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BOARD OF PUBLIC UTILITIES  
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CASE MANAGEMENT  
MAY 20 2019  
BOARD OF PUBLIC UTILITIES  
TRENTON, NJ  
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May 17, 2019

**VIA CERTIFIED MAIL AND EMAIL**

Aida Comacho Welch  
Board Secretary  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625

W019050628

**Re: Toll Brothers, Inc. Petition to the New Jersey Board of Public Utilities  
Seeking Jurisdictional Determination Over Private Sewage Transmission  
System**

Dear Ms. Comacho Welch:

This firm represents Toll Bros., Inc. or its affiliates ("Toll") in connection with the above-referenced petition to the New Jersey Board of Public Utilities ("BPU") seeking a determination as to whether the BPU has jurisdiction over the private sewage transmission system described therein. On behalf of Toll, please find one (1) original and ten (1) copies of the subject petition as well as the requisite filing fee.

We appreciate your attention to this matter.

CMS  
LEGAL  
DAG  
RPA  
M. Kammer  
M. Lupo  
WATER (+)

Very truly yours,

*Kevin J. Coakley / mjc*

Kevin J. Coakley

KJC/mja

cc: Paul Flanagan, Executive Director, BPU (via email)  
Carol Artale, Acting Chief Counsel, BPU (via email)  
Suzanne Patnaude, Senior Counsel, BPU (via email)  
Mike Kammer, Director, Division of Water, BPU (via email)  
Megan Lupo, Bureau Chief, BPU (via email)  
Kevin Kernahan, Toll Bros., Inc. (via email)

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CASE MANAGEMENT

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MAIL RECEIVED

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(973) 535-0500  
Attorneys for Petitioner Toll Bros., Inc.

<b>IN THE MATTER OF THE PETITION OF TOLL BROS., INC. FOR A JURISDICTIONAL DETERMINATION BY THE BOARD OF PUBLIC UTILITIES</b>	<b>STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES  PETITION</b>
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Petitioner Toll Bros., Inc. maintaining its principal office at 250 Gibraltar Road, Horsham, Pennsylvania, hereby petitions this Honorable Board for a determination as to whether the Board of Public Utilities (“BPU”) has jurisdiction over the private sewage transmission system described herein.

#### **Factual Background**

1. Toll Bros., Inc. or its affiliates (“Toll”) is currently under contract to purchase a portion of property located in the Borough of Florham Park, Morris County, New Jersey, as more particularly shown on **Exhibit A** attached hereto, from the Sisters of Charity of Saint Elizabeth (“SCSE”), for purposes of developing a residential community (the “Project”).
2. As part of the transaction, Toll is considering entering into a “Sewer Utility Usage & Cost Allocation Agreement”, as more particularly described herein, by which it would assume certain responsibilities regarding the ownership, administration, maintenance, and management of a private sewage transmission system currently owned and operated by the SCSE.

3. By way of background, SCSE and its affiliate, the College of Saint Elizabeth (“CSE”) are not-for-profit entities that own certain real property situated partially in the Borough of Florham Park (the “Borough”) and partially in the Township of Morris (the “Township”) (together, the “Municipalities”). A portion of the SCSE property is also occupied by another affiliate/not-for-profit entity, the Academy of Saint Elizabeth (“AOSE”).
4. On July 28, 1981, SCSE entered into an agreement with the Municipalities and the Florham Park Sewerage Authority (the “1981 Agreement”) which permitted SCSE to develop a sanitary sewer transmission system in, on and under its property (the “SC System”), and over a limited portion of the Municipalities’ right-of-ways. Attached hereto as **Exhibit B** is a copy of the sanitary sewer utility plan depicting the SC System.
5. The SC System is largely comprised of sewer collector lines located on private property. The SC System also includes a waste water pumping station located on SCSE’s private property near the intersection of Punchbowl Road and Park Avenue in the Borough (the “Pump Station”) and a force main (“Force Main”) which pumps waste water from the Pump Station to the point of its connection to the Township sewage disposal system. The Force Main is located partially on SCSE’s private property and partially on Punchbowl Road, a public right-of-way.
6. As such, the only part of the SC System located on public right-of-ways is a portion of the Force Main and a limited portion of the collecting lines transmitting sewage from “Other Users”, as defined below, to the Pump Station.
7. The 1981 Agreement authorized SCSE to own, maintain and operate the SC System

and required SCSE to make the SC System available to other nearby property owners.

8. Since that time, SCSE has made the SC System available to owners of the Morris County Golf Club and the Villa at Florham Park (“Other Users”) pursuant to separate agreements which specify the terms and conditions of each party’s usage rights and limitations.
9. The Township has at all times accepted wastewater flow from the SC System and imposed service charges upon SCSE for the same. SCSE has then in turn developed a cost allocation arrangement with the Other Users by which the total amount of service charges imposed by the Township are shared amongst SCSE and the Other Users. Upon information and belief, SCSE does not generate excess funds or otherwise profit from the Other Users.

#### **The Proposed Sewer Agreement**

10. As noted, Toll is currently under contract to purchase a portion of SCSE’s property as shown on **Exhibit A** attached hereto.
11. As part of the transaction, Toll is considering entering into a “Sewer Utility Usage & Cost Allocation Agreement” by and between itself, SCSE and the Other Users, with the consent of the Municipalities (the “Proposed Sewer Agreement”).
12. The Proposed Sewer Agreement would convey to Toll those portions of the SC System representing “Common Sewer Facilities” (i.e., the Pump Station and Force Main) and “Shared Sewerage Lines” (i.e., sewerage lines which connect multiple users’ properties to the SC System).
13. Under the Proposed Sewer Agreement, Toll would assume SCSE’s current role in administering, maintaining, and managing the Common Sewer Facilities and Shared

Sewage Lines, and allocating the total amount of operational costs, including charges imposed by the Township and other SC System operating expenses, amongst the parties based on their respective wastewater flow.

14. The Proposed Sewer Agreement would be executed by and between sophisticated business parties after a diligent review of the risks and merits of the transaction and an opportunity to consult with competent legal counsel.
15. Toll would not receive profit from the Proposed Sewer Agreement. Rather, all revenue received by Toll will be offset by expenses.
16. Moreover, Toll would only undertake the responsibilities contemplated by the Proposed Sewer Agreement on a temporary basis. Toll intends to form a not-for-profit homeowner's association ("HOA") and assign and transfer all of its rights and interests under the Proposed Sewer Agreement to the HOA.
17. During this brief time period in which Toll is responsible for the SC System, Toll will not provide sewer service to the general public or allow any additional parties other than the parties to the Proposed Sewer Agreement and members of the HOA to connect to the system, unless required by the Municipalities.

#### **RELIEF REQUESTED**

18. Toll respectfully requests confirmation that under the circumstances described above, the BPU does not have jurisdiction over Toll as an investor-owned wastewater utility pursuant to N.J.A.C. 14:9-1.2, or otherwise as a public utility pursuant to N.J.S.A. 48:2-13, during the period after conveyance of the Common Sewer Facilities and Sewerage Lines to Toll and prior to conveyance of said facilities to the HOA.

19. In the alternative, Toll requests that the BPU forbear jurisdiction during the time period while Toll operates and maintains the SC System under the Proposed Sewer Agreement, until such time as it transfers its rights and interests under the Proposed Sewer Agreement to the HOA.

Connell Foley LLP  
Attorneys for Petitioner

By: Kevin J. Coakley/mjc  
Kevin J. Coakley, Esq.

DATED: May 17, 2019