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ENVIRONMENTAL PROTECTION

WATER RESOURCES MANAGEMENT

DIVISION OF WATER MONITORING AND STANDARDS

Adopted Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that on January 9, 2019 , 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, the New Jersey Department of Environmental Protection (Department) adopted an amendment (Program Interest No. 435464, Activity No. 170001), to the Cape May County Water Quality Management (WQM) Plan and the Cape May County Wastewater Management Plan (WMP). This amendment, submitted by Richard Hluchan, Esq. on behalf of Milton and Patricia Nagel, expands the sewer service area (SSA) of the Lower Township Municipal Utilities Authority Sewage Treatment Plant by 0.07 acres to serve a proposed residential development identified as “Nagel Property.” The proposed project consists of a four-bedroom single-family home on a portion of Block 753.18, Lot 2, Lower Township, Cape May County, south of the intersection of Portsmouth Road and Rockport Drive. Preliminary notice was published in the New Jersey Register on April 2, 2018 at 50 N.J.R. 1110(a). No comments were received during the comment period.

This amendment has been reviewed in accordance with 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),

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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 areas, 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 endangered and threatened wildlife species habitat as identified on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Wildlife (Landscape Maps) as Ranks 3, 4, or 5; areas mapped as Natural Heritage Priority Sites; Category One waters designated in the Department's Surface Water Quality Standards, 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 sewer service if they are not identified as ESAs, such as endangered and threatened 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 endangered and threatened 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 under N.J.A.C. 7:15-4.4(i) through (l). To evaluate areas mapped as endangered or threatened 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 the site is mapped as Rank 4 habitat for Bald Eagle, Red Shouldered Hawk, Black Crowned Night Heron, and Cattle Egret. 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 demonstrating

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that an area is not suitable habitat for endangered or threatened wildlife species. The Department accepted the May 2015 Compliance Statement prepared by the Lomax Consulting Group as part of a CAFRA Individual Permit application as the HSD. Under a Settlement Agreement with the Department executed on August 23, 2016, dated (NJDEP FILE #0505-15-0003.I CAF150001), the owners agreed to record a Grant of Conservation Restriction on the non-developable portion of the site, which was recorded by the County of Cape May on September 27, 2017. The Conservation Restriction stipulates that there will be no development or disturbance to the remainder of the property. Based on the evaluation of endangered and threatened wildlife species habitat provided in the CAFRA permit application and the recorded Conservation Restriction on the remainder of the property, the Department determined that the project would not result in adverse impacts to endangered or threatened species or their habitat because woody vegetation between the proposed home and the adjacent marsh habitat would be preserved.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for sewer service 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 under 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 within the expanded SSA for this project.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for sewer service 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

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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> and determined that there are no Category One waters or corresponding 300-foot riparian zones 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 sewer service 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 under 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 wetlands on the subject site. Pursuant to N.J.A.C. 7:15-4.4(j)3, the Department accepted the May 2015 Compliance Statement prepared by the Lomax Consulting Group as part of a CAFRA Individual Permit application, which shows mapped coastal wetlands to the south of the property; however, the proposed project will not result in disturbance to the wetlands areas, which will be preserved under the Conservation Restriction required under the Settlement Agreement, and there are no wetlands located in the expanded SSA for this project.

Pursuant to N.J.A.C. 7:15-4.4(d), areas shall only be eligible for sewer service 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 SSAs, 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

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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> and determined that, while the proposed project site is located within a Coastal Fringe Planning Area, it qualifies for the infill exemption under N.J.A.C. 7:15-4.4(f)2. N.J.A.C. 7:15-1.5 defines infill development as the development of undeveloped or underdeveloped land in an area that is contiguous to and substantially surrounded by developed land that is served by as wastewater treatment facility as of November 7, 2016 and that will generate less than or equal to 8,000 gallons per day (gpd). N.J.A.C. 7:15-4.4(f)2 provides that Coastal Environmentally Sensitive Planning Areas shall not be identified as eligible for SSA unless documentation is provided demonstrating that their inclusion is necessary to accommodate infill development or as necessary to create a linear boundary that coincides with recognizable geographic, political, or environmental features depicted in Department GIS coverages. The northern, eastern, and western boundaries of the expanded SSA are substantially and significantly developed, are served by the Lower Township Municipal Utilities Authority Sewage Treatment Plant and will generate only 300 gpd of wastewater flow based on calculations in accordance with N.J.A.C. 7:14A-23.3. Therefore, the Department has determined that the expanded SSA will accommodate infill development as provided under N.J.A.C. 7:15-4.4(f)2.

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 SSAs, unless documentation can be provided demonstrating that a mapping waiver has been obtained from the 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

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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 January 5, 2017, the Lower Township Board of Adjustment issued Resolution 16-36-ZBA granting a variance to allow construction of the proposed single-family home. In a December 15, 2017 e-mail, the Cape May County Planning Board stated that it would not offer a position on the proposed project.

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 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 would add 0.07 acres to the SSA and generate a projected wastewater flow of 300 gpd to be received by the Lower Township Municipal Utilities Authority Sewage Treatment Plant. 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 the Board of Public Utilities-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 a written statement of consent from the Lower Township Municipal Utilities Authority and resolutions from Lower Township and the Cape May County Board of Chosen Freeholders. On May 7, 2018, Lower Township adopted Resolution 2018-169 in support of the proposed amendment. On June 28, 2018, the Lower Township Municipal

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Utilities Authority issued a letter in support of the proposed amendment. On July 24, 2018, the Cape May County Board of Chosen Freeholders adopted Resolution 565-18 in support of 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 or certifications required by any Federal, State, County or municipal review agency with jurisdiction over this project/activity.

1/9/19
Date _____

SIGNED

Bruce S Friedman, Director
Division of Water Monitoring and Standards