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## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

### **WATERSHED AND LAND MANAGEMENT**

### **DIVISION OF WATERSHED PROTECTION AND RESTORATION**

### **Proposed Amendment to the Sussex County Water Quality Management Plan**

#### **Public Notice**

**Take notice** that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan in accordance with the New Jersey Water Quality Planning Act, N.J.S.A. 58:11-1 et seq., and the Water Quality Management Planning rules, N.J.A.C. 7:15. The proposed amendment, identified as Milly's Court (Program Interest No. 435459, Activity No. AMD170002) would expand the sewer service area (SSA) of the Sussex County Municipal Utilities Authority's Upper Wallkill Valley Water Control Facility (SCMUA UWVWCF) by 7.59 acres to serve a proposed residential development located on Block 2701, Lot 2 (portion) in Franklin Borough, Sussex County. Four and three quarters acres of presently adopted sewer service area that is located on the property is proposed to be removed by this amendment. The proposed amendment portion of the project consists of 91 one-bedroom apartments, 105 two-bedroom apartments, and 28 three-bedroom apartments. The entire proposed project also includes 21 additional one-

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bedroom apartments, 15 additional two-bedroom apartments, and a clubhouse and pool, however, these buildings are located within the presently adopted sewer service area and therefore, are not the subject of this amendment. The proposed amendment portion of the project would generate a projected wastewater flow of 45,675 gallons per day (gpd), as calculated in accordance with N.J.A.C. 7:14A-23.3, to be received by the SCMUA UWVWCF (New Jersey Pollutant Discharge Elimination System (NJPDES) permit #NJ0053350).

This notice represents the Department's determination that the proposed amendment is compliant with the applicable regulatory criteria at N.J.A.C. 7:15, as described below.

The proposed project is located in the Highlands Region, as defined in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-7.a. Areas eligible for sewer service in the Highlands Region are defined at N.J.A.C. 7:15-4.4(c). The proposed project is located within a Highlands Protection Zone of the Highlands Planning Area portion of Franklin Borough, which is not a Highlands conforming municipality as defined at N.J.A.C. 7:15-1.5. The Highlands Council reviewed the proposed amendment for consistency with the Net Water Availability provisions of the Regional Master Plan (RMP) and issued a consistency determination on August 27, 2020, in accordance with Executive Order 114. The Highlands Council found that, while the proposed project is located within a HUC14 Highlands Net Water Availability Deficit Area, Franklin Borough has entered into a Tri-Party Agreement for development of a municipal Water Use and Conservation Management Plan (WUCMP). The Highlands Council found the proposed WQMP

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amendment Consistent with the RMP under the condition that the applicant assist the Borough with the implementation of a WUCMP.

In accordance with N.J.A.C. 7:15-3.3(b), site specific amendments are limited to proposed alterations to the eligible SSA needed to address a specific project or activity. N.J.A.C. 7:15-3.5(j)2 requires that site specific amendments proposing to add 100 or more acres or generating 20,000 gpd or more of wastewater flow shall include a proposed modification to 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. The proposed project involves less than 100 acres but would generate a total projected wastewater flow of 20,000 gpd or more and is thus subject to a wastewater capacity analysis modification. The purpose of the modification is to demonstrate that SCMUA UWVWCF has the available capacity to service the project. In accordance with N.J.A.C. 7:15-4.5(b)1, the existing wastewater flow at the SCMUA UWVWCF is the highest consecutive 12-month rolling average during the five-year period (January 2016 to June 2021), which was calculated to be 1.78 million gallons per day (mgd) (August 2018-July 2019) based on NJPDES Discharge Monitoring Reports reported in DEP Data Miner (<https://www.13.state.nj.us/DataMiner#>). The SCMUA WCF is currently permitted to discharge up to 3 mgd under NJPDES Permit No. NJ0053350. As such, the SCMUA UWVWCF has capacity to accommodate the additional flow from the proposed project.

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Pursuant to N.J.A.C. 7:15-4.4(d), the following are not eligible for delineation as SSA, except as otherwise provided at N.J.A.C. 7:15-4.4(i), (j), (k) and (l): environmentally sensitive areas (ESAs) identified pursuant to N.J.A.C. 7:15-4.4(e) as any contiguous area of 25 acres or larger consisting of any of the following features, alone or in combination: endangered or threatened wildlife species habitat, Natural Heritage Priority Sites, riparian zones of Category One (C1) waters and their upstream tributaries, or wetlands; coastal planning areas identified at N.J.A.C. 7:15-4.4(f); and ESAs subject to 201 Facilities Plan grant conditions pursuant to N.J.A.C. 7:15-4.4(g). The Department conducted an evaluation of the project site using a GIS shapefile provided by the applicant compared to the Department'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), (f) and (g) and made the following findings:

- The Department determined that the proposed SSA contains areas mapped as endangered or threatened wildlife species habitat Rank 5 for Barred Owl, Northern Myotis, Wood Turtle, Bog Turtle, and Bobcat on the Department's Landscape Maps of Habitat for Endangered, Threatened, or Other Priority Wildlife based on the "Landscape Project Data" Version 3.3 GIS data layers in accordance with N.J.A.C. 7:15-4.4(e)1. Pursuant to N.J.A.C. 7:15-4.4(k), the applicant submitted a Habitat Impact Assessment (HIA), prepared pursuant to N.J.A.C. 7:15-4.7.

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The Department concurred with the HIA's assessment that the proposed project would only have insignificant or discountable impacts to Barred Owl habitat. This was due to the location of the barred owl record, the distance to the subject site, the size of the forest complex associated with the documented record, the relatively low quality of the habitat being impacted (lacking nesting or roosting habitat), the relatively minor amount of associated habitat being impacted, and the preservation of approximately 23 acres of mapped habitat through conservation easements on portions of the property.

Regarding the Northern Myotis, the Department concurred with the HIA's assessment that the proposed project would have insignificant or discountable impact on this species' habitat. This was due to the Department's analysis of the forest patch associated with the site which showed that the overall impacts of the proposed project will result in less than a 0.3% reduction of forest habitat within the associated habitat patch and no critical habitat for the species was identified onsite. To further minimize habitat impacts, site clearing will be restricted during the bat active season of April 1 to September 30 and the remaining habitat onsite will be preserved through conservation easements.

The Department concurred with the HIA's assessment that the proposed project site featured habitat suitable for Wood Turtle, Bog Turtle, and Bobcat. The Department determined that the impacts to these species' habitats in the expanded sewer service area cannot be avoided and that implementation of the following conservation measures are

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required to minimize to the maximum extent practicable all adverse modification of suitable habitat and to mitigate for any such adverse modification in a manner that provides for no net loss of habitat value to endangered or threatened species including the local population of that species, in accordance with N.J.A.C. 7:15-4.4(k)3. Additional required conservation measures, specific to each of the three species, immediately follow this section.

1. The applicant shall place a Department approved conservation restriction over 35.5 acres on Block 2701, Lot 2 in Franklin Borough as depicted on the map entitled “Milly’s Court Proposed Conservation Easement Block 2701, Lot 2”, prepared by Bowman Consulting Group, Ltd and dated October 27, 2021. The applicant shall record the conservation restriction on the deed and file the conservation restriction with the Sussex County Clerk’s Office (the Registrar of Deeds and Mortgages). Said restriction shall run with the land and be binding upon all successive owners, their agents and assigns. A copy of the recorded conservation restriction and proof of recordation of the deed restriction must be provided to the Department prior to adoption of the proposed amendment, in accordance with N.J.A.C. 7:15-4.4(k)3.
2. Prior to the Department adoption of the WQM Plan amendment, the applicant will demonstrate to the Department that all mitigation actions proposed in the document entitled: “Habitat Enhancement Plan for Milly’s Court” prepared by EcolSciences Inc., dated January 7, 2021, have been fully funded and will commence concurrent with or prior to any

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associated project site preparation or construction or be initiated within 1 year of the date of WQM Plan Amendment adoption, regardless of the status of the proposed housing project.

3. Within 90 days of the Department adoption of a WQMP amendment, the applicant will provide the Division with a mitigation implementation plan document that outlines all mitigation actions and funding parameters for all proposed mitigation actions associated with the WQMP approval.
4. Consistent with guidance provided by the US Fish and Wildlife Service, no tree clearing of any vegetation with a 3 inch or greater DBH (Diameter at Breast Height) can occur during the period of April 1 to September 30<sup>th</sup> (the bat active season) of any given year.

Species specific conservation measures that will be required, in addition to the measures specified above, include the following:

Wood Turtle – The implementation of construction practices to minimize and mitigate impacts to wood turtle habitat including reducing the area of disturbance, installing wildlife fencing to prevent all species from entering the active construction zone and providing construction monitors on an as needed basis; construction of 3 wildlife tunnels underneath the access road to the proposed development, and; the creation of a new nesting area along the southern edge of the existing powerline right-of-way to provide a sunny elevated location for turtles to nest away from vehicles,

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construction, and the current Borough well access driveway. The applicant will also remove the dense vegetative cover that has become established on several former wood turtle nest mounds.

Bog Turtle - Modification of the existing road culvert to reduce flooding, and the restoration of formerly flooded areas with native plants with a 5-year monitoring program for the restored areas which will achieve an 85 percent survival rate of native species in the formerly flooded areas.

Bobcat - The construction of an open culvert under the new access drive within the powerline right-of-way to provide Bobcat a safe crossing underneath the roadway, the construction of a 3.5-foot high and 8-foot-wide culvert and associated guide fencing under Route 517 to provide safe access for Bobcats and other terrestrial species, and the installation of a game camera at the western end of the culvert to capture images of any wildlife species that utilize the culvert for crossing of Route 517 during the five-year monitoring period of this location.

- The Department determined that the proposed SSA does not contain any areas mapped as Natural Heritage Priority Sites based on the “Natural Heritage Priority Sites” GIS data layer in accordance with N.J.A.C. 7:15-4.4(e)2.
- The Department determined that the proposed SSA does not contain any C1 waters or 300-foot riparian zones along any C1 waters or upstream tributaries within the same HUC-14 watershed of any C1 waters based on the “Surface Water Quality Standards” GIS data layer in accordance with N.J.A.C. 7:13-4.1(c)1 and 7:15-4.4(e)3. A tributary to the Walkkill River



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(FW2-NTC1) and its corresponding riparian zone run along the eastern border of the property. The Wallkill River's (FW2-TMC1) riparian zone runs along the western border of the property. The tributary to the Wallkill River and its corresponding riparian zone, and the Wallkill River's riparian zone are not proposed for inclusion within the SSA. The riparian zone of the Wallkill River tributary is located mostly within the above-referenced conservation easement area.

- The Department determined that there are wetlands located on the proposed project site based on the "Wetlands 2012" GIS data layer in accordance with N.J.A.C. 7:15-4.4(e)4; however, pursuant to N.J.A.C. 7:15-4.4(j)3, the applicant provided an Authorization for Freshwater Wetlands Letter of Interpretation – Extension File # 1906-15-0001.1 FWW210001 confirming that there are no wetlands within the proposed sewer service area.
- The Department determined that the proposed SSA does not contain any areas mapped as Fringe Planning Areas, Rural Planning Areas, or Environmentally Sensitive Planning Areas within the Coastal Area Facility Review Act (CAFRA) zone based on the "CAFRA (polygon)" GIS layer and the "State Plan Data" GIS layer, in accordance with N.J.A.C. 7:15-4.4(f).
- The Department determined that there are 201 Facilities Plan grant conditions applicable to the project based on the U.S. Environmental Protection Agency (USEPA) list of New Jersey Grantees with ESA Grant Conditions at <https://www.epa.gov/npdes-permits/environmentally-sensitive-area-esa-grant-condition-waiver-program-region-2> in

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accordance with N.J.A.C. 7:15-4.4(g). The proposed project will convey wastewater to the SCMUA UWVWCF which is subject to a Federal ESA grant condition included in the grant agreement executed between the SCMUA and USEPA under project Number C-34-406-01. The ESA grant condition prohibits any sewer connection to Federally funded facilities from any sewage generating structure located on a parcel of property containing wetlands and/or floodplains unless a mapping waiver or grant waiver is obtained from USEPA. A partial grant waiver was issued by the USEPA to the SCMUA on June 23, 2021.

Pursuant to N.J.A.C. 7:15-4.4(h)1 and 2, the Department considered the land uses allowed in adopted zoning ordinances, future land uses shown in adopted municipal or county master plans, and other local land use objectives. The Franklin Borough Planning Board issued a resolution (unnumbered Application No. PB-09-19-1) on December 16, 2019, granting Preliminary and Final Major Site Plan Approval. On August 6, 2021, the Sussex County Division of Planning and Economic Development issued an email stating that the proposed project was consistent with the Sussex County Master Plan.

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

Sussex County Department of Engineering and Planning

One Spring Street

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Newton, New Jersey 07860

AND

New Jersey Department of Environmental Protection

Division of Watershed Protection and Restoration

Bureau of NJPDES Stormwater Permitting and Water Quality Management

Water Quality Management Planning Program

PO Box 420, Mail Code 501-02A

501 East State Street

Trenton, New Jersey 08625-0420

The Department's file is available for inspection between 9:00 A.M. and 4:00 P.M., Monday through Friday, upon request. An appointment to inspect the file must be arranged by calling the Bureau of NJPDES Stormwater Permitting and Water Quality Management at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to the Department at the address cited above or at the email: [wqmp.publiccomments@dep.nj.gov](mailto:wqmp.publiccomments@dep.nj.gov) and to the County at the following address:

Ms. Autumn Sylvester

Division of Planning and Economic Development

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Sussex County Department of Engineering and Planning

One Spring Street

Newton, New Jersey 07860

Comments should reference Program Interest No. 435459, Activity No. AMD170002 and must be submitted within 30 days of the date of this public notice.

Interested persons may request in writing that the Department hold a nonadversarial public hearing on the amendment or extend the public comment period specified in this notice. Such requests should reference Program Interest No. 435459, Activity No. AMD170002 and must demonstrate sufficient public interest for the public hearing or extension of the comment period, as defined at N.J.A.C. 7:1D-5.2(d). The request must be submitted within 30 days of the date of this notice to the Department address cited above. Should the Department decide to hold a public hearing, additional notice will be published in a future issue of the New Jersey Register and the comment period will be extended to 15 days after the Department's public hearing. All comments submitted prior to the close of the comment period shall be considered by the county and the Department before making a final decision on the proposed amendment.

Sewer service is not guaranteed should this amendment be adopted since it represents only one part of the permit process and other issues may need to be addressed. Inclusion in the SSA as a result of the approval of this amendment does not eliminate the need to obtain all

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necessary permits, approvals or certifications required by any Federal, State, county or municipal review agency with jurisdiction over this project/activity.

12/21/2021

Date



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Gabriel Mahon, Bureau Chief  
Bureau of NJPDES Stormwater Permitting and Water Quality Management  
Division of Watershed Protection and Restoration  
NJ Department of Environmental Protection