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ENVIRONMENTAL PROTECTION

WATER RESOURCES MANAGEMENT

DIVISION OF WATER MONITORING AND STANDARDS

Proposed Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that the Department of Environmental Protection is seeking public comment on a proposed site specific amendment, in accordance with the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-et seq., and the Water Quality Management Planning rules, N.J.A.C. 7:15. This DEP-initiated amendment (Program Interest No. 435464, Activity No. AMD180001) to the Cape May County Water Quality Management (WQM) Plan and the Cape May County Wastewater Management Plan (WMP) would expand the Lower Township Municipal Utilities Authority (LTMUA) sewer service area (SSA) by 5.7 acres to serve a proposed residential subdivision of 20 three-bedroom homes. This project, identified as "Breakwater Road Subdivision," is located on Block 495.01, Lot 13.01, in Lower Township, Cape May County and would add a projected wastewater flow of 6,000 gallons per day (gpd) to be received by the LTMUA's wastewater treatment facility (NJPDES #NJ0023809) based on flow calculated pursuant to N.J.A.C. 7:14A-23.3.

In accordance with N.J.A.C. 7:15-3.3(b), site specific amendments are limited to proposed alterations to eligible sewer service area as needed to address a specific project or activity. Under N.J.A.C. 7:15-3.5(j)2, large site specific amendments must modify the wastewater treatment capacity analysis prepared in accordance with N.J.A.C. 7:15-4.5(b) to include the proposed project or activity. This site specific amendment is considered to be small because it impacts less than 100 acres and would generate less than 20,000 gpd of wastewater; therefore, a modified wastewater treatment capacity

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analysis is not required.

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) under N.J.A.C. 7:15-4.4(e) based on a composite geographic information systems (GIS) analysis as any contiguous area of 25 acres or larger, certain coastal planning areas, or areas subject to U.S. Environmental Protection Agency (USEPA) 201 Facilities Plan grant conditions, except as otherwise provided at N.J. A.C. 7:15-4.4(i) through (l). The DEP conducted an evaluation of the project site using a GIS shapefile provided by K2 Consulting Engineers compared to the DEP's GIS data layers available at <http://www.nj.gov/dep/gis/listall.html> and/or other information as noted below, to determine the presence of any such areas in accordance with N.J.A.C. 7:15-4.4(e) through (g) and made the following findings:

The DEP evaluated the Landscape Maps version 3.3 and the "Landscape Project Data" GIS layer and determined that portions of the site is mapped as Rank 4 habitat for cattle egret and migratory raptors concentration (which includes state-listed threatened and endangered species). N.J.A.C. 7:15-4.4(j)2 provides that an applicant may rebut the presumption that the DEP's environmental data is accurate by providing a Habitat Suitability Determination (HSD) prepared pursuant to N.J.A.C. 7:15-4.6, which demonstrates that the area does not include suitable habitat for endangered or threatened wildlife species. Since this is a DEP-initiated amendment, an HSD is not required. Instead, in accordance with N.J.A.C. 7:15-4.4(e)2, (i)2, and 4.7(e)3, the DEP considered the likely effects of the proposed development on the local population of cattle egret and migratory raptors based on the best information available and determined that there are no areas critical to the survival of the local

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population of cattle egret and migratory raptors within the expanded sewer service area and the proposed project will not adversely impact any area critical to the survival of a local population of endangered or threatened wildlife species since the upland area of the project site had been legally cleared in 2017. There is a substantial amount permanently preserved cattle egret and migratory raptor habitat within the Cape Island Wildlife Management Area (419 acres) and the Cape May Coastal Wetlands Wildlife Management Area (17,762 acres). The loss of 5.7 acres of habitat legally cleared for this subdivision "is not critical to the survival of a local population" (emphasis added) of cattle egret or migratory raptors.

The DEP evaluated the "Natural Heritage Priority Sites" GIS layer and determined that there is a Natural Heritage Priority (NHP) Site called "Cold Springs Woods" located on the project site. N.J.A.C. 7:15-4.4(l) provides that an area designated as environmentally sensitive because it has been identified as an NHP may be included in the sewer service area if the DEP determines that the proposed project or activity avoids or does not adversely impact natural resource element(s) occurring within the NHP Site based on its review of a Habitat Suitability Determination (HSD) under N.J.A.C. 7:15-4.6 or a Habitat Impact Assessment under N.J.A.C. 7:15-4.7. As explained earlier, an HSD is not required for a DEP-initiated amendment. The DEP reviewed the best available information and determined that, while Cold Spring Woods NHPS supports occurrences for six species tracked by the Natural Heritage Program, which includes one State Endangered plant species and five additional Plant Species of Concern, the location of the proposed 5.7 acres that will contain the 20 single-family homes does not support any known precise occurrences of plant species tracked by the Natural Heritage Program as State Endangered or Plant Species of Concern.

The DEP evaluated the "Surface Water Quality Standards" GIS layer and determined that

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there are no Category One (C1) waters or 300-foot riparian zones along any C1 waters or upstream tributaries within the same HUC-14 watershed of any C1 waters located within the expanded sewer service area.

The DEP evaluated the "Wetlands 2012" GIS layer available and determined that there are wetlands located on the project site; however, a Letter of Interpretation (LOI/Line Verification File No. 0505-08-0019.1 FWW170001) was issued by the DEP confirming that there are no wetlands located within the expanded sewer service area.

The DEP evaluated the presence of coastal planning areas identified on the "CAFRA Layers" GIS layer and determined that, while the project is located within a Coastal Fringe Planning Areas, this project meets the definition of infill development in that it is "contiguous to and substantially surrounded by developed land that is served by a wastewater treatment facility as of the November 7, 2016, and that will generate less than or equal to 8,000 gallons of wastewater per day". There is existing development on contiguous lots on Breakwater Road north west of this subdivision and contiguous lots directly across Breakwater Road. There is development substantially surrounding this proposed subdivision on Bayshore Rd, Fishing Creek Road, and Breakwater Road which includes other subdivisions, single family homes, and mixed commercial uses including retail, medical buildings, NJDMV office, and religious places of worship.

The DEP reviewed the USEPA 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> and determined that there are no 201 Facilities Plan grant conditions applicable to the expanded sewer service area.

In accordance with N.J.A.C. 7:15-4.4(h)1 and (h)2, the DEP considered the land uses allowed in

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zoning ordinances and future land uses shown in municipal or county master plans in the delineation of areas eligible for sewer service. Lower Township Zoning Board of Adjustment issued Resolution 12-35-ZBA granting subdivision approval for this project. A letter was received from Lower Township dated July 13, 2018 confirming that the proposed amendment is consistent with the township master plan. Cape May County generally does not offer a position regarding consistency of proposed amendments with the county masterplan.

All information related to the proposed amendment is located at:

New Jersey Department of Environmental Protection
Division of Water Monitoring and Standards
Bureau of Environmental Analysis, Restoration and Standards
Water Quality Management Planning (WQMP) Program
P.O. Box 420, Mail Code 401-041
401 East State Street
Trenton, New Jersey 08625-0420

The DEP'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 comments on the proposed amendment to the WQMP Program at the address provided above. All comments should reference Program Interest No. 435464, Activity No. AMD180001 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:

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AND

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Interested persons may request in writing that the DEP 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. AMD180001 and must demonstrate sufficient public interest for the public hearing or extension of the comment period, as defined under N.J.A.C. 7:1D-5.2(d). The request must be submitted within 30 days of the date of this public notice, to the WQMP Program at the address cited above. Should the DEP decide to hold a public hearing, 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 the DEP in reviewing the amendment request.

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9/24/18

SIGNED

Date

Bruce S. Friedman, Director

Division of Water Monitoring and Standards