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ENVIRONMENTAL PROTECTION

WATER RESOURCES MANAGEMENT

DIVISION OF WATER MONITORING AND STANDARDS

Adopted Amendment to the Cape May County Water Quality Management Plan Public

Notice

Take notice that on January 14, 2019, 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. 435464, Activity No. AMD180001) to the Cape May County Water Quality Management (WQM) Plan. This project expands the Lower Township Municipal Utilities Authority (LTMUA) sewer service area 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 a portion of 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. Preliminary notice was published in the New Jersey Register on November 5, 2018 at 50 N.J.R. 2265(a). No comments were received during the comment period.

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. 7:15-3.50)2, large site specific amendments must modify the wastewater

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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 Impact less than 100 acres and would generate less than 20,000 gpd of wastewater; therefore, a modified wastewater treatment capacity analysis is not required. 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) 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 endangered and threatened

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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 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(1) 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

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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 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 Area, 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

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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/njdes-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 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 master plan.

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 authorities, and BPU-related water utilities that may be affected by, or otherwise have a substantial interest in, adoption of this amendment.

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Accordingly, the Department instructed the applicant to request a written statement of consent from the LTMUA, and resolutions from Lower Township and the Cape May County Board of Chosen Freeholders. On December 5, 2018, the LTMUA adopted Resolution 156-2018 in support of the proposed amendment. On December 3, 2018, Lower Township adopted Resolution 2018-359 in support of the proposed amendment. On January 3, 2019, the Cape May County Board of Chosen Freeholders adopted Resolution 36-19 in support of the proposed amendment

Sewer service is not guaranteed by this amendment. This 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 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.

January 14, 2019

SIGNED

Date

Bruce S. Friedman, Director

