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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

WATER RESOURCE MANAGEMENT

DIVISION OF WATER MONITORING AND STANDARDS

Adopted Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on September 27, 2019, pursuant to the provisions of 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 New Jersey Department of Environmental Protection (Department) has adopted an amendment (Program Interest No. 435442, Activity No. AMD160002) to the Northeast Water Quality Management Plan. This amendment, submitted by Bowman Consulting on behalf of Toll Brothers, Inc., expands the sewer service area (SSA) of the Rockaway Valley Regional Sewerage Authority (RVRSA) by 17.26 acres to serve a proposed residential development identified as **“Toll-Denville”** (also referred to as “Enclave at Denville”, “Avon at Denville” and “Avalon-Denville”) located on a portion of Block 40001, Lot 4 and a portion of Block 40203, Lot 1, Denville Township, Morris County. The proposed project consists of 116 single-family townhomes containing 92 three-bedroom, market-rate units; five one-bedroom, 14 two-bedroom, and five three-bedroom affordable housing units; and a 2,135 square-foot clubhouse and swimming pool. The proposed project would generate a total projected wastewater flow of 34,999 gallons per day (gpd), based on flow calculated in accordance with N.J.A.C. 7:14A-23.3, to be received by the RVRSA Wastewater Treatment Plant (WTP), New Jersey Pollutant Discharge Elimination System (NJPDDES) No. NJ0022349.

Preliminary notice was published in the New Jersey Register on September 18, 2017 at 49 N.J.R. 3526(b). Comments were received during the public comment period. A summary of public comments and agency response is provided at the end of this notice. It should be noted that while the size of the

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expanded SSA as adopted is the same as the proposed 17.26 acres, the number of dwelling units and projected wastewater flow have been reduced from what was described in the preliminary notice - from 150 to 116 residential dwelling units and from 45,000 gpd to 34,999 gpd projected wastewater flow. 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. 7:15-3.3, 3.5, and 4.4-4.7, as described below.

In accordance with N.J.A.C. 7:15-3.3(b), site specific amendments are limited to modifications of the eligible SSA needed to address a specific project or activity. For site specific amendments proposing to add 100 or more acres to the SSA or that would generate 20,000 gpd or more of wastewater flow, N.J.A.C. 7:15-3.5(j)2 requires the applicant to 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 proposed project involves less than 100 acres but would generate a total projected wastewater flow of 34,999 gpd, based on flow calculated pursuant to N.J.A.C. 7:14A-23.3. In accordance with N.J.A.C. 7:15-4.5(b)1, the existing wastewater flow at the RVRSA WTP is the highest consecutive 12-month rolling average flow during the most recent five-year period (August 2014 to July 2019), which was calculated to be 10.834 MGD (August 2018 to July 2019) based on NJPDES Discharge Monitoring Reports reported in DEP Data Miner (<https://www13.state.nj.us/DataMiner#>). The RVRSA WTP is currently permitted to discharge up to 15.0 million gallons per day (MGD), under a NJPDES permit modification issued by the Department on July 18, 2019 allowing an expansion of the WTP from 12.0 to 15.0 MGD; however, the permit modification is conditioned on adoption of a WQM Plan amendment allowing the expansion, for which a plan amendment application is currently pending. The additional flow from the proposed project should not cause the facility to exceed its permitted capacity; therefore, no additional treatment plant capacity analysis is required.

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In accordance with N.J.A.C. 7:15-3.5(g)6, the Department instructed the applicant to request written statements of consent from RVRSA, the Morris County Board of Chosen Freeholders and Denville Township. RVRSA adopted Resolution 17-122 on October 12, 2017 in support of the proposed amendment. The Morris County Office of Planning and Preservation stated in an email dated October 25, 2017 that the County would not take a formal position on the proposed amendment. Denville Township declined to respond to the applicant's request for a statement of consent.

In accordance with N.J.A.C. 7:15-3.5(h), applicants for proposals in the Highlands Region must simultaneously submit the application to both the Department and the Highlands Council to provide an opportunity for the Highlands Council to submit comments prior to the Department rendering a decision on the application. The proposed project is located within the Highlands planning area portion of Denville Township, which is not a Highlands conforming municipality as defined at N.J.A.C 7:15-1.5 since it has not had its Regional Master Plan (RMP) conformance petition approved by the Highlands Council or adopted a planning area conformance petition ordinance and land use ordinance amendments consistent with that approval. The Highlands Council reviewed the proposed amendment for consistency with the Net Water Availability provisions of the RMP and issued a consistency determination on January 3, 2018 in accordance with Executive Order 114. The Highlands Council found that, while the proposed project is located within a Highlands Water Deficit Area, the proposed WQMP amendment is consistent with the Highlands RMP based on the execution of an agreement between the Township and the Highlands Council for development and implementation of a Water Use and Conservation Management Plan. The Highlands Council also submitted to the Department a subsequent letter of consent, dated September 4, 2019, finding that the project is still consistent with the RMP based on reduced number of proposed units and projected wastewater flow.

In accordance with N.J.A.C. 7:15-4.4(c)3, in the Highlands planning areas, for municipalities that do not conform with the Highlands Regional Master Plan, areas eligible for sewer service shall conform to

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4.4(d) and (h). Pursuant to N.J.A.C. 7:15-4.4(d), the following are not eligible for delineation as sewer service areas, except as otherwise provided at N.J.A.C. 7:15-4.4(i) through (l): environmentally sensitive areas (ESAs) identified under N.J.A.C. 7:15-4.4(e) as endangered or threatened wildlife species habitat, Natural Heritage Priority Sites, riparian zones of Category One waters and their tributaries, or wetlands; coastal planning areas identified under N.J.A.C. 7:15-4.4(f); and ESAs subject to 201 Facilities Plan grant conditions under 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) through (g) and made the following findings:

- The Department determined that the expanded sewer service area does contain areas mapped as Rank 5 Indiana Bat habitat based on the "Landscape Project Data" Version 3.3 GIS data layers, in accordance with N.J.A.C. 7:15-4.4(e). However, based upon a habitat suitability determination (HSD) prepared pursuant to N.J.A.C. 7:15-4.6 and a habitat impact assessment (HIA) prepared pursuant to N.J.A.C. 7:15-4.7, the Department determined that the site does not provide the broad range of habitat used by bats during the summer months, making the onsite habitat of less critical value to the species than other forested habitats within the region. Accordingly, the Department determined that the proposed project would result in insignificant or discountable effects on the Indiana Bat.
- The Department determined that the expanded sewer service area 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 expanded sewer service area does not contain any Category One (C1) waters or 300-foot riparian zones along any C1 waters or upstream tributaries within the

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same HUC-14 watershed of any C1 waters based on the “Surface Water Quality Standards” GIS data layer in accordance with and N.J.A.C. 7:13-4.1(c)1 and N.J.A.C. 7:15-4.4(e)3.

- The Department determined that the expanded sewer service area does contain mapped wetlands based on the “Wetlands 2012” GIS data layer in accordance with N.J.A.C. 7:15-4.4(e)4. The applicant provided Freshwater Wetlands Letter of Interpretation/Line Verification File No. 1408-08-0006.1 FWW080001 (LOI) and LOI Extension 1408-08-0006.1 FWW160001, confirming there are wetlands project site. The Department also determined that there are 201 Facilities Plan grant conditions applicable to the project site based on 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> in accordance with N.J.A.C. 7:15-4.4(g). The proposed project will convey wastewater to the RVRSA WTP which is subject to a Federal ESA grant condition included in the grant agreement executed between the Sewerage Authority and USEPA under project number C-34-389-02. The ESA grant condition prohibits any sewer connections 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 conditional grant waiver was issued by the USEPA to the RVRSA on April 4, 2019.
- The Department determined that the expanded sewer service area does not contain any Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Planning Areas mapped on the CAFRA Planning Map based on the “CAFRA Layers” GIS layer in accordance with 7:15-4.4(f).

Pursuant to N.J.A.C. 7:15-4.4(h)1 and 2, the Department considered the land uses allowed in zoning ordinances and future land uses shown in municipal or county master plans and determined that the expanded sewer service area is consistent with land uses allowed by local zoning and the county and local master plans. The Denville Township Planning Board issued a resolution for application No. PSP/FSP/SS

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18-03 on May 8, 2019 granting Preliminary and Final Site Plan Approval. Based on communication with the Denville Township Planning Board, the Department determined that the proposed project complies with the Housing Element and Fair Share Plan within the Township's Master Plan.

Sewer service is not guaranteed by adoption of this amendment since it 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 adoption 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.

The Department accepted comments on the proposed amendment through October 18, 2017.

The following individuals provided written comments:

1. George Cassa
2. Wilma Frey, Senior Policy Manager, New Jersey Conservation Foundation
3. Diane Nelson, Secretary, Upper Rockaway River Watershed Association
4. JoAnn Mondsini, Executive Director, RVRSA
5. Jean Publiee
6. Elliott Ruga, Policy Director, NJ Highlands Coalition
7. George Stafford, Morris County resident

A summary of the submitted comments and the Department's responses follows. The number(s) in parenthesis after each comment identify the respective commenter(s) listed above.

1. COMMENT: The Department should hold a public hearing and/or extend the public comment period for the proposed amendment. The public hearing should be held in a location that is convenient to the residents of Denville and surrounding communities. (1-6)

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RESPONSE: The Department considered these requests in accordance with N.J.A.C. 7:15-3.5(g)8 and determined that there is not sufficient public interest, as defined under N.J.A.C.7:1D-5.2(d), in holding a non-adversarial public hearing and extending the public comment period for the proposed amendment since sufficient opportunity has already been provided for public comment since the preliminary notice was published in September 2017.

2. COMMENT: The Department should consult with the Highlands Council to determine if the proposed action is consistent with the Regional Master Plan before taking further action on the proposed amendment. The proposed project site is located in a Highlands Water Deficit Area and the water that this development is proposing to use is already highly overused. (3, 5)

RESPONSE: As stated earlier in this notice, The Highlands Council reviewed the proposed amendment for consistency with the Net Water Availability provisions of the RMP and issued a consistency determination on January 3, 2018 in accordance with Executive Order 114. The Highlands Council found that, while the proposed project is located within a Highlands Water Deficit Area, the proposed WQMP amendment is consistent with the Highlands RMP based on the execution of an agreement between the Township and the Highlands Council for development and implementation of a Water Use and Conservation Management Plan.

3. COMMENT: Commenter does not agree with the Department's calculation of existing wastewater flow at the RVRSA WTP or its determination that no additional treatment plant capacity analysis is required because the additional flow from the proposed project should not cause the facility to exceed its permitted capacity. The flow calculations in the preliminary notice of RVRSA's available capacity were based on actual flows of discharges at RVRSA and did not take into consideration

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anticipated flows that RVRSA is obligated to accept such as projects that have been approved but not yet built or connected to the sewer system. In addition, the use of the highest consecutive 12-month rolling average of the most recent five-year period may be more appropriate for use in a plan amendment rather than the single year which was cited in the preliminary notice. (4)

RESPONSE: As explained earlier in the notice, N.J.A.C. 7:15-3.5(j)2 requires site specific amendments proposing to generate 20,000 gpd or more of wastewater flow to include a wastewater treatment capacity analysis prepared in accordance with N.J.A.C. 7:15-4.5(b) that addresses the proposed project. Where the receiving WTP already exists, the Department determines if the additional wastewater flow from the proposed project, added to the existing wastewater flow at the facility would exceed the facility's permitted flow. N.J.A.C. 7:15-4.5(b)1i states that "the existing flow is the highest consecutive 12 months rolling average over the most recent five-year period", for the purpose of wastewater capacity analysis preceding development of the WMP, as reported in the Discharge Monitoring Reports required pursuant to N.J.A.C. 7:14A-6.8 for the facility." The WQMP rules do not require the evaluation of anticipated flows. However, the Department has recalculated the existing wastewater flow at the RVRSA WTP as 10.834 MGD using the highest consecutive 12-month rolling average flow (August 2018 to July 2019) during a more recent five-year period (August 2014 to July 2019), based on NJPDES Discharge Monitoring Reports reported in DEP Data Miner (<https://www13.state.nj.us/DataMiner#>). Also, as explained earlier in this notice, the RVRSA WTP is currently permitted to discharge up to 15.0 million gallons per day (MGD), under a conditional NJPDES permit modification issued by the Department on July 18, 2019 allowing an expansion of the WTP from 12.0 to 15.0 MGD. The Department still finds that the additional wastewater flow from the proposed project should not cause the facility to exceed its permitted capacity; therefore, no additional wastewater treatment plant capacity analysis is required for this amendment.

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4. COMMENT: Commenter is opposed to the proposed project because it is located in an area of concern for bats and many wildlife and bird species also utilize this area. (5)

RESPONSE: As explained earlier in this notice, the Department determined that the expanded sewer service area does contain areas mapped as Rank 5 Indiana Bat habitat but the proposed project would result in insignificant or discountable effects on the Indiana Bat because the site does not provide the broad range of habitat used by bats during the summer months, making the onsite habitat of less critical value to the species than other forested habitats within the region.

5. COMMENT: The public believes this development is overdone for the area representing congestion and overuse. Commenter also opposes granting permits for this housing development. (5)

RESPONSE: While the WQMP rules at N.J.A.C. 7:15-4.4(h)1 and 2 require the Department to consider the land uses allowed in zoning ordinances and future land uses shown in municipal or county master plans to determine if the expanded sewer service area is consistent with land uses allowed by local zoning and the county and local master plans, concerns over congestion and overuse are beyond the scope of the Department's authority under the WQMP rules and are not addressed through the plan amendment process. Similarly, while the WQMP rules at N.J.A.C. 7:15-3.2 state that "The Department shall not issue a permit or approval that conflicts with an adopted areawide plan ..." The issuance of permits by other State or federal programs is beyond the scope of the Department's authority under the WQMP rules and is not addressed through the plan amendment process.

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9/27/19

SIGNED

Date

Bruce S. Friedman, Director

Division of Water Monitoring and Standards