

adaptive re-use of prior real estate projects throughout the country. Since January 2000 alone, BPG has developed and redeveloped more than six million square feet of office, retail and industrial space with a large portion located in New Jersey.

One of BPG's significant property holdings in New Jersey is its 359-acre Hopewell Township site known as the "Technology Center of Princeton". The property was once occupied by Lucent Technologies, Inc. It is located on the east and west side of Carter Road, just north of

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August 20, 2007

HAND DELIVERED

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2007 AUG 20 P 3:38
MUEPP - OFFICE OF
LEGAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**RE: Proposed Amendments: N.J.A.C. 7:9B-1.4 and 1.15
Surface Water Quality Standards
DEP Docket Number 11-07-04/557
Proposal No. PRN-2007-166**

Dear Mr. Brower:

This firm represents BPG Properties, Ltd ("BPG") in connection with its approximately 359-acre research/office campus in Hopewell Township, Mercer County, New Jersey. We submit the following comments on the proposed amendments to the Surface Water Quality Standards (SQWS) regulations as proposed by the Department of Environmental Protection (the "Department" or "DEP") in the above-captioned notice. Specifically, our comments address the Department's proposal to amend N.J.A.C. 7:9B-1.15(f), Table 4, to classify a segment of the Stony Brook as a Category One water.

I. **BACKGROUND**

BPG is one of the largest private equity real estate fund managers in the United States. It has a long proven track record in the acquisition, development, redevelopment and adaptive re-use of

The Department's rule proposal seeks to designate a segment of the Stony Brook (from Pennington-Hopewell Road to the pumping station south of West Road) and all unnamed and unlisted tributaries to that segment as Category One waters. If adopted, the rule will have a devastating affect on BPG's ability to redevelop its property because of the imposition of a 300 foot special water resource protection area (and riparian zone if the proposed amendments to the Flood Hazard Area Control Act rules are enacted) (collectively, "buffers") adjacent to the Stony Brook and its tributaries. Such buffers will prevent BPG from implementing the 1999

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its intersection with Cleveland Road, and lies within the watershed of Stony Brook. Stream corridors from two tributaries of Stony Brook are located on the property. The property is zoned Research Office 3 (RO-3) pursuant to the Hopewell Township Land Use and Development Ordinance. The eastern parcel of the site is developed with several office and laboratory buildings and parking. The western parcel of the site contains an unoccupied dormitory building, recreational facilities and parking. The site has its own wastewater treatment plant located on the eastern parcel which discharges to one of the tributaries of Stony Brook.

Consistent with the Hopewell Township Master Plan and Zoning Ordinance, the property was granted a general development plan (GDP) approval in 1999 by the Hopewell Township Planning Board under N.J.S.A. 40:55D-45.2 to foster the renovation and redevelopment of the eastern parcel for approximately 800,000 square feet of both existing and new buildings, parking, pedestrian pathways and interior roads. It also involves upgrades to the sanitary sewer system, improvements to an existing pond and installation of a new public potable water system to replace contaminated wells in the area. The GDP approval also provides for the removal of the structures and site improvements on the western parcel of the site and the permanent preservation and dedication of such land to Hopewell Township for open space purposes. The GDP approval contemplates a long term implementation of these improvements through the granting of a 12-year vesting period. Pursuant to the GDP approval, BPG in 2006 submitted an application to the Hopewell Township Planning Board for preliminary site plan approval of the entire development. The application has been deemed complete and is expected to be considered by the Planning Board in the next several months. The preliminary site plan comports with all current State, regional and local regulations concerning stream corridor, wetlands and stormwater. BPG has also submitted a stream encroachment permit to the Department and is in the process of filing for other required Department permits. Since acquiring the property in 2004, BPG has expended several millions of dollars in hard and soft costs to renovate the existing buildings and utility systems on the eastern parcel and in making the various land approval applications, all in reliance on the GDP approval.

II. IMPACT OF RULE IF ADOPTED

Accordingly, we respectfully urge the Department to identify explicitly within its SWQS rule proposal the point in the development approval process (e.g., a complete application for approval of a general development plan, preliminary site plan, preliminary subdivision plan, final site plan or final subdivision plan pursuant to N.J.S.A. 40:55d-10.3) a proposed, but not yet fully approved, project is exempt from the effects of the Category One stream classification. In the absence of clear, rationale and fair grandfathering protections, private investment in New Jersey by BPG and others will be deterred.

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Township-approved plan, possibly including BPG's ability to discharge from its wastewater treatment plant.

III. SPECIFIC COMMENTS ON RULES

(a). Non-Environmental Impacts Have Not Been Adequately Addressed. The Department has failed to adequately address the social, economic and job impacts of its proposed rule. The rule does not take into account development proposals such as the BPG plan which are not yet fully approved or constructed, but have been the subject of many years of careful planning and approval decisions by local land use agencies, and in which considerable investments have been made in good faith reliance on such actions. The Department in its rule-making must recognize the importance for the private sector to be able to rely on predictability in regulation and, specifically, the decisions made by governmental entities with the statutory authority to plan for development and redevelopment in designated areas. Such decisions have already taken into the account the balance between development along with the economic and social benefits that it brings and the need for environmental protection. The present Category One designation proposal essentially wipes out these efforts. This has negative consequences not only on the development community, but the public as well. For example, in the case of BPG's Hopewell property, its inability to develop the property in accordance with the approved GDP and its pending preliminary site plan application due to the 300-foot buffers places in jeopardy the implementation of the public goals under the plan, including the provision of public water, demolition of the old structures on the western parcel and permanent preservation of this parcel from further development. This would be in addition to the loss of employment and taxes that would be generated by the BPG project. BPG is aware of at least two other major corporate campuses that are adjacent to the Stony Brook where the rule will have a similar outcome. The Department's rule proposal does not address sufficiently either the individual or the cumulative impact of the rule on important non-environmental criteria, including jobs and the economy.

(b). Grandfathering. One method to provide predictability and to address the adverse non-environmental impacts is to provide in the rule "grandfathering" or exemption provisions based on prior actions taken by owners to develop property in reliance on current

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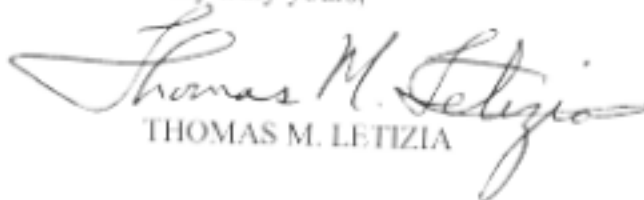
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IV. CONCLUSION

BPG is well aware that the Stony Brook is an important resource to its property and to the region. However, protection of this resource should not be done at the sacrifice of property owners who have made investments in their land holdings and entered into obligations in good faith reliance on current regulations. BPG has made a significant financial commitment in New Jersey to redevelop its Hopewell site in accordance with the approvals granted to date. The Department's proposal to classify the Stony Brook a Category One water and to impose a 300-foot buffer along the Stony Brook and its tributaries seriously impairs BPG's ability to implement its development plan. As noted above, BPG requests that the Department revise its rule proposal so that BPG may rely on its previously approved development plan and continue to invest in New Jersey.

We appreciate your consideration of these comments.

Very truly yours,


THOMAS M. LETIZIA

TML:ap
Enclosure

cc: BPG Properties, Ltd.