOOK ROAD
HARRINGTON PARK BERGEN COUNTY NEW JERSEY

PROJECT TITLE: RESERVED EASEMENTS

DATE: 10/21/2016
SCALE: 1"=30'

PAUL SOKOLOWSKI
No. 38638
Professional Engineer
State of New Jersey

NO.	DATE	BY	DESCRIPTION



REVISIONS/NOTES

DATE: 10/21/2016
BY: [Signature]

EXHIBIT 5
MITIGATION AREAS



NOTE: THIS FIGURE IS FOR INFORMATIONAL PURPOSES ONLY. DETAILED MITIGATION PLANNING PLANS TO FOLLOW SHORTLY.



DATE	DESCRIPTION	CONSULTANT	CONSULTANT	ORIENTATION / KEY PLAN	CLIENT	PROJECT	SHEET TITLE	PROJECT NO. / DRAWING DATE: 12/2021	DRAWN BY: JMG	CHECKED BY: JMG	DATE OF SHEET: 12/2021	SHEET NO. OF: 07
					LISA A. DIBERLAMO, P.E. PROFESSIONAL ENGINEER FOR LIC. NO. 30007	ALLEGRO DEVELOPMENT COMPANY, LLC	TREE PLANTING MITIGATION PLAN					EX-07

PS&S
PLANNING, SURVEYING & SITE DESIGN, INC.
2000 W. 10th Street, Suite 100
Tomball, Texas 77375
Tel: 281.359.7700
www.psands.com

PS&S
PLANNING, SURVEYING & SITE DESIGN, INC.
2000 W. 10th Street, Suite 100
Tomball, Texas 77375
Tel: 281.359.7700
www.psands.com

EXHIBIT 6

HACKENSACK RIVERKEEPER LETTER



Captain Bill Sheehan
Executive Director &
Riverkeeper

Board Officers
Tom Kozak, CPA
President

Rob Gibbs
Vice President

Dr. Bill Rave
Treasurer

Frank Costello, Esq.
Secretary

Trustees
Sandra Gordon
Virginia Kofacek
Robert Gaboris
Kelly J. Patsari
Ellie Spray
Margaret DeAngelis
Nancy Wysocki

Honorary Trustees
Robert F. Kennedy, Jr.
Paula "Pat" Schuber

Attorney to the Board
William J. Cahill, Esq.

Advisory Board
B. Paul Furlan
Anthony Evangelista
John A. Furr, M.D.
Lance White

Staff
Captain Hugh Cavale
Program Director
Mary Kay G.
Operations Manager

Lee Janssen
Field Manager

Cheryl Lee
Staff Advisor

Carlin Green
Outreach Coordinator

James Melton
Events Coordinator

Mike Parker
Grant Relations

Jen Cannon
Grant Writer

Lucretia Boyer
Volunteer Ambassador

Mr. John Dillon
United Water New Jersey
461 From Road Suite 400
Paramus, NJ 07652

I write on behalf of Hackensack Riverkeeper regarding the proposed sale and planned reuse of the United Water New Jersey (UWNJ) Headquarters on Old Hook Road in Harrington Park NJ. During the settlement talks prompted by our petition to the New Jersey Watershed Review Board, the UWNJ headquarters was exempted from the list of properties within the Watershed surrounding the reservoirs that are now protected by Green Acres Easements.

I have been briefed several times by representatives of UWNJ about the sale of the property and have met with representatives of Allegro Senior Living. I have found these parties to be committed to sharing the details of the proposed Senior Living facility and nothing I have seen during their presentation and heard in the way of responses to questions that were asked during the meetings has raised any red flags or prompted me to be overly concerned with the proposed use of the site.

During these meetings the subject of maintaining the Category 1 buffers around the proposed additions and the various impacts that may result during the construction and post construction phases of the project were discussed at length to my satisfaction.

Realizing that the proposed reconstruction of the existing building and the additions to the building will have to go before the Harrington Park Planning Board, I am confident that Allegro will be held to the standards of both Municipal Land Use Law and by the standards set forth in the Municipal Stormwater Rules.

It is my opinion that with proper application of the MS4 rules and review by NJDEP for the Category 1 buffer rule, the proposed project may even have a positive effect on water quality by minimizing the amount of urban runoff that gets into the reservoir. Since the existing facility was built many years before these rules were promulgated, this proposed reuse will bring the new facility into compliance with twenty-first century standards.

Sincerely,

Bill Sheehan
Riverkeeper



EXHIBIT 7

BERGEN SWAN LETTER



May 10, 2017

via regular mail and email, john.dillon@suez-na.com

John T. Dillon
Suez Water New Jersey, Inc.
461 From Road, Suite 400
Paramus, NJ 07652

Dear Mr. Dillon,

I am writing on behalf of Bergen SWAN to follow up on our ongoing discussions regarding the Harrington Park property.

Suez proposes to sell a 9.2-acre portion of the Harrington Park property to the Allegro Management Company, who will convert the use of the existing building and property into a residential community for seniors. The Watershed Protection and Moratorium Act requires that the Watershed Property Review Board (“WPRB”) approve this sale.

In a letter dated March 8th, SWAN proposed several additional environmental protections. In a meeting on March 21st, Suez agreed to incorporate several of these proposals. We also discussed preparing a Supplemental Conservation Easement for the property.

Again, we appreciate the time and effort that Suez and Allegro have put into maintaining an open dialogue with all parties, including SWAN and the Hackensack Riverkeeper, regarding this sale. We also appreciate the efforts by both companies to minimize the environmental impacts on the Harrington Park property, and incorporate our proposals.

Bergen SWAN will not object to the proposed sale of the Harrington Park property, if Suez executes a Supplemental Conservation Easement for this property prior to sale, with the following environmental protections detailed further below:

- The North Easement Area will be preserved and maintained in a manner consistent with its open space character.
- No walkway will be installed in the North Easement Area.
- Allegro will take steps to minimize the disturbance of vegetation in the utility easement areas located in the North Easement Area.

The Supplemental Conservation Easement must be recorded and indexed in the Bergen County Clerk's Office, in accordance with the Conservation Easement and New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13-8b-1 et seq.

SWAN will further support the sale if Allegro agrees to make a good faith effort to explore the implementation of an Organic Land Care Program for the property, but understands that Allegro reserves the right to make the ultimate decision.

I. Items to be Included in the Supplemental Conservation Easement

1. North Easement Area

The North Easement Area, comprised of 81,519 square feet, is depicted in the attached drawing titled "Additional Easement Land."

As we discussed, the North Easement Area will be preserved and maintained in a manner consistent with its open space character.

No walkway will be installed in the North Easement Area.

As discussed, Suez and Allegro agree that these commitments will be reflected in the Supplemental Conservation Easement.

2. Utility Easements

Several utility companies hold easements on this property. As discussed and agreed, Allegro will take steps to minimize the disturbance of vegetation in the utility easement areas located in the North Easement Area.

II. Additional Items Not Included in the Supplemental Conservation Easement

1. Southern Buffer Zone

All parties agree that moving the service road northwards, to expand the buffer zone, would be environmentally beneficial and provide further protection for the Reservoir. We will continue to urge Allegro to seek NJDEP approval for that move.

Suez maintains a buffer zone between the south side of the main service road for the Harrington Park property, and the Reservoir. For the sake of clarity, this property is and shall remain owned by Suez and is subject to the 2009 Settlement Agreement and Conservation Easement.

As we discussed and agreed, Suez will put in additional native non-invasive plantings in this area. As also discussed and agreed, Suez agrees to consult with Bergen SWAN and Hackensack Riverkeeper on the plantings, but reserves the right to make the ultimate decisions regarding scope and timing.

2. Land Care Program

Synthetic pesticides, herbicides, and fertilizers applied to the Harrington Park grounds can easily leach into the Reservoir. These synthetic chemicals are also harmful to those living or working on the Harrington Park property.¹ In the long term, a landscape chemically dependent on synthetics is more expensive to maintain than a landscape maintained through an organic care program.

For all of these reasons, Suez has stopped using synthetic pesticides and herbicides on this property.

We urge Allegro to avoid synthetics, both for the health of the Oradell Reservoir, and for the health of those living and working the residential community Allegro will set up on the Harrington Park property.

In place of synthetic and harmful chemicals, Allegro can maintain the Harrington Park property's landscape by implementing an organic land care program that: prioritizes the use of natural, slow-release fertilizers; allows no use of synthetic herbicides or pesticides; places a high priority on water conservation and careful stewarding of on-site run-off into vegetated areas; severely limits the use of plastics in the landscape; and showcases more native plantings and less lawn.

The experts with the Rutgers New Jersey Agricultural Experiment Station Cooperative Extension recently published an excellent Organic Land Care Best

¹ <http://organiclandcare.net/green-room/health-studies>

Management Practices Manual on this topic.² The Northeast Organic Farming Association has also published a comprehensive guide of practices for landscape design and maintenance, titled “NOFA Standards for Organic Land Care.”³

Allegro can use these resources to implement an organic land care program to maintain a healthy and beautiful landscape at the Harrington Park property, without putting the Reservoir or Allegro’s residents at risk.

SWAN will further support the sale if Allegro agrees to make a good faith effort to explore the implementation of an Organic Land Care Program for the property, but understands that Allegro reserves the right to make the ultimate decision. As discussed, Allegro agrees to take this request under consideration.

3. Site Visits

Suez will continue to conduct periodic site visits to inspect the remainder of the Harrington Park property that it stills owns consist with the 2009 Settlement Agreement. Suez will provide periodic opportunities for Bergen SWAN and Hackensack Riverkeeper to visit these sites accompanied by Company Personnel. Suez will provide two opportunities per year, between May and September. Suez will continue to work in good faith with Bergen SWAN and Hackensack Riverkeeper on scheduling.

² <http://njaes.rutgers.edu/pubs/publication.asp?pid=E357>

³ <http://organiclandcare.net/sites/default/files/upload/standards2011.pdf>

In sum, Bergen SWAN will not object to the sale of the Harrington Park property, if prior to sale, Suez executes a Supplemental Conservation Easement with the NJDEP that incorporates the environmental protections delineated in Section I above. SWAN will further support the sale if Allegro agrees to make a good faith effort to explore the implementation of an Organic Land Care Program for the property, but understands that Allegro reserves the right to make the ultimate decision.

Again, we appreciate the opportunity to address the parties through the open dialogue that Suez has maintained. Please feel free to call or email me anytime to discuss further.

Sincerely,

/s Raghuram Murthy
Raghuram Murthy

c: **via** regular mail:

Charles A. Richman, Commissioner
New Jersey Department of Community Affairs
101 South Broad Street
Box 800
Trenton, NJ 08625-0800

via email:

Bergen SWAN, bergenswan@sprynet.com

Captain Bill Sheehan, Hackensack Riverkeeper,
captain@hackensackriverkeeper.org

Nilufer DeScherer, Esq., Archer & Greiner, ndescherer@archerlaw.com

Michael Heenahan, mheenehan@gmail.com

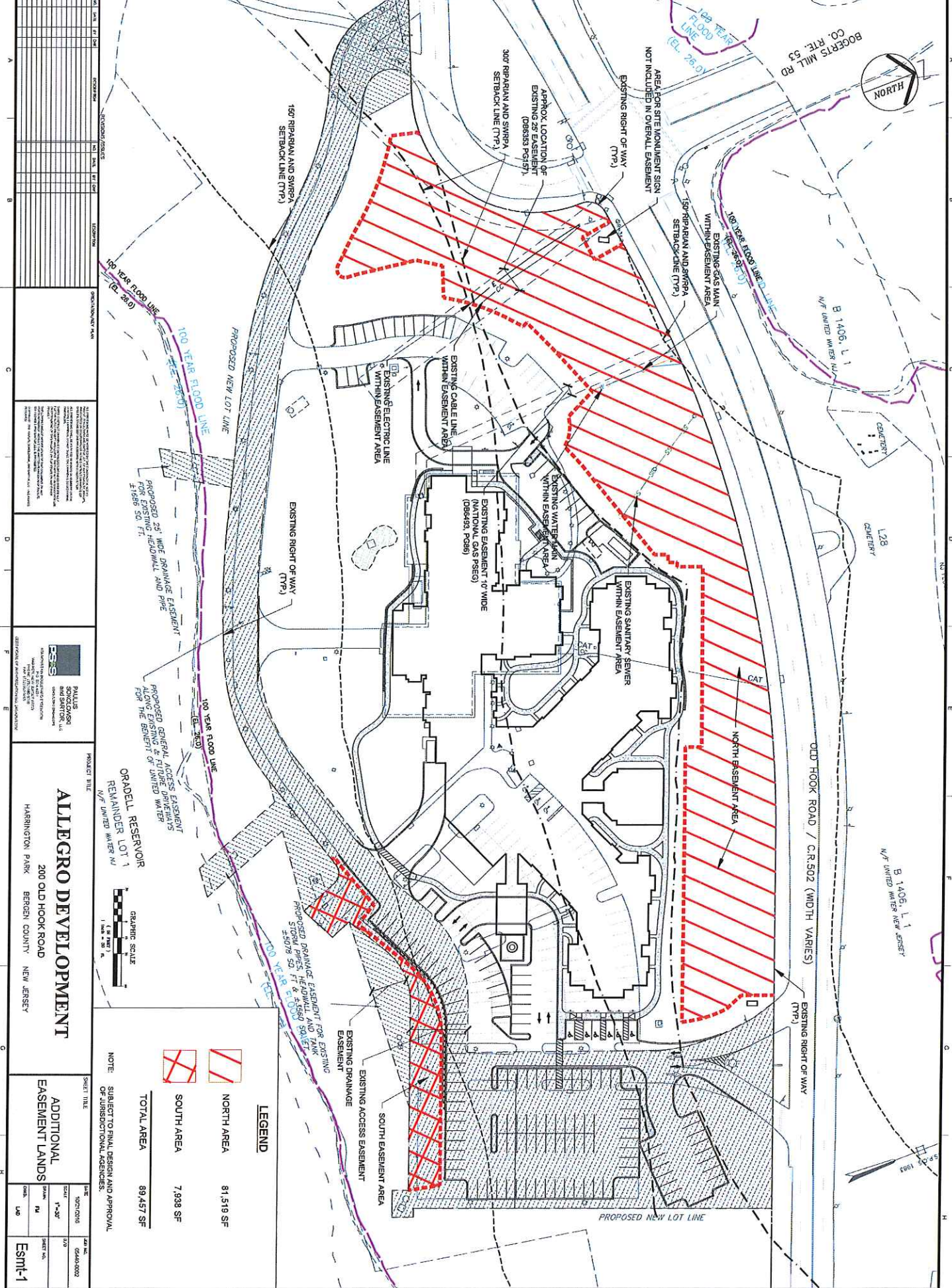
Raymond J. Cywinski, ray.cywinski@suez-na.com

Jessica Patterson, NJDEP Green Acres Program, Jessica.Patterson@dep.nj.gov

Mona Mosser, BPU, Mona.Mosser@bpu.nj.gov

Yanina Lepore, BPU, Yanina.Lepore@bpu.nj.gov

Geoffrey Gersten, DAG, Geoffrey.Gersten@dol.lps.state.nj.us

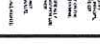


LEGEND	
	NORTH AREA 81,319 SF
	SOUTH AREA 7,938 SF
TOTAL AREA	89,457 SF

NOTE: SUBJECT TO FINAL DESIGN AND APPROVAL OF JURISDICTIONAL AGENCIES.

ALLEGRO DEVELOPMENT

200 OLD HOOK ROAD
HARRINGTON PARK BERGEN COUNTY NEW JERSEY



NO.	DATE	BY	REVISION

SHEET TITLE	DATE	SCALE	AD. NO.
ADDITIONAL EASEMENT LANDS	05/27/2016	1"=40'	0944-002
DATE	DRAWN	PL	SHEET NO.
1/16			
DATE	CHECKED		
1/16			
			Esm1-1

IN THE MATTER OF THE WATERSHED PROPERTY REVIEW BOARD
REQUEST IN CONNECTION WITH THE PROPOSED TRANSFER OF 9.2 +/- ACRES OF
LAND AND IMPROVEMENT LOCATED IN THE BOROUGH OF HARRINGTON PARK,
COUNTY OF BERGEN (THE "HEADQUARTERS PROPERTY") AND THE TRANSFER OF
CERTAIN EASEMENT IN CONNECTION THERETO

SERVICE LIST

Richard Mroz, President
Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350
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