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ENVIRONMENTAL PROTECTION

OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION

PROPOSED AMENDMENT TO THE ATLANTIC COUNTY WATER QUALITY

MANAGEMENT PLAN

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) seeks public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment proposal (Program Interest No. 435445, Activity No. AMD150002), submitted by Mr. Steven Dalton, Esq. on behalf of Block 846 Associates LLC, would expand the sewer service area (SSA) of the Atlantic County Utilities Authority Sewage Treatment Plant (STP) by 10.3 acres to allow for the construction of a 24-unit condominium development of 3 buildings with 8 three-bedroom units per building. The proposed project site, identified as Sunset Point Condominiums is located in Atlantic City, Atlantic County on a portion of Block 846/Lot(s) 1, north of Atlantic-Brigantine Boulevard (County Route 638) just east of the Brigantine Bridge. This proposed amendment has been reviewed in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15 and represents the Department's decision to proceed further with the amendment application as provided in N.J.A.C. 7:15-3.5(g)5.

Pursuant to N.J.A.C. 7:15-4.4(d), sewer service may only be provided to areas that are not identified as environmentally sensitive areas (ESAs), certain coastal planning areas, or areas

subject to US Environmental Protection Agency (EPA) 201 Facilities Plan grant conditions, except as otherwise provided at N.J.A.C. 7:15-4.4(i) through (l).

Pursuant to N.J.A.C. 7:15-4.4(e), ESAs are any contiguous area, based on a composite Geographic Information System (GIS) analysis, of 25 acres or larger consisting of any of the following features alone or in combination: areas mapped as threatened and endangered wildlife species habitat as identified on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Wildlife (Landscape Maps) as Rank 3, 4, or 5; areas mapped as Natural Heritage Priority Sites; Category One waters designated in the Department's Surface Water Quality Standard, N.J.A.C. 7:9B, based on the Department's maps of such waters and their corresponding 300-foot riparian zone based upon the Flood Hazard Area Control Act Rules, N.J.A.C 7: 13; and wetlands as mapped pursuant to N.J.S.A. 13:19A-1 and 13:9B-25.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as environmentally sensitive areas, such as threatened and endangered wildlife species habitat identified pursuant to N.J.A.C. 7:15-4.4(e)1. Areas identified by the Landscape Maps as being suitable habitat for threatened and endangered species Ranks 3 (State threatened), Rank 4 (State endangered), or Rank 5 (Federal endangered or threatened) are not to be included in proposed SSAs except as provided at N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped as threatened or endangered wildlife habitat pursuant to N.J.A.C. 7:15-4.4(e)1, the Department utilized its Landscape Maps, version 3.1, available at <http://www.nj.gov/dep/gis/listall.html>. Review of the Landscape Maps for this proposed project site has determined that a portion of the

site is identified as Rank 4 Yellow Crowned Night Heron, Least Tern, Peregrine Falcon, Cattle Egret, and Black Crowned Night Heron habitat.

The WQMP rules at N.J.A.C. 7:15-4.4(i)2 allow for the inclusion of ESAs in SSA provided that the ESAs are located within an area of an endorsed plan identified for growth and approved by the State Planning Commission, that the Department has determined that such areas are not critical to the survival of a local population of endangered and threatened wildlife species, and that ESAs included in SSA remain subject to the Department's regulatory permitting programs on a site specific basis. This proposed project is located in Atlantic City, which is identified for growth as a Designated Urban Center approved by the State Planning Commission in 1992.

N.J.A.C. 7:15-4.4(j)2 provides that an applicant may rebut the presumption that the Department's environmental data is accurate by providing a Habitat Suitability Determination (HSD) prepared pursuant to N.J.A.C. 7:15-4.6 that demonstrates that an area is not suitable habitat for endangered or threatened wildlife species. In February 2015 the applicant submitted a HSD, prepared by Dubois Environmental Consultants. The Department reviewed the HSD, all relevant documents submitted with the WQMP amendment application, existing and historic environmental data on the site, as well as conducted a site investigation and coordinated with staff of the Department's Endangered and Nongame Species Program (ENSP). The Yellow Crowned Night Heron, which requires similar habitat conditions as the Black Crowned Night Heron, has not been observed on Department surveys and reviews as having nested within range of the proposed project site. However, the site was found to be suitable habitat for the Least Tern, Peregrine Falcon, Cattle Egret, and Black Crowned Night Heron.

Where a proposed site includes suitable habitat for an identified endangered or threatened wildlife species, N.J.A.C. 7:15-4.4(k) provides that areas designed as ESA based on the Landscape Maps may be included in SSA provided the Department determines, based upon a review of data provided by the applicant as part of a Habitat Impact Assessment (HIA), that the proposed activity avoids the endangered or threatened wildlife species habitat, will result in insignificant or discountable effects on the activities of the species (such as not being critical to the survival of a local population), or includes some adequate degree of conservation measures. N.J.A.C. 7:15-4.7 provides the information that must be submitted by the applicant for the Department to review an HIA. The applicant submitted an HIA in July 2015, evaluating impacts to the habitat for the Black Crowned Night Heron, Least Tern, Peregrine Falcon, and Cattle Egret and proposing mitigation measures, to allow the Department to determine that the area was not critical to the survival of a local population, as described below.

With respect to the Least Tern, Peregrine Falcon, and Cattle Egret, the Department determined that the project would result in insignificant or discountable effects to the activities of the species because there were no populations of the species present on the proposed project site. The onsite population of Black-crowned Night-herons to be impacted represents only 0.9 % of the estimated New Jersey population. The Black Crowned Night Heron has not used the habitat in a substantial period of time. Therefore, the Department has determined that, while the project does not avoid the habitat, the project will result in insignificant or discountable effects to the activities of the local population of Black Crowned Night Herons. To provide safeguards for possible impacts to the habitat, the applicant has proposed conservation measures, as described below:

1. The proposal will not remove all suitable nesting habitat, so the potential for continued nesting elsewhere on the site will remain post-construction;
2. The proposal will result in the permanent protection of the remaining 33.4 acres of the site via a conservation easement;
3. The applicant has proposed steps (fencing, timing restrictions) to minimize the potential for human intrusion into the conservation area and secondary impacts to the remainder of the habitat; and
4. The applicant has agreed to plant an equivalent amount of area within the conservation area with a similar species composition to that being impacted by the project to mitigate for the direct loss of nesting habitat.

This amendment is subject to the following conditions: A 33.4-acre portion of the site will be dedicated as open space and placed under a conservation easement to prevent any future development; Formal transfer of ownership of the property to a State, Federal or Conservation Organization is required. The Department has indicated a willingness to accept the 33.4-acre conservation area as a donation. Pre-construction vegetation removal will occur outside of the breeding season (April 15-August 15) to avoid the immediate displacement of any nesting birds. A fence will be erected along the rear boundary of the proposed development site to deter future residents from disturbing the protected habitat and to identify the extent of each property, and the planting of a small stand of cedars between 100 and 200 meters (between 328 and 656 feet) from the proposed development to mitigate for the direct loss of nesting trees. Standard mitigation requirements of three (3) years (growing seasons) of monitoring and an assurance of 85 percent survivorship of planted vegetation will apply.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as environmentally sensitive areas, such as Natural Heritage Priority sites identified pursuant to N.J.A.C. 7:15-4.4(e)2. Areas mapped as Natural Heritage Priority Sites are not to be included in proposed SSAs, except as provided at N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped as Natural Heritage Priority Sites, the Department utilized its GIS data at <http://www.nj.gov/dep/gis/listall.html>. There are no Natural Heritage Priority sites located on the subject site.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as environmentally sensitive areas, such as Category One waters and their corresponding 300-foot riparian zones pursuant to N.J.A.C. 7:15-4.4(e)3. Areas identified as Category One waters and their corresponding 300-foot riparian zones are not to be included in SSAs, except as provided at N.J.A.C. 7:15-4.4(i) through (l). To evaluate the existence of Category One waters and their corresponding 300-foot riparian zones pursuant to N.J.A.C. 7:15-4.4(e)3, the Department utilized its GIS data at <http://www.nj.gov/dep/gis/listall.html>. There are no Category One waters or corresponding 300 foot riparian zones located on the subject site.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as environmentally sensitive areas, such as mapped wetlands pursuant to N.J.A.C. 7:15-4.4(e)4. Areas mapped as wetlands pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 are not to be included in proposed SSAs, except as provided at N.J.A.C. 7:15-4.4(i) through (l). To evaluate the existence of mapped wetlands pursuant to N.J.A.C. 7:15-4.4(e)4, the Department utilized its GIS data at <http://www.nj.gov/dep/gis/listall.html>. Pursuant to N.J.A.C. 7:15-4.4(j)3, the applicant submitted

a Letter of Interpretation/Line Verification File No. 0102-05-0006.1 FWW050001 (LOI), confirming the extent of wetlands and transition areas on the site. This documentation confirms that, while wetlands are present on the proposed project site, there are no wetlands within the proposed SSA.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as coastal planning areas pursuant to N.J.A.C. 7:15-4.4(f). Areas mapped as Coastal Fringe Planning Areas, Coastal Rural Planning Areas, and Coastal Environmentally Sensitive Planning Areas are not to be included in SSA, except, as provided under N.J.A.C. 7:15-4.4(f)1 and 2 to abate an existing imminent public health and safety issue, to accommodate infill development or as necessary to create a linear boundary that coincides with recognizable geographic, political, or environmental features depicted in the Department's GIS coverage. To evaluate the existence of any coastal planning areas identified in N.J.A.C. 7:15-4.4(f), the Department evaluated the presence of coastal planning areas identified on the CAFRA Planning Map available at <http://www.nj.gov/dep/gis/install.html>. The subject site is not located within any Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Planning Areas.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as areas subject to 201 Facilities Plan grant conditions pursuant to N.J.A.C. 7:15-4.4(g). Areas with Federal 201 grant limitations that prohibit the extension of sewers into specified ESAs are excluded from SSA, unless documentation can be provided demonstrating that a mapping revision or waiver has been obtained from EPA, as provided under N.J.A.C 7:15-4.4(g). To evaluate the

existence of 201 Facilities Plan grant conditions that prohibit the expansion of SSA to ESAs, the Department reviewed the EPA list of New Jersey Counties with ESA Grant Conditions at <https://www3.epa.gov/region02/water/sewer.html>. There are no 201 Facilities Plan grant conditions for the site.

Pursuant to N.J.A.C. 7:15-4.4(h)1 and (h)2, the Department shall consider in the delineation of areas eligible for sewer service, the land uses allowed in zoning ordinances and future land uses shown in municipal or county master plans. The Atlantic County Zoning Board requires that development in the RM3 Multifamily Medium-Rise Apartment Residential District include 30 units per acre. The proposed project is to develop 24 units of three-story townhomes. On March 22, 2007, the Atlantic City Zoning Board granted a use variance for the project by Resolution No. 26. On April 26, 2007, the Zoning Board granted site plan approval by Resolution No. 32. On September 3, 2008, the Atlantic County Department of Planning and Regional Development granted site plan approval. Therefore, the proposed project is consistent with local zoning and the county and local master plans.

Pursuant to N.J.A.C. 7:15-3.5(j)2, for projects that propose to add 100 or more acres to the SSA, or where the additional SSA would generate 20,000 gallons per day (gpd) or more of wastewater, the applicant must prepare a modification to the wastewater treatment capacity analysis to include the proposed project or activity, pursuant to N.J.A.C. 7:15-4.5(b). The project plans to add 10.3 acres to the SSA, and the projected wastewater flow for the proposed project to be received by Atlantic County Utilities Authority is 7,200 gpd, based on flow calculated pursuant to N.J.A.C.

7:14A-23.3. Therefore, no wastewater treatment capacity analysis is required for this proposed amendment.

This notice is to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at:

The Atlantic County Department of Regional Planning and Development
Route 9 and Dolphin Avenue
P O Box 719
Northfield, NJ 08225-0719

AND

NJ Department of Environmental Protection
Office of Water Resources Management Coordination
P.O. Box 420, Mail Code 401-02A
401 East State Street,
Trenton, New Jersey 08625-0420

The Department's file is available for inspection through the Open Public Records Act. Requests can be made on-line at <http://www.nj.gov/dep/opra/>.

Interested persons may submit written comments on the proposed amendment to the WQM Program Docket, at the Department address cited above. Comments should reference Program Interest No. 435445, Activity No. AMD150002 and must be submitted within 30 days of the date of this public notice or within 15 days after the close of the last public hearing, as provided below. A copy should be sent to

Mr. Anthony Esochaghi
Atlantic County Department of Regional Planning and Development
P O Box 719
Northfield, NJ 08225-0719

AND

Mr. Steven Dalton
Giordano, Halleran & Ciesla
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Red Bank, NJ 07701-6777

A public hearing, as required by Atlantic County’s adopted amendment procedures, will be held by the Atlantic County Department of Regional Planning and Development for the proposed amendment on April 19, 2017, at 10:00 AM in the Stillwater Building, Freeholder Meeting Room, 201 South Shore Road, Northfield, New Jersey. All comments must be submitted by May 4, 2017.

Interested persons may request in writing that the Department hold a non-adversarial public hearing on the amendment or extend the public comment period in this notice. Such request should reference Program Interest No. 435445, Activity No. AMD150002 and must demonstrate sufficient public interest for the public hearing or extension of the comment period, as defined under N.J.AC. 7:1D-5.2(d). The request must be submitted within 30 days of the date of this notice to the WQM Program Docket at the Department address cited above. Should the Department decide to hold a public hearing, notice of said hearing and the revised comment period’s closing date will be published in a future New Jersey Register. If a non-adversarial public hearing for the amendment is held, the public comment period provided by this notice shall close 15 days after

the last public hearing. All comments submitted prior to the close of the comment period shall be considered by Atlantic County and the Department in reviewing the amendment request.

Sewer service is not guaranteed by this amendment. This proposed amendment represents only one part of the permit process and other issues may need to be addressed. These issues may include, but are not limited to, obtaining all permits for the proposed projects; meeting all regulatory requirements for needed permits, compliance with stormwater regulations; antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works; development in wetlands and flood prone areas, or other environmentally sensitive areas which are subject to regulation under Federal or State law or to any contractual arrangements between municipalities, authorities and/or private parties. Inclusion in the sewer service area as a result of the approval of this amendment does not eliminate the need to obtain all necessary permits, approvals or certifications required by any Federal, State, County or municipal review agency with jurisdiction over this project/activity.

SIGNED

Colleen Kokas, Director
Office of WRM Coordination
Department of Environmental Protection
February 10, 2017

Date