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## **ENVIRONMENTAL PROTECTION**

### **WATERSHED AND LAND MANAGEMENT**

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

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

#### **Public Notice**

**Take notice** that on February 25, 2022, 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) adopted an amendment to the Sussex County Water Quality Management (WQM) Plan. This amendment, identified as Roxbury Warehouse, also known as Adler- Roxbury (Program Interest No. 435459, Activity No. AMD170003) expands the sewer service area (SSA) of the Musconetcong Sewerage Authority (MSA) Sewage Treatment Plant (STP), New Jersey Pollutant Discharge Elimination System No. NJ0027821, by 22 acres to serve a 470,044 square-foot warehouse located on a portion of Block 9501, Lot 1, in Roxbury Township, Morris County. The project will generate a projected wastewater flow of 11,700 gallons per day (gpd) as calculated in accordance with N.J.A.C. 7:14A-23.3.

Preliminary notice of this amendment was published in the New Jersey Register on September 20, 2021, at 53 N.J.R. 1640(a). A public comment and agency response is provided at the end of this notice.

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

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 proposed to add 100 or more acres of new SSA 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. This project will add less than 100 acres of new SSA and will generate less than 20,000 gpd of wastewater; therefore, an update of the wastewater treatment capacity analysis is not required.

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 Protection Zone of the Highlands Planning Area. Roxbury Township does not have an approved Petition for Plan Conformance with the Highlands Council to conform with the Highlands Regional Master (RMP). Pursuant to Executive Order 114 (2008), the Highlands Council reviewed the proposed amendment for consistency with the Net Water Availability provisions of the RMP and issued a letter on August 23, 2019, stating that the project is within a deficient HUC14 watershed. In accordance with the RMP objectives, a mitigation target of 1,525 gpd was assessed by the

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Council for the proposed project. Due to low soil permeability on site, the project cannot utilize surface or subsurface infiltration basins to achieve the mitigation target.

Consequently, to address this target, several conservation measures have been proposed that promote, to the maximum extent possible, the reduction of water usage. Conservation measures include low-flow water fixtures, a landscape design of drought-tolerant native plantings, and installation of automatic irrigation controls based on rain sensors. To limit the need of irrigation, a low maintenance grass mixture is proposed for open space areas. In addition, the original proposed development has been scaled back and as a result reduces the impervious coverage area as well as overall water demand. Due to these features of the proposed project, the Highlands Council has deemed it consistent with the RMP.

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, alone or in combination: endangered or threatened wildlife species habitat, Natural Heritage Priority Sites, riparian zones of Category One (C1) waters and their 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

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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 project property contained Rank 4 endangered and threatened wildlife species habitat identified for the Red-Shouldered Hawk (RSH) based on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Wildlife "Landscape Project Data" Version 3.3 GIS data layers. Pursuant to N.J.A.C. 7:15-4.4(j)2, on August 17, 2017, the applicant submitted a Habitat Suitability Determination (HSD) prepared in accordance with N.J.A.C. 7:15-4.6. The Department reviewed the HSD and concluded that the entire project site encompassed foraging habitat for the RSH. On March 9, 2018, the applicant submitted a Habitat Impact Assessment (HIA) prepared pursuant to N.J.A.C. 7:15-4.7. The Department reviewed the HIA and concluded that the impact of the proposed project would cause significant impact to the RSH habitat. However, if the applicant developed a stormwater design that avoided additional impacts to the hydrology of the onsite wetlands, which are the key foraging habitat; placed a conservation restriction on the remaining areas of the lot outside of the proposed SSA and on an additional mitigation site which provides suitable habitat for RSH, the impact would be minimized and mitigated.

The site was redesigned to avoid and minimize impacts to habitat area and includes a reduced clustered design. The project's reduced impact cluster design land disturbance area amounts to 31.9-acres, which represents a 30% decrease in land area impact. After this

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redesign to minimize impacts to the habitat area, the proposed design results in a 30% loss of habitat. To compensate for this loss of habitat, the applicant agreed to place a deed conservation easement on all remaining onsite habitat, approximately 74.7 acres.

Additionally, the applicant acquired and permanently protected by placement of a conservation restriction on 48.03 acres located at 219 River Road, Block 7, Lot 20, Montague Township, Sussex County. The conservation restriction runs with the properties and are binding on all successive owners, their agents and assigns. Ownership of the mitigation site was established and both conservation deed restrictions, (project site and the mitigation property) were executed, filed and recorded with the Morris and Sussex County Clerks, respectively; and proof of ownership and recordation of the conservation restrictions was provided to the Department, in accordance with N.J.A.C. 7:15-4.4(k)3. The agreed upon conservation restrictions were filed in Morris County and Sussex County and recorded by said county clerks on December 7th, 2021, and on December 7th, 2021, respectively.

- The Department determined that the SSA did 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 SSA did 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.

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- The Department determined that there are wetlands located on the 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 a Freshwater Wetlands Letter of Interpretation (LOI)/Line Verification File # 1436-05-0006.1; FWW180001 confirming that there were no wetlands within the SSA.
- The Department determined that the SSA did 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).
- In accordance with N.J.A.C. 7:15-4.4(g), the Department determined that there were applicable 201 Facilities Plan grant conditions 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>. The proposed project is located in the “Landing-Shore Hills” area of Roxbury Township and would convey wastewater to the MSA STP. As stipulated in the grant agreement executed between MSA and the USEPA under Project Number C-340384-03, an ESA grant condition prohibits any sewer connection within the Landing-Shore Hills area to the MSA STP from a sewage-generating structure located on a parcel of property containing wetlands unless a mapping revision or grant waiver is obtained from USEPA. As discussed above, the Department LOI confirmed the proposed project property does contain wetlands. Therefore, a waiver from USEPA was required for this amendment. On July 1, 2021,

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the USEPA issued a partial waiver of the ESA special grant condition for this project. The partial waiver allows for the connection of the proposed project as noted in the project site plan only; the ESA grant condition remains in place on the remaining ESAs on the parcel. Any modification to the project and/or future connections to the MSA would need to be evaluated and require resubmittal of another waiver request.

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 and county master plans, and other local land use objectives. The proposed project is consistent with the municipal zoning of Roxbury Township as it is located within the light industrial/office research district zoning. In communications on July 15, 2021, the Morris County Planning Department chose not to provide a determination regarding the project's consistency with the county master plan and has deferred this verification to the municipality.

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 the MSA, Roxbury Township, Morris County Board of County Commissioners, and Sussex County Board of County Commissioners, as the designated planning agency. On September 23, 2021, MSA passed resolution no. 21-43 consenting to the project. Roxbury Township passed resolution no. 2021-272 on September 28, 2021, consenting to the project. On October 4, 2021, the Morris County Office of Planning and Preservation sent an email stating the county takes no position on the adoption of this amendment. As the Designated Planning Agency for the Sussex County WQMP, the Sussex County Board of

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Preliminary notice of this amendment was published in the New Jersey Register on September 20, 2021, at 53 N.J.R. 1640(a). Comments were received from one individual during the comment period. The Department accepted comments on the proposed amendment through October 20, 2021.

The following individual provided written comment:

**Jean Public**

A summary of the comment and the Department's responses follow.

Comment: The construction of this huge warehouse and the clearing of so many trees, which serve as habitat for wildlife, is not in the best interest of New Jersey and should be denied. Warehouses are the bane of America, and nobody wants them. This is not good planning and a better way than taking natural lands and ruining them with concrete needs to be found to serve customers. (Jean Public)

Response: The comment is overly broad and largely beyond the scope of the WQM Planning review in accordance with N.J.A.C. 7:15. The WQM Planning analysis represents only one part of the permit process. Inclusion in the sewer service area resulting from adoption of this amendment does not eliminate the need to obtain all necessary permits, approvals or

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certifications required by any federal, state, county or municipal review agencies with jurisdiction over this project/activity.

As to the concern expressed about the construction of warehouses and that warehouse development is not good planning, approval of proposed development is reviewed by the municipality in accordance with the local master plan and land uses allowed by municipal zoning.

In regard to the tree clearing and habitat concerns, the project site has been part of an active Forest Management Plan with the Department's Bureau of Forest Management. 2018 site visits indicated that the best practices are being followed in accordance with the approved management plan. As discussed above, to demonstrate compliance with N.J.A.C. 7:15-4.7(e), specifically that appropriate conservation measures have been taken to offset the disturbance of on-site Red-Shoulder Hawk habitat as a result of the proposed development, the applicant has placed a conservation restriction on roughly 74.7 acres of undeveloped land on the project site, thereby permanently protecting this forested habitat patch. In addition, to fulfill the mitigation requirements of N.J.A.C. 7:15-4.4(k)3, 48.03 acres of comparable forested area located at 219 River Road, Block 7, Lot 20, Montague Township, Sussex County has also been placed under a conservation restriction. Further, the site was redesigned to avoid and minimize impacts to habitat area and includes a reduced clustered design and potential vernal habitat foraging areas and their associated 150-foot transition areas will remain undisturbed.

Regarding increased concrete, the proposed project will be required to comply with the stormwater management criteria at N.J.A.C 7:8, which are intended to minimize the adverse

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impact of stormwater runoff resulting from development on water quality and water quantity and loss of groundwater recharge in receiving water bodies.

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 SSA 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.

2/25/2022

Date

SIGNED

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