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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION

Adopted Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on **March 20, 2018**, 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. 7:15-3.5), an amendment (Program Interest No. 435437, Activity No. 160004) to the Upper Delaware Water Quality Management Plan (WQMP) was adopted by the Department of Environmental Protection (Department). This amendment, submitted by Grotto Engineering Associates, LLC on behalf of Heath Village Retirement Community, expands the sewer service area (SSA) by 47 acres to include a portion of Block 19, Lots 5, 6 and 7 in Washington Township, Morris County. The project, identified as Heath Village West, is an application to propose to develop the property as a retirement community containing 144 two-bedroom units, a 108-bed healthcare center, and a community center for use by the residents of the retirement community and other site improvements and amenities. Preliminary notice was published in the New Jersey Register on December 18, 2017 at 49 N.J.R. 4047(a). A comment was received during comment period, state that comment was received and will be addressed within this notice.

Comment: Development on these lands should not be allowed. Both the bald eagle and wood turtle deserve full protection and not mitigation, which is often abandoned after some time. This is particularly true of mitigation that includes mowing requirements. The commitment to mowing is offered simply to obtain approval, and there is no indication that any steps are or will be taken to impose penalties for any owner who obtains approval based on a suggested mitigation measure, only to abandon the mitigation activity after a few years of compliance. (Jean Public)

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Response: As provided at N.J.A.C. 7:15-4.4(k), the Department allows mitigation only when it is determined that the impacts to endangered and threatened wildlife species habitat cannot be avoided, and that the proposed project or activity includes implementation of conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat. If impact cannot be avoided and any impact is minimized to the maximum extent practicable, the mitigation must result in no net loss of habitat value to the endangered or threatened species, including the local population of that species. N.J.A.C. 7:15-1.5 defines “no net loss of habitat value” as no net reduction in the capacity of an area to support a population of any endangered or threatened wildlife species similar in size and health to any such population that the same area can support prior to completing the regulated activity.

As described in the preliminary notice for this amendment to add 47 acres to SSA, the applicant provided a Habitat Impact Assessment providing for the conservation of 54.71 acres as well as a series of mitigative steps to compensate for any potential impacts to Wood Turtle habitat within the riparian zone of the Musconetcong River. In addition, on September 7, 2017, Amy S. Greene Environmental Consultants submitted an Open Space Management Plan (OSMP) on behalf of the applicant. The OSMP indicated that the applicant is responsible for maintaining and monitoring the OSMP and submitting annual reports to the Township, to whom the conservation easement will be granted. Among these maintenance and monitoring activities is the requirement to mow annually and maintain a log of mowing activities. In addition, the applicant has granted the Department’s Endangered and Non-Game Species Program limited access to the conservation easement to conduct wildlife surveys and studies. Based on these proposed measures, the Department expects that the applicant will perform the required mitigation activities.

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), Environmentally Sensitive Areas (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; 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 Rank 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 under N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped pursuant to N.J.A.C. 7:15-4.4(e)1 as threatened or endangered wildlife habitat, the Department utilized Landscape Maps version 3.3 at <http://www.nj.gov/dep/gis/listall.html> and determined that portions of the site include Rank 3 Wood Turtle and Rank 4 Bald Eagle habitat.

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 designated 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

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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 survival or a local population), or includes some adequate degree of conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat and will mitigate for any such adverse modification. N.J.A.C. 7:15-4-7 provides the information that must be submitted as part of an HIA for the Department to review. On July 26, 2017, the applicant submitted an HIA evaluating impacts of the proposed project on the habitat for Wood Turtle and Bald Eagle. None of the acreage proposed for development is mapped for Bald Eagle, therefore, the project will avoid the Bald Eagle habitat altogether. In addition, the HIA proposed the following onsite conservation measures to mitigate for any adverse modification of Wood Turtle habitat:

1. The establishment of a conservation easement to encompass a total of 54.71 acres of mapped wood turtle habitat that would increase the “preservation-to-impacted” acreage mitigation ratio to 2:1;
2. Construction of one (1) artificial nesting mound for Wood Turtles within the riparian zone of the Musconetcong River;
3. The addition of three (3) supplemental food planting areas, encompassing approximately 40,000 square feet in total, within 90 meters of the Musconetcong River. Food planting areas will be seeded with floodplain seed mix and supplemented with approximately 1,650 additional shrubs and herbs including raspberry, cinquefoil, wild strawberry, and violet;
4. The establishment of a long-term mowing landscaping commitment, for at least 20 years, in which areas within 300 feet of the Musconetcong River will be mowed annually between November 30 and March 1 to minimize potential impacts to wood turtles.

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5. The granting of limited access to the Department to the conservation easement, provided sufficient prior notification has been given to applicant, for purposes of conducting wildlife surveys and studies.

In total, an area of 54.71 acres of suitable habitat would be maintained onsite to compensate for the impact to Wood Turtle habitat. This proposed amendment is subject to the implementation of the above-referenced conservation measures.

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. To evaluate areas mapped as Natural Heritage Priority Sites pursuant to N.J.A.C. 7:15-4.4(e)2, the Department utilized its GIS data at <http://www.nj.gov/dep/gis/listall.html>. Areas mapped as Natural Heritage Priority Sites are not to be included in proposed SSAs, except as provided under N.J.A.C. 7:15-4.4(i) through (l). 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. 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 <http://www.nj.gov/dep/gis/listall.html>. Areas identified as Category One waters and their corresponding 300-foot riparian zones are not to be included in SSAs, except as provided under N.J.A.C. 7:15-4.4(i) through (l). 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 the SSAs, except

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as provided at N.J.A.C. 7:15-4.4(i) through (1). 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> and identified mapped wetlands on the subject sites. Pursuant to N.J.A.C. 7:15-4.4(j)3, the applicant provided a Freshwater Wetlands Letter Interpretation / Line Verification File No. 1438-03-0018.1, FWW 150001 confirming the extent of wetlands and transition areas on the site. The Department and the applicant acknowledge that a riparian zone permit is required in accordance with Flood Hazard Area Control Act rules, N.J.A.C. 7:13. The applicant also intends to apply for: a Freshwater Wetlands General Permit 10A pursuant to N.J.A.C. 7:7A-10A for proposed disturbance to State open waters, freshwater wetlands, and wetland transition areas associated with the proposed access road crossing and associated culvert construction and a Freshwater Wetlands General Permit No.17 for proposed disturbance to wetland transition areas associated with the construction of a pedestrian trail pursuant to N.J.A.C. 7:7A-5.17. While there may be other wetlands located on Block 19, Lots 5, 6, and 7, none of those instances of wetlands are 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 on 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.

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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 201 grant limitations that prohibit the extension of sewers into specified ESAs are excluded from the 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 <http://www3.epa.gov/region02/water/sewer.html>. There are no 201 Facilities Plan grant conditions that provide for the restriction of sewer service to ESAs.

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 plan. Based on review of the Washington Township Zoning Ordinance RO-03-16, the proposed project is in the Musconetcong Age-Restricted Housing Overlay Zone. In addition, Heath Village West is located within the Highlands Planning Area, which requires a determination of consistency with the Highlands Regional Master Plan (RMP). On April 7, 2017, the Highlands Council submitted a letter to the Department that the proposed project is in a Protection Zone and in a deficit HUC-14 watershed. Accordingly, the Highlands Council required the approval of a Scope of Work for a Water Use and Conservation Management Plan (WUCMP) before it would issue consent on the WQMP amendment. On October 11, 2017, the Highlands Council issued a letter to the Department that the Scope of Work for the WUCMP had been approved, and that the proposed project is now consistent with the Highlands RMP.

Pursuant to N.J.A.C. 7:15-3.5(j)2, projects that propose to add 100 or more acres to the SSA or where the additional SSA would generate 20,000 gpd or more of wastewater, a 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, is required. The project plans to increase the SSA by 47 acres on portions of Block 19,

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Lots 5, 6, and 7 and the projected wastewater flow for the proposed project, anticipated to be received by Hackettstown Municipal Utilities Authority WPCP, is 46,607 gallons per day (gpd) based on flow calculations in accordance with N.J.A.C. 7:14A-23.3. The Hackettstown Municipal Utility Authority is currently permitted to discharge up 3.3 Million Gallons per Day (MGD) under New Jersey Pollutant Discharge Elimination System (NJPDES) permit NJ0021369. Based on the highest average of monthly flow from NJPDES Discharge Monitoring Reports for the 12-month period of March 2015 to February 2016, the existing wastewater flow discharged from Hackettstown Municipal Utility Authority the was calculated to be 2.037 MGD. Therefore, the proposed additional flow should not cause the facility to exceed its permitted capacity.

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 Hackettstown Municipal Utilities Authority WPCP, Washington Township, and Morris County. On January 9, 2018, the Hackettstown Municipal Utilities Authority WPCP issued Resolution NO. 18-3266 in support of the proposed amendment. On January 18, 2018, the Morris County Board of Chosen Freeholders confirmed via phone call that the Board would not offer a position regarding the proposed amendment. On January 24, 2018, Washington Township issued a letter confirming that the Township had no position on 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 the approval of this amendment does not eliminate the need to obtain all necessary permits, approvals

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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 20, 2018 _____

Date