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Superior Court of New Jersey

APPELLATE DIVISION  
BURLINGTON COUNTY

Docket No. A-2214-10T3

Gloucester County Improvement Authority )

) Civil Action  
) (In Condemnation)

Plaintiff / Respondent )

) ON APPEAL FROM

vs. )

) Final Judgment and Order  
) Appointing Commissioners  
) dated November 16, 2010

GALLENTHIN REALTY DEVELOPMENT,  
INC., STATE OF NEW JERSEY, BOROUGH )  
OF PAULSBORO, COLONIAL PIPELINE, )  
ATLANTIC CITY ELECTRIC CO., AND )  
PAULSBORO ACQUISITION CORP., )

) Superior Court of New Jersey  
) Law Division  
) Burlington County  
) Docket No. L-2718-10

Defendants )

) Sat below:  
) Hon. Michael J. Hogan, P.J. Ch

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BRIEF Of Defendant-Appellant  
Gallenthin Realty Development, Inc.

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TABLE OF CONTENTS

	Page(s)
COVER PAGE.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	v
TABLE OF CONTENTS TO APPENDIX.....	ix
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY .....	4
STATEMENT OF FACTS.....	7
A.    NATURE OF ACTION.....	7
B.    SUBJECT PROPERTY.....	9
C.    THE GCIA-BP/DOW REDEVELOPMENT PLAN URS-PHASE I AND II.....	12
D.    CHALLENGE TO THE REDEVELOPMENT DESIGNATION.....	17
E.    THE PROPOSED TAKING AND PURPORTED PUBLIC PURPOSE.....	18
F.    PLAINTIFF'S OFFER AND APPRAISAL.....	22
G.    THE CONDEMNATION ACTION IS BP'S PHASE III.....	24
<b>LEGAL ARGUMENT FOR THE APPELLANT.....</b>	<b>28</b>
Judicial Review of a Public Use Determination Requires a Special Scrutiny of the Record as Standard of Review.....	28
<b>I.    ISSUE ONE.....</b>	<b>28</b>
IT IS HARMFUL ERROR TO DENY A PLENARY HEARING AFTER JOINDER OF ISSUES IN SUMMARY ACTIONS PURSUANT TO <u>R. 4:67</u> AS REQUIRED BY <u>R. 4:73-1</u> .....	28
<b>POINT I.....</b>	<b>32</b>

THE WITHIN MATTER IS BEFORE THE COURT FOR A SUMMARY TRIAL IN ACCORDANCE WITH R. 4:67-2.....32

**POINT II.....35**

PLAINTIFF FAILED TO CONDUCT THE PRE-COMPLAINT BONA FIDE NEGOTIATIONS REQUIRED BY N.J.S.A. 20:3-6.....35

A. PLAINTIFF FAILED TO INVITE DEFENDANT ON ALL APPRAISAL INSPECTIONS.....37

    1. Marathon Report.....40

    2. T&M Report.....42

B. PLAINTIFF'S OFFER WAS INADEQUATE BECAUSE IT WAS BASED ON AN IMPROPERLY OBTAINED WETLANDS DELINEATION.....43

**POINT III.....46**

PLAINTIFF HAS HIDDEN THE TRUE, IMPERMISSIBLE PURPOSE FOR THE CONDEMNATION.....46

A. THE PLAINTIFF MAY NOT CONDEMN THE PROPERTY SOUGHT IN THIS ACTION WHICH IMPERMISSIBLY INCLUDE USES THAT ARE PART AND PARCEL OF THE REDEVELOPMENT.....47

**POINT IV.....54**

PLAINTIFF'S TAKING IS ARBITRARY AND CAPRICIOUS.....54

**POINT V.....54**

THE COMPLAINT FAILS TO PROVIDE AN ADEQUATE DESCRIPTION OF THE TAKING.....54

**POINT VI.....59**

POSSESSION AND ALL FURTHER PROCEEDINGS IN THIS MATTER SHOULD BE STAYED PENDING THE ENTRY OF FINAL JUDGMENT ON PLAINTIFF'S RIGHT TO CONDEMN.....59

**POINT VII.....59**

DEFENDANT IS ENTITLED TO A HEARING ON THE ISSUES RAISED HEREIN.....59

A. ADDITIONAL TIME SHOULD BE PERMITTED FOR DISCOVERY ON THE ISSUE OF WHETHER THE TAKING IS FOR THE PRIVATE PURPOSE..61

<b>POINT VIII</b> .....	<b>61</b>
THE COURT SHOULD AWARD FEES UNDER N.J.S.A. 20:3-26(b) AND DISCHARGE THE LIS PENDENS AND ANY DECLARATION OF TAKING FILED BY THE PLAINTIFF AND DECLARE THE WETLANDS DELINEATION VOID.....	<b>61</b>
<b>II. ISSUE TWO</b> .....	<b>62</b>
IT IS PLAIN ERROR TO USURP SUBJECT MATTER JURISDICTION FOR CLASS II RAILROAD/YARDS WHICH REST EXCLUSIVELY WITH THE FEDERAL GOVERNMENT AND ADMINISTERED THROUGH THE SURFACE TRANSPORTATION BOARD (STB) AS A MATTER OF FEDERAL STATUTE: TITLE 49 U.S.C. §10501.....	<b>62</b>
<b>Conclusion</b> .....	<b>64</b>

TABLE OF AUTHORITIES

Page(s)

**UNITED STATES CONSTITUTION**

U.S.C.S. Constitution, Amendment V.....1, 3, 52  
U.S.C.S. Constitution. Amendment X.....2  
U.S.C.S. Constitution, Amendment XIV.....1, 52

**Federal Statutes**

33 U.S.C. §1344.....41  
§404 of the Clean Water Act.....41  
49 U.S.C. § 10501.....23  
49 U.S.C. § 10501(b) (2).....3, 23, 41, 62  
50 U.S.C. App § 514.....5

**NEW JERSEY STATE CONSTITUTION**

N.J. Const. Art I, ¶ 1.....2, 30, 32

**NEW JERSEY STATUTES**

N.J.S.A. 20:3-1 et seq.....36  
N.J.S.A. 20:3-2.....31  
N.J.S.A. 20:3-2(j).....60  
N.J.S.A. 20:3-6.....22, 33, 35, 36, 37, 38, 39, 41, 46, 59  
N.J.S.A. 20:3-10.....62  
N.J.S.A. 20:3-26(b).....61, 62, 64  
N.J.S.A. 20:30-11.....59  
N.J.S.A. 20:30-17.....62  
N.J.S.A. 40A:12A-1.....12  
N.J.S.A. 40A:12A-5.....12, 48  
N.J.S.A. 40A:12A-5(e).....16, 17, 18  
N.J.S.A. 40A:12A-7.....16  
N.J.S.A. 46:23-9.11.....55  
N.J.S.A. 46:23-9.11(d) .....55  
Statute of Frauds (29 Car. II, c.3) (1677).....58

**CASES**

Bergen County v. Hackensack,  
39 N.J. 377, 380-81 (1963).....60, 61

Borough of Essex Fells v. Kessler Inst. for Rehab., Inc.,  
289 N.J. Super 329 (Law Div. 1995).....47, 50, 51, 54

Borough of Rockaway v. Donofrio,  
186 N.J. Super. 344 (App. Div. 1982)..... 33, 35, 36, 38, 56

Bridgewater Twp. V. Yarnell,  
64 N.J. 211 (1974).....3, 54, 59, 60, 61

Brill v. Guardian Life Insurance Company of America,  
142 N.J. 520 (1995).....3

Casino Reinvestment Dev. Auth v. Banin,  
320 N.J. Super. 342 (Law Div. 1998).....47, 50

County of Bergen v. S. Goldberg & Co.,  
189 A.2d 4, 39 N.J. 377 (N.J., 1963).....33, 60, 61

County of Gloucester v. American Atlantic Company. et al.,  
Law Division, Docket No. BUR-L-3641-09.....53

County of Monmouth v. Whispering Woods,  
222 N.J. Super. 1, (App. Div. 1987)  
certif. denied, 110 N J. 175 (1988).....36

County of Wayne v. Hathcock, "Poletown 2",  
471 Mich. 445, 684 N.W.2d 765, (Mich. 2004).....65

F.M.C. Stores Co. v. Borough of Morris Plains,  
100 N.J. 418, 426-27 (1985).....36, 44

Franco v. Nat'l Capital Revitalization Corp.,  
930 A.2d 160 (D.C. Cir. 2007).....52

George A. Gallenthin et al v. Borough of Paulsboro, "Gallenthin 1",  
191 N.J. 344 (2007).....2, 9, 17, 47, 48, 65

Housing Authority of Atlantic City v. Atlantic City Exposition. Inc.,  
62 N.J. 322 (1973).....35, 55, 57

Indiana Rail Road Company - Petition for Declaratory Order Decided:  
April 14, 2009. STB Finance Docket No. 35181.....63

Jones v. Haridor Realty Corp,  
37 N.J. 384 (1962).....2, 30, 32

Kelo v. City of New London,  
545 U.S. 469, 125 S.Ct. 2655, 162 L.Ed.2d 439 (2005).....52, 53

National Docks, etc., Co. v. United Companies,  
53 NJ.L. 217 (E. & A. 1890).....55, 58

<u>New Jersey Citizen Action v. Edison Township,</u> 797 F.2d 1250 (3d Cir. 1986).....	28
<u>Ocean County v. Stockhold,</u> 67 N.J. 104 (1974) (Rev'd 129 N.J. Super 286 (A.D. 1974)).....	3
<u>Poletown Neighborhood Council v. Detroit, "Poletown 1",</u> 410 Mich. 616, 304 N.W. 2d 455 (1981).....	64
<u>Rhode Island Econ. Dev. Corp. v. The Parking Co.,</u> 892 A.2d 87 (R.I. 2006).....	52
<u>Riggs v. Long Beach Twp.,</u> 109 N.J. 601(1988).....	48
<u>State by Department of Environmental Protection v. J.P. Rail, Inc.,</u> U.S.D.C. 2006-cv-01603.....	3, 63
<u>State by Commissioner of Transportation v. Carroll,</u> 234 N.J. Super. 37 (App Div. 1989).....	36
<u>State by Commissioner of Transportation v. Carroll,</u> reversed on other grounds 123 N.J. 308 (1991).....	36
<u>State by Commissioner of Transportation v. Donofrio,</u> 235 N.J. Super. 348, (Law Div. 1989).....	35, 36, 37, 38, 56
<u>State by Comm'r of Transp. v. Testa,</u> 247 N.J. Super. 335 (App. Div. 1991).....	38
<u>State of New Jersey v. J.P. Rail, Inc. et al,</u> U.S.D.C. 2006-cv-05457 .....	3, 63
<u>State v. New Jersey Zinc Co.,</u> 40 N.J. 560(1963).....	58
<u>State v. Orenstein,</u> 124 N.J. Super. 295 (App. Div. 1973).....	31, 35, 58
<u>Texas Eastern Transmission Corp. v. Wildlife Preserves Inc.,</u> 48 N.J. 261(1966).....	54, 59
<u>Twp. Of Readington v. Solberg Aviation Co.,</u> 409 N.J. Super. 282(App. Div. 2009).....	47, 51, 52, 53
<u>Township of West Orange v. 769 Associates,</u> 172 N.J. 564 (2002).....	1
<u>Township of West Orange v. 769 Associates, LLC,</u> 397 N.J. Super. 244, cert. granted 195 N.J. 419 (2008).....	61
<u>Vail v. Morris &amp; Essex RR. Co.,</u> 21 NJ.L. 189(Sup.Ct.1847).....	55
<u>Winter v. Telephone Co.,</u> 51 NJ.L. 83(Sup.Ct.1888).....	55

<u>Zold v. Mantua,</u> 935 F.2d 633 (3d Cir. 1991) .....	28
---	----

**NEW JERSEY ADMINISTRATIVE CODE**

<u>N.J.A.C. 7:7A-3.5</u> .....	44
<u>N.J.A.C. 7:7A-10</u> .....	44
<u>N.J.A.C. 7:7A-10.1(d)</u> .....	45
<u>N.J.A.C. 7:7A-10.8</u> .....	44
<u>N.J.A.C. 13:40-5.1</u> .....	56

**NEW JERSEY RULES OF COURT**

Rule 4:46.....	6, 26
Rule 4:46-1.....	3
Rule 4:67.....	3, 7, 28
Rule 4:67-2.....	31, 32
Rule 4:67-5.....	6, 26, 33, 60
Rule 4:73.....	7
Rule 4:73-1.....	3, 6, 7, 22, 26, 28, 29, 35, 54
Rule 4:73-2.....	5
Rule 4:85-4.....	61



Table of Contents to Appendix

	<b>Page (s)</b>
*Jury demand and Verified Complaint in condemnation, dated April 23,2010.....	Da 1
Complaint Exh G completely deficient taking maps, dated March 9, 2010 .....	Da 15
*Complaint Exhibit H roadway and waterfront easements property access loss not valued by McHale.....	Da 19
*Complaint Exhibit I McHale Appraisal, dated January 5, 2009.....	Da 24
<u>*T&amp;M Report</u> annexed to exhibit I at pages 94-98, dated March 24, 2010.....	Da 69
<u>*Marathon Report</u> annexed to exhibit I at pages 100-116; dated April 13, 2009.....	Da 74
Order to Show Cause signed by Hon Judge Curio, dated May 5, 2010.....	Da 93
Declaration of Taking with erroneous, false/fraudulent taking maps dated May 17, 2010.....	Da 97
Lis Pendens dated May 12, 2010.....	Da 101
Judge Curio pre-trial Letter denying Servicemember protection under USSCRA App §514 requested from CENTCOM, dated June 24, 2010.....	Da 102
*Gloucester County Docket 4/23/2010 thru 8/5/2010 and Stipulations dismissing other named defendants.....	Da 105
*Certification of William Ward, Esq. in support of Motion to dismiss verified complaint, dated July 23, 2010.....	Da 113
*Certification from Afghanistan by majority ownership interest in support of Motion to dismiss complaint, dated July 23, 2010.....	Da 123
*Declaration of Subject Property Ownership dated October 31, 2002.....	Da 129
Answer and Jury Demand to Verified Complaint dated July 23, 2010.....	Da 136
Pre-trial Order transferring venue by Hon Judge Curio at Hearing On Motion to Dismiss, dated August 5, 2010.....	Da 154

\*Defendant's Pre-trial reply to Hon Judge Bookbinder, AJSC,  
dated August 12, 2010.....Da 155

Transcript Transmittal correcting Appeal Docket  
Number to A-2214-10-T3 from A-1433-10T3 for transcript  
delivered Burlington County's Motion Hearing List.....Da 156

\*Notice of Appeal, dated January 3, 2010.....Da 159

Final Judgment appealed from and August 31, 2010 Opinion  
filed November 16, 2010.....Da 165

\*Pre-trial Judge McDonnell Site Access Orders  
exhibits in Gibson Cert. of August 3 2010  
in opposition to motion to dismiss,  
dated April 4, 2008 and May 25 2006.....Da 196

\* Abridged - true and complete copies available.

## PRELIMINARY STATEMENT

The Bill of Rights, which consists of the first ten amendments to the United States Constitution, was designed to guarantee the basic principles of individual liberty by limiting the power of the federal government and enumerating the rights of American citizens. With recent memories of the many British violations of civil rights, the writers of the Constitution and the Bill of Rights recognized their obligation to protect Americans from the immense powers of the federal government. The right to own private property and specifically the right to own a business is fundamental to the legal underpinnings and traditions of the United States. Theories of democracy and freedom regard this right as basic and unassailable. The founding fathers, however, did understand the necessity of an eminent domain "takings power" in cases in which the federal and state government would need to acquire privately owned property for "public use." Although the constitutionality of this power is irrefutable, it is not unconditional. With this in mind, a portion of the Fifth Amendment to the Constitution was specifically written to safeguard the rights of property owners with the words, "nor be deprived of property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S.C.S. Constitution, Amendment V. The Fourteenth Amendment extended this power to the states. U.S.C.S. Constitution, Amendment XIV. See also Township of West Orange v. 769 Associates, L.L.C., 172 N.J. 564, 572 (2002) (affirming that the power of eminent domain is "subject to several important constitutional

limits" including the protection that "no person shall be deprived of his or her property without due process of law.")

Further, it is important that the New Jersey State Constitutional terrain upon which this right to private property is found be understood. Specifically, since "the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people" (U.S.C.S. Constitution. Amendment X), New Jersey's private property owners are not only protected by the U.S. Constitution, but also by the New Jersey Constitution as a limited contract with its real property owners. N.J. Const. art I, ¶ 1 declares that among the inalienable rights secured is the right of "acquiring, possessing, and protecting property." While this right is subject to the police power, see, e.g., Jones v. Haridor Realty Corp., 37 N.J. 384 (1962), it is not a right to be easily overridden by the outright taking of property based on the minimal evidence and excessive deference shown here and in other cases. In Gallenthin Realty Development, Inc. et al v. Paulsboro et al, 191 N.J. 344 (2007), ("Gallenthin 1") the New Jersey Supreme Court respected and defended the private property owner's State and Federal Constitutional right to own private property but for "public use and/or blight". Therefore, the U.S. Constitution and the New Jersey Constitution both individually and mutually constitutionally protect the rights of private property owners within New Jersey's judicial jurisdiction. In the instant matter, it is argued the Trial Court deprived the Defendant of private property without due process of law, i.e. the Trial Court denied the Defendant's plenary hearing that

allows: 1.) discovery; 2.) presentation of evidence; and, 3.) cross-examination of evidence on Defendant's eight (8) issues joined below in the summary action in the Trial Court. Most specifically, the failure to allow the Defendant a plenary hearing violates the Defendant's substantive and procedural due process rights under the U.S.C.S. Constitution 5<sup>th</sup> Amendment's "takings clause" and New Jersey rule of law. In Ocean County v. Stockhold 67 N.J. 104 (1974) (citing Yarnell, supra, 64 N.J. 211) (Reversing Ocean County v. Stockhold 129 N.J. Super 286 (1974), the Appellate Division held that county had authority to initiate condemnation proceedings, that decision to condemn was not arbitrary, and that matter was determined properly without a plenary hearing). Also, R. 4:73-1. "An action in condemnation shall be brought in the Superior Court in a summary manner pursuant to R. 4:67"- Summary Actions, not as the Trial Court asserted under R. 4:46-1 Summary Judgment standard of review in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). Argued further, the Trial Court constitutionally lacks subject matter jurisdiction over Defendant's Category II railroad/yard. Title 49 U.S.C. § 10501(b)(2); State by DEP v. J.P. Rail, Inc., U.S.D.C. 2006-cv-01603, and State of NJ v. J.P. Rail, Inc., U.S.D.C. 2006-cv-05457.

## PROCEDURAL HISTORY

On April 23, 2010, Plaintiff commenced a condemnation action by filing a verified complaint with jury demand against Defendant, a minority interest in Subject Property, N.J. Superior Court Law Division, **Docket GLO-L-781-10** (See Da 1-14)

On May 5, 2010, in Superior Court, Gloucester County, the Honorable Georgia M. Curio, AJSC, reviewed and considered Plaintiff's Verified Complaint and other pleadings and granted Order to Show Cause. (See Da. 93-96)

On May 6, 2010 while Plaintiff knew of George A. Gallenthin, III and Elizabeth Gellenthin Connet's ownership interests in Subject Property, Plaintiff filed an erroneous, false and/or fraudulent Notice of Lis Pendens against only the interest of Defendant in Subject Property. (See Da 101)

On May 6, 2010, Plaintiff filed Declaration of Taking signed by George Strachan, GCIA Administrator with erroneous, false and/or fraudulent taking maps and Proposed Order for Payment into Court and for Possession with the Hon. Judge Curio AJSC at Superior Court Cumberland County Courthouse. (See Da 15-17 maps)

On May 12, 2010, Plaintiff filed Declaration of Taking and supporting maps authorized by order of Hon. Judge Curio with Gloucester County Clerk. (See Da 97-100)

On May 17, 2010, under **Docket No. L-581-06**, Plaintiff hand-delivered estimated compensation for the taking by eminent domain of Subject Property to Trust Fund Unit Superior Court, 6<sup>th</sup> Floor, Trenton NJ with Order for Payment Into Court and for Possession signed by the Hon. Judge Curio.

On May 18, 2010, while Plaintiff knew of George A. Gallenthin, III and Elizabeth Gellenthin Connet's interests in Subject Property, Plaintiff filed an erroneous, false and/or fraudulent Proof of Service of Declaration of Taking and Order for Payment into Court and for Possession Proof of with Civil Division Superior Court of NJ, but failed to serve all parties in interest. (See Da 129)

In June 2010, Plaintiff, without Defendant's knowledge or consent, stipulated dismissal of all other named Defendants in the taking: State of New Jersey, Borough of Paulsboro, Colonial Pipeline Co., Atlantic City Electric Co., and Paulsboro Acquisition Corp. (See Da 105-112)

On June 24, 2010, the Hon. Judge Curio denied George A. Gallenthin, III's faxed written request as a United States citizen serving in Afghanistan with U.S. Allies in the prosecution of a war and protected under the U.S. Servicemembers' Civil Relief Act, 50 U.S.C. App § 514, although he is individual majority interest owner in Subject Property and required to be joined by R. 4:73-2 (a) Parties. (See Da102-104)

On July 23, 2010, Defendant filed Answer with Jury Demand and Motion to Transfer Venue or in the Alternative for Recusal. (See Da 136)

On August 5, 2010, Defendant's "Motion to Transfer Venue or in the Alternative for Recusal" for conflicts was granted by the Hon. George M. Curio, Superior Court Burlington County, Law Division, Docket **BUR-L-2718-10**. (See Da 154)

On August 16, 2010, Defendant's Motion to Dismiss Plaintiff's Verified Complaint and To Award Counsel Fees and Costs was not conducted pursuant to R. 4:73-1 and R. 4:67-5 in Summary Action manner with witnesses, with discovery, and with evidence presented in a "plenary hearing" as required by due process, but was erroneously conducted pursuant to R. 4:46 as a Summary Judgment proceeding. (See Da 136-153), (See 1T).<sup>1</sup>

On November 16, 2010, the Hon. Judge Hogan entered Final Judgment and Order Appointing Commissioners and also filed an Opinion on November 16, 2010 dated August 31, 2010 denying Defendant's request for relief. (See Da 165-195)

On January 3, 2011, Defendant filed timely notice of appeal from the November 16, 2010 Final Judgment and Order Appointing Commissioners and Denying Defendant's motion seeking dismissal of the Verified Complaint or discovery and a plenary

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<sup>1</sup>1T is August 16, 2010, transcript of oral argument on Defendant's Motion to Dismiss the Verified Complaint before Hon. Michael J. Hogan, P.J. Ch., NJ Superior Court Burlington County. Docket No. L-2718-10



hearing which essentially seeks dismissal of the action or, in the alternative, a full and fair plenary hearing. (See Da 159)

## **STATEMENT OF FACTS**

### **A. NATURE OF ACTION**

This is a condemnation action ("Taking") pursuant to R. 4:73 and R. 4:67 by which the Plaintiff, the Gloucester County Improvement Authority seeks to acquire eight (8) distinct interests in real property owned by the named Defendant, Gallenthin Realty Development, Inc. and George A. Gallenthin, III, an individual that Plaintiff failed to join.

In the instant matter the Plaintiff deprived the Defendant of private property by failure to disclose to the Defendant not only a map but also the required "description of land to be acquired, and improvements to be acquired" as per R. 4:73-1. In the instant matter there are eight (8) acquisitions bundled in the Plaintiff's "Taking." These acquisitions, being derived from Plaintiff's initial "Taking" maps (See Da 15-17), are:

1) complete/permanent confiscation of Roadway Easement Deed Book 1110/Page 301;

2) complete/permanent confiscation of Roadway Easement Deed Book 1081/Page 48;

3) complete/permanent confiscation of Parcel 1A 1.031 Acres as identified on General Property Parcel Map Sheets 1-3;

4) complete/permanent confiscation of Parcel 1B 2.364 Acres

as identified on General Property Parcel Map Sheets 1-3 and Deed Book 4829 Page 62;

5) exclusive/temporary confiscation of a 50' Temporary Construction Easement 1.73 Acres as identified on General Property Parcel Map Sheets 1-3 and Deed Book 4829 Page 62;

6) exclusive/temporary confiscation of Right of Way and Rail Easement Deed Book 4743 Page 304;

7) the complete/permanent confiscation of not only the 2800 feet Railway Easement maintained for 40 years by private landowners on western boundary Defendant's lands but also substantial lands on the Defendant's northern boundary by failure to require land surveyor to "close" the survey of Defendant's land at Block 1, Lot 3;

8) the complete/permanent confiscation of property rights by three (3) times in writing, fraudulently, asserting ownership of Defendant's entire 63 acres before the New Jersey Department of Environmental Protection (NJDEP) thereby receiving false determination and/or letter of interpretation ("LOI") of "wetlands" and "coastal" jurisdiction on Defendant's entire 63 Acres.

## B. SUBJECT PROPERTY<sup>2</sup>

Since 1902 the Gallenthin family has operated/possessed the disputed property and since 1951 owned said disputed land, Block 1 Lot 3 on the Paulsboro tax map, approximately 63 acres located at Terminus of Universal Road, Paulsboro, New Jersey, aka Gallenthin Meadowlands and Dredge Depot. ("Subject Property"). Currently the ownership of the Subject Property is as follows: Defendant owns approximately 33.33%, George A. Gallenthin, III legally owns approximately 44.26% and Elizabeth Gellenthin Connet equitably owns approximately 22.4%. However, given Mr. Gallenthin's sole ownership of Defendant, a domestic for-profit corporation, he clearly owns 77.6% of the Subject Property. Plaintiff knew ownership interests. (Gallenthin Cert.) (SeeDa 129)

The Subject Property is bounded by and includes on its western edge a Category II rail line running parallel to the adjacent Mantua Avenue and on its eastern edge by the Mantua Creek federal waterway which flows into the nearby Delaware River. The Category II railway was abandoned by Conrail in the mid-70s and is maintained by Defendant or his agents since then.

The Subject Property is bounded on its southern edge by Railroad Construction Company, Inc. which operates a railroad

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<sup>2</sup> Defendant adopts the facts set forth in the July 23, 2010 Certification of George A. Gallenthin, III in Defendant's Motion to Dismiss Verified Complaint as well as those provided for in the Supreme Court's opinion in Gallenthin, supra, 191 N.J. 344 (2007).

construction company staging facility. The Subject Property is bounded on its northern edge(Da92) by: 1.)Dow-Essex Chemical 60-acre superfund site facility acquired by the Boro of Paulsboro ("Paulsboro") and leased to South Jersey Port Corporation, ("SJPC"); 2.)Paulsboro Packaging, Inc. 10-acre facility; and, 3.)British Petroleum tankfarm (BP) 130-acre superfund site.

Beyond these contiguous northern properties are the Delaware River and the Philadelphia International Airport that being 1.5 miles linear distance. The BP 130 acre superfund site and Dow-Essex Chemical 60 acre superfund site are known as the BP/Dow Redevelopment Area. The Plaintiff seeks, as a competitor of the Defendant, to recklessly redevelop the existing superfund sites and within which to build and operate a new 27 acre Confined Dredge disposal Facility ("CDF").

The Subject Property is served by a Category I railroad particularly suited for freight trains.(See Da39-41)In addition, the Subject Property is served: 1.) 14,000 volt 3 phase electric and natural gas by Atlantic City Electric; 2.) public water by Paulsboro; 3.) an active petroleum gas pipeline by Colonial Pipeline. There are also several mooring pylons and a dock in the Mantua Creek for receiving tug boats and barges with their multi-ownership chattel cargo. (See Da 34,38-41)

Prior to 1951 and dating back to as early as 1902, the Subject Property has been used to receive barges transporting

multi-ownership chattels from Mantua to Philadelphia. In addition, the Subject Property has been used as a borrow pit, transfer point, and deposit site for dredging materials. (Gallenthin Cert, ¶12.) (See Da 123) This dates from at least 1902 when the Subject Property characterized then as uplands was authorized to receive dredge deposits from the U.S. Army Corps of Engineers - Department of the Army ("USACE"), which is responsible for navigability of the Mantua Creek and the Mantua Anchorage. It is of particular interest that the Mantua Anchorage is one of only two (2) anchorages on the upper Delaware River and is an essential element of the Delaware River's navigability. The USACE made dredging deposits on the Subject Property in 1902, 1934, 1937 and 1963, while the Gallenthin Family also operated a private dredge material business thereon, Id. There are approximately 250,000 cubic yards of dredge spoils on the site, Id.

In addition to being used as a dredge deposit depot, portions of the Subject Property have been used for additional purposes. For example, in 1997 a portion was leased to Clean Ventures an environmental clean-up organization. Clean Ventures used the property for river access, employee parking, and storage. Additionally, since 1997 the Subject Property has been in-use as a Qualified Farm for the harvesting of Phragmites for cattle feed and firewood, and contains commercial beehives.

**C. GCIA-BP/DOW REDEVELOPMENT PLAN URS-PHASE I AND II**

In 1992, Governor James J. Florio targeted the Subject Property with several other properties for acquisition and development under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1. ("LRHL") The Honorable James J. Florio is now writing contracts for the redevelopment area targeted under the legislation he personally signed into law.

In 1998, Paulsboro Planning Board rezoned Subject Property (See Da 43) along with the contiguous properties for Paulsboro's Master Plan from manufacturing to marine industrial business park, thereby permitting various commercial, light industrial, and mixed non-residential uses and in 1999, the Paulsboro Council authorized the Planning Board to investigate whether several parcels could be designated as "in need of redevelopment" pursuant "to the criteria set forth in the Local Redevelopment Housing Law, N.J.S.A. 40A:12A-5. In June 2000, Paulsboro further authorized the Planning Board to investigate additional contiguous parcels. Between September 2000 and June 6 2001, Defendant contracted with Dr. Amir Rehmat, President, ENDESCO Clean Harbors, L.L.C., 1700 South Mount Prospect Road, Des Plaines, Illinois 60018, for a \$2,500,000.00 Gas Institute of Technology Cement-Lock Technology Paulsboro grant. The Endesco decontamination process was selected by USEPA, USDOT, working closely with New Jersey Department of

Transportation's Office of Maritime Resources ("NJDOT/OMR"), and New Jersey Department of Environmental Protection ("NJDEP") as most likely to be economically viable in the navigational dredging market to perform pilot scale projects on contaminated sediments from NY/NJ Harbor and Delaware River Ports. Defendant planned to help Paulsboro reuse two contiguous brownfields, BP/Dow, aka superfund sites in voluntary remediation with NJDEP. The Mayor of Paulsboro, without public meeting or knowledge of Paulsboro Council rejected the grant and stated to ENDESCO, "Get out of Town and do not come back." The Mayor of Paulsboro at all times relevant operates a real estate development company with his City Administrator incorporated as Broad Street Development Group.

In May 2001, Plaintiff, under Plaintiff's GCIA-Job #0814T329 retained Jim Maley, Esq. for redevelopment, legal and consultation services and Remington, Vernick Engineers as planners, and Triad Associates ("Triad") for economic development consultation, on five (5) redevelopment projects including BP/Dow Paulsboro. Plaintiff authorized BP/Dow Redevelopment Plan payments.

On June 28 2001, Plaintiff received URS's (BP's consultant) Phase I and II via Powerpoint in Trenton, NJ with Paulsboro, and New Jersey Economic Development Authority ("NJEDA") Team members present.

On October 23 2001, Plaintiff and URS published BP Oil Company's Redevelopment Phase I and Phase II - Highest and Best Use/Strategy for Implementation Report to NJEDA.

From Sep-Dec 2001, Plaintiff submitted BP Oil Paulsboro Solar Plant grant applications to NJ Commission on Science & Technology and NJ Department of *Environmental* Protection ("NJDEP") depicting a new access road/bridge crossing Mantua Creek at Dow/Essex, north of Defendant, and secured millions of dollars for BP's redevelopment. Dow/Essex property was subsequently condemned. Plaintiff never mentioned the Defendant's property for a bridge during the Dow/Essex taking. On March 7, 2002 Plaintiff, BP, URS, and Paulsboro held a stealth government meeting in Towson Maryland at BP's offices:

"...get in gear on additional property acq./transfer...there is an obstreperous property owner who is expected to be difficult. Condemnation/brownfields issues/solutions may be at play here".

On August 2002, BP finally declined Defendant's offer to Purchase its 130 acres in writing; an oral offer to purchase was made in 2000. It must be noted the presence of private capitalization prior to BP's designation as an area in need of redevelopment bars designation as a matter of law. Anticipating BP's acceptance of its written offer, Defendant submitted permit application and Conceptual Development Plan to NJDEP Office of Dredge Sediment Technology (NJDEP-ODT) to operate its historic



dredge depot and Confined Disposal Facility ("CDF").

On October 2002, Plaintiff had Paulsboro retain BP's consultant URS for access road scoping and DVRPC, Metropolitan Planning Organization, published, "I-295/US 130 Riverfront Transportation Corridor Study for Gloucester County NJ" with Plaintiff's BP/Dow access road bridge crossing the Mantua Creek at Dow-Essex. Still the Plaintiff never mentioned the Defendant's property for a bridge. Plaintiff also had Paulsboro authorize Plaintiff's planner, Remington & Vernick, to compile a "Redevelopment Plan Summarization." The summarization noted the possibility of ultimately including the Subject Property in the BP/Dow redevelopment area. Finally, the Plaintiff disclosed the Defendant, previously characterized as an "obstreperous land owner", i.e. *"...get in gear on additional property acq./transfer...there is an obstreperous property owner who is expected to be difficult. Condemnation/brownfields issues/solutions may be at play here."*

Subsequently, Plaintiff had Paulsboro authorize Plaintiff's Planner to prepare a "Redevelopment Area Study and Plan" that included the Subject Property to be designated an area in need of redevelopment. The Plaintiff's plan described the Subject Property as an "expanse of vacant unimproved land, other than for a rail line" owned by the Defendant.

Regarding the statutory criteria for classifying the

property as "in need of redevelopment," Plaintiff's report stated:

Conditions rising to the level of the requisite criteria for a redevelopment declaration noted from field observation conducted in January 2003 include: a not fully productive condition of land as evidenced by the expanse of vacant unimproved parcels which otherwise could be beneficial in contributing to the public health, safety and welfare of the community resultant from aggregation of the positive features of development such as the introduction of new business, job creation, and enhanced tax base; and as further evidenced by the underutilization of the existing rail line (Criteria [N.J.S.A. 40A:12A-5(e)]).

On December 3 2002, Plaintiff, without adequate or any notice whatsoever to Defendant, had Paulsboro adopt Ordinance No. 19.02 implementing a redevelopment plan pursuant to N.J.S.A. 40A:12A-7 for the BP/Dow Redevelopment Area which included Defendant's real property, i.e., exclusive access road easement.

In April 2003, Plaintiff had Paulsboro's Planning Board hold a public hearing regarding the classification of the Subject Property as being "in need of redevelopment." Plaintiff's planner George Stevenson and Plaintiff's redevelopment legal consultant/special counsel Maurice James Maley, Jr. presented the redevelopment plan and testified that pursuant to N.J.S.A. 40A:12A-5(e) the Subject property should be included in the plan based on its lack of utilization. George A. Gallenthin also testified advising the Board that the Phragmites had been harvested from the property since 1997 and stated that he was continuing the property's use as a dredging depot to

reclaim brownfields and/or superfund sites. At the conclusion of the hearing, the Planning Board determined that the Subject Property should be designated for redevelopment.

In May 2003, Plaintiff, by and through its agents, had Paulsboro Council adopt the Planning Board's recommendation to designate the Subject Property as an area in need of redevelopment pursuant to NJ.S.A. 40A:12A-5(e). The designation was overturned four (4) years and in excess of \$1,000,000 in legal work later in a 7-0 decision before the New Jersey Supreme Court, and striking the clause which targeted the Subject Property within the 1992 LRHL signed by Governor James J. Florio. Gallenthin, supra, 191 N.J. 344 (2007).

#### **D. CHALLENGE TO THE REDEVELOPMENT DESIGNATION**

In June 2003, Defendant, and George and Cynthia Gallenthin filed a complaint in lieu of prerogative writs, challenging Paulsboro's designation of their property as "in need of redevelopment." In that suit, they claimed that the Subject Property did not meet any of the statutory criteria necessary to support the designation. The Trial Court dismissed the complaint, deferred to the Borough and found the designation was supported by substantial evidence. The Gallenthins appealed and the Appellate Division affirmed the Trial Court's ruling concluding that the Borough's decision was supported by

substantial evidence. Then, in August 2006, the Gallenthins filed a Petition for Certification with the Supreme Court of New Jersey, challenging the constitutionality of N.J.S.A. 40A:12A-5(e) as applied to their property and the lower courts' application of the substantial evidence standard of review, and the Supreme Court granted certification.

In June 2007, New Jersey Supreme Court unanimously (7-0) reversed the Appellate Division, invalidated Paulsboro's redevelopment designation of the Gallenthin property, and held that N.J.S.A. 40A:12A-5(e) applies only to property that has become stagnant and unproductive because of issues of title, diversity of ownership, or other conditions of the same kind. The *Gallenthin Court* struck down a condemnor's authority because it had not established an adequate showing of blight.

**E. THE PROPOSED TAKING AND PURPORTED PUBLIC PURPOSE**

During the pendency of Gallenthins' appeal, on February 14, 2005, Plaintiff by and thru its agents engaged Marlin Peterson, DMJM Harris "to expedite Paulsboro Marine Terminal redevelopment schedule", and on January 16 2006, Plaintiff by and through its agents had Paulsboro enter into an agreement with South Jersey Port Corporation ("SJPC") entitled, "Redevelopment Agreement" for "port and marine terminal", "(BP) Paulsboro Port Project".

On July 1 2005, Plaintiff by and thru its agent had Paulsboro's Mayor certify in Respondent's Motion to Accelerate

Gallenthins' Appeal filed with NJ Superior Court Appellate Division, Docket No. A-0222-04T1 that, "The Gallenthin's property is part of the overall redevelopment area and essential to the overall redevelopment of the area".

On January 9 2006, Plaintiff's BP/Dow redevelopment special counsel emailed Defendant, "We look forward to the new, old venture" and Plaintiff motioned for and was granted an Access Order in Gloucester County Superior Court in anticipation of taking Subject Property, for Plaintiff's BP/Dow Redevelopment Plan.

On September 28, 2007, three months after the *Gallenthin Court* decided unanimously in Gallenthins' favor, Plaintiff, SJPC, and Gloucester County ("the County") entered into an agreement entitled, "Paulsboro Port Project Support and Development Agreement" ("Interim Support and Development Agreement") with Plaintiff's new employee Marlin Peterson, (formerly DMJM Harris). Since Defendant's access road was included in BP/Dow Redevelopment Area in 2002 without lawful notice to Defendant, Plaintiff never ceased including Defendant's Subject Property in BP/Dow's Redevelopment project.

On August 1, 2009, Plaintiff's Interim Support and Development Agreement expired, and Plaintiff and SJPC entered into an agreement entitled, "Paulsboro Port Project Development and Management Agreement". With this agreement, SJPC delegated

its authority for "development, financing and construction of the new port and marine terminal facilities" to Plaintiff, which became Defendant's competitor and condemnor. Still, the underlying port owner is private entity BP Oil and the Honorable James J. Florio and others are writing or receiving contracts on the Subject Property targeted under the 1992 LHRL.

According to the Verified Complaint, the property interests and easements Plaintiff seeks to acquire consist of approximately 3.395 acres in fee simple, 0.256 acres in permanent easements, and approximately 1.73 acres for a temporary construction easement. (Verified Complaint, ¶¶16-17.) In addition, Plaintiff is also acquiring Defendant's interest in a roadway easement which provides ingress and egress to the Subject Property. (See Da 8-9)

The Taking description depicts the proposed roadway traversing the Subject Property, leaving a 2.36 triangularly shaped parcel between the roadway and the BP/Dow Redevelopment Area. That parcel is bisected by the Colonial Pipeline easement. Unlike the area being acquired for the bridge, the taking map for this parcel fails to show any use of the area. The Taking maps are also void ab initio because they are based upon falsely and/or fraudulently obtained wetlands delineations by the Plaintiff. (Gallenthin Cert, ¶¶8-12) (See Da 125, 130-135)

Plaintiff purports to take the above referenced property to construct a bridge and access roadway linking the proposed Paulsboro Marine Terminal and the BP/Dow Redevelopment Area. However, although neither the roadway nor the bridge has received the necessary approvals, the Plaintiff seeks the authority upon the perfection of the "Taking" to sell the Subject Property or use said property unrestricted.

Notwithstanding Plaintiff's alleged premise for the Taking, a Pre-Development Drainage Area Plan drafted on behalf of Plaintiff depicts the Subject Property being used for a "Future Marine Terminal." (Ward Cert.) (See Da.113-122) The application submitted in support of the bridge indicated it was not subject to a "Water Quality Management Plan." (Ward Cert.) (See Da.115-116) Notwithstanding, the Post-Development Drainage Area Plan indicates that a drainage basin and Future WQS (Water Quality System) is slated for the triangular parcel. (Ward Cert.), Id. The Drainage Area Plans make no mention of a bridge or roadway in that area.

Other documents, including but not limited to a Gloucester County Resolution dated May 17, 2000, indicate that the Taking is being done in furtherance of the County's longstanding opposition to the placement of dredge spoils in the area. (Gallenthin Cert) (See Da 134) This is a crucial point of contention as Mr. Gallenthin has been pursuing the Subject

Property's historic and legal use as a dredging depot.  
(Gallenthin Cert., ¶12.) (See Da 125)

**F. PLAINTIFF'S OFFER AND APPRAISAL**

In March 2010, Plaintiff furnished Taking maps depicting erroneous property boundaries which did not disclose to the Defendant the required description of land to be acquired, and improvements to be acquired; also the "metes and bounds" survey was not furnished, which conceals the Plaintiff's failure to accurately determine the Subject Property's boundaries. (See Da 15-18)

Then, on May 12, 2010, Plaintiff filed a Lis Pendens and Declaration of Taking with the erroneous property maps and no description of Subject Property as demanded per R. 4:73-1. (See Da 80)

Plaintiff's purported jurisdictional offer under N.J.S.A. 20:3-6 is based on the appraisal report prepared by Jerome J. McHale, MAI dated January 5, 2009. ("McHale Report") (See Da 24-92) The McHale Report concludes that the Highest and Best Use for the Subject Property would be to develop it with an industrial/business park use. (McHale Report) (See Da 44) In arriving at this conclusion, the McHale Report adopted, in whole, the conclusions contained in a report prepared by Marathon Engineering & Environmental Services. (See Da 27 and Da 39) Marathon's Report is annexed to McHale's Report, pgs 100-116.) (See Da74-90) The Marathon Report indicates it was premised



in part on a site inspection which occurred on February 19, 2009. The Marathon "windshield" inspection (pg 100, ¶4, line 1-2) (See Da74) occurred from the public right-of-way without the Defendant, or Mr. Gallenthin, the 77.6% owner, being invited, nor otherwise afforded the opportunity to provide any input into this report, such as Title 49 U.S.C. § 10501 rail exclusion. Although, the federal exclusion was provided to McHale, Plaintiff ordered McHale to ignore said federal exclusion. (See Da 34, (Gallenthin Cert., ¶6.) (See Da 124) Plaintiff violated its Court ordered Access requiring 72-hour advance notice to Defendant repeatedly. (See Da 196)

In addition to relying on the Marathon Report, the McHale Report adopts in whole the opinions and conclusions contained in T&M Associates Report. (See Da 69) ("T&M Report") (See Da 27.) T&M Report relies on a wetlands delineation and letter of interpretation ("LOI") falsely and/or fraudulently obtained by Plaintiff. (Id.) The public documents were signed at least three (3) separate and distinct events under penalty of perjury. Plaintiff knew it was not the owner of the Subject Property. These signers were: 1.) David Shields, Executive Director, GCIA; 2.) George Strachan, Administrator, GCIA; and 3.) Marlin Peterson, Port Director, GCIA. Therefore, all three are directly employed by Plaintiff. Further, Plaintiff's attorney in this matter made written statement to the Defendant that no permits were pursued, e.g. "wetlands". (Gallenthin Cert, ¶¶7-11) (See Da

124-125). Defendant was not given 72-hour, advance, court ordered notice (See Da 196) let alone the opportunity to accompany T&M on its investigation to provide any input into the wetlands delineation and preparation of the T&M Report which has been used to limit the value of the Subject Property. The T&M Report also fails to address the use of the alleged "wetlands" to receive dredge deposits. In fact the McHale Report, without any sound basis, assumes that the Subject Property cannot be used as a dredge disposal site despite its historical use as such. (McHale Report, 2) (See Da 27, 34)

Based upon the findings of the Marathon Report and T&M Report, and the various legal instructions provided by Plaintiff's attorney in this matter to McHale, the McHale Report valued the Taking and damages to the remainder. McHale adopted the Sales Comparison approach thereby having to perform a Before and After Taking Valuation in order to arrive at Plaintiff's alleged jurisdictional offer. In the Before scenario, the addition, the McHale report does not account for the servient estate with respect to the Subject Property vis-à-vis the roadway easement.

**G. THE CONDEMNATION ACTION - IS BP'S PHASE III**

On April 23, 2010, in bad faith, for pretext, and after one meeting in more than eight (8) years with the Defendant's principal, consisting of two hours with the Plaintiff's trial

counsel, Plaintiff's Port Director Peterson, and Plaintiff's engineer, whom left the meeting for another appointment with the project deliverables (maps and plans), Plaintiff filed the Verified Complaint with Jury Demand and excluded certain necessary parties in interest. (See Da 1-14, See Da 127)

The Plaintiff failed to serve the majority party in interest while he was serving with U.S. Allies in Afghanistan with: 1.) the Verified Complaint; 2.) the Hon. Judge Curio's Show Cause Order dated May 5, 2010; 3.) the May 12, 2010 Order for Payment Into Court and For Possession; and, 4.) the May 17, 2010 Declaration of Taking. (See Da 127 and Da 129)

On May 12, 2010, Plaintiff filed Declaration of Taking (See Da 15-17) with erroneous property maps and not one legal description of the eight (8) acquisitions in the "Taking", yet before the Trial Judge, the Plaintiff's Trial Counsel orally asserted:

*"We moved the road to take less. I've never moved a road in my life. We moved a road. It cost us time. It cost us money. It cost me professional embarrassment with my client..."* (See 1T-12-24,25 and 1T-13-1,2);

In June 2010, Plaintiff stipulated dismissal of all other named Defendants and necessary parties, State of New Jersey, Borough of Paulsboro, Colonial Pipeline Co., Atlantic City Electric Co., and Paulsboro Acquisition Corp, without Defendant's knowledge or consent. (See 105-112)

On July 23, 2010, Defendant filed Answer, Motion to Dismiss and Motion to Transfer Venue for professional conflict between the Hon. Judge Curio and the majority party in interest serving with U.S. Allies in Afghanistan.

On August 5 2010, venue was ordered transferred from Gloucester County to Burlington County by the Hon. Judge Curio. (See Da 154)

On August 16, 2010, Defendant's Motion to Dismiss Plaintiff's Verified Complaint and To Award Counsel Fees and Costs was not conducted pursuant to R. 4:73-1 and R. 4:67-5 in Summary Action manner with witnesses, with discovery, and with evidence presented in a "plenary hearing" as required by due process, but was erroneously conducted pursuant to R. 4:46 as a Summary Judgment proceeding. (See Da 155-158) (See 1T)

On August 31, 2010 the Trial Court drafted and circulated among counsel a letter opinion but did not enter it on the docket, Defendant's Motion to Dismiss and request for limited discovery and a plenary hearing was denied. (See Da 165-168)

On 16 November, 2010, the Honorable Michael J. Hogan entered Final Judgment and Order Appointing Commissioners and entered the 27-page written opinion dated August 31, 2010. (See Da. 169-195)

On January 3, 2011 Defendant filed timely notice of appeal which essentially seeks dismissal of the action or, in the

alternative, a full and fair plenary hearing. (See Da. 159-164)

On January 21 2010, Plaintiff began: 1.) physical possession of Defendant's Subject Property; 2.) erected a fence which takes far more property than described in the Verified Complaint and substantially restricts/blocks Defendants egress and ingress to his remainder; 3.) did not move the road and took the Defendant's rail; and, 4.) Plaintiff discharged circa 500 cyds of toxins including PCBs, Chromium, Toulene and unknown volatiles on Subject Property, violating the Stay in effect when Defendant filed Notice of Appeal In Condemnation on January 3, 2011.

On January 28, 2011 USACE authorized Plaintiff and SJPC's application under Permit Number CENAP-OP-R-2007-1125-35 for the operation of a new confined dredge disposal facility on the Dow-Essex superfund site, competing with Defendant's historic dredge depot business.

**LEGAL ARGUMENT FOR THE APPELLANT**  
**Judicial Review of a Public Use Determination Requires**  
**A Special Scrutiny of the Record as the Standard of Review**

Given the critical role that our state Constitution places upon the factual existence of a "Public Use" in balancing the encouragement of infrastructure development against the danger of overreaching use of the power of eminent domain, it is essential that the judiciary engage in an independent evaluation and review of whether that factual predicate exists in each of the Plaintiff's eight (8) acquisitions bundled in the "Taking". "When the issue on appeal turns on a constitutional fact, i.e., a fact whose determination is decisive of constitutional rights, appellate courts have the obligation to give such facts special scrutiny. Constitutional litigation demands fact analysis of the most particularized kind." Zold v. Mantua, 935 F.2d 633, 636 (3d Cir. 1991) (quoting New Jersey Citizen Action v. Edison Township, 797 F.2d 1250, 1259 (3d Cir. 1986)) (internal citations omitted). Thus the Constitutions, both federal and state, call for close judicial review of the Plaintiff's public purpose designations. Gloucester County Resolution 108-10 dated April 15, 2010. (See Da 97-99)

**I. ISSUE ONE**

**It is Harmful Error to Deny a Plenary Hearing After Joinder of Issues in Summary Actions Pursuant to R. 4:67 as Required by R. 4:73-1.**

In the instant matter the Plaintiff deprived the Defendant of private property by failure to reasonably disclose to the Defendant not only a map but also the required "description of land to be acquired, and improvements to be acquired" as per R. 4:73-1. In the instant matter there are eight (8) acquisitions bundled in the Plaintiff's "Taking." These acquisitions, being derived from the initial "Taking" maps, (See Da 15-17) are:

1) complete/permanent confiscation of Roadway Easement Deed Book 1110/Page 301;

2) complete/permanent confiscation of Roadway Easement Deed Book 1081/Page 48;

3) complete/permanent confiscation of Parcel 1A 1.031 Acres as identified on General Property Parcel Map Sheets 1-3;

4) complete/permanent confiscation of Parcel 1B 2.364 Acres as identified on General Property Parcel Map Sheets 1-3 and Deed Book 4829 Page 62;

5) exclusive/temporary confiscation of a 50' Temporary Construction Easement 1.73 Acres as identified on General Property Parcel Map Sheets 1-3 and Deed Book 4829 Page 62;

6) exclusive/temporary confiscation of Right of Way and Rail Easement Deed Book 4743 Page 304;

7) the complete/permanent confiscation of not only the 2800 feet Railway Easement maintained for 40 years by private landowners on western boundary Defendant's lands but also

substantial lands on the Defendant's northern boundary by failure to require land surveyor to "close" the survey of Defendant's land at Block 1, Lot 3; and,

8) the complete/permanent confiscation of property rights by three (3) times in writing fraudulently asserting ownership of Defendant's entire 63 acres before the New Jersey Department of Environmental Protection (NJ DEP) thereby receiving false determination of "wetlands" and "coastal" jurisdiction on said Defendant's entire 63 Acres.

While the above "Taking" directly and economically benefit the adjacent private land owners, private land developers, and the private businesses contracted for operation on the adjacent land and the "Taking" reaches far beyond a public road necessity, the Plaintiff failed to describe the acquisitions and only appraised acquisitions numbered above as three (3), four (4), and five (5). Further, the Defendant joined the issue in the Trial Court, but was disallowed the clearly constitutional mandated plenary hearing which resulted in harmful error and an unjust result. New Jersey Constitution as a limited contract with its real property owners. N.J. Const. Art I, ¶ 1 declares that among the inalienable rights secured is the right of "acquiring, possessing, and protecting property." While this right is subject to the police power, see, e.g., Jones v. Haridor Realty Corp., 37 N.J. 384 (1962), it is not a right to be easily



overridden by the outright taking of property based on the minimal evidence and excessive deference shown here and in other cases.

Since property is defined under the eminent domain statute as "land, or any interest in land..." and an easement constitutes an interest in land, and the owner must be compensated for the value of the easement taken from him or her, the five (5) acquisitions not valued must be added to the "Taking" Declaration, valued and negotiated. See N.J.S.A. 20:3-2 and State v. Orenstein, 124 N.J. Super. 295, 302 (App. Div. 1973) (quoting Jahr, Eminent Domain, Valuation and Procedure, \$160 at 251 (1953)). Since the Plaintiff failed to describe said acquisitions, on reversal, remand, and a plenary hearing, the instant matter must be dismissed with re-imbusement of Defendant's attorney's fees and costs. What is just as important is the Plaintiff during oral argument on the "Taking" stated:

*"We moved a road to take less. I've never moved a road in my life. We moved a road. It cost us time. It cost us money. It cost me professional embarrassment with my client...."* (See 1T-12-24,25 and 1T-13-1,2).

However, although avowed by Plaintiff's attorney in this matter, the new road alignment to "save the (Defendant's) rail spur" (Ward. 1T20-24,25 and 1T21-1,2) was never reduced to a map and description. Further, the actual "Taking" was under the original taking map and has caused extreme harm and a "Taking"

outside the subject matter jurisdiction of the Trial Court. (See  
Da 39-41)

Yet, should the Appellate Court not dismiss the Plaintiff's  
complaint but reverse and remand for a plenary hearing, the  
Defendant shall prove the following points already joined  
previously in the Trial Court:

POINT I

**THE WITHIN MATTER IS BEFORE THE COURT FOR A SUMMARY TRIAL  
IN ACCORDANCE WITH R. 4:67-2.**

An action in condemnation must be filed in a summary manner  
which is commenced by the filing of a Verified Complaint and  
Order to Show Cause. R. 4:67-2. However, the New Jersey  
Constitution as a limited contract with its real property  
owners. N.J. Const. Art I, ¶ 1 declares that among the  
inalienable rights secured is the right of "acquiring,  
possessing, and protecting property." While this right is  
subject to the police power, see, e.g., Jones v. Haridor Realty  
Corp., 37 N.J. 384 (1962), it is not a right to be easily  
overridden by the outright taking of property based on the  
minimal evidence and excessive deference shown here and in other  
cases. In order to obtain the relief sought by its Order to Show  
Cause, Plaintiff has the burden of presenting proof it is  
entitled to condemn the property rights identified in the  
Complaint. Defendant may submit proofs as to why the Plaintiff

does not have the right to acquire the property.

The Court must review the record to see if Plaintiff has established sufficient proofs to conclude it has properly condemned the interests set forth in the complaint. As part of that review, the Court must conduct a hearing on any genuine issue of material fact that may be in dispute. County of Bergen v. S. Goldberg & Co., 39 N.J. 377 (1963).

If no objection is made by any party... or the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment.

(emphasis added) R. 4:67-5.

Herein, Plaintiff has not properly exercised its power of eminent domain. Procedurally, the Court does not have jurisdiction to grant Plaintiff's requested relief because Plaintiff failed to conduct the requisite pre-complaint bona fide negotiations. N.J.S.A. 20:3-6; Borough of Rockaway v. Donofrio, 186 N.J.Super. 344, 354 (App. Div. 1982). In particular, Plaintiff failed to invite Defendant on a critical appraisal inspection which formed the McHale Report values 19.99 acres of uplands at \$70,000 per acre for a total of \$1,400,000 (rounded) (McHale Report, 51.) (See Da 43.) McHale then adds the .64 acres of land partially owned by the Borough of Paulsboro

and the Paulsboro Acquisition Corp. over which Defendant enjoys a dominant estate and values same at \$28,000 per square foot for a total of \$18,000 (rounded) (McHale Report, Id.) Based upon these calculations, MCHale opines that the value of the property in the Before Scenario is \$1,418,000. (McHale, 54.) (See Da 52)

In the After Taking scenario MCHale values the remaining 16.595 acres of upland at \$60,000 per acre for a total estimated land value of \$1,000,000.00 (rounded) (McHale Report, supra, at 63). (Id.) In addition MCHale values the .256 acres which are being acquired for the permanent easement at 20% of value or at \$3,100. (rounded) (McHale, 66). (See Da 62) MCHale next values the 1.73 acres which are being acquired for a temporary construction easement at \$5,190 per year. According to the Complaint the terms of the temporary construction easement "include an initial thirty-six month easement period, subject to renewal at the Plaintiff's discretion for six month increments thereafter. (Verified Complaint, ¶19) (See Da 9) MCHale fails to assign a value for any time other than the initial three year period and therefore concludes that \$15,600 should be allocated as compensation to Defendant for the temporary construction easement. (McHale Report, 67). (See Da 63) In total MCHale values the property in the After Taking scenario at \$975,000. (McHale Report, 68). (See Da 64) Taking the difference between the Before Value and the After Value Scenarios, MCHale opines that

Defendant should be compensated \$443,000 for the land taken and damages to the remainder. (McHale Report,69). (See Da 65)

Noticeably absent from the McHale Report is any analysis or valuation on how the Taking of the roadway easement will affect the ingress and egress to the Subject Property. In jurisdictional offer, N.J.S.A. 20:3-6; Donofrio, supra, 186 N.J.Super. at 354. Plaintiff also failed to adequately describe all of the rights sought by this action as required by R. 4:73-1 and N.J.S.A. 20:3-6; Housing Authority of Atlantic City v. Atlantic City Exposition. Inc., 62 N.J. 322,328(1973); See also State v Orenstein, 124 N.J. Super. 295, 298 (App. Div. 1973).

In addition to the foregoing procedural failings, Plaintiff lacks the requisite public necessity or proper public purpose for this Taking. Plaintiff's taking is further barred by the Doctrine of Equitable Estoppel in that it is in furtherance of a redevelopment project and not a bridge as alleged in the Complaint. Accordingly, the Court should dismiss this action.

#### POINT II

#### **PLAINTIFF FAILED TO CONDUCT THE PRE-COMPLAINT BONA FIDE NEGOTIATIONS REQUIRED BY N.J.S.A. 20:3-6**

The power of eminent domain is one of the most awesome powers that must be exercised in a manner which will vindicate the property owner's rights. State. by Commissioner of Transportation v. Donofrio, 235 N.J. Super. 348, 353 (Law Div.

1989). Condemnors such as Plaintiff must exercise this power by turning "square corners." Furthermore, Plaintiff's "primary obligation was to comport itself with compunction and integrity, and in doing so may have to forego the freedom of action that private citizens may employ in dealing with one another." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426-27 (1985).

One of the most critical aspects of exercising the power of Eminent Domain is the proper conduct of pre-complaint bona fide negotiations as required by N.J.S.A. 20:3-6. Failure to conduct these negotiations creates a jurisdictional defect in the condemnor's action. Donofrio, supra, 186 N.J. Super. at 354.; State by Commissioner of Transportation v. Carroll, 234 N.J. Super. 37 (App Div. 1989) reversed on other grounds 123 N.J. 308 (1991). Therefore, the sanction of dismissal is required because the Court lacks jurisdiction to hear matters where the condemnor has not satisfied this requirement. Enforcing this jurisdictional prerequisite by dismissing the action as opposed to permitting the condemnor to cure any defects is done to promote the condemnor's compliance with the provisions of the Eminent Domain Act, N.J.S.A. 20:3-1 et seq. County of Monmouth v. Whispering Woods, 222 N.J. Super. 1,10 (App. Div. 1987) certif. denied, 110 N.J. 175 (1988).

We think that this case is best decided by considering the fundamental purpose of N.J.S.A. 20:3-6. We know that the purpose of the Legislature in enacting N.J.S.A. 20:3-6 was, as stated by the Eminent Domain Revision Commission, to encourage entities with condemnation powers to make acquisitions without litigation. Such a procedure thereby saves both the acquiring entity and the condemnee the expenses and delay of litigation. It permits the landowner to receive and keep full compensation. This purpose is furthered by strict construction of N.J.S.A. 20:3-6. If a condemnor may ignore the statute and later cure the proceedings, the purpose of N.J.S.A. 20:3-6 will be completely frustrated. Indeed, an order for a stay so that a condemnor may then do what it should have done earlier will encourage noncompliance with N.J.S.A. 20:3-6. A condemnor will know that if it does not comply, it may nevertheless proceed.

(emphasis added; citations omitted). Donofrio, supra, 186 N.J. Super. at 353-54.

This Court's examination of Plaintiff's actions will demonstrate the sanction of dismissal is warranted herein because of Plaintiff's failure to comport with the requirements of N.J.S.A. 20:3-6.

**A. PLAINTIFF FAILED TO INVITE DEFENDANT ON ALL APPRAISAL INSPECTIONS.**

In advance of filing a condemnation action, a condemnor

must make a bona fide offer to acquire the property along with providing copies of all appraisal reports obtained to value just compensation for the Taking. N.J.S.A. 20:3-6; State by Comm'r of Transp. v. Testa, 247 N.J. Super. 335 (App. Div. 1991) citing State. by the Comm'r of Transp. v. Donofrio, 235 N.J. Super. 348, 355 (Law Div.1989). Critical to the development of the appraisal and offer of just compensation is the gathering of information. As a result, N.J.S.A. 20:3-6 requires condemnors to invite property owners on all appraisal inspections made in connection with the development of the appraisals and to give the property owners an opportunity to have meaningful input into the appraisal process. Donofrio, supra, 186 NJ. Super. at 354. The reason for this requirement is to facilitate the development of an appraisal which could lead to the amicable resolution to the taking if it included the property owner's input.

As previously stated, Plaintiff's purported jurisdictional offer under N.J.S.A. 20:3-6 is premised on the McHale appraisal report dated January 5, 2009. (McHale Report, supra). In this report, McHale states his valuation was based on four "Conditions/Assumptions" including:

3. *"It is an extraordinary assumption of this appraisal that the information provided by Marathon Engineering & Environmental Services, Inc. and T & M Associates is correct. If it is found that this assumption is untrue, the appraiser reserves the right to modify the value conclusions herein."*

(McHale Report, supra, at 2). (See Da 27)



The Marathon and T&M Reports were separate reports regarding the Subject Property that were made part of and critical to McHale's conclusion of just compensation. The Dictionary of Real Estate Appraisal, Third Edition defines "appraisal" as: An analysis, opinion, or conclusion related to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. (See Da 69-73 and Da 74-92)

The Marathon and T&M Reports provided analyses, opinions and conclusions that relate to the nature, quality, value and utility of the Subject Property. Therefore, under N.J.S.A. 20:3-6, Plaintiff was Court ordered to provide 72-hour notice to Defendant of site access by Marathon and T&M and be given the opportunity to provide meaningful input into their reports. (See Da 172-174). Defendant however, was neither notified of the inspections made by Marathon or T&M nor otherwise given any opportunity to provide these consultants with input germane to their respective reports. (Gallenthin Cert., ¶¶6-7) (See Da 124) Moreover, Plaintiff was placed on notice it had failed to satisfy this obligation and yet steadfastly refused to comply with this requirement. (Ward Cert) (See Da 91-92; Da 117-122; Da 196-198) Accordingly, the within matter should be dismissed due to Plaintiff's failure to comply with the requirements of N.J.S.A. 20:3-6.

## 1. MARATHON REPORT

McHale states that the determination of "Highest and Best Use" "established the basis for his valuation" of the Gallenthin Property. (McHale Report, 30-31). (See Da 44-45) Highest and Best Use is the use that is legally permissible, physically possible, financially feasible and maximally productive. (Id. at 30). (Id.) In determining the first prong of this analysis, McHale states that Defendant had indicated that the maximally productive use of the site would be for one of the following:

- Dredged materials containment facility, dredged materials processing facility.
- Dredged material processing facility with trans-shipment of processed dredged material by railcar or truck for the use at another location
- Soil remediation facility that accepts contaminated soils from off-site properties and treats the materials for beneficial reuse.

(Id. at 30).(Id.)

McHale then rejected Defendant's position based on the Marathon Report.(See Da 27,34) Marathon prepared its report without contacting Defendant or inviting it on the inspection of the Subject Property. (Gallenthin Cert,¶6). (See Da 124) Marathon also failed to provide Defendant any opportunity to provide meaningful input into this report. (Id.) Instead, Marathon relied on documents provided by Plaintiff's counsel to draw its conclusions. (Marathon Report,100-102). (See Da 74-75) These included a wetlands survey and improper delineation that was made without the consent of Defendant. (Marathon Report,

101-102). (See Da 75-76) Notably absent from the documents provided by Plaintiff's counsel were the prior leases with the United States to have the USACE use the site for dredge deposits. These and other relevant documents could and would have been provided by Defendant to demonstrate why it believed the site was permitted to continue as a dredge deposit and processing facility. This permitted use was one that Defendant had never abandoned. The Marathon Report also refers to permits that Defendant would have to obtain to receive materials when in fact it would be the dredging contractor that would seek permits to place the material onto the Subject Property. The Marathon Report also fails to properly consider the USACE's jurisdiction in this regard under §404 of the Clean Water Act. Title 33 U.S.C. §1344 which allows for the discharge of dredged or fill material into the waters of the United States including wetlands at specified disposal sites. Nor does the Marathon Report consider the railway/yard exclusion of Title 49 U.S.C. § 10501 (b)(2). 72-hour advance notice of was court ordered. (See Da 196-198)

Marathon avoided Defendant and the information it could have provided in the preparation of the self serving Marathon Report. In fact, Marathon demonstrates it went out of its way to avoid Defendant when it indicates it made its inspection from the public right-of-way as opposed to going on site which it

could have done upon proper notice. N.J.S.A. 20:3-6. (McHale Appraisal, 100) (The factual question is "How may anyone see 63 acres from the northwest corner of the Subject Property because that is the end of the public right-of-way? Clearly, Plaintiff's failure to invite Defendant on the Marathon Inspection and provide input into the development of its report vitiates any allegation that bona fide negotiations were conducted in this matter. (See Da 27)

## **2. T&M REPORT**

In evaluating the second prong of the Highest and Best Use analysis of what was physically possible on the Subject Property, the McHale Report relied solely on the Maximum Building Area Report prepared by T&M. (See Da 27,34,38,42,69) The T&M Report along with the Taking map relied on a wetlands delineation and Letter Of Interpretation ("LOI") improperly obtained by Plaintiff. See Point II(B), infra. The T&M Report and underlying wetlands delineation and markings on which it was based were done in 2006 without providing Defendant the opportunity to accompany T&M on its investigation or provide any input into the wetlands delineation and preparation of the T&M Report. (T&M Report, 94) (See Da 69) (Gallenthin Cert, ¶7) (See Da 124) T&M also fails to address the use of the alleged "wetlands" to receive dredge deposits. (See Da 40,69) Plaintiff was Court ordered to provide 72-hours notice to Defendant of

site access by Marathon and T&M and be given the opportunity to provide meaningful input into their reports. (See Da 172-174).

The fatal flaws in the T&M Report can also be seen by the manner in which it contradicts Plaintiff's own plans for the alleged bridge project. T&M states, "...the land within an existing pipeline easement (to Colonial Pipeline) could only be utilized for drive isles and parking spaces, not structures." (T&M Report, 94, ¶3.) (See Da 69) Notwithstanding, Plaintiff intends to build its bridge over portions of the pipeline easement. In addition, Plaintiff's alleged use of Parcel 1B as a drainage basin would also have to be built in part over this easement. Therefore, the T&M report contradicts by Plaintiff's own project plans.

The significance of T&M's failure is that the wetlands it identified on the Subject Property were not needed for Plaintiff's project. Therefore, Plaintiff had an incentive to maximize any delineation since it would merely reduce the amount of compensation it might be required to pay Defendant. T&M should therefore have invited Defendant along on any inspection to discuss any disagreements with the delineation and other issues that may have impacted their survey.

**B. Plaintiff's offer was inadequate because it was based on an improperly obtained wetlands delineation.**

The T&M Report and Plaintiff's offer and taking are premised on a Wetlands delineation that reflects the wetlands surveys performed by T&M in February 2006 and March 2006 and a Wetlands LOI for the Subject Property that Plaintiff obtained without the knowledge or consent of Defendant in violation of Court orders. (Gallenthin Cert, ¶¶8-12) (See Da 125, Da 172-174) The surveys and LOI are wholly improper and the offer based upon them does not form the basis of bona fide negotiations. As such, the within action should be dismissed.

N.J.A.C. 7:7A-3.5 and 7:7A-10 requires any application for a letter of interpretation from the New Jersey Department of Environmental Protection be submitted under the signature of the owner or someone authorized by the owner. In addition, the application must contain an unconditional authorization from the owner to enter its property.

In submitting the requisite application for the LOI on which it relied in making its alleged jurisdictional offer, Plaintiff did not "turn square corners" or deal forthrightly as it was obligated to do. F.M.C. Stores Co. v. Borough of Morris Plains, supra, 100 N.J. at 426-27. For example, Plaintiff submitted an application for General Permit, GP-12, and wetlands delineation for the Subject Property to the State Department of Environmental Protection without first giving the requisite notice pursuant to N.J.A.C. 7:7A-10.8. (Gallenthin Cert). (See

Da 123) This failure was exacerbated by David Shields, Executive Director of the Plaintiff, signing his name on the application as the "property owner." Then on page 3 of the LOI application, under section B entitled "Property Owner's Certification," George Strachan, also with the Plaintiff, signed his name and "certified" that he was the owner of the property upon which the proposed work was to be done. (Id.) This certification served as an "unconditional written consent to allow access to the [Subject Property] by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the project site." (Id.) Plaintiff intentionally disregarded Subject Property's Court access orders. (See Da 196)

This certified application and resulting permit which followed were clearly invalid because neither the Plaintiff nor Messrs. David Shields, George Strachan, and Marlin Peterson (all direct employees of Plaintiff) were the owners of the Subject Property. (Gallenthin Cert, ¶¶7-11.) (See Da 125) Defendant had not authorized or consented to the application. Plaintiff's actions therefore were in contravention to N.J.A.C. 7:7A-10.1(d) which requires applications be submitted by either the owner of the site or by a person who has legal authority to perform the activities proposed in the application on the site. (Id.) Plaintiff had no ownership of the site and no legal authority to

do any activities on the Subject Property at the time the applications were submitted. (Id.)

Plaintiff knew of this fatal flaw as evidenced by its letter March 4, 2009, (See Da 135) acknowledgment that the application submitted to the NJDEP was not properly authorized.

In an attempt to justify these three (3) separate and individual fatal errors, Plaintiff claimed the three (3) separate and individual actions of Messrs. David Shields, George Strachan, and Marlin Peterson certifying Plaintiff's ownership of the Subject Property were mere clerical errors. (Id.) Plaintiff then had the audacity to demand Defendant, as the lawful property owner, sign a new application on Plaintiff's behalf to replace the improper application that had been filed with the NJDEP. (Id.) Plaintiff's actions in connection with the Letter of Interpretation illustrates Plaintiff's blatant disregard of Defendant's U.S. and N.J. constitutionally based private property rights and the callous manner in which Plaintiff attempted to comply with the statutory prerequisites to filing this action. Such conduct completely fails to engender the type of bona fide negotiations required by N.J.S.A. 20:3-6 thereby requiring the dismissal of the complaint.

### POINT III

#### **PLAINTIFF HAS HIDDEN THE TRUE, IMPERMISSIBLE PURPOSE FOR THE CONDEMNATION**



A. The Plaintiff may not condemn the property sought in this action which impermissibly include uses that are part and parcel of the redevelopment

The within condemnation for the alleged purpose of a bridge and supporting detention basin must be set aside where the true purpose is to use the land as part of a redevelopment that the New Jersey Supreme Court has already held the property cannot be taken. Casino Reinvestment Dev. Auth v. Banin, 320 N.J. Super. 342, 345 (Law Div. 1998), citing Borough of Essex Fells v. Kessler Inst. for Rehab., Inc., 289 N.J. Super 329,337 (Law Div. 1995) wherein the Court stated "[W]here... a condemnation is commenced for an apparently valid public purpose, but the real purpose is otherwise, the condemnation may be set aside.". The pre-textual nature of this Taking is evidenced in history, plans and other documents leading to this taking. Accordingly, the Court must go beyond the mere self serving words expressed by Plaintiff in its complaint and consider all aspects and implications of this taking including those which are in contravention to the Court's previous decision. Gallenthin, supra, 191 N.J. at 372-73.

Upon a review of the documented history, this Court will be lead to the inescapable conclusion that this action lacks a definitive public purpose for which Plaintiff should be deemed to have properly exercised its power of eminent domain. Twp. Of

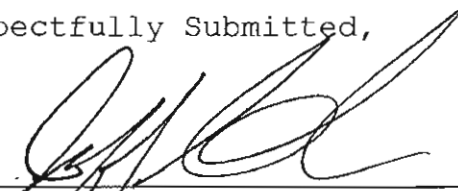
Readington v. Solberg Aviation Co., 409 N.J. Super. 282, 312 (App. Div. 2009); citing Riggs v. Long Beach Twp., 109 N.J. 601,614 (1988). The Plaintiff in conjunction with the Borough of Paulsboro has sought the redevelopment of the Subject Property and property owned by British Petroleum and DOW/Essex Chemical Company. That effort was stopped by the Defendants by an action in lieu of prerogative writs. Gallenthin, supra, 191 N.J. 344.

Because the Subject Property could no longer be acquired for redevelopment under the powers granted by the LRHL, Plaintiff and Borough had to rethink how they would acquire the Subject Property. Plaintiff now alleges it wishes to acquire the property for a bridge project. Conveniently, this type of Taking falls outside the purview of the LRHL and therefore would not require the Plaintiff to meet the substantial evidence standard associated with designating a property as being in need of redevelopment. N.J.S.A. 40A:12A-5. The purported bridge for which the Subject Property is being acquired however, has not been approved nor might it ever be approved. If the bridge is not approved, Plaintiff could merely redirect the use of the eight (8) acquisitions in its bundled Taking herein in fee simple to be used as part of the redevelopment. There is also no necessity of the eight (8) acquisitions in its bundled Taking herein to need public funds in this strained economy for a bridge that may never be built.

Subject Property, which the Plaintiff is not constitutionally allowed to take. Plaintiff clearly attempts to take the Subject Property and give it to their "group", just as in "Poletown 1", Poletown Neighborhood Council v. Detroit, 410 Mich. 616, 304 N.W.2d 455 (1981). The once tolerated attitude towards the exercise of the immense eminent domain power for economic development purposes ended in Michigan. "Poletown 2", County of Wayne v. Hathcock, 684 N.W.2d 765, (Mich. 2004).

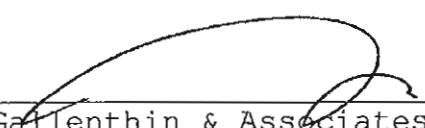
The *Gallenthin Court* ("Gallenthin 1") protected New Jersey property owners from "bogus blight" in 2007. (Gallenthin, 191 N.J. 344 (2007)). In this appeal, Gallenthin 2 argues unjust and inequitable "public use abuse", which should not be tolerated in New Jersey. Moreover, if there is either a private or public need, bona fide negotiations and easements are the legal solutions that respect all constitutionally protected private property interests.

Respectfully Submitted,



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Law Offices of Jeffrey S. Nowak  
Jeffrey S. Nowak, Esq.  
Attorney Defendant/Appellant



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Gallenthin & Associates  
George A. Gallenthin, Esq.  
*Pro Hac Vice*



ARCHER & GREINER, P.C.  
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**PATRICK M. FLYNN**  
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April 23, 2010

**VIA HAND DELIVERY**

Clerk, Superior Court of New Jersey  
Gloucester County Courthouse  
1 N. Broad Street  
Woodbury, NJ 08096

RE: *Gloucester County Improvement Authority v. Gallenthin Realty Development, Inc., et al.*

Dear Sir/Madam:

Enclosed for filing on behalf of Plaintiff, Gloucester County Improvement Authority are an original and two copies of the following documents:

1. Case Information Statement;
2. Verified Complaint (In Condemnation) with Jury Demand; and
3. Order to Show Cause.

Please file the originals of record and date stamp the extra copies returning same to our courier who has been instructed to wait. Also enclosed is this firm's check in the sum of \$200 to cover the filing fee in this matter.

PRINCETON OFFICE  
700 Alexander Park  
Suite 102  
Princeton, NJ 08540  
P 609-580-3700  
F 609-580-0051

FLEMINGTON OFFICE  
Plaza One  
1 State Route 12, Suite 201  
Flemington, NJ 08822-1722  
P 908-788-9700  
F 908-788-7854

PHILADELPHIA OFFICE  
One Liberty Place - 32nd Floor  
1650 Market Street  
Philadelphia, PA 19103-7393  
P 215-963-3300  
F 215-963-9999

WILMINGTON OFFICE  
300 Delaware Avenue  
Suite 1370  
Wilmington, DE 19801  
P 302-777-4350  
F 302-777-4352

GEORGETOWN OFFICE  
9 East Market Street  
P.O. Box 977  
Georgetown, DE 19947  
P 302-858-5151  
F 302-858-5161

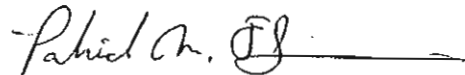
NEW YORK OFFICE  
2 Penn Plaza  
Suite 1500  
New York, NY 10121  
P 212-292-4988  
F 212-629-4568

Da 1

Clerk, Gloucester County Superior Court  
April 23, 2010  
Page 2

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



PATRICK M. FLYNN

PMF/FTJ/jp  
Enclosures

cc: Attorney General, State of New Jersey (w/enc., Certified Mail, Return Receipt Requested & Regular Mail)  
Atlantic City Electric Company (w/enc., via Certified Mail, Return Receipt Requested & Reg. Mail)  
Borough of Paulsboro, Kathy A. VanScoy, Borough Clerk (w/enc., via Certified Mail, Return Receipt Requested & Reg. Mail)  
Colonial Pipeline Company c/o Corporation Service Company (w/enc., via Certified Mail, Return Receipt Requested & Reg. Mail)  
Steven J. Eisenstein, Esq. (w/enc., via Regular Mail)  
William J. Ward, Esquire (w/enc., via Regular Mail)

Da 2

# CIVIL CASE INFORMATION STATEMENT (CIS)



Use for initial Law Division  
Civil Part pleadings (not motions) under Rule 4:5-1.  
**Pleading will be rejected for filing, under Rule 1:5-6(c),  
if information above the black bar is not completed or  
if attorney's signature is not affixed.**

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG/CK NO.

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME Christopher R. Gibson	TELEPHONE NUMBER (856) 795-2121	COUNTY OF VENUE Gloucester
---	------------------------------------	-------------------------------

FIRM NAME (if applicable) Archer & Greiner, P.C.	DOCKET NUMBER (When available)
---	--------------------------------

OFFICE ADDRESS One Centennial Square Haddonfield, NJ 08033	DOCUMENT TYPE Complaint
	JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

NAME OF PARTY (e.g., John Doe, Plaintiff) Gloucester County Improvement Authority (Plaintiff)	CAPTION Gloucester County Improvement Authority v. Gallenthin Realty Development Inc., et al.
---	---

CASE TYPE NUMBER (See reverse side for listing) 301	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
	IF YOU HAVE CHECKED "YES", SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.

RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS
---	-----------------------------

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN
---	---

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.**

**CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION**

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER/(explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS
--	---

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY?  YES  NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

	DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:
--	---	--

WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE?
--	----------------------------

ATTORNEY SIGNATURE  
*Christopher R. Gibson/PMF*



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

## CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

### Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

### Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE – PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 699 TORT – OTHER

### Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

### Track IV — Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 513 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

### Mass Tort (Track IV)

- |                                       |                       |
|---------------------------------------|-----------------------|
| 241 TOBACCO                           | 275 ORTHO EVRA        |
| 248 CIBA GEIGY                        | 276 DEPO-PROVERA      |
| 266 HORMONE REPLACEMENT THERAPY (HRP) | 277 MAHWAH TOXIC DUMP |
| 271 ACCUTANE                          | 278 ZOMETA/AREIDIA    |
| 272 BEXTRAV/CELEBREX                  | 601 ASBESTOS          |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 619 VIOXX             |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

- Verbal Threshold     Putative Class Action     Title 59

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One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968  
(856) 795-2121  
Attorneys for Plaintiff  
Gloucester County Improvement Authority

<p>GLOUCESTER COUNTY IMPROVEMENT AUTHORITY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GALLENTHIN REALTY DEVELOPMENT, INC., STATE OF NEW JERSEY, BOROUGH OF PAULSBORO, COLONIAL PIPELINE CO., ATLANTIC CITY ELECTRIC CO., AND PAULSBORO ACQUISITION CORP.,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY</p> <p>DOCKET NO.: <u>L 718-10</u></p> <p style="text-align: center;">Civil Action</p> <p><b>VERIFIED COMPLAINT (In Condemnation)</b></p>
--	--

Plaintiff, the Gloucester County Improvement Authority (“GCIA”), by way of Verified Complaint against Defendants, Gallenthin Realty Development, Inc. (“GRD”), State of New Jersey, Borough of Paulsboro, Colonial Pipeline Company, Atlantic City Electric Company, and Paulsboro Acquisition Corporation, says:

1. Plaintiff, the GCIA, is an Improvement Authority created by a Resolution of the Gloucester County Board of Chosen Freeholders pursuant to N.J.S.A. 40:37A-44, et seq., with its offices located at 109 Budd Boulevard, Woodbury, New Jersey 08096.

2. The GCIA is authorized by N.J.S.A. 40:37A-69 to acquire lands or rights therein by purchase, gift, grant, condemnation, or otherwise in the manner provided by the Eminent Domain Act, N.J.S.A. 20:3-1, et seq.

1  
Da 5



3. Defendant, GRD, is the owner of record of the property interests the GCIA is seeking to acquire through this action. Upon information and belief, GRD is a New Jersey corporation, with an office located at 26 South Bayard Avenue, Woodbury, New Jersey 08096.

4. The remaining Defendants listed below are other persons appearing of record to have an interest in the Subject Property (as hereinafter defined):

i. Colonial Pipeline Company, which by reason of a certain right-of-way interest that it holds in the Subject Property as described in Deed Book 1094, Page 893, may have a claim to an interest herein;

ii. Atlantic City Electric Company, which by reason of a certain utility easement that it holds in the Subject Property as described in Deed Book 1074, Page 268, may have a claim to an interest herein;

iii. Paulsboro Acquisition Corporation, which by reason of certain easements that it holds in the Subject Property as described in Deed Book 1077, Page 176, Deed Book 1081, Page 48, and Deed Book 1110, Page 301, may have a claim to an interest herein;

iv. Borough of Paulsboro, which by reason of certain easements that it holds in the Subject Property as described in Deed Book 1081, Page 48 and Deed Book 1110, Page 301, may have a claim to an interest herein;

v. The State of New Jersey, which by reason of certain riparian rights interests that it holds in the Subject Property, may have a claim to an interest herein;

vi. No other person, corporation, or government entity appears of record to have an interest in the Subject Property, and no other person, corporation, or government entity who may have or may claim to have an interest herein is known to the GCIA.

5. The GCIA is seeking to acquire the Subject Property from GRD subject to the interests of the Defendants listed above in Paragraphs 4(i)-(v).

6. In 2005, the County of Gloucester (“Gloucester County”) entered into an agreement with the State of New Jersey acting by and through the Commissioner of Transportation under which Gloucester County would construct a bridge and access roadway linking the proposed Paulsboro Marine Terminal with Exit 19 of Interstate 295 (the “Project”). A copy of that agreement (“Project Agreement”) is attached as Exhibit A. The primary purpose of this infrastructure improvement is to divert port-related commercial truck and vehicular traffic away from the Borough of Paulsboro’s existing residential and business district areas.

7. Pursuant to section 10 of the Project Agreement, Gloucester County had the right to assign to the GCIA the right and responsibility to construct the Project.

8. In November 2005, with the consent of the State of New Jersey, Gloucester County entered into an Interlocal Services Agreement through which it assigned its rights and responsibilities to construct the Project to the GCIA. A copy of that Interlocal Services Agreement is attached hereto as Exhibit B.

9. On November 14, 2005, the GCIA authorized the execution of the Interlocal Services Agreement through Resolution No. 179-05, a copy of which is attached hereto as Exhibit C.

10. On October 26, 2005, Gloucester County authorized the execution of the Interlocal Services Agreement through a Resolution of the Gloucester County Board of Chosen Freeholders, a copy of which is attached hereto as Exhibit D.

11. The GCIA has determined that it is necessary to acquire certain land and other property interests to construct the improvements necessary for the Project.

12. The GCIA initially authorized the actions necessary to pursue the acquisition of the land and other property interests required for the Project by Resolution dated June 18, 2009, a copy of which is attached hereto as Exhibit E.

13. By letter dated July 6, 2009, a copy of which is attached hereto as Exhibit F, the GCIA made a formal written offer to purchase the land and other property interests required for the Project from GRD for the appraised value of that land and other property interests as reported in an appraisal report dated May 15, 2009.

14. On January 25, 2010, representatives of the GCIA and GRD met to engage in bona fide negotiations for the purchase of the property required for the Project.

15. Subsequently, in response to a request made by GRD during bona fide negotiations, updated engineering drawings were issued reflecting a slight shift in the position of the proposed roadway and minor changes to the area of the proposed taking.

16. The property interests and easements currently sought to be acquired on GRD's property (Block 1, Lot 3 on the tax map of the Borough of Paulsboro) are 3.395 acres in fee simple, 0.256 acres in permanent easements, and 1.73 acres in temporary construction easements, as more particularly described in Exhibit G attached to this Verified Complaint.

17. In addition to fee simple property interests held by GRD, the GCIA is also seeking to acquire GRD's interest in a roadway easement, which is located partially on property owned by the Borough of Paulsboro (Block 1, Lot 2 on the tax map of the Borough of Paulsboro) and partially on property owned by Paulsboro Acquisition Corp. (Block 1, Lot 18 on the tax map of the Borough of Paulsboro) and is referenced in Book 1081, Page 48 of the Gloucester County Book of Deeds as amended in Book 1110, Page 301 of the Gloucester County Book of Deeds, attached as Exhibit H.

Dg 8

18. The property interests and easements described in paragraphs 16 and 17 collectively represent the land and other property interests the GCIA seeks to acquire through this action (“the Subject Property”).

19. The terms of the temporary construction easement the GCIA seeks to acquire include an initial thirty-six month easement period, subject to renewal at the GCIA’s discretion for six month increments thereafter, to allow the GCIA, its employees, agents, contractors, successors, and assigns a full, free, unlimited, unobstructed, and uninterrupted right of ingress, egress, and regress at all times to and from the temporary construction easement area as may be necessary in order to complete the Project. The temporary construction easement shall allow GRD a continued right of access to the temporary construction easement area to perform inspection and maintenance of GRD’s property in that area and to obtain access to other areas of GRD’s property.

20. The terms of the permanent easement the GCIA seeks to acquire include a full, free, unlimited, unobstructed, and uninterrupted right of ingress, egress, and regress at all times to and from the permanent easement area for the GCIA, its employees, agents, contractors, successors and assigns in order to perform any activities necessary for the completion of the Project or subsequent construction, reconstruction, deconstruction, inspection, maintenance, repair, or replacement activities associated with the Project.

21. By letter dated March 27, 2010, a copy of which is attached hereto as Exhibit I, the GCIA forwarded to GRD an updated appraisal report reflecting the changes to the Subject Property to be acquired and the increased compensation to be paid, as a prelude to continuing bona fide negotiations for the GCIA’s purchase of the Subject Property.

Da 9

22. The updated appraisal report provided a disclosure of the manner in which the amount of compensation has been calculated, including: (a) map and description of land to be acquired and identity of improvements to be acquired, if any; (b) a statement of the full fair market value, including: (i) a description of the appraisal valuation method or methods relied upon, as well as (ii) a breakdown of the appraised value allocated to the land to be acquired, and improvements to be acquired, if any; (c) data concerning comparable sales or leases relied upon in determining the amount of compensation offered, which includes: (i) names of seller and purchaser or landlord and tenant, (ii) location of property by block, lot, street, street number, and municipality, (iii) date of sale or date and duration of lease, (iv) the consideration for the sale or amount of rent, and (v) the book and page number of the recording of the deed; and (d) any unusual factors known to the condemnor which may affect value.

23. The GCIA authorized actions necessary to pursue the taking of the Subject Property by Resolution dated April 15, 2010, a copy of which is attached hereto as Exhibit J.

24. Pursuant to N.J.S.A. 20:3-6, on April 21, 2010, representatives of the GCIA and GRD once again met to conduct bona fide negotiations for the purchase of the Subject Property, at which time the GCIA offered to purchase the Subject Property for \$443,000.00, the estimated compensation determined in the updated appraisal report.

25. Despite good faith efforts, the GCIA has been unable to acquire the Subject Property through bona fide negotiations with GRD.

26. As a condemnor, the GCIA is not liable for costs associated with the investigation and/or removal or remediation costs associated with any discharge of hazardous substances or contaminants that may have occurred or begun prior to vesting of title to and ownership of the Subject Property in the GCIA, and the GCIA does not accept liability for pre-existing

contamination at the Subject Property, if any. The GCIA reserves any and all rights it has or may have to recover in this action, or in any subsequent action, all costs of environmental investigation and all costs for removal or remediation of contamination that may be incurred in the future by reason of conditions that were in existence at the Subject Property as of or prior to the date of vesting of title and possession in the GCIA pursuant to N.J.S.A. 20:3-19. The GCIA also reserves any and all rights to move for appropriate relief under law and equity, including, but not limited to, an order requiring the Clerk of the Superior Court to not release any funds remaining on deposit until the contamination is remediated and/or cleaned up or any solid waste is properly removed or closure is carried out in accordance with applicable state and federal standards, and to move for any other relief, including administrative relief, which may be necessary to protect the GCIA's rights and interests.

**WHEREFORE**, the GCIA demands judgment against Defendants as follows:

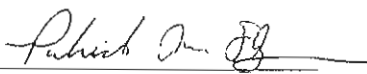
- a. That the condemnor, the GCIA, is duly vested with and has duly exercised its authority to acquire the Subject Property being condemned;
- b. Appointing three (3) disinterested Commissioners in accordance with and pursuant to N.J.S.A. 20:3-1, et. seq. to fix the compensation to be paid for the taking of the Subject Property and preserving the reservations in paragraph 26 hereof; and
- c. Such other relief as the Court deems just and equitable.

*Da II*

**DESIGNATION OF TRIAL COUNSEL**

Christopher R. Gibson is designated as trial counsel in this matter on behalf of Plaintiff,  
the Gloucester County Improvement Authority.

ARCHER & GREINER  
A Professional Corporation  
Attorneys for Plaintiff,  
Gloucester County Improvement Authority

BY:   
CHRISTOPHER R. GIBSON  
PATRICK M. FLYNN

Dated: April 23, 2010

DA 12

**CERTIFICATION PURSUANT TO R. 4:5-1(b)**

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that to the best of my knowledge and belief, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Plaintiff at this time, nor is there any non-party known to Plaintiff at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

ARCHER & GREINER  
A Professional Corporation  
Attorneys for Plaintiff,  
Gloucester County Improvement Authority

BY:   
PATRICK M. FLYNN

Dated: April 23, 2010

Da 13



VERIFYING AFFIDAVIT

GEORGE STRACHAN, of full age, upon his oath deposes and says:

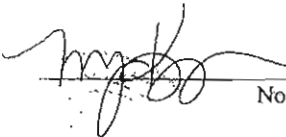
1. I am the Administrator of the Gloucester County Improvement Authority and as such, am fully familiar with the facts in this Verified Complaint.
2. I have read the foregoing Verified Complaint, and I hereby certify that all factual allegations contained therein are true and accurate based upon my personal knowledge, except those made upon information and belief, which are made based upon information provided to me and which I believe is true and accurate.
3. I have reviewed Exhibits A through J to the Verified Complaint and they are accurate copies of documents received by the GCIA or issued on its behalf.

  
GEORGE STRACHAN

Sworn and subscribed to before

me this 22 day

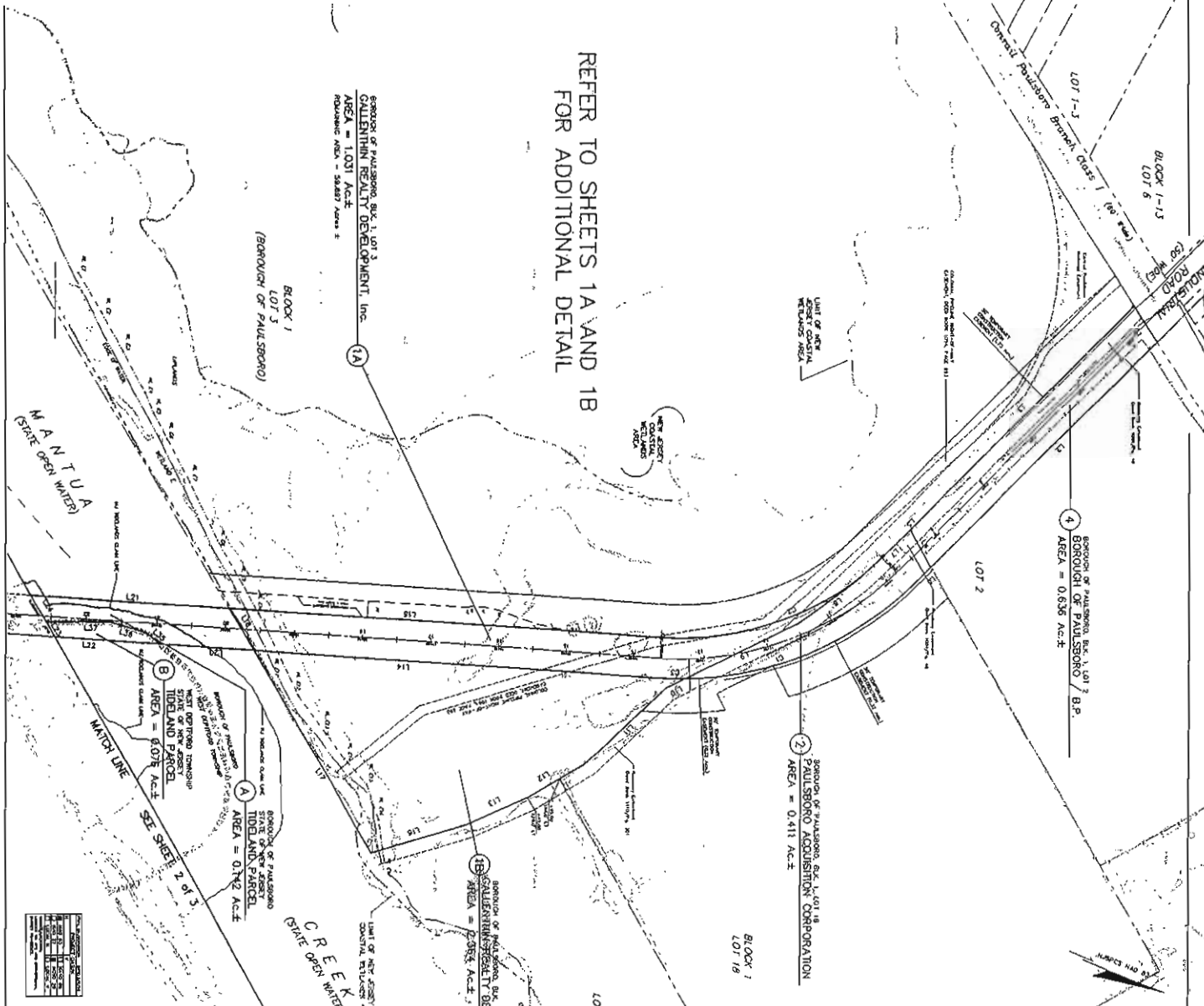
of April, 2010.

  
\_\_\_\_\_  
Notary Public

MEGAN CHRISTINE KERR  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 6/30/2010

5457339v1

REFER TO SHEETS 1A AND 1B  
FOR ADDITIONAL DETAIL



BOROUGH OF PAULSBORO, P.C. 1, LOT 7  
AREA = 0.636 AC±

BOROUGH OF PAULSBORO, P.C. 1, LOT 18  
PAULSBORO ACQUISITION CORPORATION  
AREA = 0.411 AC±

BOROUGH OF PAULSBORO, P.C. 1, LOT 1  
GALLUCCI/RESELL, INC. DEVELOPMENT, INC.  
AREA = 2.233 AC±

BLOCK 1  
LOT 5  
(BOROUGH OF PAULSBORO)

BOROUGH OF PAULSBORO, P.C. 1, LOT 3  
CAULENTINI REALTY DEVELOPMENT, INC.  
AREA - LOT 1 AC±  
Reference: Area - Sheets 1 and 2

AREA = 0.172 AC±

AREA = 0.078 AC±

AREA = 0.078 AC±



SUMMARY OF PARCEL ACQUISITIONS

PARCEL No.	OWNER	DEED No./Date	AC. & S.F.	AREA OF ACQUISITION	REMARKS
PARCEL No. 1A	...	...	...	...	...
PARCEL No. 1B	...	...	...	...	...
PARCEL No. 1C	...	...	...	...	...
PARCEL No. 1D	...	...	...	...	...
PARCEL No. 1E	...	...	...	...	...
PARCEL No. 1F	...	...	...	...	...
PARCEL No. 1G	...	...	...	...	...
PARCEL No. 1H	...	...	...	...	...
PARCEL No. 1I	...	...	...	...	...
PARCEL No. 1J	...	...	...	...	...
PARCEL No. 1K	...	...	...	...	...
PARCEL No. 1L	...	...	...	...	...
PARCEL No. 1M	...	...	...	...	...
PARCEL No. 1N	...	...	...	...	...
PARCEL No. 1O	...	...	...	...	...
PARCEL No. 1P	...	...	...	...	...
PARCEL No. 1Q	...	...	...	...	...
PARCEL No. 1R	...	...	...	...	...
PARCEL No. 1S	...	...	...	...	...
PARCEL No. 1T	...	...	...	...	...
PARCEL No. 1U	...	...	...	...	...
PARCEL No. 1V	...	...	...	...	...
PARCEL No. 1W	...	...	...	...	...
PARCEL No. 1X	...	...	...	...	...
PARCEL No. 1Y	...	...	...	...	...
PARCEL No. 1Z	...	...	...	...	...
PARCEL No. 2A	...	...	...	...	...
PARCEL No. 2B	...	...	...	...	...
PARCEL No. 2C	...	...	...	...	...
PARCEL No. 2D	...	...	...	...	...
PARCEL No. 2E	...	...	...	...	...
PARCEL No. 2F	...	...	...	...	...
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PARCEL No. 2X	...	...	...	...	...
PARCEL No. 2Y	...	...	...	...	...
PARCEL No. 2Z	...	...	...	...	...
PARCEL No. 3A	...	...	...	...	...
PARCEL No. 3B	...	...	...	...	...
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PARCEL No. 3U	...	...	...	...	...
PARCEL No. 3V	...	...	...	...	...
PARCEL No. 3W	...	...	...	...	...
PARCEL No. 3X	...	...	...	...	...
PARCEL No. 3Y	...	...	...	...	...
PARCEL No. 3Z	...	...	...	...	...

LEGEND

---	PROPERTY LINE
---	TRACT LINE
---	RIGHT-OF-WAY LINE
---	GENERAL ADJACENT LOT BOUNDARY LINE
---	ADJACENT LOT BOUNDARY LINE
---	ADJACENT WETLAND BOUNDARY LINE
---	ADJACENT MARSH BOUNDARY LINE
---	ADJACENT OPEN WATER BOUNDARY LINE
---	ADJACENT ROAD BOUNDARY LINE
---	ADJACENT BRIDGE BOUNDARY LINE
---	ADJACENT UTILITY BOUNDARY LINE
---	ADJACENT RAILROAD BOUNDARY LINE
---	ADJACENT AIRPORT BOUNDARY LINE
---	ADJACENT PARK BOUNDARY LINE
---	ADJACENT SCHOOL BOUNDARY LINE
---	ADJACENT CHURCH BOUNDARY LINE
---	ADJACENT SYNAGOGUE BOUNDARY LINE
---	ADJACENT MOSQUE BOUNDARY LINE
---	ADJACENT TEMPLE BOUNDARY LINE
---	ADJACENT GYMNASIUM BOUNDARY LINE
---	ADJACENT THEATRE BOUNDARY LINE
---	ADJACENT CONVENT BOUNDARY LINE
---	ADJACENT HOSPITAL BOUNDARY LINE
---	ADJACENT CLINIC BOUNDARY LINE
---	ADJACENT PHARMACY BOUNDARY LINE
---	ADJACENT RESTAURANT BOUNDARY LINE
---	ADJACENT BAR BOUNDARY LINE
---	ADJACENT CLUB BOUNDARY LINE
---	ADJACENT GOLF COURSE BOUNDARY LINE
---	ADJACENT TENNIS COURTS BOUNDARY LINE
---	ADJACENT SWIMMING POOL BOUNDARY LINE
---	ADJACENT SKI RESORT BOUNDARY LINE
---	ADJACENT CAMPGROUND BOUNDARY LINE
---	ADJACENT BOAT RAMP BOUNDARY LINE
---	ADJACENT BEACH BOUNDARY LINE
---	ADJACENT PARKING LOT BOUNDARY LINE
---	ADJACENT DRIVEWAY BOUNDARY LINE
---	ADJACENT ALLEY BOUNDARY LINE
---	ADJACENT EASEMENT BOUNDARY LINE
---	ADJACENT ENCROACHMENT BOUNDARY LINE
---	ADJACENT SURVEY ERROR BOUNDARY LINE
---	ADJACENT UNKNOWN BOUNDARY LINE

NOTES:  
1. OWNER'S SURVEY AND PROPERTY LINE DATA TO BE VERIFIED BY THE SURVEYOR.  
2. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
3. ALL BEARINGS ARE GIVEN AS TRUE BEARINGS.  
4. ALL CORNERS ARE TO BE MARKED WITH IRON PIPES OR IRON NAILS.  
5. ALL CURVES ARE TO BE LOCATED BY SIGHT OR BY MEANS OF AN ELECTRONIC DISTANCE MEASUREMENT DEVICE.  
6. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTER LINE OF THE ROAD OR ALONG THE CENTER LINE OF THE TRACT.  
7. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTER LINE OF THE TRACT.  
8. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTER LINE OF THE TRACT.  
9. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTER LINE OF THE TRACT.  
10. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTER LINE OF THE TRACT.

PAULSBORO MARINE TERMINAL  
ACCESS ROAD AND BRIDGE  
TOWNSHIP OF WEST DEPTERVO AND BOROUGH OF PAULSBORO  
CAMDEN COUNTY, NEW JERSEY

GENERAL PROPERTY PARCEL MAP

WILLIAM E. ALBIRGER P.L.S., P.P.  
SURVEYOR

1	1	1	1
2	2	2	2
3	3	3	3
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100	100	100	100

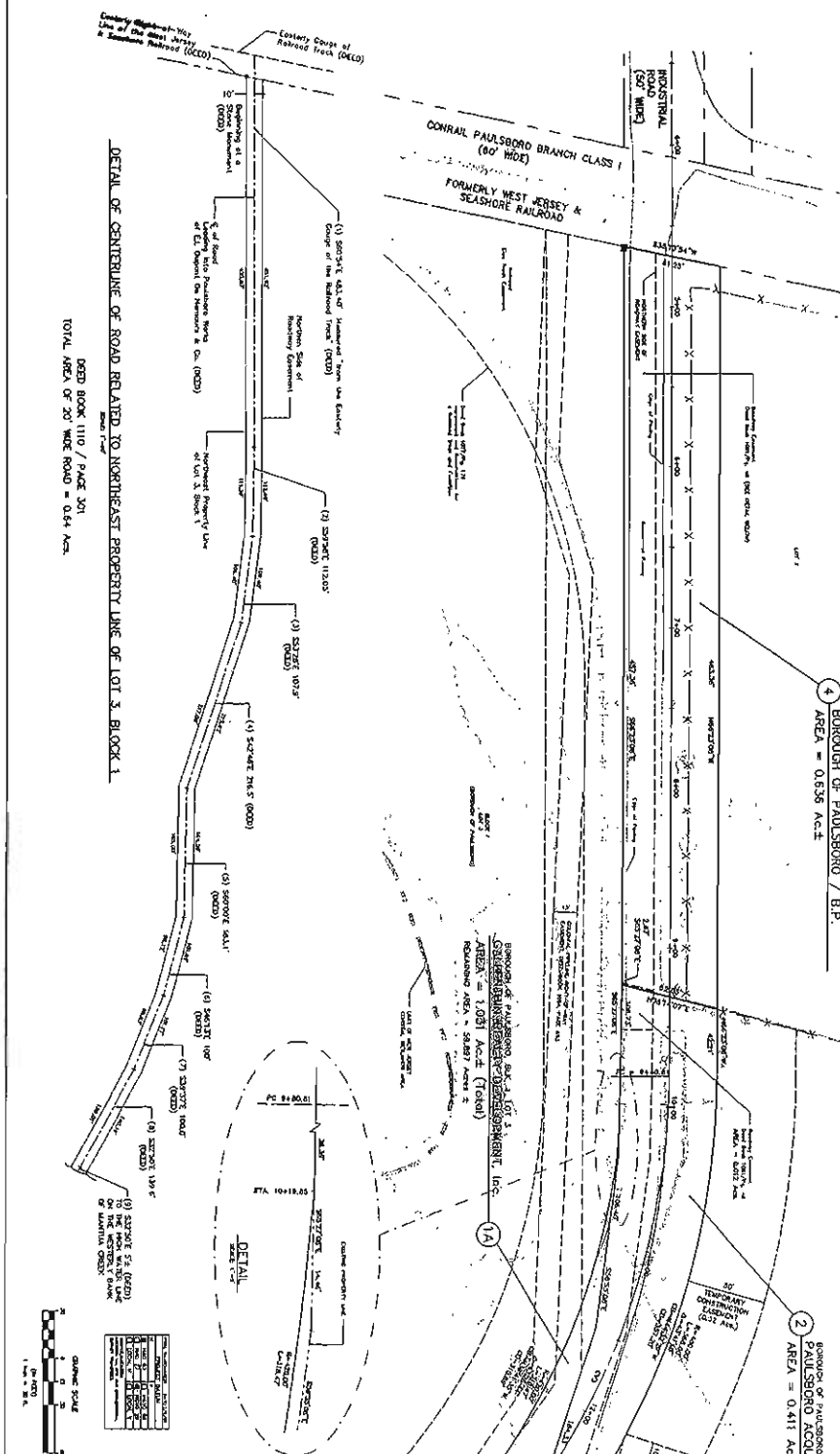
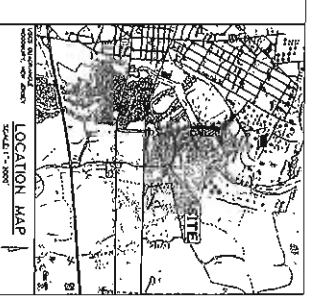
Da 15

SUMMARY OF PARCEL ACQUISITIONS

Parcel No.	Acquisition Method	Date of Acquisition	Area of Acquisition	Remarks
1.1	BY DEED	01/14/2008	0.0000 AC	
1.2	BY DEED	01/14/2008	0.0000 AC	
1.3	BY DEED	01/14/2008	0.0000 AC	
1.4	BY DEED	01/14/2008	0.0000 AC	
1.5	BY DEED	01/14/2008	0.0000 AC	
1.6	BY DEED	01/14/2008	0.0000 AC	
1.7	BY DEED	01/14/2008	0.0000 AC	
1.8	BY DEED	01/14/2008	0.0000 AC	
1.9	BY DEED	01/14/2008	0.0000 AC	
1.10	BY DEED	01/14/2008	0.0000 AC	
1.11	BY DEED	01/14/2008	0.0000 AC	
1.12	BY DEED	01/14/2008	0.0000 AC	
1.13	BY DEED	01/14/2008	0.0000 AC	
1.14	BY DEED	01/14/2008	0.0000 AC	
1.15	BY DEED	01/14/2008	0.0000 AC	
1.16	BY DEED	01/14/2008	0.0000 AC	
1.17	BY DEED	01/14/2008	0.0000 AC	
1.18	BY DEED	01/14/2008	0.0000 AC	
1.19	BY DEED	01/14/2008	0.0000 AC	
1.20	BY DEED	01/14/2008	0.0000 AC	
1.21	BY DEED	01/14/2008	0.0000 AC	
1.22	BY DEED	01/14/2008	0.0000 AC	
1.23	BY DEED	01/14/2008	0.0000 AC	
1.24	BY DEED	01/14/2008	0.0000 AC	
1.25	BY DEED	01/14/2008	0.0000 AC	
1.26	BY DEED	01/14/2008	0.0000 AC	
1.27	BY DEED	01/14/2008	0.0000 AC	
1.28	BY DEED	01/14/2008	0.0000 AC	
1.29	BY DEED	01/14/2008	0.0000 AC	
1.30	BY DEED	01/14/2008	0.0000 AC	
1.31	BY DEED	01/14/2008	0.0000 AC	
1.32	BY DEED	01/14/2008	0.0000 AC	
1.33	BY DEED	01/14/2008	0.0000 AC	
1.34	BY DEED	01/14/2008	0.0000 AC	
1.35	BY DEED	01/14/2008	0.0000 AC	
1.36	BY DEED	01/14/2008	0.0000 AC	
1.37	BY DEED	01/14/2008	0.0000 AC	
1.38	BY DEED	01/14/2008	0.0000 AC	
1.39	BY DEED	01/14/2008	0.0000 AC	
1.40	BY DEED	01/14/2008	0.0000 AC	
1.41	BY DEED	01/14/2008	0.0000 AC	
1.42	BY DEED	01/14/2008	0.0000 AC	
1.43	BY DEED	01/14/2008	0.0000 AC	
1.44	BY DEED	01/14/2008	0.0000 AC	
1.45	BY DEED	01/14/2008	0.0000 AC	
1.46	BY DEED	01/14/2008	0.0000 AC	
1.47	BY DEED	01/14/2008	0.0000 AC	
1.48	BY DEED	01/14/2008	0.0000 AC	
1.49	BY DEED	01/14/2008	0.0000 AC	
1.50	BY DEED	01/14/2008	0.0000 AC	

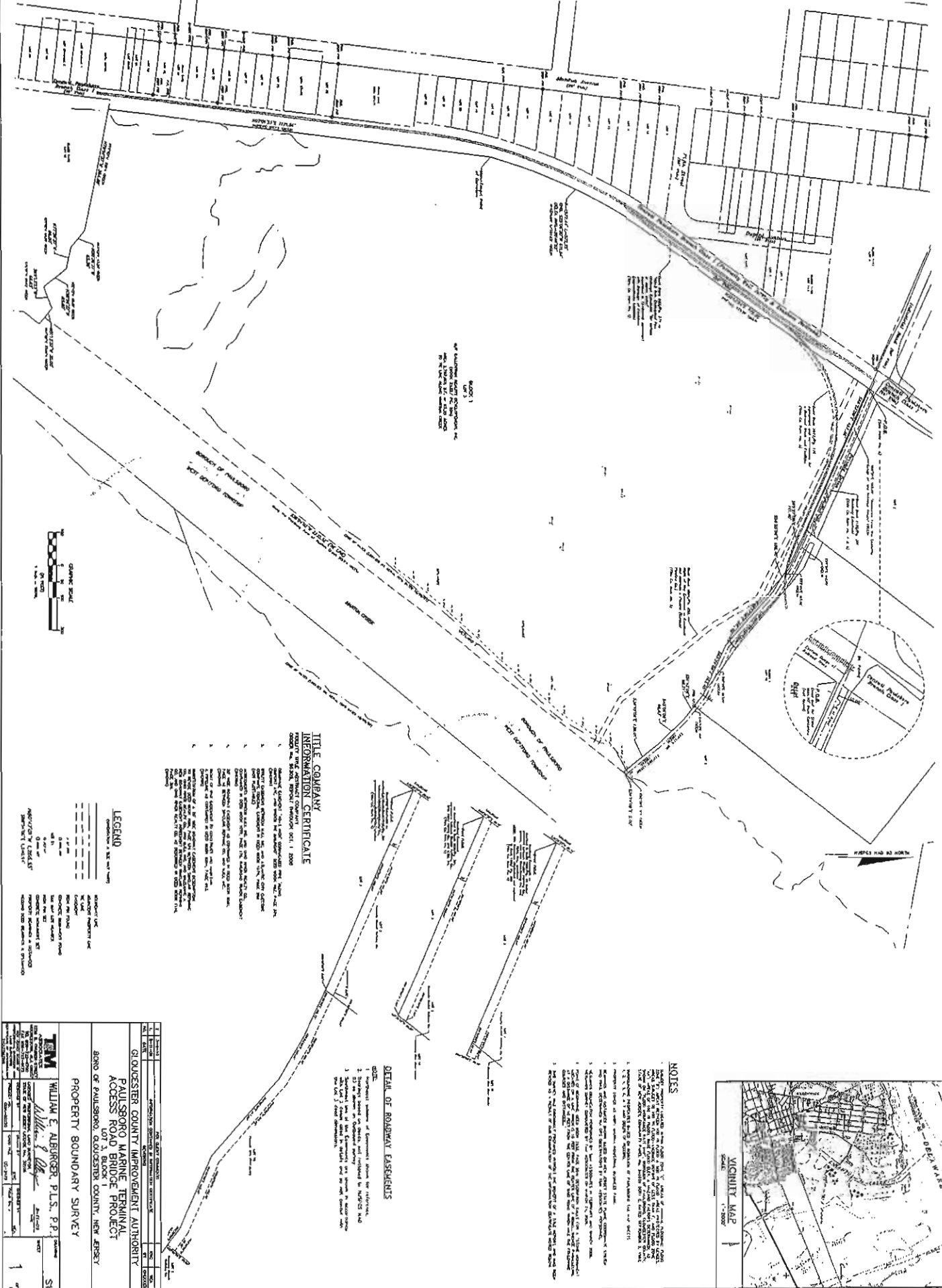
LEGEND: Color and description of various land acquisition methods including Deed, Easement, Right of Way, etc.

NOTES: 1. ALL ACQUISITIONS... 2. CONSENTS... 3. EASEMENTS... 4. EASEMENTS... 5. EASEMENTS... 6. EASEMENTS... 7. EASEMENTS... 8. EASEMENTS... 9. EASEMENTS... 10. EASEMENTS...



1.1	0.00 AC		
1.2	0.00 AC		
1.3	0.00 AC		
1.4	0.00 AC		
1.5	0.00 AC		
1.6	0.00 AC		
1.7	0.00 AC		
1.8	0.00 AC		
1.9	0.00 AC		
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1.46	0.00 AC		
1.47	0.00 AC		
1.48	0.00 AC		
1.49	0.00 AC		
1.50	0.00 AC		

Da 16



**TITLE COMPANY  
INFORMATION CERTIFICATE**

1. The above described property is shown as being owned by the undersigned title company as of the date hereof.

2. The above described property is shown as being owned by the undersigned title company as of the date hereof.

3. The above described property is shown as being owned by the undersigned title company as of the date hereof.

4. The above described property is shown as being owned by the undersigned title company as of the date hereof.

5. The above described property is shown as being owned by the undersigned title company as of the date hereof.

6. The above described property is shown as being owned by the undersigned title company as of the date hereof.

7. The above described property is shown as being owned by the undersigned title company as of the date hereof.

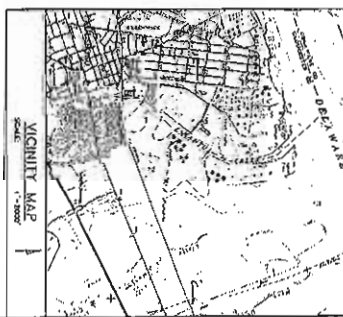
8. The above described property is shown as being owned by the undersigned title company as of the date hereof.

9. The above described property is shown as being owned by the undersigned title company as of the date hereof.

10. The above described property is shown as being owned by the undersigned title company as of the date hereof.

**LEGEND**

- Easement
- Right of Way
- Property Line
- Survey Line
- Boundary Line
- Easement
- Right of Way
- Property Line
- Survey Line
- Boundary Line



**NOTES**

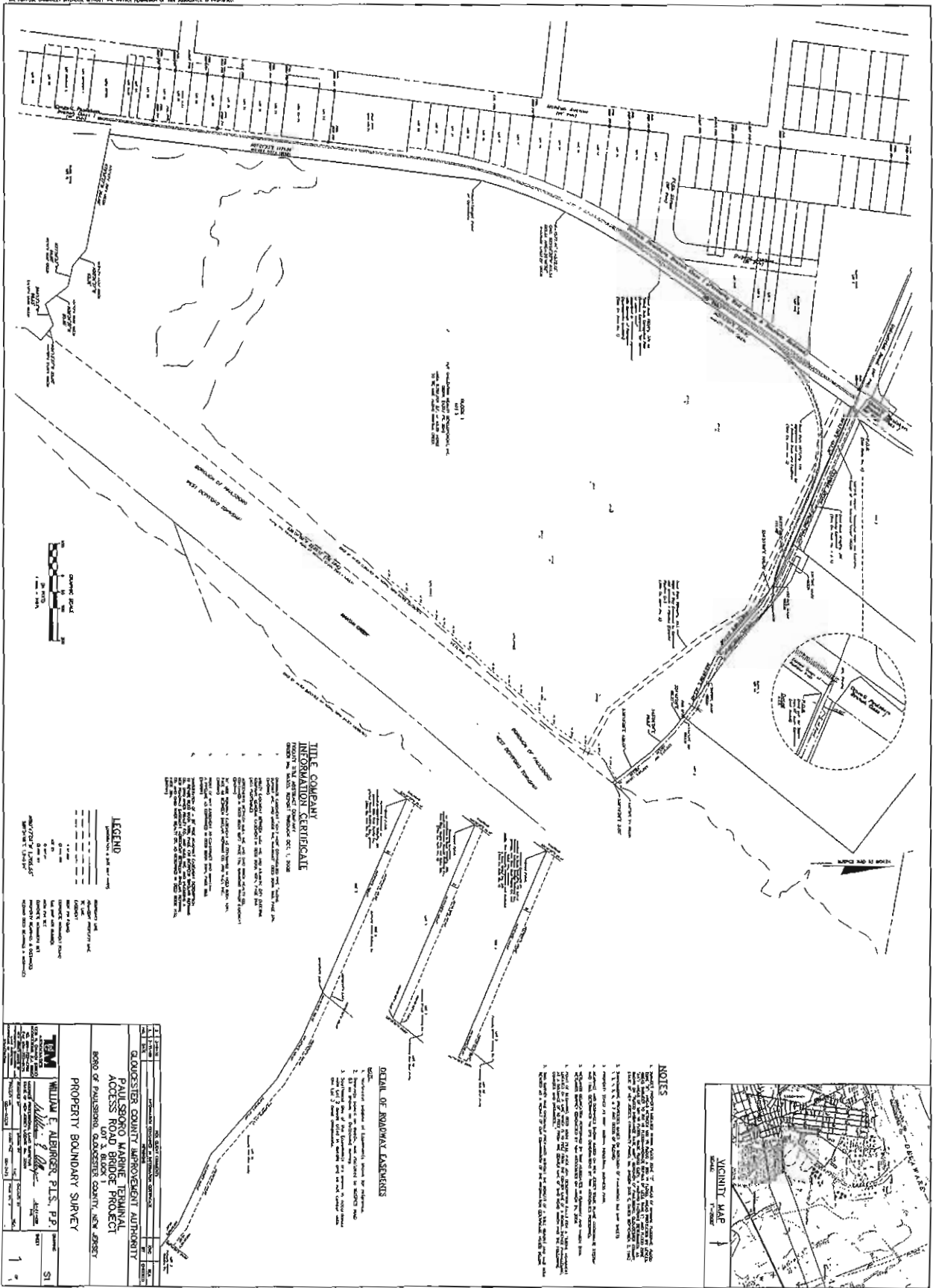
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7. The above described property is shown as being owned by the undersigned title company as of the date hereof.
8. The above described property is shown as being owned by the undersigned title company as of the date hereof.
9. The above described property is shown as being owned by the undersigned title company as of the date hereof.
10. The above described property is shown as being owned by the undersigned title company as of the date hereof.

**DETAIL OF ROADWAY EASEMENTS**

1. Easement shown as being owned by the undersigned title company as of the date hereof.
2. Easement shown as being owned by the undersigned title company as of the date hereof.
3. Easement shown as being owned by the undersigned title company as of the date hereof.
4. Easement shown as being owned by the undersigned title company as of the date hereof.
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7. Easement shown as being owned by the undersigned title company as of the date hereof.
8. Easement shown as being owned by the undersigned title company as of the date hereof.
9. Easement shown as being owned by the undersigned title company as of the date hereof.
10. Easement shown as being owned by the undersigned title company as of the date hereof.

<b>PAULSBORO MARINE TERMINAL ACCESS ROAD BRIDGE PROJECT</b> LOT 1, BLOCK 1, BRIDGE PROJECT BORO OF PAULSBORO, CAUSEWAY COUNTY, NEW JERSEY	
<b>PROPERTY BOUNDARY SURVEY</b>	
<b>WILLIAM E. ALBERGER, P.L.S., P.E.</b> Surveyor 1000 ... ... ...	<b>ST</b> ... ...

DA17



**TITLE COMPANY INFORMATION CERTIFICATE**  
 PROJECT: PAUL SORGO MARINE TERMINAL ACCESS ROAD BRIDGE PROJECT  
 PREPARED BY: [Name]  
 DATE: [Date]

**LEGEND**  
 [List of symbols and their corresponding descriptions]

<b>PAUL SORGO MARINE TERMINAL ACCESS ROAD BRIDGE PROJECT</b> LOT 1, BLOCK 1 TOWN OF PAULSBERG, GARCESIER COUNTY, NEW JERSEY	
<b>PROPERTY BOUNDARY SURVEY</b> WILLIAM E. ALBERICI, P.L.S., P.E. [Signature] [Date]	1 of 1

**DETAIL OF BOUNDARY EASEMENTS**  
 [Detailed description of easements and survey points]

**NOTES**  
 1. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE NEW JERSEY SURVEYING ACT AND THE RULES OF THE BOARD OF SURVEYING AND GEODYSICS.  
 2. THE SURVEY WAS CONDUCTED USING THE FOLLOWING METHODS AND EQUIPMENT:  
 3. THE SURVEY WAS CONDUCTED ON [Date].  
 4. THE SURVEY WAS CONDUCTED BY [Name].  
 5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FOLLOWING STANDARDS:  
 6. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FOLLOWING STANDARDS:



18

Da 18

rec 3 31-64

1061 48

ROADWAY EASEMENT

X

KNOW ALL MEN BY THESE PRESENTS that SINCLAIR REFINING COMPANY, a Maine corporation authorized to transact business as a foreign corporation in the State of New Jersey, having its principal business office at 600 Fifth Avenue, New York 20, N. Y., hereinafter referred to as "Grantor," for and in consideration of ONE and 00/100 (\$1.00) DOLLAR, receipt whereof is hereby acknowledged, and of the conditions, covenants and agreements to be kept, observed, and performed as hereinafter set forth, by OHIO RIVER REALTY COMPANY, a Kentucky corporation duly authorized to transact business as a foreign corporation in the State of New Jersey, having its principal place of business at 8316 Grade Lane, Louisville, Kentucky, and M. G. I INCORPORATED, a New Jersey corporation, having its principal place of business at Paulsboro, New Jersey, hereinafter referred to as "Grantees," does hereby, subject to the continuing fulfillment of the consideration aforesaid, give, grant and convey unto the said Grantees an easement for roadway purposes twenty (20) feet in width, extending from the Southeasterly right of way of the West Jersey and Seashore Railroad to the Northwesterly line of lands of Ohio River Realty Company in the Borough of Paulsboro, County of Gloucester, State of New Jersey, the Southwesterly side of which easement is described as follows:

BEGINNING at a concrete monument in the Southeasterly line of lands of the West Jersey and Seashore Railroad, said monument also marking the most northerly corner of lands formerly of Stille O. Chew, now M. G. I, Incorporated, by deed from Paul L. Gellenthin recorded in Deed Book 817, page 417, being the southerly line of lands of Sinclair Refining Company, by deed recorded in Deed Book 1051, page 435; thence along division line between lands of Sinclair Refining Company and lands of M. G. I, Incorporated, south 67 degrees, 10 minutes, 00 seconds east 455.87 feet to a monument; thence still along division line between said lands south 66 degrees, 5 minutes, 00 seconds east ~~32.71~~ 32.71 feet to a monument in the line of lands of said M. G. I, Incorporated, and corner to lands of Ohio River Realty Company, by deed from Maurice R. Binder and wife recorded in Deed Book 1006, page 130.

TO HAVE AND TO HOLD the above described easement unto the said Grantees, their successors and assigns, subject, however, to the conditions, covenants and agreements to be kept, observed, and performed by the Grantees as follows:

Da 19

1) Grantees agree to observe all rules and regulations that have been or may hereafter be promulgated by Grantor for the conduct of individuals while on Grantor's property, including but not limited to rules or regulations with respect to acts or practices deemed hazardous, and also agree to enforce compliance therewith by their employees, agents, invitees and licensees.

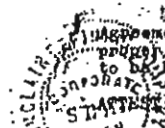
2) Grantees, at their sole cost and expense, shall maintain in good condition and repair, the premises hereby granted.

3) Grantees hereby release, relinquish and discharge and agree to indemnify, protect and save harmless Grantor of and from any and all claims, demands and liability for any loss, damage or injury to, including the death of, persons (whether they be third persons or employees of the parties hereto) and other like or different casualty to property (whether it be that of the parties hereto or of third persons) caused by, growing out of or happening in connection with use, operation or maintenance of the easement hereby granted, by Grantees, their employees, agents, invitees or licensees.

4) Grantor reserves the right to use its real estate for all purposes not inconsistent with this grant. Grantees accept this grant subject to all prior easements, leases or other interests in the above described real estate created by Grantor or its predecessors in title whether the same be of record or not, and all rights conferred by this grant shall be exercised so as to avoid unreasonable interference with any of said prior easements, leases or other interests.

5) The terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns, provided, however, that the easement and rights herein granted to Grantees shall not be assigned in whole or in part without the consent of Grantor in writing first obtained.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed this 19th day of March, 1964, by their proper officers thereunto duly authorized, and their corporate seals to be hereto affixed as of the day and year first above written.

  
[Signature]  
Assistant Secretary  
[Signature]  
Secretary  
[Signature]  
Secretary

SINCLAIR REFUELING COMPANY  
By [Signature] Vice-President  
OHIO RIVER REALTY COMPANY  
By [Signature] President  
M. O. I, INCORPORATED  
By [Signature] President

Da 20

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ROADWAY EASEMENT

X

THIS AGREEMENT made this 22<sup>nd</sup> day of November, A.D. 1965, between SINCLAIR REFINING COMPANY (a corporation of Maine) of the one part and OHIO RIVER REALTY COMPANY (a corporation of Kentucky) and M.G.I., INCORPORATED (a corporation of New Jersey) of the other part.

WHEREAS, Sinclair Refining Company by Deed of Easement dated March 19, 1964, and recorded in Deed Book 1081, page 48, granted to Ohio River Realty Company an easement for a Roadway 20 feet wide across a portion of its land more particularly described in said Deed recorded in Deed Book 1081, page 48; and

WHEREAS, because of a boundary line agreement between Sinclair Refining Company, Ohio River Realty Company, and Universal Container Corporation, dated NOVEMBER 22, 1965, and about to be recorded in the Clerk's Office of Gloucester County, it is now necessary to revise the description of said easement.

WHEREAS, it was the intention that Ohio River Realty Company grant an easement to Sinclair Refining Company across its land, which inadvertently it has failed to do.

THEREFORE THIS AGREEMENT WITNESSETH: Sinclair Refining Company, Ohio River Realty Company, and M.G.I., Incorporated, for themselves, their successors and assigns respectively, hereby agree that the description of the 20-foot wide easement for roadway purposes contained in the Deed of Easement dated March 19, 1964, and recorded in Deed Book 1081, Page 48, is hereby eliminated and in place and instead thereof, the following description is substituted:

"ALL that certain 20.00 feet wide strip of land situate in the Borough of Paulsboro, County of Gloucester and State of New Jersey, the two Southwesterly courses of said 20.00 feet wide strip of land being more particularly described as follows:

BEGINNING at a point in the Southeasterly line of the Paulsboro Branch of the West Jersey and Seashore Railroad (60.00 feet wide) where the same is intersected by the Northeasterly line of lands now or formerly of Stille C. Chew and from said beginning

Da 21



BOOK 1110 PAGE 302

point runs; thence along said line of Chew (1) South 67 degrees 01 minute 00 seconds East 455.87 feet to an angle point in the same; thence still along the same (2) South 66 degrees 05 minutes 00 seconds East 2.66 feet to a point corner to lands now or formerly of Ohio River Realty Company."

EXCEPT as herein modified, said Deed of Easement dated March 19, 1964, and all the terms, conditions, covenants and agreements therein shall continue in full force and effect; and

Said Ohio River Realty Company and Universal Container Corporation hereby release and relinquish all rights to that part of the easement previously granted, which lies within the bounds of lands of Sinclair Refining Company as set forth in boundary line agreement hereinbefore referred to; and

Said Ohio River Realty Company hereby grants and conveys to Sinclair Refining Company, its successors and assigns, a 20-foot wide easement for roadway purposes, described as follows:

"ALL that certain 20.00 feet wide strip of land situate in the Borough of Paulsboro, County of Gloucester and State of New Jersey, the Southwesterly five lines of said 20.00 feet wide strip being more particularly described as follows:


BEGINNING at a point in the Northeasterly line of lands now or formerly of Stille O. Chew, said line also being the Southwesterly line of a 20.00 feet wide road or easement, where the same is intersected by the Northwesterly line of lands now or formerly of Ohio River Realty Company, said beginning point being the following two courses, measured along said line of Chew, from its intersection with the Southeasterly line of the Paulsboro Branch of the West Jersey and Seashore Railroad (60.00 feet wide): (A) South 67 degrees 01 minute 00 seconds East 455.87 feet to an angle point; thence still along the aforementioned line of Chew (B) South 66 degrees 05 minutes 00 seconds East 2.66 feet to the beginning point and from said beginning point runs; thence along the aforementioned line of Chew, the following five courses: (1) South 66 degrees 05 minutes 00 seconds East 108.73 feet to a point; thence (2) South 59 degrees 33 minutes 00 seconds East 106.40 feet to a point; thence (3) South 48 degrees 55 minutes 00 seconds East 217.08 feet to a point; thence (4) South 66 degrees 07 minutes 00 seconds East 163.40 feet to a point; thence (5) South 52 degrees 20 minutes 00 seconds East 43.36 feet to a point corner to lands now or formerly of Ohio River Realty Company."

THIS AGREEMENT shall be binding on the successors and assigns of all the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto

Da 22


signed these presents by their proper officers, duly attested and affixed their corporate seal.

ATTEST:  
  
*[Signature]*  
 Assistant Secretary

SINCLAIR REFINING COMPANY  
 By *[Signature]*  
 Vice-President

ATTEST:  
  
*[Signature]*  
 Secretary

OHIO RIVER REALTY COMPANY  
 By *[Signature]*  
 President

ATTEST:  
  
*[Signature]*  
 Secretary

M.G.I., INCORPORATED  
 By *[Signature]*  
 President

STATE OF NEW YORK }  
 ) SS:  
 COUNTY OF NEW YORK }

BE IT REMEMBERED, that on this 20<sup>th</sup> day of November in the year of our Lord one thousand nine hundred and sixty-five before me, the undersigned authority, personally appeared E. K. Schuster, who being by me duly sworn, on his oath saith that he is an Assistant Secretary of SINCLAIR REFINING COMPANY, the party hereto, and that J. S. Stokley is a Vice-President; that deponent knows the common or corporate seal of said corporation and that the seal annexed to the within Roadway Easement was signed by the said Vice-President and the seal of said corporation affixed thereto in the presence of deponent; that said Roadway Easement was signed, sealed and delivered as and for the voluntary act and deed of said corporation for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said corporation; and at the execution thereof this deponent subscribed his name thereto as witness.

Sworn and Subscribed the day and year aforesaid.

*[Signature]*  
 Assistant Secretary

*[Signature]*  
 Notary Public  
 State of New York  
 My Comm. Expires Dec 31, 1967  
 Commission Expires March 31, 1967

State of New York, ) ss.:  
 County of New York, )  
 No. 27050 Form 1  
 JAMES M. GURRIN, County Clerk and Clerk of the Supreme Court, New York County, a Court of Record having by law a seal, DO HEREBY CERTIFY that

*[Signature]*  
 whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of making the same a NOTARY PUBLIC in and for the State of New York, duly commissioned and sworn and qualified to act as such throughout the State of New York; that pursuant to law a commission, or a certificate of his official character, and his autograph signature, have been filed in my office; that as such Notary Public he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to receive and certify the acknowledgment or proof of deeds, mortgages, powers of attorney and other written instruments for lands, tenements and hereditaments to be read in evidence or recorded in this State, to present oaths and to take and certify affidavits and depositions; and that I am well acquainted with the handwriting of such Notary Public, or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and believe that the signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and sealed my official seal this DEC 31 1965  
 FEE PAID BY *[Signature]*  
 County Clerk and Clerk of the Supreme Court, New York County

ACC 1110 PAGE 303

Da 23

**Prepared For**

Mr. James M. Graziano, Esquire  
Archer & Greiner, P.C.  
One Centennial Square  
Haddonfield, NJ 08033-0968

**Effective Date of the Appraisal**

January 5, 2009

**Self-Contained Appraisal Report**

**Vacant Land**

**Owners: Gallenthin Realty Development, Inc.**  
Terminus of Universal Road  
Block 1, Lot 3  
Paulsboro Borough  
Gloucester County, New Jersey  
**JMA File No. 208258.1**

**Prepared By**

Jerome J. McHale, MAI  
NJ SCGREa No. RG-00239

Da 24

# Table of Contents

Letter of Transmittal .....	1
Certification of Value .....	3
Summary of Facts & Conclusions .....	4
Photograph of the Subject Property .....	6
Intended Use & Users of the Appraisal .....	7
Effective Date of the Appraisal & Property Inspection .....	7
Property Rights Appraised .....	7
Definition of Market Value.....	8
Scope of the Appraisal .....	8
Assumptions & Limiting Conditions .....	9
Locality Information .....	11
Regional Analysis .....	11
Neighborhood Analysis.....	15
Location Map .....	17
Market Analysis .....	18
The Subject Property.....	20
Tax Location Map.....	25
Land Use Controls ( <i>Zoning</i> ).....	29
Highest & Best Use.....	30
Highest & Best Use - "As Vacant" .....	30
Exposure Time and Marketing Period .....	33
Discussion of Value .....	35
Sales Comparison Approach.....	36
Reconciliation (Before the Taking) .....	54
Value Conclusion (Before the Taking) .....	55
Nature Of Taking .....	56
Description of the Takings .....	56
Valuation (After the Taking) .....	59
Highest & Best Use – As Vacant (After the Taking).....	60
Appraisal Process .....	62
Sales Comparison Approach (After the Taking).....	62
Damages to the Remainder .....	66
Compensation for Easements/Encumbrances .....	66
Correlation/After Value Estimate .....	68
Reconciliation .....	69
Conclusion And Justification.....	69
Addenda .....	70
Subject Photographs.....	71
Notification Letter.....	76
Zoning Map & Ordinance.....	80
Comparable Land Sales Photographs .....	89
Determination of Maximum Building Area & Required Parking Spaces Report .....	93
Development Feasibility Assessment Report .....	99
Copy of Provided Easement Documentation.....	121
Quantification of Upland Areas (email) .....	140
Qualifications.....	143



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Real Estate Appraisal & Consulting Services

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Website: [www.jmchaleassoc.com](http://www.jmchaleassoc.com)

Atlantic County Office

329 Jimmie Leeds Road  
Galloway, New Jersey 08201

March 24, 2010

Mr. James M. Graziano, Esquire  
Archer & Greiner, P.C.  
One Centennial Square  
Haddonfield, NJ 08033-0968

**Re:** Vacant Land  
Terminus of Universal Road  
Block 1, Lot 3  
Paulsboro Borough, Gloucester County, New Jersey  
JMA File No. 208258.1

Dear Mr. Graziano:

In accordance with your request, I have prepared an appraisal report for the above referenced property. The purpose of the appraisal was to provide a market value estimate for the **fee simple interest** of the takings and damages to the remainder. The intended use of the appraisal is to serve as a valuation guide for acquisition negotiations and/or condemnation proceedings.

The market value estimate only reflects the value of the real estate and excludes the value of any crops or personalty at the property. The appraiser made a comprehensive physical inspection of the subject property, its market area, and all comparable property information.

The enclosed appraisal report includes the information relevant to the valuation of the property as well as the methodology used to arrive at the value conclusion. It has been prepared in conformity with the Uniform Standards of Professional Practice of the Appraisal Foundation, and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The appraised market values are based upon the following Conditions/Assumptions:

1. *The appraiser has been directed to assume no environmental contamination exists. However, there are two monitoring wells located on the site. They were reportedly installed to monitor any future migration of contamination from the adjoining landfill. According to the Development Feasibility Assessment Report provided by Marathon Engineering &*

Da 24

*Environmental services, Inc., a Limited Site Investigation Report dated July 7, 2008 revealed elevated concentrations of specified soil contaminants that were above the NJDEP's Residential Direct Contact Soil Remediation Standards (RDCSRS) and United States Environmental Protection Agency (USEPA) Conservation and Recovery Act (RCRA) standards.*

2. *Per the directive of the client's legal representation, the appraiser is to assume that the property owner's claim that the presence of railroad tracks on the property means the wetlands can be developed without regard to any state or federal law regulating development of wetlands, is unfounded.*
3. *It is an extraordinary assumption of this appraisal that the information provided by Marathon Engineering & Environmental Services, Inc. and T & M Associates is correct. If it is found that this assumption is untrue, the appraiser reserves the right to modify the value conclusion herein.*
4. *The property has been used as a dredge disposal site at various times, the most recent time being the year 1963. Based on information in the Development Feasibility Study prepared by Marathon Engineering, it is concluded that this prior use would not be legally permissible as of the valuation date. If it is found that this is untrue, the appraiser reserves the right to modify the value conclusion herein.*

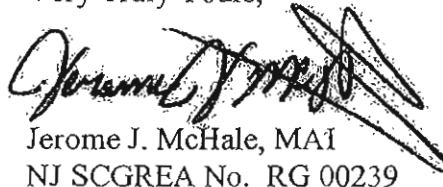
After careful consideration of all data, it is my opinion that the estimated value of the takings and damages to the remainder, as of January 5, 2009, subject to the assumptions and limiting conditions set forth is as follows. Attached is a report with my findings.

**Estimated Value of the Takings:**

**\$443,000**

Attached is a report with my findings. This report was prepared for the exclusive use of Archer & Greiner, PC., as representative of the Gloucester County Improvement Authority. It may not be distributed to or relied upon by other third parties without the prior written consent and approval by Jerome McHale of J. McHale & Associates, Inc. No portions of the report may be disseminated to the public through news, advertising, or sales media.

Very Truly Yours,

  
Jerome J. McHale, MAI  
NJ SCGRE A No. RG 00239

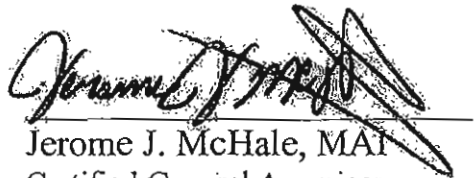
Enclosures  
208258.1 Gallenthin Paulsboro.

## Certification of Value

I certify that, to the best of my knowledge and belief:

- ◆ The statements of fact contained in this report are true and correct.
- ◆ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- ◆ I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- ◆ I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- ◆ My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ◆ My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ◆ The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity to the Standards for Appraisals in *N.J.A.C. 13:40A-6.1*, the Uniform Appraisal Federal Land Acquisitions (*Interagency Land Acquisition Conference, 1992*), with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice (USPAP)*.
- ◆ This report is also certified to Archer & Greiner, PC., as representative of the Gloucester County Improvement Authority.
- ◆ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- ◆ I have made a personal inspection of the property that is the subject of this report.
- ◆ Kevin McConnell provided significant real property appraisal assistance to the person signing this certification.
- ◆ As of the date of this report, I have completed the continuing education program of the Appraisal Institute.

March 24, 2010  
DATE OF REPORT

  
Jerome J. McHale, MAI  
Certified General Appraiser  
New Jersey License No. RG 00239

## Summary of Facts & Conclusions

Subject Property: Terminus of Universal Road  
Paulsboro Borough  
Gloucester County, New Jersey

Tax Identification: Block 1, Lot 3

Current Ownership: Gallenthin Realty Development, Inc.

Property Type: Vacant land

Building Improvements: None

Land area:

		Acre(s) (+/-)	SF (+/-)
<i>Before Takings:</i>			
	Site (Entire)	63.292	2,756,999
	Uplands	19.990	870,764
<i>Fee Takings:</i>			
	Parcel 1A	1.031	44,910
	Parcel 1B	2.364	102,976
		3.395	147,886
<i>After Takings:</i>			
	Site (Entire)	59.897	2,609,113
	Uplands	16.327	711,204

In addition to the fee takings, (1) permanent easement and (1) temporary construction easement will encumber the parcel. The easement is shown as follow:

<i>Permanent Easement</i>		
	Acre(s) (+/-)	SF (+/-)
Land Area (A)	0.256	11,151
<i>Temporary Construction Easement</i>		
	Acre(s) (+/-)	SF (+/-)
Land Area	1.73	75,359

Zoning: MIBP, Marina Industrial Business Park District

Real Estate Tax Assessment (2009):

	Land	Improvement	Total
Block 1, Lot 3	\$17,000	\$ 0	\$17,000
Block 1, Lot 3 (Qualified Farm)	\$19,000	\$ 0	\$19,000
Total	\$36,000	\$ 0	\$36,000



**Paulsboro Borough (2009):**

Tax Rate (2009):	\$4.844/\$100
Indicated Taxes (2009):	\$1,743.84
Equalization Ratio (2009):	54.95%
Equalized Assessed Value:	\$65,514.10
Effective Tax Rate:	\$2.662 ( $\$4.844/100 \times 54.95\%$ )

Date of Value Estimate: January 5, 2009

Estimated Market Value:

**Sales Comparison Approach**

Before Value	\$1,418,000
After Value	\$ 975,000

**Income Capitalization Approach**

Before Value	N/A
After Value	N/A

**Cost Approach**

Before Value	N/A
After Value	N/A

**FINAL ESTIMATE OF VALUE:**

BEFORE VALUE	\$1,418,000
AFTER VALUE	\$ 975,000

**VALUE OF THE PART TAKEN**

**AND DAMAGES TO THE REMAINDER: \$443,000**

## Intended Use & Users of the Appraisal

The intended use of this appraisal is to serve as a valuation guide for acquisition and/or condemnation proceedings. This report was prepared for the exclusive use of Archer & Greiner, PC., as representative of the Gloucester County Improvement Authority.

## Effective Date of the Appraisal & Property Inspection

The initial inspection of the subject property was conducted on January 5, 2009, which is also the effective date of the appraisal. The appraiser contacted George A. Gallenthin, Esq., president of Gallenthin Realty Development Inc., which owns the property. Mr. Gallenthin coordinated the site inspection. Ms. Cindy Gallenthin, a representative of ownership, and Mr. Patrick Schubert, accompanied the appraiser during the inspection of the site and provided information such as news articles, resolution information photographs, maps and historical information from the Library of Congress. A subsequent meeting at the owner's request occurred at the appraiser's office on January 13, 2009. Additional information such as spoil disposal agreement (temporary) from 1955, easement documentation, and NJDEP Tidelands letter of no riparian claims were provided.

The date of the preparation of the appraisal report is shown on the letter of transmittal attached with this report.

## Property Rights Appraised

The real property valued in this appraisal consists of the Fee Simple Estate. Title is assumed to be free and clear of encumbrances including special financing and restrictions such as deed restrictions and easements of record. It is only subject to the four governmental powers of taxation, eminent domain, police power, and escheat.

The **Fee Simple Estate** is defined as:

*"...absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*<sup>1</sup>

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<sup>1</sup> Appraisal Institute, *The Appraisal Of Real Estate*, 13th Edition. Chicago, IL: Appraisal Institute, 2008, p. 114.

- General Property Parcel Map provided by T&M Associates and dated 12/16/2008 and last revised on 3/9/2010.
  - Development Feasibility Assessment Study prepared by Marathon Engineering & Environmental Services, Inc. and dated April 13, 2009.
  - Maximum Building Area Report provided by T&M Associates.
  - Various deeds of easements, photographs, and documentation provided by ownership.
- 
- ◆ All of these factors have been considered when developing the subject property's highest and best use.
  - ◆ Each of the three traditional value approaches -- the Income Capitalization, Sales Comparison, and Cost approaches -- has been considered in arriving at a value conclusion for the subject property.
  - ◆ All comparable data has been verified through a variety of sources including recorded information at the local and county levels and through conversations with at least one of the parties involved in the transaction.
  - ◆ All research and analyzed information has been utilized in order to come to a final value conclusion for the subject property.

## Assumptions & Limiting Conditions

The appraisal report is subject to the following assumptions and limiting conditions set forth as follows. Additional assumptions and limiting conditions may be cited elsewhere in the report.

1. To the best of my knowledge, the statements of facts contained in the appraisal report, upon which the analysis, opinions and conclusions expressed are based, are true and correct. Information, estimates and opinions furnished to us and contained in the report or utilized in the formation of the value conclusion was obtained from sources considered reliable and believed to be true and correct. However, no representation, liability or warranty for the accuracy of such items is assumed by or imposed on us, and is subject to corrections, errors, omissions and withdrawal without notice.
2. Title is assumed to be good and marketable. The appraiser assumes no responsibility for legal matters affecting the property or title, nor does the appraiser render any opinion as to the title.
3. The legal description, areas, and dimensions shown within the report are assumed to be correct.
4. No survey of the property has been made by the appraiser. Exhibits such as site plans and floor plans are included to assist the reader in visualizing the property, and the appraiser assumes no responsibility.
5. It is assumed that there are no hidden or adverse conditions of the property, subsoil, or structures that would render it more or less valuable. No responsibility is assumed for such conditions or for the engineering/remediation that may be required to remove such condition.

If the client has a concern over the existence of such conditions in the property, I consider it imperative to retain the services of a qualified engineer or contractor to determine the existence and extent of such hazardous conditions. Such consultation should include the estimated cost associated with any required treatment or removal of the hazardous material.

6. The property has been appraised as though free of liens and encumbrances unless so specified within the report.
7. Management and ownership are assumed to be competent.
8. Public, industry and statistical information are from sources that I deem to be reliable. However, no representation as to the accuracy or completeness of such information is being made.
9. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.
10. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in the appraisal report.
11. It is assumed that all required licenses, consents or other legislative or administrative authority from any local, state or federal governmental or private entity have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
12. The appraisal is to be used in whole and not in part. No part of it shall be used in conjunction with any other appraisal. Furthermore, this report and all conclusions are for the exclusive use of the client for the sole and specific purpose(s) stated herein.
13. I am not required to give testimony or be in attendance at any court or administrative proceeding with reference to the property appraised, unless arrangements have been previously made.
14. The value conclusion is subject to formal determination of the existence of any state or federal wetlands or other environmentally sensitive areas including all required buffer zones. I am not an expert in this field and it is considered imperative that the services of a qualified environmental expert be retained in order to make such determinations. Any environmentally sensitive area detected on the property could have an impact on the value estimated herein, and thus, I reserve the right to modify the value conclusion if such areas are found to be present on the property.
15. No change of any item of the appraisal report shall be made by anyone other than myself, and I shall have no responsibility for any such unauthorized change.

### **Hypothetical Conditions/Extraordinary Assumptions:**

A Hypothetical Condition is defined as, *"that which is contrary to what exists but is supposed for the purpose of analysis"*<sup>3</sup>

An Extraordinary Assumption is defined as, *"an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions."*<sup>4</sup>

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<sup>3</sup> *Uniform Standards of Professional Appraisal Practice* as promulgated by the Appraisal Standards Board of the Appraisal Foundation, 2010-2011 Edition.

The appraised market values are based upon the following Conditions/Assumptions:

1. *The appraiser has been directed to assume no environmental contamination exists. However, there are two monitoring wells located on the site. They were reportedly installed to monitor any future migration of contamination from the adjoining landfill. According to the Development Feasibility Assessment Report provided by Marathon Engineering & Environmental services, Inc., a Limited Site Investigation Report dated July 7, 2008 revealed elevated concentrations of specified soil contaminants that were above the NJDEP's Residential Direct Contact Soil Remediation Standards (RDSCRS) and United States Environmental Protection Agency (USEPA) Conservation and Recovery Act (RCRA) standards.*
2. *Per the directive of the client's legal representation, the appraiser is to assume that the property owner's claim that the presence of railroad tracks on the property means the wetlands can be developed without regard to any state or federal law regulating development of wetlands, is unfounded.*
3. *It is an extraordinary assumption of this appraisal that the information provided by Marathon Engineering & Environmental Services, Inc. and T & M Associates is correct. If it is found that this assumption is untrue, the appraiser reserves the right to modify the value conclusion herein.*
4. *The property has been used as a dredge disposal site at various times, the most recent time being the year 1963. Based on information in the Development Feasibility Study prepared by Marathon Engineering, it is concluded that this prior use would not be legally permissible as of the valuation date. If it is found that this is untrue, the appraiser reserves the right to modify the value conclusion herein.*

## Locality Information

### Regional Analysis

The subject is located in the Borough of Paulsboro, within Gloucester County, New Jersey. Gloucester County is part of the nine county Delaware Valley River Port Commission region (DVRPC). The DVRPC is comprised of the New Jersey counties of Burlington, Camden, Gloucester & Mercer, and the Pennsylvania counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia.

The county is located in the southwesterly portion of the State with Camden and Burlington counties to the north, Atlantic County to the east, the Delaware River to the west, and

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<sup>4</sup> *Uniform Standards of Professional Appraisal Practice* as promulgated by the Appraisal Standards Board of the Appraisal Foundation, 2010-2011 Edition.

- ❖ **Super G** a new supermarket at the Mullica Hill Shopping Center in Harrison Township, which will create 200 jobs.
- ❖ **Huntsman International** sold its plant in West Deptford, losing 90 jobs. **Coim USA** purchased this plant and began business in January 2006, creating 60 jobs.

### **Transportation Data**

The region is served by an extensive network of highways and bridges, which provide good access to most portions of New Jersey and the eastern seaboard. Major highways throughout the County include Interstate 295, the New Jersey Turnpike, Atlantic City Expressway, US Routes 130 & 322, and State Routes 42, 45, 47 & 55.

Freight rail service has been available throughout the region since the last century. Commuter train service is not available within the County, but is available at the Lindenwold High Speed Line in Camden County. Public bus service is available throughout the County and region. Major air transportation services are available at the Philadelphia International Airport within a 20-minute drive of most portions of the County.

### **Utilities Data**

Most public utilities are available to the more densely populated portions of the County. Public water and sewer are typically municipally owned but are now becoming increasingly reliable on the water services of the New Jersey American Water Company due to the depletion of underground aquifers. South Jersey Gas Company and PSE&G provide public gas service. Electricity is provided by PSE&G, JCP&L and Conectiv, and telephone service is provided by Verizon.

### **Neighborhood Analysis**

The subject is located at the terminus and southwest side of Universal (Industrial) Road. A railroad line extends along the northwest side of the site. It is in the southeasterly portion of the site extends along the Great Mantua Creek.

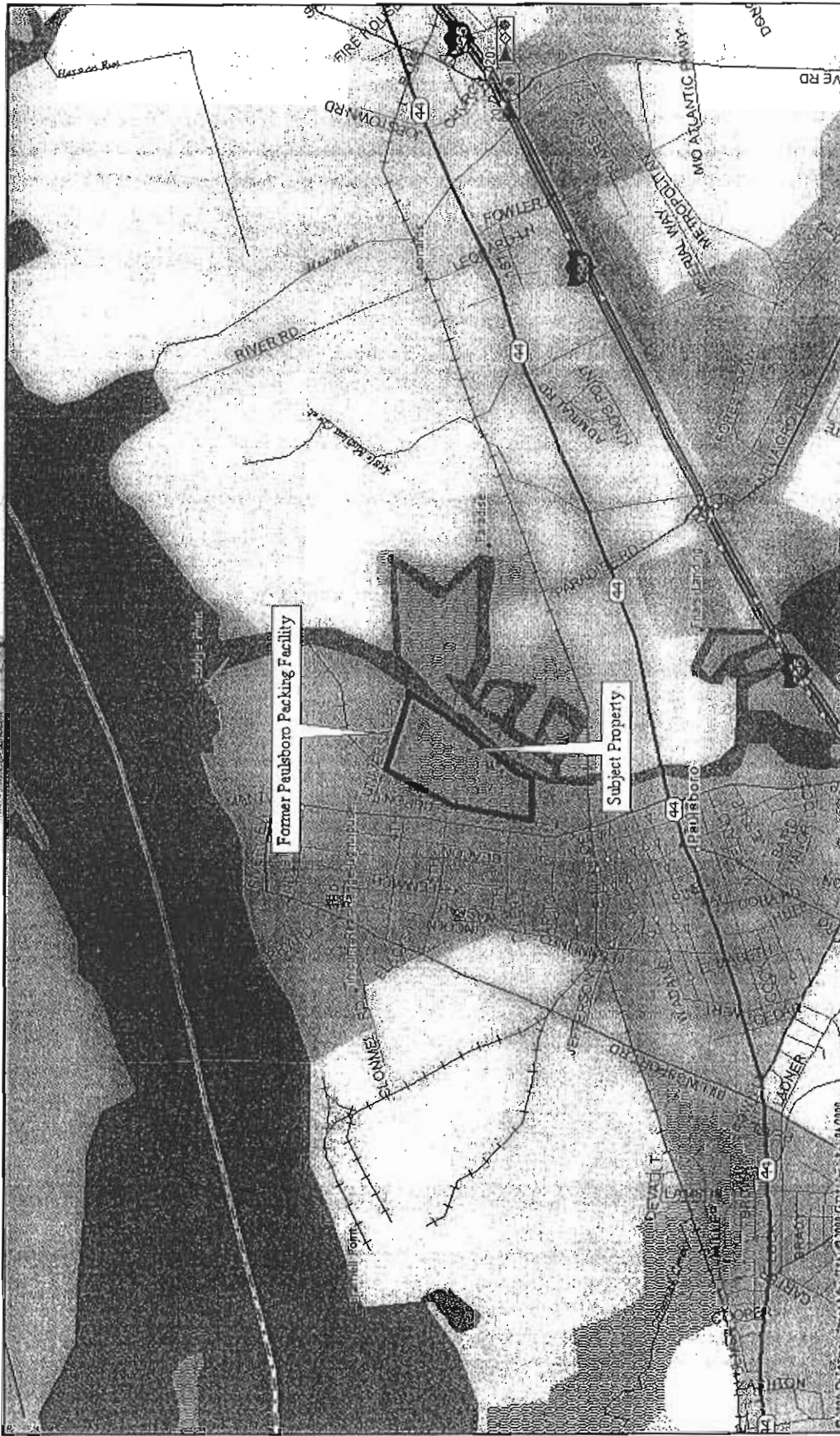
The immediate neighborhood consists of a mix of older industrial uses in fair to average condition and residential neighborhoods. The former Paulsboro Packing facility, the Great Mantua Creek, and residential dwellings primarily surround the entire site. The main roadways through the borough primarily consist of Billingsport Road (County Route 653) and N. Delaware Street.

Universal (Industrial) Road is a local arterial roadway that extends in an easterly direction from Mantua Avenue. It is asphalt paved and is controlled by signage at its intersection with Mantua Avenue.

Billingsport Road (County Route 653) is a secondary roadway extending in a mostly north to south direction from State Route 44 to the Delaware River. It is the main roadway for commercial traffic through the immediate area and the borough of Paulsboro.

In summary, the subject is located within an area that offers industrial and single-family residential uses. It is within close proximity to a network of state and interstate highways. In addition, it offers water frontage along the Great Mantua Creek.

Location Map



Da 37



On a positive note, the Delaware River Dredging Project has provided a possible stimulus to industrial development along the river. The County of Gloucester is looking develop 190-acre port in Paulsboro Borough (Paulsboro Marine Terminal Project) as well as a 330-acre site in Greenwich Township. Both projects are expected to provide a several thousand jobs and create new tax dollars for the area.

### The Subject Property

#### Ownership History

Ownership is currently in the name of Gallenthin Realty Development, Inc. No arm's length transactions have occurred in the past five years.

#### Occupancy & Use

As of the valuation date, the subject property consists of vacant land that was reportedly used as a permitted dredge disposal site in 1902, 1934, 1937 and 1963. The property had ground leased access in 1997 and 1998 to Clean Ventures in Mantua Creek for storage trailer placement, employee parking, and 142 feet of floating dock. The property has since obtained farmland qualification status.

#### General Site Information

Assessor's Parcel Number:	Block 1, Lot 3
Address:	Terminus of Universal (Industrial) Road Paulsboro Borough, Gloucester County, NJ

#### Real Estate Tax Assessment

Tax Year	2009
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	Land	Improvements	Total
Block 1, Lot 3	\$17,000	\$ 0	\$17,000
Block 1, Lot 3 (Qualified Farm)	\$19,000	\$ 0	\$19,000
Total	\$36,000	\$ 0	\$36,000

#### Paulsboro Borough (2009):

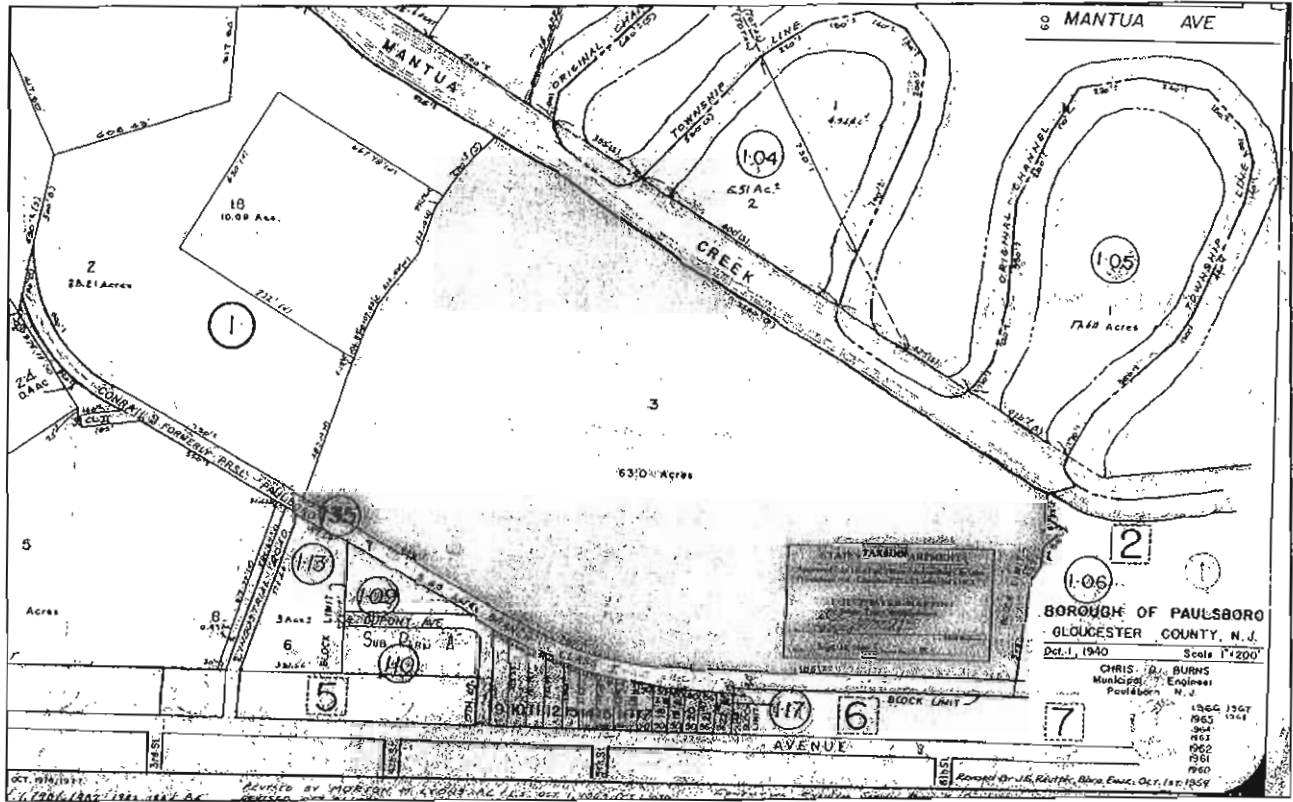
Tax Rate (2009):	\$4.844/\$100
Indicated Taxes (2009):	\$1,743.84
Equalization Ratio (2009):	54.95%
Equalized Assessed Value:	\$65,514.10
Effective Tax Rate:	\$2.662 (\$4.844/100 x 54.95%)

Physical Characteristics of the Site	
Total Site Area:	63.292 +/- acres
Upland Area:	19.99 +/- acres (Per T & M Associates)
Improved Frontage:	921' +/- along Universal (Industrial) Road (Estimated From Tax Map)  2,540' along a Railroad Line
Water Frontage:	Approximately 2,250' of water frontage along the Great Mantua Creek.
Frontage/Upland Acre:	46'
Shape of Tract:	Moderately Irregular
Topography:	Mostly level and clear. The northern most portion of the site is partially wooded. The majority of the site consists of the vegetation "Phagmitis australis."
Access:	Universal (Industrial) Road
Utilities to Site:	Electric, gas, and telephone. Water and sewer is reportedly available from Universal Road.
Site Improvements:	Railroad Spur.
Bulkhead:	There does not appear to be any bulkhead or bundled wood pilings along the site where it meets the Mantua Creek. The water depth is not known, but is tidal and barges must be used to transport goods.
Flood Designation:	The subject is located on F.E.M.A. Panel # 3340210-0001B dated September 2, 1982. According to this map, the subject lies within Flood Zones B, C & A4.
Freshwater Wetlands:	According to the Development Feasibility Assessment Report provided by Marathon Engineering & Environmental services, Inc, the site appears to be impacted by 43.5 acres of wetlands (68% of the site). Due to the presence of documented bald Eagle Habitat on the property, a 150'-wide wetlands transition buffer would create approximately 4 acres of developable land. (See Addenda for Report)
Easements/Encumbrances:	A 15'-wide Colonial Pipeline easement bisects the northern portion of the subject property and flows in a northwest-southeast direction. In addition, the northerly portion is reportedly encumbered by a 20'-wide roadway easement and

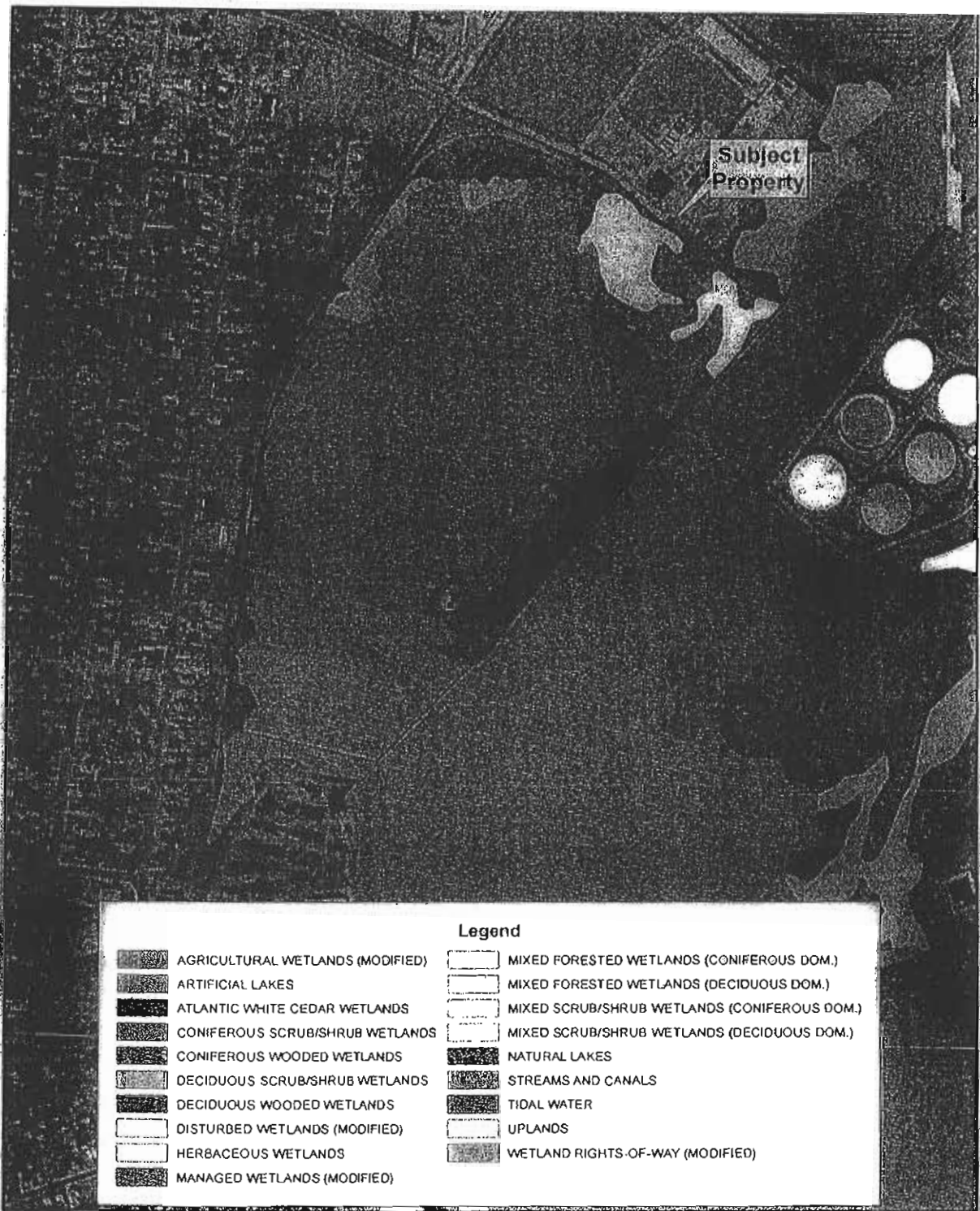
	<p>railroad side track easement.</p> <p>The subject is encumbered by and benefits from a Mutual Roadway Easement with Block 1, Lot 2 owned by the Borough of Paulsboro and Block 1, Lot 18 owned by Paulsboro Acquisition Corporation, whereby access to the subject property is permitted via a partially improved access drive known as Universal (Industrial) Road. This easement would appear to benefit the subject property and Paulsboro Acquisition Corporation more than the Borough of Paulsboro, as it allows ownership access to the water's edge of Mantua Creek.</p> <p>This easement covers 0.64 acres or 27,878 SF across both properties (Block 1, Lot 2 owned by the Borough of Paulsboro and Block 1, Lot 18 owned by Paulsboro Acquisition Corporation) at the northeastern property line for the subject. The chart summarizes the Dominant Estate rights:</p> <table border="1" data-bbox="678 829 1432 894"> <thead> <tr> <th>Rights</th> <th>Size</th> <th>Beneficiary</th> </tr> </thead> <tbody> <tr> <td>Dominant Estate</td> <td>0.64 acres</td> <td>Subject property</td> </tr> </tbody> </table>	Rights	Size	Beneficiary	Dominant Estate	0.64 acres	Subject property
Rights	Size	Beneficiary					
Dominant Estate	0.64 acres	Subject property					
<p>Environmental Contamination:</p>	<p>There are two monitoring wells located on the site. They were reportedly installed to monitor any future migration of contamination from the adjoining landfill. According to the Development Feasibility Assessment Report provided by Marathon Engineering &amp; Environmental services, Inc., a Limited Site Investigation Report dated July 7, 2008 revealed elevated concentrations of specified soil contaminants that were above the NJDEP's Residential Direct Contact Soil Remediation Standards (RDCSRS) and United States Environmental Protection Agency (USEPA) Conservation and Recovery Act (RCRA) standards. The appraiser highly recommends that a qualified expert be retained to make such a determination if any environmental condition exists. It is an extraordinary assumption of this appraisal that the subject site does not offer any areas of environmental concern.</p>						
<p>Development Approvals:</p>	<p>None.</p>						
<p>Development Potential:</p>	<p>According to the Determination of Maximum Building Area &amp; Required Parking Spaces Report (<i>included in the Addenda</i>) prepared by T &amp; M Associates, Inc., dated March 24, 2010, the property could potentially accommodate the following GBA based on current zoning requirements and potential wetland buffers:</p>						

Da 40

### Tax Location Map



Da 41



**MARATHON ENGINEERING &  
ENVIRONMENTAL SERVICES, INC.**  
SUITE 100  
510 HERON DRIVE  
SWEDESBORO, N.J. 08085

**Block 1, Lot 3**  
  
**Borough of Paulsboro,  
Gloucester County, New Jersey**

**Figure 3 - Wetlands Map**  
Source: NJDEP, Bureau of  
Geographic Information Systems,  
Freshwater Wetlands layer  
Scale: 1:6,000    ARC 061.01

Da 42

### Land Use Controls (Zoning)

The property is located within the MIBP, Marine Industrial Business Park District. The MIBP District permits the following uses; commercial recreation involving the use of the waterfront, natural recreation, nature conservancy and nature center, marinas, boat launches, mixed use business park, hotel, club, lodge, retail business, commercial greenhouse, restaurant, theater, place of amusement, consumer, professional, and commercial service establishment, wholesale business establishment, motor freight terminal, frozen food locker, general service and repair shop, and newspaper, job-printing or bookbinding establishment.

The following chart provides a summary of the schedule of limitations based on the municipality's schedule of yard, area and building requirements as of the current date:

	Standard
Minimum Lot Area	N/A
Minimum Lot Width	N/A
Minimum Front Yard	N/A
Minimum Side Yard	N/A
Maximum Building Height	N/A
Maximum Lot Coverage	N/A

The subject zoning does not offer minimum requirements, but identifies specific permitted uses. As previously noted, the subject site was used as a dredge disposal site at various times, the most recent being the year 1963. According to the Development Feasibility Assessment Report provided by Marathon Engineering & Environmental services, Inc., the following uses are not specifically allowed or prohibited under the Paulsboro MIBP Use Regulations.

- ◇ Dredged materials containment facility, dredged materials processing facility.
- ◇ Dredged material processing facility with trans-shipment of processed dredged material by railcar or truck for the use at another location.
- ◇ Soil remediation facility that accepts contaminated soils from off-site properties and treats the materials for beneficial reuse.

However, according to the report, development of the subject property as one of the above uses may be inconsistent with the Paulsboro Land Use Ordinance (section 80-34), that specifies no use shall be permitted in a manufacturing district that creates a noxious, offensive or hazardous condition beyond a manufacturing district boundary. These uses may create adverse conditions within the neighboring residential community. The reader is urged to seek legal and engineering counsel regarding any opinion as the legal status of the site.

## Highest & Best Use

Highest & Best Use analysis establishes the basis for the valuation of the property. The concept of highest and best use analysis is a market-derived interpretation based on various economic principles and forces such as supply and demand, conformity, and utility. It is defined as:

*“the reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.”<sup>6</sup>*

When a property is improved, Highest and Best Use analysis considers: 1) the site as if vacant and; 2) the property as improved. Highest and best use analysis of the site As If Vacant addresses the ideal use of the site, while highest and best use As Improved relates the existing use to the ideal use (*as if vacant*). Both analyses are important to the valuation process since land value is determined by potential, not actual use.

The highest and best use of both the site as though vacant and the property as improved must meet the following four criteria:

- ◆ Legally Permissible
- ◆ Physically Possible
- ◆ Financially Feasible
- ◆ Maximally Productive

### Highest & Best Use - “As Vacant”

**Legally Permissible** addresses the legal use of the property given applicable zoning regulations and local ordinances/codes along with any other applicable legal restrictions. The use must be probable, not speculative or conjectural.

Legal restrictions affecting the property include the local municipal land use ordinance of Paulsboro Borough along with all other county and state regulations. The property lies within MIBP, Marine Industry Business Park District. This zoning district allows for waterfront, natural recreation, nature conservancy and nature center, marinas, boat launches, mixed use business park, hotel, club, lodge, retail business, commercial greenhouse, restaurant, theater, place of amusement, consumer, professional, and commercial service establishment, wholesale business establishment, motor freight terminal, frozen food locker, general service and repair shop, and newspaper, job-printing or bookbinding establishment. Ownership has indicated that the maximally productive use of the site would be for one of the following:

- ◇ Dredged materials containment facility, dredged materials processing facility.
- ◇ Dredged material processing facility with trans-shipment of processed dredged material by railcar or truck for the use at another location.

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<sup>6</sup> Appraisal Institute: *The Appraisal of Real Estate*, 13<sup>th</sup> Edition. Chicago, IL: Appraisal Institute, 2008, p. 278.

- ◇ Soil remediation facility that accepts contaminated soils from off-site properties and treats the materials for beneficial reuse.

However, according to the expertise of Marathon Engineering & Environmental services, Inc., the proposed uses for the site has been summarized as follows on Page 17 of the Development Feasibility Assessment Report:

*"Due to the site's waterfront location and historic land use, development of the Subject Property is subject to stringent land use regulations at the state and federal levels. Further, under the dredged material processing facility and soil remediation facility alternatives, the local review process may prove difficult due to the proximity of the Subject Property to existing residential development, which could present potential use conflicts related to secondary effects (i.e., increased traffic, noise, and dust). Major approvals necessary to implement any of the three (3) alternative uses evaluated herein include a No Further Action Determination (NJDEP), Waterfront Development Permit (NJDEP), Freshwater Wetlands Individual Permit (NJDEP), Major Site Plan Approval (Borough of Paulsboro and Gloucester County Planning Boards), and likely an Individual Section 404 Permit (ACOE). It is noted that the permitting processes associated with such approvals would be comprehensive, relatively costly, and lengthy (on the order of 1.5 to 3 years for due diligence, application preparation, and application review by regulatory agencies)."*

Overall, the legal restrictions affecting the property appear to permit each of the legally permissible uses dictated by the municipal land use ordinance and the potential uses specified by ownership are considered too speculative based on the information presented in the Marathon Engineering Report.

**Physically Possible** addresses the possible use of the property given the physical aspects of the site itself. Size, shape, topography, and soils of the site affect the uses to which it can be developed.

The site is located along an access roadway known as Universal Road (Industrial Road & Private Drive) in an area of industrial and residential uses. It offers a land area of 63.292 acres (19.99 acres of upland area), 921' +/- of street frontage and a mostly level to sloping topography, and irregular shape. It offers extensive water frontage along the Great Mantua Creek. Due to the presence of documented bald Eagle Habitat on the property, a 150'-wide wetlands transition buffer would most likely be required for development.



150 FOOT WETLANDS TRANSITION BUFFER WIDTH

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Commercial	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	4.22 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	2.40 ±	42,300 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Manufacturing	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	3.80 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	1.91 ±	42,400 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Industrial Park	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	3.79 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	1.86 ±	42,400 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

The physical size of the site and width of the site would appear to allow for development of many industrial and marine industrial type uses. However, any development of the site would be limited to the upland portion of the site outside of the buffer area. All public utilities are available to the site.

**Financially Feasible** addresses which of the legally permissible and physically possible uses are capable of producing an income, or return, equal to or greater than the amount needed to satisfy operating expenses, financial obligations and capital amortization. Those uses that are capable of producing a positive return are considered to be financially feasible. However, in order to receive serious consideration as a highest and best use, there must be a reasonable expectation that the use will provide a sufficient return (*or yield*) to attract investment capital.

In terms of market demand, the property is located in a mixed use area with industrial and residential uses. Most of the surrounding uses cater to the immediate area and the presence of a landfill and oil refineries have a significant impact on the site. Based on information included in the Development Feasibility Assessment Report provided by Marathon Engineering & Environmental services, Inc., the subject property is not identified as an existing or proposed dredged material disposal site for the Delaware River Main Channel Deepening Project and dredge material facilities are not permitted on "medium creeks" such as the Mantua Creek.

Da 46

Based on this information, the financially feasible alternatives indicate that the subject parcel should be developed with an industrial/business park use.

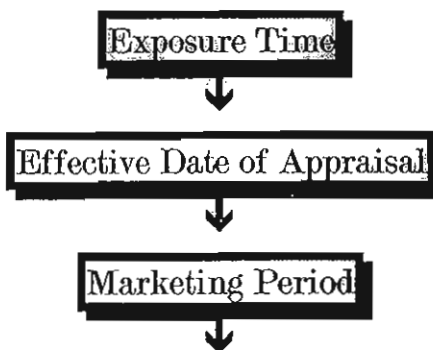
**Maximally Productive** addresses the one use that is capable of providing the highest return to the property. Thus, the subject parcel should be developed with an industrial use under the standards presented in the Marathon Engineering Report.

## Exposure Time and Marketing Period

Exposure time is inherent in the market value concept and is always presumed to precede the effective date of the appraisal. Exposure time differs depending on the specific property type and current market conditions. As such, the property type, specific market conditions, and the potential market participants are important factors in determining a reasonable estimate of exposure time.<sup>7</sup>

The marketing period is the estimated period of time that it will take to successfully market an interest in real estate at the estimated market level during the period immediately after the effective date of an appraisal. A reasonable marketing period is a function of price, time and anticipated market conditions including changes in the cost and availability of funds. The ultimate future price that may be achieved at the end of the marketing period may or may not equal the appraised value on the earlier valuation date as a result of changes that may occur during the marketing period in the economic and demographic trends, the real estate market, tenancy and property operations, the physical real estate along with other items.<sup>8</sup>

Thus, exposure time is assumed to precede the effective date of appraisal, while marketing time is the period immediately after the effective date of appraisal. Each time period is directly related to the specific property being appraised (*type and range in value*), market conditions, and market participants.



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<sup>7</sup> *Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation, 2010-2011 Edition.*

<sup>8</sup> *Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation, 2010-2011 Edition.*

**Sale of Property**

The marketing period and exposure time for the subject property in its present state was estimated through an analysis of the market and through various conversations with industry brokers. A range of 3 to 12 months for neighborhood business properties was considered typical depending on the location.

The subject is located along the along the Great Mantua Creek. It is in proximity to various industrial uses primarily consisting of oil refining facilities. Based on this information, a marketing period of 6 to 12 months is estimated for the subject in its current state, assuming it is professionally and actively marketed and the exposure time is estimated at 6 to 12 months.

Comparable Land Sales Adjustment Analysis (Before the Taking)						
	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Sale Price	10/28	\$22,800,000	\$8,350,000	\$1,215,000	\$7,868,000	\$6,960,000
Upland Area (Acre)	10.99	130.66	129.93	38.96	60.38	130.66
Sale Price/Acre of Upland	N/A	\$174,499	\$64,265	\$31,186	\$130,308	\$53,268
Rights Conveyed Adjustment	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
		\$174,499	\$64,265	\$31,186	\$130,308	\$53,268
Financing/Concessions Adjustment	Market	Market	Market	Market	Market	Market
		\$174,499	\$64,265	\$31,186	\$130,308	\$53,268
Conditions Of Sale Adjustment	Market	Market	Atypical 10%	Market	Market	Market
		\$174,499	\$64,265	\$34,304	\$130,308	\$53,268
Market Conditions	Nov-08	Sep-07	Jul-07	Apr-07	Aug-05	
# of Months	2	16	18	22	41	
Adjustment	0%	0%	0%	0%	9%	
		\$174,499	\$64,265	\$34,304	\$130,308	\$58,062
<b>Other Adjustments:</b>						
Location Adjustment	Superior	Comp	Comp	Superior	Superior	
	-10%	0%	0%	-5%	-10%	
Size (Upland) Adjustment	Larger	Larger	Larger	Larger	Larger	
	15%	15%	5%	5%	15%	
Utilities Adjustment	Comp	Comp	Inferior	Comp	Comp	
	0%	0%	10%	0%	0%	
Physical Characteristics Adjustment	Superior	Comp	Inferior	Superior	Superior	
	-15%	0%	5%	-5%	-15%	
Zoning Adjustment	Comp	Comp	Comp	Superior	Comp	
	0%	0%	0%	-15%	0%	
Approvals Adjustment	Final	Comp	Comp	Comp	Comp	
	-40%	0%	0%	0%	0%	
Net- Other Adjustments		-50%	15%	20%	-20%	-10%
<b>Summary:</b>						
Indicated Market Value Per Acre of Upland:				\$70,000		
Subject's Upland Area (Acre):				19.99		
Estimated Land Value of the Fee Simple Land Area (Rounded):				\$1,400,000		
<b>Plus:</b>						
Market Value Per SF of Partial Interest Land Area (40% of fee simple value):				\$28,000		
Dominant Estate Land Area Benefiting Subject Property (Acres)				0.64		
Value of Dominant Estate Land Area (Rounded)				\$18,000		
Estimated Market Value (Rounded):				\$1,418,000		

Da 49

The analyzed land sales were considered the best available to estimate the subject's market value as of the valuation date. The most appropriate unit of comparison is considered to be the sale price per acre. Thus, the market value of the subject site has been analyzed based upon value per site.

In the analysis of the subject, the chosen comparable sales reflected the following ranges:

Settlement Date	Sale Price	Sale Price/Acre	Sale Price/Upland Acre
8/2005 – 11/2008	\$1,215,000 – \$22,800,000	\$18,134 – \$176,922	\$31,168 – \$174,499

The estimated market adjustments made to each comparable sale are discussed as follows as of the current zoning:

**Property Rights Conveyed:** Each comparable sale reflected the purchase of the fee simple estate, while the market value of the fee simple estate is being estimated for the subject. Therefore, no adjustment appeared to be warranted.

**Financing/Concessions:** Neither sale concessions nor atypical financing arrangements were reported during the verification of each comparable sale. Thus, no adjustment appeared to be warranted.

**Conditions of Sale:** No atypical conditions of sale were reported during our verification of Sales 1, 2, 4 & 5. Thus, no adjustments were warranted. Sale 3 occurred with the threat of condemnation against the property owner. However, the purchase price was negotiated based on two appraisals and the property owner was a large corporation with the financial means to ensure their fair compensation. Some upward adjustment was considered appropriate.

**Market Conditions (Time):** The sale prices of vacant land throughout the area have shown an increasing trend until mid 2007. The analysis of the market has indicated an annual rate of appreciation for Sale 5 at approximately 5% (0.42% per month) until mid 2007. Sales 1, 2, 3 & 4 occurred during times of no appreciation.

**Location:** The subject property offers an average location within an area that offers a mix of residential and industrial uses near the Delaware River and Great Mantua Creek. It offers adequate access to major roadways. Sales 2 & 3 offered similar locational attributes in an area less attractive for industrial/business park development and did not require adjustment. Sales 1 & 5 offered superior locations close to major roadways, interchanges, and/or newer industrial park location and required downward adjustment. Sale 4 offered a moderately superior location and required upward adjustment.

**Size:** The subject property offers 19.99 acres of uplands. Each sale offered greater upland area and required upward adjustment for the "per unit" premium typically paid for smaller parcels of land. Each sale was adjusted accordingly.

**Utilities:** The subject has access to all public utilities. Sales 1, 2, 4 & 5 offered access to similar public utilities and did not require measurable adjustment. Sale 3 offered access to more limited utilities and required downward adjustment for the availability of this public infrastructure.

**Physical Characteristics:** The subject offers its only access from Universal (Industrial) Road. The site primarily consists of former dredge spoils and a level to sloping topography. In addition, it offers frontage along a railroad line and the Great Mantua Creek. Reportedly, wetlands impact approximately 68% of the entire site.

Adjustments for topography, shape, access, and frontage/acre are applied as a result of dissimilarities in terrain, drainage, slope and other physical features. The physical characteristics of the subject property and each comparable is summarized as follows:

	Upland Land Area (Acres)	Frontage (ft)	Railroad Frontage	Frontage/Acre (ft)	Water Frontage	Shape
<b>Sale 1</b>	130.66	7,875'	Yes	60'	Yes	Mod. Irregular
<b>Sale 2</b>	129.93	987.38'	Yes	8'	Yes	Mod. Irregular
<b>Sale 3</b>	38.96	50'	Yes	1'	Yes	Mod. Irregular
<b>Sale 4</b>	60.38	1,450'	Yes	24'	Yes	Mod. Irregular
<b>Sale 5</b>	130.66	7,875'	Yes	60'	Yes	Mod. Irregular

\* Represents primary frontage.

**Zoning:** The subject lies within the MIBP, Marine Industry Business Park district that permits most types of marine and industrial type uses. Sales 1, 2, 3 & 5 offered similar zoning and no measurable adjustment was required. Sale 4 offered superior zoning that the township designated for redevelopment by allowing residential/Commercial development. Thus, Sale 4 required downward adjustment for its additional development opportunities.

**Development Approvals:** The subject does not offer any development approvals at this time. Sales 2, 3, 4 & 5 did not offer approvals at the time of sale and did not require adjustment. Sale 1 offered final development approvals that were obtained by the seller prior to sale and required significant downward adjustment.

**Conclusions of the Valuation:** Each comparable sale used in the analysis provides a reasonable indication of the subject's market value and was considered the best available as of the valuation date. Based on this information and other data found within the market, the market value is estimated at **\$1,400,000** before considering the additional interest in the roadway easement.

The subject is encumbered by and benefits from a mutual Roadway Easement with Block 1, Lot 2 owned by the Borough of Paulsboro and Block 1, Lot 18 owned by Paulsboro Acquisition Corporation, whereby access to the subject property is permitted via a partially improved access drive known as Universal (Industrial) Road. This easement covers 0.64 acres or 27,878 SF across both properties at the northeastern property line for the subject. It primarily benefits the subject and Paulsboro Acquisition Corporation, providing partial roadway access to the water's edge. Interest in this easement has been estimated as follows:

Subject (Gallenthin)	40%
Paulsboro Acquisition Corp	40%
Borough of Paulsboro	<u>20%</u>
	100%

Based on this information, the market value is estimated at **\$1,418,000** (\$70,000/acre of upland, plus 0.64 acres of Dominant Estate land @ \$28,000/Acre, rounded).

### **Reconciliation (Before the Taking)**

In the final reconciliation, the appraiser must insure that the approaches and methods used relate to the real property interest being appraised, the definition of value under consideration, and the purpose and use of the appraisal. In the analysis of the subject, each of the three traditional approaches to value has been considered in estimating value for the subject property. The following value estimates were derived by each approach employed:

<b>Income Capitalization Approach</b>	N/A
<b>Cost Approach</b>	N/A
<b>Sales Comparison Approach</b>	<b>\$1,418,000</b>

During our analysis, it was found that the Income Capitalization Approach was not a reliable indication of market value, since an adequate supply of comparable lease information was not found for land zoned for this type of use. In addition, this approach to value does not reflect the typical motivations of the purchasers within the market.

The Cost Approach was also considered but not developed, since the subject consists of vacant land.

The Sales Comparison Approach was considered and is the most reliable indicator of the land value, since similar properties are typically being purchased on this basis. The comparable sales were analyzed and adjustments were made to each for differences between it and the subject. It is considered to be the only reliable indicator of the subject's market value.

### **Value Conclusion (Before the Taking)**

After considering all of the facts and circumstances in connection with the subject property, I conclude the following **Market Value** estimates for the **Fee Simple Interest** as of January 5, 2009:

-- ONE MILLION FOUR HUNDRED EIGHTEEN THOUSAND DOLLARS --  
\$1,418,000



## Nature Of Taking

### Description of the Takings

According to the General Property Parcel Map, the taking involves (2) fee takings, (1) permanent easement, and (1) temporary construction easement. Each of the takings is summarized and described as follows:

**Parcel - 1A (Red)**

**Interest Acquired:** Fee Simple

**Land Area:** 1.031 Acres (14,930 SF +/-)

**Description:** Irregular-shaped and located at the northeast portion of the site. Area will be used for new marine terminal roadway (overpass)

**Improvements Affected:** None

**Property Owner Future Rights of Use:** Owner retains the right to use the land area in the future.

**Easement Area - A & B (Blue)**

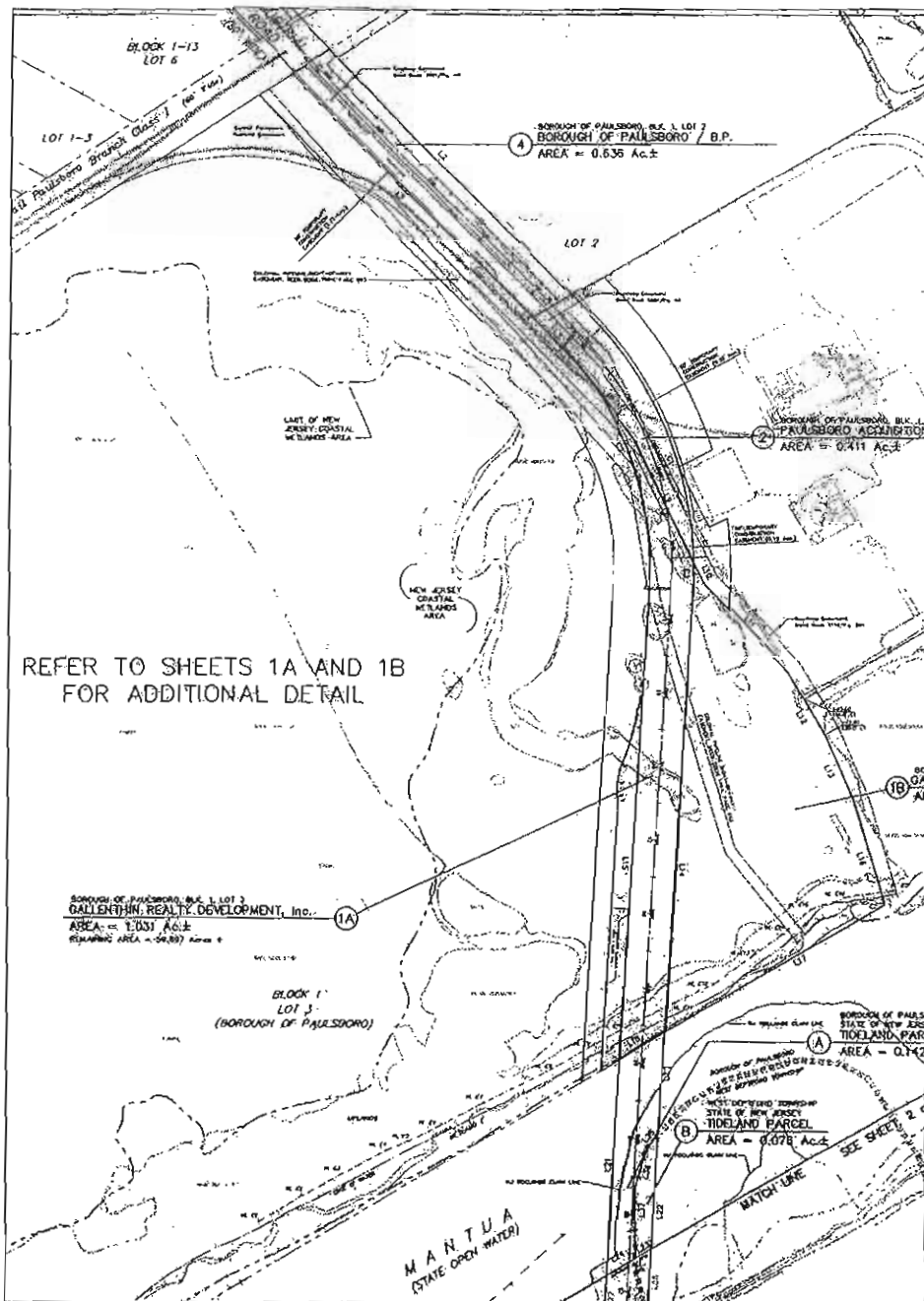
**Interest Acquired:** Permanent, partial interest

**Land Area (A):** 0.256 Acres (11,151 SF +/-)

**Description:** Moderately irregular-shaped and located on the southwest side of the taking.

**Improvements Affected:** None

**Property Owner Future Rights of Use:** The owner, or its assigns will retain the right to use the area after completion of work. However, the County retains the right to form and maintain slopes for grading the highway, including the right to topsoil and seed and to maintain the same so as to stabilize the soil, prevent erosion and/or to improve the aesthetic aspects of the highway, except for drive ways, parking lots, or other paved areas that are to remain.



Da 54

**Parcel - 1B (Red)**

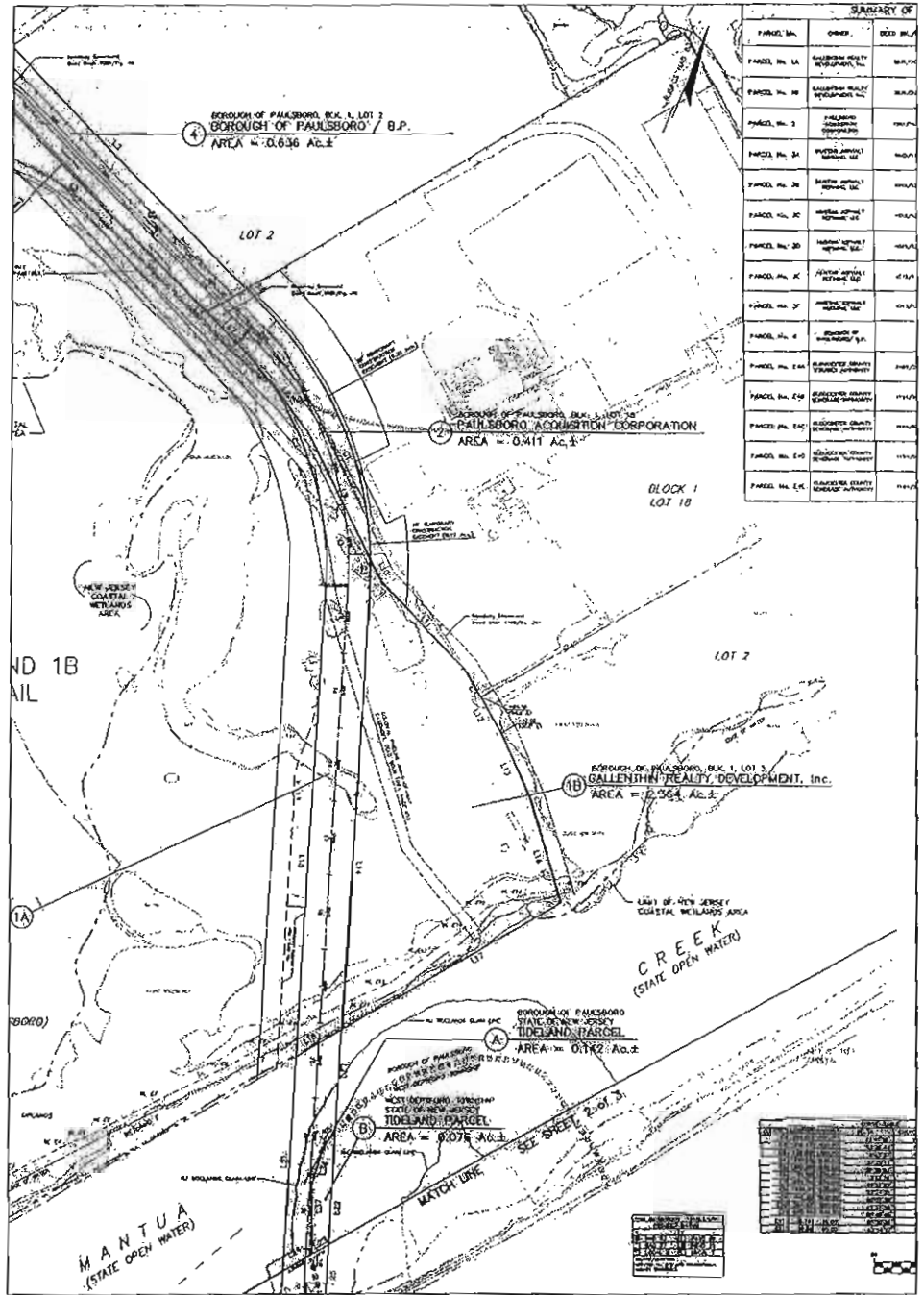
Interest Acquired: Fee Simple

Land Area: 2.364 Acres (102,976 Sq. Ft.)

Description: Irregular shaped and located at the northeast corner of the site. Area will be a land fragment from the larger parcel.

Improvements Affected: None

Property Owner Future Rights of Use: Owner forfeits the right to use the land area in the future.



**Temporary Construction Easement (Brown)**

**Interest Acquired:** Temporary, partial interest

**Land Area:** 1.73 Acres (75,359 Sq Ft)

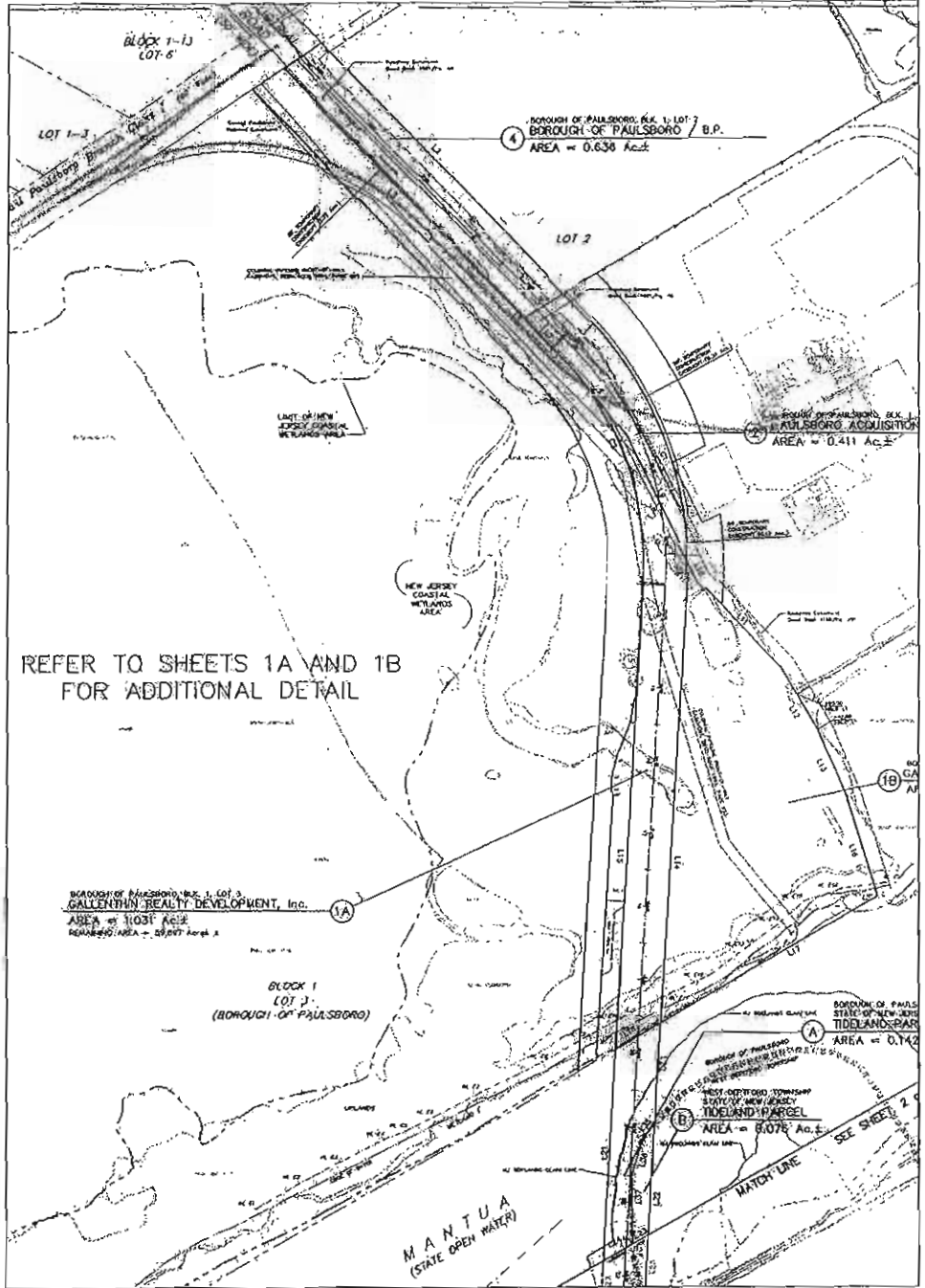
**Description:** Irregular shaped and located at the northwest portion of the site adjoining a portion of the Fee-Taking Area - JA and Universal (Industrial) Road - it has a width of 50'

**Improvements Affected:** None (The railroad tracks located within this area will reportedly not be disturbed during construction)

**Property Owner / Future Rights of Use:**

This gives the GCJA the temporary right to enter upon the land with personnel, material and equipment to construct the terminal bridge and roadway. This right shall begin from the date of notice from the engineer and/or GCJA and for an estimated time limit of 36 months. If this easement should need to be extended, further compensation will be made.

The owner or its assigns will retain the right to use the area and improvements constructed after completion of work.



## Valuation (After the Taking)

### Description of Remainder

The property will continue to offer many of the same physical characteristics as before the taking including frontage, topography, and visibility.

After the Taking, the site's physical characteristics are shown as follows:

Physical Characteristics of the Site	
Land Area:	59.897 Acres (63.292 acres less 3.395 acres)
Upland Area:	16.595 Acres (19.99 acres less 3.395 acres)
% Reduced (Upland Area):	17%
Frontage:	1,405' (Approximately 35% will be below street grade due to proposed bridge wall)
Shape of Tract:	Irregular.
Topography:	Will remain the same as before the taking
Access:	As a result of the taking, a 30'-wide access driveway will be provided to the site from the southwest side of the Roadway Extension.
Water Frontage:	Approximately 1,834' of water frontage along the Great Mantua Creek.
Frontage/Upland Acre:	85'
Topography:	Mostly level to sloping and mostly clear. The northern most portion of the site is partially wooded.
Access:	Universal (Industrial) Road – New roadway extension
Utilities to Site:	Electric and telephone. Water and sewer is reportedly available from Universal Road.
Site Improvements:	Railroad Spur will continue to exist for the property owner, but will not be available to the property (Paulsboro Acquisition Corp.) across the new roadway. New access will be provided to that site.
Bulkhead:	Will remain the same as before the taking.
Flood Designation:	Will remain the same as before the taking.

Freshwater Wetlands:	According to the Development Feasibility Assessment Report provided by Marathon Engineering & Environmental services, Inc, the entire site appears to be impacted by 43.5 acres of wetlands (73% of the site).
Easements/Encumbrances:	A 15'-wide Colonial Pipeline easement will continue to bisect the northern most portion of the subject property. The roadway easement that benefited the subject property shall be eliminated, but public roadway access will continue to be available. However, compensation for the property owner's benefit for the site improvements (asphalt) within the easement area must be provided.
Environmental Contamination:	Will remain the same as before the taking.
Development Approvals:	None.

### **Highest & Best Use – As Vacant (After the Taking)**

Legal restrictions affecting the property include the local municipal land use ordinance of Paulsboro Borough along with all other county and state regulations. The property lies within MIBP, Marine Industry Business Park District. This zoning district allows for waterfront, natural recreation, nature conservancy and nature center, marinas, boat launches, mixed use business park, hotel, club, lodge, retail business, commercial greenhouse, restaurant, theater, place of amusement, consumer, professional, and commercial service establishment, wholesale business establishment, motor freight terminal, frozen food locker, general service and repair shop, and newspaper, job-printing or bookbinding establishment.

As indicated in the Before the Taking, the legal restrictions affecting the property appear to permit each of the legally permissible uses dictated by the municipal land use ordinance and the potential uses specified by ownership are considered too speculative based on the information presented in the Marathon Engineering Report.

**Physically Possible** addresses the possible use of the property given the physical aspects of the site itself. Size, shape, topography, existing easements, and soils of the site affect the uses to which it can be developed.

The property offers a total upland area of 16.595 acres, 1,405' +/- of street frontage (approximately 35% will be below street grade due to proposed bridge wall) and a mostly level to sloping topography. The shape will become very irregular after the taking and will continue to offer extensive water frontage along the Great Mantua Creek. Due to the presence of documented bald Eagle Habitat on the property, a 150'-wide wetlands transition buffer would most likely be required for development with similar frontage and visibility along Universal Road.

150 FOOT WETLANDS TRANSITION BUFFER WIDTH

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Commercial	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	4.22 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	2.40 ±	42,300 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Manufacturing	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	3.80 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	1.91 ±	42,400 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Industrial Park	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	3.79 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	1.86 ±	42,400 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

The physical size of the site and width of the site would appear to allow for development of many industrial and marine industrial type uses. However, any development of the site based on buildable area would be more limited by 43% to 50%. All public utilities will continue to be available to the site.

**Financially Feasible** addresses which of the legally permissible and physically possible uses are capable of producing an income, or return, equal to or greater than the amount needed to satisfy operating expenses, financial obligations and capital amortization. Those uses that are capable of producing a positive return are considered to be financially feasible. However, in order to receive serious consideration as a highest and best use, there must be a reasonable expectation that the use will provide a sufficient return (*or yield*) to attract investment capital.

In terms of market demand, the property is located in a mixed use area with industrial and residential uses. Most of the surrounding uses cater to the immediate area and the presence of a landfill and oil refineries have a significant impact on the site.

Based on this information, the financially feasible alternatives indicate that the subject parcel should be developed with an industrial use.

**Maximally Productive** addresses the one use that is capable of providing the highest return to the property. Thus, the subject parcel should be developed with an industrial use under the standards presented in the Marathon Engineering Report.

### **Appraisal Process**

Again, each of the three traditional approaches to value has been considered in estimating the market value of the subject. The market value indication was developed via the Sales Comparison Approach for the same reasons as it was developed in the Before the Taking.

### **Sales Comparison Approach (After the Taking)**

A market value estimate has been developed through the Sales Comparison Approach for the subject property. The same sales have been utilized as in the Before the Taking.

Comparable Land Sales Adjustment Analysis (After Upland Taking)						
	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Sale Price	180	\$22,800,000	\$8,350,000	\$1,215,000	\$7,868,000	\$6,960,000
Upland Area (Acre)	16.595	130.66	129.93	38.96	60.38	130.66
Sale Price/Acre of Land	10.85	\$174,499	\$64,265	\$31,186	\$130,308	\$53,268
Rights Conveyed	100	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Adjustment	100	-	-	-	-	-
		\$174,499	\$64,265	\$31,186	\$130,308	\$53,268
Financing/Concessions	100	Market	Market	Market	Market	Market
Adjustment	100	-	-	-	-	-
		\$174,499	\$64,265	\$31,186	\$130,308	\$53,268
Conditions Of Sale	100	Market	Market	Atypical	Market	Market
Adjustment	100	-	-	10%	-	-
		\$174,499	\$64,265	\$34,304	\$130,308	\$53,268
Market Conditions	100	Nov-08	Sep-07	Jul-07	Apr-07	Aug-05
# of Months	100	2	16	18	22	41
Adjustment	100	0%	0%	0%	0%	0%
		\$174,499	\$64,265	\$34,304	\$130,308	\$58,062
<b>Other Adjustments:</b>						
Location	100	Superior	Comp	Comp	Superior	Superior
Adjustment	100	-10%	0%	0%	-5%	-10%
Size (Upland)	100	Larger	Larger	Larger	Larger	Larger
Adjustment	100	15%	15%	5%	5%	15%
Utilities	100	Comp	Comp	Inferior	Comp	Comp
Adjustment	100	0%	0%	10%	0%	0%
Physical Characteristics	100	Superior	Superior	Superior	Superior	Superior
Adjustment	100	-25%	-10%	-5%	-15%	-25%
Zoning	100	Comp	Comp	Comp	Superior	Comp
Adjustment	100	0%	0%	0%	-15%	0%
Approvals	100	Final	Comp	Comp	Comp	Comp
Adjustment	100	-40%	0%	0%	0%	0%
Net- Other Adjustments	100	-60%	5%	10%	-30%	-20%
<b>Summary:</b>						
Indicated Market Value Per Acre of Upland:					\$60,000	
Subject's Upland Area (Acre):					16.595	
<b>Estimated Land Value:</b>					<b>\$1,000,000</b>	



**Conclusions of the Valuation:** Each comparable sale used in the analysis provides a reasonable indication of the subject's market value and was considered the best available as of the valuation date.

Based on this information and other data found within the market, the market value for the site After the Taking with conveyance via the Sales Comparison Approach is estimated at **\$1,000,000 (\$60,000/acre of upland)**.

### **Damages to the Remainder**

As previously discussed, no damages to the remainder are anticipated due to the takings other than the physical characteristics adjustment that has already been reflected in the "After" market value of the land, and the permanent encumbrance of a 0.31 acre (13,504 SF +/-) portion of the site. The subject will continue to offer relatively similar land area for development and the portions impacted by the permanent encumbrances are along a portion of the subject's frontage along the proposed overpass frontage, within the setback areas.

### **Compensation for Easements/Encumbrances**

**Easement Area A (Permanent):** The encumbrance of the easement area is permanent and shall impact an area totaling 0.256 acre (11,151 SF +/-). Much of the impact of this encumbrance is offset by the yard setback requirements specified by local zoning, which prevents development within this encumbered area. These areas lay within the yard setbacks, so the impact of the permanent encumbrance is expected to be quite limited. A 20% reduction in the value of the land to be encumbered has been estimated. The damage as a result of this encumbrance is estimated as follows and reflects the market estimate of \$60,000/Acre of land as previously estimated in this report.

$$\begin{aligned} 0.256 \text{ acre} \times \$60,000/\text{Acre} \times 20\% &= \$3,072 \\ \text{(Rounded)} &= \$3,100 \end{aligned}$$

**Temporary Construction Easement Area (Temporary):** The encumbrance of the construction easement area is temporary and shall impart an area totaling 1.73 acres or 75,359 SF. The easement is anticipated to be in effect for (36) months. The compensation will be determined by applying a rental rate to the land affected over the time period work is expected to take. If the temporary easement needs to be extended beyond the required time, additional payment will be made semi-annually to the property owner based on a "per month" basis. The formula in determining annual income is:

$$\text{Capitalization Rate} \times \text{Value} = \text{Income}$$

The value of the land affected can be determined by applying the per acre value (\$60,000) to the area. A capitalization rate of 5% is deemed reasonable for land.

$$\$60,000/\text{Acre} \times 1.73 \text{ Acres} = \$103,800$$

$$5\% \times \$103,800 = \$5,190 \text{ annual income}$$

$$\text{Income for (36) months or three years} = \$15,600 \text{ (rounded)}$$

An amount of **\$15,600** has been allocated as compensation for the temporary encumbrance. Additional compensation, if necessary, will be based on a monthly rate of \$432.50 per month.

### Compensation for Site Improvements

Compensation must also be made for any site improvements that will be permanently impacted by the taking. The site improvements located within the mutual Roadway Easement includes the property owner's right to the asphalt-pavement within the existing roadway. The Marshall Valuation Service was used to estimate the cost new of these improvements, while the depreciation estimate of the improvements have been derived through the age/life method.

Description	Amount	Unit	Replacement Cost	Effective Age (Years)	Average Life (Years)	Remaining Life 100% Available	Depreciated Value
Asphalt Paving	18,420	SF	\$ 2.25	7	11	36%	\$14,920

\*Includes multipliers: Local Multiplier 1.15  
Cost Multiplier 1.07

Thus, the resulting market value estimate for the property, After the Taking, is summarized as follows and reflects all anticipated damages to the remainder:

Da 63

	Sales Comparison	Income Capitalization	Cost Approach
Market Value Conclusion After The Taking	\$1,000,000	N/A	N/A
Less:			
Permanent Easement	-3,100		
Temporary Construction Easement	-15,600		
Site Improvements	<u>-6,000</u>		
After Value Reflecting All Damages	\$975,300		
<b>Total (Rounded):</b>	<b>\$975,000</b>	N/A	N/A

Correlation/After Value Estimate

Sales Comparison Approach.....\$975,000

Income Capitalization Approach..... N/A

Cost Approach..... N/A

D964

**Reconciliation**

In the final reconciliation, the appraiser must insure that the approaches and methods used relate to the real property interest being appraised, the definition of value under consideration, and the purpose and use of the appraisal. In the analysis of the subject, only the Sales Comparison Approach to value has been considered in estimating value for the subject property. The following value estimates were derived by each approach employed:

	<u>Before</u>	<u>After</u>
Sales Comparison Approach	\$1,418,000	\$975,000
Income Capitalization Approach	N/A	N/A
Cost Approach	N/A	N/A

**Conclusion And Justification**

Value Before the Taking	\$1,418,000
Value After the Taking	\$ 975,000
Value of Part Taken and Damages to Remainder	\$ 443,000

To further check the reasonableness of the estimated market values before and after the taking, they appear to correlate with the indicated value ranges of the comparable sales on a per Total Acre basis as well as on a per square foot of potential gross building area basis.

Da 65



Primary Office

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Atlantic County Office

329 Jimmie Leeds Road  
Galloway, New Jersey 08201

December 26, 2008

**Via Certified & Regular Mail**

Gallenthin Realty Development, Inc.  
26 S. Bayard Avenue  
Woodbury, NJ 08096-2802

**Re: Property Acquisition Appraisal – Partial Acquisition  
Block 1, Lot 3  
Borough of Paulsboro, Gloucester County, NJ  
JMA File No. 208258.1**

Dear Mr. Gallenthin:

Our firm has been engaged by the Gloucester County Improvement Authority (GCIA) to determine the fair market value of your corporation's property for a partial acquisition. The appraisal will be used by the GCIA to provide just compensation for the partial acquisition of your property.

We would like to offer you the opportunity to meet with us, so that you can disclose any important information about the property. We plan to inspect the property on Monday, January 5, 2009 at 10:00am, but will also arrange for an additional inspection to accommodate you if you are not able to make this date.

In addition, we would like to request that you provide the applicable items detailed on the enclosed list. Please contact Jerry McHale at (856) 722-0205 to coordinate a meeting as soon as possible.

J. MCHALE & ASSOCIATES, INC.

Jerome J. McHale, MAI  
NJ SCGRE A NO. RG 00239

Da 66

Addenda

77

### PROPERTY APPRAISAL EXHIBIT REQUEST

- 1) Provide the Agreement of Sale, Deed, and settlement sheet for your acquisition of the property if made within the past 5 years.
- 2) Provide information on any Purchase Offers or Lease Agreements that have been made on the property during the past three years and if the property is currently for sale.
- 3) Provide information on any easements encumbering the property.
- 4) Provide a copy of any Site Plans submitted to the township for the development of the property or any Conceptual Plans that currently exist.
- 5) Provide documentation for any approvals received for the property.
- 6) Provide any documentation that shows proof of the rights to accommodate Dredge spoils.
- 7) Provide a copy of any recent appraisal reports prepared for the property.
- 8) Provide any other information that you believe should be considered in the appraisal of your property.

Da 67

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
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ARGR-00020

March 24, 2010

James M. Graziano, Esq.  
Archer & Greiner, P.C.  
One Centennial Square  
Haddonfield, NJ 08033

Subject: Determination of Maximum Building Area and  
Required Parking Spaces  
Gallenthin Property, Block 1, Lot 3  
Borough of Paulsboro, Gloucester County, New Jersey

Dear Mr. Graziano:

T&M has prepared this updated build-out analysis based on our May 6, 2009 report. The analysis has been updated based on the right-of-way location being moved east, away from the Gallenthin property. The revised right-of-way in this analysis was taken from the T&M General Parcel Property Map, dated 12/16/2008, and last revised 03/09/2010. The change in the proposed right-of-way resulted in approximately 0.04 acres (1,587 sq.ft.) of additional developable area.

These analyses are being prepared at the request of Archer & Greiner, P.C., counsel to the Gloucester County Improvement Authority (GCIA) for the prospective condemnation of a portion of the GRD property in conjunction with the roadway/overpass project to determine the maximum possible area that could be developed. The GRD property, also known as the Gallenthin property, is Lot 3, Block 1 in the Borough of Paulsboro, Gloucester County, New Jersey. The existing site, approximately 63.29 acres in size, has frontage along Universal Road, approximately 900 feet east of its intersection with Mantua Avenue. Universal Road, also known as Industrial Road, forms the northern property boundary of the site; existing railroad tracks form the western property line, and portions of Mantua Creek form the southern and western property lines.

~~This analysis includes information gained from our discussions with the NJDEP regarding the wetlands on site, the exclusion of land within an existing railroad easement from Total Upland Area and Buildable Area as shown in the tables included below, and the determination that the land within an existing pipeline easement could only be utilized for drive aisles or parking spaces, not structures. The analysis methodology and wetlands issues are discussed below.~~

A portion of the property in the northwest corner of the site is encumbered by a railroad easement. There is a further encumbrance caused by a pipeline easement running generally parallel to the northern property line of the site.

ENGINEERS \* PLANNERS \* LANDSCAPE ARCHITECTS \* ENVIRONMENTAL SCIENTISTS \* SURVEYORS  
CIVIL \* ELECTRICAL \* ENVIRONMENTAL \* MECHANICAL \* MUNICIPAL \* SITE \* SOLID WASTE \* STRUCTURAL \* TRAFFIC \* TRANSPORTATION

CORPORATE HEADQUARTERS IN MIDDLETOWN, NJ / REGIONAL OFFICES IN TOMS RIVER AND CLIFTON, NJ; and PLYMOUTH MEETING, PA

Da 69





James M. Graziano, Esq.  
 Re: Determination of Maximum Building Area and  
 Required Parking Spaces  
 Gallenthin Property, Borough of Paulsboro

March 24, 2010  
 Page 2 of 5

The analysis of the property was performed to determine the maximum sized building that could be constructed per the zoning requirements for the following land uses: Commercial, Manufacturing, and Industrial Park. The limitation of the zoning setbacks, maximum building coverage, and the required number of parking spaces for the proposed building(s) was also included in the analysis. The design requirements and setbacks for all three (3) uses are included in the following table:

Land Use	Max. Building Coverage (%)	Front Yard Setback (Ft.)	Side Yard Setback (Ft.)	Rear Yard Setback (Ft.)*	Parking Spaces Required**
Commercial	60	20	5	20	1/200 SF
Manufacturing	50	50	10	N/A	1/200 SF
Industrial Park	35	50	15	15	1/200 SF

\* Rear Yard Setback not applicable.

\*\* Parking Spaces required per square foot (SF) of building floor area.

At a March 26, 2009 site meeting with the NJDEP and the Army Corps of Engineers, T&M was instructed to remove the Coastal Wetland and Buffer lines from the plans, leaving only the freshwater wetland boundary to calculate the amount of upland area on-site. T&M was previously instructed to show both the freshwater and coastal wetlands lines on the plans. In our previous calculations we considered upland areas to be those outside of the coastal wetland and buffer lines as it resulted in a lower percentage of taking.

In determining the buildable land area available, the area of the railroad easement was subtracted from the total upland area and buildable area. The building set back lines were measured from the property lines. The area of the pipeline easement was assumed to be buildable for land for drive aisles and parking, but not for structures.

Several assumptions were used in determining the maximum size building for each use and the requisite number of parking spaces needed to service this building. It was assumed that any building to be constructed would be a single-story structure. This type of structure is consistent with typical building layouts built for commercial, manufacturing, and industrial park purposes. The parking space calculations are based on building floor area. If a building is to be constructed with more than a single floor, additional parking spaces will be required, which would reduce the size of the proposed building footprint. A parking space is 20 feet long x 10 feet wide (200 SF). A drive aisle to service the parking space is 25 feet wide. For calculations' sake, a half width (12.5 feet x 10 feet (space width)) was added to the parking space dimension, 125 SF. An additional 25 SF was also added for additional parking access areas. In total, the design area for each parking space equals 350 SF.



James M. Graziano, Esq.  
 Re: Determination of Maximum Building Area and  
 Required Parking Spaces  
 Gallenthin Property, Borough of Paulsboro

March 24, 2010  
 Page 3 of 5

The results of this analysis are included in the following tables:

**50 FOOT WETLANDS TRANSITION BUFFER WIDTH**

50 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Commercial	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	10.24 ±	8.68 ±	162,000 ±	6.51 ± **	810	811
Pro. Conditions	7.57 ±	6.57 ±	119,800 ±	4.81 ± **	599	599

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

50 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Manufacturing	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. # of Spaces Provided
Ex. Conditions	10.24 ±	8.61 ±	162,000 ±	6.51 ± **	810	811
Pro. Conditions	7.57 ±	5.78 ±	119,800 ±	4.81 ± **	599	599

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

50 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Industrial Park	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. # of Spaces Provided
Ex. Conditions	10.24 ±	8.58 ±	162,000 ±	6.51 ± **	810	811
Pro. Conditions	7.57 ±	5.74 ±	119,800 ±	4.81 ± **	599	599

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

**150 FOOT WETLANDS TRANSITION BUFFER WIDTH**

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Commercial	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	4.22 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	2.40 ±	42,300 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

Da 71



James M. Graziano, Esq.  
 Re: Determination of Maximum Building Area and  
 Required Parking Spaces  
 Gallenthin Property, Borough of Paulsboro

March 24, 2010  
 Page 4 of 5

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Manufacturing	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	3.80 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	1.91 ±	42,400 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

150 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Industrial Park	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	4.52 ±	3.79 ±	71,500 ±	2.87 ± **	358	358
Pro. Conditions	2.68 ±	1.86 ±	42,400 ±	1.70 ± **	212	212

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

### 300 FOOT WETLANDS TRANSITION BUFFER WIDTH

300 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Commercial	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces Provided
Ex. Conditions	0.64 ±	0.55 ±	10,000 ±	0.40 ± **	50	51
Pro. Conditions	0.10 ±	0.06 ±	1,500 ±	0.06 ± **	8	8

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

300 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Manufacturing	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces that can be Provided
Ex. Conditions	0.64 ±	0.43 ±	10,000 ±	0.40 ± **	50	51
Pro. Conditions	0.04 ±	0.04 ±	600 ±	0.02 ± **	3	3

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

Da 72



James M. Graziano, Esq.  
Re: Determination of Maximum Building Area and  
Required Parking Spaces  
Gallenthin Property, Borough of Paulsboro

March 24, 2010  
Page 5 of 5

300 FOOT WETLANDS TRANSITION BUFFER WIDTH						
Industrial Park	Total Upland Area (Ac.)	Buildable Area (Ac.)	Max. Sized Building (SF)	Parking Space Area (Ac.)	Parking Spaces Required	Max. Number of Spaces that can be Provided
Ex. Conditions	0.64 ±	0.43 ±	10,000 ±	0.40 ± **	50	51
Pro. Conditions	0.04 ±	0.04 ±	600 ±	0.02 ± **	3	3

\*\* Dominant Dimension. In both instances, the amount of space required for parking determined the maximum building size that could be constructed.

Please contact us if you require any additional information, or have any questions or comments on the information provided.

Very truly yours,

T&M ASSOCIATES

A. Maxwell Peters, P.E., C.M.E.  
Principal Engineer

N:\ARGR\00020\Correspondence\Graziano Buildable Area Report - 4-REVISED.doc

Da 73



April 13, 2009

ARC 061.01

**Patrick M. Flynn, Esquire**  
**Archer & Greiner, P.C.**  
One Centennial Square  
Haddonfield, New Jersey 08033

**RE: Development Feasibility Assessment**  
**Block 1, Lot 3**  
**Owner: Gallenthin Realty Development, Inc.**  
**Borough of Paulsboro, Gloucester County, New Jersey**

Dear Mr. Flynn:

As requested, Marathon Engineering & Environmental Services, Inc. ("Marathon") has performed a development feasibility assessment of the above referenced property, hereafter referred to as the Subject Property. This letter summarizes the environmental and land use approvals required to develop the Subject Property with the following three (3) alternative uses:

- Dredged material containment facility;
- Dredged material processing facility with trans-shipment of processed dredged material by railcar or truck for use at another location; and,
- Soil remediation facility that accepts contaminated soils from offsite properties and treats (e.g., thermal desorption remediation) the material for beneficial reuse.

Marathon was asked to evaluate the feasibility of developing the above three uses on the Subject Property because the current property owner, Gallenthin Realty Development, Inc., has claimed that the Subject Property is suitable for such uses.

Our assessment involved a site inspection on February 19, 2009 (i.e., visual inspection from public right-of-ways adjacent to the Subject Property); review of reports, correspondence, and plans prepared by others (see list below) relative to the proposed Paulsboro Marine Terminal access road and bridge, which will traverse the Subject Property; review of map resources; and regulatory compliance analysis with focus on applicable local, state, and federal environmental/land use regulations. This report contains a description of existing site conditions, a regulatory compliance analysis for each alternative use, as well as a discussion regarding major development limitations associated with the Subject Property. This assessment is intended to assist the Gloucester County Improvement Authority ("GCIA") and its legal counsel, Archer &

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Da 74

Addenda 100

Greiner, with the condemnation of the Subject Property for the purpose of public use (i.e., public roadway).

The following work products provided by Archer & Greiner were reviewed by Marathon during our assessment:

- "Wetlands Location Plan, Paulsboro Marine Terminal Access Road and Bridge Alternatives Analysis;" prepared by William E. Alburger, P.E., P.L.S., P.P., T&M Associates; dated October 4, 2007; including 2 sheets.
- "New Jersey Freshwater Wetlands Protection Act, Statewide General Permit #12, Paulsboro Marine Terminal, Borough of Paulsboro & Township of West Deptford, Gloucester County, New Jersey;" prepared by Seth Gladstone and Daniel DiFrancesco, P.E., Pennoni Associates Inc.; dated October 24, 2007 (permit application submitted to the NJDEP, Division of Land Use Regulation).
- "Limited Site Investigation Report, Paulsboro Marine Terminal, Access Road and Bridge Alignment, Paulsboro, Gloucester County, New Jersey (Volume I of II);" prepared by Craig D. Fisher and Chris A. Purvis, Pennoni Associates Inc.; dated July 7, 2008.
- "Supplemental Phase IA Archaeological Survey and Geomorphological Investigation, Paulsboro Marine Terminal Access Road and Bridge, Paulsboro Borough and West Deptford Township, Gloucester County, New Jersey;" prepared by Richard Grubb & Associates, Inc.; dated July 18, 2008.
- "Geotechnical Engineering Services – 30% Design, Paulsboro Marine Terminal Access Bridge and Roadway, Paulsboro and West Deptford Township, Gloucester County, NJ;" prepared by Pennoni Associates Inc.; dated August 11, 2008.
- Memorandum prepared by Marlin Peterson, Gloucester County Improvement Authority, regarding a meeting between the GCI and the U.S. Army Corps of Engineers ("ACOE") held October 20, 2008, prepared on the same date.
- "General Property Parcel Map, Paulsboro Marine Terminal Access Road and Bridge, Parcels to be Acquired in the Township of West Deptford and Borough of Paulsboro, Gloucester County, New Jersey;" prepared by William E. Alburger, P.E., P.L.S., P.P., T&M Associates; dated December 16, 2008; last revised February 18, 2009; including 3 sheets.
- "Phase I Environmental Site Assessment, Paulsboro Marine Terminal Access Road and Bridge Alignment, Gallenthin Realty Development, Portion of Block 1, Lot 3, Borough of Paulsboro, Gloucester County, New Jersey;" prepared by T&M Associates; dated January 13, 2009.

Da 75

- "Property Boundary Survey, Paulsboro Marine Terminal Access Road Bridge Project, Lot 3, Block 1, Boro. of Paulsboro, Gloucester County, New Jersey," prepared by William E. Alburger, P.L.S., P.P., T&M Associates; dated February 11, 2009; including 1 sheet.

## I. BACKGROUND

Encompassing approximately 63 acres, the Subject Property is identified as Block 1, Lot 3 in the Borough of Paulsboro, Gloucester County, New Jersey (Attachment A, Figure 1). According to the Paulsboro Zoning Map, the Subject Property is zoned Marine Industrial Business Park (MIBP). Located in an industrialized setting, the Subject Property is bound to the north by industrial development (Paulsboro Packaging, Inc. and future Paulsboro Marine Terminal site); to the east by Mantua Creek (tidal tributary to the Delaware River) and industrial development (Gloucester County Utilities Authority wastewater treatment facility and NuStar Energy, L.P. facility); to the south by wetlands and industrial development; and to the west by a Conrail railroad, residential development, and commercial development. Vehicular access to the Subject Property is provided via road frontage along Industrial Road (a.k.a. Universal Road), located along the northwestern portion of the Subject Property. A sign at the entrance to the site off Industrial Road identifies the Subject Property as the "Gallenthin Meadowlands, Port Gallenthin est. 1902, Dredge Depot, 856-384-6760." A 2007 aerial photograph of the Subject Property is provided in Attachment A (Figure 2).

Covering approximately 19 acres (including wetlands transition area regulated by the NJDEP) in the northern and eastern portions of the Subject Property, on-site uplands are made-land underlain by dredged material and other fill material, consisting of deciduous woodland and grassland cover types. Permanent aboveground structures on the Subject Property include a rail spur that connects the Paulsboro Packaging, Inc. facility with the Conrail line and an unimproved access road connected to Industrial Road. A 15-ft wide Colonial Pipeline easement containing a 10-inch diameter underground petroleum pipeline bisects the northern portion of the Subject Property in a northwest-southeast direction.

According to NJDEP mapping (Attachment A, Figure 3) and the wetlands delineation performed by T&M Associates in February and March 2006 (see above-referenced T&M plans), the majority of the Subject Property consists of jurisdictional wetlands (tidal and non-tidal) jointly regulated by the NJDEP and the ACCOE. Based on the available mapping, Marathon estimates that wetlands cover approximately 43.5 acres (69%) of the 63-acre tract. The Subject Property contains deciduous forested wetlands, scrub-shrub wetlands, emergent wetlands, and open waters. Typical of idle dredged material disposal areas in southern New Jersey, the emergent wetlands on the Subject Property are dominated by the invasive common reed (*Phragmites australis*). The mean high water line in the vicinity of the Subject Property is around elevation 4.0 feet (NGVD 1929). Therefore, wetlands in the central and southern portions of the Subject Property are tidally-influenced (i.e., below the mean high water line). With exception of a small fringe of wetlands located in the northern portion of the Subject Property, the on-site

DA 76

wetlands are classified as coastal wetlands regulated by the NJDEP pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). Coastal wetlands are located waterward of the "Limit of New Jersey Coastal Wetlands Area" (syn. Upper Wetlands Boundary/Upper Wetlands Limit), as depicted on the referenced General Property Parcel Map by T&M Associates.

According to the NJDEP geographic information system ("GIS") database, the southeastern portion of the Subject Property along Mantua Creek is mapped as historic fill. In addition, the Soil Survey of Gloucester County, New Jersey (Natural Resources Conservation Service, SSURGO database) (Attachment A, Figure 4), indicates that the northern and eastern portions of the Subject Property are underlain by dredged material (UddcB: Udorthents, dredged coarse materials, 0 to 8 percent slopes). Based on the soil survey mapping, it appears that the Subject Property was part of a larger dredged material containment area that extended to the north of the Subject Property, to the current Delaware River shoreline, which likely received dredged material from historic dredging operations within the Delaware River. Within the segment of the proposed Paulsboro Marine Terminal access road right-of-way that traverses the Subject Property, Pennoni Associates, Inc. ("Pennoni") found fill (i.e., construction debris and dredged material) ranging in thickness from 5 to 10 feet (see referenced Limited Site Investigation Report and Geotechnical Engineering Report). In addition to the historic dredged material deposition use, Richard Grubb & Associates, Inc. (2008) found evidence indicating that between 1930 and 1958 the area surrounding the existing access road in the northern portion of the Subject Property was probably used as a route to transport goods to a timber wharf located along the site's frontage with Mantua Creek.

In support of the Paulsboro Marine Terminal access road and bridge project, Pennoni prepared a Limited Site Investigation ("SI") Report, dated July 7, 2008, to determine the impact dredged material has had within the proposed right-of-way, which traverses the Subject Property. From April 2 to 25, 2008, Pennoni advanced six (6) borings on the Subject Property designated SB-1 through SB-6. From each boring location, Pennoni collected substrate samples from the 0.5 to 1.5 foot below ground surface ("bgs") interval, 10.0 to 10.5 foot bgs interval, and the 20.0 to 20.5 bgs interval. The sample intervals were designated A, B, and C, respectively. The eighteen (18) soil samples were analyzed for Priority Pollutant plus forty ("PP+40") and total petroleum hydrocarbons ("TPH"). In addition, each sample was analyzed for Toxicity Characteristic Leaching Procedure ("TCLP").

Analytical results specific to samples from the Subject Property revealed elevated concentrations of polycyclic aromatic hydrocarbon ("PAH") constituents detected above the NJDEP Residential Direct Contact Soil Remediation Standard ("RDCSRS") in five (5) soil samples. Four (4) samples revealed heavy metal concentrations detected above the RDCSRS. One (1) sample revealed a pesticide constituent detected above the RDCSRS. Samples SB-5B and SB-6B revealed TCLP lead concentrations of 8 milligrams per liter ("mg/l") and 9.5 mg/l, respectively. These lead concentrations exceed the United States Environmental Protection Agency ("USEPA") Resource



Conservation and Recovery Act ("RCRA") standard for toxic materials. A summary of the analytical results which exceeded the RDCSRS is provided in Table 1.

Table 1 – Summary of Analytical Results

Sample ID/Analytical <sup>1</sup> Parameter	SB-1A mg/kg <sup>2</sup>	SB-1B mg/kg	SB-4A mg/kg	SB-5A mg/kg	SB-5B mg/kg	SB-6A mg/kg	SB-6B mg/kg	NJDEP RDCSRS <sup>3</sup> mg/kg
<b>PAHs</b>								
Benzo(a)anthracene	0.20	ND	0.20	0.69	0.75	0.79	0.052J	0.6
Benzo(a)pyrene	0.30	ND	0.22	0.83	0.58	0.74	0.041J	0.2
Benzo(b)fluoranthene	0.71	ND	0.50	1.3	1.3	0.86	0.42	0.6
<b>PP Metals</b>								
Arsenic	3.0	22.6	9.9	18.7	20.7	7.2	10.7	19
Lead	154	9.0	95.4	969	513	101	462	400
<b>Pesticides</b>								
4,4' DDT	0.04	ND	2.1	0.071	0.035	1.7	ND	2

Sample ID/Analytical <sup>4</sup> Parameter	SB-5B mg/l <sup>5</sup>	SB-6B mg/l	USEPA RCRA Standard mg/l
Lead	8.0	9.5	5

- 1 Table summarizes the contaminant concentrations that exceeded the NJDEP RDCSRS and does not summarize each sample collected or the full analytical parameter each sample was analyzed.
- 2 "mg/kg" denotes milligrams per kilogram.
- 3 "RDCSRS" denotes the NJDEP's Residential Direct Contact Soil Remediation Standard.
- 4 Table summarizes the contaminant concentrations that exceeded the NJDEP RDCSRS and does not summarize each sample collected or the full analytical parameter each sample was analyzed.
- 5 "mg/l" denotes milligrams per liter.

Since Pennoni's SI revealed elevated concentrations of contaminants on the Subject Property, it would be necessary to obtain a No Further Action ("NFA") determination from the NJDEP in order to develop the Subject Property with any of the three (3) alternative uses evaluated herein. To obtain the NFA determination, the NJDEP would require a site-wide investigation to determine the full extent of impacted soils on the Subject Property. In addition, the NJDEP would require a groundwater investigation to determine the impact, if any, the impacted soil has had on groundwater beneath the Subject Property. The NJDEP would also require a Baseline Ecological Evaluation ("BEE") to determine the impact, if any, the contaminants have had on sensitive ecological receptors. It is likely that remediation at the Subject Property would involve the use of engineering controls, such as capping, and institutional controls, such as deed restriction by Deed Notice.

In addition to Pennoni's SI, T&M Associates ("T&M") prepared a Phase I Environmental Site Assessment ("Phase I"), dated January 13, 2009, of the Subject Property. T&M reported that the ACOE deposited dredged material on the Subject Property in 1902, 1934, 1937 and 1963. Since Pennoni's SI (2008) revealed contaminants above the NJDEP RDCSRS, T&M suggested additional investigations of the historic fill material,

Da 78

as stated in the previous paragraph. T&M did not reveal any additional areas of concern associated with the Subject Property, but they did recommend an investigation to determine any impacts to the Subject Property from upgradient industrial properties.

## II. ALTERNATIVE USES

It is our understanding that the current property owner has claimed the Subject Property suitable for the following three uses: dredged material disposal (containment) facility; dredged material processing facility; and soil remediation facility. Regulations and associated limitations applicable to the three alternative uses are summarized below.

### Dredged Material Containment Facility

A dredged material containment facility is a structure constructed in open water or wetlands for the purpose of permanently storing dredged material, which results in the creation of "made-land." The operation typically involves discharge of dredged material, by hydraulic or mechanical means, into an artificial basin surrounded by a retaining structure (berm or bulkhead).

It would be necessary to obtain the following approvals to authorize permanent deposition of dredged material on the Subject Property:

Approval	Authority	Administering Agency
No Further Action Determination	N.J.A.C. 7:26E et seq.	NJDEP, Division of Site Remediation
Waterfront Development Permit	N.J.A.C. 7:7 and N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Acceptable Use Determination <sup>1</sup>	N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation & Office of Dredging and Sediment Technology
Water Quality Certificate	N.J.A.C. 7:7, N.J.A.C. 7:7A, N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Coastal Wetlands Permit	N.J.A.C. 7:7 and N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Freshwater Wetlands Individual Permit	N.J.A.C. 7:7A	NJDEP, Division of Land Use Regulation
Flood Hazard Area Individual Permit <sup>2</sup>	N.J.A.C. 7:13	NJDEP, Division of Land Use Regulation
NJPDES Permit <sup>3</sup>	N.J.A.C. 7:14A-1	NJDEP, Division of Water Quality
Individual ACOE Permit	33 CFR 320-332	ACOE, Philadelphia District

Da 79

Approval	Authority	Administering Agency
Major Site Plan Approval	N.J.S.A. 40:55D-1 et seq.	Borough of Paulsboro Planning Board
Major Site Plan Approval	N.J.S.A. 40:55D-1 et seq.	Gloucester County Planning Board
Soil Erosion & Sediment Control Plan Certification	N.J.A.C. 2:90	Gloucester County Soil Conservation District

- 1 For projects that involve the use, processing, and/or transfer of dredged material, the NJDEP issues an Acceptable Use Determination as a condition of the Waterfront Development Permit.
- 2 Required for regulated activities in the flood hazard area and/or riparian zone, outside the Waterfront Development zone.
- 3 New Jersey Pollutant Discharge Elimination System (NJPDES) Permit required under certain circumstances. NJPDES-Discharge to Surface Water Permit needed if the dredged material is from a different waterbody than the receiving waterbody. Applicability of a NJPDES-Discharge to Ground Water Permit determined on a case-by-case basis by the NJDEP, Bureau of Nonpoint Pollution Control.

It is noted that a NJDEP tidelands conveyance is not required for the transfer of dredged material from one tidelands location to another (e.g., disposal at a "formerly flowed" upland site).

According to the publication entitled *The Management and Regulation of Dredging Activities and Dredged Material in New Jersey's Tidal Waters* (NJDEP 1997), clean dredged material is not regulated as solid waste and has never been a component of the New Jersey Solid Waste Management Act ("NJSWMA") planning process. For the Subject Property to be approved as a dredged material containment facility, it would be necessary to obtain an Acceptable Use Determination ("AUD") from the NJDEP. To be characterized as clean dredged material, it would be necessary to perform analytical testing of the dredged material to be accepted to confirm that contaminants in excess of the NJDEP RDCSRS are not present. Any dredged material brought to the Subject Property that did not conform to the NJDEP RDCSRS would be regulated pursuant to the beneficial use of solid waste standards under the NJSWMA, as described in more detail in the Soil Remediation Facility section below.

It has been NJDEP's policy to prohibit the permanent disposal of soil or dredged material on a site if the material to be imported contains contaminants at higher concentrations than those found in the existing soil substrate. The non-native substrate that currently underlies the majority of the Subject Property consists of construction debris and dredged material generated by historic dredging activities within the Delaware River. In order for the NJDEP to authorize the disposal of dredged material on the Subject Property, analytical test results for the dredged material would have to demonstrate that the material is equal to or less contaminated than the existing substrate on the Subject Property.

In order to obtain a Waterfront Development Permit from the NJDEP for development of a dredged material containment facility, it is necessary to identify during the application process the proposed or potential source(s) of the dredged material to be accepted at

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the facility. Dredged material containment facilities are usually constructed for the purpose of accommodating a single dredging project or multiple projects within a defined geographic region. Assuming application of hydraulic/hopper dredging technology, the location of the Subject Property limits the sources of dredged material that could be accepted at the site to the Delaware River and Mantua Creek navigation channels.

In regards to the proposed Delaware River Main Channel Deepening project (40 to 45 ft deep) ("DRMCD"), the ACOE plans to deposit 16.4 million cubic yards (CY) of dredged material at upland sites within the Delaware River region<sup>1</sup>. It is anticipated that an additional 215 million CY will be generated by maintenance dredging operations over a 50-year period<sup>1</sup>. A total of six (6) existing upland disposal sites in New Jersey have been identified by the ACOE to accept the future dredged material from the Delaware River, and these facilities have adequate capacity to serve the needs of the complete project (50-year plan)<sup>1,2</sup>. The Subject Property is not identified as an existing or proposed dredged material disposal site for the DRMCD project<sup>1,2</sup>. Further, should the needs of the DRMCD project change, it is unlikely that the Subject Property would be considered for dredged material disposal because it does not satisfy the ACOE's minimum contiguous acreage criterion of 100 acres (personal communication between GCIA and the ACOE, 10/20/08), and adjacent lands are not available to achieve this size requirement.

Situated along the western shoreline of Mantua Creek, a tidal tributary to the Delaware River, the location of the Subject Property is practical to accepting dredged material from dredging operations within Mantua Creek. Around calendar year 1899, Mantua Creek was designated as a federal navigation project by the ACOE. Today, Mantua Creek is classified as a deactivated federal navigation project, but it has not been deauthorized<sup>3</sup>. The ACOE is not aware of any dredging plans or needs within Mantua Creek (personal communication between GCIA and the ACOE, 10/20/08). Should the need to dredge Mantua Creek arise in the future, the project proponent would have to obtain permits from the NJDEP and ACOE that authorize the dredging activity and deposition or end use of the dredged material.

<sup>1</sup> U.S. Army Corps of Engineers. Public Notice CENAP-PL-E-09-01, dated December 17, 2008, regarding Delaware River Main Channel Deepening Project, Summary of Changes to the Selected Alternative Since the 1997 Supplemental Environmental Impact Statement.

<sup>2</sup> U.S. Army Corps of Engineers. 1997. Delaware River Main Channel Deepening Project, Supplemental Environmental Impact Statement. U.S. Army Corps of Engineers, Philadelphia District, Philadelphia, Pennsylvania.

<sup>3</sup> U.S. Army Corps of Engineers. List of Navigable and Non-Navigable Waters in the Philadelphia District. (undated). U.S. ACOE, Philadelphia District. Retrieved 3 March 2009. < [http://www.nap.usace.army.mil/cenap-op/regulatory/nav\\_waters.pdf](http://www.nap.usace.army.mil/cenap-op/regulatory/nav_waters.pdf) >.

Da 81

As part of the permitting processes associated with dredging projects, the regulatory agencies require that a project proponent demonstrate through an alternatives analysis that a proposed dredged material deposition site is the most practicable alternative and that impacts to wetlands/waters are avoided or minimized. Under both state and federal wetlands regulations, the environmental sensitivity of landscape features is ranked as follows, in order of increasing sensitivity: upland (non-transition area); wetlands transition area (transition areas are typically not regulated under Section 404 of the Federal Clean Water Act); wetlands; and open waters.

If dredging within Mantua Creek becomes necessary in the future, then the Subject Property may be considered as a potential dredged material disposal site for such a project, considering its location and historic use as a dredged material deposition site. However, alternative upland sites, if available, would be favored over the Subject Property by the regulatory agencies because such alternatives would avoid or minimize impacts to wetlands.

Regardless of dredging method, a containment facility on the Subject Property could accept dredged material transferred from small-scale projects, such as piers, docks, and intake structures, in the Delaware River region (cf. Weeks Marine facility, Logan Township, New Jersey). Under this scenario, the dredged material from various sources would have to satisfy the contamination criteria established in the site-specific AUD issued for the Subject Property by the NJDEP.

A subset of Coastal Zone Management rules applicable to dredged material disposal facilities in water and land areas are set forth at N.J.A.C. 7:7E-4.8 and 7:7E-7.12, respectively. Mantua Creek is classified as a "medium creek," as defined at N.J.A.C. 7:7E-4.1. Per N.J.A.C. 7:7E-4.8, dredged material disposal is prohibited in medium creeks. Therefore, a dredged material containment area on the Subject Property must be located landward of the spring high water line, which is at an approximate elevation of 4.5 ft (NGVD 1929). This restriction severely limits the area of the Subject Property available for dredged material disposal to approximately 31 acres (49 percent of the site) (rough estimate using GIS software).

To comply with state and federal wetlands regulations, it would be necessary to demonstrate through an alternatives analysis that the Subject Property is the most practical site for a dredged material containment facility (i.e., an alternative upland site is not available in the region) and that the project would minimize environmental impacts to the maximum extent feasible. Further, wetlands permits from the NJDEP and ACCOE would be conditioned on the permittee providing mitigation for impacts to wetlands<sup>4</sup>. At a minimum, the NJDEP and the ACCOE would require wetlands mitigation at ratios of 2:1 and 1:1, respectively, with a single mitigation plan satisfying the requirements of both agencies, in most cases.

<sup>4</sup> Compensatory mitigation for impacts to wetlands can be provided in several forms, such as creation, restoration, and/or enhancement of wetlands; purchase of mitigation credits; upland preservation; in-lieu fee arrangement, etc.

**Dredged Material Processing Facility**

For the purpose of this assessment, dredged material processing facility means an operation designed to accept and treat dredged material before final use at another location. Treatment of dredged material in such a facility could include dewatering in a confined disposal facility ("CDF") and/or blending to reduce chemical concentrations. Such a facility could also serve as a temporary storage area for dredged material.

It would be necessary to obtain the following approvals to authorize development of a dredged material processing facility on the Subject Property:

Approval	Authority	Administering Agency
No Further Action Determination	N.J.A.C. 7:26E et seq.	NJDEP, Division of Site Remediation
Waterfront Development Permit	N.J.A.C. 7:7 and N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Acceptable Use Determination <sup>1</sup>	N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation & Office of Dredging and Sediment Technology
Water Quality Certificate	N.J.A.C. 7:7, N.J.A.C. 7:7A, N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Coastal Wetlands Permit	N.J.A.C. 7:7 and N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Freshwater Wetlands Individual Permit	N.J.A.C. 7:7A	NJDEP, Division of Land Use Regulation
Flood Hazard Area Individual Permit <sup>2</sup>	N.J.A.C. 7:13	NJDEP, Division of Land Use Regulation
Tidelands Conveyance <sup>3</sup>	N.J.S.A. 12:3-1 et seq.	NJDEP, Bureau of Tidelands Management
NJPDES Permit <sup>4</sup>	N.J.A.C. 7:14A-1	NJDEP, Division of Water Quality
Individual ACOE Permit	33 CFR 320-332	ACOE, Philadelphia District
Major Site Plan Approval	N.J.S.A. 40:55D-1 et seq.	Borough of Paulsboro Planning Board
Major Site Plan Approval	N.J.S.A. 40:55D-1 et seq.	Gloucester County Planning Board
Water and Sewer Connection Permit <sup>5</sup>	N.J.S.A. 40:55D-1 et seq., N.J.A.C. 7:14 A-22 and 23, and N.J.A.C. 7:10	Borough of Paulsboro Water and Sewer Department
Soil Erosion & Sediment Control Plan Certification	N.J.A.C. 2:90	Gloucester County Soil Conservation District

Da 83

- 1 For projects that involve the use, processing, and/or transfer of dredged material, the NJDEP issues an Acceptable Use Determination as a condition of the Waterfront Development Permit.
- 2 Required for regulated activities in the flood hazard area and/or riparian zone, outside the Waterfront Development zone.
- 3 Tidelands conveyance documents were not reviewed during this assessment. It is unknown if tidelands conveyances have been issued for the Subject Property.
- 4 New Jersey Pollutant Discharge Elimination System (NJPDES) Permit required under certain circumstances. NJPDES-Discharge to Surface Water Permit needed if the dredged material is from a different waterbody than the receiving waterbody. Applicability of a NJPDES-Discharge to Ground Water Permit determined on a case-by-case basis by the NJDEP, Bureau of Nonpoint Pollution Control.
- 5 Water and sewer connection permit needed to connect a potential administration building to public utilities.

It would be necessary to obtain an AUD from the NJDEP for the importation of dredged material onto the Subject Property. Processing and staging/transfer facilities that handle clean dredged material are not regulated under the NJSWMA. To be characterized as clean dredged material, it would be necessary to perform analytical testing of the dredged material to be accepted to confirm that contaminants in excess of the NJDEP RDCSRS are not present. Any dredged material brought to the Subject Property that exceeds the NJDEP RDCSRS would be regulated pursuant to the beneficial use of solid waste standards under the NJSWMA, as described in more detail under the Soil Remediation Facility section. To authorize the export and end use(s) of processed dredged material, an AUD specific to the end use/final deposition site must be obtained from the NJDEP prior to export from the Subject Property.

To comply with state and federal wetlands regulations, it would be necessary to demonstrate through an alternatives analysis that the Subject Property is the most practical site for a dredged material processing facility (i.e., an alternative upland site is not available in the region) and that the project would minimize environmental impacts to the maximum extent feasible. Further, wetlands permits from the NJDEP and ACOE would be conditioned on the permittee providing mitigation for impacts to wetlands. At a minimum, the NJDEP and the ACOE would require wetlands mitigation at ratios of 2:1 and 1:1, respectively, with a single mitigation plan satisfying the requirements of both agencies, in most cases.

#### Soil Remediation Facility

Similar to a trash recycling facility, a soil remediation facility accepts and treats contaminated material for beneficial reuse at offsite locations. Typical treatment processes administered at soil remediation facilities include solidification/stabilization (e.g., micro-encapsulation) and thermal desorption.

It would be necessary to obtain the following approvals to authorize development of a soil remediation facility on the Subject Property:

Da 84

Approval	Authority	Administering Agency
No Further Action Determination	N.J.A.C. 7:26E et seq.	NJDEP, Division of Site Remediation
Class B Recycling Center Approval	N.J.A.C. 7:26A et seq.	NJDEP, Division of Solid and Hazardous Waste
Waterfront Development Permit	N.J.A.C. 7:7 and N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Water Quality Certificate	N.J.A.C. 7:7, N.J.A.C. 7:7A, N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Coastal Wetlands Permit	N.J.A.C. 7:7 and N.J.A.C. 7:7E	NJDEP, Division of Land Use Regulation
Freshwater Wetlands Individual Permit	N.J.A.C. 7:7A	NJDEP, Division of Land Use Regulation
Flood Hazard Area Individual Permit <sup>1</sup>	N.J.A.C. 7:13	NJDEP, Division of Land Use Regulation
Tidelands Conveyance <sup>2</sup>	N.J.S.A. 12:3-1 et seq.	NJDEP, Bureau of Tidelands Management
NJPDES Permit <sup>3</sup>	N.J.A.C. 7:14A-1	NJDEP, Division of Water Quality
Individual ACOE Permit	33 CFR 320-332	ACOE, Philadelphia District
Major Site Plan Approval	N.J.S.A. 40:55D-1 et seq.	Borough of Paulsboro Planning Board
Major Site Plan Approval	N.J.S.A. 40:55D-1 et seq.	Gloucester County Planning Board
Water and Sewer Connection Permit <sup>4</sup>	N.J.S.A. 40:55D-1 et seq., N.J.A.C. 7:14 A-22 and 23, and N.J.A.C. 7:10	Borough of Paulsboro Water and Sewer Department
Soil Erosion & Sediment Control Plan Certification	N.J.A.C. 2:90	Gloucester County Soil Conservation District

1 Required for regulated activities in the flood hazard area and/or riparian zone, outside the Waterfront Development zone.

2 Tidelands conveyance documents were not reviewed during this assessment. It is unknown if tidelands conveyances have been issued for the Subject Property.

3 Would be required for surface water discharges from remediation activities.

4 Water and sewer connection permit needed to connect an administration building to public utilities.

Any contaminated soil that is transported to the Subject Property for remediation would be regulated under the NJSWMA for the beneficial use of solid waste. The soil remediation facility would require a Class B Recycling Center Approval to accept and remediate soils from offsite sources. It would be necessary to satisfy the following conditions in order to obtain a Class B Recycling Center Approval from the NJDEP:

Da 85



- The remediation facility must conform to the Gloucester County Solid Waste Management Plan.
- If contaminated soils are exposed to stormwater while being processed on the Subject Property, it would be necessary to obtain a New Jersey Pollutant Discharge Elimination System ("NJPDES") Basic Industrial Stormwater Permit.
- If soil incineration processes, such as thermal desorption, are proposed, the facility would be subject to the air permitting process administered by the NJDEP, Air Quality Permitting Program. Applicable permits would include Preconstruction Permits pursuant to N.J.A.C. 7:27-8 and Title V Permits pursuant to N.J.A.C. 7:27-22.

To comply with state and federal wetlands regulations, it would be necessary to demonstrate through an alternatives analysis that the Subject Property is the most practical site for a soil remediation facility (i.e., an alternative upland site is not available in the region) and that the project would minimize environmental impacts to the maximum extent feasible. Further, wetlands permits from the NJDEP and ACOE would be conditioned on the permittee providing mitigation for impacts to wetlands. At a minimum, the NJDEP and the ACOE would require wetlands mitigation at ratios of 2:1 and 1:1, respectively, with a single mitigation plan satisfying the requirements of both agencies, in most cases.

### III. LIMITATIONS

Major limitations affecting development of the Subject Property are summarized below. Although available documentation indicates that portions of the Subject Property do not contain significant retrievable cultural resources, additional survey work would be required to confirm the absence of such resources from the entire Subject Property. Therefore, cultural resources are included under this section as a potential limitation.

#### Wetlands

The majority of the Subject Property consists of jurisdictional wetlands (tidal and non-tidal) jointly regulated by the NJDEP and the ACOE. Based on available mapping (Attachment A, Figure 3 and survey information by T&M Associates), it is estimated that wetlands cover approximately 43.5 acres (69%) of the 63-acre tract. Assuming a 150-ft wetlands transition area (see Threatened and Endangered Species discussion below) for all on-site wetlands, regulated by the NJDEP pursuant to the New Jersey Freshwater Wetlands Protection Act/Rules (N.J.A.C. 7:7A-2.5), we estimate that the developable upland area on the Subject Property is approximately 4 acres, which excludes zoning setbacks enforced by the municipality and the triangular portion of the site located between the Conrail railroad, Industrial Road, and the rail spur.

The dredged material containment facility alternative would require extensive disturbance to wetlands. Under the dredged material processing facility alternative, it appears possible to develop one or more small-scale upland CDFs in the northern portion of the Subject Property without substantial wetlands disturbance. We estimate

Da 86

that development of an efficient, cost-effective soil remediation facility would require greater than 4 acres [approximate acreage of existing developable upland (i.e., non wetlands transition area) on the Subject Property], and thus would not be feasible given the coverage of wetlands and wetlands transition area. Most soil remediation facilities and other Class B recycling facilities in southern New Jersey encompass at least 20 acres. Such facilities require large material stockpile areas, staging areas for large treatment equipment, internal routes for truck traffic, truck scales, at least one administrative building, and space dedicated for stormwater management.

As part of the wetlands Individual Permit application processes with the NJDEP and ACOE, it is necessary to perform an alternatives analysis and public need assessment to demonstrate that a proposed project minimizes wetland impacts and is in the public interest. As described above, we believe that an objective alternatives analysis for the potential dredged material containment facility project reveals the availability of other suitable disposal sites in the region (see existing disposal sites identified in the Dredged Material Placement Plan for the Delaware River Main Channel Deepening project<sup>1,2</sup>), use of which would result in less adverse impacts to wetlands. Further, it is unlikely that the Subject Property would be considered by the ACOE as a dredged material containment facility because the site does not satisfy the ACOE's minimum contiguous acreage criterion of 100 acres (personal communication between GCIA and the ACOE, 10/20/08), and adjacent lands are not available to achieve this size requirement. It would be necessary to perform additional alternatives analyses that account for environmental, economic, and technological factors, beyond the scope of the assessment reported herein, to determine if the Subject Property is the most practicable alternative for development of the other two uses (i.e., processing facility and remediation facility). If wetlands permits were issued by the NJDEP and ACOE for any of the three (3) potential uses of the Subject Property, then the permittee would be required to provide compensatory wetlands mitigation at a minimum ratio of 2:1.

#### Threatened and Endangered Species

According to the NJDEP Landscape Project mapping (version 2.1), the Subject Property contains documented (breeding and foraging) habitat for bald eagle, a state-endangered species. In 2005, Amy S. Greene Environmental Consultants, Inc. performed a bald eagle habitat assessment for the proposed Paulsboro Marine Terminal access road and bridge, which traverses the Subject Property (report not reviewed by Marathon). As reported by Pennoni in the Freshwater Wetlands General Permit #12 application (2007) submitted to the NJDEP, Amy S. Greene Environmental Consultants, Inc. concluded that the Paulsboro Marine Terminal access road project "will not impact potential Bald Eagle foraging and/or nesting areas." However, the presence of documented bald eagle habitat on the Subject Property will likely result in an exceptional resource value classification (150-ft buffer) by the NJDEP for the majority of on-site wetlands. In addition, clearing of waterfront vegetation would be restricted by the NJDEP in accordance with the New Jersey Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) and the New Jersey Rules on Coastal Zone Management (N.J.A.C. 7:7E).

Dq 87

A search of the NJDEP Natural Heritage Database for documented occurrences of threatened and endangered species specific to the Subject Property was not requested by Marathon as part of this assessment. According to the NJDEP Natural Heritage Program GIS layer (2004), there are no documented occurrences of rare plants or ecological communities on the Subject Property. A Natural Heritage Database report (April 4, 2008) for a site located less than 1 mile east of the Subject Property identifies documented habitat for shortnose sturgeon (*Acipenser brevirostrum*; state- and federally-endangered) in the vicinity of the Subject Property. Shortnose sturgeon is an anadromous fish species found within the tidal Delaware River. Important habitat for shortnose sturgeon, if present in the vicinity of the Subject Property, would be located in the open water portions of Mantua Creek and the Delaware River. Timing restrictions and possibly other mitigative measures would be enforced by the NJDEP and ACOE as permit conditions to prevent adverse impacts to breeding and foraging activities of shortnose sturgeon.

### Cultural Resources

Our review of the report by Richard Grubb & Associates, Inc. ("RGA") (2008) indicates that development of the Subject Property should not be precluded by cultural resource regulations. As reported by RGA (2008), a cultural resources survey (intensive-level architectural survey and Phase IA archaeological survey) was performed by ARCH2 and Kittatinny Archaeological Research in October 2005 for the proposed Paulsboro Marine Terminal access road and bridge, which bisects the Subject Property. ARCH2 and Kittatinny Archaeological Research concluded that the project's impact area did not include any eligible historic architectural resources, and identified a sensitivity for buried prehistoric archaeological resources in wetlands on both sides of Mantua Creek, including the Subject Property. As recommended by Kittatinny Archaeological Research, the objective of the supplemental Phase IA archaeological survey performed by RGA (2008) was to determine the potential for buried archaeological deposits within the proposed right-of-way for the Paulsboro Marine Terminal access road and bridge. During the Phase IA archaeological survey, RGA (2008) noted the presence of one registered prehistoric site (28G124) in the northern portion of the Subject Property. However, RGA concluded that there is low potential for retrievable archaeological deposits at site 28G124 due to "extensive and comprehensive" historic period disturbance. Richard Grubb & Associates, Inc. further concluded that there is a low potential for significant archaeological resources within the project site (right-of-way), and did not recommend additional cultural resource survey work for the Paulsboro Marine Terminal access road and bridge project.

As the portion of the Subject Property investigated by RGA is similar to the remainder of the Subject Property in terms of historic use, existing use, landscape positions, and substrate, it is likely that development of the Subject Property with any of the three alternative uses would not adversely impact significant cultural resources. However, the NJDEP and ACOE would require a cultural resources survey of the entire Subject Property to demonstrate that a proposed project complies with cultural resource regulations within the New Jersey Freshwater Wetlands Protection Act Rules (N.J.A.C.

Da 88

7:7A), New Jersey Rules on Coastal Zone Management (N.J.A.C. 7:7E), and Section 106 of the National Historic Preservation Act.

### Flood Hazard Areas

In accordance with the New Jersey Flood Hazard Area Control Act Rules (N.J.A.C. 7:13-11.17 and 11.18), which are incorporated into the New Jersey Rules on Coastal Zone Management (N.J.A.C. 7:7E), vegetation within the riparian zone may not be disturbed under any of the alternative uses evaluated herein. In the vicinity of the Subject Property, Mantua Creek flows through an area underlain by the Magothy geologic formation, which is known to produce substantial acid-producing deposits. Therefore, a 150-ft riparian zone measured landward of the top-of-bank is applied to Mantua Creek adjacent to the Subject Property pursuant to N.J.A.C. 7:13-4.1. Discharge of dredged or fill material is conditionally acceptable within the flood fringe (but outside the floodway), which on the Subject Property includes areas below elevation 10 ft, the flood hazard area design elevation taken from the FEMA Flood Insurance Rate Map (Community Panel No. 3402140007B, effective June 1, 1982).

### Local Zoning

The Subject Property is zoned Marine Industrial Business Park (MIBP). The three alternative uses evaluated herein are not specifically allowed or prohibited under the Paulsboro MIBP Use Regulations. However, development of a dredged material processing facility or soil remediation facility on the Subject Property may be inconsistent with the Paulsboro Land Use Ordinance, specifically § 80-34 (General Regulations, Prohibited Uses). As set forth at § 80-34, no use shall be permitted in a manufacturing district that creates a noxious, offensive or hazardous condition beyond a manufacturing district boundary. According to the Ordinance, noxious, offensive and/or hazardous conditions are created by uses that constitute a public nuisance beyond a manufacturing district boundary line by reason of dissemination of noxious, toxic or corrosive fumes, smoke, odor or dust, and uses that result in noise or vibration exceeding the average intensity of noise or vibration occurring from other causes at the manufacturing district boundary line. Operations associated with the dredged material processing facility and soil remediation facility alternatives, including operation of heavy equipment, frequent truck traffic, and material handling (e.g., mixing, loading, etc.), may create adverse conditions (e.g., increased traffic, noise, and dust) within the existing residential community that borders the Subject Property (and MIBP district boundary) to the west.

Our review of the Paulsboro Zoning Ordinance revealed that bulk land use restrictions were not provided for the MIBP Zoning District. A restriction of 70 percent maximum impervious is typical of Industrial Park zoning standards elsewhere in southern New Jersey.

Da 89


**IV. SUMMARY**

Due to the site's waterfront location and historic land use, development of the Subject Property is subject to stringent land use regulations at the state and federal levels. Further, under the dredged material processing facility and soil remediation facility alternatives, the local review process may prove difficult due to the proximity of the Subject Property to existing residential development, which could present potential use conflicts related to secondary effects (i.e., increased traffic, noise, and dust). Major approvals necessary to implement any of the three (3) alternative uses evaluated herein include a No Further Action Determination (NJDEP), Waterfront Development Permit (NJDEP), Freshwater Wetlands Individual Permit (NJDEP), Major Site Plan Approval (Borough of Paulsboro and Gloucester County Planning Boards), and likely an Individual Section 404 Permit (ACOE). It is noted that the permitting processes associated with such approvals would be comprehensive, relatively costly, and lengthy (on the order of 1.5 to 3 years for due diligence, application preparation, and application review by regulatory agencies).

Please contact our office with any questions or comments.

Sincerely,

**Marathon Engineering & Environmental Services, Inc.**



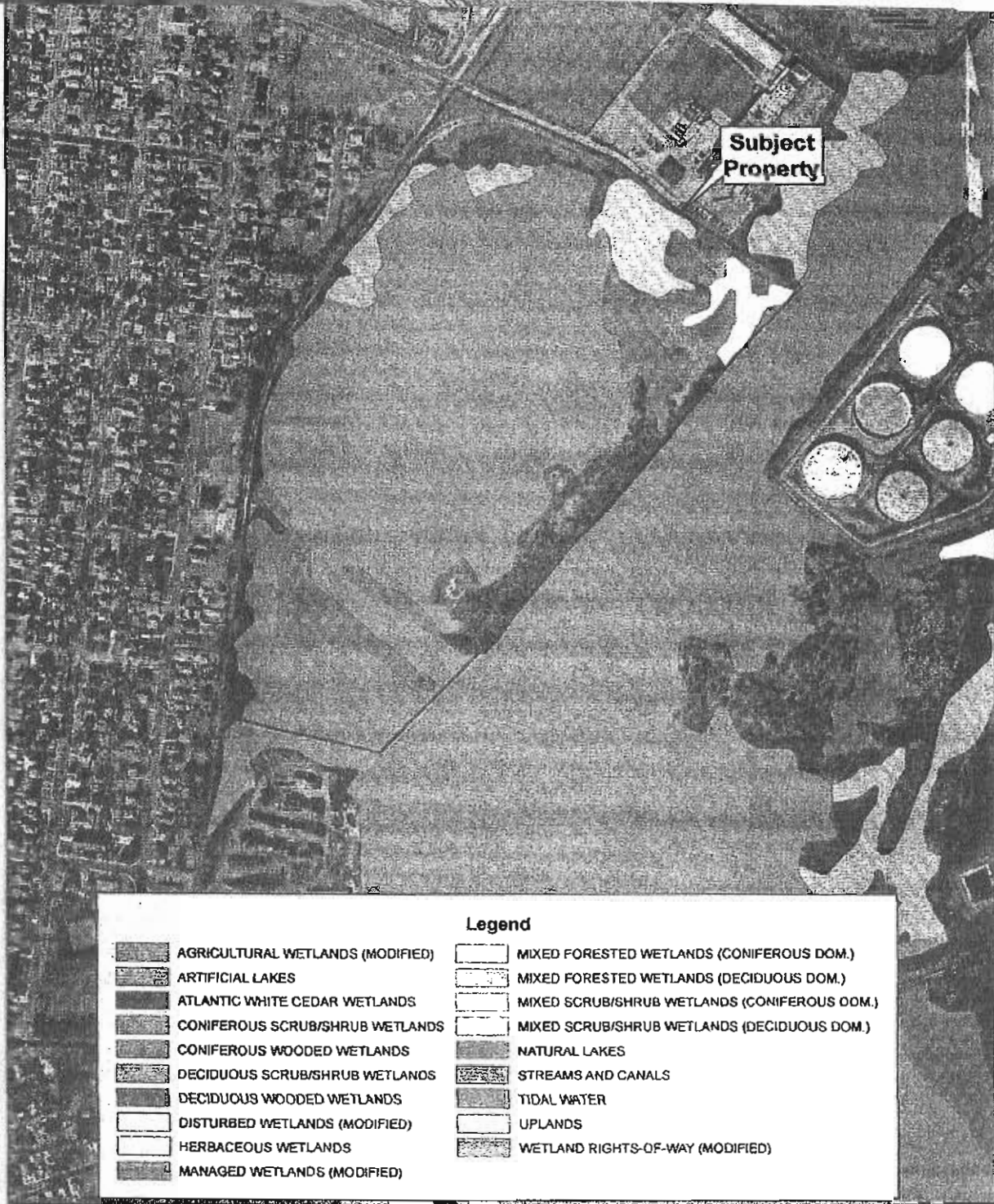
Donald W. Brickner  
Senior Environmental Scientist



Rick Ricciardi, P.P.  
Principal Environmental Scientist

Enclosures

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Legend	
	AGRICULTURAL WETLANDS (MODIFIED)
	ARTIFICIAL LAKES
	ATLANTIC WHITE CEDAR WETLANDS
	CONIFEROUS SCRUB/SHRUB WETLANDS
	CONIFEROUS WOODED WETLANDS
	DECIDUOUS SCRUB/SHRUB WETLANDS
	DECIDUOUS WOODED WETLANDS
	DISTURBED WETLANDS (MODIFIED)
	HERBACEOUS WETLANDS
	MANAGED WETLANDS (MODIFIED)
	MIXED FORESTED WETLANDS (CONIFEROUS DOM.)
	MIXED FORESTED WETLANDS (DECIDUOUS DOM.)
	MIXED SCRUB/SHRUB WETLANDS (CONIFEROUS DOM.)
	MIXED SCRUB/SHRUB WETLANDS (DECIDUOUS DOM.)
	NATURAL LAKES
	STREAMS AND CANALS
	TIDAL WATER
	UPLANDS
	WETLAND RIGHTS-OF-WAY (MODIFIED)

**MARATHON ENGINEERING &  
ENVIRONMENTAL SERVICES, INC.**  
SUITE 100  
510 HERON DRIVE  
SWEDESBORO, N.J. 08085

**Block 1, Lot 3**  
**Borough of Paulsboro,**  
**Gloucester County, New Jersey**

**Figure 3 - Wetlands Map**  
Source: NJDEP, Bureau of  
Geographic Information Systems,  
Freshwater Wetlands layer  
Scale: 1:6,000    ARC 061.01

*Dg 91*



**MARATHON ENGINEERING &  
ENVIRONMENTAL SERVICES, INC.**  
SUITE 100  
510 HERON DRIVE  
SWEDESBO, N.J. 08085

**Block 1, Lot 3**  
**Borough of Paulsboro,**  
**Gloucester County, New Jersey**

**Figure 1 - Site Location Map**  
Source: U.S.G.S. 7.5' Topo.  
Quadrangle, Woodbury, N.J.  
Scale: 1:24,000 ARC 061.01

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 Gloucester County Improvement Authority

**GLOUCESTER FINANCE**  
 Batch # 820

APR 23 2010

CA-CR MO # 295752  
 AMT \$ 30  
 Initials JK

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 APR 23 2010  
 SUPERIOR COURT OF NJ  
 GLOUCESTER COUNTY CIVIL PART

<p>GLOUCESTER COUNTY          IMPROVEMENT AUTHORITY,   <div style="text-align: right;">Plaintiff,</div>   <div style="text-align: center;">vs.</div>           GALLENTHIN REALTY          DEVELOPMENT, INC., STATE OF          NEW JERSEY, BOROUGH OF          PAULSBORO, COLONIAL PIPELINE          CO., ATLANTIC CITY ELECTRIC          CO., AND PAULSBORO          ACQUISITION CORP.,   <div style="text-align: right;">Defendants.</div> </p>	<p>SUPERIOR COURT OF NEW JERSEY          LAW DIVISION          GLOUCESTER COUNTY           DOCKET NO.: <u>L-718-10</u>   <div style="text-align: center;">Civil Action</div>   <p style="text-align: center;"><b>ORDER TO SHOW CAUSE</b></p> </p>
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**THIS MATTER** having been opened to the Court on application of Plaintiff, the Gloucester County Improvement Authority (the "GCIA"), and the Court having reviewed and considered the Verified Complaint and other pleadings filed in this action, and good cause appearing,

IT IS on this 5<sup>th</sup> day of May, 2010,

**ORDERED** that Defendants herein show cause before this Court on the 6<sup>th</sup> day of July, 2010, at 9:30 A.M. at the Gloucester County Court House, Woodbury, New Jersey, why final judgment should not be entered that the Plaintiff is duly authorized to acquire the land and other property interests described in the Verified Complaint through

④ before Hon. Georgia M. Curcio, AJSC,  
 C.R. 202, Surrogates Building, 19 No.  
 Broad Street Woodbury, NJ

DA 93



exercise of its power of eminent domain, and further, why judgment should not be rendered appointing three (3) disinterested Commissioners, residents of the County of Gloucester, to fix the compensation to be paid for the taking of the land and other property interests described in the Verified Complaint, as of the date of the commencement of this action or as of such other date as this Court shall fix, for the purposes set forth in the Verified Complaint;

**AND IT IS FURTHER ORDERED** that a copy of this Order, certified by the Plaintiff's attorney to be a true copy, together with a copy of the Verified Complaint, be served within three (3) days from Plaintiff's counsel's receipt of this Order, such service to occur by regular and certified mail, return receipt requested upon the following parties or, alternatively, upon their counsel who have appeared in this action on their behalf:

- (a) Gallenthin Realty Development, Inc.  
26 South Bayard Avenue  
Woodbury, NJ 08096

Owner - Block 1, Lot 3, Borough of  
Paulsboro

- (b) State of New Jersey  
Office of the Attorney General  
P.O. Box 080  
Trenton, NJ 08625

Holder of riparian rights (property being  
condemned subject to these rights)

- (c) Colonial Pipeline Company  
P.O. Box 1624  
Alpharetta, GA 30009-9934

(REGISTERED AGENT)  
Corporation Service Company  
830 Bear Tavern Rd.  
West Trenton, NJ 08628

DA 94

Holder of a right-of-way easement as described in Deed Book 1094, Page 893 (property being condemned subject to this easement)

- (d) Atlantic City Electric Company  
5100 Harding Highway  
Mays Landing, NJ 08330

Holder of utility easement as described in Deed Book 1074, Page 268 (property being condemned subject to this easement)

- (e) Paulsboro Acquisition Corp.  
39 Old Ridgeburry Road  
Danbury, Conn. 06817

(REGISTERED AGENT)  
The Corporation Trust Company  
820 Bear Tavern Rd.  
West Trenton, NJ 08628

Holder of easement agreements as described in Deed Book 1077, Page 176, Deed Book 1081, Page 148, and Deed Book 1110, Page 301 (property being condemned subject to these easements)

- (f) Borough of Paulsboro  
Kathy A. VanScoy, Borough Clerk  
Paulsboro Municipal Building  
1211 Delaware Street  
Paulsboro, NJ 08066

Holder of easement agreements as described in Deed Book 1081, Page 148 and Deed Book 1110, Page 301 (property being condemned subject to this easement).

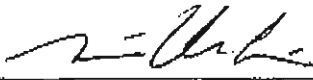
**AND IT IS FURTHER ORDERED** that Defendants shall, not later than twenty-one (21) days before the return date hereof, serve and file any responsive pleadings to the Order to Show Cause;

Da 95

**AND IT IS FURTHER ORDERED** that Plaintiff shall, not later than seven (7) days before the return date hereof, serve and file any reply to Defendants' responses to the Order to Show Cause;

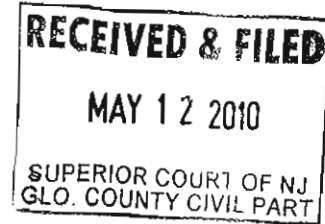
**AND IT IS FURTHER ORDERED** that Defendants are hereby **NOTIFIED** that should they fail to so respond, judgment by default may be entered against such Defendant for the relief demanded in the Complaint. Individual defendants are hereby **NOTIFIED** that if they are unable to obtain an attorney they may communicate with the New Jersey State Bar Association or the Gloucester County Legal Services Office (956-845-5360) or the Legal Services Office of the County of his residence.

5457291v1

  
\_\_\_\_\_  
GEORGIA M. CURIO, A.J.S.C.

Da96

ARCHER & GREINER  
A Professional Corporation  
One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968  
(856) 795-2121  
Attorneys for Plaintiff  
Gloucester County Improvement Authority



<p>GLOUCESTER COUNTY IMPROVEMENT AUTHORITY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GALLENTHIN REALTY DEVELOPMENT, INC., STATE OF NEW JERSEY, BOROUGH OF PAULSBORO, COLONIAL PIPELINE CO., ATLANTIC CITY ELECTRIC CO., AND PAULSBORO ACQUISITION CORP.,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY</p> <p>DOCKET NO.: <u>L 718-10</u></p> <p style="text-align: center;">Civil Action (In Condemnation)</p> <p style="text-align: center;"><b>DECLARATION OF TAKING</b></p>
--	---

Plaintiff, the Gloucester County Improvement Authority (the "GCIA"), an Improvement Authority created by a Resolution of the Gloucester County Board of Chosen Freeholders pursuant to N.J.S.A. 40:37A-44, et seq., hereby declares as follows:

1. Possession of the real property interests and easements described in the Verified Complaint filed in the within matter are hereby taken by and for the use of the GCIA, but subject to existing easements and/or rights of way described therein.

2. The GCIA is entitled to the immediate and exclusive possession, use, and title to the real property aforesaid, subject to existing easements and/or rights of way described in Exhibit B annexed hereto, and will forthwith enter into and take possession pursuant to the provisions of N.J.S.A. 20:3-1 et seq., N.J.S.A. 40:14B-20, and N.J.S.A. 40:14B-34.

Da 97

3. The real property interests and easements hereby taken are located in the Borough of Paulsboro on Gallenthin Realty Development, Inc.'s ("GRD") property (Block 1, Lot 3 on the tax map of the Borough of Paulsboro) and are 3.395 acres in fee simple absolute, 0.256 acres in permanent easements, and 1.73 acres in temporary construction easements, as more particularly described in Exhibit D attached to this Declaration of Taking.

4. The permanent easement hereby taken includes a full, free, unlimited, unobstructed, and uninterrupted right of ingress, egress, and regress at all times to and from the permanent easement area for the GCIA, its employees, agents, contractors, successors and assigns in order to perform any activities necessary for the completion of a bridge and access roadway linking the proposed Paulsboro Marine Terminal with Exit 19 of Interstate 295 (the "Project"), or subsequent construction, reconstruction, deconstruction, inspection, maintenance, repair, or replacement activities associated with the Project.

5. The temporary construction easement hereby taken includes an initial thirty-six month easement period, subject to renewal at the GCIA's discretion for six month increments thereafter, to allow the GCIA, its employees, agents, contractors, successors, and assigns a full, free, unlimited, unobstructed, and uninterrupted right of ingress, egress, and regress at all times to and from the temporary construction easement area as may be necessary in order to complete the Project. The temporary construction easement shall allow GRD a continued right of access to the temporary construction easement area to perform inspection and maintenance of GRD's property in that area and to obtain access to other areas of GRD's property.

6. Additionally, the GCIA is also acquiring through this Declaration of Taking and the underlying eminent domain action GRD's interest in a roadway easement, which is located partially on property owned by the Borough of Paulsboro (Block 1, Lot 2 on the tax map of the

Da 98

Borough of Paulsboro) and partially on property owned by Paulsboro Acquisition Corp. (Block 1, Lot 18 on the tax map of the Borough of Paulsboro) and is referenced in Book 1081, Page 48 of the Gloucester County Book of Deeds as amended in Book 1110, Page 301 of the Gloucester County Book of Deeds, attached as Exhibit C, as more particularly described in Exhibit D.

7. The names and addresses of all condemnees known to the GCIA after reasonable investigation and the nature of their interests being taken in the subject properties are attached as Exhibit A.

8. The interests in the subject properties described in paragraphs 3 through 6 above and in Exhibit D are being taken subject to the existing easements, rights of way and other interests listed in Exhibit B.

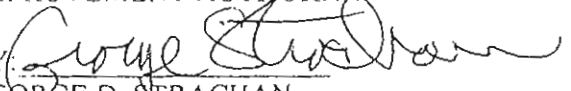
9. No other person, corporation, or government entity appears of record to have an interest therein, and no other person, corporation, or government entity who may have or may claim to have an interest therein is known to the GCIA.

10. The sum of money estimated by the GCIA to be just compensation for the aforesaid taking is Four Hundred Forty-Three Thousand Dollars (\$443,000.00), which is the sum deposited with the Clerk of Superior Court.

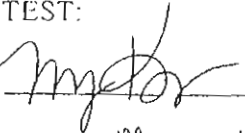
Da 99

IN WITNESS WHEREOF, the GCIA has caused this Declaration of Taking to be signed  
by its duly authorized signatory as of the 6 day of May, 2010.

GLOUCESTER COUNTY  
IMPROVEMENT AUTHORITY

BY:   
GEORGE D. STRACHAN  
Administrator

ATTEST:

By: 

Print Name: Megan Kerr

Title: Admin. Asst.

**MEGAN CHRISTINE KERR**  
**NOTARY PUBLIC OF NEW JERSEY**  
Commission Expires 6/30/2010

5457185v1

Da 100

ARCHER & GREINER  
A Professional Corporation  
One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968  
(856) 795-2121  
Attorneys for Plaintiff  
Gloucester County Improvement Authority



Docket# 17741 Type: LPR Pages: 5  
James N. Hogan, Gloucester County Clerk  
Receipt#: 17141 10:22:56 A.M. 05/12/2010  
Recording Fee: \$70.00 BK 25 335

<p>GLOUCESTER COUNTY IMPROVEMENT AUTHORITY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GALLENTHIN REALTY DEVELOPMENT, INC., STATE OF NEW JERSEY, BOROUGH OF PAULSBORO, COLONIAL PIPELINE CO., ATLANTIC CITY ELECTRIC CO., AND PAULSBORO ACQUISITION CORP.,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY</p> <p>DOCKET NO.: <u>L 718-10</u></p> <p style="text-align: center;">Civil Action (In Condemnation)</p> <p><b>NOTICE OF LIS PENDENS</b></p>
--	---

Notice is hereby given that the above titled suit ("the Action") has been commenced and is now pending in said New Jersey Superior Court, Law Division, Gloucester County, the general object of said suit being:

1. To take in the name of the Plaintiff, the Gloucester County Improvement Authority ("GCIA"), the land and other property interests hereinafter described for public use and to appoint Commissioners, in accordance with the statutes of this State and the Rules of this Court in such cases, to fix the amount to be paid for said taking.

2. The property interests in the land owned by Defendant Gallenthin Realty Development Inc. ("GRD") (Block 1, Lot 3 on the tax map of the Borough of Paulsboro) that the GCIA seeks to acquire through the Action are 3.395 acres in fee simple absolute, 0.256 acres in



SUPERIOR COURT OF NEW JERSEY  
COUNTIES OF  
CUMBERLAND, GLOUCESTER AND SALEM



GEORGIA M. CURIO  
ASSIGNMENT JUDGE

CUMBERLAND COUNTY COURTHOUSE  
BROAD & FAYETTE STREETS  
BRIDGETON, NEW JERSEY 08302  
TEL: (856) 453-4377  
FAX (856) 459-1345

**June 24, 2010**

**Christopher R. Gibson, Esq.**  
**ARCHER & GREINER**  
**One Centennial Square**  
**Haddonfield, New Jersey 08033-0968**

**Mr. George A. Gallenthin, III**  
**c/o Cindy Gallenthin**  
**26 South Bayard Avenue**  
**Woodbury, New Jersey 08096**

**RE: GCIA v. Gallenthin Realty Development, Inc.**  
**Docket No. GLO-L-718-10**

**Dear Mr. Gibson and Mr. Gallenthin:**

**Mr. Gallenthin has submitted correspondence and Affidavits to the Court seeking relief under the Federal Service Members Civil Relief Act, 50 U.S.C. app. § 501, et seq. (LexisNexis 2010 through Pub. L. No. 111-190). In connection with Mr. Gallenthin's request for relief, the Court has reviewed and considered the following:**

- **Two letters from Mr. Gallenthin dated May 27, 2010, with attachments;**
- **Affidavit of Mr. Gallenthin, notarized May 28, 2010;**
- **Letter from Mr. Gallenthin, dated June 4, 2010;**
- **Letter from Plaintiff's counsel, dated June 9, 2010, with attachments;**
- **Letter from Mr. Gallenthin, dated June 14, 2010, with attachments;**
- **Reply Affidavit of Mr. Gallenthin, notarized June 14, 2010;**

*Da 102*

**Christopher R. Gibson, Esq.**  
**Mr. George A. Gallenthin**  
**Page 2**  
**June 24, 2010**

- Letter from Plaintiff's counsel, dated June 16, 2010, with attachments;
- Letter from Mr. Gallenthin, dated June 22, 2010, with attachments; and,
- Affidavit of Mr. Gallenthin, notarized June 22, 2010.

Mr. Gallenthin requests "protections" of the Federal Service Members Civil Relief Act, 50 U.S.C. app. § 501, et seq. (hereinafter "the Act"). Variously, he seeks, "not simply a stay . . . but any relief . . ." (Affidavit of George A. Gallenthin, III, notarized May 28, 2010, by Cynthia L. Gallenthin, ¶ 12) and "dismissal" (Letter from George A. Gallenthin, III, dated June 4, 2010).

Mr. Gallenthin has not shown entitlement to relief under the Act.

First and foremost, dismissal is not a form of relief available under the Act.

Further, the Act provides relief only to natural persons on active military duty, 50 U.S.C. app. § 511; see also PNC Bank, NA v. Kemenash, 335 N.J. Super. 124, 128 (App. Div. 2000). Here, Mr. Gallenthin is not a named party, but a principal of the corporate defendant, Gallenthin Realty Development, Inc.

Mr. Gallenthin has not demonstrated that he is on active military duty either with the United States of America, 50 U.S.C. app. § 511, or with the forces of an ally of the United States, § 514. See generally Mark E. Sullivan, The Servicemembers Civil Relief Act: A Judge's Checklist, 45 Judges' Journal 27. For example, he has not supplied the requisite letter from his commanding officer documenting that he is unable, because of military duty requirements, to leave Afghanistan; he has not provided verification of active military service, e.g., through Department of Defense records, nor has he provided verification that military leave is not authorized or available, e.g., by submitting a Leave and Earnings Statement. Mr. Gallenthin does not dispute that he is employed by a civilian contractor and freely identifies himself as retired military. Under these circumstances, the right to delay the proceedings does not attach.

Da 103

Christopher R. Gibson, Esq.  
Mr. George A. Gallenthin  
Page 2  
June 24, 2010

While the Court respects Mr. Gallenthin's contributions, an employee of a civilian contractor is not covered by the Act, nor is the corporate defendant.

Mr. Gallenthin has referenced the Order of Judge McMaster, dated June 17, 2010, in Providence Mutual Fire Ins. Co. v. George Gallenthin and Cynthia Gallenthin, Docket No. GLO-DC-3935-10. The court neither questions nor comments upon Judge McMaster's exercise of her discretion in that matter or the circumstances giving rise to the entry of that Order.

This Court is not bound by the earlier Order in an unrelated matter and respectfully declines to enter a similar Order in the case here under consideration.

Accordingly, the request for dismissal is denied; no stay is granted. The Order to Show Cause, originally returnable July 6, 2010, is postponed and will be heard July 20, 2010. Counsel is to submit the corporate defendant's brief, if any, by July 9, 2010.

Very truly yours,



GEORGIA M. CURIO, AJSC  
GMC/ljs  
c.: William J. Ward, Esq.

Da 104

CVM1023 AUTOMATED CASE MANAGEMENT SYSTEM 01/31/11  
PAGE: 001 OF 002 DOCUMENT LIST 9:18

VENUE : GLOUCESTER COURT : LAW CVL DOCKET #: L 000718 10  
CASE TITLE : GLO CTY IMPROVEMENT VS GALLENTHIN REALTY

S	DATE FILED	DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME	MUL DOC PTY STA
	04 23 2010	001	COMP JRY DEMAND		GLOUCESTER C	ARCHER & GRE	N
	05 05 2010	002	ORDR SHOW CAUSE		GLOUCESTER C	ARCHER & GRE	N GR
	05 12 2010	003	DCLR TAKNG		GLOUCESTER C	ARCHER & GRE	N
	05 12 2010	004	ORD PAY INTO CT		COURT INIT		N GR
	05 19 2010	005	PRF SERVC		GLOUCESTER C	ARCHER & GRE	N
	05 20 2010	006	APP 1ST PAP DEF		ATLANTIC CIT	MONTGOMERY M	N
	06 11 2010	007	NOT OF DISMISSL		GLOUCESTER C	ARCHER & GRE	N
	06 11 2010	008	STPULTN DISMISL		GLOUCESTER C	ARCHER & GRE	N
	06 11 2010	009	STPULTN DISMISL		GLOUCESTER C	ARCHER & GRE	N
	06 25 2010	010	STPULTN DISMISL		GLOUCESTER C	ARCHER & GRE	N

PF1=INQRY PF2=MAINT  
PF4=PROMPT PF6=CONSOLIDATED CASE LIST PF7=PRIOR PF8=NEXT PF22=HELP:

4-© 1 Sess-1 172.16.1.27 TGL00057 4/67

Da 105

CVM1023 AUTOMATED CASE MANAGEMENT SYSTEM 01/31/11  
PAGE: 002 OF 002 DOCUMENT LIST 9:18

VENUE : GLOUCESTER COURT : LAW CVL DOCKET #: L 000718 10  
CASE TITLE : GLO CTY IMPROVEMENT VS GALLENTHIN REALTY

S	DATE FILED	DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME	MUL DOC PTY STA
	06 28 2010	011	STPULTN DISMISL		GLOUCESTER C	ARCHER & GRE	N
	07 23 2010	012	ANS JRY DEMAND		GALLENTHIN R	CARLIN & WAR	N
	07 23 2010	013	MOT TRN AND VEN		GALLENTHIN R	CARLIN & WAR	N GR
	07 23 2010	018	MOTN DISMISSAL		GALLENTHIN R	CARLIN & WAR	N WD
	08 03 2010	015	OBJECT MOTION		GLOUCESTER C	ARCHER & GRE	N
	08 05 2010	017	ORD TRN AND VEN		GALLENTHIN R	CARLIN & WAR	N GR

CV900123 END OF SEARCH

PF1=INQRY PF2=MAINT

PF4=PROMPT PF6=CONSOLIDATED CASE LIST PF7=PRIOR PF8=NEXT PF22=HELP:

4-© 1 Sess-1 172.16.1.27 TGL00057 4/67

Da 106

SUPERIOR COURT OF NJ  
Burlington County  
RECEIVED

AUG 13 2010

Civil Division

RECEIVED

JUN 11 2010

SUPERIOR COURT OF NJ  
Burlington County  
RECEIVED

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625  
Attorney for Defendant State of New Jersey

By: William E. Andersen ,  
Deputy Attorney General  
(609) 633-0651  
anderwil@dol.lps.state.nj.us

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
GLOUCESTER COUNTY  
DOCKET NO. 718-10

L-2718-10

GLOUCESTER COUNTY :  
IMPROVEMENT AUTHORITY, :

Plaintiff, :

v. :

Civil Action

GALLENTHIN REALTY :  
DEVELOPMENT INC., STATE OF :  
NEW JERSEY, BOROUGH OF :  
PAULSBORO, COLONIAL :  
PIPELINE CO., ATLANTIC CITH :  
ELECTRIC CO., AND PAULSBORO :  
ACQUISITION CORP., :

Defendants. :

NOTICE OF DISMISSAL

DA 107

Tidelands Resource Council, N.J.S.A. 13:1B-10, c/o the Bureau of  
Tidelands Management, P.O. Box 439, Trenton, New Jersey 08625  
(609-292-2573).

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Defendant  
State of New Jersey

William E. Andersen  
By: William E. Andersen  
Deputy Attorney General

Dated: May June 4, 2010

ARCHER & GREINER  
A Professional Corporation  
Attorneys for the Plaintiff  
Gloucester County Improvement  
Authority

Pete Jamison  
By: Pete Jamison, Esq.  
PJ Jamison

Dated: May 21, 2010

Da 108

ARCHER & GREINER  
 A Professional Corporation  
 One Centennial Square  
 P.O. Box 3000  
 Haddonfield, NJ 08033-0968  
 (856) 795-2121  
 Attorneys for Plaintiff  
 Gloucester County Improvement Authority

**SUPERIOR COURT OF NJ**  
 Burlington County  
**RECEIVED**  
 AUG 13 2010  
**Civil Division**

JUN 11 2010

<p>GLOUCESTER COUNTY          IMPROVEMENT AUTHORITY,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GALLENTHIN REALTY          DEVELOPMENT, INC., STATE OF NEW          JERSEY, BOROUGH OF PAULSBORO,          COLONIAL PIPELINE CO., ATLANTIC          CITY ELECTRIC CO., AND          PAULSBORO ACQUISITION CORP.,</p> <p style="text-align: right;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY          LAW DIVISION          GLOUCESTER COUNTY</p> <p>DOCKET NO.: <u>L 718-10</u>    L-2718-10</p> <p style="text-align: center;">Civil Action          (In Condemnation)</p> <p>STIPULATION OF DISMISSAL WITHOUT          PREJUDICE AS TO DEFENDANT ATLANTIC          CITY ELECTRIC COMPANY ONLY</p>
--	---

WHEREFORE, Defendant Atlantic City Electric Company having not filed an Answer and having no opposition to Plaintiff Gloucester County Improvement Authority's ("GCIA") Verified Complaint (In Condemnation) filed in the above-captioned action, and having no interest in or entitlement to any award, judgment or settlement of just compensation in the within condemnation; and Plaintiff GCIA having agreed to take the property that is the subject of the above-captioned condemnation action subject to Atlantic City Electric Company's existing utility easement as described in Deed Book 1074, Page 268;

IT IS HEREBY STIPULATED AND AGREED that Defendant Atlantic City Electric Company is hereby dismissed from the above-captioned matter, without prejudice and without costs against either party.

Da 109



ARCHER & GREINER, P.C.

MONTGOMERY, McCracken, WALKER &  
RHOADS, LLP

By: Patrick M. Flynn  
Patrick M. Flynn, Esq.  
Attorneys for Plaintiff Gloucester  
County Improvement Authority

Dated: 5/25/2010

By: John Aleli  
John Aleli, Esq.  
Attorneys for Defendant  
Atlantic City Electric Company

Dated: 5.28.10

5609631v1

Da 110

ARCHER & GREINER  
 A Professional Corporation  
 One Centennial Square  
 P.O. Box 3000  
 Haddonfield, NJ 08033-0968  
 (856) 795-2121  
 Attorneys for Plaintiff  
 Gloucester County Improvement Authority

SUPERIOR COURT OF NJ  
 Burlington County  
 RECEIVED  
 AUG 13 2010  
 Civil Division

JUN 11 2010

<p>GLOUCESTER COUNTY          IMPROVEMENT AUTHORITY,            Plaintiff,            vs.            GALLENTHIN REALTY          DEVELOPMENT, INC., STATE OF NEW          JERSEY, BOROUGH OF PAULSBORO,          COLONIAL PIPELINE CO., ATLANTIC          CITY ELECTRIC CO., AND          PAULSBORO ACQUISITION CORP.,            Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY          LAW DIVISION          GLOUCESTER COUNTY            DOCKET NO.: <u>L 718-10</u> C - 2718-10            Civil Action          (In Condemnation)            STIPULATION OF DISMISSAL WITHOUT          PREJUDICE AS TO DEFENDANT COLONIAL          PIPELINE COMPANY ONLY</p>
--	---

WHEREFORE, Defendant Colonial Pipeline Company having not filed an Answer and having no opposition to Plaintiff Gloucester County Improvement Authority's ("GCIA") Verified Complaint (In Condemnation) filed in the above-captioned action, and having no interest in or entitlement to any award, judgment or settlement of just compensation in the within condemnation; and Plaintiff GCIA having agreed to take the property that is the subject of the above-captioned condemnation action subject to Colonial Pipeline Company's existing right-of-way easement as described in Deed Book 1094, Page 893;

IT IS HEREBY STIPULATED AND AGREED that Defendant Colonial Pipeline Company is hereby dismissed from the above-captioned matter, without prejudice and without costs against either party.

Da III

ARCHER & GREINER, P.C.

COLONIAL PIPELINE COMPANY

By: Patrick M. Flynn  
Patrick M. Flynn, Esq.  
Attorneys for Plaintiff Gloucester  
County Improvement Authority

Dated: 5/25/2010

By: Preston A. Morrison  
Preston A. Morrison, Esq.  
Attorney for Defendant  
Colonial Pipeline Company

Dated: 6/3/2010

5610242v1

Da 112

CARLIN & WARD, P.C.  
25A Vreeland Road  
P. O. Box 751  
Florham Park, New Jersey 07932  
973-377-3350  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

GLOUCESTER COUNTY IMPROVEMENT  
AUTHORITY,

Plaintiff,

vs.

GALLENTHIN REALTY DEVELOPMENT,  
INC., STATE OF NEW JERSEY,  
BOROUGH OF PAULSBORO, COLONIAL  
PIPELINE CO., ATLANTIC CITY  
ELECTRIC CO. AND PAULSBORO  
ACQUISITION CORP.,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – GLOUCESTER  
COUNTY

DOCKET NO. GLO-L-718-10

Civil Action  
(In Condemnation)

**CERTIFICATION OF  
WILLIAM J. WARD, ESQ.**

**WILLIAM J. WARD** being of full age hereby certifies and states:

1. I am a partner with the law firm Carlin & Ward, P.C., counsel to the Defendant, Gallenthin Realty Development, Inc. in the within matter and make this certification in support of Defendant's Motion to Dismiss the Verified Complaint.
2. Attached hereto as Exhibit A is a true and accurate copy of a "Pre-Developed Drainage Area Plan" dated April 27, 2009.
3. Attached hereto as Exhibit B is a true and accurate copy of a "Post-Developed Drainage Area Plan" dated April 27, 2009.

Da 113

4. Attached hereto as Exhibit C is a true and accurate copy of a letter from my office to Plaintiff's counsel dated July 31, 2009.

5. Attached hereto as Exhibit D is a true and accurate copy of letter from my office to Plaintiff's counsel dated March 31, 2010.

6. Attached hereto as Exhibit E is a true and accurate copy of a Compliance Summary for a GP 12 Permit drafted by Pennoni Associates, Inc., acting agent for GCIA, to the New Jersey Department of Environmental Protection dated October 17, 2008.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

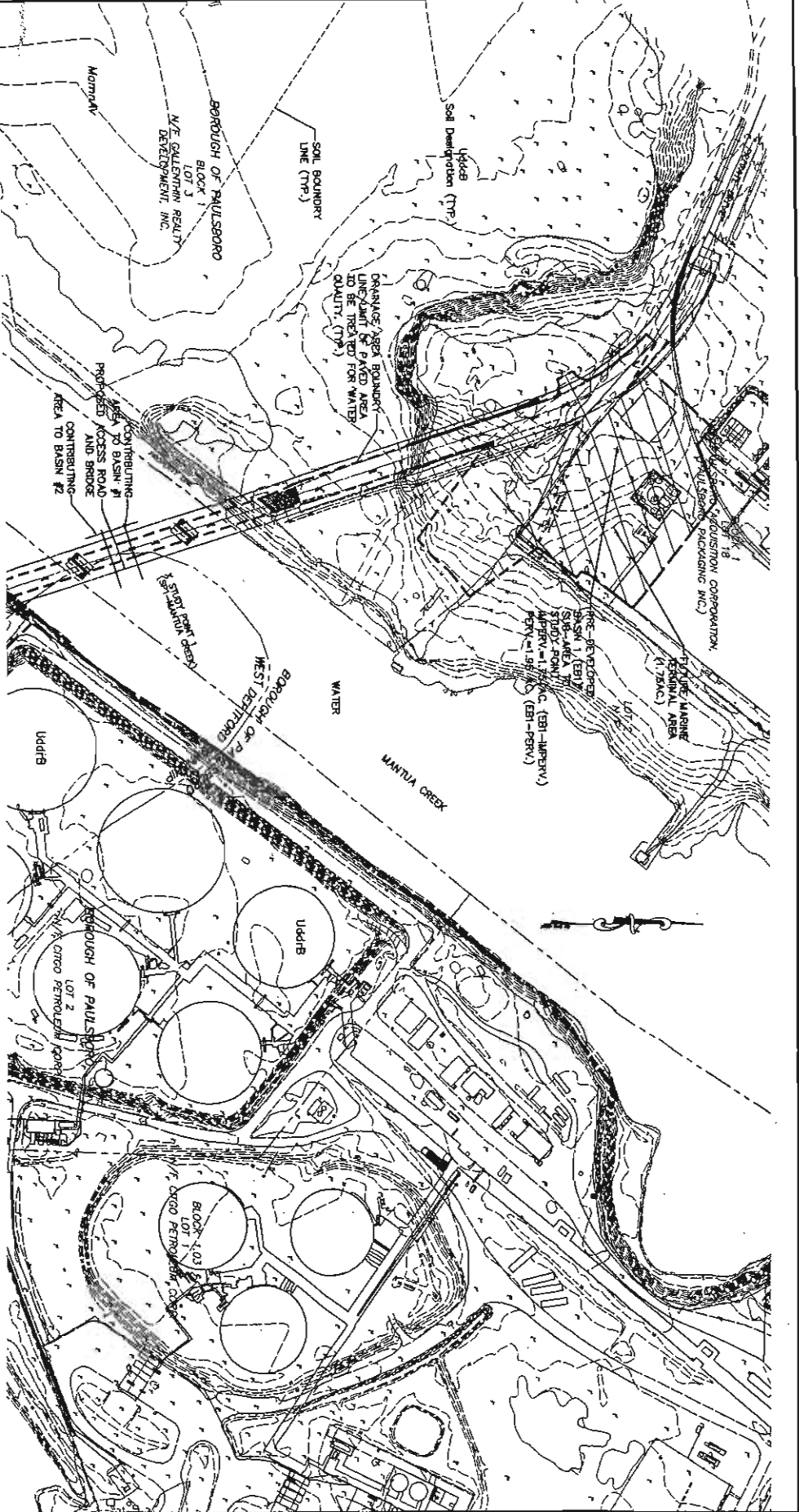


WILLIAM J. WARD

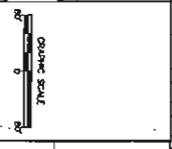
Dated: July 23, 2010

PAULSBORO MARINE TERMINAL  
ACCESS ROAD AND BRIDGE  
DRAINAGE AREA PLAN  
DATE: 10/15/03  
SCALE: AS SHOWN  
SHEET 1 OF 4

SOIL TYPE	DESC.	HS#
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UdddB	UPDORTMENTS DREDGED COARSE MATERIALS	"D"



**Perzoni Associates Inc.**  
Professional Engineers  
605 South Street  
Paulsboro, NJ 08059  
Tel: 856-251-1111  
Fax: 856-251-1112



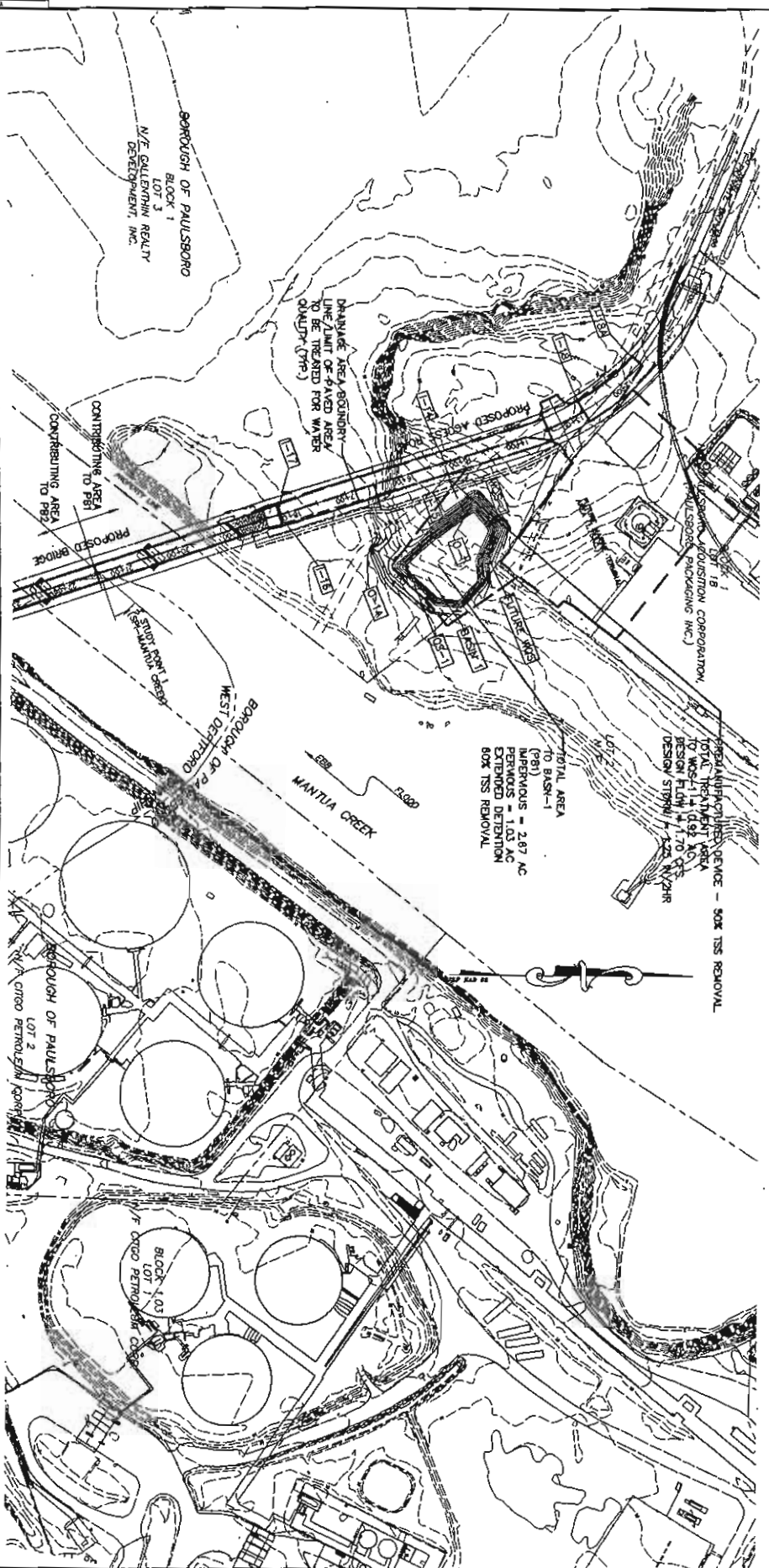
OFFICE OF THE COUNTY ENGINEER  
CLAYTON, NJ 08039

**PAULSBORO MARINE TERMINAL  
ACCESS ROAD AND BRIDGE**  
DRAINAGE AREA PLAN  
DATE: 10/15/03  
SCALE: AS SHOWN  
SHEET 1 OF 4

**DOUGLAS T. SZARD, P.E.**  
Professional Engineer  
1000 TOWNE SQUARE  
PAULSBORO, NJ 08059  
Tel: 856-251-1111  
Fax: 856-251-1112

PAULSBORO MARINE TERMINAL ACCESS ROAD AND BRIDGE  
 SHEET 3 OF 4

NO.	AREA	AREA AC.	PERM PER AC	EXTENDED DETENTION	TSS REMOVAL	TOTAL TSS REMOVAL	
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**Pennoni Associates Inc.**  
 Pennoni Associates Inc.  
 1000 N. 10th Street  
 Philadelphia, PA 19107  
 Tel: 215-561-1000  
 Fax: 215-561-1001

**PAULSBORO MARINE TERMINAL ACCESS ROAD AND BRIDGE**  
 SHEET 3 OF 4

**COUNTY OF GLoucester**  
 100 N. 2nd Street  
 Camden, NJ 08102

**PAULSBORO MARINE TERMINAL ACCESS ROAD AND BRIDGE**  
 SHEET 3 OF 4  
 SCALE: 1"=40'  
 DATE: 11/11/09  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]

# CARLIN & WARD

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

25A VREELAND ROAD  
P.O. BOX 751  
FLORHAM PARK, NEW JERSEY 07932

JAMES M. TURTELTAUB

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FAX: 973-377-5626  
E-MAIL: james.turteltaub@carlinward.com  
WEBSITE: www.carlinward.com

July 31, 2009

**VIA FACSIMILE AND LAWYERS SERVICE**

Christopher Gibson, Esq.  
Archer & Greiner  
One Centennial Square  
Haddonfield, NJ 08033

**Re: Gloucester County Improvement Authority Offer  
Gallenthin Realty Development, Inc.  
Block 1, Lot 3, Industrial Avenue, Paulsboro, New Jersey  
Our File No. 40364-01**

Dear Mr. Gibson:

We have reviewed the Gloucester County Improvement Authority's ("GCIA") offer dated July 6, 2009 to acquire a portion of Gallenthin Realty Development's ("GRD") property with our client. The information provided with the offer is deficient and requires amplification in order to be properly assessed. Therefore, please provide the additional information set forth below in order to permit GRD to evaluate the offer. Without this information, the "bona fide" negotiations as required under N.J.S.A. 20:3-6 cannot take place. .

1. Please provide the surveys which depict the Subject Property in the before condition and after conditions.
2. Please provide construction plans, including cross-sections of the GCIA's proposed project. This includes cross-sections of the bridge proposed over the Manuta Creek and any activity that will occur in what is identified as Parcel 1B.
3. Based on the maps contained in the appraisal, it appears the proposed bridge will abut the remainder of GRD's remaining property. There appears to be no room in which to construct the project. Please state whether GCIA will require any construction easements beyond the limits of the taking identified in Mr. McHale's report are required for the project. If not, please confirm GCIA's plan to restrict construction activity to the taking area and the proposed controls to insure that no activity will go beyond those limits.

Da 117



4. Please provide a copy of GCIA's wetlands delineation and buffers considered in the preparation of the appraisal report.
5. Please provide a copy of the T&M site plans showing alleged building envelopes in the before and after condition. In addition, please provide copies of any drawings depicting the layout of T&M's opined maximum building sizes before and after the takings. See McHale Report at 32, 59-60, 92-96. Please also indicate whether T&M considered buffer averaging in its determination of the potential building envelope.
6. Please provide a copy of the legal instruction provided the appraiser and legal support that the wetlands cannot be developed. See page 2 and 11.
7. Please indicate whether Mr. McHale was given an instruction to adopt the Marathon Engineering & Environmental Services, Inc. and T&M Associates reports. If so, please provide a copy of same. See pages 2 and 11.
8. Please provide a copy of any legal instruction given Mr. McHale providing the legal support for the conclusion that the dredge disposal operations would not be permitted on-site. See pages 2 and 11.
9. Please provide the basis for Marathon's conclusion that "permitting of a dredge operation would be difficult" when in fact, such permits have been obtained by the SJPC for Parcel 1B. Please indicate the basis to conclude these permits do not demonstrate the feasibility of obtaining such permits.
10. Please provide construction and traffic plans for the new driveway proposed from the proposed Universal Road extension. In addition, please state whether this is a private or public road. If private, please indicate who will own the roadway and who will be responsible for same.
11. The appraisal states 240 feet of railroad in Parcel 1C will be affected and that "Owner forfeits the right to use the land area in the future." See page 57. Then the appraisal describes the after condition that the Subject Property will continue to be improved by a railroad spur "under ownership of the adjoining property owner via easement." See page 58. Please reconcile the conflict of these statements. If an easement is to be provided GRD, please provide a copy of the easement to be granted GRD along with traffic and site plans that indicate how the spur will operate.
12. The report indicates the bulkhead will remain the same as before the taking. See page 58. The taking will consume a portion of the property's bulkhead. Please explain the basis for the appraiser's statement.
13. T&M excludes the land within the railroad easement when determining the property's building potential. Please explain the basis for disregarding this land in the determination of buildable area. See page 92.

Da 118

14. The T&M report is premised on one parking space for every 200 feet of building. The zoning ordinance states that for industrial uses, the zoning is one space per 4 employees. Borough Code §80-35. The requirement of one space per 200 feet of building only applies to commercial, office or recreational buildings which are not the opined highest and best use. Please identify the basis for T&M's conclusion of parking.
15. The Jerome J. McHale report was premised on a highest and best use opined by Marathon Engineering. See McHale Appraisal at pages 33 and 98. The Marathon Report indicates it was premised in part on a site inspection which occurred on February 19, 2009. This is the type of appraisal inspection referenced under N.J.S.A. 20:3-6. Notwithstanding the inspection took place from the right-of-way, neither GRD nor its counsel were ever invited on this inspection or otherwise afforded the opportunity to provide input into this report. Please be advised that this vitiates any claim that the McHale Report constitutes the proper basis of a bona fide offer under N.J.S.A. 20:3-6. See Borough of Rockaway v. Donofrio, 186 N.J. Super. 344, 353-54 (App. Div. 1982) which establishes principal that dismissal is warranted if the condemnor fails to invite the property owner on the appraisal inspection. An inspection should be arranged in order for GRD to be permitted the opportunity to have input into the Marathon Report.
16. The Marathon report lists several documents relied upon in its analysis. See pages 99 and 100. Please provide copies of those documents to assist in the review of Marathon's conclusions and the qualifications of Messrs. Brickner and Ricciardi.
17. Parcel 1B is being acquired as an uneconomic remnant. GRD is considering its options to maintain this property. What would the offer be if this parcel were to be excluded from the taking?
18. The appraisal fails to consider more than 250,000 cubic yards of reconstituted dredge materials on site which can be sold. The value of this material must be included in the offer.

The foregoing is based on the information provided with GCLA's offer. Upon receipt of the requested information, GRD shall be able to more properly assess the offer in order to permit the requisite bona fide negotiations under N.J.S.A. 20:3-6. Please be advised that although this request is intended to be as comprehensive as possible, it is being made without prejudice to GRD's right to seek additional information that may become necessary to evaluate GCLA's offer.

Da 119

Christopher Gibson, Esq.  
July 31, 2009  
Page 4

Thank you for your anticipated response and please call either William J. Ward, Esq. or me with any questions you may have in this regard.

Very truly yours,

CARLIN & WARD, P.C.

By: 

JAMES M. TURTELTAUB

JMT:dfb

cc: William J. Ward, Esq.  
George A. Gallenthin, III, Esq.

Da 120

# CARLIN & WARD

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

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P.O. BOX 751  
FLORHAM PARK, NEW JERSEY 07932

March 31, 2010

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E-MAIL: [william.ward@carlinward.com](mailto:william.ward@carlinward.com)  
WEBSITE: [www.carlinward.com](http://www.carlinward.com)

WILLIAM J. WARD

VIA LAWYERS SERVICE

Jeffrey D. Gordon, Esq.  
Archer & Greiner, PC  
700 Alexander Park  
Suite 102  
Princeton, NJ 08540-6351

RE: Gloucester County Improvement Authority v. Gallenthin Realty  
Development, Inc.  
Industrial Avenue, Paulsboro, New Jersey  
Our File No. 40364-01

Dear Mr. Gordon:

With respect to your recent communication regarding the continuation of settlement discussions please call my secretary, Debbie, and set up a meeting for the week of April 12, 2010 except that Mr. Gallenthin is not available on April 16, 2010. We can meet at your Princeton office. At that time we can respond to your request to have Mr. Gallenthin sign the permit application received by us on March 22, 2010.

We are also in receipt of the revised parcel maps which we have gone over in detail with Mr. & Mrs. Gallenthin and we have the following comments:

1. We would like your surveyor to provide a metes and bounds description of the parcels to be acquired from Mr. Gallenthin;
2. The utility easement to Atlantic City Electric should be plotted and notated on the parcel maps;
3. The rail easement on the subject property is misdesignated as belonging to Conrail and it is designated as 60 feet wide when in fact it is 40 feet wide. The proper designation for the rail easement should be "Port DuPont Common Rail Easement";
4. Mr. Gallenthin takes strong issue with the notes 1-7 contained on your maps. The wetlands delineation by T&M Associates dated March 2006 was done illegally without the written consent of the property owner and improperly designates wetlands on the greater parcel most of which is not being acquired by GCIA in

Dq 121

this action. Therefore, the LOI issued by the New Jersey DEP and approved by the Army Corps of Engineers is improper and illegal;

5. The designation of the Mantua Creek site as "state open water" is incorrect. This area is property of the United States per Public Works Initiative 73883 accomplished in the early 1900's when the Mantua Creek was straightened and deepened by the Army Corps of Engineers;
6. The existing roadway easement which is referenced in Book 1081, Page 48 as amended in Book 110, Page 301 is not reflected as being exclusively for the use of Gallenthin Realty Inc. and Paulsboro Acquisition Corp. The future intended use as evidenced by the project is in violation of said easements and the property owner must be compensated for this; and
7. Gallenthin Realty Inc. claims that it has title by adverse possession for the property bordering the Mantua Creek north of the existing property lines as this area was historically the location of the docks used by the Gallenthins when the subject property was utilized for a dredge spoil deposit site. Evidence of the location of the docks is in the bed of the creek where the concrete abutments for the docks are still visible. Mr. Gallenthin has photographic evidence showing their tugboats utilizing this location and we will provide same to you when we meet.

We would like to discuss all of these comments with you in more detail when we meet to discuss settlement with you the week of April 12, 2010.

Very truly yours,

CARLIN & WARD, P.C.

By:   
WILLIAM J. WARD

WJW:dfb

cc: George Gallenthin  
James M. Turteltaub, Esq.

D9 122

CARLIN & WARD, P.C.  
25A Vreeland Road  
P. O. Box 751  
Florham Park, New Jersey 07932  
973-377-3350  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

GLOUCESTER COUNTY IMPROVEMENT  
AUTHORITY,

Plaintiff,

vs.

GALLENTHIN REALTY DEVELOPMENT,  
INC., STATE OF NEW JERSEY,  
BOROUGH OF PAULSBORO, COLONIAL  
PIPELINE CO., ATLANTIC CITY  
ELECTRIC CO. AND PAULSBORO  
ACQUISITION CORP.,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – GLOUCESTER  
COUNTY

DOCKET NO. GLO-L-718-10

Civil Action  
(In Condemnation)

**CERTIFICATION OF  
LTC(R) GEORGE A. GALLENTHIN, III**

**LTC(R) GEORGE A. GALLENTHIN, III** being of full age hereby certifies and states:

1. I own 100% of the corporate stock of the Defendant Gallenthin Realty Development, Inc. (“GRD”), a New Jersey for-profit corporation. I am duly authorized to act on behalf of GRD and therefore submit the following certification in support of GRD’s motion to dismiss the Verified Complaint filed by the Gloucester County Improvement Authority (“GCIA”) and GRD’s motion to transfer venue of the matter to Burlington County or in the alternative for the recusal of the Hon. Georgia Curio, A.J.S.C.

2. I own approximately 44.26% of the property identified as Block 1, Lot 3 on the Borough of Paulsboro, Gloucester County, New Jersey (“Subject Property”) while GRD owns

Da 123

approximately 33.33% of the Subject Property. Given that I wholly own GRD, essentially I own approximately 77.6% of the Subject Property.

3. The remaining portion of the Subject Property, which amounts to approximately 22.4% is owned by my cousin Elizabeth Gellenthin.

4. Attached hereto as Exhibit A is a true and accurate copy of a Declaration of Ownership dated July 2, 2000 depicting the foregoing breakdown of the ownership of the Subject Property.

5. Despite my aforementioned ownership interest in the Subject Property, GCIA did not identify me as a defendant in the Verified Complaint nor has it acknowledged my interest in the Subject Property.

6. It is my understanding that I have the legal right to be notified of all inspections of the Subject Property performed by or on behalf of GCIA and be permitted to provide input during those inspections. However, neither GRD nor I received any notice of the inspection of the Subject Property performed by Marathon Engineering & Environmental Services, Inc. I was not aware of the inspection, nor invited on the inspection or given the opportunity to provide input into the Marathon Report.

7. The T&M Report relied upon by GCIA's appraiser was done without providing GRD and/or myself the opportunity to accompany T&M on its investigation or give any input into the improper wetlands delineation and/or preparation of the T&M Report. In fact during the appellate process of the prerogative writ suit with the Borough of Paulsboro, T&M attempted to enter onto the Subject Property without authority to do so.

Da 124

8. I am currently aware that in October 2007, the GCIA submitted to the New Jersey Department of Environmental Protection an application for a DP-12 permit/wetlands delineation. Attached hereto as Exhibit B is a true and accurate copy of the application.

9. David Shields, Executive Director of the GCIA, listed his name on the application as the "property owner." On page 3 of the application, under section B entitled "Property Owner's Certification," George Strachan, also with the GCIA, signed his name and "certified" that he was the owner of the property upon which the proposed work was to be done.

10. Neither the GCIA nor Messrs. Shields and Strachan were the owners of the Subject Property, nor were they authorized or given GRD's consent to sign the application on its behalf.

11. By way of letter dated March 4, 2009, counsel for GCIA categorized its unauthorized signing of the GP-12 Permit Application as a clerical error and therefore requested that GRD, as the lawful property owner, sign a new application on GCIA's behalf that would replace the improper application that had been filed with the NJDEP. A true and accurate copy of that letter is attached hereto as Exhibit C.

12. I believe that the wetlands survey and delineation are not only inaccurate but also fail to recognize the legal and historical use of the Subject Property as a deposit site for dredge spoils. Dating back to at least 1902 the Subject Property was authorized to receive dredge deposits from the US Army Corps of Engineers, which was responsible for widening and straightening the Mantua Creek. The Army Corps made deposits on the Subject Property in 1902, 1934, 1937 and 1963. There is approximately 250,000 cubic yards of dredge spoils on the site. I am actively pursuing the Subject Property's use as a dredging depot and believe if required to I can retain any necessary DEP water permits once dredging is commenced by the Army Corps.

Da 125



13. Attached hereto as Exhibit D is a true and accurate copy of an Order dated January 5, 2006, transferring venue of several municipal court matters involving the Gallenthins and State Senator Stephen Sweeney from Gloucester County to Camden County for adjudication.

14. Attached hereto as Exhibit E is a true and accurate copy of a letter dated January 6, 2010 notifying me of the transfer of the municipal court matters.

15. Attached hereto as Exhibit F is a true and accurate copy of a complaint filed with the Advisory Committee on Judicial Conduct dated February 10, 2006. Given the nature and the allegations set forth in the complaint I believe that the Court may possess an appearance of bias towards the arguments raised by GRD in support of its motion to dismiss GCIA's complaint.

16. My belief of an appearance of impropriety also extends to other members of the Judiciary sitting in Gloucester County including Judge Anne McDonnell, who previously served as my former attorney in an unrelated matter to this action. Judge McDonnell presided over the access suits with GCIA and permitted GCIA preliminary access to the Subject Property over GRD's objections. Upon information and belief, Judge McDonnell's husband's engineering and planning firm, Consulting Engineering Services, Inc., participated in the bidding for GCIA's purported bridge and road project. Attached hereto as Exhibit G is a true and accurate copy of the "GCIA Paulsboro Port OffRamp/Bridge Mandatory Prebid" sign in sheet dated February 15, 2007, as well as a blurb on Consulting Engineering services, Inc.

17. Attached hereto as Exhibit H are true and accurate copies of relevant pages from the website of the Gloucester County Improvement Authority, <http://www.gcianj.com/>.

18. Attached hereto as Exhibit I are true and accurate copies of relevant pages from the online biography of Stephen Sweeney posted on Gloucester County's website: <http://www.co.gloucester.nj.us/Government/Freeholders/sweeney.cfm>.

19. Attached hereto as Exhibit J is a true and accurate copy of a County of Gloucester Resolution adopting the Delaware River Development and Re-Development Report dated May 17, 2000.

20. Attached hereto as Exhibit K is a true and accurate copy of the opinion from Judge Hogan in the matter of County of Gloucester v. American Atlantic Company, et. als., Docket No. BUR-L-3641-09 (formerly Docket No. GLO-L-1313-09).

21. Upon information and belief, the American Atlantic matter was transferred from Gloucester County to Burlington County due to the fact a County Official, who attested to the adequacy of the negotiations between the parties, was related to a judge currently sitting in Gloucester County.

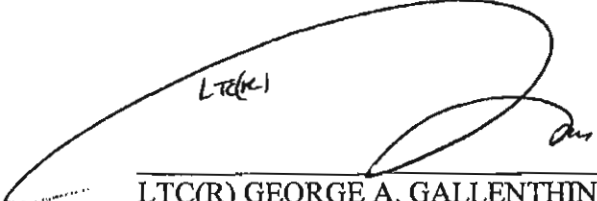
22. As set forth in GRD's Answer to the Complaint, given my interest in the Subject Property I am an indispensable party to this matter. However, I am currently serving the United States' interests in Afghanistan and am therefore unable to appear to defend the current action.

23. Notwithstanding, the Court's prior ruling, I maintain that my capacity as a citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action, warrants a stay of the action as provided for in 50 U.S.C. App. §514.

24. Attached hereto as Exhibit L is a true and accurate of the Deed of the Subject Property dated October 16, 1998 and recorded July 2, 1999.

Da 127

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

  
LTC(R) GEORGE A. GALLENTIN, III

Dated: July 23, 2010

Da 128

DECLARATION OF OWNERSHIP

WHEREAS, On 2 July 1999, Final Judgment in Suit to Quiet Title, Gloucester County, NJ was obtained and further development and challenges are anticipated.

Therefore be it agreed and declared,

- 1. Gallenthin Realty Development, Inc. (GRD), a domestic for-profit, incorporated in the State of New Jersey in 1997 owns one-third (1/3rd) of Block 1, Lot 3, Paulsboro, Gloucester County (Block 1 Lot 3), and George Andrew Gallenthin, III owns all the corporation's stock;
2. George Andrew Gallenthin, III, individual, POB 421 Doylestown, Pennsylvania 18901 owns one-third (1/3rd) of Block 1, Lot 3, plus 10.93 percent of Block 1, Lot 3 for services rendered;
3. Elizabeth Gellenthin, individual, (formerly M.G.1), Browns Mills, New Jersey owns 22.4 percent of Block 1, Lot 3 until all actions of redevelopment and eminent domain are completed. At that time of completed litigation, Elizabeth Gellenthin shall own irrevocably one-third (1/3rd) of Block 1 Lot 3, including any land acquired contiguous to Block 1 Lot 3.

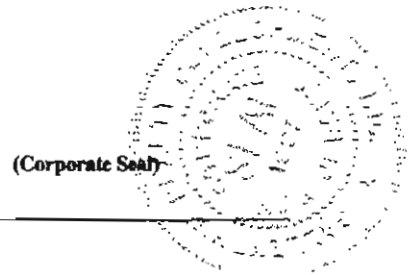
2 July 2000 [Signature]
George Andrew Gallenthin, III

[Signature]
Witness

2 July 2000 [Signature]
Elizabeth Conet nee Gallenthin
e. Connet

[Signature]
Witness

GALLENTHIN REALTY DEVELOPMENT, INC.:
By: [Signature] (SEAL)
George A. Gallenthin, III, President /Chairman
ATTEST: [Signature]
Secretary or Assistant Secretary



CORPORATE ACKNOWLEDGEMENT
STATE OF NEW JERSEY )
)ss
COUNTY OF GLOUCESTER)

BE IT REMEMBERED that on this 2nd day of July 2000, before me, the subscriber, personally appeared GEORGE A. GALLENTHIN, III, President/Chairman of GALLENTHIN REALTY DEVELOPMENT, INC., who, I am satisfied, is the person who signed the within instrument, and he or she acknowledged that he or she signed, sealed with the corporate seal and delivered the same as such officer aforesaid, and that the within instrument is the voluntary act and deed of such corporation, made by virtue of a resolution of its Board of Directors.

SWORN TO AND SUBSCRIBED to before me this 2nd day of July in the year 2000 the above persons who are known to me or proven to be George A. Gallenthin III, Chairman of Gallenthin Realty Development, Inc., George A. Gallenthin, III, and Elizabeth Conet nee Gallenthin have set their hands and seals to the above instrument.

Notary Seal [Signature]
NOTARY

Commission expires 10/31/2002
Upper Sausan Twp
Lehigh County



State of New Jersey  
 Department of Environmental Protection  
 Division of Land Use Regulation Application Form (LURP-2)  
 Division of Land Use Regulation  
 501 E. State Street P O Box 439  
 Trenton, NJ 08625-0439  
 www.nj.gov/dep/landuse



Marlin Peterson

cell- 856-628-3993

work Glou. Co. Imp. Auth.

PLEASE PRINT OR TYPE THE FOLLOWING: (Complete all sections unless otherwise noted)  
 Gloucester County Improvement Authority,

1. Applicant Name: c/o George Strachan, Executive Director Email:

Address: 109 Budd Boulevard City: Woodbury

State: NJ Zip: 08096 Daytime Phone: 856-848-4002 Ext.: Cell Phone:

2. Agent Name: Seth Gladstone Firm: Pennoni Associates Inc. Email: sgladstone@pennoni.com

Address: 515 Grove Street, Suite 2C City: Haddon Heights

State: NJ Zip: 08035 Daytime Phone: 856-547-0505 Ext.: 3459 Cell Phone: N/A

c. Property Owner Name: Gloucester County Improvement Authority, c/o Dave Shields, Executive Director Address: 1099 Budd Boulevard

City: Woodbury State: NJ Zip: 08096 Phone: 856-848-4002 Ext.:

Paulsboro Marine Terminal -

4. Project Name: Access Road and Bridge Site Location (Street Address): The proposed access road and bridge will be located in the Twp. of West Deptford & the Borough of Paulsboro, located just south of the existing CITGO facility. The bridge will span Mantua Creek.

Zip: 08096 Municipality: Township of West Deptford & Borough of Paulsboro County: Gloucester

Block(s) & Borough of Paulsboro: Block(s) & Township of West Deptford:  
 Lots(s): Block 1, Lots 2, 3 & 18 Lots(s): Block 328, Lots 1.20 & 1.25  
 Block 1.03, Lot 3  
 Block 1.04, Lots 1 & 2

N.A.D. 1983 State Plane Coordinates (feet) 6 digits only: E (x): 286,385 N (y): 367,512  
 Mantua Creek Watershed: Mantua Creek Subwatershed: Mantua Creek (below Edwards Run)

Nearest Waterway:

5. Fees: Total Fee: \$ 600.00 Project Cost: Check No:

6. Project Description: The applicant requests a General Permit #12 to conduct geotechnical borings associated with the construction of the proposed access road and bridge.

**FOR OFFICIAL USE ONLY**

Program Interest # \_\_\_\_\_ Class Code \_\_\_\_\_ Activity # \_\_\_\_\_

Type \_\_\_\_\_ Component Type \_\_\_\_\_ Highlands Yes \_\_\_\_\_ No \_\_\_\_\_

Proposed activity \_\_\_\_\_ Fees \_\_\_\_\_ Urban Area Yes \_\_\_\_\_ No \_\_\_\_\_

Date Received \_\_\_\_/\_\_\_\_/\_\_\_\_ 20th Day \_\_\_\_/\_\_\_\_/\_\_\_\_ 90th Day \_\_\_\_/\_\_\_\_/\_\_\_\_

PRO \_\_\_\_\_ Project Engineer \_\_\_\_\_

Alternate Program Interest \_\_\_\_\_ ASU \_\_\_\_\_ ASU Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Program Interest # \_\_\_\_\_ Class Code \_\_\_\_\_ Activity # \_\_\_\_\_

Type \_\_\_\_\_ Component Type \_\_\_\_\_ Fees \_\_\_\_\_ Pts \_\_\_\_\_

Proposed activity \_\_\_\_\_

Revised 2/1/2007

Da 130

Application Type	Fee Amt.	Amt. Paid
<b>Applicability Determination</b>		
<input type="checkbox"/> Coastal Jurisdictional Determination		
<input type="checkbox"/> Highlands Jurisdictional Determination		
<input type="checkbox"/> Flood Hazard Waiver/JD		
<b>CAFRA</b>		
<input type="checkbox"/> Individual Permit		
<input type="checkbox"/> Exemption Request		
<input type="checkbox"/> Permit Modification		
<input type="checkbox"/> General Permit 5		
<input type="checkbox"/> General Permit 6		
<input type="checkbox"/> General Permit 7		
<input type="checkbox"/> General Permit 8		
<input type="checkbox"/> General Permit 9		
<input type="checkbox"/> General Permit 10		
<input type="checkbox"/> General Permit 11		
<input type="checkbox"/> General Permit 12		
<input type="checkbox"/> General Permit 13		
<input type="checkbox"/> General Permit 14		
<input type="checkbox"/> General Permit 15		
<input type="checkbox"/> General Permit 16		
<input type="checkbox"/> General Permit 17		
<input type="checkbox"/> General Permit 18		
<input type="checkbox"/> General Permit 21		
<input type="checkbox"/> General Permit 22		
<input type="checkbox"/> General Permit 23		
<input type="checkbox"/> General Permit 24		
<input type="checkbox"/> General Permit 25		
<input type="checkbox"/> General Permit 26		
<input type="checkbox"/> General Permit 27		
<input type="checkbox"/> General Permit 29		
<b>Consistency Determination</b>		
<input type="checkbox"/> Federal Consistency Determination		
<input type="checkbox"/> Water Quality Certificate		
<b>Highlands</b>		
<input type="checkbox"/> Emergency Permit		
<input type="checkbox"/> Pre-application Meeting		
<input type="checkbox"/> Preservation Area Approval		
<input type="checkbox"/> PAA with Waiver		
<input type="checkbox"/> Resource Area Determination		
<input type="checkbox"/> General Permit 1		
<input type="checkbox"/> General Permit 2		
<b>Flood Hazard Area</b>		
<input type="checkbox"/> Major Permit		
<input type="checkbox"/> Minor Permit		
<input type="checkbox"/> Modification		
<b>Waterfront Development</b>		
<input type="checkbox"/> General Permit 10		
<input type="checkbox"/> General Permit 14		
<input type="checkbox"/> General Permit 18		
<input type="checkbox"/> General Permit 19		
<input type="checkbox"/> General Permit 20		
<input type="checkbox"/> General Permit 21		
<input type="checkbox"/> Individual Permit/Upland		
<input type="checkbox"/> Individual Permit/Inwater		
<input type="checkbox"/> ZANE Letter		
<input type="checkbox"/> Modification		

1. Permit number 101. (10000 check all that apply)

Application Type	Fee Amt.	Amt. Paid
<b>Coastal/Tidal Wetlands</b>		
<input type="checkbox"/> Coastal/Tidal Wetlands Permit		
<input type="checkbox"/> Coastal Wetland Permit Modification		
<b>Freshwater Wetlands</b>		
<input type="checkbox"/> Freshwater Wetlands GP1		
<input type="checkbox"/> Freshwater Wetlands GP2		
<input type="checkbox"/> Freshwater Wetlands GP2A		
<input type="checkbox"/> Freshwater Wetlands GP3		
<input type="checkbox"/> Freshwater Wetlands GP4		
<input type="checkbox"/> Freshwater Wetlands GP5		
<input type="checkbox"/> Freshwater Wetlands GP6		
<input type="checkbox"/> Freshwater Wetlands GP7		
<input type="checkbox"/> Freshwater Wetlands GP8		
<input type="checkbox"/> Freshwater Wetlands GP9		
<input type="checkbox"/> Freshwater Wetlands GP10A		
<input type="checkbox"/> Freshwater Wetlands GP10B		
<input type="checkbox"/> Freshwater Wetlands GP10C		
<input type="checkbox"/> Freshwater Wetlands GP11		
<input type="checkbox"/> Freshwater Wetlands GP11A		
<input checked="" type="checkbox"/> Freshwater Wetlands GP12	\$600.00	\$600.00
<input type="checkbox"/> Freshwater Wetlands GP13		
<input type="checkbox"/> Freshwater Wetlands GP14		
<input type="checkbox"/> Freshwater Wetlands GP15		
<input type="checkbox"/> Freshwater Wetlands GP16		
<input type="checkbox"/> Freshwater Wetlands GP17		
<input type="checkbox"/> Freshwater Wetlands GP18		
<input type="checkbox"/> Freshwater Wetlands GP19		
<input type="checkbox"/> Freshwater Wetlands GP20		
<input type="checkbox"/> Freshwater Wetlands GP20A		
<input type="checkbox"/> Freshwater Wetlands GP21		
<input type="checkbox"/> Freshwater Wetlands GP23		
<input type="checkbox"/> Freshwater Wetlands GP24		
<input type="checkbox"/> Freshwater Wetlands GP25		
<input type="checkbox"/> Freshwater Wetlands GP26		
<input type="checkbox"/> Freshwater Wetlands GP26A		
<input type="checkbox"/> Freshwater Wetlands GP27		
<input type="checkbox"/> Freshwater GP Modification		
<input type="checkbox"/> Individual Wetlands Permit		
<input type="checkbox"/> Individual Open Water Permit		
<input type="checkbox"/> Individual Permit Modification		
<input type="checkbox"/> Wetlands Exemption		
<b>Letter of Interpretation</b>		
<input type="checkbox"/> Presence Absence		
<input type="checkbox"/> Presence Absence Footprint		
<input type="checkbox"/> Delineation		
<input type="checkbox"/> Verification		
<input type="checkbox"/> Extension		
<b>Transition Area Waiver</b>		
<input type="checkbox"/> Averaging Plan		
<input type="checkbox"/> Reduction		
<input type="checkbox"/> Hardship Reduction		
<input type="checkbox"/> Special Activity Stormwater		
<input type="checkbox"/> Linear Development		
<input type="checkbox"/> Redevelopment		
<input type="checkbox"/> Individual Permit		
<input type="checkbox"/> Exemption		
<input type="checkbox"/> Modification		

Both the Applicant and Property owner's section must be filled out for all Land Use Regulation Applications

**A. APPLICANT SIGNATURE**

I certify under penalty of law that the information provided in this document is true and accurate. I am aware that there are significant civil and criminal penalties for submitting false or inaccurate information. (If corporate entity, print/type the name and title of person signing on behalf of the corporate entity.)

*George Strachan*

Signature of Applicant/Owner

10/23/07

Date

Gloucester County Improvement Authority,  
c/o George Strachan

Print Name

109 Budd Boulevard

Woodbury, NJ 08096

Print Address

Signature of Applicant/Owner

Date

Print Name

Print Address

**B. PROPERTY OWNER'S CERTIFICATION**

I hereby certify that the undersigned is the owner of the property upon which the proposed work is to be done. This endorsement is certification that the owner grants permission for the conduct of the proposed activity. In addition, I hereby give unconditional written consent to allow access to the site by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the project site.

In addition, the undersigned property owner hereby certifies:

- Whether any work is to be done within an easement - Yes:  No:
- Whether any part of the entire project (e.g., pipeline, roadway, cable, transmission line, structure, etc.) will be located within property belonging to the State of New Jersey-Yes:  No:
- Whether any work is to be done on any property owned by any public agency that would be encumbered by Green Acres - Yes:  No:
- Whether any part of this project requires a Section 106(National Register of Historic Places) Determination as part of a federal permit or approval - Yes:  No:

*George Strachan*

Signature of Owner

10/23/07

Date

Gloucester County Improvement Authority,  
c/o George Strachan

Print Name

109 Budd Boulevard

Woodbury, NJ 08096

Print Address

Signature of Owner

Date

Print Name

Print Address

C. APPLICANT'S AGENT

NOTE: Notary seal is required for Flood Hazard Area (SEA) applications.

I George Strachan Gloucester County Improvement Authority, c/o Dave Childs, Executive Director, the Applicant/Owner, authorize to act as my agent/representative in all matters pertaining to my application the following person:

Name Seth Gladstone

Occupation/Profession Environmental Scientist

George Strachan  
(Signature of Applicant/Owner)

AGENT'S CERTIFICATION

Sworn before me this day of 23rd

I agree to serve as agent for the above-mentioned applicant

October 20 07

Seth Gladstone  
(Signature of Agent)

Michelle Dutkiewicz  
Notary Public  
MICHELLE DUTKIEWICZ  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 29, 2011

D. STATEMENT OF PREPARER OF PLANS, SPECIFICATIONS, SURVEYOR'S OR ENGINEER'S REPORT

I hereby certify that the plans, specifications and engineer's report, if any, applicable to this project comply with the current rules and regulations of the New Jersey Department of Environmental Protection with the exceptions as noted.

Dan DiFrancesco  
Signature

Dan DiFrancesco

Type: Name and Date

Project Engineer, Pennoni Associates Inc.

Position, Name of Firm

E. STATEMENT OF PREPARER OF APPLICATION, REPORTS AND/OR SUPPORTING DOCUMENTS (other than engineering)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in the document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Seth Gladstone  
Signature

Seth Gladstone

Type: Name and Date

Environmental Scientist, Pennoni Associates Inc.

Position, Name of Firm



**RESOLUTION ADOPTING THE DELAWARE RIVER DEVELOPMENT AND RE-DEVELOPMENT REPORT, INCLUDING RECOMMENDATIONS FOR REGIONAL DEVELOPMENT PLANS ALONG THE DELAWARE RIVER WATERFRONT**

**WHEREAS**, the County of Gloucester has recognized the need to expand the economic vitality and potential of the Gloucester County Delaware River waterfront; and

**WHEREAS**, the County of Gloucester believes through innovative re-development planning, preservation and development of the nature environment, the County can meet the current and future needs of it's municipalities, residents and visitors; and

**WHEREAS**, the County of Gloucester recognizes the economic development potential of the Delaware River waterfront is dependent upon and intertwined with its rich natural resources; and

**WHEREAS**, the County of Gloucester continues to oppose the placement of dredge spoils along the Delaware River waterfront as same would have a major negative impact upon the development of this area; and

**WHEREAS**, the recommendations of this study and the resulting Re-Development Plan provides for the expanded waterfront park in Westville, new commercial facilities in West Deptford, a re-developed cargo and office campus facility in Paulsboro, a greenway from Grove Street to Red Bank Battlefield in National Park, a revitalized industrial park in Greenwich Twp. and a new recreation area in Logan Twp; and

**WHEREAS**, the recommendations contained in this Plan shall add to the quality of life for both current and future residents of Gloucester County; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Chosen Freeholders of the County of Gloucester and State of New Jersey hereby adopts the Delaware River Development and Re-Development Master/Action Plan, including it's recommendation for re-development plans along the Delaware River waterfront.

**ADOPTED** at a regular meeting of the Board of Chosen Freeholders of the County of Gloucester and State of New Jersey held on May 17, 2000 at Woodbury, New Jersey.

**COUNTY OF GLOUCESTER**

BY:   
**STEPHEN M. SWEENEY**

ATTEST:

BY: 

**ROBERT N. DILELLA**  
**CLERK OF THE BOARD**

11 Da 134



ARCHER & GREINER, P.C.  
ATTORNEYS AT LAW

JAMES M. GRAZIANO

ONE CENTENNIAL SQUARE  
HADDONFIELD, NJ 08033-0968  
856-795-2121  
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(856) 354-3090

Direct Fax:  
(856) 673-7090

www.archerlaw.com

March 4, 2009

(Via email and regular mail)  
F. Michael Daily, Esquire  
216 Haddon Avenue  
Westmont, NJ 08108

**RE: GP-12 Permit Application**

Dear Mr. Daily:

Attached is a copy of a corrected GP-12 permit application for certain survey and investigation work at properties owned by the Gloucester County Utilities authority ("GCUA"), Nustar Asphalt Refining, LLC ("Nustar") and Gallenthin Realty Development ("GRD").

As you know, the original application, which currently is on file with the New Jersey Department of Environmental Protection ("DEP"), was submitted with a clerical error. The GCUA is attempting to fix that clerical error and correct the record by submitting the enclosed with signatures from the three affected property owners. As you can see, the GCUA and Nustar already have executed the document. Given that this was simply a clerical oversight and that the access and testing associated with the GP-12 permit has already occurred, we would appreciate it if your client would execute the attached and return it to us, so that the DEP's file will contain a GP-12 permit application reflecting the ownership of the three affected properties.

Thank you for your assistance in this matter.

Very truly yours,

ARCHER & GREINER, P.C.

By: 

James M. Graziano

JMG/jp  
Enclosure  
3878023v1

PRINCETON OFFICE  
700 Alexander Park  
Suite 102  
Princeton, NJ 08540  
P 609-580-3700  
F 609-580-0051

FLEMINGTON OFFICE  
Plaza One  
1 State Route 12, Suite 201  
Flemington, NJ 08822-1722  
P 908-788-9700  
F 908-788-7854

PHILADELPHIA OFFICE  
One South Broad Street  
Suite 1600  
Philadelphia, PA 19107  
P 215-963-3300  
F 215-963-9999

WILMINGTON OFFICE  
300 Delaware Avenue  
Suite 1370  
Wilmington, DE 19801  
P 302-777-4350  
F 302-777-4352

NEW YORK OFFICE  
2 Penn Plaza  
Suite 1500  
New York, NY 10121  
P 212-292-4988  
F 212-629-4568

Da 135

CARLIN & WARD, P.C.  
25A Vreeland Road  
P. O. Box 751  
Florham Park, New Jersey 07932  
973-377-3350  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

GLOUCESTER COUNTY IMPROVEMENT  
AUTHORITY,

Plaintiff,

vs.

GALLENTHIN REALTY DEVELOPMENT,  
INC., STATE OF NEW JERSEY, BOROUGH  
OF PAULSBORO, COLONIAL PIPELINE  
CO., ATLANTIC CITY ELECTRIC CO. AND  
PAULSBORO ACQUISITION CORP.,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – GLOUCESTER  
COUNTY

DOCKET NO. GLO-L-718-10

Civil Action  
(In Condemnation)

**ANSWER, SEPARATE DEFENSES AND  
JURY DEMAND**

Defendant, Gallenthin Realty Development, Inc., (“GRD”) by way of their attorneys, Carlin & Ward, P.C., answers the Verified Complaint of Plaintiff the Gloucester County Improvement Authority (“GCIA”) and states:

**FIRST COUNT**

1. Defendant neither admits nor denies the allegations set forth in Paragraph 1 of the Verified Complaint and leaves Plaintiff to its proofs thereon.
2. The allegations set forth in Paragraph 2 of the Verified Complaint require a legal conclusion and therefore Defendant neither admits nor denies the allegations. However, to the extent Paragraph 2 of the Verified Complaint purports to demonstrate that GCIA is duly

authorized to condemn the Subject Property, Defendant denies such authority and challenges same as set forth more particularly in Defendant's Separate Defenses incorporated herewith.

3. Defendant admits the allegations set forth in Paragraph 3 of the Verified Complaint only to the extent that GRD, a New Jersey for-profit corporation, owns one-third of the property identified as Block 1, Lot 3 on the Borough of Paulsboro, Gloucester County, New Jersey tax map,. The remainder of the allegation does not contain sufficient information to either admit or deny same and therefore Defendant leaves the Plaintiff to its proofs thereon.

4. The allegation set forth in Paragraph 4 of the Verified Complaint does not contain sufficient information, including a sufficient description of the "Subject Property" to either admit or deny same and therefore Defendant leaves the Plaintiff to its proofs thereon. To the extent that Paragraph 4 of the Verified Complaint purports to name all persons having an interest in the property identified as Block 1, Lot 3 on the Borough of Paulsboro, Gloucester County, New Jersey tax map, Defendant denies the allegation to the extent George A. Gallenthin, III and Elizabeth Gellenthin have an ownership interest in said property and are not listed in the Verified Complaint. George A. Gallenthin, III owns 100% of the corporate stock of GRD and also owns approximately 44.26% of the property identified as Block 1, Lot 3 on the Borough of Paulsboro, Gloucester County, New Jersey. Elizabeth Gellenthin owns approximately 22.4 percent of the property identified as Block 1, Lot 3 on the Borough of Paulsboro, Gloucester County, New Jersey.

5. The allegation set forth in Paragraph 5 of the Verified Complaint does not contain sufficient information, including a sufficient description of the "Subject Property" to either admit or deny same and therefore Defendant leaves the Plaintiff to its proofs thereon.

Da 137

6. Defendant has insufficient knowledge to either admit or deny the allegation set forth in Paragraph 6 of the Verified Complaint and leaves the Plaintiff to its proofs thereon. To the extent Plaintiff alleges the primary purpose for the taking sought by its Complaint, Defendant denies said allegation.

7. Defendant has insufficient knowledge to either admit or deny the allegation set forth in Paragraph 7 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

8. Defendant admits the allegations set forth in Paragraph 8 of the Verified Complaint only to the extent that attached as Exhibit B to the Verified Complaint purports to be a copy of a document entitled "Interlocal Services Agreement And Assignment Between the County of Gloucester and the Gloucester County Improvement Authority for the Construction of Infrastructure Improvements Related to the Development of the Paulsboro Marine Terminal." Defendant has insufficient knowledge to either admit or deny the remainder of the allegation set forth in Paragraph 8 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

9. Defendant admits the allegations set forth in Paragraph 9 of the Verified Complaint only to the extent that attached as Exhibit C to the Verified Complaint purports to be a copy of a document entitled "Resolution of the Gloucester County Improvement Authority Authorizing the Execution of an Interlocal Services and Assignment Between the County of Gloucester and the Gloucester County Improvement Authority for the Construction of Infrastructure Improvements Related to the Development of the Paulsboro Marine Terminal." Defendant has insufficient knowledge to either admit or deny the remainder of the allegation set forth in Paragraph 9 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

10. Defendant admits the allegations set forth in Paragraph 10 of the Verified

Da 138

Complaint only to the extent that attached as Exhibit D to the Verified Complaint purports to be a copy of a document entitled "Resolution Authorizing the Execution of an Interlocal Services Agreement and Assignment Between the County of Gloucester and the Gloucester County Improvement Authority for the Construction of Infrastructure Improvements Related to the Development of the Paulsboro Marine Terminal." Defendant has insufficient knowledge to either admit or deny the remainder of the allegation set forth in Paragraph 10 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

11. Defendant has insufficient knowledge to either admit or deny the remainder of the allegation set forth in Paragraph 11 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

12. Defendant admits the allegations set forth in Paragraph 12 of the Verified Complaint only to the extent that attached as Exhibit E to the Verified Complaint purports to be a copy of a document entitled "Resolution of the Gloucester County Improvement Authority Authorizing Acceptance of the Findings of the Appraisal Report for Property Owned by Gallenthin Realty Development, Inc. in the Borough of Paulsboro and Authorizing the Authority and its Counsel to Pursue the Acquisition of that Property." Defendant has insufficient knowledge to either admit or deny the remainder of the allegation set forth in Paragraph 12 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

13. Defendant admits the allegations set forth in Paragraph 13 of the Verified Complaint to the extent that an offer letter dated July 6, 2009 was sent to counsel for GRD from GCIA's counsel. However Defendant denies the remaining allegations in Paragraph 13 as GRD maintains that GCIA's offer was based on an appraisal which did not comport with the

Da 139

requirements of N.J.S.A. 20:3-6 to be complied with prior to the commencement of the within condemnation proceedings.

14. Defendant admits the allegations set forth in Paragraph 14 of the Verified Complaint to the extent that representatives of the GCIA and GRD did meet to discuss resolving this matter without resorting to litigation. However, Defendant denies that GCIA engaged in bona fide negotiations or otherwise complied with the requirements of N.J.S.A. 20:3-6 prior to the commencement of the within condemnation proceedings.

15. Defendant denies the allegations set forth in Paragraph 15 of the Verified Complaint including but not limited to that any changes to the taking area were done as part of the bona fide negotiation process, as GCIA did not engage in such negotiations as required by N.J.S.A. 20:3-6 which are to be undertaken prior to the commencement of the within condemnation proceedings.

16. Defendant denies the allegation set forth in Paragraph 16 of the Verified Complaint and also Exhibit G attached thereto in that neither provides an adequate description of the property in order for Defendant to be able to ascertain exactly what property is sought to be acquired by this action. Defendant neither admits nor denies the remainder of the allegations set forth in Paragraph 16 of the Verified Complaint and leaves Plaintiff to its proofs thereon.

17. Defendant neither admits nor denies the allegations set forth in Paragraph 17 of the Verified Complaint and leaves Plaintiff to its proofs thereon.

18. Defendant neither admits nor denies the allegations set forth in Paragraph 18 of the Verified Complaint and leaves Plaintiff to its proofs thereon.

19. Defendant neither admits nor denies the allegations set forth in Paragraph 19 of

Da 140

the Verified Complaint and leaves Plaintiff to its proofs thereon.

20. Defendant neither admits nor denies the allegations set forth in Paragraph 20 of the Verified Complaint and leaves Plaintiff to its proofs thereon.

21. Defendant admits the allegations set forth in Paragraph 21 of the Verified Complaint to the extent that it received an updated appraisal report, a copy of which is attached to the Verified Complaint as Exhibit I. Defendant denies the remainder of the allegations set forth in Paragraph 21 including, but not limited to that said appraisal was a prelude to or part of any alleged bona fide negotiations required by N.J.S.A. 20:3-6 to be undertaken prior to the commencement of the within condemnation proceedings.

22. Defendant neither admits nor denies the allegations set forth in Paragraph 22 of the Verified Complaint and leaves Plaintiff to its proofs thereon.

23. Defendant admits the allegations set forth in Paragraph 23 of the Verified Complaint only to the extent that attached as Exhibit J to the Verified Complaint purports to be a copy of a document entitled "Resolution of the Gloucester County Improvement Authority Authorizing Acceptance of the Findings of the Appraisal Report for Certain Real Property Known as Block 1, Lot 3 on the Tax Maps of the Borough of Paulsboro, Gloucester County Owned by Gallenthin Realty Development, Inc. and Authorizing the Acquisition of a Portion thereof." Defendant has insufficient knowledge to either admit or deny the remainder of the allegation set forth in Paragraph 23 of the Verified Complaint and leaves the Plaintiff to its proofs thereon.

24. Defendant denies the allegations set forth in Paragraph 24 of the Verified Complaint to the extent that GCIA met to conduct bona fide negotiations required by N.J.S.A.

Da 141



20:3-6 to be undertaken prior to the commencement of the within condemnation Defendant admits the allegations set forth in Paragraph 24 of the Verified Complaint to the extent that GCIA and GRD representatives met on April 21, 2010 and that GCIA offered to purchase interests in certain property for \$443,000. Defendant denies that said offer was for any defined property or the temporary construction easement described in Paragraph 19 of the Verified Complaint.

25. Defendant admits the allegations set forth in Paragraph 25 of the Verified Complaint to the extent that Plaintiff has been unable to acquire an interest in any property owned by the Defendant by reason of any action referenced in the Verified Complaint. Defendant denies the remainder of said allegation including but not limited to the allegation that GCIA engaged in bona fide negotiations or otherwise complied with the requirements of N.J.S.A. 20:3-6 that had to be undertaken prior to the commencement of this action.

26. The allegations set forth in Paragraph 26 of the Verified Complaint require a legal conclusion and therefore Defendant neither admits nor denies the allegations.

### **SEPARATE DEFENSES**

#### **FIRST SEPARATE DEFENSE**

*(Denial of authority of condemn for failure to comply with N.J.S.A. 20:3-6)*

27. Defendant denies Plaintiff's authority to condemn their property or any rights therein as set forth in the Verified Complaint.

28. Plaintiff has failed to enter into bona fide negotiations as required by N.J.S.A. 20:3-6.

29. The Plaintiff failed to make a bona fide offer capable of being evaluated or accepted by the Defendant.

Da 142

30. Plaintiff's offer to Defendant was based on two inadequate appraisals performed by J. McHale & Associates, Inc. ("McHale Appraisals").

31. In preparing the Appraisals, Mr. McHale received legal instructions. (See pp. 2, 11 of Exhibit I to the Verified Complaint).

32. The legal instructions provided by GCIA prevented Mr. McHale from doing an independent appraisal as he was bound to assume that the wetlands on the Subject Property could not be developed and furthermore that dredge disposal operations would not be permitted on-site despite it being used for such operations in the past. (See pp. 2, 11 of Exhibit I to the Verified Complaint).

33. Mr. McHale was also instructed to incorporate, rely upon and assume as accurate two outside reports performed by Marathon Engineering & Environmental Services, Inc. ("Marathon Report") and T & M Associates. ("T & M Report"). (See pp. 2, 11 of Exhibit I to the Verified Complaint).

34. The McHale Appraisals, in arriving at the highest and best use for the Subject Property, incorporated the Marathon Report. (See pp. 31-32 of Exhibit I to the Verified Complaint).

35. The Marathon Report was prepared in violation of N.J.S.A. 20:3-6 due to the fact GRD was never invited on the inspection or given the opportunity to provide input into that report. Borough of Rockaway v. Donofrio, 186 N.J. Super. 344, 353-54 (App. Div. 1982), certif. denied, 95 N.J. 183, 470 A.2d 409 (1983).

36. This violation of N.J.S.A. 20:3-6 was brought to GCIA's attention by GRD's counsel by way of letter dated July 31, 2009.

Da 143

37. Mr. McHale prepared an updated appraisal dated March 24, 2010 which again included and incorporated the findings of the Marathon Report as part of the highest and best use analysis.

38. GCIA had a clear opportunity to correct this known fatal deficiency yet continued to ignore its obligation.

39. The T & M Report, which is relied upon by Mr. Mchale, excludes certain land when determining the Subject Property's building potential. (See pp. 94 – 98). As such, the Plaintiff's offer was based on a speculative and vague understanding of what was being acquired and how the taking would affect the remainder of the Subject Property.

40. The offer was based on an inaccurate and improper delineation of wetlands that were obtained by the Plaintiff without the legal authority to do so.

41. The appraisal failed to value all interests being acquired by this action including the temporary rights set forth in Paragraph 19 which included the right of access to all GRD properties.

42. The appraisal failed to consider all lands owned by GRD including but not limited to all lands acquired and/or damaged by the proposed taking.

43. Plaintiff's failure to comply with the requirements of N.J.S.A. 20:3-6 requires dismissal of the Verified Complaint.

**SECOND SEPARATE DEFENSE**  
(The Plaintiff failed to comply with Rule 4:73-1)

44. Defendant repeats each and every allegation set forth in the First Separate Defense and incorporates same by reference herein.

Da 144

45. Rule 4:73-1 requires a condemnation complaint contain a map and description of land to be acquired and identity of improvements to be acquired.

46. The Verified Complaint is based on a speculative and vague understanding of what is being acquired and how the remaining property would be affected by the taking. For example, there is a parcel to which GRD quieted title to that does not appear on the maps attached to the Verified Complaint.

47. The maps also fail to show easements over the property that may impact the use of the remainder.

48. The Verified Complaint fails to provide a meets and bounds description of the area sought to be acquired.

49. The Verified Complaint fails to depict lands owned by GRD which are damaged by the taking and which Plaintiff had been advised of same prior to the taking but chose to ignore same.

50. The Plaintiff's failure to comply with Rule 4:73-1 requires dismissal of the Verified Complaint.

51. The Verified Complaint must be dismissed because the taking is vague, speculative and lacks any specificity. Housing Authority of Atlantic City v. Atlantic City Exposition, Inc., 62 N.J. 322, 328 (1973).

52. Final judgment in this matter cannot be entered and Condemnation Commissioners cannot be appointed before the precise description of the taking area(s) is established. State v. Orenstein, 124 N.J. Super. 295, 298 (App.Div.1973).

Da 145

### THIRD SEPARATE DEFENSE

*(Plaintiff has acted in Bad Faith as the Taking is Arbitrary and Capricious and without Public Necessity)*

53. Defendant repeats each and every allegation set forth in the First and Second Separate Defenses and incorporates same by reference herein.

54. GCIA has failed to comport itself with the standards established by the New Jersey Supreme Court in FMC Stores v. Borough of Morris Plains, 100 N.J. 418 (1985) that condemnors must “turn square corners,” “deal forthrightly and fairly with property owners” and to refrain from preserving an untoward litigation advantage for itself.

55. The access road and bridge project underlying the current taking has not yet been issued final approval by the necessary governmental authorities.

56. There is no assurance that a bridge may ever be approved for the GCIA or that the lands would be necessary for such bridge.

57. There is no public necessity for this taking.

58. The taking sought by the Plaintiff is for the purpose of impermissibly land banking the property without a definitive project.

59. The taking sought by the Plaintiff for based on a speculative need.

60. The taking has no definitive limits on the use and therefore could be used for redevelopment of the adjacent properties in contravention to the Court’s opinion in Gallenthin Realty Development v. Borough of Paulsboro, 191 N.J. 344 (2007).

61. The taking is a pre-text for pursuing the redevelopment over GRD’s property that was previously precluded by the New Jersey Supreme Court in Gallenthin Realty Development v. Borough of Paulsboro, 191 N.J. 344 (2007).

Da 146

62. The property is not being acquired for used for the construction of the access road and bridge, then the taking is not being done for a public purpose in violation of Article I, § 20 of the New Jersey Constitution.

63. The taking is a pre-text for eliminating competition in the dredge spoil industry.

64. The taking is a pre-text for a taking of land for a purpose other than that stated in the Complaint.

65. The lack of public necessity and the underlying pre-texts for the taking warrant dismissal of the Verified Complaint.

66. The route selection for the proposed bridge and roadway and arbitrary and capricious.

#### **FOURTH SEPARATE DEFENSE**

*(The Action Should Be Stayed Pursuant to the Servicemembers Civil Relief Act)*

67. Defendant repeats each and every allegation set forth in the First, Second, and Third Separate Defenses and incorporates same by reference herein.

68. Pursuant to 50 U.S.C. App. §514, entitled Extension of protections to citizens serving with allied forces provides that:

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix] if that service with the allied force is similar to military service as defined in this Act [sections 501 to 596 of this Appendix]. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

69. LTC (R), George A. Gallenthin, III, an indispensable party to this matter, is currently serving the United State's interests in Afghanistan and is therefore unable to appear to defend the current action.

Da 147

70. Mr. Gallenthin, in his capacity as a citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action, should be entitled to a stay of the action as provided for in the Act.

**FIFTH SEPARATE DEFENSE**  
*(Failure to State a Claim for which Relief may be granted)*

71. Defendant repeats each and every allegation set forth in the First, Second, Third, and Fourth, Separate Defenses and incorporates same by reference herein.

72. Plaintiff's complaint must be dismissed for failure to state a claim for which relief may be granted.

**SIXTH SEPARATE DEFENSE**  
*(Equitable Estoppel)*

73. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, and Fifth Separate Defenses and incorporates same by reference herein.

74. Plaintiff's claims are barred by the Doctrine of Equitable Estoppel.

**SEVENTH SEPARATE DEFENSE**  
*(Unclean Hands)*

75. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, Fifth, and Sixth Separate Defenses and incorporates same by reference herein.

76. Plaintiff's claims are barred by the Doctrine of Unclean Hands.

**EIGHTH SEPARATE DEFENSE**  
*(Res Judicata)*

77. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Separate Defenses and incorporates same by reference herein.

78. Plaintiff's claims are barred by Res Judicata.

Da 148

**NINTH SEPARATE DEFENSE**  
*(Waiver)*

79. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Separate Defenses and incorporates same by reference herein.

80. Plaintiff's claims are barred by the Doctrine of Waiver.

**TENTH SEPARATE DEFENSE**  
*(Fraud)*

81. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Separate Defenses and incorporates same by reference herein.

82. Plaintiff's claims are barred by Fraud.

**ELEVENTH SEPARATE DEFENSE**  
*(Laches)*

83. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Separate Defenses and incorporates same by reference herein.

84. Plaintiff's claims are barred by the Doctrine of Laches.

**TWELFTH SEPARATE DEFENSE**  
*(Collateral Estoppel)*

85. Defendant repeats each and every allegation set forth in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Separate Defenses and incorporate same by reference herein.

86. Plaintiff's claims are barred by the Doctrine of Collateral Estoppel.

Da 149



WHEREFORE, Defendants demand judgment against Plaintiff herein:

- A. Dismissing the Verified Complaint;
- B. Awarding Defendant's costs and expenses including attorney, appraisal and engineering fees pursuant to N.J.S.A. 20:3-26(b);
- C. Staying all further steps in the action as provided for N.J.S.A. 20:3-11;
- D. Vacating any Declaration of Taking filed by Plaintiff or any party on their behalf with regard to the Subject Property;
- E. Vacating any Lis Pendens filed by Plaintiff or any party on their behalf with regard to the Subject Property; and
- F. Such other relief the Court deems just and equitable.

CARLIN & WARD, P.C.  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

By   
WILLIAM J. WARD

Dated: July 23, 2010

Da 150

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

I hereby certify that the within Answer to the Verified Complaint was filed and served within the time provided by the New Jersey court Rules. I further certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any court with the exception that similar issues are present in the pending matter of County of Gloucester v. American Atlantic Company, et. als. Docket No. BUR-L-3641-09 (formerly Docket No. GLO-L-1313-09).

In addition, I hereby certify that to the best of my knowledge no other party must be joined to this action except that George A. Gallenthin, III and Elizabeth Gellenthin should be added as named defendants.

Gallenthin Realty Development, Inc. owns one-third of the property identified as Block 1, Lot 3, in Paulsboro, Gloucester County, New Jersey. George A. Gallenthin, III owns 100% of the corporate stock of Gallenthin Realty Development, Inc. George A. Gallenthin, III also owns approximately 44.26% of the property identified as Block 1, Lot 3, in Paulsboro, Gloucester County, New Jersey. Elizabeth Gellenthin owns approximately 22.4 percent of the property identified as Block 1, Lot 3, in Paulsboro, Gloucester County, New Jersey.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CARLIN & WARD, P.C.  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

By   
WILLIAM J. WARD

Dated: July 23, 2010

Da 151

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that a copy of the within pleading was filed and served within the time allowed by Rules of Court.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CARLIN & WARD, P.C.  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

By   
WILLIAM J. WARD

Dated: July 23 2010

**JURY DEMAND**

Defendant hereby demands a trial by jury on all issues so triable.

CARLIN & WARD, P.C.  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

By   
WILLIAM J. WARD

Dated: July 23, 2010

Da 152

DESIGNATION OF TRIAL COUNSEL

William J. Ward is hereby designated as trial counsel in the within cause.

CARLIN & WARD, P.C.  
Attorneys for Defendant  
Gallenthin Realty Development, Inc.

By   
WILLIAM J. WARD

Dated: July 23, 2010

*Da 153*

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
GLOUCESTER COUNTY

GLOUCESTER COUNTY IMPROVEMENT )  
AUTHORITY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GALLENTHIN REALTY DEVELOPMENT, )  
Inc., )  
 )  
Defendant. )

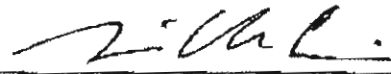
DOCKET NO. GLO-L-718-10  
Civil Action  
(In Condemnation)  
  
ORDER TRANSFERRING MATTER TO  
BURLINGTON COUNTY

THIS MATTER having come before the Court on August 5, 2010,  
in the presence of Patrick Flynn, Esq., and Christopher Gibson,  
Esq., representing Plaintiff Gloucester County Improvement  
Authority, and William Ward, Esq., representing Defendant  
Gallenthin Realty Development, Inc., and the Court having  
considered the arguments of counsel,

IT IS, on this 5<sup>th</sup> day of August 2010,

**ORDERED** that the above-captioned matter be transferred from  
the Law Division, Gloucester County, to the Law Division,  
Burlington County, with a docket number to be assigned by  
Burlington County.

This Order disposes of Defendant's motion entitled, "Notice  
of Motion to Transfer Venue or in the Alternative for Recusal."

  
\_\_\_\_\_  
GEORGIA M. CURIO, AJSC

# CARLIN & WARD

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

25A VREELAND ROAD  
P.O. BOX 751  
FLORHAM PARK, NEW JERSEY 07932

August 12, 2010

973-377-3350

FAX: 973-377-5626

E-MAIL: [william.ward@carlinward.com](mailto:william.ward@carlinward.com)

WEBSITE: [www.carlinward.com](http://www.carlinward.com)

WILLIAM J. WARD

**VIA FACSIMILE 609-518-2852 & REGULAR MAIL**

Honorable Ronald E. Bookbinder, A.J.S.C.  
Superior Court of New Jersey  
Courts Facility, Chambers 703  
49 Rancocas Road  
P.O. Box 6555  
Mount Holly, New Jersey 08060

**Re: Gloucester County Improvement Authority  
v. Gallenthin Realty Development, Inc., et al.  
Docket No. GLO-L-718-10  
Our File No. 40364-02**

Dear Judge Bookbinder:

This will confirm our conversation with Your Honor's law clerk yesterday that there will be a conference call with the Court and counsel on Friday, August 13<sup>th</sup> at 10:30 a.m.

We are in receipt of Mr. Gibson's four page self-serving letter faxed to the Court yesterday. We disagree with his letter and its contents in its entirety. However, we will not burden the Court with a detailed response. The Army Corps of Engineers and the United States Coast Guard confirmed with us last Friday, August 6<sup>th</sup> that no permit has been issued by them for the construction of the bridge from the Subject Property across the Mantua Creek. This project requires an environmental impact statement and a public hearing, neither of which has been submitted or scheduled. The October construction scheduled opened by Mr. Gibson is therefore misleading and disingenuous. Lastly, we are not forum shopping in suggesting this matter be heard by Judge Hogan. We "suggested" Judge Hogan as he presently has the American Atlantic case before him which has similar issues to the subject matter. Obviously, it is the Court that will assign a trial judge and we will of course abide by any decision of the Court in this regard.

We look forward to speaking with the Court and counsel on Friday.

Yours very truly,

CARLIN & WARD, P.C.

By:   
WILLIAM J. WARD

WJW:ja

cc: Christopher R. Gibson, Esq. (via facsimile 856-795-0574 & regular mail)  
Mr. and Mrs. George Gallenthin (e-mail & regular mail)

Da 155

## REPORTERS / TRANSCRIBERS TRANSCRIPT TRANSMITTAL

INSTRUCTIONS: Forward original to the requesting party with completed original transcript  
 Send copies to:  
 1) Supervisor of Court Reporters with copy of transcript  
 2) Administrative Office of the Courts, Attn: Chief, Reporting Sys., CN-988, Trenton, NJ 08625  
 3) Attorneys and/or Pro Se (if known)  
 4) Other court - tapes

Sent ("X")

TO: Cynthia Gallenthin  
 26 South Bayard Street  
 Woodbury, NJ 08096

CASE INFORMATION

CASE NAME (Plaintiff) Gloucester City Improvement	(Defendants) vs. Gallenthin Realty	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Non-Appeal
LOWER COURT DOCKET NUMBER <input type="checkbox"/> Indictment <input type="checkbox"/> Accusation <input checked="" type="checkbox"/> Complaint	LOWER COURT NUMBER L-2718-10	TRANSCRIPT REQUEST DATE 10/12/2010
DOCKET NUMBER A-002214-10-T3	COUNTY BURL.	COURT HOBAN Burlington County Superior Court, Mt. Holly NJ
		TRANSCRIPT REQUEST RECEIPT DATE 10/12/10

#	DATES	No Of Copies	Total Pgs Per Transcript	PROCEEDING TYPE
1	8/16/2010	2	43	HEARING
2				
3				
4				
5				
6				
7				
8				
9				
10				

TRANSCRIPTS FILED HEREWITH

\*Check, if applicable.

Appellant is responsible for filing additional copies pursuant to Court Rule 2-6-12(a)(d)  Yes  No

FROM: (Check one) <input type="checkbox"/> Reporter <input checked="" type="checkbox"/> Transcriber	REPORTER / TRANSCRIBER NAME (Print/Type) (Name of Agency, if applicable) Diana Doman Transcribing 10 Foster Ave, Suite A3 P.O. Box 129 Gibbsboro, NJ 08026  REPORTER / TRANSCRIBER (Signature) 	TRANSMITTAL DATE 2/25/2011
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Administrative Office of the Courts

Da 156

**ADMINISTRATIVE OFFICE OF THE COURTS**

State of New Jersey

**CERTIFICATION OF TRANSCRIPT COMPLETION AND DELIVERY**

**INSTRUCTIONS :**

1. Original to the Clerk(Appellate Division or Supreme Court) With all transcript copies pertaining to this case
2. One (1) copy to Deputy Clerk, Appellate Division
3. Requesting Party :CYNTHIA LEAH GALLENTHIN

GLOUCESTER CITY IMPROVEMENT AUTHORITY VS GALLENTHIN REALTY	APPELLATE COURT DOCKET NUMBER: A -001433-10-T3
	LOWER COURT DOCKET NUMBER: L-002718-10
COUNTY: BURLINGTON	LOWER COURT: CIVIL

TRANSCRIPT INFORMATION					
PROCEEDING DATE	PROCEEDING TYPE	COURT REPORTER / TRANSCRIBER	TRANSMITTED PAGES	TRANSMITTED DATES	REJECTION REASON
08/16/2010	TRIAL	DIANA DOMAN TRANSCRIBING	43	10/29/2010	

CERTIFIED BY:  on 11/23/2010  
Lois Mcfadden

Da 157



CVM1036 AUTOMATED CASE MANAGEMENT SYSTEM 11/24/10  
PAGE: 0001 PROCEEDING LIST 9:22

VENUE : BURLINGTON COURT : LAW CVL DOCKET # : BUR L 002718 10  
CASE TITLE : GLO CTY IMPROVEMENT VS GALLENTHIN REALTY

----- C A S E P R O C E E D I N G S -----									
S	PROCEEDING	MOTION	MOTION	SESSION	COURT	PROCEED	JUDGE	PROCEEDING	BY:VIA:
	TYPE	DOC/TYPE	STATUS	DATE	ROOM	TIME	ID	STATUS	
	MOTION HRG	28 MB7 PG	HEARING	01 07 11	4D	09 00	MJH01	PENDING	
	MOTION HRG	26 M42 PG	HEARING	01 07 11	4D	09 00	MJH01	PENDING	
	CSE MNG CF			12 14 10	PHONE	09 00	MJH01	PENDING	
	STAT CONF			10 20 10	4D	03 00	MJH01	PENDING	
	MOTION HRG	20 MA5		08 27 10	7C	09 00	REB01	RSCHED	
X	MOTION HRG	20 MA5	DENIED	08 16 10	4D	02 30	MJH01	COMPLETED	
	MNGMNT CNF			08 13 10	PHONE	10 30	REB01	COMPLETED	

CV900123 END OF SEARCH

PF1-PROCD-RECORD PF2-CANC-PROCD

PF4-PROMPT PF9-RELATED-CASE-LIST

PF7-PRIOR PF8-NEXT PF22-HELP:

4-e

1

Sess-1

172.16.1.27

TBUR0051

11/2

Da 158



**New Jersey Judiciary  
Superior Court - Appellate Division  
NOTICE OF APPEAL**

Type or clearly print all information. Attach additional sheets if necessary.	ATTORNEY / LAW FIRM / PRO SE LITIGANT			
TITLE IN FULL (AS CAPTIONED BELOW): GLOUCESTER COUNTY IMPROVEMENT AUTHORITY, Plaintiff v. GALLENTHIN REALTY DEVELOPMENT, INC., STATE OF NEW JERSEY, BOROUGH OF PAULSBORO, COLONIAL PIPELINE CO., ATLANTIC CITY ELECTRIC CO. AND PAULSBORO ACQUISITION CORP., Defendants	NAME JEFFREY S. NOWAK // GEORGE A. GALLENTHIN, III			
	STREET ADDRESS 1200 Laurel Oak Road, Suite 104			
	CITY Voorhees	STATE NJ	ZIP 08043	PHONE NUMBER 856-783-6700
	EMAIL ADDRESS jefnwk@comcast.net// philadelphiaalawyer@philaesq.com			

ON APPEAL FROM		
TRIAL COURT JUDGE MICHAEL J. HOGAN, P.J.Ch	TRIAL COURT OR STATE AGENCY SUPERIOR CT, LAW DIV., BURLINGTON	TRIAL COURT OR AGENCY NUMBER BUR-1-2718-10

Notice is hereby given that GALLENTHIN REALTY DEVELOPMENT, INC. appeals to the Appellate Division from a  Judgment or  Order entered on 16 November 2010 in the  Civil  Criminal or  Family Part of the Superior Court or from a  State Agency decision entered on \_\_\_\_\_.

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.  
NOT APPLICABLE - APPEAL OF ENTIRE JUDGMENT

Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.)  Yes  No

If not, has the order been properly certified as final pursuant to R. 4:42-2?  Yes  No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a  conviction  post judgment motion  post-conviction relief.  
If post-conviction relief, is it the  1st  2nd  other \_\_\_\_\_  
specify

Is defendant incarcerated?  Yes  No

Was bail granted or the sentence or disposition stayed?  Yes  No

If in custody, name the place of confinement:  
\_\_\_\_\_

Defendant was represented below by:  
 Public Defender  self  private counsel \_\_\_\_\_  
specify

Da 159

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	MICHAEL J. HOGAN, P.J.Ch.	January 3, 2011
Trial Court Division Manager		
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to <u>R. 2:5-1(a), (e) or (h)</u>	NJAG PO Box 112 Trenton, NJ 08625	January 3, 2011
Other parties in this action:		

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Gloucester County Improvement Authority, Plaintiff	Jeffrey D. Gordon, Archer & Greiner 700 Alexander Park, Suite 102, Princeton New Jersey 08540 856-795-2121	January 3, 2011

Attached transcript request form has been served where applicable on the following:

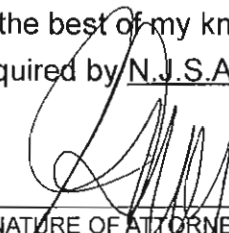
	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office	Diana Doman Transcribing for 17-Dec-10 motion	1/3/2011	200.00
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).  
List the date(s) of the trial or hearing:  
TRIAL DATE: 16-Aug-10 Transcript Completed and Delivered 23-Nov-10 by Lois McFadden SEE A-1433-10T3  
HEARING DATE: 17-Dec-10 requested from Trial Court Transcript Office by expedited service
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

1/3/11  
DATE

  
SIGNATURE OF ATTORNEY OR PRO SE LITIGANT

Da 160



**New Jersey Judiciary  
Superior Court - Appellate Division  
CIVIL CASE INFORMATION STATEMENT**

DEPUTY CLERK  
SUPERIOR COURT  
BURLINGTON COUNTY

Please type or clearly print all information.

TITLE IN FULL (1)

TRIAL COURT OR AGENCY DOCKET NUMBER (2)

GLOUCESTER COUNTY IMPROVEMENT AUTHORITY, Plaintiff v.  
GALLENTHIN REALTY DEVELOPMENT, INC., STATE OF NEW  
JERSEY\*, BOROUGH OF PAULSBORO\*, COLONIAL PIPELINE CO\*,  
ATLANTIC CITY ELECTRIC CO.\* & PAULSBORO ACQUISITION CO\*

BUR-L-2718-10  
See also: A-1433-10T3

2011-11-17 1:04  
FILED & RECEIVED

■ Attach additional sheets as necessary for any information below.

(3) APPELLANT'S ATTORNEY EMAIL ADDRESS: jefnwk@comcast.net

PLAINTIFF  DEFENDANT  OTHER (SPECIFY)

NAME

JEFFREY S. NOWAK // GEORGE A. GALLENTHIN, III

CLIENT

Gallenthin Realty Development, Inc. (GRD)

STREET ADDRESS

1200 Laurel Oak Road, Suite 104

CITY

Voorhees

STATE

NJ

ZIP

08043

TELEPHONE NUMBER

856-783-6700

(4) RESPONDENT'S ATTORNEY \* EMAIL ADDRESS:

NAME

Jeffrey D. Gordon

CLIENT

Gloucester County Improvement Authority

STREET ADDRESS

700 Alexander Park, Suite 102,

CITY

Princeton

STATE

NJ

ZIP

08540

TELEPHONE NUMBER

856-795-2121

\* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

BEING APPEALED: 16 November 2010 Final Order for Taking and Appointing Commissioners with opinion dated 31 August 2010 and filed on 16 November 2010.

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?  YES  NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6)  YES  NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice?  YES  NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h))  YES  NO

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

23-Apr-10, GCLIA filed Verified Complaint with jury demand against GRD which excluded majority landowner George A. Gallenthin, III as a party and failed to serve him in Afghanistan an active combat zone where he worked; 12-May-10, GCLIA filed declaration of taking with erroneous property maps; 23-Jul-10, GRD filed answer, motions to dismiss and transfer venue; 5-Aug-10, transfer venue ordered; 16-Aug-10, trial court held oral arguments with no jury, no witnesses, no discovery; 31-Aug-10 trial court's letter opinion with alleged findings of fact and conclusions of law denied GRD's request to order discovery and conduct a plenary hearing; 16-Nov-10, trial court filed its Letter Opinion, Final Judgment and Order Appointing Commissioners; and 17-Dec-10, trial court denied George Gallenthin's pro se request to Stay the final Order.

Da 161

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

See attached appellants' proposed issues on appeal

(10) IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

- 1. Did the trial judge issue oral findings or an opinion? If so, on what date? \_\_\_\_\_  YES  NO
- 2. Did the trial judge issue written findings or an opinion? If so, on what date? November 16, 2010  YES  NO
- 3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)?  YES  NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: \_\_\_\_\_

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (11) (A) Arises from substantially the same case or controversy as this appeal?  YES  NO
- (12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal?  YES  NO
- (13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY?  YES  NO

(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:	Appellate Division Docket Number:
GCIA v. GRD et al. appeal by Pro Se Intervenor George Gallenthin	A-1433-10T3
GCIA v. GRD et al Motion by Pro Se Intervenor George Gallenthin	M-001927-10

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

- (15) State whether you think this case may benefit from a CASP conference.  YES  NO

Explain your answer:

This is a simple case of black letter law taking of property for a road. The condemning authority thru deception is attempting to take far more land than required, necessary, and lawful and is rendering the entire remainder of appellant's 59 acres useless for the land's historic purpose while respondent operates the land's historic purpose for private gain in competition with appellant and on appellant's land. The Freeholder Director has directly stated: "We are taking your land and not going to allow you to make that kind of money." He freely admitted conducting business in direct competition with appellant-defendant.

(16) I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

(17) GALLENTHIN REALTY DEVELOPMENT INC  
Name of Appellant or Respondent

(18) Jeffrey S. Nowak / George A. Gallenthin, III  
Name of Counsel of Record  
(or your name if not represented by counsel)

(19) Monday, 3 January 2011  
Date

(20) [Signature]  
Signature of Counsel of Record  
(or your signature if not represented by counsel)

Da 162

**Law Offices of Jeffrey S. Nowak**  
**Jeffrey S. Nowak, Esq.**  
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Tel: 856.783.6700  
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**jefnwk@comcast.net**

GLOUCESTER COUNTY IMPROVEMENT  
AUTHORITY,

Respondent-Plaintiff

vs.

GALLENTHIN REALTY DEVELOPMENT,  
INC., STATE OF NEW JERSEY, BOROUGH  
OF PAULSBORO, COLONIAL PIPELINE  
CO., ATLANTIC CITY ELECTRIC CO. AND  
PAULSBORO ACQUISITION CORP.,

Appellant-Defendants

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. \_\_\_\_\_  
DOCKET NO. A-1433-10T3 companion  
DOCKET NO. BUR-L-2718-10

Civil Action  
(In Condemnation)

**PROPOSED ISSUES ON APPEAL BY  
APPELLANT  
CIVIL CASE INFORMATION STATEMENT  
Section 9-Page 2**

**PROPOSED ISSUES ON APPEAL BY APPELLANT  
CIVIL CASE INFORMATION STATEMENT  
Section 9-Page 2**

**I     ISSUE ONE**

Harmful and plain error in Facts and Law produced an unjust result in that the point of beginning (POB) on the "Taking Maps" is intentionally 60 feet east of its true, correct and accurate location legally described in the Fee Simple Absolute Deed of owner George A, Gallenthin, III, et al. The harmful error result is that the remainder is now illegal for its historic economic use as a dredge depot as regulated exclusively by the Surface Transportation Board (STB) pursuant to Title 49 USCA §§10501 et seq., not Title 20:3-1 N.J.S.A. et seq. Nor did the "Taking Authority conform to Title 20:3-1 procedurally, if said statute applies.

**II    ISSUE TWO**

Plain and Harmful Error in Facts and Law produced an unjust result in that the "Taking" of Parcel 1B is plainly beyond the legal and factual requirements; i.e. the "Taking Authority" has demanded 102,976 square feet of waterfront land with existing wharves,

*Da 163*

piers, and riparian rights and access easement to said wharves and piers for a storm-water retention basin from 2,200 square feet of impervious roadway is clearly plain error and is excessive in engineering requirement. Said assumption is supported by the engineering plans of Fee Simple landowner George A Gallenthin III.

### **III    ISSUE THREE**

Plain and harmful Error in Facts and Law produced an unjust result in that the "Taking Authority" failed to sue/join George A. Gallenthin, III, the owner of 66.66% of the Fee Simple Absolute 63 acres, and necessary party to the action. This harmful and plain error directly caused the insolvency of Gallenthin Realty Development, Inc. and the impossibility to defend.

### **IV    ISSUE FOUR**

Plain and Harmful Error in Factfindings of Judge Sitting Without A Jury on the Facts and Law produced an unjust result in that the Trial Court failed to allow discovery and trial on joined defenses of:

- 1.) Servicemembers Civil Relief Act;
- 2.) Failure to State a Claim for which Relief may be granted;
- 3.) Equitable Estoppel;
- 4.) Unclean Hands;
- 5.) Res Judicata;
- 6.) Waiver;
- 7.) Fraud;
- 8.) Laches; and,
- 9.) Collateral Estoppel.

Da 164

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P.O. Box 3000  
Haddonfield, NJ 08033-0968  
(856) 795-2121  
Attorneys for Plaintiff  
Gloucester County Improvement Authority

THIS RELIEF SET FORTH BELOW  
IS ORDERED AND FILED

NOV 16 2010

MICHAEL J. HOGAN, P.J. Ch.

<p>GLOUCESTER COUNTY IMPROVEMENT AUTHORITY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GALLENTHIN REALTY DEVELOPMENT, INC., STATE OF NEW JERSEY, BOROUGH OF PAULSBORO, COLONIAL PIPELINE CO., ATLANTIC CITY ELECTRIC CO., AND PAULSBORO ACQUISITION CORP.,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION BURLINGTON COUNTY</p> <p>DOCKET NO.: <u>BUR-L-2718-10</u></p> <p style="text-align: right;">Civil Action (In Condemnation)</p> <p><b>FINAL JUDGMENT AND ORDER APPOINTING COMMISSIONERS</b></p>
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This matter having been opened to the Court on April 23, 2010 through the filing of a Verified Complaint and proposed Order to Show Cause by the Gloucester County Improvement Authority ("GCIA"), and an Order to Show Cause having been entered on May 5, 2010, and Defendant Gallenthin Realty Development, Inc. ("GRD") having subsequently filed a motion requesting that the Court either dismiss the GCIA's Verified Complaint with prejudice or order discovery and a plenary hearing, and all parties having been given the opportunity to submit papers and the Court having heard the argument of counsel, and good cause appearing for the entry of the this Order,

IT IS on this 16<sup>th</sup> day of ~~September~~ <sup>November</sup>, 2010;

Da 165



**ORDERED AND ADJUDGED**, that the GCIA engaged in bona fide good faith negotiations in accordance with N.J.S.A. 20:3-6, the GCIA established a proper public purpose for the taking, the taking was neither arbitrary nor capricious, and the GCIA's Verified Complaint provided an adequate description of the taking, and, therefore, GRD's motion seeking dismissal of the Verified Complaint or discovery and a plenary hearing is **DENIED** in its entirety; and it is further

**ORDERED** that Final Judgment is hereby entered that Plaintiff, the GCIA, is duly vested with and has duly exercised its powers of eminent domain to acquire the Subject Property of the Defendants as described in the Verified Complaint and Declaration of Taking filed in the above-captioned matter; and it is further

**ORDERED** that Wayne Streitz, Esquire - Presiding;  
Jeffrey Puff, Esquire ; and  
John Sweeney, MAI ; three disinterested residents of the County of Gloucester and State of New Jersey, are hereby appointed Commissioners to examine and appraise the land and improvements set forth in the Verified Complaint taken by the GCIA for public purposes as stated therein and to fix and determine the compensation to be paid by the GCIA for the taking of said lands, premises, property, rights, and easements for public use for the purposes set forth in the Verified Complaint in accordance with law and to do whatever else the said Commissioners are by law authorized or required to do; and it is further;

**ORDERED** that the Commissioners shall determine the fair market value of the Subject Property as if remediated from environmental contamination, if any; and it is further

Da 164

**ORDERED** that should any of the Defendants fail to appear at the Commissioners' hearing, either personally or through counsel, that Defendant will not be permitted to appeal from the Commissioners' report and determination which will become final in accordance with law; and it is further

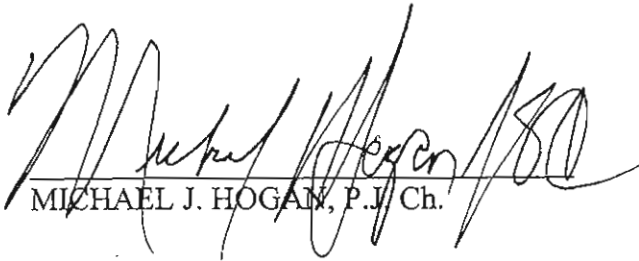
**ORDERED** that said Lead Commissioner shall cause to be given to the parties to this action ten (10) days notice in writing of the time and place when and where the Commissioners will meet and proceed to execute their duties under this appointment, said notice to be served pursuant to R. 1:15, provided, however, that service upon any Defendant whose whereabouts are unknown shall be made in the same manner as prescribed in the Order to Show Cause entered in the action; and it is further

**ORDERED** that the said Commissioners shall file their report with the Superior Court on or before a date four months next following the entry of the within Order; and it is further

**ORDERED** that in accordance with the reservations made by the GCIA in paragraph 26 of the Verified Complaint relating to issues of contamination, hazardous material or solid waste existing as of or prior to the date of vesting of title and possession pursuant to N.J.S.A. 20:3-19, the GCIA may raise any such claims, or any other claims relating thereto, without being barred by the principles of *res judicata*, collateral estoppel and/or the Entire Controversy Doctrine. The Court reserves as to the merits of such claims. Defendants shall also retain the right to assert any and all defenses, when and if such claims are raised, except for the defenses of *res judicata*, collateral estoppel and/or the Entire Controversy Doctrine premised upon this condemnation proceeding; and it is further

Da 167

**ORDERED** this "Final Judgment and Order Appointing Commissioners" is a final judgment under R. 2:4-1(a).



MICHAEL J. HOGAN, P.J. Ch.

R. 1:6-2(a)

This Motion was:

Unopposed

Opposed

R. 1:6-2(f)

By Opinion filed on August 31, 2010, the Court made findings of fact and conclusions of law explaining its disposition of this motion. Said findings of fact and conclusions of law were written.

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Da 168

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE COMMITTEE ON OPINIONS

THIS RELIEF SET FORTH BELOW  
IS ORDERED AND FILED

AUG 31 2010

MICHAEL J. HOGAN, P.J.Ch.

PREPARED BY THE COURT

_____	:	SUPERIOR COURT OF NEW JERSEY
Gloucester County Improvement Authority,	:	BURLINGTON COUNTY
Inc.	:	LAW DIVISION
	:	
Plaintiff,	:	
	:	DOCKET NO.: BUR-L-2718-10
v.	:	
	:	
Gallenthin Realty Development, Inc., et al.,	:	
	:	OPINION
Defendants.	:	
_____	:	
	:	Dated: August 30, 2010

Christopher R. Gibson, Esq., Attorney for Plaintiff GCIA ,  
Phone: (856) 795-2121 Fax: (856) 795-0574

William J. Ward, Esq., Attorney for Defendant Gallenthin Realty Development, Inc.  
Phone: (973) 377-3350 Fax: (973) 377-5626

*HOGAN, P.J. Ch.*

Plaintiff Gloucester County Improvement Authority brings this Action in Condemnation, seeking an order from this court: (1) finding that the Plaintiff is duly vested with, and has duly exercised, the requisite authority to acquire the property; (2) appointing commissioners to fix the compensation required to be paid to the owner. Defendant Gallenthin Realty Development, Inc. requests that this court decline to enter Final Judgment for condemnation as requested by the GCIA and either: (1) dismiss the Verified Complaint with prejudice; or (2) order discovery and a plenary hearing on the legality of the condemnation. Proof of service has been furnished. The court has considered those papers submitted and oral argument and the court now holds that, for the following reasons, Plaintiff's request for relief is hereby **GRANTED**. Defendant's request for relief is hereby **DENIED**.

Da 169

## I. Statement of Facts

In 2001, planning commenced for a marine terminal along the southern Delaware River in New Jersey. In 2004, the South Jersey Port Corporation (the "SJPC") began exploring the possibility of using the former BP industrial site in Paulsboro to expand its port services along the Delaware.

In 2005, Paulsboro entered into a 90-year lease with BP which would transfer the site to Paulsboro upon completion of a NJDEP approved remediation program. In July 2007, Paulsboro acquired the adjacent Essex Chemical Company property via eminent domain. These acquisitions provided Paulsboro with 190 contiguous acres with which to site the Port Terminal project. In September 2009, SJPC broke ground on the Port Terminal Project.

In connection with the Port Terminal Project, planning was begun on a roadway connection between I-295 and the Port Terminal site. Presently, the only road access between I-295 and the site runs through residential neighborhoods in Paulsboro. The new access is "intended to reroute truck traffic away from residential neighborhoods after completion of the Terminal, and to the extent possible, reroute construction traffic around those neighborhoods during the development of the Terminal. (Ex. 1 to Gibson Cert. at Ex. E.) This access route would cross the Mantua Creek, requiring the construction of a bridge.

On May 10, 2005, Gloucester County entered into an agreement with the NJDOT under which the County would design, construct, maintain, and operate the new access route connecting I-295 and the Port Terminal Project. (Ex. 1 to Gibson Cert. at Ex. A.) In November 2005, the County entered into an Interlocal Services Agreement with the Gloucester County Improvement Authority (the "GCI.A.") This agreement assigned the rights and responsibilities to construct the access route to the GCI.A. This agreement was authorized by the County's Board of Chosen Freeholders on October 26, 2005 and by the Board of the GCI.A on November 14, 2005.

Several of the potential access routes crossed land (the "property") owned by Gallenthin Realty Development, Inc. ("GRD.") (GRD alleges that it owns a 1/3 share of the property while George A. Gallenthin II owns 44.26% and Elizabeth Gallenthin owns

Da 170

22.4%. All official records, however, show GRD to be the sole owner.) The property consists of 63.292 acres located at the terminus of Universal Road in Paulsboro. The property is bounded by an industrial facility to its south. To the property's north lies the former Paulsboro Packaging facility and an inactive British Petroleum storage site which extends west to the Delaware River. Both the Paulsboro Packaging and BP sites are connected to the proposed Port Terminal project.

The property is presently vacant but was used in 1902, 1934, 1937, and 1963 as a permitted dredge disposal site. There is presently 250,000 cubic yards of dredge spoils on the site. In 1997, a portion of the property was leased to Clean Ventures, an environmental clean-up organization. Clean Ventures used the property for river access, employee parking, and storage. Since 1997, the property has been in use as a qualified farm for the harvesting of phragmites. Since 1998, the property has been zoned as a marine industrial business park, which allows commercial, light industrial, and mixed non-residential uses. (Gallenthin Cert. ¶12).

In early 2006, the GCIA sought access to the property, pursuant to N.J.S.A. 20:3-16, in anticipation of condemning the property for the access route. GRD refused GCIA access by letter dated March 7, 2006. On April 7, 2006, GCIA filed suit in Gloucester County Superior Court (GLO-L-581-06) in order to gain access to the property. On May 25, 2006 an Order was entered granting GCIA access to the property. This Order granted the GCIA "immediate access to the entire Site for the purpose of carrying out the initial investigation [,]" and specified that "this right of access shall be continuing[,]" and that "no representative, employee, owner or agent of Defendant shall interfere in any way with the access and investigation by Plaintiff, its authorized representatives, contractors, and subcontractors." (Ex. 21 to Gibson Cert.)

On September 20, 2007, GCIA notified GRD of its intent to enter the property on October 4, 2007, pursuant to N.J.S.A. 20:3-16 and the first access order. GRD once again refused access. On October 11, 2007, GCIA once again filed suit in order to gain access. On November 6, 2007, GRD removed the case to Federal Court. In February 2008, the Honorable Jerome Simandle, U.S.D.J. remanded the matter back to state court. On April 4, 2008, an Order was entered in New Jersey Superior Court granting GCIA

Da 171

access to the property. According to this Order, "Plaintiff and its authorized representatives are given access to the site designated as Lot 1, Block 3 on the tax map of Paulsboro for the purposes set forth in the Affidavit of Edwin J. Steck, P.E. dated April 3, 2008." (Ex. 28 to Gibson Cert.)

Once granted access, GCIA engineers determined that the preferred location of the access route would require the GCIA to acquire 3.663 acres of the property in fee simple and .310 acres in a permanent construction easement. This acreage would be used for the roadway and bridge, as well as a stormwater retention basin. The GCIA engineers also determined that the access project would require the acquisition of adjacent property owned by NuStar Asphalt Refinin LLC, the Borough of Paulsboro, Paulsboro Acquisition Corporation, and the Gloucester County Utility Authority. (Much of this adjacent property has already been acquired or is in the process of being acquired.)

In the fall of 2008, the GCIA retained Jerome McHale of J. McHale & Associates, Inc. ("McHale") to determine the just compensation required by the GCIA's taking of the GRD property. On December 26, 2008, McHale notified GRD that he had been retained in order to appraise the property. McHale invited GRD to accompany him on an inspection of the property and to offer any information that might be important to an appraisal.

On January 5, 2009, McHale inspected the property. Elizabeth Gallenthin and Patrick Schubert were present at this inspection on behalf of GRD. During the inspection, Elizabeth Gallenthin provided McHale with "news articles, resolution information, photographs, maps and historical information from the Library of Congress." (Ex. 30 to Gibson Cert at 7.) On January 13, 2009, at GRD's request, McHale met with George Gallenthin. At this meeting, Gallenthin provided additional information, including a "spoil disposal agreement (temporary) from 1955, easement documentation, and NJDEP Tidelands letter of no riparian claims." (Id.)

During the site visit and meeting, GRD represented that the property could potentially be used for: (1) a dredge spoils containment facility; (2) a dredge spoils processing facility with trans-shipment of processed dredge material by railcar or truck for use or disposal at another location; or (3) a soil remediation facility that accepts contaminated soils from offsite properties and treats the material for beneficial reuse. (Ex.

Da 172

30 to Gibson Cert at 30.) GRD argued that these three uses represented the highest and best use of the property.

GCIA hired Marathon Environmental & Engineering Services, Inc. ("Marathon") to examine the feasibility of GRD's proposed property uses. Subsequently, a Marathon employee viewed the property from an informal right-of-way but did not enter the property. On April 13, 2009, Marathon submitted a "Development Feasibility Assessment." This report listed six major impediments to GRD's proposed uses for the property. Marathon noted that: (1) the GRD property contains a large amount of environmentally sensitive wetlands; (2) the GRD Property is not on the United States Army Corps of Engineers' list of proposed dredge disposal sites for the proposed Delaware River Main Channel Deepening project; (3) the GRD Property does not satisfy the Corps' minimum 100 contiguous acre requirement for dredge disposal sites; (4) the GRD Property would be disfavored compared to upland sites under federal and state alternatives analysis; (5) the GRD Property contains bald eagle foraging/nesting habitat; and (6) Paulsboro zoning prohibits uses that would create a noxious, offensive or hazardous condition beyond the manufacturing district boundary line.

On May 15, 2009, McHale produced a property appraisal (the "first appraisal report") based upon the Marathon report, a report by T&M Associates concerning the size and number of buildings that could be built on the property, his site inspection, and input from GRD. Ultimately, McHale determined that GRD's three proposed "highest and best" uses were presently legally impermissible and that it would be too speculative to assume that GRD would be able to overcome the existing impediments (both legal and otherwise) to these proposed uses. McHale instead determined that the highest and best use of the property was as an industrial or business park.

Based upon his findings, McHale concluded that the fair market value of the subject property, plus damage to the remainder, was \$404,000.00 as of January 5, 2009. On June 18, 2009, the GCIA adopted a resolution accepting the first appraisal report and authorizing an offer of \$404,000.00. On July 6, 2009, the GCIA offered GRD \$404,000.00 and enclosed the supporting appraisal.

GRD rejected this offer on July 31, 2009. GRD objected to the fact that Marathon observed the property without a representative of GRD present and did not otherwise

Da 173



allow GRD to provide input to Marathon. GRD requested 18 documents and pieces of information regarding the first appraisal report.

On August 28, by letter, GCIA produced the requested information and documentation. GCIA disputed, however, the extent to which Marathon's report lacked input from GRD. Likewise, GCIA disputed whether it had any obligation to notify GRD that Marathon might engage in off-site observation of the property. GCIA's August 28 letter also invited GRD to provide any further information it thought relevant.

Over the course of the next three months, GCIA repeatedly requested that GRD respond to the offer or provide a counter offer. GRD repeatedly delayed doing so. Finally, in late December of 2009, GRD effectively served a counter offer by providing the GCIA with an appraisal report prepared by Richard M. Chaiken. Chaiken set the fair market value of the subject property, plus damage to the remainder at \$4,938,000.00.

Chaiken's appraisal was premised upon the highest and best use of the property being a dredge spoils transfer station. Chaiken did not address any of the impediments to this proposal but simply noted that such transfer stations would be required by the dredging of the Delaware and that the property was conveniently sited – with river and rail access – for this use. Chaiken further assumed that the GCIA's taking would prevent the entire property from being used for this purpose because: (1) the proposed bridge was not high enough to allow barges to pass under it; and (2) the GCIA's taking would cut off railway access to the property.

On January 25, 2010, George Gallenthin, on behalf of GRD, met with representatives of the GCIA in order to negotiate a price for the GCIA's acquisition of the subject property. During this meeting, the GCIA made three concessions. First, GCIA addressed GRD's fears concerning the bridge height. Second, the GCIA offered to slightly move the roadway so that rail access to the property could remain. Finally, the GCIA offered to move the access point between the property and the proposed roadway. The GCIA argued that this would allow GRD to pursue use of the property as a dredge spoil transfer station, thereby undercutting the remainder damages listed in Chaiken's report.

GRD appears to have accepted that these modifications would reduce the amount of remainder damages. GRD, however, was unwilling to negotiate under the assumption

that these modifications would be made. Instead, GRD requested that negotiations resume after the GCIA officially changed the takings area and updated the takings maps.

During the winter of 2010, GCIA changed its proposed taking in order to leave the existing railway spur in place. These changes required a reconfiguration of the proposed road and resulted in a decrease to the proposed taking area. The new GCIA plan involved a smaller taking – 3.395 acres in fee simple, 0.256 acres in permanent easements, and 1.73 acres in temporary construction easements. The plan, however, would require the GCIA to take a roadway easement held by GRD. On March 17, 2010, the GCIA provided the revised takings maps to GRD.

The changes to the plan forced GCIA to obtain an updated appraisal. Although the taking area decreased, McHale concluded that value of the property taken and the related damages actually increased by \$39,000.00. In a March 24, 2010 report, McHale estimated that just compensation for the taking would be \$443,000.00.

On March 17 and March 27, 2010, GCIA attempted to schedule the second round of negotiations. On April 6, 2010, GRD agreed to a meeting on April 21, 2010. The GCIA warned that if a settlement was not reached at this meeting, the GCIA would be forced to file a condemnation action. The parties met on this date. The GRD representatives, however, lacked any authority to negotiate a purchase price less than GRD's initial counter offer of \$4,900,000.00. (Mr. Gallenthin – the 100% owner of GRD – had left the country for a year in Afghanistan shortly a few days earlier.) The GRD representatives had not discussed the new appraisal or offer with Mr. Gallenthin prior to the meeting.

At this point, the GCIA once again asserted that if a purchase price could not be negotiated at the meeting, the GCIA would file a condemnation action for the subject property. GRD's counsel indicated that such a filing would be barred by the Servicemembers Civil Relief Act, 50 U.S.C. App. §514 while Mr. Gallenthin was in Afghanistan. GRD's counsel did, however, indicate that he would attempt to discuss the new offer with Mr. Gallenthin. The parties scheduled a conference call for the following week.

On April 23, 2010, the GCIA filed a condemnation action in Gloucester County Superior Court. On the same date, GCIA sent a letter to GRD stating that it had filed the

Da 175

condemnation action but inviting a counter offer. GRD counsel responded by canceling the scheduled conference call. GCIA responded by suggesting that, had GRD counsel discussed a counter offer with Mr. Gallenthin, the call should go ahead with a hope for settlement. GRD never responded to this last invitation.

## **II. Procedural History**

On April 23, 2010, the GCIA filed a Verified Complaint and proposed Order to Show Cause against GRD in the Superior Court, Law Division, Gloucester County. The Honorable Georgia M. Curio, A.J.S.C. signed the Order on May 5, 2010. On May 12, 2010, an Order for Payment Into Court and for Possession was entered. On May 17, 2010 the GCIA hand delivered a check in the amount of \$443,000.00 to the Superior Court Trust Fund Unit as estimated compensation. The Declaration of Taking was recorded in Deed Book 4770, Page 290 in the Gloucester County Clerk's Office. Proof of Service was filed with the Court on May 18, 2010.

On July 23, 2010, GRD filed a Motion for Dismissal and a Motion to Transfer Venue. GRD raised certain allegations concerning its ability to receive a fair and impartial trial in front of Judge Curio or in the Gloucester County. Judge Curio found GRD's allegations and arguments to be entirely without merit. Nonetheless, in an abundance of caution, Judge Curio transferred the matter to Burlington County. Thereafter, this court scheduled oral argument for the Order to Show Cause and Motion for Dismissal. Argument was heard on August 16, 2010.

## **III. Standard of Review: Summary Action Pursuant to R. 4:67-1 et seq.**

Actions in condemnation are filed in a summary manner pursuant to R. 4:67-2. This requires the filing of a Verified Complaint and an Order to Show Cause. Plaintiff has done so. The Defendant has filed opposition and motion for dismissal. On the return date, "[i]f...the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment." R. 4:67-5.

In this respect, the current posture of this condemnation action is analogous to a summary judgment motion. The New Jersey Supreme Court reconsidered the standards

for deciding a Motion for Summary Judgment in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). The Brill Court provided a new standard for trial courts to apply when determining whether an alleged disputed issue of fact should be considered “genuine” for purposes of Rule 4:46-2. The Opinion stated, in pertinent part:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

The Court further noted, “if there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of Rule 4:46-2.” Attendantly, when the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment.

Thus, if there are no genuine issues of material fact, this court may enter final judgment on behalf of the plaintiff or defendant. If this court determines that there are genuine issues of material fact, this court may order discovery and a plenary hearing.

#### **IV. GRD’s Challenge to the GCIA’s Exercise of Eminent Domain**

In the present case, GRD has challenged the GCIA’s exercise of eminent domain on several grounds:

- (1) GRD argues that the GCIA has failed to conduct pre-Complaint bona fide negotiations as required by N.J.S.A. 20:3-6.
- (2) GRD argues that GCIA has hidden the true, impermissible purpose for the condemnation.
- (3) GRD argues that the taking is arbitrary and capricious.
- (4) GRD alleges that the Complaint fails to provide an adequate description of the taking.

Ultimately, this court finds GRD’s arguments to be without merit. Moreover, this court believes that GRD has failed to raise any genuine issues of material fact. Thus, this court believes it appropriate deny GRD’s Motion for Dismissal and request for a plenary hearing.

## V. Analysis

The general principles surrounding the exercise of eminent domain in New Jersey are well settled. Pursuant to the United States and New Jersey Constitutions, a government entity may condemn private property for public use as long as just compensation is given to the owner. U.S. Const. Amend. V; N.J. Const. Art. 1, Sec. 20.

The determination to exercise eminent domain is generally “presumed valid and entitled to great deference.” Essex Falls v. Kessler Institute, 289 N.J. Super. 329, 338 (Law Div. 1995). “Absent a showing of ‘improper motives, bad faith or some other consideration amounting to a manifest abuse of the power of eminent domain,’ the courts will not interfere with the public body's decision to condemn private property. There will be no judicial scrutiny of the government's decision to use its eminent domain power unless there is evidence demonstrating that the decision to condemn was made in bad faith or through fraud.” Essex County Improvement Auth. V. RAR Dev. Assocs., 323 N.J. Super. 505, 515 (Law Div. 1999) (quoting Tennessee Gas Transmission Company v. Hirschfield, 39 N.J. Super. 286, 288 (App.Div.1956)). Thus, once the condemnor has established the existence of a public use, the condemnee or challenger bears the burden of proving that condemnor has acted fraudulently or in bad faith. It is presently unclear, however, whether the relevant standard of proof is “clear and convincing evidence” or simply a “preponderance of the evidence.” See City of South Amboy v. Great Lakes Dredge and Dock Co., 2007 N.J. Unpub. Lexis 1810, 9 n.4 (App. Div. 2007)

While the condemnor is granted great deference in determining whether the power of condemnation should be exercised, no such deference attaches to how the condemnor exercises this power. Prior to exercising the power of eminent domain, the condemnor must engage in good faith negotiations with the property owner and meet a number of statutory prerequisites. See N.J.S.A. 20:3-6. These requirements are jurisdictional and are strictly construed by the courts. State by Comm'r of Transp. v. Carroll, 123 N.J. 308, 317 (1991); City of Passaic v. Shennett, 390 N.J. Super. 475, 483 (App. Div. 2007); Borough of Rockaway v. Donofrio, 186 N.J. Super. 344, 354 (App. Div. 1982). Failure to meet these requirements must result in dismissal of the condemnation. The condemnor bears the burden of proving that it has engaged in good

Dq 178

faith negotiations with the property owner and met the statutory prerequisites for condemnation.

**A. GCIA engaged in *bona fide* good faith negotiations with GRD prior to filing the Condemnation Action.**

Prior to condemning property, a condemner is required to enter into *bona fide* negotiations for the property with the owner. This requirement is aimed at keeping owners from being forced to engage in unnecessary litigation, thereby insuring that owners are not denied just compensation due to the piling-up of unnecessary legal bills. To this end, N.J.S.A. 20:3-6 specifically requires that:

no action to condemn shall be instituted unless the condemner is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee, which negotiations shall include an offer in writing by the condemner to the prospective condemnee holding the title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated, and such other matters as may be required by the rules. Prior to such offer the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property. Such offer shall be served by certified mail. In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property. A rejection of said offer or failure to accept the same within the period fixed in written offer, which shall in no case be less than 14 days from the mailing of the offer, shall be conclusive proof of the inability of the condemner to acquire the property or possession thereof through negotiations.

These requirements are jurisdictional. Shennett, 390 N.J. Super. supra, 483. Failure to meet these requirements must result in the condemnation being dismissed. "If a condemner may ignore the statute and later cure the proceedings, the purpose of N.J.S.A. 20:3-6 will be completely frustrated." State, by the Commissioner of Transportation v. Donofrio, 186 N.J. Super. 348, 353 (Law Div. 1989).

**1. GCIA has met the stated requirements of N.J.S.A. 20:3-6.**

In the present case, the record clearly demonstrates that the GCIA has satisfied all of the requirements found in N.J.S.A. 20:3-6. Prior to making an offer for the property, the GCIA was required to appraise the property and give GRD the opportunity to accompany its appraiser on an inspection of the property. By letter dated December 29,

Da 179

2008, the GCIA's appraiser informed GRD that he was going to appraise the property and invited GRD to accompany him on an inspection of the property on January 5, 2009. (Ex. 1 to Gibson Cert. at Ex I at 77-79.) GRD accepted the invitation, and representatives of GRD accompanied the appraiser on the site inspection.

GCIA was next required to provide a written offer for the property to the record title of the property via certified mail. On July 6, 2009, the GCIA sent a written offer for purchase of the property to GRD<sup>1</sup> via certified mail. (Ex. 36 to Gibson Cert.) This written offer set forth the property and interest to be acquired by referencing lot and block numbers as well as providing takings maps. (Ex. 30 to Gibson Cert. at 1-2, 55-57.) The GCIA offered compensation in the amount of \$404,000.00. The written offer also contained an appraisal of the property that contained a reasonable disclosure of how compensation had been calculated. The appraisal contained an explanation of the appraisal methodology as well as all of the information upon which the appraiser relied. (Ex. 1 to Gibson Cert. at Ex. 1.)

Finally, the GCIA was required to set a response deadline in writing. This deadline had to be at least 14 days from the mailing of the offer. The GCIA's written offer fixed a 14-day period for the GRD's response. Although the GCIA had the right to file for condemnation if the GRD did not respond in 14 days, the GCIA ultimately waited 10 months before filing this condemnation action.

The facts above demonstrate that the GCIA met the stated requirements of N.J.S.A. 20:3-6. Indeed, the record actually indicates that the GCIA went above and beyond these stated requirements. GCIA actively worked to address GRD's concerns and voluntarily acquire the property.

After the January 5, 2009 appraisal inspection, the GCIA's appraiser agreed to meet with Mr. Gallenthin to discuss GRD's concerns regarding the potential highest and best use of the property. McHale received additional information that caused the GCIA to retain Marathon Environmental and Engineering Services, Inc. in order to analyze the potential property uses suggested by GRD. Although GRD is clearly not satisfied with

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<sup>1</sup> This court notes that despite defendant's claims concerning ownership of the property, GRD is the record title-holder of the property. Thus, under the statute, GCIA appropriately dealt with GRD rather than alleged individual owners.

the result of this process, this court finds it telling that the GCIA willingly engaged in the process.

Moreover, at the first the first negotiation meeting the GCIA addressed GRD's concerns by offering to mitigate potential severance damages. The GCIA appears to have believed that such mitigation would make a private settlement more likely. Ultimately, the GCIA ended up reconfiguring the taking in order to leave rail access to the property and to provide more favorable roadway access. These changes, which cost the GCIA time, effort, and money, once again indicate that the GCIA was attempting to engage in a genuine "back-and-forth" with GRD. The GCIA was not simply mechanically checking off the requirements found in N.J.S.A. 20:3-6.

**2. GRD's objections to the negotiation process are without merit.**

Despite the above, GRD provides three arguments for why the GCIA failed to engage in *bona fide* good faith negotiations pursuant to N.J.S.A. 20:3-6. First, GRD alleges that GCIA failed to invite it to accompany all appraisal inspections. Second, GRD alleges that it was not allowed to provide input during the appraisal process and that the reports and appraisal underlying the taking are, therefore, fatally flawed. Finally, GRD alleges that the GCIA's offer was premised on an improperly obtained wetlands delineation. The court finds these arguments to be without merit. This court, therefore, finds that the GCIA did, in fact, engage in *bona fide* good faith negotiations pursuant to N.J.S.A. 20:3-6.

*a. GCIA was not required to invite GRD to accompany site inspections made by environmental and engineering consultants because these inspections were not "appraisal" inspections.*

GRD alleges that GCIA failed to give it the opportunity to accompany all appraisal inspections of the property. N.J.S.A. 20:3-6 requires that "the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property." GRD argues that site inspections made by Marathon and T&M should be considered appraisal inspections. Insofar as GRD was not invited to accompany these inspections, it argues that GCIA failed to meet the requirements of N.J.S.A. 20:3-6.

*Da 181*



This court does not believe that the Marathon or T&M site inspections should be considered “appraisal” inspections. Thus, N.J.S.A. 20:3-6 did not require GCIA to invite GRD to accompany these site inspections. While the GCIA’s ultimate appraisal was premised on the analysis and conclusions of Marathon and T&M, this fact is not sufficient to render Marathon or T&M “appraisers” or to render their site inspections as “appraisal inspections.”

Although the Eminent Domain Act does not explicitly define “appraisal,” the Act does clearly distinguish between investigations underlying an appraisal and the appraisal itself. N.J.S.A. 20:3-16 (Preliminary entry) states that a condemner has the authority to enter private property for the purposes of “making studies, surveys, soundings, borings and appraisals...” “[S]tudies, surveys, soundings” and “borings” will undoubtedly serve as the foundation of the ultimate appraisal. Nonetheless these underlying investigations cannot be conflated with the appraisal itself. Thus, N.J.S.A. 20:3-16 demonstrates that GRD’s definition of “appraisal” is far broader than that intended by the Eminent Domain Act.

This court believes that the term “appraisal” is used in N.J.S.A. 20:3-16 to refer specifically to the valuation of property in terms of dollars and cents. An “appraiser” is the entity or person who calculates this monetary value. In the present case, neither Marathon nor T&M quantified the value of the property in monetary terms. Thus, they should not be considered “appraisers.” (Moreover, this court notes that the State of New Jersey licenses real estate appraisers pursuant to N.J.S.A. 45:14F-5, et seq. Neither Marathon nor T&M are licensed real estate appraisers.) The only appraiser employed by GCIA was McHale. McHale, who is licensed as a real estate appraiser by New Jersey, invited GRD to accompany his only site inspection. Thus, GCIA did invite GRD to accompany all appraisal site inspections.

*b. GRD did provide input concerning the reports underlying the appraisal. GRD did not, however, provide concrete highly credible evidence that these reports were flawed.*

More generally, GRD argues that it was not allowed to provide input concerning the Marathon or T&M reports. The facts in the record, however, belie this assertion. GRD provided facts, documents, and information to McHale concerning the highest and best use of the property. GCIA commissioned the Marathon report to specifically address

*Da 182*

the information provided by GRD. Moreover, after the Marathon and T&M reports were completed, GCIA specifically invited GRD to provide any additional information relevant to the appraisal or underlying reports.

GRD clearly disagrees with the conclusions of the appraisal and the underlying environmental/engineering reports. GRD continues to assert that the appraisal and underlying reports are fatally flawed. There is no evidence, however, that GRD responded to GCIA's request for further input by providing concrete and highly credible evidence that the reports or appraisal were inadequate.

A defective or contested appraisal may serve as the basis of good faith negotiations. Disputes concerning the value of the property and the appraisal are generally handled at post-condemnation commissioners' hearings. The inadequacy of an appraisal only undermines good faith negotiations when a condemnee provides concrete and highly credible evidence contradicting the appraisal *and* the condemning authority fails to address or respond to the new evidence. See Morris County v. Weiner, 222 N.J. Super. 560 (App. Div. 1988); Casino Reinvestment Development Authority v. Katz, 334 N.J. Super. 473 (Law Div. 2000). This rule is less concerned with the presence of an error than with the condemnor's response to the error. It is not the underlying mistake or methodological error which precludes good faith negotiation. Instead, it is the failure to address the mistake that implies a lack of good faith. This is because the failure to address a clear error implies the presence of bad faith in a way that the mere presence of the error does not.

In the present case, the record is devoid of any indication that GRD has provided GCIA with concrete and highly credible evidence contradicting the Marathon report, the T&M Report, or the appraisal itself. The mere fact that GRD raises complaints now, will not undermine the existence of good faith negotiations unless these complaints were raised during negotiations.

GRD points to information that it believes Marathon should have considered in determining the highest and best use of the property. GRD states:

Marathon...failed to provide GRD any opportunity to provide meaningful input into [the] report. Instead, Marathon relied on documents provided by GCIA's counsel to draw its conclusions...Notably absent from these documents provided

by GCIA's counsel were the prior leases with the United States to have the Army Corps. of Engineers use the site for dredge deposits. These and other relevant documents could and would have been provided by GRD to demonstrate why it believed the site was permitted to continue as a dredge deposit and processing facility.

Notably, GRD does not allege that it actually provided these leases to GCIA or Marathon. GCIA clearly invited GRD to provide additional information. If GRD failed to do so, it has no one to blame but itself.

GRD also alleges that Marathon ignored potential Federal Clean Water Act §404 jurisdiction over the wetlands as well as the fact that an entity other than GRD would apply for dredge permits. Again, it is unclear whether GRD specifically brought these criticisms to Marathon or GCIA's attention. Regardless, this court does not believe that the identity of the potential permit applicant, the presence of federal jurisdiction, or the existence of past dredge leases provides concrete and highly credible evidence that undermines Marathon or McHale's conclusion concerning the speculative nature of GRD's proposed uses.

GRD also points to problems within the T&M report. GRD argues that the T&M report contradicts GCIA's plans for placement of the bridge. Specifically, the T&M report states that only driveways and parking may be placed within Colonial Pipeline easement.

GRD, however, does not allege that it notified GCIA of this contradiction prior to the filing of this action. Absent proof that it pointed out the contradiction, GRD cannot claim that it provided concrete and highly credible evidence that the T&M report was inadequate and that GCIA ignored this evidence. Again, evidence of a mistake in an appraisal is not evidence of bad faith. It is the failure to correct a mistake that constitutes evidence of bad faith.

It is not clear, however, that the T&M report actually does contradict the GCIA's plans in a meaningful way. Absent additional expert evidence, it is not clear that T&M's conclusions, if true, would prevent GCIA from going forward with its present plan. T&M's conclusion, in this regard, is not definitive enough. Likewise, it is entirely possible that T&M's conclusions would simply require changes within the footprint of the current taking. Furthermore, GRD has not presented evidence suggesting that the

Da 184

apparent contradiction between the T&M report and the GCIA plans affects the valuation of the property. For these reasons, the apparent contradiction in the T&M report does not warrant dismissal of the Complaint.

*c. Any mistake or misconduct with regards to the T&M wetlands delineation does not warrant dismissal of the complaint.*

GRD also alleges that the T&M report and, consequently, GCIA's offer was premised on an improperly obtained wetlands delineation. Specifically, GRD points to the fact that, in its October 2007 application to the NJDEP for a Freshwater GP12 Permit for permission to conduct geotechnical borings on the property, GCIA improperly listed itself as the "property owner." GRD argues that this action "illustrates GCIA's disregard to [sic] to GRD's private property rights and the callous manner in which GCIA attempted to comply with the statutory prerequisites to filing this action." GCIA argues that the failure to obtain the proper ownership authorization on the Freshwater GP12 Permit was simply the result of a clerical error.

This court does not believe that the GCIA's action with regard to the October 2007 application warrants dismissal of the complaint – even if this action was determined to be intentional. Although the fact that the GCIA improperly listed itself as the owner may constitute a violation of NJDEP regulations, this violation in no way prejudiced GRD. This application granted NJDEP authorization for the geotechnical borings. It did not grant authorization with respect to GRD. GCIA ultimately received authorization with respect to GRD via an Access Order entered in Gloucester County Superior Court by Judge McDonnell on April 4, 2008. Thus, any alleged misrepresentation to the NJDEP did not result in harm to GRD.

Specifically, the alleged misrepresentation did not threaten to deny GRD of just compensation. The *bona fide* negotiation requirements of N.J.S.A. 20:3-6 are jurisdictional and strictly construed in order to ensure that property owners are guaranteed just compensation. Although GRD may have a separate cause of action with respect to this misrepresentation, insofar as the alleged misrepresentation not implicate GRD's ability to secure just compensation, it should not result in dismissal of the GCIA's complaint.

Da 185

**B. GCIA has established a valid public purpose for the taking.**

In order to condemn private property, a condemning authority must establish that it is planning on using the condemned property for a public purpose. U.S. Const., Am. XIV; N.J. Const., Art. I, par. 20. It is for the Legislature “to determine what constitutes a public use, a finding beyond judicial interference unless it be unreasonable and arbitrary and a perversion of the power.” State by McLean v. Lanza, 27 N.J. 516, 530 (1958). Condemning authorities are generally granted great deference in determining which property should be condemned. This is because such decisions constitute legislative action and are therefore entitled to a presumption of validity. “Burnett v. Abbott, 14 N.J. 291, 294 (1954). “Absent a showing of ‘improper motives, bad faith or some other consideration amounting to a manifest abuse of the power of eminent domain,’ the courts will not interfere with the public body's decision to condemn private property.” Essex County Improvement Auth. V. RAR Dev. Assocs., 323 N.J. Super. 505, 515 (Law Div. 1999) (quoting Tennessee Gas Transmission Company v. Hirschfield, 39 N.J. Super. 286, 288 (App.Div.1956)).

Although the courts are highly deferential to legislative determinations of public use, courts will “examine the stated public purpose of a condemnation when that condemnation infringes on an important state interest or otherwise suggests a true purpose that is discriminatory or illegal.” Readington at 320. In other words, the presence of a facially valid public purpose will not be sufficient if the stated purpose is, as Defendant’s allege, simply a pretext and serves to hide an improper “true” purpose. Proof of an improper “true” purpose would represent an “affirmative showing of fraud, bad faith, or manifest abuse” Casino Reinvestment Dev. Auth. V. Banin, 320 N.J. Super. 342, 346 (Law Div. 1998) and would require the court to invalidate the condemnation.

There has been extensive debate and discussion concerning how to prove bad faith or pretext. “Bad faith is referred to as the doing of an act for a dishonest purpose. The term also ‘contemplates a state of mind affirmatively operating with a furtive design or some motive of interest or ill will.’” Essex County at 515 (quoting Borough of Essex Fells v. Kessler Inst. for Rehab., 289 N.J. Super. 329, 338 (Law Div. 1995)). The focus of inquiry generally focuses on the governing authority’s action rather than on the motivation of individual legislators. According to Readington Township v. Solberg

Aviation Co., 409 N.J. Super. 282, 312 (App. Div. 2009), “[w]hen considering a claim of bad faith in the context of an eminent domain action, courts traditionally distinguish between the motives of the individuals who adopted the legislation and the purposes of the condemnation itself.” Thus, “when a party asserts that an ordinance [or taking] was adopted for an improper purpose, the court’s ‘inquiry should be limited to an evaluation of the objective facts surrounding the adoption of the ordinance [or taking].’” Readington, 409 N.J. Super. at 312 (quoting Riggs v. Twp. of Long Beach, 109 N.J. 601, 614, (1988)). In searching for proof of pretext, therefore, this court must examine the objective facts surrounding the condemnation.

Borough of Essex Fells v. Kessler Institute for Rehabilitation provides a good example of what sort of facts will cause a court to determine that a stated purpose is pretextual. In Kessler, the court held that if “a condemnation is commenced for an apparently valid, stated purpose but the real purpose is to prevent a proposed development which is considered undesirable, the condemnation may be set aside.” Kessler at 339. The trial court struck down the Borough of Essex Fells’s attempt to condemn a defunct college campus for use as a public park. Although there was no dispute that the Borough actually planned on using the land for parkland, the court was convinced that the true purpose of the taking was not to establish a park but was instead to block the development of an unpopular rehabilitation facility.

In deciding to ignore the Borough’s “apparently valid, stated purpose,” the court viewed several facts as particularly salient. First, the Court examined the timing of the condemnation and what, if any, event triggered the taking. In Kessler, the college campus was on the market for two years without the Borough showing any interest in purchasing it. The Borough only decided to purchase it once it was bought by the rehabilitation facility. Second, the court examined the statements made by various officials during hearings concerning the property. The officials more or less admitted that they were condemning the property in order to prevent the construction of a rehabilitation facility. Finally, the court examined the plausibility of the Borough’s stated purposes. The Borough stated that it would use the property for open space and to serve as a water recharge area for surrounding wells. The court determined that the Borough had no need

for additional public space and that the Borough had failed to engage in any open-space planning. The Borough:

failed to present any credible, ascertainable public need or plan for the subject property in terms of population patterns or any anticipated increased demand for public land. See Alsip Park Dist. v. D & M Partnership, supra, 192 Ill.Dec. at 86, 625 N.E. 2d at 46. No studies were conducted to determine whether there was a need for additional open space and no evidence of utilization or over utilization of existing park land or recreational facilities was presented. Kessler at 341.

The combination of these facts led the court to conclude that the stated purposes for the taking could not be accepted at face-value.

In Readington Township v. Solberg Aviation, the appellate division engaged in an inquiry similar to that in Kessler. In Readington, a township attempted to condemn: (1) the future development rights for an airport facilities area; (2) property in the airport safety zone surrounding the airport; and (3) property surrounding the airport that was not within the airport safety zone. The stated purpose of these takings was to preserve open space, conserve environmental resources, and provide recreational areas. The appellate court struck down the condemnation of the development rights and the land within the airport safety zone but allowed the condemnation of the land outside of the safety zone. Using the framework found in Riggs, the Court determined that the objective factors surrounding the first two takings demonstrated that the town was acting with an improper purpose. The court, however, held that the third taking had a valid purpose and therefore upheld it despite the Township's "suspect" motives.

In striking down the condemnation of the airport development rights and the condemnation of land within the airport safety zone, the appellate court focused on the fact that these takings would not accomplish the stated purposes of the taking. The Township had claimed that its purpose in condemning the development rights was open space and farmland preservation, land for recreational uses, conservation of natural resources, wetlands protection, water quality protection, preservation of critical wildlife habitat, historic preservation, airport preservation, and preservation of community character. The court, however, concluded that "there is no support for finding that the condemnation of development rights will achieve airport reservation and preservation of community character" because the condemnation would likely cripple the economic

Da 188

viability of the airport. Likewise, the area within the safety zone was largely farmland and could not be developed due to the existing safety restrictions. The land could not even be used for recreation. Readington at 313. Therefore, “[v]esting the Township with fee simple ownership of property within the airport safety zone would not preserve any open space that is in danger of being developed and would not provide additional recreational land for residents.” Id. at 316. The stated goals of the taking, therefore, could not be reasonably accepted at face value.

In determining that the stated purpose for the taking was merely pretextual, the appellate court took pains to note the suspicious context in which the condemnation occurred. According to the court,

Although the Township and [the airport owners] had been at odds for years concerning airport expansion, serious consideration of condemnation only occurred after Solberg Aviation received conditional approval of its Airport Layout Plan from the FAA and NJDOT in 1999. The Township already possesses large tracts of public open space and recreational land, and it did not even identify defendants’ property for possible acquisition until 2001. A public information session convened by the Township Committee on January 17, 2006, included presentations from experts knowledgeable in aircraft design and specifications, aviation regulations and acoustics. In fact, noise analyses were included in several reports considered by the Township prior to passing the condemnation ordinance. In light of this objective context, it appears that the decision to condemn...was tainted by the Township’s desire to control airport operations. Id. at 314-315.

The factors examined in Readington were quite similar to those examined in Kessler. In both cases, the courts examined: (1) the timing of the taking; (2) the event triggering the taking; (3) whether the taking was consistent with the condemner’s general land use plan; (4) what public statements were made about the taking; (5) what evidence was used to justify the taking; and (6) whether the taking would genuinely accomplish the condemning authority’s stated purposes.

**1. The stated purpose for the taking is a valid public purpose.**

In the present case, the GCLA asserts that they are condemning GRD’s property in order to construct a public roadway and bridge. The construction of a bridge and road is undoubtedly a public purpose. Twp. of W. Orange v. 769 Assoc., 172 N.J. 564, 573 (2002) (“Courts have long held that the condemnation of private property for use as a public road fulfills the public use requirement”); Baptist Church v. Mayor & Common



Council of Orange, 54 N.J.L. 111, 113 (1891) ("Highways are conceded to be, and manifestly are, matters of public concern; and hence, the condemnation of property for streets, alleys and public ways is undeniably for a public use"). Indeed, at oral argument GRD conceded that the roadway and bridge constituted a public use.

**2. GRD has failed to provide any evidence suggesting an ulterior improper purpose for the taking.**

GRD, however, contends that the stated purpose of building a roadway and bridge is simply pretextual and hides the true, impermissible purpose for the condemnation. GRD claims that the true purpose of the taking is twofold. First, GRD claims that the GCIA is using the pretext of a bridge and road project in order to circumvent the New Jersey Supreme Court's decision in Gallenthin v. Paulsboro, 191 N.J. 344 (2007). Under this theory, GRD argues that the true purpose of the taking is to use property for economic development purposes. Second, GRD argues that the GCIA is using the taking in order to prevent the property from being used for dredging activities.

In the present case, the objective facts within the record do not indicate that the GCIA's condemnation is pretextual. There is no indication that the GCIA is attempting to use the property for anything other than a roadway and bridge. The record does not support GRD's assertion that the GCIA is attempting to circumvent the Supreme Court's decision in Gallenthin v. Paulsboro. Neither does the record support GRD's assertion that the GCIA is simply attempting to stop the property from being used for dredging activities.

*a. The record provides no indication that the GCIA is improperly attempting to circumvent the New Jersey Supreme Court's decision in Gallenthin v. Paulsboro.*

GRD argues that GCIA is using the bridge and roadway plan as a pretext to circumvent the ruling in Gallenthin v. Paulsboro, where the New Jersey Supreme Court ruled that Paulsboro could not label GRD's property as "blighted" simply because it was vacant. This ruling prevented Paulsboro from taking GRD's property for economic development purposes. GRD argues that:

"[b]ecause the Subject Property could no longer be acquired for redevelopment under the powers granted by the LHRL, GCIA and the Borough had to rethink how they would acquire the Subject Property. GCIA now alleges it wishes to

acquire the property for a bridge project. Conveniently, this type of taking falls outside the purview of the LRHL and therefore would not require the GCIA to meet the substantial evidence standard associated with designating a property as being in need of redevelopment.”

In support of this theory, GRD points to the fact that GCIA has not received all of the permits necessary for the bridge. GRD also argues that after it acquires the property in fee simple, GCIA would be permitted to transfer or assign this land to a different party. Finally, GRD argues that, “[t]here is no necessity to acquire lands with public funds in this strained economy for a bridge that may never be built.”

At the outset, this court notes that condemners are not required to secure all the permits for a given project prior to initiating a condemnation. This court is unwilling to announce such a rule. In fact, it appears that GCIA’s failure to receive all the necessary permits is partially due to GRD’s obstruction. (GRD continues to refuse to execute the NJDEP Division of Land Use Regulation Form (“LURP Form”) that is a necessary prerequisite for NJDEP’s Waterfront Development Permit.) Moreover, the fact that GCIA is seeking a fee simple interest in the property is not proof of pretext. Most if not all condemnors seeks fee simple interests that are fully assignable and transferable. Likewise, the fact that future economic circumstances might stall the project is no reason to deny GCIA the right to condemn the property. This court will not second guess the legislative decision to move forward with this project in the present economic circumstances.

The objective factors surrounding the condemnation do not suggest an ulterior purpose. If anything, the facts in the record undercut GRD’s theory. GRD argues that the GCIA is simply attempting to circumvent the decision in Gallenthin v. Paulsboro. This decision was rendered in June 2007. GCIA, however, was tasked with constructing the access project in November of 2005. The GCIA began investigating condemnation of GRD’s property in the Spring of 2006 – more than a year before the ultimate decision in Gallenthin v. Paulsboro. The timing of the taking, therefore, demonstrates that the decision in Gallenthin v. Paulsboro was not the event that triggered the taking.

The record demonstrates that, beginning in the Spring of 2006, GCIA has consistently treated GRD’s property as an integral piece of a roadway project connecting I-295 to the Paulsboro Terminal project. This roadway project clearly fits into the

County's overall Port Terminal Project. This connection is demonstrated by the 2005 agreements between the County, NJDOT, and GCIA. There is no indication, therefore, that the proposed roadway and bridge project is not the true purpose of the taking.

*b. The record provides no indication that the GCIA is improperly attempting to eliminate dredging activities on the site.*

GRD also argues that GCIA is using the bridge and roadway plan as a pretext for its true purpose of eliminating dredging activities on the site. In support of this theory, GRD points to a Resolution adopted by the Gloucester County Freeholders in 2000 announcing their opposition to using the Delaware riverfront for dredging activities. There are no documents or statements, however, connecting this 2000 Resolution to the present condemnation. The existence of this 2000 Resolution, alone, is not sufficient to cast doubt on the present taking. This is particularly so when the purpose of the taking (construction of a road and bridge) has been exhaustively detailed and connected to a larger County project (the port terminal).

Moreover, the facts in the record once again undercut GRD's theory concerning dredging activities. First, this court notes that the GCIA has consistently maintained that dredging is not presently permitted on the property and that numerous impediments stand in the way of such a use. GRD has not provided any concrete or highly credible evidence that would disrupt this conclusion. Moreover, at the initial negotiation meeting, GCIA actually reconfigured the taking in order to minimize the impact it would have on potential dredging activities. It is unclear why the GCIA would have taken the time, expense, and effort to limit the impact of the taking on potential dredging activity if the true goal of the taking was to prevent dredging activity.

GRD places great emphasis on the size and placement of the drainage basin. GRD argues that it is the drainage basin – more so than the bridge or roadway – that it believes is not a genuine element of GCIA's true plan. GRD instead argues that the GCIA plans to use this parcel for its own dredging operations – or for the use of another private dredging operation.

GRD argues that the pretextuality of the basin is demonstrated by several factors. First, GRD points to what it considers to be the excessive size of the basin. GRD is not an engineering or environmental expert. Neither is this court. In the absence of expert

Da 192

evidence, this court has no reason to believe that the size of the basin is excessive. Second, GRD notes that, within the GCIA's engineering plans, there is some discrepancy between the total impervious area of the basin and the area of the parcel where the basin will sit. This court does not believe that this discrepancy is particularly noteworthy. Third, the GRD points to the fact that it received copies of engineering plans from GCIA that show different configurations for the area that the GCIA alleges it will site the basin. (Ex. A and B to Ward Cert.) This court, however, does not find it a cause for suspicion that the engineering details surrounding a road and bridge project would progress through various iterations. In addition, this court believes that the differing plans provided by GRD actually contain a greater consistency than GRD acknowledges. Finally, GRD questions why a stormwater basin is necessary when the road and bridge can drain directly into Mantua Creek. This court, however, can easily think of a number of legal and practical reasons why the GCIA would not want water draining directly from the road and bridge into a navigable water of the United States.

In the present case, the objective factors all indicate that GCIA is taking GRD's property for the construction of a public roadway and bridge. The record clearly connects the taking of GRD's property to the access route project connecting Route I-295 to the Port Terminal project site. The record establishes the present connected is one interconnected piece in a much larger project. GRD's allegations concerning an ulterior improper purpose – be it circumvention of Gallenthin v. Paulsboro or the prevention of dredging activities – are entirely unsupported by the scant record provided by GRD. In fact, the record provided actually serves to undercut GRD's theories. Ultimately, there is no indication in the record that GCIA's present taking is at all improper.

**C. The GCIA has not acted in an arbitrary or capricious manner.**

GRD alleges that the taking is arbitrary and capricious and should, therefore, be dismissed. See Bridgewater Township v. Yarnell, 64 N.J. 211, 214-15 (1974). Specifically, GRD claims that the taking is arbitrary and capricious because the location of the bridge is purely speculative and present plans call for the bridge to cross an easement that cannot be built upon.

This court does not believe that the present taking is arbitrary or capricious. A project is not rendered speculative simply because some of the necessary permits have

yet to be received. (Moreover, as has been mentioned above, GRD itself has stood in the way of the GCIA permitting process.)

This court also finds that GRD has failed to provide any evidence suggesting that the GCIA cannot complete the project as currently planned or within the footprint of the current taking. GRD alleges that the GCIA cannot build the bridge over the Colonial Pipeline easement. GRD, however, provides no admissible evidence that even suggests this. GRD has submitted no expert reports or certifications contradicting the GCIA's assertions concerning the easement. GRD relies exclusively on the wording of the T&M report, which states that structures cannot be placed over the Colonial Pipeline easement, and a certification submitted after oral argument that is largely inadmissible hearsay. In the absence of any evidence that the GCIA's road and bridge project cannot go forward as planned or within the footprint of the current taking, this court finds no basis to dismiss the taking as "arbitrary" or "capricious."

**D. The Complaint adequately describes the scope of the taking.**

This court believes that the Complaint adequately describes the taking. R. 4:73-1 requires a condemnation Complaint to include "a description of land to be acquired and identify of improvements to be acquired." This court believes that maps attached to the Complaint as Exhibit G are sufficient in this regard. They describe "the land to be condemned...with such certainty as to leave no room for doubt or misapprehension as to the land actually to be taken." Housing Auth. Of Atlantic City v. Atlantic City Expos., Inc., 62 N.J. 322, 328 (1973).

GRD argues that these maps do not meet the requirements of N.J.S.A. 46:23-9.11 or N.J.A.C. 13:40-5.1. These requirements, however, relate to subdivision plats and surveys respectively. They are not necessarily applicable to the maps accompanying a condemnation Complaint. The Eminent Domain Act does not require a metes and bounds description of the taking.

GRD also criticizes the terms of the temporary construction easement. Specifically, GRD claims that its right of access is not clear. This court does not believe ... that the terms of the easement are so ambiguous as to warrant dismissal of the Complaint. The easement makes it clear that GRD *will* retain access to the property. By the explicit

Da 194

terms of the easement, GCIA cannot eliminate GRD's access to the property. The terms of the easement are sufficiently clear.

#### **VI. Disposition**

For the reasons stated above, this court finds that:

- (1) GCIA engaged in bona fide good faith negotiations pursuant to N.J.S.A. 20:3-6.
- (2) GCIA has established a proper public purpose for the taking and there is no indication of an ulterior improper purpose;
- (3) The taking is neither arbitrary nor capricious; and
- (4) The Complaint provides an adequate description of the taking.

Moreover, this court finds that the evidence provided by GRD has failed to raise any genuine issues of material fact.

Therefore, this court hereby **GRANTS** GCIA's request for Final Judgment and **DENIES** GRD's motion.

Da 195

**FILED**

APR 04 2008

ANNE McDONNELL, J.S.C.

BY THE COURT

GLOUCESTER COUNTY IMPROVEMENT AUTHORITY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	GLOUCESTER COUNTY
Plaintiff(s),	:	DOCKET NO. GLO-L-1648-07
	:	
vs.	:	Civil Action
	:	
GALLENTHIN REALTY DEVELOPMENT, et als.,	:	ORDER
	:	
Defendant(s).	:	

This matter having come before the court on April 4, 2008 for an Order to Show Cause Hearing; Christopher R. Gibson, Esquire, Esquire, appearing on behalf of plaintiff; and F. Michael Daily, Esquire, appearing on behalf of defendant; and for good cause shown;

It is on this 4th day of April, 2008, ORDERED as follows:

1. This Court's order of May 25, 2006 is enforced;
2. Plaintiff and its authorized representatives are given access to the site designated as Lot 1, Block 3 on the tax map of Paulsboro for the purposes set forth in the Affidavit of Edwin J. Steck, P.E. dated April 3, 2008;
3. Plaintiff shall provide 72 hours notice of entry onto the site by email to counsel for defendant; and
4. Defendant and its representatives shall not interfere in any way with plaintiff's access to the site.

*ANNE McDONNELL*

ANNE McDONNELL, P.J.Cv.

Da 196

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Attorneys for Plaintiff

MAY 25 2006

GLOUCESTER COUNTY IMPROVEMENT  
AUTHORITY

Plaintiff,

vs.

GELLENTHIN REALTY COMPANY, INC.

Defendant

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
GLOUCESTER COUNTY

DOCKET NO.: GLO-L-581-06

Civil Action

ORDER GRANTING ACCESS

THIS MATTER having been opened to the Court by way of Order to Show Cause filed by Archer & Greiner, a Professional Corporation, seeking an Order pursuant to the Eminent Domain Act, specifically N.J.S.A. 20:3-16, directing Defendant to allow Plaintiff, its authorized representatives, contractors and subcontractors access to property owned by Defendant and which is designated as Lot I, Block 3 on the tax maps of the Borough of Paulsboro, Gloucester County, New Jersey (the "Site"); and the Court having considered the papers submitted in support of the Order to Show Cause and all opposition thereto; having heard the arguments of counsel; having determined that (1) Plaintiff requires access to the Site in order to carry out its investigation as a proposed condemnor in order to construct a bridge and roadway connecting the proposed Marine Terminal in Paulsboro, New Jersey to Exit 19 of Interstate 295 in order to divert commercial truck traffic away from residential areas; (2) that Plaintiff has given due and appropriate notice of its intent to enter the Site pursuant to N.J.S.A. 20:3-16; (3) Plaintiff has made good faith efforts to obtain access to the Site from the Defendant; (4) Defendant has

Da 197



repeatedly refused to permit access to the Site; (5) access to the Site is reasonable and necessary to conduct the initial survey for the planned bridge and roadway; and for good cause being shown;

IT IS on this 25 day of May, 2006;

ORDERED that Plaintiff, along with its authorized representatives, contractors and subcontractors, is granted immediate access to the entire Site for the purpose of carrying out the initial investigation relating to the construction of a bridge and roadway connecting the proposed Paulsboro Marin Terminal with Exit 19 of Interstate 295 to divert commercial truck traffic away from residential areas; and it is further

ORDERED that, pursuant to the Eminent Domain Act, and specifically N.J.S.A. 20:3-16, this right of access shall be continuing, provided that the Plaintiff complies with N.J.S.A. 20:3-16; and it is further

ORDERED that no representative, employee, owner or agent of Defendant shall interfere in any way with the access and investigation by Plaintiff, its authorized representatives, contractors and subcontractors; and it is further

ORDERED that a copy of this Order shall be served on all parties within 3 days of its entry.

  
ANNE MCDONNELL, P.J. Civ.

This matter was opposed.  
A decision was placed on the record on April 28, 2006

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Da 198