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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION

Adopted Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on March 9, 2018, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11-1 et seq., and the Statewide Water Quality Management Planning rules, N.J.A.C. 7:15, the New Jersey Department of Environmental Protection (Department) adopted an amendment (Program Interest No. 435445, Activity No. AMD150002) to the Atlantic County Water Quality Management (WQM) Plan. This amendment, submitted by Mr. Steven Dalton, Esq. on behalf of Block 846 Associates LLC, expands 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. Preliminary notice was published in the New Jersey Register on March 6, 2016 at 48 N.J.R. 472(b) and the Department received one comment during the public comment period. The comment and the Department's response are below.

COMMENT: This proposal will convert 10.3 acres of wetlands to urban land use. This will constitute a loss of wetlands and related ecosystems in Atlantic County. In addition, this SSA expansion will occur in a FEMA Flood Hazard Velocity Zone, where waves increase flooding depth. This development will significantly degrade public health and safety and put 24 prospective property owners at risk of flooding danger. (Fred Akers, Atlantic County Resident)

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RESPONSE TO COMMENT: The WQMP rules at N.J.A.C. 7:15 recognize that determinations regarding the land use impacts of future development are better reserved for permit review and approval by the Division of Land Use Regulation, when detailed site-specific information is available regarding land use and flooding impacts. Specifically, N.J.A.C. 7:15-4.4(m) provides that an applicant seeking to construct a project in a sewer service area must still obtain any permit or approval applicable to the project and comply with all requirements applicable to other Department programs. There are no wetlands within the proposed sewer service area. Accordingly, the disturbance of wetlands and protection of areas from flooding are issues that would be addressed in the permitting phase of this project.

This amendment proposes to add 10.3 acres to the SSA along the Atlantic City inlet. During review, the Department determined that some of this addition to SSA may impact local species. To mitigate any potential impacts, the applicant proposed detailed conservation measures which would result in over 33 acres of preserved habitat and open space. Further, while the project site contains wetlands features, no such features exist within the 10.3 acres to be included in SSA. At the WQMP planning stage, the consideration before the Department is delineation of sewer service areas in a manner that protects environmentally sensitive areas that encompass at least 25 acres. Therefore, for purposes of this review, this amendment avoids environmentally sensitive areas and satisfies N.J.A.C. 7:15.

This amendment has been reviewed pursuant to the Water Quality Management Planning rules at N.J.A.C. 7:15. This notice represents the Department's determination that the amendment is compliant with the regulatory criteria at N.J.A.C. 7:15-3.5 and 4.4 and serves as public notice of the Department's final decision pursuant to N.J.A.C. 7:15-3.5(g)11.

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

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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

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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

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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.

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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

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<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 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/listall.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

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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. 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.

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N.J.A.C. 7:15-3.5(g)6 requires the applicant to request a written statement of consent from all identified governmental entities, sewerage agencies, and BPU related sewer and water utilities that may be affected by, or otherwise have a substantial interest in, approval of the amendment proposal. Accordingly, the Department instructed the applicant to request written statements of consent from the Atlantic County Utilities Authority, the Atlantic County Board of Chosen Freeholders and Atlantic City. On March 16, 2017, the Atlantic County Utilities Authority adopted Resolution 17-3-78 in support of the proposed amendment. On June 27, 2017, the Atlantic County Board of Chosen Freeholders adopted Ordinance No. 18 in support of the proposed amendment. On October 5, 2017, the Atlantic City Department of Planning and Development confirmed via email that it would not state a formal position in support or in objection to the proposed amendment.

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

March 9, 2018

Date