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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

WATERSHED AND LAND MANAGEMENT

DIVISION OF WATERSHED PROTECTION AND RESTORATION

Adopted Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on April 19, 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 Upper Raritan Water Quality Management (WQM) Plan. This amendment, identified as the Errico Acres, also known as Residences at Overleigh, (Program Interest No. 435434, Activity No. AMD200009) establishes a new sewer service area (SSA) within a portion of Block 5, Lot 4, Far Hills Borough, Somerset County. The project parcel is approximately a total of 42 acres of which 21.1 acres would be designated as SSA. The proposed development consists of 109 age-restricted townhouses and 25 non-age restricted apartment units, to be served by a proposed New Jersey Pollutant Discharge Elimination System (NJPDES) permitted discharge to groundwater (DGW) wastewater treatment facility. As calculated in accordance with N.J.A.C. 7:14A-23.3, the proposed project will generate a projected wastewater flow of 29,600 gallons per day (gpd).

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The projected flow of 29,600 gpd and number and type of units, 109 age restricted and 25 non-age restricted units as listed above, are revised from what was stated in the amendment proposal public notice. The proposal notice identified 105 age restricted townhouses and 29 non-age restricted apartment and a flow of 62,650 gpd projected in accordance with N.J.A.C. 7:9A-7.4. After the proposal went to notice, the applicant informed the Department that the number and type of units had been revised from the original application proposal, however the total number of units remained unchanged at 134. Additionally, the applicant clarified that the DGW facility is to provide advanced treatment, with UV disinfection, and will meet Groundwater Quality Standards prior to discharge. Based on this information, the projected wastewater flow was recalculated in accordance with N.J.A.C. 7:14A-23.3, which resulted in a decrease of the projected flow from 62,650 gpd to 29,600 gpd. The significantly decreased flow projection and revised dwelling unit type breakdown did not affect or change the results of the Department's regulatory analysis as described in the proposal public notice. The Department is adopting the proposed amendment with the minor changes pursuant to N.J.A.C. 7:15-3.5(g)10.

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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. 1642(a). A public comment and agency response is provided at the end of this notice.

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 alternations 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 proposing to add 100 or more acres 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. The proposed project involves less than 100 acres but will generate more than 20,000 gpd of wastewater flow. However, as the proposed project will be served by a new onsite DGW wastewater treatment plant specifically for this project, a wastewater treatment plant (WTP) 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 in the Conservation Zone and Conservation-Environmentally Constrained Subzone of the Highlands Planning Area. Far Hills Borough has opted to not conform with the Highlands Regional Master (RMP) for those portions of the Borough within the Highlands Planning Area. However, pursuant

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to Executive Order 114 (2008), as the property is located in the Conservation Zone and Conservation-Environmentally Constrained Subzone, the Highlands Council reviewed the proposed amendment for consistency with the Net Water Availability provisions of the RMP and issued a letter on May 20, 2020, stating that the subwatershed the proposed project is located in is not in deficit and, therefore, the project is not subject to Highlands review.

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 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:

- In accordance with N.J.A.C. 7:15-4.4(e)1, the Department determined that the SSA contains areas mapped as endangered and threatened wildlife species habitat Rank 5 for Indiana Bat and Northern Myotis based on the Department's Landscape Maps of Habitat

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for Endangered, Threatened or Other Priority Wildlife “Landscape Project Data” Version 3.3 GIS data layers. On September 17, 2020, the applicant submitted a Habitat Impact Assessment (HIA) (EcolSciences, Inc., September 16, 2020 HIA, Errico Acres, Block 5, Lot 4, Borough of Far Hills, Somerset, New Jersey) prepared pursuant to N.J.A.C. 7:15-4.7. The Department reviewed the HIA and concluded that the absence of Indiana and northern long-eared bat during the survey is a strong indicator that a maternity roost for either species does not occur on or in proximity to the site. Therefore, the most likely bat impacts would be to transient male populations and solitary bats passing through the site. The Department determined that the impacts to bat habitat in the sewer service area cannot be avoided and that implementation of conservation measures are necessary to minimize to the maximum extent practicable all adverse modification of suitable habitat and to mitigate for any such adverse modifications, in accordance with N.J.A.C. 7:15-4.4(k)3 and 4.7(e)1iii. To minimize potential impacts to a listed federally protected bat species, the applicant placed a conservation easement and deed restriction on the undeveloped portions of the project property which memorializes the following steps to avoid, minimize and mitigate impacts to potential transient bat habitat:

1. Adhere to the seasonal restrictions to clearing trees of 3-inch greater Diameter Breast Height (DBH) from April 1 to September 30.
2. Reforestation at a ratio of 2:1 to areas impacted by the SSA.

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3. The tree planting plan will follow USFWS guidance as outlined in their “Characteristics of Indiana Bat Summer Habitat” and “Forest Management Recommendations” (2008). The replanting plan proposes approximately 658 trees on 20-foot centers. The applicant will monitor the survival of the tree mitigation area for a period of five years to assure at least 85% survival rate.
4. Place wetlands and wetland buffers not impacted by development and all remaining wooded portions of the site into a conservation easement to permanently preserve its current forested condition.
5. Conduct tree girdling of certain trees to encourage habitat enhancement in the short-term for roosting bats while newly planted trees mature.
6. The current white ash trees will be preserved to provide a transitional natural habitat.
7. Minimize any potential lighting impacts with downward facing lights, shields, and/or timers.
8. Avoid application of fertilizers or pesticides within 100 feet of wetlands and waterbodies.

Pursuant to N.J.A.C.7:15-4.4(k)3, the conservation restriction was executed, filed and recorded with the Somerset County Clerk and proof of recordation of the deed restriction was provided to the Department. The agreed upon conservation restriction was executed on October 13, 2021, and filed and recorded on December 10, 2021. The conservation

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restriction runs with the properties and is binding on all successive owners, their agents and assigns.

- The Department determined that the SSA 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 SSA does 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.
- The Department determined that the project location does not contain wetlands based on the “Wetlands 2012” GIS data layer in accordance with N.J.A.C. 7:15-4.4(e)4. However, in accordance with N.J.A.C. 7:15-4.4(j)3, the applicant provided a Freshwater Wetlands LOI/Line Verification File #1807-19-0001.1/ FWW190001. The LOI confirmed that wetlands were present on the project property but not within the SSA.
- The Department determined that the SSA does 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).
- The Department determined that there are no 201 Facilities Plan grant conditions applicable to the project based on the U.S. Environmental Protection Agency list of New

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Jersey Grantees 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).

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. On December 23, 2019, the Borough of Far Hills passed Ordinance No. 2019--08 which rezoned the proposed project property as TH-6-IAR for Townhouse Inclusionary Age-Restricted Residents. The Somerset County Planning Department issued a letter dated November 20, 2020, stating that the proposed project is not consistent with the Somerset County Master Plan, specifically the Land Use and Housing Elements, as the project is located in the Priority Preservation Investment Area (PPIA). The Board's practice has been only to support minimal amendments in the PPIA to address the water quality and public health issues associated with failing septic systems as documented by the Municipal Health Officer. However, in recognition of the Court rulings on the Borough's Settlement Agreement dated October 15, 2018, entitled, "Agreement to resolve issues between the Borough of Far Hills, Melillo Equities and Fair Share Housing Center concerning the Borough's Mount Laurel fair Share Obligations and the Means by Which the Borough Shall Satisfy Same", the County Planning Board will not object to this proposed amendment.

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 Far Hills Borough, the Somerset County Board of

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County Commissioners, and the Highlands Council. On November 8, 2021, Far Hills Borough issued resolution 21-133 consenting to the proposed amendment. Somerset County Planning Board, acting on behalf of the of Somerset County Commissioners, adopted a resolution on October 19, 2021, consenting to the amendment. The Highlands Council elected not to respond to the request for a statement of consent.

Preliminary notice of this amendment was published in the New Jersey Register on September 20, 2021, at 53 N.J.R. 1642(a). The Department accepted comments on the proposed amendment through October 20, 2021. Comments were received from one individual during the comment period.

The following individual provided written comment:

Jean Public

A summary of the comment and the Department's response follows.

Comment: The project should not be allowed and no further development where logging of trees is to occur should be permitted. New plantings will take 30 to 40 years to grow if they don't die in the meantime. Those trees strong enough to be there deserve to live and they preserve homes for wildlife. Every bit of wildlife living in those areas is being killed when you take down 21 acres and more of trees. This is unconscionable and needs to stop. There is no need for this development. There is plenty of room in Newark, NJ to stop taking every available bit of open land for development. This is an attack on nature and needs to be stopped.

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Response: The amendment has been reviewed in accordance with N.J.A.C. 7:15. As discussed above, the applicant has placed a conservation easement on portions of the property and is implementing measures to avoid, minimize and mitigate impacts to potential transient bat habitat, which largely relate to the protection and enhancement of the tree habitat. The applicant has placed wetlands and wetland buffer areas not impacted by the development and all remaining undeveloped wooded portions of the site, totaling roughly 15 acres, in a conservation easement, thereby permanently protecting this forested habitat patch. Additionally, over 6 acres will be replanted with bat preferred trees.

Regarding the depletion of open space, as noted above, on December 23, 2019, the Borough of Far Hills passed Ordinance No. 2019--08 which rezoned the proposed project property as TH-6-IAR for Townhouse Inclusionary Age-Restricted Residents. This action was in response to Court rulings and the Borough's Settlement Agreement to resolve issues related to Mount Laurel fair share housing obligations. The project was deemed consistent with local planning initiatives and meets the regulatory requirements of the WQMP rules.

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.