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DEPARTMENT OF ENVIRONMENTAL PROTECTION

WATER RESOURCES MANAGEMENT

DIVISION OF WATER MONITORING AND STANDARDS

Adopted Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on August 28, 2018, 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. 435434, Activity No. AMD160001), to the Upper Raritan Water Quality Management (WQM) Plan. This amendment, submitted by Chris Nusser of Engineering and Land Planning Associates on behalf of Ronald Barber, expands the Mendham Borough Sewage Treatment Plant sewer service area (SSA) by 0.08 acres to serve a proposed subdivision of an existing lot into two residential building lots.

There is an existing home on the lot, and the proposed subdivision would allow for the construction of a new home on the proposed lot. The proposed project, identified as Barber Subdivision, is in Mendham Borough, Morris County, on a portion of Block 501, Lot 24, and a portion of proposed Lot 24.01, which is south of Mountainside Road and north of Aberdeen Drive. Preliminary notice was published in the New Jersey Register on February 5, 2018 at 50 N.J.R. 866(a). No comments were received during the comment period.

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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. 7:15-3.5 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), certain coastal planning areas, or areas subject to US 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), 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; areas mapped as 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 ESAs, 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

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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 SSAs except as provided at N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped as threatened or endangered wildlife species habitat pursuant to N.J.A.C. 7:15-4.4(e)1, the Department utilized its Landscape Maps, version 3.3, available at <http://www.nj.gov/dep/gis/listall.html>, and determined that a portion of the site is mapped as Rank 4 Wood Turtle, Rank 4 Barred Owl, and Rank 4 Bobcat habitat, as well as Rank 5 Indiana Bat habitat. N.J.A.C. 7:15-4.4(j)2 provides that an applicant may rebut the presumption that the Department's environmental data is accurate by providing a Habitat Suitability Determination (HSD) prepared pursuant to N.J.A.C. 7:15-4.6, that demonstrates that an area does not include suitable habitat for endangered or threatened wildlife species. On June 30, 2017, the applicant submitted a HSD, prepared by Chris Nusser of Engineering and Land Planning Associates. Department review of the HSD determined that the proposed project site contains suitable habitat for the species mentioned above. 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 designed as ESA based on the Landscape Maps may be included in SSA provided the Department determines, through 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, 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

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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. The above-mentioned HSD also included a HIA which evaluated impacts to the habitat of the above listed species. The HIA found that the proposed project will not have direct or indirect impacts on mapped habitat due to the absence of critical foraging, feeding or nesting habitat for the subject species and the abundance of habitat in neighboring areas. The Department's review of the environmental constraints associated with the proposed project site supported the above conclusion. The proposed home will be constructed near Mountainside Road and is largely in line with existing houses on adjacent lots. The proposed disturbance will occur within a headwater area about 1500 feet from core Wood Turtle habitat and the proposed re-vegetation plan required in the transition area waiver described below, will mitigate for any habitat lost to the house footprint. The property's landscape position along a narrow, wooded corridor in a rural/suburban area renders the actual location unlikely to be used by Barred Owls or Bobcat, and potential impacts to Indiana Bat habitat have been mitigated by the imposition of an April 1 to November 15th tree clearing condition in the applicant's transition area waiver. In addition, the proposed project has received a Freshwater Wetlands Transition Area Waiver (File No. 1418-13-0001.1 FWW140001 FWTW1) from the Department that requires re-vegetation of portions of the remaining transition areas, as well as the placement of a conservation easement on the modified transition area and onsite wetlands contained on the original lot. On September 7, 2017, the Department received proof of filing that the conservation easement had been recorded with the Morris County Clerk. Based

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on the filed conservation easement, and the understanding that the proposed project is to be constructed according to the clearing limitations, the proposed revegetation plan, and the timing restrictions required by the transition area waiver, the Department found that the project will result in insignificant or discountable impacts to the documented habitat for the Indiana bat, Bobcat, Barred Owl and/or Wood Turtle. In the event the project disturbs the documented species habitat, the Department found that there are adequate conservation measures to mitigate any negative impacts.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as ESAs, such as Natural Heritage Priority sites identified pursuant to N.J.A.C. 7:15-4.4(e)2. Areas mapped as Natural Heritage Priority Sites are not to be included in SSAs, except as provided at N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped as Natural Heritage Priority Sites, the Department utilized its GIS data at <http://www.nj.gov/dep/gis/listall.html> and determined that there are no Natural Heritage Priority sites located within the expanded SSA for this project.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as ESAs, such as Category One waters and their corresponding 300-foot riparian zones pursuant to N.J.A.C. 7:15-4.4(e)3. Areas identified as Category One waters and their corresponding 300-foot riparian zones are not to be included in SSAs, except as provided at N.J.A.C. 7:15-4.4(i) through (l). 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

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its GIS data at <http://www.nj.gov/dep/gis/listall.html>. A tributary to the north branch of the Raritan River (FW2-TPC1) is located on the property; however, on February 27, 2013, the Department issued a Flood Hazard Area Applicability Determination that the proposed activity qualifies for a permit by rule at N.J.A.C. 7:13-7.2(a)2, and that no written flood hazard area approval is required for the activity because the activity would not disturb the riparian zone except where previous disturbance had occurred.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for SSA if they are not identified as ESAs, 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 SSAs, except as provided at N.J.A.C. 7:15-4.4(i) through (l). 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 site. Pursuant to N.J.A.C. 7:15-4.4(j)3, the applicant provided Freshwater Wetlands Letter of Interpretation (LOI)/Line Verification File No. 1418-13-0001.1 FWW130001 confirming that there are no wetlands in the expanded SSA for this project.

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

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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 identified on the 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.

In accordance with 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 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 <https://www.epa.gov/npdes-permits/environmentally-sensitive-area-esa-grant-condition-waiver-program-region-2>. There are no 201 Facilities Plan grant conditions applicable to the expanded SSA for this project.

Pursuant to N.J.A.C. 7:15-4.4(h)1 and 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 plans. On May 16, 2017, Mendham Borough confirmed

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via written statement that the proposed project is consistent with its zoning and master plan. On July 25, 2017, the Morris County Department of Planning confirmed via email that it will not offer a position regarding the proposed amendment's consistency with the county master plan.

Pursuant to N.J.A.C. 7:15-3.5(j)2, applicants for projects that propose to add 100 or more acres to the SSA, or where the additional SSA would generate 20,000 gallons per day (gpd) or more of wastewater must perform a 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 plans to add 0.08 acres to the SSA, and the projected wastewater flow for the proposed project to be received by the Mendham Borough Sewage Treatment Plant is 600 gpd, based on flow calculated pursuant to N.J.A.C. 7:14A-23.3. Therefore, no wastewater treatment capacity analysis is required for this amendment.

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, adoption of this amendment. Accordingly, the Department instructed the applicant to request written statements of consent from Mendham Borough, the Mendham Borough Sewage Treatment Plant, and a resolution from the Morris County Board of Chosen Freeholders. On February 16, 2018, the Morris County Office of Planning and Preservation communicated via email that it would not state a formal position in support or objection to the proposed amendment. On April 19, 2018, Mendham Borough adopted Resolution 85-2018 in support of the amendment.

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Mendham Borough had communicated to the applicant that since the Borough owned the Mendham Borough Sewage Treatment Plant, they would issue one resolution which would address both the Borough and the Sewage Treatment Plant.

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 or certifications required by any Federal, State, County or municipal review agency with jurisdiction over this project/activity.

8/28/18
Date _____

SIGNED

Bruce Friedman, Director

Division of Water Monitoring and Standards