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March 30, 2026

VIA EMAIL AND FEDERAL EXPRESS

Diana McGovern, Esq.
Gaccione Pomaco, P.C.
One Boland Drive, Suite 102
West Orange, NJ 07052

**Re: West Orange Planning Board
Application No. PB-24-01 - West Essex Highlands, Inc.
Block 179, Lot 32 (the "Subject Property")**

Dear Ms. McGovern:

This firm represents the applicant, West Essex Highlands, Inc. ("Applicant"), in connection with the above referenced application for preliminary and final site plan approval pending before the West Orange Planning Board (the "Board"). After the close of testimony, public comment, and counsel summations, during the Board's deliberations at the public hearing held on March 4, 2026, the Board asked the Applicant to review certain items regarding the proposed development. Please accept this correspondence as Applicant's response.

Sewer

As supported by the Board record, including the site plan (sheets SP-18 through SP-24, SP-46, SP-48, and SP-49), the on-site sewer system is designed to convey sewage from the buildings to a pump station located south of Road D. The pump station will pump the sewage through a force main which will connect to a manhole in Bakley Terrace and the public sewer system through an existing utility easement.

The Township of West Orange ("West Orange" or the "Township") has the obligation to reasonably cooperate with the Applicant to provide sewer service to the Subject Property, as provided for in paragraph 2.3 of the April 2020 Settlement of Litigation Agreement between the Applicant and West Orange (the "Settlement Agreement"). This obligation to cooperate includes, but is not limited to, the endorsement of all required third-party applications for sewer service. As the Board is aware, Applicant will need to make application to the New Jersey Department of Environmental Protection ("NJDEP") for a Treatment Works Approval ("TWA"), which requires endorsement by the Township Engineer. That application process is outside the jurisdiction of the

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Board and the procurement of a TWA is a standard condition of approval. Applicant remains committed to work with the Township professionals in good faith with respect to the TWA application.

Location of Sanitary Sewer Pipe

As the Board is aware, a section of on-site sewer pipe was proposed to run through near a detention basin. As provided for in the record, Applicant has agreed to relocate the pipe to outside of the stormwater system and under the sidewalk as a condition of approval. The Township's engineers will be required to review and approve the relocated pipe along with the plan revisions and detail normally associated with the resolution compliance process.

Stormwater Management System

The Board asked the Applicant to review its stormwater management system, which has already been approved by the NJDEP, to determine if additional stormwater could be funneled to the upper part of the wetlands located on the western portion of the Subject Property without the need to seek amended NJDEP approval. In short, any such modification, if practicable or needed, would require amended NJDEP approval.

As the Board is aware, under the Freshwater Wetlands Protection Act ("FWPA"), the Board and the Township are preempted from regulating freshwater wetlands in any way, such as requesting a Letter of Interpretation ("LOI") or regulating the impacts of stormwater runoff on wetlands. N.J.S.A. 13:9B-30. The jurisdiction to regulate wetlands rests solely with the NJDEP. Id.

Here, the NJDEP extended the LOI and granted General Permits for the Subject Property on November 15, 2024, which approvals considered the proposed development and stormwater management system identified on the site plan. On November 15, 2024, the NJDEP issued Permit No. 0722-04-0001.1 LUP230001, approving the proposed freshwater wetlands disturbances and included a review and approval of the stormwater management system. The LOI and NJDEP Permits are part of the Board record.

In granting the foregoing approvals, the NJDEP applied the regulations promulgated under the FWPA, N.J.A.C. 7:7A-1.1, et seq., which regulate freshwater wetlands, transition areas, and State open waters. Specifically, N.J.A.C. 7:7A-2.2 provides, in pertinent part:

(a) The following activities are regulated under this chapter when performed in a freshwater wetland unless excluded under (c) below:

* * *

2. The drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or

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surface water, regardless of the duration of such alteration,
by:

- i. Adding or impounding a sufficient quantity of stormwater or other water to modify the existing vegetation, values or functions of the wetland; or
- ii. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water so as to modify the existing vegetation, values or functions of the wetland;

5. The placing of obstructions, including depositing, constructing, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland;

N.J.A.C. 7:7A-2.2(a)(2) and (5). Applicants must demonstrate compliance with the specific regulations under their requested General Permits (N.J.A.C. 7:7A-5 and -7), Transition Area Waivers (N.J.A.C. 7:7A-8), and/or Individual Permit (N.J.A.C. 7:7A-9 and -10). The NJDEP also regulates stormwater management for projects that result in one acre of disturbance (N.J.A.C. 7:8-4.2) and/or a net increase of 0.25-acre of motor vehicle surfaces (N.J.A.C. 7:8-5.5).

Here, as supported by the record, the NJDEP conducted a detailed review before issuing its approvals. During that review, the NJDEP received several comment letters from Princeton Hydro, which included a concern about the potential to drain the wetlands. If the NJDEP had determined that this allegation was valid, it would have required the project to make modifications to address this specific issue. The applicant addressed all NJDEP comments and the NJDEP ultimately issued Freshwater Wetlands General Permits and a Flood Hazard Area Individual Permit.

As Princeton Hydro acknowledged during testimony, the NJDEP had the benefit of Princeton Hydro's comments during the permit review process. Moreover, the objector made application to the NJDEP seeking a suspension and/or stay of Applicant's permits. In a written Order Denying Permit Suspension Pending Appeal dated January 16, 2026, a copy of which is attached hereto as **Exhibit A**, the NJDEP specifically noted on p. 5:

The consultant [Princeton Hydro] also noted that a change in stormwater runoff could result in damage to existing wetlands. The Department reviewed this change and concluded that the applicant demonstrated compliance with the requirements for stormwater runoff quantity, stormwater runoff quality, and groundwater recharge. The stormwater quantity analysis specifically included standards to control the impacts of the change in flow, volume, and timing of runoff as a result of a major development. The project was

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subsequently reviewed by Department staff for compliance with the Freshwater Wetlands Rules and staff determined that the application met rule requirements.

As set forth herein, the Board does not have jurisdiction over the regulation of wetlands, and the public body which has jurisdiction, the NJDEP, considered and rejected the arguments of Princeton Hydro. The NJDEP has issued the requisite permits, which are contained in the record.

Primary Site Access

The record is clear that the only regular access to Eagle Rock Avenue is provided via Oval Road. Moreover, the IH-1 Zoning Ordinance, which was attached to the Settlement Agreement, recognizes that “unrestricted site access (ingress and egress) shall be permitted from Warner Road and Kuzik Drive.” (§ 25-19(e)(5)). When West Orange agreed to include the Subject Property as a third-round affordable housing compliance mechanism, the Township was fully aware that the only regular access to Eagle Rock Avenue from the Subject Property would be via Warner Road and Oval Road. Moreover, the Housing Element & Fair Share Plan unanimously adopted by the Planning Board on November 17, 2020, the relevant portions of which are attached hereto as **Exhibit B**, specifically noted that the Subject Property is suitable for the proposed development because “it is surrounded by residential uses and has Warner Road as the primary access.” (Housing Element, p. 9). Also, the West Essex Highlands Condominium Association, Inc. (the “Condominium Association”) was a party to the Settlement Agreement, acknowledging and agreeing to the proposed road configuration.

With respect to compliance with New Jersey’s Residential Site Improvement Standards (“RSIS”), the Township was advised by its Township Engineer and consulting traffic engineer from CME during the four-year mediation process which culminated in the Court-approved Settlement Agreement. West Orange agrees that having Warner Road and Kuzik Drive open to regular traffic “complies with RSIS regarding traffic circulation.” (Settlement Agreement, paragraph 2.5.3, p. 8). The Board’s own engineering expert agrees. See CME Memorandum dated October 29, 2025. Specifically, CME concluded that the proposed roadway system constitutes “minor collector roadways with total traffic volume that should not exceed 3,500 trips.” Id. at p.3. Accordingly, the Average Daily Traffic (“ADT”) of 2,728 trips anticipated for the proposed development complies with RSIS.

The Applicant appreciates the Board’s concern regarding off-site traffic impact, including the number of cars on Oval Road. However, as the Board is aware, the Subject Property is zoned to permit a multi-family inclusionary development having a density of 496 units. Accordingly, the Board “is without the authority to deny site plan approval because of off-site traffic conditions” because “the authority to prohibit or limit uses generating traffic into already congested streets or streets with a high rate of accidents is an exercise of the zoning power vested in the municipal governing body.” Dunkin Donuts of New Jersey, Inc. v. Twp. of N. Brunswick Planning Bd. 193 N.J. Super. 513, 515 (App. Div. 1984). When the Township Council adopted the IH-1 Zoning

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Ordinance, it exercised its zoning power to sanction the traffic generated by the development of the Subject Property.

While it is understandable to focus on ADT, there is nothing in the Board record to suggest that the regular use of Warner Road and Oval Road is unsafe under existing conditions or would pose a safety issue after the proposed development is constructed. Both Warner Road and Oval Road have 40-foot wide cartways and were designed to accommodate vehicular traffic. As supported by the record and set forth in further detail below, Applicant's traffic engineer analyzed the post-development Levels of Service ("LOS") for Warner Road and Oval Road and found that they have an acceptable LOS. There has been zero evidence offered to support the idea that either of the roadways is unsafe or does not have the capacity to accommodate the anticipated traffic volumes. With respect to the ingress and egress at the intersection of Oval Road and Eagle Rock Avenue, the installation of the required traffic signal will serve as a significant improvement to public safety.

A detailed LOS analysis was provided as part of Appendix F (pp. 15-27) to the Traffic Impact Study prepared by Langan Engineering and Environmental Services, LLC ("Langan") dated June 19, 2024. As set forth therein, the overall LOS for all portions of Eagle Rock Avenue will remain the same under as-built conditions as they are under existing no-build conditions, despite the added traffic.¹ Importantly, the LOS for the Oval Road-Eagle Rock Avenue intersection under signalized conditions represents a marked improvement compared to the current unsignalized no-build conditions. See Appendix F to Langan report, pp. 16, 18 & 20). There is no question that the intersection will be safer post-construction with the traffic signal than the unsignalized intersection which exists today. Finally, virtually all approaches/movements along Oval Road and all Condominium Roads under as-built conditions will have a LOS of "A" (38 out of 44). The remaining approaches/movements will have a LOS of "B". See Appendix F to Langan report, pp. 20-26.

Notwithstanding the foregoing, the Board requested that the Applicant explore a potential secondary primary access. The only other physically possible connection would require the opening of Oval Road into Essex Fells, which access is currently gated and may only be used for emergency access at the discretion of the West Orange Police Department pursuant to a written agreement (the "Oval Road Agreement").² In past discussions between my client and the Mayor

¹ Alternative as-built conditions were analyzed assuming unit counts of 350, 550, and 683 for the Subject Property. Applicant proposes the development of 496 units, as required by the IH-1 Zoning Ordinance.

² The Board's record includes a Declaration of Easement and Right of Way Agreement dated January 19, 1988 between Allied Signal, Inc., Essex Fells Country Club, and West Essex Highlands, Inc., recorded with the Essex County Clerk on January 28, 1988 in Deed Book 5012, Page 571. That recorded document contains the Oval Road Agreement, a 1987 Agreement between the Township of West Orange, the Township of Essex Fells, and West Essex Developers, Inc., the predecessor in interest to West Essex Highlands, Inc. The Oval Road Agreement governs the

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of Essex Fells, and as evidenced by the Mayor's on-the-record comments to the Board, Essex Fells has made clear that it will not consent to the opening of the Essex Fells portion of Oval Road for regular access. Nonetheless, West Orange has agreed that "if, in the future, it deems it necessary to open the portion of Oval Road [into Essex Fells], it will reach a mutually acceptable agreement with Essex Fells." See 1987 Agreement, paragraph 4. However, as set forth above, a second primary access to Oval Road and Eagle Rock Avenue is neither required to comply with RSIS nor needed to address any safety concerns.

The record is clear on this issue, and Applicant relies on the record, the Settlement Agreement, and IH-1 Zoning ordinance.

Water

Although the water approval process is typically a condition of approval which takes place during resolution compliance, the Applicant sought and obtained a will-serve letter and entered into an Extension Deposit Agreement with the water utility, New Jersey American Water Company ("NJ American"). As set forth on the site plan, the Subject Property will have a looped water system connected to the Condominium's water lines under Warner Road and Kuzik Drive. The Applicant has "the perpetual right to connect into and use... without any restrictions and conditions... all of the utility systems, including, but not limited to, electric, gas, water, storm drainage, sanitary sewerage, retention/detention basin(s) located on the [Condominium property]." See Easement Agreement (Exhibit A-6). The Applicant must comply with the Building Code to ensure that each building will have the necessary mechanical devices and fixtures for proper on-site water service. There is no objective evidence in the record to support the contention that a water tower is required for the Subject Property, which NJ American has already agreed to service. If, for any reason, a separate water tower structure is required, Applicant recognizes that it would need to apply for amended site plan approval.

Tree Replacement Plan

The Overall Landscape Plan is located on site plan sheet SP-29 and identifies the species of trees and plants to be installed on the Subject Property. The tree replacement calculation is set forth on site plan sheet SP-3. As the Board knows, and as supported by the record, Applicant satisfies the tree removal and replacement requirements of the IH-1 Zoning Ordinance.

Emergency Access

The Subject Property has direct emergency access to Howell Drive at the north end of Building D. This access was expressly recognized in the Concept Plan and Settlement Agreement and is expressly permitted by the IH-1 Zoning Ordinance. (§ 25-19(e)(6)). The emergency access road is 16 feet wide and can accommodate the Township's emergency vehicles. The road will be

circumstances under which the Essex Fells portion of Oval Road may be utilized for emergency vehicles only. (Deed Book 5012, Page 585).

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paved and has a slope of 10%, which complies with RSIS and is consistent with the Subject Property's other roadways. The emergency access will be controlled by a locked gate for which West Orange's emergency services personnel will have a key or other means of access to be determined by the Township.

The Township's emergency services personnel will determine if, and when, the access will be utilized, as well as the scope of use. It is anticipated that emergency services will typically utilize Warner Road and Kuzik Drive for access, and that the Howell Drive access will only be used in the extreme scenario that the Warner Road and Kuzik Drive entry points are inaccessible.

Applicant will be required to maintain the Howell Drive emergency access in satisfactory condition for use by West Orange's emergency personnel. As such, the emergency access road will be kept free of debris, excessive landscaping and snow, and will be included as part of the Subject Property's regular maintenance schedule. All on site employees and outside contractors will be instructed to regularly maintain the emergency access road to ensure its unobstructed access.

In the unlikely event of an emergency which causes the closure of Oval Road between Bongart Drive and Eagle Rock Avenue (thereby rendering Eagle Rock Avenue inaccessible), another point of emergency access exists through the Essex Fells portion of Oval Road as provided for in the Oval Road Agreement. As set forth therein, "emergency vehicles" are permitted to use this access. The Oval Road Agreement defines "emergency vehicles" as including, but not limited to, "firefighting equipment of all types, police vehicles, ambulance-rescue equipment, and such other vehicles as shall be directed by the West Orange Police Department." (Oval Road Agreement, ¶ 3). Applicant is unaware of any instance when the Oval Road emergency access has been utilized.

Ultimately, West Orange's emergency personnel will dictate whether the emergency access points would be utilized and the overall scope of their use, if necessary. Applicant will work with the Township to establish set parameters regarding emergency access to the extent possible, but Applicant expects that the decision to utilize the access will be on a case-by-case basis and at the discretion of the Township's emergency services.

Again, the record is sufficient on this issue and the proposed emergency access is supported by the Settlement Agreement and IH-1 Zoning Ordinance.

Condominium's Sewer Line

Applicant does not own and is not responsible for the maintenance of the underground sewer line which traverses an easement through the Subject Property (the "Condominium Sewer Line"). The Condominium Sewer Line is owned by and used solely by the Condominium Association, and it is the Condominium Association which is solely responsible for its maintenance and repair. As supported by the record, Applicant does not propose to connect to or otherwise rely upon the Condominium Sewer Line. Applicant provides the following historical

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information regarding the Condominium Sewer Line as a courtesy in response to the Board's inquiry, but does not rely upon it in support of the Application.

The Condominium Association is the successor-in-interest to West Essex Highlands, Inc. regarding the Condominium property in connection with the 1989 Easement Agreement (Exhibit A-6). Pursuant to that Agreement, the Association has a sewer easement running from south to north under the Subject Property. Upon information and belief, the easement contains the Condominium Sewer Line, a force main which is connected to a pump station located on Condominium Association property. The Condominium Sewer Line connects to a manhole in Howell Drive and the sewage is transmitted into Verona's sewer system. Pursuant to the Easement Agreement, the Condominium Association has "the perpetual right to install, construct, repair, maintain, reconstruct, operate and use without any restrictions or conditions" the Condominium Sewer Line.

Over the years, beginning prior to 2020, Applicant was alerted by the Township to a sewer smell emanating from the Condominium Sewer Line. Applicant met in the field with the Township Engineer and a representative from the Department of Public Works ("DPW") and discovered that certain manhole covers had been pried loose, likely by acts of mischief. In the summer, when the effluent was not flowing at a high rate, smells did escape. Applicant learned from the Condominium Association that they were having issues with their pump station. Although the Condominium Sewer Line is owned by the Association, Applicant had a contractor, Grabowski Construction, Inc., seal the manholes with concrete so that they could not be pried loose again. The sealing of the manholes was inspected by the DPW. Applicant performed this work as a courtesy to the Township and the Condominium Association, even though the maintenance of the Condominium Sewer Line was the Association's responsibility.

After the sealing of the manholes, Applicant was not apprised of any issue in connection with the Condominium Sewer Line until April 2023, when the Township received a neighbor complaint. Coincidentally, this was shortly after the community received mailed notices regarding Applicant's application for NJDEP permits in connection with the development of the Subject Property. However, despite visiting the Subject Property on numerous occasions, no smell was detected and Applicant did not hear from the Township again.

As a residential developer seeking to develop the Subject Property, Applicant has no desire to have a smell emanating from the Condominium Sewer Line. As it has done in the past, my client will take seriously any future issue concerning the Condominium Sewer Line which may arise, even though the maintenance and repair of the line is the Association's responsibility.

We trust that the foregoing addresses the Board's inquiries. As a result of almost 30 meetings spanning more than one-and-a-half years, the Board has a complete record so that it may now make an informed decision. Except for the one bulk variance (building foundation exposure) and a single de minimis exception (sidewalks on one side of a portion of Warner Road/Road D), which the Board has already voted to approve, the Application conforms with the requirements of the IH-1 Zoning Ordinance as contemplated by the Settlement Agreement.

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Thank you for your courtesies. Kindly provide at your earliest convenience the hearing date on which the Board will conclude this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bryan Plocker", with a long horizontal flourish extending to the right.

BRYAN D. PLOCKER, ESQ.

BPlocker@huttshim.com

cc: Jamilet Baquerizo Vite, Board Secretary (via email)