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## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

#### **OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION**

#### **Proposed Amendment to the Ocean 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 Ocean County Water Quality Management (WQM) Plan. This amendment proposal (Program Interest No. 435448, Activity No. AMD170006), submitted by Connell Foley LLP on behalf of Shapiro Development Company LLC and identified as “Shapiro Property”, would expand the sewer service area (SSA) of the Ocean County Utilities Authority (OCUA) Southern Water Pollution Control Facility (WPCF) by 0.74 acres to allow for the construction of four (4) five-bedroom single family homes. The proposed project site is in Long Beach Township, Ocean County, west of South Long Beach Boulevard (County Route 607) and north of Rosemma Avenue on a portion of Block 1.61, Lot 1. The proposed project site was previously mapped as coastal wetlands. On September 16, 2016, the Department approved the applicant’s request for a coastal zone map amendment, removing the sandy upland area of property from Department’s coastal wetlands mapping (see October 17, 2016 New Jersey Register at 48 N.J.R. 2130(a)). As the proposed project site is within a coastal environmentally sensitive planning area, the applicant seeks a WQM 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

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surrounded by developed land served by a 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 western, eastern, and southern boundaries of the area proposed for SSA are substantially and significantly developed, and are served by the OCUA Southern WPCF. Further, the proposed SSA would add 1,200 gpd to the SSA. Finally, as explained below, the change in environmental attributes suggests that it is appropriate to allow this property to be developed. 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

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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 (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>. Review of the Landscape Maps identified a portion of the proposed project site as habitat for Rank 3 Black-Crowned Night Heron, Rank 3 and Rank 4 Cattle Egret, and Rank 4 Least Tern, Osprey, and Yellow-Crowned Night Heron.

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. On November 9, 2017, the applicant submitted a HSD prepared by EcolSciences, Inc. Department review of the HSD determined that the proposed

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project site does not presently function as a critical wildlife habitat nor does it provide all the necessary components to sustain endangered or threatened species for the following reasons:

- the site primarily mapped as potential foraging habitat for the above referenced species with no critical nesting or rookery habitat identified;
- the area requested to be added to the sewer service area has a type of habitat is not commonly used for foraging by the above species; and
- that due to the presence of nearby houses and roads, and the overall property size, the property in its entirety is not a suitable habitat for the documented species.

Therefore, the Department has determined that the habitat is not suitable for the identified species. To protect nearby off-site foraging habitat from the impacts of the proposed residential development, the Department will require the applicant to plant screening vegetation, which will create a visual screen between the nearby foraging habitat and the human disturbance associated with the proposed lots. As per a March 8, 2018 email from Michelle Tantalla of Connell Foley LLP, the applicant has agreed to provide the screening vegetation.

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.

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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. 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 determined that there are wetlands mapped on the project site. The coastal wetlands map amendment described above evaluated the impacts to the site from Hurricane Sandy. There are no wetlands in 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

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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 Environmentally Sensitive Planning Area. As described above, the proposed SSA 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 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 providing for the restriction of sewer service to ESAs.

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 November 20, 2017, the Long Beach Township Engineer issued a letter stating that the proposed project is consistent with the Township's zoning ordinances and master plan. On November 17, 2017, the Ocean County Planning Board

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issued an email stating that the Board would not advance a position regarding the consistency of the proposed amendment with the county master plan.

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 0.74 acres to the SSA, and the projected wastewater flow for the proposed project to be received by OCUA Southern WPCF is 1,200 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 Ocean County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at:

Ocean County Department of Planning

129 Hooper Avenue

Toms River, NJ 08754

AND

NJ Department of Environmental Protection

Office of Water Resources Management Coordination

P.O. Box 420, Mail Code 401-02A

401 East State Street,

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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. 435448, Activity No. AMD170006 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. Anthony Agliata

Ocean County Department of Planning

P.O. Box 2191

Toms, River NJ 08754-2191

AND

Ms. Michelle Tantalla

Connell Foley LLP

56 Livingston Avenue

Roseland, NJ 07068

**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. 435448, Activity No. AMD170006 and must demonstrate sufficient public interest for the public hearing or extension of the comment period, as defined

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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 Ocean 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

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Alan Miller, Manager  
Office of WRM Coordination  
Department of Environmental Protection  
May 10, 2018

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Date