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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

WATERSHED AND LAND MANAGEMENT

DIVISION OF WATERSHED PROTECTION AND RESTORATION

Adopted Amendment to the Northeast Water Quality Management Plan

Take notice that on June 14, 2023, in accordance with the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-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 Northeast Water Quality Management (WQM) Plan. The amendment (Program Interest No. 435442, Activity No. WMP170001) adopts a complete municipal Wastewater Management Plan (WMP) for Oakland Borough (Borough) and supersedes the previous Oakland Borough WMP adopted on February 4, 1991 (23 N.J.R. 910(b)). The WMP also amends the Northwest Bergen County Utilities Authority (NBCUA) WMP. Oakland Borough was granted WMP responsibility for the Borough on July 2, 2014.

Preliminary notice of this amendment was published in the New Jersey Register on November 21, 2022 at 54 N.J.R. 2155(a). Comments were received during the public comment period. The comments and Department responses are provided at the end of this notice.

This notice represents the Department's determination that the amendment is consistent with the applicable regulatory criteria at N.J.A.C. 7:15, as described below.

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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 SUEZ Water NJ (now Veolia North America), Passaic Valley Water Commission, North Jersey District Water Supply Commission, Great Falls Hydroelectric Company, City of Paterson Department of Public Works, Dundee Water Power and Land Company, NBCUA, Borough of Franklin Lakes, Township of Wayne, Borough of Oakland, Bergen County Board of County Commissioners, and the New Jersey Highlands Council. On November 29, 2022, Veolia North America passed a resolution consenting to the proposed amendment. On November 29, 2022, Dundee Water Power and Land Company, Inc. passed a resolution consenting to the proposed amendment. On November 22, 2022, the Borough of Franklin Lakes passed Resolution No. 315-22, which was certified on December 6, 2022, consenting to the proposed amendment. On February 22, 2023, NBCUA passed Resolution No. 22-2023, consenting to the proposed amendment. On March 8, 2023, the Borough of Oakland passed Resolution No. 23-105, consenting to the proposed amendment. In an email dated November 21, 2022, Bergen County supported the proposed WMP and identified several minor edits to the WMP which have been incorporated into the WMP and are identified below in the Comment section. In an email dated November 17, 2022, in lieu of passing a resolution, the New Jersey Highlands Council reaffirmed the position in their October 15, 2021 letter to the Department that the amendment is consistent with the Highlands RMP and that all conditions of the Highlands Council April 13, 2018 letter have been met. The Passaic Valley Water Commission, North Jersey District Water Supply Commission, Great Falls Hydroelectric Company, City of Paterson Department of Public Works, and Township of Wayne did not respond to the request for a statement of consent.

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Pursuant to N.J.A.C. 7:15-4.3, the WMP contains all the required components for a complete municipal WMP. The significant actions are discussed below.

The WMP includes modifications to the approved Sewer Service Area (SSA). In the 1991 WMP, portions of the Borough were designated to be served by a proposed Oakland Borough municipal sewage treatment plant (STP). Subsequently, the Borough determined that treatment plant was not feasible and it was never built. This WMP assigns sections of the Borough in the downtown corridor and areas that are currently served by four existing Discharge to Surface Water (DSW) STPs (Oakwood Knolls, Skyview-Hibrook, Indian Hills High School, and Chapel Hill Estates) to be served by the NBCUA STP (NJPDES No. NJ0024813) located in the Borough of Waldwick, Bergen County. All wastewater flow from the four DSW STPs and from the downtown corridor, which is currently served largely by Individual Subsurface Sewage Disposal Systems (ISSDSs), cesspools, and on-site Discharge to Groundwater (DGW) facilities, will be conveyed to the NBCUA STP. The area to be served by the NBCUA is approximately 1,059 acres and includes 44.6 acres of the Oakwood Knolls SSA, 51 acres of the Indian Hills High School SSA, 13 acres of the Chapel Hill Estates SSA, and 39.2 acres of the Skyview-Hibrook SSA. ISSDSs, cesspools, and NJPDES permitted on-site DGW facilities, including NJPDES general permit T-1 facilities, within the NBCUA SSA will connect to the NBCUA facility and discontinue the use of the on-site systems.

On September 26, 2001, the Superior Court of Bergen County determined that the Township of Wayne had a constitutional obligation to accept wastewater flow from the Bi-County Development Corp Tract, located on Block 3001, Lots 1, 4, 15, and 18 in Oakland Borough, and ordered the Borough of Oakland and the Township of Wayne to execute a municipal services

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agreement to provide for wastewater service for the residential development (*Pinnacle Communities LTD. V. Bor. Of Oakland*, Docket No. BER-L-8348-99 (*Mount Laurel*)). The Bi-County Development Corp Tract was delineated as a SSA in the Oakland Borough WMP adopted in 1991. However, as no development existed on the subject parcels, pursuant to the Highlands Water Protection and Planning Act (Highlands Act) adopted on August 10, 2004, the SSA was subsequently removed by the Department through an amendment adopted on October 6, 2006. On June 3, 2005, the Department issued a determination that the Bi-County project was exempt from the Highlands Act pursuant to N.J.A.C. 7:38-2.3(a)17 pursuant to exemption number 17. Pursuant to a January 28, 2014 Settlement Agreement between the Department and Bi-County Development Corp. (OAL Docket No. ELU 6606-10N, ELUWM 1771-10N), it was determined that, because the project was exempt from the Highlands Act, the 2006 removal of the SSA was in error. Pursuant to the 2014 Settlement Agreement, the Property was again included in the SSA. The 2014 Settlement also directed Bi-County to revise its plans, including its 2006 Comprehensive Conservation Plan which details conservation measures to be taken on the site to address all unavoidable impacts to critical habitat areas that have been identified, to conform with the "NJDEP Permitting Plan for Bi-County Oakland" (Permitting Plan) dated May 18, 2012. The WMP identifies 50.6 of the 86 acres of the Bi-County Tract to be served by the Mountain View STP in Wayne Township, a reduction of 35.4 acres from that contained in the 1991 WMP, which still accommodates the Project as identified under the 2014 Settlement Agreement, a proposed 204-unit residential development.

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Oakland Borough is located in both the preservation and planning area of the Highlands Region, as designated by the Highlands Act, N.J.S.A. 13:20-1 et seq. A Petition for Plan Conformance for the Borough was approved by the Highlands Council on May 15, 2014; however, at the Borough's request, the planning area portion of the Borough's Plan Conformance was rescinded on June 28, 2017. Currently, Oakland Borough is conforming to the Highlands Regional Master Plan (RMP) in the preservation area only and is, thus, not a Highlands conforming municipality as defined at N.J.A.C. 7:15-1.5. Areas eligible for sewer service in the Highlands Region are defined at N.J.A.C 7:15-4.4(c). In the preservation area, the SSA delineation, municipal build-out/capacity analysis, and nitrate dilution analysis was performed according to the procedures set forth in the RMP, in accordance with N.J.A.C 7:15-4.4(c)1. In the non-conforming planning area, the WMP was developed pursuant to N.J.A.C. 7:15-4.4(c)3 and 4.5. In accordance with Executive Order No. 114 (2008), the Highlands Council reviewed the proposed plan for consistency with the Net Water Availability provisions of the RMP. In April 2018, the Highlands Council determined that the Oakland WMP would be consistent with the RMP if the following four conditions were met:

1. Oakland Borough agreed to fully implement a Highlands Water Use and Conservation Management Plan (WUCMP). The WUCMP would include specific mitigation targets and corresponding strategies tied to the proposed build-out in the WMP to mitigate for the proposed interbasin transfer. These targets and strategies must be developed before applying for a Major Modification to the Borough's Water Allocation Permit.

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2. Oakland Borough prepared and implemented a Septic Management Plan, including a Septic Maintenance Ordinance. The Septic Management Plan should require regular pump-outs especially because the Borough has been experiencing failures.
3. Consents and written approvals were received from all affected parties, municipalities, and water purveyors listed on pages 5 and 6 of the WMP.
4. Prior to issuing any TWA permits, a Major Modification to the Borough's Water Allocation Permit is required.

In an October 15, 2021 letter, the Highlands Council determined that the conditions of the April 2018 determination had been met. On August 12, 2021, Oakland Borough adopted a WUCMP as a Sub-Element of the Conservation Plan of Oakland's Master Plan. A Septic Management Plan is included as part of the WMP and includes plans to revise the Borough's Septic Management Ordinance, including the recommended frequency of septic tank and grease trap pumping. Oakland Borough has provided the Highlands Council with resolutions of all affected parties, including the Borough of Oakland, the NBCUA, and Bergen County through emails on September 21 and 22, 2021. In accordance with paragraph 27 of the July 17, 2020, Administrative Consent Order (ACO) between the Department and Oakland Borough and Oakland Borough's Water Allocation Permit No. 5199 (Activity No. WAP200001 effective May 1, 2021), permit requirement #2, no additional sewer extensions or connections are permitted by Oakland Borough to the NBCUA, except for pre-existing connections from the Chapel Hill Estates, Oakwood Knolls, and Skyview-Hibrook STPs, without a Highlands Council Consistency Determination and a Major Modification of Oakland Borough's Water Allocation Permit issued

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by the Department. Oakland has stated that they intend to pursue any required Major Modification to the Borough's Water Allocation Permit after the adoption of the proposed WMP.

Areas eligible for sewer service in the Highlands Region are defined at N.J.A.C. 7:15-4.4(c). In the preservation area, eligible areas are limited to those that were connected to a wastewater treatment facility as of August 10, 2004, or those areas that are eligible for sewer service pursuant to N.J.A.C. 7:38-2.3, 2.4, 2.6, and 3.4. Areas eligible for sewer service in the planning area of non-Highlands conforming municipalities must conform to N.J.A.C. 7:15-4.4(d) and (h). Pursuant to N.J.A.C. 7:15-4.4(d), the following are not eligible for delineation as SSAs, 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 proposed SSA using a GIS shapefile provided by the Borough compared to the Department's GIS data layers available at <https://gisdata-njdep.opendata.arcgis.com> and/or other information as noted below, to determine if the proposed SSA included 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:

- The Department determined that the SSA contains areas mapped as endangered and threatened wildlife species habitats Rank 3, 4, or 5 on the Department's Landscape Maps

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of Habitat for Endangered, Threatened, or Other Priority Wildlife based on the “Landscape Project Data” Version 3.3 GIS data layers, in accordance with N.J.A.C. 7:15-4.4(e)1. The Bi-County project located on Block 3001, Lots 1, 4, 15, and 18 is identified as Rank 3 Barred Owl habitat and Rank 5 Northern Myotis habitat. However, pursuant to the 2014 Settlement Agreement, the Bi-County project, as contemplated in the 2014 Settlement Agreement, is to remain in the SSA. As identified in the Settlement Agreement, a conservation plan has been developed for the project to protect the habitat and proposes to deed restrict from future development designated conservation areas. The conservation plan will include, but not be limited to, a conservation easement that will conserve 16.8 upland acres adjacent to the wetlands on-site. In addition, the project will be required to obtain any other approvals required by local, State, and Federal laws that address restricting tree removal or disturbance to critical Federally-listed bat species habitat. Prior to any other Department approvals or permits necessary for the construction of the project beyond SSA requirements, surveying for Northern Myotis will be required and, if no additional studies are needed, no tree clearing shall occur between April 1 and September 30 anywhere on the project site. The conservation easement must be filed before site preparation and construction. The Permitting Plan for the Bi-County project identified by the Settlement Agreement adheres to the conservation plan.

- 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.

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- The Department determined that the SSA does contain 300-foot riparian zones along C1 waters based on the “Surface Water Quality Standards” GIS data layer; however, the SSA within the C1 riparian zone is limited to the footprint of existing sewage-generating structures.
- The Department determined that there are wetlands located in the SSA on the above-mentioned Bi-County property based on the “2012 Wetlands” GIS data layer, in accordance with N.J.A.C. 7:15-4.4(e)4. However, pursuant to the 2014 Settlement Agreement, the property is to remain in the SSA. As part of the Letter of Interpretation review for the wetlands on the project site, the previously mentioned 2006 Comprehensive Conservation Plan was developed for the project that includes obtaining all necessary Department permits for any disturbances to wetlands on-site. No wetlands identified in the Comprehensive Conservation Plan are included in 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 data layer and the “State Plan Data” GIS data 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 amendment based on the U.S. Environmental Protection Agency list of New 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. 4.4(g).

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Pursuant to N.J.A.C. 7:15-4.5(b), a wastewater treatment capacity analysis was performed to assess the existing and future wastewater treatment needs for each wastewater treatment facility within Oakland Borough. In accordance with N.J.A.C. 7:15-4.5(b)1, a build-out analysis to identify projected future wastewater flow was conducted for each existing and proposed SSA within Oakland Borough. Wastewater flow projections are calculated based upon the current municipal zoning and include potential development of all vacant and underdeveloped properties and any existing parcels currently served by on-site systems that are located within the SSA and not currently being served by sanitary sewer. The wastewater flow was projected by applying the applicable criteria at N.J.A.C 7:14A-23.3. There are eight existing wastewater treatment facilities that discharge to surface water: Skyview-Hibrook STP (NJ0021342), Oakwood Knolls STP (NJ0027774), Oakland Operator LLC DBA (NJ0029858), Chapel Hill Estates STP (NJ0053112), Ramapo River Reserve STP (NJ0082811), Indian Hills High School (NJG0021253), NBCUA STP (NJ0024813), and Mountain View STP (NJ0028002), and 23 that discharge to groundwater. Of these facilities, only the NBCUA STP and Mountain View STP SSAs include vacant parcels that would contribute additional build-out flow. Wastewater flow projections for the NBCUA STP were determined to be 0.856 million gallons per day (MGD) and wastewater flow projections for the Mountain View STP were determined to be 0.0612 MGD. Both STPs are located outside of Oakland Borough and provide service to other entities; these projections are strictly for the Oakland Borough portions of the STPs' SSA.

A number of the STPs in Oakland Borough are to be decommissioned and wastewater flows conveyed to the NBCUA STP; therefore, the build-out analysis and wastewater capacity

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analysis were developed based on the transfer of SSAs and associated projected wastewater flows from these STPs to the NBCUA facility. The existing facilities that are to be decommissioned and flows transferred to NBCUA are: Skyview-Hibrook STP, Oakwood Knolls STP, Chapel Hill Estates STP, Indian Hills High School, Robert Michael Shopping Center (NJ0167126), Oakland Cross Roads (NJ0167631), Copper Tree Shopping Plaza (NJG0133809), Di Iorio Investors (NJG0262714), Our Lady of Perpetual Help (NJG0186091), Portabello Banquet (NJG0142701), Portobello Feasts (NJG0137219), Ramapo Shopping Center Inc. (NJG0142441), Ramapo Valley Resource Ltd. (NJG0145521), and Trovatos Due (NJG0140023).

The projected wastewater flow for undeveloped and underdeveloped areas and flows from existing, but not yet connected, development within Oakland Borough's existing and future SSAs was used in conjunction with the existing wastewater flow to assess whether sufficient capacity exists to accommodate future needs. The existing wastewater flow for the NBCUA STP and Mountain View STP was calculated based on the highest consecutive 12-month rolling average of flows from January 2015 to December 2019, as reported to the Department in the Discharge Monitoring Reports (DMRs). The existing flow for NBCUA was calculated as 12.283 MGD and the existing flow for Mountain View as 8.909 MGD. These existing flows originate in the respective STPs' current SSAs, which is outside of Oakland Borough; there is no existing wastewater flow from Oakland Borough to these facilities. The existing wastewater flow and the projected future wastewater flow as identified in the build-out analysis are combined to determine the total projected future flow for each SSA within Oakland Borough and utilized to assess whether sufficient capacity exists to accommodate

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future need. The results of the wastewater treatment capacity analysis identified no potential capacity deficiencies at any of the STPs; therefore, no strategies to address deficiencies are required. The Department has determined that the wastewater treatment capacity analysis complies with N.J.A.C. 7:15-4.5.

In accordance with N.J.A.C. 7:15-4.5(c), the WMP includes a nitrate dilution analysis for areas not proposed for sewer service, identified as non-SSA. In the preservation area portion of Oakland Borough, septic densities are determined in accordance with the requirements as set forth in the Highlands Act Rules at N.J.A.C. 7:38-3.4(b), which allows for 25 acres per septic unit in non-forested areas and 88 acres per septic unit in forested areas. The RMP septic system yield analysis determined a yield of zero units permissible for the preservation area. No lots were identified as exempt from the Highlands Act. In the non-conforming planning area portion of Oakland Borough, the nitrate dilution analysis was conducted in accordance with N.J.A.C. 7:15-4.5(c) on a HUC-11 basis. The entirety of the planning area portion of Oakland Borough is within the Ramapo River (02030103100) HUC-11. The analysis determined that 44 units would be allowed based on the current municipal zoning, while 82 units would be allowed based on the septic density values in "A Recharge-Based Nitrate-Dilution Model for New Jersey V7.0." Based on these analyses, there are no potential nitrate dilution analysis deficits in Oakland Borough. The Department has determined that the nitrate dilution analysis complies with N.J.A.C. 7:15-4.5(c).

The WMP includes a septic management plan (SMP) that consists of an inventory of all existing ISSDSs and cesspools, current septic management practices that promote care and

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maintenance of septic systems, and proposed improvements to the current septic management practices and refinement of the inventory. The Borough's Septic Management Ordinance is to be revised, including addressing the recommended frequency of septic tank and grease trap pumping. The Department has determined that the SMP complies with N.J.A.C. 7:15-4.5(c)1vi.

The WMP includes all required maps in accordance with N.J.A.C. 7:15-4.3(c). These include a WMP Area Map (Map 1), Selected Environmentally Sensitive Features Map (Map 2), Wastewater Service Area Map (Map 3), and Zoning Map (Map 4). The Department has determined that the mapping complies with N.J.A.C. 7:15-4.3(c).

The following individuals provided comments on this amendment during the comment period.

1. Michael Gross, Esq, representing Bi-County Development Corp
2. Peter Kortright, Bergen County Department of Planning and Engineering

A summary of the comments received and the Department responses follows. The number(s) in parentheses after each comment identifies the respective commenter listed above.

1. COMMENT: Bi-County opposes the Proposal and submits that the proposed amendment should be disapproved by the Department. The proposed WMP inexplicably and unlawfully removes approximately 40% of Bi-County's property from the SSA. The removal will violate the terms of long-standing settlement agreements, contravene court orders, and interfere with an

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active Mount Laurel affordable housing action. The removal will adversely impact the ability of Bi-County to adapt its plans to the ever-changing regulatory provisions of the Department. Pending regulations will require the ability to utilize the entire 83 acres of Property that must be included in the SSA.

In 1987, Bi-County commenced a builder's remedy action against Oakland Borough and the Oakland Borough Planning Board to authorize the development of the Property. The 1987 Action was resolved by way of a Settlement Agreement dated January 14, 1991, between Bi-County, the Borough, and the Board, which required the Borough to rezone the property and obligated the Borough to secure sewer service for the property. A WMP was adopted for Oakland Borough in 1991 which added the Property to the SSA. It has been recognized that the 1991 Settlement Agreement remains in full force and effect in a 2020 Memorandum of Understanding (MOU) between Bi-County and Oakland Borough.

In a separate action commenced by Bi-County against the Department resulting in a Settlement Agreement between Bi-County and the Department dated January 28, 2014, it was confirmed that the Bi-County Property remained in an approved SSA and that a previous Department action to remove the Property from the SSA was made in error because the Project was exempt from the Highlands Act. The Department is prohibited from adopting a WQMP amendment that does not provide sufficient SSA to serve the Project for so long as the Project remains exempt under the Highlands Act.

This proposal ignores the existence of the 1991 Settlement Agreement and the requirement that the entire Bi-County Property be included in an SSA. Furthermore, the proposal

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incorrectly states that the SSA for the Bi-County development became effective pursuant to the 2014 Agreement. The SSA for the Property was established by the 1991 WMP adoption.

The 50.6 acres of SSA allotted to the Bi-County Property pursuant to the 2022 WMP proposal is not sufficient for the Project, particularly in consideration of the pending Department regulations to protect against climate threats which will require substantial revisions to Bi-County's proposed development plans. The 2014 Settlement Agreement and 2020 MOU with the Borough both recognized that Bi-County would need to revise the previously approved site plan. However, the reduction of the SSA significantly restrains Bi-County's ability to revise its site plan to facilitate the Project while staying within an extremely limited SSA and also remaining compliant with Department regulations, including among other, the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 et seq., and Stormwater Management Rules, N.J.A.C. 7:8 et seq. Furthermore, even if the removal of acreage here would effectuate the intention of preserving environmentally sensitive areas, such matters are better addressed through the permitting process with the Department rather than a blanket reduction of the SSA as is occurring here. Bi-County asserts that the information submitted by this letter raise substantial issues concerning the 2022 WMP and the related Proposal, and therefore, the proposed amendment should be disapproved by the Department. (1)

RESPONSE: DEP was not a party to the 1991 Settlement Agreement or the 2020 MOU between Oakland and Bi-County and has no obligations thereunder. And thus takes no position on whether the WMP is consistent with the 1991 Settlement Agreement or the 2020 MOU. However, this

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adoption complies with the 2014 Settlement Agreement between DEP and Bi-County as it ensures sufficient sewer service area to serve the Project.

The removal of SSA in 2006 was part of a Highlands Region amendment reflecting the revocation of certain designated SSA in the Highlands Preservation Area in accordance with the Highlands Act. As discussed above, the Department acknowledges that, based on the Highlands Exemption status of the Bi-County project, removal of the SSA designation on the Bi-County Property was made in error in 2006 and pursuant to the 2014 Settlement, the entire Property was again included in the SSA.

The reduction of SSA in this WMP addresses protection of ESAs pursuant to the WQMP rule, N.J.A.C. 7:15-4.4, and is in compliance with the 2014 Settlement Agreement by providing sufficient sewer service to serve the Project for so long as the Project remains exempt under the Highland Act. "The Project" as defined under the 2014 Settlement Agreement referred to Pinnacle's March of 1999 application for site plan approval for inclusionary development consisting of 313 residential units as initially proposed and subsequently modified. The subsequent modifications included a reduction to 209 units in 2007 and a further reduction to 204 units in 2012 as enunciated and recognized in the Settlement Agreement. It was this Project that was deemed consistent with the Northeast WQMP under the 2014 Settlement Agreement. And, it was this Project which the Department agreed to ensure sufficient sewer service area for. It has done so here.

The 2014 Settlement Agreement was based on a 2006 Conservation Plan and a 2012 Permitting Plan that intended to allow for development and protect threatened and endangered

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species habitat and wetlands. The 2006 Conservation Plan outlined the conservation measures to be implemented for the Project site to mitigate for the impacts to the threatened and endangered species habitat. This Conservation Plan influenced the eventual 2012 Permitting Plan that avoided development in four identified conservation areas and wetlands, and was integral to the 2014 Settlement Agreement. Indeed, the Permitting Plan, which set forth the development footprint at the Property, was incorporated into the 2014 Settlement Agreement. The 2014 Settlement Agreement specified that Bi-County would submit permit applications consistent with the Permitting Plan. Permits FWW070002, FWW070004, and FWW130001, under Program Interest No. 0000-03-0013.4, were applied for consistent with the development footprint in the Permitting Plan and issued by the Department on January 26, 2015. Extensions for those permits were applied for December 26, 2019 and January 3, 2020 and are still based off the development footprint of the Permitting Plan. The permit extension applications are currently pending. The SSA delineated at the Bi-County site in this WMP is consistent with the development footprint of the Project at the time contemplated by the 2014 Settlement Agreement, as well as the 2015 permits and the pending permit extensions before the Department. Thus, the WQMP provides sufficient sewer service area for the Project, as contemplated by the 2014 Settlement Agreement.

If new or updated Department regulations at any point in the future require revisions to the site plan that would no longer be workable with the SSA delineated in this WMP, a site-specific amendment may still be applied for.

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Despite the 2014 Settlement Agreement, approximately 9 years have passed and the Bi-County property still has not been developed. Since the execution of the Settlement Agreement in 2014, the WQMP rules were revised in 2016. 47 N.J.R. 2531(a), 2533; 48 N.J.R. 2244(a). The WQMP rule, at N.J.A.C. 7:15-4.4, outlines how areas eligible for sewer service shall be determined and are applied when a WMP is updated. Environmentally sensitive areas are included as one of the determining factors. As such, it is appropriate for changes in the SSA delineation to occur as a means to preserve environmentally sensitive areas, including wetlands and threatened and endangered species habitat. Only the sewage generating structures of “the Project,” or any project, are required to be within the SSA to be consistent with the WQMP. Revisions to the Project that require moving parking, roadways, storm water basins, or other non-sewage generating structures would not be impacted by the reduction of the SSA on the Property as those could be located outside the sewer service area, subject to any separate permitting requirements. The areas of the Property excluded in the SSA in this 2022 WMP consist entirely of threatened and endangered species habitat conservation areas as identified in the 2006 Comprehensive Conservation Plan and the 2012 Permitting Plan incorporated into the 2014 Settlement Agreement, or identified as wetlands on the most recent Letter of Interpretation for the Property. The 2006 Comprehensive Conservation Plan was submitted to DEP as part of the LOI and wetlands permit applications which were subsequently issued on January 26, 2015, and on which the 2014 Settlement Agreement relied upon. Thus, the WMP provides sufficient SSA to serve the Project as defined under the 2014 Settlement Agreement. Moreover, Bi-County has available remedies through a potential site specific amendment to further expand the sewer service area, if it is able to meet the standards for same.

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The commenter incorrectly states that the draft 2020 Oakland WMP provided that the entire Bi-County Property was located within an existing SSA. Mapping in the draft Oakland WMP proposed in 2018 (50 N.J.R. 1058(a)) excluded from the proposed SSA the four Conservation Areas on the Property as outlined in the 2006 Comprehensive Conservation Plan and the 2012 Permitting Plan for the Property. No draft between that 2018 version and this current 2022 plan, including the referenced draft 2020 WMP, had those areas in the proposed SSA.

2. COMMENT: The Borough did not provide a draft of the 2022 WMP proposal which impacted the Bi-County Property and contravened the terms and conditions of the 1991 Settlement Agreement and the 2020 MOU. (1)

RESPONSE: The public notice for this WMP was published in the New Jersey Register at 54 N.J.R. 2155(a) in accordance with N.J.A.C. 7:15-3.5(g)5. As the 1991 Settlement Agreement is between the Borough of Oakland and Bi-County Development Corp., it is not DEP's obligation to comply with the Settlement Agreement.

3. COMMENT: The WMP fails to provide any explanation for the reduction or clearly indicate which portions of the Bi-County Property are or are not within the SSA. (1)

RESPONSE: The Department acknowledges that the boundaries of SSA for the Bi-County Property may not have been clear as the label obscured them on the maps. The label has been shifted to provide a clearer view of the boundaries of the SSA.

As discussed in the Response to Comment 1, the reduction of sewer service area is based on applying the current WQMP rules, while meeting the obligations under the 2014 Settlement

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Agreement to ensure sufficient sewer service area for the Project. The areas of the Property not included in the SSA are areas identified for conservation in the 2006 Comprehensive Conservation Plan and 2012 Permitting Plan prepared for the Project, which the preservation of was integral to the 2014 Settlement Agreement, as well as wetlands as identified on the Permitting Plan. Pursuant to N.J.A.C. 7:15-4.4(d), areas identified as wetlands are not eligible for sewer service if singularly, or in combination with other features identified in N.J.A.C. 7:15-4.4(e), comprise an area of 25 acres or more.

4. COMMENT: The County is encouraged that steps are outlined in the plan that will have the Borough more in compliance with wastewater regulations as well as update and improve the safety of sewage in the town. The County has reviewed the draft plan and has the following minor edits to the document: the plan should be based upon 2020 US Census Population not 2010, thus showing that the Borough's Population is 12,748 not 12,754; all references to SUEZ Water NJ should be changed to Veolia North America, and; under the Planning Coordination section, Bergen County should be included in the list as an informed stakeholder. (2)

RESPONSE: The Department concurs with the commenter. Proper treatment of the wastewater to be conveyed to NBCUA and implementation of the SMP should improve the quality and safety of the groundwater, and potentially the surface water. The identified minor edits have been made to the WMP.

Sewer service is not guaranteed by adoption of this amendment as it represents only one part of the permit process and other issues may need to be addressed. Inclusion in the SSA resulting from adoption of this amendment does not eliminate the need to obtain all necessary permits,

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

6/14/2023

Date



Gabriel Mahon, Bureau Chief
Bureau of NJPDES Stormwater Permitting and Water Quality Management
Division of Watershed Protection and Restoration
NJ Department of Environmental Protection