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## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

#### **OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION**

#### **Adopted Amendment to The Northeast Water Quality Management Plan**

##### **Public Notice**

**Take notice** that on **May 18, 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), the Department of Environmental Protection (Department) adopted an amendment (Program Interest No. 435442, Activity No. AMD170001) to the Northeast Water Quality Management Plan (WQMP). This amendment, submitted by Mark E. Meneghin P.E. LSRP on behalf of Kinnelon Borough and Pompton Plains Reformed Bible Church, expands the Two Bridges Sewage Authorities (TBSA) sewer service area (SSA) by two acres to include a portion of Block 45502, Lot 119 in the Borough of Kinnelon, Morris County. The proposed project, identified as “Kinnelon Shelter and Community Center,” would construct a shelter/community center that will include meeting rooms, a multi-purpose room, a kitchen and restroom facilities, and an open recreational space. Preliminary notice was published in the New Jersey Register on February 5, 2018 at 50 N.J.R 862(a). No comments were received during the comment period and no objections were heard at the March 13, 2018 public hearing.

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

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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; 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 habitat for threatened and endangered species Ranks 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 as threatened or endangered wildlife habitat pursuant to N.J.A.C. 7:15-4.4(e)1, the Department utilized its Landscape Maps, version 3.3 at <http://www.nj.gov/dep/gis/listall.html>. Landscape Maps, version 3.3 shows a

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portion of the site as Rank 3 Barred Owl, Rank 4 Northern Goshawk, and Rank 4 Bobcat habitat.

The site was also identified as a species occurrence area for Rank 5 Indiana Bat, Rank 5 Northern Long-Eared Bat, and Rank 5 Great Blue Heron species. As there is no dispute regarding suitability of the habitat for these species, the Department did not require a Habitat Suitability Determination

pursuant to N.J.A.C. 7:15-4.4(j) and 4.6.

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 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 August 15, 2017, the applicant submitted an HIA evaluating impacts of the proposed project on the habitat for Indiana Bats, Northern Goshawks, Bobcats, and Barred Owls.

For the Northern Goshawk, the HIA concluded that the proposed project should not adversely affect the breeding population of the species, as there is currently little suitable habitat

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on site, and only marginal foraging or roosting habitat would be affected by the disturbance.

None

of the acreage proposed for development is suitable habitat for Northern Goshawks and minimal/

discountable impact to barred owl and bobcat habitat. For the Barred Owl, the majority of the five acres disturbance area consists of an aged and monotypic forest due to past agricultural uses, and

includes some foraging trees for the species. There will be some impact to owl habitat that could provide roosting or, to a lesser extent, nesting habitat. Regarding Bobcat habitat, that the project site is forested and connected by a narrow band of forest to larger contiguous forested lands will benefit the species. However, the surrounding residential development and ballfields limit the probability of bobcat usage of the site. Collectively, the Department anticipates that the impact of the proposed project will be insignificant or discountable for all species of concern.

To the extent that impacts will occur to suitable habitat for these species, the applicant proposed the following onsite and offsite conservation measures to mitigate for any adverse modification of endangered and threatened species habitat:

1. The preservation of 62.83 acres of suitable habitat for all three species via acquisition of a tract of land near to the subject site, which will be preserved as additional forest; and
2. The location of several nest boxes on the preserved property to improve habitat quality for the Barred Owl.

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In total, this conservation measures will protect 67.83 acres of critical suitable endangered and threatened species habitat. This protected property is better positioned to serve as habitat than the proposed project site due to its association with a forest tract over 1,000 acres in size, as well as its proximity to adjacent publicly owned lands, and its connection to known habitats for the species. Additionally, the Division of Fish and Wildlife recognizes that non-game species Indiana Bat, Northern Long-eared Bat, Bobcat, and Great Blue Heron are reported of having occurrence in this area. Endangered and Non-Game Species Program (ENSP) would not expect any long term adverse impact to Bobcat or GB Heron from this project. To protect Indiana Bats and Northern Long-eared Bat habitat, ENSP has restricted the clearing of certain trees between April 1 and November 15 within 10.0 miles of a hibernaculum. ENSP has advised a general timing restriction on mechanical trimming or removal of trees from March 15 through July 31 to protect nesting birds covered under the Migratory Bird Treaty Act. In conclusion, the Department believes the proposed project will result in either insignificant or discountable impacts to endangered or threatened species habitat, or that such impacts will be sufficiently mitigated through the stated 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 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 proposed 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 pursuant to N.J.A.C. 7:15-4.4(e)2, the Department utilized its GIS data at

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<http://www.nj.gov/dep/gis/listall.html>. 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 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 under 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 its GIS data at <http://www.nj.gov/dep/gis/listall.html>. There are no Category One waters 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 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 proposed SSAs, except as provided under N.J.A.C. 7:15-4.4(i) through (l). Areas mapped as wetlands pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 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 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>. There are no wetlands within the designated SSA of 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 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

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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 identified on the CAFRA Planning Map available at <http://www.nj.gov/dep/gis/install.html>. The subject site is not located within any Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Planning Areas.

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 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 <https://www.epa.gov/npdes-permits/environmentally-sensitive-area-esa-grant-condition-waiver-program-region-2>. There are no 201 Facilities Plan grant conditions for the proposed site.

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 plans. The subject site is in the A-1 Residential Zoning

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District. In December 2016, the Borough of Kinnelon or its land use consultant issued a memorandum which outlined the longstanding municipal goal dating back to 1958 that articulates the desire for adequate local public recreational facilities. In its 2016 assessment, the Borough observed that the lack of adequate planning, combined with pressure from individual developers, has often resulted in residential developments that lack sufficient and properly located recreational facilities. As a result, the Borough has decided to buy Lot 119 of Tax Block 45502 of the official 2017 Kinnelon Borough tax map (the "Property"), from the Pompton Plains Reformed Bible Church, the current owner. The church had originally acquired the property and had planned to build a new church on the property, but as a result of the Highland Act, N.J.S.A. 13:20-1, the property was identified as within the Highlands Preservation Area. The church initially applied for, and the Department denied, an exemption from the Highlands Act. Pompton Plains Reformed Bible Church then filed suit and claimed that denial of an exemption from the Highlands Act violated the Highlands Act, federal law and the United States Constitution. The Department denied the claim, insisting that the church needed to apply for a development approval before it could raise such claims. Because of the litigation, the church agreed to an administrative dismissal of the suit while it applied for a Highlands takings waiver. As part of the application process, the church agreed to reduce the proposed scale of disturbance on the Property. The Department reached a conceptual agreement with the church, which would have resulted in a smaller sanctuary along with a conservation restriction to the State for the portion of the Property which slopes to the rear. But, as a result of the economic downturn in 2008, the church decided to halt construction of a new church, and eventually made the Property available

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to the Borough. Thus, the Property became available for municipal acquisition. Based on this approval and the incorporated endorsements, the Department has determined that the proposed project is consistent with local zoning and the county and local master plans.

Pursuant to N.J.A.C. 7:15-3.5(j)2, 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, the applicant must prepare a modification to the wastewater treatment capacity analysis to include the proposed project or activity, pursuant to N.J.A.C. 7:15-4.5(b). The project plans to add 2 acres to the SSA, and the projected wastewater flow for the proposed project to be received by TBSA Sewage Treatment Plant Facility is 1,520 gallons per day (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 proposed 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, approval of the amendment proposal. Accordingly, the Department instructed the applicant to request written statements of consent from Highlands Water Protection and Planning Council (Highlands Council), Morris County, The Pequannock, Lincoln Park and Fairfield Sewerage Authority (PLPFSA) (Authority of TBSA), Pequannock River Basin Regional Sewerage Authority (PRBRSA), Borough of Butler, and Borough of Kinnelon. On January 23, 2018, the Highlands Council issued a letter that the proposed project is consistent with the Highlands Regional Master Plan, conditioned upon issuance of a Highlands Preservation Area Approval (HPAA) waiver. The Highlands Council will

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continue to coordinate with the Department in reviewing the HPAA with taking waiver application for the Kinnelon Shelter and Community Center. On January 18, 2018, Morris County confirmed via email that the County would offer no position on the proposed amendment. On February 14, 2018, PLPFSA adopted Resolution No. 18-019 in support of the proposed amendment. On February 21, 2018 PRBRSA adopted Resolution No. R-18-2-9 in support of the proposed amendment. On February 6, 2018, the Borough of Butler adopted Resolution No. 2018-24 in support of the proposed amendment. On March 15, 2018, the Borough of Kinnelon adopted Resolution No. 3.13.18 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.

**SIGNED** \_\_\_\_\_

Alan Miller, Manager  
Office of WRM Coordination  
Department of Environmental Protection

**May 18, 2018** \_\_\_\_\_

Date