

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATERSHED MANAGEMENT

ADOPTED AMENDMENT TO THE UPPER DELAWARE WATER QUALITY  
MANAGEMENT PLAN (WQMP)

PUBLIC NOTICE

**Take notice** that on **MAR 20 2009**, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware WQMP was adopted by the Department of Environmental Protection (Department). This amendment, submitted on behalf of Huntington Knolls L.L.C., expands the sewer service area of the Milford Borough Sewage Treatment Plant to include Block 24, Lots 3 & 13 in Holland Township, Hunterdon County, the site of the proposed Huntington Knoll development. The 84 acre site is located west of County Route 519 (Milford Warren Glen Road) and south of Fox Hill Place. The proposed development includes the construction of 29 residential buildings which will contain 38 one-bedroom units and 78 two-bedroom units, a clubhouse, an assisted living unit with 50 beds, 10,000 square feet of office space, and 17,000 square feet of retail space. The total projected wastewater flow from this development, calculated in accordance with N.J.A.C. 7:14A 23.3, would be 32,950 gallons per day (GPD). The proposed project includes a total of 28 low and moderate income housing units.

This amendment proposal was noticed in the New Jersey Register on September 4, 2007 at 39 N.J.R. 3788(a). Comments received during the public comment period are summarized below with the Department's responses. In addition, the Department received a recommendation from the Highlands Council, dated January 28, 2008, as required by the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38-1.1(k). The Highlands Council recommended that the amendment be denied due to inconsistencies with the policies of the then Draft Regional Master Plan concerning critical habitat, Highlands Open Water buffers, steep slopes, forests, net water availability and agricultural resource protection. A discussion of these issues is also included in the following comments and responses.

**The following individuals provided comments:**

- 1) Eileen Swan, New Jersey Highlands Council
- 2) Michael Keady, Friends of Holland Highlands

The submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

**Comment:** The proposed amendment will disturb areas identified on the Department's Landscape Project Mapping (Version 3) as Rank 3 Critical Habitat for Cooper's Hawk, a State-threatened species. (1)

**Response:** The Department's Landscape Project Mapping (Version 3) was not available at the time the proposed amendment was submitted; therefore, Landscape Project Mapping (Version 2) was utilized. Landscape Project Mapping (Version 2) did not include any habitat Rank 3, 4, or 5 on the Huntington Knolls site. Landscape Project Mapping (Version 3) does indicate that the Huntington Knolls site exists within a nest buffer for Cooper's Hawk. However, the actual nest site is separated from the Huntington Knolls property by intervening development. Further, as noted below, the Huntington Knolls development now includes additional affordable housing units which should fully satisfy Holland Township's foreseeable affordable housing obligation. Therefore, it is not anticipated that additional sites will have to be developed to meet this obligation. Remaining forested habitat areas can remain zoned for low density residential uses, thereby preserving additional Cooper's Hawk foraging habitat in vicinity of the nest site. The Department does not believe that the Huntington Knolls development will adversely impact the continued viability of the Cooper's Hawk nest site. Lastly, the Cooper's Hawk population in New Jersey has been recovering and the status of the Cooper's Hawk is expected to be upgraded from "Threatened" to "Special Concern" in the near future.

**Comment:** The proposed development's footprint will encroach upon the 300 foot Special Water Resource Protection Area of a C-1 stream and the coincident Highlands Open Water Area buffer. (1) (2)

**Response:** The Department's current Executive Order 109 guidance establishes a 300-foot buffer on either side of Category One waters and their tributaries. The guidance states that the objective of the alternatives analysis shall be no loss of value due to potential short term or long term disturbance of these corridors. The EO 109 guidance further defines the functions to be assessed as including: filtering of stormwater runoff, nutrient uptake, groundwater storage and recharge, forest canopy, vegetative litter, wildlife habitat, bank stabilization and flood control. The EO 109



guidance is similar to the language in the Stormwater Management Rules (N.J.A.C. 7:8-5.5(h)) which allows encroachment in the disturbed portion of the outer 150-feet of a Special Water Resource Protection Area in certain circumstances provided that the functional value and overall condition of the special water resource protection area are maintained to the maximum extent practicable. The Department previously reviewed this project under those rules as part of an application for a Flood Hazard Area Control Act Permit. Under that analysis, the Department determined that, with the exception of the road crossing which is addressed below, the area of disturbance in the riparian corridor is more than 150 feet from the stream and is comprised of an area of previous disturbance (an agricultural field).. The existing agricultural use occurs to within a few feet of the stream. The periodic disturbance associated with the agricultural use has compromised the functional value of the riparian corridor. For example, the lack of vegetative cover and periodic tilling reduces the ability of the buffer to filter stormwater and remove nutrients. Similarly, the agricultural areas do not provide forest cover for temperature control, do not provide good cover for use as a wildlife corridor nor do they provide leaf litter as an energy source for the decomposing portion of the aquatic food web. The project will eliminate this periodic disturbance in the 150-feet of the buffer that lies closest to the stream. Over time, permanent vegetative cover will become established in this area including, eventually, a forested riparian corridor. Accordingly, the functional value of the remaining 150-feet of the riparian corridor will be enhanced and ultimately provide greater protection to the water resource than the 300-feet of buffer in its current condition. Therefore, the Department found this project to be consistent with those requirements and issued a Flood Hazard Area Control Act Permit on November 16, 2004.

The Highlands Open Water buffer requirements are more stringent than the Department's EO 109 guidance, in that the Highlands Regional Master Plan prohibits all avoidable disturbance within 300-feet of all surface waters in the Highlands. Both the stormwater management rules and the EO 109 guidance only apply a 300 foot buffer adjacent to Category One waters. Smaller buffers are required adjacent to surface waters with lower classifications. In addition, both the Stormwater Management Rules and the EO 109 guidance provide flexibility that allows encroachment in the buffer where there is previous development or disturbance provided that the functional value of the buffer is not reduced. The Department has concluded that existing agricultural use within the buffer has compromised its ability to provide water quality benefits and that, by eliminating disturbance within 150-feet of the stream, the remaining buffer will provide at least equal benefit to the 300 foot buffer in its current condition. Therefore, while the

project does not meet the letter of the Highlands Open Water buffer requirement, the intent of the open water buffer is satisfied by the project design. However, if the Flood Hazard Area Control Act permit expires or a major modification of that permit becomes necessary, the Department may revisit the proposed encroachment under the rules in effect at that time.

**Comment:** The proposed development's footprint allows for an intrusion of 3,207 square feet into the inner 150 foot Riparian Buffer of a C-1 stream. (2)

**Response:** The referenced encroachment of 3,207 square feet is required for the construction of an access roadway and the installation of a sanitary sewer crossing from County Route 519 into the project site. The entire road frontage of the site on County Route 519 lies within the 300-foot buffer of a Category One water or requires a crossing of the Category One water to reach the developable portion of the site. The Department determined under the Flood Hazard Area Control Act permit that, due to the location of the stream on the project site, which runs along the County Route 519 for nearly the entire length of that frontage, encroachment into the inner 150-foot was necessary because any access to the project site required a crossing of the buffer. Because of this, to deny such access would cause an exceptional and undue hardship upon the property owner. The approved permit also required that the Special Water Resource Protection Area (SWRPA) be expanded by 3,207 square feet elsewhere on the site to compensate for this encroachment. No additional encroachment into the inner 150 foot Riparian Buffer is approved as part of this amendment.

**Comment:** The proposed amendment includes disturbance of steep slopes. The Final Draft Highlands Regional Master Plan identifies both Severely Constrained (greater than 20 percent slope or greater than 10 percent within a Highlands Open Water buffer) and Moderately Constrained (slopes between 15 and 20 percent that are forested) Slopes. The Draft Regional Master Plan generally prohibits development on these slopes. (1)

**Response:** The Department reviewed the Highlands coverage of steep slopes on the project site. Steep slopes do not represent a significant percentage of the development site and are generally dispersed in small pockets throughout the site. These small isolated areas are unavoidable and due to their small size and isolation from the stream, the Department does not expect significant water quality impacts to result from their disturbance. The only large consolidated area of steep slopes on the site is that area included in the Highlands Open Water buffer. The majority of



slopes between 10 and 15 percent are confined to the banks of the stream and will remain untouched.

**Comment:** The proposed amendment includes disturbance of forest resources identified in the Draft Regional Master Plan. The Draft Regional Master Plan requires the use of very low impact design best management practices in these areas. (1)

**Response:** The development proposed for this site consists of relatively high density multifamily dwelling units. The development has been consolidated on the site as necessary to avoid encroachment into the inner 150-feet of the Special Water Resource Protection Area, with the exception of access to the site, and to avoid disturbance of the Natural Heritage Priority Site which occupies the southeast portion of the site. The development density is such that very low impact design cannot be accommodated and still have the project meet its basic purpose and achieve the affordable housing contribution. It is the affordable housing contribution on this site, as outlined below, and the environmental benefits expected to accrue from the protection of other sites, that is central to a finding that the project is consistent with the overall resource protection goals of the Highlands Regional Master Plan. As outlined below, the development project on this site should satisfy all, or nearly all, of Holland Township's affordable housing obligation. This project eliminates the need to designate and intensify zoning on other sites in the Protection and Conservation Zones as defined in the Highlands Regional Master Plan to meet Holland Township's affordable housing obligation. In addition to achieving the resource protection goals of the Highlands Regional Master Plan, low impact development can be achieved in the remainder of the Protection and Conservation Zones because they are and will continue to be zoned for low intensity uses. Therefore, the project is consistent with the overall goals of the Highlands Regional Master Plan.

**Comment:** The proposed amendment would exacerbate the deficit of net water availability in the HUC 14 subwatershed through additional consumptive use. The project includes a proposed water main extension from the adjacent Aqua New Jersey systems. The subwatershed currently has a deficit of net water availability and Aqua New Jersey has indicated that they will need additional allocation to service the project. (1) (2)

**Response:** The proposed project site is within Aqua America Water Company's franchise area. The Department has reviewed Aqua America's existing allocation and water usage figures and

has determined that it can supply potable water to this site under its existing allocation for the Phillipsburg system (PWSID # 2119001). It should also be noted that Aqua America draws water from the Hakiwokake Creek watershed and the Milford Borough Sewage Treatment Plant discharges to the Hakiwokake Creek watershed. Therefore, there is no depletive water loss (interbasin transfer) associated with this development.

The Highlands Regional Master Plan identifies the project site as being located within a water deficit HUC 14. The Regional Master Plan requires that stormwater recharge on development sites be increased to 125 percent of the predevelopment recharge and that any consumptive loss of water also be compensated by either reducing existing consumptive losses or further increasing recharge by 125 percent of the consumptive loss within the deficit HUC 14. Existing recharge on the site as computed using GSR-32 is 4,084,052 cubic feet per year. The consumptive loss associated with this site is calculated at 12,000 gallons per day, which equates to 585,561 cubic feet per year. Adding these figures together and multiplying by 1.25 yields a total required recharge on the project site of 5,837,017 cubic feet of water per year. The design of the stormwater management system for this project has been modified to include bioretention trenches designed to promote groundwater recharge. The Department has reviewed this design and has concluded that it provides the recharge necessary to meet the mitigation requirements of the Regional Master Plan. Therefore, the project as designed will not increase the deficit but rather actually reduce that deficit, once constructed.

**Comment:** The site is entirely within the Agricultural Resource Area of the Highlands Council Regional Master Plan (RMP). The wastewater and water policies of the RMP require clustering of the development such that 80 percent of the site is preserved for agriculture or natural resource open space. (1)

**Response:** Given the type and density of the development proposed on this site, there is no possible means for the project to preserve 80 percent of the land area of the site. However, the Draft Regional Master Plan, as well as the Final Regional Master Plan, describes this as a regional goal and encourages the use of mechanisms such as clustering, land preservation and transfer of development rights to achieve the 80 percent target. When viewed in a regional context, this project can achieve the 80 percent protection goal of the Regional Master Plan. The applicant has agreed to increase the number of affordable housing units on the project site from four to twenty-eight. In addition, a regional contribution equal to another four units has already



occurred. This brings the total number of affordable housing units provided by this development to thirty-two. The Department consulted with the Council on Affordable Housing (COAH) to determine the relative contribution of affordable housing on this site to the overall obligation of Holland Township. Based on that consultation, Holland Township's prior round unmet need for affordable units is sixteen. In response to the Department's inquiry, COAH has also provided an estimate of the probable third round housing need based on growth projections for Holland Township through 2018, which need would be an additional sixteen units. Therefore, the current commitment of 28 affordable housing units on the Huntington Knolls site plus an additional four units that Huntington Knolls has committed to fund through a regional contribution agreement would satisfy Holland Township's foreseeable affordable housing obligation. This is significant in light of the Regional Master Plan goal of preserving 80 percent of the land in the Conservation Zone and Protection Zone, because the satisfaction of the foreseeable affordable housing obligation would eliminate the need to increase density on other sites in these Zones to satisfy the affordable housing obligation through inclusionary development zoning. Thus, development density would be established or maintained at a level consistent with the protection objectives of the Regional Master Plan over more than 80 percent of the Protection and Conservation Zones in Holland Township.

Holland Township has filed a Notice of Intent with the Highlands Council that it intends to conform with the Highlands Regional Master Plan. The exact preservation mechanism for the areas of the Township located within the Conservation and Protection Zone will be determined through that process. However, the full satisfaction of Holland Township's affordable housing obligation on this site means that additional sites will not have to be identified through the Plan conformance process for increased density in order to accommodate affordable housing. Therefore, the Department concludes that the Huntington Knolls development provides a regional solution to the need for affordable housing and accomplishes the 80 percent protection objective when considered in the regional context.

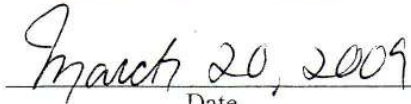
**Comment:** The proposed amendment includes development in the wellhead protection areas on-site. Development in wellhead protection areas must not reduce groundwater recharge volumes or contribute to water quality degradation. (1)

**Response:** As described above, the project will not decrease groundwater recharge and, through its stormwater design, the project will actually increase groundwater recharge. There is no on-site

wastewater disposal proposed so no wastewater pollutant load will be discharged within the wellhead protection area. Further, the project does not entail any industrial activity nor does it propose the type of retail or commercial development that would require the storage of large quantities of chemicals, fertilizers, pesticides or other contaminants that could potentially contaminate drinking water supplies. Stormwater from the project site is being managed in accordance with the Department's best management practices. Therefore, the Department concludes that the project will not reduce groundwater recharge nor introduce a potential significant source of contamination to the well head protection area.

This amendment represents only one part of the permit process and other issues may need to be addressed prior to final permit issuance. Additional issues which may need to be addressed may include, but are not limited to, the following: compliance with stormwater regulations; antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

  
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Lawrence J. Bajer, Director  
Division of Watershed Management  
Department of Environmental Protection

  
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