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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION

Proposed Amendment to the Cape May 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 Cape May County Water Quality Management (WQM) Plan. This amendment proposal (Program Interest No. 435464, Activity No. AMD170001), identified as “Nagel Property,” submitted by Richard Hluchan, Esq. on behalf of Milton and Patricia Nagel, would expand the sewer service area (SSA) of the Lower Township Municipal Utilities Authority Sewage Treatment Plant by 0.07 acres to allow for the construction of a four-bedroom single family home. The proposed project site is in Lower Township, Cape May County, on a portion of Block 753.18, Lot 2, south of the intersection of Portsmouth Road and Rockport Drive. As the site is located within a coastal fringe planning area, the applicant seeks a Water Quality Management Plan amendment under the infill exemption pursuant to N.J.A.C. 7:15-4.4(f)2. N.J.A.C. 7:15-1.5 defines infill development as the development of undeveloped or underdeveloped land in an area that is contiguous to and substantially surrounded by developed land that is served by as wastewater treatment facility as of November 7, 2016, and that will generate less than or equal to 8,000 gallons per day (gpd). Further, N.J.A.C. 7:15-4.4(f)2 provides that Coastal Environmentally Sensitive Planning Areas shall not be identified as eligible for SSA, unless documentation is provided demonstrating that their inclusion is necessary to accommodate infill development or as necessary to create a linear boundary that coincides with recognizable geographic, political, or environmental features depicted in Department GIS coverages. The northern, eastern, and western boundaries of the area proposed for SSA are substantially and significantly developed and are

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served by the Lower Township Municipal Utilities Authority Sewage Treatment Plant. Further, the proposed SSA would add 300 gpd to the SSA. Accordingly, the Department has determined that the proposed amendment qualifies as infill development. 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; 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 ESAs, 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 under N.J.A.C. 7:15-4.4(i) through

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(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 3.3 at <http://www.nj.gov/dep/gis/listall.html>, and determined that the site is mapped as Rank 4 habitat for Bald Eagle, Red Shouldered Hawk, Black Crowned Night Heron, and Cattle Egret.

The Department previously reviewed a Coastal General Permit application for the project and determined that the project as proposed would not result in adverse impacts to endangered or threatened species or their habitat provided that the proposed project preserved woody vegetation between the proposed home and the adjacent marsh habitat. Based on the above finding, the amount of habitat being impacted and the life-history characteristics of the species documented for the site which are listed above, the Department does not believe that the project site is critical to the survival of a local population of endangered or threatened species.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as ESAs, 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 under N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped as Natural Heritage Priority Sites pursuant to N.J.A.C. 7:15-4.4(e)2, 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 ESAs, 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 under 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.

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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 ESAs, 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 under 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> and identified wetlands on the subject site. Pursuant to N.J.A.C. 7:15-4.4(j)3, the applicant provided a CAFRA Amelioration Permit File No. 0505-15-0003.1 APL150001, which addresses impacts to wetlands and requires a conservation easement for 4,004 square feet of wetlands on the property.

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 located within a Coastal Fringe Planning Area. As described above, the proposed sewer service area will accommodate infill development as provided under N.J.A.C. 7:15-4.4(f)2.

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

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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://www.epa.gov/npdes-permits/environmentally-sensitive-area-esa-grant-condition-waiver-program-region-2>. There are no 201 Facilities Plan grant conditions for the proposed project 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. On January 5, 2017, the Lower Township Board of Adjustment issued Resolution 16-36-ZBA granting a variance to allow construction of the proposed single-family home. In a December 15, 2017 e-mail, the Cape May County Planning Board stated that it would not offer a position on the proposed project. Based on this approval and the incorporated endorsements, the Department has determined that 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 proposed project plans to add 0.07 acres to the SSA, and the projected wastewater flow for the proposed project to be received by the Lower Township Municipal Utilities Authority Sewage Treatment Plant is 300 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.

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

Cape May County Planning Department

4 Moore Road

Cape May Court House, NJ 08210

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. 435464, Activity No. AMD170001 and must be submitted within 30 days of the date of this public notice or within 15 days of the last public hearing, as described below. A copy should be sent to:

Mr. Kevin Thomas

Cape May County Department of Health

4 Moore Road

Cape May Court House, NJ 08210

AND

Mr. Richard Hluchan

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Hyland Levin LLP

6000 Sagemore Drive – Suite 6301

Marlton, NJ 08053

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. 435464, Activity No. AMD170001 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 Cape May 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. 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

Alan Miller, Manager
Office of WRM Coordination
Department of Environmental Protection

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March 9, 2018

Date